



**KITTERY PORT AUTHORITY
TOWN HALL
200 ROGERS RD.
KITTERY, ME 03904**

Phone: 207-439-0452 ext 301
Email: kpa@kitteryme.org
<http://www.kitteryme.gov/>

**Meeting Agenda
September 7, 2023
6:00 P.M.**

1. Call to Order / Attendance
2. Pledge of Allegiance
3. Agenda Amendments and Adoption
4. Acceptance of Previous Minutes: 8/03/2023
5. Harbormaster Report and Budget Report
6. All Items involving Town Officials or Invited Guests
7. Public Hearing
 - a. The Kittery Port Authority moves to hold a public hearing and vote to approve an application from David Hunter Rev. Trust & Jessica Hunter Rev. Trust, 50 Dion Avenue, Kittery, ME 03904 (Tax Map 23, Lot 5A) for the construction of a 4' x 80' pier, a 3' x 35' ramp, and a 10' x 20' float. Agent is Lisa Vickers, Atlantic Environmental, LLC.
 - b. The Kittery Port Authority moves to hold a public hearing and vote to approve an application from Langdon Island West Condominium Association, 9 Badgers Island West, Kittery, ME 03904 (Tax Map 1, Lot 23) for the modification of an existing structure consisting of a 4' x 8' float extension, a 4' x 34' (2 – 17') float, and two (2) 6' x 24' finger floats, as shown on ME DEP PERMIT PLAN-2022 AERIAL Drawing C3, REV. 2, dated 7/27/23, showing a railing on the short leg of the existing 28 foot long float that prohibits the berthing of boats on that slip, as well as outlines of six, 24 foot long boats in each slip, shown not extending more than 1 foot beyond the end of each finger float. Agent is Steven Riker, Ambit Engineering – Haley Ward, Inc.
8. Piers, Wharves & Floats
9. Public Segment (Three Mins.)
10. Unfinished Business
11. New Business

12. Committee and Other Reports
13. Communications from the Chairperson
14. Board Member Issues or Comments
15. Executive Session
16. Adjournment

- 1 1. Call to Order / Attendance
- 2 Chair Patten called the meeting to order at 6:01 PM.
- 3 Members present: Steve Lawrence, Niles Pinkham, John McCollett, Vice Chair Bryan
- 4 Bush, and Chair Charles Patten.
- 5 Members absent: Scott Mason and Alan Johnston
- 6 2. Pledge of Allegiance
- 7 3. Agenda Amendments and Adoption- Item 8 c will be postponed until September. **The**
- 8 **agenda was approved as amended.**
- 9 4. Acceptance of Previous Minutes: 7/6/2023
- 10 Page 3, line 37: add "The applicant asked the Board to consider postponing the
- 11 application until next month."
- 12 **The Board approved the minutes as amended.**
- 13 5. Harbormaster Report and Budget Report
- 14 The Harbormaster gave a summary of his monthly report, expenses and revenues for
- 15 fiscal year 2024. The Board asked several questions and discussion ensued briefly.

FY 2024 YTD Expenses					
OBJECT	ACCT DESCRIPTION	FY 2024 BUDGET	FY 2024 EXPENSES	FY 2024 REMAINING	PERCENT USED
64010	HARBOR MASTER FULL TIME SALARI	66,390.00	5,280.50	61,109.50	7.95
64020	PART TIME SALARIES	33,442.00	3,951.83	29,490.17	11.82
65010	POSTAGE	250.00	0.00	250.00	0.00
65020	TELEPHONE & INTERNET	2,600.00	111.85	2,488.15	4.30
65200	ELECTRICITY	2,016.00	0.00	2,016.00	0.00
65220	WATER	525.00	0.00	525.00	0.00
65240	DUMPSTERS/TRASH REMOVAL	1,800.00	155.72	1,644.28	8.65
65305	BOAT EQUIPMENT MAINTENANCE	5,000.00	159.64	4,840.36	3.19
65310	VEHICLE MAINTENANCE	3,500.00	0.00	3,500.00	0.00
65311	GAS, GREASE, & OIL	5,500.00	523.30	4,976.70	9.51
65462	RIGGING	14,000.00	2,139.45	11,860.55	15.28
65463	SANITATION	2,500.00	320.00	2,180.00	12.80
65470	PROFESSIONAL DEVELOPMENT	1,500.00	0.00	1,500.00	0.00
65480	OTHER PROFESSIONAL/CONTRACTED	2,500.00	3,094.36	-594.36	123.77
65500	MAIN BLDG/GROUNDS WHARVES/HAI	4,500.00	751.32	3,748.68	16.70
65521	UNIFORMS	2,000.00	0.00	2,000.00	0.00
66010	OFFICE SUPPLIES	300.00	0.00	300.00	0.00
66030	OTHER SUPPLIES	2,000.00	12.19	1,987.81	0.61
66040	JANITORIAL SUPPLIES & SERVICES	500.00	0.00	500.00	0.00
TOTAL		150,823.00	16,500.16	134,322.84	10.94%

16

FY 2024 YTD Revenue					
OBJECT	ACCT DESCRIPTION	FY 2024 BUDGET	FY 2024 REVENUE	FY 2024 DIFFERENCE	PERCENT
43147	DINGHY FEES	-12,000.00	-711.40	-11,288.60	5.93
43148	TRANSIENT SLIP RENTAL	-16,000.00	-2,129.00	-13,871.00	13.31
43149	KPA APPLICATION FEES	-500.00	0.00	-500.00	0.00
43150	MOORING FEES	-85,000.00	-491.00	-84,509.00	0.58
43151	LAUNCH FEE	-15,000.00	-2,530.00	-12,470.00	16.87
43152	TRANSIENT MOORING	-12,000.00	-2,002.00	-9,998.00	16.68
43153	WAIT LIST FEE	-2,000.00	-24.00	-1,976.00	1.20
43156	PIER USAGE FEE	-2,600.00	0.00	-2,600.00	0.00
43159	KAYAK RACK RENTAL	-1,500.00	0.00	-1,500.00	0.00
TOTAL		-146,600.00	-7,887.40	-138,712.60	5.38%

17

18 6. All Items involving Town Officials or Invited Guests

19 7. Public Hearing

20 8. Piers, Wharves & Floats –

21 a. The Kittery Port Authority moves to approve an application from Timothy Moore, 50a
22 Tenney Hill Rd, Kittery Point, ME 03905, to install a 10' x 24' float secured by two (2)
23 5,000-pound granite blocks, in the Piscataqua River's back channel.

24 Mr. Bush recused himself from the item.

25 **Mr. Lawrence moved to approve the application. Seconded by Mr. Pinkham. The**
26 **motion passed by roll call vote, 4-0-0.**

27 b. The Kittery Port Authority moves to accept an application from David Hunter Rev.
28 Trust & Jessica Hunter Rev. Trust, 50 Dion Avenue, Kittery, ME 03904 (Tax Map 23,
29 Lot 5A) for the construction of a 4' x 80' pier, a 3' x 35' ramp, and a 10' x 20' float.
30 Agent is Lisa Vickers, Atlantic Environmental, LLC.

31 Lisa Vickers presented the project to the Board.

32 **Mr. Lawrence moved to accept the application. Seconded by Mr. Pinkham. The**
33 **motion passed by roll call vote, 5-0-0.**

34 **The Board set a site walk for Monday, August 14, 2023 at 4:30 PM.**

35 c. The Kittery Port Authority moves to accept an application from Piscataqua Youth
36 Sailing Association & Kevin McCool, President, to install a 24' x 26' float with two (2)
37 12' x 24' wing floats, secured with two (2) 6,000-pound blocks, in the Piscataqua River
38 off the shore of Fort Foster. **Postponed until 9/7/2023 per applicant request.**

39 9. Public Segment (Three Mins.)

40 10. Unfinished Business

41 a. Revoked Mooring Appeals: #805, and #720

42 Chair Patten discussed the process and Rules & Regulations for revoked mooring
43 appeals.

44 **Chair Patten moved to reverse the decision to revoke mooring #702 and #805.**
45 **Seconded by Mr. Lawrence. The motion passed 5-0-0.**

46 11. New Business

47 12. Committee and Other Reports - None

48 13. Communications from the Chairperson

49 14. Board Member Issues or Comments

50 Mr. Lawrence – none

51 Chair Patten – none

52 Vice Chair Bush – none

53 Mr. Pinkham – none

54 Mr. McCollett – none

55 15. Executive Session - None

56 16. Adjournment

57 **Mr. Lawrence moved to adjourn at 6:38 P.M. Seconded by Vice Chair Bush. The**
58 **motion passed 5-0-0.**

59 Submitted by Carrie Varao, Development Staff Clerk on August 10, 2023.

60 Disclaimer: The following minutes constitute the author’s understanding of the meeting.
61 Whilst every effort has been made to ensure the accuracy of the information, the
62 minutes are not intended as a verbatim transcript of comments at the meeting, but a
63 summary of the discussion and actions that took place. For complete details, please
64 refer to the video of the meeting on the Town of Kittery website at
65 <http://www.townhallstreams.com/locations/kittery-maine>.



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

Port Authority Meeting Date: September 7, 2023

Item #:

STAFF REPORT – 50 DION AVENUE

Project Name: 50 Dion Avenue Pier, Gangway & Float

Applicant: Lisa Vickers, Atlantic Environmental, LLC

Owner: David & Jessica Hunter

Proposed Development: Installation of a 4' x 80' timber bent and helix anchored pier, a 3' x 35' ramp, and a 10' x 20' float.

Waivers: None

Map & Lot Numbers: Map 23, Lot 5A

Staff Recommendation: Approval of request

Riparian Line Determination:

Riparian lines were determined using the colonial method.

Description of Request:

The applicant requests the installation of a 4' wide x 80' long timber bent and helix anchored pier, a 3' wide x 35' long ramp, and a 10' wide x 20' long float.

Performance Standards:

(1) *KPA Rules 4.7.2: The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high-water mark of a water body or within a wetland must comply with all applicable requirements of Town Code Title 16.*

- **Town Code Title 16 incorporates by reference the 2015 International Residential Building Code. Compliance with this code will be ensured through the building permitting process.**

(2) *KPA Rules 4.7.3: Non-commercial private piers may have a maximum width of 6 feet as*

measured parallel to the shoreline and be limited to the minimum size necessary to accomplish their purpose. Except for temporary ramps and floats, the total length of a ramp, pier and float structure may not extend more than 150 feet beyond the normal high-water mark and piers not extend more than 100 feet beyond the normal high-water mark nor extend below the mean low water mark, whichever is shorter.

- **Based on the application materials, the pier will have a maximum deck width of 4 feet. The total length of the pier, ramp, and float is 136 feet, although it only extends approximately 84 feet past the normal high-water mark. The pier, ramp, and float system ends before the mean low water mark.**

(3) *KPA Rules 4.7.4: The maximum height of the pier deck may not exceed six (6) feet above the normal high-water mark, and the handrails not exceed 42" without the specific approval of the Port Authority.*

- **Based on the application materials, the pier has an overall height of 5.2 feet above the normal high-water mark. Handrails are 40" tall.**

(4) *KPA Rules 4.7.5: Commercial piers are limited to the minimum size necessary to accomplish their purpose. They may not extend beyond the mean low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck may not exceed six (6) feet above mean high water mark and the handrails not exceed 42", without a showing of necessity and specific approval of the Port Authority.*

- **This application is for a residential use pier, this standard is not applicable.**

(5) *KPA Rules Chapter 4.7.6: Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high- water mark and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town.*

- **The pier is roughly 56 feet from the Northern riparian line and roughly 32 feet from the Southern riparian line. There are no existing structures below the normal high-water mark within 100 feet.**

Surrounding Land Uses:

North: Residential – Waterfront, no marine structures.

South: Residential – Waterfront, no marine structures.

East: Spruce Creek.

West: Residential – no waterfront, no marine structures.

Findings of Fact:

Section 16.9.2.E requires the Kittery Port Authority to use the following process when hearing requests:

Findings of fact. An application shall be approved or approved with conditions if the Port Authority makes a positive finding based on the information presented. The application must be demonstrated that the proposed use will shall:

(1) Maintain safe and healthful conditions;

- **Staff does not believe that this development will cause any safety or health concerns.**

(2) Not result in water pollution, erosion or sedimentation to surface waters;

- **Staff does not believe that this development will result in any water pollution, erosion, or sedimentation to surface waters.**

(3) Adequately provide for the disposal of all wastewater;

- **This development will not produce any wastewater.**

(4) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

- **Staff does not believe that this development will have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.**

(5) Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

- **Staff believes that this development conserves shore cover and visual, as well as actual points of access.**

(6) Protect archaeological and historic resources;

- **Staff does not believe this development will have any impact on archeological or historic resources.**

(7) Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;

- **This standard is not applicable, as there is no commercial fisheries or maritime activity districts in the area.**

(8) Avoid problems associated with floodplain development and use; and

- **Staff believes this development will avoid problems associated with floodplain**

development and use.

(9) Is in conformance with the provisions of this title.

- **Staff believes that this development is in conformance with the provisions of Title 16.**

Using the standards and criteria found in the LUDC as well as the standards found in the Kittery Port Authority Rules and Regulations, Staff recommends **APPROVAL** of the proposed development.



TOWN OF KITTERY

Code Enforcement Office

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1308 Fax: 207-439-6806

CEO@kitteryme.org

KITTERY PORT AUTHORITY APPLICATION ACCEPTANCE MEMO

From: Craig Alfis, Code Enforcement

To: Charles Patten, Port Authority Chair

Subj: Acceptance of Application, 50 Dion Avenue

Mr. Chair,

Code Enforcement and Planning staff have reviewed the application for 50 Dion Avenue, requesting installation of a tidal docking structure, and found it to be complete. The application requests the following:

1. The installation of one 4' x 80' pier supported with timber bents and helix anchors;
2. The installation of one 3' x 35' ramp; and
3. The installation of one 10' x 20' float.

Based on a cursory review of the information provided in the application, Staff believes the application is complete, and recommends that the Port Authority accept the application for further review. Information submitted includes:

- Kittery Port Authority application;
- Proof of ownership;
- Army Corps of Engineering application and compliance certification form;
- Cover letter including project description, pictures, and erosion control plan;
- Abutters list;
- Plans showing the actual dimensions and shape of the proposed development; and
- Maine DEP NRPA approval.

If the Port Authority votes to accept the application, an in-depth review will be performed by Code and Planning staff, and a staff report will be provided to the Port Authority prior to the meeting on which the application is scheduled.

Signed,

Craig Alfis, Code Enforcement Officer

207-475-1308

ceo@kitteryme.org



KPA-23-12

Port Authority Application

Status: Active

Submitted On: 6/6/2023

Primary Location

50 DION AVENUE
KITTERY, ME 03904

Owner

David Hunter Revocable Trust
and Jessica Hunter Revocable
Trust
50 Dion Avenue Kittery, ME
03904

Applicant

Lisa Vickers
 207-615-1527
lisa@atlanticenviromaine.com
 135 River Road
Woolwich, ME 04579

Project Discription

Description of Project*

The Applicant proposes to construct a recreational dock consisting of 4' x 80' pier that connects to a 3' x 35' ramp, and a 10' x 20' float. The pier will be supported with timber bents and helix anchors. The ramp and flaot will be in place on a seasonal basis and stored outside the coastal wetland during the off-season.

Is any work being performed upland of the Highest Annual Tide?*

Yes

Are any waivers from the performance standards in the Kittery Port Authority Rules & Regulations requested?*

—

Type of Project

Is this project an in-kind repair/replacement?*

No

Property Information

Name of the property owner(s)

David and Jessica Hunter

Property Address

50 Dion Avenue

Telephone Number

(603) 812 - 6299

Email Address

dhunterwordsmusic@yahoo.com

Size of the Property 

0.35 acres

Zoning District

R-U/)Z-SL-250'

Shore Frontage Footage 

+/- 100'

Property History

This is my first Kittery Port Authority Application for this property

I have submitted an application to the Kittery Port Authority in the past for this property

If you have submitted a previous application to the Kittery Port Authority for this property, please explain:

Acknowledgements

I understand that additional permits and/or approvals may be required by the Army Corps of Engineers, the Maine Department of Environmental Protection, the Maine Department of Conservation, and/or another legal entity not listed here. Furthermore, I have submitted the additional permits and/or approvals with this application.



I certify that all information on this application is complete and true to the best of my knowledge. I understand any false, misleading, or incomplete information will result in the denial of this application.



I certify that I have submitted this application at least 21 days prior to a scheduled Kittery Port Authority Meeting. I understand that failure to submit this application at least 21 days prior will result in my request going before the Kittery Port Authority at a later date.



I certify that in addition to uploading the required documentation, I will also provide 10 paper copies of each document to the Kittery Planning and Development Office at least 21 days prior to a scheduled Kittery Port Authority Meeting.



Applicant Information

Name of Applicant

David and Jessica Hunter

Date Application Completed

6/6/2023

Name of Property Owner

David and Jessica Hunter

Agent Name

Lisa Vickers

Agent Firm

Atlantic Environmental, LLC

Agent Phone

2076151527

Agent Email

lisa@atlanticenviromaine.com

History

Date	Activity
6/5/2023, 4:41:19 PM	Lisa Vickers started a draft of Record KPA-23-12
6/6/2023, 9:42:46 AM	Lisa Vickers altered Record KPA-23-12, changed ownerCity from "NAPLES" to "Kittery"
6/6/2023, 9:42:46 AM	Lisa Vickers altered Record KPA-23-12, changed ownerName from "QUIRK TR, MAUREEN J" to "David Hunter Revocable Trust and Jessica Hunter Revocable Trust"
6/6/2023, 9:42:46 AM	Lisa Vickers altered Record KPA-23-12, changed ownerPostalCode from "34119-1363" to "03904"
6/6/2023, 9:42:46 AM	Lisa Vickers altered Record KPA-23-12, changed ownerState from "FL" to "ME"
6/6/2023, 9:42:46 AM	Lisa Vickers altered Record KPA-23-12, changed ownerStreetName from "1099 CAMELOT CIRCLE " to "50 Dion Avenue"
6/6/2023, 10:29:58 AM	Lisa Vickers altered Record KPA-23-12, changed ownerEmail from "" to "dhunterwordsmusic@yahoo.com"
6/6/2023, 10:29:58 AM	Lisa Vickers altered Record KPA-23-12, changed ownerPhoneNo from "" to "(603) 812 - 6299"
6/6/2023, 11:12:15 AM	Lisa Vickers added attachment Zoning ordinance Standards_Hunter_50 Dion.pdf to Record KPA-23-12
6/6/2023, 11:47:51 AM	Lisa Vickers added attachment Port Authority Standards_Hunter_50 Dion.pdf to Record KPA-23-12
6/6/2023, 11:51:52 AM	Lisa Vickers submitted Record KPA-23-12
6/6/2023, 1:12:40 PM	completed payment step Fee Payment on Record KPA-23-12
6/6/2023, 1:12:42 PM	approval step Application Completeness Review was assigned to Craig Alfis on Record KPA-23-12
6/7/2023, 8:43:54 AM	Craig Alfis approved approval step Application Completeness Review on Record KPA-23-12
6/7/2023, 8:43:56 AM	approval step Application Placed on Agendawas assigned to Carrie Varao on Record KPA-23-12

Date	Activity
6/7/2023, 10:36:56 AM	Carrie Varao approved approval step Application Placed on Agenda on Record KPA-23-12
6/7/2023, 10:36:59 AM	approval step Town Planner Upland Development Review was assigned to Maxim Zakian on Record KPA-23-12
6/7/2023, 10:36:59 AM	approval step Code Enforcement Upland Development Review was assigned to Craig Alfis on Record KPA-23-12

Timeline

Label	Activated	Completed	Assignee	Due Date
✓ Application Completeness Review	6/6/2023, 1:12:41 PM	6/7/2023, 8:43:54 AM	Craig Alfis	-
✓ Application Placed on Agenda	6/7/2023, 8:43:55 AM	6/7/2023, 10:36:56 AM	Carrie Varao	-
💰 Fee Payment	6/6/2023, 11:51:53 AM	6/6/2023, 1:12:40 PM	Lisa Vickers	-
✓ Town Planner Upland Development Review	6/7/2023, 10:36:58 AM	-	Maxim Zakian	-
✓ Code Enforcement Upland Development Review	6/7/2023, 10:36:58 AM	-	Craig Alfis	-
✓ Port Authority Approval Uploaded	-	-	-	-
✓ Building Permit Received	-	-	-	-



135 River Road • Woolwich, ME 04579
207-615-1527 • lisa@atlanticenviromaine.com
www.atlanticenviromaine.com

June 6, 2023

Mr. Charles Patten, Chair
Kittery Port Authority
200 Rogers Road
Kittery, Maine 03904

Re: Kittery Port Authority Application on behalf of David Hunter Revocable Trust and Jessica Hunter Revocable Trust, 50 Dion Avenue, Kittery, Maine.

Dear Mr. Patten,

On behalf of David Hunter of the David Hunter Revocable Trust and Jessica Hunter of the Jessica Hunter Revocable Trust, Atlantic Environmental, LLC (AE) is pleased to submit an application to the Kittery Port Authority for the construction of a residential dock consisting of a permanent pier that connects to a seasonal ramp and float located at 50 Dion Avenue. The dock will provide partial tide access to Spruce Creek for recreational pursuits.

As shown in the attached plans, the Applicant proposes to construct a four (4) foot wide by eighty (80) foot long pile supported pier that will connect to a three (3) foot wide by thirty-six (36) foot long seasonal ramp and a ten (10) foot wide by twenty (20) foot long float. Applications have been submitted to the Maine Department of Environmental Protection (MDEP) and the U.S. Army Corps of Engineers (ACOE), Maine Projects Office in Augusta, Maine and copies of those approvals are included in the attached application materials. Relevant portions of that application are included in the attached application materials.

Thank you in advance for your consideration of this Application. If you require any additional information or clarifications, please feel free to contact me at 207 – 615 - 1627 or by email at lisa@atlanticenviromaine.com.

Sincerely,
Atlantic Environmental LLC.

A handwritten signature in black ink that reads 'Lisa Vickers'.

Lisa Vickers,
Senior Project Manager



135 River Road • Woolwich, ME 04579
207-837-2199 • tim@atlanticenviromaine.com
www.atlanticenviromaine.com

December 8, 2022

To whom it may concern:

By this letter, I authorize Atlantic Environmental LLC to act on my behalf as my Agent for the preparation and submission of all federal, state, and local town or city permit applications and relevant documents and correspondence related to natural resource permitting project(s) at my property located at 50 Dion Ave. Kittery, Maine. This authorization includes attending meetings and site visits, appearing before all boards, commissions, and/or committees, and providing other services as required for completing the aforementioned tasks.

Thank you for the opportunity to work with you on this project. Should you have any additional questions, please do not hesitate to contact me at 207-837-2199 or via email at tim@atlanticenviromaine.com.

David Hunter

Print Name

David Hunter

Signature

12/8/2022

Date

Sincerely,
Atlantic Environmental LLC.

A handwritten signature in black ink that reads 'Timothy A. Forrester'.

Timothy A. Forrester, Owner

EXHIBIT 1.0: ACTIVITY DESCRIPTION

The Applicant owns an approximate 0.35 acre parcel of land located on Dion Avenue and adjacent to Broad Cove of Spruce Creek in the Town of Kittery, Maine (see **Exhibit 3.0**). There is no formal access to the resource for boating and other recreational water activities from the Applicant's property. In order to safely and reasonably access the coastal waters for these purposes, the Applicant proposes to construct a permanent pier with a seasonal ramp and float.

Atlantic Environmental, LLC (AE) investigated the site and the surrounding area to determine the feasibility of accessing the resource and constructing a dock that will accommodate the Applicant's watercraft and meet project goals while avoiding and minimizing impacts to the environment. Based on the Applicant's needs, the existing conditions of the site and the outcome of our investigations, the following design criteria have been determined.

In order to reach navigable waters on a partial-tide basis, the Applicant proposes to construct a dock consisting of a pier, a seasonal ramp, and a seasonal float. The pier will begin in the upland will extend in a northeasterly direction. The pier will measure four (4) feet wide by eighty (80) feet long and will be supported with a total of fourteen (14), eight (8) inch by eight (8) inch pilings and helix anchors that will be installed as described in **Exhibit 6.0**. As a result of the pilings located below the Highest Annual Tide (HAT) line, there will be a total of approximately twelve (12) square feet of direct impacts to the coastal wetland. The pier will be constructed with a 1H:1W to minimize the potential for shading impacts on the marsh vegetation. The pier will connect to a three (3) foot wide by thirty-six (36) foot long ramp and a ten (10) foot wide by twenty (20) foot long float. The float will be secured in place with float tiebacks to the pier on the inboard side and float tiebacks and helix anchors on the outboard

side. The ramp will be stored on the pier and the float will be stored in an upland location as shown on the plan sheets in **Exhibit 5.0**.

The construction of the dock will not require the removal of any trees or vegetation.

Town of Kittery – Port Authority Rules and Regulations

Section 4. Piers, Wharves, Floats, and Other Marine-Related Structures

Section 4.7. Performance Standards

4.7.1. All applications for permits under this section must comply with Town Code Title 16 and any other applicable federal or state requirements. These requirements apply to all development within 250 feet, horizontal distance, of the normal high-water mark of any river or saltwater body. These requirements also apply to any structure built on, over, or abutting a dock wharf or pier, or any other structure extending beyond the normal high- water mark of a water body or within a coastal wetland shown on the Official Shoreland Zoning Map.

The Applicant has included information in this application to demonstrate compliance with Town Code Title 16. In addition, applications were submitted to the Maine Department of Environmental Protection (MDEP) and the Army Corps of Engineers (ACOE) and copies of those approvals are included with the application materials.

4.7.2. The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high-water mark of a water body or within a wetland must comply with all applicable requirements of Town Code Title 16.

As stated above, the Applicant has submitted additional information as it relates to Town Code Title 16. In addition, the Applicant intends to submit a building permit upon review and approval of the proposed dock by the Kittery Port Authority.

4.7.3. Non-commercial private piers may have a maximum width of 6 feet as measured parallel to the shoreline and be limited to the minimum size necessary to accomplish their purpose. Except for temporary ramps and floats, the total length of a ramp, pier and float structure may not extend more than 150 feet beyond the normal high-water mark and piers not extend more than 100 feet beyond the normal high-water mark nor extend below the mean low water mark, whichever is shorter.

The proposed pier is four (4) feet in width and the proposed length will allow the ramp and float to span the marsh vegetation and provide reasonable tidal access. The proposed dock consisting of the pier, ramp, and float extends approximately eighty-four (84) feet beyond the mean high water (MHW). The pier will not

4.7.4. The maximum height of the pier deck may not exceed six (6) feet above the normal highwater mark, and the handrails not exceed 42" without the specific approval of the Port Authority.

The maximum height of the pier deck is 5.2 feet above the normal highwater mark and the handrails will measure 3.3 feet.

4.7.5. Commercial piers are limited to the minimum size necessary to accomplish their purpose. They may not extend beyond the mean low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck may not exceed six (6) feet above mean high water mark and the handrails not exceed 42", without a showing of necessity and specific approval of the Port

Authority. Documentation required for an application for a commercial pier, in addition to all other requirements of these Rules and Regulations, must set forth credible proof of the commercial usage and include at least the following:

- A. Written documentation as to the nature of the commercial enterprise and why the applicant is requesting a pier that does not meet the non-commercial private pier standards noted above;
- B. Written proof of a valid commercial enterprise, such as commercial fishing license, articles or organization/incorporation for the business;
- C. Documentation of their ownership in the commercial business or enterprise;
- D. Any additional documentation required by the Port Authority for determining the commercial use and operation of the commercial pier.

The proposed dock is for private, recreational residential use and will not be used for commercial purposes.

4.7.6. Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high- water mark and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town .

The proposed dock will begin in the upland and will be thirty-four (34) feet from the southerly property line and sixty (60) feet from the northerly property line. The float will be located approximately thirty-two (32) feet from the southerly riparian line and approximately fifty-six (56) feet from the northerly riparian line.

Town of Kittery – Title 16 – Land Use & Development Code

Chapter 16.5: General Performance Standards

Section 16.5.22. Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies

A. Standards.

Development involving piers, wharves, marinas and other uses projecting into water bodies must conform to following standards:

1. In accordance with 38 M.R.S. §435 et seq., Mandatory Shoreland Zoning, all dimensional and other standards (excluding setbacks from water bodies) of this Code apply to structures and uses projecting into a water body beyond the normal high-water mark.

The proposed pier will extend approximately thirty-two (32) feet below the normal high water line. The pier, ramp, and float will extend approximately eighty-four (84) feet below the normal high water mark. The dock will not extend below the mean low water mark.

2. Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The State of Maine no longer issues permits for construction of boathouses below the normal high water line due to the adverse environmental impact; therefore new boathouses must be located on uplands.

The Applicant does not propose to construct a boathouse.

3. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line.

The proposed dock is a water-dependent use.

4. Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.

The Applicant proposes to support the dock with helix anchors which are installed hydraulically and without large equipment. The anchor is held in place while the power head winds the helix into the ground, resulting in minimal soil disturbance and therefore no soil erosion.

5. The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.

The proposed location is close to shore and within the intertidal zone and does not contain existing developed recreation and maritime commerce or natural beach areas.

6. The facility must be located so as to minimize adverse effects on fisheries.

The proposed structures have been positioned to extend a reasonable distance to provide partial tide access. The float will be elevated to minimize impacts to the mudflats during periods of low tides. In addition, the ramp and float will be in place on a seasonal basis, furthering minimizing impacts to fisheries. The project was reviewed by the Maine Department of Environmental Protection (DEP) and the Army Corps of Engineers (ACOE) and

their review agencies. Their findings did not identify any measurable issues related to fisheries as a result of the proposed project.

7. The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.

The proposed structures are the minimal length necessary to span the marsh vegetation and provide reasonable partial tide access to the resource. There are other structures of similar scale located in the project vicinity.

8. No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.

The Applicant does not propose any new structures on, over, or abutting the proposed dock.

9. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.

There are no existing structures on, over, or abutting the proposed dock and the Applicant does not propose to convert anything to a residential dwelling unit.

10. Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland must not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

The Applicant does not propose to construct a structure on, over, or abutting the proposed dock.

11. Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.

The Applicant has included the ACOE approval in the application materials.

12. Proposals for any principal marine structure use, any residential joint and/or shared-use pier, or any residential development use pier require Planning Board approval.

The proposed dock is a is for a single residential use.

13. A residential development containing five (5) or more lots in a zone permitting a residential development use pier may construct only one residential development use pier.

The proposed dock is located on a single, residential lot.

14. Commercial development of the shorefront must provide for access by the general public as part of a shorefront development plan.

N/A

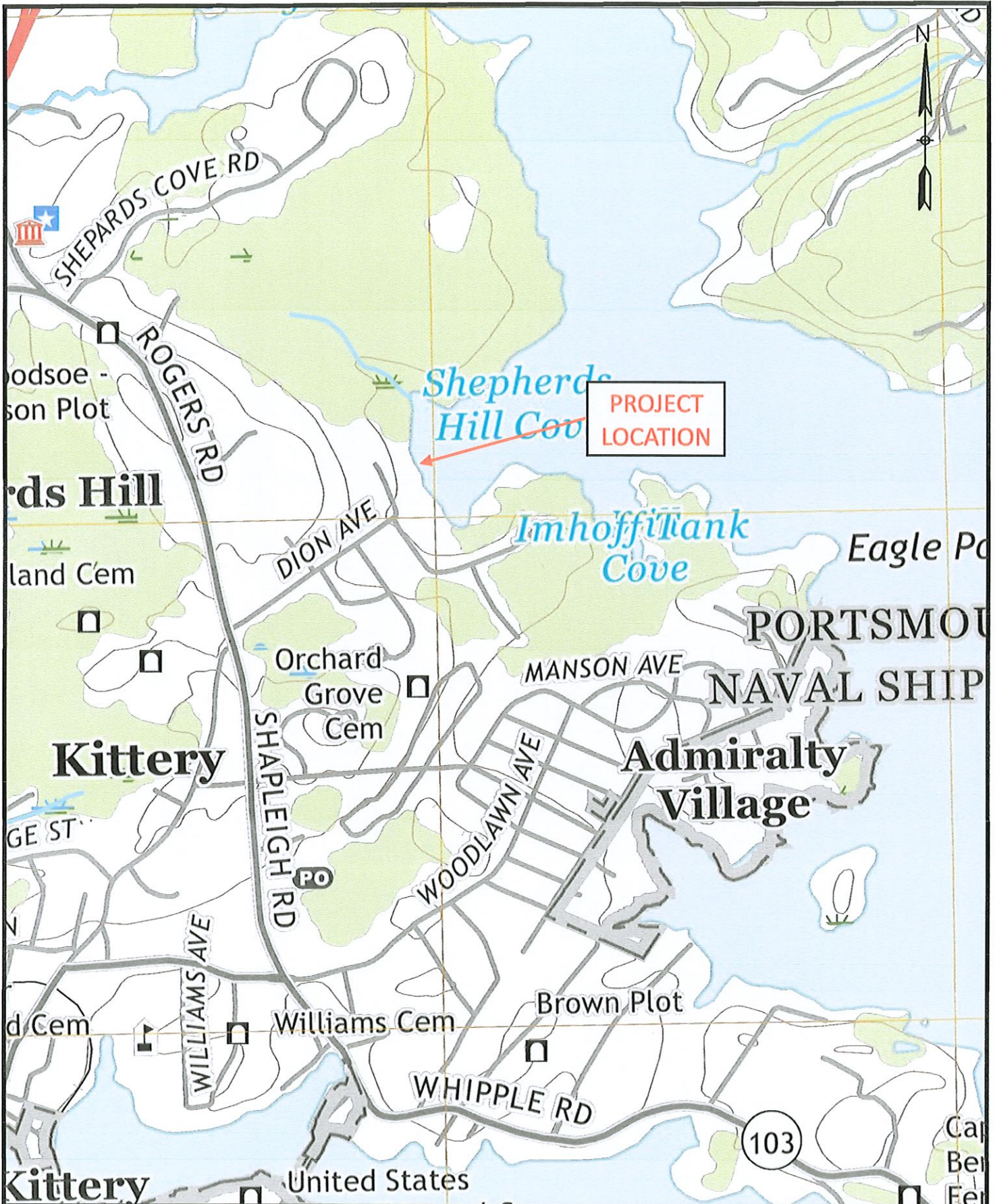
15. Only one pier, ramp and float structure is permitted on any noncommercial or non-industrial lot.

The Applicant is proposing one pier, ramp, and float.

16. Marine-related permanent structures located below the mean low water line require the following permits, leases, and approvals: 1. Port Authority approval; 2. Department of Environmental Protection permit pursuant to the Natural Resources Protection Act, 38 M.R.S. §480C; 3. Army Corps of Engineers permit; 4. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator approval; 5. Building permit.

The dock is not located below the mean low water; therefore, no review by the Submerged Lands Program of the Maine Department of Agriculture, Conservation, and Forestry is required.

The Applicant has submitted applications to the Port Authority, DEP, and ACOE. Upon receipt of these approvals, the Applicant will submit a Building Permit application to the Town of Kittery.




 <p>ATLANTIC ENVIRONMENTAL LLC. Environmental Consultants 135 River Road, Woolwich, ME 04579 (207) 837-2199 tir@gat.com tir@gat.com enviromaine.com</p>	<p>Date: 2/7/2023 Revised: Project: Hunter, Kittery</p>	<p>PROJECT LOCATION 50 Dion Avenue Kittery, Maine 03904 43.097291, -70.732966</p>	<p>Sheet 1 of 1</p>
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EXHIBIT 4.0: PHOTOGRAPHS

The following photographs are taken from the site of the project and represent the proposed location of the dock located at 50 Dion Avenue in the Town of Kittery, ME.



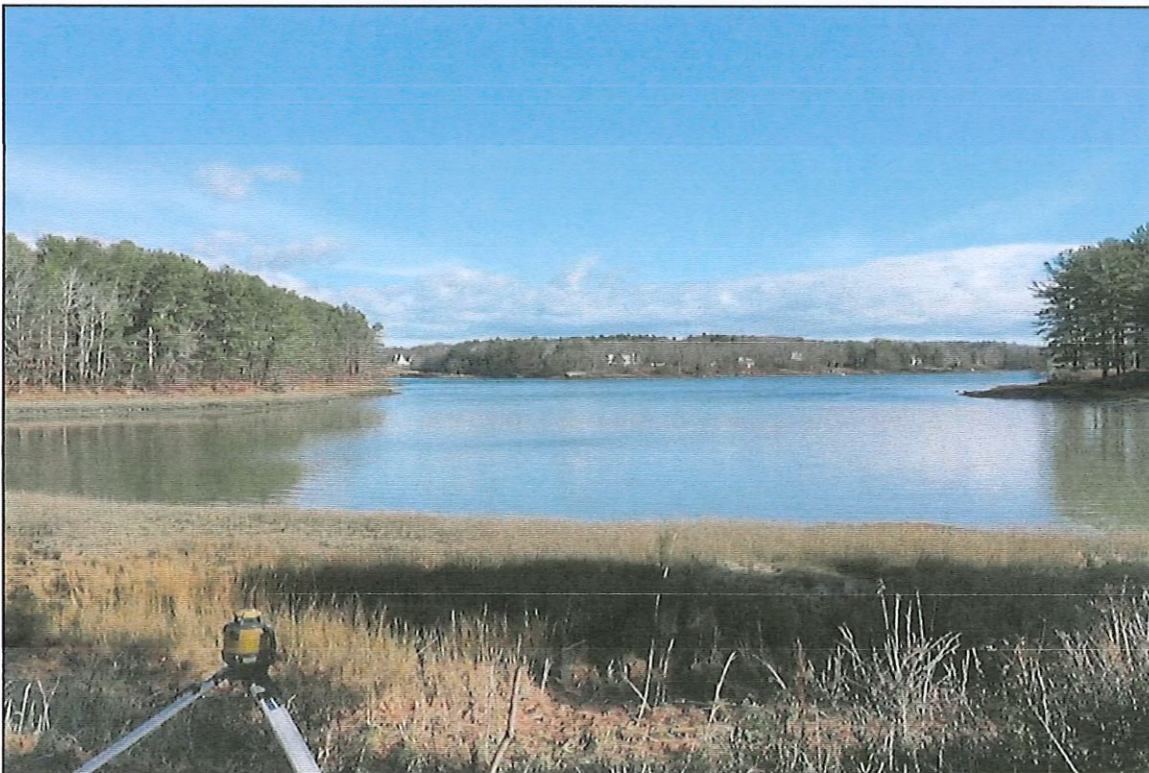
Photograph One. Aerial View of Project Site. Red arrow indicates approximate location of project.
Source: Google Earth. Date: May 4, 2018.



Photograph Two. Drone imagery showing overview of project site. Red arrow indicates project site.
Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.



Photograph Three. Drone image showing mudflats – float will be constructed with float skirts. Red arrow indicates project site. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.



Photograph Four. Facing northeasterly – view of intertidal area and project site. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.



Photograph Five. view of intertidal substrates in location of proposed dock. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.



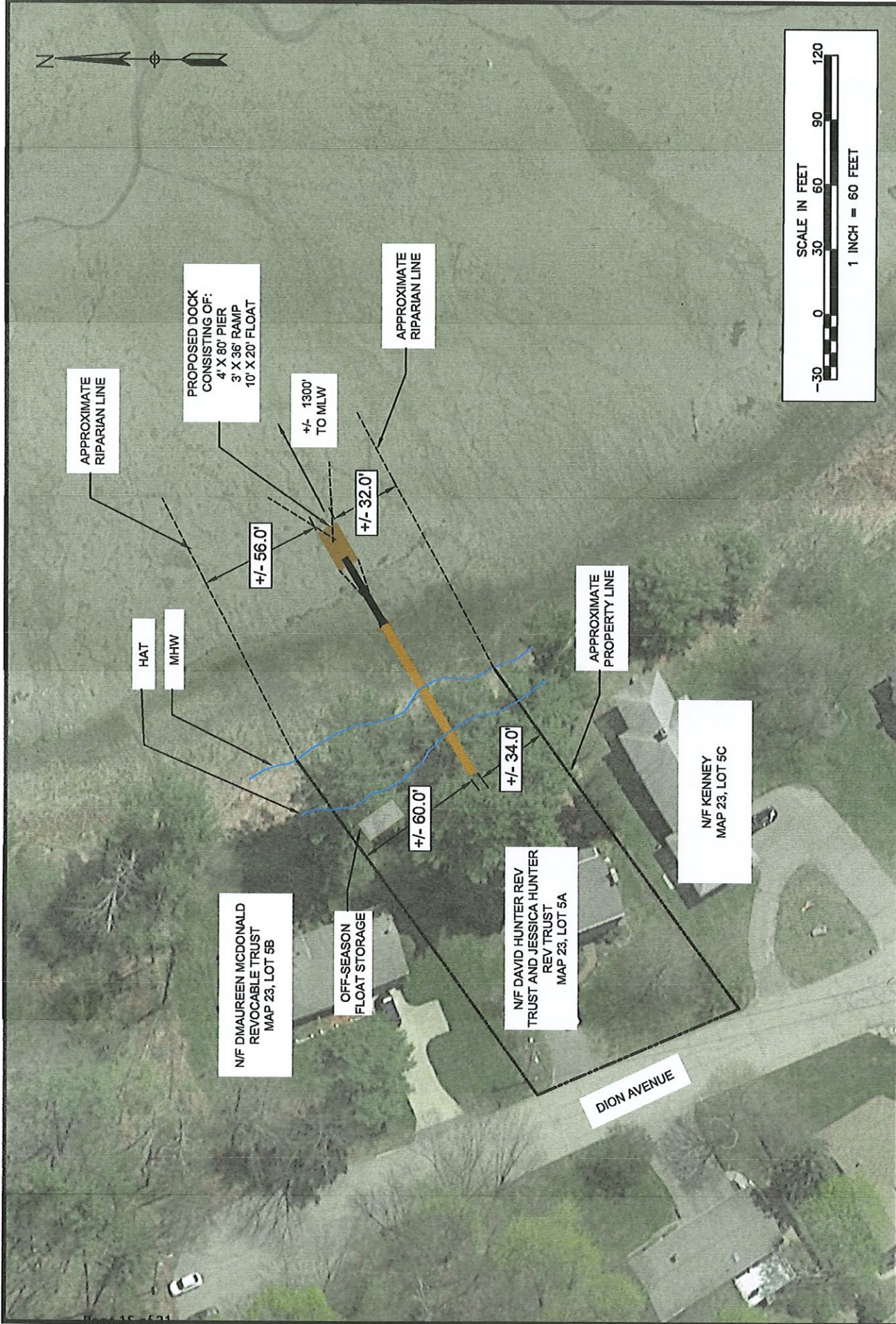
Photograph Six. Facing southerly - view of surrounding area. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.




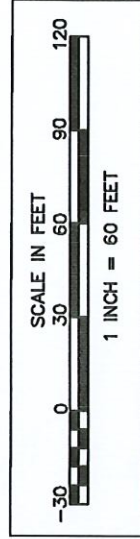
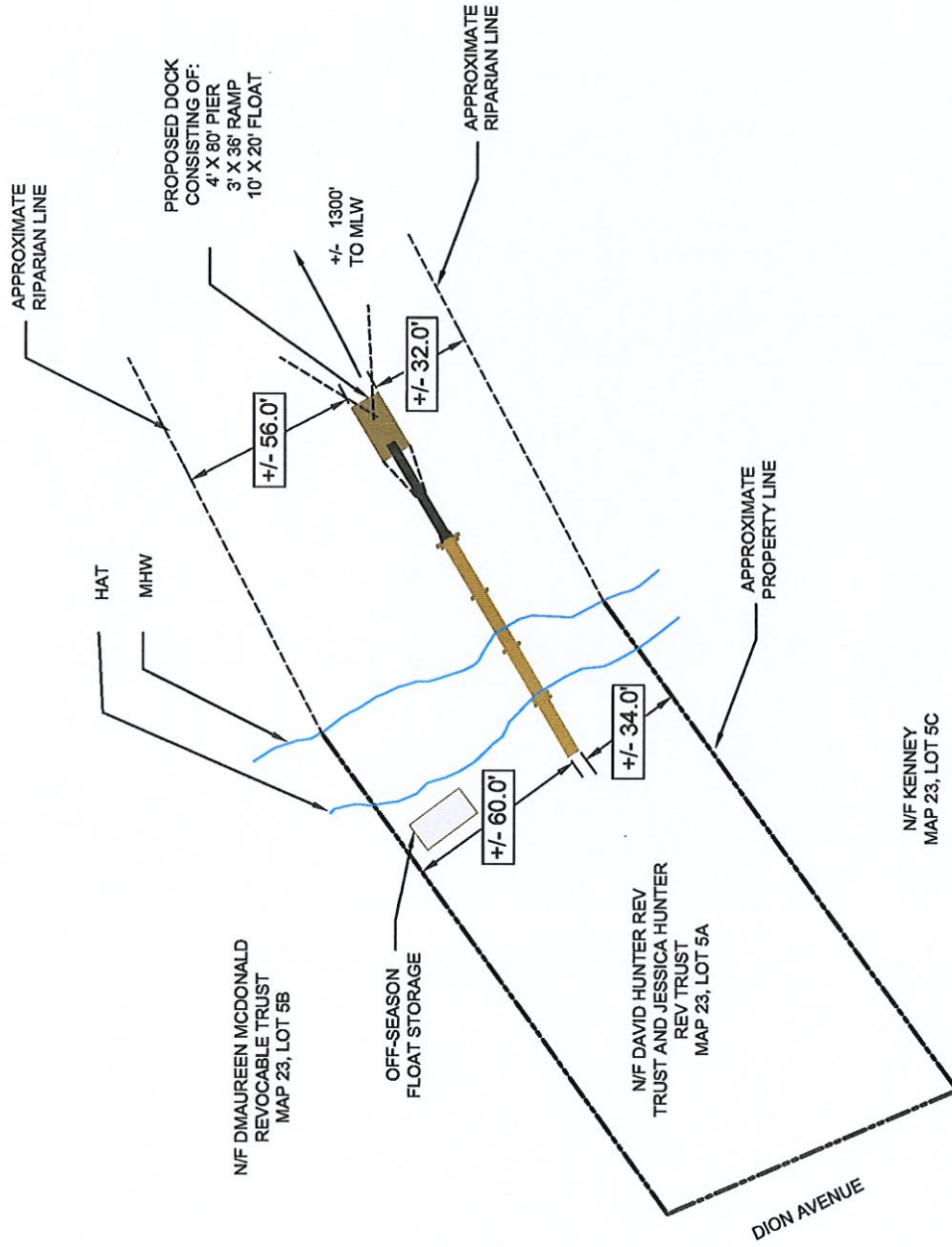
Photograph Seven. Additional drone image of project site. Red arrow indicates project site. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.



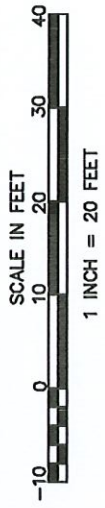
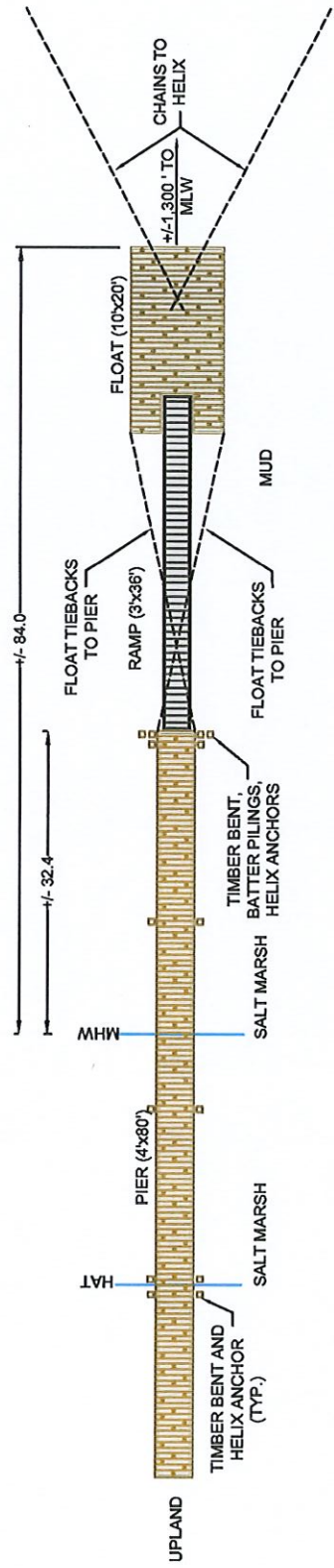
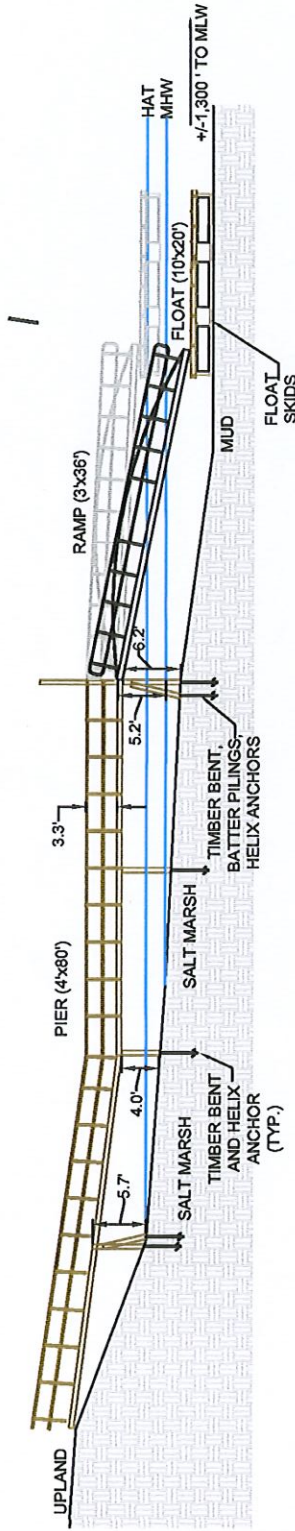
Photograph Eight. Facing northerly – view of surrounding area. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: November 28, 2022.



	<p>ATLANTIC ENVIRONMENTAL LLC. Environmental Consultants 135 River Road, Woolwich, ME 04579 (207) 837-2199 tim@atlanticenviromaine.com</p>	<p>Date: 2/7/2023 Revised: Project: Hunter, Kittery Drafted By: TAF/LCV</p>	<p>Plan View of the Proposed Dock for David and Jessica Hunter located at 50 Dion Avenue, Kittery Maine.</p>	<p>Sheet 1 of 3</p>
<p>FOR PERMITTING PURPOSES</p>				



- NOTES:
- 1) ALL PT LUMBER WILL BE CURED IN THE UPLAND FOR 21 DAYS PRIOR TO INSTALL.
 - 2) 8" X 8" PILING AND HELIX ANCHORS WILL SUPPORT THE PROPOSED PIER.
 - 3) HELIX ANCHORS WILL BE DRIVEN TO REFUSAL IN THE SUBSTRATES.
 - 4) FLOAT WILL BE CONSTRUCTED WITH FLOAT SKIDS AND SECURED IN PLACE WITH FLOAT TIEBACKS TO THE PIER ON THE INBOARD SIDE AND TIEBACK AND HELIX ON THE OUTBOARD SIDE.
 - 5) RAMP WILL BE STORED ON THE PIER AND FLOAT WILL BE HAULED OUT AND STORED IN AN UPLAND LOCATION ON THE APPLICANT'S PROPERTY.
 - 6) NO VEGETATION WILL BE REMOVED FOR THE CONSTRUCTION OF THE DOCK.
 - 7) EROSION CONTROLS WILL BE MAINTAINED AS NECESSARY UNTIL THE SITE IS STABILIZED.




 <p>ATLANTIC ENVIRONMENTAL LLC. Environmental Consultants 135 River Road, Woolwich, ME 04579 (207) 837-2199 tim@atlanticevirmaine.com</p>	<p>Date: 2/17/2023 Revised: Project: Hunter, Kittery Drafted By: TAF/LCV</p>	<p>Plan View and Cross Section View of the Proposed Dock for David and Jessica Hunter located at 50 Dion Avenue, Kittery Maine.</p>	<p>Sheet 3 of 3 FOR PERMITTING PURPOSES</p>
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EXHIBIT 6.0: CONSTRUCTION PLAN

The pier will be supported with pilings and helix anchors as described in **Exhibit 1.0**. Any CCA-treated lumber used for the construction of the pier will be cured on dry land for 21 days prior to the start of construction.

All materials will be transported to the site from the adjacent upland area. In addition, construction access will take place from the upland. The helix anchors will be installed hydraulically. The anchors are held in place and the power head winds the helix into the ground, resulting in minimal soil disturbance. The ramp and float will be constructed off-site and set in place once the pier is constructed. It is not anticipated that measurable soil disturbance will occur as a result of the construction of the pier given the use of helix anchors and construction methods. The construction of the dock should take approximately one (1) to two (2) weeks.

EXHIBIT 7.0: EROSION CONTROL PLAN

The dock involves minimal excavation and/or earth moving and all work will be conducted at low tide. Given that minimal sedimentation, if any, will occur for the construction of the dock, no formal measures are proposed to control erosion or sedimentation. However, if there are any areas of soil disturbance at the completion of construction, the area will be stabilized with vegetation and mulch in accordance with the Department's permanent soil stabilization BMPs published in the most recent version of the Maine Erosion and Sediment Control BMPs manual.

DLN:1002140154338

QUIT-CLAIM DEED


KNOW ALL BY THESE PRESENT that ANNE McCOOEY, with a mailing address of 1155 Islington Street #16, Portsmouth, New Hampshire 03801, Successor Trustee of the MAUREEN QUIRK REVOCABLE TRUST of 2008, for consideration paid, Grants to DAVID C. HUNTER, Trustee of the David C. Hunter Revocable Trust u/t/a dated Mary 16, 2007, as amended and restated and JESSICA L. HUNTER, Trustee of the Jessica L. Hunter Revocable Trust u/t/a dated May 16, 2007, as amended and restated, both with a mailing address of 225 Wibird Street, Portsmouth, New Hampshire 03801, as Joint Tenants, the land in Kittery, in York County, State of Maine, together with the buildings thereon, and being No. 41 on a Plan entitled, "PORTION OF PROPERTY OF JOSEPH DION, KITTERY, YORK COUNTY, MAINE, SURVEYED BY MOULTON ENGINEERING CO., INC. JANUARY 1964, ALBERT MOULTON, C.E." filed in the York County Registry of Deeds in Plan Book 41, Page 46. Said lot is further bounded and described as follows:

BEGINNING on the easterly side of Dion Avenue, at a point 78.12 feet southerly from line of Rogers Park, property of the Town of Kittery; thence turning and running South 6° 32' 10" East by said Dion Ave 100 feet to a hub; thence turning and running North 71° East, 159.33 feet by Lot No. 40; thence turning and running North 10° 08' West 79.06 feet, to a hub; thence turning and running North 2° 45' West, 20.34 feet, to Lot No. 42; thence turning and running South 71° West by said Lot No. 42, 155.63 feet, to said Dion Avenue and place of beginning.

Meaning and intending to convey and hereby conveying the same premises conveyed to Maureen Quirk as Trustee of Maureen Quirk Revocable Trust of 2008 by deed of Maureen Quirk, f/k/a Maureen J. Wooles dated December 1, 2008 and recorded at the York County Registry of Deeds at Book 15530, Page 193. MAUREEN QUIRK died on November 3, 2020; ANNE McCOOEY is the Successor Trustee.

IN WITNESS WHEREOF, our hands this 21st day of July, 2021.

The Maureen Quirk Revocable Trust of 2008



Witness

By: 

ANNE McCOOEY,
Successor Trustee

Maine R.E. Transfer Tax Paid

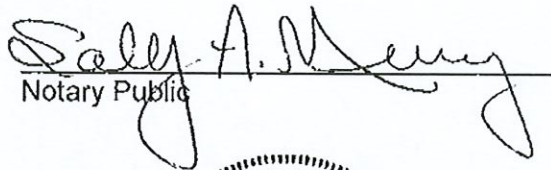
STATE OF MAINE

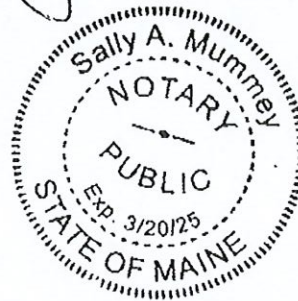
County of York

July 21, 2021

Then personally appeared the above-named, **ANNE McCOOEY**, in her said capacity and acknowledged the foregoing instrument to be her free act and deed.

Before me,


Notary Public





DEPARTMENT ORDER

IN THE MATTER OF

DAVID HUNTER REVOCABLE TRUST &) NATURAL RESOURCES PROTECTION ACT
JESSICA HUNTER REVOCABLE TRUST) COASTAL WETLANDS ALTERATION
Kittery, York County) SIGNIFICANT WILDLIFE HABITAT
RESIDENTIAL PIER SYSTEM) WATER QUALITY CERTIFICATION
L-30233-4P-A-N (approval))
L-30233-TW-B-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Clean Water Act (33 U.S.C. § 1341), and Chapters 310, 315, and 335 of Department rules, the Department of Environmental Protection (Department) has considered the application of DAVID HUNTER REVOCABLE TRUST AND JESSICA HUNTER REVOCABLE TRUST (applicants) with the supportive data, agency review comments, public comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicants propose to construct a residential pier system consisting of a four-foot-wide by 80-foot-long pier supported with 14, eight-inch square pilings and helix anchors. A three-foot-wide by 36-foot-long ramp would connect the pier to a 10-foot-wide by 20-foot-long float on skids. The float would be secured in place with tiebacks to the pier and helix anchors. The project is located at 550 Dion Road in the Town of Kittery.

The pier system would directly alter approximately 12 square feet of salt marsh habitat as a result of piling installation. Approximately 536 square feet of intertidal area, roughly 240 square feet of which is salt marsh habitat, would be indirectly impacted by the pier system as a result of shading from the structures. The pier would be constructed at greater than 1H:1W to minimize indirect impacts to the salt marsh vegetation through shading. The project is located in a Tidal Waterfowl and Wading Bird Habitat (TWWH), which is a Significant Wildlife Habitat as defined in the Natural Resources Protection Act (NRPA).

B. Current Use of the Site: The 0.35-acre property contains a single-family residence located adjacent to Broad Cove on Spruce Creek. The parcel is identified as Lot 5A on Map 23 of the Town of Kittery's tax maps.

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

The NRPA, in 38 M.R.S. § 480-D(1), requires applicants to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational, and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), 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 and surroundings including an aerial photograph of the project site.

The proposed project is located in Broad Cove of Spruce Creek, 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 project is located within 0.25 mile of Rogers Park. Rogers Park is a 27-acre public park that contains walking trails with some shorefront access and views of Spruce Creek. Properties near the proposed project contain similar and visible residential structures and pier systems. According to the Department's GIS system, four similar pier structures are located within 0.25 mile of the proposed project site on the south side of the cove.

To reduce visibility of the pier system from the scenic resource, the applicants have minimized the length of the permanent structure to the greatest extent practicable and propose to construct the pier system in a manner similar to the existing pier structures in the surrounding area. No trees or vegetation are proposed to be removed for the installation of the pier system.

The Department staff utilized the Department's Visual Impact Assessment Matrix in its evaluation of the proposed project and the Matrix showed an acceptable potential visual impact rating for the proposed project. 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) reviewed the project and stated that the proposed project should not cause any significant adverse impact to navigation or recreation based on the nature of the project and its location.

3. SOIL EROSION:

The NRPA, in 38 M.R.S. § 480-D(2), requires the applicant to demonstrate that the proposed project 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.

Construction access and material transport would occur from the upland area. The helix anchors would be installed hydraulically, which would result in minimal soil disturbance. The ramp and float would be constructed off-site and set in place once the pier is completed. No vegetation is proposed to be removed as a result of the proposed project.

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 NRPA, in 38 M.R.S. § 480-D(3), requires applicants to demonstrate that the proposed project will not unreasonably harm 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.

The project is proposed along the shoreline of, and extending into, Spruce Creek. According to the Department's Coastal Wetland Characterization form completed by Flycatcher, LLC and submitted as Appendix B in the application, habitat present on-site consists of salt marsh and mud flat with less than 5% slopes. Marine worms were commonly found, and clams were occasionally found.

In review comments dated April 21, 2023, DMR stated that habitat in the intertidal area is high salt marsh grading to mudflat. Shellfish harvesting is prohibited in this location. Soft-shell clams and marine worms have been documented in the area, but no eelgrass resources are known to exist in the project location. DMR concluded that the project, as proposed, would have some impacts to marine resources and habitat. The float would rest on soft bottom habitat during low tides. The seasonal nature of the structure as well as the skids proposed for the float would help to minimize compaction of the area. However, any boats tied up at the float would bottom out on the flat during low tides, increasing the area of compaction.

According to the Department's GIS database, the proposed project is located within a TWWH. In review comments dated May 15, 2023, the Maine Department of Inland Fisheries and Wildlife (MDIFW) recommended deck board spacing of ¾-inch over the saltmarsh to minimize shading impacts. In an email response dated May 16, 2023, the applicants agreed to incorporate ¼-inch deck spacing versus the standard ⅛-inch spacing. The applicants explained that children would be utilizing the residential pier system, and they had safety concerns with ¾-inch spacing such as the potential for toes to slip between the deck boards. The applicants further stated that the pier stringers and thickness of the deck boards would block light penetration regardless of deck spacing. They stated that some studies have found that the most effective means to minimize the potential for shading impacts on marsh vegetation is to elevate the pier a minimum of 1H:1W. The proposed pier would be four feet in width; it is designed to be five feet eight inches in height at the landward end of the pier where marsh habitat begins. Considering the angle of the sun, and a height greater than the pier width, the applicants determined

that greater deck board spacing would provide little increase in light penetration to the marsh vegetation. In response to the revised deck spacing of ¼ inch, in an email dated May 17, 2023, MDIFW stated that, since all piers create impacts to the resource, ¾-inch spacing is the typical recommendation to help minimize those impacts because it allows more light penetration than ¼-inch spacing.

Through the use of float skids and the seasonal removal of the ramp and float, the applicants have minimized impacts to on-site habitat. The applicants have also incorporated greater deck spacing to encourage light penetration to the salt marsh vegetation beneath. Though the deck spacing of ¼-inch is not fully in line with the recommendation from MDIFW, the Department determined that the resultant impacts are not unreasonable. Thus, the Department finds that the applicants have minimized impacts to the greatest extent practicable.

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 12 square feet of coastal salt marsh to construct the proposed residential pier system. The proposed pier, seasonal ramp, and seasonal float would cause indirect impacts to 526 square feet of coastal wetland, including 240 square feet of salt marsh habitat. Coastal wetlands are wetlands of special significance.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended November 11, 2018), interpret and elaborate on the Natural Resources Protection Act (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 a 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.** An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable. A pier is a water dependent use and its proposed construction is among the activities specifically provided for in Chapter 310, § 5(A)(1)(c).

The applicants submitted an alternatives analysis for the proposed project as Exhibit 2, completed by Flycatcher, LLC., and dated February 9, 2023. The purpose of the project is to gain partial-tide access to the coastal wetland for swimming and recreational boating, including kayaking and paddleboarding. The applicants considered the no-action alternative through the use of public or private marina and docking facilities. The nearest public boat launch is located approximately 1 mile from the project site. The applicants determined that the need to trailer and launch their boat on a regular basis was too restrictive. Additionally, the launch is not conducive to swimming. Several private marinas are located in close proximity to the proposed project. The Kittery Point Yacht Yard is closest, at approximately 1.8 miles from the property. The applicants determined that, similar to the public boat dock, the marinas do not provide readily available access to the coastal resource for boating and are not favorable for swimming. Additionally, the maintenance of the slip was determined to not be cost effective. Thus, the no-action alternative was rejected. The applicants considered constructing a temporary dock, but the annual cost for installation and removal of the structure would eventually exceed the cost of the permanent pier and would likely result in greater impacts to the coastal wetland during the installation and removal process. The applicants also considered alternate locations on-site. The proposed project was designed at the proposed location because it does not require vegetation removal. The preferred alternative was developed to provide reasonable partial-tide access to the coastal wetland while minimizing impacts to the resource. The pier would be constructed greater than four feet in height over the intertidal vegetation to minimize shading effects to the salt marsh.

B. **Minimal Alteration.** In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of coastal wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicants minimized the length of the pier to reach navigable waters on a partial-tide basis. The hydraulic installation of helix anchors would minimize soil disturbance and direct impacts to the coastal wetland. The ramp and float would be in place seasonally and would be removed off-site to an upland area when not in use.

C. **Compensation.** In accordance with Chapter 310, § 5(C)(6)(b), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. This 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, although the proposed

project would have some adverse impact on marine resources and wildlife habitat on-site through the compaction of soil and the potential decrease in saltmarsh biomass resulting from shading effects, the impacts are anticipated to be reasonable. The proposed project is similar in size, composition, orientation, and design to previously authorized residential pier systems in the vicinity. Furthermore, the applicants have undertaken measures to minimize potential negative impacts from the pier system. 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 finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment, and does not involve dredge spoils disposal or the transport of dredge spoils by water.

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. §§ 480-A–480-JJ and Section 401 of the Clean Water Act (33 U.S.C. § 1341):

- 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 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of DAVID HUNTER REVOCABLE TRUST AND JESSICA HUNTER REVOCABLE TRUST to construct a residential pier system 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 23rd DAY OF MAY 2023.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
 For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

MB/L30233ANBN/ATS#90659/90794

<p>FILED May 25th, 2023 State of Maine Board of Environmental Protection</p>



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. §§ 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.

Revised September 2016



REPLY TO ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

MAINE GENERAL PERMITS (GPs)
AUTHORIZATION LETTER AND SCREENING SUMMARY

DAVID & JESSICA HUNTER
DAVID HUNTER REVOCABLE TRUST
JESSICA HUNTER REVOCABLE TRUST
50 DION AVENUE
KITTERY, MAINE 03904

CORPS PERMIT # NAE-2023-00335
CORPS GP#s 3
STATE ID# NRPA

DESCRIPTION OF WORK:

Install and maintain a 4-ft wide x 80-ft long pile-supported pier with a 3-ft wide x 36-ft long seasonal ramp leading to a 10-ft wide x 20-ft long seasonal float below the mean high water mark of Shepherds Hill Cove off 50 Dion Ave at Kittery, ME. This work is shown on the attached plans entitled "PROJECT LOCATION" in one sheet dated "2/7/2023", "Plan View" in two sheets dated "2/7/2023", and "Plan View and Cross Section View" in one sheet dated "2/7/2023".

See GENERAL and SPECIAL CONDITIONS attached.

LAT/LONG COORDINATES: 43.097291° N -70.732966° W USGS QUAD: KITTERY, ME

I. CORPS DETERMINATION:

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. Your work is therefore authorized by the U.S. Army Corps of Engineers under the Federal Permit, the Maine General Permits (GPs) which can be found at: https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit/

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Special Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the GPs, including the GPs conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GPs requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 45 of the GPs (page 19) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GPs on October 14, 2025. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 14, 2026.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.

II. STATE ACTIONS: PENDING [X], ISSUED [], DENIED [] DATE

APPLICATION TYPE: PBR: , TIER 1: , TIER 2: , TIER 3: X , LURC: DMR LEASE: NA:

III. FEDERAL ACTIONS:

JOINT PROCESSING MEETING: 23FEB2023 LEVEL OF REVIEW: SELF-VERIFICATION: PRE-CONSTRUCTION NOTIFICATION: X

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 X , 404 , 10/404 , 103

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO , USF&WS NO , NMFS NO

If you have any questions on this matter, please contact my staff at 978-318-8676 at our Augusta, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at: http://corpsmapu.usace.army.mil/cm_apex/?p=136:4:0

Natalie Bingham
NATALIE BINGHAM
PROJECT MANAGER
MAINE PROJECT OFFICE

Colin Greenan
FOR FRANK J. DEL GIUDICE
CHIEF, PERMITS & ENFORCEMENT BRANCH
REGULATORY DIVISION



US Army Corps
of Engineers
New England District

**PLEASE NOTE THE FOLLOWING GENERAL AND SPECIAL CONDITIONS FOR
DEPARTMENT OF THE ARMY
MAINE GENERAL PERMIT 3
PERMIT NO. NAE-2023-00335**

GENERAL CONDITIONS

11. Navigation. a. There shall be no unreasonable interference with general navigation by the existence or use of the activity authorized herein, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein. b. Work in, over, under, or within a distance of three times the authorized depth of an FNP shall specifically comply with GC 10. c. Any safety lights and/or signals prescribed by the U.S. Coast Guard, State of Maine or municipality, through regulations or otherwise, shall be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the U.S. d. The permittee understands and agrees that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

31. Storage of Seasonal Structures. Seasonal or recreational structures such as pier sections, floats, aquaculture structures, etc. that are removed from the waterway for a portion of the year shall be stored in an upland location and not in wetlands, tidal wetlands, their substrate, or on mudflats. These seasonal structures may be stored on the fixed, pile-supported portion of a structure that is waterward of the mean high water mark or the ordinary high water mark, e.g. the storage of a ramp or gangway on the pile-supported pier. Seasonal storage of structures in navigable waters, e.g., in a protected cove, requires prior Corps approval and local harbormaster approval.

33. Permit(s)/Authorization Letter On-Site. The permittee shall ensure that a copy of the terms and conditions of these GPs and any accompanying authorization letter with attached plans are at the site of the work authorized by these GPs whenever work is being performed and that all construction personnel performing work which may affect waters of the U.S. are fully aware of the accompanying terms and conditions. The entire permit authorization shall be made a part of any and all contracts and subcontracts for work that affects areas of Corps jurisdiction at the site of the work authorized by these GPs. This shall be achieved by including the entire permit authorization in the specifications for work. The term "entire permit authorization" means all terms and conditions of the GPs, the GPs, and the authorization letter (including its drawings, plans, appendices and other attachments) and subsequent permit modifications as applicable. If the authorization letter is issued after the construction specifications, but before receipt of bids or quotes, the entire permit authorization shall be included as an addendum to the specifications. If the authorization letter is issued after receipt of bids or quotes, the entire permit authorization shall be included in the contract or subcontract. Although the permittee may assign various aspects of the work to different contractors or subcontractors, all contractors and subcontractors shall be obligated by contract to comply with all environmental protection provisions contained within the entire GP authorization, and no contract or subcontract shall require or allow unauthorized work in areas of Corps jurisdiction.

34. Inspections. The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to ensure that the work is eligible for authorization under these GPs, is being, or has been performed in accordance with the terms and conditions of these GPs. **These forms are attached after the plans.**

SPECIAL CONDITION

1. All piles and associated helix anchors shall be installed during periods of low water when the site is in-the-dry in order to prevent potential effects to endangered marine species and to minimize impacts to Essential Fish Habitat.



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

Port Authority Meeting Date: September 7, 2023

Item #: 2

STAFF REPORT – 9 BADGERS ISLAND WEST

Project Name: 9 Badgers Island West Float Modification

Applicant: Steven Riker, Amit Engineering

Owner: Langdon Island West Condominium Association

Proposed Development: Installation of a 4’x8’ float extension, 4’x34’ float, and two 6’x24’ finger floats

Waivers: 4.7.3 Overall length

Map & Lot Numbers: Map 18, Lot 27

Staff Recommendation: Denial of request

Riparian Line Determination:

Riparian lines used by abutters for previous development were determined using the extension method. Riparian lines for the purpose of this development were determined using the colonial method.

Site Description:

The subject property is in the Mixed Use – Badgers Island district, in close proximity to other water dependent uses and structures.

Description of Request:

The applicant requests addition of a 4’x8’ float extension, a 4’x34’ float, and two 6’x24’ finger floats to an existing pier, ramp and float system that is 165’ long.

Performance Standards:

***For the purposes of this report, and the application before the Board, the normal high-water mark referenced in the KPA Rules is equivalent to the mean high-water mark referenced in the*

*application and survey***

- (1) *KPA Rules 4.7.2: The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high-water mark of a water body or within a wetland must comply with all applicable requirements of Town Code Title 16.*
 - **Town Code Title 16 incorporates by reference the 2015 International Residential Building Code. Compliance with this code will be ensured through the building permitting process.**
- (2) *KPA Rules 4.7.3: Non-commercial private piers may have a maximum width of 6 feet as measured parallel to the shoreline and be limited to the minimum size necessary to accomplish their purpose. Except for temporary ramps and floats, the total length of a ramp, pier and float structure may not extend more than 150 feet beyond the normal high-water mark and piers not extend more than 100 feet beyond the normal high-water mark nor extend below the mean low water mark, whichever is shorter.*
 - **This application does not propose any change to the existing pier width. The application proposes the addition of new floats that extend 34' further from the normal high-water mark. Based on the Town's GIS map, the existing structure extends approximately 165' from the normal high-water mark. This would result in an overall length of 199', exceeding the allowable 150 feet.**
- (3) *KPA Rules 4.7.4: The maximum height of the pier deck may not exceed six (6) feet above the normal high-water mark, and the handrails not exceed 42" without the specific approval of the Port Authority.*
 - **This application does not propose any change to the existing pier height. Railings installed shall not exceed 42".**
- (4) *KPA Rules 4.7.5: Commercial piers are limited to the minimum size necessary to accomplish their purpose. They may not extend beyond the mean low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck may not exceed six (6) feet above mean high water mark and the handrails not exceed 42", without a showing of necessity and specific approval of the Port Authority.*
 - **This application is for a residential use pier, this standard is not applicable.**
- (5) *KPA Rules Chapter 4.7.6: Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high- water mark and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any*

ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town.

- **The addition of the proposed floats will be closer than 50 feet from the abutters float to the East (33 feet). This abutter has provided a letter in support of the project. To the West, the float will be 39 feet from the abutters float. This abutter has not submitted any documentation regarding the encroachment. The Town's legal counsel has opined that this setback is also applicable to floats that are part of a pier, ramp, and float system and their memorandum is attached.**

Surrounding Land Uses:

North: Residential – No waterfront, no marine structures.

South: Piscataqua River

East: Commercial – Dock, pier & float.

West: Commercial – Dock, pier & float.

Findings of Fact:

Section 16.9.2.E requires the Kittery Port Authority to use the following process when hearing requests:

Findings of fact. An application shall be approved or approved with conditions if the Port Authority makes a positive finding based on the information presented. The application must be demonstrated that the proposed use will shall:

(1) Maintain safe and healthful conditions;

- **Staff believes that navigation issues could occur due to the proximity of the float to the existing float to the West. This issue appears to be mitigated by preventing a boat from tying up on that side of the float by adding railings. Staff also believes that encroachment of floats into the 50 foot setback from other structures could affect navigation.**

(2) Not result in water pollution, erosion or sedimentation to surface waters;

- **Staff does not believe that this development will result in water pollution, erosion or sedimentation to surface waters.**

(3) Adequately provide for the disposal of all wastewater;

- **No subsurface wastewater or septic work are proposed for this project.**

(4) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

- **Staff does not believe that this development would have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.**

(5) *Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;*

- **Staff does not believe that this development would have an adverse impact on shore cover or points of access.**

(6) *Protect archaeological and historic resources;*

- **Staff does not believe that this development would have an adverse impact on archeological or historic resources.**

(7) *Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;*

- **Staff believes that navigation issues may arise from the proximity of abutting floats. This possibility should be discussed by the Port Authority and could be mitigated by limiting the size of the vessels using the docking structures.**

(8) *Avoid problems associated with floodplain development and use; and*

- **Staff does not believe that this development would have an adverse impact within the floodplain.**

(9) *Is in conformance with the provisions of this title.*

- **This project is *NOT* in conformance with the setbacks from abutting structures, or the overall length of pier, unless a waiver is granted.**

Using the standards and criteria found in of the LUDC as well as the standards found in the Kittery Port Authority Rules and Regulations, Staff recommends **DENIAL** of the proposed development due to its encroachment into the 50-foot setback from abutting structures. For the Port Authority to waive either rule 4.7.3 or 4.7.6, the project cannot adversely impair the use of public waters or navigation per rule 4.3.2.

Should the Port Authority choose to approve the application staff recommends including the following conditions of approval:

- 1) *A vessel shall never be docked on the West side of the existing float, in the area where the railing is to be installed.*
- 2) *The railing installed on the West side of the existing float shall not exceed 42” in height.*
- 3) *Vessels docked at the facility shall not protrude beyond the end of the finger floats by greater than 1 foot.*

Kristin M. Collins
kcollins@preti.com
Direct Dial: 207.791.3292

M E M O R A N D U M

TO: Kittery Port Authority, Town Manager

FROM: Kristin M. Collins; Cameron Ferrante, Town Attorneys

DATE: August 30, 2023

RE: **Applicability of Setback Regulations to Proposed Floats**

You have asked that we examine whether a float constitutes a marine-related structure for the purposes of the performance standards contained in Section 4.7.6 of the Port Authority Rules and Regulations (the “Rules”). The following memo provides an overview of the general process for interpreting the language of an ordinance or statute and an analysis of the proper interpretation of “float” in the context of Section 4.7.6.

I. Interpreting Ordinances

There are four basic principles that apply when interpreting the meaning of specific words or phrases in a municipal ordinance. First, any interpretation must look to the plain language of the ordinance.¹ Second, undefined terms should be given their common and generally accepted meaning unless the context indicates otherwise.² Third, an ordinance should be interpreted reasonably, in light of its objectives and its general structure, to avoid absurd or illogical results.³ Last, the interpretation of an ordinance must not result in any part of it being “mere surplusage,” meaning irrelevant or inoperative, if a meaningful interpretation is possible.⁴

In general, courts are not required to defer to a municipal board’s interpretation of the language of an ordinance and will apply these principles to reach their own determination of the proper interpretation of an ordinance if the Port Authority’s interpretation is challenged.

¹ See *Gensenheimer v. Town of Phippsburg*, 2005 ME 22, ¶ 21, 868 A.2d 161 (“[We] first look to the plain language of the provisions to be interpreted.”).

² See *Zappia v. Town of Old Orchard Beach*, 2022 ME 15, ¶ 10, 271 A.3d 753 (“[U]ndefined terms should be given their common and generally accepted meaning unless the context requires otherwise…”).

³ See *Olson v. Town of Yarmouth*, 2018 ME 27, ¶ 11, 179 A.3d 920 (“We construe the terms of an ordinance reasonably, considering its purposes and structure and to avoid absurd or illogical results.”); *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 95, ¶ 9, 854 A.2d 216 (“The terms or expressions in an ordinance are to be construed reasonably with regard to both the objectives sought to be obtained and the general structure of the ordinance as a whole.”)

⁴ See *Jade Realty Corp. v. Town of Eliot*, 2008 ME 80, ¶ 8, 946 A.2d 408 (“An ordinance may not be interpreted in such a way to read a provision out of existence or to render it surplusage.”)

II. Application of Section 4.7.6 to Floats

Section 4.7.6 provides, in pertinent part, that “Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high-water mark and not owned or controlled by the applicant...” The Rules define a float as “a platform that floats and is anchored, moored or secured at or near the shore, used for landing or other purposes.” By its plain terms, Section 4.7.6 does not clearly apply to isolated moored floats; however, the setbacks required by Section 4.7.6 may reasonably be applied to pier, ramp and float systems or finger float systems, based on their treatment under the Rules.

Generally, the purpose of setback requirements is to ensure that the distances between structures and uses are sufficient to permit their reasonable use and to protect public health and safety. With respect to Section 4.7.6, the apparent purpose of the setback requirement is to allow adequate distances between all marine-related structures to protect the navigability of the Town’s waters. The Rules treat pier, ramp and float systems and finger float systems as single units and Section 4.7.3 applies dimensional requirements to “pier, ramp and float structures.”⁵ This suggests that floats installed as part of a pier, ramp and float system or finger float are intended to be subject to the same requirements applicable to the associated piers, wharves or pilings. Reading Section 4.7.6 to apply only to the piers, wharves and pilings that are installed as part of a pier, ramp and float system or finger float system would create absurd results. Namely, it would allow an applicant to place the float portion of a pier, ramp and float system within 50 feet of another pier, wharf or piling but prevent a different applicant from placing a pier, wharf or piling within 50 feet of those floats, even though they are equally obstructive to navigation. As a result, based upon the language and use of terms within the Rules, interpreting Section 4.7.6 to apply to floats that are part of a pier, ramp and float system or finger float system appears to be a reasonable and defensible interpretation.

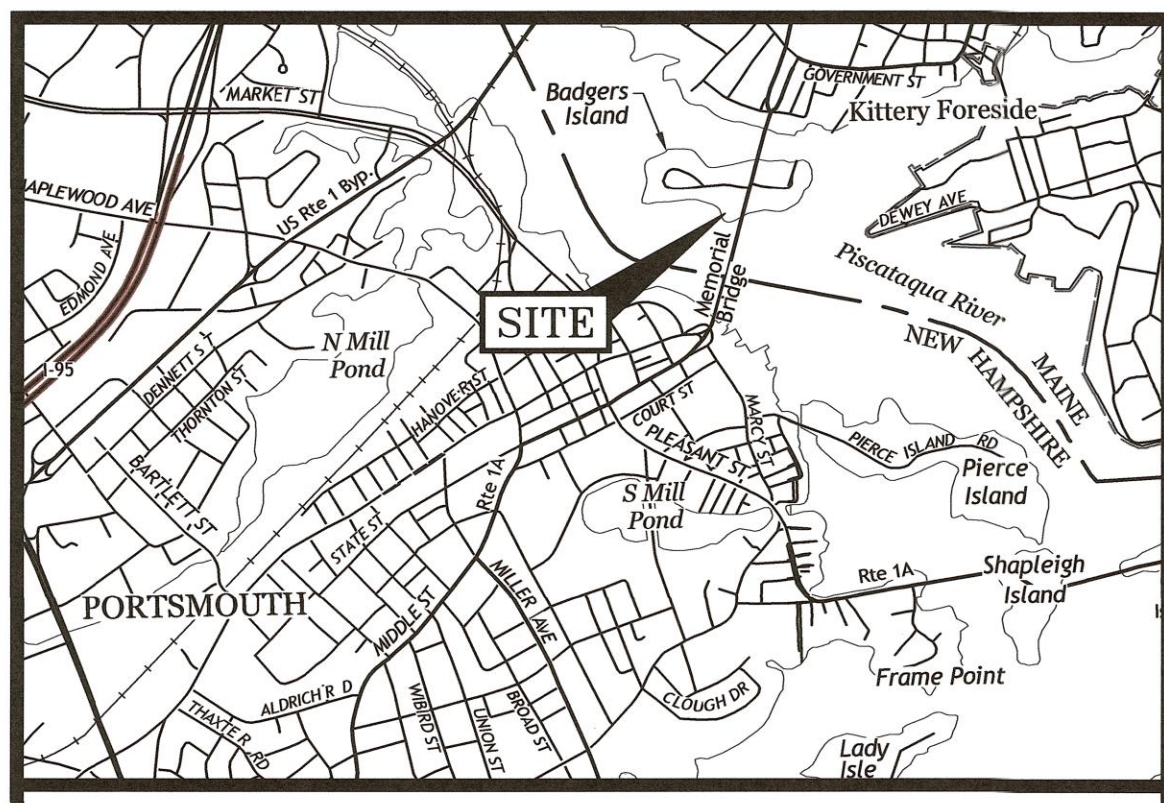
III. Conclusion and Recommendation

In conclusion, while the mandatory setbacks imposed by Section 4.7.6 of the Rules are unlikely to apply to isolated moored floats, they may reasonably be applied to floats that are part of a pier, ramp or float structure or finger float system, based on their inclusion as part of a single system. Reading Section 4.7.6 otherwise would have potentially illogical and absurd results.

This conclusion is based upon my interpretation of the Port Authority Rules and Regulations. There is always a risk that a reviewing court may have a different interpretation. As a result, I would recommend the Port Authority consider adopting an amendment to its Rules to explicitly state that the setbacks provided by Section 4.7.6 apply to piers, wharves, and pilings as well as any floats permanently or temporarily affixed to those structures. An amendment should also clarify how isolated moored floats are to be treated for setback purposes.

KMC:caf

⁵ The Rules separately define a “swim float” as “a structure that is moored on a temporary basis no earlier than May 15 and no later than October 15 for swimming purposes only” (Rules, §1).



LOCATION MAP SCALE: 1" = 2000'

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- YCRD YORK COUNTY REGISTRY OF DEEDS
- 11/21 MAP 11 / LOT 21
- IRON ROD/IRON PIPE FOUND
- STONE/CONCRETE BOUND FOUND
- BOUNDARY
- - - BUILDING SETBACK
- MHW MEAN HIGH WATER LINE
- MLW MEAN LOW WATER LINE
- HAT MAINE DEP HIGHEST ANNUAL TIDE LINE (HAT)
- - - D - - - STORM DRAIN LINE
- OVERHEAD ELECTRIC/WIRES
- CONTOUR
- SPOT ELEVATION
- EDGE OF PAVEMENT (EP)
- UTILITY POLE (w/ GUY)
- ELECTRIC METER
- PVC POLYVINYL CHLORIDE PIPE
- EL ELEVATION
- EP EDGE OF PAVEMENT
- INV. INVERT
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- FES FLARED END SECTION

PLAN REFERENCES:

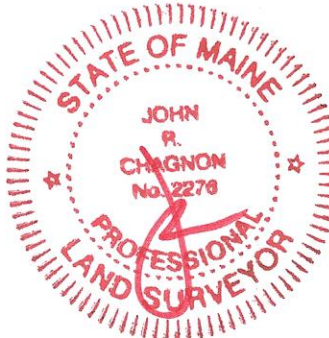
- 1) PLAN OF LAND FOR JOSEPHINE O. MARCONI, U.S. ROUTE ONE KITTERY, MAINE, SCALE 1 IN. = 30 FT., DATED FEB. 1997, PREPARED BY FRANK EMERY, JR., NOT RECORDED.
- 2) SITE PLAN OF LANGDON'S ISLAND CONDOMINIUM FOR 9 BADGERS ISLAND WEST L.L.C. PO BOX 368 NEW CASTLE, NH 03854 AT 9 BADGERS ISLAND WEST KITTERY, MAINE OCTOBER 26, 1999. PREPARED BY DOUCET SURVEY, INC DATED AUGUST 3, 1999. Y.C.R.D. CONDOMINIUM FILE 499 PAGE 1.
- 3) FINAL SUBDIVISION PLAN 9 BADGER'S ISLAND WEST KITTERY, MAINE FOR LANGDON LLC C/O JOSEPH SAWTELLE PO BOX 368, NEW CASTLE, NH 03854 PREPARED BY ATTAR ENGINEERING, INC. DATED 9/16/98. PLAN BOOK 255 PAGE 42.
- 4) PLAN OF LAND ON BADGERS ISLAND KITTERY, MAINE FOR THE PORTSMOUTH NAVIGATION CO. INC. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. DATED JANUARY 1968. Y.C.R.D. PLAN BOOK 47 PAGE 3.
- 5) PLAN OF LAND ON BADGERS ISLAND KITTERY, MAINE TO BE CONVEYED TO MEXICAN PETROLEUM CORP., SCALE 1 IN. = 20 FT., DATED JUNE 1924, PREPARED BY A.C. PETERS CIVIL ENGINEER, YCRD PLAN BOOK 9 PAGE 61.
- 6) PLAN SHOWING PORTION OF LAND OF ERNEST F. BONIN TO BE CONVEYED TO HUGO S. MARCONI ON BADGERS ISLAND KITTERY, MAINE. SCALE 1" = 20', DATED 9/10/79, PREPARED BY MOULTON ENGINEERING, CO., YCRD PLAN BOOK 79 PAGE 32.
- 7) LAND IN KITTERY, MAINE FERNANDO W. HARTFORD TO ELROY D. WITHAM, SCALE: 1 IN. = 20 FT., DATED: AUG. 1925, PREPARED BY JOHN W. DURGIN CIVIL ENGINEER, YCRD PLAN BOOK 10 PAGE 43.
- 8) STANDARD BOUNDARY SURVEY SEWER EASEMENT BADGERS ISLAND SEWER, CONTRACT NO. 88-1, KITTERY, MAINE, MADE FOR SEA CONSULTANTS, INC., SCALE 1 INCH = 20 FEET, DATED: OCTOBER 15, 1988, PREPARED BY TITCOMB ASSOCIATES, YCRD PLAN BOOK 189 PAGE 27.
- 9) STATE OF MAINE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, STATE HIGHWAY "I" KITTERY, YORK COUNTY, FEDERAL AID PROJECT NO. F-01-1(63) & BH-01-1(62), SCALE 1 INCH = 25 FEET, DATED FEBRUARY 1985, YCRD PLAN BOOK 155 PAGE 57.



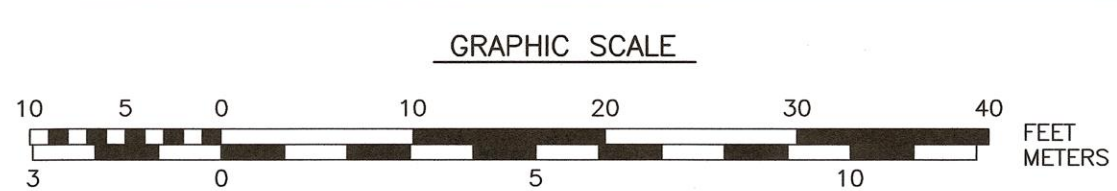
PURSUANT TO CHAPTER 90 PARTS 1 AND 2 OF THE SURVEY STANDARDS OF PRACTICE AS ADOPTED BY THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS, THE FOLLOWING EXCEPTIONS TO PART 2 ARE NOTED:

- A) NO SURVEY REPORT HAS BEEN PREPARED.
- B) NO LAND DESCRIPTION HAS BEEN PREPARED.
- C) MONUMENTS HAVE NOT BEEN SET.

THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CHAPTER 90 STANDARDS OF PRACTICE, EFFECTIVE DATE APRIL 1, 2001 EXCEPT AS NOTED ON THIS PLAN.



JOHN R. CHAGNON, PLS #2276
DATE 7-27-23



NAD83(2011)
ZONE 1802
GRID NORTH
ME SPC

AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282
WWW.HALEYWARD.COM

NOTES:

- 1) PARCEL IS SHOWN ON THE TOWN OF KITTERY ASSESSOR'S MAP 1 AS LOT 23.
- 2) OWNERS OF RECORD:
LANGDON ISLAND WEST CONDOMINIUM ASSOCIATION
9 BADGERS ISLAND WEST
KITTERY, ME 03904
9755/55
- 3) A PORTION OF THE PARCEL IS LOCATED IN A FLOOD HAZARD ZONE A2 (EL. 9) AS SHOWN ON FIRM PANEL 230171 0008 D. DATED JULY 3, 1986.
- 4) EXISTING LOT AREA:
30,413 S.F. ± (TO MHW)
0.6982 ACRES ± (TO MHW)
- 5) PARCEL IS LOCATED IN THE MU-BI (MIXED USE - BADGER ISLAND) ZONING DISTRICT & ALSO IN THE OZ-CFMU (COMMERCIAL FISHERIES/MARITIME USES) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS: (MU-BI) DISTRICT.
MIN. LOT AREA: 6,000 S.F.
FRONTAGE: 50 FEET
SETBACKS:
FRONT: 5 FEET
SIDE/REAR: 10 FEET

MAXIMUM BUILDING HEIGHT: 40 FEET
MINIMUM OPEN SPACE: 40%
SEE ZONING REGULATIONS FOR OZ-CFMU DISTRICT.
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED DOCK FLOAT STRUCTURES ON ASSESSOR'S MAP 1 LOT 23 IN THE TOWN OF KITTERY
- 8) RIPARIAN LINES DETERMINED BETWEEN LOTS 19, 23 & 24 AS DEFINED BY THE TOWN OF KITTERY, MAINE PORT AUTHORITY RULES AND REGULATIONS, AMENDED 2 JANUARY 2020.
- 9) VERTICAL DATUM IS MEAN LOWER LOW WATER (MLLW). MLLW IS REFERENCED TO NOAA STATION 8419870 SEAVEY ISLAND, PORTSMOUTH HARBOR, ME. MLLW BEING 4.62 FEET LOWER THAN 0.0 NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
- 10) HIGHEST ANNUAL TIDE SHOWN AT ELEVATION 10.2 PER LOCATION PORTSMOUTH IN MAINE DEP HIGHEST ANNUAL TIDE (HAT) LEVELS FOR YEAR 2018.

LANGDON ISLAND CONDOMINIUM
9 BADGERS ISLAND WEST KITTERY, ME

NO.	DESCRIPTION	DATE
2	ADD RAILING TO EXISTING FLOAT	7/27/23
1	ADD SLIP DIMENSIONS & LABELS	5/28/23
0	ISSUED FOR COMMENT	5/24/23

REVISIONS

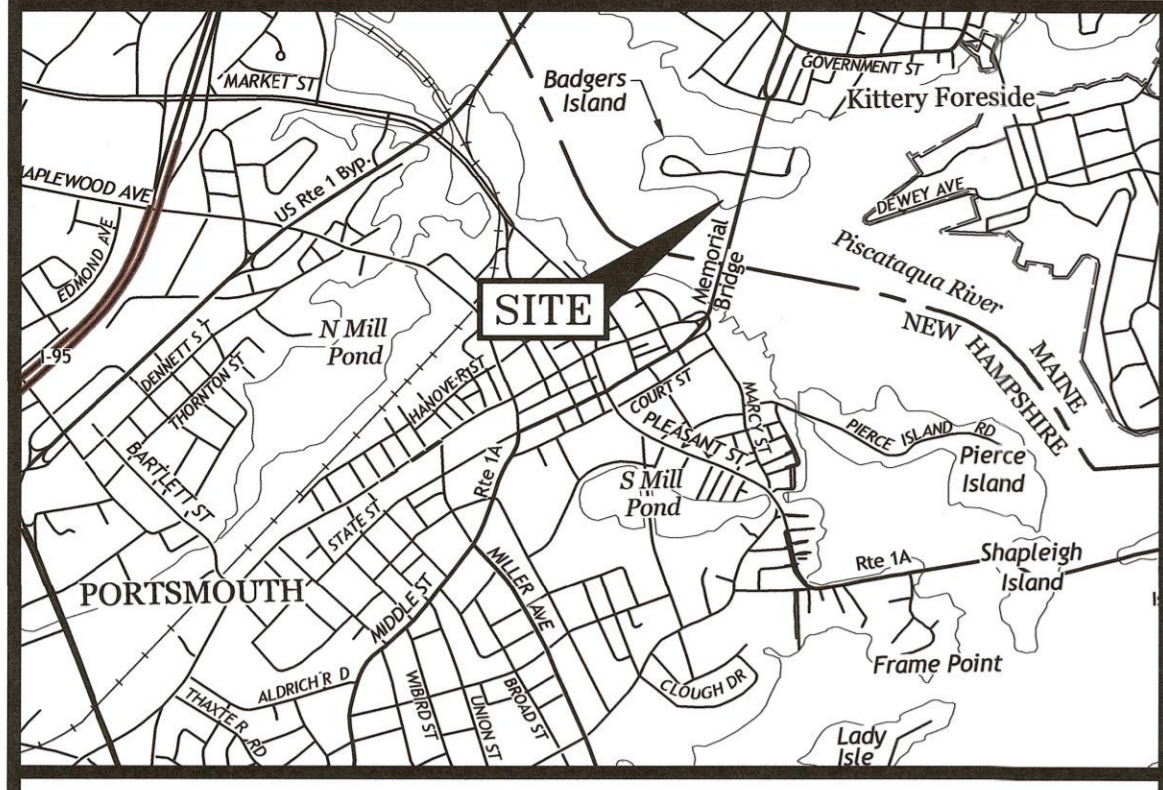
7-27-23

OWNER & APPLICANT:
LANGDON ISLAND CONDOMINIUM ASSOCIATION
BEN PORTER, PRESIDENT
9 BADGERS ISLAND WEST
KITTERY, ME ZIP 03904

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801

SCALE: 1" = 10' MAY 2023

ME DEP PERMIT PLAN-2022 AERIAL **C3**



LOCATION MAP SCALE: 1" = 2000'

LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
YCRD	YORK COUNTY REGISTRY OF DEEDS
(11/21)	MAP 11 / LOT 21
○	IRON ROD/IRON PIPE FOUND
□	STONE/CONCRETE BOUND FOUND
---	BOUNDARY
---	BUILDING SETBACK
---	MHW MEAN HIGH WATER LINE
---	MLW MEAN LOW WATER LINE
---	HAT MAINE DEP HIGHEST ANNUAL TIDE LINE (HAT)
D-D	STORM DRAIN LINE
○-○	OVERHEAD ELECTRIC/WIRES
---	CONTOUR
100	SPOT ELEVATION
97x3	EDGE OF PAVEMENT (EP)
○-○	UTILITY POLE (w/ GUY)
□	ELECTRIC METER
PVC	POLYVINYL CHLORIDE PIPE
EL	ELEVATION
EP	EDGE OF PAVEMENT
INV.	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
FES	FLARED END SECTION

PLAN REFERENCES:

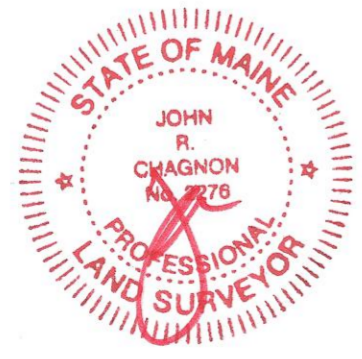
- 1) PLAN OF LAND FOR JOSEPHINE O. MARCONI, U.S. ROUTE ONE KITTERY, MAINE, SCALE 1 IN. = 30 FT., DATED FEB. 1997, PREPARED BY FRANK EMERY, JR., NOT RECORDED.
- 2) SITE PLAN OF LANGDON'S ISLAND CONDOMINIUM FOR 9 BADGERS ISLAND WEST L.L.C. PO BOX 368 NEW CASTLE, NH 03854 AT 9 BADGERS ISLAND WEST KITTERY, MAINE OCTOBER 26, 1999. PREPARED BY DOUCET SURVEY, INC DATED AUGUST 3, 1999. Y.C.R.D. CONDOMINIUM FILE 499 PAGE 1.
- 3) FINAL SUBDIVISION PLAN 9 BADGER'S ISLAND WEST KITTERY, MAINE FOR LANGDON LLC C/O JOSEPH SAWTELLE PO BOX 368, NEW CASTLE, NH 03854 PREPARED BY ATTAR ENGINEERING, INC. DATED 9/16/98. Y.C.R.D. PLAN BOOK 255 PAGE 42.
- 4) PLAN OF LAND ON BADGERS ISLAND KITTERY, MAINE FOR THE PORTSMOUTH NAVIGATION CO. INC. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. DATED JANUARY 1988. Y.C.R.D. PLAN BOOK 47 PAGE 3.
- 5) PLAN OF LAND ON BADGERS ISLAND KITTERY, MAINE TO BE CONVEYED TO MEXICAN PETROLEUM CORP., SCALE 1 IN. = 20 FT., DATED JUNE 1924. PREPARED BY A.C. PETERS CIVIL ENGINEER, YCRD PLAN BOOK 9 PAGE 61.
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- 8) STANDARD BOUNDARY SURVEY SEWER EASEMENT BADGERS ISLAND SEWER, CONTRACT NO. 88-1, KITTERY, MAINE, MADE FOR SEA CONSULTANTS, INC., SCALE 1 INCH = 20 FEET, DATED: OCTOBER 15, 1988, PREPARED BY TITCOMB ASSOCIATES, YCRD PLAN BOOK 189 PAGE 27.
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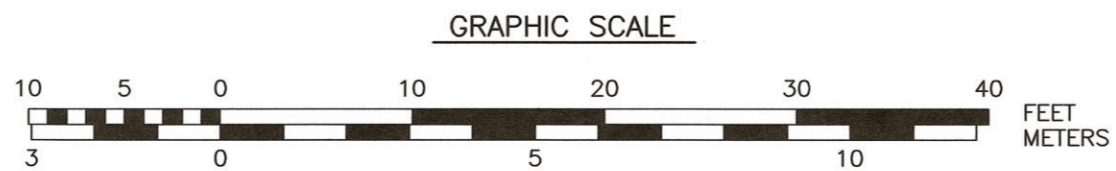
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JOHN R. CHAGNON, PLS #2276
DATE 7-27-23



GRID NORTH NAD83(2011)
ZONE 1802
ME SPC

AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282

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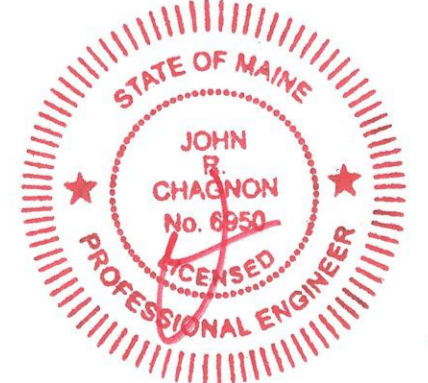
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LANGDON ISLAND WEST CONDOMINIUM ASSOCIATION
9 BADGERS ISLAND WEST
KITTERY, ME 03904
9755/55
- 3) A PORTION OF THE PARCEL IS LOCATED IN A FLOOD HAZARD ZONE A2 (EL. 9) AS SHOWN ON FIRM PANEL 230171 0008 D. DATED JULY 3, 1986.
- 4) EXISTING LOT AREA:
30,413 S.F. ± (TO MHW)
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- 6) DIMENSIONAL REQUIREMENTS: (MU-BI) DISTRICT.
MIN. LOT AREA: 6,000 S.F.
FRONTAGE: 50 FEET
SETBACKS:
FRONT: 5 FEET
SIDE/REAR: 10 FEET
MAXIMUM BUILDING HEIGHT: 40 FEET
MINIMUM OPEN SPACE: 40%
SEE ZONING REGULATIONS FOR OZ-CFMU DISTRICT.
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- 8) RIPARIAN LINES DETERMINED BETWEEN LOTS 19, 23 & 24 AS DEFINED BY THE TOWN OF KITTERY, MAINE PORT AUTHORITY RULES AND REGULATIONS, AMENDED 2 JANUARY 2020.
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- 10) HIGHEST ANNUAL TIDE SHOWN AT ELEVATION 10.2 PER LOCATION PORTSMOUTH IN MAINE DEP HIGHEST ANNUAL TIDE (HAT) LEVELS FOR YEAR 2018.

**LANGDON ISLAND CONDOMINIUM
9 BADGERS ISLAND WEST
KITTERY, ME**

NO.	DESCRIPTION	DATE
3	ADD RAILING TO EXISTING FLOAT	7/27/23
2	BLOCK MOORINGS	5/18/23
1	FLOAT CONFIGURATION	5/16/23
0	ISSUED FOR COMMENT	5/12/23

REVISIONS



7-27-23

OWNER & APPLICANT:
LANGDON ISLAND CONDOMINIUM ASSOCIATION
BEN PORTER, PRESIDENT
9 BADGERS ISLAND WEST
KITTERY, ME ZIP 03904

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801

SCALE: 1" = 10' MAY 2023

ME DEP PERMIT PLAN

C2



KPA-23-2

Kittery Port Authority

Application

Status: Active

Submitted On: 2/14/2023

Primary Location

9 BADGERS ISLAND WEST
KITTERY, ME 03904

Owner

Langdon Island West
Condominium Association
C/O Ben Porter, President
Badgers Island West 9 Kittery,
ME 03904

Applicant

Steven Riker
 603-430-9282
 sriker@haleyward.com
 200 Griffin Road, Unit 3
Portsmouth, NH 03801

Project Discription

Description of Project*

The project proposes the the modification of an exisitng tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of a 4' x 8' float extension, a 4' x 34' floats and two (2) 6' x 24' finger floats arranged to form a "T" shape. The proposed "T" shape float configuration. Due to current forces, wind forces and stability needed for docking, the proposed "T" shape float will require 4-5,000 pound block moorings (see attached Plan Set revised 5/18/23).

Is any work being performed upland of the Highest Annual Tide?*

No

Type of Project

Is this project an in-kind repair/replacement?*

No

Property Information

Name of the property owner(s)

Langdon Island West Condominium Association C/O Ben Porter, President

Property Address

9 Badgers Island West, Kittery, ME 03904

Telephone Number

617-571-2317

Email Address

langdon.condo@gmail.com

Size of the Property [?]

.69 AC

Zoning District

MU-BI

Shore Frontage Footage [?]

150 feet

Property History

This is my first Kittery Port Authority Application for this property

I have submitted an application to the Kittery Port Authority in the past for this property

If you have submitted a previous application to the Kittery Port Authority for this property, please explain:

Acknowledgements

I understand that additional permits and/or approvals may be required by the Army Corps of Engineers, the Maine Department of Environmental Protection, the Maine Department of Conservation, and/or another legal entity not listed here. Furthermore, I have submitted the additional permits and/or approvals with this application.



I certify that all information on this application is complete and true to the best of my knowledge. I understand any false, misleading, or incomplete information will result in the denial of this application.



I certify that I have submitted this application at least 21 days prior to a scheduled Kittery Port Authority Meeting. I understand that failure to submit this application at least 21 days prior will result in my request going before the Kittery Port Authority at a later date.



I certify that in addition to uploading the required documentation, I will also provide 10 paper copies of each document to the Kittery Planning and Development Office at least 21 days prior to a scheduled Kittery Port Authority Meeting.



Applicant Information

Name of Applicant

Langdon Island West Condo Association

Date Application Completed

2/14/23

Name of Property Owner

Langdon Island West Condo Association

Agent Name

Steven Riker

Agent Firm

Ambit Engineering, Inc.

Agent Phone

603-430-9282

Agent Email

sriker@haleyward.com

Attachments

Proof of Legal Interest in Property

ws.net/vpc3Complete DEP NRPA Application REDUCED SIZE 021323.pdf
Upload Date: 02/13/23 Tue Feb 14, 2023 9:29 AM
23-05-23T14%3A48%3A24Z&se=2023-05-
<LgQN8%2FHETIPQZxju9c0%2BcfBXgRg8l%3D)

Army Corps of Engineers Permit/Approval

.net/vpc3Complete DEP NRPA Application REDUCED SIZE 021323.pdf
Upload Date: 02/13/23 Tue Feb 14, 2023 9:29 AM
23-05-23T14%3A48%3A24Z&se=2023-05-
<LgQN8%2FHETIPQZxju9c0%2BcfBXgRg8l%3D)

Maine Department of Environmental Protection Permit/Approval

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Upload Date: 02/13/23 Tue Feb 14, 2023 9:29 AM
23-05-23T14%3A48%3A24Z&se=2023-05-
<ToOvFAFOyUUTH9xtFD9w%2Fkogp%2B7mGoQ%3D)

Maine Department of Conservation Permit/Approval

.net/vpc3Complete DEP NRPA Application REDUCED SIZE 021323.pdf
Upload Date: 02/13/23 Tue Feb 14, 2023 9:29 AM
23-05-23T14%3A48%3A24Z&se=2023-05-
<iZiDB0x1VgozIswGykcohYdr2GuqQ%3D)

Construction Plans

downloads.net/Plans Set REDUCED SIZE 012023.pdf
Upload Date: 02/13/23 Tue Feb 14, 2023 9:27 AM
23-05-23T14%3A48%3A24Z&se=2023-05-
<eftnnpnNSiEqU1IGt49ZJRr%2BSE982BHg4%3D)

Other Documents

downloads.net/Plans No Objection Letter Signed 052023.pdf
Upload Date: 05/20/23 Mon May 22, 2023 1:45 PM
=2023-05-23T14%3A48%3A25Z&se=2023-05-
<iH7DKEyncBG1gl%2BiuW6cvZixYNpKLFPC%3D)

Town Tax Map of Lot

downloads.net/Tax Map 3402.14.pdf
Upload Date: 02/13/23 Tue Feb 14, 2023 9:27 AM

3A24Z&se=2023-05-**List of Abutters within 150 feet (including over the water) of applicant's**

et/vpc3- Updated Plan Set REDUCED SIZE 051823.pdf
SIZE_051823_012023_Varao_Carrie_Varao_2023_May_24_2023.pdf

Abutter List 3402.14.pdf
Uploaded by Steven Riker on Feb 14, 2023 at 9:27 AM
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FawWonD%2BC8r78o2Wfh2wE0wRBs5XINM4%3D)

Updated Plan Set REDUCED SIZE 051823.pdf

et/vpc3- Updated Plan Set REDUCED SIZE 051823.pdf
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Uploaded by Steven Riker on Feb 14, 2023 at 9:27 AM
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History

Date	Activity
2/13/2023, 2:04:00 PM	Steven Riker started a draft of Record KPA-23-2
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerCity from "" to "Kittery"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerEmail from "" to "langdon.condo@gmail.com"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerName from "" to "Langdon Island West Condominium Association C/O Ben Porter, President"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerPhoneNo from "" to "617-571-2317"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerPostalCode from "" to "03904"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerState from "" to "ME"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerStreetName from "" to "Badgers Island West"
2/14/2023, 9:18:24 AM	Steven Riker altered Record KPA-23-2, changed ownerStreetNo from "" to "9"
2/14/2023, 9:28:23 AM	Steven Riker submitted Record KPA-23-2
2/16/2023, 4:21:23 PM	completed payment step Fee Payment on Record KPA-23-2
2/16/2023, 4:21:24 PM	approval step Application Completeness Review was assigned to Carrie Varao on Record KPA-23-2

Date	Activity
2/16/2023, 4:21:38 PM	Carrie Varao approved approval step Application Completeness Review on Record KPA-23-2
2/16/2023, 4:21:39 PM	approval step Code Enforcement Upland Development Review was assigned to Craig Alfis on Record KPA-23-2
2/22/2023, 9:41:54 AM	Craig Alfis assigned approval step Town Planner Upland Development Review to Jason Garnham on Record KPA-23-2
2/22/2023, 9:42:02 AM	Craig Alfis approved approval step Code Enforcement Upland Development Review on Record KPA-23-2
3/20/2023, 9:36:38 AM	Jason Garnham approved approval step Town Planner Upland Development Review on Record KPA-23-2
3/20/2023, 9:36:39 AM	approval step Port Authority Approval Uploaded was assigned to Carrie Varao on Record KPA-23-2
5/22/2023, 1:44:50 PM	Carrie Varao added attachment Updated Plan Set REDUCED SIZE 051823.pdf to Record KPA-23-2
5/23/2023, 11:03:05 AM	Carrie Varao changed Description of Project from " the="" "<p>the="" ..."="" the="" an="" docking="" exisitng="" kpa-23-2<="" modification="" of="" on="" p="" project="" propose..."="" proposes="" record="" structure="" style='font-size:15px;font-family:"Times New Roman",serif;color:black;' the="" tidal="" to="">

Timeline

Label	Activated	Completed	Assignee	Due Date
✓ Application Completeness Review	2/16/2023, 4:21:24 PM	2/16/2023, 4:21:38 PM	Carrie Varao	-
✓ Town Planner Upland Development Review	2/16/2023, 4:21:39 PM	3/20/2023, 9:36:38 AM	Jason Garnham	-
✓ Code Enforcement Upland Development Review	2/16/2023, 4:21:39 PM	2/22/2023, 9:42:02 AM	Craig Alfis	-
💰 Fee Payment	2/14/2023, 9:28:24 AM	2/16/2023, 4:21:23 PM	Steven Riker	-
✓ Port Authority Approval Uploaded	3/20/2023, 9:36:39 AM	-	Carrie Varao	-

Label	Activated	Completed	Assignee	Due Date
✓ Building Permit Received	-	-	-	-



TOWN OF KITTERY

Code Enforcement Office

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1308 Fax: 207-439-6806

CEO@kitteryme.org

KITTERY PORT AUTHORITY APPLICATION ACCEPTANCE MEMO

From: Craig Alfis, Code Enforcement
To: Charles Patten, Port Authority Chair

Subj: Acceptance of Application, 9 Badgers Island West

Mr. Chair,

Code Enforcement and Planning staff have reviewed the application for 9 Badgers Island West, requesting modifications to the existing tidal docking structure, and found it to be complete. The application requests the following modifications:

1. The installation of a 4' x 8' float extension;
2. The installation of two 4' x 17' floats; and
3. The installation of two 4' x 24' finger float.

Based on a cursory review of the information provided in the application, Staff believes the application is complete, and recommends that the Port Authority accept the application for further review. Information submitted includes:

- Kittery Port Authority application;
- Proof of ownership;
- An abutter letter from Mr. Will Banfield;
- Plans showing the actual dimensions and shape of the proposed floats; and
- Maine DEP NRPA application including abutters list.

This project is covered under USACE Maine General Permit #3, Structures, Floats and Lifts for self-verification. Therefore, no USACE individual permit is required. If the Port Authority votes to accept the application, an in-depth review will be performed by Code and Planning staff, and a staff report will be provided to the Port Authority prior to the meeting on which the application is scheduled.

Signed,

Craig Alfis, Code Enforcement Officer
207-475-1308

ceo@kitteryme.org

ALTERNATIVES ANALYSIS

The project proposes the the modification of an existng tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of a 4' x 8' float extension, a 4' x 34' floats and two (2) 6' x 24' finger floats arranged to form a "T" shape. The proposed "T" shape float configuration. Due to current forces, wind forces and stability needed for docking, the proposed "T" shape float will require 4-5,000 pound block moorings (see attached Plan Set revised 5/18/23).

Project design alternatives have been explored to provide safe boating access/dockage for 6 users/owners of condominiums associated with the existing residential structure located on the lot. The current float face has 48 linear feet of docking/slip space, which essentially will only accommodate two boats up to 20 feet in length. The existing float also has 28 linear feet of slip space facing northerly, however this space is undesirable for dockage given the close proximity to the docking structure on Tax Map 1, Lot 24 of only 23 feet, measured float to float and not considering boats being secured to both floats further minimizing navigation space between them.

The proposed modification achieves the desired need for float (slip) space while representing the least impacting alternative. The proposed "T" shape float configuration will provide slip space for 6 boats, with four of the slips accommodating boats up to 24 feet in length. The proposed float modification represent the least impacting alternative as the impact associated with the modification is "indirect" (shading 456 sq. ft.), with 121 sq. ft. of direct impact for moorings.

Additionally, the proposed modification required revision due to navigational concerns expressed by the abutter/owner of Tax Map 1, Lot 19, USACOE, the Kittery Port Authority (KPA) and the Department of Submerged Lands. USACOE, KPA and the Department of Submerged Lands advised obtaining a Letter of No Objection from the abutter/owner of Tax Map 1, Lot 19. In order to gain that written concurrence, the design was revised accordingly.

The property owners (6 condominium owners) require a tidal docking structure on their property that can accommodate their recreational boating needs. Modification of the existing structure is the least impacting alternative. Other recreational docking options for the condominium owners include using the closest public boat launch located 3 miles from the project site in Kittery, ME, but that facility is very congested during the boating season. The Town of Kittery Harbormaster has 65 people on the "Badgers Island" mooring wait list as of January 27, 2023. Additionally, two privately owned marinas, both located within 500 feet of the subject property, Badgers Island Marina and Piscataqua Marina have waiting lists over 1 year for a slip to accommodate boat lengths as discussed above.

In conclusion, the modification of the docking structure as proposed, written concurrence from the abutter combined with the project design and components demonstrate that the project is the least impacting alternative while providing reasonable use for the property owners.



AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Maine Department of Environmental Protection
312 Canco Road
Portland, ME 04103

**Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME**

To Whom it May Concern:

This letter transmits a Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application request to permit the modification of an existing tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float. The finger floats will be attached to the existing main float using float bracing eliminating the need for moorings & chains or float piles to secure the proposed finger floats, representing the least impacting alternative.

Attached to this application you will find an Existing Conditions Plan-Sheet C1, a ME DEP Permit Plan-Sheet C2 and a Dock Details Plan-Sheet D1. The plan set depicts the existing lot, jurisdictional areas, abutting parcels, existing structures, proposed work, and impact areas. Also attached to this application you will find the following: USGS Project location map, tax map, recorded deed, certified mail receipts for abutter notification, a field survey checklist, a coastal wetland characterization, a photo log, project description worksheets for docks, and a notice of intent to file.

Lastly, in utilizing the Maine Office of GIS, the site is located directly adjacent to Tidal Wading Bird and Waterfowl Habitat and Shellfish Beds.

Please contact me if you have any questions or concerns regarding this application.

Respectfully submitted,

Sincerely,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com



1 February, 2023

To Whom It May Concern:

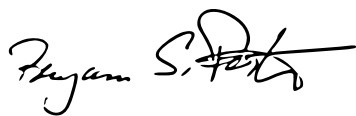
RE: State of Maine Department of Environmental Protection Application for proposed docking structure within the previously developed 100' Tidal Buffer Zone and jurisdictional wetlands for Langdon Island Condo Association of 9 Badgers Island Kittery, ME, 03904

This letter is to inform the State of Maine DEP the Town of Kittery in accordance with State Law that the following entity:

Riverside & Pickering Marine Contractors
Ambit Engineering, Inc.

Is individually authorized to represent us as our agents in the approval process.
Please feel free to call me if there is any question regarding this authorization.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Porter". The signature is stylized with a large initial "B" and a long horizontal stroke extending to the right.

*Langdon Island Condo Association
Authorized Representative, Ben Porter, President
9 Badgers Island West
Kittery, ME 03904*

From: [Maine Dept. of Environmental Protection](#)
To: [Steve Riker](#)
Subject: Dept. of Environmental Protection Payment Portal
Date: Wednesday, February 1, 2023 2:42:39 PM

Thank you for submitting this payment to the Dept. of Environmental Protection. Below is a copy of the information and payment the agency will receive.

- Applicant Name: **Langdon Island Condominium Association**
- Activity Location: **Kittery, ME**
- First Name: **Steven**
- Last Name: **Riker**
- Company Name: **Ambit Engineering, Inc**
- Street Address: **200 Griffin Road Unit #3**
- Town/City: **Portsmouth**
- State or Province: **New Hampshire**
- Country: **United States**
- Zip Code: **03801**
- Phone Number: **603-430-9282**
- Email Address: **sdr@ambitengineering.com**
- Fee Type: **Natural Resources Protection Act (Individual Permit)**
- Customer Number:
- Invoice Number:
- Spill Number:
- Payment Amount: **564.00**
- Additional Comments:

Your information will be reviewed and you may be contacted if more information is needed or if there are additional questions.

APPLICATION FOR A NATURAL RESOURCES PROTECTION ACT PERMIT

→ PLEASE TYPE OR PRINT IN **BLACK INK ONLY**

1. Name of Applicant: Langdon Island West Condominium Association		5. Name of Agent: Steven D. Riker Ambit Engineering, Inc.	
2. Applicant's Mailing Address: C/O Ben Porter, President 9 Badgers Island West, Kittery, ME 03904		6. Agent's Mailing Address: 200 Griffin Road, Unit 3, Portsmouth, NH 03801	
3. Applicant's Daytime Phone #: 617-571-2317		7. Agent's Daytime Phone #: 603-430-9282	
4. Applicant's Email Address (Required from either applicant or agent): langdon.condo@gmail.com		8. Agent's Email Address: sdr@ambitengineering.com	
9. Location of Activity: (Nearest Road, Street, Rt.#) 9 Badgers Island West		10. Town: Kittery	11. County: York
12. Type of Resource: (Check all that apply) <input type="checkbox"/> River, stream or brook <input type="checkbox"/> Great Pond <input checked="" type="checkbox"/> Coastal Wetland <input type="checkbox"/> Freshwater Wetland <input type="checkbox"/> Wetland Special Significance <input type="checkbox"/> Significant Wildlife Habitat <input type="checkbox"/> Fragile Mountain		13. Name of Resource: Piscataqua River	
		14. Amount of Impact: (Sq.Ft.)	Fill: 384 sq. ft indirect impact for proposed floats Dredging/Veg Removal/Other:
15. Type of Wetland: (Check all that apply) <input type="checkbox"/> Forested <input type="checkbox"/> Scrub Shrub <input type="checkbox"/> Emergent <input type="checkbox"/> Wet Meadow <input type="checkbox"/> Peatland <input type="checkbox"/> Open Water <input checked="" type="checkbox"/> Other <u>Tidal</u>		FOR FRESHWATER WETLANDS	
		<i>Tier 1</i>	<i>Tier 2</i>
		<i>Tier 3</i>	
		<input type="checkbox"/> 0 - 4,999 sq ft. <input type="checkbox"/> 5,000-9,999 sq ft <input type="checkbox"/> 10,000-14,999 sq ft	<input type="checkbox"/> 15,000 – 43,560 sq. ft. <input type="checkbox"/> > 43,560 sq. ft. or smaller than 43,560 sq. ft., not eligible for Tier 1
16. Brief Activity Description:		The project proposes the expansion/modification of an existing tidal docking structure including including the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.	
17. Size of Lot or Parcel & UTM Locations:		<input checked="" type="checkbox"/> 30,413 square feet, or <input checked="" type="checkbox"/> .69 acres UTM Northing: <u>-70.75311</u> UTM Easting: <u>43.08114</u>	
18. Title, Right or Interest:		<input checked="" type="checkbox"/> own <input type="checkbox"/> lease <input type="checkbox"/> purchase option <input type="checkbox"/> written agreement	
19. Deed Reference Numbers:		20. Map and Lot Numbers:	
Book#: 9755 Page: 55		Map #: 1 Lot #: 23	
21. DEP Staff Previously Contacted:		22. Part of a larger project: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
23. Resubmission of Application?: <input type="checkbox"/> Yes → <input checked="" type="checkbox"/> No		After-the-Fact: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
24. Written Notice of Violation?: <input type="checkbox"/> Yes → <input checked="" type="checkbox"/> No		25. Previous Wetland Alteration: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
23. If yes, previous application #		Previous project manager:	
24. If yes, name of DEP enforcement staff involved:			
26. Detailed Directions to the Project Site:		From US Route 1 in Kittery, ME, turn onto Badgers Island West. In 300 feet, turn left into 9 Badgers Island West.	
TIER 1		TIER 2/3 AND INDIVIDUAL PERMITS	
<input checked="" type="checkbox"/> Title, right or interest documentation <input checked="" type="checkbox"/> Topographic Map <input checked="" type="checkbox"/> Narrative Project Description <input checked="" type="checkbox"/> Plan or Drawing (8 1/2" x 11") <input checked="" type="checkbox"/> Photos of Area <input checked="" type="checkbox"/> Statement of Avoidance & Minimization <input checked="" type="checkbox"/> Statement/Copy of cover letter to MHPC		<input type="checkbox"/> Erosion Control/Construction Plan <input checked="" type="checkbox"/> Functional Assessment (Attachment 3), if required <input type="checkbox"/> Compensation Plan (Attachment 4), if required <input checked="" type="checkbox"/> Appendix A and others, if required <input type="checkbox"/> Statement/Copy of cover letter to MHPC <input type="checkbox"/> Description of Previously Mined Peatland, if required	
27. TIER 1		27. TIER 2/3 AND INDIVIDUAL PERMITS	
<input checked="" type="checkbox"/> Title, right or interest documentation <input type="checkbox"/> Topographic Map <input type="checkbox"/> Copy of Public Notice/Public Information Meeting Documentation <input type="checkbox"/> Wetlands Delineation Report (Attachment 1) that contains the information listed under Site Conditions <input checked="" type="checkbox"/> Alternatives Analysis (Attachment 2) including description of how wetland impacts were Avoided/Minimized			
28. FEES Amount Enclosed:		\$564.00	
CERTIFICATIONS AND SIGNATURES LOCATED ON PAGE 2			

IMPORTANT: IF THE SIGNATURE BELOW IS NOT THE APPLICANT'S SIGNATURE, ATTACH LETTER OF AGENT AUTHORIZATION SIGNED BY THE APPLICANT.

By signing below the applicant (or authorized agent), certifies that he or she has read and understood the following :

DEP SIGNATORY REQUIREMENT

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor a permit be issued.

CORPS SIGNATORY REQUIREMENT

USC Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry shall be fined not more than \$10,000 or imprisoned not more than five years or both. I authorize the Corps to enter the property that is subject to this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein.

DEP SIGNATORY REQUIREMENT

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Further, I hereby authorize the DEP to send me an electronically signed decision on the license I am applying for with this application by emailing the decision to the address located on the front page of this application (see #4 for the applicant and #8 for the agent)."

Steven D. Riker *Steven Riker*
SIGNATURE OF AGENT/APPLICANT

Date: 1/27/2023

NOTE: Any changes in activity plans must be submitted to the DEP and the Corps in writing and must be approved by both agencies prior to implementation. Failure to do so may result in enforcement action and/or the removal of the unapproved changes to the activity.

(pink)

08/08

**PUBLIC NOTICE:
NOTICE OF INTENT TO FILE**

Please take notice that

Langdon Island West Condominium Association

9 Badgers Island West, Kittery, ME 03904

(Name, Address and Phone # of Applicant)

is intending to file a Natural Resources Protection Act permit application with the Maine Department of Environmental Protection pursuant to the provisions of 38 M.R.S.A. §§ 480-A thru 480-BB on or about

February 15, 2023

(anticipated filing date)

The application is for

Modification/expansion of an existing tidal docking structure.

(description of the project)

at the following location:

9 Badgers Island West, Kittery, Maine

(project location)

A request for a public hearing or a request that the Board of Environmental Protection assume jurisdiction over this application must be received by the Department in writing, no later than 20 days after the application is found by the Department to be complete and is accepted for processing. A public hearing may or may not be held at the discretion of the Commissioner or Board of Environmental Protection. Public comment on the application will be accepted throughout the processing of the application.

For Federally licensed, permitted, or funded activities in the Coastal Zone, review of this application shall also constitute the State's consistency review in accordance with the Maine Coastal Program pursuant to Section 307 of the federal Coastal Zone Management Act, 16 U.S.C. § 1456. (Delete if not applicable.)

The application will be filed for public inspection at the Department of Environmental Protection's office in *(Portland, Augusta or Bangor)*(circle one) during normal working hours. A copy of the application may also be seen at the municipal offices in _____ **Kittery** _____, Maine.
(town)

Written public comments may be sent to the regional office in Portland, Augusta, or Bangor where the application is filed for public inspection:

MDEP, Central Maine Regional Office, 17 State House Station, Augusta, Maine 04333

MDEP, Southern Maine Regional Office, 312 Canco Road, **Portland**, Maine 04103

MDEP, Eastern Maine Regional Office, 106 Hogan Road, Bangor, Maine 04401

(blue)

PUBLIC NOTICE FILING AND CERTIFICATION

Department Rules, Chapter 2, require an applicant to provide public notice for all Tier 2, Tier 3 and individual Natural Resources Protect Act projects. In the notice, the applicant must describe the proposed activity and where it is located. **“Abutter”** for the purposes of the notice provision means any person who owns property that is BOTH (1) adjoining and (2) within one mile of the delineated project boundary, including owners of property directly across a public or private right of way.

- 1. **Newspaper:** You must publish the Notice of Intent to File in a newspaper circulated in the area where the activity is located. The notice must appear in the newspaper within 30 days prior to the filing of the application with the Department. You may use the attached Notice of Intent to File form, or one containing identical information, for newspaper publication and certified mailing.
- 2. **Abutting Property Owners:** You must send a copy of the Notice of Intent to File by certified mail to the owners of the property abutting the activity. Their names and addresses can be obtained from the town tax maps or local officials. They must receive notice within 30 days prior to the filing of the application with the Department.
- 3. **Municipal Office:** You must send a copy of the Notice of Intent to File and a **duplicate of the entire application** to the Municipal Office.

ATTACH a list of the names and addresses of the owners of abutting property.

CERTIFICATION

By signing below, the applicant or authorized agent certifies that:

- 1. A Notice of Intent to File was published in a newspaper circulated in the area where the project site is located within 30 days prior to filing the application;
- 2. A certified mailing of the Notice of Intent to File was sent to all abutters within 30 days of the filing of the application;
- 3. A certified mailing of the Notice of Intent to File, and a duplicate copy of the application was sent to the town office of the municipality in which the project is located; and
- 4. Provided notice of and held a public informational meeting, if required, in accordance with Chapter 2, Rules Concerning the Processing of Applications, Section 13, prior to filing the application. Notice of the meeting was sent by certified mail to abutters and to the town office of the municipality in which the project is located at least ten days prior to the meeting. Notice of the meeting was also published once in a newspaper circulated in the area where the project site is located at least seven days prior to the meeting.

The Public Informational Meeting was held on N/A .
Date

Approximately N/A members of the public attended the Public Informational Meeting.

 Steven D. Riker
Signature of Applicant or authorized agent

 1/27/23
Date

(blue)

**APPENDIX A: MDEP VISUAL EVALUATION
FIELD SURVEY CHECKLIST**
(Natural Resources Protection Act, 38 M.R.S.A. §§ 480 A - Z)

Name of applicant: Langdon Island West Condominium Assoc. Phone: 617-571-2317
 Application Type: Maine DEP NRPA Individual
 Activity Type: (brief activity description) Modification of existing tidal docking structure
 Activity Location: Town: Kittery Court: York
 GIS Coordinates, if known: Lat: -70.75311 Lon: 43.08114
 Date of Survey: 1/27/23 Observer: Steven D. Riker Phone: 603-430-9282

**Distance Between the Proposed Visibility
Activity and Resource (in Miles)**

1. Would the activity be visible from:	0-¼	¼-1	1+
A. A National Natural Landmark or other outstanding natural feature?			X
B. A State or National Wildlife Refuge, Sanctuary, or Preserve or a State Game Refuge?			X
C. A state or federal trail?			X
D. A public site or structure listed on the National Register of Historic Places?	X	John Paul Jones Memorial Park	
E. A National or State Park?			X
F. 1) A municipal park or public open space?	X		
2) A publicly owned land visited, in part, for the use, observation, enjoyment and appreciation of natural or man-made visual qualities?	X		
3) A public resource, such as the Atlantic Ocean, a great pond or a navigable river?	X		
2. What is the closest estimated distance to a similar activity?	. X		
3. What is the closest distance to a public facility intended for a similar use?			X
4. Is the visibility of the activity seasonal? (i.e., screened by summer foliage, but visible during other seasons)		Yes	X No
5. Are any of the resources checked in question 1 used by the public during the time of year during which the activity will be visible?		X Yes	No

A listing of National Natural Landmarks and other outstanding natural features in the State of Maine can be found at: www.nature.nps.gov/nnl/Registry/USA_map/states/Maine/maine.htm . In addition, unique natural areas are listed in the Maine Atlas and Gazetteer published by DeLorme.

(pink)

**APPENDIX B: MDEP COASTAL WETLAND CHARACTERIZATION:
INTERTIDAL & SHALLOW SUBTIDAL FIELD SURVEY CHECKLIST**

NAME OF APPLICANT: Langdon Island West Condominium Assoc. PHONE: 617-571-2317

APPLICATION TYPE: Maine DEP NRPA Individual

ACTIVITY LOCATION: TOWN: Kittery COUNTY: York

ACTIVITY DESCRIPTION: fill pier lobster pound shoreline stabilization
 dredge other: _____

DATE OF SURVEY: 11/2/22 OBSERVER: Steven D. Riker

TIME OF SURVEY: 11:30 A.M. TIDE AT SURVEY: Low tide @12:36 P.M. Portsmouth

SIZE OF DIRECT IMPACT OR FOOTPRINT (square feet):
Intertidal area: 0 Subtidal area: 384 sq. ft.

SIZE OF INDIRECT IMPACT, if known (square feet): 0
Intertidal area: 0 Subtidal area: 0

HABITAT TYPES PRESENT (check all that apply):

sand beach boulder/cobble beach sand flat mixed coarse & fines salt marsh
 ledge rocky shore mudflat (sediment depth, if known: _____)

ENERGY: protected semi-protected partially exposed exposed

DRAINAGE: drains completely standing water pools stream or channel

SLOPE: >20% 10-20% 5-10% 0-5% variable

SHORELINE CHARACTER:

bluff/bank (height from spring high tide: E118) beach rocky vegetated

FRESHWATER SOURCES: stream river wetland stormwater

MARINE ORGANISMS PRESENT:

	absent	occasional	common	abundant
mussels	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
clams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
marine worms	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
rockweed	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
eelgrass	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
lobsters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
other Periwinkle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SIGNS OF SHORELINE OR INTERTIDAL EROSION? yes no

PREVIOUS ALTERATIONS? yes no

CURRENT USE OF SITE AND ADJACENT UPLAND:

undeveloped residential commercial degraded recreational

PLEASE SUBMIT THE FOLLOWING:

Photographs Overhead drawing (pink)

Natural Resource Protection Act Application
APPENDIX D: Project Description Worksheet for a Dock, Pier or Wharf Application.



Help us process your application more efficiently by completing this worksheet, which is supplemental to a NRPA application for a dock, pier or wharf. A completed Appendix D may be substituted for Block 14 of the application page.



THIS IS AN APPLICATION FOR A.....

- Commercial wharf
 If yes, indicate type of commercial activity: _____
 License number: _____
 Number of fishermen using this wharf: _____
- Public pier, dock or wharf
- Common or shared recreational pier, dock or wharf
- Private recreational pier, dock or wharf
- Expansion or modification of an existing structure
- Other, please indicate: _____



TELL US ABOUT YOUR BOAT....

My boat(s) requires a draft of _____ feet.
 My boat(s) is _____ feet long.

Three Condo owners have the following boats:
 Robalo R247 (24' long, 30" draft)
 Robalo 242CC (24' long, 20 draft, twin 150HP)
 Robalo 242CC (24' long, 20 draft, single 300HP)



TELL US ABOUT YOUR PROJECT SITE.... For coastal piers and wharves, please complete Appendix B of the NRPA application. For freshwater docks, please describe the substrate and any vegetation: _____

See Appendix B attached



SCENIC CONSIDERATIONS...Please complete Appendix A of the NRPA application.

See Appendix A attached



WHAT FACILITIES ARE NEARBY?

The nearest public boat launch is located in Kittery approximately 3 miles from the project location.
 (town) (distance)

The nearest public, commercial, or private marina is located in Kittery approximately 375 feet miles from the project location.
 (distance) (town)

Badgers Island Marina (27 Badgers Island West) and Piscataqua Marina (4 Island Avenue)

I have inquired about slip or mooring availability at the nearest marina or public facility.

Yes, a slip or mooring is available. No, a slip or mooring is not available.

Approximate expected time on waiting list: 2 years

I have contacted the local Harbor Master. Name: John Brosnihan

65 people on mooring wait list "Badgers Island" as of 1/27/23 Phone: 207-475-1301

I currently use the following for my boat: Mooring Marina



TELL US ABOUT YOUR PROPOSED PIER, DOCK OR WHARF...

MATERIALS:

- The structure will be supported by pilings.
_____ pilings of _____ inches in diameter
- The structure will be supported by stacked, flow-through granite cribs.
_____ blocks, measuring _____ feet by _____ feet
- The structure will be supported by solid fill.
_____ square feet of solid fill
- Other: No piles or moorings & chains proposed. Float extension and finger floats are attached to existing floats. Finger floats will utilize float braces to attach to main float.

DIMENSIONS:

Length of fixed section: _____ 161 _____ feet
Width of fixed section: _____ 10 _____ feet
Length of ramp: _____ 36 _____ feet
Dimensions of float: "L" shaped. Long section 8' x 39' _____ feet wide by _____ feet long Short section 8' x 20'
Distance the structure will extend below mean low water (MLW): _____ 73 _____ feet
Depth of water at the fixed end of the structure: _____ 10 _____ feet @ low tide
Depth of water at the float at low tide: _____ 18 _____ feet
Depth of water at the float at high tide: _____ 28 _____ feet
Dimensions of any proposed buildings (e.g. bait shed):
_____ feet high by _____ feet wide by _____ feet long

ACCESS:

During construction, my project site will be accessed via:

- Land
- Beach/intertidal area
- Water/barge

ALTERNATIVES ANALYSIS

The project proposes the modification of an existing tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float. The finger floats will be attached to the existing main float using float bracing eliminating the need for moorings & chains or flot piles to secure the proposed finger floats, representing the least impacting alternative.

Project design alternatives have been explored to provide safe boating access/dockage for 6 users/owners of condominiums associated with the existing residential structure located on the lot. The current float face has 48 linear feet of docking/slip space, which essentially will only accommodate two boats up to 20 feet in length. The existing float also has 28 linear feet of slip space facing northerly, however this space is undesirable for dockage given the close proximity to the docking structure on Tax Map 1, Lot 24 of only 23 feet, measured float to float and not considering boats being secured to both floats further minimizing navigation space between them.

The proposed modification achieves the desired need for float space while representing the least impacting alternative. The addition of the 8' x 16' float extension and the addition of 3 finger floats provide slip space for 6 boats, with four of the slips accommodating boats up to 25 feet in length, one slip accommodating a boat up to 22 feet in length and one slip accommodating a boat up to 30 feet in length. The proposed float extension and the proposed finger floats represent the least impacting alternative as the impact associated with them is "indirect" (shading), and do not require moorings & chains and/or the driving of piles to secure the floats which would be considered "direct" impact.

The property owners (6 condominium owners) require a tidal docking structure on their property that can accommodate their recreational boating needs. Modification of the existing structure while only proposing indirect impact (shading) is the least impacting alternative. Other recreational docking options for the condominium owners include using the closest public boat launch located 3 miles from the project site in Kittery, ME, but that facility is very congested during the boating season. The Town of Kittery Harbormaster has 65 people on the "Badgers Island" mooring wait list as of January 27, 2023. Additionally, two privately owned marinas, both located within 500 feet of the subject property, Badgers Island Marina and Piscataqua Marina have waiting lists over 1 year for a slip to accommodate boat lengths as discussed above.

In conclusion, the modification of the docking structure as proposed, combined with the project design and components demonstrate that the project is the least impacting alternative while providing reasonable use for the property owners.

WETLAND FUNCTIONS AND VALUES ASSESSMENT

INTRODUCTION

This report provides an assessment of the functions and values of the tidal wetland system located within a parcel of land located at 9 Badgers Island West, Kittery, Maine. The property is identified as Tax Map 1, Lot 23, is approximately 30,413 sq. ft. in size, and is located on the southern side of Badgers Island West and to the north of the Piscataqua River. The lot is developed and contains a six unit residential condominium building with associated parking. The surrounding land use is residential with similar water access structures.

Wetlands on the project site were assessed by Steven D. Riker, New Hampshire Certified Wetland Scientist on November 2, 2022 in accordance with the 1987 United States Army Corps of Engineers' Wetlands Delineation Manual (Routine Delineation Method), and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, Version 2.0, January 2012. The functions and values of these wetlands were assessed using the United States Army Corp of Engineers' Highway Methodology Workbook Supplement (ACOE, September 1999).

Thirteen functions/values were assessed and evaluated for the wetland area, which include groundwater recharge/discharge, floodflow alteration, fish/shellfish habitat, sediment/toxicant retention, nutrient removal, production export, sediment shoreline stabilization, wildlife habitat, endangered species habitat, visual quality aesthetics, educational/scientific value, recreation and uniqueness/heritage. Functions are considered "principal" if they are found to be an important or critical component of the wetland. Functions and values may also be "principal" if they provide a special or unique value to society.

DISCUSSION

For the purpose of this assessment, the tidal wetland directly associated with the subject parcel was evaluated. This tidal wetland is contiguous with other wetlands located along the Piscataqua River, and on a larger scale, the Atlantic Ocean. This assessment examines those functions and values of the tidal wetland area located directly adjacent to the subject parcel, and the proposed tidal docking expansion/modification.

As described above, the tidal wetland, herein referred to as Wetland A, receives hydrology from the daily tide cycle, and surrounding upland runoff, to a lesser extent. Tidal flow associated with the Piscataqua River provides hydrology to Wetland A. During a dropping tide, water flows easterly within the Piscataqua River where it empties into the Atlantic Ocean.

There are 2 wetland classes associated with the wetland resources that exist on the subject parcel. According to the "Classification of Wetlands and Deepwater Habitats of the United States" (USFWS 1979). The intertidal flat associated with the parcel would be classified as an estuarine intertidal unconsolidated shore cobble-gravel wetland system that is regularly flooded by the tides (E2US1N) The subtidal area associated with the parcel would be classified as a marine subtidal unconsolidated bottom mud wetland system (E1UB3L).

Wetland A performs sediment/toxicant retention, nutrient removal, floodflow alteration, sediment/shoreline stabilization and uniqueness/heritage as principal functions and values and is also capable of providing fish and shellfish habitat, production export, wildlife habitat, recreation, and educational/scientific value.

IMPACT ASSESSMENT

The project proposes the modification/expansion of an existing tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

Given the nature of the project, it is anticipated that there will be no affect on the wetland's ability to perform the above identified functions and values. The expansion/modification will not impede tidal flow or alter hydrology, it will not deter use by wildlife species that currently use the wetland area, it will not impede any migrational fish movement, it will not contribute to pollution, degradation, or erosion, and it will not have a visual impact as the surrounding properties are previously developed and some already contain similar docking structures. Impacts associated with tidal docking structures are insignificant as tidal docks are designed to minimize impact, do not contribute to additional stormwater or pollution, and do not impede fish migration or deter use by wildlife species. Given that the expansion modification includes minimum indirect impact (shading), the proposed project will not impede tidal flow or alter hydrology, will not impact migrational movement of fish and wildlife, and will not provide a barrier or alter hydrology, therefore preserving the functionality of the adjacent wetland resources.

The tidal docking structure is comparable to others in the immediate area, therefore having no impact from an aesthetic or navigational standpoint.

Lastly, following construction, the wetland will still be able to perform its principal functions which are sediment/toxicant retention, nutrient removal, floodflow alteration, sediment/shoreline stabilization and uniqueness/heritage as the tidal docking structure will have no interference with the natural processes that are integral to these functions.

CONSTRUCTION DETAILS-SEQUENCE

The project proposes the modification of an existing tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

The float extension and finger float modification is anticipated to take approximately 1 day. The floats will be pre-fabricated off site and will be mobilized to the subject lot via crane barge. The crane barge will lower the floats into place and fastened to the existing structure. A construction sequence is also provided in the plan set, located on "Details-Sheet D2".

No erosion control devices are required for this project. There will be no exposed soils or vegetation removal required to complete the installation of the proposed floats. Proposed work will be performed from a crane barge and there will be no contact with the substrate during installation, eliminating the need for erosion and sediment controls. There is nothing in regards to the proposed construction that would provide an opportunity for erosion.

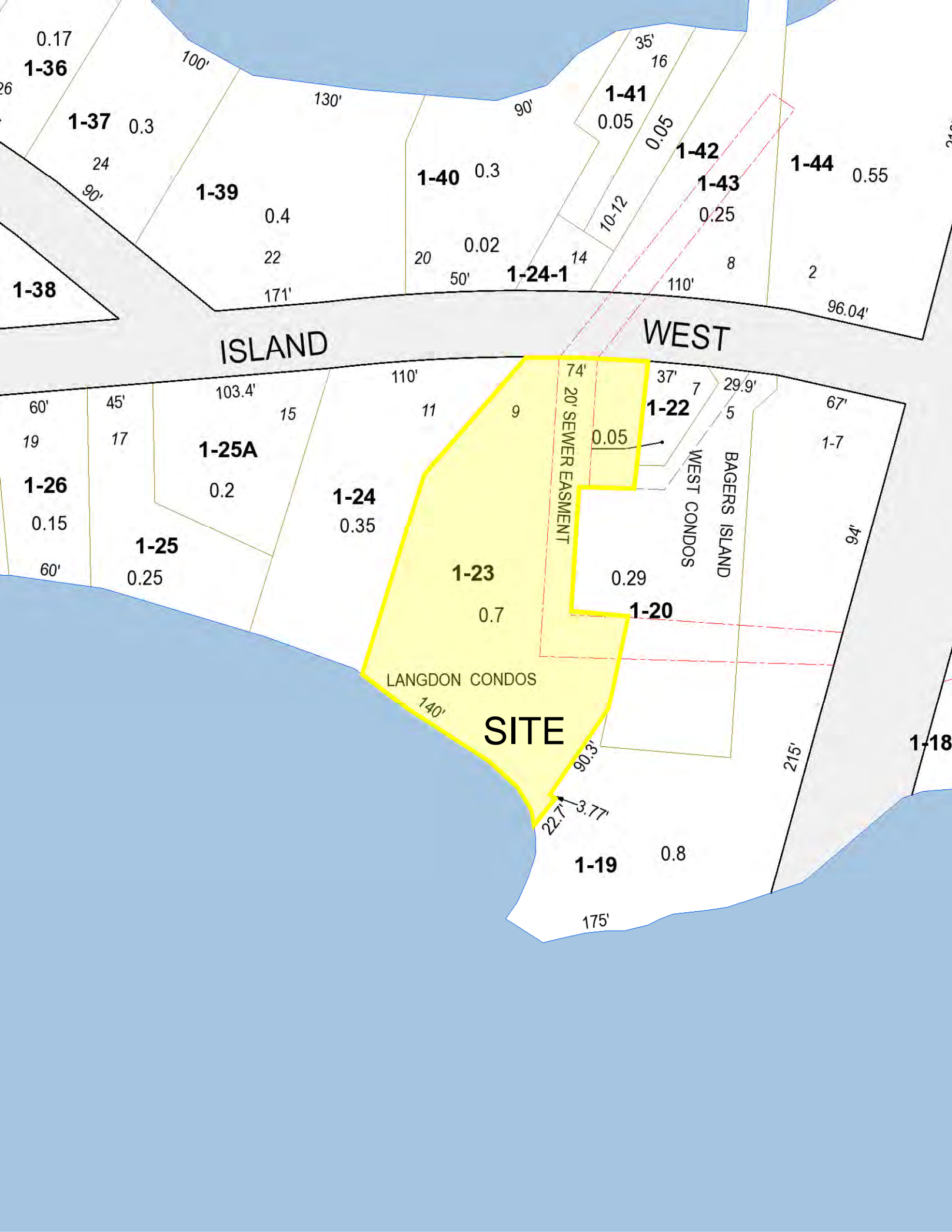
My Map

No legend



0.4km

Copyright:© 2013 National Geographic Society, i-cubed



0.17

1-36

100'

130'

35'

16

1-41

0.05

0.05

1-37 0.3

24

90'

1-40 0.3

1-39

0.4

22

171'

20 0.02

1-24-1

20

50'

14

10-12

110'

8

1-42

1-43

0.25

1-44

0.55

2

96.04'

1-38

ISLAND

WEST

60'

45'

103.4'

15

110'

11

9

74'

1-22

0.05

37'

7

29.9'

5

67'

1-7

1-26

0.15

60'

1-25A

0.2

1-24

0.35

1-25

0.25

1-23

0.7

20' SEWER EASEMENT

0.29

1-20

WEST CONDOS

BAGERS ISLAND

94'

LANGDON CONDOS

SITE

140'

90.3'

22.7'

3.77'

1-19

0.8

175'

1-18

215'

Ambit Engineering Abutter List

Langdon's Island Condominium Association
 9 Badgers Island West
 Kittery, ME

Job # 3402.14

Applicant/Owner(s)

Map	Lot	Deed	Owner (s) First/Trust	Owner(s) Last, Trustee	Mailing Address	City	State	Zip
1	23		Langdon's Island Condominium Association	C/O Ben Porter	9 Badgers Island West	Kittery	ME	03904

Engineer	Ambit Engineering Civil Engineers & Land Surveyors				200 Griffin Road, Unit #3	Portsmouth	NH	03801
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Job #	3402.14	Abutters						
Map	Lot	Deed	Owner(s) First/Trust	Owner(s) Last /Trustee	Mailing Address	City	State	Zip
1	22		Banfield Development Co. LLC		5 Badgers Island West #3	Kittery	ME	03904
1	20		Ralph T.	Eager	25 Badgers Island West	Kittery	ME	03904
1	19		One Badgers Island West LLC		5 Badgers Island West #1	Kittery	ME	03904
1	24		Edward L.	McGarry	11 Badgers Island West	Kittery	ME	03904



10 February, 2023

Edward L. McGarry
11 Badgers Island West
Kittery, ME 03904

RE: Maine Department of Environmental Services, Natural Resources Protection Act Permit Application for the expansion of an existing tidal docking structure for Langdon's Island Condominium Association, Kittery, ME.

Dear Property Owner,

Under the Maine Department of Environmental Protection, this letter is to inform you in accordance with State Law that a Natural Resources Protection Act Permit Application will be filed with the Maine Department of Environmental Protection (DEP) for a permit to expand an existing tidal docking structure, **at the above mentioned property** on behalf of your abutter **Langdon's Island Condominium Association.**

This letter is sent to inform you as an abutter to the above-referenced property (according to local Municipal records) that the **Langdon's Island Condominium Association**, proposes a project that requires construction in areas under jurisdiction of the Maine DEP.

Plans are on file at this office, and once the application is filed, plans that show the proposed project will be available for viewing during normal business hours at the office of the **Kittery clerk, Kittery Town Offices**, or once received by Maine DEP, at the offices of the Maine DEP, 312 Canco Road, Portland, ME 04103, (207)822-6300. It is suggested that you call ahead to the appropriate office to ensure the application is available for review.

Please feel free to call if you have any questions or comments.

Sincerely,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com

CERTIFIED MAIL/Return Receipt Requested





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC.



10 February, 2023

Ralph T. Eager
25 Badgers Island West
Kittery, ME 03904

RE: Maine Department of Environmental Services, Natural Resources Protection Act Permit Application for the expansion of an existing tidal docking structure for Langdon's Island Condominium Association, Kittery, ME.

Dear Property Owner,

Under the Maine Department of Environmental Protection, this letter is to inform you in accordance with State Law that a Natural Resources Protection Act Permit Application will be filed with the Maine Department of Environmental Protection (DEP) for a permit to expand an existing tidal docking structure, **at the above mentioned property** on behalf of your abutter **Langdon's Island Condominium Association.**

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Please feel free to call if you have any questions or comments.

Sincerely,

Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com

CERTIFIED MAIL/Return Receipt Requested





10 February, 2023

Banfield Development Co. LLC
5 Badgers Island West #3
Kittery, ME 03904

RE: Maine Department of Environmental Services, Natural Resources Protection Act Permit Application for the expansion of an existing tidal docking structure for Langdon's Island Condominium Association, Kittery, ME.

Dear Property Owner,

Under the Maine Department of Environmental Protection, this letter is to inform you in accordance with State Law that a Natural Resources Protection Act Permit Application will be filed with the Maine Department of Environmental Protection (DEP) for a permit to expand an existing tidal docking structure, **at the above mentioned property** on behalf of your abutter **Langdon's Island Condominium Association.**

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Plans are on file at this office, and once the application is filed, plans that show the proposed project will be available for viewing during normal business hours at the office of the **Kittery clerk, Kittery Town Offices**, or once received by Maine DEP, at the offices of the Maine DEP, 312 Canco Road, Portland, ME 04103, (207)822-6300. It is suggested that you call ahead to the appropriate office to ensure the application is available for review.

Please feel free to call if you have any questions or comments.

Sincerely,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com

CERTIFIED MAIL/Return Receipt Requested





10 February, 2023

One Badgers Island West, LLC
5 Badgers Island West #1
Kittery, ME 03904

RE: Maine Department of Environmental Services, Natural Resources Protection Act Permit Application for the expansion of an existing tidal docking structure for Langdon's Island Condominium Association, Kittery, ME.

Dear Property Owner,

Under the Maine Department of Environmental Protection, this letter is to inform you in accordance with State Law that a Natural Resources Protection Act Permit Application will be filed with the Maine Department of Environmental Protection (DEP) for a permit to expand an existing tidal docking structure, **at the above mentioned property** on behalf of your abutter **Langdon's Island Condominium Association**.

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Plans are on file at this office, and once the application is filed, plans that show the proposed project will be available for viewing during normal business hours at the office of the **Kittery** clerk, **Kittery Town Offices**, or once received by Maine DEP, at the offices of the Maine DEP, 312 Canco Road, Portland, ME 04103, (207)822-6300. It is suggested that you call ahead to the appropriate office to ensure the application is available for review.

Please feel free to call if you have any questions or comments.

Sincerely,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com

CERTIFIED MAIL/Return Receipt Requested



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3402.14

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OFFICIAL USE

Certified Mail Fee
 \$ _____

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____



Postage
 \$ _____

Total Postage and Fees
 \$ _____

Sent To
BANFIELD DEVELOPMENT
 Street and Apt. No., or PO Box No.
5 BADGERS ISLAND WEST #3
 City, State, ZIP+4®
KITTERY, ME 03904

7021 0950 0000 8345 7157

U.S. Postal Service™
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3402.14

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Certified Mail Fee
 \$ _____

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____



Postage
 \$ _____

Total Postage and Fees
 \$ _____

Sent To
ONE BADGERS ISLAND WEST LLC
 Street and Apt. No., or PO Box No.
5 BADGERS ISLAND WEST # 1
 City, State, ZIP+4®
KITTERY, ME 03904

7021 0950 0000 8345 7164

U.S. Postal Service™
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3402.14

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Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____



Postage
 \$ _____

Total Postage and Fees
 \$ _____

Sent To
MCGARRY
 Street and Apt. No., or PO Box No.
11 BADGERS ISLAND WEST
 City, State, ZIP+4®
KITTERY, ME 03904

7021 0950 0000 8345 7133

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

3402.14

For delivery information, visit our website at www.usps.com®.

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 \$ _____

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Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____



Postage
 \$ _____

Total Postage and Fees
 \$ _____

Sent To
EEGER
 Street and Apt. No., or PO Box No.
25 BADGERS ISLAND WEST
 City, State, ZIP+4®
KITTERY, ME 03904



13 February 2023

Tribal Historic Preservation Officer
Penobscot Nation
Cultural and Historic Preservation Department
12 Wabanaki Way
Indian Island, ME 04468

**Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME**

To Whom it May Concern:

Enclosed for your use is a Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application request for the proposed expansion of an existing tidal docking structure on the above referenced site along the Piscataqua River.

The project proposes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

Attached to this application you will find a "MEDEP Dock Permit Plan- Sheet C2" which depicts the existing lot, jurisdictional areas, abutting parcels, existing structures, proposed work, and impact areas. Also attached to this application you will find the following: USGS Project location map, tax map, recorded deed, certified mail receipts for abutter notification, a field survey checklist, a coastal wetland characterization, a photo log, project description worksheets for docks, and a notice of intent to file.

Please contact me if you have any questions or concerns regarding this application.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Tribal Historic Preservation Officer
Passamaquoddy Tribe of Indians
Pleasant Point Reservation
PO Box 343
Perry, ME 04667

**Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME**

To Whom it May Concern:

Enclosed for your use is a Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application request for the proposed expansion of an existing tidal docking structure on the above referenced site along the Piscataqua River.

The project proposes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

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Please contact me if you have any questions or concerns regarding this application.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Tribal Historic Preservation Officer
Passamaquoddy Tribe of Indians
Indian Township Reservation
PO Box 301
Princeton, ME 04668

**Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME**

To Whom it May Concern:

Enclosed for your use is a Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application request for the proposed expansion of an existing tidal docking structure on the above referenced site along the Piscataqua River.

The project proposes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

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Please contact me if you have any questions or concerns regarding this application.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Tribal Historic Preservation Officer
Aroostook Band of Micmacs
7 Northern Road
Presque Isle, ME 04769

**Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME**

To Whom it May Concern:

Enclosed for your use is a Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application request for the proposed expansion of an existing tidal docking structure on the above referenced site along the Piscataqua River.

The project proposes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

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Please contact me if you have any questions or concerns regarding this application.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Tribal Historic Preservation Officer & Environmental Planner
Houlton Band of Maliseet Indians
88 Bell Road
Littleton, ME 04730

Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME

To Whom it May Concern:

Enclosed for your use is a Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application request for the proposed expansion of an existing tidal docking structure on the above referenced site along the Piscataqua River.

The project proposes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float.

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Please contact me if you have any questions or concerns regarding this application.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Maine Bureau of Parks and Lands
Maine Department of Agriculture, Conservation & Forestry
22 State House Station
Augusta, ME 04333

Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME

To Whom it May Concern:

This letter transmits a request to review the attached Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application.

Please contact me if you have any questions or concerns regarding this application, or if you need any additional information to complete a review.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





AMBIT ENGINEERING, INC.

A DIVISION OF HALEY WARD, INC. 

13 February 2023

Maine Historic Preservation Commission
55 Capitol Street
65 State House Station
Augusta, ME 04333

**Re: NRPA Individual Permit Application
Tax Map 1, Lot 23
9 Badgers Island West
Kittery, ME**

To Whom it May Concern:

This letter transmits a request to review the attached Maine Department of Environmental Protection, Natural Resources Protection Act Individual Permit Application, per Section 106 of the National Historic Preservation Act of 1996.

Please contact me if you have any questions or concerns regarding this application, or if you need any additional information to complete a review.

Respectfully submitted,



Steve Riker, CWS
Project Scientist/Project Manager
sriker@haleyward.com





United States Department of the Interior



FISH AND WILDLIFE SERVICE
Maine Ecological Services Field Office
P. O. Box A
East Orland, ME 04431
Phone: (207) 469-7300 Fax: (207) 902-1588

In Reply Refer To:
Project Code: 2023-0044771
Project Name: 9 Badgers Island West Dock Expansion/Modification

February 13, 2023

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Maine Ecological Services Field Office

P. O. Box A

East Orland, ME 04431

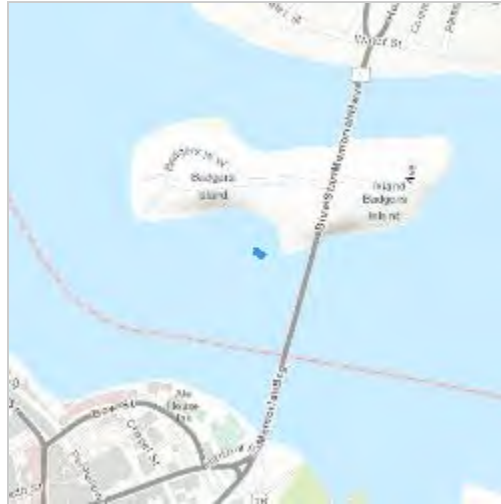
(207) 469-7300

Project Summary

Project Code: 2023-0044771
Project Name: 9 Badgers Island West Dock Expansion/Modification
Project Type: Boatlift/Boathouse/Dock/Pier/Piles - New Construction
Project Description: The project proposes the modification of an existing tidal docking structure on the above referenced site along the Piscataqua River. The construction includes the installation of an 8' x 16' float extension, two (2) 4' x 30' finger floats and one (1) 4' x 26' finger float. The finger floats will be attached to the existing main float using float bracing eliminating the need for moorings & chains or float piles to secure the proposed finger floats, representing the least impacting alternative.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@43.081100750000004,-70.75308974066705,14z>



Counties: York County, Maine

Endangered Species Act Species

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Birds

NAME	STATUS
Roseate Tern <i>Sterna dougallii dougallii</i> Population: Northeast U.S. nesting population No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2083	Endangered

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

IPaC User Contact Information

Agency: Ambit Engineering, Inc.

Name: Steven Riker

Address: 200 Griffin Road, Unit 3

City: Portsmouth

State: NH

Zip: 03801

Email: sdr@ambitengineering.com

Phone: 6034309282

Site Photograph #1

November 2022



Site Photograph #2

November 2022



Site Photograph #3

November 2022



Site Photograph #4

November 2022



Site Photograph #5

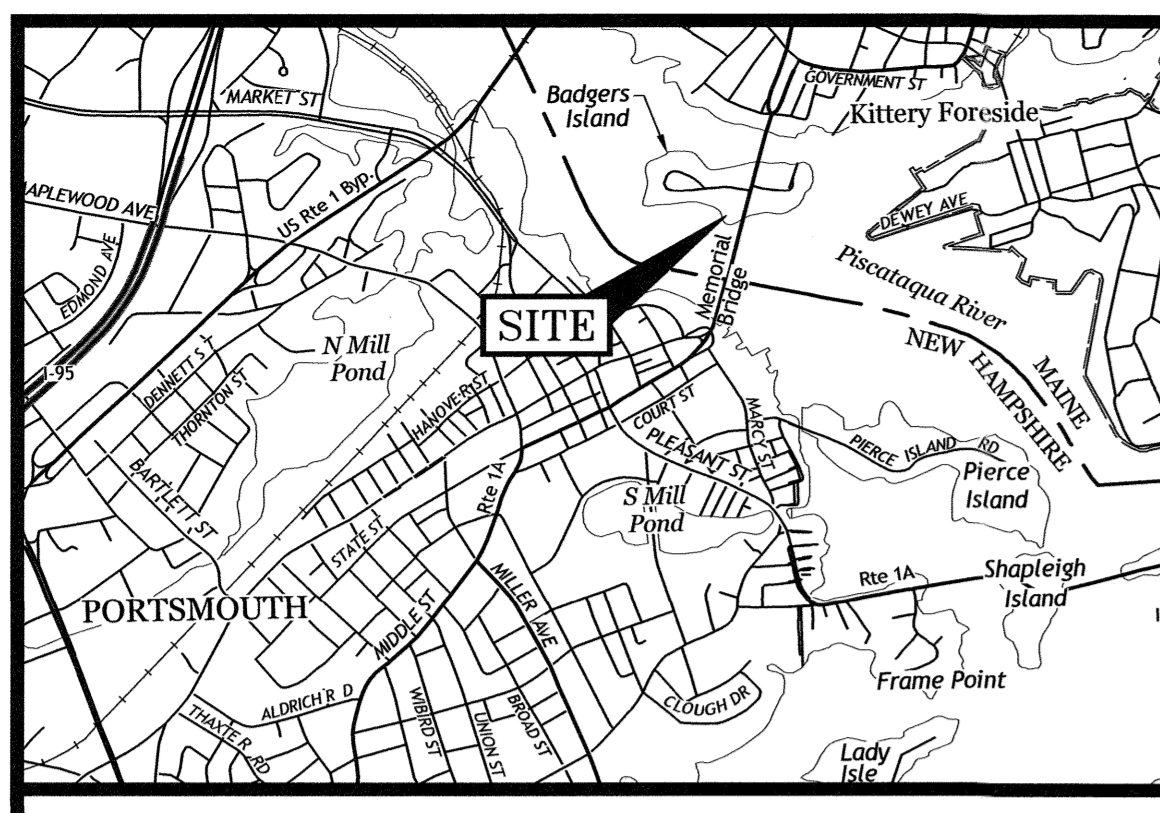
November 2022



Site Photograph #6

November 2022





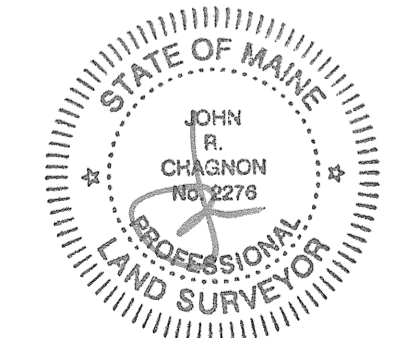
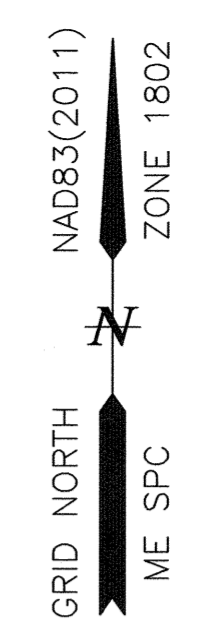
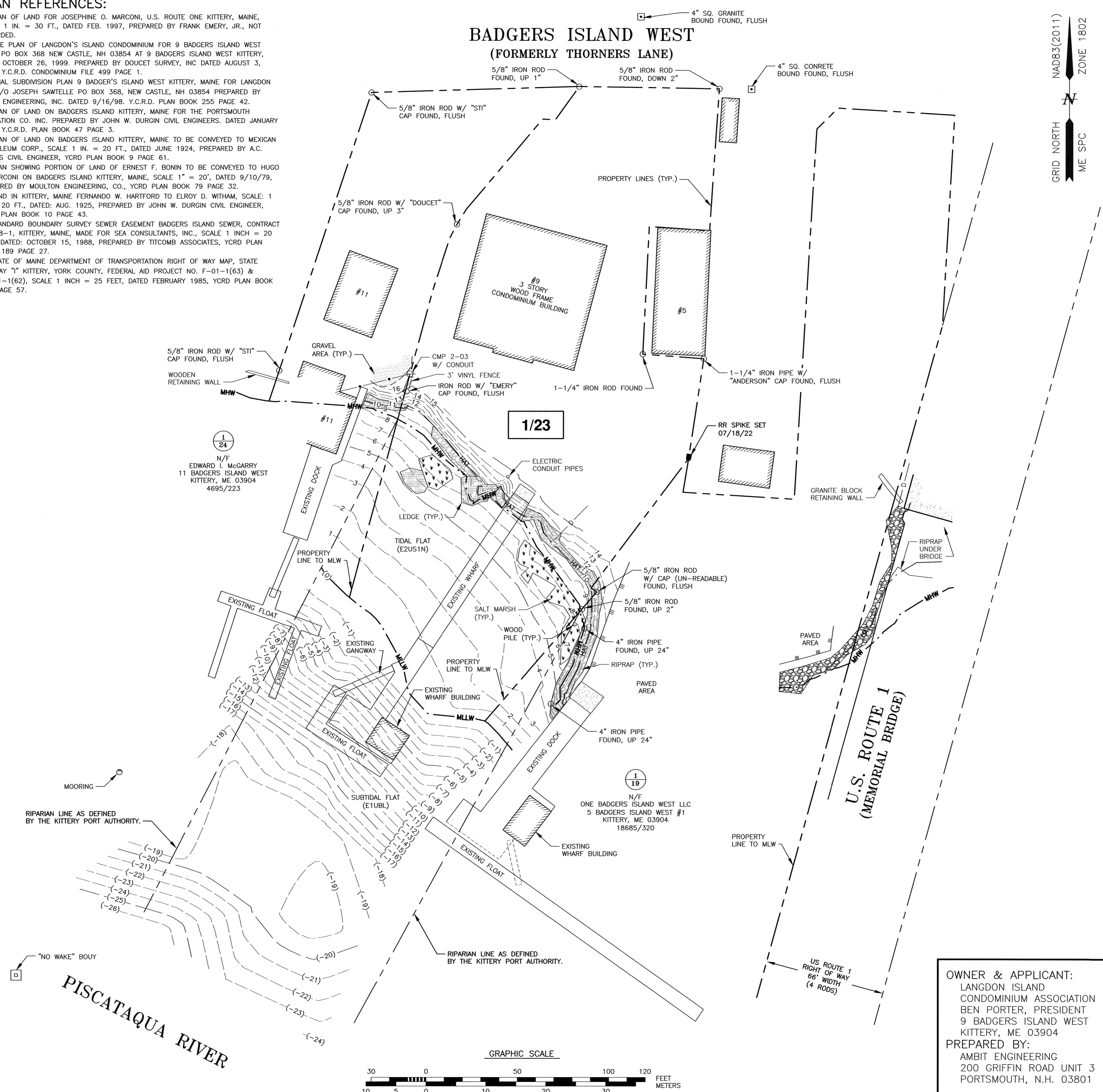
LOCATION MAP SCALE: 1" = 2000'

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- YCRD YORK COUNTY REGISTRY OF DEEDS
- MAP 11 / LOT 21
- IRON ROD/IRON PIPE FOUND
- ◻ STONE/CONCRETE BOUND FOUND
- BOUNDARY
- - - BUILDING SETBACK
- - - MHW MEAN HIGH WATER LINE
- - - MLW MEAN LOW WATER LINE
- - - HAT MAINE DEP HIGHEST ANNUAL TIDE LINE (HAT)
- - - STORM DRAIN LINE
- - - OVERHEAD ELECTRIC/WIRES
- 100 97x3 CONTOUR
- SPOT ELEVATION
- EDGE OF PAVEMENT (EP)
- UTILITY POLE (w/ GUY)
- ELECTRIC METER
- PVC POLYVINYL CHLORIDE PIPE
- EL. ELEVATION
- EP EDGE OF PAVEMENT
- INV. INVERT
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- FES FLARED END SECTION

- PLAN REFERENCES:**
- 1) PLAN OF LAND FOR JOSEPHINE O. MARCONI, U.S. ROUTE ONE KITTERY, MAINE, SCALE 1 IN. = 30 FT., DATED FEB. 1997, PREPARED BY FRANK EMERY, JR., NOT RECORDED.
 - 2) SITE PLAN OF LANGDON'S ISLAND CONDOMINIUM FOR 9 BADGERS ISLAND WEST L.L.C. PO BOX 368 NEW CASTLE, NH 03854 AT 9 BADGERS ISLAND WEST KITTERY, MAINE OCTOBER 26, 1999. PREPARED BY DOUCET SURVEY, INC DATED AUGUST 3, 1999. Y.C.R.D. CONDOMINIUM FILE 499 PAGE 1.
 - 3) FINAL SUBDIVISION PLAN 9 BADGERS ISLAND WEST KITTERY, MAINE FOR LANGDON LLC C/O JOSEPH SAWELLE PO BOX 368, NEW CASTLE, NH 03854 PREPARED BY ATTAR ENGINEERING, INC. DATED 9/16/98. Y.C.R.D. PLAN BOOK 255 PAGE 42.
 - 4) PLAN OF LAND ON BADGERS ISLAND KITTERY, MAINE FOR THE PORTSMOUTH NAVIGATION CO. INC. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. DATED JANUARY 1968. Y.C.R.D. PLAN BOOK 47 PAGE 3.
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 - 8) STANDARD BOUNDARY SURVEY SEWER EASEMENT BADGERS ISLAND SEWER, CONTRACT NO. 88-1, KITTERY, YORK COUNTY, FEDERAL AID PROJECT NO. F-01-1(63) & BH-01-1(62), SCALE 1 INCH = 25 FEET, DATED FEBRUARY 1985, YCRD PLAN BOOK 189 PAGE 27.
 - 9) STATE OF MAINE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, STATE HIGHWAY "1" KITTERY, YORK COUNTY, FEDERAL AID PROJECT NO. F-01-1(63) & BH-01-1(62), SCALE 1 INCH = 25 FEET, DATED FEBRUARY 1985, YCRD PLAN BOOK 155 PAGE 57.

BADGERS ISLAND WEST (FORMERLY THORNERS LANE)

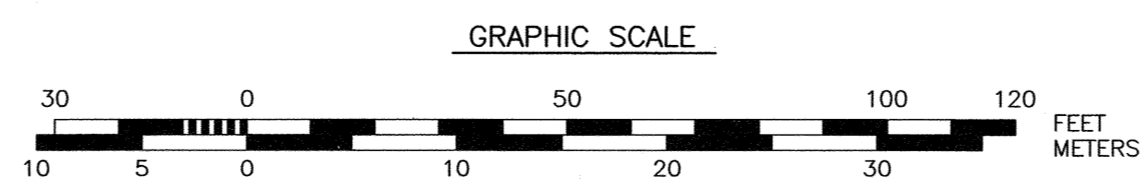


PURSUANT TO CHAPTER 90 PARTS 1 AND 2 OF THE SURVEY STANDARDS OF PRACTICE AS ADOPTED BY THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS, THE FOLLOWING EXCEPTIONS TO PART 2 ARE NOTED:

- NO SURVEY REPORT HAS BEEN PREPARED.
- NO LAND DESCRIPTION HAS BEEN PREPARED.
- MONUMENTS HAVE NOT BEEN SET.

THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS' CHAPTER 90 STANDARDS OF PRACTICE, EFFECTIVE DATE APRIL 1, 2001 EXCEPT AS NOTED ON THIS PLAN.

JOHN R. CHAGNON, PLS #2278
DATE 11-5-23



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

- NOTES:**
- 1) PARCEL IS SHOWN ON THE TOWN OF KITTERY ASSESSOR'S MAP 1 AS LOT 23.
 - 2) OWNERS OF RECORD:
LANGDON ISLAND WEST CONDOMINIUM ASSOCIATION
9 BADGERS ISLAND WEST
KITTERY, ME 03904
9755/55
 - 3) A PORTION OF THE PARCEL IS LOCATED IN A FLOOD HAZARD ZONE A2 (EL. 9) AS SHOWN ON FIRM PANEL 230171 0008 D. DATED JULY 3, 1986.
 - 4) EXISTING LOT AREA:
30,413 S.F. ± (TO MHW)
0.6982 ACRES ± (TO MHW)
 - 5) PARCEL IS LOCATED IN THE MU-BI (MIXED USE - BADGER ISLAND) ZONING DISTRICT & ALSO IN THE OZ-CFMU (COMMERCIAL FISHERIES/MARITIME USES) ZONING DISTRICT.
 - 6) DIMENSIONAL REQUIREMENTS: (MU-BI) DISTRICT.
MIN. LOT AREA: 6,000 S.F.
FRONTAGE: 50 FEET
SETBACKS:
FRONT: 5 FEET
SIDE/REAR: 10 FEET
MAXIMUM BUILDING HEIGHT: 40 FEET
MINIMUM OPEN SPACE: 40%
SEE ZONING REGULATIONS FOR OZ-CFMU DISTRICT.
 - 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULTS OF AN EXISTING CONDITIONS SURVEY ON ASSESSOR'S MAP 1 LOT 23 IN THE TOWN OF KITTERY
 - 8) RIPARIAN LINES DETERMINED BETWEEN LOTS 19, 23 & 24 AS DEFINED BY THE TOWN OF KITTERY, MAINE PORT AUTHORITY RULES AND REGULATIONS, AMENDED 2 JANUARY 2020.
 - 9) VERTICAL DATUM IS MEAN LOWER LOW WATER (MLLW). MLLW IS REFERENCED TO NOAA STATION 8419870 SEAVEY ISLAND, PORTSMOUTH HARBOR, ME. MLLW BEING 4.82 FEET LOWER THAN 0.0 NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
 - 10) HIGHEST ANNUAL TIDE SHOWN AT ELEVATION 10.2 PER LOCATION PORTSMOUTH IN MAINE DEP HIGHEST ANNUAL TIDE (HAT) LEVELS FOR YEAR 2018.
 - 11) THIS IS NOT A BOUNDARY SURVEY. BOUNDARY LINES AS SHOWN ARE BASED ON THE REFERENCE PLANS LISTED HEREON. NO DEED RESEARCH OR BOUNDARY DETERMINATION WAS MADE TO CONFIRM OR REFUTE MATTERS SHOWN ON SAID PLANS FOR THE PURPOSES OF THIS PLAN. EASEMENTS, RESERVATIONS, ETC. THAT MAY EXIST ARE NOT SHOWN OR NOTED HEREON.

LANGDON ISLAND CONDOMINIUM 9 BADGERS ISLAND WEST KITTERY, ME

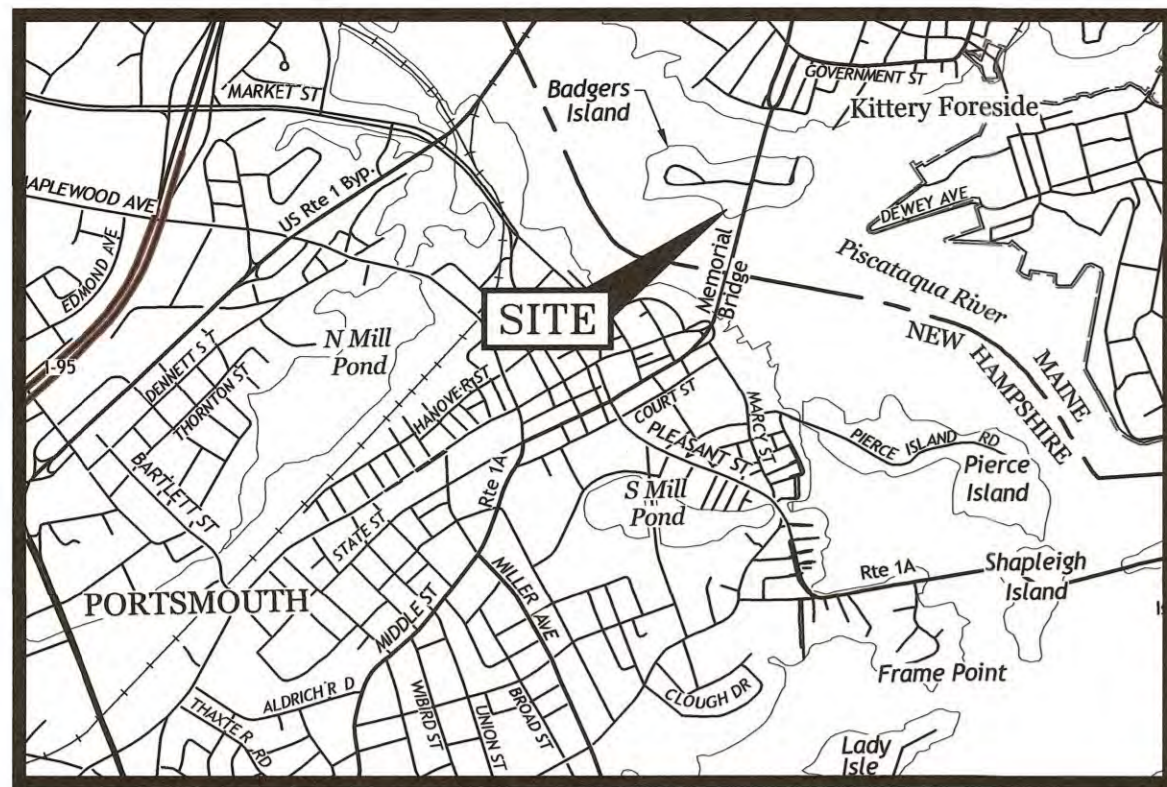
NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	1/5/23
REVISIONS		

OWNER & APPLICANT:
LANGDON ISLAND CONDOMINIUM ASSOCIATION
BEN PORTER, PRESIDENT
9 BADGERS ISLAND WEST
KITTERY, ME 03904

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801

SCALE: 1" = 30' NOVEMBER 2022

EXISTING CONDITIONS PLAN **C1**



LOCATION MAP SCALE: 1" = 2000'

LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
YCRD	YORK COUNTY REGISTRY OF DEEDS
(11/27)	MAP 11 / LOT 21
○	IRON ROD/IRON PIPE FOUND
□	STONE/CONCRETE BOUND FOUND
---	BOUNDARY
- - -	BUILDING SETBACK
— MHW —	MEAN HIGH WATER LINE
— MLW —	MEAN LOW WATER LINE
— HAT —	MAINE DEP HIGHEST ANNUAL TIDE LINE (HAT)
— D —	STORM DRAIN LINE
— 100 —	OVERHEAD ELECTRIC/WIRES
— 97x3 —	CONTOUR
—	SPOT ELEVATION
—	EDGE OF PAVEMENT (EP)
○	UTILITY POLE (w/ GUY)
□	ELECTRIC METER
PVC	POLYVINYL CHLORIDE PIPE
EL	ELEVATION
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INV.	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
FES	FLARED END SECTION

PLAN REFERENCES:

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- 2) SITE PLAN OF LANGDON'S ISLAND CONDOMINIUM FOR 9 BADGERS ISLAND WEST L.L.C. PO BOX 368 NEW CASTLE, NH 03854 AT 9 BADGERS ISLAND WEST KITTELY, MAINE OCTOBER 26, 1999. PREPARED BY DOUCET SURVEY, INC DATED AUGUST 3, 1999. Y.C.R.D. CONDOMINIUM FILE 499 PAGE 1.
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- 8) STANDARD BOUNDARY SURVEY SEWER EASEMENT BADGERS ISLAND SEWER, CONTRACT NO. 88-1, KITTELY, MAINE, MADE FOR SEA CONSULTANTS, INC., SCALE 1 INCH = 20 FEET, DATED: OCTOBER 15, 1988, PREPARED BY TITCOMB ASSOCIATES, YCRD PLAN BOOK 189 PAGE 27.
- 9) STATE OF MAINE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, STATE HIGHWAY "I" KITTELY, YORK COUNTY, FEDERAL AID PROJECT NO. F-01-1(63) & BH-01-1(62), SCALE 1 INCH = 25 FEET, DATED FEBRUARY 1985, YCRD PLAN BOOK 155 PAGE 57.



PROPOSED 5.5' X 5.5' (5,000 lb.) GRANITE BLOCK MOORINGS W/ 5/8" CHAINS, (TYP.) TO BE SET BY QUALIFIED MARINE CONTRACTOR. 121 SQ.FT. PERMANENT IMPACT FOR BLOCK MOORINGS

PROPOSED FLOAT 4' X 34' (2-17') FLOATS

PROPOSED FLOAT EXTENSION 4' X 8'

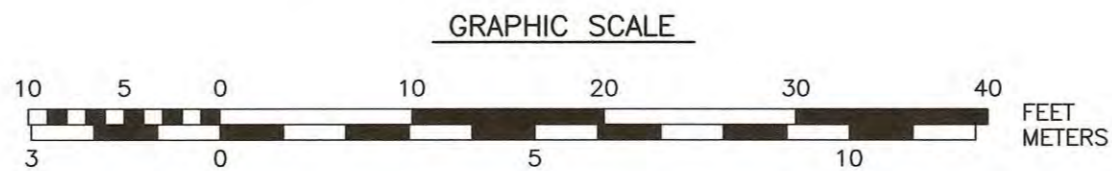
PROPOSED FINGER FLOAT 6' X 24'

PROPOSED FINGER FLOAT 6' X 24'

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JOHN R. CHAGNON, PLS #2276 DATE 5.18.23



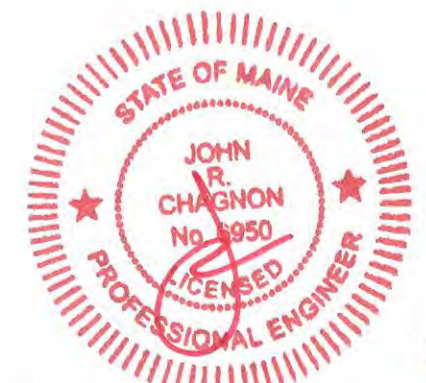
GRID NORTH
 NAD83(2011)
 ZONE 1802
 ME SPC

AMBIT ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 200 Griffin Road - Unit 3
 Portsmouth, N.H. 03801-7114
 Tel (603) 430-9282
 Fax (603) 436-2315

- NOTES:
- 1) PARCEL IS SHOWN ON THE TOWN OF KITTELY ASSESSOR'S MAP 1 AS LOT 23.
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 LANGDON ISLAND WEST CONDOMINIUM ASSOCIATION
 9 BADGERS ISLAND WEST
 KITTELY, ME 03904
 9755/55
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 DIMENSIONAL REQUIREMENTS: (MU-BI) DISTRICT.
 MIN. LOT AREA: 6,000 S.F.
 FRONTAGE: 50 FEET
 SETBACKS:
 FRONT: 5 FEET
 SIDE/REAR: 10 FEET
 MAXIMUM BUILDING HEIGHT: 40 FEET
 MINIMUM OPEN SPACE: 40%
 SEE ZONING REGULATIONS FOR OZ-CFMU DISTRICT.
 - 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED DOCK FLOAT STRUCTURES ON ASSESSOR'S MAP 1 LOT 23 IN THE TOWN OF KITTELY
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LANGDON ISLAND CONDOMINIUM 9 BADGERS ISLAND WEST KITTELY, ME

2	BLOCK MOORINGS	5/18/23
1	FLOAT CONFIGURATION	5/16/23
0	ISSUED FOR COMMENT	5/12/23
NO.	DESCRIPTION	DATE



5.18.23

OWNER & APPLICANT:
 LANGDON ISLAND CONDOMINIUM ASSOCIATION
 BEN PORTER, PRESIDENT
 9 BADGERS ISLAND WEST
 KITTELY, ME ZIP 03904

PREPARED BY:
 AMBIT ENGINEERING
 200 GRIFFIN ROAD UNIT 3
 PORTSMOUTH, N.H. 03801

SCALE: 1" = 10' MAY 2023

ME DEP PERMIT PLAN C2

SEQUENCE OF CONSTRUCTION

- 1) MOBILIZATION OF A CRANE BARGE, PUSH BOAT, WORK SKIFF, MATERIALS AND PREFABRICATED COMPONENTS SUCH AS THE GANGWAY AND FLOAT TO THE SITE VIA AVAILABLE ACCESS.
- 2) MOBILIZATION OF EQUIPMENT TRUCKS TO THE SITE.
- 3) THE BARGE WILL BE POSITIONED ALONGSIDE THE PROPOSED LOCATION OF THE NEW DOCK AND WATERWARD OF ANY EMERGENT VEGETATION TO MINIMIZE IMPACTS.
- 4) INSTALLATION OF THE SUB STRUCTURE WILL BE PERFORMED FROM A CRANE BARGE OR SKIFF TO REDUCE THE AMOUNT OF FOOT TRAFFIC IN THE INTERTIDAL AREA.
- 5) ALL WORK WILL BE PERFORMED AT LOW TIDE TO MINIMIZE SEDIMENTATION.
- 6) SUPER STRUCTURE OF THE PIER IS BUILT. MATERIALS ARE LIFTED FROM THE BARGE AND SET INTO POSITION BY THE CRANE.
- 7) ONCE THE PIER IS COMPLETE, THE GANGWAY AND FLOAT ARE BROUGHT INTO POSITION AND INSTALLED.

HEAVY EQUIPMENT IN WETLANDS OR MUDFLATS

OPERATING HEAVY EQUIPMENT OTHER THAN FIXED EQUIPMENT (DRILL RIGS, FIXED CRANES, ETC.) WITHIN WETLANDS SHALL BE MINIMIZED, AND SUCH EQUIPMENT SHALL NOT BE STORED, MAINTAINED OR REPAIRED IN WETLANDS, TO THE MAXIMUM EXTENT PRACTICABLE. WHERE CONSTRUCTION REQUIRES HEAVY EQUIPMENT OPERATION IN WETLANDS, THE EQUIPMENT SHALL EITHER HAVE LOW GROUND PRESSURE (TYPICALLY <3 PSI), OR IT SHALL BE PLACED ON SWAMP/CONSTRUCTION/TIMBER MATS (HEREIN REFERRED TO AS "CONSTRUCTION MATS" AND DEFINED AT APPENDIX A, ENDNOTE 4) THAT ARE ADEQUATE TO SUPPORT THE EQUIPMENT IN SUCH A WAY AS TO MINIMIZE DISTURBANCE OF WETLAND SOIL AND VEGETATION. CONSTRUCTION MATS ARE TO BE PLACED IN THE WETLAND FROM THE UPLAND OR FROM EQUIPMENT POSITIONED ON SWAMP MATS IF WORKING WITHIN A WETLAND. DRAGGING CONSTRUCTION MATS INTO POSITION IS PROHIBITED. OTHER SUPPORT STRUCTURES THAT ARE CAPABLE OF SAFELY SUPPORTING EQUIPMENT MAY BE USED WITH WRITTEN CORPS AUTHORIZATION (CATEGORY 2 AUTHORIZATION OR INDIVIDUAL PERMIT). SIMILARLY, THE PERMITTEE MAY REQUEST WRITTEN AUTHORIZATION FROM THE CORPS TO WAIVE USE OF MATS DURING FROZEN, DRY OR OTHER CONDITIONS. AN ADEQUATE SUPPLY OF SPILL CONTAINMENT EQUIPMENT SHALL BE MAINTAINED ON SITE. CONSTRUCTION MATS SHOULD BE MANAGED IN ACCORDANCE WITH THE CONSTRUCTION MAT BMPs AT WWW.NAF.USACE.ARMY.MIL/MISSIONS/REGULATORY

TIME OF YEAR WORK WINDOWS/RESTRICTIONS

FOR ACTIVITIES WHERE WORK IS AUTHORIZED IN STREAMS AND TIDAL WATERS THAT CAUSES TURBIDITY OR SEDIMENT RE-SUSPENSION OR OTHER CONSTRUCTION RELATED DISTURBANCES, WORK MUST BE CONDUCTED DURING THE FOLLOWING T.O.Y. WORK WINDOWS (NOT DURING THE T.O.Y. RESTRICTIONS) UNLESS OTHERWISE AUTHORIZED BY THE CORPS UNDER CATEGORY 2 REVIEW:

	T.O.Y. RESTRICTION	T.O.Y. WORK WINDOW
NON-TIDAL WATERS	OCT. 01 THROUGH JUL. 14	JUL. 15 THROUGH SEP. 30
TIDAL WATERS	APR. 10 THROUGH NOV. 07	NOV. 08 THROUGH SEP. 09

ALTERNATE WINDOWS AUTHORIZED UNDER CATEGORY 2 MAY INCLUDE SPECIES SPECIFIC WINDOWS RECOMMENDED BY THE MAINE DEPT. OF MARINE RESOURCES AND/OR MAINE DEPT. OF INLAND FISHERIES & WILDLIFE.

FLOODPLAINS AND FLOODWAYS

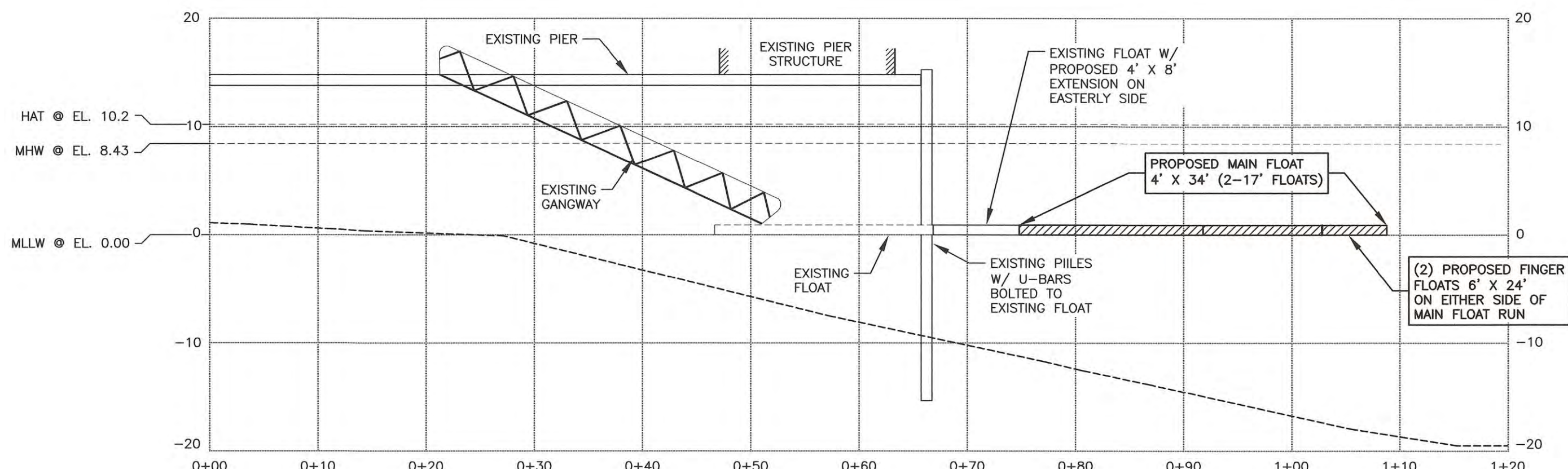
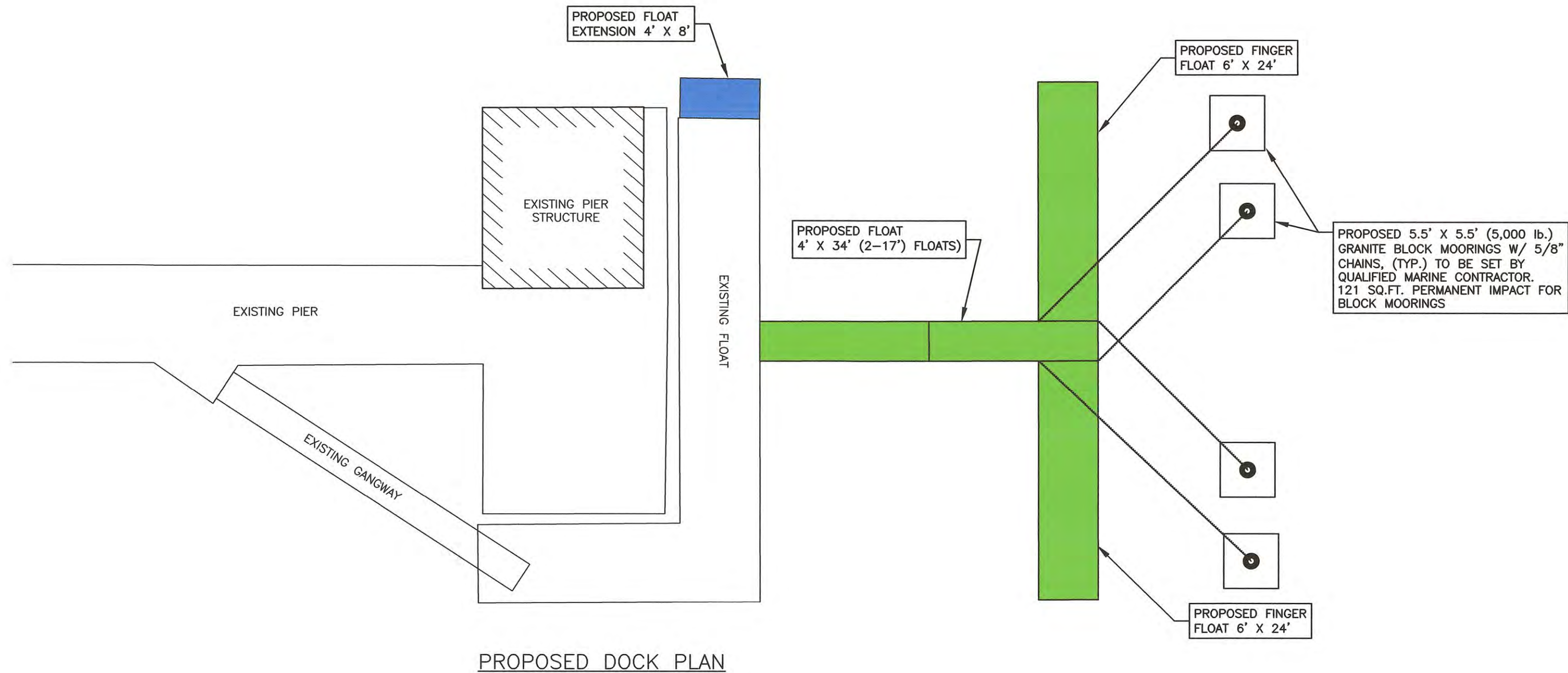
- APPROPRIATE MEASURES MUST BE TAKEN TO MINIMIZE FLOODING TO THE MAXIMUM EXTENT PRACTICABLE.
- ACTIVITIES WITHIN 100-YEAR FLOODPLAINS MUST COMPLY WITH APPLICABLE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)-APPROVED STATE AND/OR LOCAL FLOODPLAIN MANAGEMENT PERMITTING REQUIREMENTS. PROPONENTS MAY NEED TO COORDINATE WITH FEMA AND APPLY FOR A FORMAL CHANGE TO THE FLOOD INSURANCE STUDY PRODUCTS OR FORWARD A SET OF PROJECT PLANS AND RELEVANT TECHNICAL DOCUMENTATION IN A DIGITAL FORMAT TO THE RISK ANALYSIS BRANCH CHIEF, MITIGATION DIVISION, FEMA, REGION 1, 99 HIGH STREET, BOSTON, MASSACHUSETTS 02110. APPLICANTS SHOULD PROVIDE A COPY OF ANY DOCUMENTATION TO THE CORPS ALONG WITH THE PCN.
- PROPONENTS MAY HAVE TO OBTAIN A FLOOD HAZARD DEVELOPMENT PERMIT ISSUED BY THE TOWN. INQUIRIES MAY BE DIRECTED TO THE MUNICIPALITY OR TO THE MAINE FLOODPLAIN MANAGEMENT COORDINATOR AT (207) 287-8063. SEE [HTTP://WWW.MAINE.GOV/DACF/FLOOD/](http://WWW.MAINE.GOV/DACF/FLOOD/)

STORAGE OF SEASONAL STRUCTURES.

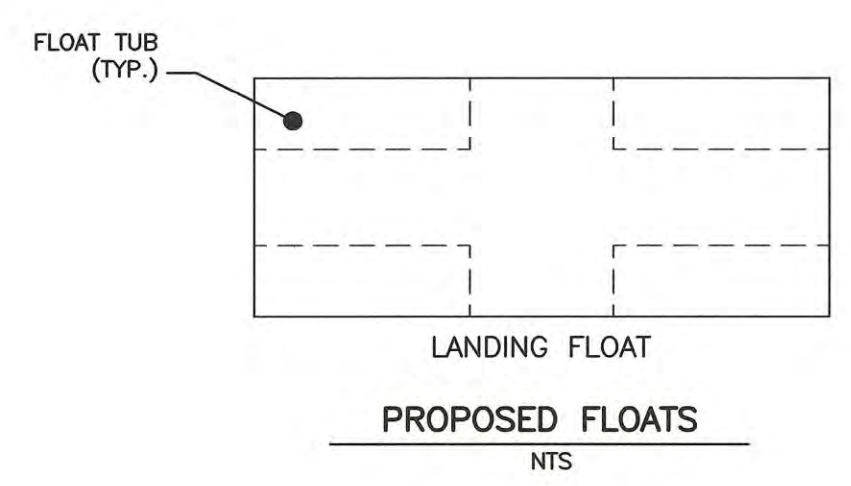
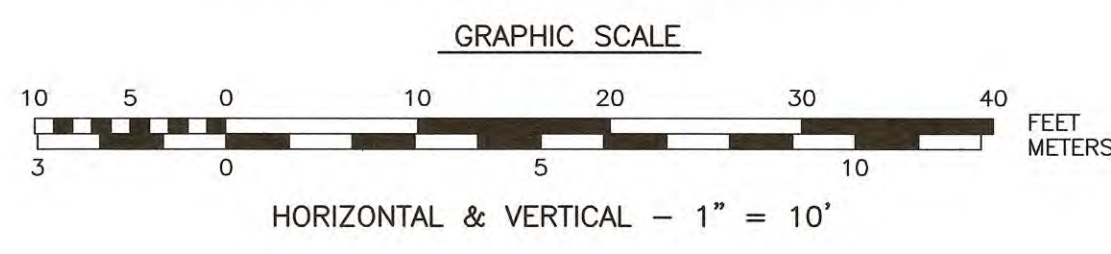
SEASONAL OR RECREATIONAL STRUCTURES SUCH AS PIER SECTIONS, FLOATS, AQUACULTURE STRUCTURES, ETC. THAT ARE REMOVED FROM THE WATERWAY FOR A PORTION OF THE YEAR (OFTEN REFERRED TO AS SEASONAL STRUCTURES) SHALL BE STORED IN AN UPLAND LOCATION LANDWARD OF HIGHEST ANNUAL TIDE (H.A.T.) OR ORDINARY HIGH WATER (OHW) AND NOT IN WETLANDS, TIDAL WETLANDS, THEIR SUBSTRATE OR ON MUDFLATS. THESE SEASONAL STRUCTURES MAY BE STORED ON THE FIXED, PILE-SUPPORTED PORTION OF THE STRUCTURE THAT IS WATERWARD OF H.A.T. OR OHW. SEASONAL STORAGE OF STRUCTURES IN NAVIGABLE WATERS, E.G., IN A PROTECTED COVE ON A MOORING, REQUIRES CORPS APPROVAL AND LOCAL HARBORMASTER APPROVAL.

SPAWNING, BREEDING, AND MIGRATORY AREAS.

- JURISDICTIONAL ACTIVITIES AND IMPACTS SUCH AS EXCAVATIONS, DISCHARGES OF DREDGED OR FILL MATERIAL, AND/OR SUSPENDED SEDIMENT PRODUCING ACTIVITIES IN JURISDICTIONAL WATERS THAT PROVIDE VALUE AS FISH MIGRATORY AREAS, FISH AND SHELLFISH SPAWNING OR NURSERY AREAS, OR AMPHIBIAN AND MIGRATORY BIRD BREEDING AREAS, DURING SPAWNING OR BREEDING SEASONS SHALL BE AVOIDED AND MINIMIZED TO THE MAXIMUM EXTENT PRACTICABLE.
- JURISDICTIONAL ACTIVITIES IN WATERS OF THE UNITED STATES THAT PROVIDE VALUE AS BREEDING AREAS FOR MIGRATORY BIRDS MUST BE AVOIDED TO THE MAXIMUM EXTENT PRACTICABLE. THE PERMITTEE IS RESPONSIBLE FOR OBTAINING ANY "TAKE" PERMITS REQUIRED UNDER THE USFWS'S REGULATIONS GOVERNING COMPLIANCE WITH THE MIGRATORY BIRD TREATY ACT OR THE BALD AND GOLDEN EAGLE PROTECTION ACT. THE PERMITTEE SHOULD CONTACT THE APPROPRIATE LOCAL OFFICE OF THE USFWS TO DETERMINE IF SUCH "TAKE" PERMITS ARE REQUIRED FOR A PARTICULAR ACTIVITY.



**PROPOSED DOCK ELEVATION
PROPOSED FINGER FLOATS**



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

- NOTES:**
- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
 - 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
 - 3) EROSION CONTROL MEASURES SHALL BE IN ACCORDANCE WITH MAINE EROSION AND SEDIMENT CONTROL PRACTICES FIELD GUIDE FOR CONTRACTORS, MARCH 2015.

**LANGDON ISLAND
CONDOMINIUM
9 BADGERS ISLAND WEST
KITTEERY, ME**

NO.	DESCRIPTION	DATE
2	BLOCK MOORINGS	5/18/23
1	FLOAT CONFIGURATION	5/16/23
0	ISSUED FOR COMMENT	5/12/23



5-18-23

OWNER & APPLICANT:
LANGDON ISLAND
CONDOMINIUM ASSOCIATION
BEN PORTER, PRESIDENT
9 BADGERS ISLAND WEST
KITTEERY, ME 03904

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801

SCALE: AS SHOWN MAY 2023

DETAILS **D1**

DECLARATION OF LANGDON'S ISLAND CONDOMINIUM

21 THIS DECLARATION (the "Declaration") is executed as of October 21, 1999 by 9 Badgers Island West LLC (the "Declarant") pursuant to the Maine Condominium Act, Chapter 31 of Title 33 of the Maine Revised Statutes of 1964, as amended (the "Act").

ARTICLE I

CREATION OF CONDOMINIUM; DEFINED TERMS

1.1. Declaration of Property. The Declarant, owner a certain parcel of land (the "Land") in the Town of Kittery, County of York and State of Maine more particularly described in Schedule A and of all buildings and improvements to be constructed on the Land and all easements, rights, privileges and appurtenances hereunto belonging (collectively, the "Property") hereby declares that the Property shall be conveyed subject to the covenants, easements and restrictions contained in the Act and in this Declaration which shall run with the Property and be binding upon, and inure to the benefit of, all owners of any and every portion of the Property and their respective heirs, successors and assigns; that the Property is hereby submitted to the provisions of the Act; and that the Declarant hereby creates with respect to the Property a condominium as defined-in Section 1601-103(7) of the Act (the "Condominium").

The Property is depicted on the Plats of the Land (the "Plats") and Plans of such buildings and improvements to be constructed thereon (the "Plans") which Plats and Plans are recorded herewith in York County Registry of Deeds (Schedules B and C).

1.2. Defined Terms. As provided in Section 1601-103 of the Act, capitalized terms not otherwise defined in this Declaration as it may be amended from time to time, or the Plats and Plans, shall have the same meanings as specified in the Act. The following terms which are not otherwise defined in this Declaration shall have the following specific meanings in this Declaration:

1.2.1. "Allocated Interests" mean (a) the Common Element Interest, (b) the Common Expense Liability and (c) the Votes in the Association, allocated to each Unit pursuant to this Declaration.

1.2.2. "Common Elements" mean all portions of the Condominium other than the Units.

- 1.2.3. "Common Element Interest" means the percentage of undivided interest in the Common Elements appurtenant to each Unit.
- 1.2.4. "Common Expenses" mean and include, but are not limited to, (a) the cost of maintenance, management, operation, repair and replacement of the Common Elements and such Limited Common Elements and such parts of the Units are to which pursuant to this Declaration it is the responsibility of the Association to maintain, repair and replace, (b) the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of this Declaration and the fees and disbursements of the Insurance Trustee, if any, (c) such amounts as the Executive Board may deem necessary to provide for general operating reserve funds, reserve funds for replacements and contingencies, and such other reserve funds as the Executive Board may periodically establish, (d) sums that the Executive Board may deem necessary to compensate for any deficits in receipts over expenses for the previous fiscal year, and (e) the charges and fees to the extent not separately metered to individual Units and charged to individual Unit Owners; and (f) such other costs and expenses that may be declared by the Act, this Declaration, the By-Laws, or resolution or agreement by the Executive Board, Unit Owners, or any two or more of the foregoing, to be Common Expenses of the administration, operation, maintenance and repair of the Condominium and Property and the rendering to Unit Owners of all related services.
- 1.2.5. "Declarant Control Period" means the entire time period which extends from the date of the recording of this Declaration until the earlier of (a) five (5) years following the conveyance of the first Unit to a Purchaser or (b) sixty (60) days after the conveyance of 75% of the Units.
- 1.2.6. "Eligible Mortgage Holder" means the holder of a recorded first Mortgage encumbering a Unit in the Condominium which has delivered written notice to the Association by prepaid United

States mail, return receipt requested, or by delivery in hand securing a receipt therefore, stating the name and address of the said holder of a Mortgage, the name and address of the owner of the Unit encumbered by such Mortgage, the identifying number of such Unit, and containing a statement that such Mortgage is a recorded first Mortgage.

1.2.7. "Limited Common Elements" mean those portions of the Common Elements the exclusive use of which is reserved as an appurtenance to one or more, but fewer than all, of the Units as indicated and allocated pursuant to this Declaration.

1.2.8. "Limited Common Expenses" mean (a) the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element which shall be assessed against the Units to which that Limited Common Element is assigned equally, or in proportion to the relative Common Expense Liabilities of such Units as between themselves, as the Executive Board may periodically determine, and (b) the Common Expenses for services benefitting fewer than all the Units, which are assessed exclusively against the Units benefitted generally in accordance with the use of such services as permitted by Section 1603-115(c) (2) of the Act, as determined by the Executive Board.

1.2.9. "Unit" means a part of the Property designated for any type of separate ownership or occupancy, which has a direct exit to a public street or way, or to a Common Element or Common Elements leading to a public street or way. The "size" of each Unit is the number of square feet of floor space therein (including balconies, garage and basement) determined by reference to the dimensions shown on the Plans and set forth on Schedule B attached hereto.

1.3. Interpretation. In the event of any conflict or discrepancy between this Declaration, the By-Laws, and the Plats and Plans, the provisions of this Declaration shall govern the By-Laws and the Plats and Plans.

ARTICLE II

IDENTIFICATION AND LOCATION OF CONDOMINIUM; ASSOCIATION

2.1. Name of Condominium. The name of the Condominium is LANGDON'S ISLAND CONDOMINIUM.

2.2. Name of Association. The name of the Unit Owners Association organized under and identified in Section 1603-101 of the Act (the "Association") is LANGDON'S ISLAND CONDOMINIUM ASSOCIATION.

2.3. Location of Condominium. The Condominium is located at 9 Badgers Island West, Kittery, County of York, and State of Maine.

ARTICLE III

DESCRIPTION OF Property AND UNITS

3.1. Description of the Property. A legally sufficient description of the Property included in the Condominium is set forth in Schedule A and the location and dimensions of the Property included in the Condominium are depicted on the Plats.

3.2. Location and Dimensions of Building. The location and dimensions of each Building and other improvements to be erected on the Land are depicted on the Plats and on the Plans.

3.3. Maximum Number of Units. The Declarant has created pursuant to this Declaration the Units identified on Schedule B. The maximum number of Units shall be seven (7). Reference is made to Schedule B for the identifying number and type of each Unit created by this Declaration and to the Plats and Plans for a description of each Unit created by this Declaration including each Unit's identifying number, the locations and dimensions of the vertical boundaries and horizontal boundaries of each Unit, the Common Elements to which the Unit has direct access and any other information necessary to identify the Unit.

3.4. Uniqueness of Unit 7 (the Marine Unit). The marina and associated appurtenances is Limited Common Area of Unit 7. The owner of Unit 7 shall have exclusive control of all waterfront lands and adjacent submerged lands.

Included in the rights belonging to the owner of Unit 7 is the exclusive right to negotiate or enter into contracts with the local, state or federal governments concerning the marina and its facilities (including, but not by way of limitation, the right and privilege to renegotiate, on behalf of the Association, any

existing Submerged Land Lease with the State of Maine). Included within these rights held by the owner of Unit 7 is the right to expand the marina, if desired in compliance with all local, state and federal laws and ordinances), and to replace and construct Limited Common Elements in the Limited Common Area belonging to Unit 7, as well as the right to condominiumize the dock space. The Association, by the recordation of this Declaration, grants to the owner of Unit 7, the irrevocable right to act as agent for the Association in all dealings with all local, state and federal agencies dealing with all waterfront issues as well as any private person or entity. No further action of the Association or Executive Board is required to grant or exercise these rights; THEY ARE DEEMED CONVEYED TO THE OWNER OF UNIT 7 AT THE TIME OF CONVEYANCE OF THE DEED TO UNIT 7.

The operation of the marina by the owner of Unit 7 shall be without interference from the Association. Neither the Association, nor the Executive Board, nor any Unit Owner shall do any act or enact any Rules or Regulations which attempt to govern the operation of the marina or its facilities or the Limited Common Elements of Unit 7. The owner of Unit 7, by acceptance of the deed to Unit 7, agrees to comply with all Kittery ordinances (e.g., noise) as well as to maintain the Limited Common Element of Unit 7 in a clean and safe condition. In addition, the owner of Unit 7 shall reasonably maintain the landscaping within the Limited Common Element associated with Unit 7.

The owner of Unit 7 is prohibited from placing or maintaining vending machines or unsightly structures or storage containers on the Limited Common Element of Unit 7. Neither may the owner of Unit 7 sell fuel, bait, fishing supplies or boat supplies within the Limited Common Element of Unit 7. Neither may the owner of Unit 7 engage in any boat sales, boat storage activities or boat maintenance/repair activities on the land area of the Limited Common Element of Unit 7. It is the intent of the Declarant to maintain a pleasure boat marina only. The Owner of Unit 7 may undertake landscaping or maintain picnic facilities within the Limited Common Element. Unit 7 must adhere to all rules and regulations relating to changes to the exterior of the condominium building housing the other six (6) Units and the Common area (excluding the Limited Common Element of Unit 7).

Although Unit 7 has been granted numerous rights that do not require the approval of the Association, it is not the intent of the Declarant to allow the owner of Unit 7 to negatively impact the remaining Unit Owners through these rights. The owner of Unit 7 by acceptance of a deed of conveyance, agrees to cooperate with the Association regarding issues of noise, clutter and other, similar issues concerning the right of each Unit Owner to enjoy the use of their Unit.

- 3.4.1. Subdivision of Unit 7 (the Marina Unit). Unit 7 may be subdivided into two (2) or more Units. The costs of accomplishing subdivision will be borne by the owner of Unit 7. The Association will cooperate in executing and recording an amendment to the Declaration including plats and plans subdividing the Unit.

The provisions of this Section may not be amended nor may the condominium be terminated without the written consent of the owner of Unit 7. The terms of this Section shall, if conflict exist between this Section and any other Section in the Condominium Documents, always prevail.

3.5. Unit Boundaries. The boundaries of Units 1 through 7 created pursuant to this Declaration are situated as shown on the Plats and Plans and shall consist of:

- 3.5.1. Upper and Lower (Horizontal) Boundaries: The upper and lower boundaries of each Unit shall be the following boundaries extended to an intersection with the vertical (perimetric) boundaries:
- 3.5.1.1. Upper Boundary: The horizontal plane of the lower horizontal surface of the ceiling joists.
 - 3.5.1.2. Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab or the unfinished subflooring of the Unit, as the case may be.
- 3.5.2. Vertical (Perimetric) Boundaries: The vertical boundaries of each Unit shall be the vertical planes at the stud line of the back surface of its perimetric walls, extended to the intersections with each other and with the upper and lower Unit boundaries.
- 3.5.3. The Unit shall include the heating, hot water and air conditioning apparatus exclusively serving the Unit whether or not located within the boundaries of the Unit and all furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of

the finished surfaces thereon, located within the boundaries of the Unit.

- 3.5.4. Subject to the provisions of subparagraph 3 above, if any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or any other fixtures lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
- 3.5.5. Subject to the provisions of subparagraph 4 above, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.
- 3.5.6. Subject to the provisions of subparagraphs 3 and 4 above, any shutters, awnings, windows, window boxes, doorsteps, stoops, porches and all exterior doors and windows and other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

3.6. Allocated Interests. The Allocated Interests allocated to each Unit are listed in Schedule B. Each Allocated Interest has been rounded to the nearest one thousandth of one percent (0.001%). The formula for calculating the Allocated Interest is as follows:

Square Feet in Unit

Square Feet in all Units

3.7. Alteration of Partitions. Subject to applicable provisions of law, ordinances and land-use regulations, a Unit Owner may, after acquiring a vertically or horizontally adjoining Unit or adjoining part of a vertically or horizontally adjoining Unit, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if such acts do not impair the structural integrity or mechanical systems of the Building in which such Units are located or lessen the support of any portion of the Property. Removal of partitions or creation of apertures under this subparagraph is not an alteration of boundaries.

3.8. Alterations by Unit Owner. A Unit Owner may make non-structural improvements and alterations to the interior of his Unit but no Unit Owner may make any improvements or alterations or do any work whatsoever which would impair the structural integrity or mechanical, electrical and plumbing systems of the Buildings. No Unit Owner shall impair any easement or hereditament therein without the unanimous consent of the Unit Owners affected thereby. No Unit Owner shall alter any of the Common Elements or paint or otherwise change the appearance of the Common Elements (including the Limited Common Elements) or paint or otherwise change the exterior appearance of his Unit (including, but not limited to, the exterior surfaces of doors) or any other portion of the Condominium without the prior written approval of the Executive Board of the Association or a committee appointed by the Board pursuant to the By-Laws.

3.9. Exterior Changes to the Building. Any changes to the exterior of the building housing Units 1-7 shall require the approval of a majority of the Unit Owners; provided, however, any proposed exterior changes to the balconies, e.g., screening, awnings, glass enclosures, etc., shall require the unanimous consent of all Unit Owners.

ARTICLE IV

COMMON ELEMENTS, LIMITED COMMON ELEMENTS
AND APPLICABLE PROVISIONS

4.1. Common Elements. The Common Elements are shown on the Plats and Plans and are allocated according to the percentages on Schedule B.

4.2. Limited Common Elements. The location and dimensions of all Limited Common Elements, except for the portions of the Property described as Limited Common Elements pursuant to the Act, and the identifications of the Unit or Units to which the Limited Common Elements are hereby allocated are described in this Paragraph and on the Plats and Plans. The allocation of Limited Common Elements to the Units cannot be altered except with the written consent of the Owners and Mortgagees of record of the Units affected by the reallocation of Limited Common Elements and in compliance with Section 1602-108(b) of the Act at the expense of the Owners of the Units involved. The walkways, decks, ties, steps and skids depicted on the Plats and Plans serving more than a single Unit, are Limited Common Elements allocated to the Units in the Building to which they are attached. The following portions of the Property serving a single Unit, but located outside that Unit's boundaries are each allocated as a Limited Common Element to the Unit which it serves:

- 4.2.1. Functional porches, balconies, decks, patios, the parking spaces of the Unit designated by the Unit's identifying number, as depicted on the Plats and Plans.
- 4.2.2. Doors leading from Units to porches, balconies, decks or patios, and their related frames, sills and hardware.
- 4.2.3. Doors leading from the Unit to the Common Elements and any associated door paneling, frames, glassware, buck, trim, sills and hardware including lock and chime assembly, hinges and closure.
- 4.2.4. Shutters, awnings, window boxes, windows, door steps and stoops designed to serve the Unit.
- 4.2.5. The wharf, pier, floats and all related fixtures, appliances and personal Property shall be limited common element associated with Unit 7.

4.3. Common Elements to Remain Undivided. The Common Element Interest of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Unit shall extend to and include the Common Element Interest, whether or not expressly referred to in the instrument effecting such transfer.

4.4. Amendment of Interest in Common Elements. The Common Element Interest and Limited Common Interest appurtenant to each Unit shall have a permanent character, shall be inseparable from each Unit and shall not be altered or changed except by the recording of an amendment to this Declaration, duly executed by all of the Unit Owners and all of the holders of record of any first Mortgage liens upon the Units.

4.5. Use of Common Elements. Except as their use may otherwise be limited by this Declaration or by the By-Laws or otherwise by the Executive Board pursuant to its powers, each Unit Owner, tenant and occupant of a Unit, and the family members and guests of such Unit Owner, tenant and occupant, may use the Common Elements in common with all other Unit Owners and tenants or occupants of other Units, and their respective family members and guests, in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Unit Owners, upon the following terms:

- 4.5.1. Any Unit Owner in default in the payment of any amount due to the Association or in violation of any provision of this Declaration, the By-Laws, or the rules and regulations of the Association, which violation continues for 30 days after written notice thereof by the Association to the Unit Owner may be prohibited by the Executive Board from the use and enjoyment of any and all of the Common Elements not essential to access to the Unit, in addition to all other remedies available to the Executive Board.
- 4.5.2. Parking of motor vehicles by Unit Owners, the immediate families of Unit Owners, tenants, guests, visitors, and invitees shall be only in the Limited Common Elements designated as spaces for parking for that Unit. No unattended vehicles shall at any time be left in such a manner as to impede the passage of traffic or to impair access to parking areas. No storage of any objects shall be permitted in the Common Elements. Parking areas and Common Elements shall at all times be kept free of unreasonable accumulations of debris or rubbish of any kind.
- 4.5.3. Unit Owners shall not erect fences, signs, canopies, clotheslines or other structures, plant or remove trees or shrubs, or materially alter the grading or landscaping, or do any other thing which affects the appearance from the exterior of the Buildings or grounds including Limited Common Elements, except as provided in this Declaration or in accordance with the written permission of the Executive Board.
- 4.5.4. Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted or displayed upon, in, from or about any Unit or Common Element except as otherwise provided herein, in the By-Laws, or in any Rules promulgated in writing by the Association, without the prior written approval of the Executive Board. The foregoing provisions of this subparagraph shall not apply to a Mortgagee in possession of a Unit as a result of foreclosure, judicial sale or a proceeding in lieu of foreclosure. Each Owner

of a Unit shall have the right to post in front of his Unit on the outside of the Building in which his Unit is situated a non-illuminated sign not to exceed an area of one foot by two feet publishing the name of the Owner and the address or identifying number of his Unit.

- 4.5.5. No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements (except those areas designated for such storage by the Condominium Documents or the Executive Board) without the approval of the Board. Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written consent of the Executive Board.

ARTICLE V

EASEMENTS

5.1. Utilities, Pipes and Conduits. Each Unit Owner shall have an easement in common with all other Unit Owners to use all pipes, wire, ducts, cables, conduits, public utility lines and other Common Elements serving his Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of all other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit.

5.2. Ingress, Egress, and Regress. Each Unit Owner shall have an easement, subject to any rules and regulations established by the Executive Board, in common with all other Unit Owners to use the entrances, exits, corridors and other Common Elements as a means of ingress, egress and regress to and from the Property and the adjoining public streets.

5.3. Condominium Association and Executive Board Access. Declarant reserves in favor of itself, the Association and its Executive Board, officers, agents and employees, and the managing agent and every other person authorized by the Executive Board the irrevocable right and easement to have access to each Unit as provided in Section 1603-107(a) of the Act as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Elements and Limited Common Elements therein or accessible therefrom or the making of any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public

safety or to prevent damage to any other Unit or Units, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate whether or not the Unit Owner is present at the time.

5.4. Declarant's Right to Grant Easements. The Declarant shall have the right, until the Declarant has conveyed all Units in the Condominium to Purchasers, to create, to grant and reserve any and all easements and rights-of-way through, under, over and across the Property for any purpose.

5.5. Common Elements Easement in Favor of Unit Owners. The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to the following easements in favor of the Units benefitted:

5.5.1. For the installation, repair, maintenance, use removal and/or replacement of pipes, ducts, heating and air-conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

5.5.2. For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Elements adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the building or impair or structurally weaken the building.

5.5.3. For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor joists above the Unit and the top surface of the floor joists below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common

Elements adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the building.

ARTICLE VI

ASSESSMENTS FOR COMMON EXPENSES AND
MAINTENANCE OF Property

6.1. Allocation of Assessments of Common Expenses. The total amount of Common Expenses shall be assessed against the Units in the following proportions:

- 6.1.1. The Common Expenses that are not assessed as Limited Common Expenses shall be assessed against all the Units in proportion to the relative Allocated Interests of all the Units.
- 6.1.2. (a) If a Limited Common Expense benefits more than a single Unit, that Limited Common Expense shall be assessed solely against all the Units benefitted in proportion to the relative Allocated Interests of such Units as between themselves, as the Executive Board may determine, and (b) if a Limited Common Expense only benefits a single Unit, that Limited Common Expense shall be assessed solely against the Unit benefitted, as the Executive Board shall determine.
- 6.1.3. Heat, electricity and telephone services shall be supplied by the public utility company serving the area directly to each Unit through a separate meter and each Unit Owner shall be required to pay the bills for heat, electricity and telephone services consumed or used in his Unit. The heat and electricity serving the Common Elements shall be separately metered, and the Executive Board shall pay all bills for heat, and electricity consumed in the Common Elements as a Common Expense assessable to all the Owners of Units. Water and sewer services shall be supplied by the Water and Sewer District serving the area to all of the Units and the Common Elements through one or more building meters and the

Executive Board shall pay or caused to be paid as a Common Expense all charges for water consumed on the Property promptly after the bills therefore are rendered.

The Declarant shall not be liable for any assessments for any Units until after the latter to occur or sixty (60) days after the first conveyance of a Unit to a Purchaser or the Association makes its first Common Expense assessment.

6.2. Lien for Assessments. The total monthly assessment levied against each Unit for Common Expenses and Limited Common Expenses and any special assessment, and any other sums duly levied against the Unit pursuant to this Declaration, the By-Laws, or the Act, all interest thereon and charges for late payment thereof and legal fees and other costs of collection thereof, and fines, penalties and fees as provided in this Declaration or the By-Laws shall constitute the personal liability of the owner of the Unit so assessed and also shall, until fully paid, constitute a lien against the Unit in favor of the Association from the date upon which such assessment, special assessment or other sum such as interest becomes due as provided in Section 1603-116 of the Act. Such lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Association as to the full amount of the annual assessment, and, as to special assessments and other sums duly levied including Limited Common Expenses assessed against a Unit Owner for maintenance, repair or replacement of a Limited Common Element, on the first day of the next month which begins more than ten (10) days after delivery to the Unit Owner of notice of such special assessment or levy. Such lien is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) a first Mortgage recorded before or after the date which the assessment sought to be enforced becomes delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against the Units; provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4651 and 18-A M.R.S.A. Section 2-201, et seq., as they or their equivalents may be amended or modified from time to time.

6.3. Payment Obligations. Each Unit Owner shall pay to the Association or its authorized representative on the first day of each month, or on such other date that the Association may determine in writing, (1) one-twelfth (1/12) of the Common Expenses including Limited Common Expenses and revised Common Expenses including Limited Common Expenses, assessed on An annual basis against his Unit and (2) all special assessments, any other sums duly levied against the Unit pursuant to this Declaration, these Bylaws, or the Act, including Limited Common Expenses assessed against Unit Owners for maintenance repair, or replacement of a Limited Common Element, all interest thereon and charges for late

payment thereof and legal fees and other costs of collection thereof, and fines, penalties, and fees as provided by this Declaration, these Bylaws, or the Act.

6.4. Limited Common Elements, Maintenance. The Association shall maintain, repair and replace all Limited Common Elements as required by this Declaration and shall assess as a Limited Common Expense the Common Expenses associated with the maintenance, repair or replacement of each Limited Common Element (except for Common Expenses associated with structural repairs or replacements) against the Units to which the Limited Common Element is assigned or appurtenant in proportion to the relative Allocated Interests of such Units as between themselves; provided that the Association shall also have the right to assess an individual Unit for Limited Common Expenses associated with said purposes applicable to such Unit if the Limited Common Expense shall be incurred due to the negligence, neglect or misconduct of the Owner of such Unit or if the item giving rise to the expense shall be for the benefit of that Unit only. Provided, however, the owners of Unit 7 shall be sole and exclusively responsible for the maintenance of the waterfront area, including, but not by way of limitations, the pier, floats, wharf and all appurtenant fixtures, structures, piping, appliances, associated parking, and grounds. Further providing, however, the Unit Owner of any Unit to which a Limited Common Element balcony, deck, patio or terrace is appurtenant shall perform the normal maintenance for such Limited Common Element, including keeping it in a clean and sanitary condition, free and clear of ice, snow and any accumulation of water, but if that Limited Common Element, or any other Limited Common in a Building, is allocated to more than one Unit, the Association shall be responsible and shall assess the costs thereof as a Limited Common Expense to the Units benefitted. The Unit Owner shall maintain windows allocated to his Unit as a Limited Common Element including washing and necessary replacements with substitutions of similar color, size, quality and style. The Association shall be responsible for all structural repairs and replacements of all Limited Common Elements except for windows and the costs thereof shall be assessed to all Unit Owners as a Common Expense, unless such repair or replacement shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, in which case such cost shall be assessed to the Unit Owners responsible as a Limited Common Expense.

6.5. Maintenance of Common Elements. The Association shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of the Executive Board such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements whether located inside or outside of the Units, the cost of which shall be charged to the Unit Owners as a Common Expense except as otherwise provided in Paragraph 6.4 with regards to Limited Common Elements.

6.6. Maintenance of Unit. Each Unit Owner shall keep and maintain his Unit in good order, condition and repair. No Unit Owner shall sweep or throw, or permit to be swept or thrown, from his Unit any dirt, debris or other substance. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Article. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners.

6.7. Liability of Owner. Each Unit Owner shall be liable, and the Association shall have a lien against his Unit, for the expense of maintenance, repair or replacement of any damage to the Common Elements, and any and all consequential damages or effects arising therefrom, caused by such Unit Owner's act, neglect or carelessness or by that of any member of such Unit Owner's family, or such Unit Owner's guests, employees, agents, lessees, or their pets, which the Association shall have the right to cure, correct, maintain, repair or release.

6.8. Managing Agent. The Executive Board may employ for the Condominium a "Managing Agent" at a compensation established by the Executive Board. The Managing Agent shall perform such duties and services as the Executive Board shall authorize, including, but not limited to, all of the duties listed in the Act, the Declaration, or these Bylaws, such duties shall be performed as advisory to the Executive Board. The Executive Board may delegate to the Managing Agent all of the powers granted to the Executive Board by the Act, the Declaration, and these Bylaws other than the following powers:

- 6.8.1. To adopt the annual budget and any amendment thereto or to assess any Common Expenses;
- 6.8.2. To adopt, repeal or amend rules and regulations of the Association;
- 6.8.3. To designate signatories on Association bank accounts;
- 6.8.4. To borrow money on behalf of the Association;
- 6.8.5. To designate Reserved Common Elements;
- 6.8.6. To allocate Limited Common Elements.

Any employment contract between the Managing Agent and the Association must provide that it may be terminated with cause on no more than ninety (90) days' written notice.

ARTICLE VII

ASSOCIATION OF UNIT OWNERS; VOTING;
DECLARANT CONTROL

7.1. The Association, Powers. The Association is a non-profit and non-stock corporation organized under Title 13-B of the Maine Revised Statutes of 1964, as amended, and is the governing body for all the Unit Owners with respect to the administration, maintenance, repair, replacement, cleaning, sanitation, management and operation of the Common Elements, and the making of any additions or improvements thereto as provided in this Declaration and in the By-Laws. The membership of the Association at all times shall consist exclusively of all Unit Owners. Each Unit Owner shall automatically become and be a member of the Association as long as he continues as a Unit Owner and upon the termination of the interest of the Unit Owner in the Condominium his membership and any interest in the common funds of the Association shall thereupon automatically terminate and transfer and inure to the next Unit Owner or Owners succeeding him in interest. The Association shall have all the powers granted pursuant to Section 1602-102 of the Act.

7.2. Executive Board Powers Declarant Control Period. Except as otherwise provided in Section 1603-103(b) of the Act, the Executive Board may act on behalf of the Association, shall have all of the powers necessary for the administration of the affairs of the Association and may do all such acts and things as are not by the Act or this Declaration or the By-Laws required to be exercised and done by the Association. The affairs of the Association shall be governed by an Executive Board composed of no less than three (3) and no more than six (6) persons. Prior to the Transition Election provided for by paragraph 7.2, the Executive Board shall be composed of three (3) natural persons appointed by the Declarant and after the Transition Election, the Executive Board shall be composed of three (3) natural persons chosen by the Unit Owners. The members of the Executive Board appointed by the Declarant during the Declarant Control Period can be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations and the Declarant shall have the right during the Declarant Control period to appoint, remove and replace from time to time any and all officers of the Association without the necessity of obtaining resignations. The appointees of the Declarant need not be Unit Owners. After the Transition Election at least a majority of the members of the Executive Board shall be Unit Owners or spouses of Unit Owners, or in the case of a Unit Owner which is a corporation, partnership, trust or estate, a designated agent thereof. The transition from Declarant-appointed members of the Executive Board to Unit Owners other than the Declarant shall occur no later than the earlier of (a) sixty (60) days after the conveyance of 75% of the Units to

Purchasers or (b) five (5) years following conveyance of the first Unit to a Purchaser, or at such earlier date as the Declarant in its sole discretion shall specify. The Transition Meeting of the Association and Transition Election shall be held at which time all of the members of the Executive Board appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect three (3) successor members of the Executive Board to act in the place and stead of those resigning.

7.3. **Voting.** If a Unit is owned of record by one person, that Unit Owner's right to vote shall be established by the record title to the Unit. If ownership of a Unit is in more than one person, the person who shall be entitled to cast the Votes allocated to that Unit shall be the person named in a certificate executed by all of the Owners of such Unit and filed with the Secretary of the Association. If ownership of a Unit is in a corporation, partnership, trust or estate, the officer or employee of that corporation, partner of that partnership, trustee of that trust, or agent of that estate, entitled to cast for the corporation, partnership, trust or estate the Votes allocated to such Unit shall be designated in a certificate for that purpose executed by the president or a vice president of that corporation, and attested to by the secretary or clerk of that corporation, executed by all the partners of that partnership, or executed by all the beneficiaries of that trust, or executed by either all the devisees of that estate or by order of the probate court and filed with the Secretary of the Association. Such certificates of multiple owners, corporations, partnerships, trusts or estates shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary of the Association.

ARTICLE VIII

RESTRICTIONS ON USE, OCCUPANCY AND ALIENATION OF UNITS

8.1. Use and Occupancy Restrictions on Units. Each Unit shall be occupied and used subject to the following restrictions:

- 8.1.1. Excepting Unit 7, no Unit shall be used for other than single-family residential purposes by the Unit Owner, the Unit Owner's family related by blood, marriage or adoption, and the tenants and guests of the Unit Owner or of the Unit Owner's family. Units 1 through 6 shall not be used for any business purpose; provided, however, business which do not generate noise, smells or on-site client contact shall be permitted.

- 8.1.2. Unit 7 may operate a commercial marina, provided; however, that the owner of Unit 7 shall maintain an additional policy of insurance covering the operation of the business; such insurance shall be at the sole and exclusive expense of the owner of Unit 7. Unit 7 shall also pay that portion of the casualty insurance as is allocated to the Limited Common Elements of Unit 7.
- 8.1.3. No Unit shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession and occupation or proper use of any other Unit or the Common Elements. By acceptance of their deed to a Unit, the owners of Units within the Langdon's Island Condominium shall be deemed to understand that there shall be operated a commercial marina by the owner of Unit 7.
- 8.1.4. The maintenance, keeping, boarding and/or raising of animals shall be and is prohibited within any Unit or upon the Common Elements, except that the keeping of small, orderly domestic pets such as dogs, cats or caged birds, aquarium fish and other limited species of animals which do not normally leave the Unit and which do not make noise may be permitted by the Executive Board in accordance with and subject to any rules and regulations adopted by the Executive Board.
- 8.1.5. The Executive Board shall have strict control of the exterior appearance of the river side of the condominium Property and Building. To this end, the Board may enforce reasonable rules governing such appearance.
- 8.1.6. All deck furnishings shall comply with Executive Board standards for appearance.
- 8.1.7. Neither the Executive Board nor the Owners Association shall make any Rule, or change to this Declaration or to the By-Laws, affecting the operation and/or use of the commercial marina on Unit 7 without the consent of the owner of Unit 7.
- 8.1.8. No Unit Owner shall make any interior structural changes or perform any exterior

construction until the design, engineering and contractor has been approved in writing by the Declarant, its successors and assigns.

8.2. Leasing Restrictions. Excepting the marina operated in conjunction with the ownership of Unit 7, no Unit shall be rented for transient or hotel purposes or in any event for a period of less than one (1) month and no portion of any Unit (other than the entire Unit) shall be leased for any period. No Unit Owner shall lease a Unit other than on written form of lease: (a) requiring the lessee to comply with the Condominium Documents and rules and regulations of the Association; (b) providing that failure to comply therewith constitutes a default under the lease; and (c) providing that the Executive Board has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the lessor thereunder after seven (7) days prior written notice to the Unit Owner, in the event of a default by the lessee in the performance of the lease. Each owner of a Unit shall promptly, following the execution of any lease of a Unit, forward a conformed copy thereof to the Executive Board.

8.3. Voluntary Resale of Units. The following provisions apply to the sales of Units by all Unit Owners other than the Declarant:

8.3.1. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to the date of recordation of a conveyance in fee of such Unit by the Owner. In a voluntary transfer of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments and special assessments for Common Expenses made by the Executive Board against the latter up to the time of recordation of grantor's transfer, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any person who shall have entered into an agreement to purchase a Unit from a Unit Owner shall be entitled to a certificate from the Executive Board as provided by Section 1604-108(b) of the Act, and the grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any assessments or unpaid special assessments made by the Executive Board against the grantor for Common Expenses made in excess of those disclosed on such certificate.

- 8.3.2. A voluntary transfer for the purpose of this Paragraph 8.3 shall be considered any sale, lease, gift, testate or intestate distribution, or the transfer of ownership of a corporation owning a Unit.

ARTICLE IX

MORTGAGES OF UNITS; RIGHT OF MORTGAGEES

9.1. Right to Mortgage. Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with the Allocated Interests appurtenant to such Unit. No Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Common Elements or any part thereof except his own Unit and his own respective Allocated Interests appurtenant to his Unit.

9.2. Identification of Mortgagee. A Unit Owner who mortgages his Unit shall notify the Executive Board in writing of the name and address of his Mortgagee(s) and shall file a copy of the Mortgage with the Executive Board.

9.3. Mortgage Foreclosure. Any Mortgagee of a Unit that obtains title to the Unit pursuant to the remedies provided in the Mortgage, or through a completed foreclosure of the Mortgage, or through deed (or assignment) in lieu of foreclosure, shall take the Unit with the Allocated Interests appurtenant thereto free of such claims for unpaid assessments for Common Expenses, interest and costs levied against such Unit which accrue prior to the acquisition of title to such Unit by the Mortgagee, other than the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgagee shall acquire title to the Unit through a completed foreclosure or deed (or assignment) in lieu of foreclosure.

9.4. Notices to Eligible Mortgage Holder of Insurer. The Association shall send written notice by prepaid United States mail to each Eligible Mortgage Holder within a reasonable period prior to the taking of any actions which would directly effect the Mortgage and is required by national lending standards.

9.5. Mortgagee Approval Rights. The Association shall obtain the prior written approval of a proportionate share of the Eligible Mortgage Holders (as required by the national lending standards) to make substantial changes to the Condominium or the Condominium documents.

An addition or amendment to the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors.

An Eligible Mortgage Holder who receives a written request to approve additions or amendments to the Condominium Documents who does not deliver to the requesting party a negative response within thirty (30) days after the giving of notice shall be deemed to have approved such request in writing.

9.6. Voting and Other Rights of Eligible Mortgage Holders. In the event of any default by a Unit Owner in payment of assessments or performance of obligations pursuant to the Condominium Documents, the Eligible Mortgage Holder of the Mortgage on such Owner's Unit shall have the right but not the obligation to cure such default. In addition to, but not by way of limitation of, all rights granted to Eligible Mortgage Holders pursuant to this Declaration to cast the Votes allocated to a Unit in lieu of the Unit Owner, an Eligible Mortgage Holder, or its representative, shall have the right to attend meetings of the Association and Executive Board for the purposes of discussing the termination of the Condominium, a change in the Allocated Interests of a Unit, a change in the boundaries of a Unit or a subdivision of a Unit, the merger or consolidation of the Condominium with another condominium, the conveyance or subjection to a security interest of any portion of the Common Elements, the proposed use of any proceeds of hazard insurance for purposes other than the repair or restoration of the damaged Property, or the adoption of any proposed budget by the Executive Board.

9.7. Rights of First Refusal. In the event the Unit Owners in the future adopt any right of first refusal in the case of the sale of any Unit, such right of first refusal shall not impair the right of any Mortgagee to:

- (a) Foreclose or take title to the Unit pursuant to the remedies provided in the Mortgage,
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or
- (c) Sell or lease a Unit acquired by the procedures hereinabove set forth.

The Association does not initially have a Right of First Refusal to purchase any Unit being marketed for sale.

9.8. Mortgage Priority. No provision of the Condominium Documents shall be deemed or construed to give a Unit Owner, or any

other person, priority over the rights of any Eligible Mortgage Holder in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units, Common Elements, or both.

ARTICLE X

EASEMENTS AND LICENSES

10.1. Recorded Easements and Licenses. The recording data for recorded easements and licenses appurtenant to or included in the Condominium, if any, are stated and set forth on Schedule A.

10.2. Access Easement. The Property will be served by an access easement over the land lying to the south of the Property. This easement is shown on the site plat recorded herewith.

10.3. Unit 7 Easements. Unit 7 (the Marina Unit) will be served with an easement for parking and an easement for use of a building to serve as marina office both of which are located on other land lying to the south as shown on the site plat recorded herewith.

ARTICLE XI

TAXATION

11.1. Separate Taxation. If there is any Unit Owner other than the Declarant, each Unit and its Allocated interests shall be deemed to be a separate tax parcel and shall be separately taxed and assessed by the Town of Kittery. Neither the Buildings, the Property nor any of the Common Elements shall be deemed to be or assessed as a separate tax parcel.

11.2. Units Not Yet Separately Assessed. In the event that for any year real estate taxes assessed by the Town of Kittery are not separately taxed and assessed to each separate Unit Owner but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Allocated Interests.

ARTICLE XII

AMENDMENTS

12.1. Before Any Conveyance. Prior to the conveyance of any Unit by the Declarant to a Unit Owner other than as security for an obligation, the Declarant shall have the right to amend and re-

amend this Declaration in any manner that the Declarant may deem appropriate.

12.2. After First Conveyance. After the first conveyance of a Unit by a Declarant as contemplated in the preceding paragraph, the terms of the following subparagraphs shall apply to the amendment of this Declaration:

- 12.2.1. **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Executive Board or Association in which a proposed amendment is considered, and shall be served upon all Unit Owners and upon all Eligible insurers, if required.
- 12.2.2. **Resolution.** An amendment may be proposed by either the Executive Board or by two (2) Unit Owners. No resolution of the Executive Board adopting a proposed amendment or any proposed amendment shall be effective unless it has been adopted at a meeting of the Association duly called and held in accordance with the By-Laws by the affirmative vote of at least four (4) of the Unit Owners and then executed and recorded as required by the Act.
- 12.2.3. **Agreement.** In the alternative, an amendment may be made by an agreement signed by the record Owners of Units to which are allocated at least 100% of the Votes in the Association in the manner required for the execution of a deed and acknowledged by at least one of them, and such amendment shall be effective when certified and recorded as provided in the Act.
- 12.2.4. **Execution and Recording.** A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by such officer or officers of the Association and/or member or members of the Executive Board designated for that purpose by the By-Laws. The amendment shall be effective when such certificate and copy of the amendment are recorded.
- 12.2.5. **Notice and Challenge.** No action to challenge the validity of an amendment to this

Declaration adopted by the Association pursuant to this Article may be brought more than one year after such amendment is recorded. After each amendment to this Declaration adopted pursuant to this Article has been recorded, notice thereof shall be sent to all Unit Owners and to all Eligible Mortgage Holders at the address last furnished to the Executive Board, but failure to send such notices shall not affect the validity of such amendment.

ARTICLE XIII

APPLICABILITY, COMPLIANCE AND DEFAULT

13.1. Applicability. This Declaration shall be applicable to the Condominium. All present and future Owners and tenants, their guests, licensees, servants, agents, employees and any other person or persons that shall be permitted to use the Common Elements shall be subject to this Declaration, the By-Laws and to such rules and regulations as may be issued by the Executive Board from time to time to govern the conduct of its members and the use and occupancy of the Property ownership, rental or occupancy of any of the Units in the Condominium shall be conclusively deemed to mean that said Owner, tenant or occupant has accepted and ratified this Declaration, the By-Laws and the rules and regulations of the Association and will comply with them. The acceptance of a deed or conveyance (other than as security) or the entering into of a lease or the entering into of an occupancy of any Unit (other than possession by a Mortgagee prior to either of the completion of foreclosure or the acceptance of a deed to the Unit subject to the Mortgage held by such Mortgagee) shall signify that the provisions of this Declaration and the By-Laws, the rules and regulations of the Condominium and the decisions of the Executive Board are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

13.2. Compliance:

13.2.1. Each Unit Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of this Declaration, By-Laws and the rules and regulations adopted pursuant thereto, and the same as they may be amended from time to time.

- 13.2.2. Except as otherwise stated herein, the Executive Board shall have the power to adopt, amend and enforce compliance with, such reasonable rules and regulations relative to the operation, use and occupancy of the Units and the Common Elements.

13.3. Arbitration. All claims, disputes and other matters in question between the Association and any Unit Owners arising out of or relating to, this Declaration, the By-Laws, or the deed to any Unit or the breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE XIV

LIMITATION OF LIABILITY

14.1. Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers and employees:

- 14.1.1. Shall not be personally liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or Property caused by the elements or by another Unit Owner or person on the Property or by the failure of any Common Element, e.g., water pipes, unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;
- 14.1.2. Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members, duties for any mistake of judgment, negligence or otherwise, except for the Executive Board members, own willful misconduct or gross negligence;
- 14.1.3. Shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the

Executive Board or the Association in the performance of the Executive Board members, duties;

- 14.1.4. Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers or guests, for loss or damage caused by theft of or damage to personal Property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;
- 14.1.5. Shall have no personal liability in tort to a Unit Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and,
- 14.1.6. Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their duties, except for the Executive Board members, own willful misconduct or gross negligence.

14.2. Indemnification. Each member of the Executive Board, in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member and/or officer of the Executive Board, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties; provided that, indemnification hereunder if such Executive Board member and/or officer had no Reasonable cause to believe his conduct was unlawful. The indemnification by the Unit Owners set forth in this paragraph shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such.

14.3. Defense of Claims. Complaints brought against the Association, the Executive Board or the officers, employees or agents thereof in their respective capacities as such, or the Condominium as a whole, shall be directed to the Executive Board of the Association, which shall promptly give written notice thereof to the Unit Owners and such complaint shall be defended by the Association. The Unit Owners shall have no right to participate in such defense other than through the Association.

ARTICLE XV

GENERAL PROVISIONS

15.1. Captions. The headings in this Declaration are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. Schedules are attached to and incorporated by reference into this Declaration and are an integral part of this Declaration.

15.2. Gender, Number, Etc. The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

15.3. Remedies Cumulative. All rights, remedies and privileges granted to the Executive or a Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party hereunder or by any instruments or documents incorporated herein by reference or at law or in equity.

IN WITNESS WHEREOF, 9 Badger's Island West LLC, as Declarant, has caused this Declaration to be executed and ensealed in its name by its Member hereunto duly authorized as of the date and year first above written.

9 Badger's Island West LLC

Dated: October 27, 1999

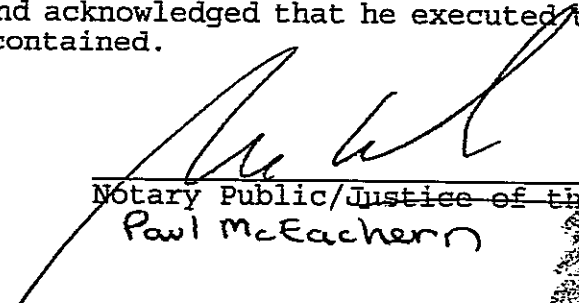
By: Joseph G. Sawtelle
Managing ~~Partner~~ Member
Joseph G. Sawtelle

BK9755 PG083

State of New Hampshire
Rockingham, SS.

October 27, 1999

Personally appeared Joseph G Sawelle as Managing Member of 9 Badger's Island West LLC, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.


Notary Public/Justice of the Peace
Paul McEachern



SCHEDULE A

A certain tract or parcel of land with the buildings thereon situated on Badger's Island, so-called, in Kittery, County of York and State of Maine, bounded and described as follows:

Beginning at a point in the Southerly sideline of a town way called Thorners Lane said point of beginning being N 75° 13' W seventeen and sixty-six (17.66) feet from a concrete hub at an angle point in said way as laid out by Albert Moulton C. E. in 1951; said point of beginning being also on the division line between land conveyed to Ernest F. Bonin by Hugo S. Marconi and land formerly of Marjorie S. Tilton; thence running S 17° 48' W by land formerly of Marjorie S. Tilton seventy-eight (78) feet more or less to a point and land formerly of Abigail Tilton; thence Westerly thirty-three and one-half (33½) feet more or less; thence Southerly seventy (70) feet more or less and Easterly thirty-three and one-half (33½) feet more or less, all by land formerly of Abigail Tilton to an iron pipe at the Westerly sideline of a right-of-way on land formerly of Ebert L. Philpott; thence running S 23° 12' W by said right-of-way fifty-five and twenty hundredths (55.20) feet to an iron pipe and strip of land recently conveyed by said Bonin to said Marconi; thence S 50° 42' W by said strip of land through an iron pipe set on line eighty-eight and twenty-eight hundredths (88.28) feet to a point; thence S 39° 18' W by said strip three and seventy-seven hundredths (3.77) feet to a pipe and other land conveyed by said Bonin to said Marconi by deed recorded in Book 1745, Page 52; thence S 54° 38' W by said other land formerly of Bonin through a stake at mean high water to the low water line of the Piscataqua River; thence Northwesterly by said river to the former right of way of the Atlantic Shore Railway; thence Northeasterly by said railroad right-of-way to a point; thence S 17° 00' E seven and no hundredths (7.00) feet to a stake and the parcel of land conveyed from Marconi to Bonin first mentioned; thence N 50° 00' E by said parcel twenty-two and no hundredths (22.00) feet to the Southerly sideline of Thorner's Lane; thence S 75° 13' E by said land seventy-six and sixty-eight hundredths (76.68) feet to the point of beginning.

Being the same premises conveyed to 9 Badgers Island West, LLC by Joseph G. Sawtelle, Trustee of 136 Little Bay Road Trust by Warranty Deed dated June 10, 1999, and recorded in the York County Registry of Deeds at Book 9516, Page 178.

BK9755 PG085

SCHEDULE B

Allocation of Interest
in Common Area

<u>Unit Designation</u>	<u>Square Feet of Unit</u>	<u>Percentage Interest in Common Area</u>
1	1,782	16.592%
2	1,782	16.592%
3	1,782	16.592%
4	1,782	16.592%
5	1,782	16.592%
6	1,782	16.592%
7 (marina unit)	<u>48</u>	<u>.448%</u>
	10,740	100%

RECEIVED YORK S S.

1999 OCT 29 P 12:59

ATTEST: *Lois M. Cline*
REGISTER OF DEEDS

→ McEachern & Thornhill

3198

17:01

Maine Department of Environmental Services
Southern Maine Regional Office
312 Canco Road
Portland, ME 04103

RE: Maine Department of Environmental Services, Natural Resources Protection Act Permit Application, Kittery Port Authority Application and USACOE Authorization for modification/expansion of an existing tidal docking structure for Langdon's Island Condominium Association, 9 Badgers Island West, Kittery, ME.

This letter is to inform the Maine Department of Environmental Protection (DEP), The Kittery Port Authority (KPA) and the US Army Corp of Engineers (USACOE) in accordance with State Law that our abutter, **Langdon's Island Condominium Association**, has shown us **plans dated May 18, 2023** depicting the proposed tidal docking structure modification/expansion on their property (Tax Map 1, Lot 23) prepared by Ambit Engineering, Inc. We are aware of the proposed tidal docking structure, the proposed structures proximity to our existing tidal docking structure and we have no objection to **Langdon's Island Condominium Association** constructing their dock modification/expansion as presented on the above referenced plans.

In accordance with DEP rules, we hereby sign this letter to indicate our acceptance of the proposed tidal docking structure modification/expansion in close proximity to our tidal docking structure.

Sincerely,



Will Banfield
One Badgers Island West LLC
5 Badgers Island West #1
Kittery, ME 03904
Tax Map 1, Lot 19

By: William J. Banfield II owner 5/20/2023
Printed Name & Title



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

May 26, 2023

File Number: NAE-2023-00345

Ben Porter
Langdon Island West Condominium Association
9 Badgers Island West
Kittery, Maine 03904
Sent by email: langdon.condo@gmail.com

Dear Mr. Porter:

The U.S. Army Corps of Engineers (USACE) has reviewed your application to modify an existing structure by installing a float 34 feet in length and 4 feet in width and two floats each 24 feet in length and 6 feet in width along with associated tackle. This project is located in the Piscataqua River at 9 Badgers Island West, Kittery, Maine. The work is shown on the enclosed plans titled "Langdon Island Condominium" on three sheets dated November 2022 and May 2023.

Based on the information that you have provided, we verify that the activity is authorized under General Permit # 3 of the enclosed October 14, 2020, federal permits known as the Maine General Permits (GPs). The GPs are also available at <https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit>.

Please review the enclosed GPs carefully, in particular the general conditions beginning on page 5, and ensure that you and all personnel performing work authorized by the GPs are fully aware of and comply with its terms and conditions. A copy of the GPs and this verification letter shall be available at the work site as required by General Condition 33.

This authorization expires on October 14, 2025. You must commence or have under contract to commence the work authorized herein by October 14, 2025, and complete the work by October 14, 2026. If not, you must contact this office to determine the need for further authorization and we recommend you contact us *before* the work authorized herein expires. Please contact us immediately if you change the plans or construction methods for work within our jurisdiction as we must approve any changes before you undertake them. Performing work within our jurisdiction that is not specifically authorized by this determination or failing to comply with the special condition(s) provided above or all of the terms and conditions of the GPs may subject you to the enforcement provisions of our regulations.

This authorization does not obviate the need to obtain other federal, state, or local authorizations required by law. Applicants are responsible for applying for and obtaining any other approvals.

We continually strive to improve our customer service. To better serve you, we would appreciate your completing our Customer Service Survey located at <https://regulatory.ops.usace.army.mil/customer-service-survey/>

Please contact Jana Jacobson of my staff at (207) 233-2117 or Jana.L.Jacobson@usace.army.mil if you have any questions.

Sincerely,

SHAWN B.
MAHANEY

Digitally signed by
SHAWN B.
MAHANEY
Date: 2023.05.31
07:44:00 -04'00'

For: Peter D. Olmstead
Chief, Maine Section
Regulatory Division

cc:

Steven Riker, Ambit Engineering; sdr@ambitengineering.com



**US Army Corps
of Engineers**®
New England District

(Minimum Notice: Permittee must sign and return notification
within one month of the completion of work.)

COMPLIANCE CERTIFICATION FORM

Corps of Engineers Permit No: NAE-2023-00345

Name of Permittee: Ben Porter, Langdon Island West Condominium Association

Permit Issuance Date: May 26, 2023

Please sign this certification and return it to the following address upon completion of the activity and any mitigation required by the permit. You must submit this after the mitigation is complete, but not the mitigation monitoring, which requires separate submittals.

```

*****
* MAIL TO: U.S. Army Corps of Engineers, New England District      *
*           Policy & Technical Support Branch                    *
*           Regulatory Division                                  *
*           696 Virginia Road                                    *
*           Concord, Massachusetts 01742-2751                   *
*****

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Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the above referenced permit, and any required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Printed Name

Date of Work Completion

(_____) _____
Telephone Number



**US Army Corps
of Engineers**®
New England District

**GENERAL PERMIT
WORK-START NOTIFICATION FORM**
(Minimum Notice: Two weeks before work begins)

EMAIL TO: Jana.L.Jacobson@usace.army.mil

-or-

MAIL TO: Jana Jacobson
U.S. Army Corps of Engineers, New England District
Maine Project Office
442 Civic Center Drive, Suite 350
Augusta, Maine 04330

Corps of Engineers Permits (No. NAE-2023-00345) were issued to Langdon Island West Condominium Association. The permits authorized the permittee to modify an existing structure by installing a float 34 feet in length and 4 feet in width and two floats each 24 feet in length and 6 feet in width along with associated tackle.

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: _____

Business Address: _____

Telephone: (____) _____

Proposed Work Dates: Start: _____

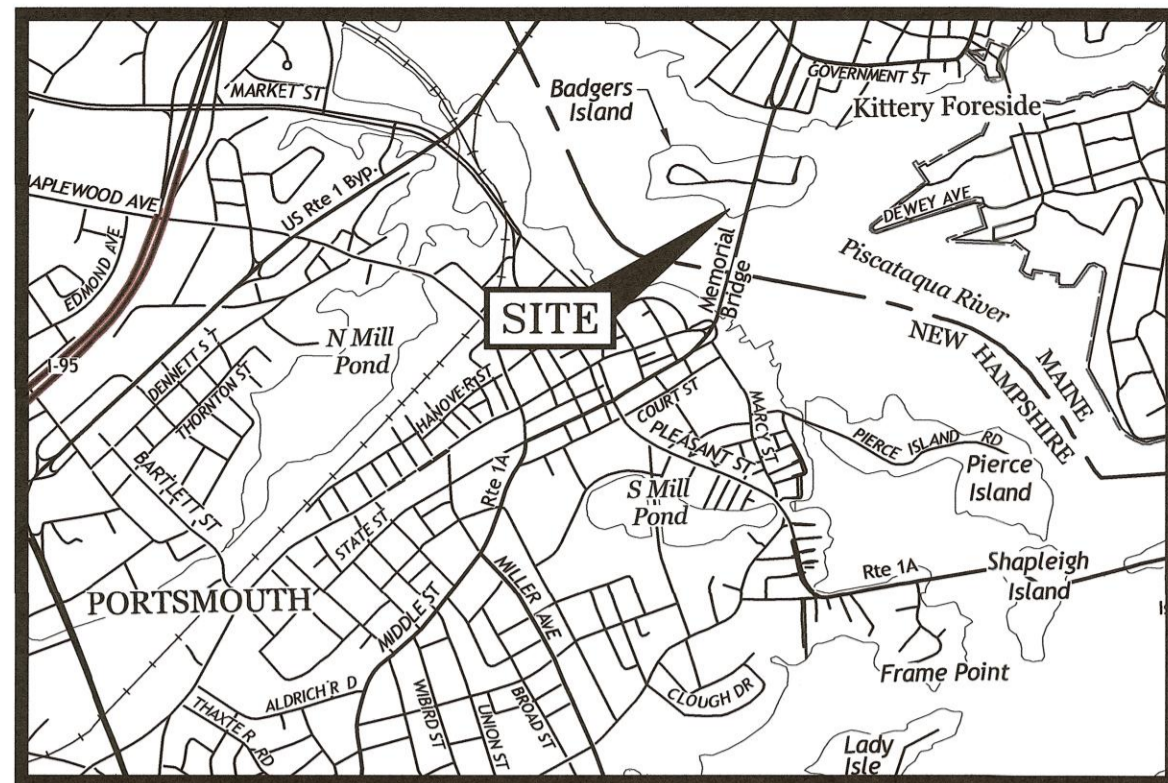
Finish: _____

PERMITTEE'S SIGNATURE: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

FOR USE BY THE CORPS OF ENGINEERS

Project Manager: JACOBSON Submittals Required: No
Inspection Recommendation: Routine Maine General Permits compliance



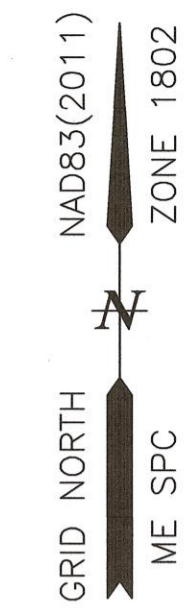
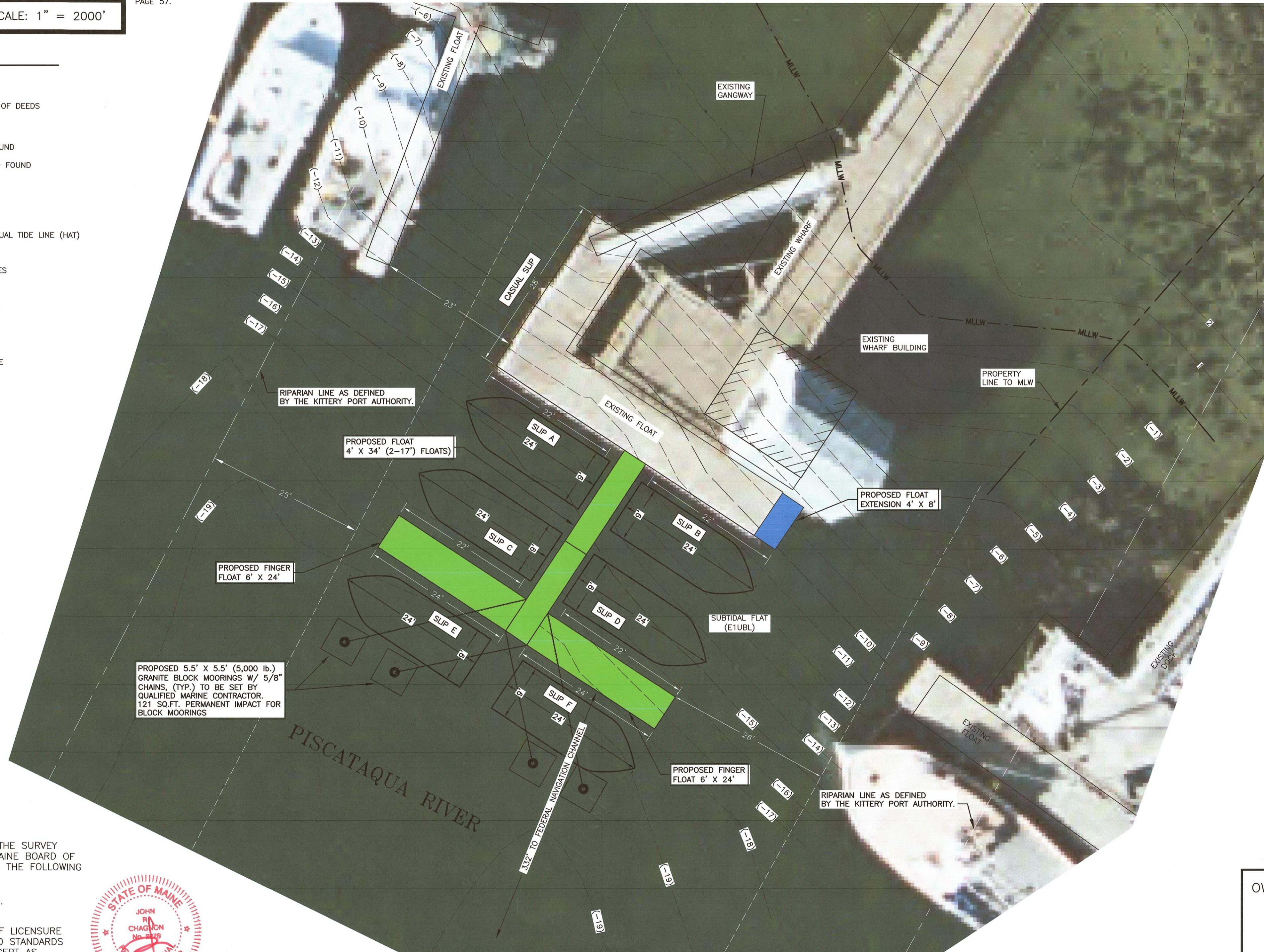
LOCATION MAP SCALE: 1" = 2000'

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- YCRD YORK COUNTY REGISTRY OF DEEDS
- (11/27) MAP 11 / LOT 21
- IRON ROD/IRON PIPE FOUND
- STONE/CONCRETE BOUND FOUND
- BOUNDARY
- - - BUILDING SETBACK
- MHW MEAN HIGH WATER LINE
- MLW MEAN LOW WATER LINE
- HAT MAINE DEP HIGHEST ANNUAL TIDE LINE (HAT)
- - - D - - - STORM DRAIN LINE
- - - OVERHEAD ELECTRIC/WIRES
- 100 --- 97x3 --- CONTOUR
- SPOT ELEVATION
- EDGE OF PAVEMENT (EP)
- UTILITY POLE (w/ GUY)
- ELECTRIC METER
- PVC POLYVINYL CHLORIDE PIPE
- EL ELEVATION
- EP EDGE OF PAVEMENT
- INV. INVERT
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- FES FLARED END SECTION

PLAN REFERENCES:

- 1) PLAN OF LAND FOR JOSEPHINE O. MARCONI, U.S. ROUTE ONE KITTEERY, MAINE, SCALE 1 IN. = 30 FT., DATED FEB. 1997, PREPARED BY FRANK EMERY, JR., NOT RECORDED.
- 2) SITE PLAN OF LANGDON'S ISLAND CONDOMINIUM FOR 9 BADGERS ISLAND WEST L.L.C., PO BOX 368 NEW CASTLE, NH 03854 AT 9 BADGERS ISLAND WEST KITTEERY, MAINE OCTOBER 26, 1999. PREPARED BY DOUCET SURVEY, INC DATED AUGUST 3, 1999. Y.C.R.D. CONDOMINIUM FILE 499 PAGE 1.
- 3) FINAL SUBDIVISION PLAN 9 BADGER'S ISLAND WEST KITTEERY, MAINE FOR LANGDON LLC C/O JOSEPH SAWTELLE PO BOX 368, NEW CASTLE, NH 03854 PREPARED BY ATTAR ENGINEERING, INC. DATED 9/16/98. Y.C.R.D. PLAN BOOK 255 PAGE 42.
- 4) PLAN OF LAND ON BADGERS ISLAND KITTEERY, MAINE FOR THE PORTSMOUTH NAVIGATION CO. INC. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. DATED JANUARY 1968. Y.C.R.D. PLAN BOOK 47 PAGE 3.
- 5) PLAN OF LAND ON BADGERS ISLAND KITTEERY, MAINE TO BE CONVEYED TO MEXICAN PETROLEUM CORP., SCALE 1 IN. = 20 FT., DATED JUNE 1924, PREPARED BY A.C. PETERS CIVIL ENGINEER, YCRD PLAN BOOK 9 PAGE 61.
- 6) PLAN SHOWING PORTION OF LAND OF ERNEST F. BONIN TO BE CONVEYED TO HUGO S. MARCONI ON BADGERS ISLAND KITTEERY, MAINE, SCALE 1" = 20', DATED 9/10/79, PREPARED BY MOULTON ENGINEERING, CO., YCRD PLAN BOOK 79 PAGE 32.
- 7) LAND IN KITTEERY, MAINE FERNANDO W. HARTFORD TO ELROY D. WITHAM, SCALE: 1 IN. = 20 FT., DATED: AUG. 1925, PREPARED BY JOHN W. DURGIN CIVIL ENGINEER, YCRD PLAN BOOK 10 PAGE 43.
- 8) STANDARD BOUNDARY SURVEY SEWER EASEMENT BADGERS ISLAND SEWER, CONTRACT NO. 88-1, KITTEERY, MAINE, MADE FOR SEA CONSULTANTS, INC., SCALE 1 INCH = 20 FEET, DATED: OCTOBER 15, 1988, PREPARED BY TITCOMB ASSOCIATES, YCRD PLAN BOOK 189 PAGE 27.
- 9) STATE OF MAINE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, STATE HIGHWAY "I" KITTEERY, YORK COUNTY, FEDERAL AID PROJECT NO. F-01-1(63) & BH-01-1(62), SCALE 1 INCH = 25 FEET, DATED FEBRUARY 1985, YCRD PLAN BOOK 155 PAGE 57.



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
300 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- 1) PARCEL IS SHOWN ON THE TOWN OF KITTEERY ASSESSOR'S MAP 1 AS LOT 23.
- 2) OWNERS OF RECORD:
LANGDON ISLAND WEST CONDOMINIUM ASSOCIATION
9 BADGERS ISLAND WEST
KITTEERY, ME 03904
9755/55
- 3) A PORTION OF THE PARCEL IS LOCATED IN A FLOOD HAZARD ZONE A2 (EL. 9) AS SHOWN ON FIRM PANEL 230171 0008 D. DATED JULY 3, 1986.
- 4) EXISTING LOT AREA:
30,413 S.F. ± (TO MHW)
0.6982 ACRES ± (TO MHW)
- 5) PARCEL IS LOCATED IN THE MU-BI (MIXED USE - BADGER ISLAND) ZONING DISTRICT & ALSO IN THE OZ-CFMU (COMMERCIAL FISHERIES/MARITIME USES) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS: (MU-BI) DISTRICT.
MIN. LOT AREA: 6,000 S.F.
FRONTAGE: 50 FEET
SETBACKS:
FRONT: 5 FEET
SIDE/REAR: 10 FEET

MAXIMUM BUILDING HEIGHT: 40 FEET
MINIMUM OPEN SPACE: 40%
SEE ZONING REGULATIONS FOR OZ-CFMU DISTRICT.
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED DOCK FLOAT STRUCTURES ON ASSESSOR'S MAP 1 LOT 23 IN THE TOWN OF KITTEERY
- 8) RIPARIAN LINES DETERMINED BETWEEN LOTS 19, 23 & 24 AS DEFINED BY THE TOWN OF KITTEERY, MAINE PORT AUTHORITY RULES AND REGULATIONS, AMENDED 2 JANUARY 2020.
- 9) VERTICAL DATUM IS MEAN LOWER LOW WATER (MLLW). MLLW IS REFERENCED TO NOAA STATION 8419870 SEAVEY ISLAND, PORTSMOUTH HARBOR, ME. MLLW BEING 4.62 FEET LOWER THAN 0.0 NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
- 10) HIGHEST ANNUAL TIDE SHOWN AT ELEVATION 10.2 PER LOCATION PORTSMOUTH IN MAINE DEP HIGHEST ANNUAL TIDE (HAT) LEVELS FOR YEAR 2018.

LANGDON ISLAND CONDOMINIUM
9 BADGERS ISLAND WEST KITTEERY, ME

NO.	DESCRIPTION	DATE
1	ADD SLIP DIMENSIONS & LABELS	5/28/23
0	ISSUED FOR COMMENT	5/24/23

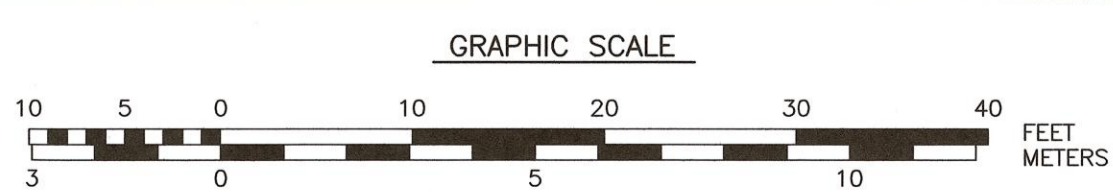
STATE OF MAINE
JOHN R. CHAGNON
No. 6950
LICENSED PROFESSIONAL ENGINEER
5-28-23

SCALE: 1" = 10' MAY 2023

ME DEP PERMIT PLAN-2022 AERIAL **C3**

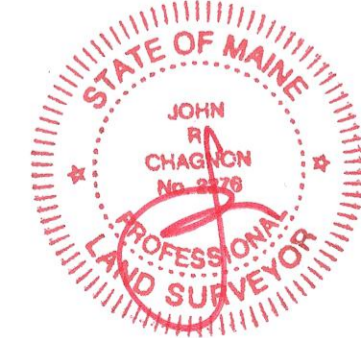
OWNER & APPLICANT:
LANGDON ISLAND CONDOMINIUM ASSOCIATION
BEN PORTER, PRESIDENT
9 BADGERS ISLAND WEST
KITTEERY, ME ZIP 03904

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801



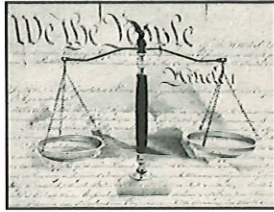
PURSUANT TO CHAPTER 90 PARTS 1 AND 2 OF THE SURVEY STANDARDS OF PRACTICE AS ADOPTED BY THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS, THE FOLLOWING EXCEPTIONS TO PART 2 ARE NOTED:
A) NO SURVEY REPORT HAS BEEN PREPARED.
B) NO LAND DESCRIPTION HAS BEEN PREPARED.
C) MONUMENTS HAVE NOT BEEN SET.

THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CHAPTER 90 STANDARDS OF PRACTICE, EFFECTIVE DATE APRIL 1, 2001 EXCEPT AS NOTED ON THIS PLAN.



JOHN R. CHAGNON, PLS #2276
DATE 5-28-23

Patrick S. Bedard
psbedlaw@bedardbobrow.com



BEDARD & BOBROW, PC
Practicing Law in ME, NH & MA
9 Bradstreet Lane P.O. Box 366
Eliot, Maine 03903
Tel. 207-439-4502 Fax 207-439-6172
www.bedardbobrow.com

David J. Bobrow
djblaw@bedardbobrow.com

June 19, 2023

Charles Patten, Chairman
Kittery Port Authority
200 Rogers Road
Kittery, ME 03904

Re: Application of Langdon Island Condominium Association
REGULAR MAIL-10 COPIES

Dear Chairman Patten:

I represent Donna McGarry, owner of 11 Badger's Island West, Kittery, Maine. I am writing to you regarding Langdon's Island Condominium Float Expansion application scheduled to be heard on Thursday, July 5, 2023. This is Donna McGarry's response to the proposal.

First, I attach my previous submission to the Kittery Port Authority on March 28, 2023 which was not considered because the application had not yet been accepted. However, I am now asking this be considered. It outlines the fact that this existing dock expansion on the Langdon Island Condominium (hereafter Langdon Island) property, which is too close to Donna McGarry's permitted dock, was never permitted by the Kittery Port Authority. The previous owner of Langdon Island's at some point expanded the dock closer to Donna McGarry's dock and did not receive a permit to do so. This illegal expansion has caused problems for Donna McGarry because when any boat is placed on the right side of the dock, nearer Donna's dock, it blocks access to several of her slips.

Langdon Island has made statements that Donna McGarry wants it to tear out its non-permitted dock. This is untrue and she has never said that, either personally or through her attorney. She can continue to access her dock and floats with the expansion there so long as boats are not parked on the right side of Langdon Island's dock expansion. Donna cannot access her dock and floats if there is a boat of any size placed there. Langdon Island has suggested that it would man any boat parked there so the boat could be moved immediately if Donna McGarry needed it to be moved. This is not acceptable because it could cause problems for Donna and anyone else using her dock and slip and they should not be at the mercy of a boat parked there, hoping it is manned and someone can immediately move it. No boats should be parked on the right side of Langdon Island's dock. Also, the six boats being parked on the slips proposed to be constructed should not be longer than 25 feet so they do not come out into the water and obstruct Donna's passage to her dock and floats. Donna McGarry does not oppose this proposal by

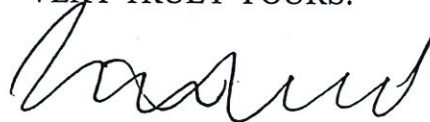
Langdon Island so long as two conditions are placed on the plan or in the final approval and the following is done:

1. The current float on the right side of the Langdon Island dock and float, which was illegally expanded, can remain but cannot ever be used for access by a boat or to park a boat. To make certain this happens a railing should be built along this side and any cleats be removed so a boat cannot be tied up on this side; and
2. The size of any boat on the next floats and in these slips can be no longer than 25 feet overall length, which includes the engine. This is to prevent the boats from jutting out into the traveled way on the river which would obstruct Donna from using her dock and float.

With these conditions made part of the approval and/or noted on the plan Donna McGarry does not oppose Langdon Island's dock and float application. If this is not done Donna McGarry opposes the approval for the reasons set forth in this letter and in the detailed response sent to the Kittery Port Authority on March 28, 2023.

If you have any questions, please do not hesitate to contact me.

VERY TRULY YOURS:



PATRICK S. BEDARD

Cc: Donna McGarry
Steve Riker, Ambit Engineering

DONNA MCGARRY-MORRISON'S LOBSTER-OPPOSITION TO
LANGDON ISLAND CONDOMINIUM APPLICATION BEING
ACCEPTED

I represent Donna McGarry, owner of Morrison's Lobster at 11 Badgers Island West, Kittery, Maine, and abutting 9 Badgers Island West. She opposes the Kittery Port Authority accepting the application as her existing dock is closer than 50 feet to the dock at 9 Badgers Island West. A previous owner of 9 Badgers Island West illegally expanded the dock by placing a walkway and floats next to the existing dock. This unpermitted expansion was closer than 50 feet to Donna McGarry's existing dock and floats. This unpermitted expansion was also not allowed by section 4.7.6 of the Kittery Port Authority rules and regulations.

The history of permits for docks for both parcels will show what previous approvals were granted. First, 9 Badgers Island West received approval in 1980 from the Kittery Port Authority, and other governing bodies, for the construction of a dock on its property. I have enclosed these documents. You can see the existing Morrison dock to the left in the drawing. The only other approval 9 Badgers Island West received was an approval to replace an existing dock on the property dated September 12, 2000; however, this replacement showed an existing walkway and floats that were never approved in 1980, or at any time thereafter. The Town's records do not show any approval for this walkway and additional floats. The unpermitted expansion appears to be a walkway 3 feet wide by 36 feet in length, a float on the side of the permitted dock 27 feet length and approximately 8 feet wide, and a float in front of the permitted dock approximately 40 feet long and 8 feet in width. This unpermitted expansion is apparent by comparing the existing conditions plan in 2000 with what was permitted in 1980. Thus, the additional walkway and floats are not permitted and should be removed.

In 1992 the McGarrys, Ted (Donna's husband who is now deceased) and Donna, received approval for a dock and float expansion at 11 Badgers Island West. After this approval there has been no further expansion of the McGarry's dock and it remains as it was after being built out after the 1992 approvals.

It appears that the owner of 9 Badgers Island West at some point closer to the year 2000 added a gangway and extension to its dock which came closer than 50 feet to Donna McGarry's existing dock and floats. The best evidence of this is a photo of Badger's Island provided by the Maine Geological Survey on April 6, 1999. It shows the McGarry dock existing as permitted in 1992, but it shows no expansion of the dock at 9 Badgers Island, Kittery, Maine (if you look at the blown up version of this photo it does show a slight lip on the right side which could have been used for a walkway, but does not show the floats or walkway existing at that time.) Donna McGarry does not recall a walkway or floats being used by 9 Baggers Island West at any time after their expansion of the dock in 1992 (or before) until around 2000 when the dock was rebuilt and expanded. If the walkway and floats were there after 1992 and used they would have obstructed Donna using boats to access her dock and floats. A prior renter at 9 Badgers Island West, Judi Clark, also does not recall any walkway or floats at 9 Badgers Island West from 1981 through 1994. This unpermitted expansion has caused problems for Donna McGarry since it was constructed and used.

As you can see in the attached sketch done by architect Brud Weger, overlaying the Langdon Island Condominium plan, it shows what happens when an 11 foot wide boat is parked on Donna McGarry's dock and Langdon Island Condominium decides to park a 10 foot wide boat to the side of its unpermitted 8 foot addition. If that happens there is not enough room for another boat parked at Donna McGarry's dock to get through and between the two boats. Thus, by the owner

of 9 Badgers Island West building (without a permit) too close to the McGarry dock it has impacted navigation and use of her dock.

Donna McGarry is requesting the Kittery Port Authority not accept this application by Langdon Island Condominium Association until it removes the floats and the walkway so that the property is consistent with the 1980 permit. This would mean taking out the floats on the side of the dock and in the front of the dock, as well as the walkway to the floats. The Kittery Port Authority has the power to request this by virtue of its Rules and Regulations, paragraph 6.1, because this section provides that if anyone violates the rules and regulations this may result in the loss of facility use and mooring privileges. This means that the Langdon Island Condominium Association dock and floats should not be used, nor should this application proceed to be scheduled for a public hearing, until the Langdon Island Condominium Association comes into compliance with its permitted use for the property.

I enclose the following documents:

1. 1980 permits for 9 Badgers Island West property (Vincent Prien);
2. 1992 permits for 11 Badgers Island West (Ted and Donna McGarry);
3. 2000 approval to replace existing docks and floats at 9 Badgers Island West (Pickering Marine);
4. April 6, 1999 photo provide by Maine Geological Survey, one regular size and the other blown up to show 9 and 11 Badgers Island West;
5. February 27, 2023 e-mail from Judi Clark regarding her living at 9 Badgers Island West from 1981 through 1994;
6. Letter from Attorney Patrick S. Bedard to Ben Porter, President of Langdon's Island Condominium Association dated October 26, 2022 requesting permits for the expansion

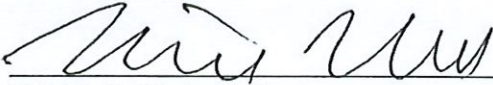
of the floats and walkway (and Mr. Porter provided by e-mail the 2000 approval which has been copied in number 3 here, but no permits for the expansion);

7. Sketch by Architect Brud Weger showing the difficulty for Donna McGarry accessing her dock due to the unpermitted float expansion.

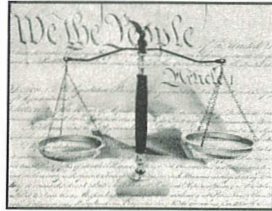
I will be participating by zoom at the meeting on April 6, 2023, and Donna McGarry will be present in person.

RESPECTFULLY SUBMITTED:
DONNA MCGARRY,
By Her Attorney
PATRICK S. BEDARD, ME Bar No. 3813
BEDARD & BOBROW, PC.
P.O. Box 366
9 Bradstreet Lane
Eliot, ME 03903
207-439-4502

Date: 3/29/23


Patrick S. Bedard, Esq.

Patrick S. Bedard
psbedlaw@bedardbobrow.com



BEDARD & BOBROW, PC
Practicing Law in ME, NH & MA
9 Bradstreet Lane P.O. Box 366
Eliot, Maine 03903
Tel. 207-439-4502 Fax 207-439-6172
www.bedardbobrow.com

David J. Bobrow
djblaw@bedardbobrow.com

March 28, 2023

Charles Patten, Chairman
Kittery Port Authority
200 Rogers Road
Kittery, ME 03904

Re: Application of Langdon Island Condominium Association
HAND DELIVERED-10 COPIES

Dear Chairman Patten:

I represent Donna McGarry, an abutter to the proposed dock expansion at 9 Badgers Island West, Langdon Island Condominium Association. I was away and did not participate in the first meeting in March, 2023 considering whether to accept this application. I will be attending by zoom for the April 6, 2023 meeting. I believe Donna McGarry will be in attendance at the meeting on April 6, 2023 in person. I listened to the recording of the first meeting and wanted to provide what information I had that would hopefully be of assistance in understand what permits were granted for both Donna's property and the Langdon Island Condominium Association property. Thus, I have attached a brief argument regarding the unpermitted expansion which is obstructing Donna's access to her dock, and relevant documents regarding this, including permits, letters and a photograph from 1999. I have provided a total of 10 copies of this submission and have also provided one copy to the applicant's representative, Steve Riker.

I look forward to attending the meeting on April 6, 2023.

VERY TRULY YOURS:

A handwritten signature in blue ink, appearing to read "Patrick S. Bedard". The signature is fluid and cursive.

PATRICK S. BEDARD

Cc: Client

DONNA MCGARRY-MORRISON'S LOBSTER-OPPOSITION TO
LANGDON ISLAND CONDOMINIUM APPLICATION BEING
ACCEPTED

I represent Donna McGarry, owner of Morrison's Lobster at 11 Badgers Island West, Kittery, Maine, and abutting 9 Badgers Island West. She opposes the Kittery Port Authority accepting the application as her existing dock is closer than 50 feet to the dock at 9 Badgers Island West. A previous owner of 9 Badgers Island West illegally expanded the dock by placing a walkway and floats next to the existing dock. This unpermitted expansion was closer than 50 feet to Donna McGarry's existing dock and floats. This unpermitted expansion was also not allowed by section 4.7.6 of the Kittery Port Authority rules and regulations.

The history of permits for docks for both parcels will show what previous approvals were granted. First, 9 Badgers Island West received approval in 1980 from the Kittery Port Authority, and other governing bodies, for the construction of a dock on its property. I have enclosed these documents. You can see the existing Morrison dock to the left in the drawing. The only other approval 9 Badgers Island West received was an approval to replace an existing dock on the property dated September 12, 2000; however, this replacement showed an existing walkway and floats that were never approved in 1980, or at any time thereafter. The Town's records do not show any approval for this walkway and additional floats. The unpermitted expansion appears to be a walkway 3 feet wide by 36 feet in length, a float on the side of the permitted dock 27 feet length and approximately 8 feet wide, and a float in front of the permitted dock approximately 40 feet long and 8 feet in width. This unpermitted expansion is apparent by comparing the existing conditions plan in 2000 with what was permitted in 1980. Thus, the additional walkway and floats are not permitted and should be removed.

In 1992 the McGarrys, Ted (Donna's husband who is now deceased) and Donna, received approval for a dock and float expansion at 11 Badgers Island West. After this approval there has been no further expansion of the McGarry's dock and it remains as it was after being built out after the 1992 approvals.

It appears that the owner of 9 Badgers Island West at some point closer to the year 2000 added a gangway and extension to its dock which came closer than 50 feet to Donna McGarry's existing dock and floats. The best evidence of this is a photo of Badger's Island provided by the Maine Geological Survey on April 6, 1999. It shows the McGarry dock existing as permitted in 1992, but it shows no expansion of the dock at 9 Badgers Island, Kittery, Maine (if you look at the blown up version of this photo it does show a slight lip on the right side which could have been used for a walkway, but does not show the floats or walkway existing at that time.) Donna McGarry does not recall a walkway or floats being used by 9 Baggers Island West at any time after their expansion of the dock in 1992 (or before) until around 2000 when the dock was re-built and expanded. If the walkway and floats were there after 1992 and used they would have obstructed Donna using boats to access her dock and floats. A prior renter at 9 Badgers Island West, Judi Clark, also does not recall any walkway or floats at 9 Badgers Island West from 1981 through 1994. This unpermitted expansion has caused problems for Donna McGarry since it was constructed and used.

As you can see in the attached sketch done by architect Brud Weger, overlaying the Langdon Island Condominium plan, it shows what happens when an 11 foot wide boat is parked on Donna McGarry's dock and Langdon Island Condominium decides to park a 10 foot wide boat to the side of its unpermitted 8 foot addition. If that happens there is not enough room for another boat parked at Donna McGarry's dock to get through and between the two boats. Thus, by the owner

of 9 Badgers Island West building (without a permit) too close to the McGarry dock it has impacted navigation and use of her dock.

Donna McGarry is requesting the Kittery Port Authority not accept this application by Langdon Island Condominium Association until it removes the floats and the walkway so that the property is consistent with the 1980 permit. This would mean taking out the floats on the side of the dock and in the front of the dock, as well as the walkway to the floats. The Kittery Port Authority has the power to request this by virtue of its Rules and Regulations, paragraph 6.1, because this section provides that if anyone violates the rules and regulations this may result in the loss of facility use and mooring privileges. This means that the Langdon Island Condominium Association dock and floats should not be used, nor should this application proceed to be scheduled for a public hearing, until the Langdon Island Condominium Association comes into compliance with its permitted use for the property.

I enclose the following documents:

1. 1980 permits for 9 Badgers Island West property (Vincent Prien);
2. 1992 permits for 11 Badgers Island West (Ted and Donna McGarry);
3. 2000 approval to replace existing docks and floats at 9 Badgers Island West (Pickering Marine);
4. April 6, 1999 photo provide by Maine Geological Survey, one regular size and the other blown up to show 9 and 11 Badgers Island West;
5. February 27, 2023 e-mail from Judi Clark regarding her living at 9 Badgers Island West from 1981 through 1994;
6. Letter from Attorney Patrick S. Bedard to Ben Porter, President of Langdon's Island Condominium Association dated October 26, 2022 requesting permits for the expansion

of the floats and walkway (and Mr. Porter provided by e-mail the 2000 approval which has been copied in number 3 here, but no permits for the expansion);

7. Sketch by Architect Brud Weger showing the difficulty for Donna McGarry accessing her dock due to the unpermitted float expansion.

I will be participating by zoom at the meeting on April 6, 2023, and Donna McGarry will be present in person.

RESPECTFULLY SUBMITTED:
DONNA MCGARRY,
By Her Attorney
PATRICK S. BEDARD, ME Bar No. 3813
BEDARD & BOBROW, PC.
P.O. Box 366
9 Bradstreet Lane
Eliot, ME 03903
207-439-4502

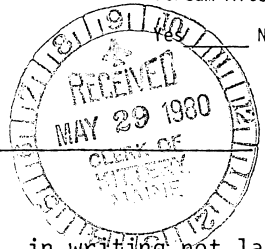
Date: 3/29/23



Patrick S. Bedard, Esq.

McGarry KPA Exhibit 1

MAR 1 Lot 23



Stream Alterations

No.

TO: Department of Environmental Protection

FROM: Kittery Municipal Office

TYPE OF APPLICATION: Wetlands

Please use this form to return your comments, if any, to this office, in writing not later than June 11. Otherwise, we will assume that you have no objections to this project. Questions concerning this project should be directed to Don Witherill at 289-2111.

PROJECT

APPLICANT

NUMBER: 03 - 6652

NAME: Vincent A. Prien

NAME: Pile Pier

CONTACT PERSON: (603) 964-5923

LOCATION: Kittery

After a thorough review of the above project, as presented to us, and consideration of our agency's standards, programs and responsibilities, the following comments are submitted to the Department of Environmental Protection:

1. This agency has no objections to the project as proposed. _____
2. The opinion of this agency is the proposed project warrants a Public Hearing and offers the following comments as a basis for such hearing:
3. This agency has objections to the project as proposed and offers the following comments as a basis for the objections:

(Comments must be signed and dated in order to be accepted by this Department.)
(If additional space is needed, please attach another sheet.)

PROJECT SUMMARY - WETLANDS ACT & CERTIFICATION

TO BE FILLED IN BY DEP

Applicant: Vincent A. Prien

City/Town: Kittery County: York

Name of Project: Pile Pier

Project No.: 03-6652-31130

1. Description of Project: 14' x 160' wood + Pile Private Pier on the Piscataqua River

2. Attach copy of deed, lease, purchase agreement, or other legal document establishing title, right or interest of applicant in the site.

3. Length of shoreline on the coastal wetland owned or controlled by the applicant.

140' of shoreline

4. Indicate nature of shoreline and tidal area (grassy, mud, rock, etc.)

Ledge + mud

5. Check below any other permits required for the project. Indicate with an asterisk (*) those permits already obtained.

U.S. Army Corps of Engineers (Tidal Waters)

Waste Discharge (DEP)

Other (Explain) Kittery Port authority and Kittery Planning Board

6. Actual physical dimensions of project:

Length (Out into wetland): 160'

Width (Along shore): 14'

Height: 2' above High water mark

7. Description of present use of the wetland: NONE, on said Property But adjoining Properties have Piers

8. Description of present use of the adjacent wetland: Recreating Lots # 24, 21
Both have Private Boat Docking facilities.
9. List power equipment to be used in construction of the project: Chain saw,
Pump Drills, Pile driver.
10. Submit a scale drawing of the coastal wetland to be affected by the project, which shows the project in detail, the landowner's property boundary lines, the *low-water mark* and *high-water mark*. For your convenience, sample sketches and blank graph paper are attached. Applicants may submit larger drawings or blueprints, but if they exceed 8½" X 11" eleven copies are required.
11. State, in detail, the measures you propose to take to protect the surrounding area from the adverse affects of your project: _____

This is Private Dock - there is no need for waste
disposed -

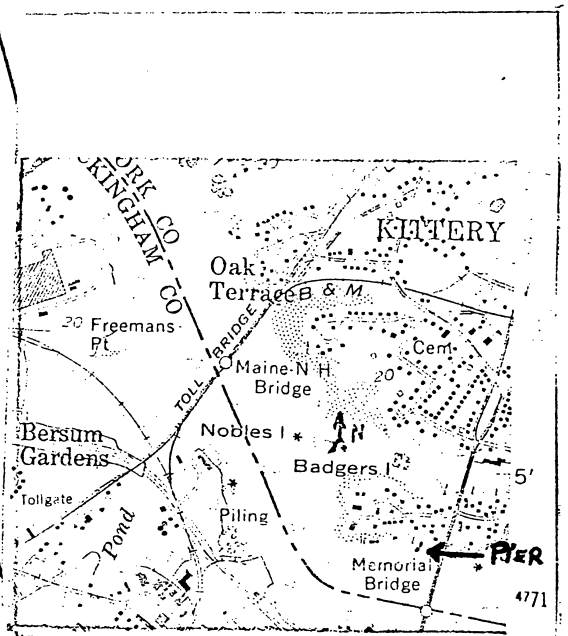
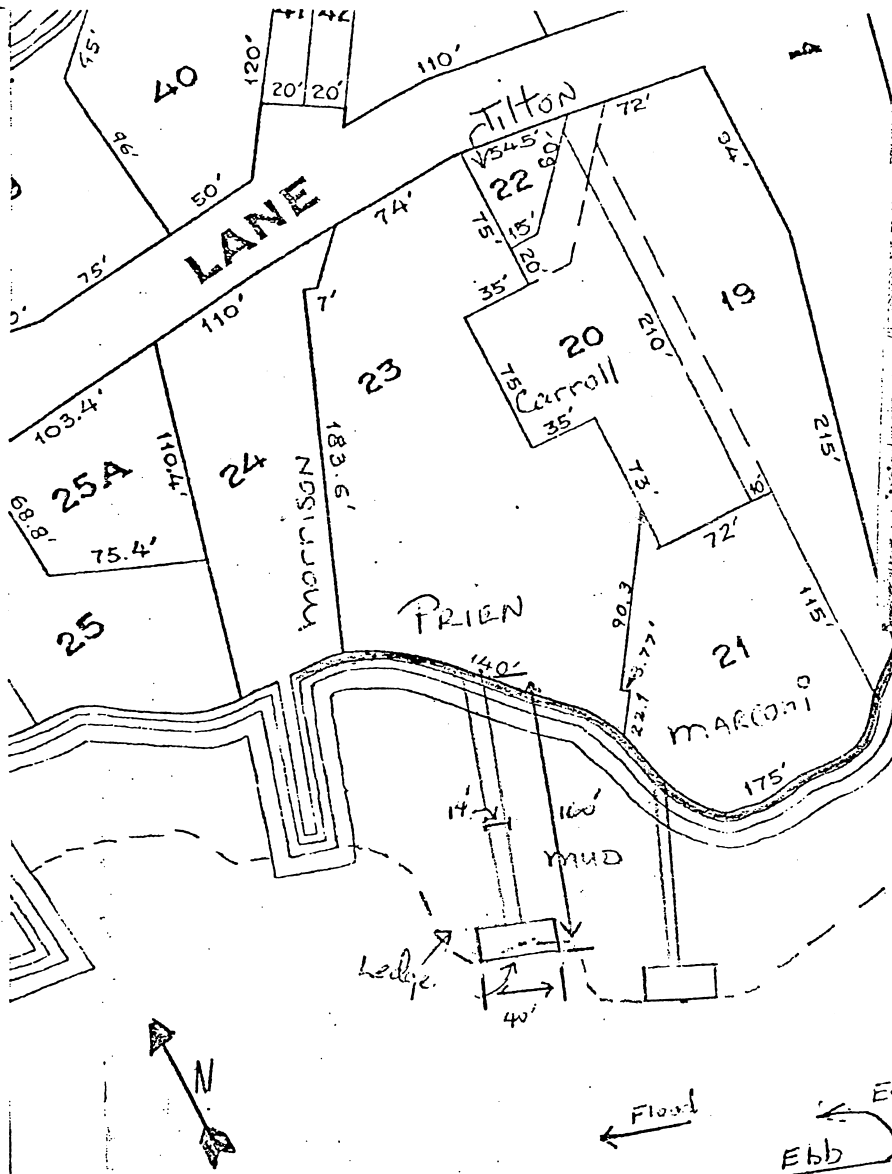
12. If this project is part of a larger project describe below:

13. If dredging or filling indicate number of cubic yards: _____
14. Indicate location for deposition of dredged material: _____

15. Detailed directions for finding the site. (Include sketch map.)
Take Route 1 into Badgers Is. across River from
Ports. N.H., turn left onto Thomers lane, its the
third House on left, Big yellow, 2 chimney Colonial Home.

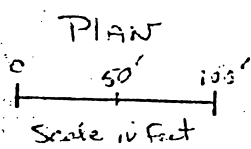
16. The applicant shall set forth below the names and addresses of the owners of *abutting* property, by signing this application the applicant certifies that he has provided each with a copy of the notice similar in form to that which is attached to this application.

NAME	ADDRESS
<u>Hugo Marconi</u>	<u>Badgers Is. Kittery, Maine</u>
<u>Sylvester Carroll</u>	<u>55 Whipple Rd. Kittery, ME.</u>
<u>Mrs. Marjorie Tilton</u>	<u>346 Pleasant St. Ports. N.H.</u>
<u>Martin Morrison</u>	<u>82 Badgers Is. Kittery</u>
_____	_____



Portsmouth Quasi
 New Hampshire - Maine
 7.5 min Series Topo
 U.S.G.S.
 Scale 1-24,000

Purpose: Private use for Small Craft
 Adjacent Property Owners:
 ① Lot 21 Hugo marconi
 ② Lot 20 Sylvester Carroll
 ③ Lot 22 marjorie Tilton
 ④ Lot 24 martin marrison

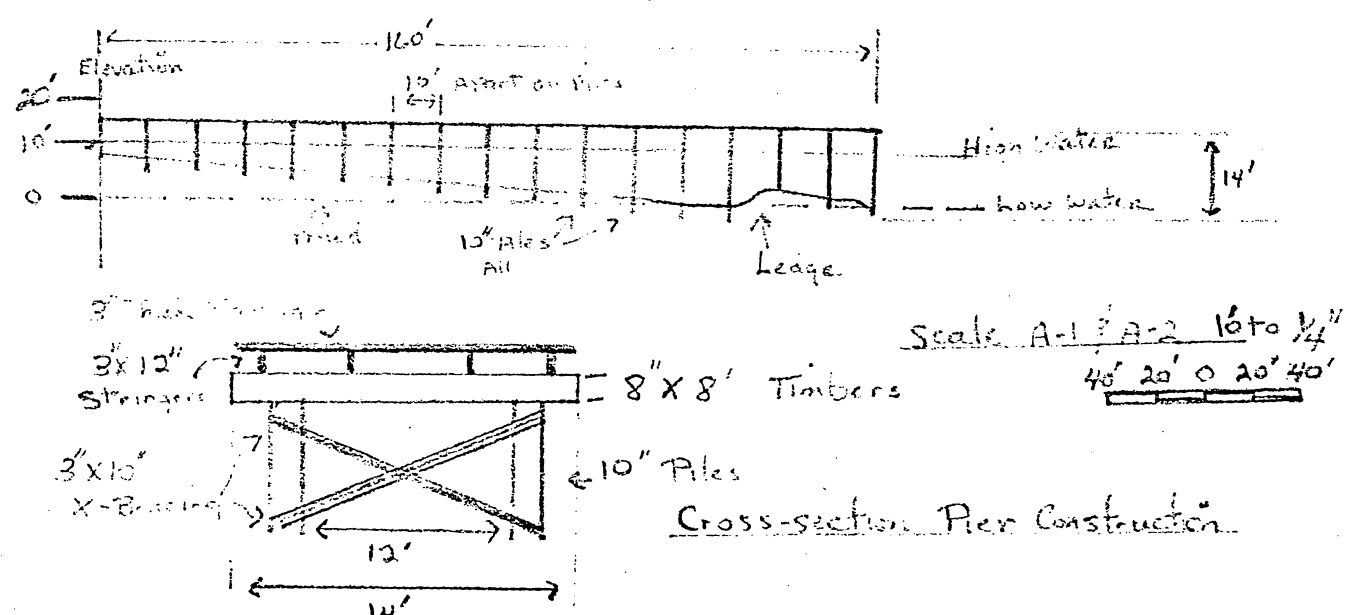
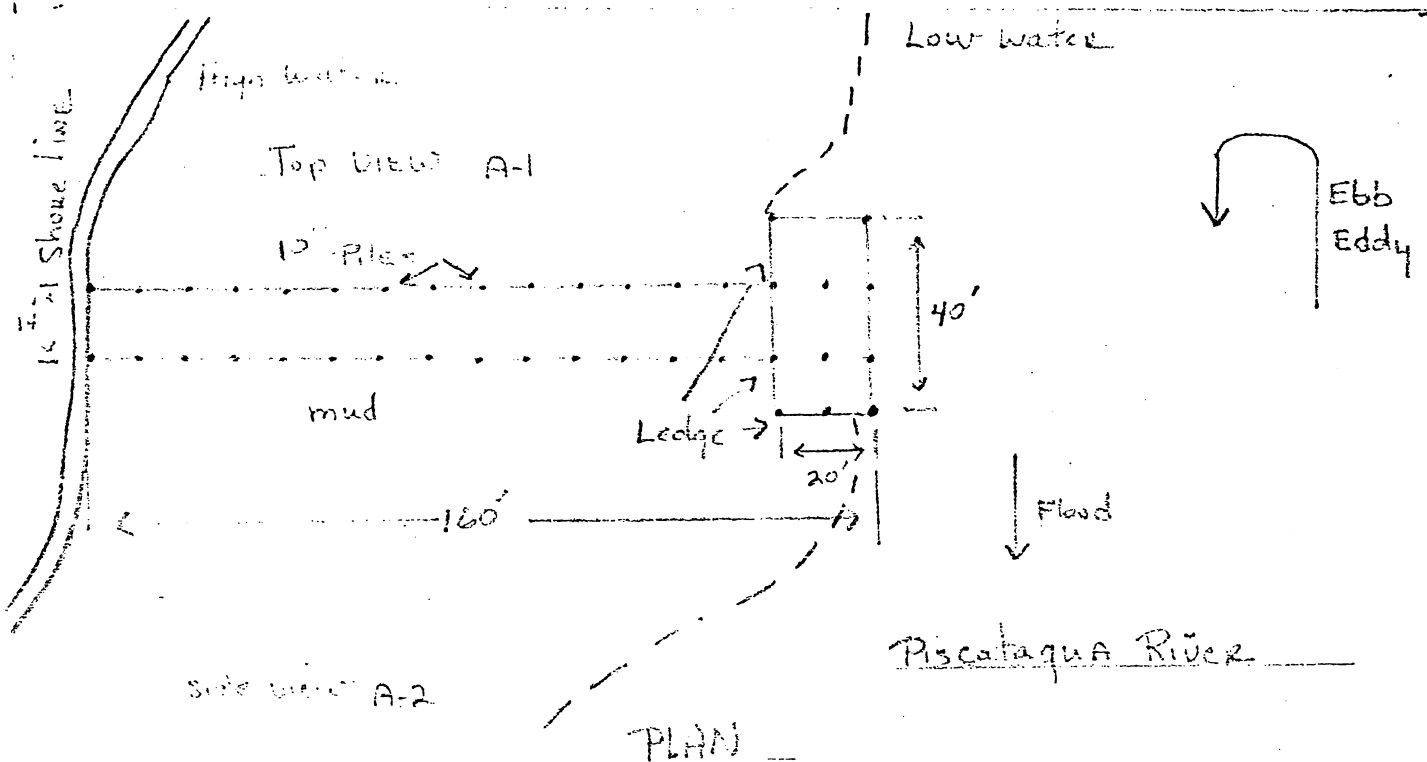


Kittery Tax map
 I Lot #23

PISCATAQUA

PORTSMOUTH

Dock Plan for
 Vincent PRIEN
 Sheet 1 of 2



- Notes
1. The proposed project is intended for private use only.
 2. Project does not involve dredging, excavating or filling.

Proposed Dock
 AT Piscataqua River
 in Nixey's main
 York County
 Application By
 Vincent Peizer

Receipt # 4829

BUILDING PERMIT AND APPLICATION 9-10-1981, Value 6000, M 1 L 23
 Owner PRIEN, VINCENT, Location BY BARDON IS, Fee 6.00, No. 81-113
 Mailing Address 6 Stone Wall Ln, Rye N.H. Zip 03570, Tel. 964-5028
 Applicant SAME, Contractor SELF
 Plumbing Permit No., Interior N/A, Exterior N/A, No. Baths N/A, Dist. to Water N/A
 Plot Plan YES, Yard Spaces N/A ft. front N/A, ft. left N/A, ft. rear N/A
 Building Plan YES, Dimensions See File 14x160 & 20x40 TOWER
 Structural type _____, Style _____, Foundation _____, Fin. Cellar _____
 Ext. _____, Int. _____, Roof _____, Insul. _____, Elect. _____
 Heat _____, Fireplace/Stove _____, Other _____
 Occupancy Permit required _____
14x160' PIER WITH 20x40' TEE AT SEA END - 7.1. & WOOD 50%

In accordance with Chapter 1, Section IV, subsection D, of Appendix A, Land Use and Development Code Zoning Ordinance for the Town of Kittery, Maine, adopted June 13, 1977, this application for a Building Permit is hereby approved/denied by P.E.O. P. A. TETREAU, ACTING, Code Enforcement Officer, for the following reason(s): APPROVAL HAS BEEN OBTAINED FROM ALL NEARBY CIVIL BODIES

Owner's signature [Signature]
 Applicant other than owner: _____
 I hereby certify that the proposed construction and/or use is authorized by the owner of record and I have been instructed by the owner to make this application as his authorized agent.
 Signature of Agent _____ Tel. _____
 Address _____ State _____ Zip _____

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

IN PROGRESS INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION. TEL. 439-0452



TOWN OF KITTERY

CERTIFICATE OF OCCUPANCY APPLICATION

9-100 19 87 Zone M 1 L 23 No. 11-111
 Owner James J. Gaudin Location 24 Borden St Kittery, ME
 Present Use Residential
 Proposed Construction and/or Use Basement
 Requisite Approvals See other documents, Plan 202, Per. No. 11-111, 11-111, 11-111

BUILDING INSPECTION RECORD

Local Ordinances	Rough-In Plumbing	Rough-In Electrical
Fire Codes	Finished Plumbing	Finished Electrical

Remarks:

CERTIFICATE OF OCCUPANCY PERMIT

Conditional or temporary occupancy issued by _____, 19____
 and is subject to the following conditions and/or safeguards _____
 _____ expires _____, 19____
 Completed occupancy issued by _____, _____, 19____,
 as the subject property has been inspected and/or evaluated and appears to be in compliance with all applicable codes.

BUILDING PERMIT AND APPLICATION

1-110 19 87 Value 2000 M 1 L 23 Fee 100 No. 11-111
 Owner James J. Gaudin Location 24 Borden St
 Mailing Address 24 Borden St Zip 04043 Tel. 253-1000
 Applicant James J. Gaudin Contractor James J. Gaudin
 Plumbing Permit No., Interior N/A Exterior N/A No. Baths 1 1/2 Dist. to Water 4 1/2
 Plot Plan 1/2, Yard Spaces N/A ft. front R/W line, 0/0 ft. left, 1/2 ft. rt., 0/0 ft. rear 0/0
 Building Plan 1/2, Dimensions 30' x 10' 1/2 x 10' 1/2 Ht. 10' 1/2 Ft.
 Structural type _____, Style _____, Foundation _____, Fin. Cellar _____
 Ext. _____, Int. _____, Roof _____, Insul. _____, Elect. _____
 Heat _____, Fireplace/Stove _____, Other _____
 Occupancy Permit required _____

In accordance with Chapter 1, Section IV, subsection D, of Appendix A, Land Use and Development Code Zoning Ordinance for the Town of Kittery, Maine, adopted June 13, 1977, this application for a Building Permit is hereby approved/denied by _____, Code Enforcement Officer, for the following reason(s): _____

Owner's signature James J. Gaudin

Applicant other than owner:

I hereby certify that the proposed construction and/or use is authorized by the owner of record and I have been instructed by the owner to make this application as his authorized agent.

Signature of Agent _____ Tel. _____

Address _____ State _____ Zip _____

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

IN PROGRESS INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION. TEL. 439-0452



MAP 1 lot 23

BP-81-113

TOWN OF KITTERY PORT AUTHORITY

TOWN HALL, KITTERY, MAINE

August 1, 1980

Mr. Vincent A. Prien
84 Badgers Island
Kittery, Maine
03904

Dear Mr. Prien;

At a recent meeting of the Town of Kittery Port Authority, your application to build a wood and pile pier was discussed and approved, subject to you obtaining approval from the other appropriate agencies.

Sincerely yours,

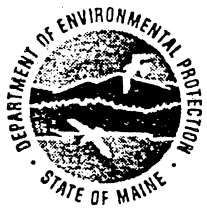
Frank C. Frisbee
Chairman

cc. Arthur Peverly, Planning Board
Manual Sousa, Town Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AUGUSTA, MAINE 04330

BOARD ORDER

IN THE MATTER OF



VINCENT A. PRIEN)	ALTERATION OF COASTAL WETLANDS ACT
Kittery, Maine, York County)	AND WATER QUALITY CERTIFICATION
PILE-SUPPORTED PIER)	
#03-6652-31130)	FINDINGS OF FACT AND ORDER

After reviewing the project file which includes the application with its supportive data, agency review comments, staff summary and other related materials on file with regard to the above noted project, under provisions of Title 38, M.R.S.A., Section 474 and Section 401 of P.L. 92-500, the Federal Water Pollution Control Act Amendments of 1972, the Board finds the following facts:

1. Nature of Project: Construct a pile-supported pier to measure 12 feet by 140 feet with a 20 foot by 40 foot tee at its end. Pier deck is to be located approximately 4 feet above mean high water.
2. The project will not unreasonably interfere with existing recreational and navigational uses.
3. The project will not cause unreasonable soil erosion.
4. The project will not unreasonably harm wildlife or freshwater, estuarine, or marine fisheries.
5. The project will not unreasonably interfere with the natural flow of any waters.
6. There is reasonable assurance that the activity will not lower the quality of any waters or violate applicable Water Quality Standards.

THEREFORE, the Board approves the application of Vincent A. Prien to construct a pile-supported pier as described in paragraph #1 above, subject to the following terms and conditions:

1. The Standard Conditions of Approval, except for Condition F, a copy attached.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25TH DAY OF JUNE, 1980.

BOARD OF ENVIRONMENTAL PROTECTION

BY 
Henry E. Warren, Chairman

PLEASE NOTE ATTACHED SHEET FOR APPEAL PROCEDURES....



State of Maine

SUBMERGED LAND EASEMENT

No. 783-09

This is an easement conveying to you certain, limited rights in the submerged lands of the State of Maine. It is not your environmental permit to use these lands. Please read the easement carefully and abide by its terms.

The Director of the Bureau of Public Lands, (hereinafter called the "Grantor") Department of Conservation, an agency of the State of Maine, acting pursuant to the provisions of R. S., Title 12, Section 514-A, in consideration of the performance of the covenants and conditions hereinafter provided, hereby grants to Vincent A. Prien, the mailing address of which is Kittery, Maine (hereinafter called the "Grantee") an easement in so much of the State-owned submerged lands (hereinafter called the "premises") as are described in Department, Environmental Protection application number 03-6652-31130 as are actually used by the Grantee in conformity with any permit (hereinafter referred to as the "permit") issued pursuant to such application, subject to the following covenants, and conditions:

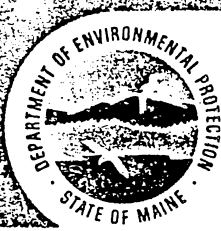
1. **TERM:** Such easement shall hold for the term of 30 years commencing with the date of this instrument and ending at midnight on December 31, 2009, and no longer.
2. **USE:** The premises shall not be used for any commercial purpose or as an amenity in furtherance of a commercial purpose, excepting only structures occupying not more than 100 square feet of State-owned land and structures occupying not more than 2,000 square feet of State-owned land and used exclusively for the landing or processing of shellfish, finfish, or other natural products of the sea. Within 30 days after request by Grantor by written notice hereunder, Grantee shall deliver to Grantor a written description, certified by Grantee to be correct, of the actual and specific uses then and therefore made of the premises. No sand, gravel or other materials shall be removed from the premises and no enlargement of structures or fixtures upon the premises shall be permitted without the prior written consent of the Grantor. No materials may be deposited on the premises except as specifically authorized in the permit.
3. **AUTOMATIC CANCELLATIONS:** In the event any regulatory agency of the United States or the State of Maine or any political subdivision thereof denies or disapproves any portion of any application by the Grantee for the use of the above described premises or any portion thereof, or that any court of competent jurisdiction invalidates any permit granted pursuant to such application, this easement shall be cancelled automatically as to the denied or disapproved use, and shall to that extent be null, void, and of no effect as of the date of such denial or disapproval.
4. **ASSIGNMENT:** Any and all rights conveyed herein by the Grantor may be assigned or otherwise conveyed by the Grantee, subject to the covenants and conditions of this instrument.
5. **PROPERTY TAXES:** Grantee shall pay all taxes, charges, assessments and other impositions levied upon the premises and the buildings, improvements, and fixtures thereon when due and payable.
6. **OTHER USES:** Grantee may make no use of the premises except that expressly authorized by any permit. Grantor reserves the right to make such other uses of the premises, including, without limitation, the right to permit pipes to be laid thereunder and wires to be maintained thereover, as shall not unreasonably interfere with Grantee's use and enjoyment of the premises.
7. **INDEMNITY:** Grantee agrees to defend or cause to be defended and to indemnify and hold the Grantor harmless against any and all claims, suits, causes of action, expenses and damages incurred by or brought against Grantor and arising or allegedly rising out of, in whole or part, the use or occupancy of the premises by Grantee, its invitees, contractors, agents and employees.
8. **DEFAULT:** If Grantee or its successor in interest shall fail to comply with any of the terms of this instrument, Grantor shall have the right at its option at any time thereafter to terminate this easement, re-enter and take possession of the premises after giving thirty (30) days advance notice in writing to Grantee or its successor in interest. If during said thirty (30) day period Grantee cures its default to the satisfaction of Grantor then termination shall automatically be vacated, otherwise the same shall remain in full force and effect. Such right of termination shall be in addition to any other legal or equitable rights or remedies which Grantor may have. If Grantor shall institute an action to enforce any provision of this easement, Grantor shall be entitled to recover reasonable attorney's fees.
9. **MAINTENANCE:** Grantee, at its sole cost and expense, shall at all times keep, or cause all improvements (regardless of ownership) to be kept, in as good condition and repair as originally constructed, except for reasonable use. Grantee shall not allow debris or refuse to accumulate on the premises. In addition to having the right to cancel this easement, Grantor shall have the right upon 30 days notice to remove such debris and refuse and collect the cost of such removal from the Grantee.
10. **ABANDONMENT:** Failure by the Grantee to use or maintain the premises for two consecutive years shall be deemed to constitute abandonment of the premises, including all structures and improvements thereon. Upon abandonment the Grantor at its option may require Grantee to remove all such structures and improvements within such period of time as it may prescribe at the sole expense of the Grantee or the Grantor may assume possession and ownership of all structures and improvements.
11. **NOTICE:** Any notice permitted or required hereunder shall be deemed to have been given when actually delivered or when deposited in the U.S. mail, first-class postage prepaid, addressed as follows: To Grantor: Bureau of Public Lands, State Capitol, Augusta, Maine 04333, Attn: Submerged Lands Division, and giving the easement number, or to such other address specified by Grantor by written notice hereunder. To Grantee: at the address hereinabove set forth for Grantee or at such other address as Grantee may have theretofore specified by written notice actually received by and placed of record with Grantor.

November 1, 1979

****STANDARD CONDITIONS****

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE COASTAL WETLANDS LAW, 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. Compliance With All Permit Terms and Conditions. The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all terms and conditions of this permit. All preconstruction terms and conditions must be met before construction begins.
- D. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two 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 shall state the reasons why the activity was not begun within two years from the granting of the initial permit and the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- E. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- F. No Construction Equipment Below High Water. No construction equipment being used in the undertaking of an approved activity is allowed below the mean high water line.
- 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

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: STATE HOUSE, AUGUSTA 04333

Henry E. Warren
COMMISSIONER
289-2811

Rights of Review and Appeal

Any person aggrieved by a decision by the Board of Environmental Protection ("Board") or Department of Environmental Protection ("Department") has the following rights of review and appeal:

I. As to any decision by the Board:

A. Request for hearing:

Within 30 days of the applicant's receipt of a Board decision made without public hearing, any person aggrieved by the decision may make a request for a hearing. Such a request shall set forth in detail the basis of the petitioner's grievance; the findings, conclusions or conditions to which the petitioner objects; the basis of the objections; and the nature of the evidence or argument to be offered.

B. Reconsideration by the Board:

Within 30 days of the applicant's receipt of a Board decision, any person aggrieved by the decision may petition the Board of Environmental Protection, in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the Board, or for an opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered. 38 M.R.S.A. §344(5).

C. Judicial appeal:

Any person aggrieved by a final Board decision is entitled to judicial review by filing a petition in Superior Court for Kennebec County or in Superior Court for the county where (1) the aggrieved person resides or has his principal place of business; or (2) the activity or property which is the subject of the proceeding is located.

The petition for review shall specify the person seeking review, the manner in which he is aggrieved and the final agency action which he wishes reviewed. The petition shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief.

ADMINISTRATIVE SERVICES:
289-2691

BUREAUS:

AIR QUALITY CONTROL
289-2437

LAND QUALITY CONTROL
289-2111

WATER QUALITY CONTROL
289-2591
OIL POLLUTION CONTROL
289-2591

REGIONAL OFFICES:

31 CENTRAL STREET
BANGOR 04401
947-6746

634 MAIN STREET
PRESQUE ISLE 04769
764-3737

OIL POLLUTION CONTROL
17 COMMERCIAL STREET
PORTLAND
773-6491

OIL SPILL REPORTS ONLY
(TOLL FREE) 1-800-482-0777

CITIZENS' ENVIRONMENTAL
ASSISTANCE SERVICE
289-2691
(TOLL FREE) 1-800-452-1942

AIR QUALITY CONTROL
17 COMMERCIAL STREET
PORTLAND
773-0196

LAND QUALITY CONTROL
17 COMMERCIAL STREET
PORTLAND
773-0196

The petition for review shall be filed within 30 days after receipt of notice if taken by a party to the proceeding of which review is sought. Any other person aggrieved shall have 40 days from the date the decision was rendered to petition for review.

The petition for review shall be served by certified mail, return receipt requested, upon D.E.P., all parties to the proceeding, and the Attorney General.

II. As to a decision by the Department:

A. The Board has delegated authority to Department staff to act on certain applications.

Any person aggrieved by a staff decision may request in writing, within 30 days of receipt of the order by the applicant, that the Board review such decision. Such request for review must set forth the reasons why the review is requested and the actions which the person making the request desires to be taken by the Board. When review of a staff determination is requested, it shall be conducted as if it were an application filed with the Board and not subject to delegation.

NOTE:

1. Because a person other than the applicant may file an appeal, as stated above, any action to commence work according to the terms of the permit prior to the expiration of the appeal or review period entails a risk that the approval may be altered. Applicants must assess the likelihood and extent of such a risk.

2. The filing of a petition for review or appeal does not operate as a stay of the final agency action.

3. Further information concerning review and appeal may be found in the Maine Administrative Procedure Act (5 M.R.S.A. §8001 et seq.) and Department statutes (38 M.R.S.A. §341 et seq. and regulations.

4. You may contact D.E.P. if you have any question about the rights of review and appeal procedures.



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02154

REPLY TO
ATTENTION OF:
NEDOD-R- 26-80-248
ME-PORT-80-303

30 October 1980

Vincent A. Prien
6 Stonewall Lane
Rye, NH 03870

Dear Mr. Prien:

Inclosed is a Federal permit authorizing the work stated therein. Please acquaint yourself with all the terms and conditions of the permit and particularly to those conditions which are binding upon you as the permittee. Your particular attention is called to condition (n) which requires you to notify this office when the work is commenced and when it is completed.

If any material changes in the plans are found necessary, revised plans should be submitted to this office. These revised plans must receive the approval required by law before the work is begun.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Morgan R. Rees".

MORGAN R. REES
Chief, Regulatory Branch
Operations Division

Incl
Permit



Name of Applicant Vincent A. Prien

Effective Date 30 October 1980

Expiration Date (if applicable) _____

**DEPARTMENT OF THE ARMY
PERMIT**

Referring to written request dated 30 April 1980 for a permit to:

Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, P.L. 92-500);

Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; P.L. 92-532);

Vincent A. Prien
6 Stonewall Lane
Rye, NH 03870

is hereby authorized by the Secretary of the Army:

to construct and maintain a pile supported pier consisting of a 140' x 14' pier with a 20' x 40' "T" head. The pier will extend approximately 160' beyond mean high water.

in Piscataqua River

at Kittery, Maine

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings: give file number or other definite identification marks.) Plans entitled, "Dock Plan For Vincent Prien", in 2 sheets, not dated.

subject to the following conditions:

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementat on plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

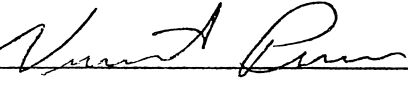
DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:

a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

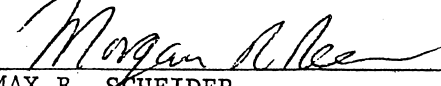


PERMITTEE
Vincent PRIEW

10/20/80

DATE

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

for 

MAX B. SCHEIDER
Colonel, Corps of Engineers
Division Engineer
~~SYSTEMS ENGINEER~~
~~SYSTEMS ENGINEER~~

30 Oct 80

DATE

Transferee hereby agrees to comply with the terms and conditions of this permit.

TRANSFEEEE

DATE

o. That if the activity authorized herein is not started on or before N/A day of 31st 1983 (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before December, 19 83, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

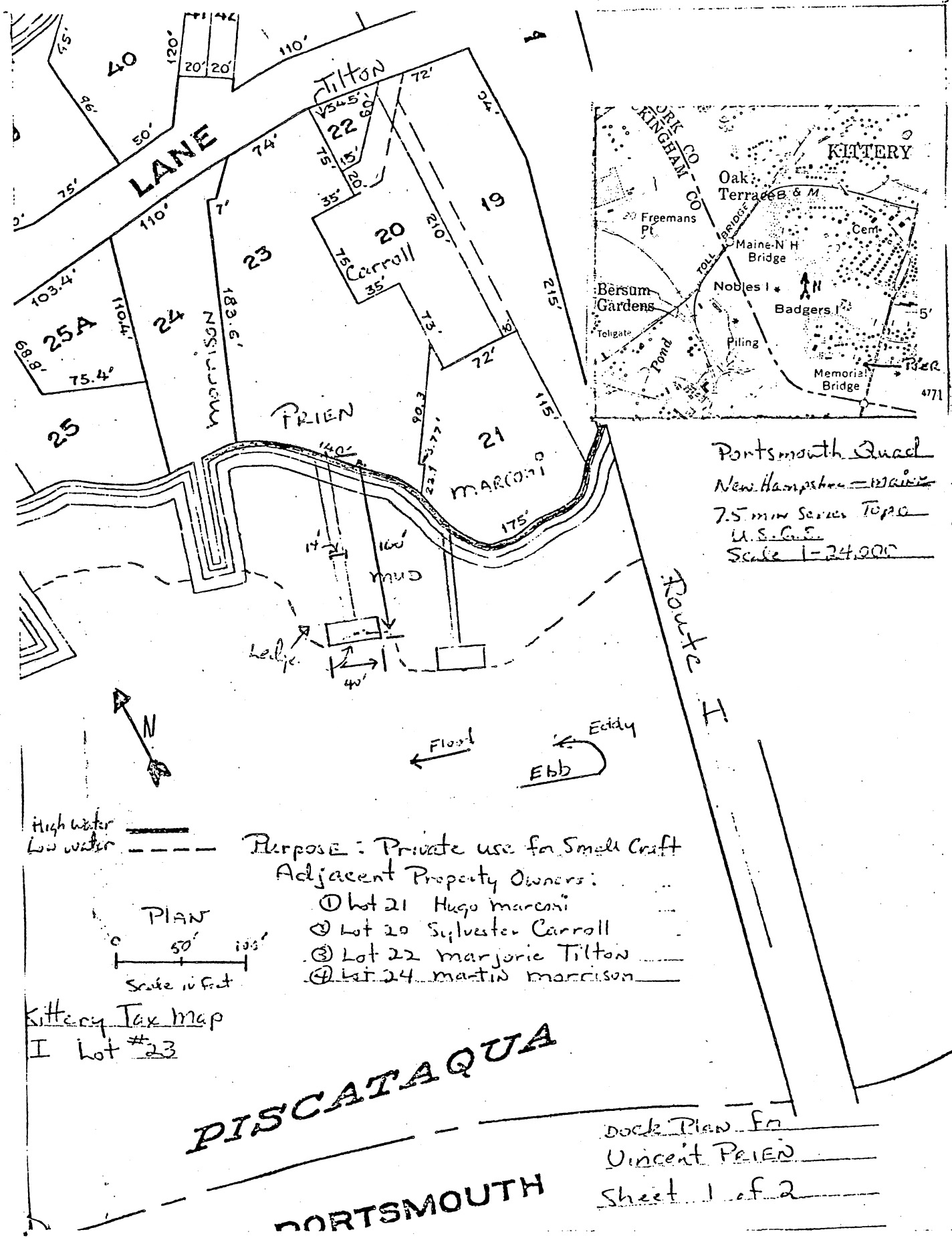
q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

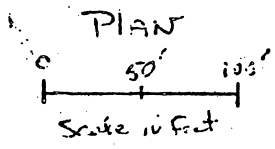
t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):



Portsmouth Quad
 New Hampshire - 1874
 7.5 min Series Topo
 U.S.G.S.
 Scale 1-24,000

Purpose: Private use for Small Craft
 Adjacent Property Owners:
 ① Lot 21 Hugo marconi
 ② Lot 20 Sylvester Carroll
 ③ Lot 22 marjorie Tilton
 ④ Lot 24 martin marrison

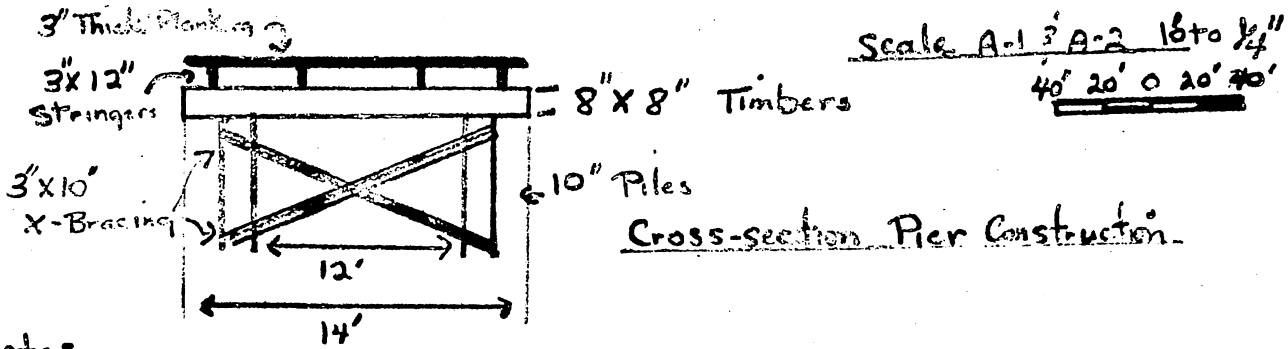
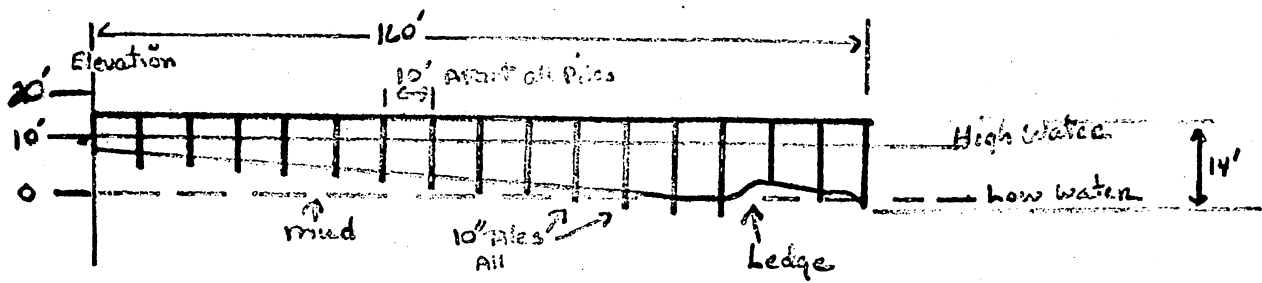
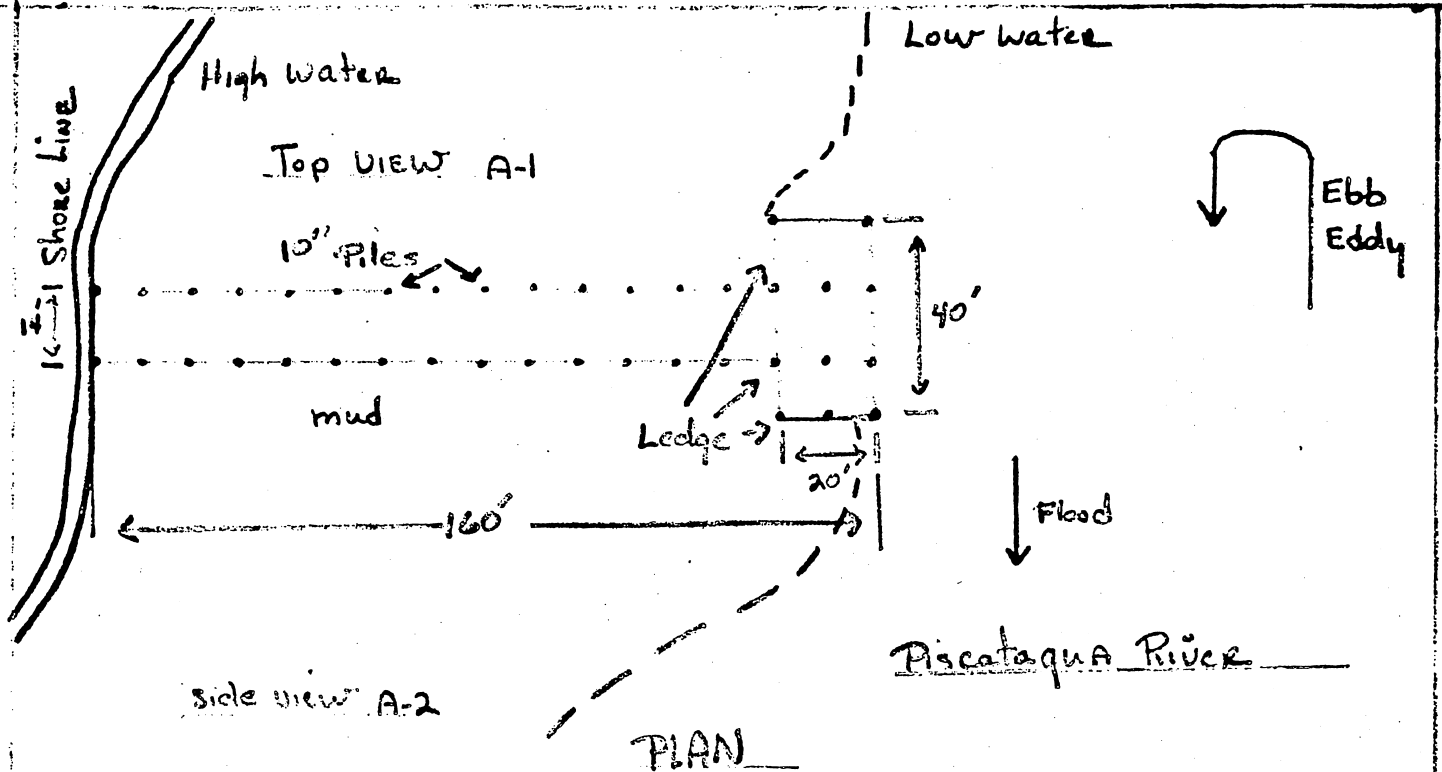


Kittery Tax map
 I lot #23

PISCATAQUA

PORTSMOUTH

Dock Plan for
 Vincent PRIEN
 Sheet 1 of 2



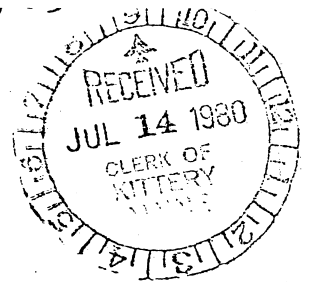
Notes

1. The proposed project is intended for private use only.
2. project does not involve dredging, excavating or filling.

Proposed Dock:
 AT Piscataqua River
 IN Ritters, main
 York, County
 Application By
 Vincent Prien.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AUGUSTA, MAINE 04330



BOARD ORDER
IN THE MATTER OF

VINCENT A. PRIEN
Kittery, Maine, York County
PILE-SUPPORTED PIER
#03-6652-31130

) ALTERATION OF COASTAL WETLANDS ACT
) AND WATER QUALITY CERTIFICATION
)
) FINDINGS OF FACT AND ORDER

After reviewing the project file which includes the application with its supportive data, agency review comments, staff summary and other related materials on file with regard to the above noted project, under provisions of Title 38, M.R.S.A., Section 474 and Section 401 of P.L. 92-500, the Federal Water Pollution Control Act Amendments of 1972, the Board finds the following facts:

1. Nature of Project: Construct a pile-supported pier to measure 12 feet by 140 feet with a 20 foot by 40 foot tee at its end. Pier deck is to be located approximately 4 feet above mean high water.
2. The project will not unreasonably interfere with existing recreational and navigational uses.
3. The project will not cause unreasonable soil erosion.
4. The project will not unreasonably harm wildlife or freshwater, estuarine, or marine fisheries.
5. The project will not unreasonably interfere with the natural flow of any waters.
6. There is reasonable assurance that the activity will not lower the quality of any waters or violate applicable Water Quality Standards.

THEREFORE, the Board approves the application of Vincent A. Prien to construct a pile-supported pier as described in paragraph #1 above, subject to the following terms and conditions:

1. The Standard Conditions of Approval, except for Condition F, a copy attached.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25TH DAY OF JUNE, 1980.

BOARD OF ENVIRONMENTAL PROTECTION

BY Henry E. Warren
Henry E. Warren, Chairman

PLEASE NOTE ATTACHED SHEET FOR APPEAL PROCEDURES.....

McGarry KPA Exhibit 2



REPLY TO
ATTENTION OF

Regulatory Division
CENED-OD-R-52
Permit Number 1992-01082

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

20 JUL 1992

Edward McGarry
Morrison's Lobsters
11 Badgers Island West
Kittery, Maine 03904

Dear Mr. McGarry:

This is in reference to your request for a determination as to the need for a Department of the Army permit to modify your existing pier, ramp and floats in the Piscataqua River off Badgers Island West, at Kittery, Maine. According to the information that you have provided the existing structure consists of a 22' x 32' wharf and building with a 14' x 50' pier extending parallel with an attached 3' x 35' ramp leading to a 6' x 73' base float attached perpendicular. Your application states that the existing pier was constructed in 1965. Title 33, Code of Federal Regulations, Part 330.3 (b) states that structures or work completed prior to December 18, 1968 were permitted by Nationwide Permits issued on July 19, 1977 provided there is no interference with navigation.

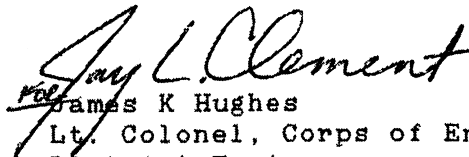
We have completed our evaluation of your application to modify your existing float system. Your permit is hereby amended to reconfigure your float system to a 6' x 60' base float attached perpendicular to the pier with two 4' x 40' finger floats attached parallel to the pier extending west, forming three slips, as shown on the attached plans entitled "Proposed Finger Floats, for: Edward McGarry, off: Badgers Island West, at: Kittery, Maine." in 4 sheets undated.

All other conditions of the original permit remain in full force and effect.

Before you begin work, you are required to obtain any necessary State and/or local permits, or other necessary Federal permits as required.

Should you have any questions concerning this matter, please contact Rod Howe or Shawn Mahaney at 207-623-8367 our Augusta, Maine Project Office.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

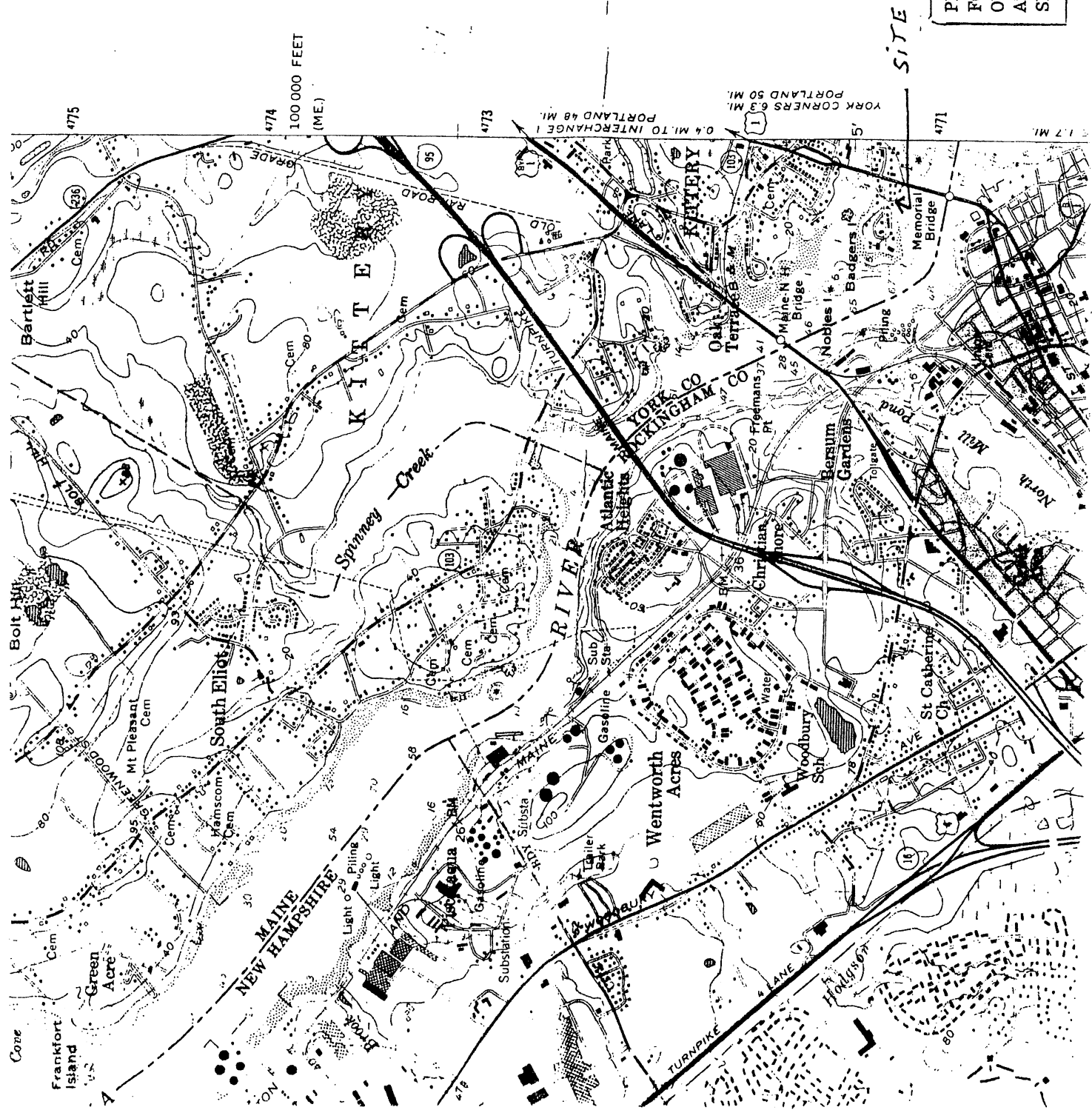

James K Hughes
Lt. Colonel, Corps of Engineers
District Engineer

Copies Furnished:

Maine Dept. of Environ. Protection
ATTN: William Laflamme
State House-Station #17
Augusta, Maine 04333

Town of Kittery
ATTN: CEO
Municipal Offices
Kittery, Maine 03904

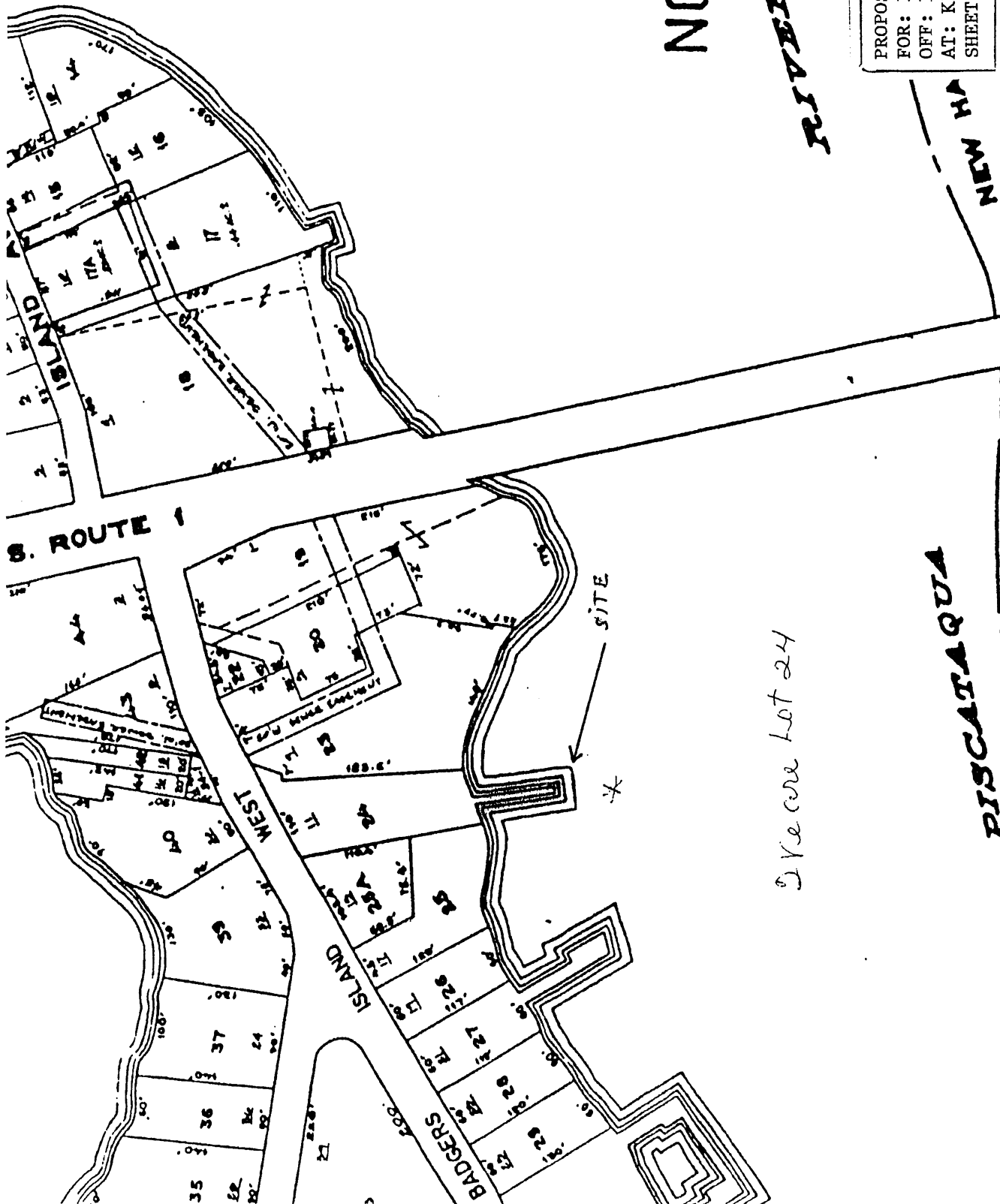
PROPOSED FINGER FLOATS
 FOR: EDWARD MCGARRY
 OFF: BADGERS ISLAND WEST
 AT: KITTERY, MAINE
 SHEET 1 OF 4



SITE

0.4 MI. TO INTERCHANGE 1
 6.3 MI. TO PORTLAND 48 MI.
 50 MI. TO PORTLAND 50 MI.

100 000 FEET
 (ME.)



NOT TO

RIVER

PROPOSED FINGER FLOATS
 FOR: EDWARD MCGARRY
 OFF: BADGERS ISLAND WEST
 AT: KITTERY, MAINE
 SHEET 2 OF 4

PROPERTY MAP
 TOWN OF KITTERY

See core Lot 24

PISCATAQUA

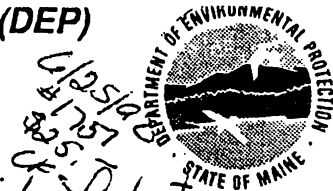
SMITH

1992

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) PERMIT BY RULE NOTIFICATION FORM

(For use with DEP Regulation, Chapter 305)

PLEASE TYPE OR PRINT IN BLACK INK ONLY



Name of Applicant: Edward D. McBarry DBA Morrison's Lobsters

Address: 11 Badgers Island West Town/City: Kittery

State: Me Zip Code: 03904 Tel.No: 207-439-2501

Name of Wetland, Water Body or Stream: 1

Name of Nearest Road and Directions to Site: Badgers Island West

South on Route 1 into Kittery Me. Take right
just before the Piscataqua River into N.H.

Town/City: Kittery County: _____

Description of Project: Replacing & adding two pilings

RECEIVED OF
DEPT. OF ENVIRONMENTAL PROTECTION
STATE OF MAINE
JUN 23 1992

1. Attach a check for \$25 made payable to Treasurer State of Maine.
2. Attach to this form a location map with project site clearly marked.
3. Attach photographs showing existing site conditions. (unless not required under standards)
4. For projects below mean low water, submit a copy of the project design plan to the Bureau of Public Lands.

I am filing notice of my intent to carry out work which meets the requirements for Permit by Rule under DEP Regulation Chapter 305. I will comply with Section 1 and all the standards contained in the Section(s) checked below:

- | | |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <input type="checkbox"/> Sec.(2)Dist. of Soil Mat. | <input type="checkbox"/> Sec.(11)General Permits of State Transprt. Fac. |
| <input type="checkbox"/> Sec.(3)Intake Pipes | <input type="checkbox"/> Sec.(12)Restoration of Natural Areas |
| <input checked="" type="checkbox"/> Sec.(4)Maint. Repair & Replace of Struct. | <input type="checkbox"/> Sec.(13)Fish & Wild. Creation, Enhance. & Water Quality |
| <input checked="" type="checkbox"/> Sec.(5)Moorings | <input checked="" type="checkbox"/> Sec.(14)Piers, Wharves & Pilings |
| <input type="checkbox"/> Sec.(6)Movement of Rocks or Veg. by Hand | <input type="checkbox"/> Sec.(15)Public Boat Ramps |
| <input type="checkbox"/> Sec.(7)Outfall Pipes | <input type="checkbox"/> Sec.(16)Select Sand Dune Projects |
| <input type="checkbox"/> Sec.(8)Riprap | <input type="checkbox"/> Sec.(17)Transters |
| <input type="checkbox"/> Sec.(9)Crossings (Utility Lines, etc.) | <input type="checkbox"/> Sec.(18)Maintenance Dredging |
| <input type="checkbox"/> Sec.(10)Stream Crossing | |

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife and Marine Resources to access the project site for the purpose of determining compliance with the rules. I also understand that this permit is not valid until 14 days after receipt by the Department.

Signature of Applicant: Edward D. McBarry Date: 6/22/92

Send white and yellow form with attachments via certified mail to the ME Dept. of Environmental Protection State House Station 17 Augusta, Maine 04333

Retain pink copy as record of permit. Permits are valid upon receipt by the DEP for one year. No further authorization by DEP will be issued after receipt of notice. **Permits issued under this section are invalid if the DEP finds any application standard has not been met. Work carried out in violation of any standard is subject to enforcement action, including a fine of up to \$25,000 for each day of violation.**

For office use only					
Proj. No.	FP	Date	Def.	Date	Acc. Date

Remarks for Decision
 Post-Construction Permit
 Army Corp of Engineers Permit
 DEP Permit
 Building Permit

BUILDING PERMIT AND APPLICATION Dec 21, 19 72 Value 4500 M 1 L 24
 Fee 35.00 No. 92-702
 Owner EDWARD W. GARDY Location 11 Badgers + Stand West
 Mailing Address Same Zip Tel. 9-2501
 Applicant Donna McGarry Contractor M. Henrick Assoc 600-245 9629
 Plumbing Permit No., Interior Exterior N/A No. Baths Dist. to Water 7
 Plot Plan none Yard Spaces N/A ft. front R/W line 30+ ft. left, 20+ ft. rt., N/A ft. rear
 Building Plan N/A Dimensions 300 Plans Ht. Foundation Pilings - Fin. Cellar
 Structural type Style Roof N/A Insul. Elect. →
 Ext. Int. Heat Fireplace/Stove Other N/A

Occupancy Permit required NO
 Repair and restructuring existing dock, finger piers,
 (orks by Army Corp + Kitt. Post Authority previously given)
 In accordance with Chapter 1, Section IV, subsection D, of Appendix A. Land Use and Development Code Zoning Ordinance for the
 Town of Kittery, Maine, adopted June 13, 1977, this application for a Building Permit is hereby approved/denied by
 [Signature] Code Enforcement Officer, for the following reason(s):

Owner's signature _____
 Applicant other than owner:
 I hereby certify that the proposed construction and/or use is authorized by the owner of record and I have been
 instructed by the owner to make this application as his authorized agent.
 Signature of Agent [Signature] Tel. _____
 Address _____ State _____ Zip _____

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION
 WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE
 PERMIT IS ISSUED AS NOTED ABOVE.

IN PROGRESS INSPECTIONS INDICATED ON THIS CARD
 CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN
 NOTIFICATION. TEL. 439-0452



TOWN OF KITTEERY PORT AUTHORITY

TOWN HALL
KITTEERY, MAINE 03904

Mr. & Mrs. Ed McGarry
Morrison's Lobsters
11 Badgers Island West
Kittery, Maine 03904

4 December 1992

Dear Mr. & Mrs. McGarry:

Re: Request to modify your existing float system, by replacing your 6'X73' Base Float with a 6'X60' Float with two 4'X40' Finger Floats attached parallel to the pier. All being connected to existing pier by 3'X35' gangway riding on a 8'X10' Float inside of Base Float. Your request was discussed at the Port Authority meeting on Dec. 3, 1992.

The Port Authority voted to accept your request, as submitted, to replace the existing floats as noted above. Any changes necessary must be brought back to the Port Authority for approval before hand.

For a referance, the Port Authority measured from the end of existing dock.

This Port Authority approval is contingent on the approval of any other governing bodies that may be required.

Respectfully

Milton Hall (Chairman)

cc: Port Authority Members
Harbormaster
Code Officer
File (2)

November 20, 1992

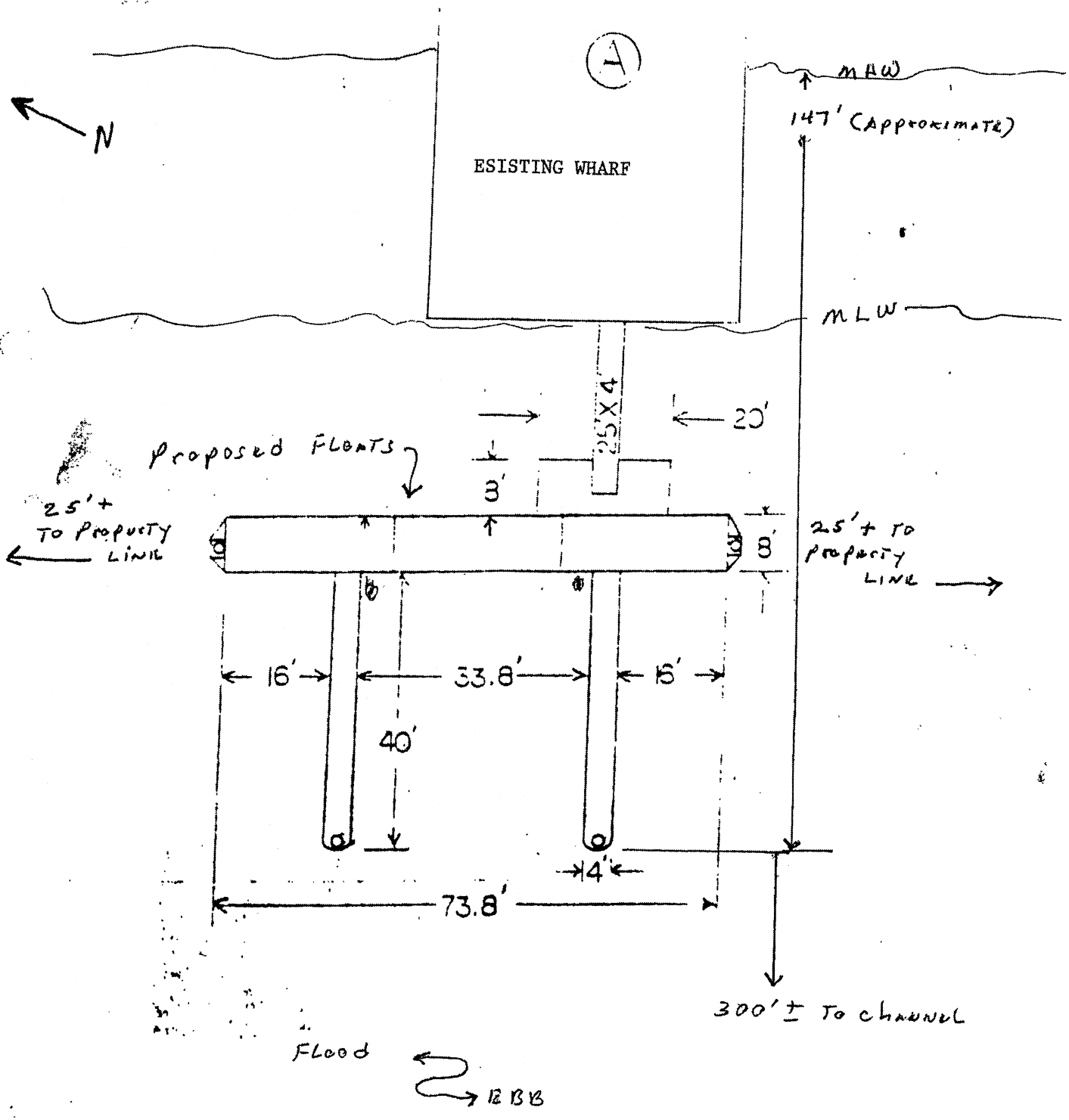
To The Port Authority Board Members,

Attached is a diagram of the ramp and docks we now have for private use. Also attached is a copy of the permit I received from the Department of Environmental Protection and a copy of our check sent to them.

This had to be done due to the fact the previous dock suffered extensive damage from the No Name Storm. Also from all the dredging and blasting that had been done in the river, we ended up loosing whatever depth we had to the point that at low tide most of our dock sat in the mud. We couldn't take our boat off the dock unless it was high tide. We also had to get intouch with New England Telephone because their cables are all over our property and for this reason we could not dredge.

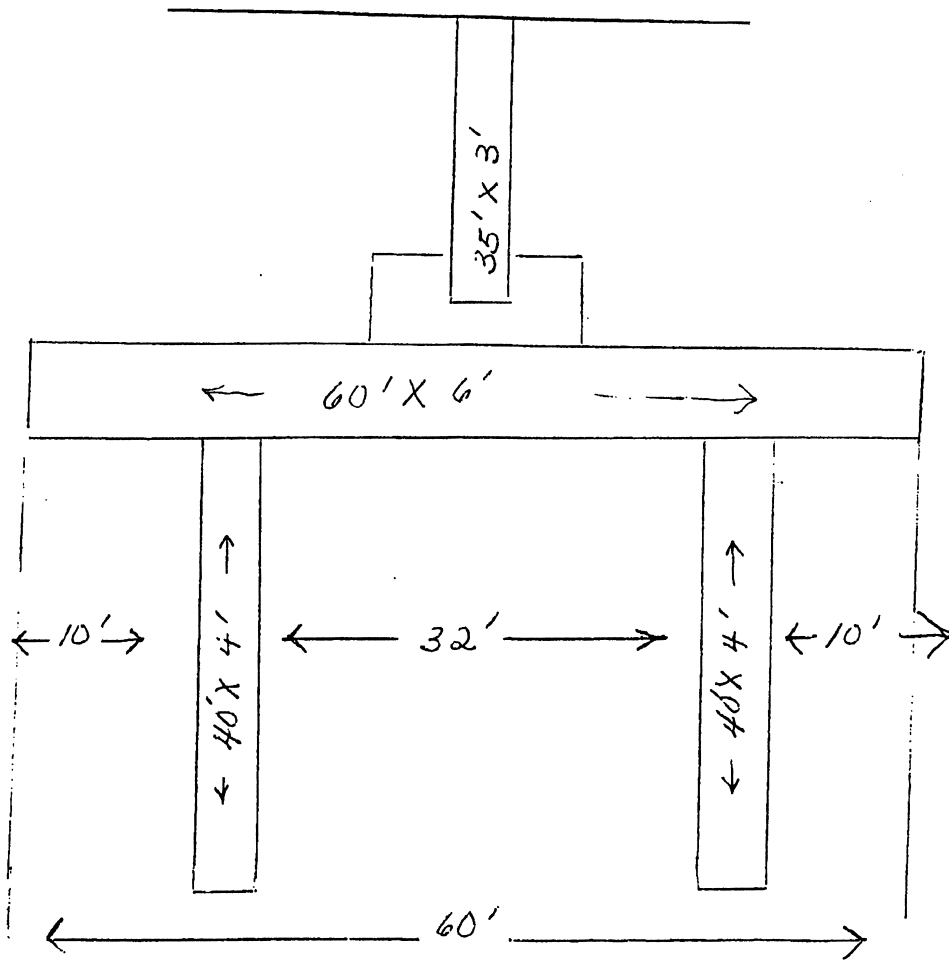
I hope this is everything you need so this matter can be resolved. I want to apologize for not presenting our plan to the Members of the Board, but we were under the assumption that all concerned parties had been notified.

Edward A. McBarry
Donna M. McBarry



PROPOSED FINGER FLOATS
 FOR: EDWARD MCGARRY
 OFF: BADGERS ISLAND WEST
 AT: KITTERY, MAINE
 SHEET 4 OF 7

11/92
Updated Drawing



McGarry KPA Exhibit 3



TOWN OF KITTEY PORT AUTHORITY
TOWN HALL
P.O. BOX 808, KITTEY, MAINE 03904

Pickering Marine
Glen Normendeau
7 Pickering Ave.
Portsmouth, N.H. 03801

Sept. 12, 2000

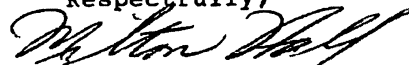
Dear Mr. Normendeau:

Re: Request to Re-Construct Pier, Ramp and Floats existing for Jade Realty Corp., 9 Badgers Isl. West, Kittery, Me. 03904.

The subject pier and floats were discussed at the Port Authority Meeting on September 7, 2000.

The Port Authority agreed that no permits were required from the Port Authority since you were replacing an existing Pier, Ramp and Floats. One stipulation being that the railings on the pier not be any higher than 42" and the Pilings on the Pier and Floats not be any higher than the top of the rails.

Respectfully,


Milton Hall (Chairman)

cc: Files (2)
Code Enforcement Officer

office

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)
PERMIT BY RULE NOTIFICATION FORM
 (For use with DEP Regulation, Chapter 305)

PLEASE TYPE OR PRINT IN BLACK INK ONLY (3 COPIES, PLEASE BEAR DOWN)

Name of Applicant: Pickering Marine Corporation		Name of Owner: Jade Realty Corporation	
Mailing Address: 7 Pickering Ave.		Town/City: Portsmouth	
State: NH	Zip Code: 03801	Daytime Telephone No. (Include area code): 603-427-2824	
Name of Wetland, Water Body or Stream: Piscataqua River			
Detailed Directions to Site: Interstate 95 South to Kittery Traffic Circle to route 1 to Badgers Island West. Property is on the left in front of the new Condominium (easily identifiable)			
Town/City: Kittery	Map #: 1	Lot #: 23	County: York
Description of Project: Reconstruct existing deteriorated pier, ramp, & floats			
Part of a larger project?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

(CHECK ONE) This project: does does not involve work below mean low water.

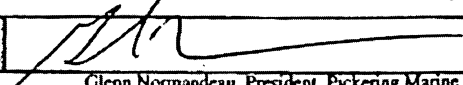
I am filing notice of my intent to carry out work which meets the requirements for Permit By Rule (PBR) under DEP Regulation, Chapter 305. I have a copy of PBR Sections checked below. I have read and will comply with all of the standards.

- | | | |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Sec. (2) Soil Disturbance | <input type="checkbox"/> Sec. (8) Shoreline stabilization | <input type="checkbox"/> Sec. (14) Piers, Wharves & Pilings |
| <input type="checkbox"/> Sec. (3) Intake Pipes | <input type="checkbox"/> Sec. (9) Utility Crossing | <input type="checkbox"/> Sec. (15) Public Boat Ramps |
| <input checked="" type="checkbox"/> Sec. (4) Replacement of Structures | <input type="checkbox"/> Sec. (10) Stream Crossing | <input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects |
| <input type="checkbox"/> Sec. (5) REPEALED | <input type="checkbox"/> Sec. (11) State Transportation Facilities | <input type="checkbox"/> Sec. (17) Transfers/Permit Extension |
| <input type="checkbox"/> Sec. (6) Movement of Rocks or Vegetation | <input type="checkbox"/> Sec. (12) Restoration of Natural Areas | <input type="checkbox"/> Sec. (18) Maintenance Dredging |
| <input type="checkbox"/> Sec. (7) Outfall Pipes | <input type="checkbox"/> Sec. (13) F&W Creation/Enhance/Water Quality Improvement | |

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules. I also understand that *this permit is not valid until approved by the Department or 14 days after receipt by the Department, whichever is less.*

I have attached all of the following required submittals. NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS:

- Attach a check for \$50 (non-refundable) made payable to: "Treasurer, State of Maine".
- Attach a U.S.G.S. topo map or Maine Atlas & Gazetteer map with the project site clearly marked.
- Attach photographs showing existing site conditions (unless not required under standards).

Signature of Applicant: 	Date: 7/27/2000
-------------------------------------------------------------------------------------------------------------	-----------------

Glenn Normandeau, President, Pickering Marine Corp.

Keep the bottom copy as a record of permit. Send the form with attachments via certified mail to the Maine Dept. of Environmental Protection at the appropriate regional office listed below. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Permits are valid for two years. Work carried out in violation of any standard is subject to enforcement action.

AUGUSTA DEP
 STATE HOUSE STATION 17
 AUGUSTA, ME 04333-0017
 (207)287-2111

PORTLAND DEP
 312 CANCO ROAD
 PORTLAND, ME 04103
 (207)822-6300

BANGOR DEP
 106 HOGAN ROAD
 BANGOR, ME 04401
 (207)941-4570

PRESQUE ISLE DEP
 1235 CENTRAL DRIVE
 PRESQUE ISLE, ME 04769
 (207)764-0477

OFFICE USE ONLY	Ck.#	Date	Staff	Staff	
PBR #	FP		Acc. Date	Def. Date	After Photos



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

**DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
STATE OF MAINE, SUMMARY OF SCREENING AND STATUS**

JADE REALTY CORPORATION
C/O PICKERING MARINE CORPORATION
7 PICKERING AVENUE
PORTSMOUTH, NH 03801

CORPS PERMIT # 200001981
CORPS PGP ID# 00-415
STATE ID# PBR

DESCRIPTION OF WORK AS ON ATTACHED STATE APPN:

Demolish an existing pile and timber pier in the Piscataqua River at Kittery, Maine and replace it with a 140'X 10' pile and timber pier leading to an 18'x 40' pile supported platform forming a "T". Along the northern and southwestern sides of the deck will be a 27'x 8' and 2, 20'x 8' floats respectively. The floats will be accessed by a 36'x 3' ramp. A boathouse located on the end of the existing pier will be relocated to the same position on the new structure.

UTM GRID COORDINATES N: 4771132 E: 357261 USGS QUAD: KITTERY, ME

I. STATE ACTIONS: PENDING [], ISSUED [], DENIED [] DATE _____

LEVEL OF STATE REVIEW: PERMIT BY RULE: X, TIER 1: _____, TIER 2: _____, TIER 3: _____ (NRPA).

II. FEDERAL ACTIONS:

DATE STATE FILE REVIEWED: 8/10/00 (PGP JP MEETING)

LEVEL OF CORPS REVIEW: CATEGORY 1: _____ CATEGORY 2: x

AUTHORITY: SEC 10 X, 404 _____, 10/404 _____, 103 _____

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

ESSENTIAL FISH HABITAT (EFH): EFH PRESENT Y / N (CIRCLE ONE)

IF YES: Based on the terms and conditions of the PGP, which are intended to ensure that authorized projects cause no more than minimal environmental impacts, the Corps of Engineers has preliminary determined that this project will not cause more than minimal adverse effects to EFH identified under the Magnuson-Stevens Fisheries Conservation and Management Act.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO, USF&WS NO, NMFS NO

CORPS DETERMINATION: We authorize your project as proposed and as shown on the plans submitted to the Corps under the State of Maine PGP.

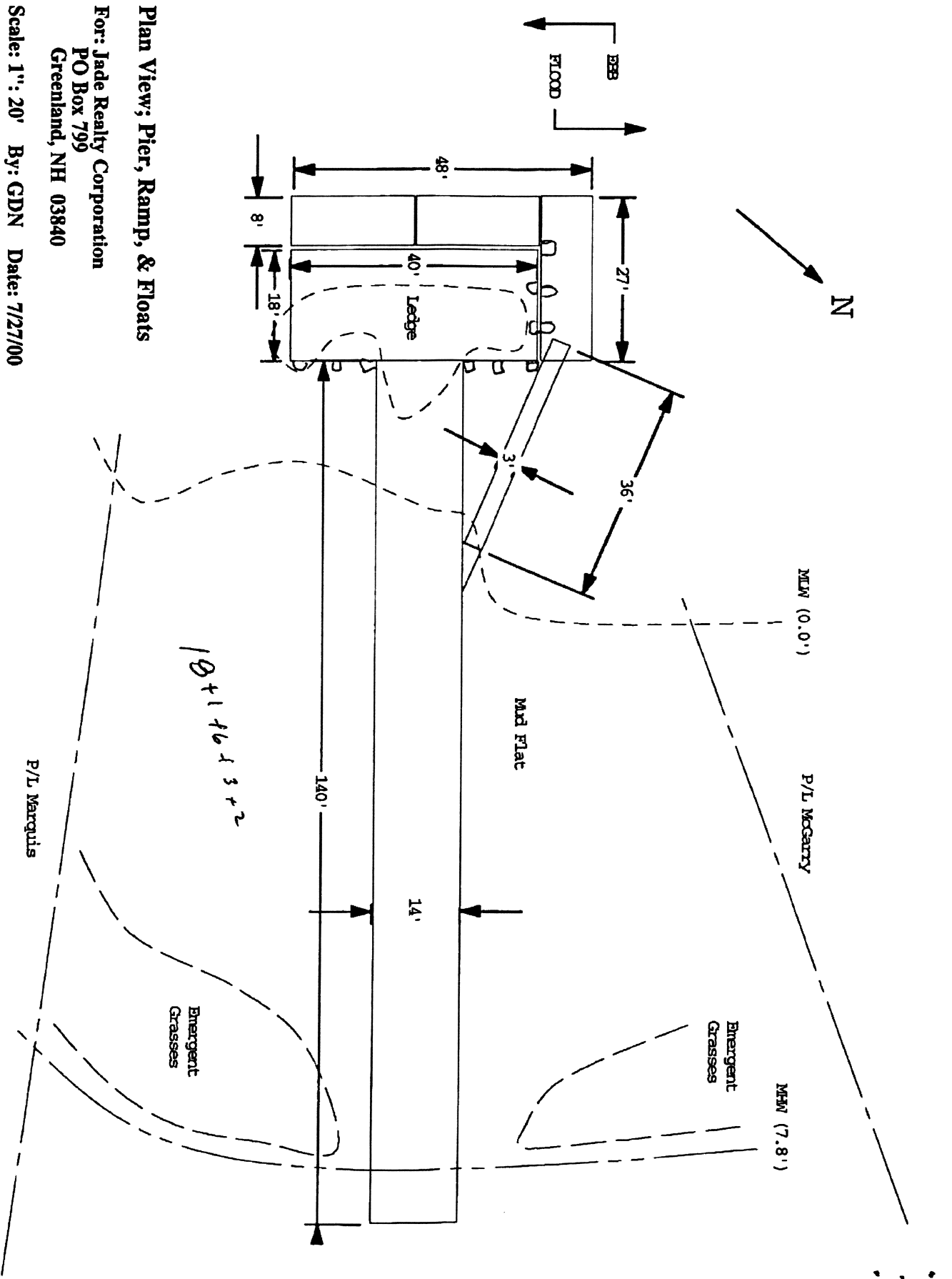
Please note that all work is subject to the conditions contained in the general permit and any additional special conditions listed on any attached sheets. No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. Also, this permit requires you to notify us before beginning work and allow us to inspect the project. Hence, you must complete and return the attached Work Start Notification Form(s) to this office no later than two weeks before the anticipated starting date. (FOR PROJECTS REQUIRING MITIGATION, BE SURE TO INCLUDE MITIGATION WORK START FORM)

Additional Special conditions Attached: YES / NO (CIRCLE ONE)

The Corps of Engineers has implemented an administrative appeals process for jurisdictional determinations. If you are interested in appealing the jurisdictional determination for this project; or if you would like any additional information pertaining to the appeals process, please contact Shawn Mahaney or Rod Howe of my staff at 207-623-8367 at our Manchester, Maine Project Office.

JAY L. CLEMENT
SENIOR PROJECT MANAGER
MAINE PROJECT OFFICE

DAVID H. KILLOY
CHIEF, PERMITS & ENFORCEMENT SECTION
REGULATORY BRANCH
DATE 10/30/00

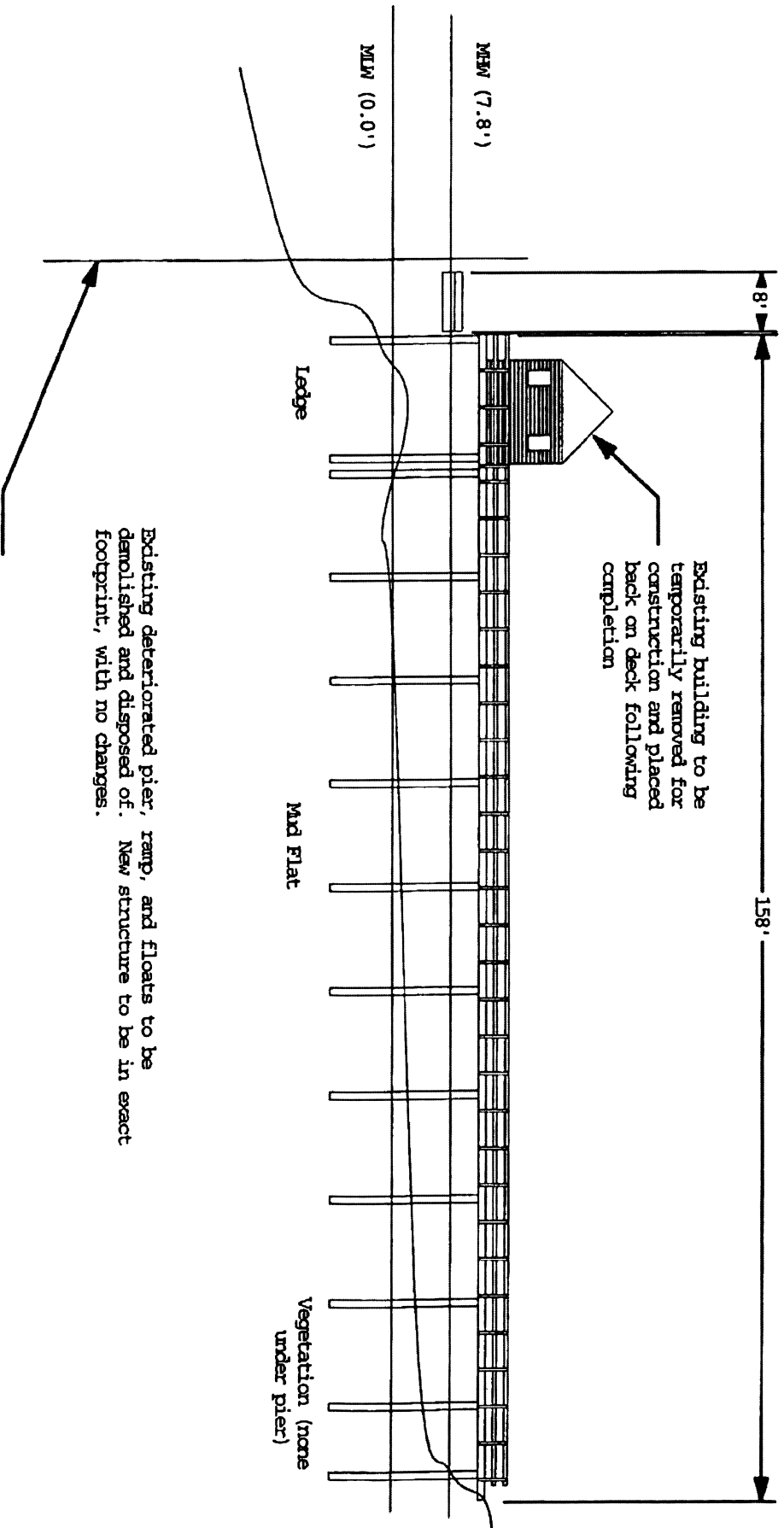


Plan View; Pier, Ramp, & Floats

For: Jade Realty Corporation
 PO Box 799
 Greenland, NH 03840

Scale: 1" = 20' By: GDN Date: 7/27/00

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824



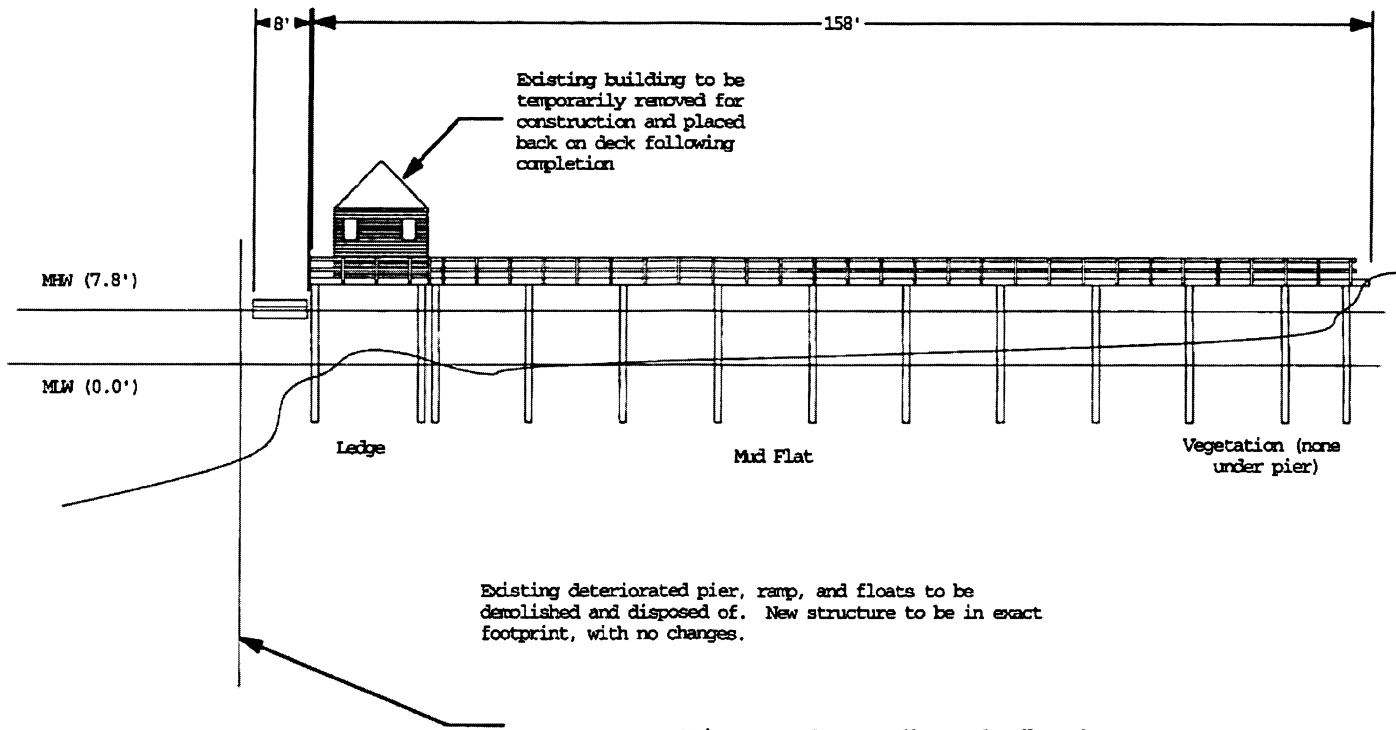
Note: Maine State Plane Coordinates for float face
 N 90830 E 343155

Elevation View; Pier, Ramp, & Floats

For: Jade Realty Corporation
 PO Box 799
 Greenland, NH 03840

Scale: 1" = 20' By: GDN Date: 7/27/00

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824



Elevation View; Pier, Ramp, & Floats

For: Jade Realty Corporation
 PO Box 799
 Greenland, NH 03840

Scale: 1" : 20' By: GDN Date: 7/27/00

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824

TOWN OF KITTERY PORT AUTHORITY
APPLICATION

CASE NO. _____

for
PIERS, WHARFS, FLOATS AND OTHER MARINE-RELATED STRUCTURES.

DATE: 7/27/00

The following application is submitted for the (~~construction~~ ~~modification~~
reconstruction) of a Pier, Ramp & Floats as specified in the
Town of Kittery Port Authority Regulations

1. The owner of the property is Jade Realty Corporation 2. Telephone # 603-430-8323
2. The property address is 9 Badgers Island West
3. Assessor's Map # 1 , Lot # 23 , Size (acres) 0.6 a , Zoning District BI
4. The shorefrontage this property is 140 feet measured at the high water line.
5. The applicant is demonstrates a legal interest in the property by providing a copy of the following: Deed
6. Additional Permits required:
 - a. Building permit X
 - b. Planning board review _____
 - c. DEP Permit X
 - d. Army Corps of Engineers X

7. CONSTRUCTION PLAN

Please provide a description of the property showing all proposed construction which shows the lot lines and exact positions of the proposed structure with dimensions and elevations from a readily identifiable reference points.

Signed Applicant _____

Glenn Normandcau, President, Pickering Marine Corporation
Owner's Agent

Signed (Property Owner) _____

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824

ABUTTERS TO:

Map 1, Lot 23
Jade Realty Corporation
PO Box 799
Greenland, NH 03840

ABUTTER LIST

Tax Map & Lot No.
Name
Mailing Address

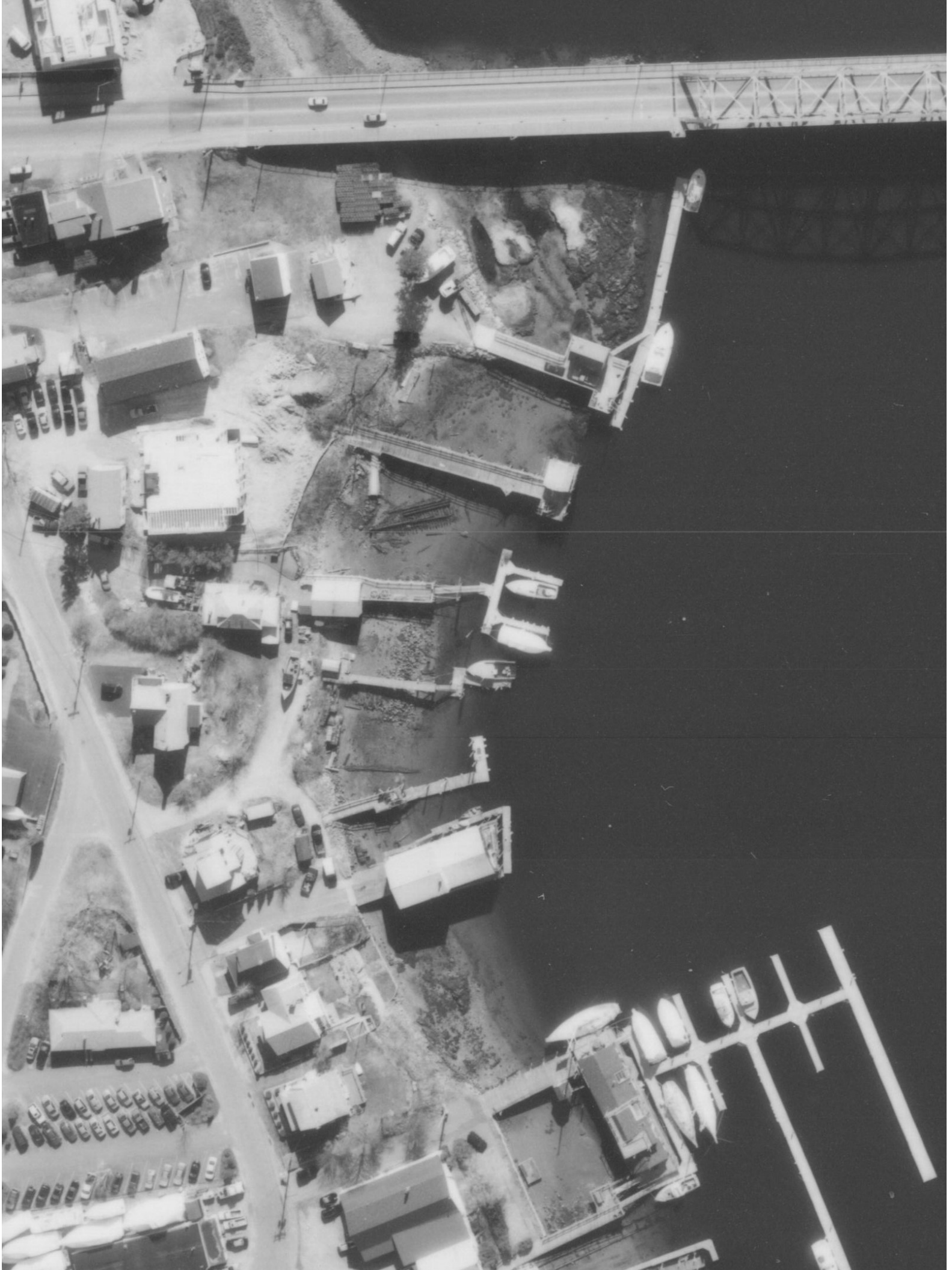
Map 1, Lot 19
Anthony Marquis
4 Raynes Neck Rd.
York, ME 03909

Map 1, Lot 20
Carroll Trust
Patricia Rossiter
55 Whipple Rd.
Kittery, ME 03904

Map 1, Lot 22
Wilfred & Janet Verville
7 Badgers Island West
Kittery, ME 03904

Map 1, Lot 24
Edward McGarry
11 Badgers Island West
Kittery, ME 03904





McGarry KPA Exhibit 5

From: Judi Clark <jucl@natureplanet.com>
Date: February 27, 2023 at 11:27:27 PM EST
To: tdmcgarry@comcast.net
Subject: Original Pier on Badgers Island

To whom it may concern:

I lived in the duplex on Badgers Island for 12+ years, from 1981 until spring of 1994. This is the property next to Ted and Donna McGarry. I moved when the new owners wanted the property for themselves, and they soon tore the house down to build the present day Condos.

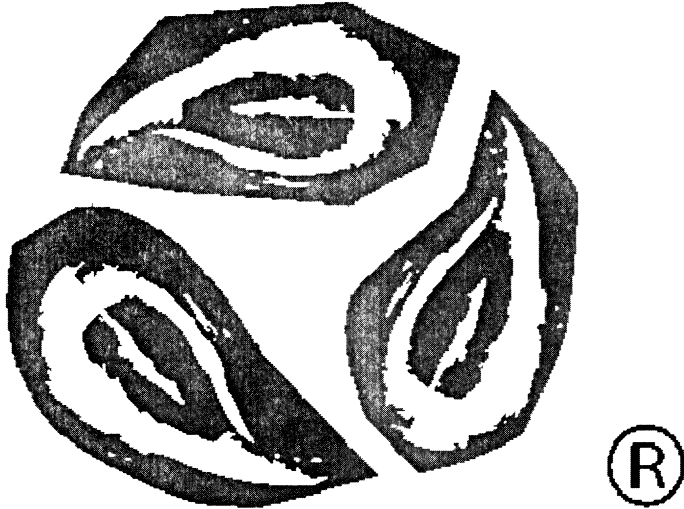
On a historical note, the home that eventually became the duplex that I lived in, was built by the shipbuilder William Badger in 1797 who played a role in the amazing shipbuilding industry on the Piscataqua river.

When I lived in the duplex on Badger Island, I rented from a fisherman named Vinnie Perrine. He kept his fishing trawler on the dock. There was just a single pier that was wider at the end that allowed him to tie the fishing boat to the dock in parallel with the shore. After a few years, Vinnie added an oversized shed for a tiny office towards the end of the dock. To my memory, there was no gangway on the side of the dock closest to the McGarry's docks.. Outside of the shed, the dock remained the same the entire time that I lived there.

Thanks,

Judi Clark
Vice President of Operations

NATURE



PLANET

225 Ottley Dr, Suite 220 | Atlanta, GA 30324

Direct Line: 503 664 3366

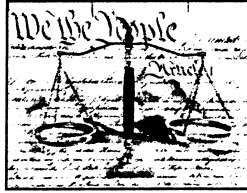
www.NaturePlanet.com

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McGarry KPA Exhibit 6

Patrick S. Bedard
psbedlaw@bedardbobrow.com



BEDARD & BOBROW, PC

Practicing Law in ME, NH & MA
9 Bradstreet Lane P.O. Box 366
Eliot, Maine 03903
Tel. 207-439-4502 Fax 207-439-6172
www.bedardbobrow.com

David J. Bobrow
djblaw@bedardbobrow.com

October 26, 2022

Ben Porter
President
Langdon's Island Condominium Association
9 Badgers Island
Kittery, Maine 03904

Re: Docks and floats at 11 and 9 Badgers Island, Kittery, Maine

Dear Mr. Porter:

As you know I represent Donna McGarry, owner of 11 Badgers Island, Kittery, Maine. I am following up after my letter to you dated October 18, 2022. After I wrote to you I requested from the Town of Kittery records related to the dock and float system on your property at 9 Badgers Island, Kittery, Maine. The Harbormaster delivered to my office what records the Town of Kittery, including the Port Authority, had related to your dock at 9 Badgers Island, Kittery, Maine.

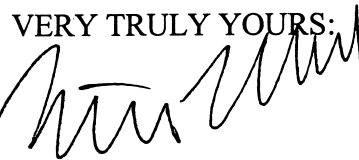
The dock at 9 Badgers Island, Kittery, Maine was approved in 1980. This originally constructed dock has the three approvals required for a dock: Army Corps, Maine Department of Environmental Protection, and the Town of Kittery Port Authority. The approved dock is 12 feet by 140 feet with a T portion at the end of the dock which is 20 feet by 40 feet. This was all legally done and there are permits for the dock.

There are no further permits that I can find (none were delivered by the Town of Kittery). It appears that the dock was expanded by a prior owner (possibly before the condominium was formed) expanding the dock with a float approximately 8 feet further towards 11 Badgers Island, Donna McGarry's permitted dock and floats. This is shown on a 2003 plan of 9 Badgers Island done by LeBlanc Associates for Jade Realty Corporation showing the construction of a ramp and floats at the end of the T. The plan shows that the T end of the pier is now 48 feet wide instead of the permitted 40 feet wide, going closer to Donna McGarry's dock and floats than allowed (the estimate on the plan of the distance is now 40' to 50' when at least 50' is required.) The front of the dock also appears to have been expanded about 8 feet into the Piscataqua River channel. According to the Port Authority Rules in Kittery a property owner needs Kittery Port Authority Approval for floats (which are permanent structures). I also expect Army Corps and Maine DEP approval is needed as well. The Town was unable to provide any evidence that this expansion was permitted. Donna told me she did not receive any notice from the Town, nor any other permitting authority, of any expansion of this float. Instead, the work was apparently done

and the expansion was completed. The expansion has caused problems because placing a boat on the side of the float chokes off Donna's access to her dock and float.

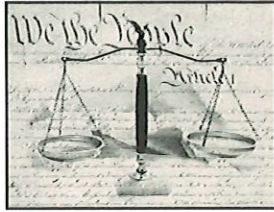
I am requesting from you a copy of the permits for this expansion of your dock beyond the 20 feet by 40 feet T area at the end of the dock. If you do not have permits for this then the float area closest to Donna should not be used for docking boats as it was not permitted and is too close to Donna's dock and float system. I attach copies of the evidence the Town of Kittery provided to me showing the dock that was permitted in 1980, and the plan showing the condition of the dock in 2003 after an expansion for which there is no evidence of any permits.

I look forward to hearing from you.

VERY TRULY YOURS:

PATRICK S. BEDARD

Cc: Donna McGarry

Patrick S. Bedard
psbedlaw@bedardbobrow.com



BEDARD & BOBROW, PC

Practicing Law in ME, NH & MA
9 Bradstreet Lane P.O. Box 366
Eliot, Maine 03903
Tel. 207-439-4502 Fax 207-439-6172
www.bedardbobrow.com

David J. Bobrow
djblaw@bedardbobrow.com

June 19, 2023

Charles Patten, Chairman
Kittery Port Authority
200 Rogers Road
Kittery, ME 03904

Re: Application of Langdon Island Condominium Association
REGULAR MAIL-10 COPIES

Dear Chairman Patten:

I represent Donna McGarry, owner of 11 Badger's Island West, Kittery, Maine. I am writing to you regarding Langdon's Island Condominium Float Expansion application scheduled to be heard on Thursday, July 5, 2023. This is Donna McGarry's response to the proposal.

First, I attach my previous submission to the Kittery Port Authority on March 28, 2023 which was not considered because the application had not yet been accepted. However, I am now asking this be considered. It outlines the fact that this existing dock expansion on the Langdon Island Condominium (hereafter Langdon Island) property, which is too close to Donna McGarry's permitted dock, was never permitted by the Kittery Port Authority. The previous owner of Langdon Island's at some point expanded the dock closer to Donna McGarry's dock and did not receive a permit to do so. This illegal expansion has caused problems for Donna McGarry because when any boat is placed on the right side of the dock, nearer Donna's dock, it blocks access to several of her slips.

Langdon Island has made statements that Donna McGarry wants it to tear out its non-permitted dock. This is untrue and she has never said that, either personally or through her attorney. She can continue to access her dock and floats with the expansion there so long as boats are not parked on the right side of Langdon Island's dock expansion. Donna cannot access her dock and floats if there is a boat of any size placed there. Langdon Island has suggested that it would man any boat parked there so the boat could be moved immediately if Donna McGarry needed it to be moved. This is not acceptable because it could cause problems for Donna and anyone else using her dock and slip and they should not be at the mercy of a boat parked there, hoping it is manned and someone can immediately move it. No boats should be parked on the right side of Langdon Island's dock. Also, the six boats being parked on the slips proposed to be constructed should not be longer than 25 feet so they do not come out into the water and obstruct Donna's passage to her dock and floats. Donna McGarry does not oppose this proposal by

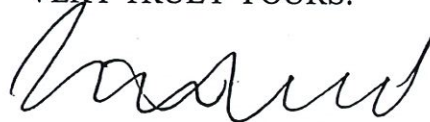
Langdon Island so long as two conditions are placed on the plan or in the final approval and the following is done:

1. The current float on the right side of the Langdon Island dock and float, which was illegally expanded, can remain but cannot ever be used for access by a boat or to park a boat. To make certain this happens a railing should be built along this side and any cleats be removed so a boat cannot be tied up on this side; and
2. The size of any boat on the next floats and in these slips can be no longer than 25 feet overall length, which includes the engine. This is to prevent the boats from jutting out into the traveled way on the river which would obstruct Donna from using her dock and float.

With these conditions made part of the approval and/or noted on the plan Donna McGarry does not oppose Langdon Island's dock and float application. If this is not done Donna McGarry opposes the approval for the reasons set forth in this letter and in the detailed response sent to the Kittery Port Authority on March 28, 2023.

If you have any questions, please do not hesitate to contact me.

VERY TRULY YOURS:



PATRICK S. BEDARD

Cc: Donna McGarry
Steve Riker, Ambit Engineering

DONNA MCGARRY-MORRISON'S LOBSTER-OPPOSITION TO
LANGDON ISLAND CONDOMINIUM APPLICATION BEING
ACCEPTED

I represent Donna McGarry, owner of Morrison's Lobster at 11 Badgers Island West, Kittery, Maine, and abutting 9 Badgers Island West. She opposes the Kittery Port Authority accepting the application as her existing dock is closer than 50 feet to the dock at 9 Badgers Island West. A previous owner of 9 Badgers Island West illegally expanded the dock by placing a walkway and floats next to the existing dock. This unpermitted expansion was closer than 50 feet to Donna McGarry's existing dock and floats. This unpermitted expansion was also not allowed by section 4.7.6 of the Kittery Port Authority rules and regulations.

The history of permits for docks for both parcels will show what previous approvals were granted. First, 9 Badgers Island West received approval in 1980 from the Kittery Port Authority, and other governing bodies, for the construction of a dock on its property. I have enclosed these documents. You can see the existing Morrison dock to the left in the drawing. The only other approval 9 Badgers Island West received was an approval to replace an existing dock on the property dated September 12, 2000; however, this replacement showed an existing walkway and floats that were never approved in 1980, or at any time thereafter. The Town's records do not show any approval for this walkway and additional floats. The unpermitted expansion appears to be a walkway 3 feet wide by 36 feet in length, a float on the side of the permitted dock 27 feet length and approximately 8 feet wide, and a float in front of the permitted dock approximately 40 feet long and 8 feet in width. This unpermitted expansion is apparent by comparing the existing conditions plan in 2000 with what was permitted in 1980. Thus, the additional walkway and floats are not permitted and should be removed.

In 1992 the McGarrys, Ted (Donna's husband who is now deceased) and Donna, received approval for a dock and float expansion at 11 Badgers Island West. After this approval there has been no further expansion of the McGarry's dock and it remains as it was after being built out after the 1992 approvals.

It appears that the owner of 9 Badgers Island West at some point closer to the year 2000 added a gangway and extension to its dock which came closer than 50 feet to Donna McGarry's existing dock and floats. The best evidence of this is a photo of Badger's Island provided by the Maine Geological Survey on April 6, 1999. It shows the McGarry dock existing as permitted in 1992, but it shows no expansion of the dock at 9 Badgers Island, Kittery, Maine (if you look at the blown up version of this photo it does show a slight lip on the right side which could have been used for a walkway, but does not show the floats or walkway existing at that time.) Donna McGarry does not recall a walkway or floats being used by 9 Baggers Island West at any time after their expansion of the dock in 1992 (or before) until around 2000 when the dock was rebuilt and expanded. If the walkway and floats were there after 1992 and used they would have obstructed Donna using boats to access her dock and floats. A prior renter at 9 Badgers Island West, Judi Clark, also does not recall any walkway or floats at 9 Badgers Island West from 1981 through 1994. This unpermitted expansion has caused problems for Donna McGarry since it was constructed and used.

As you can see in the attached sketch done by architect Brud Weger, overlaying the Langdon Island Condominium plan, it shows what happens when an 11 foot wide boat is parked on Donna McGarry's dock and Langdon Island Condominium decides to park a 10 foot wide boat to the side of its unpermitted 8 foot addition. If that happens there is not enough room for another boat parked at Donna McGarry's dock to get through and between the two boats. Thus, by the owner

of 9 Badgers Island West building (without a permit) too close to the McGarry dock it has impacted navigation and use of her dock.

Donna McGarry is requesting the Kittery Port Authority not accept this application by Langdon Island Condominium Association until it removes the floats and the walkway so that the property is consistent with the 1980 permit. This would mean taking out the floats on the side of the dock and in the front of the dock, as well as the walkway to the floats. The Kittery Port Authority has the power to request this by virtue of its Rules and Regulations, paragraph 6.1, because this section provides that if anyone violates the rules and regulations this may result in the loss of facility use and mooring privileges. This means that the Langdon Island Condominium Association dock and floats should not be used, nor should this application proceed to be scheduled for a public hearing, until the Langdon Island Condominium Association comes into compliance with its permitted use for the property.

I enclose the following documents:

1. 1980 permits for 9 Badgers Island West property (Vincent Prien);
2. 1992 permits for 11 Badgers Island West (Ted and Donna McGarry);
3. 2000 approval to replace existing docks and floats at 9 Badgers Island West (Pickering Marine);
4. April 6, 1999 photo provide by Maine Geological Survey, one regular size and the other blown up to show 9 and 11 Badgers Island West;
5. February 27, 2023 e-mail from Judi Clark regarding her living at 9 Badgers Island West from 1981 through 1994;
6. Letter from Attorney Patrick S. Bedard to Ben Porter, President of Langdon's Island Condominium Association dated October 26, 2022 requesting permits for the expansion

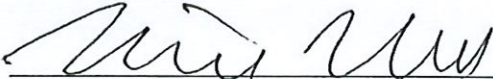
of the floats and walkway (and Mr. Porter provided by e-mail the 2000 approval which has been copied in number 3 here, but no permits for the expansion);

7. Sketch by Architect Brud Weger showing the difficulty for Donna McGarry accessing her dock due to the unpermitted float expansion.

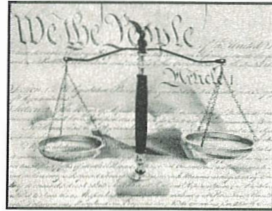
I will be participating by zoom at the meeting on April 6, 2023, and Donna McGarry will be present in person.

RESPECTFULLY SUBMITTED:
DONNA MCGARRY,
By Her Attorney
PATRICK S. BEDARD, ME Bar No. 3813
BEDARD & BOBROW, PC.
P.O. Box 366
9 Bradstreet Lane
Eliot, ME 03903
207-439-4502

Date: 3/29/23


Patrick S. Bedard, Esq.

Patrick S. Bedard
psbedlaw@bedardbobrow.com



BEDARD & BOBROW, PC
Practicing Law in ME, NH & MA
9 Bradstreet Lane P.O. Box 366
Eliot, Maine 03903
Tel. 207-439-4502 Fax 207-439-6172
www.bedardbobrow.com

David J. Bobrow
djblaw@bedardbobrow.com

March 28, 2023

Charles Patten, Chairman
Kittery Port Authority
200 Rogers Road
Kittery, ME 03904

Re: Application of Langdon Island Condominium Association
HAND DELIVERED-10 COPIES

Dear Chairman Patten:

I represent Donna McGarry, an abutter to the proposed dock expansion at 9 Badgers Island West, Langdon Island Condominium Association. I was away and did not participate in the first meeting in March, 2023 considering whether to accept this application. I will be attending by zoom for the April 6, 2023 meeting. I believe Donna McGarry will be in attendance at the meeting on April 6, 2023 in person. I listened to the recording of the first meeting and wanted to provide what information I had that would hopefully be of assistance in understand what permits were granted for both Donna's property and the Langdon Island Condominium Association property. Thus, I have attached a brief argument regarding the unpermitted expansion which is obstructing Donna's access to her dock, and relevant documents regarding this, including permits, letters and a photograph from 1999. I have provided a total of 10 copies of this submission and have also provided one copy to the applicant's representative, Steve Riker.

I look forward to attending the meeting on April 6, 2023.

VERY TRULY YOURS:

A handwritten signature in blue ink, appearing to read "Patrick S. Bedard", is written over a light blue horizontal line.

PATRICK S. BEDARD

Cc: Client

DONNA MCGARRY-MORRISON'S LOBSTER-OPPOSITION TO
LANGDON ISLAND CONDOMINIUM APPLICATION BEING
ACCEPTED

I represent Donna McGarry, owner of Morrison's Lobster at 11 Badgers Island West, Kittery, Maine, and abutting 9 Badgers Island West. She opposes the Kittery Port Authority accepting the application as her existing dock is closer than 50 feet to the dock at 9 Badgers Island West. A previous owner of 9 Badgers Island West illegally expanded the dock by placing a walkway and floats next to the existing dock. This unpermitted expansion was closer than 50 feet to Donna McGarry's existing dock and floats. This unpermitted expansion was also not allowed by section 4.7.6 of the Kittery Port Authority rules and regulations.

The history of permits for docks for both parcels will show what previous approvals were granted. First, 9 Badgers Island West received approval in 1980 from the Kittery Port Authority, and other governing bodies, for the construction of a dock on its property. I have enclosed these documents. You can see the existing Morrison dock to the left in the drawing. The only other approval 9 Badgers Island West received was an approval to replace an existing dock on the property dated September 12, 2000; however, this replacement showed an existing walkway and floats that were never approved in 1980, or at any time thereafter. The Town's records do not show any approval for this walkway and additional floats. The unpermitted expansion appears to be a walkway 3 feet wide by 36 feet in length, a float on the side of the permitted dock 27 feet length and approximately 8 feet wide, and a float in front of the permitted dock approximately 40 feet long and 8 feet in width. This unpermitted expansion is apparent by comparing the existing conditions plan in 2000 with what was permitted in 1980. Thus, the additional walkway and floats are not permitted and should be removed.

In 1992 the McGarrys, Ted (Donna's husband who is now deceased) and Donna, received approval for a dock and float expansion at 11 Badgers Island West. After this approval there has been no further expansion of the McGarry's dock and it remains as it was after being built out after the 1992 approvals.

It appears that the owner of 9 Badgers Island West at some point closer to the year 2000 added a gangway and extension to its dock which came closer than 50 feet to Donna McGarry's existing dock and floats. The best evidence of this is a photo of Badger's Island provided by the Maine Geological Survey on April 6, 1999. It shows the McGarry dock existing as permitted in 1992, but it shows no expansion of the dock at 9 Badgers Island, Kittery, Maine (if you look at the blown up version of this photo it does show a slight lip on the right side which could have been used for a walkway, but does not show the floats or walkway existing at that time.) Donna McGarry does not recall a walkway or floats being used by 9 Baggers Island West at any time after their expansion of the dock in 1992 (or before) until around 2000 when the dock was re-built and expanded. If the walkway and floats were there after 1992 and used they would have obstructed Donna using boats to access her dock and floats. A prior renter at 9 Badgers Island West, Judi Clark, also does not recall any walkway or floats at 9 Badgers Island West from 1981 through 1994. This unpermitted expansion has caused problems for Donna McGarry since it was constructed and used.

As you can see in the attached sketch done by architect Brud Weger, overlaying the Langdon Island Condominium plan, it shows what happens when an 11 foot wide boat is parked on Donna McGarry's dock and Langdon Island Condominium decides to park a 10 foot wide boat to the side of its unpermitted 8 foot addition. If that happens there is not enough room for another boat parked at Donna McGarry's dock to get through and between the two boats. Thus, by the owner

of 9 Badgers Island West building (without a permit) too close to the McGarry dock it has impacted navigation and use of her dock.

Donna McGarry is requesting the Kittery Port Authority not accept this application by Langdon Island Condominium Association until it removes the floats and the walkway so that the property is consistent with the 1980 permit. This would mean taking out the floats on the side of the dock and in the front of the dock, as well as the walkway to the floats. The Kittery Port Authority has the power to request this by virtue of its Rules and Regulations, paragraph 6.1, because this section provides that if anyone violates the rules and regulations this may result in the loss of facility use and mooring privileges. This means that the Langdon Island Condominium Association dock and floats should not be used, nor should this application proceed to be scheduled for a public hearing, until the Langdon Island Condominium Association comes into compliance with its permitted use for the property.

I enclose the following documents:

1. 1980 permits for 9 Badgers Island West property (Vincent Prien);
2. 1992 permits for 11 Badgers Island West (Ted and Donna McGarry);
3. 2000 approval to replace existing docks and floats at 9 Badgers Island West (Pickering Marine);
4. April 6, 1999 photo provide by Maine Geological Survey, one regular size and the other blown up to show 9 and 11 Badgers Island West;
5. February 27, 2023 e-mail from Judi Clark regarding her living at 9 Badgers Island West from 1981 through 1994;
6. Letter from Attorney Patrick S. Bedard to Ben Porter, President of Langdon's Island Condominium Association dated October 26, 2022 requesting permits for the expansion

of the floats and walkway (and Mr. Porter provided by e-mail the 2000 approval which has been copied in number 3 here, but no permits for the expansion);

7. Sketch by Architect Brud Weger showing the difficulty for Donna McGarry accessing her dock due to the unpermitted float expansion.

I will be participating by zoom at the meeting on April 6, 2023, and Donna McGarry will be present in person.

RESPECTFULLY SUBMITTED:
DONNA MCGARRY,
By Her Attorney
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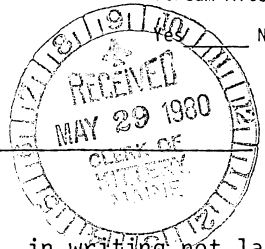
Date: 3/29/23



Patrick S. Bedard, Esq.

McGarry KPA Exhibit 1

MAR 1 Lot 23



Stream Alterations

No. 1

TO: Department of Environmental Protection

FROM: Kittery Municipal Office

TYPE OF APPLICATION: Wetlands

Please use this form to return your comments, if any, to this office, in writing not later than June 11. Otherwise, we will assume that you have no objections to this project. Questions concerning this project should be directed to Don Witherill at 289-2111.

PROJECT

APPLICANT

NUMBER: 03 - 6652

NAME: Vincent A. Prien

NAME: Pile Pier

CONTACT PERSON: (603) 964-5923

LOCATION: Kittery

After a thorough review of the above project, as presented to us, and consideration of our agency's standards, programs and responsibilities, the following comments are submitted to the Department of Environmental Protection:

1. This agency has no objections to the project as proposed. _____
2. The opinion of this agency is the proposed project warrants a Public Hearing and offers the following comments as a basis for such hearing:
3. This agency has objections to the project as proposed and offers the following comments as a basis for the objections:

(Comments must be signed and dated in order to be accepted by this Department.)
(If additional space is needed, please attach another sheet.)

PROJECT SUMMARY - WETLANDS ACT & CERTIFICATION

TO BE FILLED IN BY DEP

Applicant: Vincent A. Prien

City/Town: Kittery County: York

Name of Project: Pile Pier

Project No.: 03-6652-31130

1. Description of Project: 14' x 160' wood + Pile Private Pier on the Piscataqua River

2. Attach copy of deed, lease, purchase agreement, or other legal document establishing title, right or interest of applicant in the site.

3. Length of shoreline on the coastal wetland owned or controlled by the applicant.

140' of shoreline

4. Indicate nature of shoreline and tidal area (grassy, mud, rock, etc.)

Ledge + mud

5. Check below any other permits required for the project. Indicate with an asterisk (*) those permits already obtained.

U.S. Army Corps of Engineers (Tidal Waters)

Waste Discharge (DEP)

Other (Explain) Kittery Port authority and Kittery Planning Board

6. Actual physical dimensions of project:

Length (Out into wetland): 160'

Width (Along shore): 14'

Height: 2' above High water mark

7. Description of present use of the wetland: NONE, on said Property But adjoining Properties have Piers

8. Description of present use of the adjacent wetland: Recreating Lots # 24, 21
Both have Private Boat Docking facilities.
9. List power equipment to be used in construction of the project: Chain Saw,
Pump Drills, Pile driver.
10. Submit a scale drawing of the coastal wetland to be affected by the project, which shows the project in detail, the landowner's property boundary lines, the *low-water mark* and *high-water mark*. For your convenience, sample sketches and blank graph paper are attached. Applicants may submit larger drawings or blueprints, but if they exceed 8½" X 11" eleven copies are required.
11. State, in detail, the measures you propose to take to protect the surrounding area from the adverse affects of your project: _____

This is Private Dock - there is no need for waste
disposed -

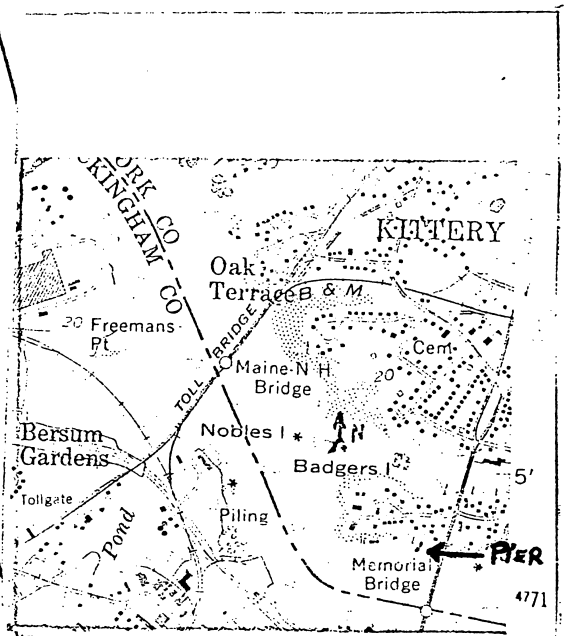
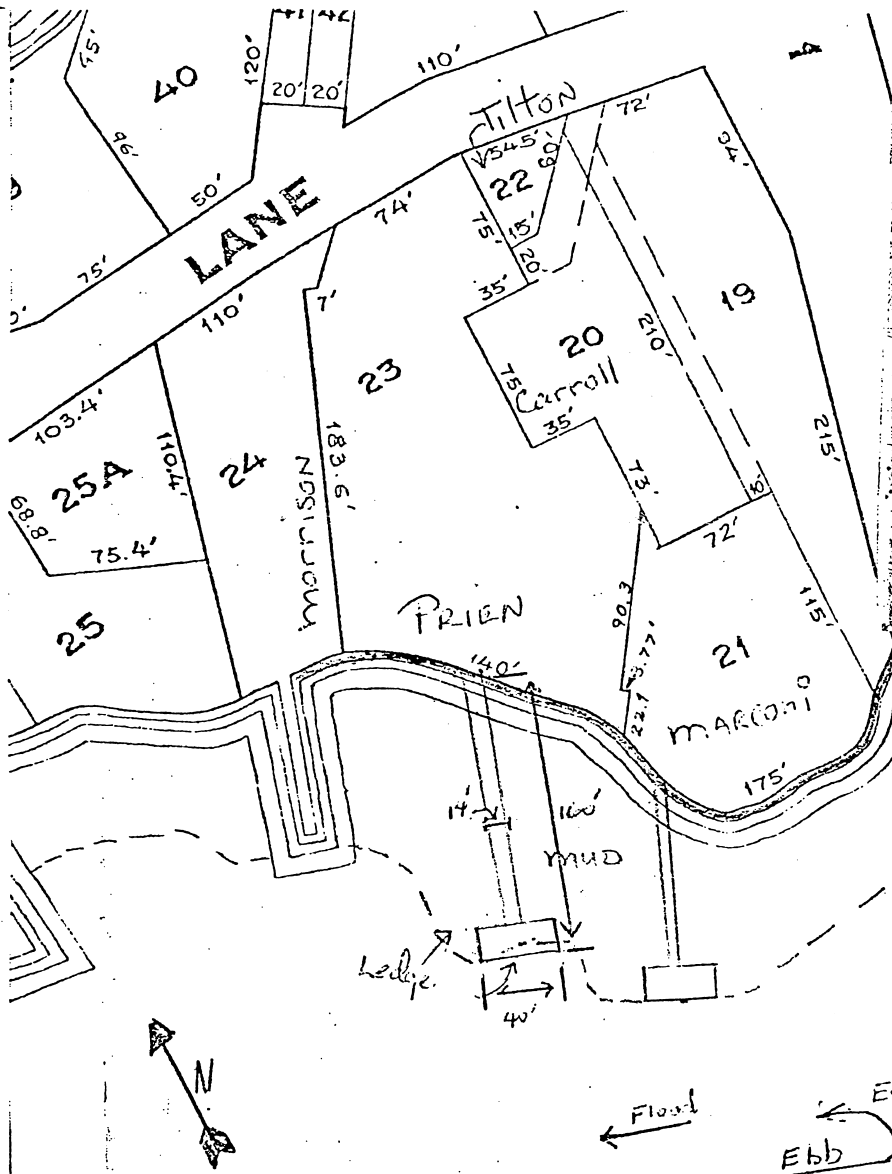
12. If this project is part of a larger project describe below:

13. If dredging or filling indicate number of cubic yards: _____
14. Indicate location for deposition of dredged material: _____

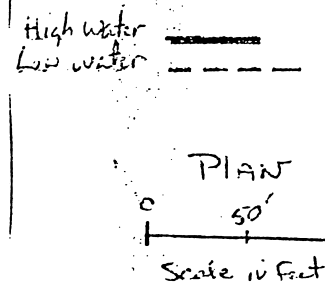
15. Detailed directions for finding the site. (Include sketch map.)
Take Route 1 into Badgers Is. across River from
Ports, N.H., turn left onto Thomers lane, its the
Third House on left, Big yellow, 2 chimney Colonial Home.

16. The applicant shall set forth below the names and addresses of the owners of *abutting* property, by signing this application the applicant certifies that he has provided each with a copy of the notice similar in form to that which is attached to this application.

NAME	ADDRESS
<u>Hugo Marconi</u>	<u>Badgers Is. Kittery, Maine</u>
<u>Sylvester Carroll</u>	<u>55 Whipple Rd. Kittery, ME.</u>
<u>Mrs. Marjorie Tilton</u>	<u>346 Pleasant St. Ports, N.H.</u>
<u>Martin Morrison</u>	<u>82 Badgers Is. Kittery</u>



Portsmouth Quasi
 New Hampshire - Maine
 7.5 min Series Topo
 U.S.G.S.
 Scale 1-24,000



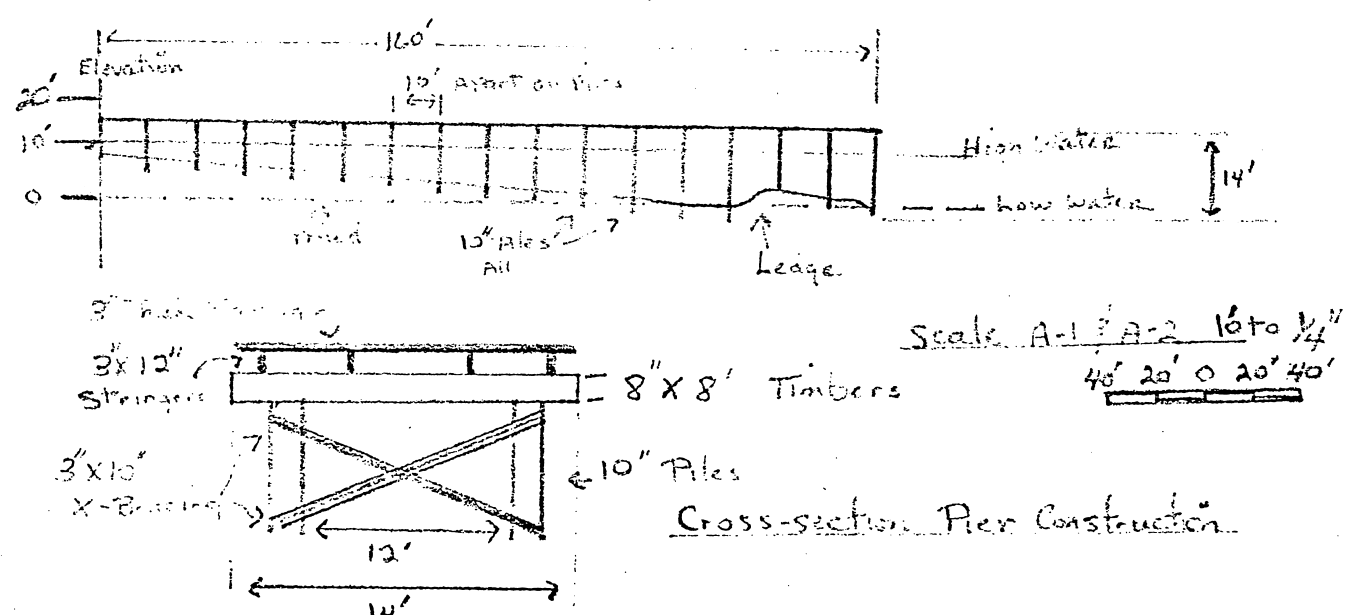
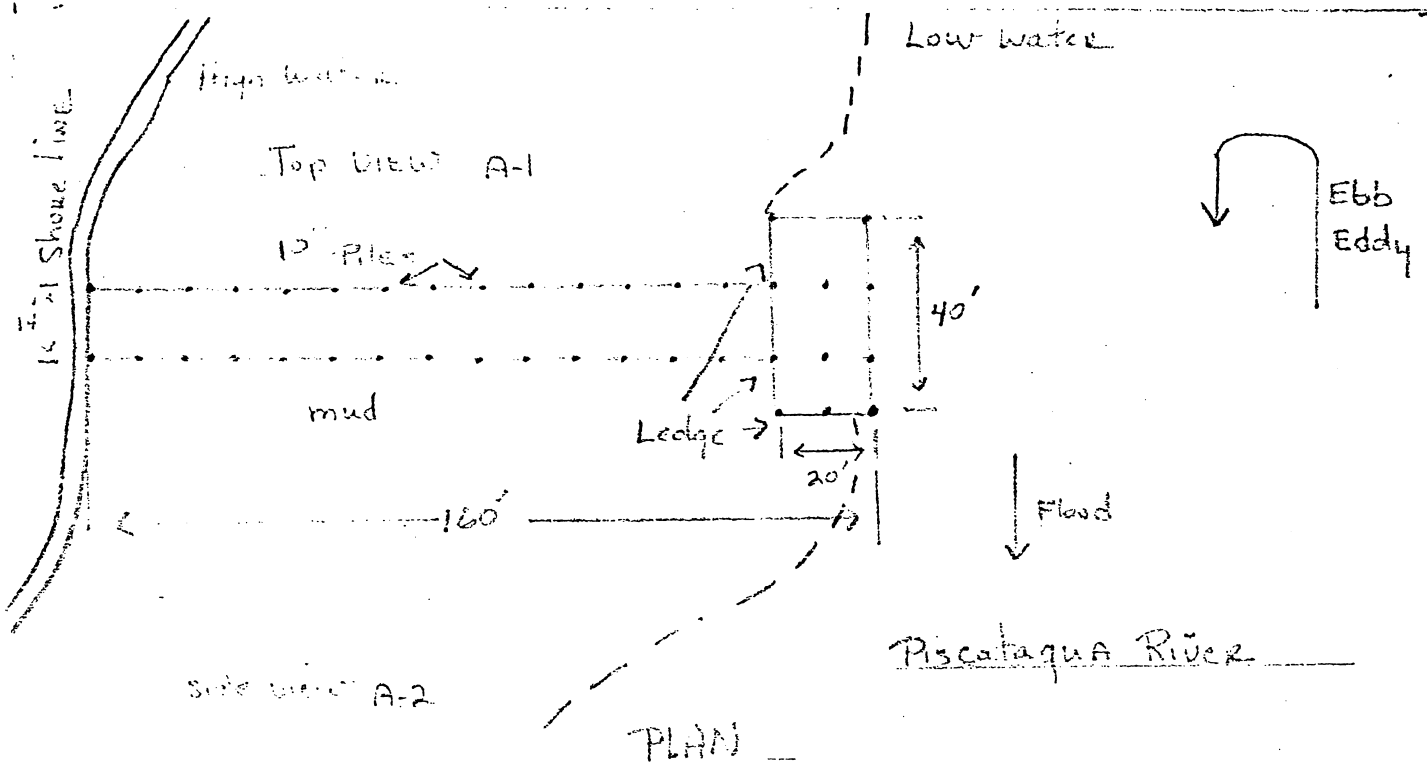
Purpose: Private use for Small Craft
 Adjacent Property Owners:
 ① Lot 21 Hugo marconi
 ② Lot 20 Sylvester Carroll
 ③ Lot 22 marjorie Tilton
 ④ Lot 24 martin marrison

Kittery Tax map
 I Lot #23

PISCATAQUA

PORTSMOUTH

Dock Plan for
 Vincent PRIEN
 Sheet 1 of 2



- Notes
1. The proposed project is intended for private use only.
 2. Project does not involve dredging, excavating or filling.

Proposed Dock
 AT Piscataqua River
 in Nixony maine
 York County
 Application By
 Vincent Peizer.

Receipt # 4829

BUILDING PERMIT AND APPLICATION 9-10-1981, Value 6000, M 1 L 23
 Owner PRIEN, VINCENT, Location BY BARDON IS, Fee 6.00, No. 81-113
 Mailing Address 6 STONEWALL LN, RYE N.H., Zip 03070, Tel. 964-5028
 Applicant SAME, Contractor SELF
 Plumbing Permit No., Interior N/A, Exterior N/A, No. Baths N/A, Dist. to Water N/A
 Plot Plan YES, Yard Spaces N/A ft. front N/A, ft. left N/A, ft. rear N/A
 Building Plan YES, Dimensions SEE FILE 14x160 & 20x40 TOWER Ft.
 Structural type _____, Style _____, Foundation _____, Fin. Cellar _____
 Ext. _____, Int. _____, Roof _____, Insul. _____, Elect. _____
 Heat _____, Fireplace/Stove _____, Other _____
 Occupancy Permit required _____
14x160' PIER WITH 20x40' TEE AT SEA END - 7.1. E WOOD 50%

In accordance with Chapter 1, Section IV, subsection D, of Appendix A, Land Use and Development Code Zoning Ordinance for the Town of Kittery, Maine, adopted June 13, 1977, this application for a Building Permit is hereby approved/denied by P.E.O. P. A. TETREAU, ACTING, Code Enforcement Officer, for the following reason(s): APPROVAL HAS BEEN OBTAINED FROM ALL NEARBY CIVIC BODIES

Owner's signature [Signature]
 Applicant other than owner: _____
 I hereby certify that the proposed construction and/or use is authorized by the owner of record and I have been instructed by the owner to make this application as his authorized agent.
 Signature of Agent _____ Tel. _____
 Address _____ State _____ Zip _____

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

IN PROGRESS INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION. TEL. 439-0452



TOWN OF KITTERY

CERTIFICATE OF OCCUPANCY APPLICATION

9-100 19 87 Zone M 1 L 23 No. 11-111
 Owner James J. Gaudin Location 24 Borden St Kittery, ME
 Present Use Residential
 Proposed Construction and/or Use Basement
 Requisite Approvals See other documents, Plan 202, Per. No. 11-111, 11-111, 11-111

BUILDING INSPECTION RECORD

Local Ordinances	Rough-In Plumbing	Rough-In Electrical
Fire Codes	Finished Plumbing	Finished Electrical

Remarks:

CERTIFICATE OF OCCUPANCY PERMIT

Conditional or temporary occupancy issued by _____, 19____
 and is subject to the following conditions and/or safeguards _____
 _____ expires _____, 19____
 Completed occupancy issued by _____, _____, 19____,
 as the subject property has been inspected and/or evaluated and appears to be in compliance with all applicable codes.

BUILDING PERMIT AND APPLICATION

1-110 19 87 Value 2000 M 1 L 23 Fee 100 No. 11-111
 Owner James J. Gaudin Location 24 Borden St, Kittery, ME
 Mailing Address 24 Borden St, Kittery, ME Zip 04043 Tel. 253-1000
 Applicant James J. Gaudin Contractor James J. Gaudin
 Plumbing Permit No., Interior N/A Exterior N/A No. Baths 1 1/2 Dist. to Water 1/2
 Plot Plan 1/2, Yard Spaces N/A ft. front R/W line, 1/2 ft. left, 1/2 ft. rt., 1/2 ft. rear 1/2
 Building Plan 1/2, Dimensions 30' x 10' x 10' x 10' Ht. 10' Ft.
 Structural type _____, Style _____, Foundation _____, Fin. Cellar _____
 Ext. _____, Int. _____, Roof _____, Insul. _____, Elect. _____
 Heat _____, Fireplace/Stove _____, Other _____
 Occupancy Permit required _____

In accordance with Chapter 1, Section IV, subsection D, of Appendix A, Land Use and Development Code Zoning Ordinance for the Town of Kittery, Maine, adopted June 13, 1977, this application for a Building Permit is hereby approved/denied by _____, Code Enforcement Officer, for the following reason(s): _____

Owner's signature James J. Gaudin

Applicant other than owner:

I hereby certify that the proposed construction and/or use is authorized by the owner of record and I have been instructed by the owner to make this application as his authorized agent.

Signature of Agent _____ Tel. _____

Address _____ State _____ Zip _____

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

IN PROGRESS INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION. TEL. 439-0452



MAP 1 LOT 23

BP-81-113

TOWN OF KITTERY PORT AUTHORITY

TOWN HALL, KITTERY, MAINE

August 1, 1980

Mr. Vincent A. Prien
84 Badgers Island
Kittery, Maine
03904

Dear Mr. Prien;

At a recent meeting of the Town of Kittery Port Authority, your application to build a wood and pile pier was discussed and approved, subject to you obtaining approval from the other appropriate agencies.

Sincerely yours,

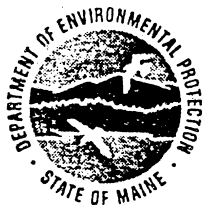
Frank C. Frisbee
Chairman

cc. Arthur Peverly, Planning Board
Manual Sousa, Town Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AUGUSTA, MAINE 04330

BOARD ORDER

IN THE MATTER OF



VINCENT A. PRIEN)	ALTERATION OF COASTAL WETLANDS ACT
Kittery, Maine, York County)	AND WATER QUALITY CERTIFICATION
PILE-SUPPORTED PIER)	
#03-6652-31130)	FINDINGS OF FACT AND ORDER

After reviewing the project file which includes the application with its supportive data, agency review comments, staff summary and other related materials on file with regard to the above noted project, under provisions of Title 38, M.R.S.A., Section 474 and Section 401 of P.L. 92-500, the Federal Water Pollution Control Act Amendments of 1972, the Board finds the following facts:

1. Nature of Project: Construct a pile-supported pier to measure 12 feet by 140 feet with a 20 foot by 40 foot tee at its end. Pier deck is to be located approximately 4 feet above mean high water.
2. The project will not unreasonably interfere with existing recreational and navigational uses.
3. The project will not cause unreasonable soil erosion.
4. The project will not unreasonably harm wildlife or freshwater, estuarine, or marine fisheries.
5. The project will not unreasonably interfere with the natural flow of any waters.
6. There is reasonable assurance that the activity will not lower the quality of any waters or violate applicable Water Quality Standards.

THEREFORE, the Board approves the application of Vincent A. Prien to construct a pile-supported pier as described in paragraph #1 above, subject to the following terms and conditions:

1. The Standard Conditions of Approval, except for Condition F, a copy attached.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25TH DAY OF JUNE, 1980.

BOARD OF ENVIRONMENTAL PROTECTION

BY 
Henry E. Warren, Chairman

PLEASE NOTE ATTACHED SHEET FOR APPEAL PROCEDURES....



State of Maine SUBMERGED LAND EASEMENT

No. 783-09

This is an easement conveying to you certain, limited rights in the submerged lands of the State of Maine. It is not your environmental permit to use these lands. Please read the easement carefully and abide by its terms.

The Director of the Bureau of Public Lands, (hereinafter called the "Grantor") Department of Conservation, an agency of the State of Maine, acting pursuant to the provisions of R. S., Title 12, Section 514-A, in consideration of the performance of the covenants and conditions hereinafter provided, hereby grants to Vincent A. Prien, the mailing address of which is Kittery, Maine (hereinafter called the "Grantee") an easement in so much of the State-owned submerged lands (hereinafter called the "premises") as are described in Department, Environmental Protection application number 03-6652-31130 as are actually used by the Grantee in conformity with any permit (hereinafter referred to as the "permit") issued pursuant to such application, subject to the following covenants, and conditions:

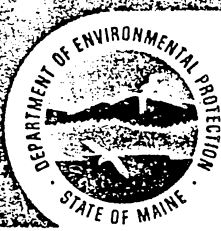
1. **TERM:** Such easement shall hold for the term of 30 years commencing with the date of this instrument and ending at midnight on December 31, 2009, and no longer.
2. **USE:** The premises shall not be used for any commercial purpose or as an amenity in furtherance of a commercial purpose, excepting only structures occupying not more than 100 square feet of State-owned land and structures occupying not more than 2,000 square feet of State-owned land and used exclusively for the landing or processing of shellfish, finfish, or other natural products of the sea. Within 30 days after request by Grantor by written notice hereunder, Grantee shall deliver to Grantor a written description, certified by Grantee to be correct, of the actual and specific uses then and therefore made of the premises. No sand, gravel or other materials shall be removed from the premises and no enlargement of structures or fixtures upon the premises shall be permitted without the prior written consent of the Grantor. No materials may be deposited on the premises except as specifically authorized in the permit.
3. **AUTOMATIC CANCELLATIONS:** In the event any regulatory agency of the United States or the State of Maine or any political subdivision thereof denies or disapproves any portion of any application by the Grantee for the use of the above described premises or any portion thereof, or that any court of competent jurisdiction invalidates any permit granted pursuant to such application, this easement shall be cancelled automatically as to the denied or disapproved use, and shall to that extent be null, void, and of no effect as of the date of such denial or disapproval.
4. **ASSIGNMENT:** Any and all rights conveyed herein by the Grantor may be assigned or otherwise conveyed by the Grantee, subject to the covenants and conditions of this instrument.
5. **PROPERTY TAXES:** Grantee shall pay all taxes, charges, assessments and other impositions levied upon the premises and the buildings, improvements, and fixtures thereon when due and payable.
6. **OTHER USES:** Grantee may make no use of the premises except that expressly authorized by any permit. Grantor reserves the right to make such other uses of the premises, including, without limitation, the right to permit pipes to be laid thereunder and wires to be maintained thereover, as shall not unreasonably interfere with Grantee's use and enjoyment of the premises.
7. **INDEMNITY:** Grantee agrees to defend or cause to be defended and to indemnify and hold the Grantor harmless against any and all claims, suits, causes of action, expenses and damages incurred by or brought against Grantor and arising or allegedly rising out of, in whole or part, the use or occupancy of the premises by Grantee, its invitees, contractors, agents and employees.
8. **DEFAULT:** If Grantee or its successor in interest shall fail to comply with any of the terms of this instrument, Grantor shall have the right at its option at any time thereafter to terminate this easement, re-enter and take possession of the premises after giving thirty (30) days advance notice in writing to Grantee or its successor in interest. If during said thirty (30) day period Grantee cures its default to the satisfaction of Grantor then termination shall automatically be vacated, otherwise the same shall remain in full force and effect. Such right of termination shall be in addition to any other legal or equitable rights or remedies which Grantor may have. If Grantor shall institute an action to enforce any provision of this easement, Grantor shall be entitled to recover reasonable attorney's fees.
9. **MAINTENANCE:** Grantee, at its sole cost and expense, shall at all times keep, or cause all improvements (regardless of ownership) to be kept, in as good condition and repair as originally constructed, except for reasonable use. Grantee shall not allow debris or refuse to accumulate on the premises. In addition to having the right to cancel this easement, Grantor shall have the right upon 30 days notice to remove such debris and refuse and collect the cost of such removal from the Grantee.
10. **ABANDONMENT:** Failure by the Grantee to use or maintain the premises for two consecutive years shall be deemed to constitute abandonment of the premises, including all structures and improvements thereon. Upon abandonment the Grantor at its option may require Grantee to remove all such structures and improvements within such period of time as it may prescribe at the sole expense of the Grantee or the Grantor may assume possession and ownership of all structures and improvements.
11. **NOTICE:** Any notice permitted or required hereunder shall be deemed to have been given when actually delivered or when deposited in the U.S. mail, first-class postage prepaid, addressed as follows: To Grantor: Bureau of Public Lands, State Capitol, Augusta, Maine 04333, Attn: Submerged Lands Division, and giving the easement number, or to such other address specified by Grantor by written notice hereunder. To Grantee: at the address hereinabove set forth for Grantee or at such other address as Grantee may have theretofore specified by written notice actually received by and placed of record with Grantor.

November 1, 1979

****STANDARD CONDITIONS****

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE COASTAL WETLANDS LAW, 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. Compliance With All Permit Terms and Conditions. The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all terms and conditions of this permit. All preconstruction terms and conditions must be met before construction begins.
- D. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two 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 shall state the reasons why the activity was not begun within two years from the granting of the initial permit and the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- E. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- F. No Construction Equipment Below High Water. No construction equipment being used in the undertaking of an approved activity is allowed below the mean high water line.
- 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

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: STATE HOUSE, AUGUSTA 04333

Henry E. Warren
COMMISSIONER
289-2811

Rights of Review and Appeal

Any person aggrieved by a decision by the Board of Environmental Protection ("Board") or Department of Environmental Protection ("Department") has the following rights of review and appeal:

I. As to any decision by the Board:

A. Request for hearing:

Within 30 days of the applicant's receipt of a Board decision made without public hearing, any person aggrieved by the decision may make a request for a hearing. Such a request shall set forth in detail the basis of the petitioner's grievance; the findings, conclusions or conditions to which the petitioner objects; the basis of the objections; and the nature of the evidence or argument to be offered.

B. Reconsideration by the Board:

Within 30 days of the applicant's receipt of a Board decision, any person aggrieved by the decision may petition the Board of Environmental Protection, in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the Board, or for an opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered. 38 M.R.S.A. §344(5).

C. Judicial appeal:

Any person aggrieved by a final Board decision is entitled to judicial review by filing a petition in Superior Court for Kennebec County or in Superior Court for the county where (1) the aggrieved person resides or has his principal place of business; or (2) the activity or property which is the subject of the proceeding is located.

The petition for review shall specify the person seeking review, the manner in which he is aggrieved and the final agency action which he wishes reviewed. The petition shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief.

ADMINISTRATIVE SERVICES:
289-2691

BUREAUS:

AIR QUALITY CONTROL
289-2437

LAND QUALITY CONTROL
289-2111

WATER QUALITY CONTROL
289-2591
OIL POLLUTION CONTROL
289-2591

REGIONAL OFFICES:

31 CENTRAL STREET
BANGOR 04401
947-6746

634 MAIN STREET
PRESQUE ISLE 04769
764-3737

OIL POLLUTION CONTROL
17 COMMERCIAL STREET
PORTLAND
773-6491

OIL SPILL REPORTS ONLY
(TOLL FREE) 1-800-482-0777

CITIZENS' ENVIRONMENTAL
ASSISTANCE SERVICE
289-2691
(TOLL FREE) 1-800-452-1942

AIR QUALITY CONTROL
17 COMMERCIAL STREET
PORTLAND
773-0196

LAND QUALITY CONTROL
17 COMMERCIAL STREET
PORTLAND
773-0196

The petition for review shall be filed within 30 days after receipt of notice if taken by a party to the proceeding of which review is sought. Any other person aggrieved shall have 40 days from the date the decision was rendered to petition for review.

The petition for review shall be served by certified mail, return receipt requested, upon D.E.P., all parties to the proceeding, and the Attorney General.

II. As to a decision by the Department:

A. The Board has delegated authority to Department staff to act on certain applications.

Any person aggrieved by a staff decision may request in writing, within 30 days of receipt of the order by the applicant, that the Board review such decision. Such request for review must set forth the reasons why the review is requested and the actions which the person making the request desires to be taken by the Board. When review of a staff determination is requested, it shall be conducted as if it were an application filed with the Board and not subject to delegation.

NOTE:

1. Because a person other than the applicant may file an appeal, as stated above, any action to commence work according to the terms of the permit prior to the expiration of the appeal or review period entails a risk that the approval may be altered. Applicants must assess the likelihood and extent of such a risk.

2. The filing of a petition for review or appeal does not operate as a stay of the final agency action.

3. Further information concerning review and appeal may be found in the Maine Administrative Procedure Act (5 M.R.S.A. §8001 et seq.) and Department statutes (38 M.R.S.A. §341 et seq. and regulations.

4. You may contact D.E.P. if you have any question about the rights of review and appeal procedures.



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02154

REPLY TO
ATTENTION OF:
NEDOD-R- 26-80-248
ME-PORT-80-303

30 October 1980

Vincent A. Prien
6 Stonewall Lane
Rye, NH 03870

Dear Mr. Prien:

Inclosed is a Federal permit authorizing the work stated therein. Please acquaint yourself with all the terms and conditions of the permit and particularly to those conditions which are binding upon you as the permittee. Your particular attention is called to condition (n) which requires you to notify this office when the work is commenced and when it is completed.

If any material changes in the plans are found necessary, revised plans should be submitted to this office. These revised plans must receive the approval required by law before the work is begun.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Morgan R. Rees".

MORGAN R. REES
Chief, Regulatory Branch
Operations Division

Incl
Permit



Name of Applicant Vincent A. Prien

Effective Date 30 October 1980

Expiration Date (if applicable) _____

**DEPARTMENT OF THE ARMY
PERMIT**

Referring to written request dated 30 April 1980 for a permit to:

Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, P.L. 92-500);

Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; P.L. 92-532);

Vincent A. Prien
6 Stonewall Lane
Rye, NH 03870

is hereby authorized by the Secretary of the Army:
to construct and maintain a pile supported pier consisting of a 140' x 14' pier with a 20' x 40' "T" head. The pier will extend approximately 160' beyond mean high water.

in Piscataqua River
at Kittery, Maine

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings: give file number or other definite identification marks.) Plans entitled, "Dock Plan For Vincent Prien", in 2 sheets, not dated.

subject to the following conditions:

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementat on plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:

a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

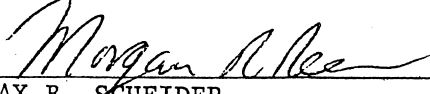


PERMITTEE
Vincent PRIEW

10/20/80

DATE

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

for 

MAX B. SCHEIDER
Colonel, Corps of Engineers
Division Engineer
~~SYSTEMS ENGINEER~~
~~SYSTEMS ENGINEER~~

30 Oct 80

DATE

Transferee hereby agrees to comply with the terms and conditions of this permit.

TRANSFEEEE

DATE

o. That if the activity authorized herein is not started on or before N/A day of 31st 1983 (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before December, 19 83, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

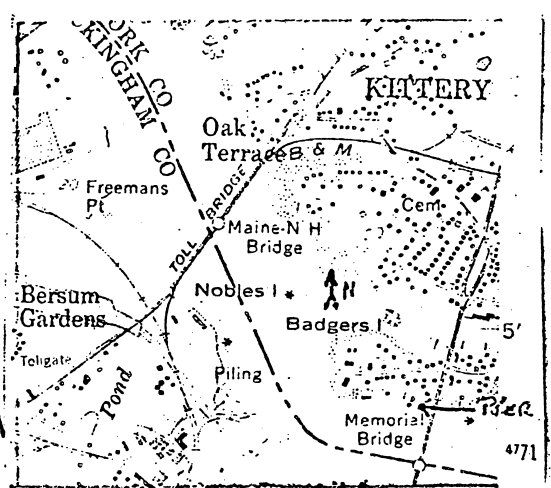
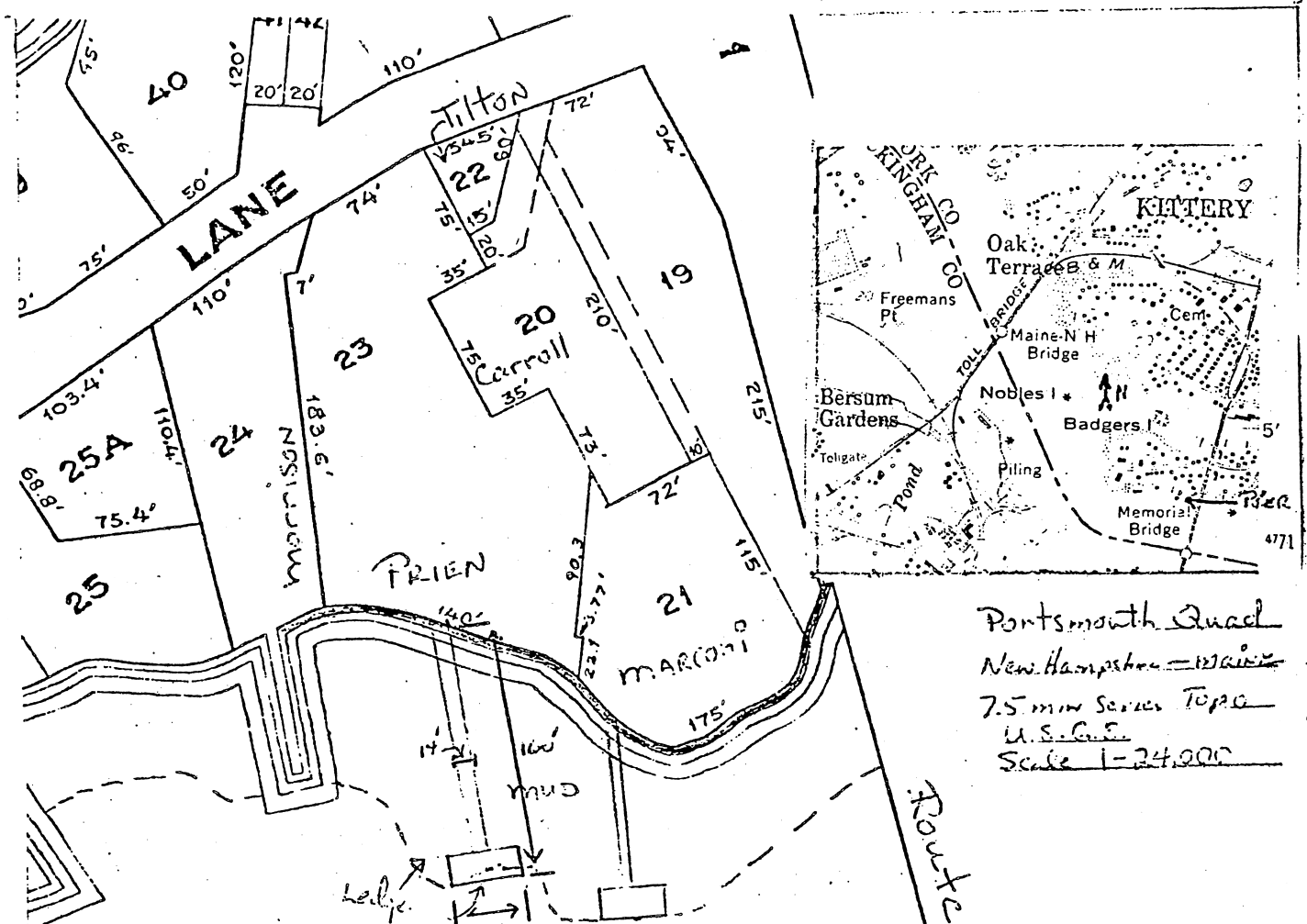
q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):



Portsmouth Quad
 New Hampshire - 1874
 7.5 min Series Topo
 U.S.G.S.
 Scale 1-24,000



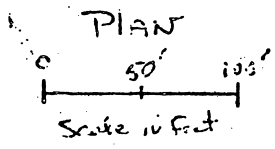
Flood ←
 Eddy
 Ebb →

High water ———
 Low water - - - - -

Purpose: Private use for Small Craft

Adjacent Property Owners:

- ① Lot 21 Hugo marconi
- ② Lot 20 Sylvester Carroll
- ③ Lot 22 marjorie Tilton
- ④ Lot 24 martin marrison

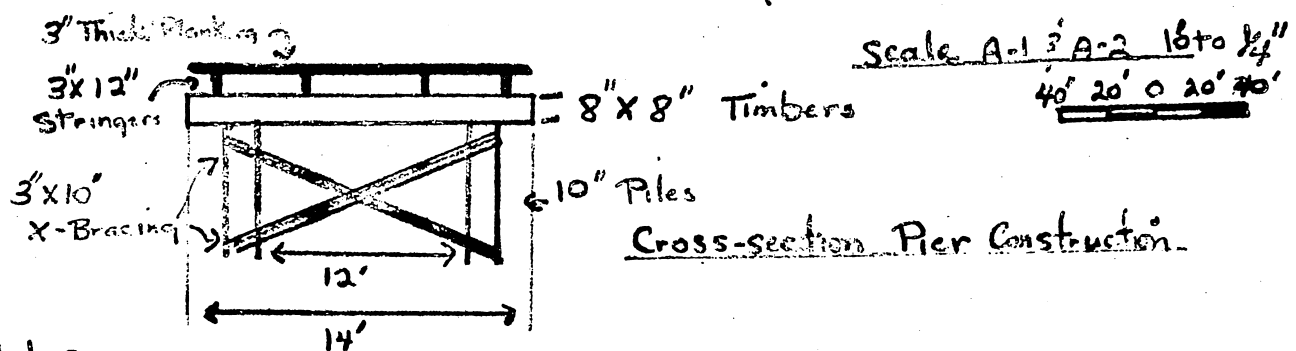
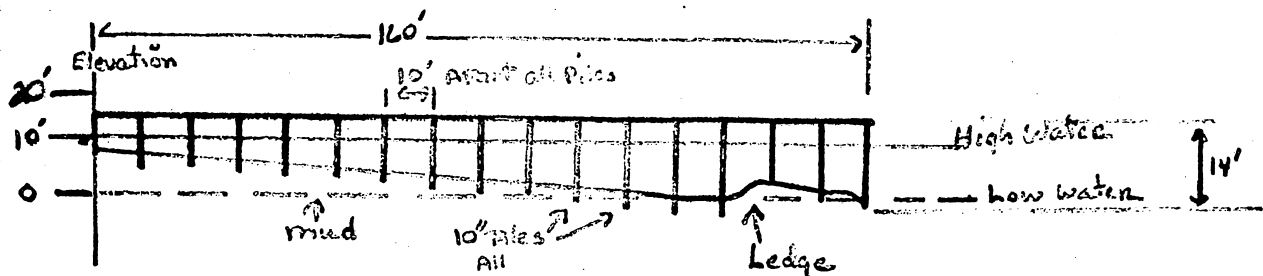
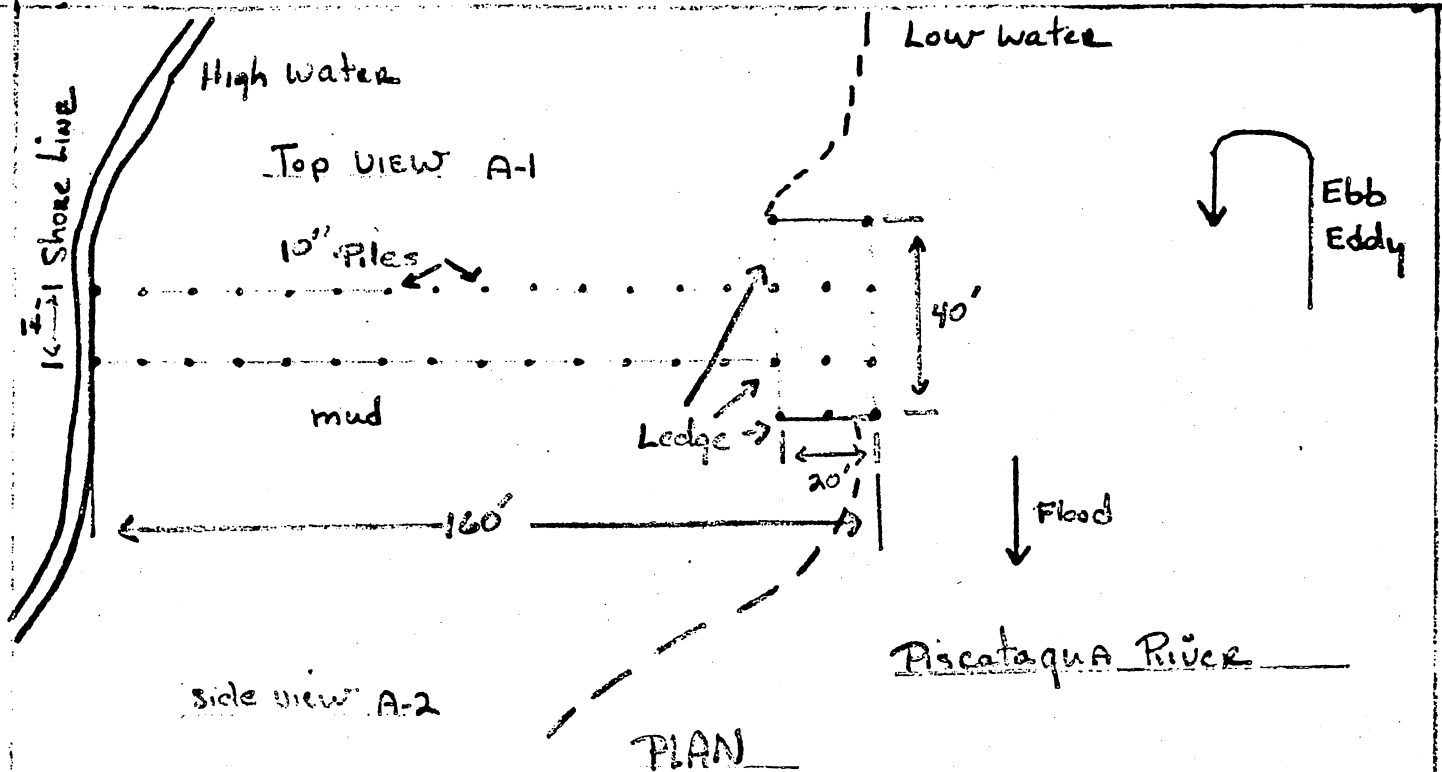


Kittery Tax map
 I lot #23

PISCATAQUA

PORTSMOUTH

Dock Plan for
 Vincent PRIEN
 Sheet 1 of 2



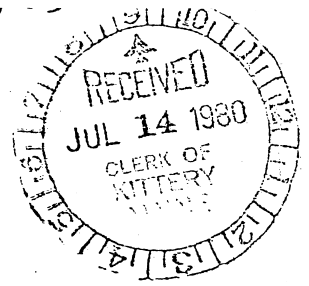
Notes

1. The proposed project is intended for private use only.
2. project does not involve dredging, excavating or filling.

Proposed Dock:
 AT Piscataqua River
 IN Kittery, Maine
 York County
 Application By
 Vincent Prien.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AUGUSTA, MAINE 04330



BOARD ORDER
IN THE MATTER OF

VINCENT A. PRIEN
Kittery, Maine, York County
PILE-SUPPORTED PIER
#03-6652-31130

) ALTERATION OF COASTAL WETLANDS ACT
) AND WATER QUALITY CERTIFICATION
)
) FINDINGS OF FACT AND ORDER

After reviewing the project file which includes the application with its supportive data, agency review comments, staff summary and other related materials on file with regard to the above noted project, under provisions of Title 38, M.R.S.A., Section 474 and Section 401 of P.L. 92-500, the Federal Water Pollution Control Act Amendments of 1972, the Board finds the following facts:

1. Nature of Project: Construct a pile-supported pier to measure 12 feet by 140 feet with a 20 foot by 40 foot tee at its end. Pier deck is to be located approximately 4 feet above mean high water.
2. The project will not unreasonably interfere with existing recreational and navigational uses.
3. The project will not cause unreasonable soil erosion.
4. The project will not unreasonably harm wildlife or freshwater, estuarine, or marine fisheries.
5. The project will not unreasonably interfere with the natural flow of any waters.
6. There is reasonable assurance that the activity will not lower the quality of any waters or violate applicable Water Quality Standards.

THEREFORE, the Board approves the application of Vincent A. Prien to construct a pile-supported pier as described in paragraph #1 above, subject to the following terms and conditions:

1. The Standard Conditions of Approval, except for Condition F, a copy attached.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25TH DAY OF JUNE, 1980.

BOARD OF ENVIRONMENTAL PROTECTION

BY Henry E. Warren
Henry E. Warren, Chairman

PLEASE NOTE ATTACHED SHEET FOR APPEAL PROCEDURES.....

McGarry KPA Exhibit 2



REPLY TO
ATTENTION OF

Regulatory Division
CENED-OD-R-52
Permit Number 1992-01082

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

20 JUL 1992

Edward McGarry
Morrison's Lobsters
11 Badgers Island West
Kittery, Maine 03904

Dear Mr. McGarry:

This is in reference to your request for a determination as to the need for a Department of the Army permit to modify your existing pier, ramp and floats in the Piscataqua River off Badgers Island West, at Kittery, Maine. According to the information that you have provided the existing structure consists of a 22' x 32' wharf and building with a 14' x 50' pier extending parallel with an attached 3' x 35' ramp leading to a 6' x 73' base float attached perpendicular. Your application states that the existing pier was constructed in 1965. Title 33, Code of Federal Regulations, Part 330.3 (b) states that structures or work completed prior to December 18, 1968 were permitted by Nationwide Permits issued on July 19, 1977 provided there is no interference with navigation.

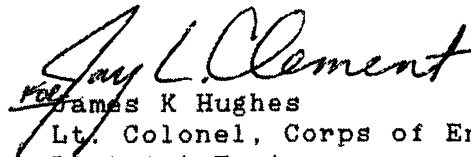
We have completed our evaluation of your application to modify your existing float system. Your permit is hereby amended to reconfigure your float system to a 6' x 60' base float attached perpendicular to the pier with two 4' x 40' finger floats attached parallel to the pier extending west, forming three slips, as shown on the attached plans entitled "Proposed Finger Floats, for: Edward McGarry, off: Badgers Island West, at: Kittery, Maine." in 4 sheets undated.

All other conditions of the original permit remain in full force and effect.

Before you begin work, you are required to obtain any necessary State and/or local permits, or other necessary Federal permits as required.

Should you have any questions concerning this matter, please contact Rod Howe or Shawn Mahaney at 207-623-8367 our Augusta, Maine Project Office.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

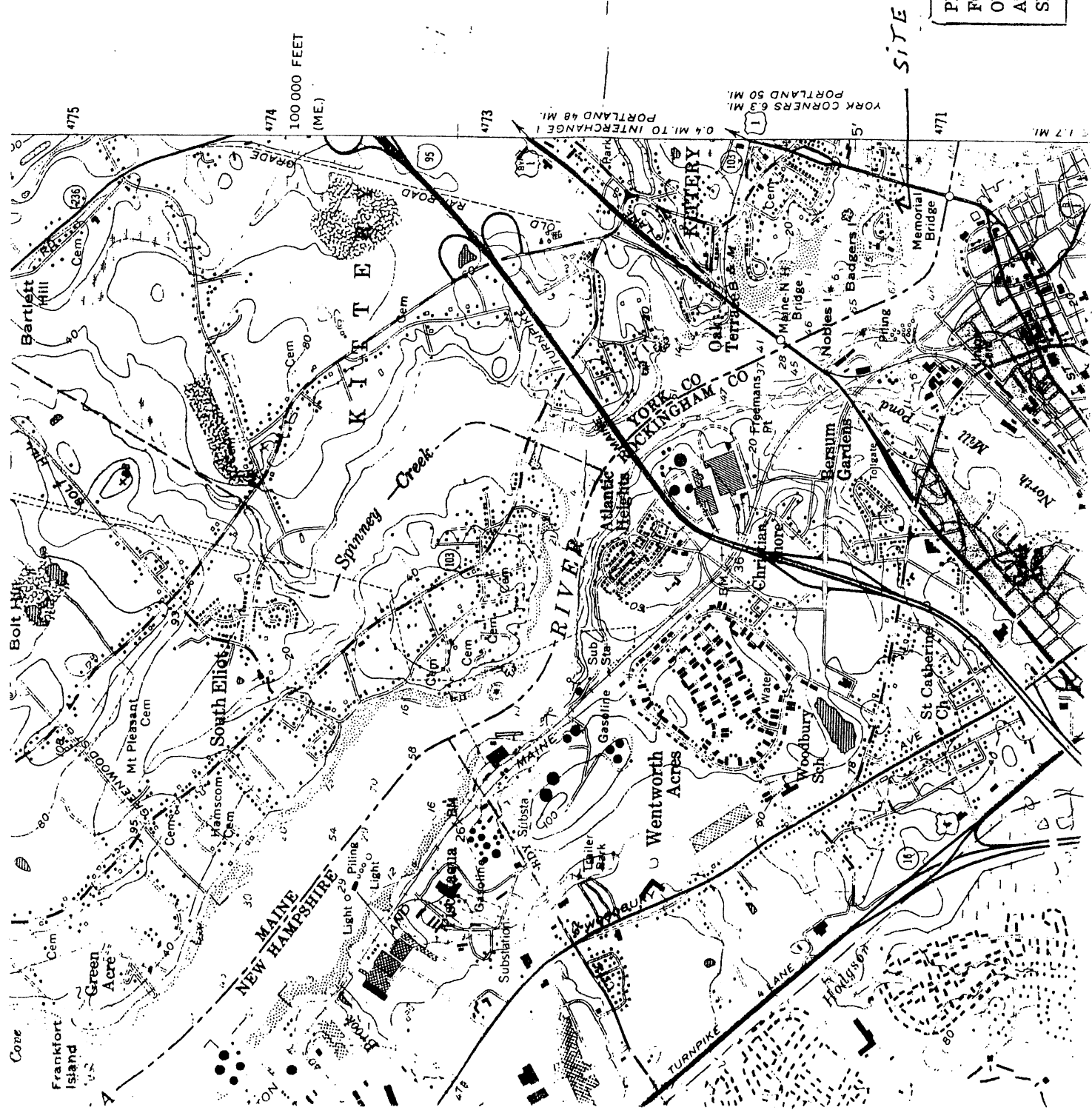

James K Hughes
Lt. Colonel, Corps of Engineers
District Engineer

Copies Furnished:

Maine Dept. of Environ. Protection
ATTN: William Laflamme
State House-Station #17
Augusta, Maine 04333

Town of Kittery
ATTN: CEO
Municipal Offices
Kittery, Maine 03904

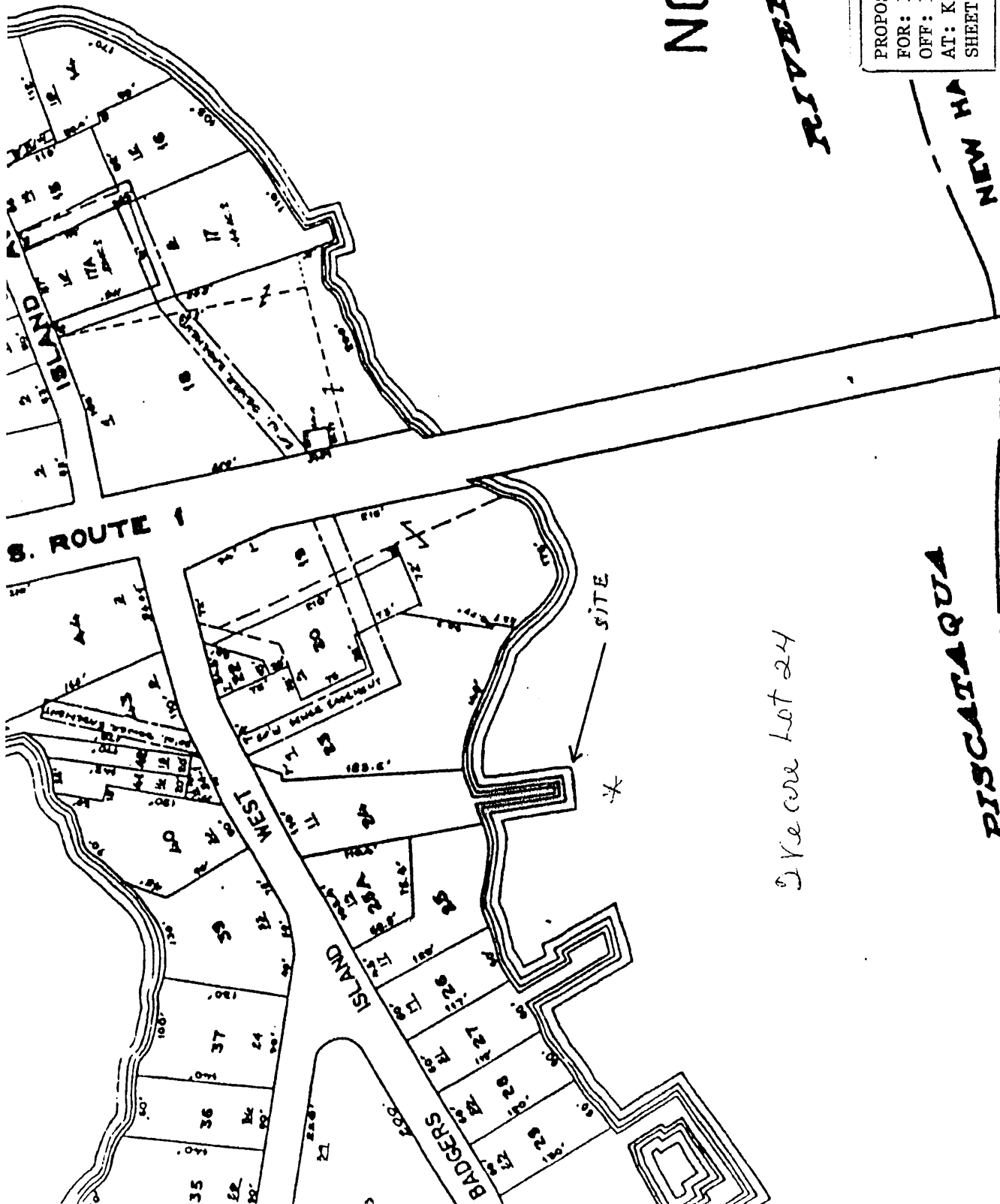
PROPOSED FINGER FLOATS
 FOR: EDWARD MCGARRY
 OFF: BADGERS ISLAND WEST
 AT: KITTERY, MAINE
 SHEET 1 OF 4



SITE

0.4 MI. TO INTERCHANGE 1
 0.4 MI. TO PORTLAND 48 MI.
 YORK CORNERS 6.3 MI.
 PORTLAND 50 MI.

100 000 FEET
 (ME.)



NOT TO

RIVER

PROPOSED FINGER FLOATS
 FOR: EDWARD MCGARRY
 OFF: BADGERS ISLAND WEST
 AT: KITTERY, MAINE
 SHEET 2 OF 4

PROPERTY MAP
 TOWN OF KITTERY

See core Lot 24

PISCATAQUA

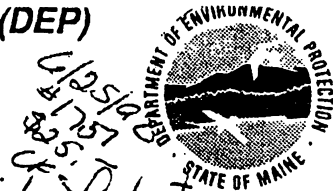
SMOOTH

1992

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) PERMIT BY RULE NOTIFICATION FORM

(For use with DEP Regulation, Chapter 305)

PLEASE TYPE OR PRINT IN BLACK INK ONLY



Name of Applicant: Edward D. McBarry DBA Morrison's Lobsters

Address: 11 Badgers Island West Town/City: Kittery

State: Me Zip Code: 03904 Tel.No: 207-439-2501

Name of Wetland, Water Body or Stream: 1

Name of Nearest Road and Directions to Site: Badgers Island West

South on Route 1 into Kittery Me. Take right
just before the Piscataqua River into N.H.

Town/City: Kittery County: _____

Description of Project: Replacing & adding two pilings

RECEIVED OF
DEPT. OF ENVIRONMENTAL PROTECTION
STATE OF MAINE
JUN 23 1992

1. Attach a check for \$25 made payable to Treasurer State of Maine.
2. Attach to this form a location map with project site clearly marked.
3. Attach photographs showing existing site conditions. (unless not required under standards)
4. For projects below mean low water, submit a copy of the project design plan to the Bureau of Public Lands.

I am filing notice of my intent to carry out work which meets the requirements for Permit by Rule under DEP Regulation Chapter 305. I will comply with Section 1 and all the standards contained in the Section(s) checked below:

- | | |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <input type="checkbox"/> Sec.(2)Dist. of Soil Mat. | <input type="checkbox"/> Sec.(11)General Permits of State Transprt. Fac. |
| <input type="checkbox"/> Sec.(3)Intake Pipes | <input type="checkbox"/> Sec.(12)Restoration of Natural Areas |
| <input checked="" type="checkbox"/> Sec.(4)Maint. Repair & Replace of Struct. | <input type="checkbox"/> Sec.(13)Fish & Wild. Creation, Enhance. & Water Quality |
| <input checked="" type="checkbox"/> Sec.(5)Moorings | <input checked="" type="checkbox"/> Sec.(14)Piers, Wharves & Pilings |
| <input type="checkbox"/> Sec.(6)Movement of Rocks or Veg. by Hand | <input type="checkbox"/> Sec.(15)Public Boat Ramps |
| <input type="checkbox"/> Sec.(7)Outfall Pipes | <input type="checkbox"/> Sec.(16)Select Sand Dune Projects |
| <input type="checkbox"/> Sec.(8)Riprap | <input type="checkbox"/> Sec.(17)Transters |
| <input type="checkbox"/> Sec.(9)Crossings (Utility Lines, etc.) | <input type="checkbox"/> Sec.(18)Maintenance Dredging |
| <input type="checkbox"/> Sec.(10)Stream Crossing | |

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife and Marine Resources to access the project site for the purpose of determining compliance with the rules. I also understand that this permit is not valid until 14 days after receipt by the Department.

Signature of Applicant: Edward D. McBarry Date: 6/22/92

Send white and yellow form with attachments via certified mail to the ME Dept. of Environmental Protection State House Station 17 Augusta, Maine 04333

Retain pink copy as record of permit. Permits are valid upon receipt by the DEP for one year. No further authorization by DEP will be issued after receipt of notice. **Permits issued under this section are invalid if the DEP finds any application standard has not been met. Work carried out in violation of any standard is subject to enforcement action, including a fine of up to \$25,000 for each day of violation.**

For office use only					
Proj. No.	FP	Date	Def.	Date	Acc. Date

Remarks for Decision
 Post Construction Permit
 Army Corp of Engineers Permit
 DEP Permit
 Building Permit

BUILDING PERMIT AND APPLICATION Dec 21, 19 72 Value 4500 M 1 L 24
 Fee 35.00 No. 92-702
 Owner EDWARD McCARRY Location 11 Badgers + Stand West
 Mailing Address Same Zip Tel. 9-2501
 Applicant Donna McCarry Contractor M. Henrick Assoc 600-245 9629
 Plumbing Permit No., Interior Exterior N/A No. Baths Dist. to Water 7
 Plot Plan N/A Yard Spaces N/A ft. front R/W line 30+ ft. left, 20+ ft. rt., N/A ft. rear
 Building Plan N/A Dimensions 300 Plans Ft.
 Structural type Style Foundation PILINGs - Fin. Cellar
 Ext. Int. Roof N/A Insul. Elect.
 Heat Fireplace/Stove Other N/A

Occupancy Permit required NO
 Repair and restructuring existing dock, finger piers,
 (OKS by Army Corp + Kitt. Post Authority previously given)
 In accordance with Chapter 1, Section IV, subsection D, of Appendix A. Land Use and Development Code Zoning Ordinance for the
 Town of Kittery, Maine, adopted June 13, 1977, this application for a Building Permit is hereby approved/denied by
 [Signature] Code Enforcement Officer, for the following reason(s):

Owner's signature _____
 Applicant other than owner:
 I hereby certify that the proposed construction and/or use is authorized by the owner of record and I have been
 instructed by the owner to make this application as his authorized agent.
 Signature of Agent [Signature] Tel. _____
 Address _____ State _____ Zip _____

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION
 WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE
 PERMIT IS ISSUED AS NOTED ABOVE.

IN PROGRESS INSPECTIONS INDICATED ON THIS CARD
 CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN
 NOTIFICATION. TEL. 439-0452



TOWN OF KITTEY PORT AUTHORITY

TOWN HALL
KITTEY, MAINE 03904

Mr. & Mrs. Ed McGarry
Morrison's Lobsters
11 Badgers Island West
Kittery, Maine 03904

4 December 1992

Dear Mr. & Mrs. McGarry:

Re: Request to modify your existing float system, by replacing your 6'X73' Base Float with a 6'X60' Float with two 4'X40' Finger Floats attached parallel to the pier. All being connected to existing pier by 3'X35' gangway riding on a 8'X10' Float inside of Base Float. Your request was discussed at the Port Authority meeting on Dec. 3, 1992.

The Port Authority voted to accept your request, as submitted, to replace the existing floats as noted above. Any changes necessary must be brought back to the Port Authority for approval before hand.

For a referance, the Port Authority measured from the end of existing dock.

This Port Authority approval is contingent on the approval of any other governing bodies that may be required.

Respectfully

Milton Hall (Chairman)

cc: Port Authority Members
Harbormaster
Code Officer
File (2)

November 20, 1992

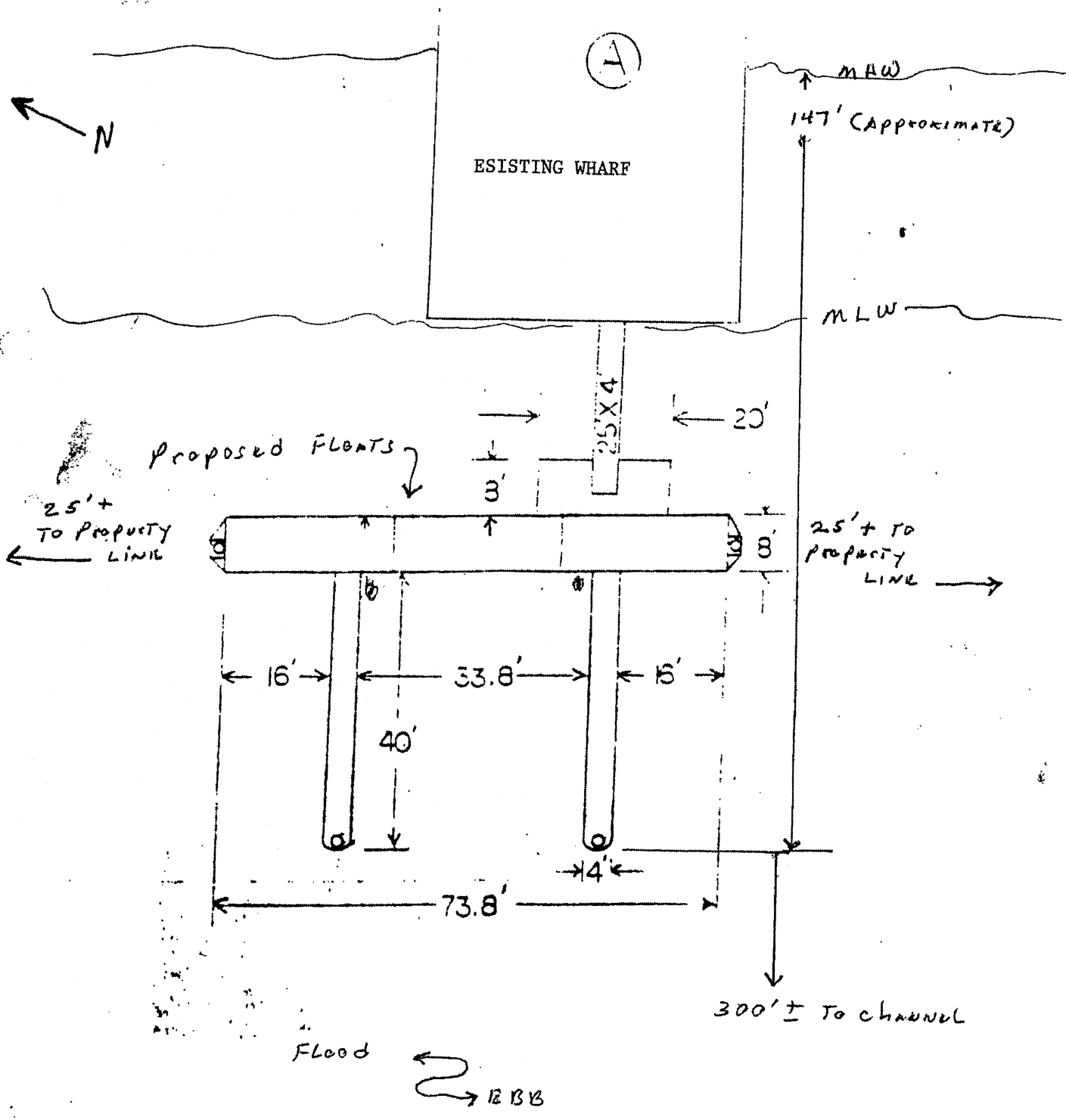
To The Port Authority Board Members,

Attached is a diagram of the ramp and docks we now have for private use. Also attached is a copy of the permit I received from the Department of Environmental Protection and a copy of our check sent to them.

This had to be done due to the fact the previous dock suffered extensive damage from the No Name Storm. Also from all the dredging and blasting that had been done in the river, we ended up loosing whatever depth we had to the point that at low tide most of our dock sat in the mud. We couldn't take our boat off the dock unless it was high tide. We also had to get intouch with New England Telephone because their cables are all over our property and for this reason we could not dredge.

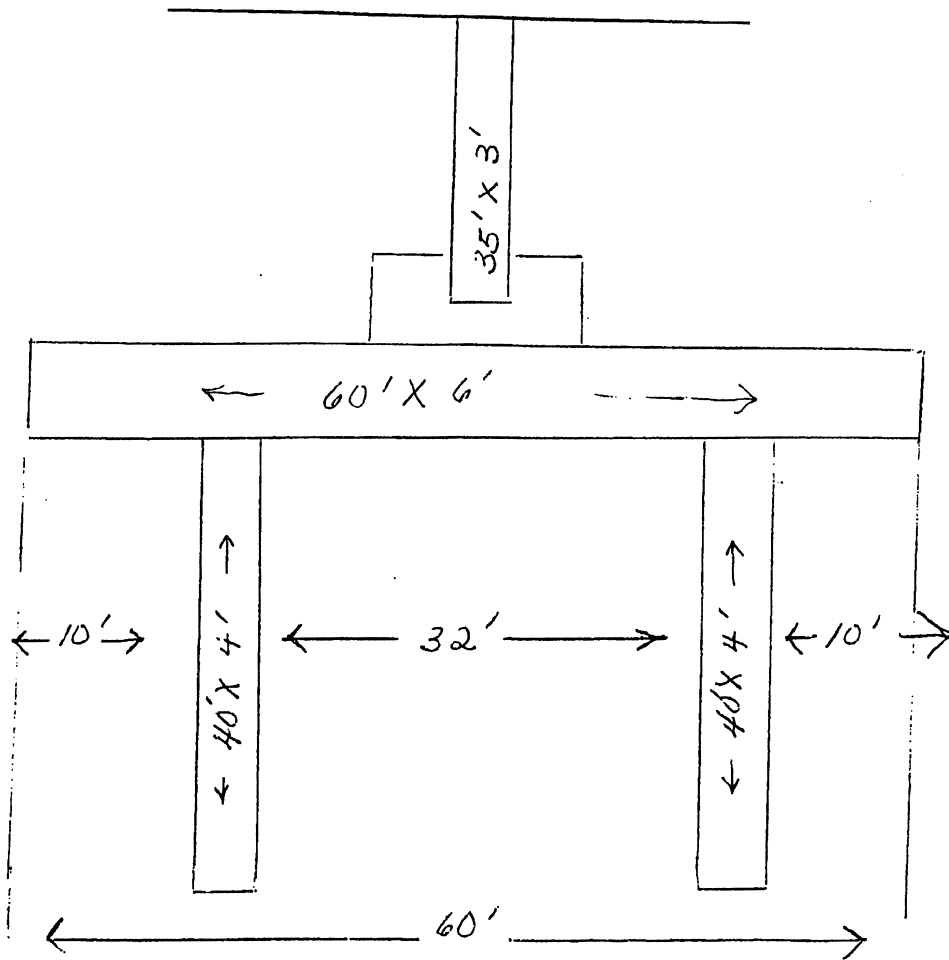
I hope this is everything you need so this matter can be resolved. I want to apologize for not presenting our plan to the Members of the Board, but we were under the assumption that all concerned parties had been notified.

Edward A. McBarry
Donna M. McBarry



PROPOSED FINGER FLOATS
 FOR: EDWARD MCGARRY
 OFF: BADGERS ISLAND WEST
 AT: KITTERY, MAINE
 SHEET 4 OF 7

11/92
Updated Drawing



McGarry KPA Exhibit 3



TOWN OF KITTEY PORT AUTHORITY
TOWN HALL
P.O. BOX 808, KITTEY, MAINE 03904

Pickering Marine
Glen Normendeau
7 Pickering Ave.
Portsmouth, N.H. 03801

Sept. 12, 2000

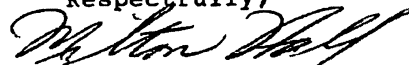
Dear Mr. Normendeau:

Re: Request to Re-Construct Pier, Ramp and Floats existing for Jade Realty Corp., 9 Badgers Isl. West, Kittery, Me. 03904.

The subject pier and floats were discussed at the Port Authority Meeting on September 7, 2000.

The Port Authority agreed that no permits were required from the Port Authority since you were replacing an existing Pier, Ramp and Floats. One stipulation being that the railings on the pier not be any higher than 42" and the Pilings on the Pier and Floats not be any higher than the top of the rails.

Respectfully,


Milton Hall (Chairman)

cc: Files (2)
Code Enforcement Officer

office

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)
PERMIT BY RULE NOTIFICATION FORM
 (For use with DEP Regulation, Chapter 305)

PLEASE TYPE OR PRINT IN BLACK INK ONLY (3 COPIES, PLEASE BEAR DOWN)

Name of Applicant: Pickering Marine Corporation		Name of Owner: Jade Realty Corporation	
Mailing Address: 7 Pickering Ave.		Town/City: Portsmouth	
State: NH	Zip Code: 03801	Daytime Telephone No. (Include area code): 603-427-2824	
Name of Wetland, Water Body or Stream: Piscataqua River			
Detailed Directions to Site: Interstate 95 South to Kittery Traffic Circle to route 1 to Badgers Island West. Property is on the left in front of the new Condominium (easily identifiable)			
Town/City: Kittery	Map #: 1	Lot #: 23	County: York
Description of Project: Reconstruct existing deteriorated pier, ramp, & floats			
Part of a larger project?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

(CHECK ONE) This project: does does not involve work below mean low water.

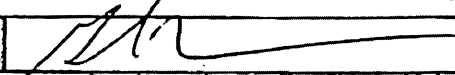
I am filing notice of my intent to carry out work which meets the requirements for Permit By Rule (PBR) under DEP Regulation, Chapter 305. I have a copy of PBR Sections checked below. I have read and will comply with all of the standards.

- | | | |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------|
| <input type="checkbox"/> Sec. (2) Soil Disturbance | <input type="checkbox"/> Sec. (8) Shoreline stabilization | <input type="checkbox"/> Sec. (14) Piers, Wharves & Pilings |
| <input type="checkbox"/> Sec. (3) Intake Pipes | <input type="checkbox"/> Sec. (9) Utility Crossing | <input type="checkbox"/> Sec. (15) Public Boat Ramps |
| <input checked="" type="checkbox"/> Sec. (4) Replacement of Structures | <input type="checkbox"/> Sec. (10) Stream Crossing | <input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects |
| <input type="checkbox"/> Sec. (5) REPEALED | <input type="checkbox"/> Sec. (11) State Transportation Facilities | <input type="checkbox"/> Sec. (17) Transfers/Permit Extension |
| <input type="checkbox"/> Sec. (6) Movement of Rocks or Vegetation | <input type="checkbox"/> Sec. (12) Restoration of Natural Areas | <input type="checkbox"/> Sec. (18) Maintenance Dredging |
| <input type="checkbox"/> Sec. (7) Outfall Pipes | <input type="checkbox"/> Sec. (13) F&W Creation/Enhance/Water Quality Improvement | |

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules. I also understand that *this permit is not valid until approved by the Department or 14 days after receipt by the Department, whichever is less.*

I have attached all of the following required submittals. NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS:

- Attach a check for \$50 (non-refundable) made payable to: "Treasurer, State of Maine".
- Attach a U.S.G.S. topo map or Maine Atlas & Gazetteer map with the project site clearly marked.
- Attach photographs showing existing site conditions (unless not required under standards).

Signature of Applicant: 	Date: 7/27/2000
-------------------------------------------------------------------------------------------------------------	-----------------

Glenn Normandeau, President, Pickering Marine Corp.

Keep the bottom copy as a record of permit. Send the form with attachments via certified mail to the Maine Dept. of Environmental Protection at the appropriate regional office listed below. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Permits are valid for two years. Work carried out in violation of any standard is subject to enforcement action.

AUGUSTA DEP
 STATE HOUSE STATION 17
 AUGUSTA, ME 04333-0017
 (207)287-2111

PORTLAND DEP
 312 CANCO ROAD
 PORTLAND, ME 04103
 (207)822-6300

BANGOR DEP
 106 HOGAN ROAD
 BANGOR, ME 04401
 (207)941-4570

PRESQUE ISLE DEP
 1235 CENTRAL DRIVE
 PRESQUE ISLE, ME 04769
 (207)764-0477

OFFICE USE ONLY	Ck.#	Date	Staff	Staff	
PBR #	FP		Acc. Date	Def. Date	After Photos



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

**DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
STATE OF MAINE, SUMMARY OF SCREENING AND STATUS**

JADE REALTY CORPORATION
C/O PICKERING MARINE CORPORATION
7 PICKERING AVENUE
PORTSMOUTH, NH 03801

CORPS PERMIT # 200001981
CORPS PGP ID# 00-415
STATE ID# PBR

DESCRIPTION OF WORK AS ON ATTACHED STATE APPN:

Demolish an existing pile and timber pier in the Piscataqua River at Kittery, Maine and replace it with a 140'X 10' pile and timber pier leading to an 18'x 40' pile supported platform forming a "T". Along the northern and southwestern sides of the deck will be a 27'x 8' and 2, 20'x 8' floats respectively. The floats will be accessed by a 36'x 3' ramp. A boathouse located on the end of the existing pier will be relocated to the same position on the new structure.

UTM GRID COORDINATES N: 4771132 E: 357261 USGS QUAD: KITTERY, ME

I. STATE ACTIONS: PENDING [], ISSUED [], DENIED [] DATE _____

LEVEL OF STATE REVIEW: PERMIT BY RULE: X, TIER 1: _____, TIER 2: _____, TIER 3: _____ (NRPA).

II. FEDERAL ACTIONS:

DATE STATE FILE REVIEWED: 8/10/00 (PGP JP MEETING)

LEVEL OF CORPS REVIEW: CATEGORY 1: _____ CATEGORY 2: x

AUTHORITY: SEC 10 X, 404 _____, 10/404 _____, 103 _____

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

ESSENTIAL FISH HABITAT (EFH): EFH PRESENT Y / N (CIRCLE ONE)

IF YES: Based on the terms and conditions of the PGP, which are intended to ensure that authorized projects cause no more than minimal environmental impacts, the Corps of Engineers has preliminary determined that this project will not cause more than minimal adverse effects to EFH identified under the Magnuson-Stevens Fisheries Conservation and Management Act.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO, USF&WS NO, NMFS NO

CORPS DETERMINATION: We authorize your project as proposed and as shown on the plans submitted to the Corps under the State of Maine PGP.

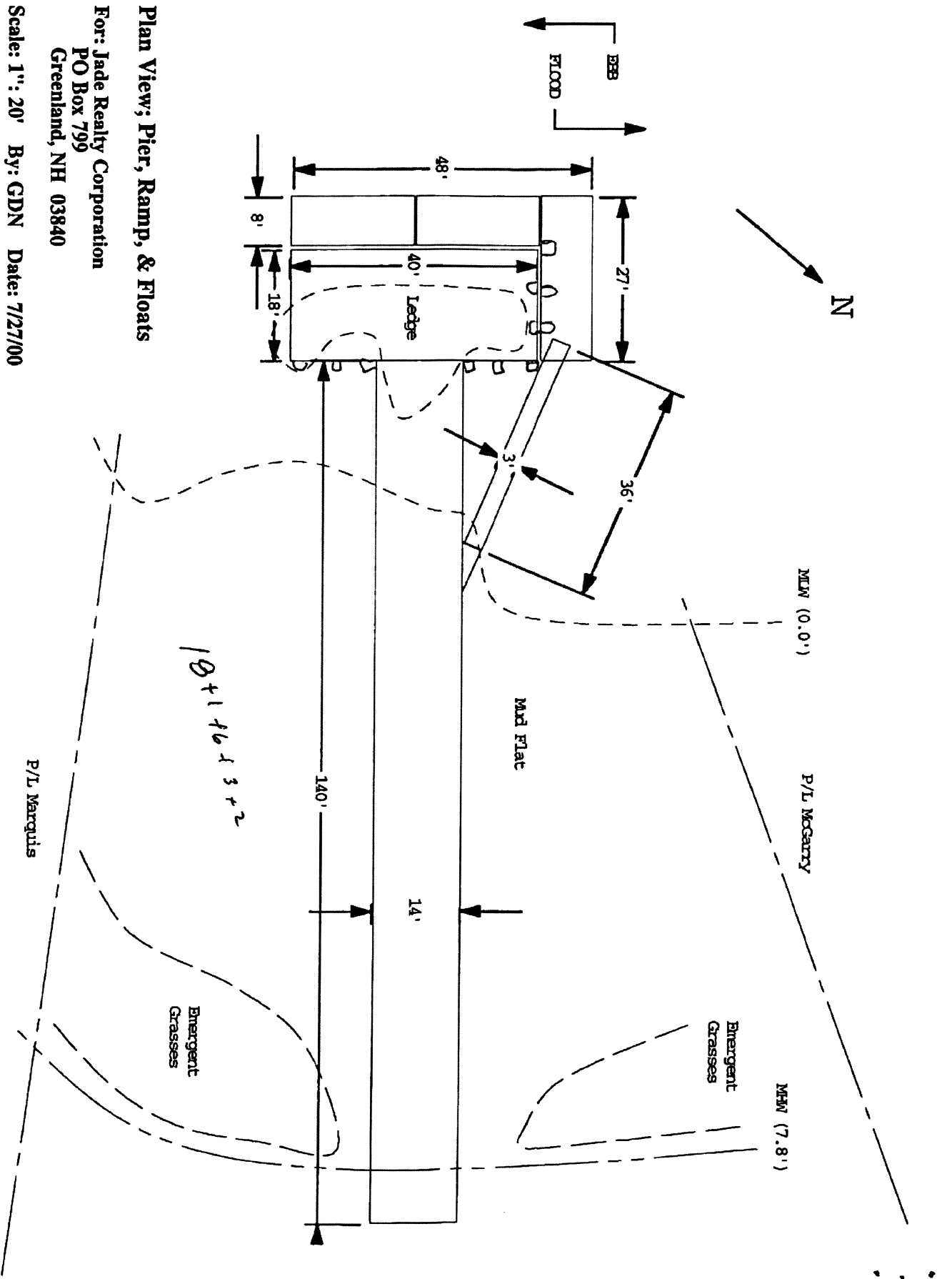
Please note that all work is subject to the conditions contained in the general permit and any additional special conditions listed on any attached sheets. No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. Also, this permit requires you to notify us before beginning work and allow us to inspect the project. Hence, you must complete and return the attached Work Start Notification Form(s) to this office no later than two weeks before the anticipated starting date. (FOR PROJECTS REQUIRING MITIGATION, BE SURE TO INCLUDE MITIGATION WORK START FORM)

Additional Special conditions Attached: YES / NO (CIRCLE ONE)

The Corps of Engineers has implemented an administrative appeals process for jurisdictional determinations. If you are interested in appealing the jurisdictional determination for this project; or if you would like any additional information pertaining to the appeals process, please contact Shawn Mahaney or Rod Howe of my staff at 207-623-8367 at our Manchester, Maine Project Office.

Jay L. Clement
JAY L. CLEMENT
SENIOR PROJECT MANAGER
MAINE PROJECT OFFICE

David H. Killoy 10/30/00
DAVID H. KILLOY DATE
CHIEF, PERMITS & ENFORCEMENT SECTION
REGULATORY BRANCH

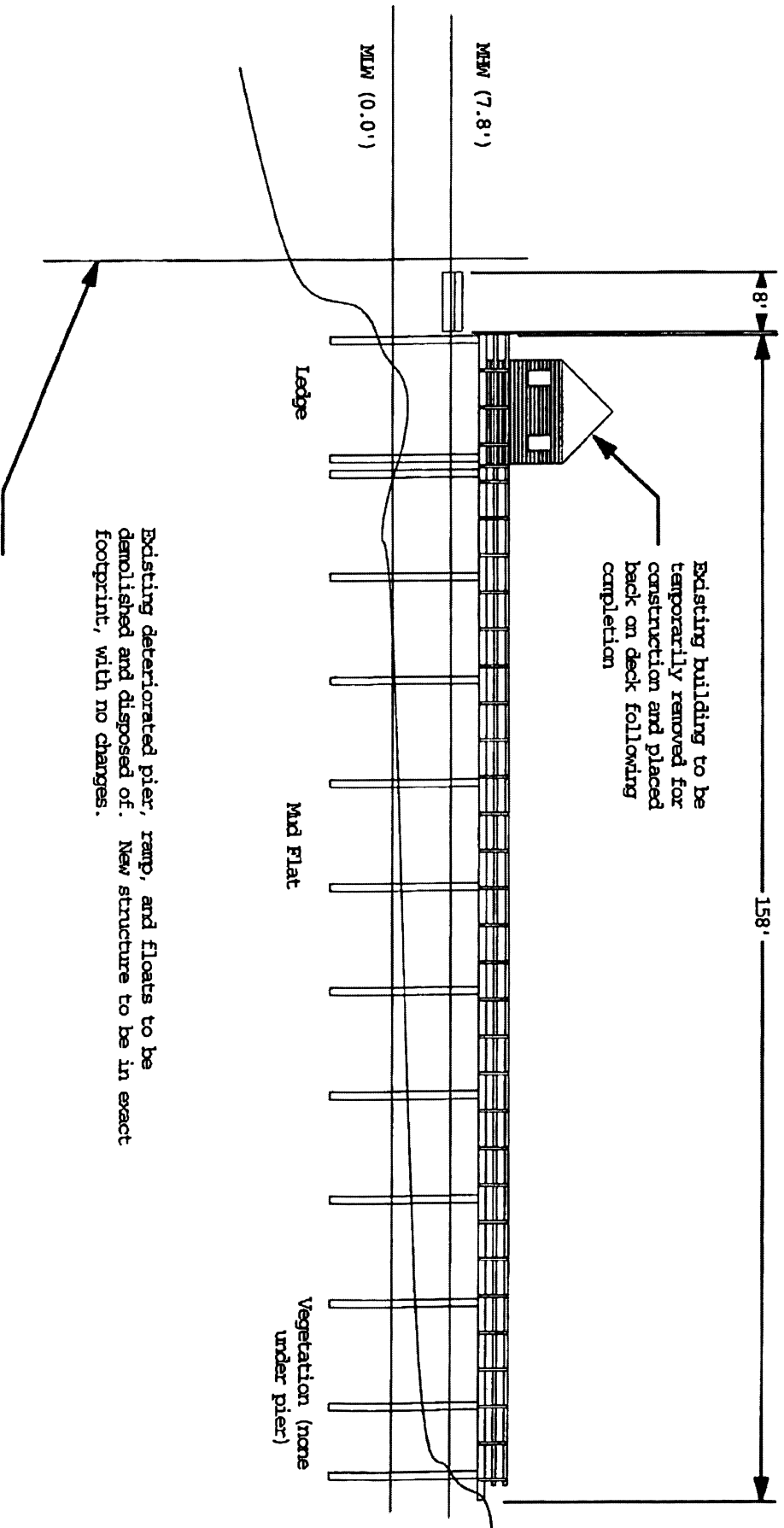


Plan View; Pier, Ramp, & Floats

For: Jade Realty Corporation
 PO Box 799
 Greenland, NH 03840

Scale: 1" = 20' By: GDN Date: 7/27/00

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824



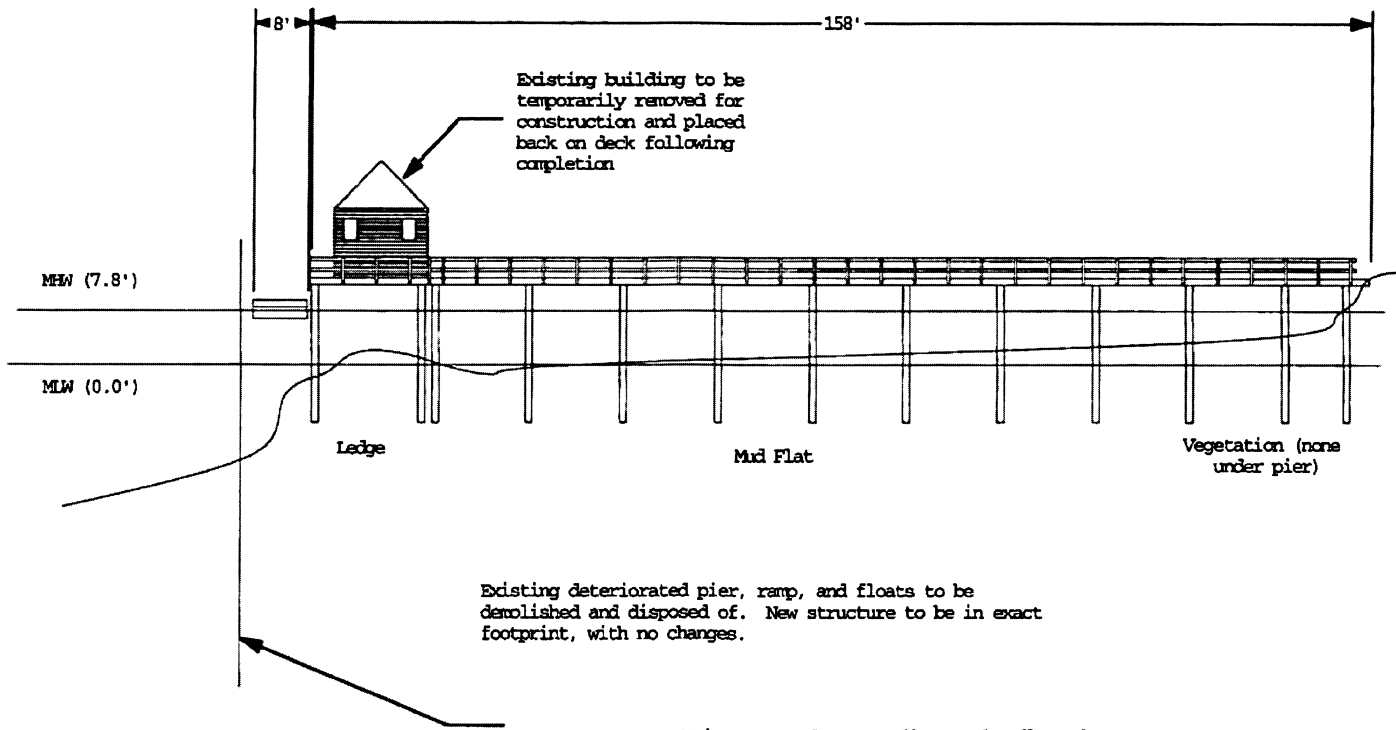
Note: Maine State Plane Coordinates for float face
 N 90830 E 343155

Elevation View; Pier, Ramp, & Floats

For: Jade Realty Corporation
 PO Box 799
 Greenland, NH 03840

Scale: 1" = 20' By: GDN Date: 7/27/00

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824



Elevation View; Pier, Ramp, & Floats

For: Jade Realty Corporation
 PO Box 799
 Greenland, NH 03840

Scale: 1" : 20' By: GDN Date: 7/27/00

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824

TOWN OF KITTERY PORT AUTHORITY
APPLICATION

CASE NO. _____

for
PIERS, WHARFS, FLOATS AND OTHER MARINE-RELATED STRUCTURES.

DATE: 7/27/00

The following application is submitted for the (~~CONSTRUCTION MODIFICATION~~
reconstruction) of a Pier, Ramp & Floats as specified in the
Town of Kittery Port Authority Regulations

1. The owner of the property is Jade Realty Corporation 2. Telephone # 603-430-8323
2. The property address is 9 Badgers Island West
3. Assessor's Map # 1 , Lot # 23 , Size (acres) 0.6 a , Zoning District BI
4. The shorefrontage this property is 140 feet measured at the high water line.
5. The applicant is demonstrates a legal interest in the property by providing a copy of the following: Deed
6. Additional Permits required:
 - a. Building permit X
 - b. Planning board review _____
 - c. DEP Permit X
 - d. Army Corps of Engineers X

7. CONSTRUCTION PLAN

Please provide a description of the property showing all proposed construction which shows the lot lines and exact positions of the proposed structure with dimensions and elevations from a readily identifiable reference points.

Signed Applicant _____

Glenn Normandcau, President, Pickering Marine Corporation
Owner's Agent

Signed (Property Owner) _____

Pickering Marine Corporation 7 Pickering Ave. Portsmouth, NH 03801 603-427-2824

ABUTTERS TO:

Map 1, Lot 23
Jade Realty Corporation
PO Box 799
Greenland, NH 03840

ABUTTER LIST

Tax Map & Lot No.
Name
Mailing Address

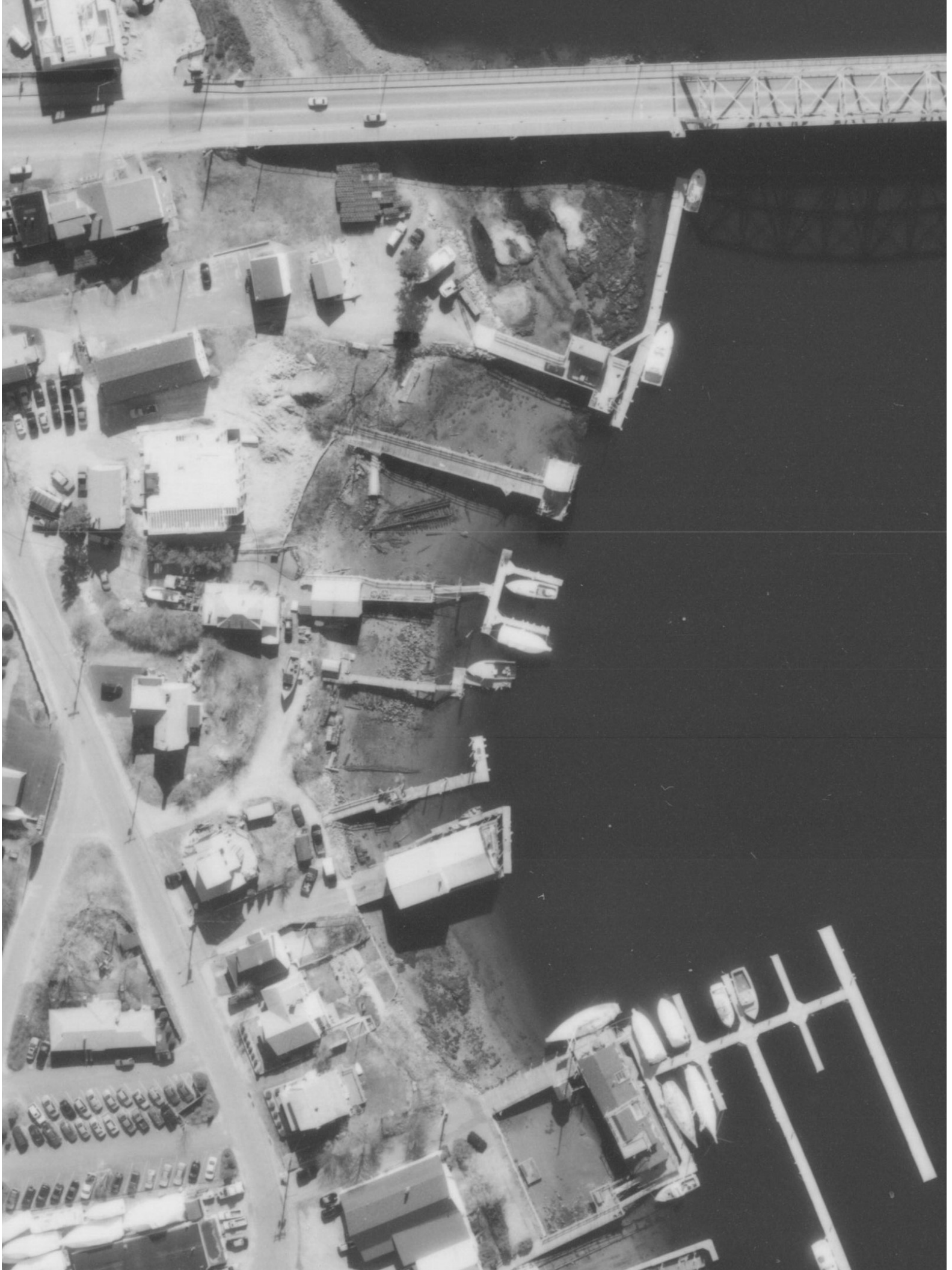
Map 1, Lot 19
Anthony Marquis
4 Raynes Neck Rd.
York, ME 03909

Map 1, Lot 20
Carroll Trust
Patricia Rossiter
55 Whipple Rd.
Kittery, ME 03904

Map 1, Lot 22
Wilfred & Janet Verville
7 Badgers Island West
Kittery, ME 03904

Map 1, Lot 24
Edward McGarry
11 Badgers Island West
Kittery, ME 03904





McGarry KPA Exhibit 5

From: Judi Clark <jucl@natureplanet.com>
Date: February 27, 2023 at 11:27:27 PM EST
To: tdmcgarry@comcast.net
Subject: Original Pier on Badgers Island

To whom it may concern:

I lived in the duplex on Badgers Island for 12+ years, from 1981 until spring of 1994. This is the property next to Ted and Donna McGarry. I moved when the new owners wanted the property for themselves, and they soon tore the house down to build the present day Condos.

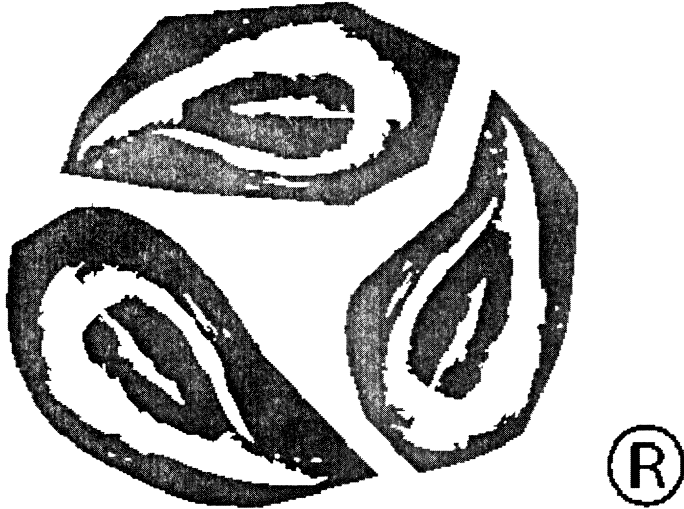
On a historical note, the home that eventually became the duplex that I lived in, was built by the shipbuilder William Badger in 1797 who played a role in the amazing shipbuilding industry on the Piscataqua river.

When I lived in the duplex on Badger Island, I rented from a fisherman named Vinnie Perrine. He kept his fishing trawler on the dock. There was just a single pier that was wider at the end that allowed him to tie the fishing boat to the dock in parallel with the shore. After a few years, Vinnie added an oversized shed for a tiny office towards the end of the dock. To my memory, there was no gangway on the side of the dock closest to the McGarry's docks.. Outside of the shed, the dock remained the same the entire time that I lived there.

Thanks,

Judi Clark
Vice President of Operations

NATURE



PLANET

225 Ottley Dr, Suite 220 | Atlanta, GA 30324

Direct Line: 503 664 3366

www.NaturePlanet.com

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McGarry KPA Exhibit 6

Patrick S. Bedard
psbedlaw@bedardbobrow.com



BEDARD & BOBROW, PC

Practicing Law in ME, NH & MA
9 Bradstreet Lane P.O. Box 366
Eliot, Maine 03903
Tel. 207-439-4502 Fax 207-439-6172
www.bedardbobrow.com

David J. Bobrow
djblaw@bedardbobrow.com

October 26, 2022

Ben Porter
President
Langdon's Island Condominium Association
9 Badgers Island
Kittery, Maine 03904

Re: Docks and floats at 11 and 9 Badgers Island, Kittery, Maine

Dear Mr. Porter:

As you know I represent Donna McGarry, owner of 11 Badgers Island, Kittery, Maine. I am following up after my letter to you dated October 18, 2022. After I wrote to you I requested from the Town of Kittery records related to the dock and float system on your property at 9 Badgers Island, Kittery, Maine. The Harbormaster delivered to my office what records the Town of Kittery, including the Port Authority, had related to your dock at 9 Badgers Island, Kittery, Maine.

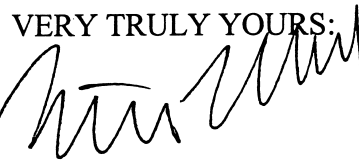
The dock at 9 Badgers Island, Kittery, Maine was approved in 1980. This originally constructed dock has the three approvals required for a dock: Army Corps, Maine Department of Environmental Protection, and the Town of Kittery Port Authority. The approved dock is 12 feet by 140 feet with a T portion at the end of the dock which is 20 feet by 40 feet. This was all legally done and there are permits for the dock.

There are no further permits that I can find (none were delivered by the Town of Kittery). It appears that the dock was expanded by a prior owner (possibly before the condominium was formed) expanding the dock with a float approximately 8 feet further towards 11 Badgers Island, Donna McGarry's permitted dock and floats. This is shown on a 2003 plan of 9 Badgers Island done by LeBlanc Associates for Jade Realty Corporation showing the construction of a ramp and floats at the end of the T. The plan shows that the T end of the pier is now 48 feet wide instead of the permitted 40 feet wide, going closer to Donna McGarry's dock and floats than allowed (the estimate on the plan of the distance is now 40' to 50' when at least 50' is required.) The front of the dock also appears to have been expanded about 8 feet into the Piscataqua River channel. According to the Port Authority Rules in Kittery a property owner needs Kittery Port Authority Approval for floats (which are permanent structures). I also expect Army Corps and Maine DEP approval is needed as well. The Town was unable to provide any evidence that this expansion was permitted. Donna told me she did not receive any notice from the Town, nor any other permitting authority, of any expansion of this float. Instead, the work was apparently done

and the expansion was completed. The expansion has caused problems because placing a boat on the side of the float chokes off Donna's access to her dock and float.

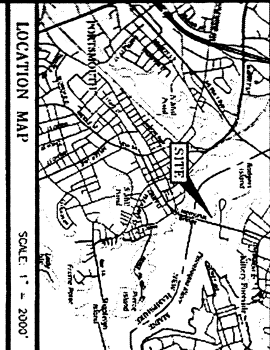
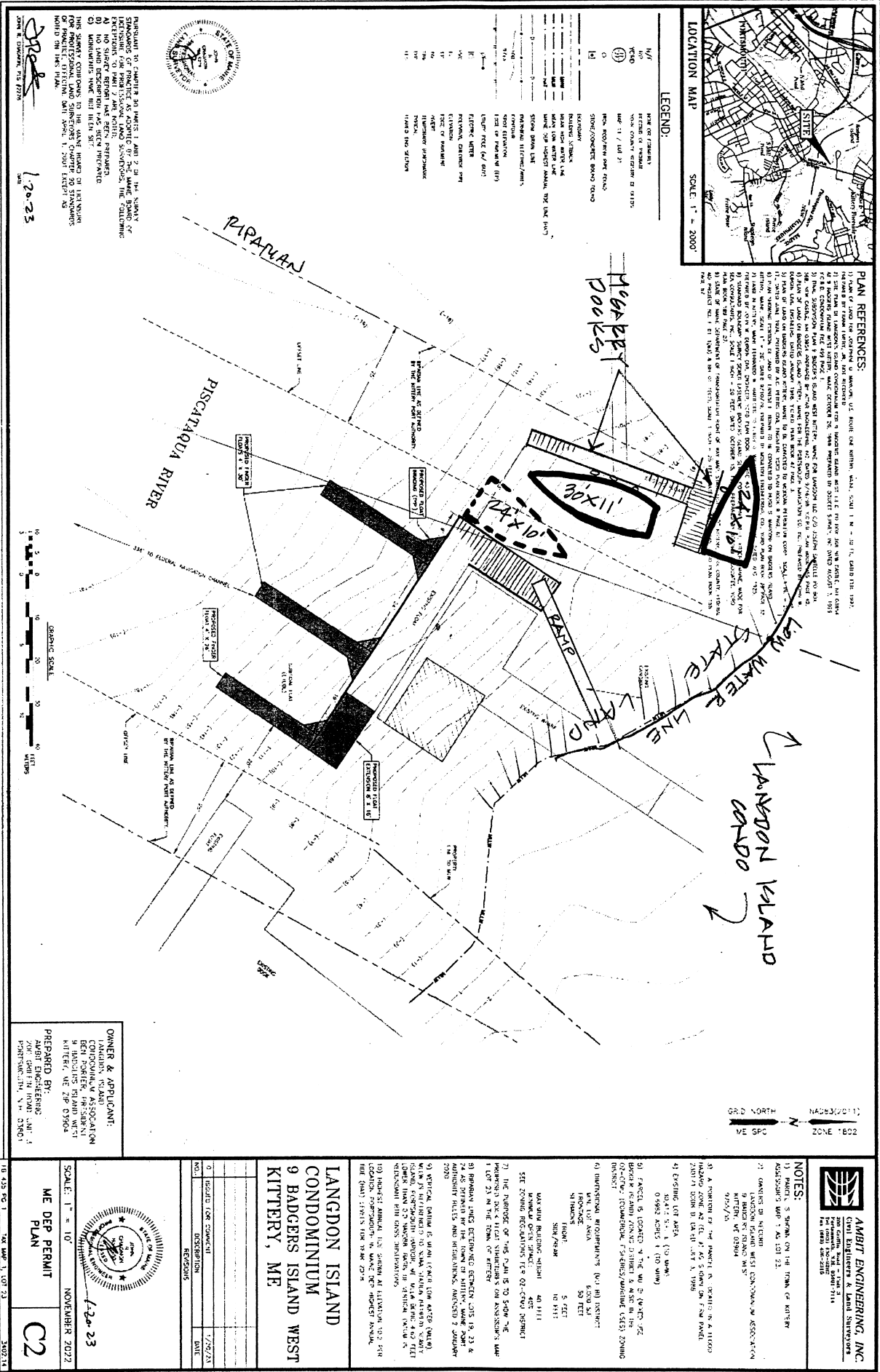
I am requesting from you a copy of the permits for this expansion of your dock beyond the 20 feet by 40 feet T area at the end of the dock. If you do not have permits for this then the float area closest to Donna should not be used for docking boats as it was not permitted and is too close to Donna's dock and float system. I attach copies of the evidence the Town of Kittery provided to me showing the dock that was permitted in 1980, and the plan showing the condition of the dock in 2003 after an expansion for which there is no evidence of any permits.

I look forward to hearing from you.

VERY TRULY YOURS:

PATRICK S. BEDARD

Cc: Donna McGarry

McGarry KPA Exhibit 7



PLAN REFERENCES:

- 1) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 2) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 3) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
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- 72) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 73) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 74) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 75) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
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- 81) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
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- 90) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 91) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
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- 93) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 94) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 95) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 96) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 97) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 98) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 99) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.
- 100) PLAN OF LANGDON ISLAND CONDOMINIUM, 1997.

LEGEND:

- 1/2" = 1' (PLAN)
- 1/4" = 1' (SECTION)
- 1/8" = 1' (SECTION)
- 1/16" = 1' (SECTION)
- 1/32" = 1' (SECTION)
- 1/64" = 1' (SECTION)
- 1/128" = 1' (SECTION)
- 1/256" = 1' (SECTION)
- 1/512" = 1' (SECTION)
- 1/1024" = 1' (SECTION)
- 1/2048" = 1' (SECTION)
- 1/4096" = 1' (SECTION)
- 1/8192" = 1' (SECTION)
- 1/16384" = 1' (SECTION)
- 1/32768" = 1' (SECTION)
- 1/65536" = 1' (SECTION)
- 1/131072" = 1' (SECTION)
- 1/262144" = 1' (SECTION)
- 1/524288" = 1' (SECTION)
- 1/1048576" = 1' (SECTION)
- 1/2097152" = 1' (SECTION)
- 1/4194304" = 1' (SECTION)
- 1/8388608" = 1' (SECTION)
- 1/16777216" = 1' (SECTION)
- 1/33554432" = 1' (SECTION)
- 1/67108864" = 1' (SECTION)
- 1/134217728" = 1' (SECTION)
- 1/268435456" = 1' (SECTION)
- 1/536870912" = 1' (SECTION)
- 1/1073741824" = 1' (SECTION)
- 1/2147483648" = 1' (SECTION)
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- 1/8589934592" = 1' (SECTION)
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- 1/549755813888" = 1' (SECTION)
- 1/1099511627776" = 1' (SECTION)
- 1/2199023255552" = 1' (SECTION)
- 1/4398046511104" = 1' (SECTION)
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- 1/17592186044416" = 1' (SECTION)
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