

Office of Adjudications

IN THE MATTER OF :

APP NO. 201810092-SDF

HEERDT :

February 3, 2020

PROPOSED FINAL DECISION

***I
Introduction***

On August 10, 2018, John and Lisa Heerdts (“Applicants”) filed an application for a structures, dredging and fill permit (“Application”). The Applicants seek permission to conduct activities waterward of the coastal jurisdiction line, specifically: construction of a residential dock to include a four foot wide, thirty six foot long wooden pier, three foot wide, twenty eight foot long aluminum ramp, and an eight foot wide, twelve and one half foot long floating dock (“proposed dock”); the removal of five granite blocks from the intertidal area; and the retention of a granite block seawall and granite access steps.

A Notice of Tentative Determination, indicating a recommendation to approve the Application, was published on April 1, 2019, and, on April 22, 2019, a petition for hearing was filed, initiating this hearing process.

The parties to this matter are the Applicants and Department staff. Doris Zelinsky and Joseph Murray (“Intervenors”) were granted status as intervenors, pursuant to Regs., Conn. State Agencies § 22a-3a-6(k)(2), on June 19, 2019.

A site visit and hearing to receive public comments was held in Branford on September 25, 2019. An evidentiary hearing was held October 24 and 24, 2019. On November 15, 2019, the

Applicants and Department staff filed an Agreed Draft Decision (“ADD”), attached hereto as Appendix 1. The Intervenors filed an objection on January 1, 2020.

A hearing on the Intervenors objection is neither required by the Department’s Rules of Practice nor necessary to resolve and issue which divides the parties; no such hearing is or will be scheduled.

After considering the ADD, the objection, and the record in this matter, I hereby adopt the ADD, as supplemented herein, as my proposed final decision in this matter. I further recommend that the Commissioner approve the Application and issue the Draft Permit (attached hereto as Appendix 2) as a final permit.

II
Findings of Fact

I adopt the Findings of Fact proposed by the ADD, and decline to adopt any additional or alternative findings of fact proposed by the Intervenors in the objection.

III
Conclusions of Law

In adopting the ADD, and overruling the Intervenors’ objection thereto, I reach the following conclusions of law, with which I supplement the ADD.

I first note that the Intervenors have not claimed that the proposed dock will have any impact on the environment. Instead their arguments focus on the rights of the public to access the public trust and the “reasonableness” of the proposed structure. My conclusions, set out below, focus on these issues raised by the Intervenors at the hearing, and in their objection.

The Intervenors asserts that the Applicants’ have failed to demonstrate their “need” for a dock. When making this assertion, the Intervenors provide no reference to a requirement of statute,

regulation, or any relevant provision of the common law which requires a demonstration of need before a littoral property owner may seek construction of a residential dock like the one at issue here. A review of the Department's decisions on other residential docks reveals that such an analysis is not routinely conducted. Questions of utility, such as whether the Applicants need a dock, are inherently subjective. There is, however, no need to resolve the question. That the Intervenor believe that the Applicants do not need a dock is not a ground upon which a recommendation to deny the Applications could be based.

The Intervenor also claim, repeatedly, that to this point in this proceeding, the Department has not appropriately recognized the rights of the public to access the public trust, particularly when comparing those rights to the Applicants' rights to construct a dock. I disagree. The Intervenor argue that the ADD ignores the rights of the public while claiming for the Applicants' "an automatic and absolute legal entitlement to a dock." (Objection at 3.) In contrast, the Intervenor would ignore the rights of the Applicants, as littoral property owners, in favor of the rights of the public. To resolve the Intervenor claims, I look first to the Coastal Management Act ("CMA"). That act, at General Statutes § 22a-92(c)(1)(K), provides that it must be a condition in permitting new coastal structures that "access to, or along, the public beach below mean high water must not be unreasonably impaired by such structures. . . ." The policy articulated by the CMA is consistent with the common law; it is well settled that the rights of the littoral owner are "subordinate to the public rights." *Lane v. Comm. of Env'tl. Protection*, 136 Conn. App. 135, 157-158 (2012).

It is also true, however, that littoral property owners, like the Applicants, have certain rights, among them the exclusive right to erect a pier and use it for "any purpose." *Rochester v.*

Barney, Rochester v. Barney, 117 Conn. 462, 468 (1933).¹ These rights, however, are not absolute; the Applicants' 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." *Id.* For example, in the recent Superior Court decision in *Nussbaum v. Commissioner of the Dept. of Energy and Environmental Protection*,

the hearing officer also considered and contrasted the Plaintiff's littoral rights which, as a shore property owner, do authorize him to use the intertidal area, subject to the applicable statutes and regulations, and subject to the public's rights. These rights are ancient common-law rights that are subject to a balancing against the public's right to access the public trust. Thus, littoral rights include the right to wharf out into the water, and to build a pier, dock or other structure whose purpose is to facilitate the coastal landowner's access to and use of the water. These rights are not absolute and have been properly regulated.

Nussbaum v. Dep't of Energy & Env'tl. Prot., 2019 WL 6742078, at *5 (Conn. Super. Ct. Nov. 14, 2019)

An evaluation of these competing rights typically requires that the rights of the littoral property owner to wharf out be balanced against the right of the public to access the public trust. *See, e.g., Nussbaum, supra*, at *2 ("[T]he Commissioner was required to consider and balance the private landowner's property rights with the state's and the public's interest and rights in land which is held in public trust to determine whether the structure . . . unreasonably impairs the public rights in view of the balance of rights."); *In the Matter of Graham Bluff Realty, LLC*, Proposed Final Decision, p. 8 (February 25, 2005) aff'd, Final Decision (March 2, 2005); *In the Matter of Flaster*, Proposed Final Decision, p. 14 (November 4, 2009) aff'd, Final Decision (November 12, 2009);

¹ "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).

In the Matter of Harvey, Proposed Final Decision, pp. 12-14 (June 17, 2014), *aff'd*, Final Decision (September 24, 2014). Within the structure created by the CMA and the statutes concerning structures, dredging and filling, the Department seeks to ensure that an application minimizes intrusion into the public trust.

The record in this matter reveals that these competing rights are well balanced. To preserve public access to the area below mean high water, Department staff required a shorter dock than originally proposed, required removal of large granite blocks spanning mean high water that present an obstacle to those walking along the beach, and determined that it would be easy to walk under the structure at mean high water. R. Michael Payton, supervisor of the state's navigation safety program and an expert on boating safety, inspected the location of the proposed dock and "concluded that the revised dock proposal does not present a potential hazard to navigation or hindrance to the public's use of the waters." Mr. Payton further testified that he did not see how the proposed dock "would obstruct or hinder access to the water for boats being launched from either adjacent neighboring properties." (Ex. DEEP-21.) No expert contradicted Mr. Payton's testimony.²

The Intervenors also claim that the dock is an unreasonable exercise of the Applicant's littoral rights. They make several arguments to support this claim. First, the Intervenors assert that the proposed dock is unreasonable because, "the Heerdt's existing water access is even better

² The other witnesses who testified on this subject were not experts. This is precisely the type of issue on which the Department may rely on its own expertise. *See Connecticut Building and Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991) ("An agency composed of [experts] is entitled . . . to rely on its own expertise within the area of its professional competence.") The expert testimony of Mr. Payton was credible and reliable, and was the only expert testimony offered on this subject. "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).

than the intervenors water access.” (Objection at 25.) This comparison, found in several places in the Objection, fails to recognize that, as waterfront property owners, the Applicants have certain rights that those accessing the beach and the water from an easement, or those walking along the public beach, do not. For that reason, a comparison of the water access of the Intervenor to the Applicants is neither particularly relevant nor persuasive.³

Next, the Intervenor argues that the Applicants’ have other access – from their seawall, granite steps, mooring ball, and pulley line – and it would, therefore, be unreasonable to authorize the proposed dock. The Intervenor finds support for this argument in the Department’s “Residential Dock Guidelines.” Those guidelines, the Intervenor argues provide for only “one point of access per property.” The Intervenor claims that access from the seawall, granite steps, mooring ball, and pulley line are already “points of access,” so the guidelines operate to prevent construction of a dock. To reach any other conclusion, the Intervenor argues, would be arbitrary and capricious. Department staff disagreed with this reading of the guidelines, and instead interpret the guidelines to permit that only one *structure*, like the proposed dock.

Support for the position advocated by Department staff is found in the document itself, which indicates that “typically [a littoral property owner] may exercise [their] right to access the water by constructing a dock from [their] upland area into the state’s public trust waters.” The document also addresses circumstances where multiple docks extending from the same parcel may be sought – such as a second dock extending from an easement to benefit an easement holder – and indicating that two extending from the same parcel of land would not be permitted.

³One Intervenor, Mr. Murray, is not the owner of waterfront property. The other Intervenor, Ms. Zelinsky, does own waterfront property, although not in the immediate vicinity of the dock. Ms. Zelinsky’s testimony focused on access to the beach from an easement located near the proposed structure, and it is her rights as an easement holder which this decision contrasts with the rights of the waterfront property owners. Nothing contained herein is intended to analyze or characterize her rights as a waterfront property owner.

Further, a review of the Department’s proposed and final decisions regarding coastal structures – which represent only a small sample of the docks approved by the Department – reveals that, for example, docks extending from seawalls are not uncommon. See, e.g. *In the matter of Megrue-Cliff Place, LLC*, Final Decision, December 22, 2015 (Proposed structure began at the waterward face of a seawall and extended into Long Island Sound); *In the matter of Daniel McLeod*, Final Decision, May 15, 2014 (The proposed activity consists of repairs to an existing seawall and concrete pier and the construction of a dock structure extending from the end of the existing concrete pier); *In the matter of King, Final Decision*, July 25, 2012 (Authorized activities include: repair and retention of an existing concrete seawall, repair and retention of an existing concrete boat ramp, installation of scour protection in front of the existing boat ramp and seawall, replacement of stone riprap to the east of the existing boat ramp, and installation of a steel pile-supported pier, t-head, and boat lift for recreational boating access to Long Island Sound”). While I agree with the Intervenors that the Department must not act arbitrarily and capriciously, it is adopting the Intervenors’ interpretation of the guidance document that would require a decision at odds with the Department’s many precedents.⁴

Ultimately, the guidance document is just that – guidance. While it lays out Department staff’s understanding of the interface between relevant statutes and the common law, it cannot modify or extinguish rights created by our courts or the General Assembly. A reading of the guidance document that disregards the rights of the littoral property owner cannot be the correct reading.

⁴ The Intervenors also read the guidance document to require the Applicant to seek use of a neighboring structure rather than the proposed dock. While the guidance document indicates such arrangements are “encouraged,” it certainly does not require such arrangements. The Applicants’ littoral rights allow use of their property to access the water. This is an example of a right that cannot be extinguished or diminished through a guidance document.

Finally, the Intervenors claim that the proposed dock is unreasonable because for portions of the tidal cycle, the floating dock at the waterward end of the proposed dock will “spend much of the tidal cycle in the mud or very low water.” This is not a novel argument; a review of the Department’s decisions reveals that this issue is well settled. In the Proposed Final Decision *In the matter of McLeod*, adopted by the Final Decision in that matter, the hearing officer concluded that

[i]t is true that a dock at this location cannot be built to provide universal access to the water at all tides and remain respectful of the necessary balance. That is a limitation of the property and does not equate to a limitation on the property owner’s right to build a reasonable structure to provide access to the water from the upland. The applicant, in attempting to achieve the necessary balance to receive a permit did not seek to extend the structure to the deeper water of the navigational channel. Instead, he has accepted these limitations and understands they dictate that prudence be used in the berthing of any vessel at the structure.

In the matter of McLeod, Proposed Final Decision, May 15, 2014, p. 16, aff’d Final Decision, June 5, 2014. *In the matter of 16 Highgate Road*, where a dock was proposed in an area that is shallow, and subject to significant tidal variations, the Department concluded that “a dock structure need not provide a waterfront property owner with water access at all times and under all tidal conditions.” *In the matter of 16 Highgate Road*, Final Decision, June 23, 2015, p.9. *In the matter of Harvey*, on which the decision in 16 Highgate Road relies, the Department reached a similar conclusion, that

[d]espite the concern expressed by [opponents of a proposed dock], there is no legal requirement that access to the water from structures approved under the department’s authority be available at all times and tides. In this matter, the limitations associated with this property are not determinative of whether the applicant may exercise his littoral rights.

In the matter of Harvey, Final Decision, September 24, 2014, p. 3. There is no good reason to recommend a different conclusion in this matter.

The proposed dock is appropriately sized for its surroundings. It is in a developed area with an already existing seawall and several other existing or proposed docks. It will not unreasonably interfere with access to the beach below mean high water as it is easy to walk under; in fact, access for those walking along the public beach might improve with removal of the granite blocks. The proposed dock will not interfere with use of nearby waters by paddle craft. The record reveals that the proposed dock balances the rights of the Applicants as littoral property owners with the rights of the public to access the public trust. For those reasons, I recommend that Application be approved, and the Draft Permit be issued as a final permit.

IV
Recommendation

For the reasons set forth herein, and for the reasons set forth in the ADD, I recommend that the Commissioner approve the Application and issue the Draft Permit as a final permit.



Brendan Schain, Hearing Officer

S E R V I C E L I S T

In the matter of Heerd
Application No.: 201810092-SDF
PARTY

REPRESENTED BY

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**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS**

IN THE MATTER OF : **Application No. 201810092-SDF**
:
:
HEERDT : **NOVEMBER 15, 2019**

AGREED DRAFT DECISION

I. SUMMARY

On August 10, 2018, John and Lisa Heerdt (“Applicants”) submitted a Structures, Dredging and Fill License application to conduct activities waterward of the coastal jurisdictional line. APP-1. The main activity proposed in the application, as later amended (the “Application”) (DEEP-11), is the construction of a residential dock to include a 4' wide by 36' long wooden fixed pier, 3' wide by 28' long aluminum ramp, and an 8' wide by 12.5' long floating dock. The Application also proposes the removal of five pre-1995 granite blocks from the intertidal area and the retention of a granite block seawall and pre-1995 granite access steps.

The staff within the Department of Energy and Environmental Protection’s Land and Water Resources Division (“DEEP” or “Department” and “LWRD”) reviewed the Application and, after requesting additional information and modifications to the original proposal (DEEP-5A) prepared a Draft License (DEEP-14). On April 1, 2019, DEEP published a Notice of Tentative Determination (DEEP-13), indicating that Department staff recommended the Application be approved as conditioned in the Draft License. A petition for hearing (DEEP-16) was received on April 22, 2019, and this hearing process was initiated. DEEP-20.

During the pre-hearing portion of this proceeding, Doris Zelinsky and Joseph Murray (the “Intervenors”) were granted status as intervenors pursuant to § 22a-3a-6(k)(2) of the Department’s Rules of Procedure. *See* Hearing Officer’s Ruling on Requests to Intervene, dated

June 19, 2019 and Hearing Officer's Ruling on Motion to Intervene, dated July 11, 2019. Their participation in the hearing was limited to the issues identified in the description of their witnesses' proposed testimony as stated in the Intervenor's pre-hearing information dated August 9, 2019.¹ *See* Hearing Officer's Prehearing Conference Summary, dated September 6, 2019. No additional persons sought the status of intervenor or intervening party.

A public hearing was held in Branford on September 25, 2019, and written public comments were accepted until October 4, 2019. The evidentiary hearing was held on October 21 and 24, 2019 at the Department's headquarters in Hartford.

At the evidentiary hearing, testimony from three expert witnesses was accepted into the record on behalf of the Applicants and Department staff. Krista Romero, an Environmental Analyst II with DEEP/LWRD, and the permitting analyst assigned to review the Application, testified regarding LWRD's review of the Application and its recommendation for approval in the Tentative Notice of Determination. DEEP-18 (K. Romero C.V.); DEEP-20 (Prefiled Testimony of K. Romero); K. Romero Testimony, Hearing Recording, 10/21/19, Track 1-2

¹ In this regard, the Intervenor's pre-hearing information stated, in relevant part:

- i) Jennifer E.D. O'Donnell, Ph.D., (expert) ... will testify that the proposed dock will not provide reasonable access for the Heerdt's since, for much of the tide cycle, the proposed dock will be unusable.
- ii) Doris Zelinsky (intervenor) will discuss her family's ownership of an easement onto Sunset Beach at the point of the proposed dock and the impact of the proposed dock on her family's recreational use of Sunset Beach and its adjoining waters. The proposed dock would make kayaking, swimming and paddle boarding more dangerous. The proposed dock would also impede recreational walking on the beach and would harm aesthetic values.
- iii) Joseph Murray (intervenor) will discuss his family's ownership of an easement onto Sunset Beach at the point of the proposed dock and the impact of the proposed dock on his family's recreational use of Sunset Beach and its adjoining waters. The proposed dock would make kayaking, swimming and paddle boarding more dangerous. The proposed dock would also impede recreational walking on the beach and would harm aesthetic values.
- iv) Eunice Kaymen is a former president of the Sunset Beach Association, Inc. and is an avid swimmer in the waters of Sunset Beach. Mrs. Kaymen will discuss the recreational impact of the proposed dock upon herself and other members of the Association.

[starting at 00:29:04] (references to live testimony will be in the following format: “[Witness] Test., [Date]. Track [#], [Time]”). Michael Payton, a supervisor in the Department’s Navigation and Boating Infrastructure Unit, Boating Division, testified regarding water access and navigation issues. DEEP-19 (M. Payton C.V.); DEEP-21 (Prefiled Testimony of M. Payton); M. Payton Test., 10/21/19, Track 2, [starting at 00:10:30]. Testifying on behalf of the Applicants was John B. Lust Jr., an expert in permitting for coastal structures. APP-3 (J. Lust Resume); APP-2 (Prefiled Testimony of J. Lust); J. Lust Test., 10/21/19, Track 1, [starting at 00:02:35]. Intervenors Doris Zelinsky, Joseph Murray and Eunice Kaymen testified as fact witnesses for the Intervenors. INT-7, INT-8, INT-9; *see generally* D. Zelinsky, J. Murray, and E. Kaymen Test., 10/24/19, Tracks 1-3. Dr. Jennifer E.D. O’Donnell, Ph.D. testified as an expert in coastal engineering for the Intervenors. INT-6 (Prefiled Testimony of J. O’Donnell); INT-11 (C.V. of J. O’Donnell); J. O’Donnell Test., 10/24/19, Track 1 [starting at 00:19:00].

Based on a review of the record in this matter, including the documentary evidence, witness testimony, and public comment, the Applicants, through the presentation of substantial evidence, have met their burden of proof by demonstrating that the proposed activities, if conducted in accordance with the proposed Draft License, complies with the relevant statutory standards, namely the Structures, Dredging and Fill Statutes (General Statutes §§ 22a-359 through 22a-363) and the applicable portions of the Coastal Management Act (General Statutes §§ 22a-90 through 22a-112). As such, the proposed Draft License (DEEP-14) should be issued as a Final License.

II. FINDINGS OF FACT

1. The Applicants are owners of a waterfront property in Branford, Connecticut known as 61 Sunset Beach Road (the “Property”). APP-1; APP-2.

2. The Property consists of about 0.19 acres. It borders residential homes to the north (53 Sunset Beach Road) and south (65 Sunset Beach Road), Sunset Beach Road to the east, and Branford Harbor to the west. APP-2; APP-4.
3. There are several other man-made structures in this neighborhood and along Branford Harbor, including many permitted, private residential docks and seawalls. APP-2; APP-4 – APP-11; DEEP-6A, 6C, 6D; DEEP-7A, 7B, 7C, 7F; DEEP-12.
4. There is a seawall at the Property that predates 1995, as shown on historic aerial photographs. The Mean High Water (“MHW”) line and Coastal Jurisdiction Line (“CJL”) run along the face of the seawall at high tide. APP-1; APP-2; DEEP-11; DEEP-12.
5. There is an existing mooring and pulley line at the Property approved by the Branford Harbormaster. DEEP-5B; DEEP-8; DEEP-12.
6. The Mean Low Water (“MLW”) line is approximately 60 feet waterward from the seawall. The public can walk along the intertidal beach area waterward of the seawall during lower periods of the tidal cycle. APP-2; APP-4; DEEP-11; J. Lust Test., 10/21/19, Track 1, [00:08:48]; K. Romero Test., 10/21/19, Track 1, [00:32:30]; D. Zelinsky Test., 10/24/19, Track 2, [00:17:55, 00:20:57, 00:23:55, and 00:25:54]; J. Murray Test., 10/24/19, Track 3, [00:44:00].
7. People who currently walk along the beach in this area pass underneath the existing fixed piers at 39 (also known as 37), 41, and 53 Sunset Beach Road. APP-2; APP-4; APP-6, APP-7, APP-9; DEEP-6A; J. Lust Test., 10/21/19, Track 1, [00:08:48]; K. Romero Test., 10/21/19, Track 1, [00:33:08]; D. Zelinsky Test., 10/24/19, Track 2, [00:28:11]; J. Murray Test., 10/24/19, Track 3, [00:44:00 and 00:46:00].
8. At the Property, there are five granite block stones in the intertidal area that extend 24' perpendicular from the waterward base of the existing seawall. These blocks are an existing impediment to public access along the beach. APP-1; APP-2; DEEP-6D; DEEP-12; K. Romero Test., 10/21/19, Track 1, [00:32:07]; D. Zelinsky Test., 10/24/19, Track 2, [00:27:09]; J. Murray Test., 10/24/19, Track 3, [00:46:00].
9. The only coastal resources found on the Property and in the vicinity of the project site are coastal hazard areas, coastal waters (near shore waters), developed shorefront, intertidal flats, wildlife resources and habitat, benthic habitat, and indigenous aquatic life. APP-2; DEEP-6A; DEEP-11; DEEP-12.
10. There are no tidal wetlands located in front of the Property. There are tidal wetlands approximately 35' south of the location of the proposed dock in front of 65 Sunset Beach Road. APP-2; DEEP-6C; DEEP- 6D; DEEP-11; DEEP-12
11. In the original application submitted to the DEEP on August 10, 2018, the dock was proposed to consist of the following:

- a. A 4' wide by 52' long wooden fixed pier elevated approximately 6' above the intertidal beach that will start at the existing seawall on a new concrete pier landing and be supported by five sets of two piles;
- b. A 3' wide by 28' long aluminum ramp; and
- c. An 8' wide by 12.5' long floating dock held in place with steel strong arms attached to short pilings and kept 18" above the substrate with a float bench.

The ramp and float were proposed to be seasonal, in that they will be removed during the non-boating months. The original application also sought to retain pre-1995 granite access steps (4' wide by 6' long) and five granite block stones in the intertidal area that extend from the waterward base of the existing seawall. APP-1; APP-2.

- 12. On September 17, 2018, Department staff sent a Notice of Insufficiency letter to the Applicants requesting additional information and recommending modifications to the dock design. DEEP-5A; DEEP-20.
- 13. In response to the Notice of Insufficiency and subsequent communications with Department staff, the Applicants shortened the length of the fixed pier (first to 40' long, then to 36' long), moved the dock to the north to center it on the Property, added the retention of the existing seawall as a proposed activity, and proposed the removal of the five granite block stones in the intertidal area to improve public access along the beach. APP-2; DEEP-5B; DEEP-10; DEEP-11; DEEP-12; DEEP-20; DEEP-21; J. Lust Test., 10/21/19, Track 1, [00:08:03]; K. Romero Test., 10/21/19, Track 1, [00:31:05 and 00:33:35]; M. Payton Test., 10/21/19, Track 2, [00:15:38 and 00:16:44]
- 14. The final plans for the proposed dock and other activities, with a revision date of March 13, 2019, are included in the Draft License (DEEP-14), and propose the following activities and conditions:
 - a. A 4' wide by 36' long wooden fixed pier elevated approximately 6' above the intertidal beach that will start at the existing seawall on a new concrete pier landing and be supported by three sets of two piles;
 - b. A 3' wide by 28' long aluminum ramp;
 - c. An 8' wide by 12.5' long floating dock held in place with steel strong arms attached to short pilings and kept 18" above the substrate with a float bench;
 - d. The removal of five pre-1995 granite blocks from the intertidal area;
 - e. The retention of 74' +/- granite block seawall with a top elevation between 7.5' and 8.5' NAVD88; and
 - f. The retention of pre-1995 granite access steps (4' wide by 6' long).

- g. The ramp and float must be removed by November 15 of each year and cannot be installed until April 15 of each year. When removed, the ramp and float must be stored in an upland location landward of the CJL and outside tidal wetlands. The activities proposed to be authorized in the Draft License are hereinafter referred to as the “Project.”

APP-2; DEEP-11; DEEP-12; DEEP-20; K. Romero Test., 10/21/19, Track 1, [00:34:40].

- 15. The design of the proposed dock is comparable to other residential docks in the area. K. Romero Test., 10/21/19, Track 1, [00:35:05].
- 16. Department staff had sufficient information to review and process the Application and no further information was required by the staff to make its Tentative Determination. DEEP-20; K. Romero Test., 10/21/19, Track 1, [00:39:40].
- 17. No dredging, excavating or filling is proposed in the Application or listed as an authorized activity in the Draft License. DEEP-11; DEEP-12; DEEP-14.
- 18. The proposed dock will extend approximately 73' from MHW and the CJL from the face of the seawall. APP-2; DEEP-11; DEEP-12; K. Romero Test., 10/21/19, Track 2, [00:00:24].
- 19. The proposed dock will be located approximately 60' from the dock on the northern adjacent property (53 Sunset Beach Road) and approximately 100' from the permitted, yet unbuilt, dock on the southern adjacent property (73 Sunset Beach Road). APP-2; APP-9; APP-10; DEEP-11; DEEP-12; DEEP-20; M. Payton Test., 10/21/19, Track 2, [00:16:44].
- 20. At an average low tide, there will be water around the float. This is sufficient water depth to berth a shallow draft vessel such as a dingy necessary to reach a moored vessel to be brought to the dock during the higher tide cycles. As the tide rises, the water depths around the float will increase allowing vessels with a greater draft to access the float. APP-2; DEEP-11; DEEP-12; K. Romero Test., 10/21/19, Track 1, [00:36:32]; *see generally* J. O'Donnell Test., 10/24/19, Track 1, [starting at 00:28:00].
- 21. There are two private water access points near the Property consisting of pathways to the shoreline. One is located at 69 Sunset Beach Road. The other is an easement claimed by the Intervenor Doris Zelinsky and Joseph Murray over a strip of land between 53 and 45 Sunset Beach Road. DEEP-9; DEEP-11; DEEP-12; DEEP-20; DEEP-21; K. Romero Test., 10/21/19, Track 1, [00:41:30]; M. Payton Test., 10/21/19, Track 2, [00:14:40]; INT-12; *see generally* D. Zelinsky Test., 10/24/19, Track 1, [00:47:30]; J. Murray Test., 10/24/19, Track 3, [00:16:00 and 00:31:06].
- 22. The proposed dock will not hinder access to the water and shoreline from the two access points. DEEP-10; DEEP-12; DEEP-20; DEEP-21; J. Lust Test., 10/21/19, Track 1, [00:08:03 and 00:11:08]; K. Romero Test., 10/21/19, Track 1, [00:41:30];

- M. Payton Test., 10/21/19, Track 2, [00:16:44, 00:17:17 and 00:29:34]; D. Zelinsky Test., 10/24/19, Track 2, [00:33:47] (admitting proposed dock will not block claimed easement to the water or the ability to walk along the beach).
23. The proposed activities were reviewed by the Connecticut Department of Agriculture, Bureau of Aquaculture and the Branford Shellfish Commission. Both agencies determined that the Project would not significantly impact a shellfish area. APP-2; DEEP-1; DEEP-3; DEEP-11, Final Application, Attachment D and F; DEEP-12; DEEP-20.
 24. On March 29, 2018, Karen Zyko of DEEP's Bureau of Natural Resources Wildlife Division responded to the Applicants' request for a review under the Department's Natural Diversity Database. Ms. Zyko found that there would be no negative impacts to State-listed species resulting from the Project. DEEP-2; DEEP-12; DEEP-20; APP-2.
 25. The U.S. Army Corps of Engineers authorized the Project (as originally proposed with the longer fixed pier) on August 20, 2018, under its General Permits for the State of Connecticut, concluding that there would be only minimal impacts on the waters of the United States and no more than minimal individual and cumulative adverse effects on the aquatic environment. APP-2; DEEP-4; DEEP-12.
 26. The proposed activity will have only minimal environmental impacts in the form of 8 square feet of intertidal flats impacts due to pile installation. Such impacts are routine for most residential docks and there will be no additional adverse environmental impacts. APP-2; DEEP-12; DEEP-20; K. Romero Test., 10/21/19, Track 1, [00:43:46].
 27. This proposed activity will not have an adverse impact on swimmers or navigating vessels, including kayaks and paddleboards. DEEP-12; DEEP-20; DEEP-21; M. Payton Test., 10/21/19, Track 2, [00:12:02, 00:17:58 and 00:30:01]; K. Romero Test., 10/21/19, Track 1, [00:41:17]; J. Lust Test., 10/21/19, Track 1, [00:09:46]; *see* D. Zelinsky Test., 10/24/19, Track 2, [00:42:52] (admitting that paddlers are currently able to maneuver around existing moored boats, pulley lines, and docks), Track 2 [00:46:21] (admitting that installation of docks in the past did not restrict recreational activities); E. Kaymen Test., 10/24/19, Track 3, [00:07:04 and 00:08:39] (admitting that installation of docks in the past did not restrict swimming activities); J. Murray Test., 10/24/19, Track 3, [00:34:58] (admitting that he can swim past existing docks), Track 3, [00:42:01] (admitting that paddlers are currently able to maneuver around existing moored boats, pulley lines, and docks).
 28. The proposed activity will not have any anticipated long-term impact to water quality. The environmental impact from the installation of the pilings will be short-term and will quickly stabilize after construction is completed. APP-2; DEEP-12; DEEP-20; K. Romero Test., 10/21/19, Track 1, 00:44:52 and 00:47:51].

29. The Project will take approximately 2-3 weeks to construct, weather and tidal conditions permitting. The granite block stones will first be removed by a barge-mount crane. Then, the fixed pier support pilings will be installed using a barge-mounted crane. The barge will be at the site only at high tide levels to ensure that there is enough water depth to keep the barge floating without touching the bottom. Traditional carpentry techniques will be used to build the rest of the pier from a small work float. The float and ramp will be pre-manufactured off site and installed last by a barge-mounted crane. Construction of the Project will comply with standard Best Management Construction Practices and will not adversely impact the environment beyond the minimal, negligible impacts related to pile installation and will be quickly stabilized. APP-2; DEEP-11; DEEP-12; DEEP-14.
30. Alternative Project configurations were considered, mainly related to the length of the fixed pier. Shorter pier configurations were considered but rejected because structures that did not extend as far into the Harbor and would have resulted in a dock that did not provide reasonable water access for the Applicants. Structures that extended further into the harbor were considered but were determined to result in unnecessary encroachment into the public trust area – in that the longer pier did not provide the Applicants with any appreciable increase in water depth around the float at low tide or longer tidal access. The alternatives analysis also included the “No Build” option, which was rejected because it would not allow the Applicants to access the waters of the State with a dock, as is their right. APP-2; DEEP-11; DEEP-12; DEEP-20; K. Romero Test., 10/21/19, Track 1, [00:40:07].
31. The proposed docking facility has been minimized to the greatest extent and provides reasonable access to Long Island Sound. No further minimization or mitigation of environmental or public trust impacts was recommended by DEEP Staff. APP-2; DEEP-12; DEEP-20; K. Romero Test., 10/21/19, Track 1, [00:43:46].

III. CONCLUSIONS OF LAW

The activities proposed in the Application, as conditioned by the proposed Draft License, are regulated by the Structures, Dredging and Fill Statutes (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 Project, in particular the construction of the dock, will provide the Applicants with reasonable access to the water in accordance with their littoral rights as waterfront property owners while balancing intrusions into the public trust and limiting environmental impacts. The Application and evidence presented during the hearing

supports the assertion that the Applicants' exercise of their littoral right to wharf out can be achieved while minimizing impacts to coastal resources, wildlife, navigation, and coastal sedimentation and erosion patterns.

A. Applicable Statutory Standard

To satisfy its burden, the Applicants must demonstrate compliance with the statutory standards contained in the Structures, Dredging and Fill Statutes and the Coastal Management Act. The Structures, Dredging and Fill Statutes require 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, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned. *See* Conn. Gen. Stat. § 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:

- 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;
- Section 22a-92(a)(2), which requires the preservation and enhancement of coastal resources;
- 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;

- 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;
- 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;
- 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.
- 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, the proper analysis of the Project’s compliance with the applicable statutes focuses on the major topics highlighted within the exhibits and testimony in the record.

B. Expert Testimony

When considering technically complex issues, administrative agencies typically rely on experts. *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. Dep’t of Environmental Protection*, 257 Conn. 128, 139 (2001).

Mr. Lust, Ms. Romero and Mr. Payton each testified whether, in their expert opinion, the Project complied with the relevant statutory criteria. APP-2; DEEP-20; DEEP-21; K. Romero Test., 10/21/19, Track 1, [starting at 00:42:19]. All responded that the Project complied. These expert opinions were credible and provide a substantial basis in fact upon which to base my recommendation. No expert evidence was offered to refute their opinions. *See Feinson v. Conservation Comm'n*, 180 Conn. 421, 429 (lay commission must accept expert testimony); *compare* INT-6 (Prefiled Test. of J. O'Donnell); Test. of J. O'Donnell, 10/24/19, Track 1, [00:25:57 and 00:42:58] (stating that she was not offering expert opinion on any subject other than the depth of water around the proposed float). The analysis that follows is intended to amplify the general conclusions reached by these experts and provide context for the recommendation that the proposed Draft License should be issued as a Final License.

C. The Applicants' Littoral Rights

It is well settled that owners of waterfront property have the right to erect structures to reach navigable waters.

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). However, the Applicants' littoral rights are subject to reasonable regulation. Connecticut courts have recognized that "the state may regulate [the exercise of littoral rights] in the interest of the public." *Lane v. Comm. of Env'tl. Protection*, 136 Conn. App. 135, 157-58 (2012). DEEP is the authority charged by the General Assembly with regulating littoral rights within the appropriate statutory structure to ensure that an application minimizes incursion into the public trust, does not impact sedimentation or increase

erosion, minimizes impacts to coastal resources, and does not result in adverse impacts on coastal resources or public navigation.

A waterfront property owner's right to access the water from their upland by means of a pier or wharf has been repeatedly recognized in DEEP final decisions:

The Connecticut courts clearly confirm that waterfront property owners hold littoral rights that include a right to erect structures to reach navigable waters.

In the Matter of Ronald Harvey, Application No. 200802576-KB, Final Decision, Sept. 23, 2014, p. 1 (hereinafter "*Harvey*").

The construction of a structure over the inter-tidal area to gain access to navigable waters from the upland is understood to be an acceptable exercise of one's littoral rights if impacts to navigation and coastal resources are sufficiently minimized in compliance with the applicable statutes, regulations, and policies.

In the Matter of Daniel McLeod, Appl. No. 200801981-KB, Final Decision, June 5, 2014, p. 16 (hereinafter "*McLeod*"); *see also In the Matter of 16 Highgate Road, LLC*, Appl. No. 201207495-TS, Final Decision, June 23, 2015, p. 14.

The right to construct a dock is not diminished because the proposed structure will not reach depths of water sufficient for the berthing of a vessel at all times in all tidal conditions. K. Romero Test., 10/21/19, Track 1, [00:36:59]. This issue was addressed in the *Harvey* Final Decision, in which it was found:

Despite the concern expressed by the intervening parties, there is no legal requirement that access to the water from structures be approved under the department's authority be available at all times and tides. As a result, there may be a limitation on available water access associated with a given coastal property. In this matter, the limitations associated with this property are not determinative of whether the applicant may exercise his littoral rights. Instead, these limitations demonstrate that the applicant's rights are not unfettered. The department is under no obligation to permit a structure that provides the applicant with deep water access at all times and tides for all types of vessels. Because of the property's limitations, the applicant was required to accept less than complete water access with the understanding that he may need to read a tide chart and exercise discretion, as necessary, to delay navigating to and from his property given available conditions. Absent truly unusual circumstances, this remains a proper exercise of

his littoral rights and respects the balance to be struck between littoral rights of access to coastal areas by upland property owners and the public's interests in coastal resources, navigation, and access to public trust areas.

Harvey, at p. 3; *see also McLeod*, at p. 16. As such, the Intervenor's concerns about the depth of water around the float at low tide and the amount of time a boat can access the dock are not determinative in this matter.

The Intervenor also argue that the existing mooring and pulley line at the Property equate to reasonable water access for the Applicants, and that a dock is unreasonable and unnecessary at the Property. This argument is also in error. The use of a mooring or pulley line, like those currently present at the Property, is not an adequate substitute for a dock at this Property. *See K. Romero Test.*, 10/21/19, Track 2, [00:01:57]. As noted in the *Harvey* decision:

Lastly, any member of the public may apply to the harbormaster for a mooring permit, which are issued on an annual basis and can be lost by the permittee if he fails to renew. Since a mooring permittee must only have legal access to the water and need not be a waterfront property owner to obtain a mooring permit, *having a mooring is not equivalent to the littoral right to have a dock.*

Harvey, Prop. Final Dec., June 17, 2014, § II(A)(25), p. 8 (emphasis added). A seawall or access stairs are clearly not equivalent in functionality to a dock which provides access to navigable water depths.

On the issue of littoral rights, the record reflects that the Department staff engaged in an appropriate balancing analysis to allow the Applicants to exercise their littoral rights while respecting the public's rights and privileges and minimizing adverse impacts to coastal resources.

D. Department Guidelines and Information Sheets

The Intervenor complain that Department staff did not follow certain DEEP guidelines and information sheets in proposing approval of the Project. *See* INT-14 – 16; *see generally* K. Romero Test., 10/21/19, Track 1, [00:51:28] (testifying that DEEP guidelines are non-binding

and staff is not required to follow them). The Intervenor's reliance on the guidelines and information sheets is misplaced. Informal guidelines and information sheets issued by an administrative agency do not carry the force of law or regulation. This was recognized by the DEEP Commissioner in connection with the same Residential Dock Guidelines referenced by the Intervenor here:

The department cannot enforce its guidelines as law without first adopting them as regulations. Neither the department's guidelines nor the Army Corps' setback are adopted as regulations by the department. As noted in the applicant's brief, "[i]t is clear that informal guidelines, promulgated outside the rulemaking framework of the Uniform Administrative Procedure Act; General Statutes §§ 4-166 through 4-189; may not be applied as substantive rules." *Hospital of St. Raphael v. Commission on Hospitals and Health Care*, 182 Conn. 314, 322 (1980) (citing *Salmon Brook Convalescent Home v. Commission on Hospitals & Health Care*, 177 Conn. 356, 368 (1979)). The guidelines serve as a useful tool for minimizing impact but cannot be imposed as a requirement. With the demonstrated need to achieve a balance between littoral rights, coastal resources, navigation, and the public trust, it is important that the department maintain a level of flexibility during the application review process. Ultimately, the Commissioner of Energy and Environmental Protection is empowered by the legislature to determine that the appropriate balance is struck. General Statutes §§ 22a-97(b) and 22a-359(a). ... The guidelines are only a part of the process and cannot dictate the final outcome.

Harvey, at p. 3.

E. The Connecticut Blue Plan

The Intervenor also claim that the *Connecticut Blue Plan*, see Conn. Gen. Stat. § 25-157t *et seq.*, applies to this application. See INT-17; K. Romero Test., 10/21/19, Track 1, [00:58:38], Track 2, [00:00:00] (both questioning applicability of the *Blue Plan*). This claim is also without merit for two principal reasons. First, while the DEEP Commissioner has adopted a final draft *Blue Plan* as required by § 25-157t(f), the provisions of the statute are clear that the *Blue Plan* does not become effective until the draft is approved by the Legislature. See Conn. Gen. Stat. § 25-157t(g). Second, the terms of the *Blue Plan* provide that it is only applicable to activities that are within an area waterward of the -10' contour. See Conn. Gen. Stat. §25-157t(c). The

substantial evidence in this proceeding shows that the Project is located landward of the -10' contour and, as such, the *Blue Plan* would not apply to the Project or this proceeding, even if it were currently in effect.

F. The Public Trust

The Project minimizes impacts on the right of the public to access public trust areas near the proposed dock. The proposed fixed pier provides six feet of clearance to allow members of the public to pass beneath it during lower periods of the tidal cycle. In addition, the removal of the five granite blocks currently in the intertidal area of the Property will improve public access along the beach. K. Romero Test., 10/21/19, Track 1, [00:32:07]; J. Lust Test., 10/21/19, Track 1, [00:08:03]. The overall length of the structure was reduced during the permitting process to minimize intrusion into waters held in the public trust. DEEP-12; DEEP-20. Department staff considered alternative configurations of the proposed dock before determining that the design tentatively approved appropriately balanced the rights of the Applicants and the public.

The Intervenors' claims that the proposed dock will unreasonably impact their ability to access the public trust area, as well as their, and the public's, ability to swim, boat and walk along the shoreline are without merit and ignores the fact that there are three other existing docks within the vicinity of the proposal. *See* D. Zelinsky Test., 10/24/19, Track 2, [00:33:47] (admitting proposed dock will not block claimed easement to the water or the ability to walk along the beach), Track 2, [00:42:52] (admitting that paddlers are currently able to maneuver around existing moored boats, pulley lines, and docks); E. Kaymen Test., 10/24/19, Track 3, [00:04:02] (acknowledging that she can swim past the existing dock at 53 Sunset Beach Road); J. Murray Test., 10/24/19, Track 3, [00:34:58] (admitting that he can swim past existing docks), Track 3, [00:42:01] (admitting that paddlers are currently able to maneuver around existing moored boats, pulley lines, and docks), Track 3, [00:44:00 and 00:46:00] (acknowledging people

can walk along beach under existing piers). The area between 53 and 45 Sunset Beach Road where the Intervenor claim a right to access the water is adjacent to the existing dock at 53 Sunset Beach Road. Despite the presence of that dock, the Intervenor testified that it was still possible to access the beach and the water (to swim or boat) from that access point despite the presence of the existing dock. The proposed dock is 60' further south from the existing dock at 53 Sunset Beach Road and there was no credible evidence presented that the proposed dock presents an additional impediment to access the beach or the water from the access point at 53 and 45 Sunset Beach Road. Substantial evidence in the record also supports a conclusion that the proposed dock will not impact access to the water from the easement on 69 Sunset Beach Road.

In addition, the proposed dock represents no greater obstruction to the public's right to swim and boat in navigable waters than any other dock. As mentioned above, the length of the proposed dock was been reduced from the Applicants' original proposal to minimize the encroachment into public trust waters. The fact that the dock occupies an area where a dock previously did not exist does not *ipso facto* create an unreasonable impact on the public's rights.² K. Romero Test., 10/21/19, Track 2, [00:04:20]; M. Payton Test., 10/21/19, Track 2, [00:30:43]. If that was the case, no docks could be built in Connecticut. Rather, the rights of the public must be balanced against the rights of the Applicants to result in a structure that provides reasonable access to the Applicants without creating an unreasonable impairment on the public's rights, which is the result in this matter.

² In addition, in this matter, there was testimony that the existing mooring and pulley line at the Property already represent an obstruction to public navigation in the area where the dock is proposed. J. Murray Test., 10/24/19, Track 3, [00:37:05 and 00:39:56]. As such, the dock is not taking up space that is currently free from all obstructions.

G. Impact to Sedimentation and Erosion

The proposed docking facility is pile-supported and will have little impact on sediment transport through erosion of the intertidal zone or upland areas. These piles will cover a total of 8 square feet, resulting in a minimal loss of intertidal area. K. Romero Test., 10/21/19, Track 1, [00:35:49]. The proposed dock will also not alter the coastline or increase the potential for flooding.

H. Impact to Coastal Resources

The identified coastal resources found on the Property and in its vicinity are coastal hazard areas, coastal waters (near shore waters), developed shorefront, intertidal flats, wildlife resources and habitat, benthic habitat, and indigenous aquatic life. APP-2; DEEP-6A; DEEP-11; DEEP-12. The Applicants have met their burden to show, through the presentation of substantial evidence, that the proposed activity, as conditioned by the Draft License, 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 that there would be no unacceptable adverse impacts to the coastal resources, including: wildlife, shellfish, finfish, developed shorefront, water quality, and navigation. DEEP-12; DEEP-20. Although the coastal waters will be temporarily impacted by the installation of pier pilings, Department staff concluded that there would be no long-term environmental impact from the project. DEEP-12; DEEP-20.

I. Visual Impacts

The Intervenors also raised as an issue the aesthetic impact of the proposed dock, but provided only summary testimony about their subjective opinions about the visual impact caused by the dock. The applicable statutory scheme provides that “degrading visual quality through significant alteration of the natural features of vistas and viewpoints” is included in 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 dock.

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 Property is residential, densely developed with homes and shoreline flood and erosion control structures and other docks. Given this context, the proposed dock does not represent a significant alteration of any natural features and will have only minimal impact on views. K. Romero Test., 10/21/19, Track 1, [00:48:36], Track 2, [00:03:44].

This issue has also been reviewed in past final decisions of the Department in which it was determined:

The presence of this new residential dock in a developed residential area and its alteration of the view from private residences alone do not represent an impact on coastal resources warranting the proposed structure's denial. Personal preferences or matters of taste also do not control the Department's determination on a waterfront property owner's right to seek permission to build a structure that provides reasonable access to the water. The fact that other individuals in the area would not pursue such a course of action if left the choice is not grounds for denial.

McLeod, at p. 15.

Given the standards applicable to determining whether a new coastal structure represents an adverse visual impact, it is clear that the Project, especially the proposed dock, will not result in an adverse visual impact.

J. Impacts to Navigation

The substantial evidence in the record demonstrates that the proposed dock will have minimal impacts to navigation. Due to the minimized length of the proposed docking facility,

the project does not represent an impact to the public's ability to navigate in the area. Boats moored in the small cove or launched from shore will still be able to travel to and from Long Island Sound without any hindrances due to the proposed dock.

In addition, by approving the Project under the General Permits, the Army Corps determined the dock would not impact navigation, because no project is eligible under the General Permits if it unreasonably interferes with navigation or prevents the "full and free use by the public of all navigable waters at or adjacent to the activity...." DEEP-4.

IV. CONCLUSION

The Department's tentative determination that the Project should be permitted (DEEP-13), as conditioned by the Draft License (DEEP-14), is supported by the substantial evidence in the record. The Applicants have met their burden of proving, by a preponderance of the evidence, that the proposed activities should be permitted through the credible testimony of expert witnesses and the submission of documentary evidence as described above. The substantial evidence in the record indicates that unreasonable environmental harm is not likely to occur if the Project is constructed pursuant to the conditions in the Draft License.

V. RECOMMENDATION

For the reasons stated above, the proposed Draft License should be issued as Final License.


AGREEMENT

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

**Department of Energy and Environmental
Protection, Land & Water Resources
Division**

**Applicants
JOHN & LISA HEERDT**

By _____
Brian P. Thompson
Division Director
Land & Water Resources Division
Department of Energy and Environmental
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79 Elm Street
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By  _____
Their Attorneys
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CERTIFICATION

I hereby certify that on November 15, 2019, a copy of the foregoing was e-mailed to the Hearing Officer and the following in conformance with the Post-Hearing Directive:

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Branford, CT 06405

Krista Romero

Connecticut Department of Energy and Environmental Protection License*

Structures, Dredging & Fill Permit

Licensee(s): John Heerdt

Licensee Address(s): 61 Sunset Beach Road
Branford, CT 06405

License Number(s): 201810092-SDF

Municipality: Branford

Project Description: Install a dock for recreational boating access and retain access stairs and a seawall for flood and erosion control.

Project Address/Location: 61 Sunset Beach Road

Waters: Branford Harbor

Authorizing CT Statute(s) and/or Federal Law: CGS Section 22a-90 to 112; CGS Section 22a-359 to 363g

**Applicable Regulations of
CT State Agencies:**

Agency Contact: Land & Water Resources Division,
Bureau of Water Protection & Land Reuse, 860-424-3019

License Expiration: Five (5) years from the date of issuance of this license.

Project Site Plan Set: John Heerdt Site Plans, 10 sheets of plans prepared by John B. Lust latest revision dated Mach 13, 2019.

License Enclosures: Compliance Certification Form, Land Record Filing, LWRD
General Conditions, Site Plan Set, Work Commencement Form

*Connecticut's Uniform Administrative Procedure Act defines License to include, "the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law . . ."

Authorized Activities:

The Licensee is hereby authorized to conduct the following work as described in application # 201810092-SDF:

1. retain 74 linear feet of an existing granite block seawall with a top elevation between 7.5' - 8.5' NAVD88 and 4' wide x 6' long granite access stairs;
2. remove 25 linear feet of five(5) granite block stones to an area above the CJL and outside of tidal wetlands; and
3. install a 4' wide x 36' long fixed pier, a 3' wide x 28' long ramp and an 8' x 12.5' floating dock with float benches.

Failure to comply with the terms and conditions of this license shall subject the Licensee and / or the Licensee's contractor(s) to enforcement actions and penalties as provided by law.

This license is subject to the following Terms and Conditions:

1. **License Enclosure(s) and Conditions.** The Licensee shall comply with all applicable terms and conditions as may be stipulated within the License Enclosure(s) listed above.
2. The Licensee shall conduct the work authorized as activity number 2 in the license list of authorized activities, prior to undertaking the work authorized as activity number 3 in the license list of authorized activities. Such work shall be conducted no later than the expiration date of this license.
3. The Licensee 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 Licensee shall store such structures at an upland location, landward of the coastal jurisdictional line and outside of tidal wetlands.
4. The Licensee 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. 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.
6. The Licensee 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.

Issued under the authority of the Commissioner of Energy and Environmental Protection on:

Date

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



General Conditions for Land & Water Resources Division Licenses

- 1. Land Record Filing (for Structures Dredging & Fill, Tidal Wetlands, Certificate of Permission, and Long Island Sound General Permit Licenses only).** The Licensee shall file the Land Record Filing on the land records of the municipality in which the subject property is located not later than thirty (30) days after license issuance pursuant to Connecticut General Statutes (CGS) Section 22a-363g. A copy of the Notice 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 license issuance. If a Land Record Filing form is not enclosed and the work site is not associated with an upland property, no filing is required.
- 2. Contractor Notification.** The Licensee shall give a copy of the license and its attachments to the contractor(s) who will be carrying out the authorized activities prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such contractor(s). The Licensee's contractor(s) shall conduct all operations at the site in full compliance with the license and, to the extent provided by law, may be held liable for any violation of the terms and conditions of the license. At the work site, the contractor(s) shall, whenever work is being performed, have on site and make available for inspection a copy of the license and the authorized plans.
- 3. Work Commencement.** Not later than two (2) weeks prior to the commencement of any work authorized herein, the Licensee shall submit to the Commissioner, on the Work Commencement Form attached hereto, 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.
 - For water diversion activities authorized pursuant to 22a-377(c)-1 of the Regulations of Connecticut State Agencies, the Licensee shall also notify the Commissioner in writing two weeks prior to initiating the authorized diversion.
 - For emergency activities authorized pursuant Connecticut General Statutes Section 22a-6k, the Licensee shall notify the Commissioner, in writing, of activity commencement at least one (1) day prior to construction and of activity completion no later than five (5) days after conclusion.
- 4. For Coastal Licenses Only - License Notice.** The Licensee shall post the first page of the License in a conspicuous place at the work area while the work authorized therein is undertaken.
- 5. Unauthorized Activities.** Except as specifically authorized, 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. The Licensee may not conduct work within wetlands or watercourses other than as specifically authorized, unless otherwise authorized in writing by the Commissioner. Tidal wetlands means "wetland" as

defined by section 22a-29 and “freshwater wetlands and watercourses” means “wetlands” and “watercourses” as defined by section 22a-38.

6. **Unconfined Instream Work.** Unless otherwise noted in a condition of the license, the following conditions apply to projects in non-coastal waters:
 - Unconfined instream work is limited to the period June 1 through September 30.
 - Confinement of a work area by cofferdam techniques using sand bag placement, sheet pile installation (vibratory method only), portadam, or similar confinement devices is allowed any time of the year. The removal of such confinement devices is allowed any time of the year.
 - Once a work area has been confined, in-water work within the confined area is allowed any time of the year.
 - The confinement technique used shall completely isolate and protect the confined area from all flowing water. The use of silt boom/curtain or similar technique as a means for confinement is prohibited.
7. **For State Actions Only - Material or Equipment Storage in the Floodplain.** Unless approved by a Flood Management Exemption, the storage of any materials at the site which are buoyant, hazardous, flammable, explosive, soluble, expansive, radioactive, or which could in the event of a flood be injurious to human, animal or plant life, below the elevation of the five-hundred (500) year flood is prohibited. Any other material or equipment stored at the site below said elevation by the Licensee or the Licensee's contractor must be firmly anchored, restrained or enclosed to prevent flotation. The quantity of fuel stored below such elevation for equipment used at the site shall not exceed the quantity of fuel that is expected to be used by such equipment in one day. In accordance with the licensee's Flood Contingency Plan, the Licensee shall remove equipment and materials from the floodplain during periods when flood warnings have been issued or are anticipated by a responsible federal, state or local agency. It shall be the Licensee's responsibility to obtain such warnings when flooding is anticipated.
8. **Temporary Hydraulic Facilities for Water Handling.** If not reviewed and approved as a part of the license application, temporary hydraulic facilities shall be designed by a qualified professional and in accordance with the *Connecticut Guidelines for Soil Erosion and Sediment Control*, the *2004 Connecticut Stormwater Quality Manual*, or the *Department of Transportation's ConnDOT Drainage Manual*, as applicable. Temporary hydraulic facilities may include channels, culverts or bridges which are required for haul roads, channel relocations, culvert installations, bridge construction, temporary roads, or detours.
9. **Excavated Materials.** Unless otherwise authorized, all excavated material shall be staged and managed in a manner which prevents additional impacts to wetlands and watercourses.
10. **Best Management Practices.** The Licensee shall not cause or allow pollution of any wetlands or watercourses, including pollution resulting from sedimentation and erosion. In constructing or maintaining any authorized structure or facility or conducting any authorized activity, or in removing any such structure or facility, the Licensee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to otherwise

prevent pollution of wetlands and other waters of the State. For purposes of the license, "pollution" means "pollution" as that term is defined by CGS section 22a-423. Best Management Practices include, but are not limited, to practices identified in the *Connecticut Guidelines for Soil Erosion and Sediment Control* as revised, *2004 Connecticut Stormwater Quality Manual*, Department of Transportation's *ConnDOT Drainage Manual* as revised, and the Department of Transportation Standard Specifications as revised.

11. Work Site Restoration. Upon completion of any authorized work, the Licensee shall restore all areas impacted by construction, or used as a staging area or accessway in connection with such work, to their condition prior to the commencement of such work.

12. Inspection. The Licensee shall allow any representative of the Commissioner to inspect the project location at reasonable times to ensure that work is being or has been conducted in accordance with the terms and conditions of this license.

13. Change of Use. (Applies only if a use is specified within the License "Project Description")

a. The work specified in the license is authorized solely for the purpose set forth in the license. No change in purpose or use of the authorized work or facilities as set forth in the license may occur without the prior written approval of the Commissioner. The Licensee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this license, request permission from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change.

b. A change in the form of ownership of any structure authorized herein from a rental/lease commercial marina to a wholly-owned common interest community or dockominium may constitute a change in purpose as specified in paragraph (a) above.

14. De Minimis Alteration. The Licensee shall not deviate from the authorized activity without prior written approval from the Commissioner. The Licensee may request a de minimis change to any authorized structure, facility, or activity. A de minimis alteration means a change in the authorized design, construction or operation that does not increase environmental impacts or substantively alter the construction of the project as authorized.

- For diversion activities authorized pursuant to 22a-377(c)-2 of the Regulations of Connecticut State Agencies, a de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.

15. Extension Request. The Licensee may request an extension of the license expiration date. Such request shall be in writing and shall be submitted to the Commissioner at least thirty (30) days prior to the license expiration. 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.

16. Compliance Certification. Not later than 90 days after completion of the authorized work, the Licensee shall prepare and submit to the Commissioner the attached Compliance

Certification Form. Such Compliance Certification shall be completed, signed, and sealed by the Licensee and a Connecticut Licensed Design Professional. If non-compliance is indicated on the form, or the Commissioner has reason to believe the activities and/or structures were conducted in non-compliance with the license, the Commissioner may require the Licensee to submit as-built plans as a condition of this license.

- 17. Maintenance.** The Licensee shall maintain all authorized structures or work in optimal condition or shall remove such structures or facility and restore the affected waters to their pre-work condition. Any such maintenance or removal activity shall be conducted in accordance with applicable law and any additional approvals required by law.
- 18. No Work After License Expiration.** Work conducted after the license expiration date is a violation of the license and may subject the licensee to enforcement action, including penalties, as provided by law.
- 19. License Transfer.** The license is not transferable without prior written authorization of the Commissioner. A request to transfer a license shall be submitted in writing and shall describe the proposed transfer and the reason for such transfer. The Licensee's obligations under the license shall not be affected by the passage of title to the license site to any other person or municipality until such time as a transfer is approved by the Commissioner.
- 20. Document Submission.** Any document required to be submitted to the Commissioner under the license or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

 - Regulatory Section
 - Land & Water Resources Division
 - Department of Energy and Environmental Protection
 - 79 Elm Street
 - Hartford, Connecticut 06106-5127
 - 860-424-3019
- 21. Date of Document Submission.** The date of submission to the Commissioner of any document required by the license shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under the license, 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 the license, the word "day" as used in the license means calendar day. Any document or action which is required by the license 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.
- 22. Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under the license shall be signed by the Licensee 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.”

- 23. Accuracy of Documentation.** In evaluating the application for the license, the Commissioner has relied on information and data provided by the Licensee and on the Licensee’s representations concerning site conditions, design specifications and the proposed work, including but not limited to representations concerning the commercial, public or private nature of the work or structures, 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, the license may be modified, suspended or revoked, and any unauthorized activities may be subject to enforcement action.
- 24. Limits of Liability.** In granting the license, the Commissioner has relied on all representations of the Licensee, including information and data provided in support of the Licensee’s application. Neither the Licensee’s representations nor the issuance of the license shall constitute an assurance by the Commissioner as to the structural integrity, the engineering feasibility or the efficacy of such design.
- 25. Reporting of Violations.** In the event that the Licensee becomes aware that they did not or may not comply, or did not or may not comply on time, with any provision of this license or of any document incorporated into the license, the Licensee shall immediately notify the agency contact specified within the license 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 agency contact, the Licensee shall provide, for the agency’s review and written approval, a report including the following information:
- a. the provision(s) of the license that has been violated;
 - b. the date and time the violation(s) was first observed and by whom;
 - c. the cause of the violation(s), if known;
 - d. if the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and times(s) it was corrected;
 - e. if the violation(s) has not ceased, the anticipated date when it will be corrected;
 - f. steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented; and
 - g. the signatures of the Licensee and of the individual(s) responsible for actually preparing such report.

If the violation occurs outside of normal business hours, the Licensee shall contact the Department of Energy and Environmental Protection Emergency Dispatch at 860-424-3333. The Licensee shall comply with any dates which may be approved in writing by the Commissioner.



Land Record Filing*

To: Branford of Town Clerk

**Signature and
Date:**

Subject: 61 Sunset Beach Road
License # 201810092-SDF

Pursuant to Section 22a-363g of the Connecticut General Statutes, the Commissioner of Energy and Environmental Protection gives notice that a license has been issued to John Heerd, 61 Sunset Beach Road, Branford, CT 06405 to:

1. retain 74 linear feet of an existing granite block seawall with a top elevation between 7.5' -8.5' NAVD88 and 4' wide x 6' long granite access stairs;
2. remove 25 linear feet of five(5) granite block stones to an area above the CJL and outside of tidal wetlands; and
3. install a 4' wide x 36' long fixed pier, a 3' wide x 28' long ramp and an 8' x 12.5' floating dock with float benches.

If you have any questions pertaining to this matter, please contact the Land & Water Resources Division at 860-424-3019.

Return to:

Land & Water Resources Division
State of Connecticut
Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

*The Licensee shall file the Land Record Filing on the land records of the municipality in which the subject property is located not later than thirty (30) days after license issuance pursuant to Connecticut General Statutes (CGS) Section 22a-363g. A copy of the Notice 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 license issuance.

- 26. Revocation/Suspension/Modification.** The license may be revoked, suspended, or modified in accordance with applicable law.
- 27. Other Required Approvals.** License issuance does not relieve the Licensee of their obligations to obtain any other approvals required by applicable federal, state and local law.
- 28. Rights.** The license 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.
- 29. Condition Conflicts.** In the case where a project specific special condition listed on the license differs from, or conflicts with, one of the general conditions listed herein, the project specific special condition language shall prevail. It is the licensee's responsibility to contact the agency contact person listed on the license for clarification if needed prior to conducting any further regulated activities.



Work Commencement Form

To: Regulatory Section
Department of Energy and Environmental Protection
Land & Water Resources Division
79 Elm Street
Hartford, CT 06106-5127

Licensee Name: _____

Licensee Address: _____

License No(s): _____

CONTRACTOR(s):

1 Name: _____

Address: _____

Telephone: _____

E-mail: _____

2 Name: _____

Address: _____

Telephone: _____

E-mail: _____

3 Name: _____

Address: _____

Telephone: _____

E-mail: _____

Date Contractor(s) received a copy
of the license and approved plans: _____

EXPECTED DATE OF COMMENCEMENT OF WORK: _____

EXPECTED DATE OF COMPLETION OF WORK: _____

LICENSEE: _____

(Signature)

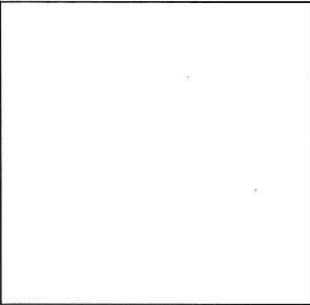
(Date)



**Connecticut Department of Energy and
Environmental Protection**
Bureau of Water Protection and Land Reuse
Land & Water Resources Division

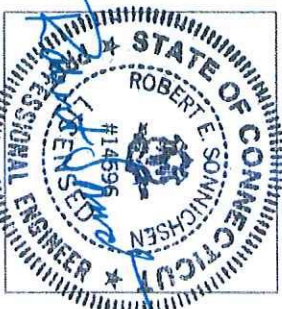
Compliance Certification Form

The following certification must be signed by the licensee working in consultation with a Connecticut-licensed design professional and must be submitted to the address indicated at the end of this form within ninety (90) days of completion of the authorized work.

1. Licensee Name: _____ License Number(s): _____	
2. Check one: (a) <input type="checkbox"/> "I certify that the final site conditions and / or structures are in general conformance with the approved site plans". Identify and describe any deviations and attach to this form. (b) <input type="checkbox"/> "The final site conditions and / or structures are not in general conformance with the approved site plans. The enclosed "as-built" plans note the modifications".	
3. "I understand that any false statement in this certification is punishable as a criminal offence under section 53a-157b of the General Statutes and under any other applicable law."	
_____ Signature of Licensee	_____ Date
_____ Name of Licensee (print or type)	
_____ Signature of CT-Licensed Design Professional	_____ Date
_____ Name of CT-Licensed Design Professional (print or type)	
_____ Professional License Number (if applicable)	Affix Stamp Here 
<ul style="list-style-type: none">As-built plans shall include: elevations or tidal datums, as applicable, and structures, including any proposed elevation views and cross sections included in the approved license plans. Such as-built 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.The Licensee will be notified by staff of the Land and Water Resources Division (LWRD) if further compliance review is necessary. Lack of response by LWRD staff does not imply compliance.	
Submit this completed form to : Regulatory Section Department of Energy and Environmental Protection Land & Water Resources Division 79 Elm Street Hartford, CT 06106-5127	

NEW PIER, RAMP & FLOAT

JOHN HEERDT
61 SUNSET BEACH ROAD
NEW HAVEN COUNTY
BRANFORD, CONNECTICUT



Engineer or Surveyor:
Permitting Agent: John B. Lust

GENERAL NOTES:

1. BASE MAP COMPILED FROM THE FOLLOWING REFERENCE MAPS: " PROPERTY SURVEY PREPARED FOR JOHN HEERDT - 61 SUNSET BEACH ROAD, BRANFORD, CT "; DATED 11-8-17 AND PREPARED BY CRISCUOLO ENGINEERING, LLC- BRANFORD, CT
 - 1.1 AERIAL PHOTO TAKEN FROM GOOGLE 2017 IMAGERY
 - 1.2 PROJECT LOCATION MAP TAKEN FROM TERRAIN NAVIGATOR PRO
 - 1.3 BRANFORD TAX PARCEL MAP FROM TOWN GIS
2. THIS PLAN SHOULD ONLY BE USED FOR GENERAL PRESENTATION AND NOT FOR CONSTRUCTION PURPOSES. ALL STRUCTURES, UTILITIES AND ELEVATIONS SHOULD BE FIELD VERIFIED PRIOR TO THE START OF ANY WORK.
3. THE ENGINEERING SEAL AND SIGNATURE IS PROVIDED TO INDICATE GENERAL CONFORMANCE WITH COASTAL ENGINEERING PRACTICE. THE ATTACHED DESIGNS ARE CONCEPTUAL AND FOR THE PURPOSE OF PERMITTING ONLY. THEY DO NOT INCLUDE A STRUCTURAL ENGINEERING ANALYSIS.

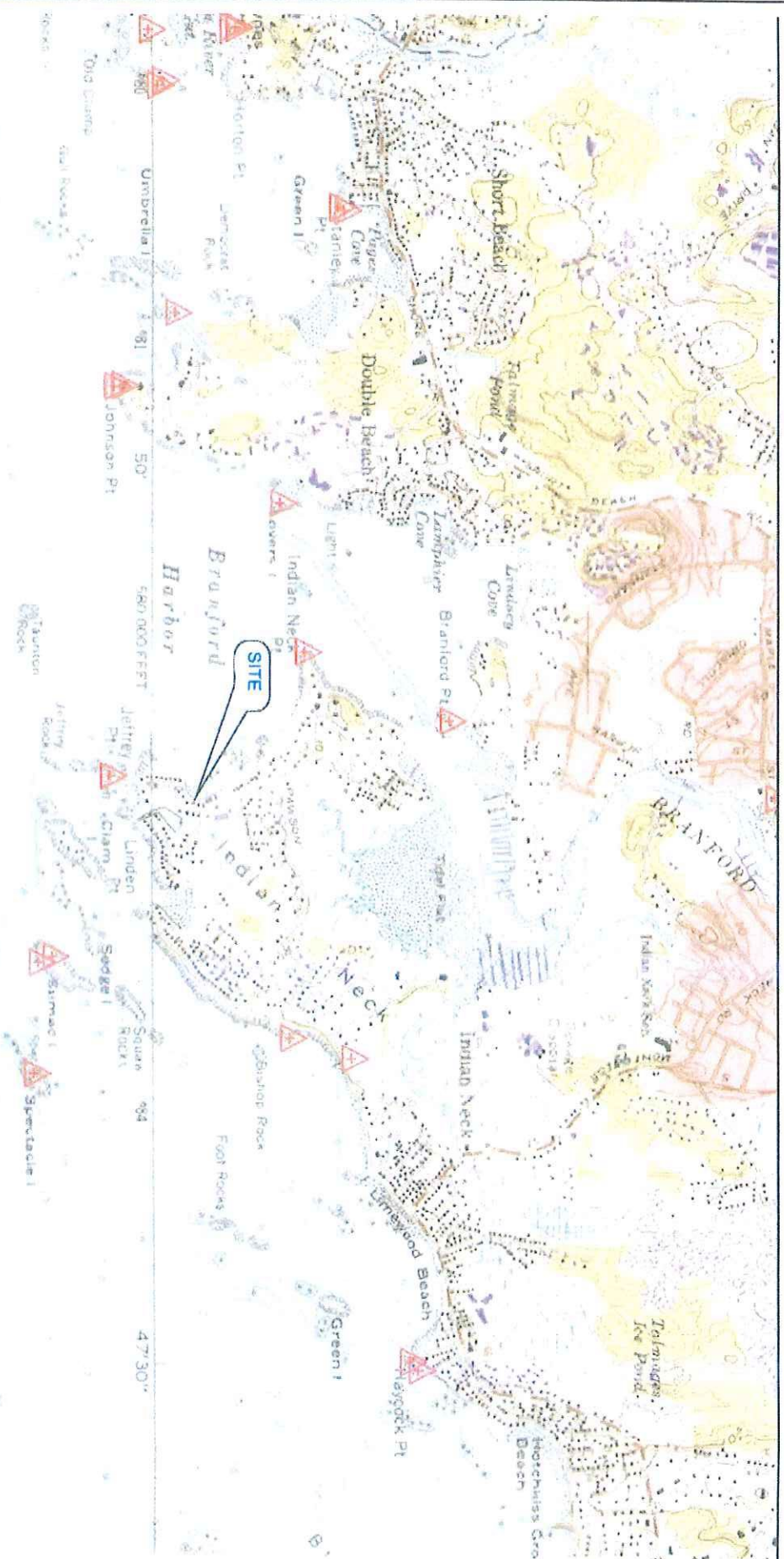
Drawing List

- 1 of 10 - Cover Sheet
- 2 of 10 - Site Location Map
- 3 of 10 - Assessor Map
- 4 of 10 - Vicinity Map
- 5 of 10 - Existing Conditions - Property View
- 6 of 10 - Existing & Proposed - Property View
- 7 of 10 - Proposed Conditions - Plan View
- 8 of 10 - Existing & Proposed - Aerial View & Adjacent Structures
- 9 of 10 - Profile View A-A
- 10 of 10 - Profile View B-B

Date: December 20, 2017

Revised: March 13, 2019

Permitting Agent: John B. Lust



L O N G I S L A N D S O U N D

U.S.G.S. QUADRANGLE - BRANFORD

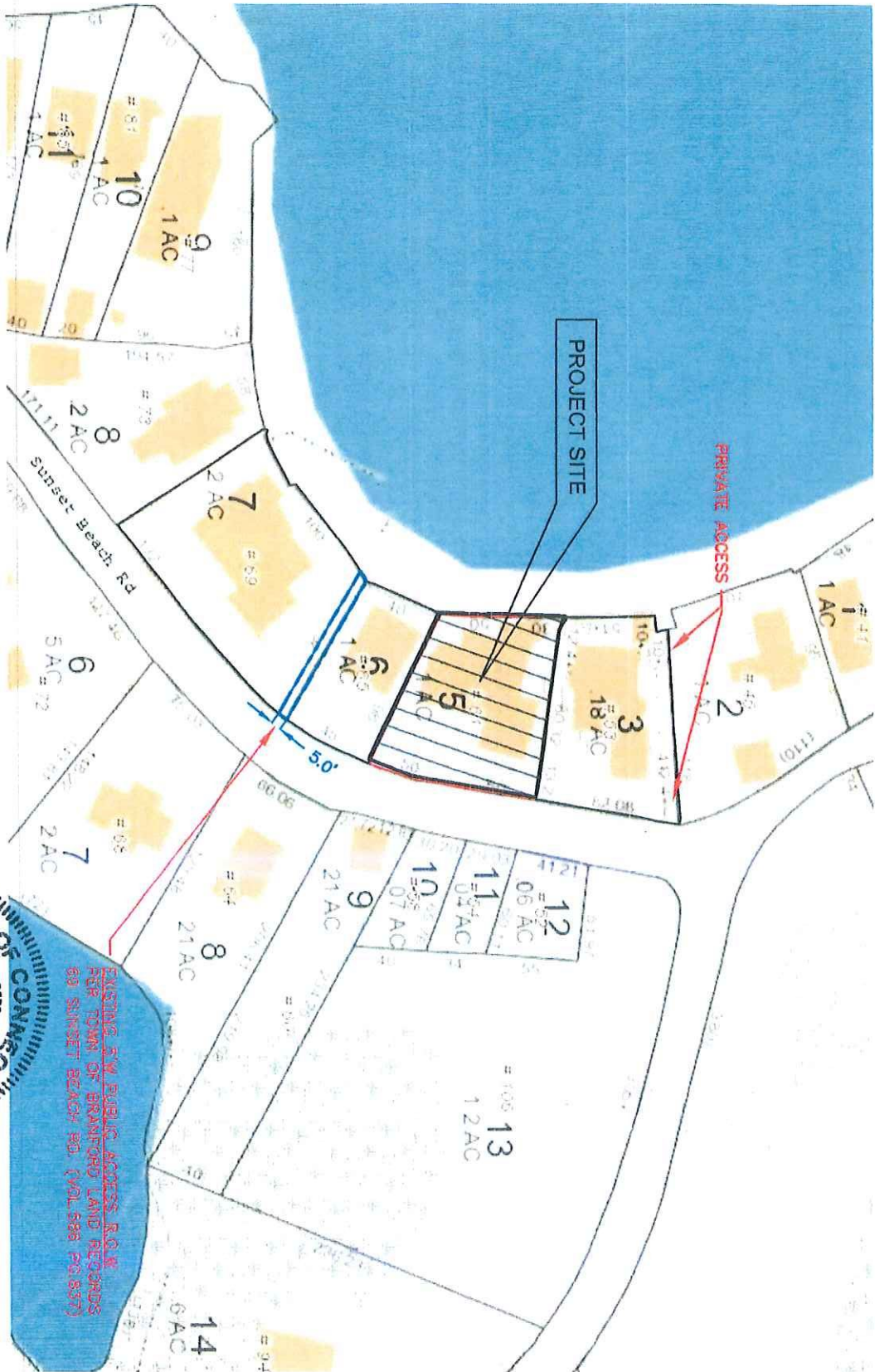
Scale: 1" = 2000'



0 SCALE REF. 1"

PROJECT LOCATION MAP FROM TERRAIN NAVIGATOR PRO

Applicant	JOHN HEERDT
	61 SUNSET BEACH ROAD
	NEW HAVEN COUNTY
	BRANFORD, CONNECTICUT
SITE LOCATION MAP	Sheet: 2 of 10



ASSESSOR MAP

BRANFORD TAX PARCEL MAP FROM TOWN GIS

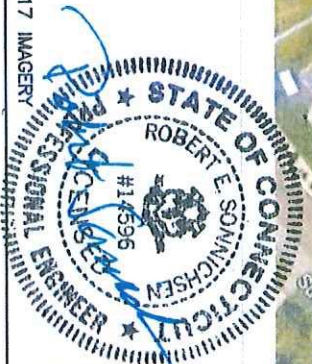
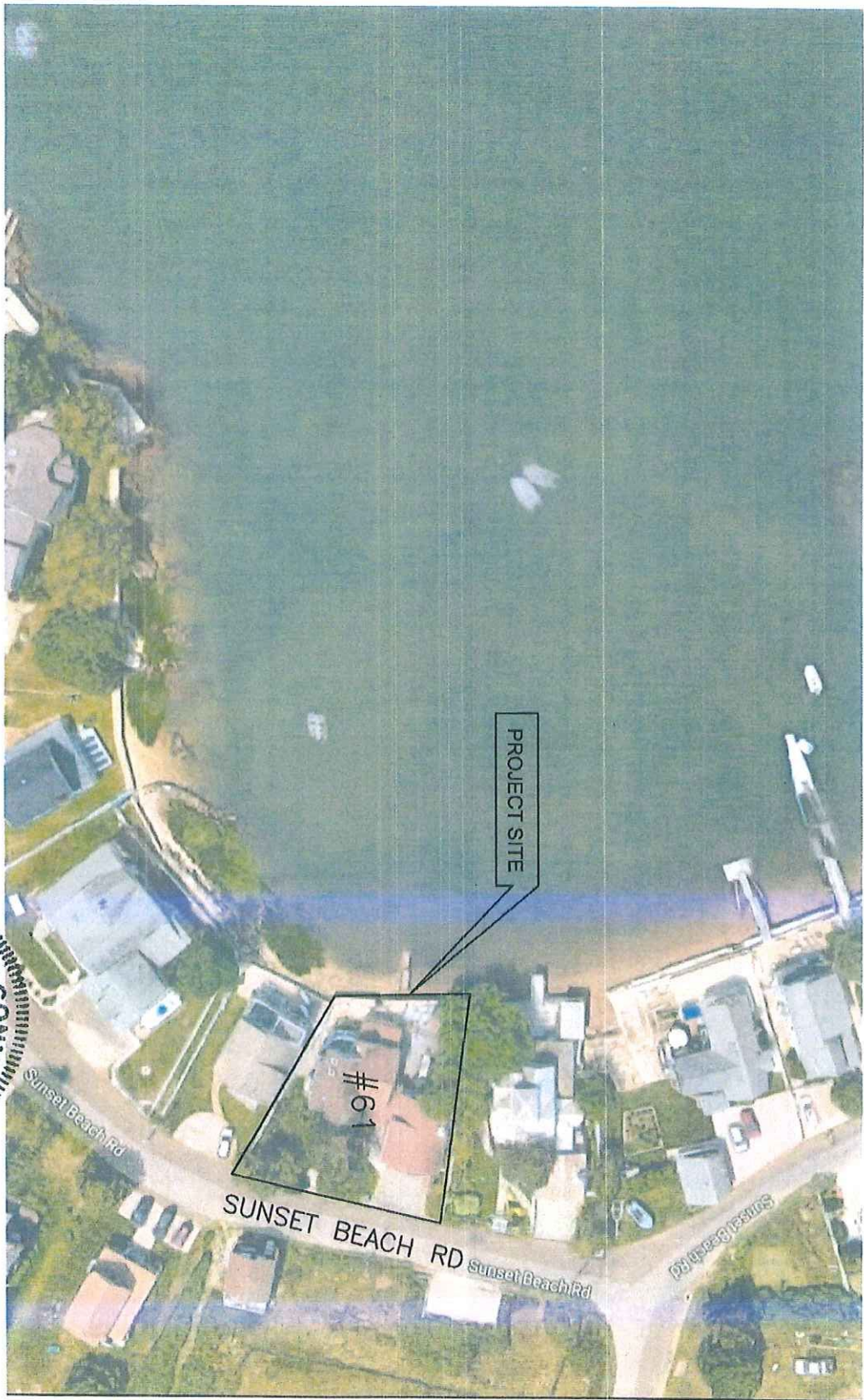


JOHN HEERDT
 61 SUNSET BEACH ROAD
 NEW HAVEN COUNTY
 BRANFORD, CONNECTICUT
 ASSESSOR MAP Sheet: 3 of 10

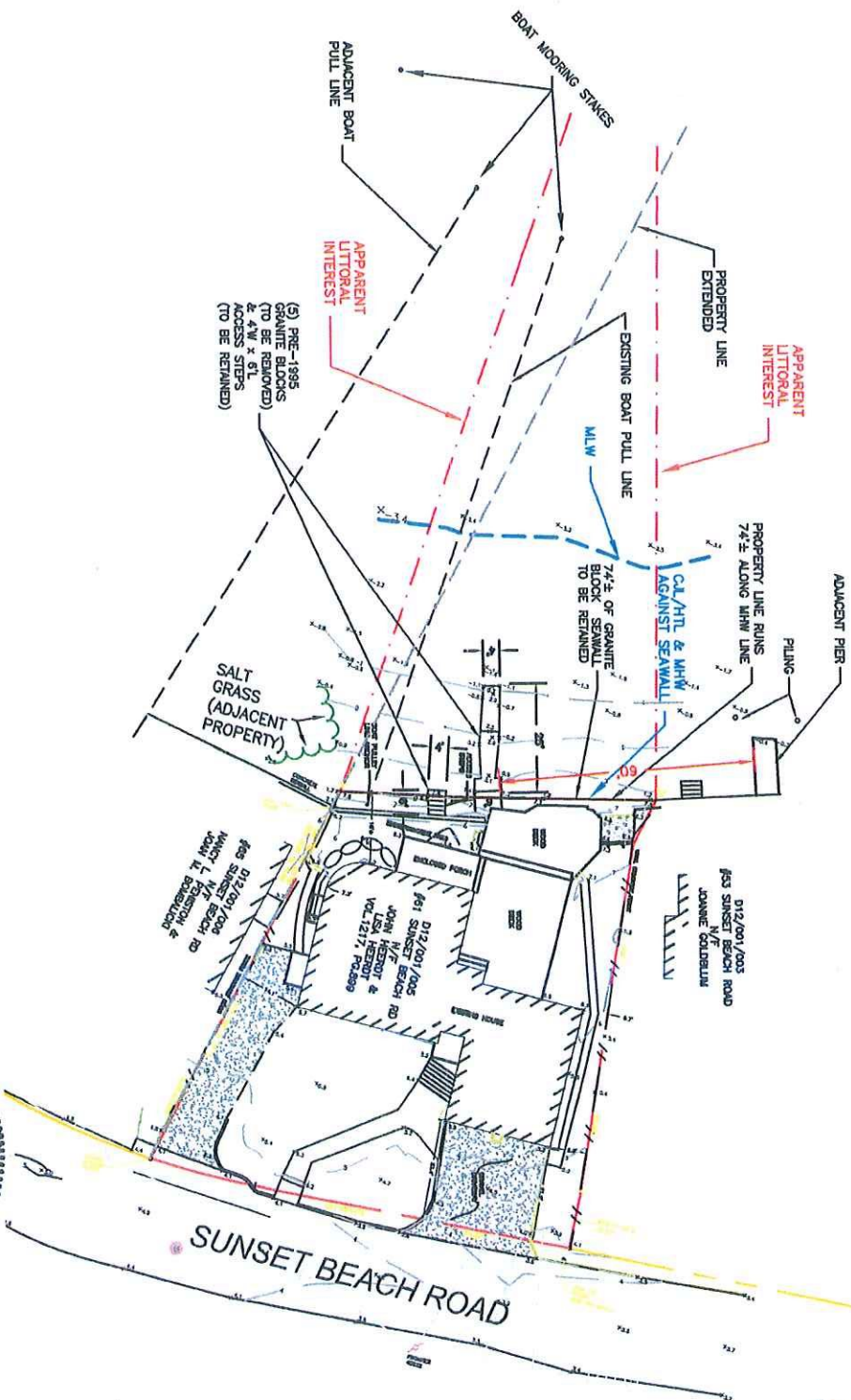


PROJECT VICINITY MAP FROM GOOGLE 2017 IMAGERY

VICINITY MAP



Applicant	JOHN HEERDT 61 SUNSET BEACH ROAD NEW HAVEN COUNTY BRANFORD, CONNECTICUT
VICINITY PLAN	Sheet: 4 of 10

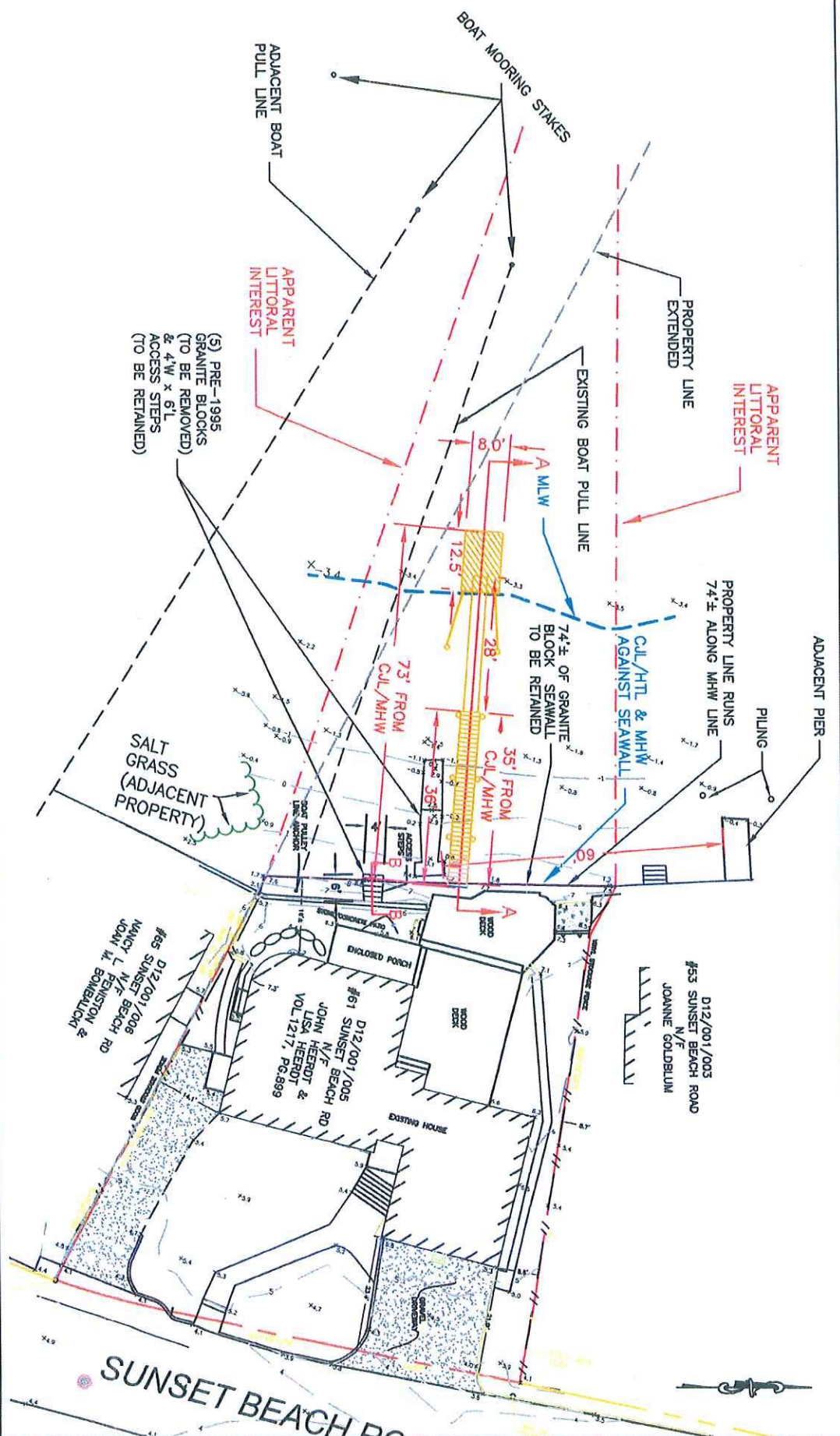
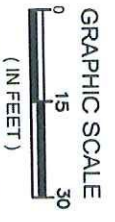


Permitting Agent: John B. Lust	Drawn By: JBL
Checked By: R.S.	Date: December 20, 2017
Revised: March 4, 2019	DATUM = NAVD88
	C/L (HTL) = 4.3 (4.4)
	MHW = 2.6
	MLW = -3.4



JOHN HEERDT
61 SUNSET BEACH ROAD
NEW HAVEN COUNTY
BRANFORD, CONNECTICUT

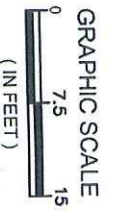
NEW PIER, RAMP & FLOAT
EXISTING CONDITIONS
PROPERTY VIEW Sheet: 5 of 10



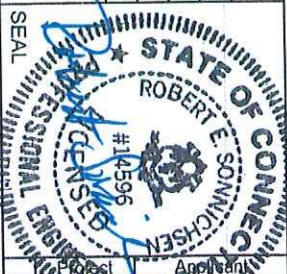
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Drawn By:	JBL
Checked By:	R.S.
Date:	December 20, 2015
Revised:	March 13, 2015
DATUM = NAVD88	
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MLW = -3.4	



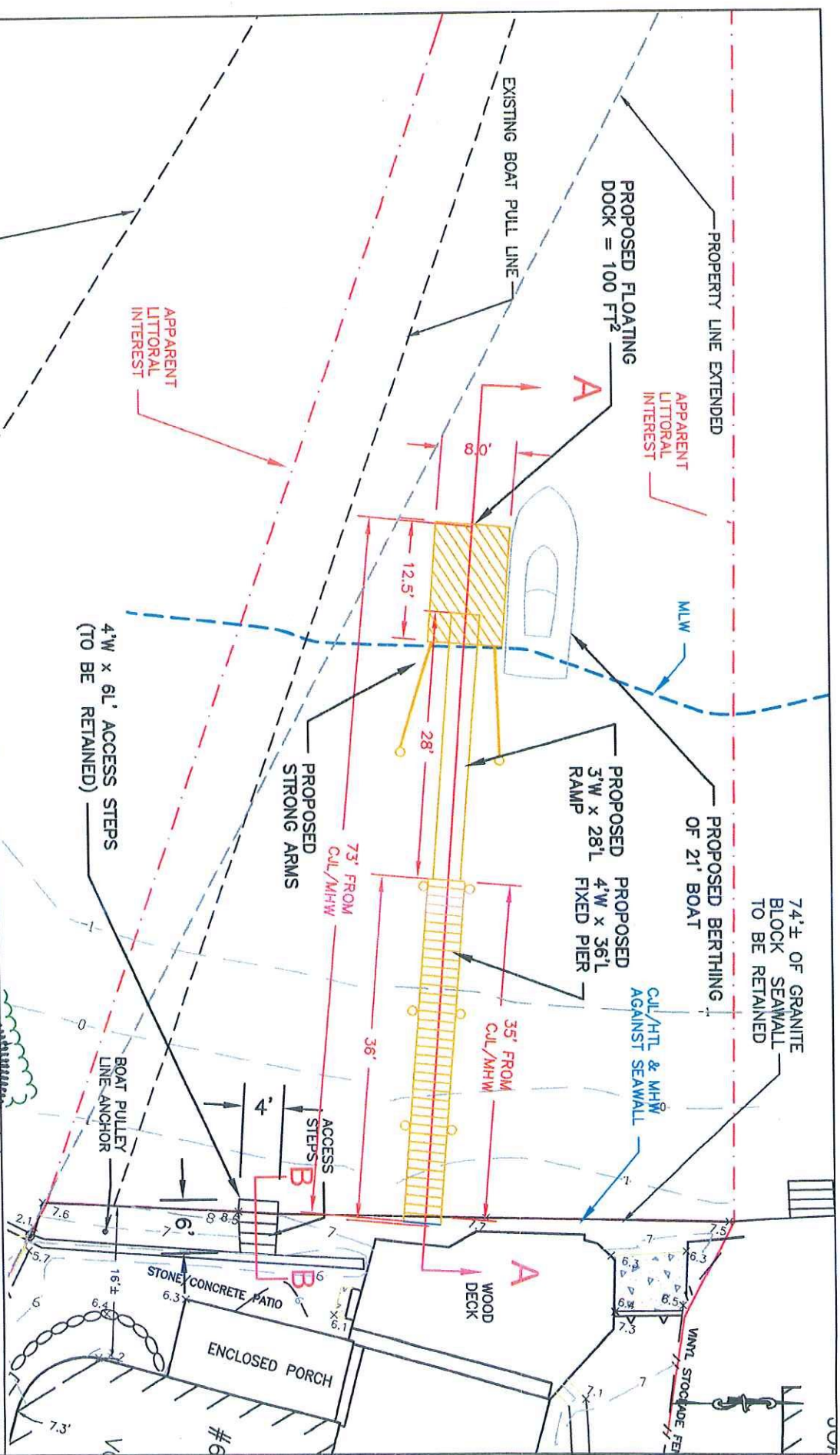
JOHN HEERDT
61 SUNSET BEACH ROAD
NEW HAVEN COUNTY
BRANFORD, CONNECTICUT
NEW PIER, RAMP & FLOAT
EXISTING W/PROPOSED
PROPERTY VIEW
Sheet: 6 of 10

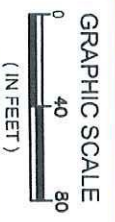
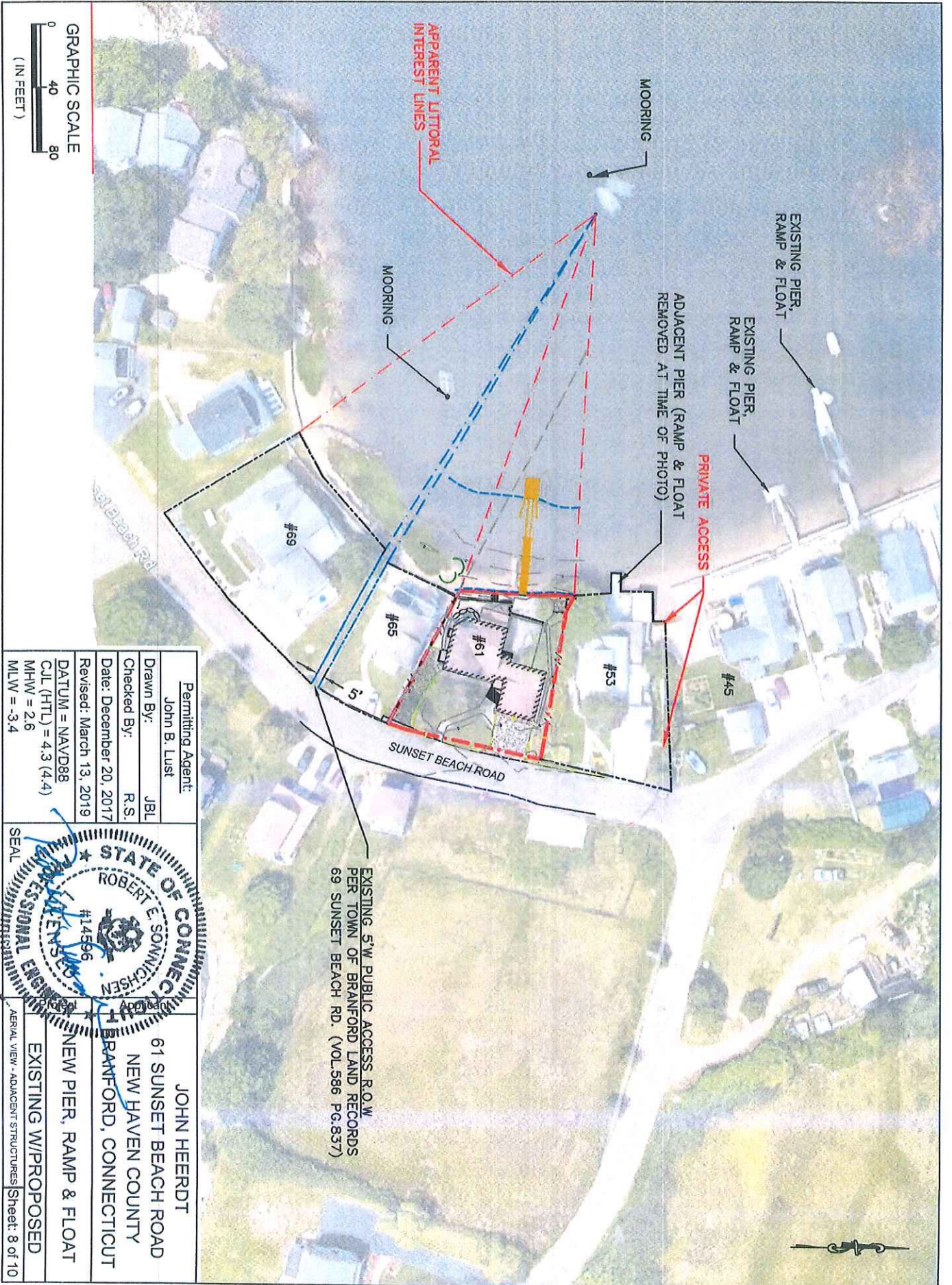


Permitting Agent: John B. Lust	
Drawn By: JBL	Checked By: R.S.
Date: December 20, 2017	Revised: March 13, 2019
DATUM = NAVD88	
C.L (HTL) = 4.3 (4.4)	
MHW = 2.6	
MLW = -3.4	



JOHN HEERDT
 61 SUNSET BEACH ROAD
 NEW HAVEN COUNTY
 BRANFORD, CONNECTICUT
 NEW PIER, RAMP & FLOAT
 PROPOSED CONDITIONS
 PLAN VIEW
 Sheet: 7 of 10



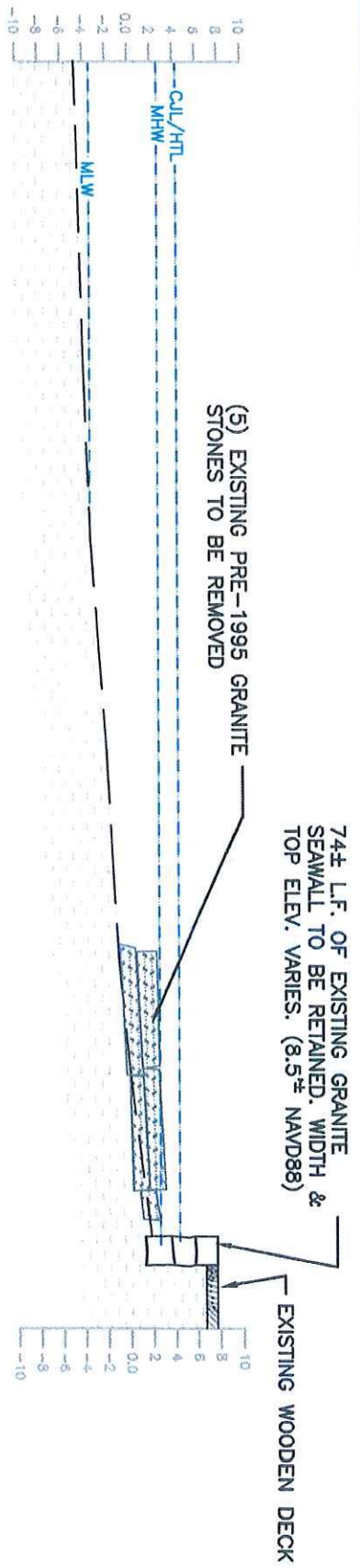


Permitting Agent:
 John B. Lust
 Drawn By: JBL
 Checked By: R.S.
 Date: December 20, 2017
 Revised: March 13, 2019
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 M/HW = 2.6
 M/LW = -3.4

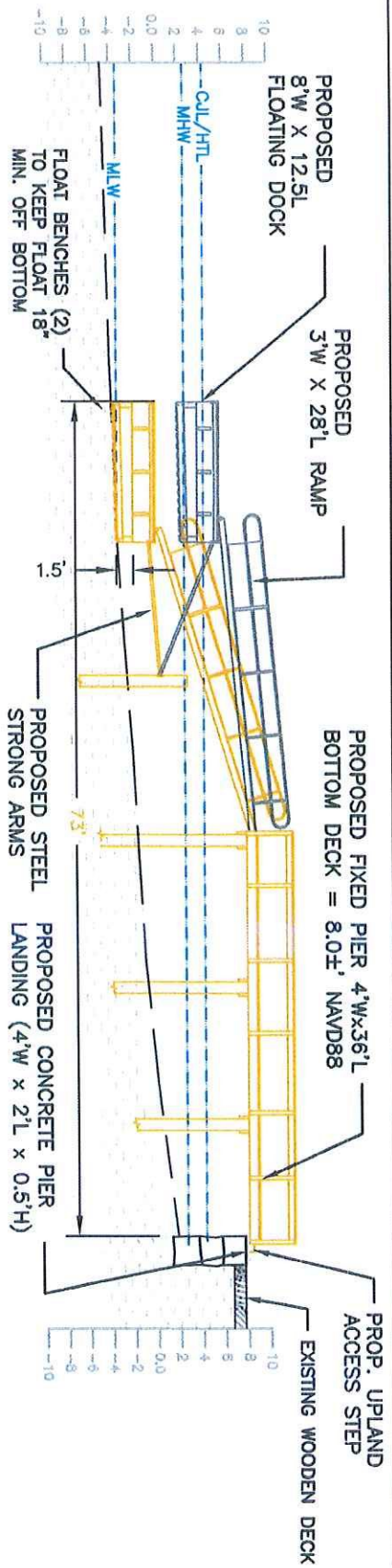


JOHN HEERDT
 61 SUNSET BEACH ROAD
 NEW HAVEN COUNTY
 BRANFORD, CONNECTICUT
 NEW PIER, RAMP & FLOAT
 EXISTING W/PROPOSED
 AERIAL VIEW - ADJACENT STRUCTURES Sheet: 8 of 10

EXISTING 5'W PUBLIC ACCESS R.O.W.
 PER TOWN OF BRANFORD LAND RECORDS
 69 SUNSET BEACH RD. (VOL.586 PG.837)



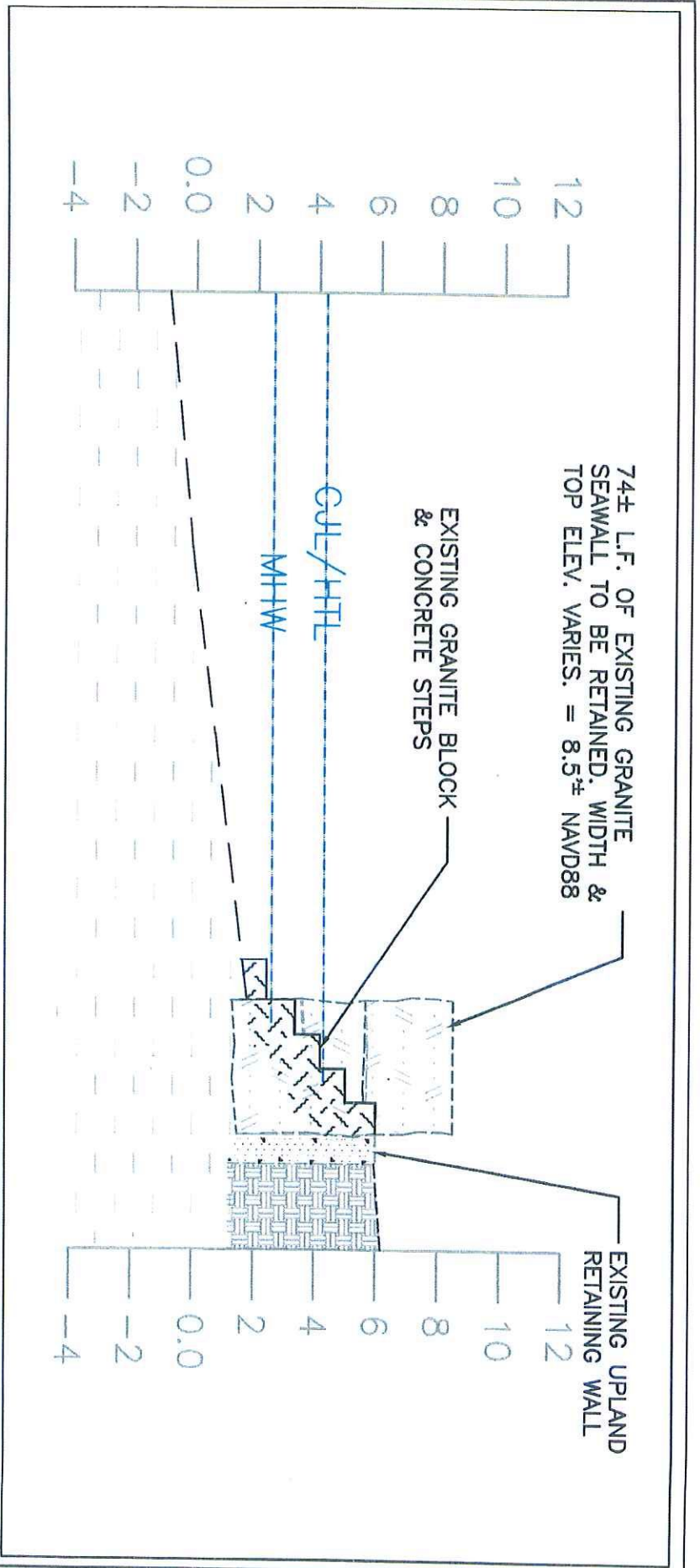
EXISTING PROFILE



PROPOSED PROFILE

Permitting Agent: John B. Lust		JOHN HEERDT 61 SUNSET BEACH ROAD NEW HAVEN COUNTY BRANFORD, CONNECTICUT
Drawn By: JBL		
Checked By: R.S.		
Date: December 20, 2017		
Revised: March 13, 2019	NEW PIER, RAMP & FLOAT	
DATUM = NAVD88	CROSS SECTION A-A	
CUL (HTL) = 4.3 (4.4)	PROFILE VIEW Sheet: 9 of 10	
MHW = 2.6		
MLW = -3.4		





EXISTING PROFILE



Permitting Agent: John B. Lust	JBL		JOHN HEERDT
Drawn By:	R.S.		61 SUNSET BEACH ROAD NEW-HAVEN COUNTY BRANFORD, CONNECTICUT
Checked By:			NEW PIER, RAMP & FLOAT
Date: March 13, 2019			CROSS SECTION B-B
Revised: Oct. 11, 2018		SECTION VIEW	Sheet: 10 of 10
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