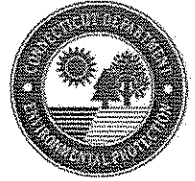


# STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
79 ELM STREET HARTFORD, CT 06106-5127



## OFFICE OF ADJUDICATIONS

**IN THE MATTER OF** : **APPLICATION NO. 200701924-DL**

**GLL, LLC** : **MAY 6, 2010**  
**(GREGORY F. LICHATZ)**

### PROPOSED FINAL DECISION

#### I

#### SUMMARY

The applicant, GLL, LLC/Gregory F. Lichatz, has applied to the Department of Environmental Protection Office of Long Island Sound Programs (OLISP/staff) for a permit to remove riprap, pilings and other material and to install a fixed pier, ramp and float for private, recreational boating access in the Connecticut River in Rocky Hill. The proposed dock would be located in coastal waters and tidal wetlands; the applicant's proposal is therefore subject to the provisions of the Structures, Dredging and Fill statutes (commonly referred to as the Structures and Dredging Act), General Statutes §§22a-359 through 22a-363f; the Tidal Wetlands Act, General Statutes §§22a-28 through 22a-35 and Regs., Conn State Agencies §§22a-30-1 through 22a-30-17; and the applicable goals and policies of the Coastal Management Act (CMA), General Statutes §§22a-90 through 22a-112.

The parties in this proceeding are the applicant, staff and the intervening parties James Zagroba and Elaine Smith. Staff published notice of its intent to recommend approval of the application on May 24, 2009, and has prepared and entered on the record a draft permit that would authorize the proposed activities. (Attachment A.)

A hearing on the application was requested on June 19, 2009. A site visit was conducted on September 1, 2009, followed by an evening hearing in Rocky Hill to take public comment on the application. The evidentiary portion of the hearing was held in Hartford on September 3 and

24. The record closed on October 1, 2009, and post-hearing briefs were filed on November 6, 2009. Staff also filed a reply to the brief filed by the intervening parties on November 30, 2009.

The intervening parties have failed to sustain their burden of proving, by prima facie evidence, their allegations of unreasonable pollution. General Statutes §22a-19. They have also failed to show by a preponderance of the evidence that their legal rights, duties or privileges will be specifically affected by this decision. General Statutes §4-177a.

With respect to the applicant's proposal to remove riprap and other materials that are located waterward of the high tide line, the applicant has failed to sustain its burden of proof and I therefore recommend that the application be returned to staff and the applicant for appropriate revisions in accordance with the findings and conclusions regarding these activities as outlined herein.

Ultimately, my decision on two issues, navigation and public safety, is dispositive of this matter. However, for purposes of providing a complete record of my decision, I have included my findings on all factors relevant to this application. The applicant's proposal to construct a dock at this site presents a unique situation in that it would be located in close proximity to the navigational area of the Rocky Hill-Glastonbury Ferry, a public transit system. The Commissioner must consider the impacts of this dock and its use taking into account the proposed location, design, physical site conditions and the statutory requirements that include the impacts of this dock on navigation. Additionally, State policy requires the Commissioner to consider at all times whether these impacts adequately protect against risk to health or safety, or other undesirable and unintended consequences. The record does not support such a conclusion. Therefore, I recommend that the application to construct a dock be denied.

## *II*

### *DECISION*

#### *A*

### *FINDINGS OF FACT*

The following findings are based on my review of the evidentiary record of this proceeding and determination of the credibility of witnesses and weight to be given to and reasonable inferences drawn from the evidence.

#### *1*

### *The Parties*

1. The applicant is a limited liability company owned by Gregory F. Lichatz who resides at 221 Wolcott Hill Road, Wethersfield. The applicant is the owner of property located at 273 Meadow Road, Rocky Hill, which is the site of the proposed regulated activities that are the subject of the application. (Exs. DEP-1, 8.)
2. DEP wildlife and fisheries divisions commented on the initial application, and staff of the DEP Office of Long Island Sound Programs, Bureau of Water Protection and Land Reuse, conducted a technical review of the initial application and amendments, and tentatively determined to issue the requested permit. (Exs. DEP-1, 8, 9.)
3. James Zagroba and Elaine Smith filed a proper petition for a hearing on the application on June 19, 2009 as provided by General Statutes §22a-32. On August 27, 2009, Zagroba and Smith<sup>1</sup> filed a petition to intervene as parties pursuant to General Statutes §§22a-19 and 4-177a.<sup>2</sup>

---

<sup>1</sup> Ms. Smith shares an interest in property located at 276 Meadow Road with Mr. Zagroba, however, she resides out of state. Ms. Smith submitted a comment letter and did not otherwise participate in the proceeding. For purposes of this decision, references to the property of the intervening parties refers to Mr. Zagroba's property located at 263 Meadow Road, which abuts the proposed project site.

<sup>2</sup> Pleadings, petitions, rulings, briefs, formal notices, directives and conference summary memoranda are contained in the Office of Adjudications docket file and are a part of the record of this proceeding. General Statutes §4-177(d).

Party status was granted under §22a-19 on September 2, 2009 and under §4-177a on September 3, 2009 with certain restrictions.<sup>3</sup>

4. The intervening parties have raised the following issues: (1) whether the proposed activities would adversely and unreasonably affect the habitat of the Virginia River Snail, listed as Endangered by the State; (2) whether the dock size, location and use would unreasonably interfere with the riparian rights of the abutting property owner James Zagroba or expose his property to damage caused by flooding or other natural disaster; (3) whether the size, location and use of the dock would affect the safe operation of the Glastonbury-Rocky Hill Ferry; and (4) whether the dock would be used for commercial purposes or provide berthing for multiple vessels. (Test. J. Zagroba, 9/24/09.)<sup>4</sup>

## 2 *The Site*<sup>5</sup>

5. The site is located on the Connecticut River within a coastal area and flood plain. Zoned residential, it is a developed lot with a three-family house, a commercial snack bar that is open to the public with outdoor seating and two associated parking areas. The larger of the two gravel parking areas encompasses most of the rear of the site and provides access to and parking for tenants and snack bar patrons. This parking area is bounded to the east by an embankment and small beach. Mixed vegetation extends from the upland to below the high tide line (HTL). A number of picnic tables are located along this shoreline area. Part of a marine railway extends onto the northeasterly portion of the site. (Exs. DEP-1, 3, 8, 18; test. J. Zagroba, 9/24/09.)

---

<sup>3</sup> The intervening parties filed a verified pleading with specific factual allegations thereby satisfying the requirements of §22a-19. *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 161-165 (2002). However, §4-177a requires the petitioners to demonstrate that their legal rights, duties or privileges will be specifically affected by a decision in the proceeding. The rights, duties or privileges raised by the petitioners in this matter pertain to the impact of the applicant's proposal on the ability of Mr. Zagroba to use a dock previously authorized by the department in 1993 and recently lost due to a storm event. This dock no longer exists and cannot be reconstructed without additional authorization from the department. Therefore, I limited the petitioners' issues under §4-177a to more general matters such as the impact of this decision on their ability to wharf out or to navigate, but not on the use of a non-existent dock that may not be present in the future in the same location as the previously permitted structure.

<sup>4</sup> The testimony and proceedings in this matter were recorded. No written transcript has been prepared. The audio recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

<sup>5</sup> The attached, Figure 3, Existing Conditions, illustrates the site as it presently exists.

6. Rip-rap, gravel and asphalt cover portions of the site including an area waterward of the HTL covering approximately 784 square feet. Fourteen derelict or remnant timber piles are also located on the northern portion of the site waterward of the HTL; four are located below the mean high water line and the remaining ten are below the mean low water line. Of the 59 feet of the marine railway that runs along the site, 5 feet extend waterward of the HTL. (Exs. DEP-1, 3, 8.)

7. James Zagroba owns the residential property abutting the site to the south. The property to the north is owned by the State of Connecticut and consists of a parking area located adjacent to the site and the Rocky Hill-Glastonbury Ferry launch, including a slip created by a series of dolphin piles situated to the north and south of the concrete launch and extending from the shoreline to an area well below the mean low water line. The Ferry is operated by the Connecticut Department of Transportation (DOT). Property to the north of the Ferry launch, which is owned by the Town of Rocky Hill, contains a newly constructed boat launch, docking for police and fire vessels and a public access pier system. (Exs. DEP-1, 3, 8.)

8. During the period between 1980 and 2005, a series of unpermitted dock structures of various configurations were located on the site in close proximity to the Ferry launch. The structures extended across most of the shorefront of the site and were used for berthing recreational vessels and the Town of Rocky Hill police and fire vessels. The docks were also used by patrons of the snack bar. Over the years the structures changed in size and configuration and appear to have had the capacity to berth a number of vessels in a variety of positions<sup>6</sup> and there is a history of vessels berthed, laterally stacked, at these structures in close proximity to Mr. Zagroba's property. At various times, either a component of the dock structure or a berthed vessel extended beyond the most waterward dolphin piling located on the south side of the Ferry slip apparently in the navigational path of the Ferry. These structures have been removed with the exception of the remnant piles. (Exs. DEP-1, APP-2; test.M. Jackson, 9/3/09, J. Zagroba, 9/24/09.)

---

<sup>6</sup> For example, in a 1990 aerial photograph the structure appears to be configured in such a way that it provided several berthing slips. This configuration made is possible to berth vessels stern in, bow in, side in and stacked side-by-side. (Ex. APP-2; test. M. Jackson, 9/3/09, J. Zagroba, 9/24/09.)

9. The shoreline vegetation on the site includes saplings, shrubs and several herbaceous species. Tidal wetlands vegetation, saltmeadow grass (*Spartina patens*) and switch grass (*Panicum virgatum*) are present along the beach area. Submerged aquatic vegetation (SAV) consisting of tape grass or wild celery (*Vallisneria Americana*) is present along most of the shoreline of the site; the largest expanse is near the southern boundary in the area of the proposed dock. (Exs. DEP-1, 3, 8, APP-4.)

10. The following coastal resources exist at the site: modified bluffs and escarpments, stream channel encroachment lines, rocky shorefront, developed shorefront, tidal wetlands, freshwater wetlands and tidally influenced watercourse, SAV, wildlife, finfish and listed endangered species. (Ex. DEP-21; test. D. Lambert, 9/3/09.)

### 3 *Application History*

11. The applicant's initial application was filed with OLISP on July 23, 2007. The applicant requested "after-the-fact authorization" to retain riprap Lichatz had placed along the riverbank on the eastern portion of the site to halt ongoing erosion. The application also contained a request for authorization to retain the gravel and asphalt, the five-foot portion of the marine railway and the fourteen derelict or remnant timber piles all located waterward of the HTL. (Ex. DEP-1.)

12. The application Executive Summary detailed the site characteristics, historic site conditions, permit history, Proposed Project Description & Scope of Authorization, and hydraulic, environmental, navigational and public trust impacts of the proposed activities. The environmental impacts assessment included consideration of the wetland vegetation, SAV, and threatened and endangered species. The applicant represented that retaining the riprap and other materials would not adversely impact these resources. (Ex. DEP-1.)

13. Staff determined that the application did not accurately reflect existing site conditions. The riprap, gravel and asphalt were present in smaller volumes than represented, they were "widely scattered around the intertidal zone" and being carried away by the River and possibly affecting the protected resources around the site. Staff therefore recommended that the applicant revise its application to request authority to remove all material located waterward of the HTL,

including the derelict piles, to avoid future enforcement action. Staff indicated that the revisions should reflect that the removal of the riprap, gravel and asphalt would be conducted using hand-held tools during periods of low tide. (Exs. DEP-4, APP-5.)

14. The applicant revised the Executive Summary in February 2008, however, only in regards to removing the riprap, gravel and asphalt. The Proposed Project Description & Scope of Authorization was unchanged with respect to the applicant's request for authorization to retain ten derelict piles to avoid further loss of upland soils and to use the remaining four piles represented to be in good condition for tie off purposes. The applicant did not make any reference to the use of "hand-held tools" to remove the materials as required by staff. No other changes were made to the initial application, including the environmental impacts assessment. All content still referred to retaining, not removing, the materials and piles.<sup>7</sup> (Exs. DEP-3, APP-5.)

15. By April 2008, the applicant commenced negotiations with the DOT in anticipation of further revising its application to include a request for authorization to construct a dock on the site. The discussions were intended to lead to approval by DOT of the location of the proposed dock in relation to the operation of the Ferry before filing an amended permit application with OLISP. (Ex. DEP-5; test. M. Jackson, 9/3/09.)

16. The applicant first proposed to locate the dock at the northern side of the site in the area of the former dock structures and remnant piles. On August 14, 2008, the applicant revised its plans, shifting the dock 15 to 20 feet south of this location at the request of ferry Captain Larry Stokes. Stokes also asked that the two remnant piles located just south of the Ferry launch remain for use as additional tie-off support for the Ferry during storm events. Stokes advised the

---

<sup>7</sup> The applicant did eliminate its request to retain the portion of the marine railway located below the HTL as staff determined that this portion of the marine railway was subject to an easement favoring the State of Connecticut. (Exs. DEP-3, APP-5.)

applicant to limit the extension of its dock so that it aligned with a point in the middle of the two most waterward dolphin piles on the south side of the Ferry slip. The applicant revised its drawings according to Stokes' comments. Stokes forwarded the revised drawings to DOT Transportation Maritime Manager Charles C. Beck. (Exs. DEP-4-7, 13; test. M. Jackson, 9/3/09, C. Beck, 9/24/09.)

17. Beck provided the following comments to the applicant on August 26, 2008: “[T]he location of the proposed dock puts the waterside end very close (30 feet) to the operating area of the [Ferry]. The concern is that under certain wind/current conditions, the location of the proposed dock could impede the safe operation of the Cumberland [tug] during the departure evolution.<sup>8</sup> Of more concern is that under any weather conditions the propeller wash from the Cumberland could damage the dock and/or anything moored to the dock (floats, boats, platforms, etc).” Beck also noted that propeller wash was more extensive and the necessary turning area was larger during the departure maneuver than on the approach to the Rocky Hill slip. Beck advised that, if responding to public notice, he would have to object to the location of the dock as an “impediment to the safe operation of the Ferry as well as the potential liability for damage to the dock and boats/floats moored to the dock.” (Ex. DEP-18; test. C. Beck, 9/24/09.)

18. The applicant again revised its plans moving the dock farther south on the site. The applicant advised Beck that the dock had been shifted as far south as possible to maintain a 25-foot offset from the southern riparian boundary line.<sup>9</sup> On August 29, 2008, Beck responded that “the new location of the proposed dock still puts the waterside end close to the operating area of the [Ferry]. As before, the concern is that under certain wind/current conditions, the location of the proposed dock could impede the safe operation of the Cumberland during the departure evolution though admittedly somewhat less than the first location. I am still very concerned that even in the new proposed location the propeller wash from the Cumberland could damage the dock and/or anything moored to the dock.” Mr. Beck noted that he would “still have to object to the location of the proposed dock. It would be difficult for the DOT to allow a dock to be established that would increase our liability.” (Ex. DEP-18.)

---

<sup>8</sup> For an explanation of the Ferry operations, see Finding of Fact #31, *infra*.

<sup>9</sup> U.S. Army Corps of Engineers guidelines specify a 25-foot offset from riparian boundaries. (Test. M. Jackson, 9/3/09.)



19. The applicant made no further revisions to the size or location of the dock. However, on March 26, 2009, Beck advised the applicant that the “location and size of the dock is much better than the original design and location” and indicated DOT’s consent to the dock provided the parties entered into an indemnification agreement. (Exs. DEP-5, 7.)

20. The DOT gave its consent to the dock on June 11, 2009. The consent letter references the proposed dock depicted on a drawing dated December 29, 2008, and contains the following statements: “The Department no longer has concerns or objections to the proposed dock configuration or location relative to the operation of the [Ferry]. The Department does not anticipate any conflicts with Ferry navigation as it approaches and departs the Ferry slip.” Beck repeated his prior comments that “at times weather and River conditions produce unusual challenges to a successful landing or departure from the Ferry slip. Additionally, even on the best of days propeller wash from the Ferry may be directed in the vicinity of the proposed dock.” (Ex. DEP-13; test. C. Beck, 9/24/09.)

21. The consent letter also provided that DOT would not be held responsible for any damage to the dock or vessels moored to the dock caused by the Ferry “including but not limited to the Ferry propeller wash.” The DOT relied on the indemnification agreement in issuing its consent to the proposed dock. DOT noted that the applicant would assume all risks associated with the installation and operation of its dock and indemnify the State “for any possible damage caused by the Ferry operation....” The indemnification agreement was fully executed on June 3, 2009. (Exs. DEP-13, INT-3.)

22. In regards to the third and final proposed location of the dock, Beck and Captain Stokes concluded that they “could live with it” and “would not object to it.” Beck testified that the Ferry captains could navigate around the dock; but that the presence of the dock combined with the current, weather, and tide could cause the Ferry to alter its course. He testified that he was satisfied that the dock would not impede the safe operation of the Ferry, however, he insisted on the indemnification agreement to protect the DOT “from something that could happen unexpectedly.” He also testified that he considered the indemnification to extend to personal injury as well as property damage. (Test. C. Beck, 9/24/09.)

23. During the hearing the DOT representatives, Captain Larry Stokes and Charles Beck, appeared under subpoena to testify regarding the impacts of the proposed dock on the operation of the Ferry. Captain Stokes was made available by DOT to testify only as a fact witness. DOT counsel appeared and objected to questions that called for an expert opinion from the Ferry captain regarding the effect of the dock on Ferry operations.<sup>10</sup> The indemnification agreement between DOT and the applicant was fully executed well before the start of the hearing and provided that DOT would not object to the proposed dock design or location. The limitations set by DOT on Captain Stokes' testimony were in furtherance of this agreement. (Test. L. Stokes, C. Beck, 9/24/09.)

24. Apparently, the DOT did not review the full extension of the dock including the berthing configuration. The December 29, 2008 drawing upon which DOT relied in reaching its conclusion does not reflect the berthing configuration that is depicted in later drawings. The waterward extension of the proposed dock, without a vessel, aligns with the point between the two outward dolphin piles as requested by Captain Stokes. However, as depicted in later drawings, the full extension of the dock with a moored vessel aligns with or beyond the third dolphin pile and not the mid-point required by Stokes. DOT did not discuss the applicant's proposal with staff or attempt to simulate the conditions that would exist if the dock were present in its proposed location. (Exs. DEP-4, 5, 7, 8, 10, 13, 16 18; test. C. Beck, 9/24/09.)

25. The applicant filed its amended application with OLISP in May, 2009 incorporating its request for authorization to construct a dock and retain two existing piles.<sup>11</sup> The application, although amended, was still not fully revised to reflect the applicant's proposal to remove rather than retain the riprap and other materials located waterward of the HTL or the number of piles to

---

<sup>10</sup> A summary of Captain Stokes' testimony was put on the record. The basis for DOT counsel's objections was also summarized on the record.

<sup>11</sup> In its site description, the applicant identified a total of fourteen existing piles, however, the project description includes a request to remove fourteen piles and retain two piles. It appears from the application drawings that the applicant proposes to remove all but two piles. (Ex. DEP-8.)

be removed or retained.<sup>12</sup> The department's assessment of the impacts of the proposal on various protected fisheries and wildlife was based on the initial application for authorization to retain the materials. There is no indication that the information was updated after the application was amended. Additionally, although the applicant was advised that it would have to remove of the riprap, gravel and asphalt with hand-held tools, the application provides that the contractor will: (1) remove "all derelict piles and riprap waterward of the HTL with a barge mounted crane...." (Ex. DEP-8.)

4  
*The Proposed Activities*<sup>13</sup>

*a*  
*Proposed Dock Location/Riparian Boundary*

26. The proposed dock would be constructed on the south side of the site, which abuts Mr. Zagroba's property. The applicant estimated its northern and southern riparian boundaries by extending the upland property lines straight out to the mean high water mark. The riparian lines were further extended, at an angle to the property lines, to intersect at right angles with the horizontal center line of the River in the area of the applicant's shoreline. The applicant determined that the proposed float would be offset 25 feet from the southern riparian boundary line, a distance that could not have been maintained had the applicant extended its riparian lines straight out from the upland property lines. (Exs. DEP-3, 8; test. M. Jackson, 9/3/09.)

*b*  
*Pier, Ramp and Float*

27. The applicant proposes to construct a 4 ft. by 29 ft. timber pier with a 3 ft. by 28 ft. aluminum access ramp and an 8 ft. by 20 ft. float. The pier would be supported by twelve timber piles. An additional seven piles would support the float including a group of three battered or brace piles on the north side, which faces the Ferry. A barge-mounted vibratory hammer would be used to drive the piles during periods of high water. The balance of the pier would be constructed by hand. The proposed ramp and float, to be purchased or constructed at an upland

---

<sup>12</sup> Portions of the applicant's environmental impacts analysis continue to refer to retaining rather than removing the rip rap and other materials, however, the applicant did include a discussion of the impacts of the dock structure on SAV, navigation, and public trust areas. (Ex. DEP-8.)

<sup>13</sup> The attached, Figure 4, Proposed Conditions, illustrate these activities.

facility, would be towed by boat to the site and installed during a period of high water. The applicant intends to remove the ramp and float during the off-season to avoid damage or loss from winter ice flows or debris that flows downstream during spring flooding. (Exs. DEP-8, 9; test. M. Jackson, 9/3/09.)

28. The structure would extend approximately 43 feet waterward of the mean high water line. DEP guidelines recommend that residential dock structures should not be constructed more than 40 feet waterward of the mean low water line; this structure would be 29 feet waterward of that line. These waterward extensions do not include the proposed berthing configuration shown on the applicant's plans. The pier would be constructed 5 feet above the substrate waterward of the mean high water line. (Exs. DEP-8, 9, 16; test. M. Jackson, 9/3/09, D. Lambert, 9/24/09.)

29. To justify its request for the 8 ft. by 20 ft. float, the applicant noted in its amended application that the "site is exposed to constant large wake action" due to its "proximity to the Rocky Hill-Glastonbury Ferry Navigation Channel." The Connecticut River is home port for a large number of recreational and commercial vessels. The Ferry, located directly north of the applicant's property, "makes several trips back and forth across the River throughout the day during summer months" and "produces an extreme amount of wave energy." "The wakes generated by the constant flow of boat traffic up and down the River pose a serious and sustained safety threat to anyone using the dock." The size of the float "is justified and necessary to meet the minimal level of stability and safety. In recent years, equal or greater size floats have been authorized by the DEP along similar sections of the Connecticut River for these same reasons." (Ex. DEP-8.)

30. Staff recommends approval of the 160 square foot float, which exceeds the department's standard of 100 square feet for floats attendant to residential docks. Staff considers the size of the float necessary for stabilization given its proximity to the operation of the Ferry. Staff testified that the battered piles at the north end of the float would provide stability, however, it is primarily the dimensions of the float that would allow it to "ride the waves created by the Ferry wake." Dipping or bobbing from wave or wake heights of more than a foot would be diminished with a float of these dimensions, although such heights are not expected in the area of the float. Staff noted that the applicant expects that "the float may require more frequent replacement due

to the wash it will encounter from the Ferry navigation but holds the state harmless in such likelihood.” (Exs. DEP-9, 22; test. D. Lambert, 9/03/09, 9/24/09.)

5

*The Rocky Hill-Glastonbury Ferry*

31. The Rocky Hill-Glastonbury Ferry is a seasonal public transit ferry system that crosses the Connecticut River from Rocky Hill on the west side of the River to Glastonbury on the east side and is part of State Highway 160. The Ferry makes approximately 40 round trips on average each day during the operating season. The Ferry consists of the tug, the Cumberland, and a barge, and is piloted by any one of four captains employed by the DOT and considered by DOT to have the skills to navigate around structures such as the applicant’s proposed dock. (Test. L. Stokes, C. Beck, 9/24/09.)

32. When departing the Rocky Hill slip, the Cumberland faces bow in and is attached by bow and stern lines with its starboard side to the barge. The tug initially reverses its engine and backs out pulling the barge with passengers and automobiles completely out of the slip. The tug then swings around 180 degrees ending port side to the barge and pushes the barge forward to the Glastonbury side of the River. This operation is repeated during the departure from the Glastonbury slip. (Ex. DEP-18; test. L. Stokes, C. Beck, 9/24/09.)

33. On departing the Rocky Hill slip, the Ferry travels east, turns to the south and then northeast on approach to the Glastonbury slip. On the approach to Rocky Hill, the Ferry leaves the Glastonbury slip, turns to the south and then west directly into the current. The Ferry then gradually turns north and then east before entering the Rocky Hill slip. These maneuvers are necessary as the Ferry must be steered directly into the River currents. The area necessary for the pilots to make the turns is greater during the departure maneuver than on the approach. Propeller wash occurs during the turn on the approach to the slip and more so during the departure maneuver. Captain Larry Stokes testified that the height of the wave action or prop wash created by the turning maneuvers should not exceed six inches by the time it reaches the proposed dock. (Ex. HO-1, DEP-18; test. L. Stokes, C. Beck, 9/24/09.)

34. Currents, including those affected by the spring freshet and the tide, are stronger on the west side of the River and impact the speed of the Ferry and the direction the Ferry travels. Because the Ferry must head into the current, an increase in the velocity of the current may require the pilot to alter the navigational path of the Ferry bringing it west, closer to the shore (i.e., closer to the site) on the approach to Rocky Hill. Stokes testified that the current can also push the Ferry closer to the shore. During heavier currents, Stokes has found himself pushed west or landward of the outermost dolphin piling at the south side of the Ferry slip. Stokes later testified that there is no need for the Ferry to come landward of that outermost dolphin pile, and if the current puts the Ferry further landward, the Captain has made a mistake. Apparently two recorded mishaps have occurred due to Ferry operations since the early 1990s causing damage to two vessels berthed or in the area of the prior existing dock structures. Notably, Beck testified that if he were present when these docks were constructed, he would have objected to them. (Ex. DEP-22; test. L. Stokes, C. Beck, 9/24/09.)

35. During the initial review of the applicant's proposed dock, Beck expressed concern that the waterside end of the dock was close to the operating area of the Ferry and under certain wind and current conditions the dock could impede the safe operation of the tug. He also expressed concern that propeller wash from the tug could damage the dock or float or boats moored to the dock. Beck repeated his concerns on August 29, 2008 regarding the safe operation of the Ferry and the potential for damage even after the dock was shifted to its current proposed location. Even in the June 11, 2009 consent letter, Beck again stated that "at times weather and River conditions produce unusual challenges to a successful landing or departure from the Ferry slip. *Additionally*, even on the best of days, propeller wash... may be directed in the vicinity of the proposed dock." (Emphasis added.) These statements are consistent with Captain Stokes' testimony that wind and River currents can push the Ferry or cause it to be driven closer to the site. (Exs. DEP-7, 18; test. L. Stokes, C. Beck, 9/24/09.)

6  
*Endangered Species*

36. The applicant provided an assessment of the endangered and threatened species that occur in the area of the site in its initial application seeking to retain the materials located waterward of the HTL. The applicant consulted the National Diversity Data Base (NDDDB),

which indicated that Federal and State Endangered Bald Eagles and Shortnose Sturgeon, and State Threatened Atlantic Sturgeon occur in the area. Additionally, the State Endangered Virginia River Snail exists in the project area. DEP wildlife staff advised the applicant that the Virginia River Snail could be the species most impacted by retaining the riprap. DEP fisheries staff advised that retaining the riprap will not have adverse effects on either the Shortnose Sturgeon or the Atlantic Sturgeon. (Ex. DEP-8.)

37. The applicant retained Dr. David Wagner, who conducted a site survey on July 28 and 29, 2007, to determine if the characteristics of the site were suitable for the Virginia River Snail.<sup>14</sup> Wagner determined that the Snail exists in the shallow waters less than 3 meters deep and is susceptible to siltation from dredging or other soil disruption. Wagner found shells of the Virginia River Snail on rocks along the shoreline of the site and observed over sixty living Snails during each site visit. In his initial report, Wagner concluded that the Snail appears to be well established at the site. At the time of his report, Dr. Wagner made no recommendation regarding the impact of the applicant's July 2007 proposal to retain riprap and other materials on the Virginia River Snail. In an August 28, 2009 supplement to his report, Dr. Wagner opined that "there will be minimal adverse impact to the Virginia River Snail from the proposed dock provided "any snails and mussels in the footprint (and immediately proximate area) of the proposed piles [are] physically relocated prior to pile driving activities." (Exs. DEP-3, 8, APP-6.)

38. Dr. Wagner's study occurred prior to a project conducted by DOT in late 2008 involving renovations to the Rocky Hill and Glastonbury Ferry launches. DOT was required, pursuant to a DEP permit, to survey and relocate any Virginia River Snails found in the project dredging areas.

---

<sup>14</sup> Dr. Wagner, who serves on the DEP Advisory Committee for Rare and Endangered Invertebrates, also investigated the presence of the Puritan Tiger Beetle in the area. After two site visits, he determined that the site was degraded and impacted with rocky, armored banks, no beach at high water and no suitable larval breeding habitat for the Puritan Tiger Beetle. Dr. Wagner concluded that the site was therefore unsuitable for the Puritan Tiger Beetle. (Ex. DEP-3.)

During the renovations, the DOT also identified the presence of the Tidewater Mucket, a threatened species on the Connecticut Endangered/Threatened Species list.<sup>15</sup> The DOT consulting biologist indicated that it is likely that many more Tidewater Muckets are present in the area given the ideal habitat, and the presence of shells in the dredge area indicates “that the species is reproducing in this area of the Connecticut River.” (Exs. DEP-3, 22, APP-6.)

7

*Environmental Impacts*

39. The tidal wetlands (*Spartina patens*) on the site are located immediately adjacent to the riprap removal area. Submerged aquatic vegetation (SAV) (*Vallisneria Americana*) is located at the base of the shoreline waterward of mean low water. The waterward end of the proposed pier would be landward of the SAV. The aluminum ramp would span the SAV closest to the area of the dock and the float would be 5 to 10 feet away from the SAV in the area to avoid shading or boats resting on the SAV. (DEP-8, 9, 10; test. M. Jackson, D. Lambert, 9/3/09.)

40. Staff has identified a number of coastal resources present at the site and determined that the proposed activities are not expected to have an impact on these features. Additionally, the proposed activities are not expected to impact coastal flooding, water circulation or drainage patterns, shore erosion or accretion, visual quality and water quality. The Department of Agriculture Bureau of Aquaculture (BOA) determined that areas north of Old Lyme and Old Saybrook lack significant shellfish resources and do not require a BOA determination of the impact of the proposed activities on shellfish. (Ex. DEP-9; test. D. Lambert, 9/3/09.)

41. The dock would be set back 100 feet from the Connecticut River federal navigation channel and would not impede small craft navigation in the area. The float would be located 25 feet from the applicant’s estimated southern riparian boundary. From these factors and in

---

<sup>15</sup> DOT was required to survey and remove Virginia River Snails from the areas where the renovation and dredging activities were likely to cause mortality. After receiving the permit authorizing the work, DOT discovered the presence of the Tidewater Mucket. The report prepared by an invertebrate biologist indicated that a total of 3282 Virginia River Snails and 9 Tidewater Muckets were removed from the two Ferry approaches and dredging areas and were relocated upstream to suitable habitats. The report notes that the range of sizes of the Virginia River Snail found in the project area indicates “a very healthy population with a high rate of recruitment and high adult survival.” (Ex. DEP-22.)



reliance on the DOT's consent to the location of the dock, staff determined that there are no navigational issues associated with the proposed activities. Had the DOT objected to the dock, the Notice of Tentative Determination would not have been issued for the dock in its proposed location. Staff also determined that the proposed fixed pier "has been minimized to the point where the overall encroachment is acceptable." (Exs. DEP-8, 9, 21; test. M. Jackson, D. Lambert, 9/3/09.)

42. The west-facing side of the float would be suitable for mooring a 33-foot vessel with a shallow draft. On the southern side, the float would be 8 feet wide and the battered support piles would be centered on the northern side. The float is not designed for multiple moorings or laterally stacked vessels. Given the float design, site conditions and water depths, staff concluded that berthing restrictions regarding the number of vessels that may be moored at this float were unwarranted. (Test. M. Jackson, 9/3/09, D. Lambert, 9/3/09.)

43. Historically, pilings can be dislodged or sheared during winter ice flows. Spring floods have brought logs the size of telephone poles downstream. It is likely that such debris will collect around the Town dock structures or the dolphin piles at the Ferry launch before reaching the proposed dock or Mr. Zagroba's property. The battered piles should prevent the float from dislodging and floating downstream. To protect the ramp and float from the effects of ice flows and strong currents, the applicant intends to remove these components during the off season. (Ex. DEP-8; test. M. Jackson, 9/3/09.)

44. The proposed fixed pier would terminate approximately 5 feet landward of mean low water and would be elevated 5 feet above the surface at and below mean high water to allow for public access to that area. In circumstances where a structure does not allow for such public access and instead requires the public to pass over the structure, staff takes into account whether the design of the structure, including any ladders or stairs, is safe for such a purpose. Staff does not otherwise consider public or private user safety with respect to the design of a structure. (Ex. DEP-8; test. M. Jackson, 9/3/09, D. Lambert, 9/24/09.)

45. Dr. Wagner provided the applicant with his opinion that any Virginia River Snails found in the area of the proposed piles be physically relocated after the draft permit had been prepared.

The draft permit does not include such a requirement, but imposes a prohibition against any authorized work during the breeding period of the Snail, April 1 through September 30. In addition, the threatened Tidewater Mucket has been observed and is expected to be reproducing at least in the area of the Ferry launch. Since the possible presence of the Tidewater Mucket in the area was first made known during the hearing, it is obvious that there was no determination of whether the proposed activities would impact this threatened animal. (Exs. DEP-10, 22, APP-6.)

8  
*Draft Permit*

46. The draft permit outlines the authorized scope of work.<sup>16</sup> The applicant would be authorized to remove the riprap stone, gravel and asphalt, during periods of low water, although there is no specified method for doing so. The applicant would also be authorized to remove fourteen timber piles and retain two existing piles and install the proposed dock. The construction methods described in the amended application are incorporated by reference into the permit. Construction of the dock must occur during periods of high water. The work is prohibited during the period April 1 through September 30, the breeding period of the Virginia River Snail. (Ex. DEP-10; test. D. Lambert, 9/3/09.)

47. The draft permit requires the applicant to flag the limits of the tidal wetlands in the work area so that the vegetation is readily identifiable by contractor personnel and to ensure that all work is performed in a manner that minimizes impacts to the tidal wetlands. Any barge that is used to remove or install piles must not come in contact with bottom sediments and no equipment or material may be deposited, placed or stored in any wetland or watercourse on or off-site. The applicant is not required to remove the ramp and float during the off-season as there is no resource involved that would be impacted by the presence of the ramp and float during the off-season.<sup>17</sup> (Exs. DEP-10, 21; test. D. Lambert, 9/3/09.)

48. The draft permit prohibits the applicant from deviating from its approved plans or changing the residential purpose or use of the structure without prior authorization from the

---

<sup>16</sup> The March 30, 2009 drawings referenced in the draft permit reflect the applicant's latest proposal, however, the permit does not specify that the authorized work is described in the applicant's amended application and not the initial application. (Ex. DEP-10.)

<sup>17</sup> See, however, Finding of Fact #27.

Commissioner. This “no change in use” provision is intended to prohibit the applicant from using its dock for commercial purposes, i.e., to charge a fee for berthing vessels. The draft permit does not otherwise restrict public access or the use of the dock or the number of vessels that may be berthed at the dock at any time. Such restrictions are often included as permit conditions to protect resources or to address navigation issues. The draft permit does not require signage in the area that would notify the public, including patrons of the snack bar, of the private nature of the dock or prohibit access to the dock as these restrictions or requirements would not be enforced by the department. (Ex. DEP-10; test. D. Lambert, 9/3/09.)

## 9

### *Alternatives*

49. The amended application does not contain an alternatives analysis. Obviously, the applicant considered two alternative locations for the dock in response to the DOT concerns regarding the safe navigation of the Ferry and liability for damage due to Ferry operations. If the applicant were to decrease the length of the structure, bringing it closer to shore and further away from the navigational path of the Ferry, the SAV in the area could be adversely affected. According to staff, such impacts to the SAV might be authorized in the circumstance where the longer structure was determined to have a significant impact on Ferry navigation and the DOT objected to its location. (Ex. DEP-8; test. D. Lambert, 9/3/09.)

## B

### *CONCLUSIONS OF LAW*

Before reaching the substantive issues to be determined in this matter, it is necessary to set forth certain general principles that govern my review of the evidence in this matter. With respect to the parties and the applicable burdens of proof, the applicant has the burden of proving by a preponderance of the evidence that its proposed regulated activities are consistent with the statutory and regulatory criteria, and legislative goals and policies that govern those activities. Regs., Conn. State Agencies §22a-3a-6(f). Likewise, the intervening parties have the burden of proving, by prima facie evidence, their allegations of unreasonable pollution under §22a-19(a). Because there is a statutory scheme that governs the applicant’s proposal, the intervening parties

must show that the proposed activities do not comply with the applicable statutes and regulations to meet this burden. *City of Waterbury v. Town of Washington*, 260 Conn. 506, 549-551 (2002). In this matter, the intervening parties must also prove by a preponderance of the evidence that their legal rights, duties or privileges would be specifically affected by the applicant's proposed activities. General Statutes §4-177a(a).

As the hearing officer in this matter it is my prerogative to assess the credibility of the witnesses and determine factual matters. *Elf v. Dept. of Public Health*, 66 Conn. App. 410, 422 (2001). I am not required to believe or disbelieve the evidence presented by any witness, even an expert, or to use any of the materials presented in a particular fashion provided the conduct of the hearing was fundamentally fair. *Samperi v. Inland Wetlands Agency*, 226 Conn. 579, 597 (1993).

## *1*

### *Statutory and Regulatory Criteria*

The applicant proposes to conduct activities in coastal waters and tidal wetlands and is required to demonstrate that its proposal complies with the statutes and regulations that protect coastal resources. This application was therefore reviewed under the applicable provisions of General Statutes §§22a-28 through 22a-35 (Tidal Wetlands Act), Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17 (implementing regulations); and General Statutes §§22a-359 through 22a-363f (commonly referred to as the "Structures and Dredging Act"). The application was also reviewed for consistency with the applicable policies and provisions of the Coastal Management Act (CMA) that provide for the preservation of tidal wetlands and the protection, preservation and enhancement of coastal resources including those used for recreational purposes. General Statutes §§22a-90 through 22a-112.

## *a*

### *Tidal Wetlands Act*

Individuals seeking to conduct regulated activities on tidal wetlands must obtain prior authorization from the DEP. In determining whether to permit such activities, the Commissioner is required to take into account such factors as the effect of the activity on public health and welfare, marine fisheries, and shellfisheries. §22a-32. The Commissioner is also required to

consider the policy of the Tidal Wetlands Act, which is the preservation of the wetlands of the state and prevention of wetland despoliation and destruction. §22a-28. The implementing regulations of the Tidal Wetlands Act set out the criteria for granting, denying or limiting permits. Regs., Conn. State Agencies §22a-30-10(a).

*b*

*Structures and Dredging Act*

The Structures and Dredging Act authorizes the Commissioner to regulate dredging, structures and the placement of fill in tidal, coastal or navigable waters and, in doing so, to consider coastal resources, and state and public interests. §22a-359(a). Therefore, an individual must apply for and secure a permit to dredge, erect structures, or place fill or other obstructions or to conduct the work associated with such activities within the Commissioner's jurisdiction. §22a-361(a).

The Structures and Dredging Act requires the Commissioner to consider the impact of the applicant's proposed activities in light of various criteria. This impact determination includes consideration of the impacts of the use of the proposed dock on the tidal, coastal or navigable waters of the state, adjoining coastal and tidal resources, tidal wetlands, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural disasters and water-dependent use opportunities...." §22a-361(c).<sup>18</sup>

*c*

*Coastal Management Act*

The Commissioner is also required to assure that regulated activities that are authorized pursuant to the Tidal Wetlands and Structures and Dredging Acts are consistent with the goals and policies of the CMA. §22a-98. Also, policies established by the Tidal Wetlands and Structures and Dredging Acts are incorporated into the policies of the CMA. §22a-93.

---

<sup>18</sup> Section 22a-361(c) authorizes the Commissioner to adopt regulations to carry out the provisions of the Structures and Dredging Act. Although there are currently no regulations, the provisions of this subsection clearly reflect the will of the legislature to authorize the Commissioner to consider a wide array of factors in determining whether to issue the subject permit. See *Salmon Brook Convalescent Home, Inc. v. Commission on Hospitals*, 177 Conn. 356, 363 (1979) (agency only empowered to adopt regulations to carry into effect the will of the legislature as expressed by the statute).

Therefore, the three Acts are interrelated and, in combination, form the statutory scheme that governs the activities proposed by the applicant.

2

*Consistency with Statutory and Regulatory Criteria*

*a*

*The Application*

There are several inconsistencies in the application materials. The applicant did not fully revise its request for after-the fact authorization to retain the riprap, gravel, asphalt and derelict piles to indicate its present intent to remove these materials. The impact determinations on wildlife and endangered and threatened species have not been updated in light of this change or with respect to the more recent plan to construct a dock on the site. These defects are significant to the extent that the application and supporting materials are incorporated by reference into the scope of work authorized by the draft permit. Moreover, the permit expressly provides that the Commissioner has relied on this information in determining whether to issue the permit. Additionally, the implementing regulations of the Tidal Wetlands Act require that an application contain a “detailed description of the proposed activity, including construction methodology”; and a “description of any adverse environmental impacts associated with the proposed activity.” Regs., Conn. State Agencies §22a-30-6(7) and (8). It is clear that the application materials do not comply with these requirements.

*b*

*Removal of Riprap, Gravel and Asphalt*

The record reflects that at the time staff advised the applicant to revise its request to retain the riprap and other materials to a request to remove them; staff noted that the method for doing so would have to be with the use of hand-held tools. There is no such reference in any of the revised application materials. In fact, the application contains a proposal to remove the materials and derelict pilings with a barge-mounted crane. Also, there is no method specified in the draft permit for removing these materials. There is a permit condition that requires the applicant to flag tidal wetland vegetation in the area of the riprap and other materials; however, it is not clear from the record whether such a condition was based on the applicant’s proposal to use a barge-mounted crane to remove the material or some other required method. In the

absence of a specific permit condition or further revisions to the application with respect to the method to be employed to remove the materials, the application is inconsistent with the governing regulations. For the reasons stated above such inconsistencies do not allow for a full consideration of this part of the applicant's proposal. §§22a-30-6(7) and (8).

c

*Factors for Consideration Not in Dispute*

Aside from the application defects outlined above, there are several statutory and regulatory criteria to be considered in this application that are not in dispute and do not warrant extensive discussion with respect to the applicant's proposed dock. Among them are the impact of the construction, maintenance and use of the dock on erosion and sedimentation, circulation and quality of coastal or tidal waters and on the protection of life and property from hurricanes or other natural disasters. §§22a-33, 22a-359, and 22a-361(c); §22a-30-10(b), (d), (f) and (g).

The record clearly demonstrates that the proposed dock will not cause or produce unreasonable erosion or sedimentation or adversely affect tidal water circulation and quality. §§22a-359(a), 22a-361(c), 22a-30-10(d) and (f). One issue raised by the intervening parties was concern that the presence of the dock would expose Mr. Zagroba's property to damage due to debris flowing downstream. The evidence shows that such debris is likely to collect around the upstream dock structures and possibly the applicant's structure. In addition, the evidence indicates that the applicant intends to remove its ramp and float during the offseason thereby eliminating the possibility that those components could become dislodged and carried downstream due to ice flows or heavy currents.

There is no evidence on the record that shows that the dock will increase the potential for flood or hurricane damage to the adjoining property or "increase the exposure of any property, land or structures to damage from storm waves or erosion." There is also no evidence that the presence of the dock will increase the velocity or volume of flood water flow in the River or reduce the capacity of the River to transmit flood waters. §§22a-361(c), 22a-30-10(g). I find that the proposed dock is consistent with respect to the several criteria discussed here.

Although there is a dispute over whether the proposed dock is likely to interfere with the riparian rights of the intervening parties, it is appropriate to dispose of this issue here. The applicant established its riparian boundary and located its dock a distance of 25 feet from that boundary in accordance with U.S. Army Corps of Engineers guidelines. My authority does not extend to a legal determination of the applicant's method or the location of its riparian boundary.<sup>19</sup> The intervening parties, however, have not provided any evidence that the applicant's dock, in its proposed location would interfere with their ability to have a dock or to navigate in that part of the River. Therefore, with respect to the claims of the intervening parties that the proposed dock might interfere with their riparian rights, the record does not support such a conclusion. §§22a-359(a), 22a-361(c); §22a-30-10(h)(3).

— d —  
***Preservation of Tidal Wetlands***

The governing statutory scheme requires a determination that the applicant's proposed dock will preserve the wetlands in the area. In arriving at that determination, the Commissioner is required to find that: (1) there is no technically feasible alternative for accomplishing the applicant's objectives that would further minimize adverse impacts; (2) the proposed structure is no greater in length, width and height than necessary to accomplish its intended function; (3) pile supported construction will be used; and (4) all reasonable measures to minimize any adverse impacts of the proposed dock on the wetlands and adjoining coastal and tidal resources are incorporated into the draft permit. §22a-30-10(b)(1) – (4).

At the proposed location, the dock ramp and float will not adversely impact the tidal wetlands vegetation or SAV in the area. A shorter structure would adversely impact these resources. In that regard it appears that the proposed dock is appropriately designed, notwithstanding issues regarding the size of the float, which are addressed below. Impacts to coastal and tidal resources have been minimized with the exception of the impacts of the dock on the Ferry navigation, which will also be addressed below. In all other respects, the proposed dock is consistent with these regulatory criteria.

---

<sup>19</sup> Query whether the applicant employed an acceptable method to determine its riparian boundary within a navigable waterway. E.g., *Water Street Associates Limited Partnership v. Innopak Plastics Corporation et al.*, 230 Conn 764 (1994).



*e*  
***Endangered Species***

The Commissioner is required to determine whether the habitat areas of rare and endangered wildlife and fish species will be unreasonably affected or whether wildlife and their nesting, breeding or feeding habitats will be unreasonably reduced or altered by the proposed activities. §22a-30-10(e)(2) and (3). With respect to the Virginia River Snail, there is inconsistent evidence on the record as to the best means to protect this state endangered animal. The draft permit prohibits construction of the dock during the Snail's breeding period, while the applicant's consultant recommends that the Snail be relocated from the pile driving areas. Notably, the threatened Tidewater Mucket may be also present in the area. DEP wildlife and fisheries staff were not consulted regarding the proposed dock and therefore did not comment on its impact on the Virginia River Snail. It appears that staff may not have been aware of the possible presence of the Tidewater Mucket. Therefore, I find that the evidence is insufficient to determine whether the proposed dock will unreasonably affect these resources.

*f*  
***Navigation, Use and Public Safety***

The Tidal Wetlands Act and its implementing regulations require the Commissioner to determine the impact of the applicant's proposed activities on existing or potential recreational and navigational uses. The applicant must therefore demonstrate that its proposed activities will not: (1) unreasonably interfere with public access to and use of wetlands or the areas below mean high water (public trust area) or with public recreational facilities; (2) unreasonably interfere with a navigable channel or small craft navigation; or (3) cause or contribute to sedimentation problems in nearby navigable waters or channels. §22a-30-10(c). It is apparent from the record that the proposed dock is designed to allow for long shore public access to the public trust area. The dock would be located a sufficient distance from the federal navigation channel and there is ample room for small craft to navigate around it. Also, the construction and presence of the dock would not cause any permanent sedimentation problems in the area.

With respect to whether the proposed dock would unreasonably interfere with a navigable channel, it has been determined that it would be located a sufficient distance from the federal

navigational channel. However, the Ferry travels in a path that is dictated by weather, and changing currents, not the federal navigational channel. As the DOT repeatedly and consistently cautioned, tide, wind and strong currents can pose challenges to Ferry operations, including forcing the Ferry landward in the direction of the dock, whether due to these natural forces or a mistake of the Ferry pilot. Therefore, the presence of the dock and any vessels moored to the float would clearly present an impediment to the navigation of the Ferry particularly during conditions that force the Ferry landward.

The applicant contends that the location and presence of the previously existing dock structures and only two known mishaps related to Ferry operations over a period of 15 years is sufficient evidence that the Ferry can safely operate in the area of the proposed dock. I am not persuaded. Those unpermitted structures are not before me for consideration, nor were they subjected to the regulatory scrutiny that would have occurred if such structures were permitted by the department or reviewed by the DOT. In fact, Mr. Beck testified that he would have objected to the location of those dock structures even though he is aware that the ferry captains maneuvered around them for years.

Of significance are the two issues of concern to the DOT regarding the applicant's proposal. The first concern was the safe operation of the Ferry, and the second was to protect the DOT from liability in the event something unexpected occurred. As to the first issue, Mr. Beck was satisfied that the safe operation of the Ferry is assured by the current proposed location of the dock. Although it may have been reasonable for staff to rely on DOT's consent, I find Mr. Beck's conclusion inconsistent with the evidence, particularly when his first response to this proposed location was to restate his concern that at that location the dock could impede the safe operation of the Ferry, albeit slightly less so. With respect to this location, nothing has changed.

The bases for DOT's insistence on indemnification in the event of damage caused by Ferry operations are also significant. The likelihood that damage might occur due to propeller wash from the Ferry was only one reason that DOT required the indemnification agreement. It is clear that DOT was also concerned about unexpected events such as weather and current conditions that could produce unusual challenges to a successful landing at or departure from the Ferry slip. Notably, Mr. Beck testified that it was his belief that the indemnification agreement

covered personal injury as well as damage to property. In whatever context, the evidence evinces DOT's concerns over the presence of the proposed dock and the navigation of the Ferry under circumstances that are unexpected or uncontrollable. The Indemnification Agreement has no impact on such circumstances.

The Commissioner is required to consider the use of the proposed dock with respect to the criteria specified in the Structures and Dredging Act. §22a-361(c). A number of issues emerge from the significant evidence on the record regarding the use of this dock. The evidence shows that when a vessel is moored to this dock on the easterly side of the float, the entire configuration poses an impediment to the navigation of the Ferry. Additionally, the applicant designed and requested a float that is supported by battered piles and is fifty percent larger than floats typically permitted for residential, recreational docks. Justification for this request rested on the large wake action created by the Ferry and other boat traffic on the River, which the applicant considers a serious and sustained safety threat to anyone using the dock. I find support for the applicant's claim from DOT's insistence on indemnification against any personal injury or property damage.

The site of the proposed dock also raises issues regarding its use. Although the site is zoned residential, it has a very public character. The large gravel parking lot takes up most of the area of the site between the three-family house and the snack bar and is closely adjoined to the public parking area associated with the Ferry. The outside eating facilities for the snack bar are also located in this area. Notwithstanding, the dock is characterized as residential and private. As such, there are no enforceable permit conditions that would require the applicant to post signs or otherwise prohibit the public from accessing the dock and float or that prohibit patrons of the snack bar from tying up to the float. The department must rely on the "no change" provision in the draft permit, which prohibits the applicant, who does not reside at the site, from allowing or charging a fee for such use. There are also no restrictions on the number of vessels that can be moored to the float or limitations on who may use the dock, including the tenants residing on the site.

According to the legislature, it is the policy of the state "to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state." General Statutes §22a-1. To

carry out this policy the legislature has established the continuing responsibility of state government to, among other things, conduct its business in a manner that will “attain the widest range of beneficial uses of the environment without degradation, *risk to health or safety*, or other undesirable and unintended consequences....” (Emphasis added.) General Statutes §22a-1a. Additionally, with respect to activities conducted pursuant to the Tidal Wetlands Act, the Commissioner must consider the effect of the proposed activities with reference to environmental factors *and* the public health and welfare. (Emphasis added.) §22a-33. These declarations of public policy and continuing responsibility reflect the legislative intent that the Commissioner, while acting within her authority to assess the effects of the applicant’s proposed activities on the environment, consider the health and safety risks associated with those activities.

It is obvious from the evidence that all of the parties have concerns about the safe use of this dock. Staff agreed with the applicant’s concern over the safety threats posed by the Ferry and other boat traffic by recommending the larger than standard float. The DOT is satisfied that it can “live with the dock” so long as it is indemnified against liability. However, that agreement does not eliminate or even mitigate the potential for injury or damage contemplated by DOT and calls into question whether a larger float is sufficient to protect people who use the dock.

I cannot ignore the expert evidence from the applicant, DOT and staff that, on its face, clearly demonstrates that there are serious safety issues associated with the use of this dock. Such evidence constitutes more than mere speculation and reflects specific concerns. See, *River Bend Associates, Inc. v. Conservation and Inland Wetlands Commission of the Town of Simsbury*, 269 Conn. 57, 71 (2004) (Evidence of general environmental impacts, mere speculation or general concerns not substantial evidence; agencies commonly rely on expert testimony). Moreover, the Commissioner cannot ignore the fact that any permitted dock is meant to be used and, in this case, the evidence demonstrates that use of this dock poses a safety threat to the applicant and its invitees, and any other individuals who may wish to get a closer look at the water or the Ferry as it passes by.

In this unique instance, the Commissioner must not only consider the impact of the use of the dock on the Ferry, she must also consider the impact of the Ferry on the use of the dock. My finding that the proposed dock and its use will interfere with the navigation of the Ferry supports the conclusion that it violates the relevant provisions of statutory scheme that governs this application. My finding that the proposed dock poses a threat to public safety and welfare necessitates the conclusion that it is inconsistent with the policies of the state.

## *C*

### *CONCLUSION*

The intervening parties made specific allegations regarding such issues as the potential impacts from the construction and use of the proposed dock on the habitat of the Virginia River Snail and on their riparian rights. They also alleged that the dock would expose Mr. Zagroba's property to damage due to flooding or other natural disasters. The intervening parties were required to prove these allegations by prima facie evidence as they relate to their claim of unreasonable pollution under §22a-19. However, they have failed to sustain that burden. I have concluded that the evidence is insufficient to conclusively determine whether the proposed dock will adversely affect the Virginia River Snail. The intervening parties failed to present persuasive evidence of any adverse impacts on their riparian rights and virtually no evidence that the dock will expose Mr. Zagroba's property to damage. The intervening parties have also failed to sustain their burden of proving by a preponderance of the evidence that their legal rights, duties or privileges would be specifically affected by the applicant's proposed activities with regard to these allegations. §4-177a(a).

The intervening parties have also alleged that the applicant's proposed dock would affect the safe operation of the Ferry and would be used for commercial purposes or for berthing multiple vessels. The only evidence presented to support the latter allegation was that such practices occurred in the past. This evidence is insufficient. With respect to the allegation that the dock would impede the safe operation of the Ferry, the intervening parties attempted to meet their burden through cross-examination of staff and the applicant's witness. They presented no additional evidence in support of this claim. However, it is not necessary for me to determine

whether they were successful in meeting their burden. My own, independent assessment of the record in its entirety provides more than sufficient support for my conclusions.

The applicant has demonstrated through a preponderance of the evidence that its proposed dock and its use comply with some but not all of the statutory and regulatory criteria that govern these activities. With respect to those criteria as outlined above, the applicant has met its burden of proof. However, despite the fact that the application complies with these environmental standards, the applicant has not met its burden in all respects. The application is inconsistent with the regulatory requirements of the Tidal Wetlands Act with respect to the applicant's proposal to remove the riprap and other materials located waterward of the HTL. Additionally, the evidence is insufficient to determine whether the applicant's proposed activities will adversely affect the Virginia River Snail or the Tidewater Mucket.

While not insignificant, these issues are outweighed by the effects of the proposed dock and its use on the navigation of the Ferry and on public safety and welfare. Given the evidence that the dock, by its presence and use, will adversely affect navigation and public safety and welfare, I cannot find that the applicant has sustained its burden of proving that its proposed activities comply with the requirements of the relevant statutory and regulatory requirements.

The department recognizes a property owner's riparian right to access navigable waters and must balance that right against the common law public trust doctrine.<sup>20</sup> In doing so, the department also recognizes that riparian interests are subject to regulation,<sup>21</sup> which, as in this case, subjects private residential docks and other structures to the applicable provisions of the Tidal Wetlands, Structures and Dredging and Coastal Management Acts and the policies of the state that are carried out through these provisions.

---

<sup>20</sup> The "term traditionally has been used to refer to the body of common law under which the state holds in trust for public use title in waters and submerged lands waterward of the mean high tide line." *Leydon v. Town of Greenwich*, 257 Conn. 318, 332 (2001).

<sup>21</sup> See *Water St. Assocs. Ltd. Partnership v. Innopak Plastics Corp.*, 230 Conn 764 (1994) (Owners of adjoining upland have exclusive, yet qualified, right to wharf out in manner that does not interfere with free navigation.); *Poneleit v. Dudas*, 141 Conn. 413 (1954) (Riparian rights no more immune from control under police power than other property rights.); *New York, N.H. & H. R. Co. v. Long*, 72 Conn 10 (1899) (Owner of land abutting navigable water has authority to build wharf unless restrained by peculiar conditions of navigation or by public regulations.)

In the course of implementing these regulatory provisions, the department integrates into the process the State's role as trustee of the public trust area on behalf of the public. The department has consistently carried out its responsibility under a basic duty to minimize environmental impacts and private encroachments into public trust lands and waters. In other words, the department is obligated to require the minimum encroachment necessary to allow the applicant reasonable access to navigable waters giving due regard to protected resources and public safety and well-being.

Reasonable access may therefore be limited in terms of time, type and size of structure, or the size of a vessel to be moored at the structure. In fact, there may be times when regulatory limits preclude any structure at all. Although the record does not support a conclusion that no dock may be constructed at this site, there is sufficient evidence to conclude that the applicant's proposed dock cannot be easily modified to avoid impacts to navigation and public safety while protecting and preserving the coastal resources that are present on the site. Accordingly, its application to construct that dock must be denied.

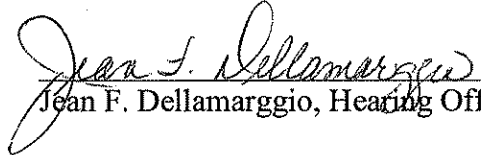
### *III*

#### *RECOMMENDATION*

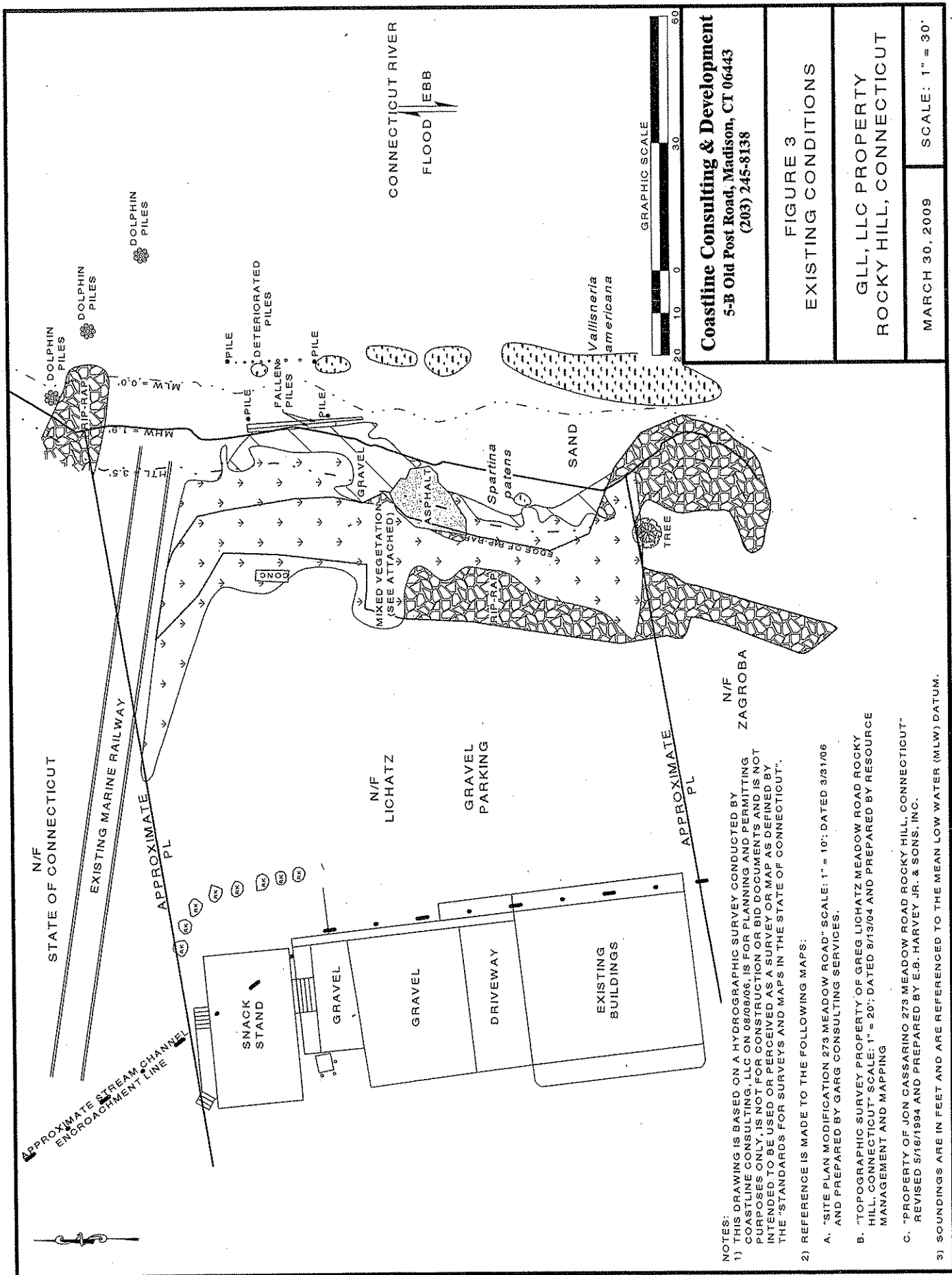
The application that is the subject of this proceeding proposes two distinct activities for which a permit must be issued. With respect to the applicant's proposal to remove riprap and other materials that are located waterward of the high tide line, I recommend that the application be returned to staff and the applicant for appropriate revisions in accordance with the findings and conclusions regarding those activities as outlined herein.

In this case, the applicant's proposal to construct a dock at this site presents a unique situation in that it would be located in close proximity to the navigational area of the Ferry, a public transit system. The Commissioner must consider the impacts of this dock and its use taking into account the proposed location, design, physical site conditions and the statutory requirements that include consideration of the impacts of this dock on navigation and public

safety. Additionally, the legislature's declaration of policy clearly requires the Commissioner to consider at all times whether these impacts adequately protect against risk to health or safety, or other undesirable and unintended consequences. On this basis and for all of the foregoing reasons, I recommend that the application to construct the dock be denied.

  
Jean F. Dellamarggio, Hearing Officer





**Coastline Consulting & Development**  
 5-B Old Post Road, Madison, CT 06443  
 (203) 245-8138

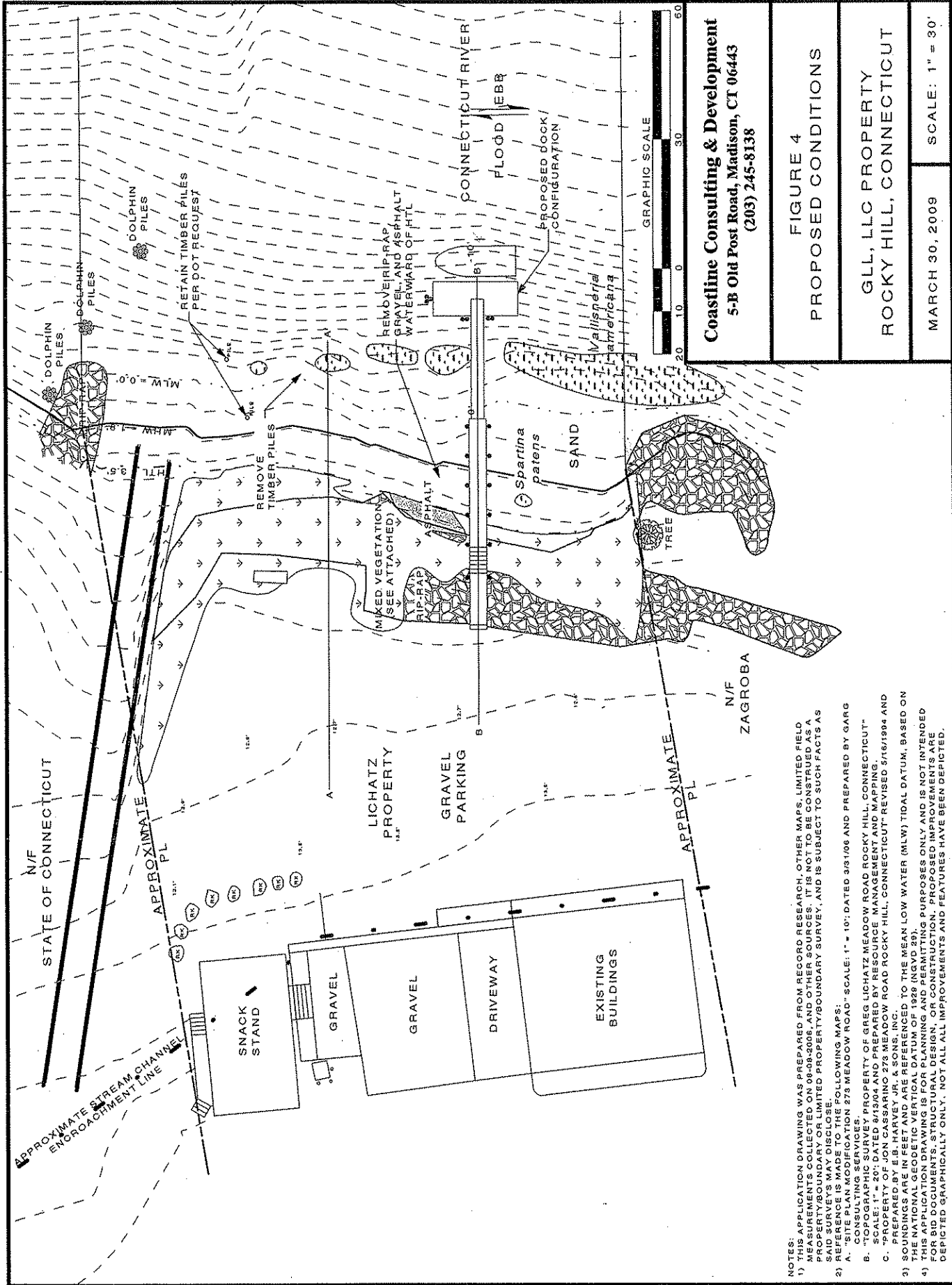
**FIGURE 3**  
**EXISTING CONDITIONS**

**GLL, LLC PROPERTY**  
**ROCKY HILL, CONNECTICUT**

MARCH 30, 2009

SCALE: 1" = 30'

- NOTES:
- 1) THIS DRAWING IS BASED ON A HYDROGRAPHIC SURVEY CONDUCTED BY COASTLINE CONSULTING, LLC ON 08/09/06, IS FOR PLANNING AND PERMITTING PURPOSES ONLY. IS NOT FOR CONSTRUCTION OR BID DOCUMENTS AND IS NOT INTENDED TO BE USED OR PERCEIVED AS A SURVEY OR MAP AS DEFINED BY THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT".
  - 2) REFERENCE IS MADE TO THE FOLLOWING MAPS:
    - A. "SITE PLAN MODIFICATION 273 MEADOW ROAD" SCALE: 1" = 10'; DATED 3/31/06 AND PREPARED BY GARG CONSULTING SERVICES.
    - B. "TOPOGRAPHIC SURVEY PROPERTY OF GREG LICHATZ MEADOW ROAD ROCKY HILL, CONNECTICUT" SCALE: 1" = 20'; DATED 8/13/04 AND PREPARED BY RESOURCE MANAGEMENT AND MAPPING
    - C. "PROPERTY OF JON CASSARINO 273 MEADOW ROAD ROCKY HILL, CONNECTICUT" REVISED 5/16/1994 AND PREPARED BY E.B. HARVEY JR. & SONS, INC.
  - 3) SOUNDINGS ARE IN FEET AND ARE REFERENCED TO THE MEAN LOW WATER (MLW) DATUM.



**Coastline Consulting & Development**  
 5-B Old Post Road, Madison, CT 06443  
 (203) 245-8138

**FIGURE 4**  
**PROPOSED CONDITIONS**

**GLL, LLC PROPERTY**  
**ROCKY HILL, CONNECTICUT**

**MARCH 30, 2009**      **SCALE: 1" = 30'**

- NOTES:**
- 1) THIS APPLICATION DRAWING WAS PREPARED FROM RECORD RESEARCH, OTHER MAPS, LIMITED FIELD MEASUREMENTS COLLECTED ON 08-08-2006, AND OTHER SOURCES. IT IS NOT TO BE CONSTRUED AS A PROPERTY/BOUNDARY OR LIMITED PROPERTY/BOUNDARY SURVEY, AND IS SUBJECT TO SUCH FACTS AS SAID SURVEYS MAY DISCLOSE.
  - 2) REFERENCE IS MADE TO THE FOLLOWING MAPS:
    - A. "PROPOSED MODIFICATION 273 MEADOW ROAD" SCALE: 1" = 10', DATED 3/31/06 AND PREPARED BY GARG CONSULTING SERVICES.
    - B. "TOPOGRAPHIC SURVEY PROPERTY OF GREG LICHATZ MEADOW ROAD ROCKY HILL, CONNECTICUT" SCALE: 1" = 20', DATED 8/19/04 AND PREPARED BY RESOURCE MANAGEMENT AND MAPPING.
    - C. "PROPERTY OF JON CASSARINO 273 MEADOW ROAD ROCKY HILL, CONNECTICUT" REVISED 5/16/1994 AND PREPARED BY E.B. HARVEY JR. & SONS, INC.
  - 3) SOUNDINGS ARE SHOWN TO THE MEAN LOW WATER (MLW) TIDAL DATUM, BASED ON SOUNDINGS AND ELEVATIONS FROM THE NAD 83 DATUM OF 1928 (NGVD 29).
  - 4) THIS APPLICATION DRAWING IS FOR PLANNING AND PERMITTING PURPOSES ONLY AND IS NOT INTENDED FOR BID DOCUMENTS, STRUCTURAL DESIGN, OR CONSTRUCTION. PROPOSED IMPROVEMENTS ARE DEPICTED GRAPHICALLY ONLY. NOT ALL IMPROVEMENTS AND FEATURES HAVE BEEN DEPICTED.

*P A R T Y L I S T*

Proposed Final Decision In the Matter of GLL, LLC  
Application No. 200701924-DL

PARTY

REPRESENTED BY

The Applicant

GLL, LLC  
Gregory Lichtz

Louis N. George, Esq.  
Hassett & George, P.C.  
945 Hopmeadow Street  
Simsbury, CT 06070

Department of Environmental Protection

Office of Long Island Sound Programs  
79 Elm Street  
Hartford, CT 06106

DeAva Lambert

Intervening Parties

James Zagroba  
Elaine Smith

Walter A. Twachtman, Jr., Esq.  
Boscarino, Grasso & Twachtman, LLP  
628 Hebron Avenue, Bldg. 2, Suite 301  
Glastonbury, CT 06033

Draft



PERMIT

Permit No: 200701924-DL

Municipality: Rocky Hill

Work Area: Connecticut River off property located at 273 Meadow Road

Permittee: GLL, LLC  
221 Wolcott Hill Road  
Rocky Hill, CT 06109

Pursuant to sections 22a-359 through 22a-363f of the Connecticut General Statutes (“CGS”) and in accordance with CGS section 22a 98 and the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection (“Commissioner”) to remove derelict structures and install a dock for private residential access to recreational boating as is more specifically described below in the SCOPE OF AUTHORIZATION, in the Connecticut River off property identified as the “work area” above.

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

**FAILURE TO CONFORM TO THE TERMS AND CONDITIONS OF THIS PERMIT MAY SUBJECT THE PERMITTEE AND ANY CONTRACTOR TO ENFORCEMENT ACTIONS, INCLUDING PENALTIES AND INJUNCTIONS, AS PROVIDED BY LAW.**

**SCOPE OF AUTHORIZATION**

The Permittee is hereby authorized to conduct the following work as described in application 200701924-DL including five (5) sheets of plans dated March 30, 2009, submitted by the Permittee to the Commissioner and attached hereto, as follows:

1. Remove riprap stone, gravel, and asphalt and 14 timber piles from below the high tide line as specifically shown on Figures 3-5 of the attached plans;
2. Retain two existing timber piles as shown on Figure 4 of the attached plans;
3. Install a 4-foot wide fixed wood pile and timber pier extending 23 feet below the high tide line connected to a 3’x28’ ramp and 8’x 20’ float as specifically shown on Figures 4-5 of the attached plans.

**UPON INITIATION OF ANY WORK AUTHORIZED HEREIN, THE PERMITTEE ACCEPTS AND AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS PERMIT.**

SPECIAL TERMS AND CONDITIONS

1. Any work authorized herein shall not transpire between April 1 and September 30, during the breeding period of the Virginia River Snail (*Elimia virginica*), which may occur in the project area.
2. Not later than two weeks prior to the commencement of any work authorized herein, the Permittee shall submit to the Commissioner, on the form attached hereto as Appendix A, the name(s) and address(es) of any contractor(s) employed to conduct such work and the expected date for commencement and completion of such work.
3. The Permittee shall flag the limits of the tidal wetlands adjacent to the area where work is to be conducted so as to be readily identifiable by contractor personnel until the work authorized hereunder is completed. The Permittee shall ensure that all work is conducted in a manner to minimize impacts to the adjacent tidal wetlands.
4. Structure removal authorized in paragraph #1 in the SCOPE OF AUTHORIZATION, above, shall be conducted within 120 days of the date of permit issuance, complying with Special Condition #1, above. Such material shall be disposed of at an upland location approved for the disposal of such waste material, as applicable.
5. The Permittee shall ensure that any barge utilized in the removal of structures or the installation of support piles authorized herein does not rest on or come in contact with the bottom sediments. It shall not be a defense to this provision for the Permittee to assert that it has no control over the operation of the barge.
6. The work specified in paragraph #1 of the SCOPE OF AUTHORIZATION shall be conducted only during periods of low water .
7. The work specified in paragraph # 3 of the SCOPE OF AUTHORIZATION shall be conducted only during periods of high water .
8. Except as specifically authorized by this permit, no equipment or material, including but not limited to, fill, construction materials, excavated material or debris, shall be deposited, placed or stored in any wetland or watercourse on or off-site, or within any delineated setback area, nor shall any wetland, watercourse or delineated setback area be used as a staging area or access way other than as provided herein.
9. On or before (a) 90 days after completion of the work authorized herein, or (b) upon expiration of the work completion date or any authorized one year extension thereof, whichever is earlier, the Permittee shall submit to the Commissioner "as-built" plans prepared and sealed by a licensed engineer, licensed surveyor or licensed architect, as applicable, of the work area showing all tidal datums and structures.

GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within five years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
  - a. The Permittee may request a one-year extension of the work completion date. Such request shall be in writing and shall be submitted to the Commissioner at least 30 days prior to said work completion date. Such request shall describe the work done to date, work which still needs to be completed and the reason for such extension. The Commissioner shall grant or deny such request in her sole discretion.
  - b. Any work authorized herein conducted after said work completion date or any authorized one-year extension thereof is a violation of this permit and may subject the Permittee to enforcement action, including penalties, as provided by law.
2. In conducting the work authorized herein, the Permittee shall not deviate from the attached plans, as may be modified by this permit. The Permittee shall not make de minimis changes from said plans without prior written approval of the Commissioner.
3. The Permittee shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable law including, but not limited to, CGS sections 22a-28 through 22a-35 and CGS sections 22a-359 through 22a-363f.
4. Prior to the commencement of any work authorized hereunder, the Permittee shall cause a copy of this permit to be given to any contractor(s) employed to conduct such work. At the work area the Permittee shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
5. The Permittee shall notify the Commissioner in writing of the commencement of any work and completion of all work authorized herein no later than three days prior to the commencement of such work and no later than seven days after the completion of such work.
6. All waste material generated by the performance of the work authorized herein shall be disposed of by the Permittee at an upland site approved for the disposal of such waste material, as applicable.
7. In undertaking the work authorized hereunder, the Permittee shall not cause or allow pollution of wetlands or watercourses, including pollution resulting from sedimentation and erosion. For purposes of this permit, "pollution" means "pollution" as that term is defined by CGS section 22a-423.
8. Upon completion of any work authorized herein, the Permittee shall restore all areas impacted by construction, or used as a staging area or access way in connection with such work, to their condition prior to the commencement of such work.
9. Any document required to be submitted to the Commissioner under this permit or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the

Commissioner, be directed to:

Permit Section  
Office of Long Island Sound Programs  
Department of Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127  
(860) 424-3034  
Fax # (860) 424-4054

10. The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.
11. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorized work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this permit, request authorization from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change.
12. This permit may be revoked, suspended, or modified in accordance with applicable law.
13. This permit is not transferable without prior written authorization of the Commissioner. A request to transfer a permit shall be submitted in writing and shall describe the proposed transfer and the reason for such transfer. The Permittee's obligations under this permit shall not be affected by the passage of title to the work area to any other person or municipality until such time as a transfer is authorized by the Commissioner.
14. The Permittee shall allow any representative of the Commissioner to inspect the work authorized herein at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
15. In granting this permit, the Commissioner has relied on representations of the Permittee, including information and data provided in support of the Permittee's application. Neither the Permittee's representations nor the issuance of this permit shall constitute an assurance by the Commissioner as to the structural integrity, the engineering feasibility or the efficacy of such design.
16. In the event that the Permittee becomes aware that he did not or may not comply, or did not or may not comply on time, with any provision of this permit or of any document required hereunder, the Permittee shall immediately notify the Commissioner and shall take all reasonable steps to ensure

that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, the Permittee shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and the Permittee shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Permittee shall not excuse noncompliance or delay and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Commissioner in writing.

17. In evaluating the application for this permit the Commissioner has relied on information and data provided by the Permittee and on the Permittee's representations concerning site conditions, design specifications and the proposed work authorized herein, including but not limited to representations concerning the commercial, public or private nature of the work or structures authorized herein, the water-dependency of said work or structures, its availability for access by the general public, and the ownership of regulated structures or filled areas. If such information proves to be false, deceptive, incomplete or inaccurate, this permit may be modified, suspended or revoked, and any unauthorized activities may be subject to enforcement action.
18. The Permittee may not conduct work waterward of the high tide line or in tidal wetlands at this permit site other than the work authorized herein, unless otherwise authorized by the Commissioner pursuant to CGS section 22a-359 et. seq. and/or CGS section 22a-32 et. seq.
19. The issuance of this permit does not relieve the Permittee of his obligations to obtain any other approvals required by applicable federal, state and local law.
20. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the Permittee and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."
21. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state or local laws or regulations pertinent to the property or activity affected hereby.



Issued on \_\_\_\_\_, 2009

STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

---

**Betsey Wingfield**  
**Bureau Chief**  
**Bureau of Water Protection and Land Reuse**

**Permit Application No. 200701924-DL**  
**GLL, LLC**

Certified Mail # \_\_\_\_\_



SCALE: 1 = 12,000

MAP TAKEN FROM 7.5 MINUTE USGS TOPOGRAPHIC MAPS OF THE HARTFORD SOUTH, CONNECTICUT QUADRANGLE, 1960 (PHOTOINSPECTED 1976, PHOTOREVISED 1984).

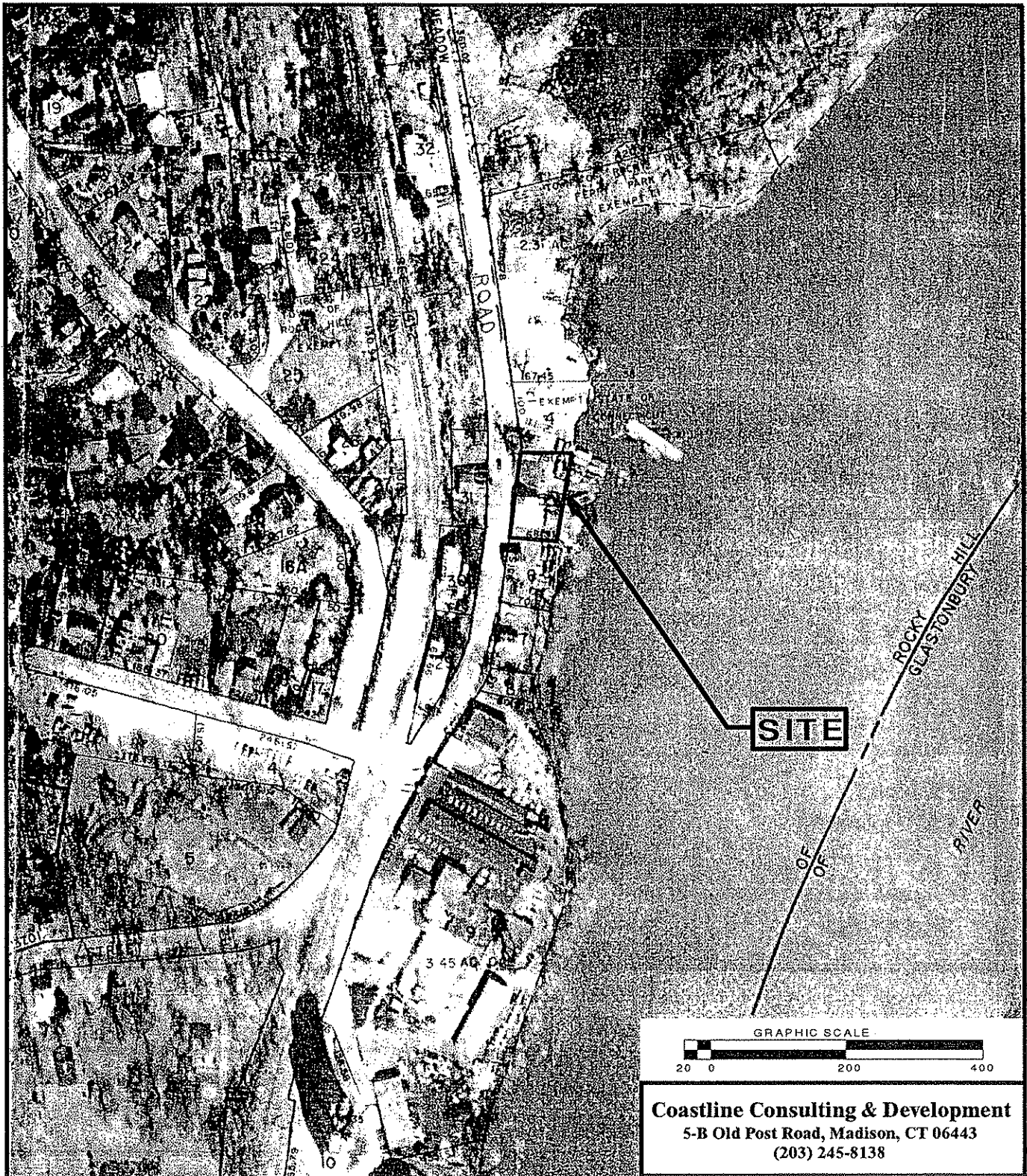
**Coastline Consulting & Development**  
 5-B Old Post Road, Madison CT 06443  
 (203) 245-8138

FIGURE 1  
 SITE LOCATION MAP

GLL LLC  
 273 MEADOW ROAD  
 ROCKY HILL, CONNECTICUT

March 30, 2009

FILE NO.: 06-61



**NOTES:**

- 1) THESE APPLICATION DRAWINGS ARE FOR PLANNING AND PERMITTING PURPOSES ONLY, NOT FOR BID DOCUMENTS OR CONSTRUCTION.
- 2) THE EXISTING SITE CONDITIONS ARE APPROXIMATE AND ARE BASED UPON ROCKY HILL ASSESSOR MAP #22, AND OBSERVATIONS MADE IN THE FIELD.

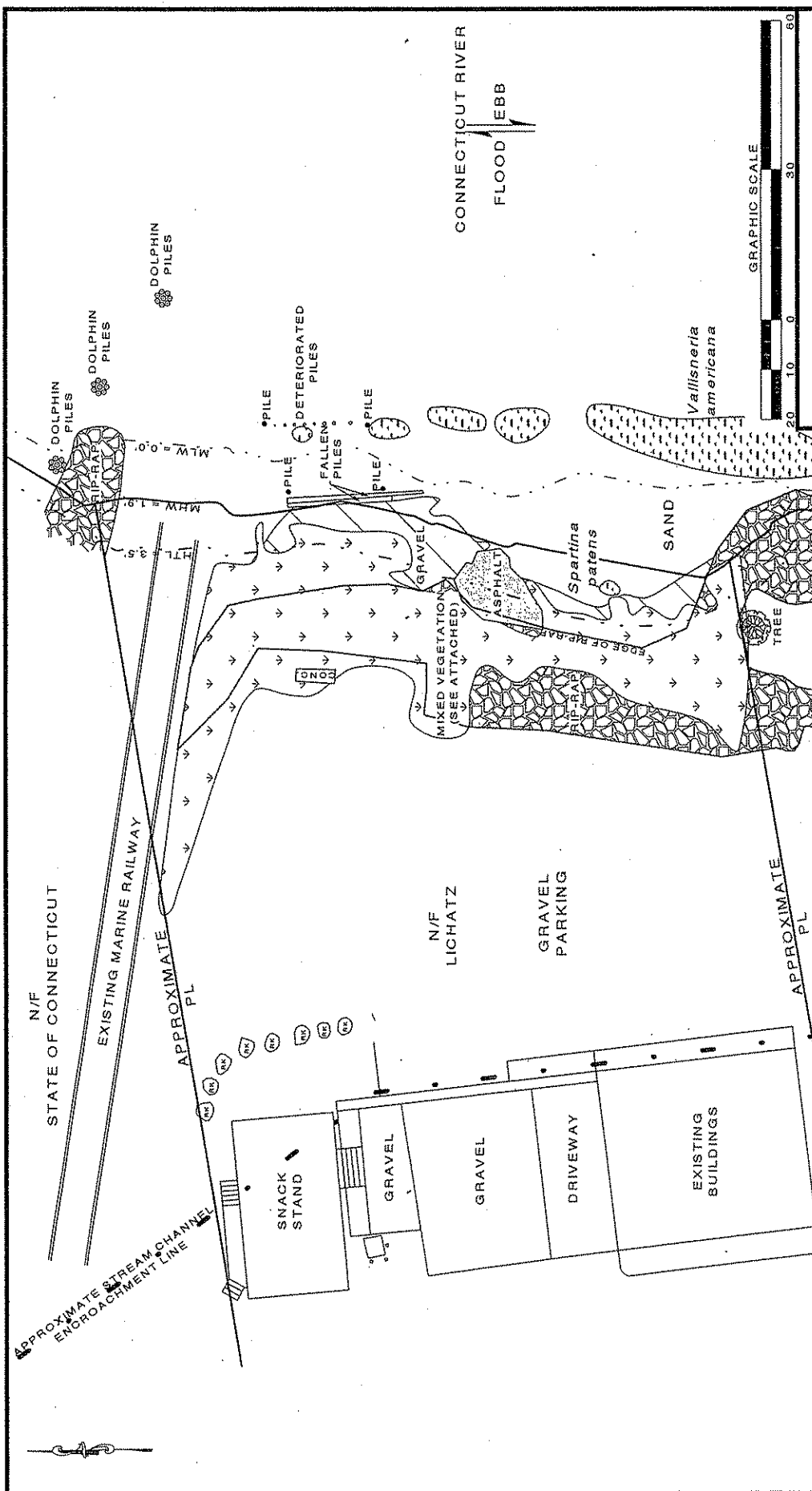
**Coastline Consulting & Development**  
 5-B Old Post Road, Madison, CT 06443  
 (203) 245-8138

**FIGURE 2**  
**SITE PLAN VIEW**

**GLL, LLC**  
**ROCKY HILL, CONNECTICUT**

MARCH 30, 2009

SCALE: 1" = 200'



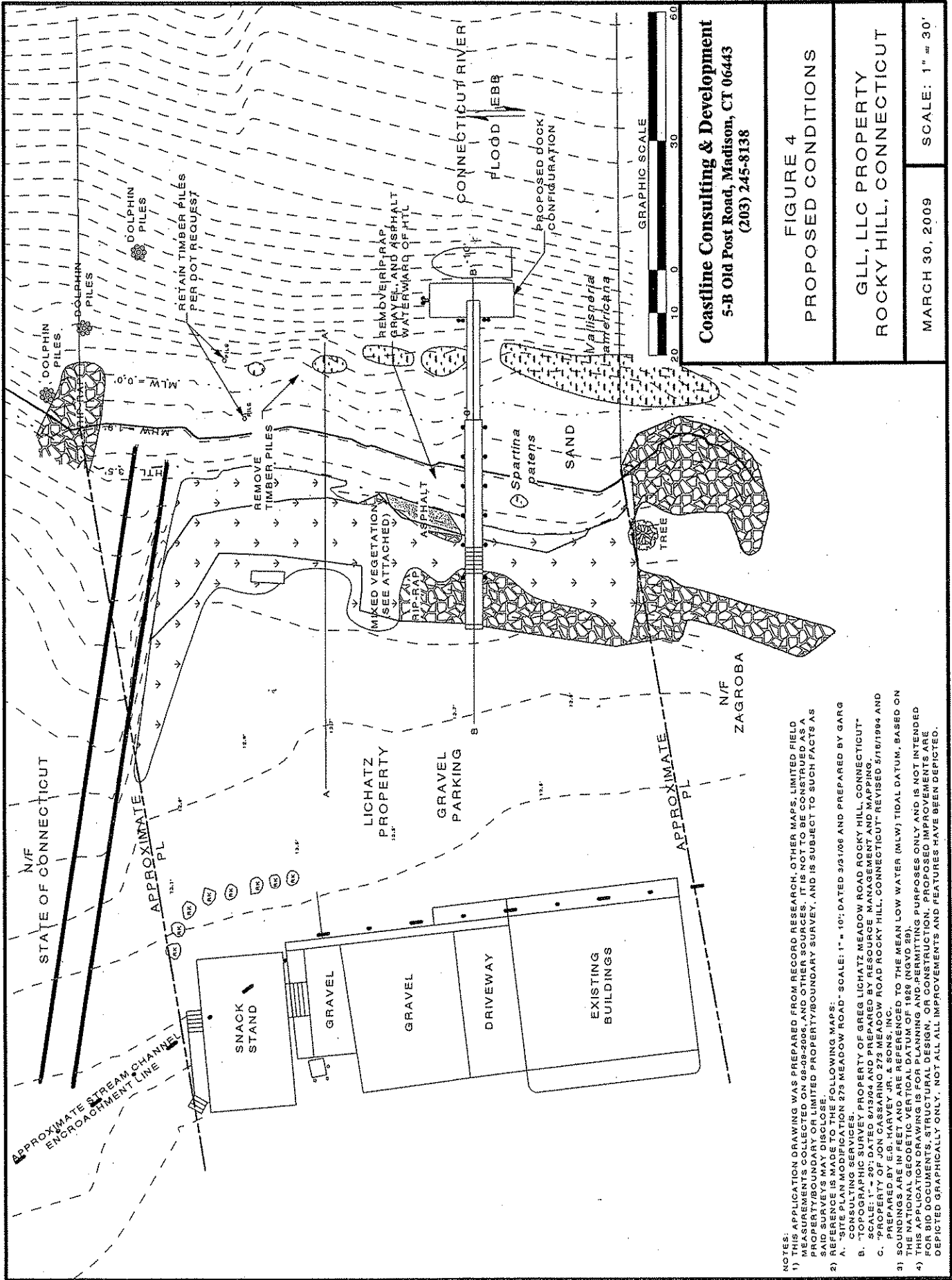
**Coastline Consulting & Development**  
 5-B Old Post Road, Madison, CT 06443  
 (203) 245-8138

**FIGURE 3**  
**EXISTING CONDITIONS**

**GLL, LLC PROPERTY**  
**ROCKY HILL, CONNECTICUT**

**MARCH 30, 2009**      **SCALE: 1" = 30'**

- NOTES:
- THIS DRAWING IS BASED ON A HYDROGRAPHIC SURVEY CONDUCTED BY COASTLINE CONSULTING, LLC ON 08/08/06, IS FOR PLANNING AND PERMITTING PURPOSES ONLY, IS NOT FOR CONSTRUCTION OR BID DOCUMENTS AND IS NOT INTENDED TO BE USED OR PERCEIVED AS A SURVEY OR MAP AS DEFINED BY THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT".
  - REFERENCE IS MADE TO THE FOLLOWING MAPS:
    - "SITE PLAN MODIFICATION 973 MEADOW ROAD" SCALE: 1" = 10'; DATED 9/31/06 AND PREPARED BY GARG CONSULTING SERVICES.
    - "TOPOGRAPHIC SURVEY PROPERTY OF GREG LICHATZ MEADOW ROAD ROCKY HILL, CONNECTICUT" SCALE: 1" = 20'; DATED 8/13/04 AND PREPARED BY RESOURCE MANAGEMENT AND MAPPING
    - "PROPERTY OF JON CASSARINO 279 MEADOW ROAD ROCKY HILL, CONNECTICUT" REVISED 5/16/1994 AND PREPARED BY E.B. HARVEY JR. & SONS, INC.
  - SOUNDINGS ARE IN FEET AND ARE REFERENCED TO THE MEAN LOW WATER (MLW) DATUM.



**Coastline Consulting & Development**  
 5-B Old Post Road, Madison, CT 06443  
 (203) 245-8138

**FIGURE 4**  
**PROPOSED CONDITIONS**

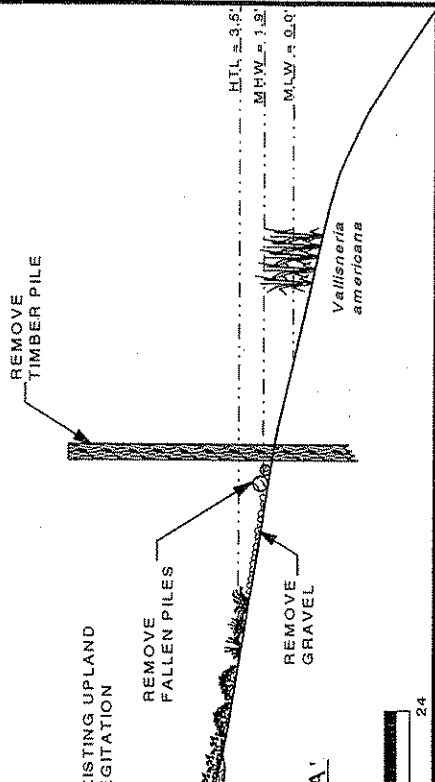
**GLL, LLC PROPERTY**  
**ROCKY HILL, CONNECTICUT**

**MARCH 30, 2009**

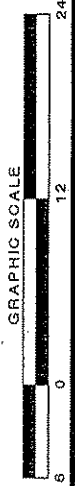
**SCALE: 1" = 30'**

- NOTES:**
- 1) THIS APPLICATION DRAWING WAS PREPARED FROM RECORD RESEARCH, OTHER MAPS, LIMITED FIELD MEASUREMENTS COLLECTED ON 08-08-2006, AND OTHER SOURCES. IT IS NOT TO BE CONSTRUED AS A PROPERTY/BOUNDARY OR LIMITED PROPERTY/BOUNDARY SURVEY, AND IS SUBJECT TO SUCH FACTS AS SAID SURVEYS MAY DISCLOSE.
  - 2) REFERENCE IS MADE TO THE FOLLOWING MAPS:
    - A. "MODIFICATION 273 MEADOW ROAD" SCALE: 1" = 10'; DATED 2/3/2006 AND PREPARED BY GARG CONSULTING SERVICES.
    - B. "TOPOGRAPHIC SURVEY PROPERTY OF GREG LICHATZ MEADOW ROAD ROCKY HILL, CONNECTICUT" SCALE: 1" = 20'; DATED 8/12/04 AND PREPARED BY RESOURCE MANAGEMENT AND MAPPING.
    - C. "PROPERTY OF JON CASSARINO 273 MEADOW ROAD ROCKY HILL, CONNECTICUT" REVISED 5/16/1994 AND PREPARED BY E.B. HARVEY JR. & SONS, INC.
  - 3) SOUNDINGS ARE PROVIDED FOR REFERENCE ONLY TO THE MEAN LOW WATER (MLW) TIDAL DATUM, BASED ON THE SOUNDINGS ARE NOT TO BE USED FOR PLANNING AND PERMITTING PURPOSES ONLY AND IS NOT INTENDED FOR BID DOCUMENTS, STRUCTURAL DESIGN, OR CONSTRUCTION. PROPOSED IMPROVEMENTS ARE DEPICTED GRAPHICALLY ONLY. NOT ALL IMPROVEMENTS AND FEATURES HAVE BEEN DEPICTED.

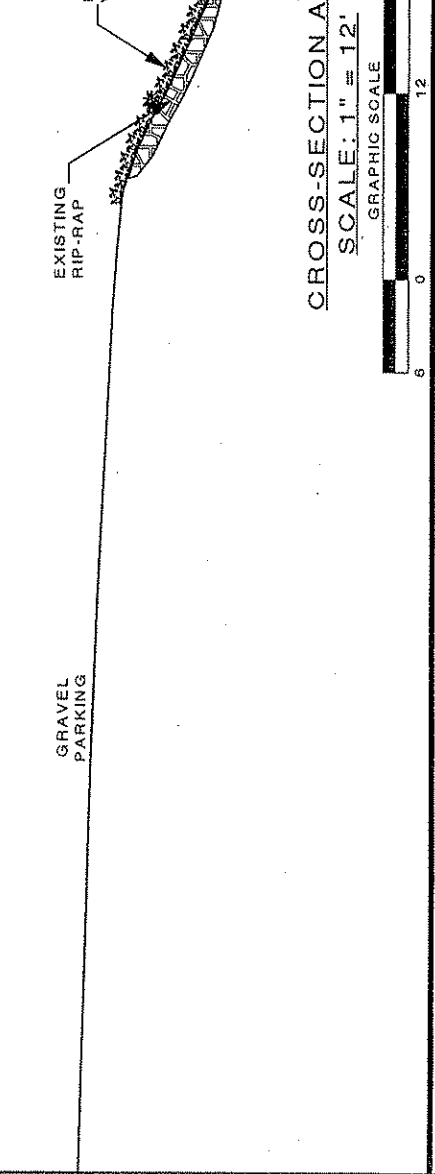
A



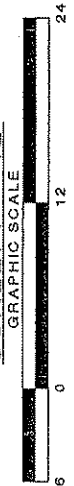
**CROSS-SECTION A-A'**  
SCALE: 1" = 12'



A



**CROSS-SECTION B-B'**  
SCALE: 1" = 12'



**Coastline Consulting & Development**  
5-B Old Post Road, Madison, CT 06443  
(203) 245-8138

FIGURE 5	
PROJECT CROSS-SECTIONS	
G.L.L., LLC PROPERTY ROCKY HILL, CONNECTICUT	
MARCH 30, 2009	SCALE: AS NOTED

- NOTES:
- THIS APPLICATION DRAWING WAS PREPARED FROM RECORD RESEARCH, OTHER MAPS, LIMITED FIELD MEASUREMENTS COLLECTED ON 08-08-2006, AND OTHER SOURCES. IT IS NOT TO BE CONSTRUED AS A PROPERTY/BOUNDARY OR LIMITED PROPERTY/BOUNDARY SURVEY, AND IS SUBJECT TO SUCH FACTS AS SAID SURVEYS MAY DISCLOSE.
  - REFERENCE IS MADE TO THE FOLLOWING MAPS:
    - "FIGURE 3, EXISTING CONDITIONS, G.L.L., LLC PROPERTY, ROCKY HILL, CONNECTICUT," DATED JUNE 14, 2007 AND PREPARED BY COASTLINE CONSULTING, LLC.
    - "FIGURE 4, PROPOSED CONDITIONS, G.L.L., LLC PROPERTY, ROCKY HILL, CONNECTICUT," DATED MAY 2, 2008 AND PREPARED BY COASTLINE CONSULTING, LLC.
  - SOUNDINGS ARE IN FEET AND ARE REFERENCED TO THE MEAN LOW WATER (MLW) TIDAL DATUM, BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 29).
  - THIS APPLICATION DRAWING IS FOR PLANNING AND PERMITTING PURPOSES ONLY AND IS NOT INTENDED FOR BID DOCUMENTS, STRUCTURAL DESIGN, OR CONSTRUCTION. PROPOSED IMPROVEMENTS ARE DEPICTED GRAPHICALLY ONLY. NOT ALL IMPROVEMENTS AND FEATURES HAVE BEEN DEPICTED.