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WOODMAN EDMANDS DANYLIK AUSTIN
SMITH & JACQUES, P.A.

ATTORNEYS-AT-LAW

ROBERT B. WOODMAN
PETER L. EDMANDS
THOMAS DANYLIK
RALPH W. AUSTIN
JAMES B. SMITH
KEITH R. JACQUES
MICHAEL J. O'FOOLE
HARRY B. CENTER II
SANDRA L. GUAY

234 MAIN STREET
P.O. BOX 468
BIDDEFORD, ME 04005-0468
TELEPHONE: 207-284-4581
FAX: 207-284-2078
E-MAIL: SLG@woodedlaw.com

September 26, 2014

David Webber, Chairman
York Harbor Board
Town of York
186 York Street
York, ME 03909-1314

Re: Dock Application of Steve and Pamela Maynard
12 Barrell Lane, Ext. (Map 57, Lot 49)

Dear Mr. Webber:

For the Board's convenience, enclosed please find 8 copies of the Maynard York Harbor Application for Review of Piers, Wharfs, Landings, Floats and Moored Floats for the construction of a 4-foot x 50-foot fixed pier with an associated 35-foot by 3-foot ramp accessing a 10-foot by 24-foot float at the Maynard's 12 Barrell Lane, Extension property. This is a recopy of the same application that was presented to the Harbor Board in September of 2013, the only change being larger sized plans.

As the Board is aware, this application has undergone significant review by this Board and by the Selectmen, who remanded this matter to the Harbor Board on December 16, 2013, after the Harbor Board initially denied the application on October 2, 2013. Following that remand, Mr. Maynard has continued to work with the Harbor Board in its review of the application, including redesigning the dock to the opposite side of his riverfront parcel. At the last meeting, the Board requested two items. First, the Board requested confirmation of the distances to high and low tides by the Town's peer reviewer. These measurements, as consistently shown on the plan, have now been confirmed. (Attachment A). Second, the Board asked that Mr. Maynard obtain written authorization from Mr. Stacy to relocate his mooring closer to the bridge. Although Mr. Stacy was very considerate of that request, he was concerned that moving closer to the bridge may result in items being thrown from the bridge into his vessel. As a result, relocating Mr. Stacy's mooring closer to the bridge is no longer an option. Therefore,

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

York Harbor Board
Town of York
September 26, 2014
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the application submitted herewith, is the same application that has been before this Board since May of 2013, with slight modification based on comments received since that time.¹

As previously described to the Board, some of these revisions include:

- 1) The "Existing Conditions Plan" has been revised to help illustrate that the proposed project meets the Harbor Board ordinance 8.3.6.9(b). The parcel was surveyed by Anderson Livingston Engineers, Inc. (attached at Tab 3) and both the High Water Line and Low Water Line were determined in accordance to the town's ordinance. An "84' Offset from Edge of Coastal Wetland" has been drawn to help indicate that there is a +/- 16ft length of shoreline that is 84ft or less from the low water line.
- 2) The line labeled APPRX MHW PER REF #1 has been relabeled to APPRX HAT PER RE #1 (HIGH WATER MARK). This was mislabeled on the original plan.
- 3) A "Proximity Plan" has been drafted which helps illustrate the project in relation to the adjacent floating dock and has measurements to the 103 Bridge, York Town Dock (across the river), and all the mooring blocks in the immediate area.
- 4) Per the concerns vocalized by the public and the Harbor Board as to the validity of the mooring measurements previously provided, additional survey work was performed to specifically locate the actual position of the mooring blocks as opposed to the mooring balls. These have been indicated on the plan and the distance from these mooring blocks to the float have been also added.
- 5) A plan has been included which illustrates the potential visual impact of proposed dock in relation to a photo taken from the 103 Bridge. The plan is called "Potential Dock Visual Impact" (Tab 4).

In addition to the modifications noted above, Mr. Maynard had offered to:

- Deed restrict the size of the boat that can be moored to the dock; and
- Make the dock available to a local commercial fisherman during the off-season.

Lastly, as the 80B appeal of the Board's initial October 2, 2013 decision is still being stayed at the Superior Court, by this letter I am incorporating into the record the entire record of review of this application before the Town, from the initial submission on April 22, 2013,

¹ The Board also asked for an entirely new application for the relocated dock. Although we disagree that a new application was required, this issue is no longer applicable.

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

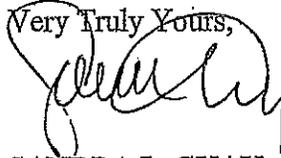
York Harbor Board
Town of York
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through the October 1, 2014 Harbor Board meeting. This includes the February 10, 2014 letter to the CEO which was sent in response to questions from the Harbor Board. (Attachment B).

The Maynard Application meets the requirements of the ordinance as it applies to the Harbor Board's scope of review, that the proposed dock will neither impede navigation nor endanger vessels. As previously discussed, the issuance of a building permit, and the other relevant ordinance requirements, are determinations for the CEO to make. The Applicant would therefore appreciate Harbor Board's approval of this application.

Thank you for your attention to this matter. We look forward to meeting with the Board at the October 1, 2014 meeting.

Very Truly Yours,



SANDRA L. GUAY

SLG/lb

Enclosures

Copy to:

Steve and Pamela Maynard (w/o attachments)

Zachary Taylor, Riverside & Pickering (w/o attachments)

Susan B. Driscoll, Esq.

RANSOM
Consulting, Inc.

Consulting
Engineers
and Scientists

September 23, 2014

Project 141.06103

Amber Harrison
Code Enforcement
Town of York
186 York Street
York, Maine 03909

RE: Maynard Pier Peer Review
12 Barrell Lane Extension

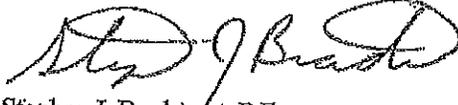
Dear Amber:

Ransom Consulting, Inc. (Ransom) has completed the peer review of the proposed pier for Steve and Pamela Maynard. This review was for the purpose of confirming the location of the high and low water elevation in the vicinity of the proposed pier. Elevations legally need to be confirmed by a Professional Land Surveyor and not a Professional Engineer. After consulting with Steve Burns, it was agreed that we should subcontract this work to a surveyor. We hired Titcomb Associates who performed this work and their letter of findings is attached, confirming the location of the Highest Annual Tide (HAT) and the Low Water Mark (LWM).

I trust that this addresses the concern of the York Harbor Board. Should you have any questions, please feel free to give me a call at 772-2891.

Sincerely,

RANSOM CONSULTING, INC.



Stephen J. Bradstreet, P.E.
Senior Project Manager

SJB:sjb
Attachment



Titcomb Associates

Land Surveying Land Planning

133 Gray Road
Falmouth, Maine 04105-2029
(207) 797-9199
Fax: (207) 878-3142
www.titcombsurvey.com

39 Court Street
Bath, Maine 04530-2017
(207) 443-9199
Fax: (207) 388-5077
www.titcombsurvey.com

September 19, 2014

Steve Bradstreet
Ransom Consulting, Inc.
400 Commercial Street, Suite 404
Portland, ME 04101

Re: **12 Barrell Lane Extension, York, Maine**

Dear Steve:

At your request we have conducted field work and reviewed the information relating to the application for a proposed pier located on Barrell Lane Extension in York, Maine. It has been determined from our investigation that the Plan of Proposed Pier made for Steve and Pamela Maynard by Riverside and Pickering dated December 12, 2012 and revised through August 7, 2013 accurately portrays the HAT (highest annual tide) and the LWM (low water mark) in relation to the project site and proposed pier.

The high water mark is defined in the Town of York Harbor Ordinance as "the highest elevation of the water during the highest annual tide...which is also interpreted by The Maine Department of Environmental Protection for the current year." The Maine Department of Environmental Protection publishes a list of these values for specific years and locations; in 2013 the HAT for York Harbor is listed at 11.3 feet above mean low water, or 6.3 feet based on NAVD88 datum.

The Harbor Ordinance defines low water as "the lowest elevation of the water during the low tide immediately following the highest annual tide". Based on published tide charts, the HAT occurred on June 25, 2013; the LWM immediately following the HAT was at a level of 1.7 feet below mean low water, or a difference of 13.0 feet between the highest and lowest tides. The resulting value of the LWM based on NAVD88 datum is -6.7 feet ($6.3 - 13.0 = -6.7$).

Comparing the Plan of Proposed Pier and our values based on NAVD88, it has been determined they coincide with each other, confirming the accuracy of the HAT and LWM as shown on the Plan of Proposed Pier.

Please let me know if you have any questions or comments.

Sincerely,

David E. Titcomb, PLS
President, Titcomb Associates

\214052.rpt

WOODMAN EDMANDS DANYLIK AUSTIN
SMITH & JACQUES, P.A.

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234 MAIN STREET
P.O. BOX 468
BIDDEFORD, ME 04005-0468
TELEPHONE: 207-284-4581
FAX: 207-284-2078
E-MAIL: SLG@woodedlaw.com

February 10, 2014

Amber Harrison, Code Enforcement Officer
Town of York
186 York Street
York, ME 03909

Re: Maynard Application
Harbor Board Review

Dear Amber:

This letter responds to your email to me earlier this month wherein you passed along certain questions raised by a Harbor Board member. As the questions are all related, I have incorporated the questions into one and will attempt to answer this question in this letter. I also anticipate responding directly to Board members when we meet on February 12th. Let me start however by commenting that while we certainly do not mind answering any of the questions that Board members might have, the decision with respect to most of these issues rests on your shoulders, and is beyond the jurisdiction of the Harbor Board under the York Harbor Ordinance.

Question:

Please explain how the proposed dock meets Section 8.3.6.3 and 8.3.6.9 of the Town's Land Use ordinance.

Response:

A. Section 8.3.6.3 requires that the structure or facility shall be located so as to minimize adverse effects on fisheries. The term "fisheries" is undefined in the ordinance. The term "fishery" or "fisheries" is likewise not defined in the state statutes, where the only reference to fisheries is in the commercial context.

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

Amber Harrison, Code Enforcement Officer

February 10, 2014

Page 2 of 4

33 M.R.S.A. §131 provides this definition:

"Commercial fisheries businesses" means any enterprise directly or indirectly concerned with the commercial harvest of wild or aquacultured marine organisms, whose primary source of income is derived from these activities. "Commercial fisheries businesses" includes without limitation:

- A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;
- B. Persons providing direct services to commercial fishermen and aquaculturists or fishermen's cooperatives, as long as provision of these direct services requires the use of working waterfront real estate; and
- C. Municipal and private piers and wharves operated to provide waterfront access to commercial fishermen, aquaculturists or fishermen's cooperatives.

There has been no evidence provided at any of the meetings thus far that the placement of the small dock up against the shoreline on the Maynard property will have any effect on the ability of anyone to operate a commercial fisheries business or even to fish where they are legally entitled to do so. Not only will the Maynard dock not interfere with fishing activities, as mentioned at the meeting, and at the request of a local lobsterman, Mr. Maynard is agreeable to allowing this lobsterman to use the dock off season. The dock therefore will not only have no adverse effect on a fishery, it will be assisting in the promotion of the lobster fishery.

B. Section 8.3.6.9 has several subsections, most of these are easily seen on the site plan that has been submitted with the application:

For example, the measurement shown on the "Existing Conditions Plan" indicates that the subject parcel meets the requirements of the ordinance 8.3.6.9c.. All measurements shown on the plan are geometrically perpendicular to the normal high water mark and measure to the low water channel. Both the low water channel and the normal high water mark were surveyed by a licensed Maine surveyor.

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

Amber Harrison, Code Enforcement Officer

February 10, 2014

Page 3 of 4

The shortest distance between the low water channel and the normal high water mark, when measured perpendicularly from normal high water mark, is 65 feet as shown on the plans submitted. *As a point of reference only*, there are two other measurements indicated on the plan. One measurement illustrates the approximate position further along the shore that shows the approximate last point where the distance, calculated as described above, is still 84 feet or less. The other measurement illustrates that even if the measurement was taken from the furthest shoreward point of the riprap that the distance is still 84 feet or less.

With respect to the "man-made structure" issue -- there are two sections that mention this term using identical language: 8.3.9.a. and 8.3.9.c. (all measurements shall be made perpendicular from the normal high water mark of the natural shoreline; no measurements shall be made from any man-made structure).

Section 8.3.9.a. refers to piers/floats not extending to 100 feet of the opposite marsh bank. As seen in the plans and other documents attached to the application, the pier/float in the case is not even remotely close to 100 feet of the opposite bank.

The ordinance defines "shoreline" as "[t]he normal high-water mark of a waterbody, or the upland edge of a coast wetland." As previously testified to the Harbor Board, the loose rip rap is there to break up wave action. It does not however alter the "normal high-water mark" as the rip rap could easily be moved and the high-water mark would remain the same. As such, the purpose of this this section has been amply satisfied.

Likewise, Section 8.3.9.c. addresses whether the low water channel is 84 feet or less from the high water mark and has the identical language as Section 8.3.9.a. with respect to the high-water mark. As noted above, even if the measurement was taken from the furthest shoreward point of the riprap the distance is still 84 feet or less. As such, the purpose of the ordinance has once again been satisfied.

The ordinance defines a structure as anything "built" for the support, shelter, or enclosure ... together with anything constructed or erected..." Loosely placed and tumbled rip rap fits none of those descriptions. Rather, "rip-rap" is defined as an "erosion-resistant ground cover of large, loose, angular stone."¹ Rip rap is used to decrease water velocity and to protect slopes from erosion. It does not however block water from seeking its normal path and height, as would a sea wall.

¹ From *Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas*

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

Amber Harrison, Code Enforcement Officer

February 10, 2014

Page 4 of 4

Thank you for your assistance and the opportunity to respond to these questions.

Very truly yours,

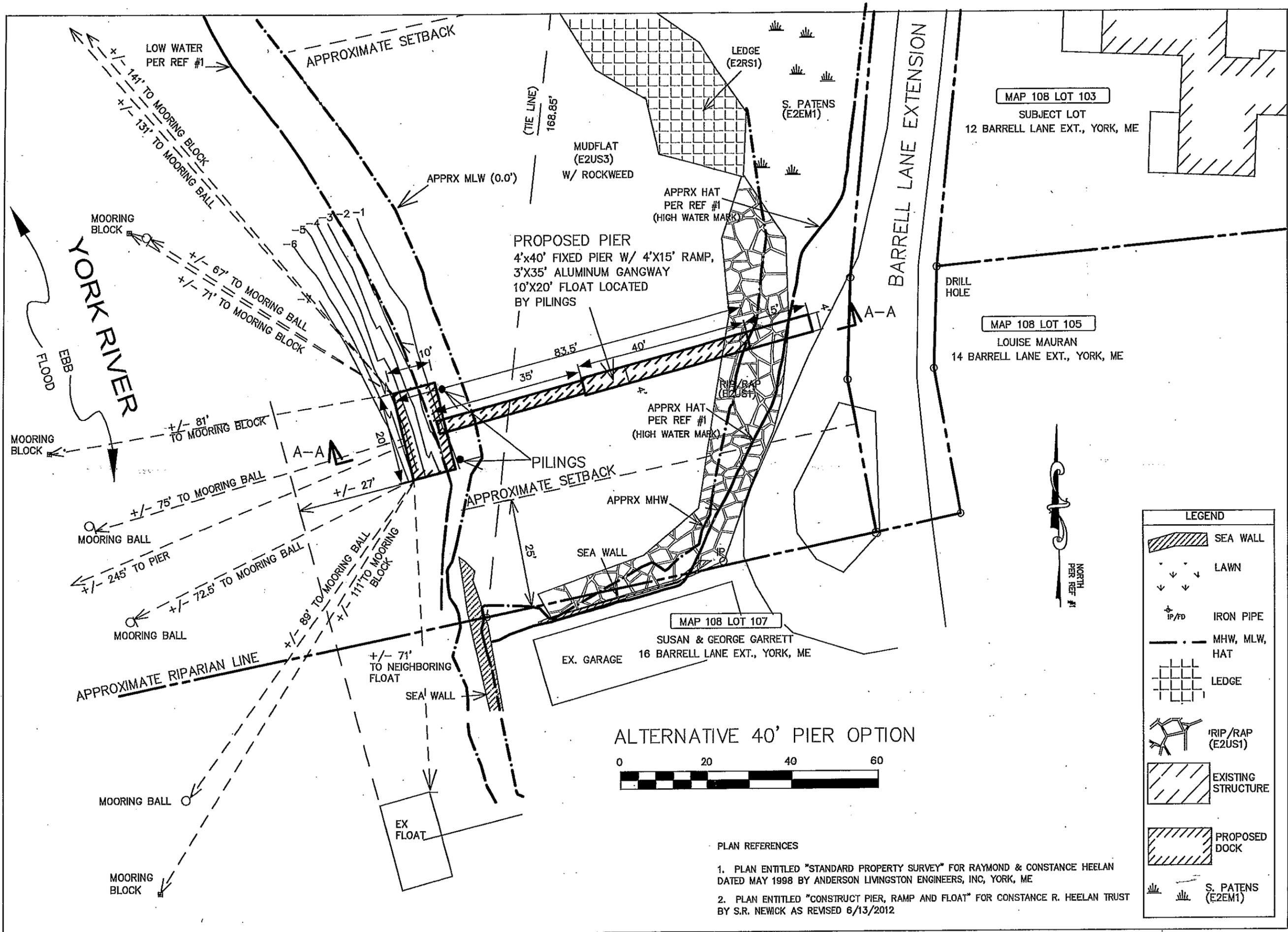


SANDRA L. GUAY

SLG/lb

Copy to: Steven Maynard

10 B



ALTERNATIVE 40' PIER OPTION



PLAN REFERENCES

1. PLAN ENTITLED "STANDARD PROPERTY SURVEY" FOR RAYMOND & CONSTANCE HEELAN DATED MAY 1998 BY ANDERSON LIVINGSTON ENGINEERS, INC, YORK, ME
2. PLAN ENTITLED "CONSTRUCT PIER, RAMP AND FLOAT" FOR CONSTANCE R. HEELAN TRUST BY S.R. NEWICK AS REVISED 6/13/2012

LEGEND	
	SEA WALL
	LAWN
	IRON PIPE
	MHW, MLW, HAT
	LEDGE
	'RIP/RAP (E2US1)
	EXISTING STRUCTURE
	PROPOSED DOCK
	S. PATENS (E2EM1)

<p>STEVE & PAMELA MAYNARD PROPOSED PIER</p>		<p>Date: 9/30/2014</p>	<p>Drawn By: APF</p>	<p>Checked By: ZCT</p>	<p>Approved: _____</p>	<p>Date: _____</p>	<p>Job Name: _____</p>
<p>12 BARRELL LANE EXTENSION City: YORK, ME</p>		<p>MAP 108 LOT 103 (57-49) Drawing Scale: 1"=20'</p>		<p>Address: _____</p>		<p>Title: _____</p>	
<p>RIVERSIDE PICKERING MARINE CONTRACTORS</p>							
<p>REVISIONS</p>	<p>Description</p>	<p>Date</p>					
		<p>File #: 564-12</p>		<p>ALTERNATIVE</p>			

10c

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November 26, 2014

David Webber, Chairman
York Harbor Board
Town of York
186 York Street
York, ME 03909-1314

Re: Dock Application of Steve and Pamela Maynard
12 Barrell Lane, Ext. (Map 57, Lot 49)

Dear Mr. Webber:

At the October 1, 2014 Harbor Board meeting, the Board (and the Chairman in particular), commented that certain of the attachments to the application did not correctly illustrate the Maynard float in its relocated position. As you may recall, in order to address Board and public comment, the float has been relocated an additional 10 feet shoreward than had originally been proposed. Enclosed herewith for the Board's review, are the requested revised illustrations. (Attachment 1). As previously discussed, these revisions are a part of the original application submitted on September 25, 2013, and remanded to the Harbor Board by the Board of Selectmen on December 16, 2013.

Since the last meeting, and at the Harbor Board's request, there has been an additional site visit by the Board to the Maynard property. The purpose of the site visit was to view the proposed location of the relocated float. It is my understanding that at that site visit, the vessel that is moored closest to the proposed Maynard float was physically pushed by the Harbor Master's boat to its maximum position closest to the proposed Maynard float. This measurement was taken close to the low tide that evening. It is also my understanding that although this was done, the closest that vessel was able to come toward the float was 49.5 feet as measured from the corner of the stern on the port side of the vessel to the shoreward side of the float. The proposed float is 10 feet wide. This being the case, the closest that the vessel can be expected to be while moored bow and stern is approximately 39.5 feet away from the waterward face of the proposed float. Enclosed with this letter are pictures taken at the site visit of the relationship between the fishing vessel as it was pushed toward the shore, and the staked location of the Maynard float. (Attachment 2).

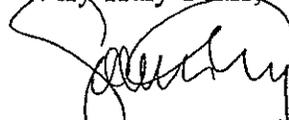
WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

David Webber, Chairman
York Harbor Board
November 26, 2014
Page 2 of 2

Also enclosed with this letter are photographs illustrating the relationship of the outcrop of rocks supporting the existing Garrett dock and the proposed float. (Attachment 3). As can be clearly seen, while there is ample passage between the nearest moored vessel and the proposed float location, passage through the actual area of the Maynard float in order to be able to access the Garrett dock is unlikely due to the proximity of the outcrop. In other words, while there appears to be ample distance, even in the strongest tide, to dock safely at the Maynard float and to pass between a boat docked at the Maynard dock and the nearest moored vessel, the use of the area of the float for passage to the adjacent downriver Garrett dock, as has been suggested in prior meetings, appears unlikely due to the high probability of grounding the vessel on the rock outcrop. The proposed location of the Maynard float is in fact now approximately 27 feet farther to shore than the adjacent Garrett dock. The float has been pulled back to the very edge of the channel so that the shoreward side of the float will occasionally be out of the water at low tide and thus minimizing any impacts to navigation to local mariners in the immediate area.

Thank you for your attention to this matter. We look forward to meeting with the Board at the December 3, 2014 meeting.

Very Truly Yours,



SANDRA L. GUAY

SLG/lb

Enclosures

Enclosed: Original and 5 copies

Copy to: Steve and Pamela Maynard (w/o attachments)
Zachary Taylor, Riverside & Pickering (w/o attachments)
Susan B. Driscoll, Esq.

ATTACHMENT 1

NOTES:

- 1) PLAN NOT TO SCALE.
- 2) RENDERING OF POTENTIAL DOCK IS AN APPROXIMATION OF THE SIZE AND LOCATION AS VIEWED FROM THE EASTERN END OF THE 103 BRIDGE.



REVISIONS	
Date	Description

File #: 564-12

Sheet of

P.O. Box 368, Eliot, ME 03903
Office: (207) 451-9229 Fax: (207) 703-0954

MAYNARD

POTENTIAL DOCK VISUAL IMPACT

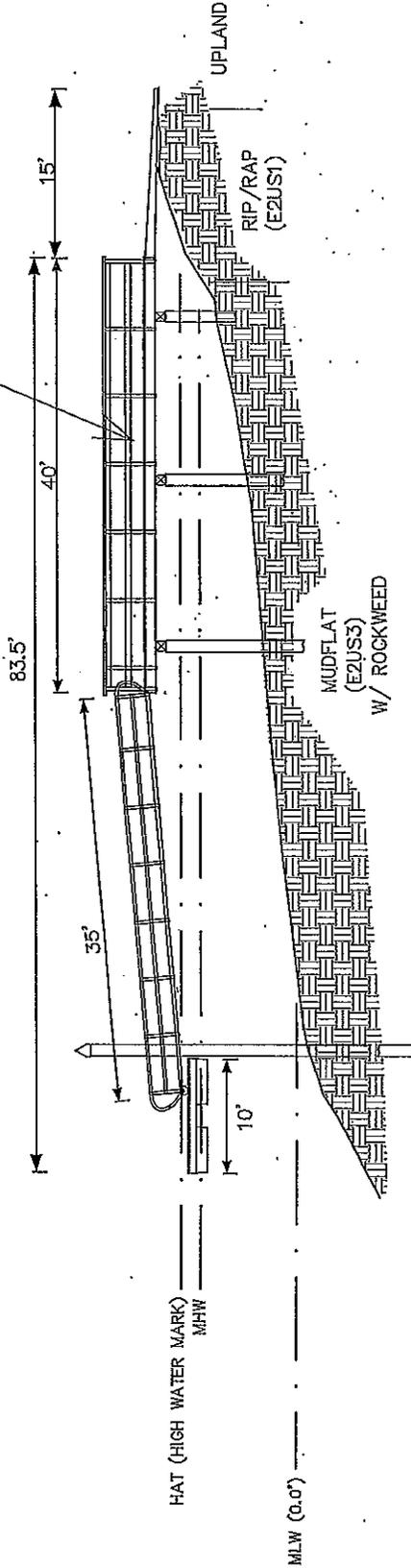
Date: 11-20-14
 Drawn By: APF
 Checked By: ZCT

Address: 12 BARRELL LANE EXT City: YORK, ME
 Map & Lot #: MAP 108 LOT 103 Drawing Scale: 1:20
 Approved: _____ Title: _____
 Date: _____ Job Class: _____

NOTES

1. THE DOCKING STRUCTURE HAS BEEN DESIGNED TO ALLOW THE OWNER TO ACCESS THE WATER IN A SAFE AND ECOLOGICALLY SOUND MANNER. THE FIXED STRUCTURE IS DESIGNED TO REDUCE THE IMPACT OF SUN SHADING TO THE SALT MARSH THROUGH TWO SPECIFIC DESIGN FUNCTIONS:
FIRST, THERE WILL BE A 1 TO 1 RATIO OF PIER WIDTH TO HEIGHT OF THE BOTTOM OF THE LONGITUDINAL SUPPORTS SUSTAINED WHERE THERE IS SALT MARSH BED BELOW THE STRUCTURE AND SECOND, THE DECKING WILL BE SPACED 3/4" APART.
2. THE FLOAT WILL BE LOCATED ENTIRELY BELOW MLW AND THIS WILL BE DRY AT PERIODS OF LOW WATER. FLOAT SKIDS AND STOPS WILL NOT BE REQUIRED. PILING WILL BE USED TO LOCATE THE SEASONAL RAMP AND FLOAT.

PROPOSED PIER
4'-X-40' FIXED PIER W/ 4'-X-15' RAMP,
3'-X-35' ALUMINUM GANGWAY
10'-X-20' FLOAT LOCATED
BY PILINGS

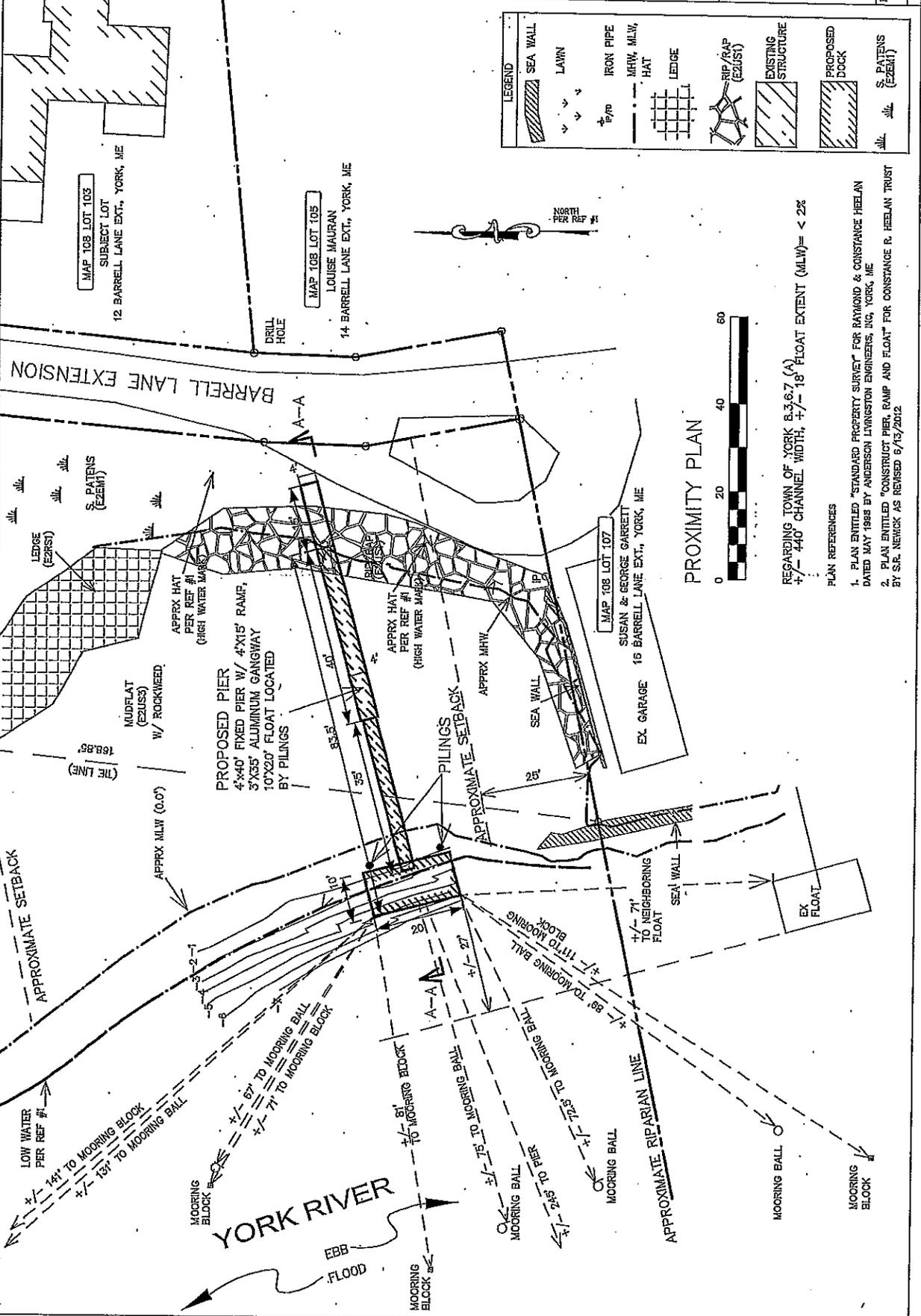


DOCK PROFILE A-A



Date: 12/12/2012 Drawn By: APP Checked By: ZOT		Address: 12 BARRELL LANE EXTENSION CITY, YORK, NY Title: MAP 108 LOT 103 (67-49) Drawing Scale: 1"=10' Job Name:	
REVISIONS Description Date 11-20-14 RISE FROM PREVIOUS PROPOSED MAP FOR PER		RIVERSIDE PICKERING MARINE CONSULTANTS	
Date: 12/12/2012 Drawn By: APP Checked By: ZOT		Address: 12 BARRELL LANE EXTENSION CITY, YORK, NY Title: MAP 108 LOT 103 (67-49) Drawing Scale: 1"=10' Job Name:	

MAP 108 LOT 103 (57-49) MAP 108 LOT 103 (57-49) MAP 108 LOT 103 (57-49) MAP 108 LOT 103 (57-49)		MAP 108 LOT 103 (57-49) MAP 108 LOT 103 (57-49) MAP 108 LOT 103 (57-49) MAP 108 LOT 103 (57-49)	
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STEVE & PAMELA MAYNARD STEVE & PAMELA MAYNARD STEVE & PAMELA MAYNARD STEVE & PAMELA MAYNARD		STEVE & PAMELA MAYNARD STEVE & PAMELA MAYNARD STEVE & PAMELA MAYNARD STEVE & PAMELA MAYNARD	
9/30/2014 9/30/2014 9/30/2014 9/30/2014		9/30/2014 9/30/2014 9/30/2014 9/30/2014	



REVISIONS	Date	Description
11-22-14	11-22-14	REVISE PROXIMITY PLAN TO REFLECT PROPOSED 48' MOORING BLOCK

PROXIMITY PLAN

REGARDING TOWN OF YORK 6.3.6.7 (A)
 +/- 440' CHANNEL WIDTH, +/- 18' FLOAT EXTENT (MLW) = < 2%

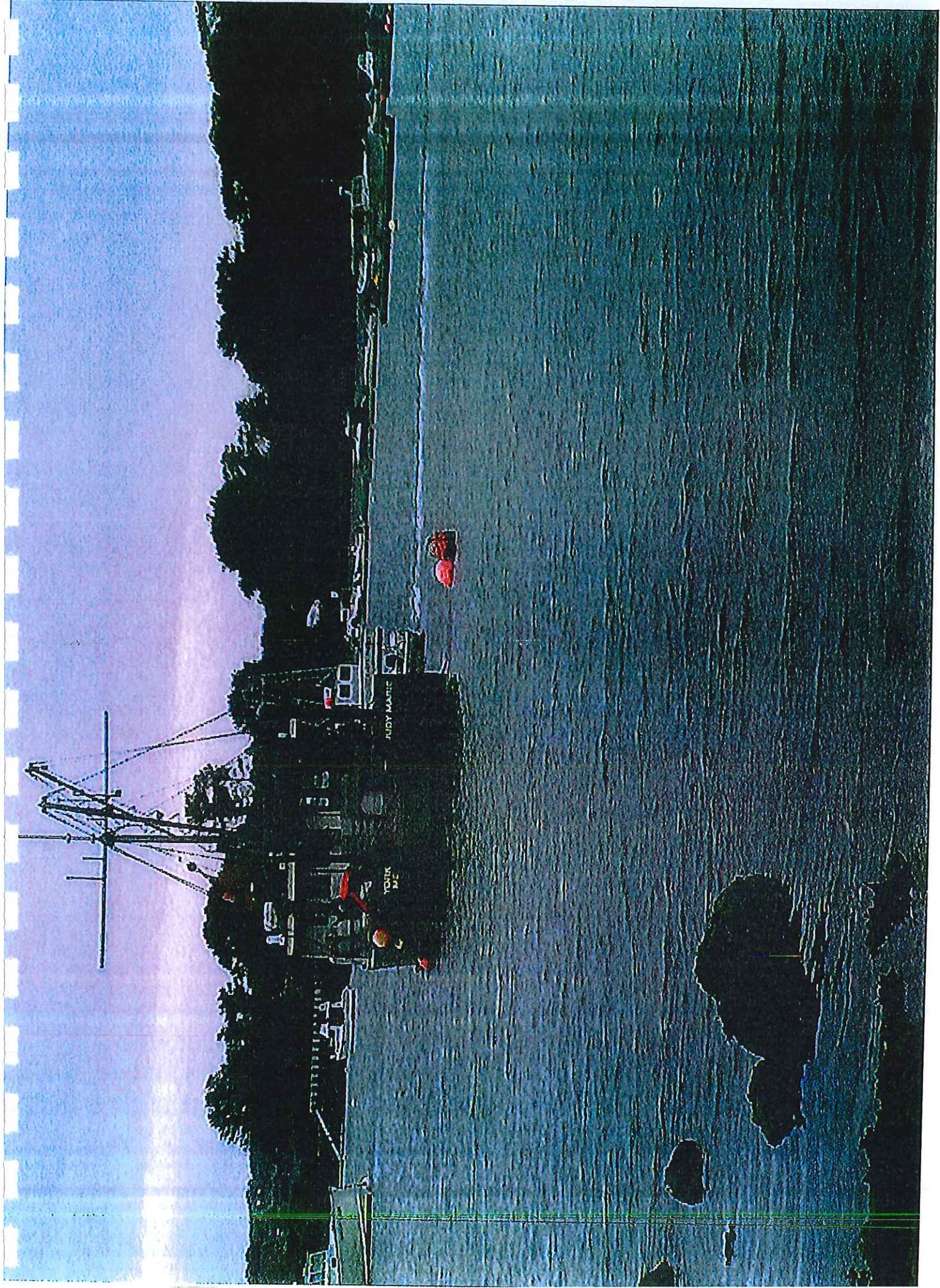
PLAN REFERENCES

1. PLAN ENTITLED "STANDARD PROPERTY SURVEY FOR RAYMOND & CONSTANCE HEELAN DATED MAY 1988 BY ANDERSON LIVINGSTON ENGINEERS, INC, YORK, ME
2. PLAN ENTITLED "CONSTRUCT PIER, RAMP AND FLOAT" FOR CONSTANCE R. HEELAN TRUST BY S.R. NEWICK AS REVISED 6/13/2012

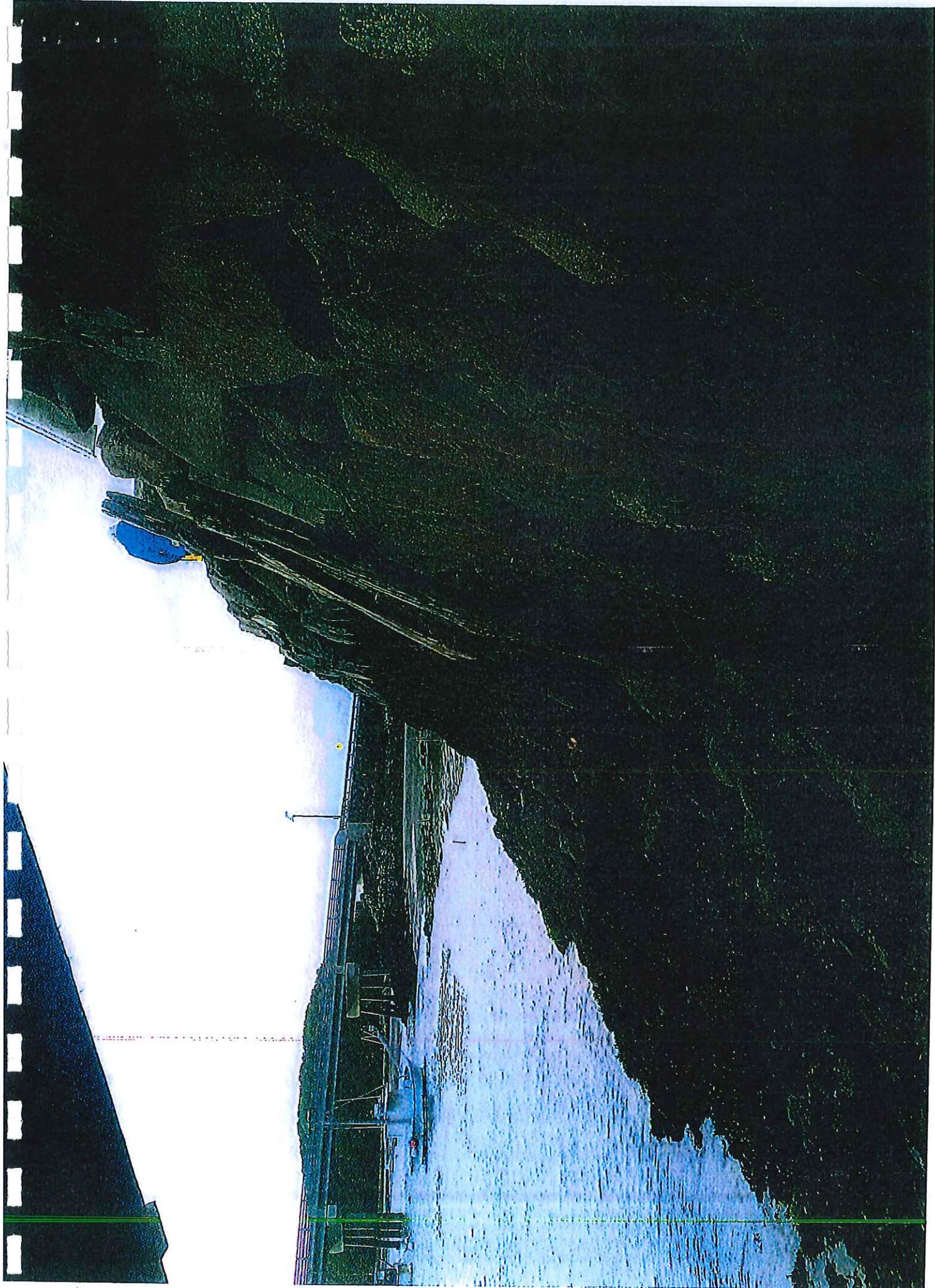
ATTACHMENT 2

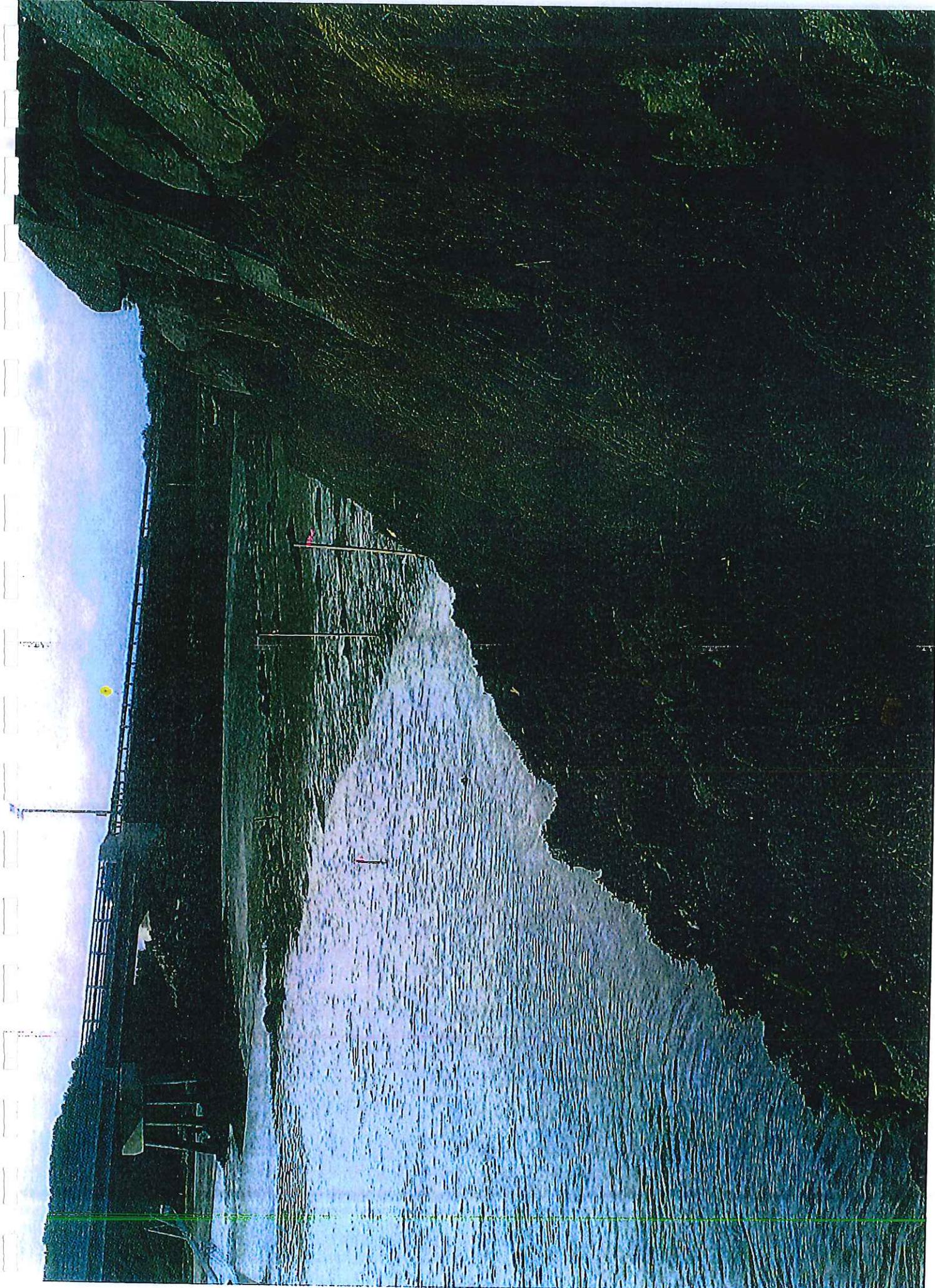


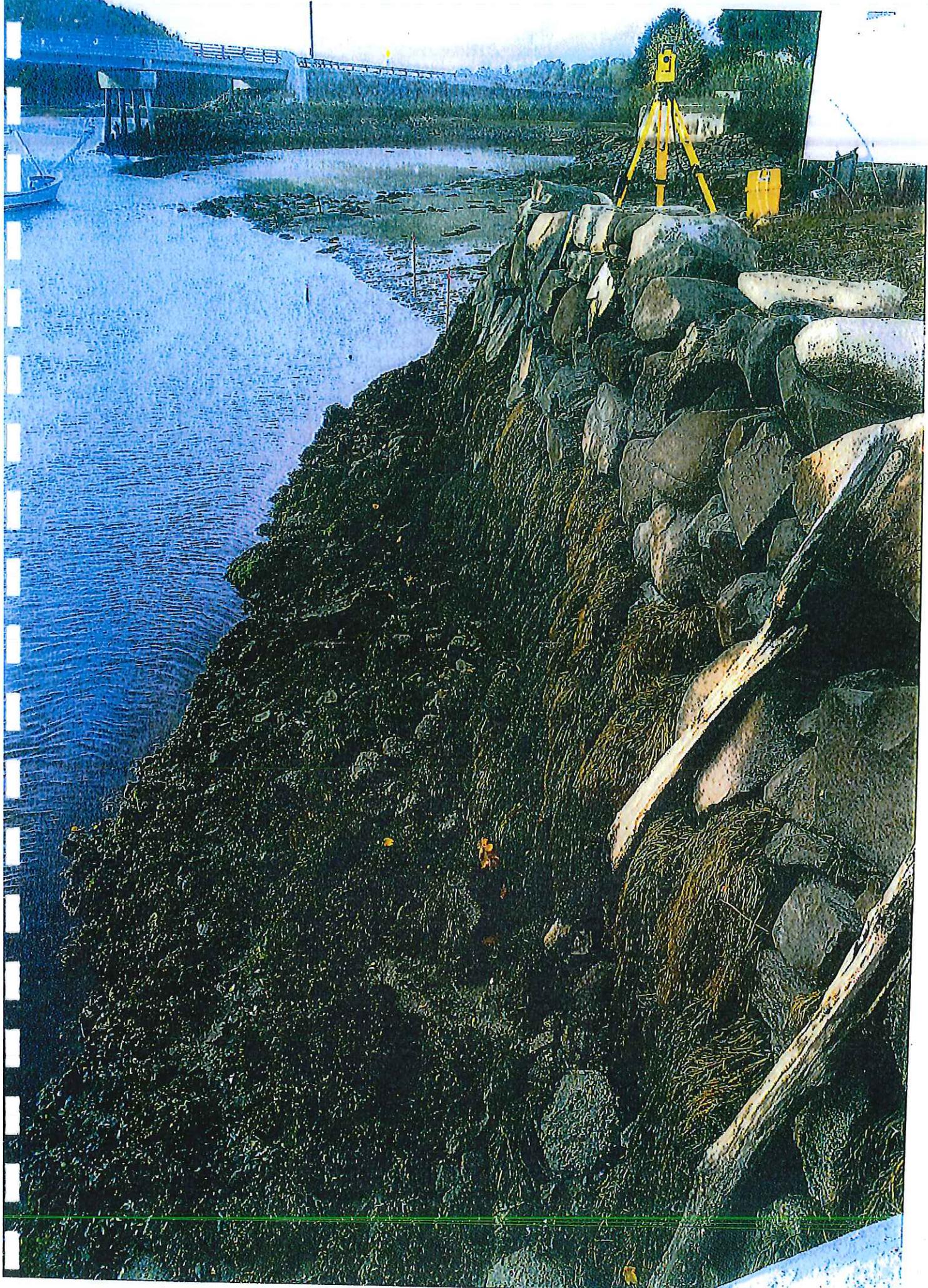




ATTACHMENT 3

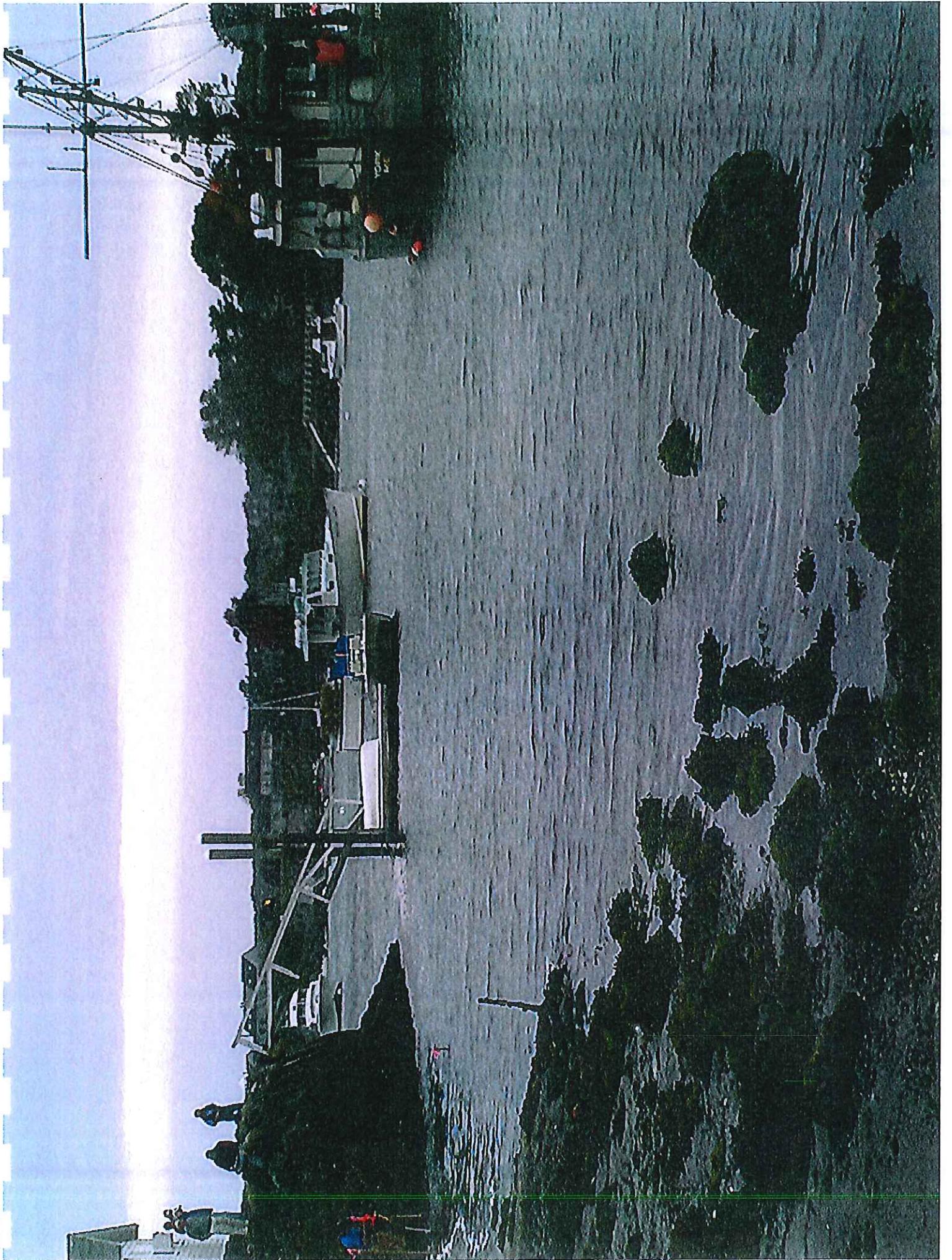








10D



10 E



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LÉPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

October 2014

Steve and Pamela Maynard
42 Main Street
East Hampton, CT 06424

RE: Natural Resources Protection Act Application, York,
DEP #L-25858-4P-A-N/L-25858-TW-B-N
(*Corrected Order)

Dear Mr. and Mrs. Maynard:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 822-6300 or at robert.green@maine.gov

Sincerely,

Robert L. Green, Jr., Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

STEVE AND PAMELA MAYNARD) NATURAL RESOURCES PROTECTION ACT
York, York County) COASTAL WETLAND ALTERATION
PIER SYSTEM) SIGNIFICANT WILDLIFE HABITAT
L-25858-4P-A-N (approval)) WATER QUALITY CERTIFICATION
L-25858-TW-B-N (approval)) FINDINGS OF FACT AND ORDER
(*CORRECTED ORDER)

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of STEVE AND PAMELA MAYNARD with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicants propose to construct a four-foot wide by 15-foot long landing and a four-foot wide by 50-foot long pile-supported pier with a three-foot wide by 35-foot long ramp, and a 10-foot wide by 24-foot long float. The pier will be constructed out of pressure-treated dimensional lumber and will be supported on four sets of cross-braced timbers, which will be driven into the substrate. The ramp and float will be constructed off-site and brought to the site by boat. The end of the float will extend approximately 115 feet beyond the mean high tide line and 25 feet beyond the mean low tide line, providing full-tide access at the float. The applicants propose to keep the ramp and float in place year round.

The project is shown on a plan sheet entitled, "Steve and Pamela Maynard, Proposed Pier," prepared by Riverside & Pickering Marine Contractors and dated December 12, 2012. The project site is located on the west side of Barrell Lane Extension in the Town of York.

B. Current Use of the Site: The upland portion of the site is highly developed with homes and lawn. The land slopes gradually down to a riprap rap slope that lines the coastal wetland. Piers are located on either side of the project site, including the Town of York's pier across the river from the project site.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicants submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicants also submitted several photographs of the proposed project site.

The proposed project is located in the York River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its

natural and cultural visual qualities. The surrounding area is developed with residential structures with piers. The proposed project will be similar in size and design to existing nearby structures and will be compatible with the existing character of the shoreline in the project vicinity.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application and the visual impact rating, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to navigation or recreation.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

Soil disturbance will be limited to the installation of pilings, which is not expected to be a significant source of sediment.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The site of the proposed project is a moderate to low energy shore. The upland includes a 0.52-acre lot with 215 feet of water frontage that is developed with a house. The supratidal zone is heavily developed with a roadway that runs parallel to the shoreline and within 50 feet of the highest annual tide line. The intertidal zone is approximately 50 to 75 feet wide. The intertidal is composed of mudflats and a riprap slope along the shoreline. Rockweed is found in abundance on hard substrate.

Department staff reviewed a Geographic Information System (GIS) database that contains information provided by both the Department of Marine Resources (DMR) and the Department of Inland Fisheries and Wildlife (MDIFW). The GIS database indicates that tidal wading bird and waterfowl habitat (TWWH), defined as a Significant Wildlife Habitat in the Natural Resources Protection Act (NRPA), is found within the project site.

MDIFW reviewed the proposed project and stated that there are no Essential Wildlife Habitats at the project site. MDIFW commented that given the small size of the habitat, the lack of natural buffer, the existence of other private piers, and a nearby bridge crossing, the proposed project is not expected to result in a significant adverse impact to waterfowl and wading birds that use this habitat.

The DMR stated that the proposed project should not cause any significant adverse impact to marine resources.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicants propose to use lumber treated with chromated copper arsenate (CCA) to construct the pier. To protect water quality, all CCA-treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

Provided that CCA-treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicants propose to directly alter eight square feet of coastal wetland to construct the pier and to indirectly alter approximately 545 square feet of coastal wetland as a result of shading impacts from the pier, ramp, and float.

The Wetland Protection Rules interpret and elaborate on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for an NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. **Avoidance.** No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicants submitted an alternatives analysis for the proposed project completed by Zachary Taylor of Riverside and Pickering Marine Contractors and dated December 13, 2012. The applicants investigated the availability of a mooring from the York Harbor Master, and learned that there is a multi-year waiting list for new boats. The Town pier is located across the river from the project site; however, mooring at the dock is time-restricted given the volume of users. The applicants chose the alternative to build a pier to provide immediate access to the water.

B. **Minimal Alteration.** The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicants own a 35-foot sailboat that requires six feet of draft. The proposed pier is the minimum size necessary to provide sufficient draft during periods of low tide when the sailboat is moored at the end of the float.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicants have avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA-treated lumber is cured as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of STEVE AND PAMELA MAYNARD to construct a landing and a pile-supported pier with a *permanent ramp and float, as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations;

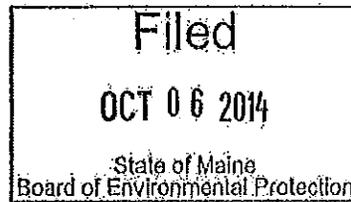
1. Standard Conditions of Approval, a copy attached.
2. The applicants shall take all necessary measures to ensure that their activities or those of their agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 3RD DAY OF October, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
CORRECTING THE ORDER DATED April 8, 2013. The effective date and expiration date remain the same as in the original.

BY: Michael Kuhns
For: Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

RLG/L25858ANBN/ATS#75629&75756 CORRECTED



Natural Resource Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

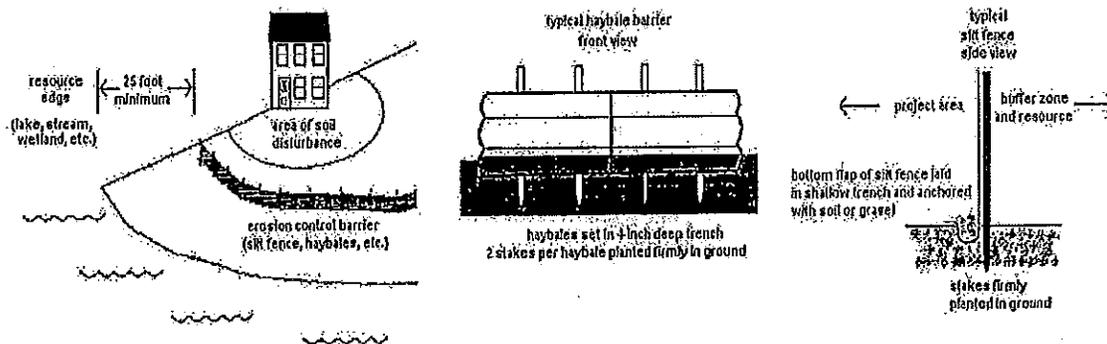


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead - buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

After Construction

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.
2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

Why Control Erosion?**To Protect Water Quality**

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

To Protect the Soil

It has taken thousands of years for our soil to develop. Its usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

To Save Money (\$\$)

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements; and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this **INFORMATION SHEET** for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
