

IN THE MATTER OF :

APPLICATION NO-201407131-KR

MEGRUE-CLIFF PLACE, LLC :

June 11, 2015

PROPOSED FINAL DECISION

I
SUMMARY

On July 8, 2014, Megrue-Cliff Place, LLC (Applicant) applied for a permit to conduct activity waterward of the Coastal Jurisdiction Line. (Application). The activity proposed by the Application is the construction of a residential dock to include a fixed pier, aluminum ramp, and floating dock and the removal of up to five cubic yards of stone. The Department's Office of Long Island Sound Programs (Department staff) reviewed the Application and prepared a Draft Permit (Appendix 1). On August 28, 2014, a Notice of Tentative Determination, indicating that Department staff recommended the Application be approved as conditioned in the Draft Permit, was published in the Norwalk Hour. A petition for hearing was received on September 23, 2014, and this hearing process was initiated.

In addition to the Applicant and Department staff, the Bell Island Improvement Association, Inc. (BIIA) was granted status as an intervening party in this matter pursuant to General Statutes § 22a-19 on December 12, 2014.¹ A site inspection was conducted on December 15, 2014. A public hearing was held at Norwalk Town Hall on January 15, 2015, and written

¹ See December 12, 2014 ruling on file with the Office of Adjudications.

public comments were accepted until January 21, 2015. The evidentiary hearing was held on January 21 and 23, 2015.

At the evidentiary hearing, testimony from five expert witnesses was accepted into the record. Krista Romero testified on behalf of Department Staff. The Applicant called John Hilts, a permit preparer, Roman Zajac, an expert on marine and estuarine ecology and a professor and chair of the Department of Biology and Environmental Science at the University of New Haven, and John C. Roberge, P.E., an expert in the design of coastal structures and near shore sedimentation transport. Michael Aurelia, a soil scientist and geologist with experience as a municipal conservation director and with shellfish regulation and management, testified on behalf of the BIIA. On April 10, 2015, after the hearing and in accordance with the post-hearing directive, the parties filed post-hearing findings of fact and conclusions of law for my consideration.

I have reviewed the record in this matter, including the documentary evidence, expert testimony and public comment. Based on this review, I conclude that the Applicant, through the presentation of substantial evidence, has met its burden of proof by demonstrating that the proposed activity, if conducted in accordance with the proposed Draft Permit, complies with the relevant statutory standards, namely the Structures, Dredging and Fill Act (General Statutes §§ 22a-359 through 22a-363) and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112). I further conclude that the BIIA has not met its independent burden of proving that the proposed activity is reasonably likely to result in unreasonable environmental pollution, impairment or destruction. I therefore recommend issuance of the proposed Draft Permit (Appendix 1) as a final permit.

II
FINDINGS OF FACT

1. Megrue-Cliff Place, LLC is the owner of property known as 5 Cliff Place in the Bell Island Area of Rowayton in Norwalk (Property). The Property is .1376 acres (5,993 square feet) in size and is improved with a house, deck, garage and other accessory structures. A masonry seawall, visible in aerial photographs since 1934, runs along the eastern boundary of the Property. The Property has approximately forty-five feet of frontage on Sheffield Island Harbor, part of Long Island Sound. (Exs. APP-1, DEEP-2-4, 20.)
2. There are no previous permits or certificates issued by the Department that authorized work waterward of the Coastal Jurisdiction Line (CJL) at the Property, and the Property has not been the subject of a DEEP enforcement action for unauthorized activities waterward of the CJL. Notice of the application was provided to all required parties at the time it was filed including the Mayor of Norwalk. Coastal resources identified on or adjacent to the Property include a coastal hazard area, rocky shorefront and coastal waters. There are no views of any public significance that will be impacted by the proposed structure.² (Exs. APP-1, DEEP- 4-5, 20; test., K. Romero, 1/21/15, p. 214)
3. The Property is bounded on the north by property owned by Robert Manning, at 32 Yarmouth Road. The seawall also runs along the eastern boundary of the Manning property. A fixed pier, ramp and floating dock, permitted by the Department, abuts the seawall and is used to access Long Island Sound from the Manning property. The Property is bounded on the south by the Cliff Place right-of-way, owned by the BIIA. A beach and swim area, including a floating dock used as a swim float, is located further south of the Property. A line of buoys marks the swim area, the closest of which is 140 feet away from the proposed structure; the swim float is 222 feet away from the proposed structure. (Exs. APP-2, 9, 11a, DEEP-4.; test., J. Hilts, 1/21/15, pp. 16-17.)
4. The Applicant proposes to construct a fixed pier, four feet wide and forty feet long, supported by three concrete-filled steel mono-piles. An aluminum gangway, three feet wide and forty feet long, will connect the fixed pier to a 160-square foot floating dock, eight feet wide and twenty feet long secured by three float anchor piles and a cut off float stop pile. A timber float stop, six feet wide and twelve feet long, will be installed to prevent the floating dock from resting on the substrate. The proposed structure is to be located at the center of the Property's Long Island Sound frontage. The CJL, elevation +5.4, runs coincident with the masonry seawall on the property; the entire proposed structure extends beyond the CJL. The fixed pier extends from the masonry seawall on the property to mean low water. The Applicant also proposes removal of up to five cubic yards of rock in the area of the proposed

²Mr. Aurelia, the expert retained by the BIIA, testified that “[m]y feeling is as you add more docks, the aesthetics of the site go down[.]” but did not identify any view of particular significance, and agreed that aesthetic opinions are inherently subjective. (Test., M. Aurelia, 1/23/15, pp. 115-116, 141.)

floating dock. This Application for a permit authorizing the proposed activities, as required by the Structures, Dredging and Fill Act, was filed on July 8, 2014 (Application).³ (Exs. APP-1, DEEP-1, 4, 8, 20; test., J. Hilts, 1/21/15, pp. 30-31, 33-36; test. K. Romero, 1/21/15, pp. 186-187.)

5. The plans for the dock were prepared by John Hilts, who described his role in the Application as a “permit application preparer.” The plans were reviewed and sealed by Scott Davies, a Professional Engineer. As verified by Department staff, application materials may be drawn by someone other than the engineer who affixes his seal. (Test., J. Hilts, 1/21/15, pp. 79-80, K. Romero, 1/23/15, p. 41.)
6. The proposed activity was reviewed, either prior to submission of the Application or during Department staff’s review, by the Army Corps of Engineers, the Connecticut Department of Agriculture’s Bureau of Aquaculture and the Norwalk Harbor Management Commission. The Army Corps of Engineers determined that the proposed activity would have “only minimal individual or cumulative impacts on waters of the United States” and authorized construction. The Harbor Management Commission determined that the proposal was consistent with the Norwalk Harbor Management Plan. The Bureau of Aquaculture recommended that the rocks be removed in a “low impact manner” and concluded that, “this project will not significantly impact shell fishing at this specific location.” (Exs. APP-1, DEEP-4, 6, 12, 14, 15; test., J. Hilts, 1/21/15, pp. 24-29.)
7. The proposed activity was also reviewed using data from the Department’s Natural Diversity Database. Staff from the Department’s Bureau of Natural Resources Division of Wildlife determined that no “negative impacts to State-listed species” were anticipated to result “from [the] proposed activity at the site.” (Exs. APP-1, DEEP-4.)
8. The Applicant proposed a floating dock of 160 square feet, as opposed to a smaller dock of 100 square feet, because of concerns about wind and wave action at the property. The Property is in an area with open water to the south and east. Department staff evaluated aerial photographs of the Property and known site conditions and determined, in an exercise of professional judgment, that the larger float proposed was justified. In this area, “two second waves” with a wavelength of about twenty feet are typical. A floating dock twenty feet in length is appropriate under these conditions because it reaches from the crest of one wave to the crest of the next, creating added stability by minimizing the pitch and yaw of the

³ The Application initially sought a permit to construct a fixed pier, ramp and floating dock of a similar size to be located six feet north of the Property’s southern boundary line. After receiving comments from the Army Corps of Engineers and the Norwalk Harbor Management Commission and a Notice of Insufficiency from Department staff, the proposed structure was relocated to the center of the Property’s Long Island Sound frontage. This change in the location of the proposed structure necessitated the removal of rocks in the area of the proposed floating dock. The Department’s Residential Dock Guidelines call for setbacks of twenty-five feet from abutting properties. Because the Property is only forty-five feet wide, setbacks of twenty-five feet were not possible. Centering the structure on the Property provides the maximum possible setbacks from both abutting properties. (Exs. DEEP-4, 10, 12, 20; test. J. Hilts, 1/21/15, pp. 28-29.)

float. Mr. Roberge testified that a floating dock of 160 square feet is “appropriate . . . [m]ost definitely” based on his knowledge of the site, although he did not prepare any calculation. A calculation was prepared by Mr. Hilts when permitting the structure on the adjacent Manning property, which shows the site is exposed to a long fetch (of 6 miles) over an arc of twenty degrees. (Ex. DEEP-21; test., J. Hilts, 1/21/15, p. 102, J. Roberge, 1/21/13, pp. 150-151, 167, K. Romero, 1/21/13, pp. 182-183, 226.)

9. The intertidal area in front of the Property is rocky, with boulders interspersed with sandy areas. The substrate in the area is covered by irregularly spaced rocks which gives way to sand. This sandy overburden covers rock ledge. A mooring field is located in front of the Property, a portion of which is over a shellfish bed. Shellfish beds extend from the shoreline into Long Island Sound. Immediately in front of the property is a recreational shellfish bed, open to local residents between November 1 and May 1, unless rainfall exceeds 1.5 inches in a twenty-four hour period. The shellfish beds are near shore, very shallow, and rocky, creating inhibitions to seed oystering with dredges and vessels, except by hand during low tide. (Exs. DEEP-20, INT-10; test., J. Hilts, 1/21/15, pp. 16-17, 20-21, 31.)
10. The three pilings supporting the pier will be made of steel and drilled into the substrate and grouted with epoxy grout. Three additional drilled steel pilings will secure the floating dock. Three timber float stop pilings, two at the landward end of the floating dock and one at the waterward edge of the floating dock, will secure timber float stops used to ensure the floating dock remains elevated at least eighteen inches off of the substrate. (Test., J Hilts, 1/21/15, pp. 33-35.)
11. Impacts caused by the installation and ongoing presence of the pilings will be minimal and largely confined to the footprints of the pilings. During the installation of the pilings, there will be some disturbance to habitat in the area immediately surrounding the pilings. This disturbance includes turbidity in the water comparable to the turbidity caused by a wave breaking on a beach. Mr. Zajac testified that, because the area is dynamic, and because the amount of dust and rock debris from drill cuttings would likely be small and dissipate through wave action, it was not necessary to prohibit installation of the proposed structure during shellfish spawning season. The Bureau of Aquaculture did not recommend any seasonal restrictions on installation. (Test., R. Zajac, 1/23/15, pp. 61-63, 84, J. Roberge, 1/21/15, pp. 153-155, 158.)
12. Once the pilings are installed, a small area of habitat within the footprint of the piling in the sandy overburden above the rock ledge will be removed. This habitat loss will not affect the function of the community of organisms near the pilings. Organisms will continue to live in the area near the pilings. Impacts to circulation and sediment transport will also be localized and limited. During severe storms, the area within a few inches of each pile may experience scouring, returning to its normal condition over the next few tidal cycles. This scouring will have no permanent impact on water quality or erosion. Because the pilings will have essentially no impact on sediment transport, they will not impact the transport of sediments

to the beach south of the Property. (Test., J. Roberge, 1/21/15, pp. 153-155, 158, R. Zajac, 1/23/15, pp. 61-63.)

13. The pier that is supported by the pilings will be ten feet above mean sea level. Because it is elevated, light will be able to reach under the pier and no organisms will be adversely impacted. (Test., J. Hilts, 1/21/2015, p. 32, R. Zajac, 1/23/2015, pp. 60-61.)
14. Because the floating dock is required to remain eighteen inches or more off of the substrate, it will not smother any organisms living on or in the substrate. Finfish will have access to the area underneath the floating dock and can continue to utilize that habitat. The shading caused by the floating dock will not have any adverse environmental impact. There is no environmental impact caused by the 160 square foot floating dock as compared to a 100-square foot floating dock. The additional sixty square feet of shading caused by the larger float is not considered to have a significant impact. (Test., K. Romero, 1/23/15, pp. 31-32, R. Zajac, 1/23/15, pp. 66-67.)
15. Department staff determined that the project will have no unacceptable adverse impacts on two of the three coastal resources in the area of the proposed structure: the coastal hazard area and coastal waters. The proposed structure is also in an area of rocky shorefront. This coastal resource will be impacted by the removal of rock in the area of the proposed floating dock. (Ex. DEEP-20.)
16. The Application proposes the removal of up to five cubic yards of stone to enable the installation of the float stops. The removal of this amount of stone will have no adverse environmental impacts and is insignificant to the scope of the overall habitat. (Test., R. Zajac, 1/23/15, pp. 68-69.)
17. At low tide, the water surrounding the proposed floating dock will be approximately nineteen to twenty-four inches deep. Once or twice per month, periods of low water more pronounced than typically low tide conditions will require any vessel using the floating dock to be moved to deeper water. (Test., J. Hilts, 1/21/15, pp. 43-44, 46-47.)
18. The proposed fixed pier, ramp and floating dock will not impact the ability of vessels to navigate the area. The area is a no wake zone and is heavily used by recreational boaters in vessels of all types. Although there are more than one hundred moorings in the vicinity of the proposed structure, the closest mooring is estimated to be over 100 feet away. Vessels navigating the area must already navigate around the fixed pier, ramp and floating dock and stone outcropping located on the Manning property, and the construction of this structure will have no additional impact. (Ex. DEEP-20; test., J. Roberge, 1/21/15, p. 129.)
19. Access to areas held in the public trust will be preserved. The fixed pier will provide clearance of five feet from the substrate at the mean high water line, offering public trust

access beneath the structure. The fixed pier extends only to mean low water, limiting its encroachment into the public trust. (Ex. DEEP-20; test. J. Hilts, 1-21-15, pp. 191-192.)

20. The proposed structure will be able to withstand severe weather, including the 100-year storm.⁴ For the purposes of the Application, full engineering plans for the dock have not been prepared, nor are they required. However, Mr. Roberge testified that he was satisfied that “a detailed engineering design could be made to fit within the general geometry” of the proposed structure. Because of the proposed elevation of the fixed pier, it will be inundated during the 100-year design storm. While it is important that this structure can weather the design storm, it will experience more severe forces during storms in which it is not inundated, but is instead subject to wave action. The proposed structure, including the floating dock, can be designed to withstand these storm forces. (Test., J. Roberge, 1/21/15, pp. 147-149.)
21. During predicted storm events, the floating dock can be removed and relocated for safe storage. The ramp connecting the pier and the float can either be hung horizontally using hardware on the pilings or removed. The Applicant also intends to remove the floating dock during the winter months when it is not in use. (Test., J. Hilts, 1/21/15, pp. 36-37.)
22. A condition in the draft permit requires that “[t]he [Applicant] shall ensure that any vessel utilized in the execution of the work authorized herein shall not rest on, or come into contact with, the substrate at any time.” Other conditions prevent a barge from being stored over intertidal flats, submerged aquatic vegetation or tidal wetlands vegetation, requires any vessel that becomes grounded to be feed without dragging or prop dredging and requires that a copy of the permit be provided to any marine contractors hired to construct the proposed structure. These conditions are sufficient to prevent impacts to the substrate and any organisms living therein.⁵ Marine contractors are able to comply with these conditions. (Ex. DEEP-9; test., J. Hilts, 1/21/15, pp. 62-63, 132-133.)
23. The Applicant considered several alternatives including: installing the proposed structure, with a slightly longer fixed pier, closer to the Property’s southern boundary, an alternative rejected because of possible interference with the littoral rights of other property owners; installing the structure closer to the Manning property to the North, an alternative rejected because it would likely create a conflict with the existing Manning pier, ramp and float; a structure similar to the one proposed, but with a longer pier to provide greater water depths at low tide, an alternative rejected because it would result in a greater encroachment into public trust waters and the potential for additional impacts to shellfish; a traditional mooring, an alternative rejected because of additional impacts to the benthic community caused by the

⁴ At the public hearing, many Bell Island residents expressed concern that the proposed structure would not withstand severe weather and could break loose or become a projectile, damaging surrounding properties.

⁵ At the public comment hearing, members of the public requested that the barge only be allowed on site for a period one hour before high tide to one hour after high tide. This period would not provide sufficient time to work on the dock and provides no additional protections not already provided by the existing special conditions in the Draft Permit.

tackle and swing radius of a mooring chain⁶; and, constructing no dock, an alternative rejected because it prevented the Applicant from using its littoral right to access the waters of Long Island Sound. Department staff was satisfied with the Applicant's analysis of alternatives and the alternative chosen. (Exs. APP-1, DEEP-4, 12, 20; test., K. Romero, 1/21/15, pp. 183-185, 253-254, J. Hilts, 1/21/15, pp. 47-49, 130-132, J. Roberge, 1/21/15, pp. 183-185, M. Aurelia, 1/23/15, pp. 145-146)

24. Michael Auriela, who testified as an expert witnesses on behalf of the BIIA, identified two primary areas of concern: adverse impacts to the public shellfish bed in front of the property; and, impacts on the ability of shorebirds to use the area for foraging. (Test., M. Aurelia, 1/23/15, pp. 108, 113, 115.)
25. As to the public shellfish bed, Mr. Auriela stated that his primary concern was, "that the general public is less likely to shellfish under a dock because it's there. They're concerned that they might get yelled at by the adjacent property owner. . . . [P]eople usually don't shellfish near docks. I'm not exactly sure why. They usually shellfish in more open areas." When asked to explain his opinion further, Mr. Auriela agreed that no physical barrier prevented the public from accessing the shellfish beds and indicated that people will stay away "[b]ecause of the docks. Because of the structure, there's a reluctance of clammers to go near the structure because especially in this location, they will get yelled at by the owner." Mr. Auriela indicated he had no knowledge of whether owners of the Property or other nearby properties had tried to discourage shell fishing in the past. When asked if his testimony on this point was "somewhat speculative," he responded "[y]es . . . [b]ut it's based on experience." Mr. Aurelia indicated that less shell fishing would not result in increased population of shellfish because they would be relocated by the shellfish commission. Mr. Aurelia further testified that he was "concerned that the disturbance associated with the installation of . . . piles could impact the spawning of shellfish if it occurred during the wrong time of the year, depending on the duration and the number of things that were happening when – when the barge and drilling is going on." (Test., M. Aurelia, 1/23/15, pp. 107-108, 124-125.)
26. Mr. Aurelia also testified that he believed construction of the proposed structure would "double" the impact on shorebird foraging habit already caused by the Manning dock. Mr. Aurelia testified that shorebirds do not nest in the area, but nest on islands nearby and forage over a wide area, which varies, depending on the size of the bird. Mr. Aurelia identified the "great egret, snowy egret, American oyster catcher, black-crowned night heron, a few yellow-crowned night heron" as sensitive shorebirds that are likely to nest on nearby islands and use the area for foraging. Mr. Aurelia testified that most of these birds are "very sensitive to human intrusion, especially elevated human intrusions, so that when people go out on the dock . . . they're going to flush and go somewhere else." Mr. Zajac also testified regarding shorebird foraging. It was his opinion that the presence of the dock would not impact the

⁶ A mooring was also determined to be an inadequate alternative because it is a right broadly available, even to those who do not own waterfront property, and is therefore not equivalent to the littoral right to have a dock.

ability of shorebirds to forage in the intertidal area. Of particular concern to Mr. Aurelia was the potential for other structures, in addition to the Manning dock and the proposed structure, to be constructed in this area. He testified that, to his knowledge, this area was not the exclusive foraging area for any particular species of shorebird. Mr. Aurelia testified that this area, “has the potential for a lot more docks which would eliminate this area in my opinion as a foraging area,” but testified that he did not know if other nearby property owners were planning to construct docks. (Test., M. Aurelia, 1/23/15, pp. 113-116, 131-133, M. Zajac, 1/23/15, p. 72.)

III.
CONCLUSIONS OF LAW

A
The Applicant’s Burden

The activity proposed in the Application, as conditioned by the proposed Draft Permit, is regulated by the Structures, Dredging and Fill Act (General Statutes §§ 22a-359 through 22a-363) and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112.) This statutory framework requires a balancing of interests and requires applicants to minimize impacts to coastal resources. The proposed activity, the construction of the proposed structure, will provide the Applicant with reasonable access to the water while balancing intrusions into the public trust and limiting environmental impacts. The Application and evidence presented during the hearing supports the assertion that the Applicant’s exercise of its littoral right to wharf out can be achieved while minimizing impacts to coastal resources, wildlife, navigation, and coastal sedimentation and erosion patterns.

The record supports the factual findings and conclusions based on those findings that potential environmental impacts from the proposed project have been sufficiently minimized and that the project is consistent with applicable policies regarding coastal resources management satisfy the Applicant’s burden in this matter.

1
The Applicant's Littoral Rights

The littoral right of waterfront property owners to erect structures to reach navigable waters is well settled.

The owner of the adjoining upland has certain exclusive yet qualified rights and privileges in the waters and submerged land adjoining his upland. He has the exclusive privilege of wharfing out and erecting piers over and upon such soil and of using it for any purpose which does not interfere with navigation, and he may convey these privileges separately from the adjoining land. He also has the right of accretion, and generally of reclamation, and the right of access by water to and from his upland.

Rochester v. Barney, 117 Conn. 462, 468 (1933). These rights are qualified; the qualifications are formulated in statute that govern applications for structures waterward of the state's CJL.

The applicants are owners of waterfront property and are entitled to access water from the upland. The waterfront property owner has the exclusive right to erect a pier and use it for "any purpose." *Rochester v. Barney*, supra, 117 Conn. at 468. That right is not diminished because the proposed structure will not reach depths of water sufficient for the berthing of a vessel in all tidal conditions. If waterfront property owners were required to reach deeper water to exercise their littoral rights, they would consistently argue for lengthy piers to provide full access to deep water even when they deem such access to be unnecessary to meet their goals. Longer piers may provide full access to navigable water but would unnecessarily impact coastal resources, navigation, and public recreational use.

The Applicant's littoral rights are subject to reasonable restriction. Connecticut courts have recognized that "the state may regulate [the exercise of littoral rights] in the interest of the public" and that the littoral rights of a property owner are "subordinate to the public rights." *Lane v. Comm. of Env'tl. Protection*, 136 Conn. App. 135, 157-158 (2012). The Department is the authority charged by the General Assembly with regulating littoral rights, and the record reveals that, within

the statutory structure created, the Department seeks to ensure that an application minimizes incursion into the public trust, does not impact sedimentation or increase erosion, minimizes impacts to identified coastal resources, does not degrade visual quality through the significant alteration of natural vistas or viewpoints, does not adversely impact the navigation of vessels in the area, and can withstand storms and natural disasters without causing injury to persons or property. Department staff appropriately sought a balance that allowed the Applicant to exercise its littoral rights while respecting the public's rights and privileges.

2

STATUTORY STANDARDS

a

Applicable Statutory Standards

To satisfy its burden, the Applicant must demonstrate compliance with two sets of statutory standards, contained in the Structures, Dredging and Fill Act and the Coastal Management Act. The Structures, Dredging and Fill Act requires that the Department give due regard for indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreation purposes, the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality, recreation use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned. General Statutes § 22a-359.

The Coastal Management Act includes several general policy statements and requirements regarding the management of Connecticut's coastal resources and the review of proposed structures in coastal areas, including:

- i. Section 22a-92(a)(1), which requires that the development, preservation or use of the land and water resources of the coastal area will 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;

- ii. Section 22a-92(a)(2), which requires the preservation and enhancement of coastal resources;
- iii. Section 22a-92(a)(3), which requires that high priority and preference be given to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters;
- iv. Section 22a-92(b)(1)(D), 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;
- v. Section 22a-92(b)(2)(F), which requires the management of coastal hazard areas so as to ensure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion problems except in those instances where structural alternatives prove unavoidable and necessary to protect existing inhabited structures, infrastructural facilities or water dependent uses;
- vi. Section 22a-92(b)(2)(I), which requires the regulation of shoreland use and development in a manner which minimizes adverse impacts upon adjacent coastal systems and resources.
- vii. Section 22a-92(c)(2)(A), which sets forth policies concerning coastal land and other resources within the coastal boundary, including the management of estuarine embayments so as to ensure 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.

In light of the overlapping statutory requirements, my analysis of the proposed structure's compliance with the applicable statutes focuses on the major topics highlighted within the exhibits and testimony in the record and the post-hearing filings.

b
Expert Testimony

When considering technically complex issues, administrative agencies typically rely on experts, as I do here. See *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78 (2004) (determination of impacts to an inland wetland is a technically complex matter for which inland wetlands commissions typically rely on evidence provided by experts). “When the application of agency regulations requires a technical, case-by-case review, that is precisely the type of situation that calls for agency expertise.” *MacDermid v. Department of Environmental Protection*, 257 Conn. 128, 139 (2001). Mr. Hilts, Mr. Roberge, Mr. Zajac and Ms. Romero were all asked whether, in their expert opinion, the proposed structure complied with each criteria or policy identified above. Each responded that the proposed structure complied. These expert opinions were credible and provide a substantial basis in fact upon which to base my recommendation. The analysis that follows is intended to amplify the general conclusions reached by these experts and provide context for my recommendation that the proposed Draft Permit should be issued.

c
The Public Trust

The application minimizes impacts on the right of the public to access public trust areas near the proposed structure. The proposed structure provides sufficient clearance from the rocky shorefront to allow members of the public to pass beneath it. The overall length of the structure was reduced during the permitting process to minimize its intrusion into waters held in the public trust. Department staff considered alternative locations and configurations of the proposed structure before determining that the design tentatively approved appropriately balanced the rights of the applicant and the public.

d

Impact to Sedimentation and Erosion

The proposed structure is pile-supported and will have little impact on sediment transport or the erosion of the intertidal zone or upland areas. The temporary suspension of sediments caused by the pile installation will not result in significant sedimentation that would disrupt the coastal circulation patterns in the area near the proposed structure. General Statutes § 22a-361. The only identified impact on the transportation of sediment is limited scouring of the substrate in the immediate vicinity of the pilings during severe weather. As the proposed structure is in an area with regular wave action, any impacts to water quality or the substrate in this area will be resolved in the span of several tidal cycles. The proposed structure will have no impact on the transportation of sediment to the nearby beach used by Bell Island residents. The Application appropriately minimizes any impacts to sediment or erosion, causing only extraordinarily minor impacts for a very short duration.

e

Impact to Coastal Resources

The identified coastal resources on the site are coastal hazard area, rocky shorefront and coastal waters. The Applicant has met its burden to show, through the presentation of substantial evidence, that the proposed activity, as conditioned by the Draft Permit, minimizes impacts to these coastal resources in compliance with General Statutes §§ 22a-92(a)(2), 22a-92(b)(2)(B) and 22a-92(b)(2)(F). Department staff determined, in their expert opinion, that there would be no unacceptable adverse impacts to the coastal hazard area or coastal waters, and I rely on their conclusion. Although the rocky shoreline will be impacted by the removal of a small amount of stone in the area of the floating dock, the substantial evidence in the record indicates that this impact is insignificant, given the relatively small amount of rock that is to be removed. Removal

of this rock is necessary to position the dock in the middle of the Property, increasing setbacks from abutting properties and minimizing potential conflicts with vessels using the Manning dock. Any impact to the rocky shorefront caused by the removal of rock, when balanced against the benefits from positioning the proposed structure in the center of the Property and the Applicant's littoral rights, has been sufficiently minimized.

The applicable statutory scheme also indicates that "degrading visual quality through significant alteration of the natural features of vistas and viewpoints" is included within the definition of "adverse impact to coastal resources." General Statutes § 22a-93(15)(F). This section is intended to preserve views of particular statewide significance. See *Coen v. Ledyard Zoning Comm'n*, 2011 Conn. Super. LEXIS 2663 (Conn. Super. Ct., Oct. 19, 2011)(affordable housing development did not degrade view of coastal resource despite being forty-feet in height and exceeding zoning regulations by five feet). No views of statewide significance were identified that would be impacted by the proposed structure.

Development which changes a view does not necessarily have an adverse impact. *Smith v. Zoning Bd. of Appeals*, 1991 Conn. Super. Lexis 771 (Conn. Super. Ct., 1991). The area around the proposed structure is residential, densely developed with homes. If the Property were viewed from the water, the masonry seawall and Manning dock would be prominent. Given this context, the proposed structure does not represent a significant alteration of any natural features and will have only minimal impact on views.

f
Impacts to Navigation

The substantial evidence in the record demonstrates that the proposed structure minimizes impacts to navigation. General Statutes § 22a-361. Anyone operating a vessel in the area would have to avoid the swim buoys and swim float maintained by BIIA, the large mooring field

waterward of the proposed structure and the Manning dock. A vessel traveling north, circumnavigating Bell Island in a counter-clockwise direction, would already have to move away from shore and travel between the end of the Manning dock and the mooring field, to avoid the Manning dock and a natural outcropping in the shoreline to the north. The proposed structure will not significantly alter that route and will have only minimal impact on navigation.

g
Storm Forces

The Coastal Management Act also requires development to proceed in manner that minimizes hazards to life and property. General Statutes § 22a-92(a)(5). The ability of the structure to weather storms was also of significant concern during the public hearing, with several members of the public commenting on boats that had become unmoored and crashed into the seawall. The fixed pier can be engineered to withstand significant storm forces, including the 100-year storm and more frequent storms which will impart significant wave loads on the structure. The proposed floating dock and ramp can also be designed to withstand these forces and can also be removed in the event that a significant storm is predicted. The substantial evidence in this record demonstrates that the proposed structure has been conceptually designed in such a way as to minimize potential hazards to life and property.

B
The Intervening Party's Claims

The BIIA has been granted status as an intervening party in this matter, pursuant to General Statutes § 22a-19 of the Connecticut Environmental Protection act of 1971 (CEPA). As stated in more detail in a ruling dated December 12, 2014, BIIA's standing in this matter was limited to those issues upon which they made allegations that unreasonable pollution, impairment or

destruction of the natural resources of the state was likely to occur. Those allegations that satisfied this standard concerned alleged impacts to the benthic community and to shorebirds.

Throughout the hearing and in its post-hearing filing, the BIIA argues that the Draft Permit should not be issued or, if it is issued, extensively modified. The BIIA makes four arguments: (1) that the proposed structure will impact shellfish and shell fisherman in the area near the proposed structure; (2) that there will be unreasonable environmental harm to shorebirds that forage in the area where the proposed structure will be constructed; (3) that approval of the 160 square foot floating dock, a departure from published guidelines, was improper; and, (4) that the Department has failed to consider the cumulative impact of the proposed structure and other structures that could possibly be constructed in the future. The BIIA has standing to raise only the first two claims listed above, as those are the only claims about which the BIIA made specific factual allegations that the proposed activity is reasonably likely to result in unreasonable environmental harm as required to convey standing pursuant to General Statutes § 22a-19 (CEPA)⁷. Evidence on the BIIA's third and fourth claims was accepted into the record and a significant portion of its post-hearing filing is used to argue these claims. Although it is not absolutely necessary that I do so, I address these claims to show that even if they were properly raised, they are not claims upon which the BIIA can prevail.

1
Applicable Legal Standards

To prevail, a party intervening pursuant to CEPA must demonstrate that it is reasonably likely that unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state. § 22a-19(b). The BIIA asserts, based on the opinion of Mr.

⁷ The BIIA did not seek standing pursuant to the Department's Rules of Practice, which may have allowed additional latitude to raise some of its additional claims.

Aurelia, that “[a]n environmental impact that can be avoided is unreasonable.” This is not, however, the appropriate legal standard. In 2002, our Supreme Court held that, “[i]t is clear that the legislature did not intend for a plaintiff to be able to establish a prima facie case under CEPA on the sole basis that the defendant's conduct was causing something more than a *de minimis* impairment.” *City of Waterbury v. Town of Wash.*, 260 Conn. 506, 553 (Conn. 2002). Instead, when “the legislature has enacted an environmental legislative and regulatory scheme specifically designed to govern the particular conduct that is the target of the [intervention], that scheme gives content to the meaning of the word ‘unreasonable.’” *Id.* at 557. To read CEPA in the way suggested by the intervening party would allow the Applicant only the affirmative defense that, although an impact is avoidable, the alternatives which avoid it are not feasible and prudent. However, our Supreme Court has unambiguously stated that, “we do not interpret the term “unreasonable” in such a way as to relegate defendants in CEPA actions to the *sole* affirmative defense that there was no feasible and prudent alternative to their conduct.” *Id.* at 559. Instead, “when the legislature has enacted a specific statutory scheme concerning conduct that is later complained of, it also intended that a party be able to offer evidence of compliance with that statute which, if believed, would rebut a prima facie showing under CEPA.” *Id.*

2

Impacts to Shellfish and Shell Fishermen

The BIIA argues that the proposed structures will diminish the size of the area available to shell fishermen and the construction of the proposed structures during spawning season has the potential to impact the spawning of shellfish. The claim that the proposed structure will diminish the size of the area available to shell fisherman is based on Mr. Aurelia’s testimony that shell fishermen are less likely to venture into areas near residential docks, even if those areas are open for shell fishing. By Mr. Aurelia’s own admission, this testimony is speculative, as it is premised

on the notion that the owner of the Property will take action to prevent shell fishing near the proposed structure, even though there is no evidence in the record to support such a claim. “Such speculation is insufficient to demonstrate that the proposed activity is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.” *Oppenheimer v. Redding Conservation Comm'n*, 2003 Conn. Super. LEXIS 3456, 15-17 (Conn. Super. Ct. Dec. 15, 2003)(expert testimony “strewn thick with speculation,” identified by use of words like “potential” “can” or “could,” cannot support a finding of unreasonable environmental harm). The fixed pier portion of the structure has room for members of the public to walk beneath it to access public trust areas. The public shellfish beds are open only from November 1 to May 1. The Applicant has indicated it intends to remove the floating dock and stow or remove the aluminum ramp seasonally. During most of the time the shellfish bed is open, the floating dock and aluminum ramp will be stowed or removed and not impede access in any way.

The BIIA also fails to identify any unreasonable environmental harm that may be caused, assuming *arguendo* that shell fishing activity declined in the vicinity of the proposed facility. Mr. Aurelia speculates that this may cause the local shellfish commission to intervene and move shellfish to different locations. This type of management activity, however, is not directly attributable to the activity proposed by the Application and does not, on its face, constitute unreasonable environmental harm.

The BIIA also claims that construction of the proposed structure has the potential to impact the spawning of shellfish, premised on Mr. Aurelia’s testimony. Again, Mr. Aurelia’s testimony is speculative, indicating he is “concerned” that installation of the piles “could” impact spawning shellfish. The testimony of the Applicant’s expert Mr. Zajac and the evidence in the record

regarding the conclusions reached by the Bureau of Aquaculture contradict Mr. Aurelia's conclusions. The Bureau of Aquaculture made no recommendation as to any restrictions on the timing of construction of the proposed structure. The Bureau of Aquaculture has no interest in whether the proposed structure is permitted. I find their silence on this issue to be persuasive.

During construction, any work barge brought to the site is prohibited from resting on the substrate. This condition will prevent unintended adverse impacts to shellfish otherwise possible during construction from the weight barge itself or turbidity caused by the barge disturbing the substrate.⁸

The BIIA has not satisfied its burden of proof as there is no credible evidence in the record that reveals that the proposed structure, if constructed as permitted, is reasonably likely to unreasonably pollute, impair or destroy shellfish in the area of the proposed structure.

3 *Impacts to Shorebirds*

The BIIA's next claim is that additional docks on the south side of Bell Island will interfere with the ability of shorebirds to forage in the area. The BIIA claims that, "[e]ven adding one dock on the south side of Bell Island doubles the impact of the dock on the Manning property."

To satisfy their burden, the BIIA must demonstrate both that environmental harm is reasonably likely and that the harm itself will be unreasonable. There is no evidence in the record that any other dock is planned for the south side of Bell Island. Testimony regarding cumulative impacts in this matter is speculative, as the witnesses have no particular knowledge of the intent

⁸ The BIIA urges modification of the Draft Permit to include more specific restrictions on hours of operation, presumably to provide additional assurances that the construction barge will not rest on the substrate. I find the conditions already in the Draft Permit to be sufficiently protective. I also note that, in determining whether to grant a permit, I may not assume that permit conditions will be violated. *Waste Management v. New Milford Zoning Comm'n*, 1994 Conn. Super. Lexis 1064 (Conn. Super. Ct., 1994). Compliance with the permit condition as drafted will eliminate any impacts that could be caused by the construction barge.

of any property owner other than the Applicant. As noted above, such speculation is insufficient to satisfy the BIIA's burden. *Id.* at 15-17. The BIIA has failed to establish that it is reasonably likely other structures will be constructed on the south side of Bell Island. Because there has been no *prima facie* showing that the alleged environmental harm is reasonably likely, I need not consider whether the cumulative impact of yet to be proposed structures would cause unreasonable environmental harm.

Instead, I must constrain my inquiry to the environmental impact of the proposed structure. The record, including Mr. Aurelia's testimony, indicates that shorebirds forage over a wide area, and are resilient in their ability to find food. There is no evidence that this area is of any particular significance for foraging shorebirds, nor is it the exclusive foraging ground of any species.

To determine if any impacts caused by the proposed structure are unreasonable, they must be viewed in light of relevant statutory and regulatory schemes. *Waterbury v. Washington*, *supra*, 260 Conn. 557 (2002). The Structures, Dredging and Fill Act allows the construction of structures that traverse the areas where shorebirds are likely to forage to reach the waters of Long Island Sound. Some minor impacts on the ability of shorebirds to forage is inevitable in the context of this statutory regime. In this matter, the impacts to shorebird foraging caused by the proposed structure are so minor as to be considered *de minimis*, and certainly do not rise to the level of unreasonable.⁹

⁹ Mr. Aurelia stated, and the BIIA argues, that the impact of the proposed structure will "double" the impact of the Manning dock. The impact of the Manning dock on foraging shorebirds was not quantified in any meaningful way as to make this analysis useful. It is entirely possible that the Manning dock has had such a minor impact on foraging shorebirds that, even if that impact were to double, it would still be *de minimis*. It is also quite possible the impact will not double. If, for example, shorebirds stay a certain distance away from residential dock structures, adding a second structure in the immediate vicinity will not double the area shorebirds avoid, as there is likely to be significant overlap in the area avoided by shorebirds, a pattern similar to a Venn diagram.

The evidence in the record reveals that potential adverse impacts to foraging shorebirds are neither reasonably likely nor unreasonable in light of the relevant statutory scheme. For these reasons, the BIIA has failed to satisfy its burden.

4

The Size of the Floating Dock

The BIIA further claims that Department staff’s consideration of the 160-square foot floating dock, and its inclusion in the Draft Permit, was flawed because the relevant statutory scheme is vague and Department staff deviated from guidelines published by the Department which call for limiting floating docks to 100-square feet without sufficient justification. I disagree. The BIIA’s argument fails for several reasons, not the least of which is that it fails to identify any unreasonable environmental harm caused by the larger dock, which is its burden. “It is not enough to argue . . . that the size of the project alone satisfies this requirement.” *Criscuolo v. Conn. Dep’t of Env’tl. Prot.*, 2008 Conn. Super. LEXIS 2524, 10 (Conn. Super. Ct., 2008). In fact, the BIIA fails to identify *any* environmental impact caused by the additional sixty square feet of floating dock.

The BIIA argues that the statutory scheme concerning the permitting of the proposed structure is improperly vague. That issue, however, is not appropriate for this forum. I must determine only whether the proposed structure satisfies existing statutory criteria (there are, as the BIIA notes, not regulations with which the proposed structure must comply). A claim that the existing statutory scheme is vague is not one upon which I may base my decision. See *Ogden v. Zoning Board of Appeals of the Town of Columbia*, (2015) 157 Conn. App. 656 (June 9, 2015)(administrative agencies lack the authority to decided “void for vagueness” claims).¹⁰

¹⁰ A claim that statutory and regulatory schemes are so vague as to be unenforceable are, essentially, constitutional claims. Our Supreme Court recently held that, “[i]t would be pointless for us to require [a] party to bring his constitutional [vagueness] claim before [an administrative agency], as it is a well-established common-law principle

In the absence of specific statutory or regulatory criteria, the Department must exercise discretion in determining which floating docks should be approved. Although the Department has issued residential dock guidelines, those guidelines have not been promulgated as regulations and are not, therefore, rules of general applicability. Instead, those guidelines speak to what may typically be approved. In approving a floating dock of any size, whether it deviates from the guidelines or not, the Department must not abuse its discretion. An exercise of discretion is proper if the conclusion reached is supported by substantial evidence in the record. See *Town of Newtown v. Keeney*, 234 Conn. 312 (1995)(the substantial evidence test is the appropriate standard of review when considering an alleged abuse of the Department’s discretion).

The BIIA faults Department staff for not requiring a calculation regarding wind and wave exposure at the site, but the record indicates that such a calculation was unnecessary in this matter. The record indicates that, prior to determining a 160-square foot floating dock was appropriate for the site, Department staff reviewed application materials, viewed aerial photographs of the Property and had discussions on the subject which included staff members with particular knowledge of the area.¹¹ Department staff are experts on the evaluation of residential docks, and their determination, reached after review of relevant information, is substantial evidence upon which I may rely. “When the application of agency regulations requires a technical, case-by-case review, that is precisely the type of situation that calls for agency expertise.” *MacDermid v. Department of Environmental Protection*, 257 Conn. 128, 139 (2001). “An agency may rely on its

that administrative agencies lack the authority to determine constitutional questions.” (Internal quotation marks omitted.) *Ogden v. Zoning Board of Appeals of the Town of Columbia*, supra, 157 Conn. App. 666 (June 9, 2015).

¹¹ The BIIA notes that Susan Bailey, a staff member with whom the Application was discussed, did not testify at the hearing. Hearsay is permissible in administrative hearings and there is no reason to suspect that the content of this conversation was misrepresented. Furthermore, the BIIA could have sought to call Ms. Bailey as a rebuttal witness and did not do so.

own expertise in evaluating evidence within the area of its expertise.” *Connecticut Building Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991).

In making my recommendation, I am not limited to considering only the information used by Department staff. The additional evidence in the record includes the analysis prepared for the Manning permit, which shows the Property is exposed to a significant fetch, and Mr. Roberge’s opinion that a 160-square foot floating dock is appropriate for the site. Several Bell Island residents also commented as to the significant storm forces that impact the area, including photographs of boats smashed against the seawall.¹² I find Mr. Roberge’s testimony to be persuasive and the materials prepared for the Manning permit to be informative. Taken together, this evidence as well as Department staff’s expert opinion and the evidence upon which it was based, is substantial evidence to demonstrate that permitting a floating dock of 160-square feet is an appropriate exercise of the Department’s discretion.

5

Statutory and Regulatory Scheme

The BIIA’s final argument is that there are no statutory or regulatory criteria that require the Department to consider the cumulative impacts of docks on shorebirds or the aesthetics of the Connecticut Shoreline. The BIIA acknowledges that, “[n]o regulations have been promulgated and no criteria have been established.” Instead, the BIIA argues that the cumulative impact of multiple private docks will lead to “death by a thousand cuts.” In making this claim, the BIIA does not argue that unreasonable environmental harm is reasonably likely because of the activity proposed by *this* Application. For that reason, the BIIA cannot satisfy its burden on this claim.

¹² While public comment is not evidence in the record upon which I may ultimately rely, I may use it to guide my inquiry into a subject matter.

I further note that this issue is not one that is properly raised in the context of this hearing process on a specific permit application. Instead, it raises a policy question, best addressed to the Commissioner as part of an administrative rule making proceeding or to the General Assembly. I reiterate a point made in both my ruling on the BIIA's intervention and to the BIIA's attorney during the hearing: during this hearing process I may consider only whether the proposed activity satisfies existing statutory and regulatory criteria and whether the activity proposed by *this* Application is reasonably likely to result in unreasonable environmental harm.

6

Feasible and Prudent Alternatives

The BIIA suggests a shared dock or a mooring as feasible and prudent alternatives to the proposed activity. "By its plain terms, Conn. Gen. Stat. § 22a-19 (b) requires the consideration of alternative plans only where the commission first determines that it is reasonably likely that the project would cause unreasonable pollution, impairment or destruction of the public trust in the natural resource at issue." *Paige v. Town Plan & Zoning Comm'n*, 235 Conn. 448, 462-463 (1995).¹³ Because unreasonable pollution, impairment or destruction of the natural resources of the state is not reasonably likely as a result of the activities proposed, consideration of feasible and prudent alternatives is not required.¹⁴

¹³ Department staff considers alternatives when balancing the littoral rights of an applicant with the intrusion into the public trust. This analysis is different, and the purpose served is distinct, from a feasible and prudent alternatives analysis conducted pursuant to General Statutes § 22a-19 (b).

¹⁴ I note, however, that neither a shared dock nor a mooring are feasible and prudent alternatives to a residential dock because they do not accomplish the Applicant's purpose of exercising its littoral rights to wharf out and reach the waters of Long Island Sound from its Property. See *Samperi v. Inland Wetlands Agency*, 226 Conn. 575, 595 (1993)(Prudent alternatives are economically reasonable in light of the social benefits derived from the act); *Tarullo v. Inland Wetlands and Watercourses Commission of Wolcott*, 263 Conn. 572, (2003); *Manchester Environmental Coalition v. Stockton*, 184 Conn. 51, 62-63 (1981). Furthermore, the record indicates that the Department has no mechanism to require shared docks, and that a mooring may have a greater impact on shellfish than the proposed structure.

IV
CONCLUSION

The Department's tentative determination that the proposed activity should be permitted, as conditioned by the Draft Permit, is supported by the substantial evidence in the record. The Applicant has met its burden of proving, by a preponderance of the evidence, that the proposed activity should be permitted through the credible testimony of expert witnesses and the submission of documentary evidence as described above. The BIIA has failed to satisfy the burden placed on it by General Statutes § 22a-19. The substantial evidence in the record indicates that unreasonable environmental harm is not likely to occur if the proposed structure is constructed pursuant to the conditions in the Draft Permit.

V
RECOMMENDATION

For the reasons stated above, I recommend issuance of the proposed Draft Permit.



Brendan Schain, Hearing Officer

S E R V I C E L I S T

In the matter of Megrue – Cliff Place, LLC – Structures, Dredging and Fill Permit
Application No.: 201407131-KR

PARTY

REPRESENTED BY

The Applicant

Megrue-Cliff Place, LLC
5 Cliff Place
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Department of Energy and Environmental Protection

Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse
79 Elm St.
Hartford, CT 06106

Krista Romero
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Courtesy Copies

Bell Island Improvement Association
c/o Alan R. Spirer
P.O. Box 5201
Westport, CT 06880

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Westport, CT 06880
Ph: (203) 454-1999
arspirer@yahoo.com

PERMIT

Permit No: 201407131-KR

Municipality: Norwalk

Work Area: Sheffield Island Harbor off property located at
5 Cliff Place

Permittee: Megrue-Cliff Place LLC
Apax Partners, L.P.
601 Lexington Avenue, 53rd Floor
New York, NY 10022

Pursuant to sections 22a-359 through 22a-363g of the Connecticut General Statutes (“CGS”) and in accordance with CGS section 22a-98 and the Connecticut Water Quality Standards, effective February 25, 2011, a permit is hereby granted by the Commissioner of Energy and Environmental Protection (“Commissioner”) to install a dock for recreational boating access as is more specifically described below in the SCOPE OF AUTHORIZATION, off property identified as the “work area” above.

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

UPON INITIATION OF ANY WORK AUTHORIZED HEREIN, THE PERMITTEE ACCEPTS AND AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS PERMIT. FAILURE TO CONFORM TO THE TERMS AND CONDITIONS OF THIS PERMIT MAY SUBJECT THE PERMITTEE AND ANY CONTRACTOR TO ENFORCEMENT ACTIONS, INCLUDING INJUNCTIONS AS PROVIDED BY LAW AND PENALTIES UP TO \$1,000.00 PER DAY PURSUANT TO THE ADMINISTRATIVE CIVIL PENALTY POLICY DESCRIBED IN SECTIONS 22a-6b-1 THROUGH 22a-6b-15 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

SCOPE OF AUTHORIZATION

The Permittee is hereby authorized to conduct the following work as described in application #201407131-KR, including 5 sheets of plans sheets 1-3 dated March 10, 2014 and sheets 4-5 revised August 14, 2014, submitted by the Permittee to the Commissioner and attached hereto, as follows:

1. install a 4’ wide x 40’ long fixed pier, a 3’ wide x 40’ long ramp, and an 8’ x 20’ piling anchored floating dock; and

2. remove approximately 5 cubic yards of stones from a 65 square foot area at floating dock location.

SPECIAL TERMS AND CONDITIONS

1. Not later than two (2) 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 all contractor(s) employed to conduct such work and the expected date for commencement and completion of such work, if any.
2. At no time shall any barge be stored over intertidal flats, submerged aquatic vegetation or tidal wetland vegetation or in a location that interferes with navigation. In the event any barge associated with the work authorized herein is grounded, no dragging or prop dredging shall occur to free the barge.
3. The Permittee shall ensure that any vessel utilized in the execution of the work authorized herein shall not rest on, or come in contact with, the substrate at any time.
4. The Permittee shall file Appendix B on the land records of the municipality in which the subject property is located not later than thirty days after permit issuance pursuant to CGS Section 22a-363g. A copy of Appendix B with a stamp or other such proof of filing with the municipality shall be submitted to the Commissioner no later than sixty (60) days after permit issuance.
5. The Permittee shall give a copy of this permit to the contractor(s) who will be carrying out the activities authorized herein prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such contractor(s). The Permittee's contractor(s) shall conduct all operations at the site in full compliance with this permit and, to the extent provided by law, may be held liable for any violation of the terms and conditions of this permit. At the work area the contractor(s) shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
6. The Permittee shall post the attached Permit Notice in a conspicuous place at the work area while the work authorized herein is undertaken.
7. 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 access way other than as provided herein.
8. 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.

9. The Permittee shall install float stops or other such device to prevent the entire float surface from resting on the bottom at low water. Such structure shall be maintained in optimal operating condition for the life of the structure.
10. On or before ninety (90) days after completion of the work authorized herein, the Permittee shall submit to the Commissioner "as-built" plans of the work area showing all tidal datums and structures, including any proposed elevation views and cross sections included in the permit. Such plans shall be the original ones and be signed and sealed by an engineer, surveyor or architect, as applicable, who is licensed in the State of Connecticut.

GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within five (5) 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 thirty (30) days prior to said work completion date. Such request shall describe the work done to date, what work still needs to be completed, and the reason for such extension. It shall be the Commissioner's sole discretion to grant or deny such request.
 - 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 may not conduct work waterward of the coastal jurisdiction 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.
4. 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-363g.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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 Energy and Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127
(860) 424-3034
Fax # (860) 424-4054

11. 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 (3) 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.
12. 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.”

13. 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.
14. 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.
15. In the event the Permittee becomes aware that they 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.
16. This permit may be revoked, suspended, or modified in accordance with applicable law.
17. The issuance of this permit does not relieve the Permittee of their obligations to obtain any other approvals required by applicable federal, state and local law.

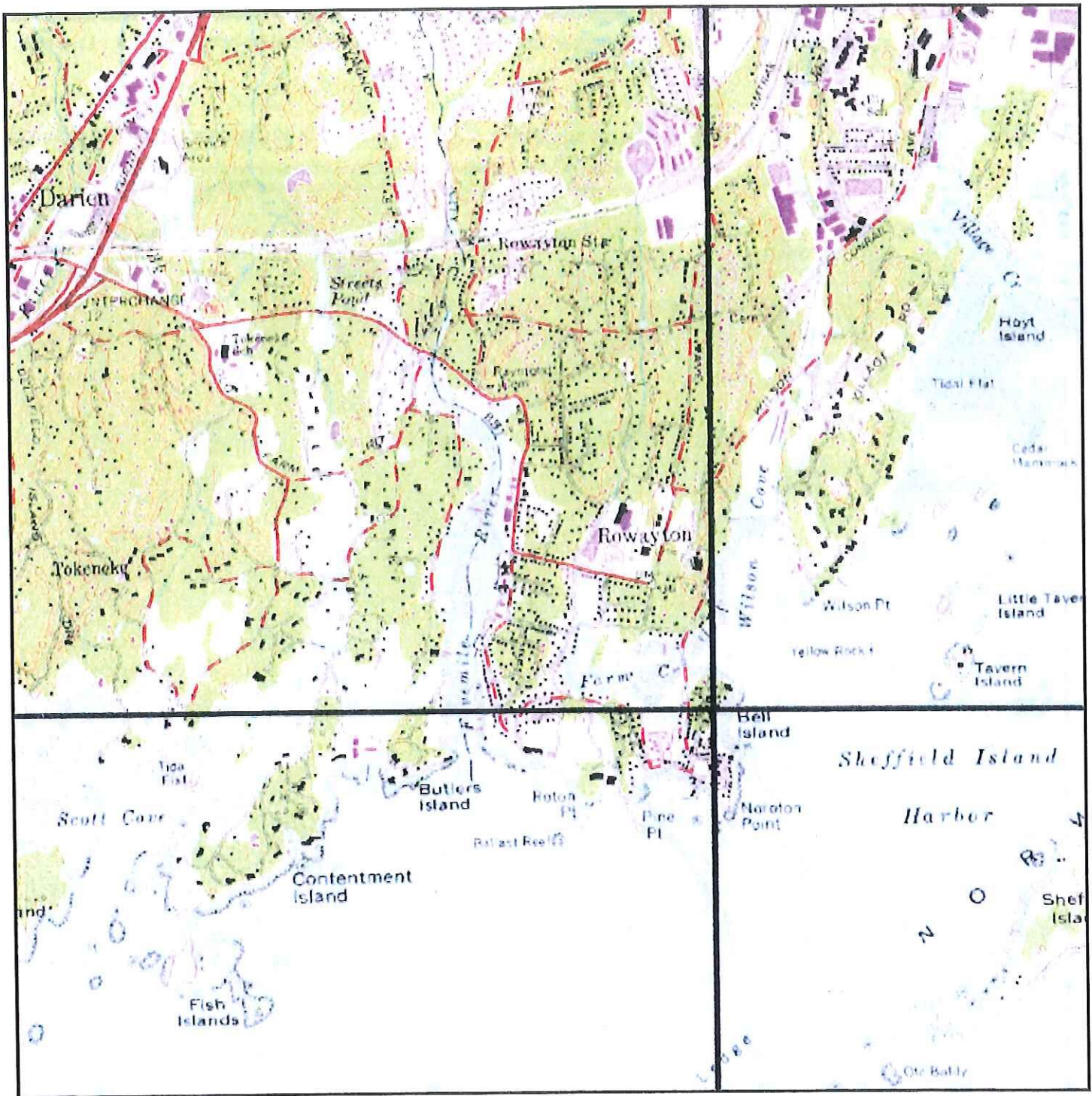
18. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state or local laws or regulations pertinent to the property or activity affected hereby.

Issued on _____, 2014

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Betsey C. Wingfield
Bureau Chief
Bureau of Water Protection and Land Reuse

Permit #201407131-KR
Megrue-Cliff Place LLC



VICINITY MAP

FROM U.S.G.S. NORWALK SOUTH QUADRANGLE MAP

SCALE: 1:24000

PURPOSE: PRIVATE RECREATIONAL BOATING
 DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988
 ADJACENT PROPERTY OWNERS: ROBERT MANNING, DOUGLAS HARNED
 APPLICATION PREPARED BY: JOHN HILTS P.O. BOX 47, ROWAYTON, CT 06853

PROPOSED PIER, RAMP AND FLOATING DOCK IN SHEFFIELD ISLAND HARBOR
 AT: 5 CLIFF PLACE, ROWAYTON (NORWALK), FAIRFIELD COUNTY, CONNECTICUT
 APPLICANT: MEGRUE-CLIFF PLACE LLC
 DATE: 10 MARCH 2014 SHEET 1 OF 5 REVISION NUMBER: DATE:



ASSESSOR'S MAP

FROM NORWALK ASSESSOR'S MAP 10SE

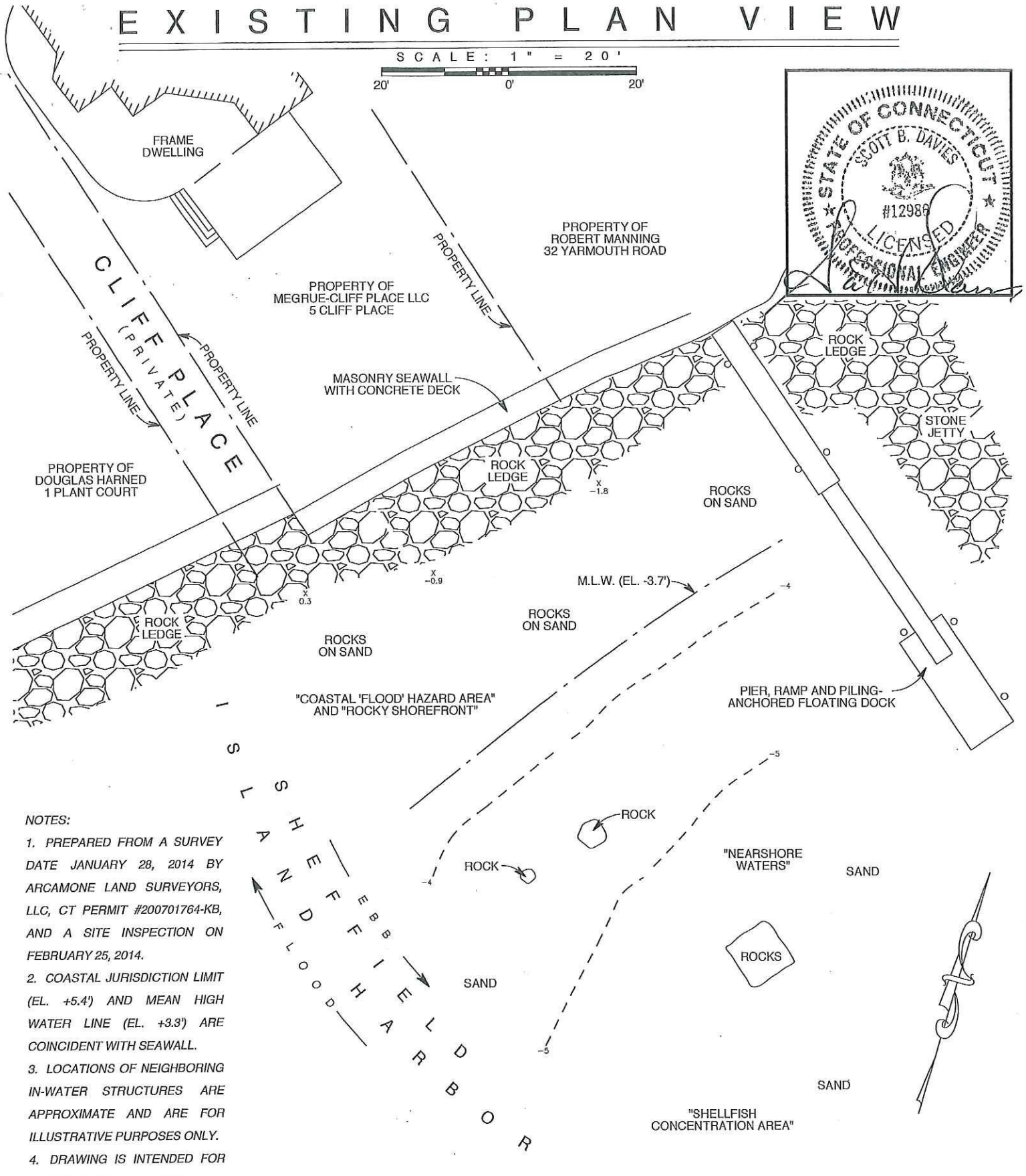
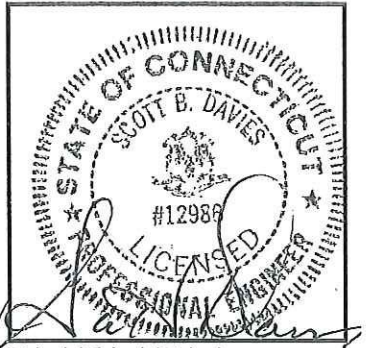
BLOCK 36 PARCEL 10

PURPOSE: PRIVATE RECREATIONAL BOATING
 DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988
 ADJACENT PROPERTY OWNERS: ROBERT MANNING, DOUGLAS HARNED
 APPLICATION PREPARED BY: JOHN HILTS P.O. BOX 47, ROWAYTON, CT 06853

PROPOSED PIER, RAMP AND FLOATING DOCK IN SHEFFIELD ISLAND HARBOR
 AT: 5 CLIFF PLACE, ROWAYTON (NORWALK), FAIRFIELD COUNTY, CONNECTICUT
 APPLICANT: MEGRUE-CLIFF PLACE LLC
 DATE: 10 MARCH 2014 SHEET 2 OF 5 REVISION NUMBER: DATE:

EXISTING PLAN VIEW

SCALE: 1" = 20'
 20' 0' 20'



NOTES:

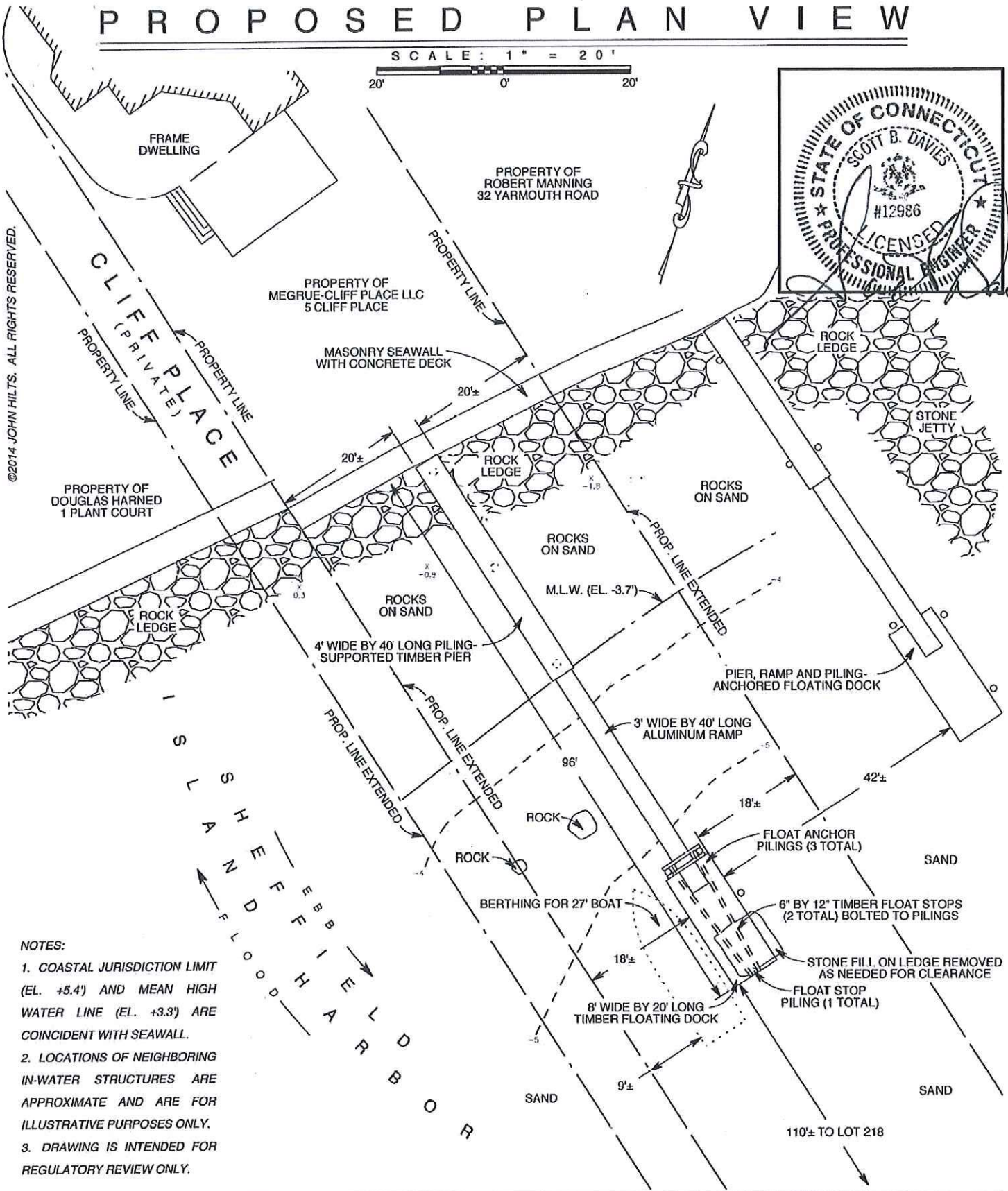
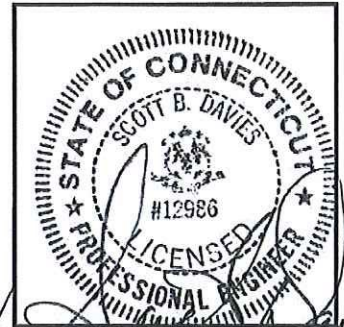
1. PREPARED FROM A SURVEY DATE JANUARY 28, 2014 BY ARCAMONE LAND SURVEYORS, LLC, CT PERMIT #200701764-KB, AND A SITE INSPECTION ON FEBRUARY 25, 2014.
2. COASTAL JURISDICTION LIMIT (EL. +5.4') AND MEAN HIGH WATER LINE (EL. +3.3') ARE COINCIDENT WITH SEAWALL.
3. LOCATIONS OF NEIGHBORING IN-WATER STRUCTURES ARE APPROXIMATE AND ARE FOR ILLUSTRATIVE PURPOSES ONLY.
4. DRAWING IS INTENDED FOR REGULATORY REVIEW ONLY.

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<p>PURPOSE: PRIVATE RECREATIONAL BOATING DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988 ADJACENT PROPERTY OWNERS: ROBERT MANNING, DOUGLAS HARNED APPLICATION PREPARED BY: JOHN HILTS P.O. BOX 47, ROWAYTON, CT 06853</p>	<p>PROPOSED PIER, RAMP AND FLOATING DOCK IN SHEFFIELD ISLAND HARBOR AT: 5 CLIFF PLACE, ROWAYTON (NORWALK), FAIRFIELD COUNTY, CONNECTICUT APPLICANT: MEGRUE-CLIFF PLACE LLC DATE: 10 MARCH 2014 SHEET 3 OF 5 REVISION NUMBER: DATE:</p>
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PROPOSED PLAN VIEW

SCALE: 1" = 20'



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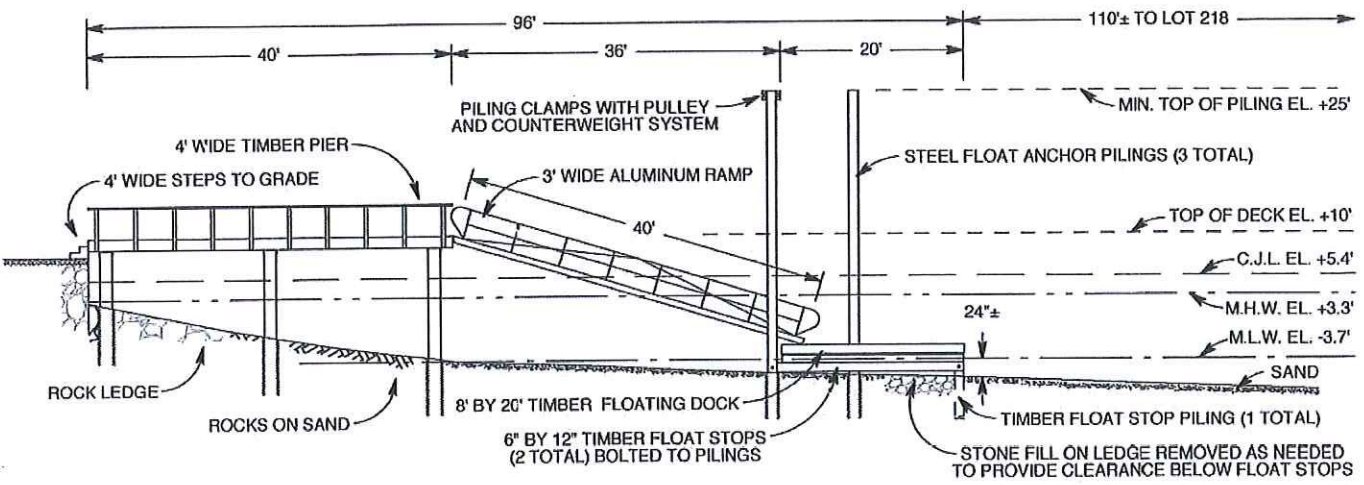
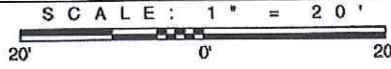
NOTES:

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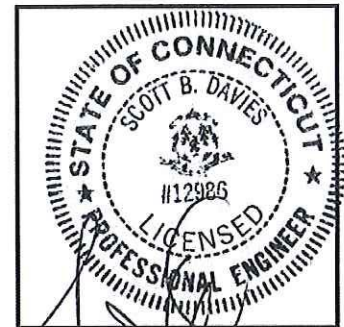
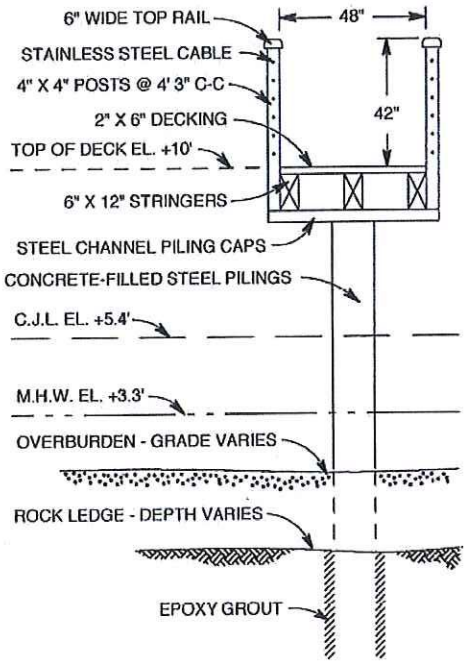
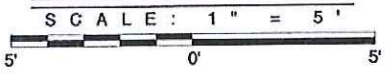
PURPOSE: PRIVATE RECREATIONAL BOATING
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AT: 5 CLIFF PLACE, ROWAYTON (NORWALK), FAIRFIELD COUNTY, CONNECTICUT
APPLICANT: MEGRUE-CLIFF PLACE LLC
DATE: 10 MARCH 2014 **SHEET 4 OF 5** **REVISION NUMBER:** 4 **DATE:** 8/14/14

PROPOSED ELEVATION

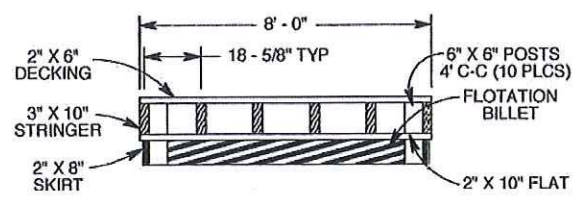
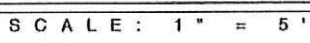


PROPOSED PIER SECTION



Scott B. Davies

PROPOSED FLOATING DOCK SECTION



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NOTE: DRAWINGS ARE FOR REGULATORY REVIEW ONLY.

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OFFICE OF LONG ISLAND SOUND PROGRAMS

APPENDIX A

**TO: Permit Section
Department of Energy and Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127**

PERMITTEE: Megrue-Cliff Place LLC
Apax Partners, L.P.
601 Lexington Avenue, 53rd Floor
New York, NY 10022

Permit No: 201407131-KR, Norwalk

CONTRACTOR 1: _____

Address: _____

Telephone #: _____

CONTRACTOR 2: _____

Address: _____

Telephone #: _____

CONTRACTOR 3: _____

Address: _____

Telephone #: _____

EXPECTED DATE OF COMMENCEMENT OF WORK: _____

EXPECTED DATE OF COMPLETION OF WORK: _____

PERMITTEE: _____
(signature) (date)



OFFICE OF LONG ISLAND SOUND PROGRAMS

APPENDIX B

NOTICE OF PERMIT ISSUANCE
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

To: Norwalk City Clerk

**Signature and
Date:**

Subject: 5 Cliff Place
Coastal Permit #201407131-KR

Pursuant to Section 22a-363g and Section 22a-361 of the Connecticut General Statutes, the Commissioner of Energy and Environmental Protection gives notice that a permit has been issued to Megrue-Cliff Place LLC, Apex Partners, L.P., 601 Lexington Avenue, 53rd Floor, New York, NY 10022 to:

1. install a 4' wide x 40' long fixed pier, a 3' wide x 40' long ramp, and an 8' x 20' piling anchored floating dock; and
2. remove approximately 5 cubic yards of stones from a 65 square foot area at floating dock location.

If you have any questions pertaining to this matter, please contact the Office of Long Island Sound Programs at 860-424-3034.

Return to:
Office of Long Island Sound Programs
State of Connecticut
Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106-5127



PERMIT NOTICE

This Certifies that Authorization to perform work below the Coastal Jurisdiction Line and/or within Tidal Wetlands of coastal, tidal, or navigable waters of Connecticut

Has been issued to:

Megrue-Cliff Place LLC

At this location:

5 Cliff Place, Norwalk

To conduct the following:

Install a dock and remove stones.

Permit #: **201407131-KR**

Issued on: **September xx, 2014**

This Authorization expires on: **September xx, 2019**

This Notice must be posted in a conspicuous place on the job during the entire project.

Department of Energy and Environmental Protection

Office of Long Island Sound Programs

79 Elm Street • Hartford, CT 06106-5127

Phone: (860) 424-3034 Fax: (860) 424-4054

www.ct.gov/deep