CURTIS THAXTER
ATTORNEYS AT LAW

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David P. Silk, Esq.
dsilk@curtisthaxter.com

September 25, 2020

jdoten@yarmouth.me.us

HAND DELIVERED
General Board of Appeals – Zoning
c/o Jennifer S. Doten, CCM, Town Clerk
Town of Yarmouth
Yarmouth Town Hall
200 Main Street
Yarmouth, ME 04096

RE: Administrative Appeal of Denise and Craig Benson,
104 Spruce Point, Map 54, Lot 27

Dear General Board of Appeals Members:

I represent Denise and Craig Benson (the "Bensons"), owners of real property located at 104 Spruce Point Road, Map 54, Lot 27, zones LDR, SOD and RPD (the "Property"). The Property has frontage along Battle Cove. Enclosed is our check in the amount of $100.00 for the filing fee for this appeal.

This is an appeal made pursuant to Chapter 203, General Board of Appeals Ordinance, Section F.1.m, which provides that the General Board of Appeals (the "Board") is authorized to hear and decide appeals from decisions of the "Permitting Authority" made in the administration or issuance of permits or establishment of conditions under Chapter 701, Zoning Ordinance.

Pursuant to Chapter 203, such administrative appeals shall be heard by the Board on a de novo basis, when, as here, it is alleged that there is an error in any decision or determination made by the "Permitting Authority" in a review of a permit application under Chapter 701, the Zoning Ordinance.[1]

[1] The Town's Planning Staff has taken the view that notwithstanding what Chapter 203 says, the Bensons cannot have their day before the General Board of Appeals. The Planning Staff says that any appeal from a Planning Board decision must be taken to the Superior Court and cite to Chapter 202 of the Town's Ordinances. The Planning Staff overlooks that Maine courts require an applicant to exhaust all administrative remedies before seeking relief in court. And when as here, there is a provision that allows for the administrative review and one that calls for a direct appeal to court, the former controls. *See Bryant v. Town of Camden*, 2016 ME 27, 132 A.3d 1183.

The relevant "Permitting Authority" acting under Chapter 701, here the Planning Board, erred in denying the Bensons' application for a shoreland zoning permit and waiver of maximum float size made under Chapter 701, Article II.R. (the "Application"). The Planning Board voted on August 26, 2020 to deny the Bensons' Application. As this appeal is filed within 30 days of the Planning Board's action, the appeal is timely.

For relief, the Bensons request that the Board, acting de novo, approve the Bensons' Application. A copy of the Bensons' written Application presented to the Planning Board is attached hereto as Exhibit A. The basis for this appeal is as follows.

The Bensons have an existing residential pier and ramp on their Property and by their Application sought a waiver from the maximum float size of 320 square feet. They proposed a float of 720 square feet. The float will be located in Battle Cove and will be exposed to significant fetch generated when the prevailing winds from the South blow as they often do in the summer. There is about 7 and half miles of open water between Portland and the site when the wind is out of the South. In addition, to avoid the ledges at Hussey Sound, and due to the low clearance of the fixed bridge leading to Cousins Island, there is significant boat traffic near the float that generates wakes. The float as proposed would provide better stability to the Bensons, who are in their sixties.

The Application addressed and provided the information necessary to show the relevant standards for a waiver of the maximum float size and shoreland zoning permit were met. An applicant is entitled to a waiver of the maximum float size standard of 320 square feet on a showing that the proposal "has special needs requiring additional area, such as, but not limited to; high intensity uses in cooperative or community docks, need for handicap access, or unusual wind and tide conditions requiring a larger float for stability."

Specifically the Bensons presented uncontradicted testimony that due to the unusual wind (fetch) and tide conditions at the site, a larger float was required for stability. Captain Sarah Kaplan, a Maine Maritime Academy graduate and USCG licensed 1600 Gross Ton Master, provided written and oral testimony documenting the unusual wind and tide conditions at Battle Cove where the Property is situated. She explained that the proposed 720 square foot floats was necessary to ensure stability. She also explained that as proposed the float – three floats intra-connected – could better absorb the energy created by the fetch and wakes than a smaller float.

The Town Harbor Master reported that he had no objection to the Bensons' waiver request and that the proposed 720 square feet seasonal floats would not interfere with navigation.

The abutters to the Property and others with nearby residential docks indicated in writing and orally that the proposed floats would not interfere with their access to the water and would not impair any scenic or aesthetic considerations. Several of them also attested to Captain Kaplan's characteristic of the marine waters in Battle Cove as being exposed to significant fetch due to the open water exposure to the South and boat traffic that generated significant wakes. They attested to the need for a large float to ensure adequate stability.

Tim Forrester, of Atlantic Environmental, provided uncontradicted written and oral testimony that the waiver request if approved would lessen any environmental impact when compared to a 320 square foot float, because more of the float would be over deeper water.

The Maine Department of Environmental Protection and the U.S. Army Corp. of Engineers have both issued approvals for the float under the relevant environmental and other standards that they must consider.

The State of Maine, Bureau of Submerged Lands, issued a submerged land lease for the float, finding that all conditions relevant to issuance of such a submerged land lease had been satisfied.

The Planning Board staff initially indicated that the Bensons had met all of the requirements for both the shoreland zoning permit and waiver request and recommended that the Planning Board approve the request.

The Applicants, the Bensons, both of whom are in their Golden years, mid to late 60s, explained how and why the proposed floats would greatly make safer their ability to maneuver (walk) on the floats and come and go with water-craft, regardless of size.

The Planning Board was also told that under Maine law, riparian property owners like the Bensons have a long recognized common law property right to "wharf out" to obtain meaningful access to deep water. *Great Cove Boat Club v. Bureau of Public Lands*, 672 A.2d 91 (Me. 1996). While that right is subject to the rights of others to access deep water and to navigate, and environmental factors, given the evidence submitted from the Harbor Master and others, none of those concerns could serve as a basis here for the Planning Board to deny the waiver request. Property rights cannot be arbitrarily abridged.

In denying the Application, the Planning Board failed to consider the evidence before it and failed to apply the applicable standards. But it is irrelevant why the Planning Board denied the Application. That is because the Ordinance states that this Board decides the merits of the Bensons' Application on a de novo basis, and "shall hear and decide the matter afresh, undertaking its one independent analysis of the evidence and the law, and reaching its own decision." Chapter 203.F.3.

The General Board of Appeals Ordinance provides that the applicant at a hearing on an appeal may submit at the hearing oral and documentary evidence. The General Board of Appeals Ordinance does not specify whether any document evidence must be submitted prior to the hearing and if so by when. If there is such a requirement, the undersigned counsel for the Bensons respectfully requests that he be notified, so that if there is such a requirement for submission of documentary evidence prior to the hearing, that requirement can be met.

While the Bensons intend to present both additional documentary and oral testimony at the Board hearing, enclosed for the Board's information is a copy of the Application submitted to the Planning Board.

The Bensons look forward to the Board hearing and deciding this matter "afresh" based on its own independent analysis of the evidence and the law.

Sincerely,

David P. Silk

cc: Denise and Craig Benson w/enclosure

Enclosure:

1. Atlantic Environmental LLC's July 21, 2020 Application made on behalf of the Bensons for waiver and shoreland zoning permit made under Chapter 701, Article II Section R(4) of the Town's Zoning Ordinance

O:\Benson, Craig & Denise (05226)\Drafts\2020 09 25 Ltr to GBA Appeal.docx

CURTIS THAXTER LLC 077129

VENDOR: TOWN OF YARMOUTH CHECK NO: 77129

OUR REF. NO.	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
78796	Filing Fee	09/23/2020	$100.00	$100.00	$0.00

Check Date: September 23, 2020

THIS CHECK IS PROTECTED BY A VOID PANTOGRAPH, MICROPRINT SIGNATURE LINE AND A HEAT SENSITIVE PADLOCK ICON. ADDITIONAL SECURITY FEATURES ARE LISTED ON BACK.

CURTIS THAXTER LLC
ONE CANAL PLAZA
PORTLAND, MAINE 04101

KEY BANK NATIONAL ASSOCIATION
PORTLAND, MAINE

52-60/112

077129

CHECK NO.	CHECK DATE	VENDOR NO.
77129	09/23/2020	TEMP

PAY

One hundred and NO/100 Dollars

CHECK AMOUNT
$100.00

TO THE ORDER OF TOWN OF YARMOUTH

MP

IMAGE FADES WITH HEAT
RUB PADLOCK

⑈077129⑈ ⑆011200608⑆ 002⑈7931 5⑈

ATLANTIC Environmental LLC
135 River Road • Woolwich, ME 04579
207-837-2199 •tim@atlanticenviromaine.com
www.atlanticenviromaine.com

July 21, 2020

Ms. Judy Colby-George, Chair
Planning Board
Town of Yarmouth
200 Main Street
Yarmouth, ME 04096

Re: Shoreland Zoning Permit Application for Modifications to an Existing Dock located at 104 Spruce Point Road in Yarmouth, Maine.

Dear Ms. Colby-George,

On behalf of Denise and Craig Benson, Atlantic Environmental, LLC (AE) is pleased to submit a Shoreland Zoning Permit Application for modifications to an existing recreational dock that provides water access to Casco Bay and adjacent coastal waters (see Location Map). The Applicant proposes to remove an existing sixteen (16) foot wide by twenty (20) foot long float and replace it with a twelve (12) foot wide by twenty (20) foot long float. In addition, two (2), twelve (12) foot wide by twenty (20) foot long floats will be installed seaward of the first float. The Applicant requests a waiver from Article II, Section R(4) to allow for a total of seven hundred and twenty (720) square feet of float area to provide a safe means for recreational water access. All three floats will be in place on a seasonal basis and stored in an upland location during the off-season.

The proposal was previously submitted to the Planning Board; however, the prior application did not include sufficient information related to the unique circumstances and environmental conditions at the project site. The application has been updated to include an environmental impact analysis, historic wind information at the site, and a letter from Captain Sarah Kaplan regarding the unique circumstances that require a float size larger than three hundred and twenty (320) square feet. In addition, the Applicant is proposing to reduce the prior proposal by eighty (80) square feet in overall float size.

The Applicant has received approval from the Maine Department of Environmental Protection (MDEP) and the Army Corps of Engineers (ACOE) for floats totaling eight hundred (800) square feet. There permits will be revised if the Board approves the proposed smaller design. Copies of those permits area included in the attached application materials.

Thank you in advance for your consideration of this Application. If you require any additional information or clarifications, please feel free to contact me at 207 - 837 - 2199 or by email at tim@atlanticenviromaine.com.

Sincerely,
Atlantic Environmental LLC.

Timothy A. Forrester, Owner

ATLANTIC Environmental LLC

CURTIS THAXTER
ATTORNEYS AT LAW

David P. Silk, Esq.
dsilk@curtisthaxter.com

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July 21, 2020

VIA U.S. Mail and Email to:
AJaegerman@yarmouth.me.us: NCiarimboli@yarmouth.me.us

Director of Planning & Development Alex Jaegerman and Building Inspector and Code Enforcement Officer Nicholas Ciarimboli
Town of Yarmouth
200 Main A Street
Yarmouth ME 04096

RE: Craig and Denise Benson's application for waiver of float size for property at 104 Spruce Road, Map 54, Lot 27

Dear Messrs. Jaegerman and Ciarimboli:

Enclosed please find Craig and Denise Benson's application for float size waiver under Article II Section R.4.c of Chapter 701 of the Town Ordinance to permit them to locate a 720 square foot float at the end of their already permitted residential pier located at 104 Spruce Road in so-called Battle Cove.

On behalf of the applicants, Tim Forrester of Atlantic Environmental LLC, has prepared the application and has addressed all of the specific standards in the ordinance. Captain Sarah Kaplan has provided a letter addressing why the nautical conditions at the site necessitate for safety and stability the proposed floats. We look forward to any questions you may have and to making ourselves available when the application is scheduled for hearing before the Planning Board.

I write to address the ability of the Planning Board to consider the application. The Planning Board Ordinance, Article I.E.8 of Chapter 202 of the Town Ordinance provides:

> If the Planning Board denies a preliminary or formal plan or application, the Planning Board may refuse to receive and consider a re-submittal or second appeal of the same or substantially the same application or plan or application for a period of six (6) months from the date of the denial. Provided, however, that if in the opinion of the Chair of the Planning Board, substantial new evidence will be brought forward or that an error or mistake in law or misunderstanding of facts has occurred, or that the applicant has made material changes to the application or plan addressing issues that were salient in the basis for denial in the immediately previous application, the Planning Board shall not refuse to receive and consider such re-submitted or second appeal application or plan.

Rather than reopen the record to allow the Bensons to present additional information that some of the Board deemed lacking in the Bensons' March 26, 2020 application, on July 8, 2020 the Board voted to deny that application. So the Bensons are submitting the new application with the additional information germane to the concerns expressed by Board members at the June 10, 2020 hearing as reflected in the minutes. Those concerns were lack of environmental analysis (beyond what was included with the submitted MDEP and US Army Corp permits for three floats) and lack of information on any unusual nautical conditions that would require a larger float for stability and safety.

The new application prepared by Mr. Forrester fully addresses these two issues that, as reflected in the minutes, were salient for the Board's denial. Mr. Forrester has prepared a detailed environmental analysis. In addition, Captain Kaplan has submitted a detailed letter identifying the unusual nautical conditions at so-call Battle Cove and her opinion that due to those conditions, the waiver request is necessary to ensure stability and safety at the location. floats.

Under Article I.E.8 of Chapter 202, the Planning Board "shall not refuse to receive and consider such re-submitted or second appeal application or plan" submitted within 6 months of a similar application when substantial new evidence is submitted, material changes are made, or the new application addresses "issues that were salient in the basis for denial in the immediately previous application issues that were subject in the basis for denial of the immediately provided application." We respectfully suggest that the new application meets any one of these requirements. Therefore we look forward to proceeding with the application.

One final note, under Maine law, it is well established that a littoral property owner's property rights include the right to wharf out to deep water in order to access navigable water. As the Court stated in *Great Cove Boat Club v. Bureau of Public Lands*, 672 A.2d 91 (Me. 1996):

> [A] littoral proprietor and riparian owner, as is universally conceded, have [sic] a qualified property in the waterfrontage, belonging by nature to their land; the chief advantage growing out of the appurtenant estate in the submerged land being the right of access over an extension of their water fronts to navigable water, and the right to construct wharves, piers or landings subject to such general rules and regulations as the legislature, in the exercise of its powers, may prescribe for the protection of public rights in rivers or navigable waters.

The Bensons have obtained a Lease from the State for the pier and floats. The local Harbormaster has started the proposed floats will not pose an impediment to navigation. No objection letters will be resubmitted again showing that the floats as proposed will not interfere with other private docks. The waiver request will not result in any interference with current "scenic character". And the waiver will allow the applicants at this location to safely exercise their property right to gain access to navigable waters.

Thank you for your consideration.

Sincerely,

David P. Silk

cc: Craig and Denise Benson
Falls Point Marine, Inc.
Atlantic Environmental LLC

TOWN OF YARMOUTH

200 Main Street
Yarmouth, Maine 04096
(207)846-2401 WWW.YARMOUTH.ME.US Fax: (207)846-2438

SHORELAND ZONING PERMIT APPLICATION

PERMIT #_____ ISSUE DATE _____ FEE AMOUNT_____

Date: 7/20/20 **Zoning District** LDR **Map** 54 **Lot** 27 **Ext** _____

APPLICANT NAME: Atlantic Environmental, LLC c/o Tim Forrester PHONE NO: (207) 837 - 2199
MAILING ADDRESS: 135 River Road Woolwich, ME 04579 e-mail tim@atlanticenviromaine.com

OWNER (other than applicant)
NAME: Denise and Craig Benson PHONE NO: (603) 502 - 2900
MAILING ADDRESS: 3 Merrymeeting Lane Rye, NH 03870 e-mail craigrbenson@gmail.com

CONTRACTOR
NAME: Falls Point Marine, Inc. PHONE NO: (207) 865 - 4567
MAILING ADDRESS: P.O. Box 61 Freeport, ME 04078 e-mail info@fallspoint.com

PROPERTY LOCATION: 104 Spruce Point Road

Applicant must also include a narrative of the project including a description of all proposed construction, (E.G. Land clearing, road building, septic systems and wells – Please note: A site plan sketch is required on a separate sheet of paper no less than 11" x 17" or greater than 24"x36"

Please note: Plan set must be bound (not rolled) with a cover sheet and index.

Proposed use of project: Residential Dock Associated with Residence

Estimated cost of construction $45,000

Lot area (sq. ft.) 113256 sq. ft.

Frontage on Road (FT) +/- 300 ft.

SQ. FT. of lot to be covered by non-vegetated surfaces 720 sq. ft.

Elevation above 100 YR Flood Plain N/A

Frontage on water body (FT.) +/- 130'

Height of proposed structure 5' - 8'

Existing use of property Residential

Proposed use of property Residential

Note: NEXT Questions apply only to expansions of portions of existing structures that are less than the required setback.

A) Total building footprint area of portion of structure that is less than required setback as of 1/1/89: N/A SQ.FT.

B) Actual shore setback of existing structure proposed for expansion (measured as required in SOD, e.g.: Highest Annual Tide; Upland Edge of Coastal Wetland; Top of Bank (RP); Normal High Water Line of rivers and streams; as applicable): _____

C) Building footprint area of expansions of portion of structure that is less that required setback from 1/1/89 to present: N/A SQ.FT.

D) Building footprint area of proposed expansion of portion of structure that is less than required setback: N/A SQ.FT.

E) % Increase of building footprint of previous and proposed expansions of portion of structure that is less than required setback since 1/1/89: % increase = ((C+D)x100)/A = N/A %

F) Floor Area and Market Value of Structure prior to improvements: (a) Area: N/A Value: _____. Floor Area and Market Value of portions of Structure removed, damaged or destroyed: (b) Area: _____ Value: _____. If the floor area or market value of (b) exceeds 50% of the area or value of (a), then the Relocation provisions of Article IV.R.5.a.(3) and (4) shall apply. **Note:** A value appraisal may be required or submitted in close cases where the applicant asserts that that 50% trigger and relocation assessment provision is not met. **Any plan revisions after initial approvals to replace rather than renovate building components (foundations, framing, etc.) shall be required to re-calculate the extent of removal, damage or destruction relative to retained structure.**

☒ Please provide a site plan to include lot lines, area to be cleared of trees and other vegetation; the exact position of proposed structures, including decks, porches, and out buildings with accurate setback distances form the shoreline, side and rear property lines; the location of proposed wells, septic systems, and driveways; and areas and amounts to be filled or graded. If the proposal is for the expansion of an existing structure, please distinguish between the existing structure and the proposed expansion.

☐ Note: For all projects involving filling, grading, or other soil disturbance you must provide a soil erosion control plan describing the measures to be taken to stabilize disturbed areas before, during and after construction.

☒ Draw a simple sketch showing both the existing and proposed structures with dimensions.

EXHIBIT 8.0: COPIES OF DEP AND ACOE PERMITS

SHORELAND ZONING PERMIT CHECKLIST

Please note that this checklist is intended to help applicants identify major submittal components but it is the applicant's responsibility to review the SOD/RP provisions outlined in Chapter 701 of the Yarmouth Code and provide all required information as well as conform to all design components. Copies of Chapter 701 are available at the Yarmouth Town Hall or can be downloaded on the Town website which is www.yarmouth.me.us.

- ☒ Complete Shoreland Zoning Permit application including signatures of property owners and agents.
- ☒ Appropriate fee.
- ☒ Square footage of lot area within the 250' SOD
- ☒ Square footage and % of lot covered by non-vegetated surfaces within the SOD
- N/A ☐ Square footage and % of cleared area within lot area within the SOD
- ☒ Delineation of 75' setback from upland edge of the coastal wetland
- ☒ Delineation of 250' SOD line from upland edge of the coastal wetland.
- ☒ Delineation of Resource Protection District
- ☒ Height of any proposed structures as measured between the mean original grade at the downhill side of the structure and the highest point of the structure
- N/A ☐ Building elevations of any proposed structures as viewed from side and rear lot lines
- N/A ☐ % Increase of expansions of portion of structure which is less than the required setback (if applicable)
- N/A ☐ Floor Area and Market Value of Structure prior to improvements: (a) Area:_____ Value:_____. Floor Area and Market Value of portions of Structure removed, damaged or destroyed: (b) Area:_____ Value:_____.
- N/A ☐ Elevation of lowest finished floor to 100 year flood elevation
- ☒ Evidence of submission of the application to the Maine Historic Preservation Commission (MHPC) at least twenty (20) days prior to the Planning Board meeting as required in Article IV.R.O
- ☒ Copy of additional permit(s) if applicable:
  - Planning Board (e.g. Subdivision, Site Plan Review)
  - Board of Appeals
  - Flood Hazard
  - Exterior plumbing permit (Approved HHE 200 Application Form)
  - Interior plumbing permit
  - DEP permit (Site Location, Natural Resources Protection Act)
  - Army Corps of Engineers Permit (e.g. Sec. 404 of Clean Waters Act)
- ☒ Please circle all habitat types, marine organisms and shoreline elements present: (Sand beach) (boulder/cobble beach) (sand flat) (mixed coarse & fines) (salt marsh) (ledge) (rocky shore) (mudflat) (sediment depth if known) (Bluff/bank) (Mussels) (clams) (marine worms) (rockweed) (eelgrass) (lobsters) (other_____)
- ☒ Signs of intertidal erosion? (Yes) (no)
- ☒ Energy: (protected) (semi-protected) (partially exposed) (exposed)
- ☒ Copy of deed
- N/A ☐ Soil erosion control plan
- ☒ Photographs
- ☒ Plan view

NOTE: Applicant is advised to consult with the CEO and appropriate state and federal agencies to determine whether additional permits, approvals, and reviews are required.

CONDITIONS OF APPROVAL

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant concerning the development and use of the property which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

I certify that all information given in this application is accurate. All proposed uses shall be in conformance with this application and the Town of Yarmouth Shoreland Regulations in the Zoning Ordinance. I agree to future inspections by the Code Enforcement Officer / Planning Director / Planning Board members (as applicable) at reasonable hours and with advance notice.

"I authorize appropriate staff within the Yarmouth Planning Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to collect facts pertaining to my application."

Applicant Signature_____ Date_____

Agent Signature Timothy A. Forster Date July 20, 2020
(if applicable)

Code Enforcement Officer _____

DATE OF APPROVAL / DENIAL OF APPLICATION_____
(by either staff or planning board)

ATLANTIC Environmental LLC
135 River Road • Woolwich, ME 04579
207-837-2199 •tim@atlanticenviromaine.com
www.atlanticenviromaine.com

July 9, 2020

To whom it may concern:

By this letter, I authorize Atlantic Environmental, LLC. to act on my behalf as my Agent for the preparation and submission of all local town applications and relevant documents and correspondence related to the modification of the seasonal floats associated with our dock at 104 Spruce Point Road in Yarmouth, Maine. This authorization includes attending meetings and site visits, appearing before all boards, commissions, and/or committees, and providing other services as required for completing the aforementioned tasks.

Thank you for the opportunity to work with you on this project. Should you have any additional questions, please do not hesitate to contact me at 207-837-2199 or via email at tim@atlanticenviromaine.com.

Denise Benson
Print Name

Denise K Benson
Signature

July 9, 2020
Date

Sincerely,
Atlantic Environmental LLC.

Timothy A Forrester

Timothy A. Forrester, Owner

EXHIBIT 1.0: ACTIVITY DESCRIPTION

The Applicant owns an approximate 2.6-acre parcel of land located on Spruce Point Road and adjacent to Casco Bay in the Town of Yarmouth, Maine (see **Exhibit 3.0**). There is an existing dock that consists of a 4.5 foot wide by two hundred (200) foot long pier, a three (3) foot wide by fifty-five (55) foot long ramp, and a sixteen (16) foot wide by twenty (20) float. Due to its size and location, the float does not provide safe docking and results in shading and boat prop impacts to an eelgrass bed located at the location of the existing float. In addition, the Applicant has undergone recent surgeries and requires a safe and stable dock. In order to provide meet the Applicant's project purpose of safe docking for the Applicant's and their watercraft and minimize impacts to the eelgrass bed, the Applicant proposes to modify the existing float system.

Atlantic Environmental, LLC (AE) investigated the site and the surrounding area to determine the feasibility of modifying the existing float to meet project goals while avoiding and minimizing impacts to the environment. Based on the Applicant's needs, the existing conditions of the site and the outcome of our investigations, the following design criteria have been determined.

In order to meet the Applicant's project purpose, the Applicant proposes to replace the existing sixteen (16) foot wide by twenty (20) foot long float with three (3), twelve (12) foot wide by twenty (20) foot long floats. The new floats will be secured in place with float chains and mooring blocks on the inboard and outboard ends of the float.

The floats will be removed in the off-season and hauled off-site and stored in an upland location.

EXHIBIT 2.0: STANDARDS OF REVIEW

Town of Yarmouth
Chapter 701: Zoning Ordinance
Article II, Section R – Docks, Piers, Wharves, Moored Floats, Breakwaters, Causeways, Marinas, Bridges over 20 feet in length, and Uses Projecting into Waterbodies.

3. Standards of Review:

a. The Permitting Authority may require the applicant to submit an environmental impact analysis assessing the proposal's potential impact on natural areas, including cumulative impacts of the proposed structure in conjunction with other structures.

AE conducted an environmental impact analysis to identify species and habitats within the intertidal zone and shallow subtidal zones (see Exhibit 6.0). The subtidal in the location of the floats consists of cobble, rockweed, sand/mud and eelgrass. The eelgrass varies in density and is more dense (50 – 70%) at the existing 16' x 20' float and transitions to less dense (0 – 30%) in the area located under the proposed new floats. The floats will be located in approximately five (5) to eight (8) feet of water during low tide. This provides ample depth to eliminate prop scour on the seaward end of the floats.

The existing float measures 16' x 20' and results in three hundred and twenty (320) square feet of indirect impacts. The Applicant proposes to replace this float with a 12' x 20' float and add two (2) additional 12' x 20' floats for a total of seven hundred and twenty (720) square feet of indirect impacts. These impacts are due to shading from the floats; however, they are seasonal and have been reviewed and approved by the MDEP and ACOE and their review agencies as further noted in Section d below.

Based on the proposed float modifications and the environmental impact analysis, the primary direct impacts are a result result of the anchoring for the floats. This totals approximately one hundred and seventy-six (176) square feet. The indirect impacts are limited primarily to shading and are approximately seven hundred and twenty (720) square feet. The Applicant has submitted a payment to the Maine Natural Resource Conservation Program as part of the Army Corps of Engineers (ACOE) and the Maine Department of Environmental Protection (MDEP) approval to mitigate for the potential impacts as described in Section 5.

b. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

The floats will be constructed off-site and set in place from the water. The project does not involve excavation or earth moving. The Applicant does not anticipate any adverse causes of erosion or sediment.

c. The location shall not interfere with developed beach areas, moorings, and points of public access or other private docks.

The floats are not located over a developed beach area or near existing moorings. No points of public access will be impacted by the proposed dock. There are private docks in the project vicinity; however, the additional floats will not interfere with the use of other private docks.

d. The facility shall be located and constructed so as to create minimal adverse effects on fisheries, existing scenic character, or areas of environmental significance, such as: clam flats, eel grass beds, salt marshes, mussel bars and regionally, statewide and national significant wildlife areas as determined by Maine Department of Inland Fisheries and Wildlife (I.F.W.).

The proposed float modifications have been designed and positioned to provide greater safety and minimize environmental impacts. According to the most recent Maine Department of Environmental Protection's eelgrass survey map, eelgrass is located at the project site. AE conducted a dive survey to determine the limits of the eelgrass and the project plans reflect AE's findings. The Applicant has located the float to provide approximately five (5) to eight (8) feet of water depth from the bottom of the float over the eelgrass at mean low water (MLW). This will minimize the potential for prop scour and shading from the float to the eelgrasss. The Applicant does not anticipate there will be adverse effects on fisheries, existing scenic character, or other areas of environmental significance. This opinion is further supported by the DEP in the NRPA License that was issued to the applicant.

The additional floats (including size and location) were reviewed by the Department of Inland Fisheries and Wildlife (MDIFW) and the Department of Marine Resources (DMR) during the Department of Environmental Protection (DEP) review process. The dock was also reviewed by the US Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and the Environmental Protection Agency (EPA) during the Army Corps of Engineers (ACOE) process. MDIFW stated that, "only minimal new impacts were anticipated in the area provided the Applicants follow Best Management Practices (BMPs)." The Applicant intends to follow BMPs. Additionally, DMR stated that impacts to marine resources or habitat will be minimized given the water depth at the float at low tide. The DEP and ACOE, based on comments from their review agencies, approved the proposed modifications.

e. The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters or impede the navigability of a river or channel. In making a determination regarding potential impediments to navigation, the Permitting Authority may request comments from the Harbor and Waterfront Committee.

The proposed floats will be elevated and will not unreasonably interfere with the natural flow of any surface or subsurface waters or impede the navigability of a river or channel. During the previous review of the project, the Town of Yarmouth's Harbormaster agreed with the Applicant's assessment that the project will not pose an impediment to navigation.

f. The facility shall be no larger in height, width or length than necessary to carry on the activities and be consistent with the surrounding character, and use the area. A temporary pier, dock or wharf in Non Tidal waters shall not be wider than six (6) feet for non-commercial uses.

The purpose of the additional floats is to provide a safe and stable means for all anticipated dock uses. The modifications are the minimum necessary to safely access the water while minimizing impacts to the resource. The proposed floats are in character with residential docks for access to the water which are common along the shore in Yarmouth and the coast of Maine.

g. New permanent piers and docks on Non Tidal waters shall not be permitted unless it is clearly demonstrated to the Permitting Authority that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

The proposed dock is located on tidal waters.

h. Areas, such as, but not limited to: high intensity uses as in cooperative or community docks, need for handicap access, or unusual wind and tide conditions requiring a larger float for stability.

The Applicant is proposing to replace an existing sixteen (16) foot by twenty (20) foot long float with a twelve (12) foot wide by twenty (20) foot long float and add two (2) additional twelve (12) foot wide by twenty (20) foot long floats as further discussed in #4 below.

i. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as required, a second structure may be allowed and may remain as long as the lot is not further divided.

The Applicant is not proposing more than one (1) dock on their lot.

j. Vegetation may be removed in excess of the standards in Article IV.R. 7.(k) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Permitting Authority. Construction equipment must access the shoreline by barge when feasible as determined by the Permitting Authority.

i. When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment access way must be restored.

ii. Revegetation must occur in accordance with Article IV. R. Section 7 (n) of this ordinance.

The proposed dock does not require the removal of vegetation in excess of the standards of Article IV.R.7.(k).

4. The following maximum dimensional requirements shall apply for private docks, located outside of the WOC, WOC II, WOCIII, GD, and Industrial Zones. The requirements for ramp and float size may be waived by the Planning Board if it finds that the proposal has special needs requiring additional area, such as, but not limited to; high intensity uses as in cooperative or community docks, need for handicap access, or unusual wind and tide conditions requiring a larger float for stability. Maximum Pier width shall not be waived.
a. Pier: Six (6) feet in overall width
b. Ramp: Three and one half (3.5) feet in width
c. Float: Three hundred twenty (320) square feet.

The proposed float modifications will result in a total of seven hundred and twenty (720) square feet, an increase in four hundred (400) square feet over the dimensional requirements listed above. The Applicant considered several alternative float layouts including the construction of three (3), five (5) foot wide by twenty (20) foot long floats to meet the dimensional standards; however, this option was deemed unsafe given the fetch, wakes, and prevailing wind direction at the site.

A ten year analysis of wind speed and direction was prepared between the months of May to October from 2010 to 2020 utilizing data collected from the Portland International Jetport (Station #14784). In addition, the site was reviewed to determine the length of the wind fetch from the project site. As shown on the Site Exposure plan, there are five (5) areas with significant wind fetch that range from approximately 2.4 miles to approximately 7.5 miles. This fetch combined with the dominating wind speed and direction is a primary reason in the necessity for a larger float to overcome these stressors. The alternative to construct a more narrow float width is unstable in these conditions and would result in safety concerns for docking and accessing watercraft.

The site was also reviewed by Captain Sarah Kaplan, a Maine Maritime Academy graduate and USCG licensed 1600 Gross Ton Master. Her analysis of the site notes that given the prevailing winds, fetch and wake from vessels in the area, there is greater instability at the project site versus a site located in a more protective cove. Her full letter is included in the attached application materials. For these reasons, the Applicant requests the Board waive the dimensional requirements for the float size.

5. MITIGATION The Permitting Authority may require a mitigation of adverse impacts and may impose any reasonable conditions to assure such mitigation as is necessary to comply with these standards. For the purpose of this Section, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant environmental areas, including minimizing an impact by

limiting the dimensions of the Structure and type of materials used; the magnitude, duration, or location of an activity; or by controlling the time of an activity.

The Applicant is proposing modifications to an existing recreational dock that will provide reasonable and safe tidal access to Casco Bay and adjacent waters. The additional floats will improve the conditions to the eelgrass bed as there will be additional depth of water under the float and will limit potential boat prop damage. Nonetheless, the Applicant has agreed to make a $8,394.00 payment to the Maine Natural Resource Conservation Program to mitigate for the potential impacts.

In addition, the ramp and floats will be in place on a seasonal basis and stored outside the coastal wetland during the off-season.

July 20, 2020

Tim Forrester
Atlantic Environmental, LLC
135 River Road
Woolwich, ME 04579

RE: Craig and Denise Benson
104 Spruce Point Road, Yarmouth, Maine
Map 54, Lot 27
Application for Float Size Waiver/ Residential Dock

Dear Mr. Forrester:

I understand the Bensons are seeking a waiver from the Town Planning Board for permission to install three 12' X 20' floats placed end to end, a total of 720 square feet. I understand the Bensons have already obtained approval for the 720 square foot seasonal floats from the Maine DEP and U.S. Army Corp. You have asked me to advise you on the wind and tide and other water conditions in the immediate area where the Benson's float is located and to comment on whether those conditions warrant safety considerations for a 720 square foot system.

As this letter will be furnished with the waiver application to the Planning Board, you asked me to provide some background information on my credentials and experience:

I am a Maine Maritime Academy graduate and USCG licensed 1600 Gross Ton Master, currently working for Portland Tugboat as Captain on the tug Andrew McAllister. While most of my work now is in Portland Harbor, on occasion I have transited Hussey Sound on the tug to dock and undock tug and barges at Florida Power and Light on Cousins Island. Prior to that, I worked for 3 years as a vessel operator for a marine construction company in Casco Bay, mostly in the Freeport and Yarmouth area, and 8 years as a Mate for a tug and barge company on the US Pacific coast.

I am very familiar with the water area of the Benson's float, including the prevailing winds, waves, fetch, geography, and vessel traffic. My familiarity is based on my work with a local marine construction company, performing the seasonal service on the pier systems in Battle Cove and surrounding area, and frequently transiting that area with the push boat and crane barge. Most recently I visited the area by boat on the evening of July 11, 2020, to observe the conditions.

There was a Moderate breeze, with wind 17 kts out of the South; wind waves 1 ft or less; the tide was high. There was the occasional sailboat and motorboat transiting the area. Three docks in the cove had boats moored on them that were constantly bouncing into their mooring lines from the wind waves. Several minutes after a motorboat went by, I could see the affect their wake had on the moored boats, causing them to bounce harder for several moments. I would consider the weather conditions on that evening to be a usual summer evening. The floats in the cove were bobbing with the wind waves such that they looked unpleasant to stand on and even more challenging to board the boats moored alongside.

Based on my experience and familiarity with the site, it is my opinion that the cove's exposure to the prevailing winds, fetch, and wake from vessels transiting the area create greater *instability* for a float system than at a site located in a more protective cove.

Battle Cove is completely exposed to the Southerly prevailing winds in the summer:
8 nm SW (217T) to the Casco Bay Bridge,
4.75 nm SSW (199T) to Hussey Sound,
2.1 nm due S (180T) to Little Chebeague.
The below picture was taken in the cove looking SW to Portland. From the picture, you can see there is a lot of open water looking out of the cove.

"Wave height is affected by wind speed, wind duration (how long the wind blows), and fetch (the distance over the water that the wind blows in a single direction). Large waves form when all three factors combine." NOAA Waves Education (https://oceanservice.noaa.gov). The orientation alone of this particular cove in the summer factors in the prevailing wind duration and long fetch needed for large wave heights.

The geography of that single area funnels most vessel traffic transiting up and down Casco Bay close to Battle Cove as the navigable channel from Portland to Mere Point, thus a great frequency of feeling the effect of a vessel's wake. Specifically, ledges marked by Hussey

Sound Lighted Buoy "18" on the NNE side of Great Chebeague Island force vessels to transit very close to Little John Island and thus Battle Cove at the southern end of Cousins Island, so the effect from vessel wake is greater. The northerly side of Cousins Island is flats and has a fixed bridge vertical height of 25 ft, eliminating taller and deeper draft vessels from transiting the north side of the island, or smaller boats from transiting that area around low tide. Outside the south end of Great Chebeague Island is completely exposed to the Atlantic Ocean, thus vessels transit inside the island to be protected from ocean swell.

While in more protected locations, a land owner accessing deep water with seasonal floats could use a narrower float system satisfying the restricted square footage, such as 40' by 8' or 50' by 6' or 60' by 5'. Such narrow floats at the Benson location would create an unstable platform to stand on or embark/disembark a boat due to the site conditions with wind, fetch, and wake – a wider float system would be much more stable. I am familiar with the design and engineering of the float system, and feel that the system is exceptionally well designed to accommodate the prevailing conditions.

The additional length seaward that the Benson's are requesting provide additional benefits for safety. More sea room for docking and undocking their boat would provide more room for error, so it is not restricted to a highly skilled boat operator. The prevailing winds alone will want to blow a vessel onto the beach. It also keeps the boat maneuvering further from the beach, away from swimmers, and shoaling water. The greater depth under the float would prevent bottom scouring and grounding.

It is my opinion that due to the particular location of the site conditions I have observed, personally dealt with in that area, and discuss above, the Benson's waiver request is necessary to ensure stability and safety in the use of the seasonal floats.

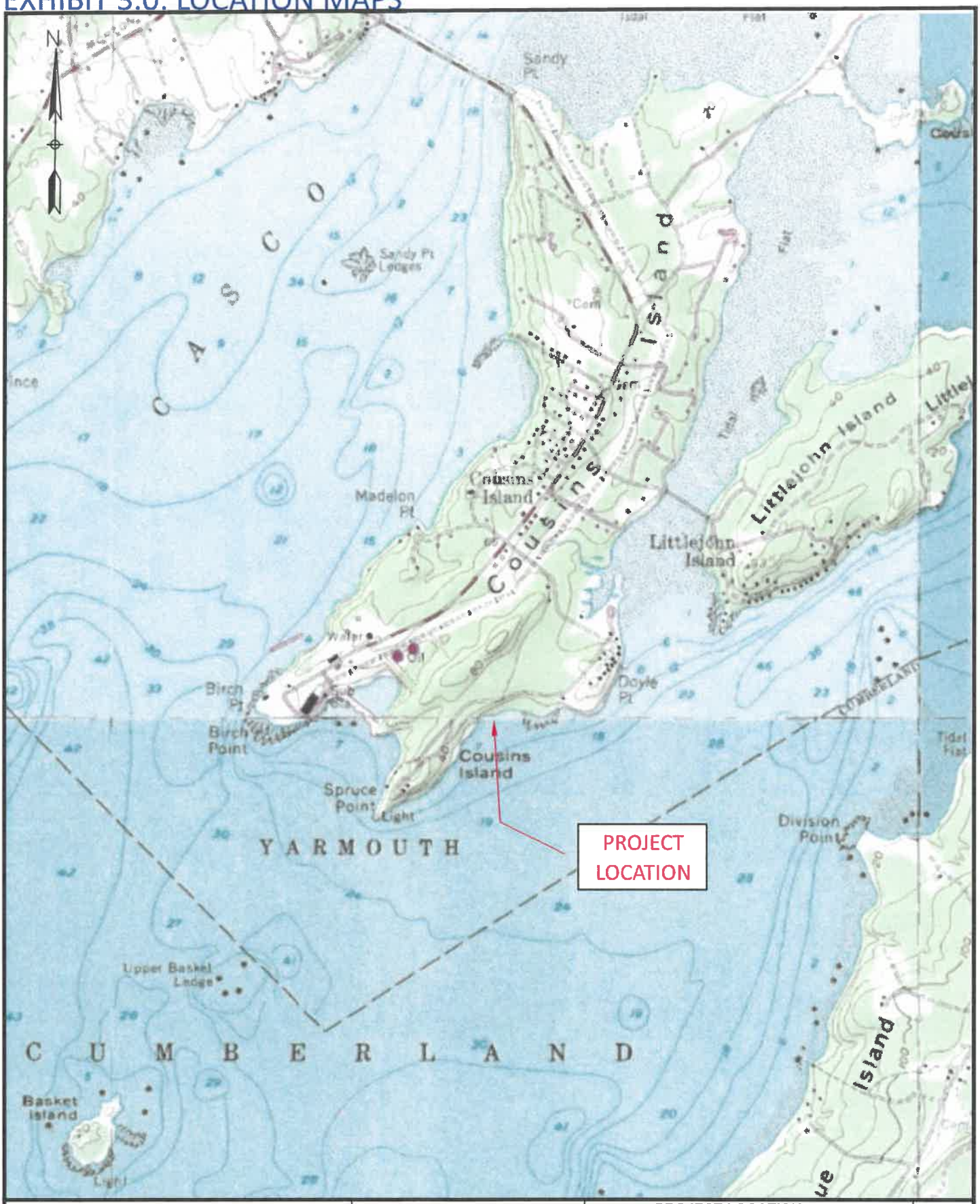
Sincerely,

Sarah Kaplan

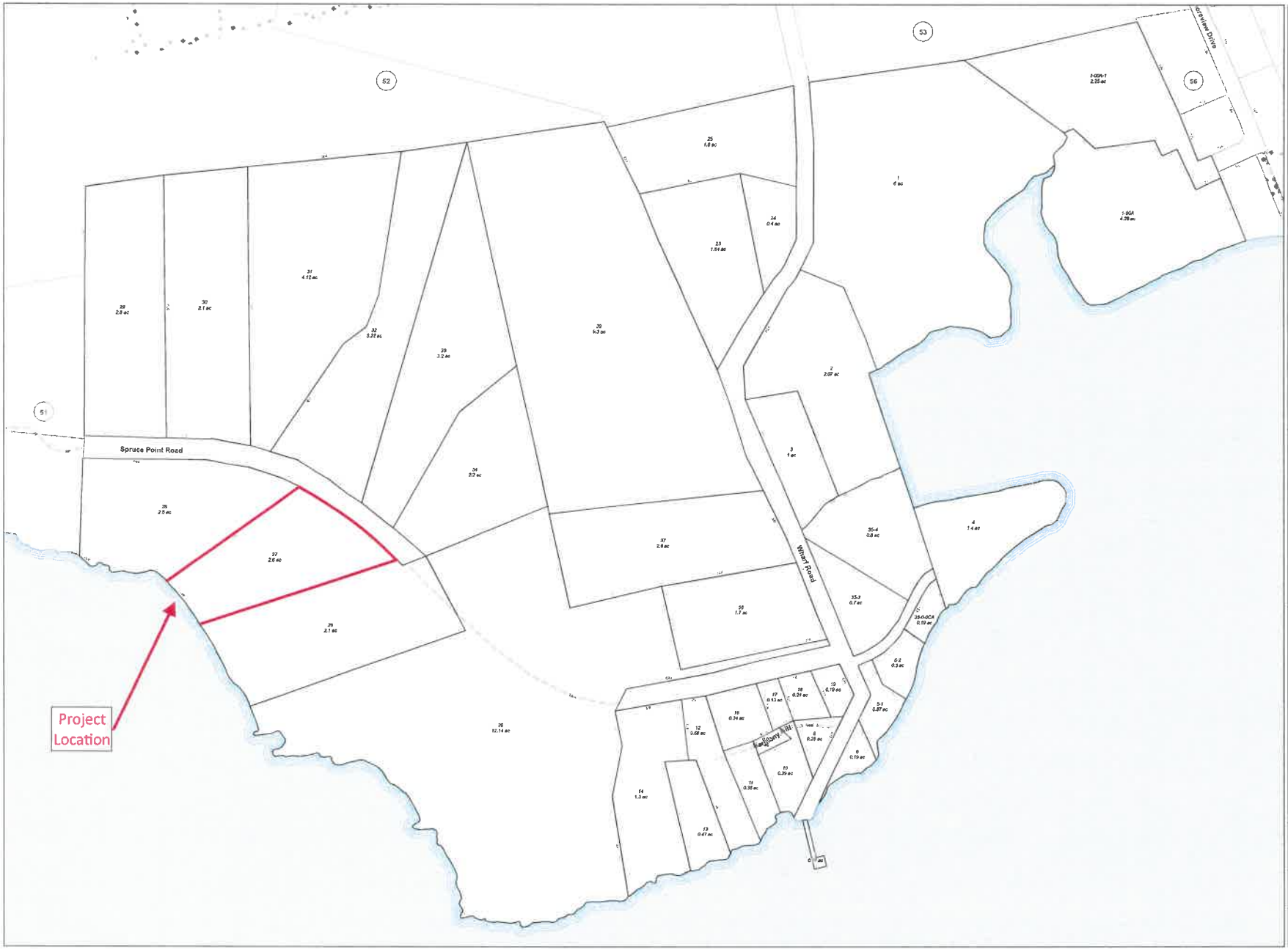
Sarah R. Kaplan

Captain, Portland Tugboat
28 Pennell Ave,
Portland, ME 04103

EXHIBIT 3.0: LOCATION MAPS



ATLANTIC ENVIRONMENTAL LLC. Environmental Consultants 135 River Road, Woolwich, ME 04579 (207) 837-2199 tim@atlanticenviromaine.com	Date: 7/17/2020 Revised: Project:Benson, Yarmouth Drafted By:	**PROJECT LOCATION** 140 Spruce Point Road, Yarmouth, Maine Maine Atlas & Gazetteer Map 6 (Section E-1) 43.750105, -70.1457	Sheet 1 of 1



Assessors Maps

Property Boundary

Paper Streets

Water Body

45 Map Number

Sample Property Label

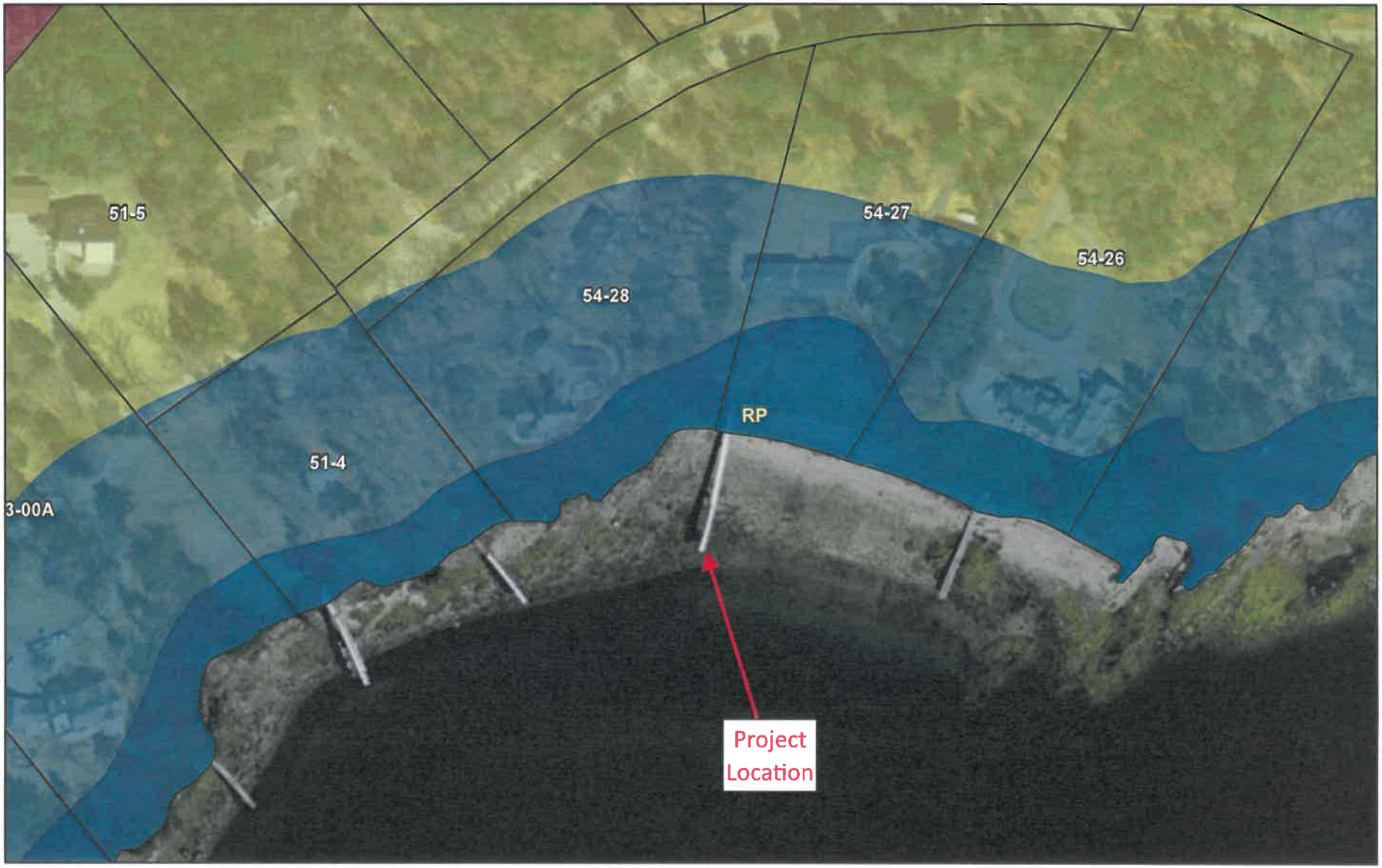
Lot 3
Unit 31
1.2 Acres

0 100 200
1 inch = 100 feet

The Town of Yarmouth shall not be held liable for discrepancies in land conveyance based on the content of these maps. The maps are for assessing purposes only. Maps revised to 2019.

MAP 54

Benson Zoning Map



7/20/2020, 1:51:35 PM

Parcel ID's

Parcels

Zoning

Low Density Residential

Shoreland Overlay District

Industrial

Resource Protection

Parcels Mailing Labels

1:2,257

0 0.01 0.03 0.05 mi

0 0.02 0.04 0.08 km

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS,

Public User

Town of Yarmouth

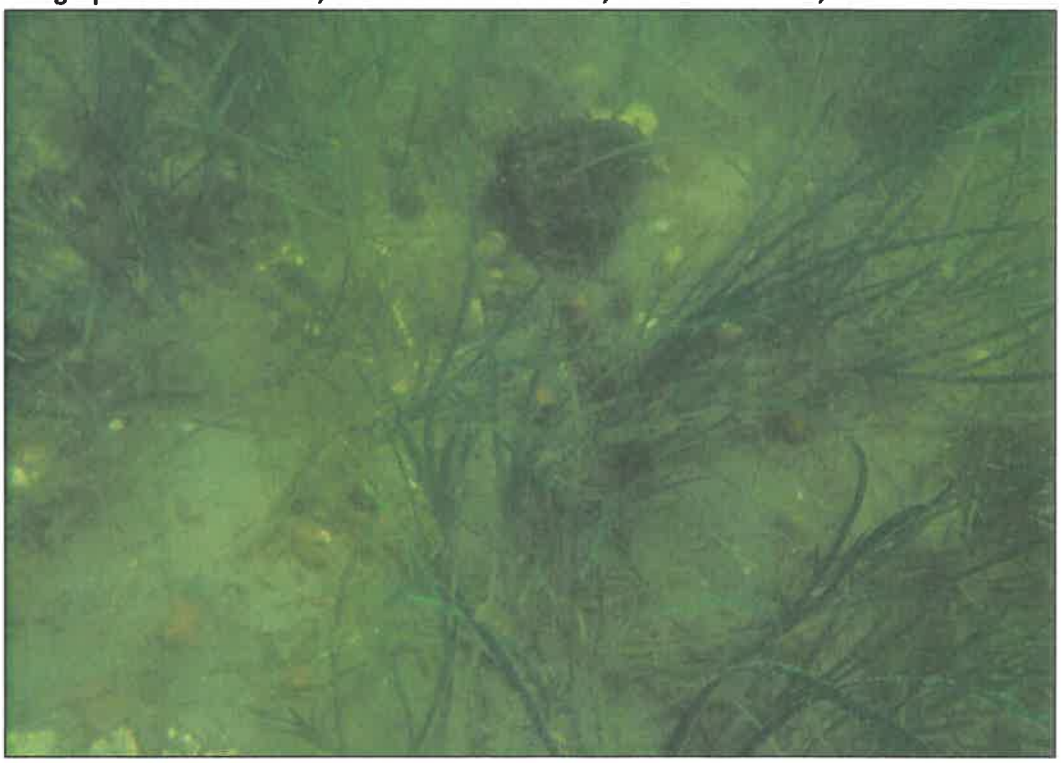
EXHIBIT 4.0: PHOTOGRAPHS

The following photographs are taken from the site of the project and represent the existing conditions located at 104 Spruce Point Road in the Town of Yarmouth, ME.

Photograph One. Aerial View of Project Site. Red arrow indicates approximate location of project. Source: Google Earth. Date: May 4, 2018.

Photograph Two. View of shallow subtidal showing cobble, rockweed, sand/mud, and beginning of eelgrass bed. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: June 26, 2020.

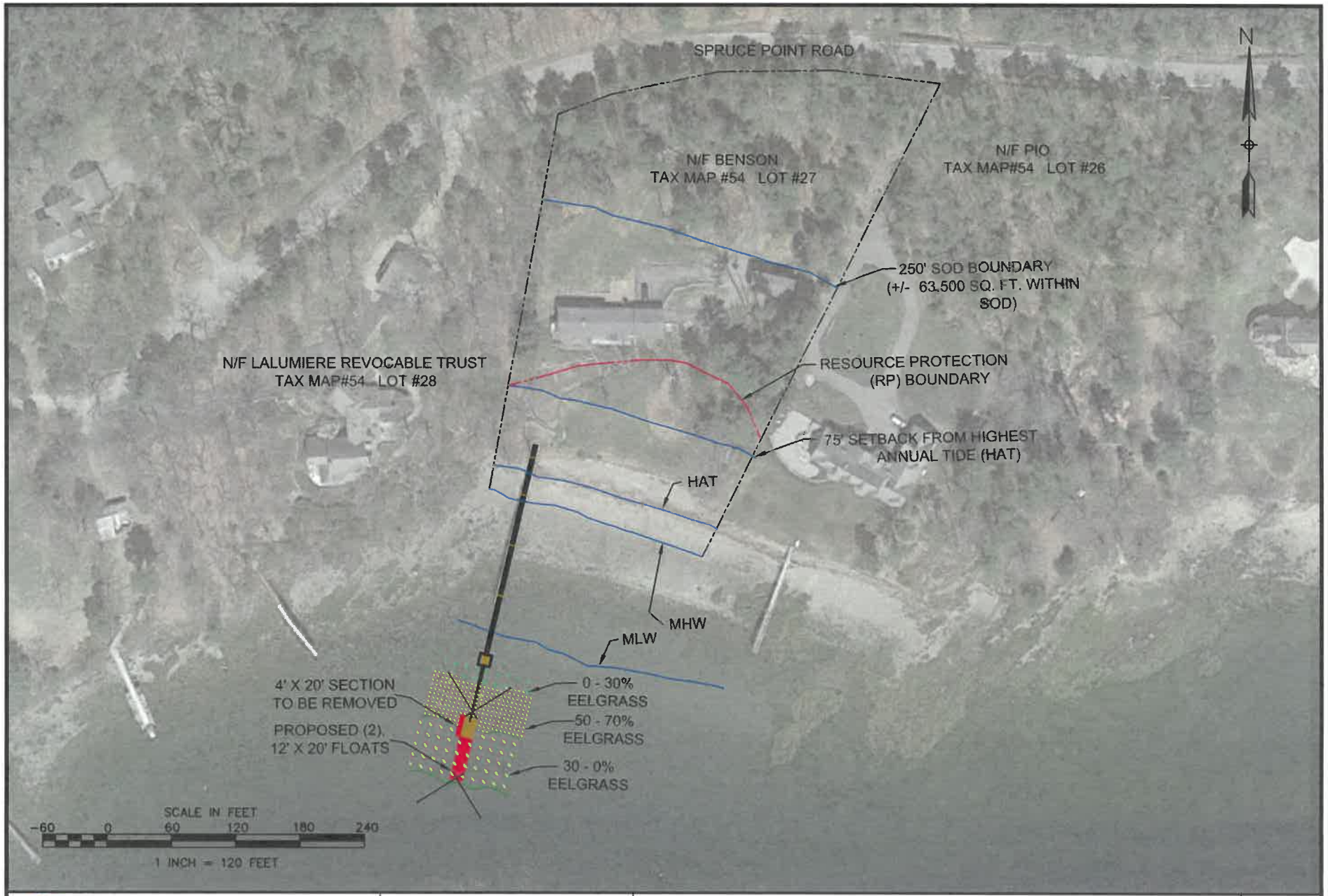
Photograph Three. Subtidal habitat showing varying degrees of eelgrass density adjacent to existing float. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: June 26, 2020.



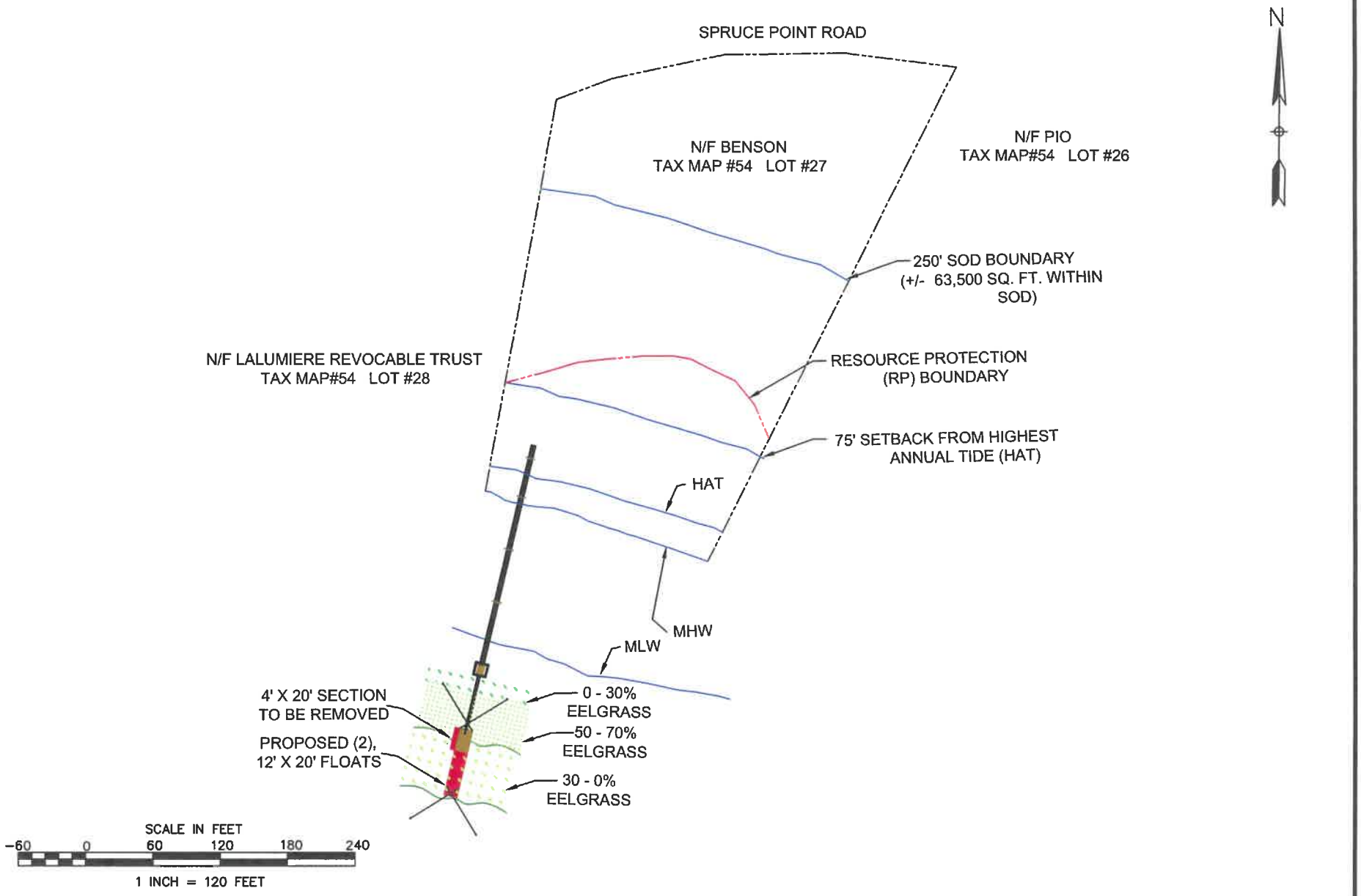
Photograph Four. Shallow subtidal habitat showing less dense eelgrass landward of the main float. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: June 26, 2020.

Photograph Five. Shallow subtidal habitat showing a greater density of eelgrass adjacent to the main float. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: June 26, 2020.

Photograph Six. Subtidal habitat showing dense eelgrass adjacent to the. Main float. Photographer: Tim Forrester, Atlantic Environmental, LLC Date: June 26, 2020.



ATLANTIC ENVIRONMENTAL LLC. **Environmental Consultants** **135 River Road, Woolwich, ME 04579** **(207) 837-2199** **tim@atlanticenviromaine.com**	**Date:** 7/20/2020 **Revised:** **Project:** Benson, Yarmouth **Drafted By:** TAF/LCV	**Proposed Float Modifications for Denise and Craig Benson located at 104 Spruce Point Road in Yarmouth, Maine.**	**Sheet 1 of 3**



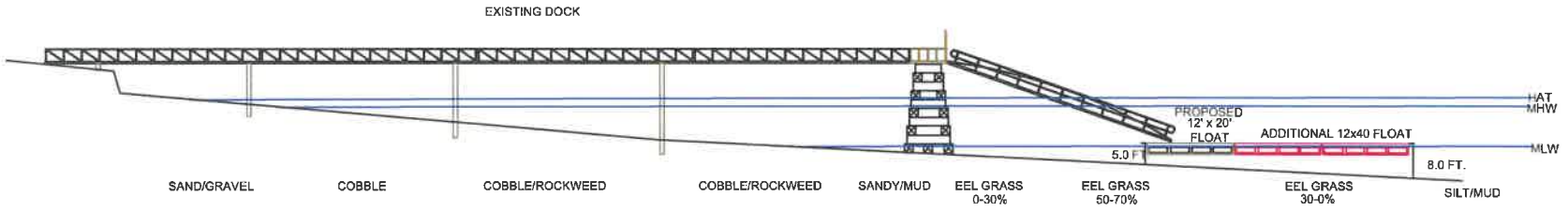
ATLANTIC ENVIRONMENTAL LLC.
Environmental Consultants
135 River Road, Woolwich, ME 04579
(207) 837-2199
tim@atlanticenviromaine.com

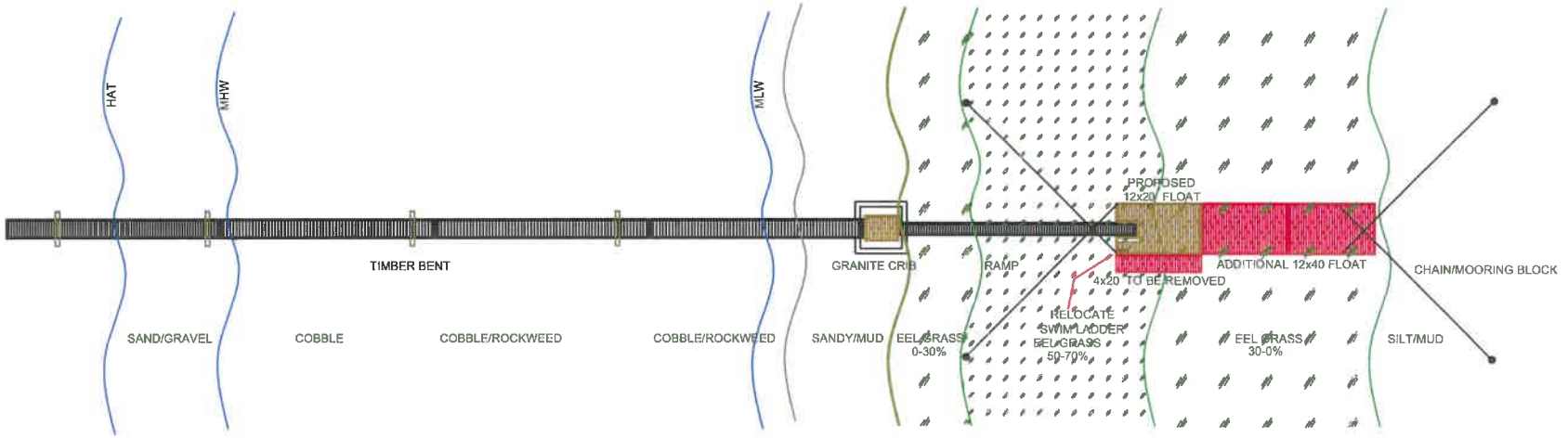
Date: 7/20/2020
Revised:
Project: Benson, Yarmouth
Drafted By: TAF/LCV

Proposed Float Modifications for Denise and Craig Benson located at 104 Spruce Point Road in Yarmouth, Maine.

Sheet 2 of 3

NOTES:
1) ALL PT LUMBER WILL BE CURED IN THE UPLAND FOR 21 DAYS PRIOR TO INSTALL.
2) THE APPLICANT PROPOSES TO REPLACE THE EXISTING 16' X 20 FLOAT WITH A 12' X 20' FLOAT AND ADD A 12' X 40' FLOAT.
3) THE ADDITIONAL FLOATS WILL BE HAULED OFF-SITE AND STORED IN AN UPLAND LOCATION DURING THE OFF-SEASON.
4) FLOATS WILL BE SECURED IN PLACE WITH CHAINS AND MOORING BLOCKS.





SCALE IN FEET
-20 0 20 40 60 80
1 INCH = 40 FEET

ATLANTIC ENVIRONMENTAL LLC.
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135 River Road, Woolwich, ME 04579
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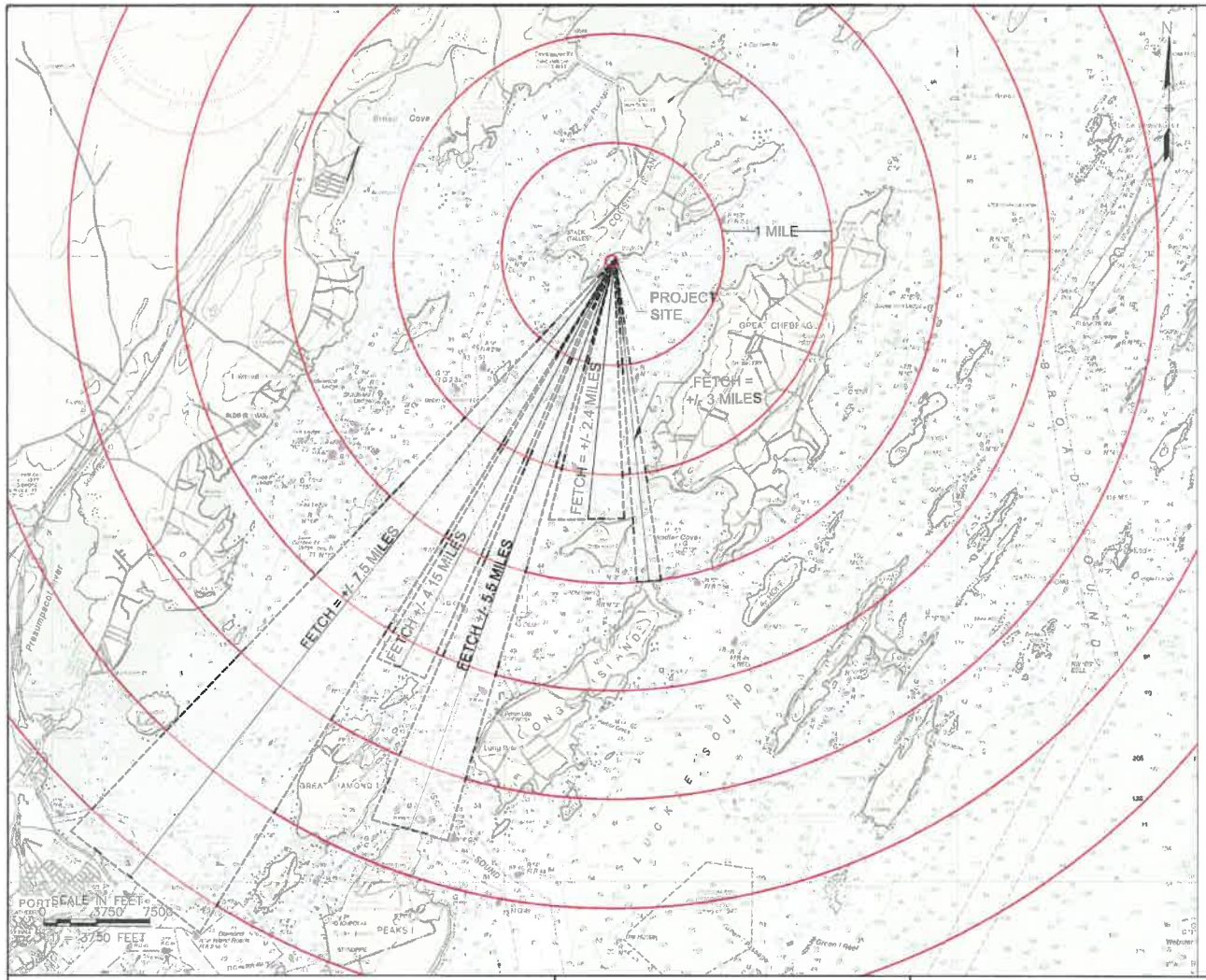
tim@atlanticenviromaine.com

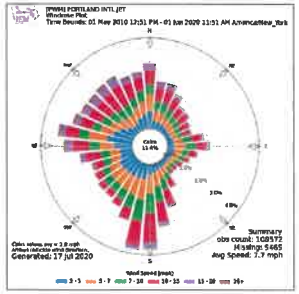
Date: 7/16/2020
Revised:
Project: Benson, Yarmouth
Drafted By: TAF/LCV

Plan View and Cross Section View of the Proposed Additional floats for Denise and Craig Benson located at 104 Spruce Point Road in Yarmouth, Maine.

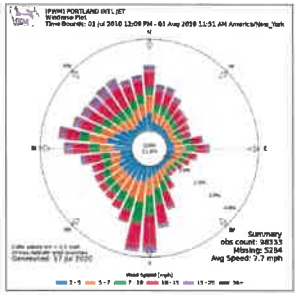
Sheet 3 of 3



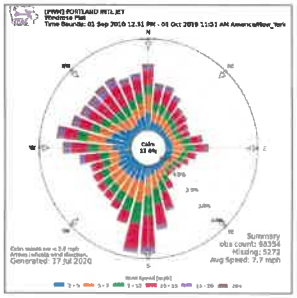
WIND ROSE CHARTS
BASED ON WIND DATA FROM 2010 - 2020 DURING THE MONTHS OF MAY - OCTOBER
PWM STATION 14764



MAY 2010 - JUNE 2020



JULY 2010 - AUGUST 2019



SEPTEMBER 2019 - OCTOBER 2019

ATLANTIC ENVIRONMENTAL LLC.
Environmental Consultants
135 River Road, Woolwich, ME 04579
(207) 837-2199
tim@atlanticenviromaine.com

DATE: 7/16/2020
REVISED:
PROJECT: BENSON, YARMOUTH
DRAFTED BY: TAF/LCV

SITE EXPOSURE FOR 104 SPRUCE POINT ROAD, YARMOUTH, MAINE

BASE MAP IS PORTION OF NOAA CHART - 13290 - CASCO BAY, MAINE
MAP IS FOR REFERENCE PURPOSES ONLY.

SHEET 1 of 1

EXHIBIT 6.0: ENVIRONMENTAL IMPACT ANALYSIS/COASTAL WETLAND CHARACTERIZATION

6.1 INTRODUCTION

AE personnel conducted several site visits at the Applicant's property on June 26, 2020. The purpose of the site visit was to gather data to perform a coastal wetland characterization of the natural resources at the site and to calculate the impacts of the proposed floats. The assessment was conducted at low and mid tides.

6.2 METHODOLOGIES

The site was evaluated based on DEP methodologies that include, "Maine's Coastal Wetlands: I. Types, Distribution, Rankings, Functions, and Values" (1999) and "Maine's Coastal Wetlands: II. Recommended Functional Assessment Guidelines" (1999) of which Appendix B, MDEP COASTAL WETLAND CHARACTERIZATION: INTERTIDAL & SHALLOW SUBTIDAL FIELD SURVEY CHECKLIST of the Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A to 480-BB NRPA Application is based upon. A copy of the checklist is attached in this exhibit. Site-specific data were gathered with a survey level and a Trimble GEO 7X GPS unit. Features identified include rock outcrops, Highest Annual Tide (HAT), Mean High Water (MHW), Mean Low Water (MLW), property pins, habitat types, and existing structures. A shallow water subtidal inventory was performed to assess the organisms and habitats within the intertidal and shallow subtidal zones. The collected data were then used to generate plan view and cross section drawings (**see Exhibit 5.0**).

6.3 RESULTS

The site of the proposed project consists of an approximately 2.6-acre parcel of land which is located off Spruce Point Road in the Town of Yarmouth, Maine. The site is developed with a residential structure and associated infrastructure, including the existing dock. Table One

outlines the species identified and includes relative abundance. Eelgrass was determined to be the dominate resource within the delineated project area. The eelgrass bed ends at the seaward edge of the terminal float. Water depths ranged from five (5) feet at MLW along the back edge of the main float to eight (8) feet at MLW at the seaward edge of the terminal float. According to the Maine Department's Geographic Information System (MEGIS) Significant Wildlife Habitat map, the project site is mapped within Tidal Waterfowl and Wading Bird habitat (TWWH), a Significant Wildlife Habitats as defined by the NRPA. Impacts to TWWH have been minimized by the use of seasonal structures.

The energy level is considered partially exposed, there is standing water, and there are no freshwater wetlands located in the vicinity of the project site. The slope in the location of the floats is 0 – 5%.

Two (2) general habitat types were identified in the vicinity of the project site: Eelgrass and Silt/Mud Bottom. The floats will be located over these habitat types.

6.4 DISCUSSION AND CONCLUSIONS

The primary organisms that utilize the entire habitat area include: small crustaceans, snails, rock crabs, green crabs, juvenile fish, and shellfish.

Based on the site characterization and conditions of the site, all organisms identified within the footprint of the proposed structures are common within the surrounding area and will continue to utilize the area at the completion of construction. It is not anticipated there will be a loss of wetland functions or values as a result of the proposed project. However, some impacts to eelgrass will occur as a result of shading.

Table One: Species List and Relative Abundance Within the Proposed Float Area at 104 Spruce Point Road, Yarmouth, Maine.

Taxonomic Category (Phylum)	Species Name	Common Name	Relative Abundance
Chordata	*Myoxocephalus scorpius*	Shorthorn sculpin	Rare Occurrence
	Didemnum vexillum	Colonial tunicate	Rare occurrence
	Menidia menidia	Atlantic silversides	Observed
Algae	*Fucus vesiculosis*	Rockweed	Common
	Zostera marina	Eelgrass	Abundant
	Ulva lactuca	Sea lettuce	Rare occurrence
Mollusca	*Placopecten magellanicus*	Scallop	(shells)
	Crepidula fornicata	Atlantic slipper shell	(shells)
	Mya arenaria	Softshell clam	(shells)
	Mercenaria mercenaria	Quahog clam	(shells)
	Semibalanus balanoides	Northern Rock Barnacle	Abundant
	Littorina littorea	Common Periwinkle	Abundant
Arthropoda	*Carcinus maenus*	Green crab	Rare occurrence
	Pagurus acadianus	Acadian hermit crab	Common
	Cancer borealis	Jonah crab	Rare occurrence
Echinodermata	*Asterias forbesi*	Common sea star	Rare occurrence
Nematode & Polychaete		Burrowing worms	Common

APPENDIX B: MDEP COASTAL WETLAND CHARACTERIZATION: INTERTIDAL & SHALLOW SUBTIDAL FIELD SURVEY CHECKLIST

NAME OF APPLICANT: Denise and Craig Benson PHONE: (603) 502 - 2900
APPLICATION TYPE: Individual NRPA
ACTIVITY LOCATION: Yarmouth COUNTY: Cumberland

ACTIVITY DESCRIPTION: fill x pier (Float Modification) lobster pound shoreline stabilization dredge other:

DATE OF SURVEY: June 26, 2020 OBSERVER: Tim Forrester

TIME OF SURVEY: 9:30 am TIDE AT SURVEY: Low-Tide

SIZE OF DIRECT IMPACT OR FOOTPRINT (square feet):
Intertidal area: 0 Subtidal area: 0

SIZE OF INDIRECT IMPACT, if known (square feet):
Intertidal area: 0 Subtidal area: approximately 720 square feet

HABITAT TYPES PRESENT(check all that apply):
x sand beach x boulder/cobble beach □ sand flat □ mixed coarse & fines □ salt marsh
□ ledge □ rocky shore x mudflat (sediment depth, if known:____)

ENERGY: □ protected □ semi-protected x partially exposed □ exposed

DRAINAGE: □ drains completely x standing water □ pools □ stream or channel

SLOPE: □ >20% □ 10-20% □5-10% x 0-5% □ variable

SHORELINE CHARACTER:
□ bluff/bank (height from spring high tide:____) □ beach □ rocky x vegetated

FRESHWATER SOURCES: □ stream □ river □ wetland x stormwater

MARINE ORGANISMS PRESENT:

	absent	occasional	common	abundant
mussels	x			
clams		x		
marine worms			x	
rockweed			x	
eelgrass			x	
lobsters		x		
other		x		

SIGNS OF SHORELINE OR INTERTIDAL EROSION? □ yes x no

PREVIOUS ALTERATIONS? x yes □ no
CURRENT USE OF SITE AND ADJACENT UPLAND:
□ undeveloped x residential □ commercial □ degraded x recreational

PLEASE SUBMIT THE FOLLOWING:
x Photographs x Overhead drawing (pink)

EXHIBIT 7.0: COPY OF DEED

MAINE REAL ESTATE TAX-Paid

DLN: 1001840030286 WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **Marcel C. Nadeau and Deborah J. Nadeau of 104 Spruce Point Road Yarmouth, ME** for consideration paid grant to **Denise Benson** of **Rye, NH** with WARRANTY COVENANTS, the premises in the **Town of Yarmouth,** County of **Cumberland** and State of **Maine**, being more particularly described in Exhibit A attached hereto and made a part hereof.

IN WITNESS WHEREOF, the said **Marcel C. Nadeau and Deborah J. Nadeau** have caused this instrument to be signed this **19th day of June, 2018**

Marcel C. Nadeau

Deborah J. Nadeau

Witness

State of **Maine**
County of **Cumberland**

Then personally appeared before me this **19th** day of **June** , **2018** the said **Marcel C. Nadeau and Deborah J. Nadeau** and acknowledged the foregoing to be their voluntary act and deed.

Notary Public/Maine Attorney at Law
Commission Expiration: _____

Charles H. McLaughlin
Attorney At Law

DOC :28760 BK:34927 PG:145
RECEIVED - RECORDED, CUMBERLAND COUNTY REGISTER OF DEEDS
06/19/2018, 02:20:56P
Register of Deeds Nancy A. Lane E-RECORDED

File Number: 18-0760

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1, Spruce Point Road, Yarmouth, Maine

A certain lot or parcel of land, together with the buildings and improvements thereon, situated on both sides of the Spruce Point Road, Cousins Island, in the Town of Yarmouth, County of Cumberland, and State of Maine, more particularly bounded and described as follows:

Being Lot 1 as shown on "Plan of Subdivision for James Brown, Cousins Island, Maine" dated August 2, 1972 and recorded in the Cumberland County Registry of Deeds in Plan Book 93, Page 33, to which plan reference is hereby made, and as amended.

Also hereby conveying a right of way from Wharf Road to Spruce Point Road over the 50-foot private right of way shown on said Plan, together with a right of way over the private 20-foot right of way leading to Casco Bay as shown on said Plan. There is further conveyed as appurtenant to Lot 1 in common with other lot owners on said Plan the use of any beach or bathing area on Casco Bay located between land now or formerly of one Waters and land now or formerly of one Conner. The use shall not include the right to store or maintain (but does include the right to launch) boats on the shore.

Also conveying all my right, title and interest in and to the fee to the land lying between Lot 1 and Casco Bay bounded on the northwest by the dividing line between Lots 1 and 2 as extended to Casco Bay and on the southeast by land now or formerly of Waters, as extended to Casco Bay. Subject to the use by others for beach and bathing purposes (including the right to launch boats) and subject to the 20-foot right of way as shown on said Plan.

The above-described premises are conveyed subject to the following:

1. Grantees shall pay their pro rata share, along with other land owners, of road maintenance and snow plowing costs for the 50-foot right of way leading from Wharf Road and for Spruce Point Road to the extent the Town of Yarmouth does not.
2. No right of way is granted over the area entitled "Existing Travelled Way" on said Plan.
3. No lot shall be subdivided for the purpose of creating another residential lot.

Being the same premises conveyed to Marcel C. Nadeau and Deborah J. Nadeau by virtue of divorce decree dated June 12, 2017, an abstract of which is recorded in the Cumberland County Registry of Deeds in Book 34093, Page 21. Further reference is made to deed dated June 30, 2005 and recorded in said Registry in Book 22829, Page 211.

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

CRAIG AND DENISE BENSON	) NATURAL RESOURCES PROTECTION ACT
Yarmouth, Cumberland County	) COASTAL WETLAND ALTERATION
RESIDENTIAL PIER MODIFICATION	) SIGNIFICANT WILDLIFE HABITAT
L-28115-4P-A-N (approval)	) WATER QUALITY CERTIFICATION
L-28115-TW-B-N (approval)	) FINDINGS OF FACT AND ORDER
CORRECTED ORDER*	

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310, 315, and 335 of Department rules, the Department of Environmental Protection has considered the application of CRAIG AND DENISE BENSON with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: The Department accepted a Natural Resources Protection Act (NRPA) Permit by Rule Notification Form (PBR #36975) on March 11, 2005, for piers, wharves, and pilings in accordance with Chapter 305 (14) of Permit by Rule Standards. The residential pier was constructed.

B. Summary: The applicant proposes to expand an existing residential pier system which consists of a pile-supported supported pier, a seasonal ramp, and a seasonal float. *The existing pier system consists of three 4.5-foot-wide by 50-foot-long sections of permanent pier structure, a three-foot wide by 45-foot long ramp, and a 16-foot wide by 20-foot long seasonal float. *The applicants propose to expand their existing pier system by adding one 4.5-foot-wide by 50-foot-long permanent pier structure seaward, adding two 20-foot-wide by 12-foot-long seasonal floats, and replacing the existing three-foot wide by 45-foot long ramp with a new three-foot wide by 55-foot long seasonal ramp. *The proposed project will result in a 4.5-foot-wide by 200-foot-long permanent pier structure, a three-foot-wide by 55-foot-long seasonal ramp and a 20-foot-wide by 44-foot-long seasonal float structure. *The proposed project will accommodate a large sailing vessel that requires extra draft and additional floats to secure the larger boat and longer ramp length.

The proposed permanent pier structure will be supported by eight existing pilings pinned to ledge that are located in the coastal wetland and a new 11-square-foot granite crib at the seaward end to support the additional permanent pier section. The proposed pier system will result in 129 square feet of total direct impacts; 121 square feet of new direct impacts due to the granite crib and eight square feet of direct impact due to existing pilings. The proposed project will result in 1224 square feet of indirect impacts due to shading from the pier, ramp, and floats. The proposed project is located in mapped Tidal

Waterfowl and Wading Bird Habitat (TWWH) which is designated as Significant Wildlife Habitat under the NRPA. The proposed project can be seen on a set of plans, titled "Benson Yarmouth 104 Spruce Pt. Rd" prepared by Falls Point Marine and dated January 2019. The project is located at 104 Spruce Point Road in the Town of Yarmouth.

C. Current Use of the Site: The site of the proposed project is located on a 2.6-acre parcel of land, which is currently being developed with a residential property and boat house under construction in the upland area. The project site is identified as Lot #27 on Map #54 on the Town of Yarmouth's tax maps.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

The Natural Resources Protection Act (NRPA), in 38 M.R.S. §480-D(1), requires the applicant to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), the applicants submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicants also submitted several photographs of the proposed project site and surroundings. Department staff visited the project site on April 5, 2019.

The proposed project is located in the Town of Yarmouth which is located in Casco Bay, and is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. Existing vegetation on the applicants' shoreline consists of trees, lawn, and shrubs. The proposed project is similar in design to pier systems in the surrounding area. Except for the additional length and the granite crib, the proposed pier system will have similar features as the existing pier system.

Department staff utilized the Department's Visual Impact Assessment Matrix in its evaluation of the proposed project and the Matrix showed an acceptable potential visual impact rating for the proposed project. Based on the information submitted in the application, the site visit and the visual impact rating, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to navigation, recreation, fishing, and riparian access based on the nature of the project and its location.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the coastal wetland.

3. SOIL EROSION:

The NRPA, in 38 M.R.S. §480-D(2), requires the applicant to demonstrate that the proposed project will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

No trees or other vegetation removal is proposed for the modification of the pier system which will be constructed by barge including the granite crib which will also be installed by barge. The proposed ramp and floats will be constructed at an off-site location and set in place once the pier is constructed. The proposed project will work in accordance with the Department's *Maine Erosion and Sediment Control Best Management Practices,* dated October 2016. Based upon these construction methods, the applicants anticipate that soil disturbance associated with project construction will be minimal.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The NRPA, in 38 M.R.S. §480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

The project site consists of trees, lawn, and vegetation with a residential structure and a boat house under construction all of which are located in the upland area. The substrate at the proposed project site consists of sand, gravel beach in the intertidal area and transitions to coarse grained flat in the subtidal area. There is eelgrass located within the footprint of the project site.

According to the Department's Geographic Information System (GIS) database, there is mapped TWWH which is designated as Significant Wildlife Habitat under the NRPA located within the project site.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that only minimal new impacts were anticipated in the project area provided the applicants follow Best Management Practices (BMPs).

Eelgrass habitat has been documented within the project footprint, and the DMR stated that there may be some long-term impacts to marine resources or habitat. However, impacts are being minimized because the water depth at low tide will be approximately five feet at the floats to avoid bottom disturbance from vessel traffic to and from the floats. The floats will also be removed seasonally. The DMR also stated that the granite

crib design provides a longer lasting structure, more suitable surface area and interstitial space for marine organisms.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The NRPA, in 38 M.R.S. §480-D(5), requires the applicants to demonstrate that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

The applicants propose to use lumber treated with chromated copper arsenate (CCA) to construct the pier system. To protect water quality, all CCA-treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

Provided that CCA-treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The proposed pier system will result in 121 square feet of new direct impact due to granite crib. This plus the eight square feet of existing direct impact due to pilings, will result in 129 square feet of direct impacts to the coastal resource. Indirect impacts to the resource will total 1224 square feet due to shading from the pier, ramp, and floats.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended January 26, 2009), interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. The applicants submitted an alternatives analysis for the proposed project completed by Falls Point Marine, and dated January 15, 2019. The purpose of this project is to provide readily available, safe, all-tide access with water and power

accessibility to navigable waters for recreational boating and swimming. The applicants considered leaving the pier system as is, however it doesn't allow their vessel to reach the float at all tides without disturbing bottom substrate. The applicants considered the use of public and private boat launch facilities located in the Town of Yarmouth, the closest facility, Madeleine Point, is located on the opposite side of Cousin's Island, approximately one mile away, and has no power or water for vessel maintenance. The applicants also considered constructing the pier system in a different location and with different designs. However, modifying the existing pier system will require fewer new impacts to the resource if replaced in the same location, and requires little change to existing conditions at the site. The project location also allowed for the shortest distance to navigable waters and will have significantly less adverse impacts to eelgrass. Based on these considerations, the applicants stated that there is no other practicable alternative to the proposed project that avoids impacts to the resource.

B. Minimal Alteration. In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, the applicants must demonstrate that the amount of coastal wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The location of the proposed pier system was chosen to minimize new impacts to the coastal resource and will utilize existing pilings pinned to ledge for support. The new seasonal ramp and floats will also be stored out of the coastal wetland during the off-season.

C. Compensation. In accordance with Chapter 310 §5(C)(6)(b), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. This project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. However, under U.S. Army Corps of Engineers Permit NAE-2005-0280246-MOD, the applicants will be required to make a contribution to the In-Lieu Fee (ILF) program of the Maine Natural Resources Conservation Program (MNRCP) in the amount of $8,394.00 to compensate for 976 square feet of indirect impacts to the eelgrass at the project site.

The Department finds that the applicants have avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment, and does not involve dredge spoils disposal or the transport of dredge spoils by water.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Federal Water Pollution Control Act:

A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.

B. The proposed activity will not cause unreasonable erosion of soil or sediment.

C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.

E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA treated lumber is cured as described in Finding 5.

G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

H. The proposed activity is not on or adjacent to a sand dune.

I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of CRAIG AND DENISE BENSON to modify a residential pier system as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.

2. The applicants shall take all necessary measures to ensure that their activities or those of their agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 13TH DAY OF MAY, 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CORRECTING THE ORDER DATED 05/01/2019. The effective date and expiration date remain the same as in the original.

BY: _____
For: Gerald D. Reid, Commissioner

Filed
MAY 13 2019
State of Maine
Board of Environmental Protection

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

AJaS/L28115ANBN/ATS#84027/#84375

Natural Resources Protection Act (NRPA)
Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. § 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.

B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.

D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.

E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.

F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.

G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.

H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Revised September 2016

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

Erosion Control for Homeowners

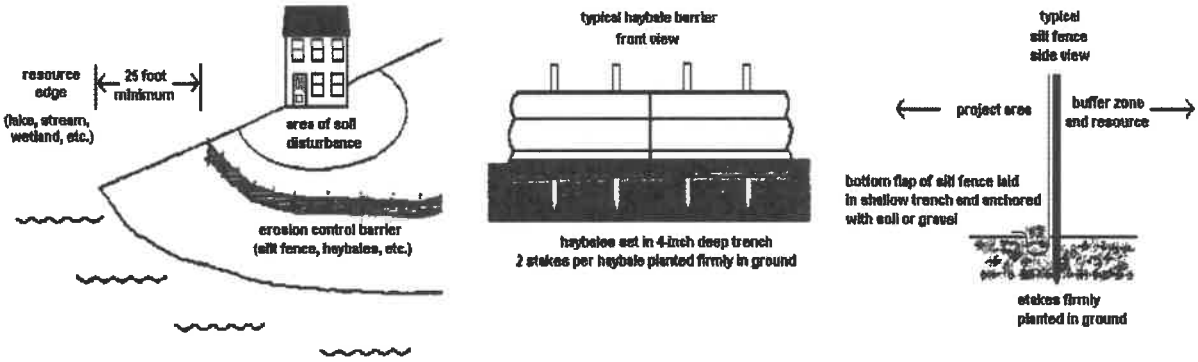
Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.

2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.

3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.

4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.

2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

After Construction

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.

2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

Why Control Erosion?

To Protect Water Quality

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

To Protect the Soil

It has taken thousands of years for our soil to develop. It usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

To Save Money ($$)

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.

DEPLW0386 A2012

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

Regulatory Division
CENAE-RDC

April 16, 2019

Craig and Denise Benson
3 Merry Meeting Lane
Rye, New Hampshire 03870-2325

Mr. and Mrs. Benson:

This letter concerns Department of the Army Programmatic General Permit No. NAE-2005-00236, which authorized the construction and maintenance of a 4.5' x 150' pile and timber pier with an attached 3.5' x 45' ramp leading to a 16' x 20' bottom moored float extending southwest in Casco Bay off 104 Spruce Point Road at Yarmouth, Maine.

In accordance with your recent request, the permit is hereby modified to authorize a 50 ft. granite-crib supported seaward extension to the existing pier and the installation and maintenance of a 55-ft. long x 3-ft. wide ramp leading to three floats totaling 800 s.f. with associated mooring tackle. This work is shown on the attached plans entitled "Craig and Denise Benson Pier extension plan" in four sheets dated "January 2019".

The following special conditions are requirements of the modified permit:

1. *Compensatory mitigation to offset impacts to submerged aquatic vegetation shall consist of payment of $8,394.00 to the Maine Natural Resource Conservation Program. The attached completed In-Lieu-Fee (ILF) Project Data Worksheet shall be mailed with a cashier's check or bank draft made out to "Treasurer, State of Maine", with the permit number clearly noted on the check. The check and worksheet shall be mailed to Maine Department of Environmental Protection, Attention: ILF Program Administrator, 17 State House Station, Augusta, Maine 04333. This authorization is not valid until the permittee provides the Corps with a copy of the check with the permit number noted on the check. The ILF amount is only valid for a period of one year from the date on the authorization letter. After that time, the project shall be reevaluated and a new amount determined.*
2. *Seasonal coastal structures such as ramps and floats that are removed from the waterway for a portion of the year shall be stored at an upland location above the mean high water line and not on tidal marsh.*
3. *All intertidal work shall be conducted in the dry, at low tide.*
4. *To the degree practicable, the permittee shall install low impact tackle systems (e.g. helical anchors and elastic systems) that prevent the float's mooring chains from resting or dragging on the bottom substrate at all tides.*

All other conditions of the original permit remain in full force and effect.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://per2.nwp.usace.army.mil/survey.html

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Jay L. Clement
For Lindsey E. Lefebvre
Acting Chief, Permits & Enforcement Branch
Regulatory Division

LEL:cmg

Cc: Alexis Sivovlos, MaineDEP

FallsPointMarine
Waterfront Resources for Casco Bay & Beyond

1/10/2019

Maine Historic Preservation Commission
65 State House Station
Augusta, Maine 04333-0065

To Whom It May Concern:

At the request of the US Dept of the Army, Falls Point Marine, Inc. is forwarding information regarding a proposal for an outer granite crib extension to an existing dock. This installation, which extends from Mean Low Water is for Denise and Craig Benson of 104 Spruce Point Road in Yarmouth, Me 04096 Tax Map 57 Lot 27.

Enclosed you will find a map, drawing, and photos of the project.

There are no shipwrecks in the area. We hope that this project will not affect any historic resources and meets with your approval.

Please do not hesitate to call if you require any further information.

Sincerely,

Kathleen Keegan

Falls Point Marine, Inc.
PO Box 61
So. Freeport, Me 04078
207-865-4567
kathy@fallspoint.com

cc:
Aroostook Band of Micmacs
Passamaquoddy Tribe of Indians (x2)
Houlton Band of Maliseet Indians
Penobscot Indian Nation
MHPC