

IN THE MATTER OF : *APPLICATION NO 201501126-SJ*

GREGORY MELVILLE : *MARCH 31, 2016*

PROPOSED FINAL DECISION

I
SUMMARY

On February 17, 2015, Gregory Melville (Applicant) applied for the authorizations necessary 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 an aluminum gangway and floating dock. The Department's Office of Long Island Sound Programs (Department staff) reviewed the Application and prepared a Draft Permit (Appendix 1)¹. On August 17, 2015, a Notice of Tentative Determination, indicating that Department staff recommended the Application be approved as conditioned in the Draft Permit, was published in the Hartford Courant. A petition for hearing was received on September 15, 2015, and this hearing process was initiated.

The parties to this matter are the Applicant and Department staff. Although the petitioner and other members of an informal association referred to as Friends of Whalebone Cove actively participated in this matter, neither the petitioner nor any other individual or entity sought status as a party or intervenor. A site inspection was conducted on December 11, 2015. A public hearing

¹ The final Draft Permit, attached, has been modified since the publication of the Notice of Tentative Determination to incorporate changes to the proposed structure made during the hearing process. Those specific changes are discussed in footnote #3 below.

was held at the Lyme Town Hall on January 5, 2016, and written public comments were accepted until January 8, 2016. The evidentiary hearing was held on January 12 and 19, 2016.

At the evidentiary hearing, testimony from four expert witnesses was accepted into the record. Susan Jacobson testified on behalf of Department Staff. The Applicant called Keith Neilson, P.E., who designed the proposed structure and prepared the Application, 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 Richard Snarski, an expert on the evaluation of impacts to tidal and inland wetlands. 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 and expert testimony. Based on this review, I conclude that the Applicant has met its burden of proof by demonstrating by a preponderance of the evidence 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-361), the statutes and regulations concerning activities conducted in tidal wetlands (General Statutes § 22a-32 and Regs., Conn. State Agencies §§ 22a-30-1 through 22a-30-17) and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112). I have also reviewed and considered the many public comments I received, the overwhelming majority of which expressed opposition to the Application. While I respect the passion of those members of the public who participated in this process, in making my recommendation, I must apply the facts in the evidentiary record to the statutory and regulatory criteria referenced above. There is no evidence in the record which supports denial of the Application on the basis of those issues raised in the

public comments, and many of the public comments implicate issues outside the statutory and regulatory criteria relevant to the evaluation of the Applications. I therefore recommend issuance of the proposed Draft Permit (Appendix 1) as a final permit.

II

FINDINGS OF FACT

1. Gregory Melville is the owner of property known as 484 Joshuatown Road, in Lyme (Property). The Property is approximately 6.45 acres in size and is improved with a house, deck, garage and other accessory structures. Along its northwestern boundary, the Property has approximately 240 feet of frontage on Whalebone Cove and Whalebone Creek, a tidal, costal or navigable water of the state. (Ex. APP-1,2,9,10, DEEP-3,7.)
2. Neither Mr. Melville nor the Property has not been the subject of a DEEP enforcement action for unauthorized activities, and there are no unauthorized structures at the Property. Notice of the application was provided to all required parties at the time it was filed including the First Selectman of Lyme. (Exs. DEEP-3.)
3. The proposed structure is located in an area of emergent wetland vegetation, primarily comprised of *Zizania aquatic*, a tidal wetland plant. The coastal resources found at the site of the proposed activities include tidal wetlands, freshwater wetlands, submerged aquatic vegetation, wildlife, and finfish. No public vistas or viewpoints of statewide concern have been identified in Whalebone Cove. Both submerged and emergent aquatic vegetation are present in Whalebone Cove. (Exs. DEEP 3-4.)
4. Water in Whalebone Creek and Whalebone Cove flow west and empty into the Connecticut River. Route 148 and Ferry Road both run along the Cove and there are several single family houses along those roads and the Cove. Other than the Applicant's home, the closest occupied home is more than 600 feet from the proposed structure; the closest home on Ferry Road is approximately 900 feet away. A portion of the Silvio O. Conte Preserve, owned by the United States Fish and Wildlife Service, lies northwest of the Property and proposed structure. (Exs. APP-2, 6, 7 10, 13-16, DEEP-3.)
5. Land access to the public trust in the area along the Property is already extremely limited because the adjoining upland is privately owned and slopes steeply to Whalebone Creek and Whalebone Cove. The sediments in the intertidal zone are soft and the adjoining areas are steep and covered with vegetation, including briars, brambles and bittersweet, making passage by foot impractical. The use of motorized boats and personal watercraft is not prohibited on Whalebone Creek or Whalebone Cove. (Exs. APP-7, DEEP-3; test. S. Jacobson, 1/12/16.)

6. The Applicant proposes to construct a variety of improvements, only some of which lie waterward of the coastal jurisdiction line (CJL) and are subject to review by the Department.² Those activities regulated by the Department include: a ten foot by six foot pier supported deck, of which only nine square feet lie waterward of the CJL; a twenty-three inch wide, twenty-six foot long aluminum ramp extending from the deck; and a forty square foot floating dock, eight feet wide by five feet long, connected to the aluminum ramp, secured by four float anchor piles. Float stops are proposed to maintain eighteen inches of separation between the float and the substrate. The float anchor piles proposed are made of three inch diameter galvanized steel pipes, which slide into four inch diameter galvanized steel pipe sleeves which are embedded into the bottom sediments. No artificial lighting on the ramp or floating dock is proposed. (Draft Permit attached as Appendix 1.)³
7. The ramp, floating dock and float anchor piles will be removed seasonally, no later than November 15, and replaced no earlier than April 15. The sleeves into which the float anchor piles are secured will remain embedded in the bottom and be capped to prevent them from filling with sediment. (Draft Permit attached as Appendix 1.)
8. The aluminum ramp will span the emergent tidal wetlands vegetation and the use of open-grate decking will prevent impacts that could be caused by shading the vegetation. The proposed floating dock is situated beyond, and will not contact, the submerged aquatic vegetation. The proposed structure will have only negligible impacts on the wetlands. The proposed structure will impact the wetland less than if the site were used to launch personal watercraft and paddle craft without a dock on an ongoing basis, as launching from shore would likely cause the wetlands vegetation to be trampled. Golden club, a plant species of State Special Concern, has been found to occur in Whalebone Cove. A survey of the Property was conducted by Mr. Snarski and reviewed by staff of the Department's Wildlife Division, and no golden club was observed in the areas where work is proposed. (Exs. APP-3,4,8,11,19; test. K. Neilson, 1/12/16, R. Snarski, 1/19/16, S. Jacobson, 1/12/16.)
9. Alternatives to the proposed structure, including different configurations and a "no-build" alternative, were considered and rejected. The configuration of the proposed structure was selected to avoid impacts to vegetation. Even the "no-build" alternative would have more

² Other improvements, such as walkways, have been approved by the Lyme Conservation Commission.

³The Application initially proposed a two foot wide, twenty four foot long aluminum ramp and a floating dock oriented "north-south." After the publication of the NTD, the Applicant re-surveyed the tidal wetlands vegetation and proposed reconfiguring the dock to further limit impacts. The reconfigured proposal changed the dimensions of the ramp to twenty-three inches wide and twenty-six feet long and oriented the floating dock "east-west." The revised configuration is detailed in the Draft Permit (attached as Appendix 1) and is the configuration considered here.

impact on vegetation if the area were used for launching watercraft. (Exs. APP-10, DEEP-3; test., R. Zajac, 1/12/16, R. Snarski, 1/19/16, S. Jacobson, 1/12/16.)

10. The proposed structure is not likely to impact birds, fish or other wildlife that use Whalebone Cove. As noted by the applicant's expert, Dr. Zajac,, the proposed structure poses no risk of adverse impact to wildlife or vegetation in the cove. (Ex. APP-17.)
11. No shellfish were noted in Whalebone Cove. The Department of Agriculture's Bureau of Aquaculture was consulted and determined that the proposed work would not significantly impact any shellfish area. (Exs. APP-17, DEEP-3.)
12. There is no dredging, excavating or filling proposed in the Application. Provisions in the Draft Permit prevent storage of any barge used for construction over intertidal flats, submerged aquatic vegetation or tidal wetland vegetation and limits barge access to periods of high water and prohibit dragging or prop dredging which could impact sediments. Float stop piles were required to prevent the floating dock from impacting sediments, and berthing of a boat with a draft of greater than twelve inches in low water conditions, which could cause impacts to sediments, is also prohibited. (Ex. APP-7, Draft Permit attached as Appendix 1.)
13. The proposed structure is located in Whalebone Creek, the widest of several channels that make up Whalebone Cove. At the site of the proposed dock, the channel is approximately forty feet wide at low water. Only the five foot wide float would be located within this waterway. The float, and any vessel berthed at it, would leave sufficient room in the channel for safe passage by another vessel, especially when considering that only paddle craft and shallow draft motor craft are likely to operate that far up Whalebone Creek. (Exs. APP-10, DEEP-11.)
14. The Town of Lyme has adopted guidelines of activities proposed in tidal areas. The proposed structure is located in "Zone B" which requires that: the combined deck area of structures shall not be greater than eighty square feet, structures shall not extend to the lesser of more than twenty-five percent of the distance to the opposite shore when measured at ordinary low water or more than twenty feet beyond ordinary low water, structures must be set back ten feet from side property lines, each owner is permitted only one structure, and floats must be separated by at least fifty feet. The proposed structure meets these guidelines. (Ex. DEEP-1, Draft Permit attached as Appendix 1.)

III.
CONCLUSIONS OF LAW

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) and statutes concerning tidal wetlands (General Statutes § 22a-32 and Regs., Conn. State Agencies §§ 22a-30-1 through 22a-30-17). The Structures Dredging and Fill Act and the Coastal Management Act require a balancing of rights 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 costal sedimentation and erosion patterns.

The statutes and regulations concerning tidal wetlands require me to "consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth [in this act.]" The Application and evidence presented during the hearing indicate that the proposed structure will have no impact on the health or welfare of the public or to any fisheries, wildlife or sediments.

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 satisfying the Applicant's burden in this matter.

A
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 statutes 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.

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.

In this case, the proposed structure will not impact sediments, coastal resources, vistas or viewpoints of statewide significance or navigation and can be removed to avoid damage to persons or properties in the event of severe storms. The structure is small and appropriately sized to the scale of the waterbody in which it is to be situated. For these reasons, the Applicant's littoral rights are appropriately balanced against the public interest in preserving the environment.

B
Uncontradicted Expert Testimony

When considering technically complex issues such as impacts to tidal wetlands or coastal resources, 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. Nielson, Mr. Snarski, Mr. Zajac and Ms. Jacobson were all asked whether, in their expert opinion, the proposed structure complied with each statutory or regulatory criteria or policy identified above. Each responded that the proposed structure complied. “An administrative agency is not required to believe any of the witnesses, including expert witnesses... but it must not disregard the only expert evidence available on the issue” *Bain v. Inland Wetlands Commission*, 78 Conn. App. 808, 817 (2003). “The trier of fact is not required to believe un rebutted expert testimony, but may believe all, part or none of such un rebutted expert evidence.” *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 405 (1998). These expert

opinions were credible and provide a substantial basis in fact upon which to base my recommendation.⁴ 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
Tidal Wetlands Act and Regulations

The placement of a pile-supported structure in this area of tidal wetlands is consistent with the requirement that the proposed activity will not result in a significant adverse impact on the circulation and quality of coastal or tidal waters. Regs., Conn. State Agencies § 22a-30(10)(f). The tidal wetlands regulations state a preference for elevated, pile-supported structures as a means to eliminate or minimize obstructions to the flow and circulation of water in the tidal wetlands system. Regs., Conn. State Agencies §§ 22a-30-10(b)(3) and 22a-30-10(f)(3). In this case, the piles are narrow steel pipes, not the thicker wood or steel piles that commonly support larger residential dock structures. The impacts to the flow and circulation of water in the tidal wetlands system from the proposed pilings will be *de minimus*. The installation of a pile-supported structure rather than a solid-fill structure will meet the Applicant's objective to access the waters of Whalebone Creek and Whalebone Cove from his property and the Department's objective of attenuating impacts to tidal the tidal wetlands system by ensuring the continued free flow of water and sediments in the existing system and spanning the emergent vegetation.

⁴ David Gumbart, of The Nature Conservancy, testified under oath at the public comment hearing. His testimony provided helpful background on the flora and fauna present in Whalebone Cove. It did not, however, establish Mr. Gumbart as an expert or identify any specific adverse impacts that would be caused by the proposed structure. For those reasons, his testimony cannot be viewed as expert testimony which reached conclusions contradictory to the other experts that testified in this matter.

D
Coastal Management Act and Structures, Dredging and Fill Statutes

The Structures, Dredging and Fill statutes and the Connecticut Coastal Management Act contain myriad overlapping statutory requirements and policies to be considered when permitting a coastal structure. As the uncontradicted evidence in the record clearly indicates that the proposed application is consistent with each of these requirements and policies, there is no need to separately analyze each requirement of policy here. Instead, the topics highlighted below are taken from both statutory schemes and are highlighted because they implicate issues of concern to those who commented on the Application.

1
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 does not impede land access to the public trust, because land access is extraordinarily difficult, whether the structure is constructed or not. The ramp is sufficiently elevated such that someone attempting to traverse the public trust, should they be able to gain access to it from some other property, would only be impeded by the unforgiving slope and dense vegetation. The overall length of the structure leaves sufficient room in the channel for other vessels to pass and is only a minimal intrusion into waters held in the public trust. The proposed floating dock is only forty square feet, significantly smaller than many residential floating docks. The small floating dock further limits encroachment into the public trust, and represents a reasonable balance between the Applicant's right to a dock and the right of the public to access the waters of the State of Connecticut.

Impact to Coastal Resources

The identified coastal resources on the site are tidal wetlands; freshwater wetlands; submerged aquatic vegetation; wildlife; and finfish. The Applicant has met its burden to show 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 vegetation, as the proposed structure will span areas of emergent vegetation. The relatively small, pile-supported structure will not impact wildlife or finfish.

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). While I agree with many commenters that Whalebone Cove is a place of great beauty, no views of statewide significance were identified that would be adversely 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, developed with homes and roads. If the Property were viewed from the water, much of the floating dock and ramp would be hidden by vegetation during the months when they are installed. I note that narrow steel pipes will be used to secure the floating dock, instead of larger wood piles, which will minimize the visual impact of the structure. Even these

steel pipes will be removed for much of the year. Given this context, the proposed structure does not represent a significant alteration of any natural features and will have only minimal impact on views.

3
Impacts to Navigation

The evidence in the record demonstrates that the proposed structure minimizes impacts to navigation. General Statutes § 22a-361. The forty square foot floating dock occupies only a small portion of the channel even in low water conditions. Anyone operating a vessel in the area would have sufficient room in the channel, even at low water, to pass the floating dock and any vessel moored to it.

E
Public Comments

Unless made under oath, public comments are not evidence in the record upon which my recommendation can be based. Instead, public comments are used to guide my inquiry – to identify those issues that are of interest to the public so that they may be investigated further during the evidentiary hearing. This distinction is set out in the Department’s Rules of Practice, which state,

[a]ny person who is not a party or intervenor nor called by a party or intervenor as a witness may make an oral or written statement at the hearing. Such a person shall be called a speaker. If the hearing officer is going to consider a speaker’s statement as evidence or if the speaker wants his statement to be considered as evidence, the hearing officer shall require that the statement be made under oath or affirmation and shall permit the parties and intervenors to cross-examine the speaker and to challenge or rebut the statement.

Regs., Conn. State Agencies § 22a-3a-6(t). In this matter, I received more than two dozen written comments and more than a dozen verbal comments at the public comment hearing. I note that the comments relevant to my inquiry in this matter – whether the proposed deck, ramp and floating dock comply with the relevant statutory and regulatory criteria and policies – were addressed by

the testimony placed in the evidentiary record. A number of other issues were raised by members of the public. While there is no requirement that I do so, I believe it is prudent to respond to some of those comments at this time.

Several members of the public urged me to adopt a one-year moratorium on the consideration of the proposed structure and to use that time to empanel a task force to study the potential impacts of this and similar structures on Whalebone Cove. This is simply beyond my authority as a hearing officer. This Application was reviewed by Department staff for compliance with applicable statutory and regulatory criteria and policies using the same administrative process that applies to all residential dock applications. This hearing process has used the same procedures as any other hearing on any other permit application. To deviate, at this late date, from this established processes would raise significant due process concerns. The right of the public to provide information about the impacts of the proposed structure must be balanced with the right of the Applicant to a final determination by the Department as to whether he can construct the proposed structure. The purpose of this hearing process, coming after the technical review of the Application by Department staff, is to seek this balance. Members of the public were invited to comment both on staff's tentative determination and again during the hearing process. It is possible for members of the public who gain status as parties or intervenors to present documentary evidence and expert witnesses regarding the impacts of the proposed structure during the hearing process. None did here. After having solicited comments and provided an opportunity for the submission of additional evidence, it is now time for the review of the Application to be concluded, and a decision to be made. A deviation from the normal process resulting in further delay would upset the balance between the rights of the Applicant and the rights of the public. There is no

statute or regulation which authorizes a moratorium and to implement one here would exceed my authority and prejudice the Applicant.

Perhaps the most pressing concern raised by members of the public was motorboat traffic on Whalebone Cove and Whalebone Creek. Many commenters believe that the presence of the proposed structure will encourage more motorboats to enter the cove, causing a variety of aesthetic impacts and damage to the vegetation and wildlife in and around the cove. While I acknowledge that Whalebone Creek and Whalebone Cove may not be suited to handle heavy motorboat traffic, this issue is not one which can be addressed in the context of permitting the proposed structure. In fact, the Coastal Management Act requires the Department to both protect coastal resources and to encourage recreational boating. General Statutes § 22a-92(b)(1). Neither the tidal wetlands statutes and regulations nor the statutes regulating structures, dredging and fill contain any criteria enabling regulation of vessels other than, in very limited circumstances, those using the proposed structure. It is clear that the statutory and regulatory framework for the permitting of coastal structures is primarily focused on impacts from the structure itself. While the Department does have some jurisdiction to regulate boating on the waters of the state, that jurisdiction does not flow from the statutory and regulatory authority to permit coastal structures.

To consider the impact of motorboats not authorized to use the private, residential dock proposed would require a deviation from the relevant regulatory framework and speculation about the possible future actions of motorboat owners that have no relationship to the Applicant. I also note that there is no evidence in the evidentiary record that supports the claim that the proposed structure will increase motorboat traffic in the area or that increased traffic will have an adverse impact on the natural resources in the area significant enough to warrant denial of the Application. I further note that, although it cannot be pursued in this matter, it may be possible to work with the

Department's boating division and the Town of Lyme to address some of the issues associated with motorboats identified by members of the public.

Many commenters also questioned whether Department staff had appropriately consulted the Connecticut River Gateway Commission and staff of the United States Fish and Wildlife Service's Silvio O. Conte National Fish and Wildlife Refuge during the course of its review. As detailed by Department staff in their post hearing filing, no referral to the Gateway Commission is required. The Gateway Commission did submit comments in this matter. In its written comment, the Commission expresses its hope that future dock applications in Whalebone Cove will not be filed, although it acknowledges that this is "not within the control of the DEEP[.]" and requests certain considerations be made in the review of the Application. Nowhere in its written comments does the Gateway Commission argue a referral was required, nor does the Gateway Commission request that the Application be denied. Andrew French, of the United States Fish and Wildlife Service, took a similar position in his comments. He expressed concern about artificial lights (which are not proposed as part of this Application) and increased motorboat traffic, but never expressly called for the Application to be denied.⁵ The evidentiary record in this matter indicates that Department staff undertook a thorough review of the Application, and that the design of the proposed structure and the conditions of approval in the Proposed Draft Permit address the concerns voiced by the Gateway Commission, the Fish and Wildlife Service and other commenters, to the extent it was possible to do so in the context of the statutes and regulations which guide the review of the proposed structure.

⁵ The property near the site which is owned by the Fish and Wildlife Service was acquired from The Nature Conservancy (TNC). In its comments TNC highlights the habitat value of the Cove and expresses a desire that this habitat value be taken into consideration in reviewing the Application, but does not expressly request denial of the Application.

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, including the credible testimony of expert witnesses and the submission of documentary evidence as described above, that the proposed activity should be permitted.

V
RECOMMENDATION

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



Brendan Schain, Hearing Officer

SERVICE LIST

In the Matter of Melville, Gregory APP. # 201501126-SJ

Party

Representative(s)

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ATTACHMENT B

PERMIT

Permit No: 201501126-SJ

Municipality: Lyme

Work Area: Whalebone Cove off property located at
484 Joshuatown Road

Permittee: Gregory Melville
474 Maple Avenue
Cheshire, CT 06410

Pursuant to sections 22a-359 through 22a-363g and sections 22a-28 through 22a-35 of the Connecticut General Statutes (“CGS”) and in accordance with 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 #201501126-SJ, including four sheets of plans revised November 25, 2015, submitted by the Permittee to the Commissioner and attached hereto, as follows:

install a dock by:

- a. constructing a 6' x 10' deck, of which 9 square feet is waterward of the coastal jurisdiction line;

- b. placing a 23" x 26' ramp; and
- c. installing a 5' x 8' float with steel pipes for support.

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 work barge be stored over intertidal flats, submerged aquatic vegetation or tidal wetland vegetation or in a location that interferes with navigation.
3. Barge access into Whalebone Cove shall occur only during periods of higher water. In the event any barge associated with the work authorized herein is grounded, no dragging or prop dredging shall occur to free the barge.
4. 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.
5. 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 coastal jurisdiction line and outside of tidal wetlands.
6. The Permittee is prohibited, during periods of low water, from berthing, mooring, or otherwise affixing any vessel with a draft deeper than 12". Such prohibition is valid for the life of the float authorized herein.
7. 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.
8. 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.
9. The Permittee shall post the attached Permit Notice in a conspicuous place at the work area

while the work authorized herein is undertaken.

10. The Permittee shall establish a minimum of a 10 foot setback from any wetlands or watercourses in and adjacent to the area where work is to be conducted or areas which are to be used for access to the work area. Such setback area(s) shall be flagged so as to be readily identifiable by contractor personnel until the work authorized hereunder is completed.
11. Except as specifically authorized by this permit, no equipment or material, including but not limited to, fill, construction materials, excavated material or debris, shall be deposited, placed or stored in any wetland or watercourse on or off-site, or within any delineated setback area, nor shall any wetland, watercourse or delineated setback area be used as a staging area or access way other than as provided herein.
12. 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.
13. 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.

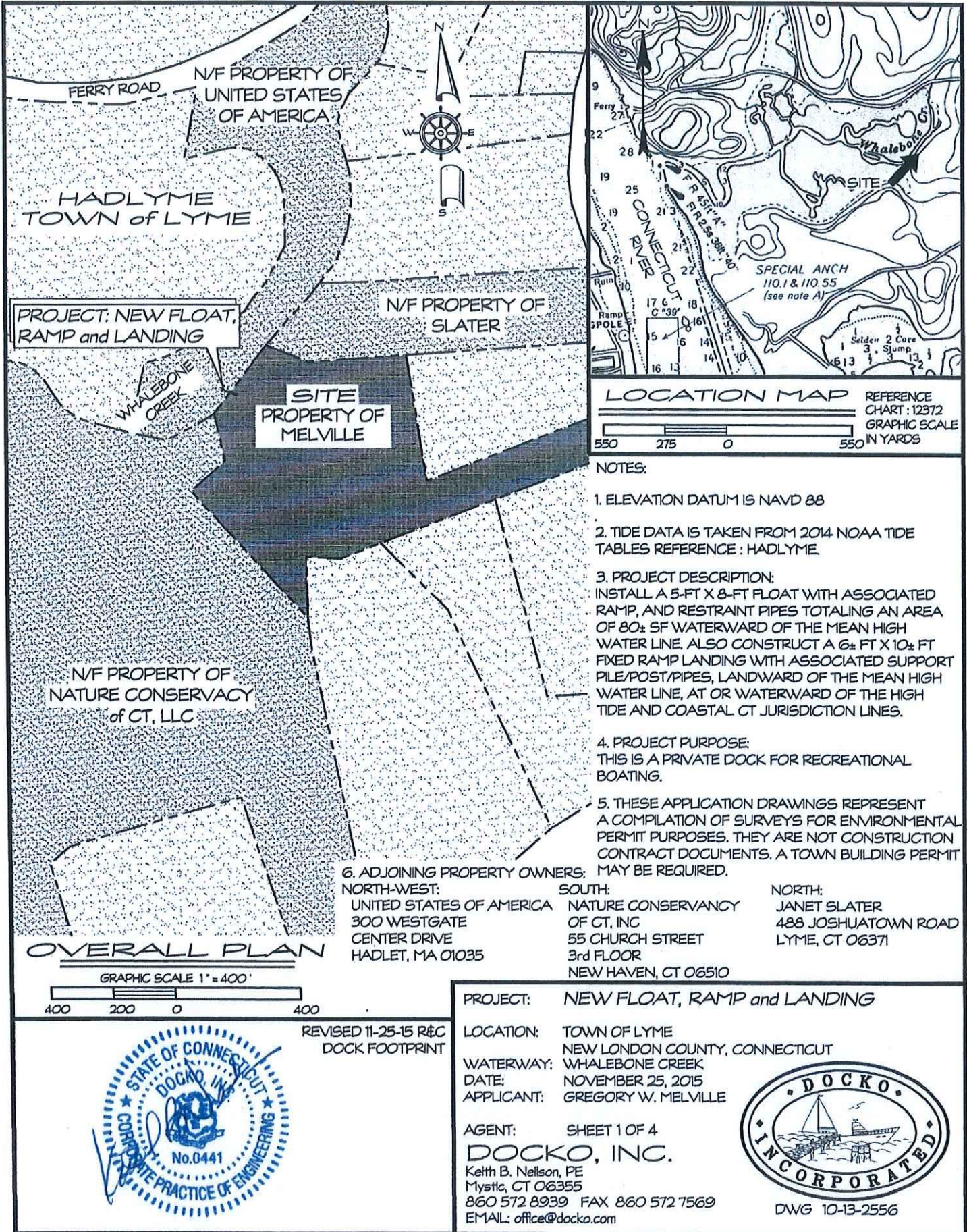
- 17. The issuance of this permit does not relieve the Permittee of their obligations to obtain any other approvals required by applicable federal, state and local law.
- 18. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and 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.

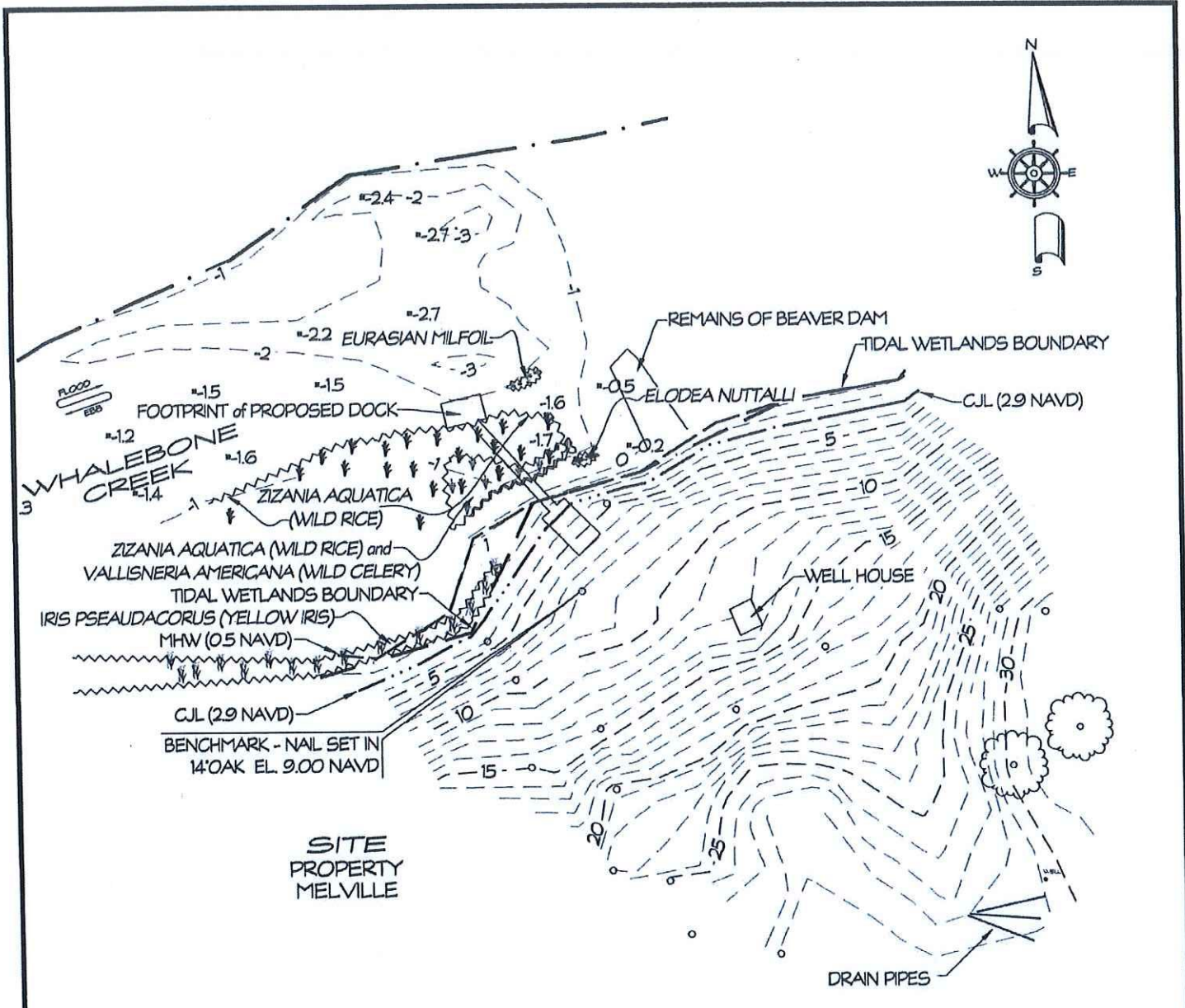
Issued on _____, 2016

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

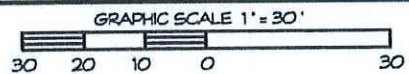
Robert Klee
Commissioner

Permit #201501126-SJ
Gregory Melville





EXISTING CONDITIONS



HYDROGRAPHIC/TOPOGRAPHIC SURVEY by RICHARD W. GATES
ELEVATION DATUM BASED ON NAVD '88



REVISED 11-25-15 D.I.
DOCK FOOTPRINT
REVISED 11-11-15 D.I.
UPDATED SURVEY &
R. SNARSKI TIDAL
and SAV SURVEY

PROJECT: NEW FLOAT, RAMP and LANDING

LOCATION: TOWN OF LYME
NEW LONDON COUNTY, CONNECTICUT

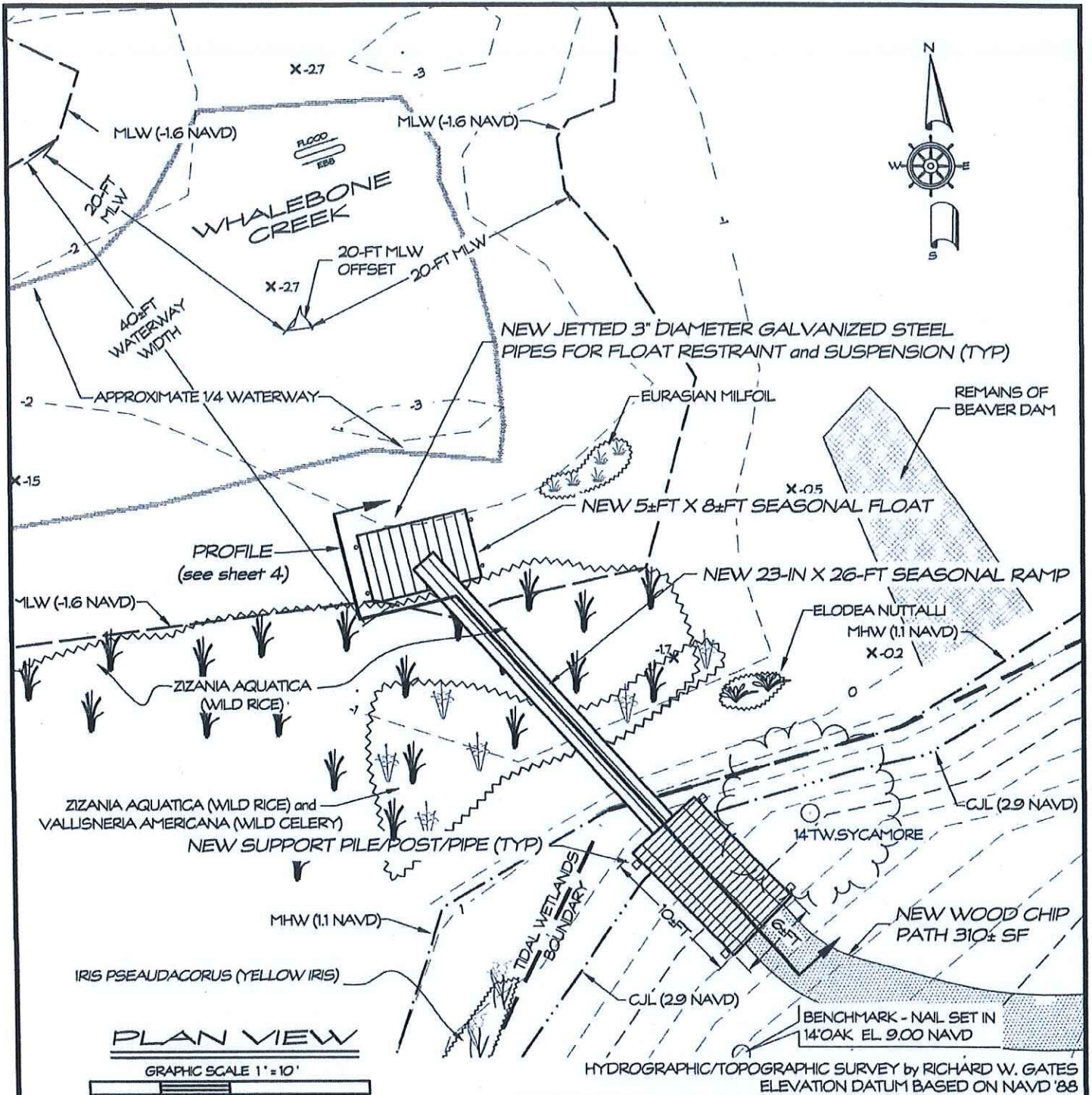
WATERWAY: WHALEBONE CREEK
DATE: NOVEMBER 25, 2015
APPLICANT: GREGORY W. MELVILLE

AGENT: SHEET 2 OF 4
DOCKO, INC.

Keith B. Nelson, PE
Mystic, CT 06355
860 572 8939 FAX 860 572 7569
EMAIL: office@docko.com



DWG 10-13-2556



PROJECT: NEW FLOAT, RAMP and LANDING

LOCATION: TOWN OF LYME
NEW LONDON COUNTY, CONNECTICUT

WATERWAY: WHALEBONE CREEK
DATE: NOVEMBER 25, 2015
APPLICANT: GREGORY W. MELVILLE

AGENT: SHEET 3 OF 4
DOCKO, INC.

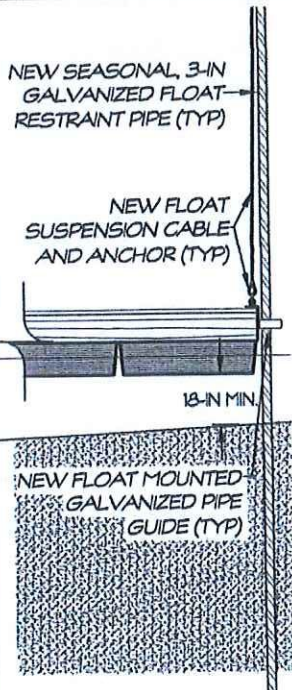
Keith B. Nelson, PE
Mystic, CT 06355
860 572 8939 FAX 860 572 7569
EMAIL: office@docko.com



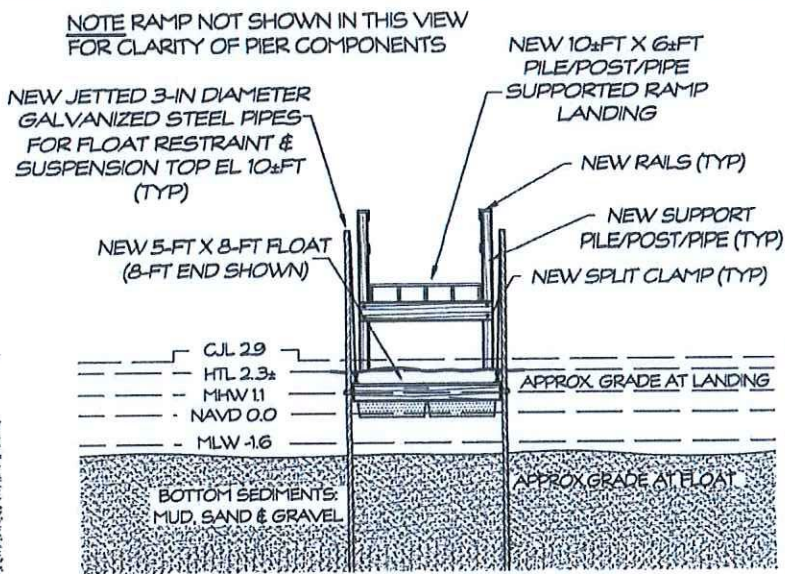
DWG 10-13-2556



REVISED 11-24-15
DOCK FOOTPRINT
REVISED 11-11-15 D.I.
UPDATED SURVEY &
R. SNARSKI TIDAL and
SAV SURVEY



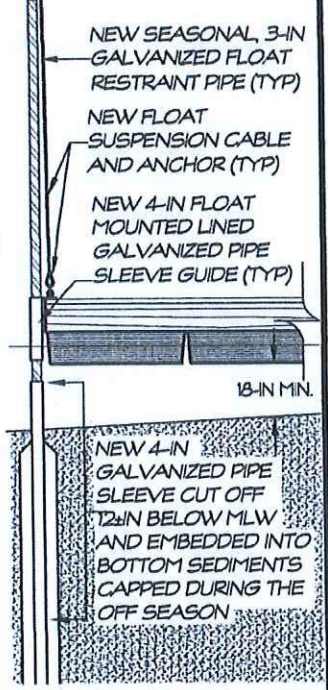
RESTRAINT PIPE DETAIL
NOT TO SCALE



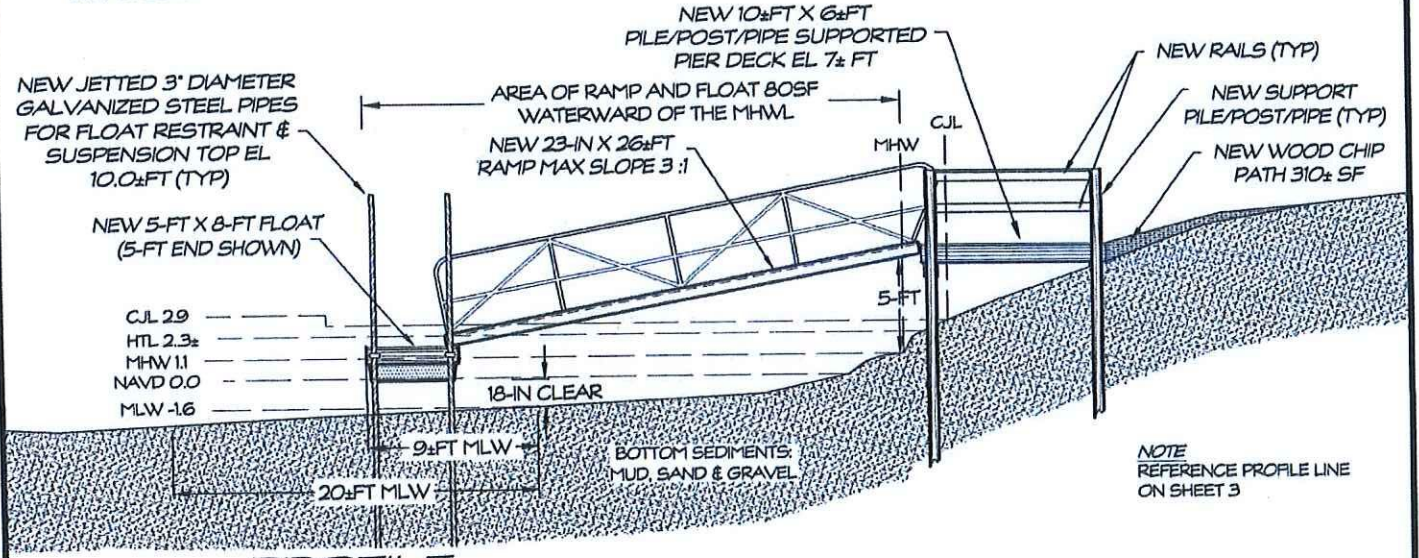
NOTE RAMP NOT SHOWN IN THIS VIEW FOR CLARITY OF PIER COMPONENTS

NOTE REFERENCE PROFILE LINE ON SHEET 3

END VIEW
GRAPHIC SCALE 1" = 10'



RESTRAINT PIPE SLEEVE DETAIL
NOT TO SCALE



PROFILE
GRAPHIC SCALE 1" = 10'

NOTE REFERENCE PROFILE LINE ON SHEET 3

ELEVATION DATUM BASED ON NAVD '88



REVISED 11-25-15
NEW PROFILE & END VIEW

PROJECT: **NEW FLOAT, RAMP and LANDING**

LOCATION: TOWN OF LYME
NEW LONDON COUNTY, CONNECTICUT

WATERWAY: WHALEBONE CREEK

DATE: NOVEMBER 25, 2015

APPLICANT: GREGORY W. MELVILLE

AGENT: SHEET 4 OF 4
DOCKO, INC.
Keith B. Nelson, PE
Mystic, CT 06355
860 572 8939 FAX 860 572 7569
EMAIL: office@docko.com

DWG 10-13-2556

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: Gregory Melville
474 Maple Avenue
Cheshire, CT 06410

Permit No: 201501126-SJ, Lyme

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: Lyme Town Clerk

**Signature and
Date:**

Subject: 484 Joshuatown Road
Coastal Permit #201501126-SJ

Pursuant to Sections 22a-363g, Section 22a-32 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 **Gregory Melville**, 474 Maple Avenue, Cheshire, CT, 06410 to:

install a dock by:

- a. constructing a 6' x 10' deck, of which 9 square feet is waterward of the coastal jurisdiction line;
- b. placing a 23" x 26' ramp; and
- c. installing a 5' x 8' float with steel pipes for support.

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: **Gregory Melville**

At this location: **484 Joshuatown Road, Lyme**

To conduct the following:

install a dock by:

- a. constructing a 6' x 10' deck, of which 9 square feet is waterward of the coastal jurisdiction line;
- b. placing a 23" x 26' ramp; and
- c. installing a 5' x 8' float with steel pipes for support.

Permit #: **201501126-SJ**

Issued on:

This Authorization expires on:

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