



STATE OF CONNECTICUT

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



OFFICE OF ADJUDICATIONS

IN THE MATTER OF : APPLICATION NO. 200701968
GAIL REYNOLDS : NOVEMBER 9, 2010

PROPOSED FINAL DECISION

Gail Reynolds has applied to the Department of Environmental Protection (DEP) for a permit to install a residential dock at Lot 35 Delafield Island Road in Darien. The dock would consist of a pile-supported timber fixed pier, an aluminum ramp, and a float. The landward edge of the pier would begin on a ledge outcropping on Lot 35 and span approximately fifty feet of intertidal wetlands before terminating at the edge of these wetlands. The dock would serve as a shared residential dock for Lot 35 and 111 Delafield Island Road.

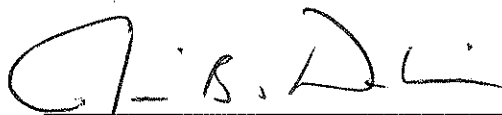
The DEP published its tentative determination to approve the application on April 27, 2010. A timely petition for a hearing was submitted. A hearing was held at Darien Town Hall on September 14, 2010. Public comments were received and written comments and photographs of the site and surrounding area were submitted. On September 16, 2010, the hearing continued and concluded at the DEP in Hartford.

1 The designation of a "shared dock" means that a deed restriction will be filed with the Town of Darien prohibiting any future construction of a dock at 111 Delafield Island Road.
2 These exhibits were admitted per the parties' agreement: APP 1 through 11 and DEP 1 through 29.

The applicant and DEP have jointly submitted for my consideration the attached Agreed Draft Decision, which includes proposed findings of fact and conclusions of law. A revised draft permit is attached to this Decision (Attachment A); the revisions include special permit terms and conditions to address the presence of the Eastern Prickly Pear, identified near the landward edge of the proposed dock.

The Decision satisfactorily conveys the findings of fact and assessments of applicable law necessary to support a conclusion that this proposed activity, if conducted in accordance with the proposed revised draft permit, complies with the relevant statutory and regulatory requirements. General Statutes §§22a-28 through 22a-35 (Tidal Wetlands Act); §§22a-90 through 112 (Connecticut Coastal Management Act); §§22a-359 through 22a-363f (Structures, Dredging and Fill); and Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17. Notably, the record and the Decision address comments, questions and concerns expressed by the public about the size and location of the dock, as well as access to, construction of, and use of the dock.<sup>3</sup>

I adopt the attached Agreed Draft Decision as my proposed final decision and recommend that the Commissioner issue the requested permit.



Janice B. Deshais, Hearing Officer

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<sup>3</sup> For example, the record outlines the various alternatives explored by the applicant regarding the location and size of the dock and notes the interaction among the applicant, the DEP, and many other state and local agencies in evaluating this proposed project.

AGREED DRAFT DECISION

GAIL REYNOLDS  
COASTAL PERMIT APPLICATION # 200701968

INSTALLATION OF A PIER, RAMP AND FLOATING DOCK  
TOWN OF DARIEN

October 27, 2010

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1. Introduction: On July 26, 2007, Gail Reynolds submitted an application to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line and in an area of tidal wetlands, for the installation of a residential dock, comprised of a pile-supported timber fixed pier, ramp, and float in an intertidal arm in the northern quadrant of Scott Cove on Long Island Sound at Darien, Connecticut. This application seeks a permit to undertake said regulated activities under the provisions of the Structures, Dredging and Fill provisions of the Connecticut General Statutes ("General Statutes"), sections 22a-359 through 363f, in accordance with the Connecticut Coastal Management Act, sections 22a-90 through 22a-112 of the General Statutes, and the Tidal Wetlands Act and regulations, sections through 22a-28 through 22a-35 of the General Statutes and sections 22a-30-1 through 22a-30-17 of the Regulations of Connecticut State Agencies.
  2. Parties: The parties to the proceeding are: the Applicant, Gail Reynolds, and staff from the Office of Long Island Sound Programs ("OLISP" or the "Staff") of the Department of Environmental Protection ("DEP").

The parties have agreed to the admission of all the exhibits listed on the attached Prehearing Submissions comprising staff exhibits DEP-1 through DEP-29 and Applicant's exhibits APP-1 through APP-11. Twenty-four (24) Hearing Officer Exhibits were also admitted into the record without objection after the hearing was held.

FINDINGS OF FACT

**Background**

1. Site Location and Character: The 1.7-acre site is an unimproved lot located at Lot 35 Delafield Island Road on an arm of Scott Cove in Darien, Connecticut. (APP-3). The landscape bordering the Cove is primarily comprised of low density residential areas with extensive forest cover and a heterogeneous mix of salt marsh and upland transition habitats. (APP-6). Scott Cove is an estuarine embayment that is subject to an extensive tidal range of approximately 7' to 8'. (APP-2, APP-4). At low tide, approximately 50-60% of Scott Cove is exposed tidal flat. Given this geomorphological setting, the area

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where the proposed dock is located is not exposed to heavy wave action. Water flow within the Cove is primarily tidal. (APP-2).

The site is long and narrow and runs along the eastern road line of Delafield Island Road for approximately 700'. (APP-3). Topography on the site slopes gently to the east. An old cart path is located on and adjacent to the southern property line of the parcel, with only the western portion of the path located on the subject parcel. Other than the portions of fill material, the only other upland area in this portion of the property is a bedrock outcropping that lies within the upper marsh area. The bedrock outcropping is vegetated with individuals of Eastern red cedar (*Juniper virginiana*) and high tide bush (*Iva frutescens*) along the periphery of the marsh. A small clump of Eastern Prickly Pear (*Opuntia humifusa*), a state species of special concern, is located on the western portion of the outcropping.

The shoreline on and adjacent to the site is characteristic of the salt marshes found along the southern New England shoreline. The shoreline of the site is not armored but naturally vegetated with high and low tidal marsh species. (APP-3, APP-6). The banks of the north and south frontage areas of the site are dominated by low marsh vegetation (*Spartina alterniflora*). Further upland, the high marsh area of the site is comprised of mixed vegetation, including *Spartina patens*, *Iva frutescens*, and other vegetation. The entire frontage of the site consists of a 50' band of *Spartina alterniflora* transitioning into *Spartina patens*.

The proposed pier will be located in the southern portion of the site. The landward end of the fixed pier is proposed to be built on the ledge outcropping and will span approximately 50' of intertidal wetlands before terminating at the edge of the tidal wetlands. (DEP-29, APP-2, APP-3).

2. Application History: The initial application was received on July 26, 2007 requesting authorization to install a private residential dock at 111 Delafield Island Road, consisting of a 4' wide by 58' long pile supported timber access pier, a 3' wide by 28' aluminum ramp and a 6' wide by 16' long floating dock with two (2) anchor piles. (DEP-4).

After an initial review of the application, OLISP staff members, in consultation with staff from the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and the National Marine Fisheries Service, suggested to the Applicant that the location of the proposed dock be relocated to the adjacent vacant parcel known as Lot 35 and the dock be shared with the property located at 111 Delafield Island Road. The Applicant complied with the suggestion and coordinated with the DEP and the National Marine Fisheries Service to identify a location off an existing rock outcrop on Lot 35 as the preferred location for the proposed dock. (DEP-7, DEP-8, DEP-9; *see generally*, Public Hearing Transcript, Sept. 16, 2010, Testimony ("Test.") of R. Bajek, pp. 99-104).

On March 7, 2008, the Applicant submitted a revised application text describing the new location for the proposed dock. (DEP-10). The Applicant completed the application on February 19, 2010 by filing a revised Executive Summary and final drawings. (DEP-12). The revised application seeks a permit to undertake regulated activities in tidal, coastal and navigable waters of the State waterward of the high tide line and in an area of tidal wetlands, for the installation of a shared residential dock, comprised of a 4' x 70' pile

supported timber access fixed pier, 3' x 36' aluminum ramp, and an 8' x 20' float to be held in place by four (4) pilings.

In evaluating the application, OLISP staff members solicited or received input from various state and local agencies, including the Harbor Management Commission, the Darien Shellfish Commission, the Darien Planning and Zoning Commission, the Connecticut Commission on Culture & Tourism, and the State of Connecticut Department of Agriculture Bureau of Aquaculture, as well as input from other offices within the DEP itself. (DEP-14, DEP-22, DEP-29). The Applicant received a federal permit for the proposed dock from the U.S. Army Corps of Engineers on July 1, 2009. (APP-7).

On April 27, 2010, OLISP staff recommended tentative approval of the application and issued a Notice of Tentative Determination to Approve and Intent to Waive a Public Hearing. (DEP-16). On that same day, the notice was published in the Stamford Advocate, a daily newspaper with circulation in Stamford, Darien, and Greenwich, Connecticut. (DEP-20). Because the project spans an area of tidal wetland vegetation, section 22a-32 of the General Statutes required a 40-day comment period on the application and also required that a public hearing be held upon request by twenty-five (25) individuals in a petition. The public comment period closed on June 6, 2010. On May 26, 2010, OLISP staff received a petition from Eugene P. Markowski and Bernadette M. Markowski (the "Petitioners") with at least 25 signatures requesting that a public hearing be held on the application. (DEP-21).

In accordance with statutory requirements, upon receipt of the petition a public hearing was scheduled on the application. The hearing officer, Janice B. Deshais, of the DEP Office of Adjudications, held a status conference on June 22, 2010. Thereafter, a site visit was held on August 3, 2010 during low tide. On August 20, 2010, OLISP staff published a Notice of Public Hearing. (DEP-23). A final Prehearing Conference was held on September 2, 2010. A second site visit was held during the high tide on September 14, 2010. The public comment session of the hearing was held in Darien at the Darien Town Hall that same day at 6:30 pm. An evidentiary hearing was held at DEP Headquarters in Hartford on September 16, 2010. At the hearing, the Applicant presented exhibits and testimony to show that the proposed dock would result in no adverse impact on the tidal wetlands, coastal resources, or marine fisheries. (APP-1, APP-2, APP-3, APP-4, APP-5). The hearing record closed on September 30, 2010.

3. Project Description: The final application seeks authorization to install a 4' x 70' pile supported timber access fixed pier, 3' x 36' aluminum ramp, and an 8' x 20' float to be held in place by four (4) pilings with float stops to keep the float elevated 18" above the substrate. (DEP-17, APP-8). The landward end of the fixed pier will begin atop the ledge outcropping on Lot 35. (DEP-17, DEP-29). At the request of OLISP staff, the proposed dock will serve as shared residential dock for Lot 35 and 111 Delafield Island Road. (DEP-8, DEP-9, DEP-17).

4. Purpose and Use of Proposed Dock: The purpose of the proposed work is to construct a pier, ramp and floating dock for the Applicant's private, recreational boating use. (DEP-17). The Draft Permit and Revised Draft Permit limit the use of the proposed dock to "kayak and canoe access." (DEP-18, DEP-27).
5. Compliance and Enforcement History: There are no previous permits or certificates issued by the DEP that authorized work waterward of the high tide line at this site. The site has not been the subject of a DEP enforcement action for unauthorized activities waterward of the high tide line. (DEP-4, DEP-15, DEP-17).
6. Tidal Wetlands Vegetation: On December 18, 2007, OLISP staff conducted a site visit to verify the location of tidal wetland vegetation within the project location. (DEP-6, DEP-6a-6b, DEP-29). The inspection revealed that tidal wetland vegetation extends from property line to property line as shown in the revised permit application drawings. (DEP-17, DEP-29). The low marsh area along the banks of the site is dominated by *Spartina alterniflora*. High marsh vegetation, including *Spartina patens* and *Iva frutescens*, are found in upland portions of the site. The site frontage consists of a 50' band of *Spartina alterniflora* transitioning landward into *Spartina patens*. (DEP-29, APP-9).

The proposed dock has been designed to minimize impacts to tidal wetlands as much as is possible. (APP-3). To minimize shading of the tidal wetland vegetation, the proposed structure is designed to be elevated at least 1' above the height of the vegetation at peak growing season. To further avoid shading impacts to the upper marsh, the Applicant proposes direct pedestrian access to the pier in lieu of a structure. The distance to be traversed on foot over the high marsh is approximately 39'. Due to the nature of the substrate and vegetative growth within the high marsh and the nature of the private use of the pier, it is unlikely that directly walking across the high marsh will negatively impact the wetland over time by trenching, vegetative demise or other physical impairments. (APP-3; *see generally*, Test. of M. Raymond, pp. 115-116, Test. of R. Zajac, pp. 133-134). The ramp and float portions of the dock structure will be located waterward of the tidal wetland vegetation on-site and therefore is not expected to impact this resource. (DEP-4, DEP-15, DEP-17, DEP-29, APP-3).

7. Shellfish: The proposed work will not significantly affect any shellfish areas. (DEP-14, DEP-15, DEP-29, APP-4, APP-5, APP-10, APP-11; *see generally*, Test. of P. Pellegrino, pp. 129-130).
8. Connecticut Endangered, Threatened and Special Concern Species: At the time of the initial application in 2007, the Applicant reviewed the DEP's Natural Diversity Database ("NDDDB") and found there were no known extant populations of Federal, State Endangered, Threatened, and Special Concern species at the project site. Subsequent to the issuance of public notice, OLISP staff identified a state-listed plant of special concern – Eastern Prickly Pear (*Opuntia humifusa*) – on the site.

The presence of the species is limited to an approximately 10-12 square foot area along the northwestern edge of the ledge outcropping, near the landward end of the proposed

dock. (DEP-24a-24d, APP-3). OLISP staff consulted with DEP NDDDB staff, who advised that the proposed dock and any access path be placed in an area away from this species and that no clearing of native vegetation be permitted in the area of the Eastern Prickly Pear. (DEP-25). In light of these recommendations, DEP issued a Revised Draft Permit incorporating the same as three special conditions to the permit. (DEP-27; *see generally*, Test. of M. Raymond, pp. 114, 116-117).

The NDDDB database also discloses an extant (but unnamed) population of Federal or State Endangered, Threatened, or Special Concern species in the area where the proposed dock will be located. DEP NDDDB staff indicated that the location of such species is a sufficient distance from the proposed dock so as to avoid impacts from the proposed dock. (DEP-26).

9. Intertidal Mudflats: The fixed pier has been designed to minimize contact with, and disturbance to, the intertidal flat. (*See generally*, Test. of P. Pellegrino, p. 128). The impacts from driving the piles into the substrate will be short-term and the float is equipped with float stops to keep it at least 18" above the surface of the flat at periods of low water. All barge work during construction may be conducted only during periods of high water and the barge must move to deeper waters during periods of low water. Finally, the proposed dock will be used only for non-motorized vessels and, therefore, there is no possibility for prop-dredging at the site. (DEP-15, DEP-17, DEP-18, DEP-27, DEP-29, APP-4, APP-5).
10. Finfish: The proposed project will not adversely impact fisheries resources and habitat in Scott Cove. (DEP-4, DEP-17, APP-4, APP-5; *see generally*, Test. of M. Ludwig, pp. 118-122).
11. Navigation Impacts: There are no existing navigation channels in Scott Cove and, at low tide, navigation in the channel is nearly impossible. (APP-1, APP-2). The length of the proposed dock will not restrict navigation beyond these existing natural restrictions. The proposed location for the dock is approximately 107' from the dock located on the eastern adjacent property (76 Arrowhead Way) and at least 350' from the opposite shoreline. The proposed dock will have at least 25' setback from each adjacent property boundary. (DEP-15, DEP-17, DEP-29, APP-1, APP-3).
12. Public Trust: The DEP has found that along the Connecticut coast reasonable access for a littoral property owner can generally be achieved by a fixed pier extending to mean low water with a ramp and 100 square foot float. The proposed fixed pier complies with this policy by terminating prior to reaching mean low water. The proposed 8' x 20' float is slightly larger than that typically permitted by OLISP only because the proposed dock will be shared between two separate properties. (DEP-4, DEP-9, DEP-15, DEP-17, DEP-29).

The Applicant owns 104 Delafield Island Road, 111 Delafield Island Road, and Lot 35 Delafield Island Road, which is adjacent to 111 Delafield Island Road. (DEP-15). Each of the Applicant's properties fronts on Scott Cove. The Applicant originally submitted an

application seeking authorization to install a dock at 104 Delafield Island Road and had expressed interest in applying for a second dock. OLISP staff informed the Applicant that OLISP looks favorably on shared docks as a means for minimizing the number of private encroachments into public trust waters and suggested that the Applicant consider applying for a shared dock between 111 Delafield Island Road and Lot 35, with the structure being located on Lot 35. (DEP-8, DEP-9, DEP-10, DEP-12). OLISP noted that it would consider approving a float larger than 100 square feet for a shared dock. OLISP also noted that before approving a shared dock, the Applicant would be required to file a deed restriction in the Town of Darien Land Records prohibiting the future construction of a dock on 111 Delafield Island Road. (DEP-8, DEP-9, DEP-10, DEP-12, DEP-15, DEP-29). The Applicant acted on the suggestion of OLISP and withdrew her application for 104 Delafield Island Road and submitted the present application for a shared dock between 111 Delafield Island Road and Lot 35. (DEP-8, DEP-10, DEP-12, DEP-17). Consequently, the present application eliminates an additional dock and encroachment in public trust waters and the cumulative impacts of boating structures in Scott Cove. (DEP-8, DEP-15, DEP-29).

13. Revised Draft Permit: In light of the recent identification of the Eastern Prickly Pear (*Opuntia humifusa*) near the landward edge of the proposed dock, the Special Terms and Conditions included in the original draft permit (DEP-18) have been amended to include the following:
  4. Prior to construction of the dock authorized in the SCOPE OF AUTHORIZATION, above, the Permittee shall flag the area where the state-listed Special Concern Species identified as the Eastern Prickly Pear (*Opuntia humifusa*) is located. Such flags shall remain in place until construction has been completed. At no time shall any construction equipment access occur within this area, nor shall any construction equipment be staged or stored in this area. All work shall be done in a manner to avoid impacts to this species.
  5. The Permittee shall access the dock outside the area where any Eastern Prickly Pear is located on-site.
  6. The Permittee shall not remove any native vegetation within the immediate vicinity where any Eastern Prickly Pear is located on-site. (DEP-27).

## **Environmental Impacts**

Overall, environmental impacts associated with the proposed pier, ramp and floating dock have been minimized to the greatest extent practicable. (See generally, Test. of R. Zajac, pp. 131-137). The proposed pier, ramp and floating dock conform to OLISP policy of a fixed pier extending to mean low water by terminating prior to reaching mean low water. The proposed 8' x 20' float is slightly larger than that typically permitted by OLISP only because the proposed dock will be shared between two separate properties. The proposal for a shared dock is



consistent with OLISP policy that encourages shared docks where the same individual owns two adjacent properties. (DEP-9). Because the proposed dock will be shared between two separate properties, it provides the Applicant with reasonable access to public trust waters while minimizing the number of waterward encroachments and associated impacts to coastal resources.

The use of this dock is limited to non-motorized vessels and, therefore, there is no possibility for prop-dredging at the site. The installation of the fixed pier, ramp, and floating dock are not anticipated to adversely impact existing coastal resources, intertidal flats, tidal wetlands, shellfish or finfish resources. (DEP-4, DEP-15, DEP-17, DEP-18, DEP-27, DEP-29, APP-1, APP-2, APP-3, APP-4, APP-5). Use of the fixed pier, ramp, and floating dock in accordance with the Special Terms and Conditions of the Revised Draft Permit is not anticipated to adversely impact any State listed endangered, threatened, or special concern species. (DEP-27, DEP-29).

### Alternatives

1. The Applicant considered the following alternatives:
  - a. Alternative Site: A private residential dock located on the Applicant's adjacent parcel, 111 Delafield Island Road, consisting of a 4' wide by 58' long pile supported timber access pier, a 3' wide by 28' aluminum ramp and a 6' wide by 16' long floating dock with two (2) anchor piles. This alternative was rejected because the DEP, in consultation with the federal resource agencies, identified potential impacts on navigation. (*See generally*, Test. of T. Selmeski, pp. 104-107).
  - b. Shorter Fixed Pier: A shorter pier or ramp, located on Lot 35, to minimize the extent of the structure into Scott Cove. This alternative was rejected because it would require the waterwardmost pier support pilings to be located in existing tidal wetland vegetation. (DEP-9).
  - c. No Dock: The alternative of no dock was considered and rejected because it prevents the Applicant from exercising her right of littoral access to the waters of Scott Cove.
2. After balancing all of the relevant concerns, a dock structure consisting of a fixed pier, ramp and floating dock, as proposed by the Applicant, was determined to provide reasonable access to public trust waters for non-motorized boating while minimizing both overall encroachment and impacts to coastal resources. This proposal represents the least intrusive and most environmentally sensitive of those alternatives considered.

### CONCLUSIONS

1. Environmental Impact of the Proposed Action: The proposed project would provide the Applicant with reasonable access to public trust waters for recreational boating. The record supports a finding that the potential environmental impacts from the proposed

project have been sufficiently minimized and the proposed project is consistent with the following policies regarding coastal resources, tidal wetlands, and coastal management:

- a. Section 22a-92(a)(1) of the General Statutes, which requires that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;
- b. Section 22a-92(b)(1)(D) of the General Statutes, which requires that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts to coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners;
- c. Section 22a-92(b)(1)(H) of the General Statutes, which provides for the protection of coastal resources by requiring, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal resources, (ii) utilize existing altered, developed or redeveloped areas, (iii) are located to assure optimal distribution of state owned facilities to the state wide boating public, and (iv) utilize ramps and dry storage rather than slips in environmentally sensitive areas;
- d. Section 22a-92(b)(2)(D) of the General Statutes, which requires the management of intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds; and to allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation of tidal flats;
- e. Section 22a-92(b)(2)(E) of the General Statutes, which requires the preservation of tidal wetlands and the prevention of despoliation and destruction of tidal wetlands in order to maintain their vital natural functions;
- f. Section 22a-92(c)(1)(B) of the General Statutes, which disallows any filling of tidal wetlands and nearshore, offshore and intertidal waters for the purpose of creating new land from existing wetlands and coastal waters which would otherwise be undevelopable unless it is found that adverse impacts on coastal resources are minimal;
- g. Section 22a-92(c)(2)(A) of the General Statutes, which requires the management of estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and

basin configuration; and to protect, enhance and allow natural restoration of eelgrass flats except in special limited cases, notably shellfish management, where the benefits accrued through alteration of the flat may outweigh the long-term benefits to marine biota, waterfowl, and commercial and recreational fisheries;

- h. Section 22a-98 of the General Statutes, which requires, among other things, regulated activity to incorporate all reasonable measures mitigating any adverse impacts of such actions on coastal resources and future water-dependent development activities;
  - i. Section 26-310(a) of the General Statutes, which requires that each state agency, in consultation with the Commissioner, shall conserve endangered and threatened species and their essential habitats, and shall ensure that any action authorized, funded or performed by such agency does not threaten the continued existence of the endangered or threatened species or result in the destruction or adverse modification of habitat designation as essential to such species, unless such agency has been granted an exemption;
  - j. Section 22a-359 of the General Statutes, which establishes the criteria for review of applications seeking permission for dredging and erection of structures and placement of fill in tidal, coastal or navigable waters, and requires the DEP to make permit decisions, among other things, with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining uplands, 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;
  - k. Section 22a-33 of the General Statutes, which establishes the criteria for review of Tidal Wetlands Act applications and requires, among other things, that DEP consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters;
  - l. Section 22a-30-10 of the Tidal Wetlands Regulations, which further explains the criteria for Tidal Wetland Act review; and
  - m. Section 22a-30-11(b)(2) of the Tidal Wetlands Regulations, which defines the use guidelines for small residential docks.
2. Consistent with All Applicable Standards: The proposal is consistent with applicable standards, goals and policies of sections 22a-28 through 22a-35 and 22a-359 of the General Statutes, which requires the Department to make permit decisions with due regard for indigenous aquatic life, fish and wildlife, the use and development of adjoining

uplands, and the recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned.

3. Alternatives to the Proposed Action: There is no feasible or prudent alternative which would provide the applicant reasonable littoral access which would have less impact on the adjacent coastal resources.

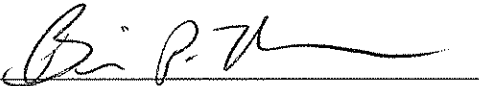
#### AGREEMENT

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

**Department of Environmental Protection**

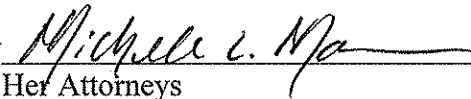
**Applicant, Gail Reynolds**

By



Brian P. Thompson  
Director  
Office of Long Island Sound Programs  
Department of Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

By



Her Attorneys  
John P. Casey, Esq.  
Michele L. Maresca, Esq.  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103-3597

# Revised Draft

## ATTACHMENT A

### PERMIT

**Permit No:** 200701968-TS

**Municipality:** Darien

**Work Area:** Scott Cove off property located at Lot 35 Delafield Island Road

**Permittee:** Gail Reynolds  
104 Delafield Island Road  
Darien, CT 06820

Pursuant to sections 22a-359 through 22a-363f and sections 22a-28 through 22a-35 of the Connecticut General Statutes ("CGS") and in accordance with CGS section 22a-98, and the Connecticut Water Quality Standards dated December 2002, a permit is hereby granted by the Commissioner of Environmental Protection ("Commissioner") to install a dock for kayak and canoe access as is more specifically described below in the SCOPE OF AUTHORIZATION, in an area of tidal wetlands along Scott Cove off property identified as the "work area" above.

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

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

#### **SCOPE OF AUTHORIZATION**

The Permittee is hereby authorized to conduct the following work as described in application #200701968-TS including 4 sheets of plans dated January 25, 2008, with sheets 2, 3 and 4 revised April 7, 2008, submitted by the Permittee to the Commissioner and attached hereto as follows:

install a 4' x 70' fixed pier to extend off an existing rockledge outcropping, a 3' x 36' ramp, and an 8' x 20' float with float stops secured by four float restraint piles.

SPECIAL TERMS AND CONDITIONS

1. Prior to the commencement of work authorized herein, the Permittee shall record a Shared Dock Agreement on the Town of Darien Land Records for the properties identified on sheets 1 and 2 attached hereto as "Lot 35" and "111 Delafield Island Road ." The dock authorized herein shall be the sole means of littoral access for both properties. Prior to filing such agreement with the Town, a copy of said agreement language shall be forwarded to the Commissioner for her review and written approval. Work authorized herein shall not commence until the Permittee has received such written approval and the agreement has been recorded on the land records. If said agreement is revoked, modified or cancelled without the written approval of the Commissioner, this permit shall become null and void and the structure authorized herein must be immediately removed.
2. The work specified in the SCOPE OF AUTHORIZATION is authorized solely for the purpose set out in this permit. No change in the purpose or use of the authorized work or facilities as set forth in this permit may occur without the prior written authorization of the Commissioner. The Permittee shall, prior to undertaking or allowing any change in use or purpose from that which is authorized by this permit, request authorization from the Commissioner for such change. Said request shall be in writing and shall describe the proposed change and the reason for the change.
3. The Permittee shall ensure that all work associated with the driving of piles for construction of the dock shall be conducted by a water-based barge only during periods of high water in the area of the proposed dock. Any such barge must move to deeper waters during periods of low water in the area of the proposed dock. At no time shall the barge rest on the bottom of Scott Cove. It shall not be a defense to this provision for the Permittee to assert that it has no control over the operation of the barge.
4. Prior to construction of the dock authorized in the SCOPE OF AUTHORIZATION, above, the Permittee shall flag the area where the state-listed Special Concern Species identified as the Eastern Prickly Pear (*Opuntia humifusa*) is located. Such flags shall remain in place until construction has been completed. At no time shall any construction equipment access occur within this area, nor shall any construction equipment be staged or stored in this area. All work shall be done in a manner to avoid impacts to this species.
5. The Permittee shall access the dock outside the area where any Eastern Prickly Pear is located on-site.
6. The Permittee shall not remove any native vegetation within the immediate vicinity where any Eastern Prickly Pear is located on-site.
7. The Permittee shall construct the fixed pier authorized herein so that the bottom of pier elevation is constructed no lower than elevation 12.1' mean low water.

8. The Permittee shall install the float stops authorized in the SCOPE OF AUTHORIZATION above, 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.
9. All waste material generated by the performance of the work authorized herein shall be disposed of by the Permittee at an upland site approved for the disposal of such waste material.
10. Except as specifically authorized by this permit, no equipment or material, including but not limited to, fill, construction materials, excavated material or debris, shall be deposited, placed or stored in any wetland or watercourse on or off-site, or within any delineated setback area, nor shall any wetland, watercourse or delineated setback area be used as a staging area or accessway other than as provided herein.
11. In undertaking the work authorized hereunder, the Permittee shall not cause or allow pollution of wetlands or watercourses, including pollution resulting from sedimentation and erosion. For purposes of this permit, "pollution" means "pollution" as that term is defined by CGS section 22a-423.
12. Not later than two weeks prior to the commencement of any work authorized herein, the Permittee shall submit to the Commissioner, on the form attached hereto as Appendix A, the name(s) and address(es) of any contractor(s) employed to conduct such work and the expected date for commencement and completion of such work.
13. The Permittee shall give a copy of this permit to the contractor(s) who will be carrying out the activities authorized herein prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such contractor(s). The Permittee's contractor(s) shall conduct all operations at the site in full compliance with this permit and, to the extent provided by law, may be held liable for any violation of the terms and conditions of this permit.
14. On or before (a) 90 days after completion of the work authorized herein, or (b) upon expiration of the work completion date or any authorized one year extension thereof, whichever is earlier, the Permittee shall submit to the Commissioner as-built" plans prepared and sealed by a licensed engineer, licensed surveyor or licensed architect, as applicable, of the work area showing all tidal datums and structures.

#### GENERAL TERMS AND CONDITIONS

1. All work authorized by this permit shall be completed within five years from date of issuance of this permit ("work completion date") in accordance with all conditions of this permit and any other applicable law.
  - a. The Permittee may request a one-year extension of the work completion date. Such request shall be in writing and shall be submitted to the Commissioner at least 30 days prior to said work completion date. Such request shall describe the work done to date, work which still

needs to be completed and the reason for such extension. The Commissioner shall grant or deny such request at her sole discretion.

- b. Any work authorized herein conducted after said work completion date or any authorized one- year extension thereof is a violation of this permit and may subject the Permittee to enforcement action, including penalties, as provided by law.
2. In conducting the work authorized herein, the Permittee shall not deviate from the attached plans, as may be modified by this permit. The Permittee shall not make de minimis changes from said plans without prior written approval of the Commissioner.
3. The Permittee shall maintain all structures or other work authorized herein in good condition. Any such maintenance shall be conducted in accordance with applicable law including, but not limited to, CGS sections 22a-28 through 22a-35 and CGS sections 22a-359 through 22a-363f.
4. Prior to the commencement of any work authorized hereunder, the Permittee shall cause a copy of this permit to be given to any contractor(s) employed to conduct such work. At the work area the Permittee shall, whenever work is being performed, make available for inspection a copy of this permit and the final plans for the work authorized herein.
5. The Permittee shall notify the Commissioner in writing of the commencement of any work and completion of all work authorized herein no later than three days prior to the commencement of such work and no later than seven days after the completion of such work.
6. Upon completion of any work authorized herein, the Permittee shall restore all areas impacted by construction, or used as a staging area or accessway in connection with such work, to their condition prior to the commencement of such work.
7. Any document required to be submitted to the Commissioner under this permit or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

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

8. The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means calendar day. Any



document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or a Connecticut or federal holiday.

9. This permit may be revoked, suspended, or modified in accordance with applicable law.
10. This permit is not transferable without prior written authorization of the Commissioner. A request to transfer a permit shall be submitted in writing and shall describe the proposed transfer and the reason for such transfer. The Permittee's obligations under this permit shall not be affected by the passage of title to the work area to any other person or municipality until such time as a transfer is authorized by the Commissioner.
11. The Permittee shall allow any representative of the Commissioner to inspect the work authorized herein at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
12. In granting this permit, the Commissioner has relied on representations of the Permittee, including information and data provided in support of the Permittee's application. Neither the Permittee's representations nor the issuance of this permit shall constitute an assurance by the Commissioner as to the structural integrity, the engineering feasibility or the efficacy of such design.
13. In the event that the Permittee becomes aware that he did not or may not comply, or did not or may not comply on time, with any provision of this permit or of any document required hereunder, the Permittee shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, the Permittee shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and the Permittee shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Permittee shall not excuse noncompliance or delay and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Commissioner in writing.
14. In evaluating the application for this permit the Commissioner has relied on information and data provided by the Permittee and on the Permittee's representations concerning site conditions, design specifications and the proposed work authorized herein, including but not limited to representations concerning the commercial, public or private nature of the work or structures authorized herein, the water-dependency of said work or structures, its availability for access by the general public, and the ownership of regulated structures or filled areas. If such information proves to be false, deceptive, incomplete or inaccurate, this permit may be modified, suspended or revoked, and any unauthorized activities may be subject to enforcement action.
15. The Permittee may not conduct work waterward of the high tide line or in tidal wetlands at this

permit site other than the work authorized herein, unless otherwise authorized by the Commissioner pursuant to CGS section 22a-359 et. seq. and/or CGS section 22a-32 et. seq.

- 16. The issuance of this permit does not relieve the Permittee of his obligations to obtain any other approvals required by applicable federal, state and local law.
- 17. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the Permittee and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."
- 18. This permit is subject to and does not derogate any present or future property rights or powers of the State of Connecticut, and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state or local laws or regulations pertinent to the property or activity affected hereby.

Issued on \_\_\_\_\_, 2010

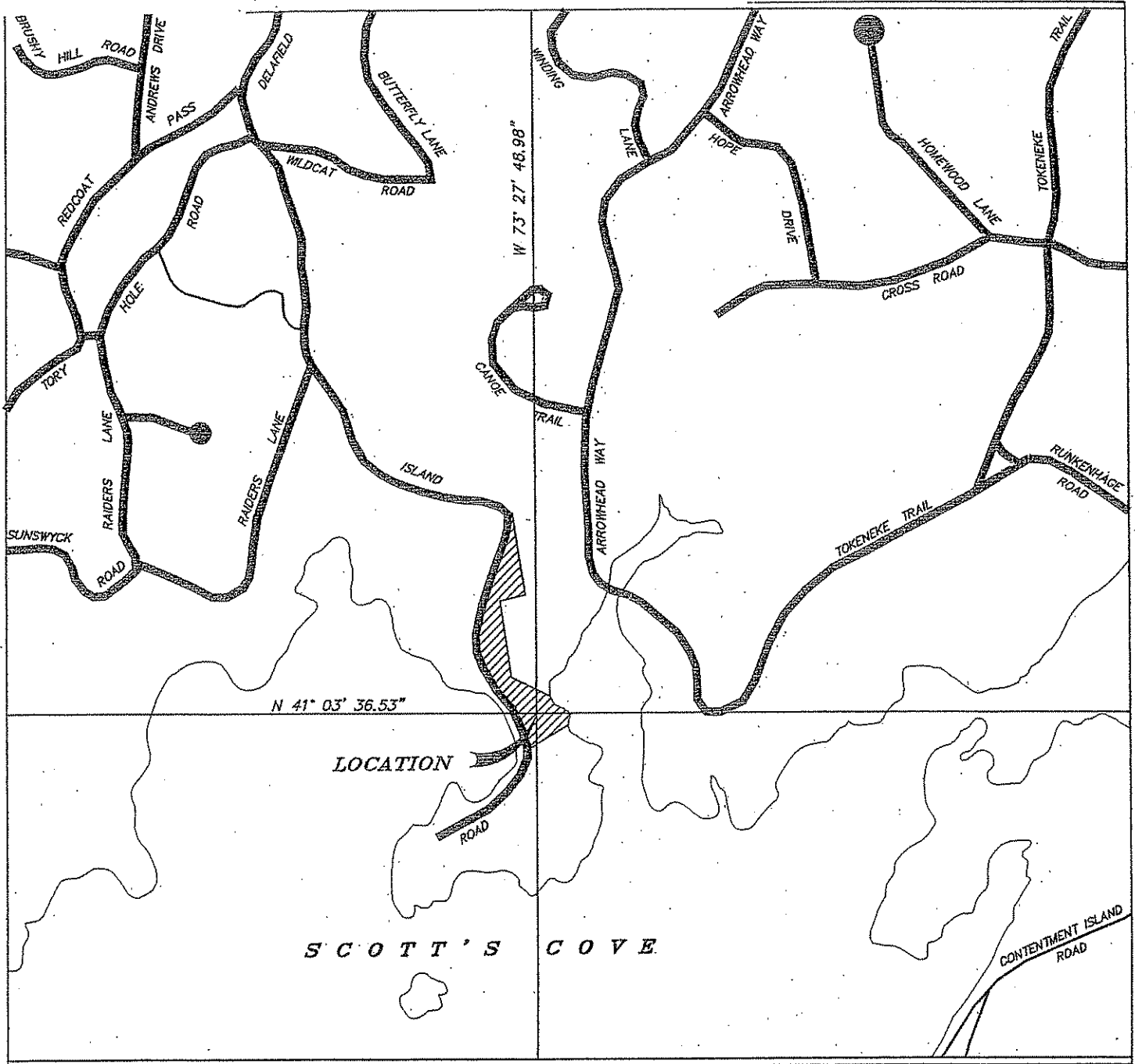
STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

**Permit Application No. #200701968-TS**  
Gail Reynolds

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



LOCATION MAP

TAX ASSESSORS MAP 70, LOT 35. ZONE: R - 1

PERMITTING AGENT  
 JAMES J. BAJEK, LLC  
 36 POTTER ROAD  
 WILTON, NEW HAMPSHIRE 03086  
 PHONE 603-654-5350  
 FAX 603-654-5610

SCALE : 1" = 600'



LOCATION MAP  
 PREPARED FOR

**RALPH F. REYNOLDS**

DARIEN, CONNECTICUT

SCALE: 1" = 600'

JANUARY 25, 2008

**WILLIAM W. SEYMOUR & ASSOCIATES, P.C.**

LAND SURVEYORS ~ DARIEN, CONN. ©

PHONE 203-655-3331

FAX 203-656-2143

H.T.L. HIGH TIDE LINE ELEV = 8.6  
M.H.W. MEAN HIGH WATER ELEV = 7.1  
M.S.L. MEAN SEA LEVEL ELEV = 3.5  
M.L.W. MEAN LOW WATER ELEV = 0.0  
L.P.T. LOWEST PREDICTABLE TIDE ELEV = -0.3  
DATUM: MEAN LOW WATER

DELAFIELD ISLAND ROAD

N / F  
ROBERT M. BAYLIS  
LOIS W. BAYLIS  
#116 DELAFIELD ISLAND ROAD  
ASSESSORS MAP 70 LOT 37

N / F  
GAIL L. REYNOLDS  
#111 DELAFIELD ISLAND ROAD  
ASSESSORS MAP 70 LOT 36

N / F  
JOHN W. FRASER  
AMY B. FRASER  
#76 ARROWHEAD WAY  
ASSESSORS MAP 70 LOT 48A

TAX ASSESSORS MAP 70, LOT 35  
PREPARED FOR

# RALPH F. REYNOLDS

DARIEN, CONNECTICUT

SCALE: 1" = 60' JANUARY 25, 2008

REVISED - FEBRUARY 18, 2010

WILLIAM W. SEYMOUR & ASSOCIATES, P.C.

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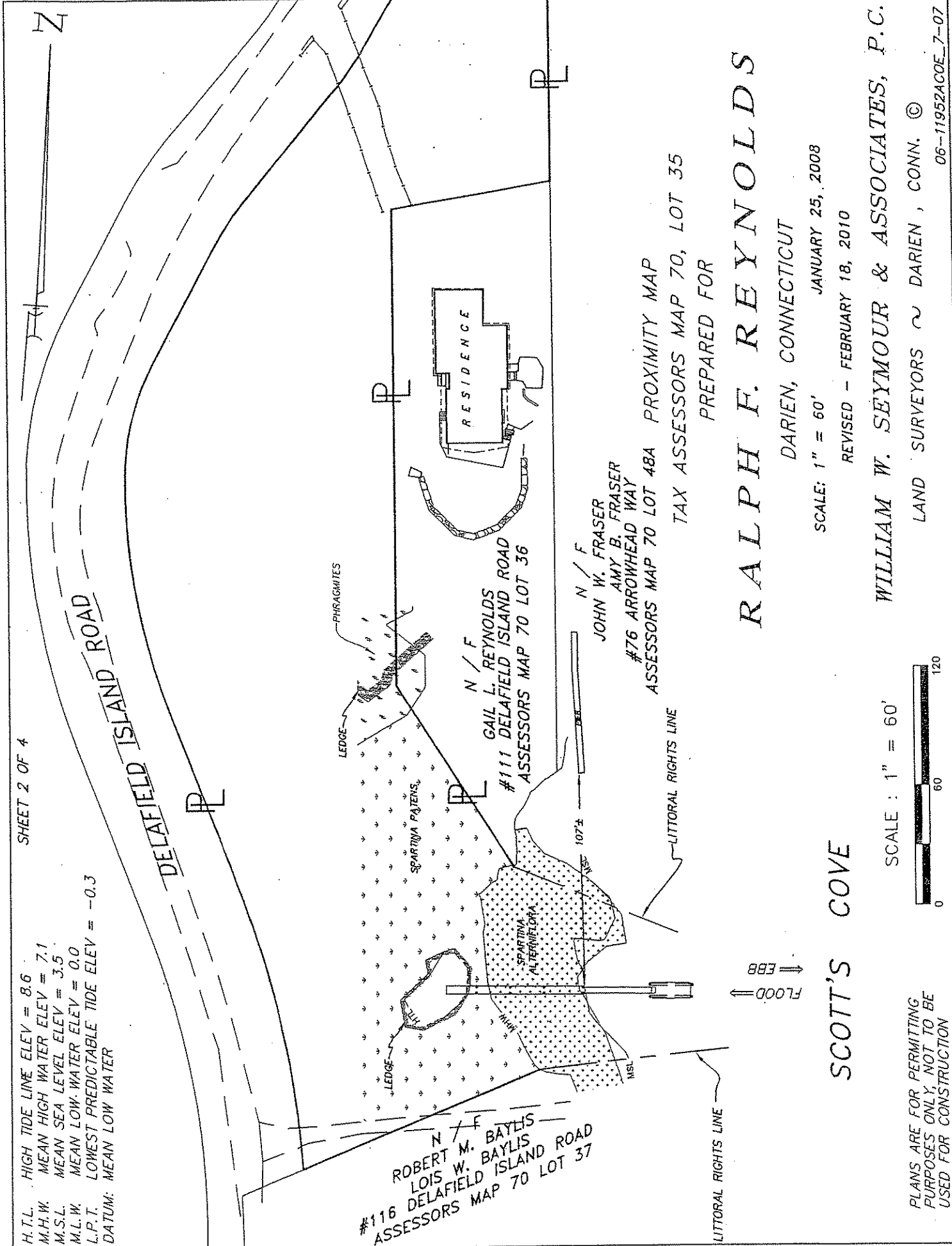
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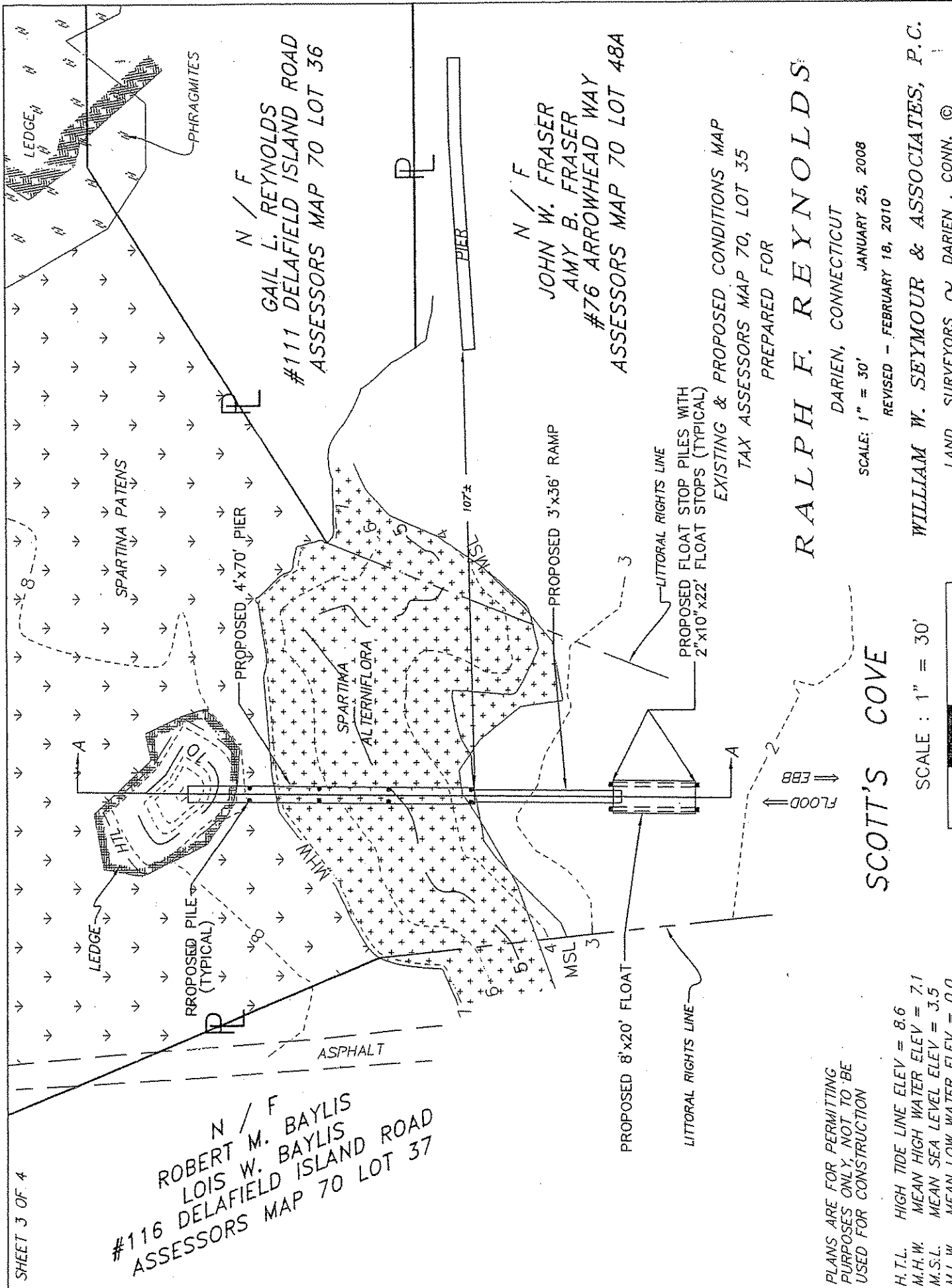
SCOTT'S COVE

SCALE: 1" = 60'



PLANS ARE FOR PERMITTING PURPOSES ONLY, NOT TO BE USED FOR CONSTRUCTION





SHEET 3 OF 4

N / F  
 ROBERT M. BAYLIS  
 LOIS W. BAYLIS  
 #116 DELAFIELD ISLAND ROAD  
 ASSESSORS MAP 70 LOT 37

N / F  
 GAIL L. REYNOLDS  
 #111 DELAFIELD ISLAND ROAD  
 ASSESSORS MAP 70 LOT 36

N / F  
 JOHN W. FRASER  
 AMY B. FRASER  
 #76 ARROWHEAD WAY  
 ASSESSORS MAP 70 LOT 48A

RALPH F. REYNOLDS

DARIEN, CONNECTICUT  
 SCALE: 1" = 30'  
 REVISED - FEBRUARY 18, 2010  
 JANUARY 25, 2008  
 WILLIAM W. SEYMOUR & ASSOCIATES, P.C.  
 LAND SURVEYORS ~ DARIEN, CONN. ©

SCOTT'S COVE

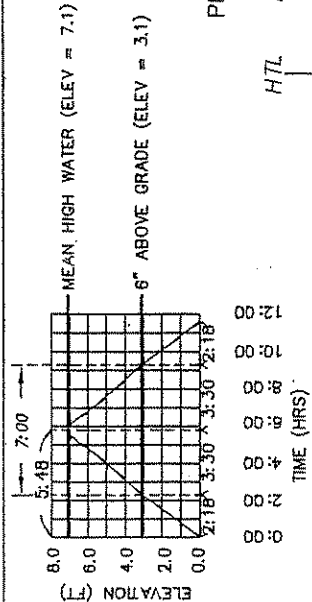
SCALE: 1" = 30'



PLANS ARE FOR PERMITTING PURPOSES ONLY, NOT TO BE USED FOR CONSTRUCTION

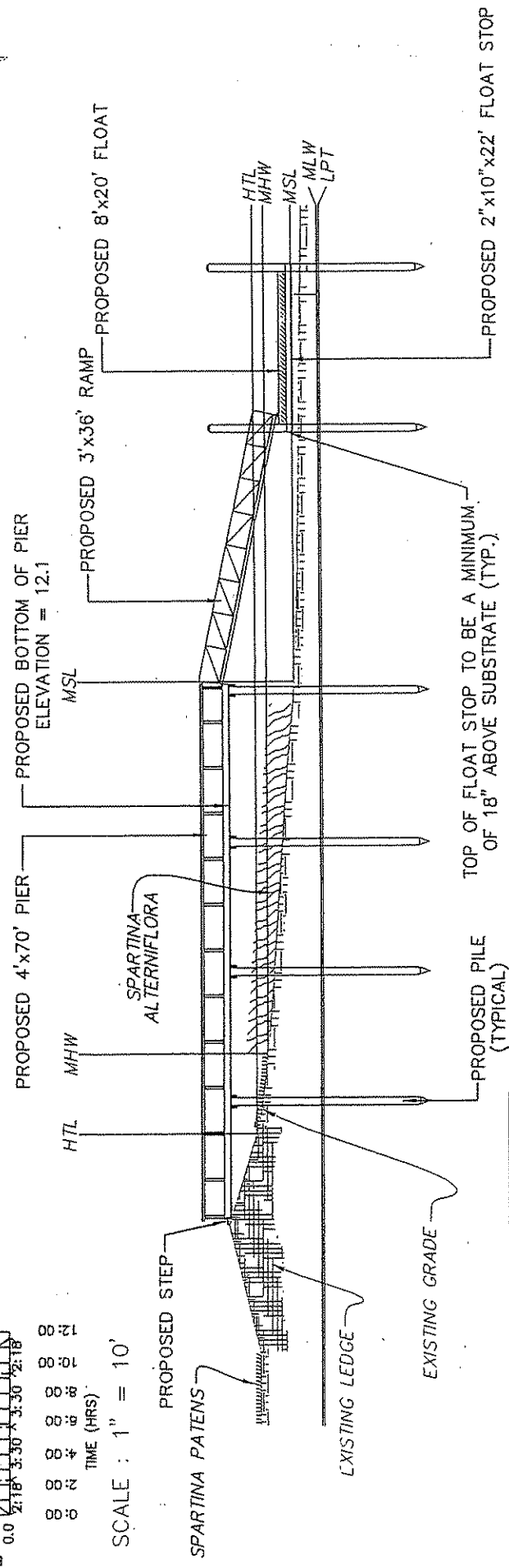
H.T.L. HIGH TIDE LINE ELEV = 8.6  
 M.H.W. MEAN HIGH WATER ELEV = 7.1  
 M.S.L. MEAN SEA LEVEL ELEV = 3.5  
 M.L.W. MEAN LOW WATER ELEV = 0.0  
 L.P.T. LOWEST PREDICTABLE TIDE ELEV = -0.3  
 DATUM: MEAN LOW WATER

06-11952ACOE\_7-07

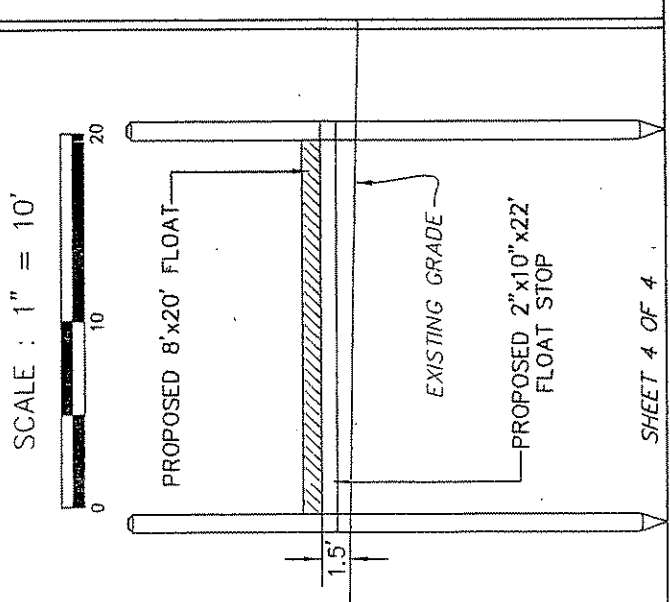


2:18 FROM MEAN LOW WATER TO 6" ABOVE GRADE  
 +3:30 TO MEAN HIGH WATER  
 5:48 TOTAL TIME TO MEAN HIGH WATER  
 3:30 FROM 6" ABOVE GRADE TO MEAN HIGH WATER  
 +3:30 FROM MEAN HIGH WATER TO 6" ABOVE GRADE  
 7:00 OF TOTAL USAGE

H.T.L. HIGH TIDE LINE ELEV = 8.6  
 M.H.W. MEAN HIGH WATER ELEV = 7.1  
 M.S.L. MEAN SEA LEVEL ELEV = 3.5  
 M.L.W. MEAN LOW WATER ELEV = 0.0  
 L.P.T. LOWEST PREDICTABLE TIDE ELEV = -0.3  
 DATUM: MEAN LOW WATER



SCALE : 1" = 10'

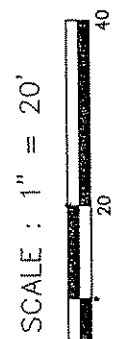


CROSS SECTION A - A

PROPOSED CROSS SECTION MAP  
 TAX ASSESSORS MAP 70, LOT 35  
 PREPARED FOR

**RALPH F. REYNOLDS**

DARIEN, CONNECTICUT  
 SCALE: 1" = 20'  
 JANUARY 25, 2008  
 REVISED - FEBRUARY 18, 2010



WILLIAM W. SEYMOUR & ASSOCIATES, P.C.  
 LAND SURVEYORS ~ DARIEN, CONN. ©  
 06-11952ACOE\_7-07

PLANS ARE FOR PERMITTING PURPOSES ONLY, NOT TO BE USED FOR CONSTRUCTION

**OFFICE OF LONG ISLAND SOUND PROGRAMS**

**APPENDIX A**

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

**PERMITTEE:** Gail Reynolds  
104 Delafield Island Road  
Darien, CT 06820

**Permit No:** 200701968-TS, Greenwich

**CONTRACTOR 1:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**CONTRACTOR 2:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**CONTRACTOR 3:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**EXPECTED DATE OF COMMENCEMENT OF WORK:** \_\_\_\_\_

**EXPECTED DATE OF COMPLETION OF WORK:** \_\_\_\_\_

**PERMITTEE:** \_\_\_\_\_  
(signature) (date)