

STATE OF CONNECTICUT

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



OFFICE OF ADJUDICATIONS

IN THE MATTER OF : *APPLICATION NO. 200602755-SJ*

MARC FLASTER : *NOVEMBER 4, 2009*

PROPOSED FINAL DECISION

SUMMARY

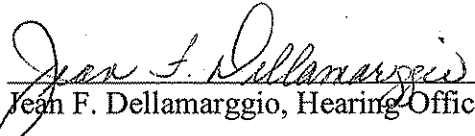
On October 20, 2009, the applicant, DEP staff, and the intervenors jointly filed the attached Agreed Draft Decision for my review and consideration. (Attachment A.) Regs., Conn. State Agencies §22a-3a-6(1)(3)(A). I have reviewed this submission, the record, and the relevant law in this matter. I find that the amended application complies with the applicable statutes and relevant provisions of the implementing regulations. Furthermore, I find that the parties' Agreed Draft Decision satisfactorily conveys the factual findings and legal conclusions necessary to support my conclusion. I therefore adopt this Agreed Draft Decision as my Proposed Final Decision.

The DEP has prepared a revised draft permit authorizing the project¹. (Attachment B.) The record and this revised draft permit reflect staff's consideration of all of the relevant criteria set forth in the applicable statutes and regulations governing the proposed activity.

If conducted as proposed and in accordance with the terms and conditions of the revised draft permit, the regulated activities would be consistent with all relevant statutes and regulations

¹ The Agreed Draft Decision outlines the lengthy history of this application, including the issuance of two Notices of Tentative Determination. Each notice included a draft permit authorizing a dock, one in a southerly location and the other in a northerly location. The draft permit authorizing the dock at the northerly location was the initial subject of this proceeding. Prior to the commencement of the hearing on this application and pursuant to an agreement between the parties as referenced in the Agreed Draft Decision, the location of the dock was changed to a southerly location almost identical to that proposed in the earlier tentative determination. As a result of this change, it was necessary that staff prepare a revised draft permit to reflect the evidence presented. On October 30, 2009, a copy of the revised draft permit was marked as an exhibit (DEP-50) By agreement of the parties, the exhibit was admitted to the evidentiary record, which was reopened for that purpose.

regarding coastal resources, tidal wetlands and coastal management. General Statutes §§22a-28 through 22a-35, 22a-90 through 22a-112, 22a-359 through 22a-363f and Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17. I therefore recommend that the permit be issued.


Jean F. Dellamargio, Hearing Officer

ATTACHMENT A

AGREED DRAFT DECISION

MARC FLASTER
COASTAL PERMIT APPLICATION #200602755-SJ

INSTALLATION OF A PIER, RAMP AND FLOATING DOCK
911 HARBOR ROAD
TOWN OF FAIRFIELD

October 15, 2009

1. Introduction. Marc and Michele Flaster are owners of property at 911 Harbor Road in Southport, Connecticut. (APP-1) The property consists of approximately 0.9 acres, with approximately 240 feet of water frontage on Southport Harbor. (APP-2) On October 19, 2006, Marc Flaster ("Applicant") submitted an application with drawings to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line and in an area of tidal wetlands at the 911 Harbor Road property in the Town of Fairfield. (DEP-1) As presently amended, the application requests approval to retain and maintain a pre-1939 stone seawall and to construct a fixed pile and timber pier with a ramp and floating dock with four restraint pilings at the southern end of the property. (APP-2) This application seeks a permit to undertake said regulated activities under the provisions of the Structures, Dredging and Fill provisions of the Connecticut General Statutes ("General Statutes") sections 22a-359 through 363f, in accordance with the Connecticut Coastal Management Act, sections 22a-90 through 22a-112 of the General Statutes, and the Tidal Wetlands Act and regulations, sections 22a-28 through 22a-35 of the General Statutes and sections 22a-30-1 through 22a-30-17 of the Regulations of Connecticut State Agencies ("R.C.S.A.") and the Connecticut Water Quality Standards developed pursuant to General Statutes section 22a-426. (DEP-1, APP-2).
2. Parties: The parties to the proceeding are: the Applicant, Staff from the Office of Long Island Sound Programs of the Department of Environmental Protection ("DEP Staff"), the intervening Town of Fairfield Shellfish Commission ("FSC"), Conservation Commission ("CC"), and Harbor Management Commission ("HMC").
3. The parties have agreed to the admission of all the exhibits listed in the Prehearing Submissions comprising staff exhibits DEP-1 through DEP-47, and the Applicant's exhibits APP-1 through APP-8, and the Intervenors' Exhibits INT-1 through INT-3.

FINDINGS OF FACT

Background:

1. Site Location and Character: The site is located on the West side of Southport Harbor at a private residence at 911 Harbor Road, Southport, Connecticut. Southport Harbor is an estuarine embayment on Long Island Sound (DEP-1). The shoreline around the project area is developed rocky shorefront. The shorefront of this property and those properties to the north and south along the western side of Southport Harbor all have stone/masonry seawalls at their boundary with the harbor. The seawall at the Flaster property is approximately 240 feet long with a bend to the West at its southern terminus. There is a significant band of bedrock ledge approximately 18' waterward of the seawall at the bend in the southern end of the seawall. The harbor experiences a tidal range of up to 7'. The harbor contains natural shellfish beds but due to water quality issues, the area is restricted by the Department of Agriculture, Bureau of Aquaculture ("DA/BA") to conditionally-restricted relay status, which requires harvested shellfish to be transplanted to an area of clean water for a minimum of two weeks. (DEP-1, APP-2, DEP-43).
2. Application History: The development, submission and evolution of this application has had a long and convoluted history. As a result of conflicting policy priorities between and among the FSC, CC, and HMC, DEP Staff, and the Army Corps of Engineers ("ACOE"), and the concerns of an adjacent property owner, finding a location and design to address multiple conflicting stakeholder issues proved difficult, but a compromise was ultimately reached. (Testimony of Sharp, APP-2, APP-3).

The process began with efforts by the Applicant in the fall of 2005 to consider the most straightforward path to obtain a permit for a dinghy dock at the property to provide access to a sailboat to be moored in the Southport Harbor mooring field. Field observations revealed that the area immediately waterward of the southern-most part of the seawall on the Applicant's property, where the wall bends to the West, supported only sparse tidal wetlands vegetation. Along the northernmost 170 feet of the 240 foot frontage, a continuous band of tidal wetlands vegetation exists varying in width from 10- 20 feet. Given these on-site wetland conditions, a dock at the southerly location would have the least tidal wetlands impact, and early communications with DEP Staff indicated that location would be the easiest for the agency to permit, as it would minimize any adverse impact on tidal wetlands. Accordingly, the Applicant's consultant prepared preliminary drawings, which it presented initially on an informal basis to the HMC in the winter and spring of 2006. Both the HMC and the southerly abutting neighbor, Derby Anderson, objected to the several options proposed at the southern end of the property. HMC raised issues concerning impacts of the dock proposals on the federal anchorage and public mooring lines and littoral rights of neighboring property owners. Mr. Anderson expressed concern that the docks as proposed were too close to or encroached upon his littoral interest line. Therefore, the Applicant, after further input from DEP Staff, evaluated a location at the northern end of the property. (Testimony of Sharp, DEP-1, DEP-9).

Original Application for Dock at the Northern End of the Property

As a result of the pre-application feedback from HMC and discussions with DEP Staff, the Applicant's initial application to the Department requested authorization to retain and maintain the pre-existing seawall and to install an elevated 4' wide by 29' long fixed pile and timber pier extending from the existing stone seawall and supported by two sets of two piles, a 3' wide by 30' long ramp, and a 10' wide by 10' long floating dock anchored by two (2) restraint pilings. The dock was proposed to be located thirty-seven (37) feet south of the Flasters' northerly property boundary. Notice of the application was published in the Connecticut Post on October 10, 2006, and the application was received by the Department on October 16, 2006. (DEP-1).

By letter dated November 9, 2006, the FSC submitted comments to the Department requesting that the Applicant 1) redesign the dock to allow full walking height beneath the pier, 2) eliminate the second section of fixed pier waterward of the cordgrass, provide dock skids to minimize disturbance to the bottom, eliminate the restraint piles holding the float in place, use a longer ramp if desired and provide removable rigid struts, anchors and cables to secure the float instead of the two restraint piles and 3) provide a permanent shellfish easement to the Town of Fairfield. The stated reasons for the changes were to limit the amount of permanent structures in the intertidal zone, to maintain access for shellfish dredging and clutching activities on the intertidal flat, and to provide the FSC with the right to remove the ramp and float upon demand to facilitate shellfish harvesting to eliminate potential conflicts between use of the dock during the summer boating season and cultching activities and winter season shellfish dredging. (DEP-2).

By letter dated January 18, 2007, the HMC submitted comments to the Department requesting that certain details be added to the plans, that the docking arrangement for the proposed watercraft be shown, that the source of bathymetric information be provided, that an appropriate area of navigable water be maintained between the proposed float and nearby mooring line. The commission also expressed its concern about visual impacts, and reserved its right to comment on this issue, as well as the application in general after the requested information was provided. (DEP-3).

By letter dated February 19, 2007 to the HMC with a copy to DEP Staff, Applicant's consultant responded to comments raised by the HMC and provided updated drawings of the proposed structures to address those comments. (APP-7).

By letter dated March 1, 2007 to the Department, HMC indicated that it had received the information from the applicant requested in its January 18, 2007 letter to its satisfaction, and reserved the right to review and comment as additional information became available. (DEP-4).

By letter dated March 7, 2007, DEP Staff requested that the application be modified as follows: shorten the length of the fixed pier, as requested by FSC in its letter of November 9, 2006; equip the float with skids as requested by FSC; employ the use of

stabilizing bars instead of the two restraint piles on the float as requested by FSC; provide information on the history and regulatory status of the existing seawall; provide the linear extent of the proposed repairs to the seawall; include the boundary line of the Federal Navigation Channel, the high tide line, mean high water, and mean low water line; show the bedrock outcrops on revised plans; and revise all plans to specify that the information illustrated is accurate. (DEP-5).

By letter dated April 6, 2007, HMC advised the Department that plans submitted by the Applicant dated February 19, 2007 were generally consistent with the Harbor Management Plan and cautioned that shortening the dock, as requested by FSC and DEP Staff may result in the float resting on the bottom at low tide and may be contrary to good engineering practice. HMC summarized their policies on setback distances from the channel boundary. (DEP-6).

By letter dated May 30, 2007, DEP Staff summarized the discussions from a meeting between the Applicant and Staff concerning design modifications to reach consensus on a minimized dock structure near the northern boundary of the property. The letter, however, advises that, upon further investigation, DEP Staff had come to the conclusion that there was a viable alternative at the southern end of the property. The letter requested that the Applicant fully evaluate the use of a davit system and ladder off the seawall at the southern end of the property, and, if that alternative were not acceptable to the Applicant, to provide an alternatives analysis comparing the feasibility and environmental impacts of the ladder and davit system with those of the proposed dock at the northern location. (DEP-7).

By letter dated June 26, 2007, Applicant's consultant provided the evaluation of alternatives requested and concluded that the davit system was not a viable option for a number of reasons, including the difficulty of entering and exiting the water with a dinghy at the lower end of the tidal cycle across the rocks and mud of the sloping intertidal flat at the property. (DEP-8).

Following further discussions with DEP Staff on the various alternatives, including moving the dock to the southern end of the property, Applicant's counsel sent a facsimile communication to the Department on September 19, 2007 summarizing the concerns expressed by HMC and the adjacent southerly neighbor over the Applicant's pre-application proposals in May of 2006 to locate the dock at the southern end of the property. Attached to the facsimile transmission was a letter from HMC dated May 31, 2006 outlining its concerns. (DEP-9).

At the request of DEP Staff, Applicant's consultant by letter of September 19, 2007 provided a response to the issues raised in the FSC letter of November 9, 2006 concerning the proposal at the northern location. (DEP-10). The consultant noted that: 1) the pier would be elevated five (5) feet above the substrate at the mean high water line, in substantial compliance with the FSC "full walking height" request; 2) the pier was re-designed to eliminate the waterward 13-foot second section of fixed pier; and proposes use of 2 hinge pin for attaching the ramp, per the FSC recommendation; 3) float skids are

not necessary due to information from recent bathymetric survey work indicating the float would remain above the bottom at all but extreme low tides; 4) the float restraint or anchor piles are necessary and the 25 foot gap between the restraint piles and the fixed pier should not impede shellfish harvesting; 5) a longer ramp will not be necessary; the use of struts is not desirable due to torquing forces on the pier; 6) the seasonal removal of the ramp and float makes the easement unnecessary.

By letter of October 11, 2007, FSC requested DEP Staff to send, by e-mail, plans for the dock proposal and state clearly the Department's request for review and action by FSC. (DEP-11).

By letter of November 8, 2007, the CC requested changes to the application plans for the northern location similar to those requested by FSC in its letter of November 9, 2006. (DEP-12).

By letter of February 29, 2008, the Applicant's consultant wrote to DEP Staff presenting for consideration four alternative designs at the southern location of the property (Layouts A-D), along with a design at the northern location eliminating a 12' section of the fixed pier (Figure 5 dated 2-19-07), as requested by FSC. The letter included an alternatives analysis of each design for the Department's consideration. (DEP-13).

On April 29, 2008, DEP Staff inspected the southern area of the property with the Applicant to determine whether a dock at the southern end of the property would require a tidal wetlands permit, or only a structures and dredging permit. In a set of Field Inspection Notes, DEP Staff noted "sparse wetland vegetation" growing in the area of the southern dock location which would require a tidal wetlands application. (DEP-14).

Revised Application for a Dock at the Southern End of the Property.

By the spring of 2008, it was apparent that HMC preferred the northern location. However, although the northern location was not objectionable to the FSC or CC, as this area of intertidal flat was slightly less productive of oysters than was the southerly location, FSC and the CC opposed the design of the structure at the northern location with permanent timber float-support piles which they were concerned would obstruct dredging and cultching. Applicant's consultant was not comfortable with the strut design suggested by FSC or with the elimination of the piles on the float, given the tidal pull and the possibility of storm impacts in the lower harbor. In view of the deadlock, and following discussions with DEP Staff, Applicant's consultant submitted by letter of May 15, 2008, supplemental application pages and figures for a proposed dock at the southern location with a 4' x 15' fixed pier coming off the bend in the seawall, a 3' x 20' gangway at a right angle to the pier oriented toward the south, and a 10' x 10' float, the southeastern corner of which was located on the littoral line as drawn by extending the property line. In keeping with Department guidance on the design of floats above mean low water, the float design included four restraint piles which are equipped with float collars to keep the float off the bottom (Testimony of Sharp, DEP-15).

By letter dated June 13, 2008, the Army Corp of Engineers (“ACOE”) informed the Applicant that it had determined that the proposed dock at the southern location would have only minimal individual or cumulative impacts on waters of the United States, including wetlands, and, therefore, the work is authorized under the federal permit known as the Connecticut Programmatic General Permit. The ACOE conditioned the approval on a requirement that the Applicant use float stops to ensure that the lowermost part of the float is at least 18 inches above the substrate at all times and that the Applicant remove the float at the end of the boating season. (APP-4).

By e-mail dated June 20, 2008, Applicant’s consultant sent an e-mail to the ACOE, with a copy to DEP Staff, requesting a revision of the 18” minimum separating distance between the float and the substrate to a 6” minimum due to the sloping bottom topography and the difficulty of accessing the float from a dinghy during the bottom of the tidal cycle. (APP-5). The ACOE granted the request replacing special condition #1 of its authorization under the CT Programmatic General Permit with the following: “The permittee shall use float stops to ensure that the float not rest on the bottom at all times.” (DEP-25).

On July 3, 2008, the DA/BA transmitted a DEP Permit Consultation Form concerning the dock proposed at the southern location in the May 15, 2008 correspondence from Applicant’s consultant. DA/BA concluded that the proposal would not significantly impact any shellfish area, and requested float skids or stops be incorporated to keep the float off the bottom, to restrict work between June 1 – September 30 for dredging or excavation work to protect shellfish, and to eliminate one pile on the southeastern corner of the float. (DEP-16).

In response to an e-mail from DEP Staff, on July 3, 2008, DA/BA e-mailed DEP Staff to withdraw the request to eliminate the fourth pile. (DEP-17).

On July 25, 2008, DEP Staff conducted an inspection with the applicant in a dinghy to check the location of the bedrock outcrop and confirm that the proposed dock would be landward of the outcrop which would not impact shellfish harvest by trawling. (DEP-18).

On July 29, 2008, DEP Staff advised DA/BA about the results of the inspection concerning the location of the bedrock and asked for confirmation on whether the fourth pile would have to be eliminated. By e-mail dated July 31, 2008, DA/BA responded that it had no problem with the fourth pile. (DEP-19).

By letter dated September 25, 2008, Derby Anderson, the owner of the property abutting the Flasters to the South sent a letter to DEP Staff with a survey of his property showing use of the “cove method” to determine the littoral line between the two properties, enclosing photographs of the area in front of the seawall at the southern end of the Applicant’s property, and requesting information on the Applicant’s dock application. (DEP-20).

By Memorandum dated September 25, 2008, DEP responded to a phone call from Mr. Anderson and forwarded the February 29, 2008 correspondence from the Applicant's consultant with the four southerly dock proposals and a revised northerly proposal, suggesting that Layout D would be the best alternative to minimize wetland impacts. (DEP-21).

By letter dated October 3, 2008, Mr. Anderson wrote to the Commissioner requesting notice concerning the Applicant's dock application under Section 22a-30-7(e)(10) of the Tidal Wetlands Regulations. (DEP-22).

In response to a request by DEP Staff, Applicant's consultant emailed to DEP on October 13, 2008, a drawing of an alternative design of the dock at the southern end of the property with the ramp and float flipped from the south side of the fixed pier to the north side of the fixed pier in order to respond to Mr. Anderson's concerns and move the float away from the southerly littoral line. As Applicant's consultant explained, the problem with this design option is that it would result in the float not being accessible for several hours at mean low water and would create less safe access for small boaters using the fairway between the mooring line and the shore. In addition, the new location would have greater impact on the tidal wetlands vegetation located to the north of the pier. Therefore, Applicant's consultant concluded that the design proposed with the May 15, 2008 submittal was the preferred alternative. (DEP-23).

In response to a question from DEP Staff regarding the pinning of pilings due to the presence of ledge at the proposed dock location, Applicant's consultant emailed DEP on October 16, 2008 that there was potential to encounter rock at the proposed southern location and that, if rock was encountered at a depth of less than 10 feet, the rock would need to be cored and the pile would have to be grouted into the rock. (DEP-24).

On October 16, 2008, DEP Staff issued a Notice of Tentative Determination Summary Sheet for the dock proposed on the southerly property boundary which included a summary of its potential impacts on the environmental concerns, navigational issues, public trust concerns, and other review criteria. (DEP-26).

On November 24, 2008, DEP issued a Notice of Intent to Waive Public Hearing and a Notice of Tentative Determination, published in the Connecticut Post, to approve an application for a 15' long x 4' wide pier dock extending from the existing stone seawall on the southern end of the Applicant's property and a 3' wide x 20' long pre-fabricated aluminum gangway that will connect a 10' x 10' pre-fabricated aluminum floating dock to the pier. (DEP-27).

By letter dated December 11, 2008, the FSC commented that the proposed dock was significantly inconsistent with the Fairfield Shellfish Management Plan, because the southern location was the most productive of oysters and the proposed dock design imposed permanent obstructions to shellfish activities in the intertidal area. FSC requested that the DEP consider relocation of the structure away from an oyster bed at the apex of the wall, re-design of the structure so that it may be removed from hard bottom

areas, and a provision to give the FSC an easement to allow them to request removal of the structure's components. (DEP-28).

By letter dated December 19, 2008, the CC commented that the proposed dock location would adversely impact productive oyster beds in the areas and requested that the structure be relocated to a more northerly location. (DEP-29).

By letter dated December 22, 2008, Mr. Anderson commented that the north end of the property would be the appropriate location for a dock. (DEP-30).

By letter dated December 24, 2008, Mr. Anderson provided DEP Staff with photographs showing a stone breakwater on the water side of the Applicant's property in the 1950's, early 1960's. (DEP-31).

By letter dated December 29, 2008, Mr. Anderson informed DEP Staff that he had learned from one of the shellfish commissioners that shellfish in the harbor were harvested periodically from small boats. He provided this information because he had told DEP Staff that he had never seen anyone harvesting in the area. (DEP-32).

By letter dated December 29, 2008, HMC commented to DEP Staff that the applicant's plans for dock construction, as currently proposed and attached to the Notice, were inconsistent with the Harbor Management Plan. The HMC recommended that DEP Staff re-consider the northerly part of the Applicant's property as the more preferable location for dock construction. (DEP-33).

Return to the Northern Location

Given the objections by FSC and CC to the proposal at the southern location, Mr. Anderson's objection to the proposal at the southern location and HMC's objection to the southern location, Applicant's consultant, DEP Staff and Staff of FSC conducted an exchange of e-mails in February of 2009 to try to explore a design at the northern location that might be acceptable to all. During this exchange, the prior northern design was re-examined and the FSC recommendation to eliminate the float restraint piles in favor of struts was discussed. In response to a DEP question as to why additional pilings placed just waterward of the wetlands to the north and south of the end of the fixed pier would not provide sufficient structural stability to support struts, as recommended by FSC, Applicant's consultant responded in a February 5, 2009 email to DEP that there would be large torque loads on the pier that would require several piles in each location, including batter piles, and the potential need to tie them all together via a cross beam to accomplish a structurally sound design. The result would be ungainly and shade wetlands and, therefore, the Applicant's consultant recommended the restraint piles to secure the float rather than the use of struts.

By letter dated March 20, 2009, FSC reiterated both its objections to the use of restraint piles for the same reasons previously expressed based on interference with shellfishing activities and its recommendations concerning the proposed dock design following its

review of the correspondence from Applicant's consultant to DEP. The letter concludes that the correspondence from Applicant's consultant was not responsive to the FSC's concerns. (DEP-35).

As the efforts to reach a consensus on the southern option appeared doomed due to the opposition by all three commissions and by Mr. Anderson, Applicant's consultant provided DEP with revised application narratives and drawings for a proposed dock location at the northern end of the property by letter dated March 20, 2009. The proposal was substantially similar to Figure 5 of DEP-13 submitted in February of 2008 and included a foreshortened fixed pier, ramp and floating dock with restraint piles and collars to keep the float off the bottom in compliance with the ACOE condition. The revised design minimized the potential impact to any shellfish resource in the area by suspending the float at mean low water on float stops in compliance with the ACOE permit condition, and minimized impacts on navigation and on the ability to mechanically harvest shellfish by reducing the overall length of the dock and leaving a larger fairway between the end of the float and the federal anchorage line. (DEP-36).

DEP Staff received a fax dated March 23, 2009, from David Carey, Director, DA/BA, with the DA/BA's determination that the work proposed in the March 20, 2009 correspondence from Applicant's consultant will not significantly impact any shellfish areas. DA/BA recommended the following permit conditions to minimize impacts: standard condition to include float stops or skids to prevent floating dock from resting on the substrate during periods of low water, standard condition to restrict work between June 1-September 30, inclusive, and a condition that the dock be removed seasonally to allow shellfish harvest (DEP-37).

By email dated March 27, 2009, Applicant's consultant responded to a question from DEP Staff regarding the feasibility of the use of a rope system to suspend the outer end of the applicant's proposed dock. The consultant noted that it would not be practical, safe or durable and that these negative factors would outweigh any benefit of eliminating the two waterward support piles. (DEP-38).

On March 31, 2009, DEP Staff issued a Notice of Tentative Determination Summary Sheet for the shortened pier located on the northern side of the property which included a summary of its potential impacts on the environmental concerns, navigational issues, public trust concerns, and other review criteria. (DEP-39).

By letter dated April 9, 2009, the ACOE informed the Applicant that in response to his request, the ACOE was amending its authorization under the CT Programmatic General Permit to replace the description of work with the following: "Install and maintain an approximately 4' x 16' pile supported pier with an approximately 3' x 25' ramp leading to an approximately 10' x 10' dock in Southport Harbor at Southport, Connecticut. The structure will extend approximately 40' beyond the mean high water and is for private, recreational use. The work is shown on the attached revised plans Plan View and Figures 4, 5, 6 and 7 entitled 'Flaster Residence, 911 Harbor Road, Southport, Connecticut', dated '3/12/09'." The ACOE also added the following special condition:

“[t]he height of the structure above the marsh shall at all points, be equal to or exceed the width of the deck. For the purpose of this condition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.” (APP-6).

On April 10, 2009, DEP Staff issued a second Notice of Intent to Waive Public Hearing and Notice of Tentative Determination to approve an application for a shortened 16' x 4' pier extending from the existing stone seawall on the north side of the Applicant's property and a 3' x 25' pre-fabricated aluminum gangway that will connect a 10' x 10' pre-fabricated aluminum floating dock to the pier held in place by four restraint piles equipped with “stops” to prevent the float from resting on the bottom at mean low water. (DEP-40).

In response to the Notice of Tentative Determination, by letter dated April 24, 2009, FSC provided comments on the dock proposed for the north side of the property. FSC commented once again that it was opposed to the issuance of the permit for the construction of the dock because of its impact to shellfish resources and the ability to mechanically harvest shellfish and requested that DEP require a pile-free dock structure and require the Applicant to provide an easement to remove the dock, float and boat at the request of the FSC. (DEP-41).

By letter dated May 11, 2009, the Applicant's consultant corrected Figure 5 of the revised permit application submitted on March 20, 2009 to relabel “Federal Navigation Channel” as the “Federal Anchorage Boundary.” (DEP-42).

By letter dated May 14, 2009, Applicant's counsel responded to the April 24, 2009 FSC comment letter and explained that the FSC's preference to eliminate the dock restraint piles and replace them with a truss or strut-supported structure and a float equipped with skids rather than a float suspended above the bottom is unsound. It is not consistent with current federal regulatory policy, as it would leave the float on the bottom at mean low water. It is not structurally feasible due to torque loading from wind, wave and tidal action. Finally, it is not necessary for shellfish harvesting in the area of the Applicant's property, because the ramp and float will be removed per the DEP draft permit condition for seasonal removal which means that boats towing a dredge basket will have 25' of open water between the fixed pier and the four restraint piles in which to maneuver. The letter further notes that the draft permit requires the Applicant to use best efforts to accommodate shellfish harvesting by temporarily removing the ramp and float upon notification by the DEP and therefore, there is no need to require that the Applicant grant an easement to the FSC conferring the power to require removal of these structures. (DEP-43).

By memo dated May 14, 2009, Mr. Steinke, as Town Conservation Director, wrote to E. Crowley, Chairman, FSC regarding the impact of the dock proposed for the north side of the property on shellfish resources and harvesting and reiterated his request that DEP require a pile-free dock structure and require the Applicant to provide an easement to the FSC conferring the power to require removal of the dock, float and boat. (DEP-44).

On May 19, 2009 a request for a public hearing was submitted to DEP Staff by the FSC and the CC with a petition for hearing signed by more than 25 persons concerning the dock at the northern end of the property which was the subject of the April 10, 2009 Notice of Tentative Determination. On May 20, 2009, DEP Staff requested a Hearing Officer to adjudicate this application and enclosed two requests for hearing and the petition. (DEP-45).

By letter dated May 20, 2009, HMC commented on the dock proposed for the north side of the property and noted that it had determined that the Applicant's current plans for dock construction were consistent with the Harbor Management Plan, and it further transmitted additional comments and recommendations regarding the application. (DEP-46).

Request for Hearing and Intervention

The CC and FSC filed Notices of Intervention pursuant to § 22a-19 of the General Statutes on May 19, 2009, and on July 2, 2009.

The request to intervene by the CC was granted by the Director of the Office of Adjudications on June 4, 2009. The request by FSC was granted by the Hearing Officer on July 2, 2009.

The HMC submitted a Notice of Intervention on August 3, 2009, pursuant to § 22a-19 of the General Statutes and referencing its statutory authority pursuant to § 22a-113m of the General Statutes for the preparation of a management plan for Southport Harbor and its role in carrying out the plan.

On August 17, 2009, the Hearing Officer ruled that the HMC notice did not completely satisfy the requirements of § 22a-19 but concluded that the facts alleged were sufficient to comply with the Department's Rules of Practice at § 22a-3a-6(k)(1)(B)(iii), R.C.S.A. and granted the request for intervening status pursuant to the Rules.

Resolution by Stipulation with Revised Dock Design at Southern Location.

With the filing of the hearing petition and requests for intervention by FSC and the CC, and the appearance on behalf of the commissions by the Town Attorney, Applicant's counsel sought a meeting with the Town Attorney and FSC/CC Staff to see if the intractable design issues relating to the Flaster dock application could be resolved in a manner satisfactory to all parties.

On June 18, 2009, a meeting was held in which a compromise design was suggested by FSC/CC at the southern location. The concept was to return to the southern location with the design submitted in May of 2008 which would place the entire L-shaped structure between the seawall and the ledge rock, which is approximately 18 feet waterward of the seawall. A dock at this location would have no impact on mechanical harvesting of shellfish, because the presence of the ledge currently prevents a commercial boat from

towing a shellfish dredge along the harbor bottom in the area landward of the ledge. The use of the float collars and stops would keep the float off the bottom, protecting any shellfish resources below the float, and the seasonal removal restriction would enable hand harvesting of shellfish during the time periods allowed by DA/BA for Conditionally-restricted relay harvesting activities.

The challenge for Applicant's consultant was to design the structure in such a way that it could be pulled back from the littoral line separating the waterfront interests of the Anderson and Flaster properties.

The Applicant subsequently spoke to Mr. Anderson about such a proposal and Mr. Anderson agreed that if the Applicant's consultant produced a drawing with a littoral line in a location determined by the "cove method," and the float could be pulled back five (5) feet from the "cove method" littoral line, he believed that the design would be acceptable. Subsequently Applicant's consultant prepared such a drawing as requested by Mr. Anderson, and Applicant's counsel attached the drawing to a Letter Agreement dated July 22, 2009 between the Flaster and Anderson property owners, which the owners of both properties executed.

With the agreement with Mr. Anderson in hand, the Applicant presented the revised dock design to FSC on August 12, 2009, CC on August 20, 2009, and HMC on August 26, 2009. All three commissions accepted the compromise design at the southern location, with the CC conditioning its acceptance on maintaining a minimum six (6) inch separating distance between the bottom of the float and the substrate at all times. The HMC determined that the revised dock design is consistent with the Harbor Management Plan with the understanding and expectation that the proposed dock will be used for dinghy access to a Harbor mooring location and that construction and use of the proposed dock will not result in any significant adverse impact on the beneficial use of any existing Harbor mooring locations.

A Notice of Public Hearing was published in the Connecticut Post on August 29, 2009 giving notice of a hearing on September 15, 2009 at 6:30 p.m. in Meeting Room 1 of Sullivan Independence Town Hall, 725 Old Post Road, Fairfield, CT, to be preceded by a site visit at 3:00 p.m. at the Applicant's property.

On September 4, 2009, the DEP Staff, the three intervening Fairfield commissions, and Mr. Flaster entered into a stipulation with revised drawings to confirm the terms of the agreement among the parties. (Testimony of Sharp, APP-3).

3. Project Description: The Applicant seeks authorization to install a 15' long x 4' wide pier that would extend from the existing stone seawall and a 3' wide x 20' long gangway that would connect a 10' x 10' floating dock to the pier (APP-3). The location of the proposed structure is at the southern end of the property. The Applicant is also proposing to retain a 240 linear foot masonry seawall and conduct maintenance on that wall.

4. Purpose and Use of Proposed Dock: The purpose of the proposed work is to construct a pier, floating dock and gangway for the Applicant's private, recreational boating use for berthing, storing and launching a dinghy. (DEP-1).
5. Compliance and Enforcement History: There are no previous permits or certificates issued by the DEP-OLISP that authorized work waterward of the high tide line at this site. The site has not been the subject of a DEP enforcement action for unauthorized activities waterward of the high tide line. (DEP-1).
6. Tidal Wetlands Vegetation: Approximately 170 linear feet of the Applicant's shoreline has a band of tidal wetland vegetation (consisting primarily of *Spartina alterniflora*) growing immediately in front of the seawall. The band is approximately ten (10) by twenty (20) feet wide and growing at an elevation of approximately three (3) feet. The wetland band changes in the southern section of the Applicant's Property where a conifer growing along the upland has a canopy that extends waterward of the seawall. This transition area includes both a change in the seawall direction from north-south to east-west and the presence of bedrock ledge. Growth of *S. alterniflora* is present on the southern part of the property but is patchy at an approximate elevation of 1.6'. The location of the dock in the southerly portion of the site has less wetland impacts than a dock in the northern area. (APP-3).
7. Shellfish: The DA/BA, the lead state agency responsible for shellfish management and aquaculture in Connecticut, has determined that the proposed activity will not significantly impact any shellfish areas. The OLISP staff received a fax dated March 23, 2009, from David Carey, Director, DA/BA, with the DA/BA's determination that the work proposed will not significantly impact any shellfish areas. DA/BA recommended the following permit conditions to minimize impacts: standard condition to include float stops or skids to prevent floating dock from resting on the substrate during periods of low water, standard condition to restrict work between June 1-September 30, inclusive, and condition that the dock be removed seasonally to allow shellfish harvest. (DEP-37).
8. Connecticut Endangered, Threatened and Special Concern Species: A review of all Endangered, Threatened, and Special Concern species was conducted for the project site by staff of DEP's Environmental & Geographic Information Center ("EGIC"). An August 30, 2005 letter from Kenneth Metlzer, DEP ecologist, confirmed that there are no known extant populations of Federal or State Endangered, Threatened or Special Concern Species that occur at the site of the proposed structures. (DEP-26).
9. Intertidal Mudflats: The proposed structure does not affect any intertidal mudflats in the vicinity of the project site. (DEP-26).
10. Finfish: The proposed project will not adversely impact existing finfish populations in the vicinity of the project site. (DEP-26).

11. Navigation Impacts: The proposed dock will not have an adverse impact on any federal navigational channel or fairway. Potential navigation impacts associated with previous designs have been minimized by placing the dock landward of the band of ledge rock in front of the Applicant's seawall, so the fairway for small craft such as canoes and kayaks between the ledge and the mooring line is free of any structure. In addition, the HMC's Harbor Management Plan for Southport Harbor recommends a minimum 5' separating distance between the federal anchorage line and any structures, and the compromise design shows that the closest the dock will come to the anchorage line is 20'. (DEP-26, APP-2, APP-3).
12. Public Trust: The project does not represent an unreasonable encroachment into public trust waters in Southport Harbor. Potential public trust impacts have been minimized by shortening the fixed pier to fifteen (15) feet and the gangway to twenty (20) feet and orienting the gangway at a right angle to the pier. Because of the presence of historical seawalls along the shoreline, the depth of the water at the adjacent downstream property and the presence of tidal wetlands, there is little pedestrian access along the shoreline at the site. However, the lowest horizontal member of the proposed fixed pier is more than five feet off the substrate and allows head clearance for longshore pedestrian traffic underneath the dock. Therefore, the project does not affect public access. (APP-2, APP-3).

Environmental Impacts:

Environmental impacts associated with the proposed pier, gangway and floating dock have been minimized to the greatest extent practicable. The installation of the ramp and float are not anticipated to adversely impact existing intertidal flats, tidal wetlands, shellfish or finfish resources. (DEP-26, APP-2, APP-3).

Alternatives: Several project alternatives were considered by the Applicant:

1. Multiple dock lengths and designs at both the northern and southerly locations waterward of the seawall at the property. (DEP-1, DEP-13, DEP-15, DEP-36).
2. Elimination of a dock in favor of the use of a davit, a form of hoist/crane combination, and a ladder. (DEP-7, DEP-8).

After balancing all of the relevant concerns, a dock structure consisting of a fixed pier, ramp and float in the southern location as stipulated by all of the parties will afford the Applicant with reasonable access to public trust waters for boating while minimizing both overall encroachment and impacts to coastal resources. This proposal represents the least intrusive and most environmentally sensitive of those alternatives considered.

CONCLUSIONS

1. Environmental Impact of the Proposed Action: The proposed project would provide the Applicant with reasonable access to public trust waters for recreational boating. The record supports a finding that the potential environmental impacts from the proposed project have been sufficiently minimized and the proposed project is consistent with the following policies regarding coastal resources, tidal wetlands, and coastal management:
 - a. Section 22a-92(a)(1) of the General Statutes, which requires that the development, preservation or use of the land and water resources of the coastal area proceed in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;
 - b. Section 22a-92(b)(1)(D) of the General Statutes, which requires that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;
 - c. Section 22a-92(b)(1)(H) of the General Statutes, which requires, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal resources, (ii) utilize existing altered, developed or redeveloped areas, (iii) are located to assure optimal distribution of state owned facilities to the state wide boating public, and (iv) utilize ramps and dry storage rather than slips in environmentally sensitive areas;
 - d. Section 22a-92(b)(2)(D) of the General Statutes, which requires the management of intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds; to allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation;
 - e. Section 22a-92(c)(2)(A) of the General Statutes, which requires management of estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration; to protect, enhance and allow natural restoration of eelgrass flats except in special limited cases, notably shellfish management, where the benefits accrued through alteration of the flat may outweigh the long-term benefits to marine biota, waterfowl, and commercial and recreational fisheries;

- f. Section 26-310(a) of the General Statutes, which requires that each state agency, in consultation with the Commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of the endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species, unless such agency has been granted an exemption.
 - g. Section 22a-92(b)(2)(E) of the General Statutes, which requires preservation of tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions.
 - h. Section 22a-92(c)(1)(B) of the General Statutes, which disallows any filling of tidal wetlands and nearshore, offshore and intertidal waters for the purpose of creating new land from existing wetlands and coastal waters which would otherwise be undevelopable unless it is found that adverse impacts on coastal resources are minimal.
 - i. Section 22a-33 of the General Statutes, which establishes the criteria for review of Tidal Wetlands Act applications.
 - j. RCSA section 22a-30-10 of the Tidal Wetlands Regulations, which further explains the criteria for Tidal Wetlands Act review.
 - k. RCSA section 22a-30-11(b)(2) of the Tidal Wetlands Regulations, which defines the use guidelines for small residential docks.
2. Consistent with All Applicable Standards: The proposal is consistent with applicable standards, goals and policies of sections 22a-28 through 22a-35 and 22a-359 of the General Statutes which require the Department to make permit decisions with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining uplands, and the recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.
 3. Alternatives to the Proposed Action: There is no feasible or prudent alternative that would provide the Applicant reasonable riparian access and which would have less impact on the adjacent coastal resources.

Public Comments and Testimony.

In response to the most recent Notice of Tentative Determination dated April 10, 2009 for a dock at the northern location, DEP received the following public comments on the proposed permit:

1. Comment letter dated April 24, 2009 from FSC (DEP-41). Comments focused on providing a pile-free float design and the temporary removal of the structure at the request of the FSC.
2. Comment letter dated May 20, 2009 from Mary von Conta, HMC (DEP-46) indicating that the Commission determined that the applicant's current plans for dock construction were consistent with the Harbor Management Plan.

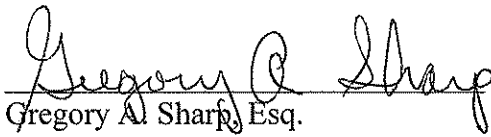
The Applicant has since modified the location and design of his proposed dinghy dock in Southport Harbor and presented the modified design to the three commissions and DEP Staff. All three of the intervening Fairfield commissions have endorsed the modified design at the southern location with conditions that are acceptable to the Applicant and consistent with the ACOE permit conditions, and DEP Staff has concurred. (APP-2, APP-3).

On September 15, 2009, following a site visit at the Applicant's property, the hearing was held as scheduled. Presentations were given by counsel for the Applicant, DEP Staff, and counsel for the Intervenor. Counsel for the Applicant explained the history of the application and the compromise reached by the parties. DEP Staff reviewed its role in the process and summarized the balancing of factors required by the statutes and regulations and its conclusion that the compromise location and design was the preferred alternative, as it minimized impacts to coastal resources, navigation, and the preservation and harvesting of shellfish in the Harbor. Counsel for the Intervenor spoke in support of the compromise reached by the parties, explained the concerns of the three commissions and how the location and design at the southern location addressed those concerns to the greatest extent possible. In addition, six members of the public spoke, all in support of the proposed dock as reflected in the agreement reached by the parties.

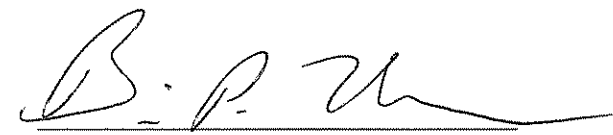
AGREEMENT

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the standard and special conditions stated in the Draft Permit, attached hereto.

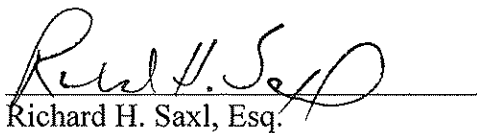
APPLICANT, MARC FLASTER

By: 
Gregory A. Sharp, Esq.
His Attorney

OFFICE OF LONG ISLAND SOUND
PROGRAMS

By: 
Brian P. Thompson, Director
Office of Long Island Sound Programs
Department of Environmental Protection

INTERVENORS, TOWN OF FAIRFIELD
CONSERVATION COMMISSION, HARBOR
MANAGEMENT COMMISSION, AND
SHELLFISH COMMISSION

By: 
Richard H. Saxl, Esq.
Town Attorney

ATTACHMENT B

Draft

PERMIT

Permit No: 200602755-SJ
Town: Fairfield
Work Area: 911 Harbor Road
Permittee: Marc Flaster
911 Harbor Road
Southport, CT 06890-1408

Pursuant to sections 22a-359 through 22a-363f and sections 22a-28 through 22a-35 of the Connecticut General Statutes ("CGS") and in accordance with CGS section 22a-98 and the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection ("Commissioner") to retain and maintain a seawall for shoreline flood and erosion control and install a dock for recreational boating access as is more specifically described below in the SCOPE OF AUTHORIZATION, in Southport Harbor 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 200602755-SJ, including 7 sheets of plans with sheet 1 undated, sheets 2-4 dated September 2006, and sheets 5-7 revised September 4, 2009, submitted by the Permittee to the Commissioner and attached hereto:

1. retain a 240 linear foot seawall;
2. conduct substantial maintenance on the wall by adding grout and installing 1" drainage pipes as needed; and
3. install a 4' x 15' fixed pier, a 3' x 20' ramp and a 10' x 10' with float support pilings.

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. The Permittee shall ensure that all work associated with piling installation by a water-based barge be conducted only during periods of high water in the area of the proposed dock. Any such barge must move to deeper waters during periods of low water and not rest on or come in contact with the bottom of Southport Harbor.
2. The Permittee shall, to the maximum extent possible, contain the sediments generated from any boring activity associated with pile installation and remove the sediment to a location landward of the high tide line and outside of tidal wetlands. Such sediment shall be contained and removed using hand-held equipment during the subsequent period of low water immediately following the installation of the pile.
3. The Permittee shall construct the fixed pier authorized herein so that the lowest horizontal member of the main portion of the fixed pier is constructed no less than 5' above the elevation of the substrate below the pier.
4. The Permittee shall install float stops or other such device to maintain a minimum 6" clearance between the bottom of the float and the substrate surface at low water. Such float stops shall be maintained in optimal operating condition for the life of the structure.
5. Seawall maintenance authorized herein shall be conducted at low water only using hand held equipment. Prior to the commencement of such maintenance, a tarp shall be placed below the work area to catch all debris. Upon completion, the tarp and any debris shall be removed to an upland site approved for the disposal of such waste material, as applicable.
6. When not in use, any dinghy stored at the dock authorized herein shall be stored on the float.
7. The Permittee shall remove the ramp and float authorized herein no later than November 15 of any calendar year and shall not install such ramp and float before April 15 of any calendar year. Upon removal of the ramp and float authorized herein, the Permittee shall store such structures at an upland location, landward of the high tide line and outside of tidal wetlands.
8. The Permittee shall make best efforts to accommodate shellfish harvesting by temporarily removing the ramp and float authorized herein upon notification by the Department of Environmental Protection.
9. 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, nor shall any wetland or watercourse be used as a staging area or accessway other than as provided herein.
10. 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.

11. 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 contours, bathymetries, tidal datums and structures.

GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within three 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 accessway 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 authorization 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.

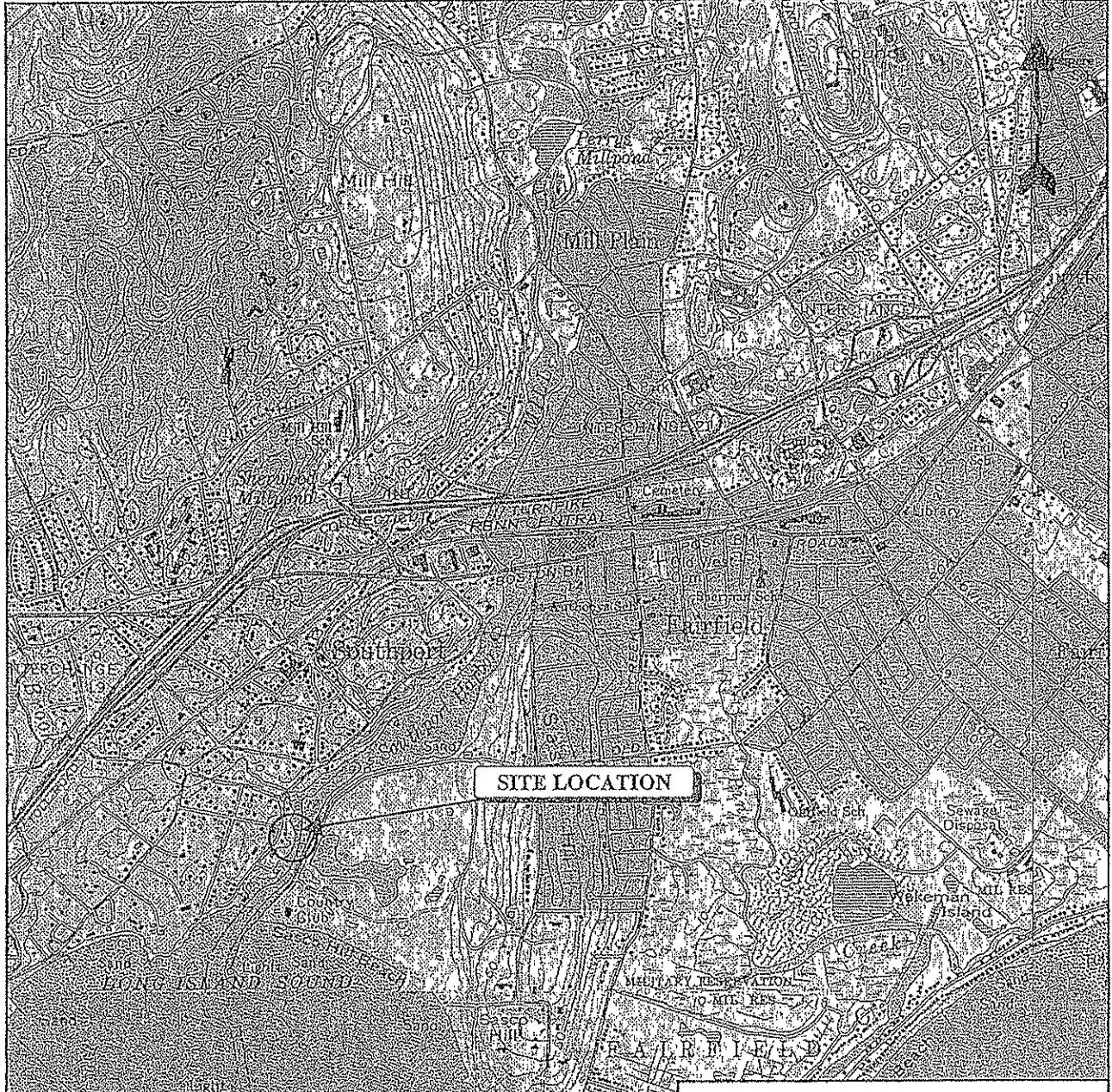
Issued on _____, 2009

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Amey W. Marrella
Acting Commissioner

Permit Application No. 200602755-SJ
Marc Flaster

SJ/ko



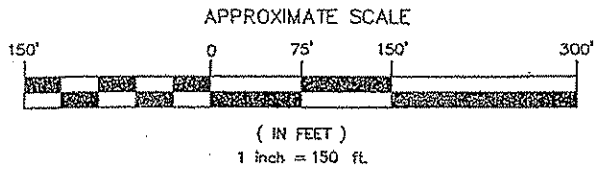
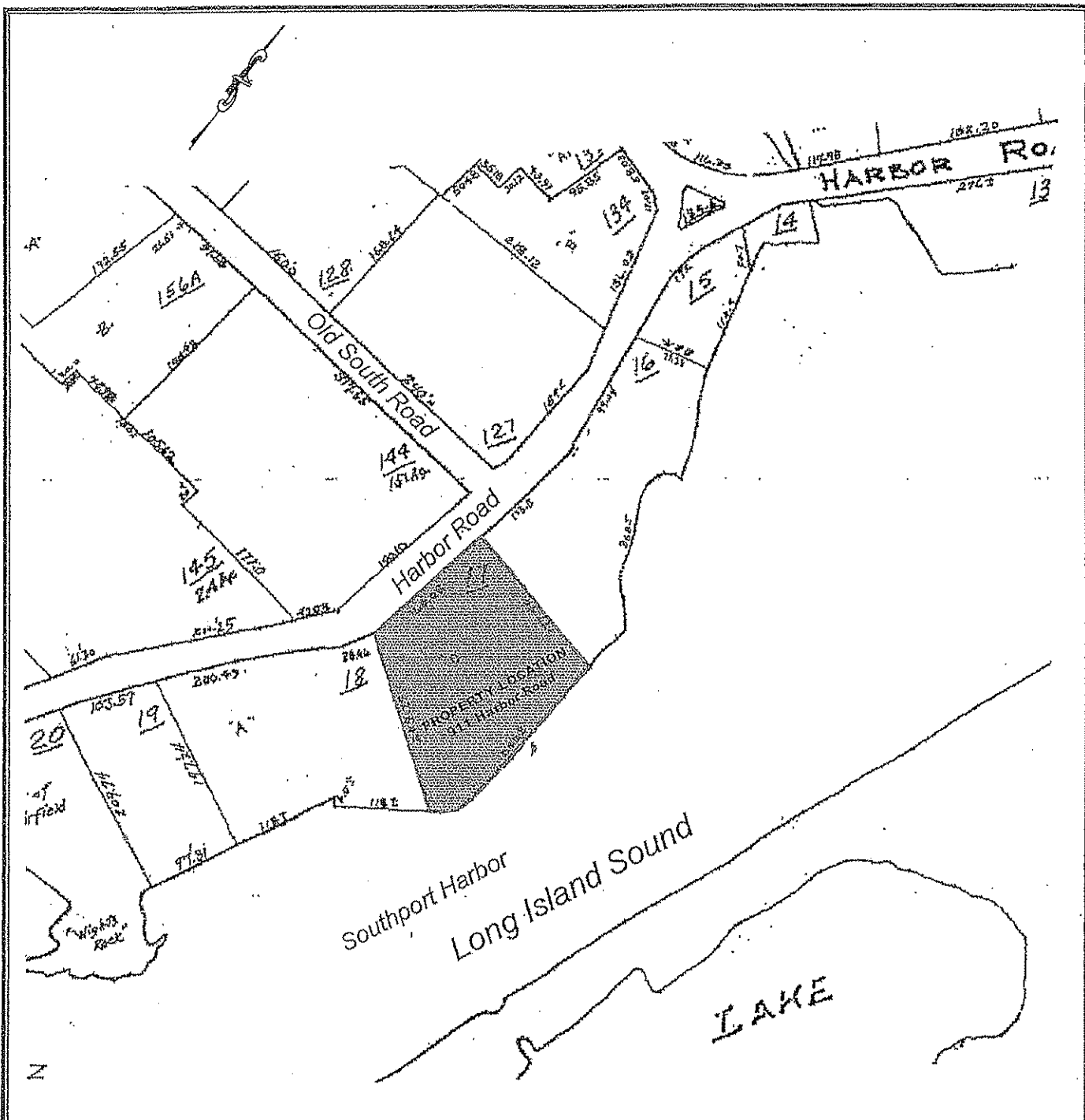
SITE LOCATION

U.S. Geological Survey Map
 Scale: 1:24,000
 Westport, Connecticut Quadrangle



FIGURE 1
SITE LOCATION MAP
STRUCTURES, DREDGE & FILL PERMIT
APPLICATION


FLASTER PROPERTY
911 HARBOR STREET
SOUTHPORT HARBOR
SOUTHPORT, CONNECTICUT



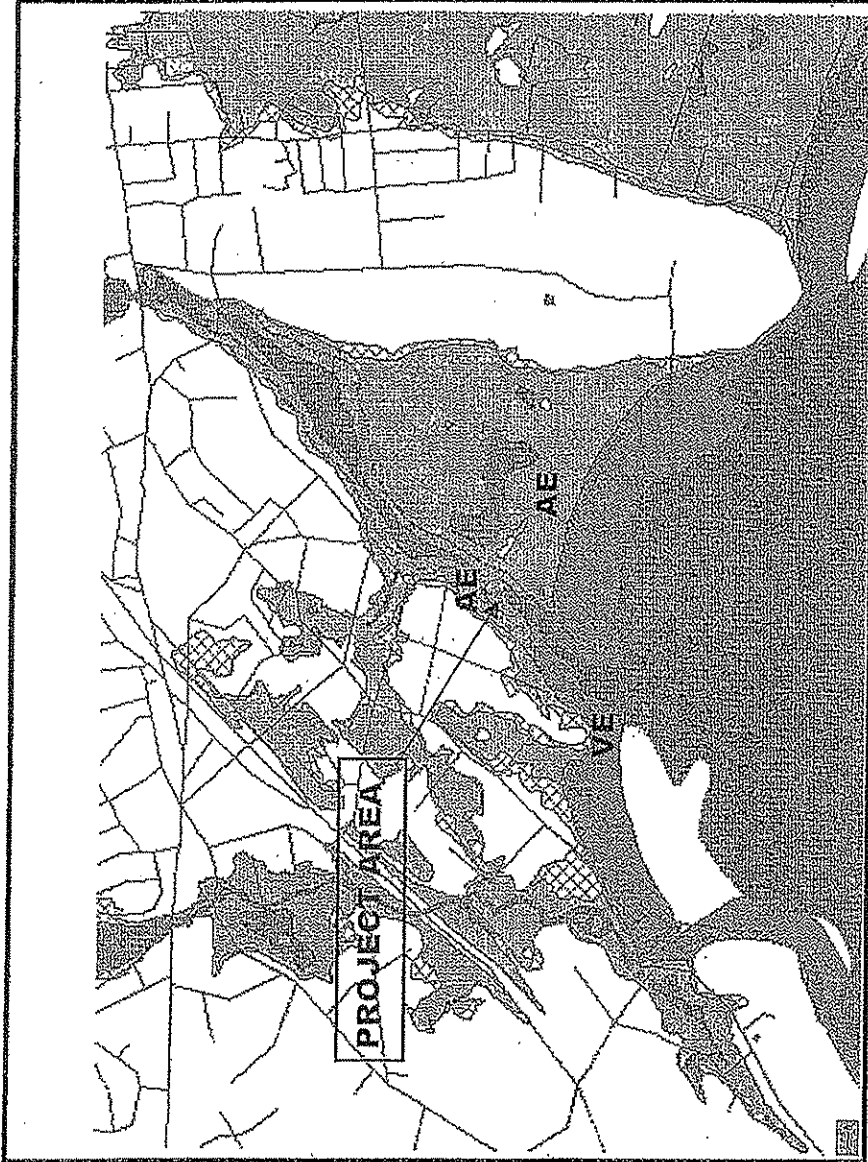
NOTES:

1. THE LOCATION OF ALL STRUCTURES, EQUIPMENT, DELINEATIONS AND OTHER FEATURES PRESENTED ON THIS DRAWING SHOULD BE CONSIDERED APPROXIMATE. THIS DRAWING SHOULD ONLY BE USED FOR GENERAL PRESENTATION PURPOSES AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES. TRITON MAKES NO WARRANTY AS TO THE CORRECTNESS OR THE COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DRAWING, AND THE USER ASSUMES ALL RISK OF LOSS TO PERSONS AND PROPERTY FROM RELIANCE THEREON.

P:\040 Drawings\102491\Figures\102491-SP6x11.dwg
 Layout: 210xAsenMap

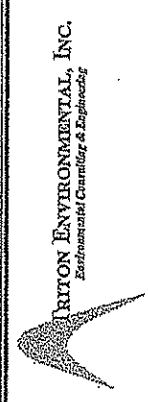
 TRITON ENVIRONMENTAL, INC. <i>Environmental Consulting & Engineering</i>	
305 Church Street, Suite 201 • Guilford, Connecticut 06437 • (203) 458-7200	
FIGURE 2 TAX ASSESSOR MAP	
STRUCTURES, DREDGE & FILL PERMIT APPLICATION	
FLASTER PROPERTY 911 HARBOR ROAD SOUTHPORT, CONNECTICUT	
DRAWN BY: DMA	APPROVED BY: BJ
DATE: 9/06	SCALE: 1"=150' FILE No.: 102491 SP01

Flood Rate Insurance Map



LEGEND

Street	Surface Water	Water Quality Class (HY_LEGEND)
Aqueduct	Cran Bog	Fish Hatch
Fiat	Intrmt Wtr	Marsh
Rock	Sewage Pd	Water
Water Tank	FEMA Flood Zone (ZONE)	



BRITTON ENVIRONMENTAL, INC.
Environmental Consulting & Engineering

385 Church Street, Suite 201 • Groton, Connecticut 06437 • 203.465.7260

FIGURE 3

FLOOD RATE
 INSURANCE MAP

STRUCTURES, DREDGE & FILL PERMIT APPLICATION
 (FRM)

FLASTER RESIDENCE
 911 HARBOR ROAD
 SOUTHPORT, CONNECTICUT

DRAWN BY: MFG / APPROVED BY: WH

DATE: 9/06 | SCALE: N.T.S. | FILE No: 102491-SP8x11

NOTES:

1. THIS MAP WAS COPIED FROM THE "FLOOD INSURANCE RATE MAP" IN THE TOWN OF FAIRFIELD, CONNECTICUT, IN FAIRFIELD COUNTY, PANEL 10 OF 11, COMMUNITY-PANEL NUMBER #090007 0100 C. DATE MAP REVISED: OCTOBER 6, 1998.
2. THE LOCATION OF ALL STRUCTURES, EQUIPMENT, DELINEATIONS AND OTHER FEATURES PRESENTED ON THIS DRAWING SHOULD BE CONSIDERED APPROXIMATE. THIS DRAWING SHOULD ONLY BE USED FOR GENERAL PRESENTATION PURPOSES AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES. BRITTON MAKES NO WARRANTY AS TO THE CORRECTNESS OR THE COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DRAWING, AND THE USER ASSUMES ALL RISK OF LOSS TO PERSONS AND PROPERTY FROM RELIANCE THEREON.

1. Flood Insurance (Flood) 2. Flood Insurance (Flood) 3. Flood Insurance (Flood) 4. Flood Insurance (Flood) 5. Flood Insurance (Flood) 6. Flood Insurance (Flood) 7. Flood Insurance (Flood) 8. Flood Insurance (Flood) 9. Flood Insurance (Flood) 10. Flood Insurance (Flood)

LEGEND

- PROPERTY LINE
- SPARTAN ALTIMETER
- GROUND ELEVATION CONTOUR (GRID)



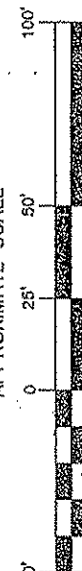
HARBOR ROAD

FLASTER PROPERTY

RET. POND REVISION CHANGED

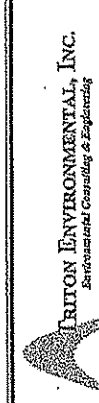
Southport Harbor

APPROXIMATE SCALE
(IN FEET)
1 inch = 50 ft.



NOTES:

1. THE LOCATION OF ALL STRUCTURES, EQUIPMENT, DELINEATIONS AND OTHER FEATURES PRESENTED ON THIS DRAWING SHOULD BE CONSIDERED APPROXIMATE. THIS DRAWING SHOULD ONLY BE USED FOR GENERAL PRESENTATION PURPOSES AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES. TRITON MAKES NO WARRANTY AS TO THE CORRECTNESS OR THE COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DRAWING, AND THE USER ASSUMES ALL RISK OF LOSS TO PERSONS AND PROPERTY FROM RELIANCE THEREON.
2. BASE MAP INFORMATION IS TAKEN FROM A MAP ENTITLED "IMPROVEMENT LOCATION SURVEY PREPARED FOR MARC & MICHELE FLASTER 911 HARBOR ROAD SOUTHPORT, CONNECTICUT" DATED: APRIL 6, 2001. REVISED MARCH 3, 2005. SCALE: 1"=20', PROVIDED BY THE HUNTINGTON COMPANY.



TRITON ENVIRONMENTAL, INC.
Environmental Consulting & Engineering

385 Church Street, Suite 201 • Guilford, Connecticut 06437 • 203.456.7200

FIGURE 4

EXISTING SITE CONDITIONS PLAN

STRUCTURES, DREDGE & FILL PERMIT APPLICATION

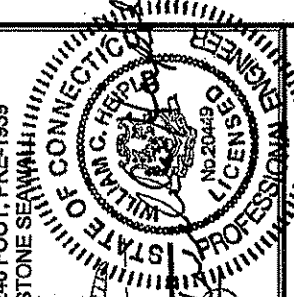
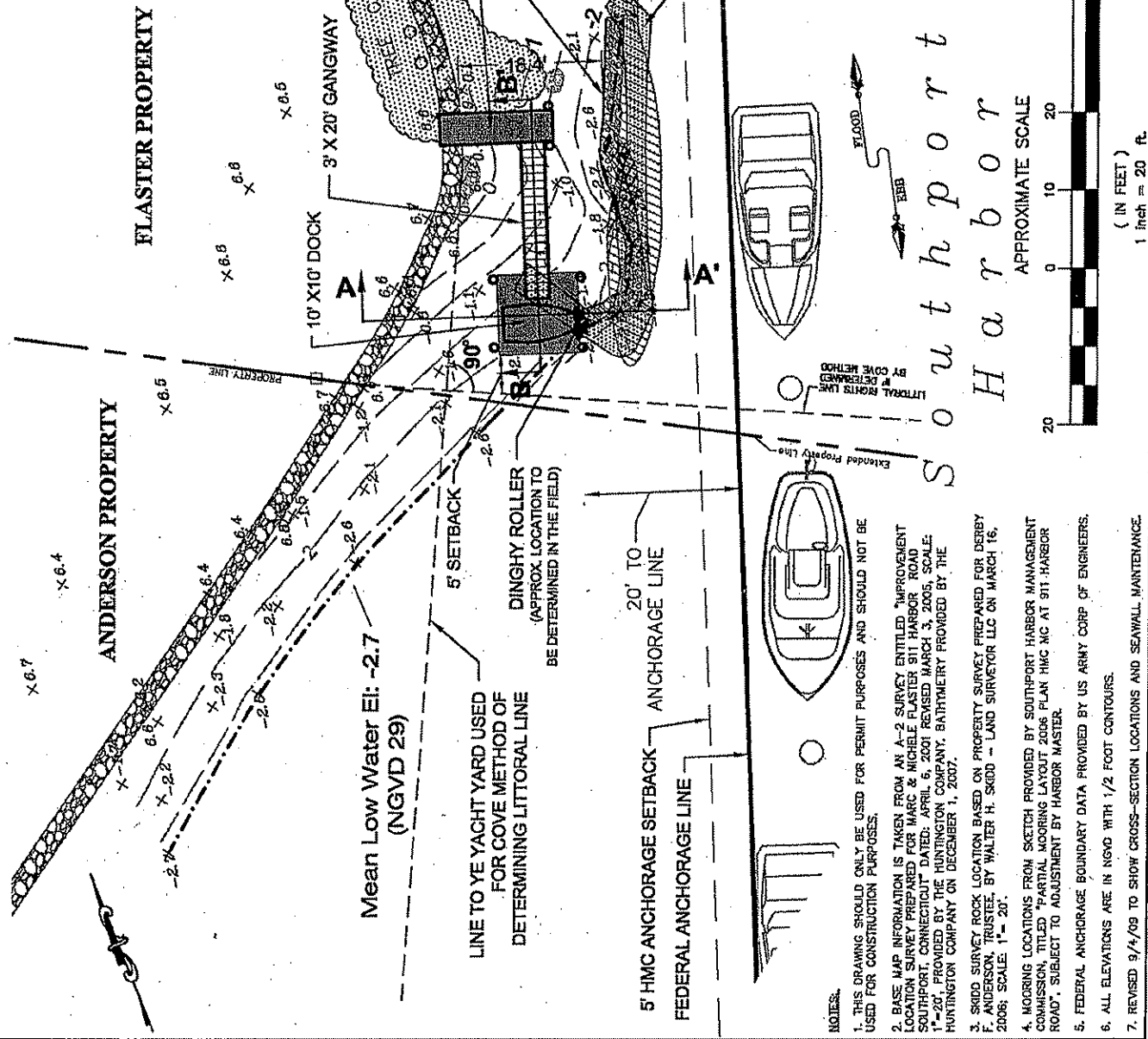
FLASTER RESIDENCE
911 HARBOR ROAD
SOUTHPORT, CONNECTICUT

DRAWN BY: MFG APPROVED BY: WH

DATE: 9/06 SCALE: 1"=50' FILE No.: 102-491sp4-B411

LEGEND

	PROPERTY LINE
	SPARTINA ALTERNIFLORA
	BATHYMETRIC CONTOUR (NGVD)
	EXPOSED ROCK LEDGE
	UNEXPOSED ROCK LEDGE
	ROCK LOCATION PER SURVEY OF WALTER H. SKIDD, L.S. FOR D.F. ANDERSON, TRUSTEE 3/16/06
	ROCK LOCATION PER SURVEY OF FLASTER PROPERTY BY THE HUNTINGTON CO. 4/6/2001



TRITON ENVIRONMENTAL, INC.
 Environmental Consulting & Engineering

305 Church Street, Suite 201 • Guilford, Connecticut 06437 • 203.628.1200

FIGURE 5

PROPOSED SITE CONDITIONS PLAN
 SHOWING DINGHY DOCK

STRUCTURES, DREDGE AND FILL APPLICATION
 FLASTER RESIDENCE
 911 HARBOR ROAD
 SOUTHPORT, CONNECTICUT

DRAWN BY: RGM APPROVED BY: WCH
 DATE: 7/22/09 SCALE: 1" = 20' FILE No.: 102491SDP02

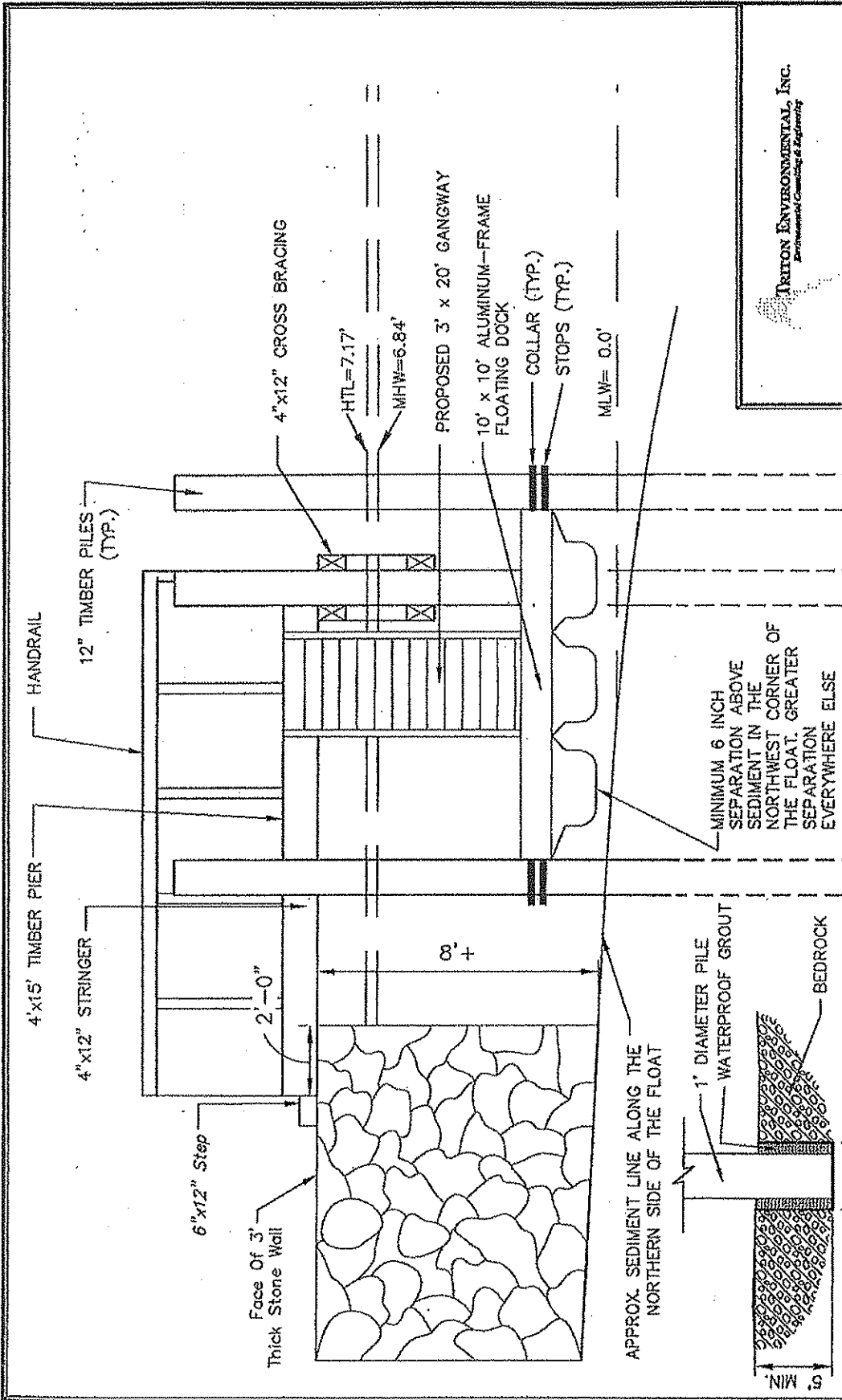
Southport

APPROXIMATE SCALE



(IN FEET)
 1 inch = 20 ft.

- NOTES:**
- THIS DRAWING SHOULD ONLY BE USED FOR PERMIT PURPOSES AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES.
 - BASE MAP INFORMATION IS TAKEN FROM AN A-2 SURVEY ENTITLED "IMPROVEMENT LOCATION SURVEY PREPARED FOR MARC & NICHELE FLASTER 911 HARBOR ROAD SOUTHPORT, CONNECTICUT" DATED: APRIL 6, 2001 REVISED MARCH 3, 2005, SCALE: 1"=20', PROVIDED BY THE HUNTINGTON COMPANY, BATHYMETRY PROVIDED BY THE HUNTINGTON COMPANY ON DECEMBER 1, 2007.
 - SKIDD SURVEY ROCK LOCATION BASED ON PROPERTY SURVEY PREPARED FOR DERBY F. ANDERSON, TRUSTEE, BY WALTER H. SKIDD - LAND SURVEYOR LLC ON MARCH 16, 2006; SCALE: 1" = 20'.
 - MOORING LOCATIONS FROM SKETCH PROVIDED BY SOUTHPORT HARBOR MANAGEMENT COMMISSION, TITLED "PARTIAL MOORING LAYOUT 2006 PLAN HMC MC AT 911 HARBOR ROAD", SUBJECT TO ADJUSTMENT BY HARBOR MASTER.
 - FEDERAL ANCHORAGE BOUNDARY DATA PROVIDED BY US ARMY CORP OF ENGINEERS.
 - ALL ELEVATIONS ARE IN NGVD WITH 1/2 FOOT CONTOURS.
 - REVISED 9/14/09 TO SHOW CROSS-SECTION LOCATIONS AND SEAWALL, MAINTENANCE.



TRITON ENVIRONMENTAL, INC.
Environmental Consulting & Engineering

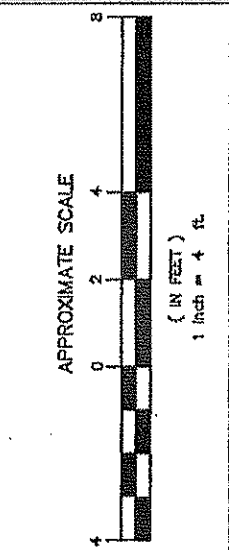
350 Church Street, Suite 201 • Guilford, Connecticut 06437 • 203.460.7200

FIGURE 6
CROSS SECTION A-A'
AT MEAN LOW WATER

STRUCTURES, DREDGE AND FILL APPLICATION
FLASTER RESIDENCE
311 HARBOR ROAD
SOUTHPORT, CONNECTICUT

DRAWN BY: RSM
DATE: 7/22/09
SCALE: 1"=5'

APPROVED BY: VCH
FILE No: 102491SDFO1

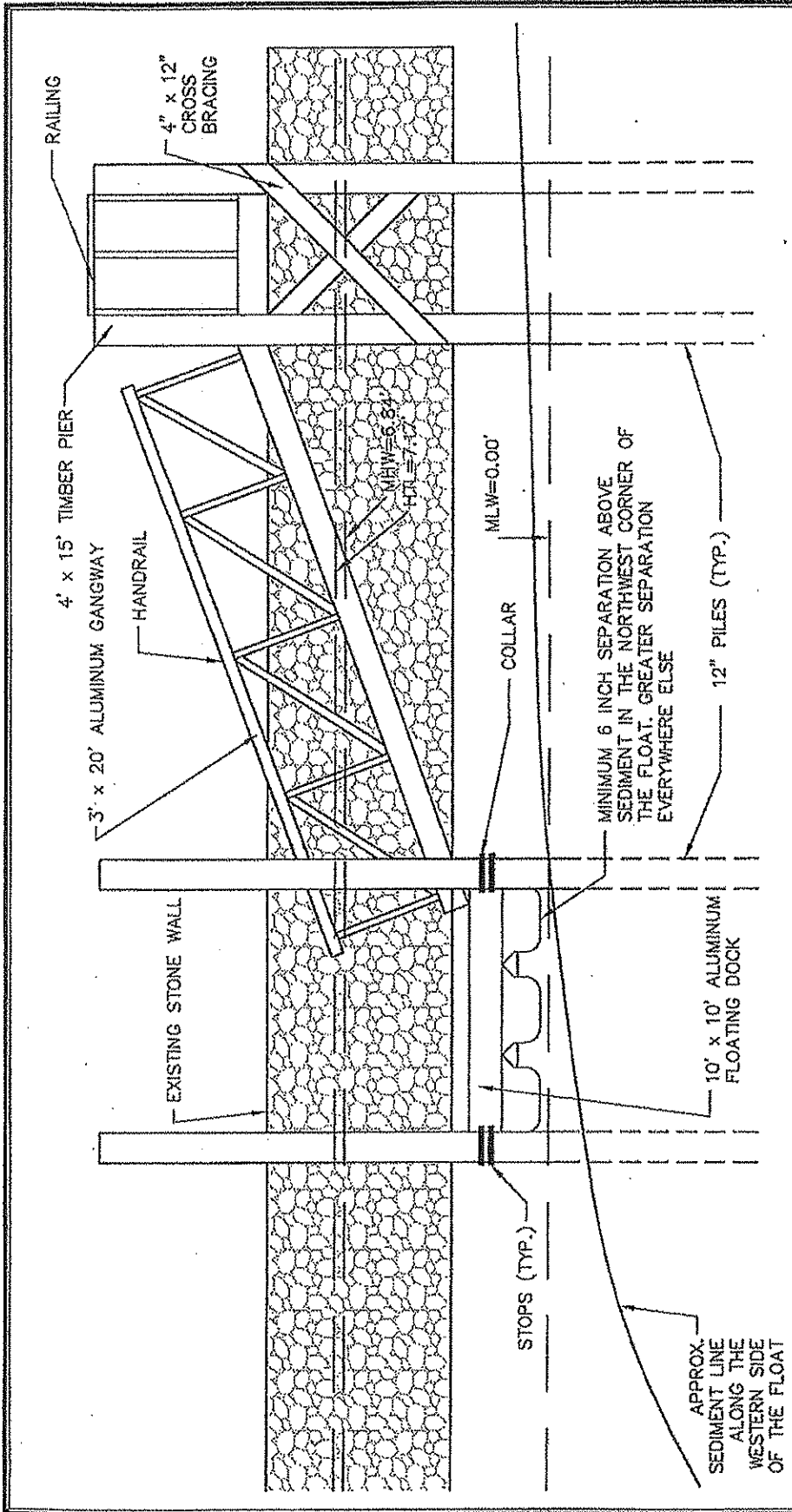


FILE "SOCKET" DETAIL
(TO BE USED IF PILE CANT BE DRIVEN
MINIMUM OF TEN FEET INTO SEDIMENT)
N.T.S.

NOTES:

1. THIS DRAWING SHOULD ONLY BE USED FOR PERMIT PURPOSES AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES.

2. REVISED 9/4/09 TO SHOW MINIMUM 6" DOCK/SEDIMENT SEPARATION AS REQUESTED BY FAIRFIELD CONSERVATION COMMISSION IN AUGUST 2009.



TRITON ENVIRONMENTAL, INC.
Environmental Consulting & Engineering

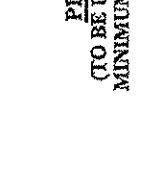
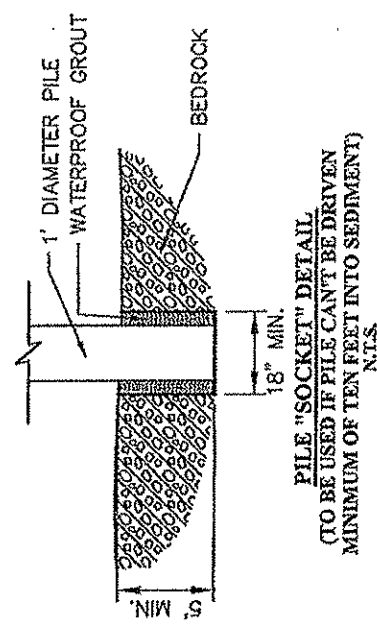
335 Church Street, Suite 201 • Fairfield, Connecticut 06424 • 203-253-2200

FIGURE 7
 CROSS SECTION B-B
 AT MEAN LOW WATER

STRUCTURES, DREDGE AND FILL APPLICATION
 FLASTER RESIDENCE
 511 HARBOR ROAD
 SOUTHPORT, CONNECTICUT

DRAWN BY: RGM | APPROVED BY: WCH
 DATE: 7/22/09 | SCALE: 1"=5' | FILE No.: 102491SD-F01

- NOTES:**
1. THIS DRAWING SHOULD ONLY BE USED FOR DEMONSTRATION PURPOSES AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES.
 2. REVISED 9/4/09 TO SHOW MINIMUM 6" DOCK/SEDIMENT SEPARATION AS REQUESTED BY FAIRFIELD CONSERVATION COMMISSION IN AUGUST 2009.



P A R T Y L I S T

Proposed Final Decision In the Matter of Marc Flaster
Application No. 200602755-SJ

PARTY

REPRESENTED BY

The Applicant

Marc Flaster

Gregory A. Sharp, Esq.
Murtha Cullina LLP
CityPlace 1, 29th Floor
185 Asylum Street
Hartford, CT 06103

Department of Environmental Protection

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

Susan Jacobson

Intervenors

Town of Fairfield
Shellfish Commission
Conservation Commission
Harbor Management Commission

Richard H. Saxl, Esq.
5 Imperial Avenue
P.O. Box 5042
Westport, CT 06880