Case #30158

FARRELLFRITZ P.C.
ATTORNEYS

John C. Armentano
Counsel

Direct Dial: 631.367.0719
Direct Fax: 631.367.0788
jcarmentano@farrellfritz.com

100 Motor Parkway
Hauppauge, NY 11788
www.farrellfritz.com

Our File No.: 35907-100

July 15, 2019

Via Hand Delivery and Email
Supervisor Laura A. Gillen and
The Town of Hempstead Town Board
One Washington Street
Hempstead, New York 11550
Email: lgillen@tohmail.org

Re: Request to Suspend Dock Permit Pending a Town Board Hearing To Review Structure Posing Menace to Navigation Pursuant to Town Code Section 168-8
Permit No.: 776-065-19
Permittee: John Bortolis
Premises: 3400 Hewlett Avenue, Merrick, New York (NCTM: 63-322-34)

Supervisor Gillen and Members of the Town Board:

Our law firm represents Jeffrey and Jennifer Clancy (the "Clancys"), who reside at 3421 East Bay Court, Merrick, and Eric and Elizabeth Horowitz (the "Horowitzes"), who reside at 3404 Hewlett Avenue, Merrick. The Clancys and the Horowitzes are neighbors to John Bortolis, who resides at 3400 Hewlett Avenue, Merrick. The issuance of the above-referenced permit ("Permit")[1] allows Mr. Bortolis to construct a pier, dock and boat-lift ("Dock") that creates a menace to navigation and dangerous conditions for the Clancys and Horowitzes, and their guests and passengers, in utilizing their own docks and accessing navigable water.

Pursuant to Town Code Section 168-8, the Clancys and the Horowitzes request the Town Board review and investigate the Dock which is a menace to navigation, suspend the Permit for 30 days pending a hearing, modify the Permit to ensure safe navigation (i.e. reduce the Docks' intrusion into the cove) and remove menacing structure(s). Section 168-8 states:

> Any structure, mooring pile or spile, except bulkheading, erected or installed under this chapter, shall at all times be maintained by the permittee, his successor or assignee of the adjacent upland, in good repair and condition and not as a menace to navigation or to persons using the structure, mooring pile or spile, and the Town Board, upon finding reasonable cause to believe that the permittee, his successor or assignee of the adjacent upland has

[1] A copy of the Permit is annexed as Exhibit "1."

> failed to comply with this section, may forthwith suspend any permit issued under this chapter for a period not to exceed 30 days, and after a hearing, on written notice mailed to the permittee, his successor or assignee of the adjacent upland at his last known address, and at least 10 days prior to such hearing, may revoke such permit and remove or repair such structure, mooring pile or spile and charge the permittee, his successor or assignee of the adjacent upland with the expense of such removal or repair.

Mr. Bortolis's Dock creates a menace to navigation and must be modified. The bulkheaded rear-yards of the Clancys, the Horowitzes and Mr. Bortolis effectively form a right-angle and create a cove. The Permit allows Mr. Bortolis to build the Dock 75 feet into the cove, where no one else in the cove has a dock longer than 40 feet. This unreasonable length results in Mr. Bortolis's Dock extending across the Clancys' and Horowitzes' rears-yards, effectively trapping them and blocking access to navigable waters of East Bay. In order to access East Bay, the Clancys and Horowitzes must encounter and circumnavigate Mr. Bortolis's Dock, which task is aggravated by tidal, wind and waves conditions.

In support of our request for review, we have attached an analysis prepared by our riparian rights expert, Louis Gnip, L.S., which summarizes the navigation hazards posed by Mr. Bortolis's Dock and explains why the Department of Conservation & Waterways' purported solution of merely placing the boat lift on the south side of the Dock will not cure the danger. Mr. Gnip also recommends mitigation being a 50-foot Bortolis Dock. A copy of Mr. Gnip's Dock analysis is annexed as Exhibit "2."

Not only does the Permit allow a dock that is twice as large (100% larger) than the Clancys' and Horowitzes' docks within the cove, but the Dock's length is unjustified because it allows Mr. Bortolis to reach water depths of seven feet, which is two or three times deeper than a depth necessary for navigation. The New York State Department of Environmental Conservation regulations state that a depth of only 2.5 feet is necessary, and the Town Code defines "navigable waters" as those providing a depth of four feet. Mr. Bortolis has access to navigable waters virtually at his bulkhead and outwards to 40 or 50 feet.

Accordingly, we request that the Town Board (i) suspend the Permit for 30 days (ii) investigate the Permit and Mr. Bortolis's Dock, (iii) schedule, notice and hold a hearing thereon, (iv) modify the Permit to remove the dangers to navigation and (v) remove the menacing structure(s).

Thank you for your prompt consideration of this matter.

Respectfully submitted,

John C. Armentano

CC:

Town Board Members (via Hand Delivery and Email)
Dorothy L. Goosby
Thomas E. Muscarella
Bruce A. Blakeman
Anthony P. D'Esposito
Erin King Sweeney
Dennis Dunne, Sr.
Town Clerk, Sylvia A. Cabana (Via Hand Delivery)
Charles S. Kovit, Esq. (via Hand Delivery and Email)
Chief Deputy Town Attorney
Sahn Ward Coschignano (via Email)
c/o Christian Browne, Esq.
c/o Ralph Branciforte, Esq.
The Clancys (via Email)
The Horowitzes (via Email)

EXHIBIT 1

TOWN OF HEMPSTEAD
DEPARTMENT OF
CONSERVATION AND WATERWAYS

PERMIT

STRUCTURES IN WATERWAYS

Type of Use: Commercial ( ) Residential (X)

Permit Number 776-065-19* Date March 27, 2019

Sec. 63 Block 322 Lot/s 34

Issue to John Bortolis

Address 3400 Hewlett Ave., Merrick 11566

Name of Waterway (s) East Bay

A permit to construct and maintain in safe condition:

*Amend original permit, structures moved westward approx. 35' from property line: 40'x4' pier, ramp, 20'x10' float and 4-pile boat lift located on east side of float.

GENERAL CONDITIONS

1. No structure shall infringe on adjacent property owner's riparian rights or in any way cause a hazard to navigation.
2. This permit must be conspicuously displayed at the site of work.
3. Permit issued subject to inspection at all times.
4. All bulkheading to be constructed wholly within property line of ownership.
5. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, N.Y.S. Dept. of Environmental Conservation or local government which may be required.
6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description, resulting from the said project.

Thomas E. Dohrmann

PERMIT ADMINISTRATOR

Council Members
DOROTHY L. GOOSBY
EDWARD A. AMBROSINO
BRUCE A. BLAKEMAN
ERIN KING SWEENEY
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR.

SYLVIA A. CABANA
Town Clerk

DONALD X. CLAVIN, JR.
Receiver of Taxes

THOMAS E. DOHENY, JR.
Commissioner

THOMAS O. DAUSCHER
Deputy Commissioner

Town of Hempstead
Department
of
Conservation & Waterways
1401 LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

LAURA A. GILLEN
Supervisor

March 27, 2019

John Bortolis
3400 Hewlett Ave.
Merrick, NY 11566

Dear Mr. Bortolis,

Please be advised that your application for Structures in Waterways has been approved and Permit No.776-065-19* has been issued in accordance with the application and plan submitted.

This permit must remain on the premises and be available for inspection at all times.

We direct your attention to the condition on your permit to obtain further authorization to do this work from:

Department of the Army
New York District, Corps of Engineers
Regulatory Affairs
26 Federal Plaza
New York, New York 10278-0090
(917)790-8511

New York State Department of Environmental Conservation
Department of Regulatory Affairs
Building 40 – SUNY – Room 219
Stony Brook, New York 11794
(631)444-0355

Sincerely,

Thomas E. Doheny, Jr.
Commissioner

*amended

TD:jmw
enclosures

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No. 061-19 Date Received 3/26/19

Name	Address	Telephone No.
1. **APPLICANT:** MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. **OWNER:** MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. **CONTRACTOR:** KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No. _____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No. _____
Disability Benefit Insurance Filed: YES ☑ NO ☐ *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES ☐ NO ☑ *(Submit Form C105.21)*

4. LOCATION OF WORK SITE:
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES ☐ NO ☑

5. USE OF UPLAND PROPERTY: Business _____ Proposed Res. _____ Exist.Res. X Other _____

6. USE OF PROPOSED WATERWAYS STRUCTURE: Commercial _____ Non-commercial X Houseboat _____

7. DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY. REPLACE 84 LF OF BULKHEAD IN PLACE WITH 18-IN INCREASE IN ELEVATION. ~~RECONSTRUCT 40X4 (160 SF) PIER, 20X10 (300 SF) FLOATING DOCK W/ RAMP AND 4-PILE VESSEL LIFT. NO DREDGING IS PROPOSED.~~

8. OWNER'S STATEMENT: *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

Signature of Owner

9. APPLICANT'S STATEMENT: *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

SF #770 EASEMENT.

AREA (FT²)		
MOORING PILES		
BULKHEAD (L.F.)	84	
TOTAL FEE	$42.00	

PERMIT NO. _____
DATE ISSUED _____
RECEIPT NO. _____
CHECKED BY _____
APPROVED BY _____

CWF12-4 10/00

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No. 065-19 Date Received 3/24/19

Name	Address	Telephone No.
1. **APPLICANT:** MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. **OWNER:** MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. **CONTRACTOR:** KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No. _____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No. _____
Disability Benefit Insurance Filed: YES [✓] NO [ ] *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES [ ] NO [✓] *(Submit Form C105.21)*

4. **LOCATION OF WORK SITE:**
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES [X] NO [✓]

5. **USE OF UPLAND PROPERTY:** Business _____ Proposed Res. _____ Exist.Res. X Other _____
6. **USE OF PROPOSED WATERWAYS STRUCTURE:** Commercial _____ Non-commercial X Houseboat _____
7. **DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:**
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY. 40X4 (160 SF) PIER, 20X10 (200 SF) FLOATING DOCK W/ RAMP AND 4-PILE VESSEL LIFT. NO DREDGING IS PROPOSED.

8. **OWNER'S STATEMENT:** *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

Signature of Owner

9. **APPLICANT'S STATEMENT:** *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

AMEND # 776
PIER MOVED WEST / lift flipped to EAST Side of ~~pier~~ float.

AREA (FT²)		
MOORING PILES	N/C	
BULKHEAD (L.F.)		
TOTAL FEE		

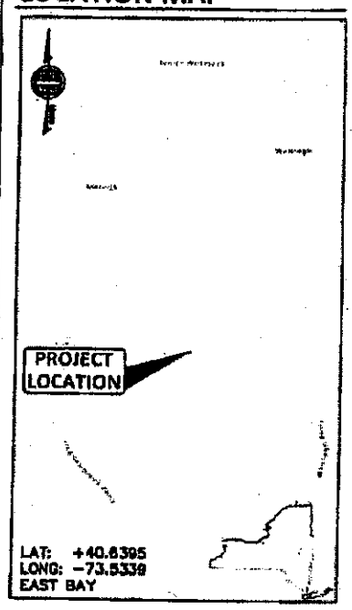
PERMIT NO. _____
DATE ISSUED _____
RECEIPT NO. _____
CHECKED BY _____
APPROVED BY _____

CWF12-4 10/00

BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
23 JULY 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENEUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516-595-3483
EMAIL: CONTACT@RT-WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08-30-2017
B:	USACE COMMENTS	09-19-2017
C:	NYSDEC COMMENTS	04-27-2018
D:	NYSDEC COMMENTS	07-23-2018

SKETCH INDEX

SK-1	TITLE SHEET & LOCATION MAP
SK-2	FACILITY PLAN
SK-3	HYDROGRAPHIC STUDY
SK-4	BULKHEAD SECTION
SK-5	FIXED PIER & FLOATING DOCK
SK-6	BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

- SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	−0.1	MEAN SEA LEVEL
MLW	±0.0	−1.9	MEAN LOW WATER
MLLW	−0.1	−2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

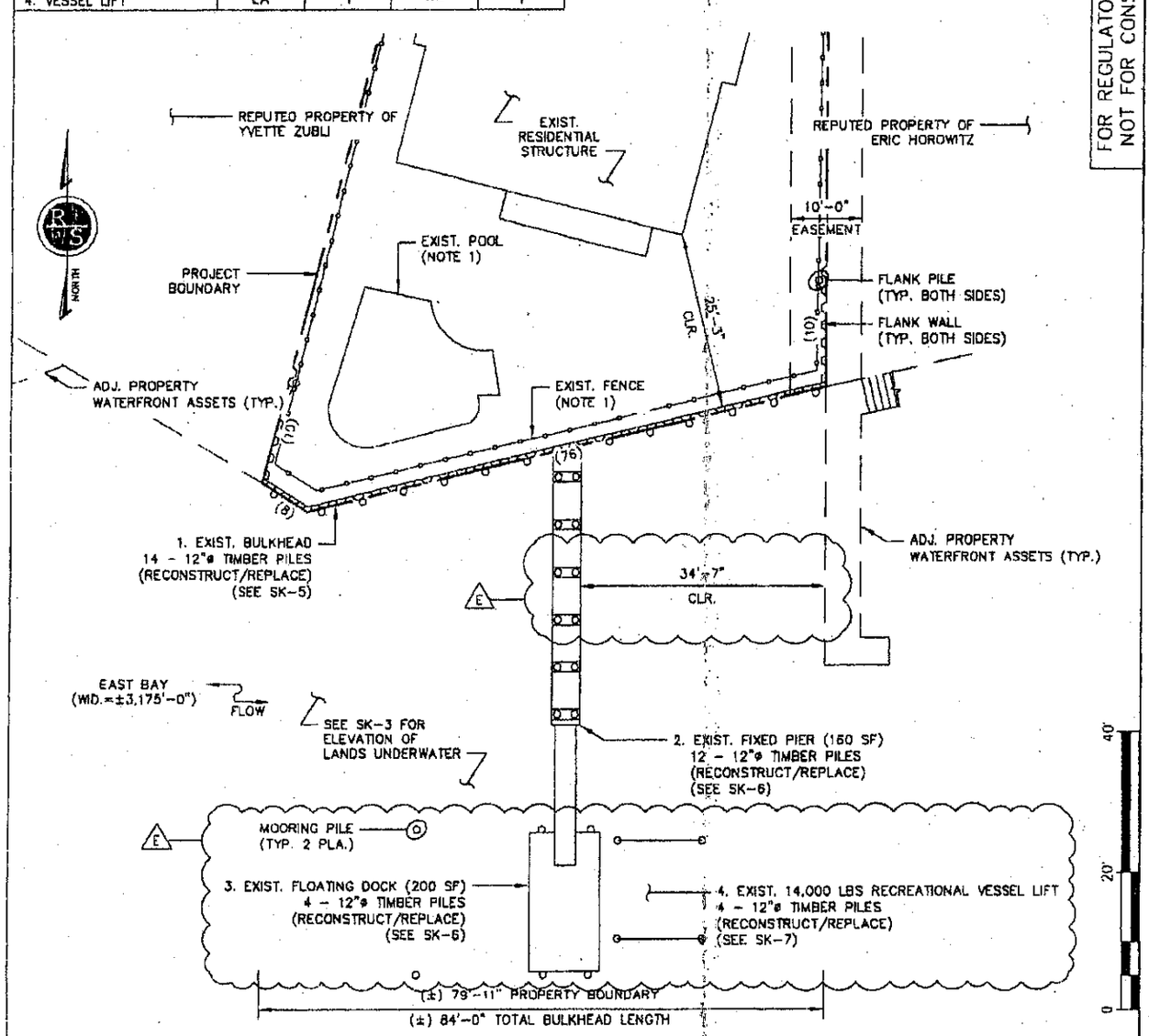
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER-WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 84 LF BULKHEAD SHALL BE REPLACED IN-PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER-WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4-PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-1	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	N/A	Rising Tide | Waterfront Solutions
	DRAWN BY: JMK		DATE: 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
1 of 6 sheet(s)	CHECKED BY: AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. D	SHEET: TITLE SHEET & LOCATION MAP

SCHEDULE D – SUMMARY OF PROPOSED ACTIVITY				
ITEM	UM	SIZE	AREA	NOTE(S)
1. BULKHEAD	FT	84	--	2
2. FIXED PIER	FT	40 X 4	160 SF	1
3. FLOATING DOCK	FT	20 X 10	200 SF	1
4. VESSEL LIFT	EA	1	--	1

NOTE(S):
1. LAWFULLY EXISTING OVER-WATER STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.
2. LAWFULLY EXISTING STRUCTURE REMAINING IN PLACE (I.E. NOT DESTROYED BY SUPERSTORM SANDY).

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



FACILITY PLAN

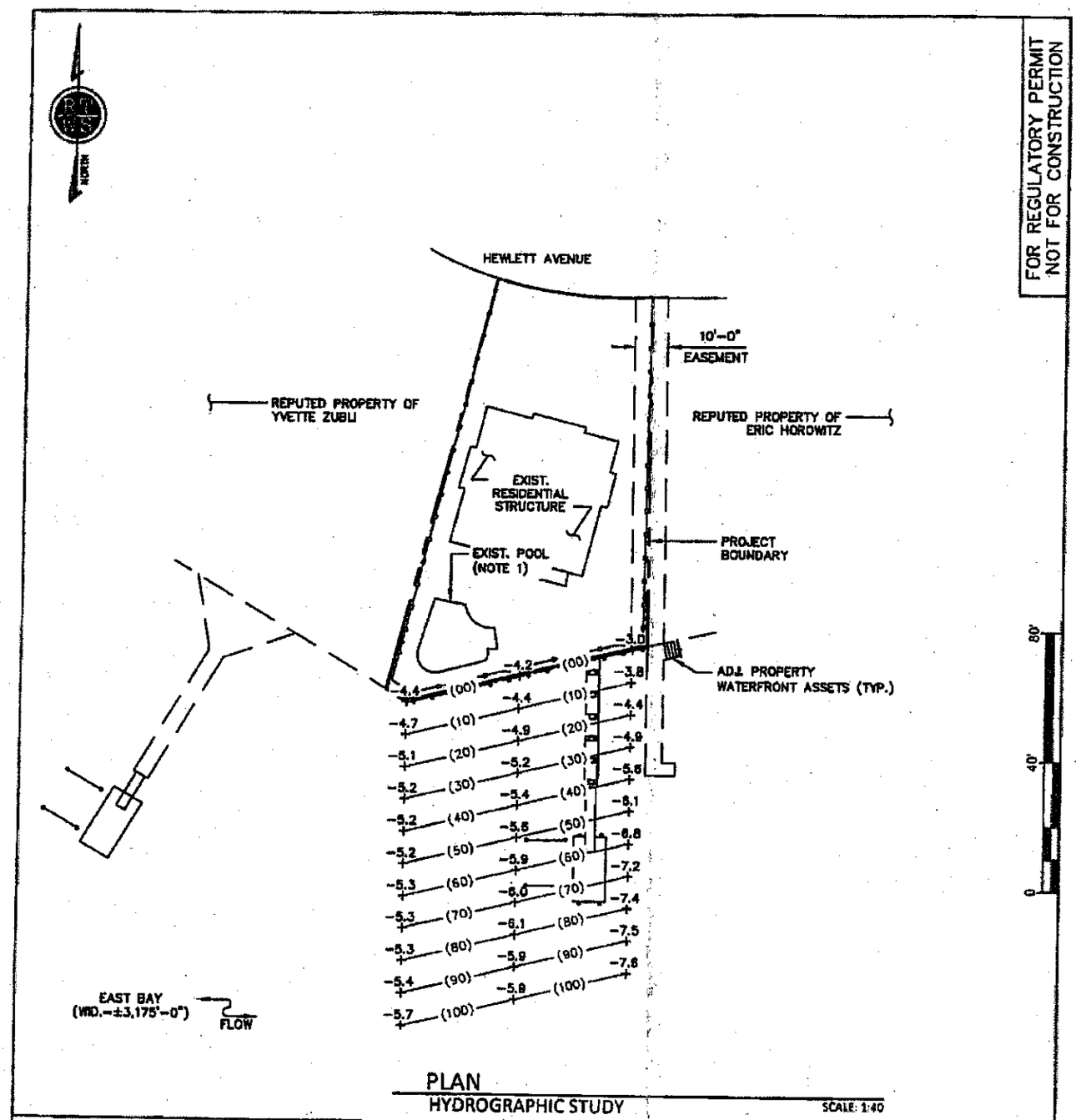
SCALE 1:20

LEGEND:
(XX) BULKHEAD LENGTH IN FEET

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-2	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:20	Rising Tide | Waterfront Solutions
2 OF 6 SHEET(S)	DRAWN BY JWK		DATE 03/26/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. E	SHEET FACILITY PLAN

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
HYDROGRAPHIC STUDY

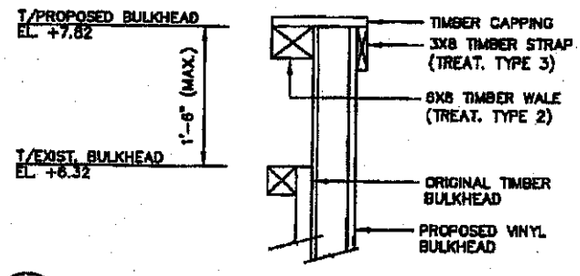
SCALE: 1:40

LEGEND:
-X.X- LAND UNDERWATER ELEVATION (NAVD 88)
-(XX)- HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

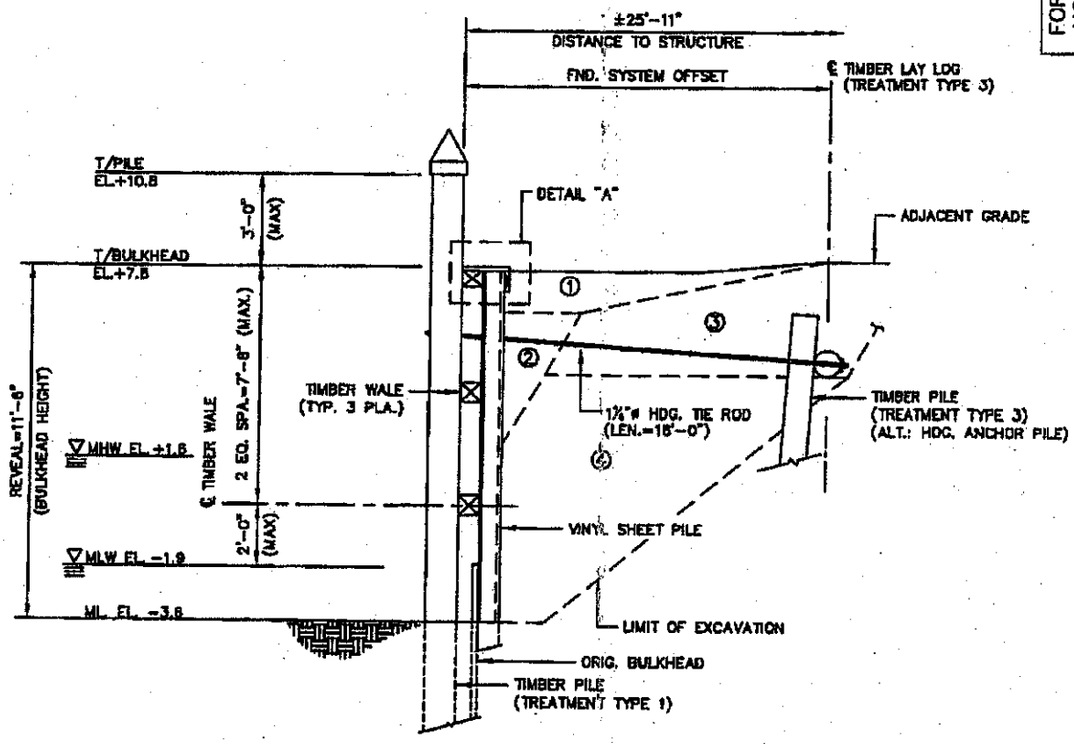
SHEET NO. SK-3 3 of 6 sheet(s)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:40	Rising Tide Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET HYDROGRAPHIC STUDY

TABLE 2 - FILL DESIGNATIONS		
ITEM	DESCRIPTION	QUANTITY
1	PLACED FILL REQ'D FOR 18" ELEVATION	24 CY
2	REPLACED ERODED/LOST FILL	0 CY
3	RECLAIMED/ORIGINAL FILL	80 CY
4	RECLAIMED/ORIGINAL FILL OR DREDGE SPOILS	152 CY



A / SK-5 DETAIL
T/BULKHEAD DEFINITION N.T.S.

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

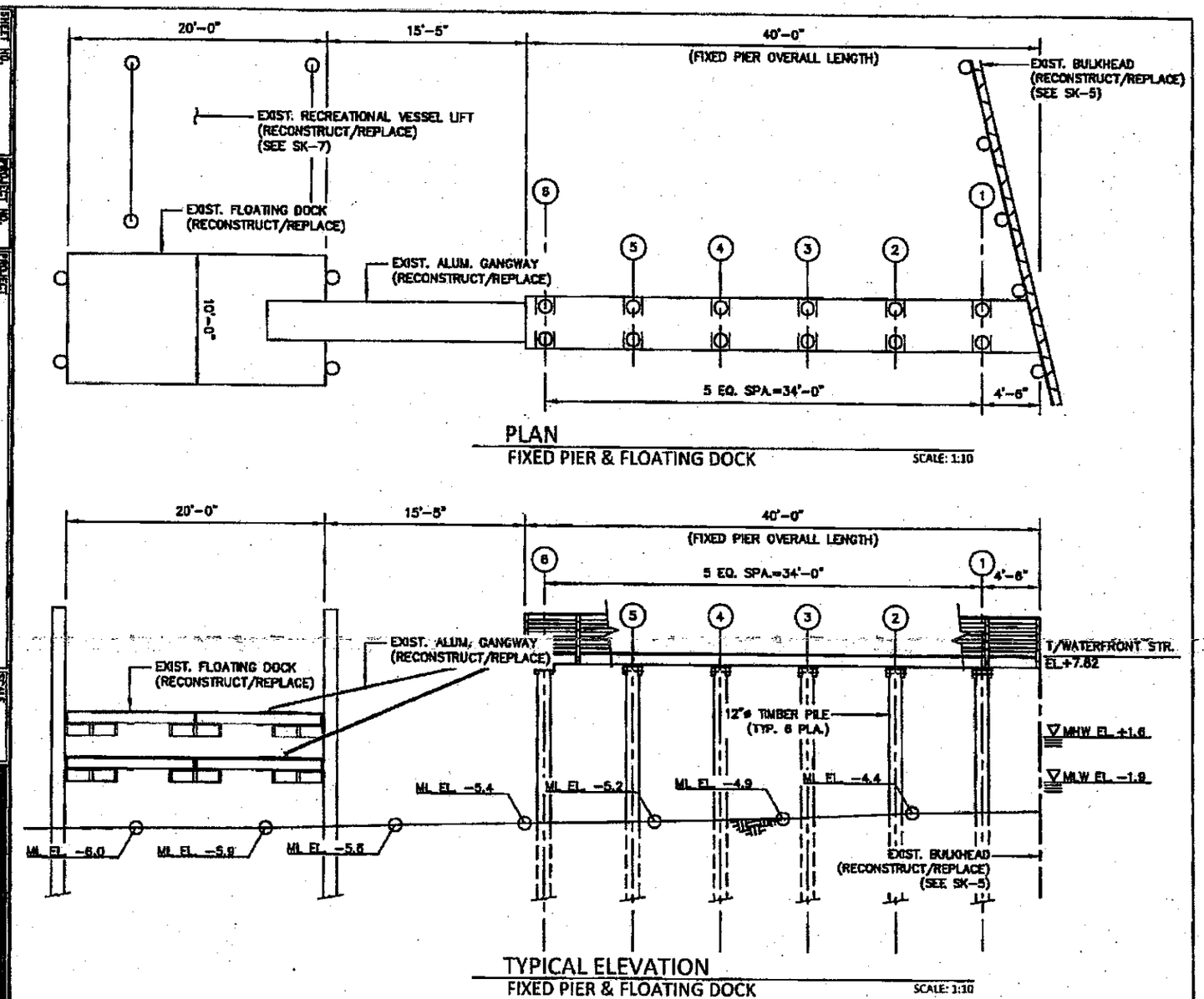


B / SK-4 SECTION
BULKHEAD/PLATFORM SCALE: 1:5

TABLE 3 - TIMBER TREATMENT		
TREATMENT TYPE	CCA RETENTION	DESCRIPTION
1	2.5	CCA TREATED PER AWPA-P5
2	2.5	CCA TREATED PER LATEST AWPA STANDARDS, COMMODITY SPECIFICATION A.P 3.0
3	1.5	

NOTE 1: APPURTENANCE(S) TO BE REMOVED/REINSTALLED AS DIRECTED BY HOMEOWNER. NOT SHOWN FOR CLARITY.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-4	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	1:5	Rising Tide | Waterfront Solutions
4 of 5 SHEETS	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BULKHEAD/PLATFORM SECTION



FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

SHEET NO. SK-5 5 OF 6 SHEETS

PROJECT NO. P17073.00
DRAWN BY JMK
CHECKED BY AMA

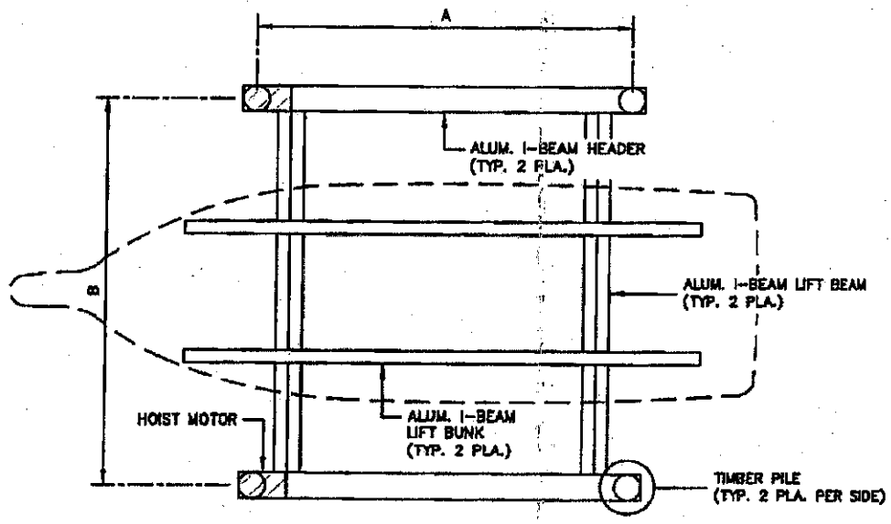
PROJECT
BULKHEAD REPLACEMENT
PREPARED FOR
MR. JOHN BORTOLIS
LOCATED AT
3400 HEWLETT AVENUE
EAST BAY
MERRICK, NY 11566
NASSAU COUNTY

SCALE 1:10
DATE 07/23/19
REVISION NO. 0

Rising Tide | Waterfront Solutions
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NEW YORK 11570

SHEET
FIXED PIER & FLOATING DOCK

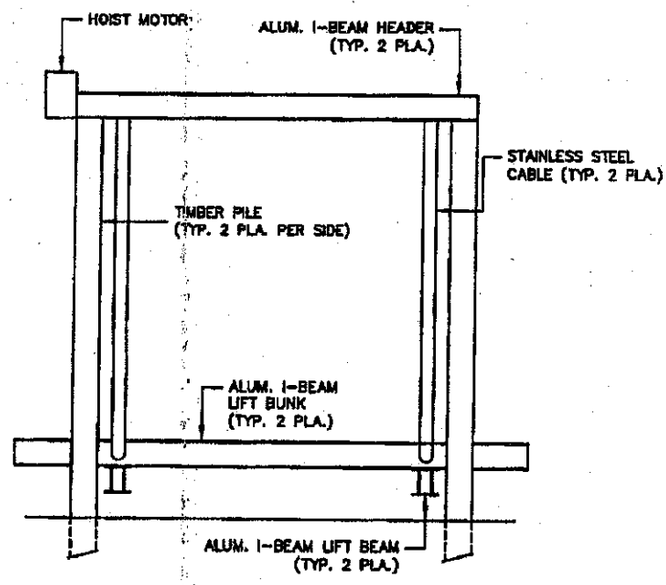
FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
BOAT LIFT

SCALE: 1:5

SCHEDULE A - ALL SPACING TO CENTER OF PILE			
LIFT CAPACITY	A	B	RECOMMENDED PILING SIZES
5,000 LBS	11'-0"	10'-0"	10"Ø
7,000 LBS	12'-0"	12'-0"	10"Ø
10,000 LBS	12'-0"	12'-6"	10"Ø
14,000 LBS	12'-0"	12'-6"	10"Ø
18,000 LBS	14'-0"	14'-0"	12"Ø
22,000 LBS	12'-0"	16'-0"	12"Ø
27,000 LBS	16'-0"	16'-0"	12"Ø
33,000 LBS	18'-0"	18'-0"	12"Ø



ELEVATION
BOAT LIFT

SCALE: 1:5

SHEET NO. SK-6 (6 of 6 sheets)	PROJECT NO. P170731.00	PROJECT: BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5
	DRAWN BY JMK		DATE 07/23/18
	CHECKED BY AMA		REVISION NO. D

Rising Tide | Waterfront Solutions
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NEW YORK 11570

SHEET: BOAT LIFT

EXHIBIT 2

Sketch Map Narative – NAS-30-4A & 4
Showing the Bortolis Dock outshore at 75'
From the Upland Bulkhead within the East Bay Cove
At Merrick, Town of Hempstead, County of Nassau, State of New York

Having reviewed the documents provided in connection with the above matter involving outshore Riparian Zones, I have determined that the appropriate method to apply is the "Perpendicular Method" as employed by the State of New York in areas of their jurisdiction. Outshore improvements that have taken place over the years in this East Cove Bay were allowed without consideration of the Perpendicular Method. This has violated the upland owner's right of free and direct navigation to their upland properties. The Bortolis structure extended obout 75 feet outshore and was recently destroyed by Hurricane Sandy.

The Perpendicular Method is constructed by establishing a base line between the headlands with a perpendicular line drawn therefrom to each respective upland owner's property lines as shown on the map referenced above.

The issue of free and direct navigation occurred at the time Mr. Bortolis applied for a permit to reconstruct his dock facility in the previous location prior to his dock being destroyed. It is unfortunate that the agencies reviewing this proposal did not consider the effect of navigation of neighboring properties within the cove area after complaints were made by neighboring owner Clancy. There are presently four owners in the cove area, however, the only ones involved are Bortolis, Horowitz and Clancy.

It is my opinion that the Bortolis dock plan extends too far into the cove area forcing neighboring owners to navigate into other neighboring riparian areas. A dock location closer to the bulkhead is feasible as a navigable water depth of 4.5 feet is all that is necessary for the type of watercraft involved. The current Bortolis plan occupies not only his riparian area but the total area of Horowitz and a portion of Clancy. This forces Horowitz to utilize Clancy's riparian zone for ingress and egress from his upland property. No one is totally blocked from navigation, however, it requires them to maneuver using various navigational methods for access, especially during times of high winds.

It is only proper at this time of dock reconstruction by Bortolis that a modified version to the Perpendicular Method be considered to minimize encroachments to neighboring land owners and provide fair and equitable navigational access to their properties. Shortening the length of the Bortolis dock can accomplish this. I have prepared a Sketch Map No. NAS-30-4 that would shorten the Bortolis dock from 75 feet to 50 feet from the bulkhead line that could accomplish this. This plan shows a moored boat to the east and boat lift to the west. I have incorporated soundings on my Sketch Map that were taken from a Hydrographic Study Plan, Sheet No. SK-3 dated 3/26/16 by Rising Tide/Waterfront Solutions made for Mr. Bortolis. This plan shows the water depth at the dock structure to be between 5.2 to 5.6 feet based on the North American Vertical Datum (NAVD) 88. This proposal minimizes the encroachments and provides for adequate water depth and reasonable navigation to neighboring owners.

The Town of Hempstead's mitigation of placing the boat lift on the west side of the 75 foot dock is insufficient to address the issue of navigability. This is not a viable solution because the dock length is excessive within navigable waters and still presents a navigable issue to the upland neighboring property owners within the cove area.

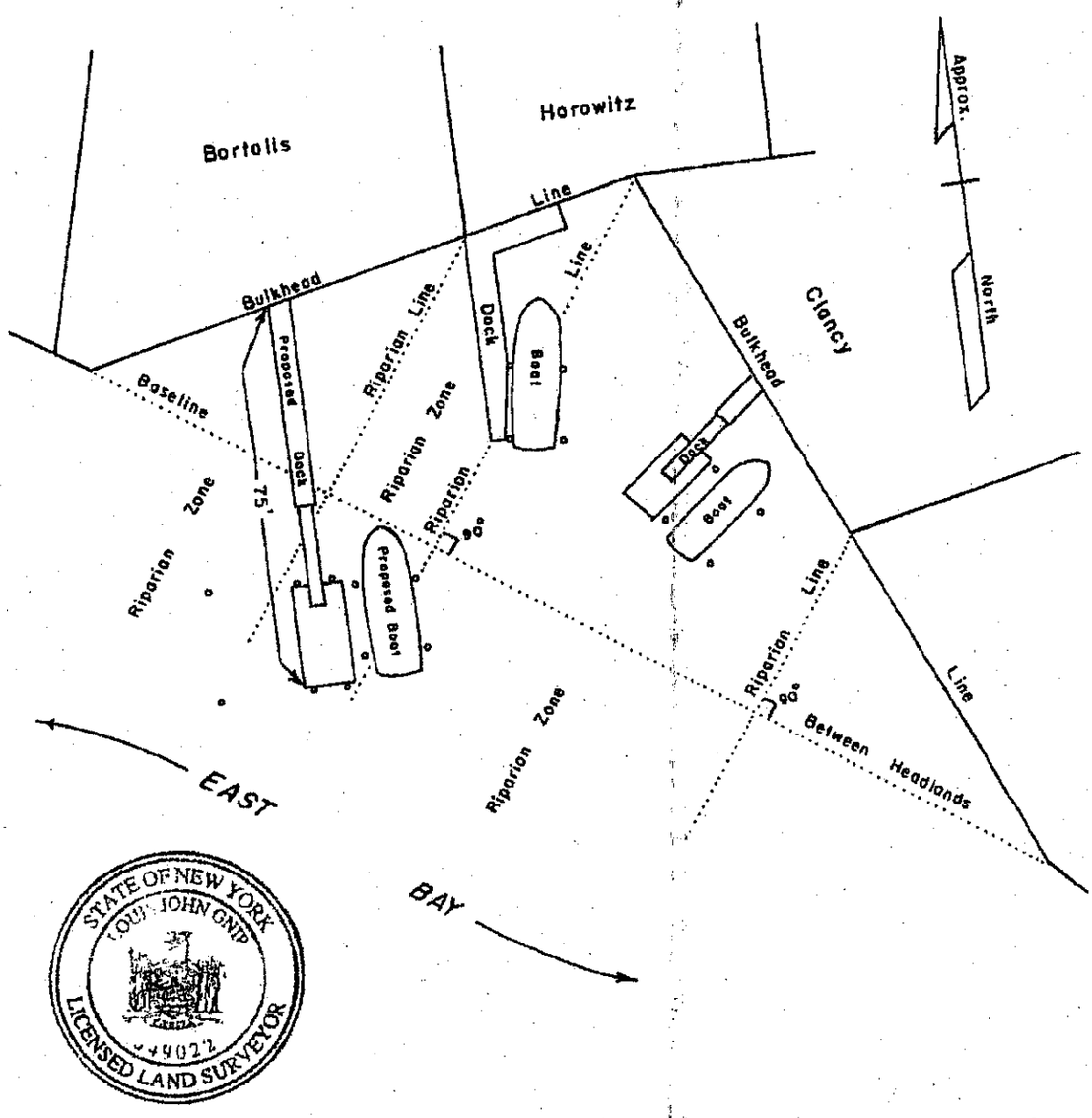
It should also be pointed out that DEC permits have provisions that no docks, catwalks, floats, pilings, and boat lift/davit shall extend laterally beyond property lines, interfere with navigation, or interfere with other landowner riparian rights. Item "D" of their permit indicates that the permittee has no right to trespass or interfere with riparian rights. A dock structure of 75 feet outshore in this cove area certainly violates the provisions of the DEC permit.

Therefore, a modified version of the Perpendicular Method is encouraged so as to provide the Clancy's and Horowitz's fair and equitable use of their respective riparian zones.

Respectfully submitted,

Louis J. Gnip, Land Surveyor
Dated: July 11, 2019

(Note: Bortolis Dock at 75')



STATE OF NEW YORK
LOUIS JOHN GNIP
49022
LICENSED LAND SURVEYOR

SKETCH MAP Showing Cove Area of East Bay at Merrick, Town of Hempstead, County of Nassau, State of New York with existing and proposed outshore improvements. Riparian Zones are established using the "Perpendicular Method" for a cove area. The proposed dock/boat for Bortolis is shown according to the modified facility plan SK-2. The improvements according to the proposal herein shown transgresses into the riparian zones of both Horowitz and Clancy.

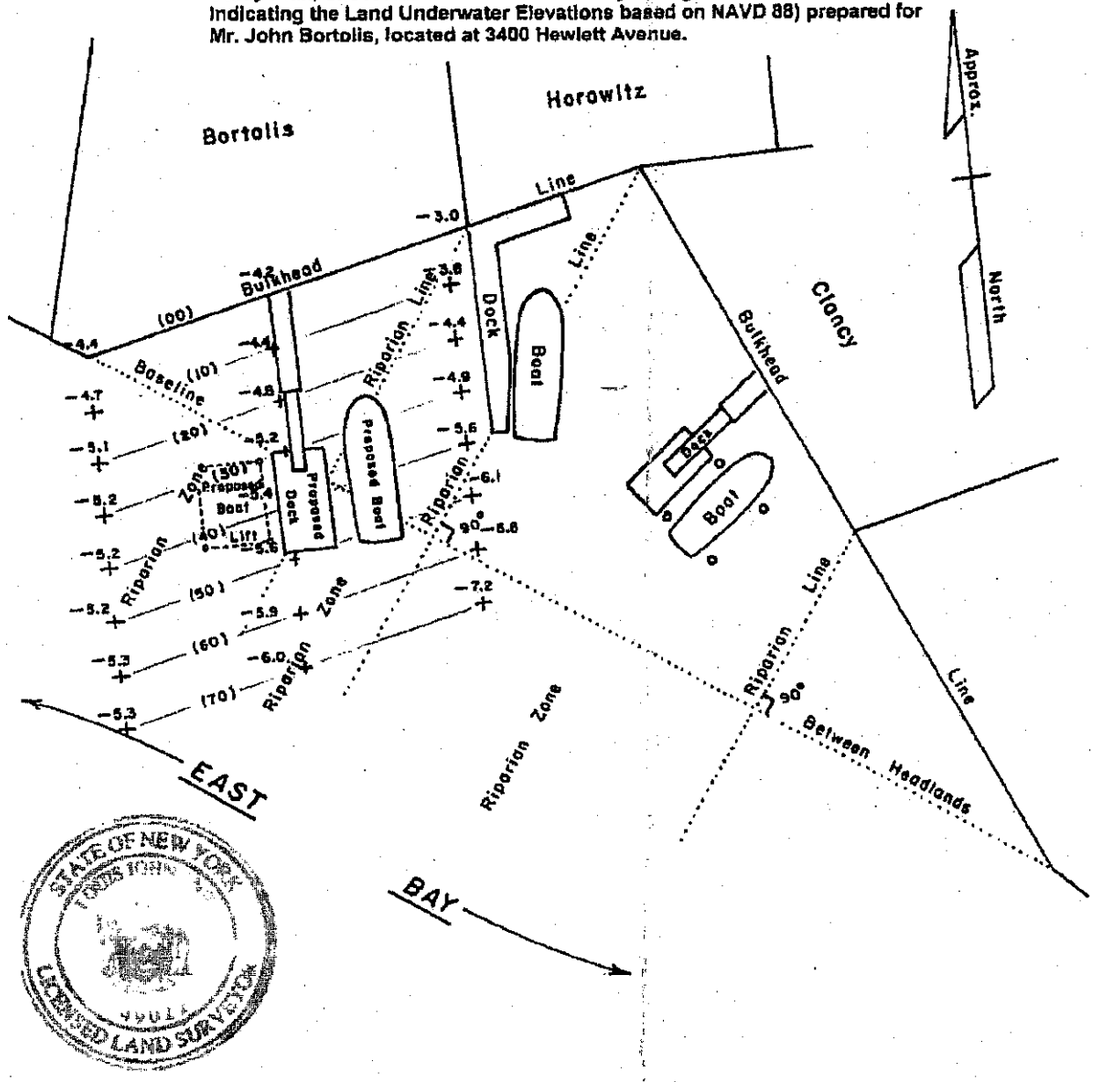
Map Scale 1" = 30 Feet

By: Louis J. Gnip, L.S. 49022
Dated: May 8, 2019

NAS - 30-4A

(Note : Bortolis Dock at 50')

(Note: Soundings as shown on this map were taken from a Hydrographic Study Plan, Sheet No. SK-3 dated 3/26/16 by Rising Tide/Waterfront Solutions indicating the Land Underwater Elevations based on NAVD 88) prepared for Mr. John Bortolis, located at 3400 Hewlett Avenue.



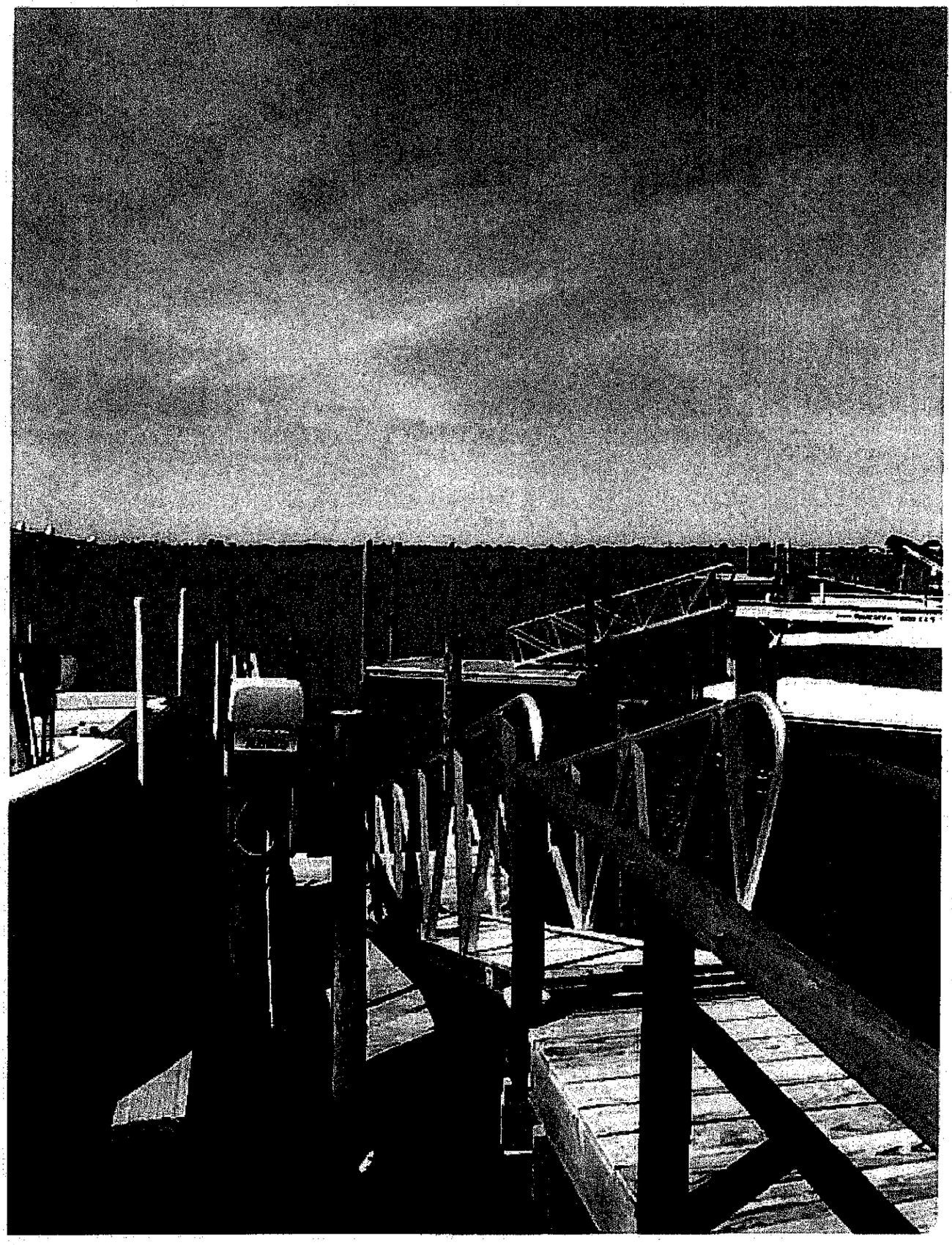
STATE OF NEW YORK
LICENSED LAND SURVEYOR

SKETCH MAP Showing Cove Area of East Bay at Merrick, Town of Hempstead, County of Nassau, State of New York with existing and proposed outshore improvements. Riparian Zones are established using the "Perpendicular Method" for a cove area. The proposed dock/boat for Bortolis has been shortened by 25 feet from the current plan to minimize the adverse effect that such outshore improvements have on free and direct navigational access for all neighboring upland owners within this cove area.

Map Scale 1" = 30 Feet

By: Louis J. Gnip, L.S. 49022
Dated: May 2, 2019 (Revised: July 11, 2019)

NAS - 30-4



7-15-19

FARRELLFRITZ PC
ATTORNEYS

John C. Armentano
Counsel

Direct Dial: 631.367.0719
Direct Fax: 631.367.0788
jcarmentano@farrellfritz.com

100 Motor Parkway
Hauppauge, NY 11788
www.farrellfritz.com

Our File No.: 35907-100

July 18, 2019

Via Fed Ex and Email
Supervisor Laura A. Gillen and
The Town of Hempstead Town Board
One Washington Street
Hempstead, New York 11550
Email: lgillen@tohmail.org

Re: Supplemental Request to Suspend Dock Permit Pending a Town Board Hearing To Review Structure Posing Menace to Navigation Pursuant to Town Code § 168-8
Permit No.: 776-065-19, as amended 7156-065-19[1]
Permittee: John Bortolis
Premises: 3400 Hewlett Avenue, Merrick, New York (NCTM: 63-322-34)

Supervisor Gillen and Members of the Town Board:

Our law firm represents Jeffrey and Jennifer Clancy (the "Clancys"), who reside at 3421 East Bay Court, Merrick, and Eric and Elizabeth Horowitz (the "Horowitzes"), who reside at 3404 Hewlett Avenue, Merrick. The Clancys and the Horowitzes are neighbors to John Bortolis, who resides at 3400 Hewlett Avenue, Merrick. The issuance of the above-referenced permit, as amended ("Permit"),[2] allows Mr. Bortolis to construct a pier, dock and boat-lift ("Dock") that creates a menace to navigation and dangerous conditions for the Clancys and Horowitzes, and their guests and passengers, in utilizing their own docks and accessing navigable water.

At the direction of Chief Deputy Town Attorney Charles S. Kovit, Esq., and the Court's Decision and Order dated June 26, 2019, and entered June 28, 2019 ("Order"),[3] the Clancys and the Horowitzes are hereby required to proceed pursuant to Town Code Section 168-8 and request that the Town Board suspend the Permit for 30 days pending a hearing, review and investigate the Dock which is a menace to navigation, modify the Permit to ensure safe navigation (i.e. reduce the Docks' intrusion into the cove) and remove menacing structure(s).

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[1] The Town Department of Conservation and Waterways ("DCW") was required to reissue the Permit, again, pursuant to the Nassau County Supreme Court's July 16, 2019, mandate in connection with litigation entitled *Clancy v. Bortolis*, Index No. 373-2019 ("Litigation"). This request pursuant to Section 168-8 supplements the prior request dated July 15, 2019, concerning Permit Number 776-065-19, and applies equally to any subsequently issued permit.
[2] A copy of Permit Number 776-065-19 is annexed as Exhibit "1," and a copy of Permit Number 7156-065-19 is annexed as Exhibit "2."
[3] A copy of the Court's Order is annexed as Exhibit "3."

Section 168-8 states:

> Any structure, mooring pile or spile, except bulkheading, erected or installed under this chapter, shall at all times be maintained by the permittee, his successor or assignee of the adjacent upland, in good repair and condition and not as a menace to navigation or to persons using the structure, mooring pile or spile, *and the Town Board, upon finding reasonable cause to believe that the permittee, his successor or assignee of the adjacent upland has failed to comply with this section, may forthwith suspend any permit issued under this chapter for a period not to exceed 30 days*, and after a hearing, on written notice mailed to the permittee, his successor or assignee of the adjacent upland at his last known address, and at least 10 days prior to such hearing, may revoke such permit and remove or repair such structure, mooring pile or spile and charge the permittee, his successor or assignee of the adjacent upland with the expense of such removal or repair.

Mr. Kovit, on behalf of the Town, argued and the Court held that "the Town's right to revoke a permit and direct a hearing take place to determine if permittee's structure, mooring, pile or spile fails to comply with 168-8 is a remedy [the Clancys and Horowitzes] were required to exhaust before commencing litigation" (Order, p. 5). Accordingly, the Clancys and Horowitzes make this request to the Town Board to review the Permit.

Mr. Bortolis's Dock creates a menace to navigation and must be modified. The bulkheaded rear-yards of the Clancys, the Horowitzes and Mr. Bortolis effectively form a right-angle and create a cove of converging docks. The Clancys and the Horowitzes had existing docks extending outwards from their bulkheads before the DCW issued the Permit and Mr. Bortolis built his Dock. The Clancys' property is the most easterly and their dock is built-out 35 feet westward into the cove. The Horowitzes' property is directly to the west of the Clancys and their dock is built-out 40 feet southward out into the cove. Mr. Bortolis's property is directly to the west of the Horowitzes and his Dock is built-out 75 feet southward out into the cove. An aerial photograph of the cove configuration is annexed as Exhibit "4."

The Permit allows Mr. Bortolis to build his Dock 75 feet into the cove, where no one else in the cove has a dock longer than 40 feet. This astonishing and unjustifiable length results in Mr. Bortolis's Dock extending across the Clancys' and Horowitzes' rears-yards and docks, effectively trapping them and blocking access to navigable waters of East Bay. In order to access East Bay, the Clancys and Horowitzes must encounter and circumnavigate Mr. Bortolis's Dock and pilings, which task is aggravated by tidal, wind and waves conditions. This endeavor can be dangerous and unnecessarily increases the risk of bodily harm and property damage.

In support of this request for review, we have attached an analysis prepared by our riparian rights expert, Louis Gnip, L.S., which summarizes the navigation hazards posed by Mr. Bortolis's Dock and explains why the DCW's purported solution of merely placing the boat lift on the west side of the Dock will not cure the danger. Mr. Gnip also recommends mitigation in the form of reducing Mr. Bortolis's dock to 50 feet. A copy of Mr. Gnip's Dock analysis is annexed as Exhibit "5." A photograph taken July 15th depicting the arrangement of the structures within the cove is annexed as Exhibit "6."

Not only does the Permit allow a dock that is twice as large (100% larger) than the Clancys', the Horowitzes' and the other docks within the cove, but the Dock's length is unjustified because it allows Mr. Bortolis to reach water depths of seven feet, which is two or three times deeper than a depth necessary for navigation. "The term 'navigable' is related to depth of water and draft of vessel." *Muraca v. Meyerowitz*, 13 Misc.3d 348, 351 (Sup. Ct. Nassau Co. 2006). The New York State Department of Environmental Conservation regulations state that a depth of only 2.5 feet is necessary, and the Town Code defines "navigable waters" as those providing a depth of four feet. Mr. Bortolis has access to navigable waters virtually at his bulkhead and outwards to 40 or 50 feet. Mr. Bortolis has upwards of 7.5 feet of water depth at the terminus of his Dock. This excessive dock length approved by the DCW must be constrained.

As a result of the Litigation, Mr. Kovit, on behalf of the DCW, agreed to move Mr. Bortolis's proposed boat-lift from the east side of his Dock to the west side of his Dock, away from the Clancys and Horowitzes. As explained by Mr. Gnip, relocating the boat-lift does not resolve the menace to navigation posed by the length of the Dock. Moreover, Mr. Bortolis would still be permitted to dock or place vessels on the east side of his Dock, which vitiates the entire purpose of relocating the boat-lift and poses the same issues as the boat-lift.

At a Court appearance on July 16th, we pointed-out that the amended Permit did not move the boat lift to the west side of the Dock, it kept the boat-lift on the east side of the Dock and it did not prohibit the docking or placement of vessels on the east side of the Dock. Mr. Kovit promised to amend the Permit, again, to move the boat-lift to the west side of the Dock, as well as to prohibit the docking and placement of vessels (in addition to prohibiting structures and mooring) on the east side of the Dock. We have asked for a copy of the latest reissued permit, but have received neither a copy thereof nor an indication of the status its reissuance.

We offered to Mr. Bortolis's counsel and to Mr. Kovit a fair and reasonable solution to the Dock's menace to navigation – reduce the Dock's length to 60 feet. Not only does this solution remove the menace to navigation posed by the Dock's length, but it also permits Mr. Bortolis to utilize *both sides of his Dock*. The option to utilize both side of one's dock provides additional safeguards in docking a vessel based upon wind, wave and tidal conditions, and will eliminate the potential for a violation of the Permit (utilization of the east side of the Dock) and inevitable disputes resulting therefrom.

Lastly, Mr. Kovit has made it clear that he will oppose any suspension of the Permit for the Dock. Mr. Kovit is not an engineer, licensed surveyor or expert in waterways and riparian issues; his lay opinion should be disregarded, particularly in light of Mr. Gnip's expert analysis.

To the extent Mr. Kovit argues that the Town Board should not suspend the Permit simply because the Court lifted the temporary restraining order ("TRO"), this is a red-herring. The Court only lifted the TRO because there is an administrative remedy is available to the Clancys and Horowitzes. The circumstances surrounding Mr. Bortolis's receipt of the Permit vis-à-vis his building of the Dock are glaringly conspicuous. The Clancys and Horowitzes were not provided notice of Mr. Bortolis's application for or the issuance of the Permit. The Clancys discovered that Mr. Bortolis was seeking the Permit and provided comments to the DCW as to why the Dock would create a menace to navigation and severely impeded the Clancys and Horowitzes riparian rights.

While the Clancys awaited responses from DCW concerning their comments and a copy of the Permit to review and discuss with DCW and the Town Board, DCW provided the permit to Mr. Bortolis – who *immediately* started work. The Clancys and Horowitzes has no choice but to spend the time, money and resources to retain counsel and rush to Court to stop Mr. Bortolis's build-out of the Dock. By the time the Clancys and Horowitzes were able to commence the Litigation and obtain the TRO, Mr. Bortolis purportedly had completed approximately 75% of his Dock.

This nonfeasance, or malfeasance, provided an extraordinary advantage to Mr. Bortolis and severely impaired the Clancys and Horowitzes. Mr. Bortolis should not be permitted to benefit for such actions and omissions to the detriment of the Clancys and Horowitzes – who had their docks at reasonable lengths *prior* to the DCW issuing Mr. Bortolis the Permit. Due to the foregoing circumstances, Mr. Bortolis has been allowed to adversely impact his neighbors without recourse.

Accordingly, we request that the Town Board (i) suspend the Permit for 30 days, (ii) investigate the Permit and Mr. Bortolis's Dock, (iii) schedule, notice and hold a hearing thereon, (iv) modify the Permit to remove the dangers to navigation, and (v) remove menacing structure(s).

Thank you for your prompt consideration of this matter.

Respectfully submitted,

John C. Armentano

CC:

Town Board Members (via Fed Ex and Email)
Dorothy L. Goosby
Thomas E. Muscarella
Bruce A. Blakeman
Anthony P. D'Esposito
Erin King Sweeney
Dennis Dunne, Sr.
Town Clerk, Sylvia A. Cabana (via Fed Ex and Email)
Charles S. Kovit, Esq. (via Email)
Chief Deputy Town Attorney
Mitchell Pitnick, Esq. (via Email)
Counsel to the Supervisor
Sahn Ward Coschignano (via Email)
c/o Christian Browne, Esq.
c/o Ralph Branciforte, Esq.
The Clancys (via Email)
The Horowitzes (via Email)

Exhibit 1

TOWN OF HEMPSTEAD
DEPARTMENT OF
CONSERVATION AND WATERWAYS

PERMIT

STRUCTURES IN WATERWAYS

Type of Use: Commercial ( ) Residential (x)

Permit Number 776-065-19* Date March 27, 2019

Sec. 63 Block 322 Lot/s 34

Issue to John Bortolis

Address 3400 Hewlett Ave., Merrick 11566

Name of Waterway (s) East Bay

A permit to construct and maintain in safe condition:

*Amend original permit, structures moved westward approx. 35' from property line: 40'x4' pier, ramp, 20'x10' float and 4-pile boat lift located on east side of float.

GENERAL CONDITIONS

1. No structure shall infringe on adjacent property owner's riparian rights or in any way cause a hazard to navigation.
2. This permit must be conspicuously displayed at the site of work.
3. Permit issued subject to inspection at all times.
4. All bulkheading to be constructed wholly within property line of ownership.
5. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, N.Y.S. Dept. of Environmental Conservation or local government which may be required.
6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description, resulting from the said project.

Thomas E. Dohany

PERMIT ADMINISTRATOR

Council Members
DOROTHY L. GOOSBY
EDWARD A. AMBROSINO
BRUCE A. BLAKEMAN
ERIN KING SWEENEY
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR.

SYLVIA A. CABANA
Town Clerk

DONALD X. CLAVIN, JR.
Receiver of Taxes

THOMAS E. DOHENY, JR.
Commissioner

THOMAS O. DAUSCHER
Deputy Commissioner

Town of Hempstead
Department of Conservation & Waterways

1401 LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

LAURA A. GILLEN
Supervisor

March 27, 2019

John Bortolis
3400 Hewlett Ave.
Merrick, NY 11566

Dear Mr. Bortolis,

Please be advised that your application for Structures in Waterways has been approved and Permit No.776-065-19* has been issued in accordance with the application and plan submitted.

This permit must remain on the premises and be available for inspection at all times.

We direct your attention to the condition on your permit to obtain further authorization to do this work from:

Department of the Army
New York District, Corps of Engineers
Regulatory Affairs
26 Federal Plaza
New York, New York 10278-0090
(917)790-8511

New York State Department of Environmental Conservation
Department of Regulatory Affairs
Building 40 – SUNY – Room 219
Stony Brook, New York 11794
(631)444-0355

Sincerely,

Thomas E. Doheny, Jr.
Commissioner

*amended

TD:jmw
enclosures

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No. 061-19 Date Received 3/26/19

Name	Address	Telephone No.
1. **APPLICANT:** MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. **OWNER:** MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. **CONTRACTOR:** KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No. _____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No. _____
Disability Benefit Insurance Filed: YES [✓] NO [ ] *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES [ ] NO [✓] *(Submit Form C105.21)*

4. **LOCATION OF WORK SITE:**
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES [ ] NO [✓]

5. **USE OF UPLAND PROPERTY:** Business _____ Proposed Res. _____ Exist.Res. X Other _____
6. **USE OF PROPOSED WATERWAYS STRUCTURE:** Commercial _____ Non-commercial X Houseboat _____
7. **DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:**
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY. REPLACE 84 LF OF BULKHEAD IN PLACE WITH 18-IN INCREASE IN ELEVATION. ~~RECONSTRUCT 40X4 (160 SF) PIER, 20X10 (200 SF) FLOATING DOCK W/ RAMP AND 4 PILE VESSEL LIFT. NO DREDGING IS PROPOSED.~~

8. **OWNER'S STATEMENT:** *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

Signature of Owner

9. **APPLICANT'S STATEMENT:** *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

SE #110 EASEMENT.

AREA (FT²)		
MOORING PILES		
BULKHEAD (L.F.)	84	
TOTAL FEE	$42.00	
RECEIPT NO.		
CHECKED BY		
APPROVED BY		

PERMIT NO. _____
DATE ISSUED _____

CWF12-4 10/00

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No. 065-19 Date Received 3/24/19

Name	Address	Telephone No.
1. APPLICANT: MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. OWNER: MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. CONTRACTOR: KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No. _____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No. _____
Disability Benefit Insurance Filed: YES [✓] NO [ ] *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES [ ] NO [✓] *(Submit Form C105.21)*

4. **LOCATION OF WORK SITE:**
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES [X] NO [✓]

5. **USE OF UPLAND PROPERTY:** Business _____ Proposed Res. _____ Exist.Res. X Other _____

6. **USE OF PROPOSED WATERWAYS STRUCTURE:** Commercial _____ Non-commercial X Houseboat _____

7. **DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:**
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY. 40X4 (160 SF) PIER, 20X10 (200 SF) FLOATING DOCK W/ RAMP AND 4-PILE VESSEL LIFT. NO DREDGING IS PROPOSED.

8. **OWNER'S STATEMENT:** *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

[signature]
Signature of Owner

9. **APPLICANT'S STATEMENT:** *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

[signature]
Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

NIMEND # 776
PIER MOVED WEST / lift flipped to
EAST Side of ~~pier~~ float.

AREA (FT²)		
MOORING PILES	N/C	
BULKHEAD (L.F.)		
TOTAL FEE		

PERMIT NO. _____
DATE ISSUED _____

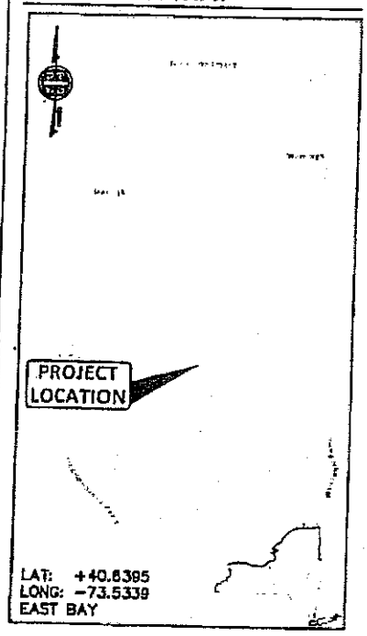
RECEIPT NO. _____
CHECKED BY [initials]
APPROVED BY [initials]

CWF12-4 10/00

BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
23 JULY 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENEUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516-595-3483
EMAIL: CONTACT@RT-WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08-30-2017
B:	USACE COMMENTS	09-19-2017
C:	NYSDEC COMMENTS	04-27-2018
D:	NYSDEC COMMENTS	07-23-2018

SKETCH INDEX

SK-1	TITLE SHEET & LOCATION MAP
SK-2	FACILITY PLAN
SK-3	HYDROGRAPHIC STUDY
SK-4	BULKHEAD SECTION
SK-5	FIXED PIER & FLOATING DOCK
SK-6	BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

- SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	-0.1	MEAN SEA LEVEL
MLW	±0.0	-1.9	MEAN LOW WATER
MLLW	-0.1	-2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

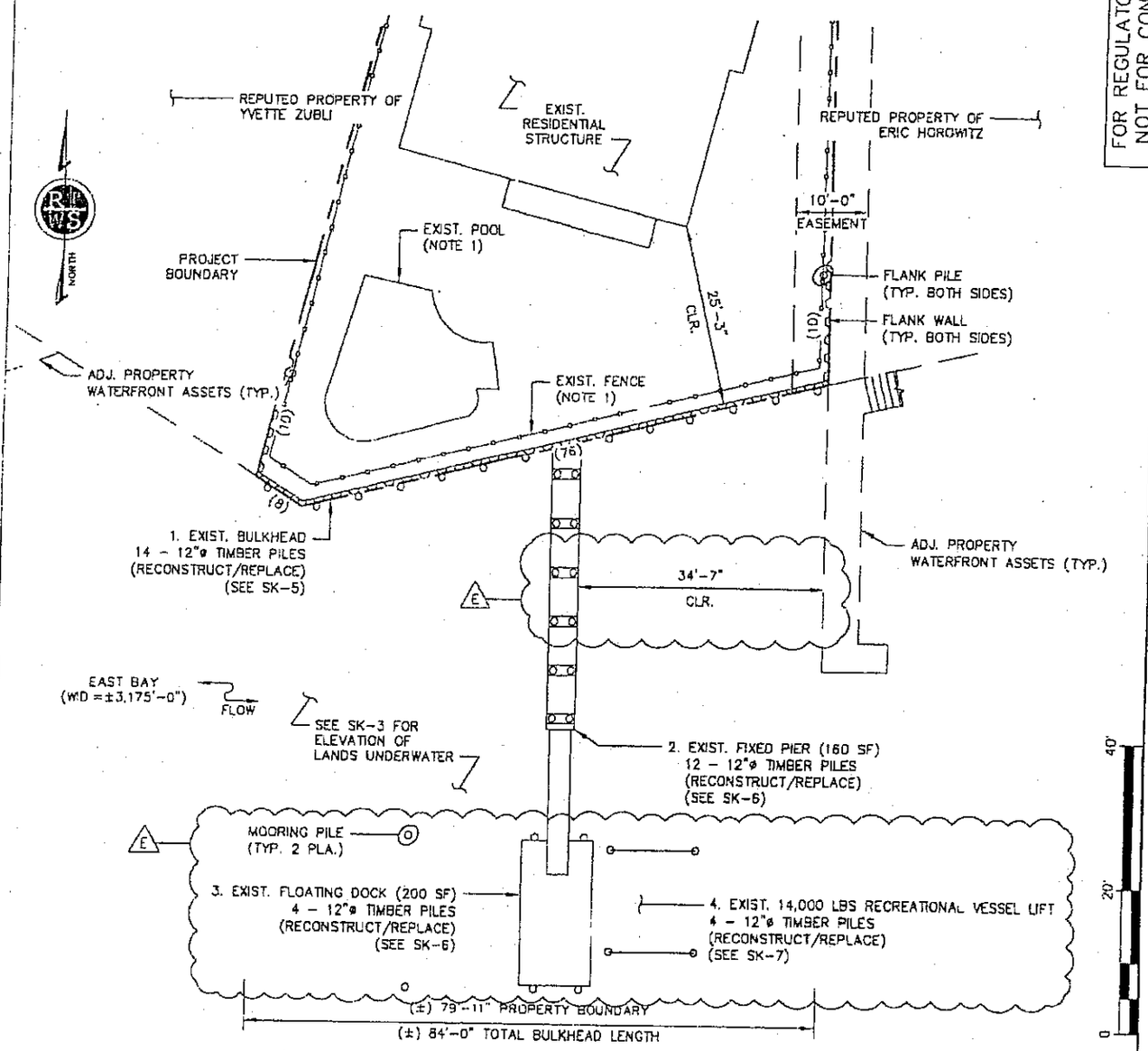
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER-WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 84 LF BULKHEAD SHALL BE REPLACED IN-PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER-WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4-PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

SHEET NO. SK-1 1 of 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE N/A	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. D	SHEET TITLE SHEET & LOCATION MAP

SCHEDULE D – SUMMARY OF PROPOSED ACTIVITY				
ITEM	UM	SIZE	AREA	NOTE(S)
1. BULKHEAD	FT	84	--	2
2. FIXED PIER	FT	40 X 4	160 SF	1
3. FLOATING DOCK	FT	20 X 10	200 SF	1
4. VESSEL LIFT	EA	1	--	1

NOTE(S):
1. LAWFULLY EXISTING OVER-WATER STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.
2. LAWFULLY EXISTING STRUCTURE REMAINING IN PLACE (I.E. NOT DESTROYED BY SUPERSTORM SANDY).

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



FACILITY PLAN

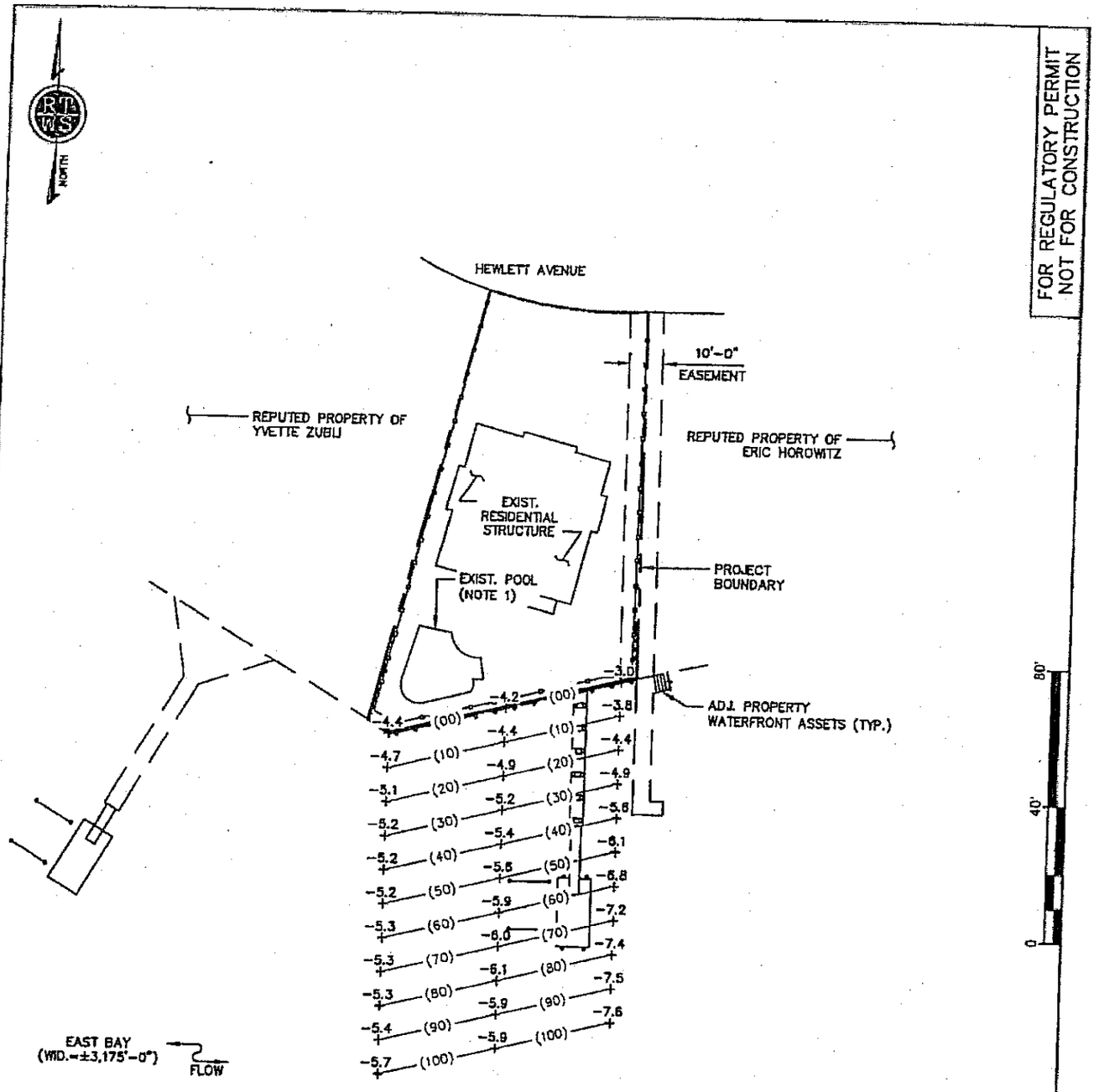
SCALE 1:20

LEGEND:
(XX) BULKHEAD LENGTH IN FEET

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	Rising Tide | Waterfront Solutions
SK-2	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:20	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
2 OF 6 SHEET(S)	DRAWN BY JMK		DATE 03/26/16	
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. E	SHEET FACILITY PLAN

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



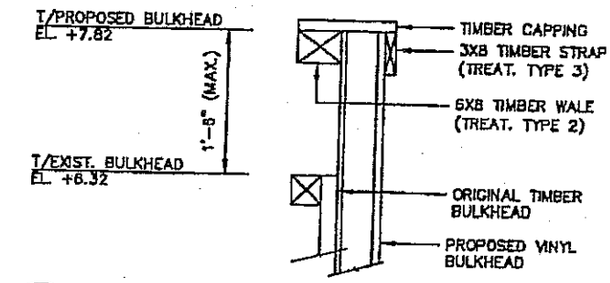
PLAN
HYDROGRAPHIC STUDY

SCALE 1:40

LEGEND:
-X.X: LAND UNDERWATER ELEVATION (NAVD 88)
-(XX)- HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

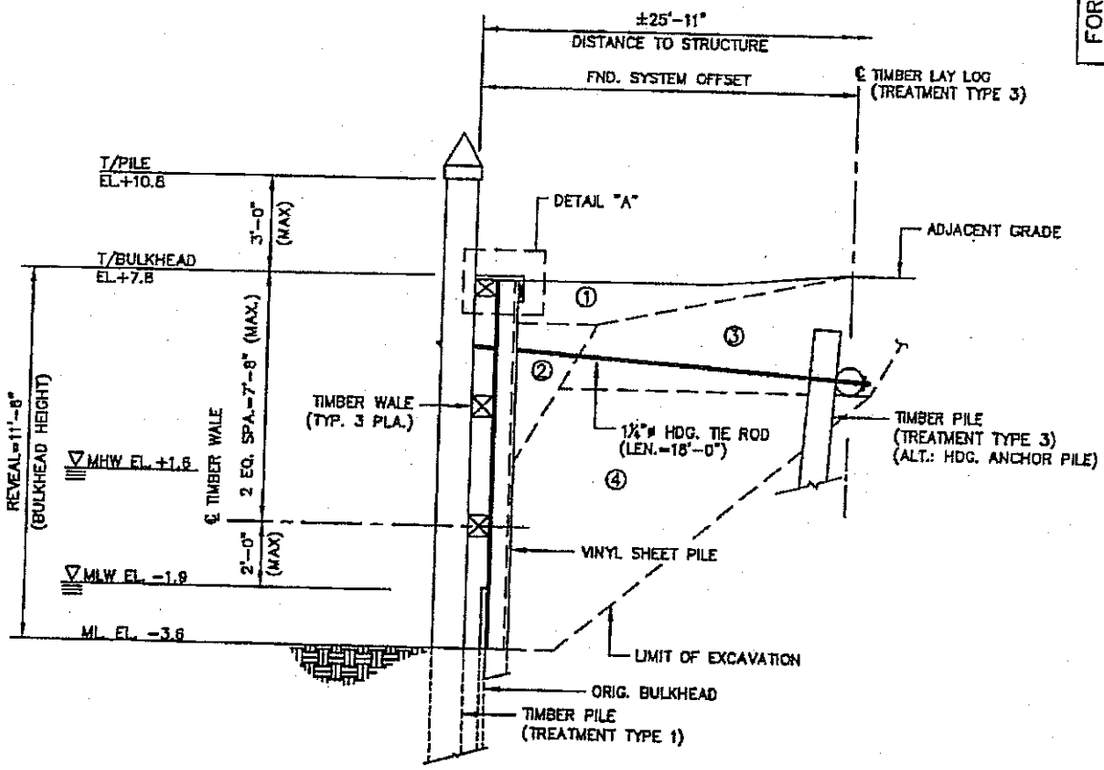
SHEET NO. SK-3 3 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:40	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET HYDROGRAPHIC STUDY



A / SK-5 DETAIL
T/BULKHEAD DEFINITION N.T.S.

TABLE 2 - FILL DESIGNATIONS		
ITEM	DESCRIPTION	QUANTITY
1	PLACED FILL REQ'D FOR 18" ELEVATION	24 CY
2	REPLACED ERODED/LOST FILL	0 CY
3	RECLAIMED/ORIGINAL FILL	80 CY
4	RECLAIMED/ORIGINAL FILL OR DREDGE SPOILS	152 CY

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

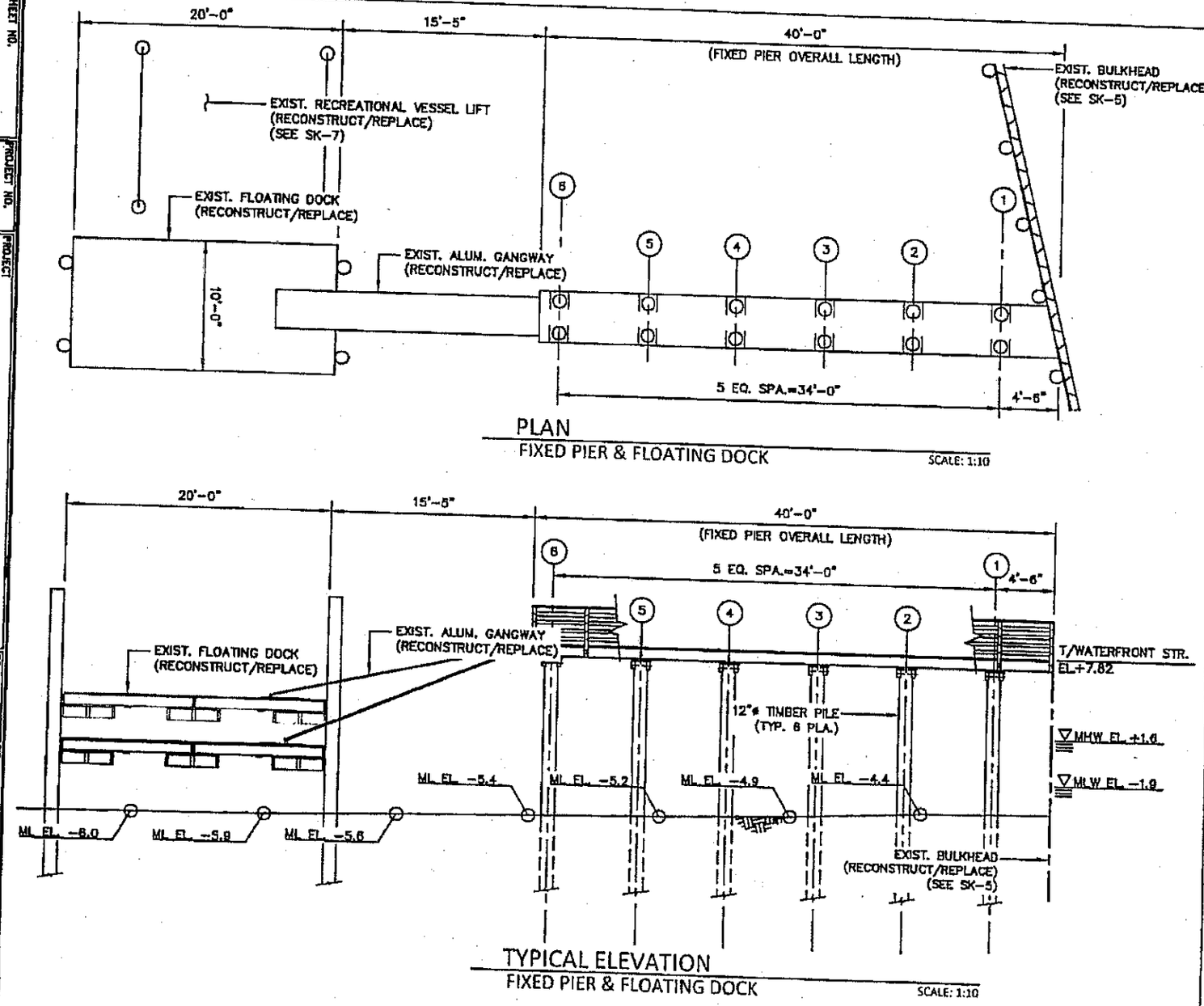


B / SK-4 SECTION
BULKHEAD/PLATFORM SCALE: 1:5

TABLE 3 - TIMBER TREATMENT		
TREATMENT TYPE	CCA RETENTION	DESCRIPTION
1	2.5	CCA TREATED PER AWPA-P5
2	2.5	CCA TREATED PER LATEST AWPA STANDARDS, COMMODITY SPECIFICATION A.P 3.0
3	1.5	

NOTE 1: APPURTENANCE(S) TO BE REMOVED/REINSTALLED AS DIRECTED BY HOMEOWNER. NOT SHOWN FOR CLARITY.

SHEET NO. SK-4 4 of 6 sheet(s)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BULKHEAD/PLATFORM SECTION



FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

SHEET NO. SK-5 5 of 6 SHEET(S)

PROJECT NO. P170731.00
DRAWN BY JRK
CHECKED BY AMA

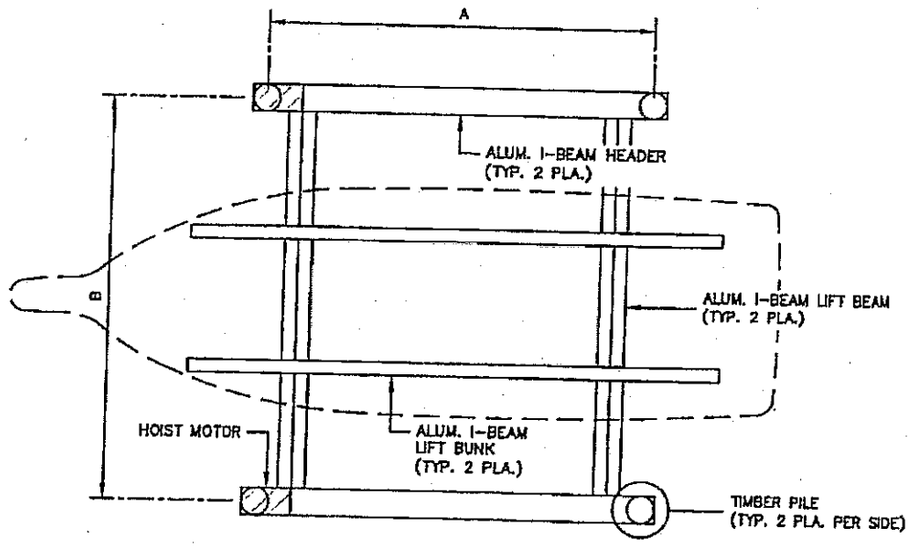
PROJECT
BULKHEAD REPLACEMENT
PREPARED FOR
MR. JOHN BORTOLIS
LOCATED AT
3400 HEWLETT AVENUE
MERRICK, NY 11566
EAST BAY
NASSAU COUNTY

SCALE 1:10
DATE 07/23/18
REVISION NO. 0

Rising Tide | Waterfront Solutions
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NEW YORK 11570

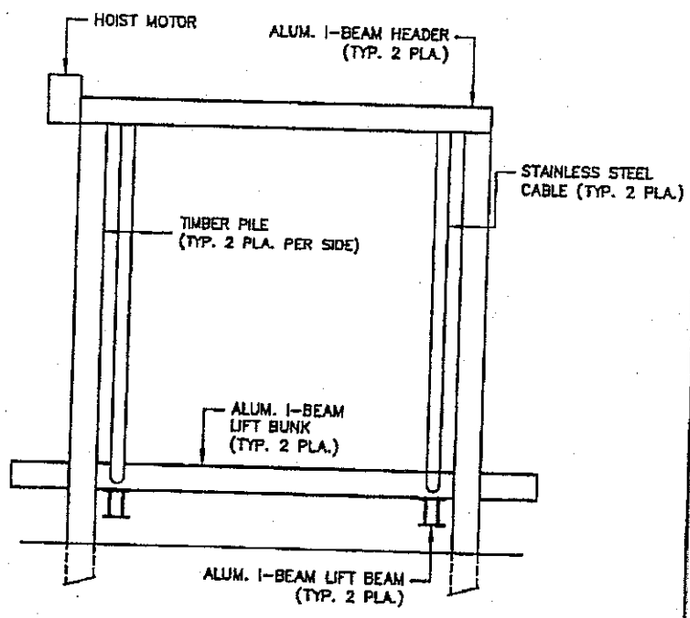
SHEET
FIXED PIER & FLOATING DOCK

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
BOAT LIFT
SCALE: 1:5

SCHEDULE A - ALL SPACING TO CENTER OF PILE			
LIFT CAPACITY	A	B	RECOMMENDED PILING SIZES
5,000 LBS	11'-0"	10'-0"	10"Ø
7,000 LBS	12'-0"	12'-0"	10"Ø
10,000 LBS	12'-0"	12'-6"	10"Ø
14,000 LBS	12'-0"	12'-6"	10"Ø
18,000 LBS	14'-0"	14'-0"	12"Ø
22,000 LBS	12'-0"	16'-0"	12"Ø
27,000 LBS	16'-0"	16'-0"	12"Ø
33,000 LBS	18'-0"	18'-0"	12"Ø



ELEVATION
BOAT LIFT
SCALE: 1:5

SHEET NO. SK-6 6 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BOAT LIFT

Exhibit 2

TOWN OF HEMPSTEAD
DEPARTMENT OF
CONSERVATION AND WATERWAYS

PERMIT

STRUCTURES IN WATERWAYS

Type of Use: Commercial ( ) Residential (X)

Permit Number 7156-065-19* Date July 8, 2019

Sec. 63 Block 322 Lot/s 34

Issue to John Bertolis

Address 3400 Hewlett Ave., Merrick 11566

Name of Waterway (s) East Bay

A permit to construct and maintain in safe condition:

One 40'x4' pier to ramp to 20'x10' floating dock with 4 pile boat lift installed on East side of float.

No structures/mooring on West side of pier and float

*Replaces previous permit #776 last amended on 3/27/19.

GENERAL CONDITIONS

1. No structure shall infringe on adjacent property owner's riparian rights or in any way cause a hazard to navigation.
2. This permit must be conspicuously displayed at the site of work.
3. Permit issued subject to inspection at all times.
4. All bulkheading to be constructed wholly within property line of ownership.
5. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, N.Y.S. Dept. of Environmental Conservation or local government which may be required.
6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description, resulting from the said project.

Thomas E Dolan

PERMIT ADMINISTRATOR

Council Members
DOROTHY L. GOOSBY
BRUCE A. BLAKEMAN
ERIN KING SWEENEY
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR.
THOMAS E. MUSCARELLA

SYLVIA A. CABANA
Town Clerk

DONALD X. CLAVIN, JR.
Receiver of Taxes

THOMAS E. DOHENY, JR.
Commissioner

THOMAS O. DAUSCHER
Deputy Commissioner

Town of Hempstead
Department of Conservation & Waterways

1401 LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

LAURA A. GILLEN
Supervisor

July 9, 2019

John Bertolis
3400 Hewlett Ave.
Merrick, NY 11566

Dear Mr. Bortolis,

Please be advised that your previous Structure Permit #776 has been rescinded and replaced with newly issued Permit#7156-065-19 as per Supreme Court Decision, Index#373-19.

The permit clearly states that the proposed boat lift be constructed on the westerly side of float and that no structures (or anything else) be constructed on the easterly side of pier, ramp and float.

This permit must remain on the premises and be available for inspection at all times.

We direct your attention to the condition on your permit to notify this office upon completion of work and to obtain further authorization for the proposed installation from:

Department of the Army
New York District, Corps of Engineers
Regulatory Affairs
26 Federal Plaza
New York, New York 10278-0090
(917)790-8511

New York State Department of Environmental Conservation
Department of Regulatory Affairs
Building 40 – SUNY – Room 219
Stony Brook, New York 11794
(631)444-0355

Sincerely,

Thomas E. Doheny, Jr.
Commissioner

As Per
Nassau Cty.
Supreme Court

TD:jmw
enclosures

Exhibit 3

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

TRIAL/IAS, PART 21
NASSAU COUNTY

In the Matter of the Application of
JEFFREY B. CLANCY, JENNIFER CLANCY, ERIC HOROWITZ and ELIZABETH HOROWITZ,

Petitioners(s)-Plaintiff(s),

for a Judgment pursuant to Article 78 of the Civil Practice Law and Rules and for Other Relief

-against-

JOH BORTOLIS, TOWN OF HEMPSTEAD, THOMES E DOHENY, JR., COMMISSIONER TOWN OF HEMPSTEAD DEPARTMENT OF CONSERVATION & WATERWAYS,

Respondent(s)-Defendant(s).

Index No.: 373/19

Motion Seq. No.: 001 & 002
Motion Submitted: 5/6/19

The following papers read on this motion:

Order to Show Cause/Supporting Exhibits/Memorandum of Law.....X
Notice of Motion/Supporting Exhibits.....X
Memorandum of Law in Opposition to Motion.....X
Opposition to Order to Show Cause//Supporting Exhibits/
Memorandum of Law.....X
Petition.....X
Answer to Petition.....X
Supplemental Petition.....X
Answer to Supplemental Petition.....X

Petitioners-Plaintiffs, Jeffrey B. Clancy, Jennifer Clancy (the Clancys), Eric Horowitz and Elizabeth Horowitz (the Horowitzs), move this court (Motion Seq. 001) for preliminary injunctive relief against Respondents-Defendants, John Bortolis (Bortolis), The Town of Hempstead (the Town), and Thomas E. Doheny, Jr. Commissioner Town of Hempstead Department of Conservation & Waterways (Comm. Doheny). Bortolis opposes the motion. The Town moves separately (Motion Seq. 002) to dismiss the petition based on Petitioners' failure to exhaust all administrative remedies. Petitioners oppose the motion.

The Clancys commenced this hybrid Article 78/declaratory relief action by verified petition and complaint dated April 4, 2019. A supplemental petition and complaint was served which added the Horowitzs as Petitioners-Plaintiffs. Bortolis has submitted answers to the petition and supplemental petition.

The parties are all neighbors and have waterfront property in Merrick, County of Nassau. The Horowtizs live in between the Clancys and Bartolis. The Clancys and the Horowitzs had existing docks that they utilized for boating. Bartolis, who bought his property in 2015, petitioned the Town for permission to build a pier, leading to a dock, off of his property. There had been a dock there previously but it was destroyed by Hurricane Sandy and never rebuilt. The Town issued the permit, which allowed Bartolis to build a pier leading to a dock, and annexed to the dock a boat lift. The pier and dock would extent out 70 to 80 feet from Bartolis' property.

Bartolis and the Horowitzs live on Hewlett Avenue while the Clancys live on East Bay Court. The rear of the Bartolis and Horotwitz properties face South, more or less, and their docks jut out to the south. The rear of the Clancy property faces west, more or less, and their pier and dock juts out to the west. The shoreline of the Bartolis property running east connects to the Horowtitz property, which, while running east, is then met by the Clancy shoreline at a near right angle. The Clancy and Horowitz piers and docks jut out no more than 40 feet. Because the Bartolis pier and dock will jut out at least 70 feet, and because Bartolis intends to put his boat lift on the east side of his dock, the Horowitzs and Clancys complain that their riparian rights are being impacted. A picture of the area from above shows that, prior to Bartolis putting in his dock, the Horowtizs and Clancys had unobstructed access to their docks by boat. If Bartolis is allowed to complete his pier and dock, and is allowed to dock his boat on the east side of the dock, both neighbors, but the Horowitzs in particular, will no longer have the ease of access that they previously enjoyed. For this reason, they each move to enjoin Bartolis from completing his dock.

On April 5, 2019, the Clancys presented an order to show cause for, *inter alia*, a preliminary injunction, with a temporary restraining order (TRO), to the Hon. Anna Anzalone of this court. Judge Anzalone granted the TRO preventing Bartolis from continuing to build the pier and dock. The matter was assigned to this court and on May 3, 2019, oral argument was held. During the oral argument it was discussed that the Horowitzs would be added to the petition and complaint. The stay currently remains in

effect. The court notes that Petitioners allege that Bartolis continued to work on the pier and dock after the TRO, while Bartolis submits it was only work performed to prevent damage to the existing structures.

The petition and complaint contain six causes of action, to wit: 1) Pursuant to CPLR Art. 78, annulling the permit, 2) declaring the permit annulled, 3) seeking a permanent injunction enjoining Bartolis from interfering with Petitioners' navigable waters and directing the Town to revoke or rescind the permit, 4) issuing an injunction directing Bartolis to remove the existing structures, 5) pursuant to RPAPL §15, declaring the riparian rights of the parties, and 6) directing Comm. Doheny to "impose and enforce" Town Code Section 168 against Bartolis. Because the Town's motion impacts all, except, potentially, the Fifth Cause of Action, the court will first address whether Petitioners' were required to exhaust administrative remedies.

THE TOWN'S MOTION TO DISMISS (MOTION SEQ. 002)

A person who wishes to challenge an administrative agency's determination must first exhaust all available administrative remedies. (*Abreu v. New York City Police Dept.*, 182 AD2d 414 [2d Dept 1992]). The only exceptions to this rule are when the agency's determination is being challenged as unconstitutional, or it is alleged the agency has wholly exceeded its grant of power, or if resort to the administrative remedies would be futile. (*Watergate II Apartments v. Buffalo Sewer Authority*, 46 NY2d 52 [1978]).

Town of Hempstead Code §168-8 holds:

> Any structure, mooring pile or spile, except bulkheading, erected or installed under this chapter, shall at all times be maintained by the permittee, his successor or assignee of the adjacent upland, in good repair and condition and not as a menace to navigation or to persons using the structure, mooring pile or spile, and the Town Board, upon finding reasonable cause to believe that the permittee, his successor or assignee of the adjacent upland has failed to comply with this section, may forthwith suspend any permit issued under this chapter for a period not to exceed 30 days, and after a hearing, on written notice mailed to the permittee, his successor or assignee of the adjacent upland at his last known address, and at least 10 days prior to such hearing, may revoke such permit and remove or repair such structure, mooring pile or spile and charge the permittee, his successor or assignee of the adjacent upland with the expense of such removal or repair.

The Town argues that the Town's right to revoke a permit and direct a hearing take place to determine if permitee's structure, mooring pile or spile fails to comply with 168-8 is a remedy Petitioners' herein were required to exhaust first before commencing litigation.

In opposition, Petitioners make a number of arguments. The first is that §168-8 does not apply because the "structure" has not yet been "erected or installed". The court finds this argument, at best, seeks to elevate form over substance. Clearly there is a structure that has been erected. It has not yet been completed, but enough of it exists to have encouraged Petitioners to commence this proceeding, and to then complain that Bartolis continued to work on it. Further, §168-1 defines "structure" as including: "[A]ny submerged or underground cables, pipes, or any fixtures crossing any waterway; a float or series of floats, a pier, a dock, mooring pile or spile, and any fixture or appurtenance extending under, to, over or into the navigable waters, and bulkheading." Clearly, the

amount of the pier that has been completed thus far falls within "any fixture or appurtenance extending under, to, over or into the navigable waters".

Second, Petitioners argue that the "plain language" of the section bars application herein because the section is merely an enforcement mechanism to ensure structures are not allowed to fall into disrepair. However, the exact wording states: "Any structure, mooring pile or spile...shall at all times be maintained by the permittee...in good repair and condition and *not as a menace to navigation...*". (Emphasis added). The court agrees that the section can be read to mean that a structure that has fallen into disrepair can be a menace to navigation, but it can also be read to mean that the permitee must maintain the structure so as to both not fall into disrepair, *and* to also not be a menace to navigation. Under the latter interpretation, which the court favors, one structure blocking another clearly is a menace to navigation.

Third, Petitioners assert that §168-8 "does not provide for a private right to seek review of a permit". Petitioners offer no legal support for this assertion, and the court finds it curious when considering that the Town itself is arguing this is what they must do. Clearly, if Petitioners attempted to use such a remedy, and were rejected by the Town for that reason, Petitioners would be free to come back to this court to seek their remedy, and to seek appropriate sanctions against the Town Attorney for, in essence, directly lying to the court. Further, the court notes that the Town, in their moving papers, have already stated that should the TRO be lifted, their first course of action would be to modify the permit to direct Bartolis to place the boat lift on the west side of the dock. In other words, Petitioners may not even have to make a formal application as the Town has already

indicated their agreement that the boat lift be moved. This is yet another statement by the Town that if, not lived up to, would be subject to reargument and potential sanctions if found untrue.

Petitioners' fourth argument is that the Clancys did already attempt to use such a remedy based upon certain letters they wrote to Comm. Doheny in 2016. It appears the first letter was written prior to a permit application being submitted, and the second letter was written prior to a permit being granted. Clearly, a permit must be issued before a hearing can be held to consider revoking it.

Next, Petitioners argue that only the court can determine the parties' riparian rights. The court agrees with Petitioners on this argument. As a result, the court will not dismiss the Fifth Cause of Action.

Finally, Petitioners argue that seeking the exhaustion of administrative remedies would be futile. As discussed, *supra*, in light of the Town's agreement to immediately address the permit, once the TRO is lifted, such an argument is rendered meritless.

Regarding the Fifth Cause of Action, the court faces a quandary. On the one hand, failure to vacate the TRO means the Town cannot revoke and reissue the permit, even though that appears to be the most appropriate outcome. On the other hand, vacating the TRO could result in Bartolis finishing his pier and dock, and even assuming he was directed to place the boat lift on the west side, the court could still determine that it impedes upon Petitioners' riparian right, at which point Bartolis would be faced with having to tear down the recent construction and rebuild it in a manner that does not impede on Petitioners' riparian rights. To be clear, this court would order that exact thing

should it be determined that the Petitioners' riparian rights were being impeded.

As a result, the safest course of action to protect everyone's rights is relieve the Town and Comm. Doheny from the restraints of the TRO to allow them to act as they have stated they will act. The TRO will remain in effect as to Bartolis. However, the Town has not given the court a time frame for how long such action will take, and the court does not find it appropriate to leave the TRO in place indefinitely. Therefore the TRO will expire at 11:00 a.m. on Tuesday, July 16, 2019. All parties are directed to appear before the court on that date, at that time, to address whether there is a need, or grounds, to extend the TRO.

Petitioners' motion for a preliminary injunction is DENIED without prejudice, with leave to renew once a determination is made on the TRO on July 16, 2019.

Accordingly, it is hereby

ORDERED, that the Town's motion (Motion Seq. 002) is GRANTED to the extent that the First, Second, Third, Fourth and Sixth Causes of Action are dismissed, with leave to renew upon exhaustion of administrative remedies; and it is further

ORDERED, that the TRO is vacated as to the Town and Comm. Doheny; and it is further

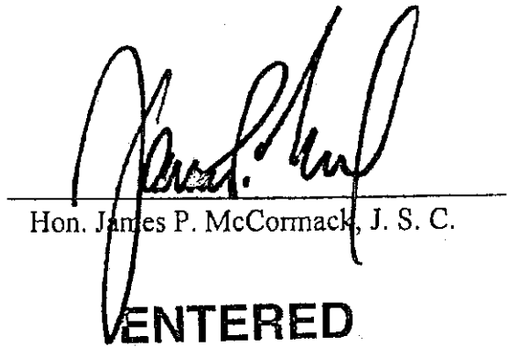
ORDERED, that the TRO will expire in full on Tuesday, July 16, 2019 at 11:00 a.m., at which date and time all parties are directed to appear before the court; and it is further

ORDERED, that Petitioners' motion for a preliminary injunction (Motion Seq. 001) is DENIED without prejudice, with leave to renew once a determination is made

regarding the TRO

This foregoing constitutes the Decision and Order of the Court.

Dated: June 26, 2019
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

ENTERED

JUN 28 2019

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Exhibit 4

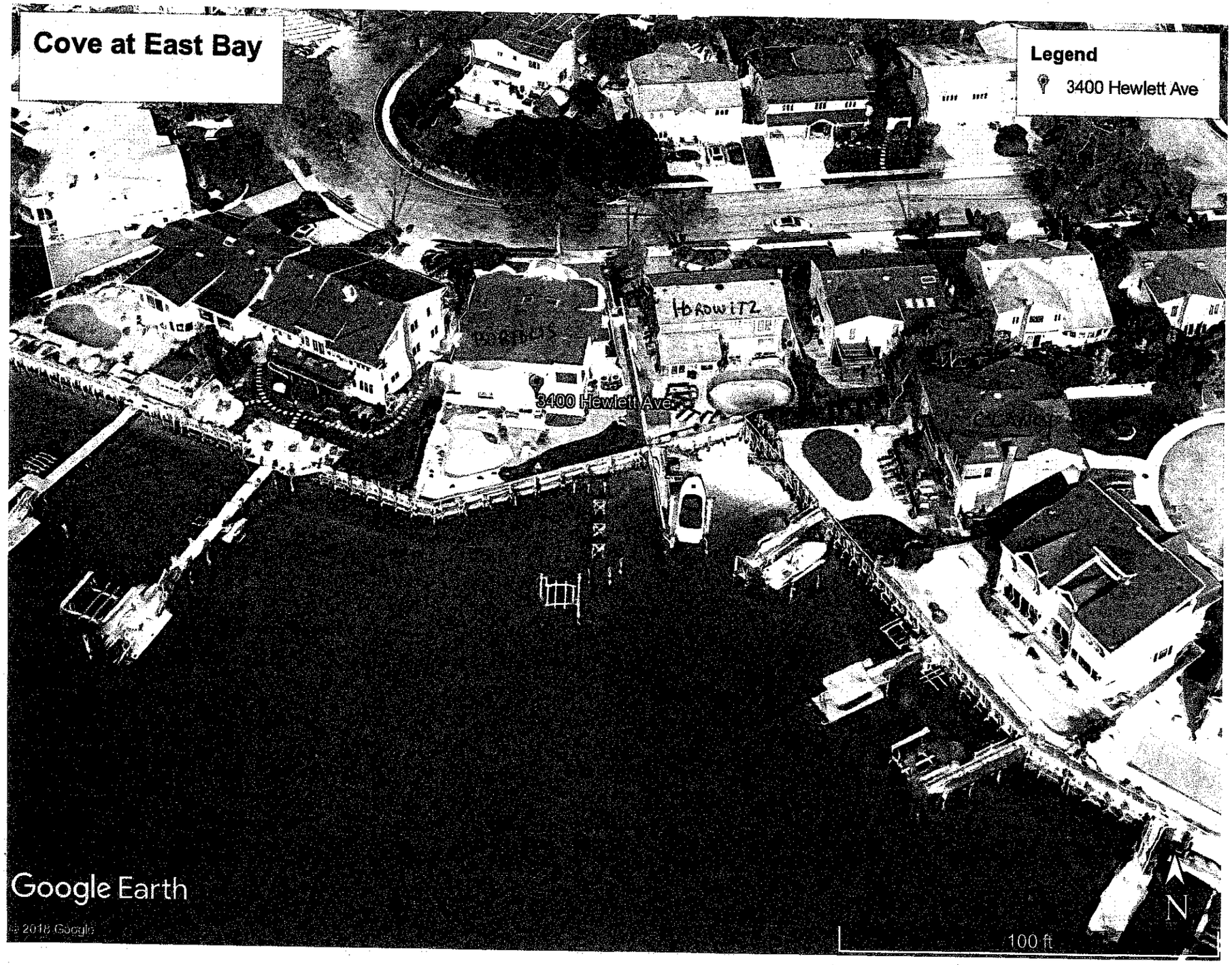

Cove at East Bay
Legend
3400 Hewlett Ave
3400 Hewlett Ave
HOROWITZ
Google Earth
© 2018 Google
100 ft
N

Exhibit 5

Sketch Map Narative – NAS-30-4A & 4
Showing the Bortolis Dock outshore at 75'
From the Upland Bulkhead within the East Bay Cove
At Merrick, Town of Hempstead, County of Nassau, State of New York

Having reviewed the documents provided in connection with the above matter involving outshore Riparian Zones, I have determined that the appropriate method to apply is the "Perpendicular Method" as employed by the State of New York in areas of their jurisdiction. Outshore improvements that have taken place over the years in this East Cove Bay were allowed without consideration of the Perpendicular Method. This has violated the upland owner's right of free and direct navigation to their upland properties. The Bortolis structure extended obout 75 feet outshore and was recently destroyed by Hurricane Sandy.

The Perpendicular Method is constructed by establishing a base line between the headlands with a perpendicular line drawn therefrom to each respective upland owner's property lines as shown on the map referenced above.

The issue of free and direct navigation occurred at the time Mr. Bortolis applied for a permit to reconstruct his dock facility in the previous location prior to his dock being destroyed. It is unfortunate that the agencies reviewing this proposal did not consider the effect of navigation of neighboring properties within the cove area after complaints were made by neighboring owner Clancy. There are presently four owners in the cove area, however, the only ones involved are Bortolis, Horowitz and Clancy.

It is my opinion that the Bortolis dock plan extends too far into the cove area forcing neighboring owners to navigate into other neighboring riparian areas. A dock location closer to the bulkhead is feasible as a navigable water depth of 4.5 feet is all that is necessary for the type of watercraft involved. The current Bortolis plan occupies not only his riparian area but the total area of Horowitz and a portion of Clancy. This forces Horowitz to utilize Clancy's riparian zone for ingress and egress from his upland property. No one is totally blocked from navigation, however, it requires them to maneuver using various navigational methods for access, especially during times of high winds.

It is only proper at this time of dock reconstruction by Bortolis that a modified version to the Perpendicular Method be considered to minimize encroachments to neighboring land owners and provide fair and equitable navigational access to their properties. Shortening the length of the Bortolis dock can accomplish this. I have prepared a Sketch Map No. NAS-30-4 that would shorten the Bortolis dock from 75 feet to 50 feet from the bulkhead line that could accomplish this. This plan shows a moored boat to the east and boat lift to the west. I have incorporated soundings on my Sketch Map that were taken from a Hydrographic Study Plan, Sheet No. SK-3 dated 3/26/16 by Rising Tide/Waterfront Solutions made for Mr. Bortolis. This plan shows the water depth at the dock structure to be between 5.2 to 5.6 feet based on the North American Vertical Datum (NAVD) 88. This proposal minimizes the encroachments and provides for adequate water depth and reasonable navigation to neighboring owners.

The Town of Hempstead's mitigation of placing the boat lift on the west side of the 75 foot dock is insufficient to address the issue of navigability. This is not a viable solution because the dock length is excessive within navigable waters and still presents a navigable issue to the upland neighboring property owners within the cove area.

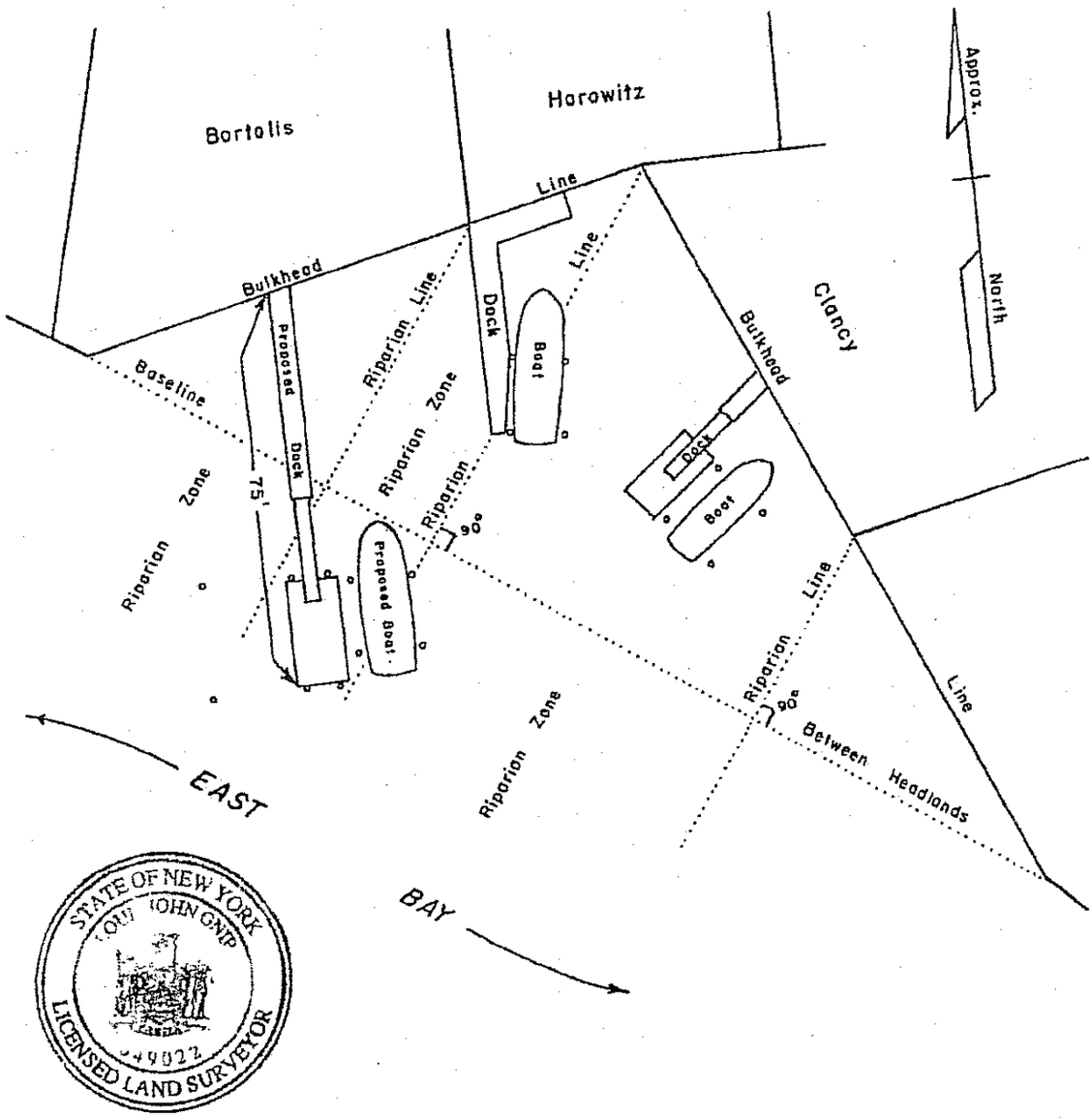
It should also be pointed out that DEC permits have provisions that no docks, catwalks, floats, pilings, and boat lift/davit shall extend laterally beyond property lines, interfere with navigation, or interfere with other landowner riparian rights. Item "D" of their permit indicates that the permittee has no right to trespass or interfere with riparian rights. A dock structure of 75 feet outshore in this cove area certainly violates the provisions of the DEC permit.

Therefore, a modified version of the Perpendicular Method is encouraged so as to provide the Clancy's and Horowitz's fair and equitable use of their respective riparian zones.

Respectfully submitted,

Louis J. Gnip, Land Surveyor
Dated: July 11, 2019

(Note: Bortolis Dock at 75')



STATE OF NEW YORK
LOUIS JOHN GNIP
049022
LICENSED LAND SURVEYOR

SKETCH MAP Showing Cove Area of East Bay at Merrick, Town of Hempstead, County of Nassau, State of New York with existing and proposed outshore improvements. Riparian Zones are established using the "Perpendicular Method" for a cove area. The proposed dock/boat for Bortolis is shown according to the modified facility plan SK-2. The improvements according to the proposal herein shown transgresses into the riparian zones of both Horowitz and Clancy.

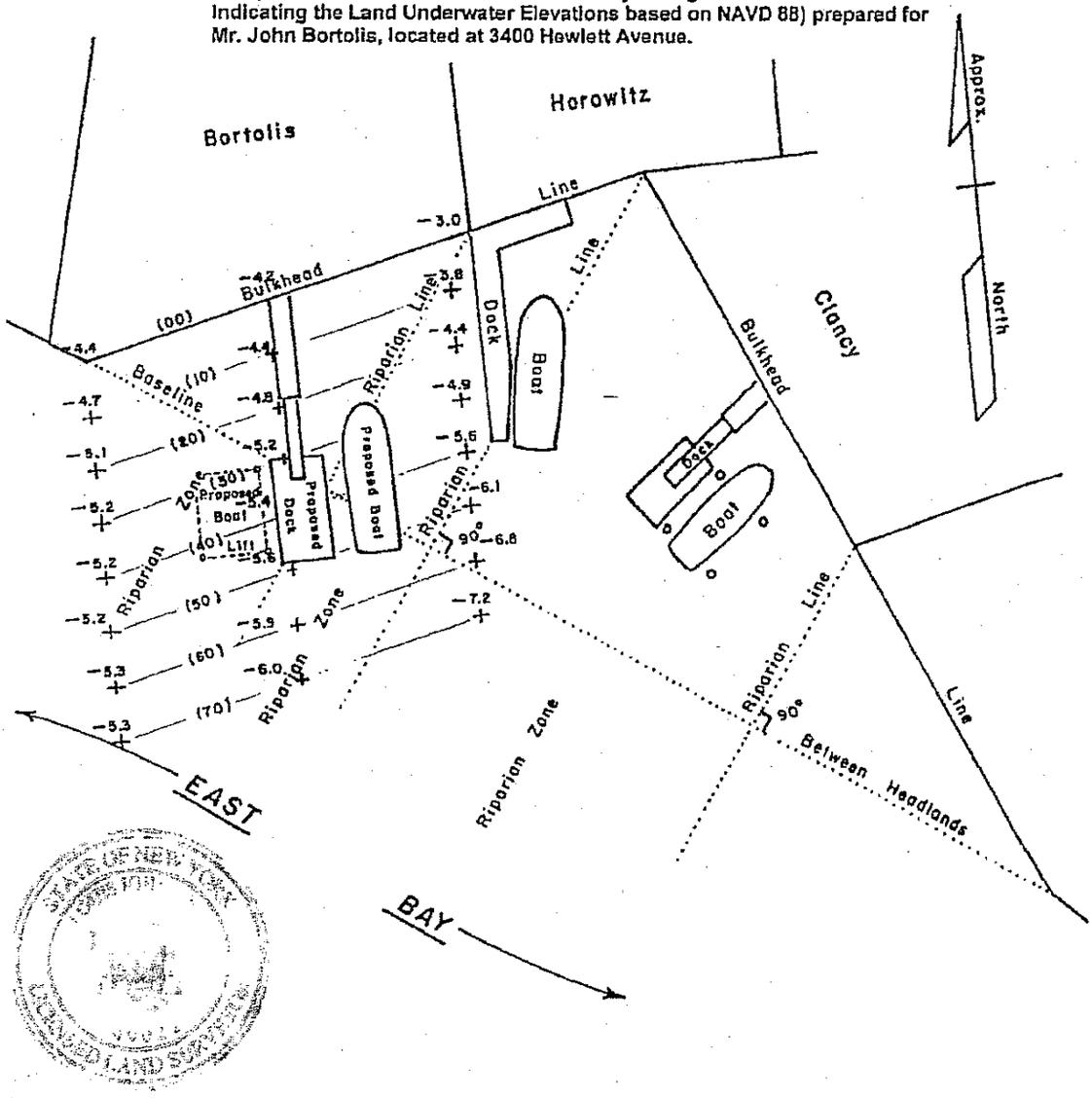
Map Scale 1" = 30 Feet

By: Louis J. Gnip, L.S. 49022
Dated: May 8, 2019

NAS - 30 - 4 A

(Note : Bortolis Dock at 50')

(Note: Soundings as shown on this map were taken from a Hydrographic Study Plan, Sheet No. SK-3 dated 3/26/16 by Rising Tide/Waterfront Solutions indicating the Land Underwater Elevations based on NAVD 88) prepared for Mr. John Bortolis, located at 3400 Hewlett Avenue.



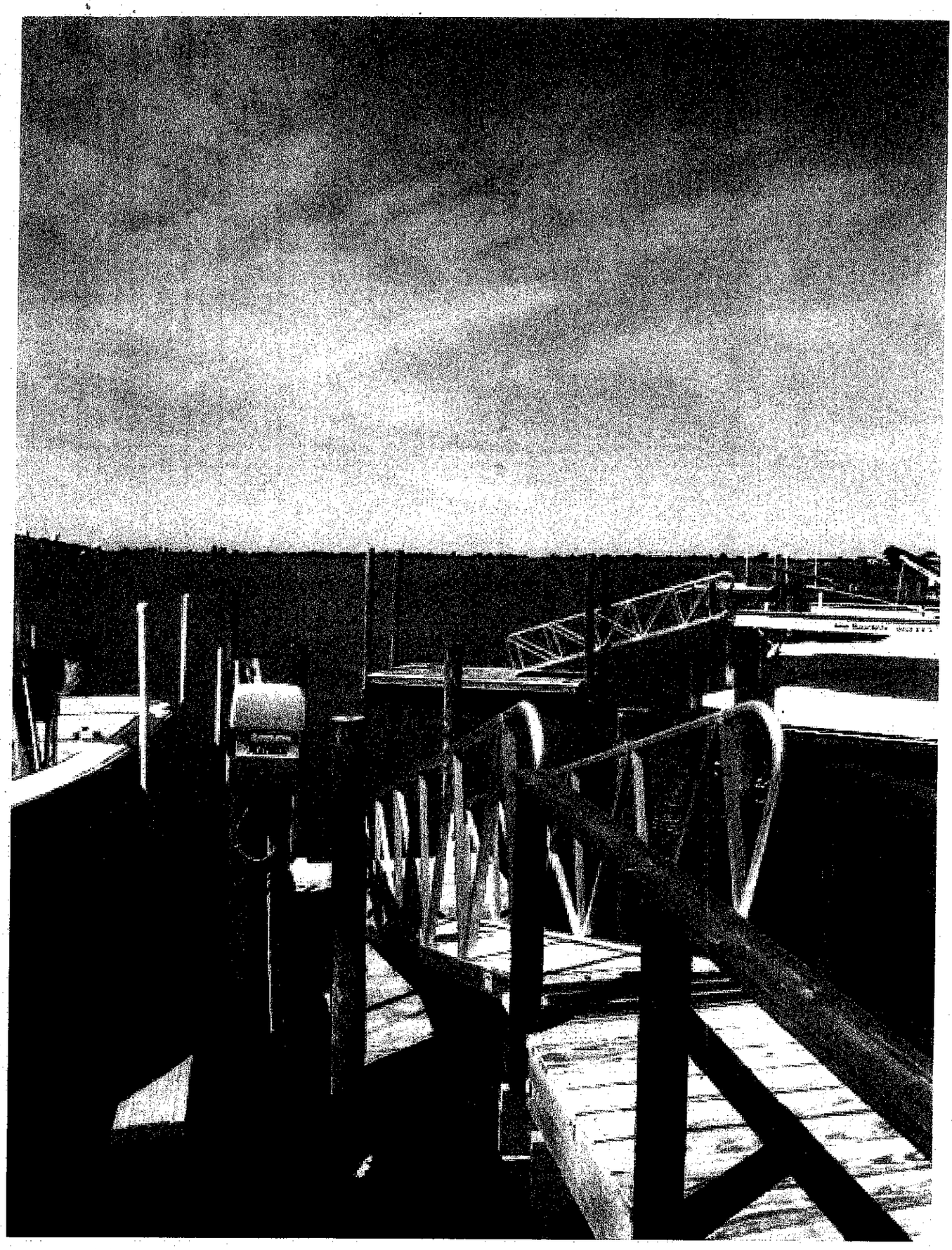
SKETCH MAP Showing Cove Area of East Bay at Merrick, Town of Hempstead, County of Nassau, State of New York with existing and proposed outshore improvements. Riparian Zones are established using the "Perpendicular Method" for a cove area. The proposed dock/boat for Bortolis has been shortened by 25 feet from the current plan to minimize the adverse effect that such outshore improvements have on free and direct navigational access for all neighboring upland owners within this cove area.

Map Scale 1" = 30 Feet

By: Louis J. Gnip, L.S. 49022
Dated: May 2, 2019 (Revised: July 11, 2019)

NAS - 30-4

Exhibit 6



7-15-19

Council Members.
DOROTHY L. GOOSBY
BRUCE A. BLAKEMAN
ERIN KING SWEENEY
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR.
THOMAS E. MUSCARELLA

Sylvia A. Cabana
Town Clerk

Donald X. Clavin, Jr.
Receiver of Taxes

JOSEPH J. RA
Town Attorney

Town of Hempstead

Office of the Town Attorney

1 WASHINGTON STREET, HEMPSTEAD, N.Y. 11550-4923
(516) 489-5000
FAX# (516) 489-5150

LAURA A. GILLEN
Supervisor

August 8, 2019

John C. Arementano, Esq.
Farrell Fritz
100 Motor Parkway
Hauppauge, NY 11788

Christian Browne, Esq.
The Omni
333 Earle Ovington Boulevard, Suite 501
Uniondale, NY 11553

Jeffrey and Jennifer Clancy
3421 East Bay Court
Merrick, NY 11566

Eric and Elizabeth Horowitz
3404 Hewlett Avenue
Merrick, NY 11566

Mr. John Bortolis
3400 Hewlett Avenue
Merrick, NY 11566

Re: Structure in Waterway at
3400 Hewlett Avenue, Merrick
Under Town of Hempstead Permit
#776-065-19
Pursuant to Town Board Resolution 920-2019

Dear Sirs/Madams:

On August 6, 2019, the Town of Hempstead Town Board passed a resolution in which the Town Board will consider whether reasonable cause exists to determine that a structure in the waterway located at 3400 Hewlett Avenue, Merrick constitutes a menace to navigators pursuant to Section 168-8 of the Code of the Town of Hempstead.

I am writing you this letter to inform you that your input in this matter is being requested. Please submit arguments, documentation and/or testimony in support or in opposition to the Town Board reasonable cause determination. Please be aware that your submissions must

be sent to each member of the Town Board. The Town Board members and addresses area as follows:

1) Laura A. Gillen, Supervisor
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

2) Councilwoman Dorothy L. Goosby
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

3) Councilman Bruce A. Blakeman
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

4) Councilwoman Erin King Sweeney
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

5) Councilman Anthony P. D'Esposito
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

6) Councilman Dennis Dunne, Sr.
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

7) Councilman Thomas E. Muscarella
Town of Hempstead
1 Washington Street
Hempstead, NY 11550

Your submission to the Town Board members must be received no later than August 23, 2019.

Thank you for your input in this matter.

Very truly yours,

JOSEPH J. RA
Town Attorney

By
Mario Bove
Deputy Town Attorney

MB/dm
Enclosure

cc Supervisor Laura A. Gillen
Members of the Town Board
Thomas E. Doheny, Dept. of Conservation & Waterways
Joseph J. Ra, Town Attorney

TOWN BOARD
TOWN OF HEMPSTEAD
In the Matter of

JOHN BORTOLIS
3400 Hewlett Avenue
Merrick, New York
Section: 63; Block: 322; Lot 34,

Applicant.

AFFIDAVIT

Case No. 30158
Permit No. 776-065-19
Resolution No. 920-2019

STATE OF NEW YORK }
} ss:
COUNTY OF NASSAU }

ADON AUSTIN, being duly sworn, deposes and says as follows:

1. I am a licensed professional engineer in the State of New York (License No. 085255) specializing in waterfront permitting, design and construction. I also am a principal of Rising Tide Waterfront Solutions - An Engineering Company, PLLC ("Rising Tide Waterfront Solutions"), with offices located at 486 Sunrise Highway, Suite 102, Rockville Centre, New York 11570. My curriculum vitae is attached at **Exhibit "A"**.

2. I submit this Affidavit in response to the Town Board's Resolution No. 920-2019, in which the Board requested documentation to assist it in determining whether the dock located at 3400 Hewlett Avenue, Merrick, New York, is a "menace to navigation."

BACKGROUND

A. The Bortolis Property and Neighboring Properties

3. John Bortolis resides at 3400 Hewlett Avenue, Merrick, New York (the "Bortolis Property").

4. Jeffrey B. Clancy and Jennifer Clancy reside at 3421 East Bay Court, Merrick, New York (the "Clancy Property").

5. Eric Horowitz and Elizabeth Horowitz reside at 3404 Hewlett Avenue, Merrick, New York (the "Horowitz Property").

6. Currently, a pier terminating with a floating dock extends seaward from the Clancy Property's bulkhead. A pier also extends seaward from the Horowitz Property's bulkhead.

7. A Google Earth aerial photograph of these properties is attached at **Exhibit "B"**. Please note that the photograph does not depict the current dock at the Bortolis Property (discussed below).

B. The Bortolis Dock

8. Rising Tide Waterfront Solutions was retained to prepare drawings to replace the pier and floating dock previously located at the Bortolis Property. This original pier and dock was substantially damaged during Superstorm Sandy, prior to Mr. Bortolis' ownership of his property. The supporting pile foundations and bents along with the piles supporting the boat lift remained intact.

9. On or about August 2017, Mr. Bortolis retained Rising Tide Waterfront Solutions to prepare the drawings to replace the pier and floating dock, and also to prepare permit applications to reconstruct the dock located at the Bortolis Property. The proposed work would include reconstructing the 40-foot pier extending from the bulkhead of the Bortolis Property, which then terminates at a proposed gangway and floating dock. The proposed action also included a boat lift that would be located on the east-side of the floating dock. Collectively the "Bortolis Dock" extends 75 ft 5 in. seaward from the bulkhead.

C. **The Amended Permit**

10. Subsequent to receiving authorizations to replace the Bortolis Dock from the New York State Department of Environmental Conservation, the New York State Department of State, the New York State Office of General Services, and the United States Army Corps of Engineers, on March 26, 2019, Rising Tide Waterfront Solutions submitted a permit application to the Town of Hempstead Department of Conservation of Waterways (the "TOH"). Prior to this submission, the TOH requested that the pier for the Bortolis Dock be relocated 20 feet further to the west from the Bortolis Property Line. This request was made to accommodate the Clancys' concerns regarding the then-proposed location of the Bortolis Dock.

11. The TOH Permit Application illustrating, among other things, the Bortolis Dock at the relocated position 34 feet 7 inches from the Bortolis Property line, is attached at **Exhibit "C"**.

12. On March 27, 2019, the TOH issued permit No. 776-065-19, amending the original authorization. A copy of this permit is attached at **Exhibit "D"**.

13. Due to litigation among the parties in the Nassau County Supreme Court, on July 17, 2019, the TOH further amended Mr. Bortolis' permit, relocating Mr. Bortolis' boat lift to the west side of his floating dock, and prohibiting any structures on the east-side of his pier. The permit, as amended, dated July 17, 2019, is attached at **Exhibit "E"**.

THE BORTOLIS DOCK DOES NOT IMPEDED SAFE WATER ACCESS TO THE CLANCY PROPERTY OR THE HOROWITZ PROPERTY

14. It is my opinion based upon a reasonable degree of engineering certainty that the Bortolis Dock does not hinder safe water access to the Clancy Property or the Horowitz Property. The safe water access has been, and remains, illustrated by utilizing standards for safe vessel maneuvering in wind and current conditions form the American Society of Civil

Engineers. The maneuvers for a 50 foot vessel are over-laid upon drawings of the proposed docks and presented as F-1 to F-6 in **Exhibit "F"** for the Board's consideration.

15. The original location of the Bortolis Dock, the relocated pier 34 feet 7 inches from the Bortolis Property line, or the relocated pier with the repositioned floating dock on the west side of Mr. Bortolis' pier, do not impair the littoral rights of the Clancy Property or the Horowitz Property.

16. I direct the Board's attention to 9 NYCRR § 274.5, which identifies means and methods for a resolving riparian disputes. They include the perpendicular method, the long lake method, the round lake pie method, the colonial method, and the proportionate thread of the stream method. Direct access to navigable water is provided for the Clancy Property and the Horowitz Property utilizing one or multiple principles. Each of these methods are demonstrated in drawings G-1 to G-4 attached at **Exhibit "G"**.

17. The current length for the Bortolis Dock (75 feet 5 inches) is justified as the pier must extend to a water depth of four (4) feet during low tide. This depth provides adequate water depth for vessels at berth and appropriate clearance below the floating dock to minimize impact to environmental habitats. Reducing the pier length will place the end of Mr. Bortolis' pier in shallow water, preventing Mr. Bortolis from utilizing his vessel during low tides, as well as inappropriately shading below the dock, i.e., potentially destroying habitat along the bottom of Merrick Bay.

18. The water depth information can be determined from Rising Tide Water Solutions' Hydrographic Study (SK-3), which is included within Exhibit "C". This study does not illustrate water depth – the plan shows the elevation(s) of the lands underwater in relation to the vertical NAVD88 Datum. The Mean Low Water Elevation, in the same vertical datum (NAVD88), is negative 1.9 feet. This information is provided on the Title Sheet & Location

Map prepared by Rising Tide and is included within the referenced set of plans (SK-1). The pier extends seaward to lands underwater at an elevation of negative 6.0 feet (NAVD88). The average water depth during low tide cycles is determined by the difference between the Mean Low Water Elevation of negative 1.9 and the elevation of the lands under water at the end of the Bortolis Dock of negative 6.0. This difference is 4.1 feet, which is the minimum necessary to meet federal, state and town code. I also have highlighted this information in yellow on the drawings SK-1 and SK-3 attached at **Exhibit "H"** (SK-1 and SK-3 are also included within Exhibit "C").

19. **Exhibit "I"** illustrates the bathymetry, or water depth, during low tide on drawing I-1. As shown, the water depth along the floating dock ranges from 4.0 to 4.2 feet during the average low tide.

20. In sum, it is my opinion based upon a reasonable degree of engineering certainty that the proposed dock at the Bortolis Property does not impede the Clancys' access or the Horowitz's access to Merrick Bay and does not infringe upon the Clancys' or the Horowitz's littoral rights.

ADON AUSTIN

Sworn to before me this
22 day of August 2019.

Notary Public

DONALD BAILEY
Notary Public, State of New York
No 01BA6379839
Qualified in Queens County
Commission Expires August 27, 2022

EXHIBIT A

Rising Tide | Waterfront Solutions

Adon M. Austin, P.E.

Director of Waterfront Facility Management

Mr. Austin is a Principal at Rising Tide Waterfront Solutions responsible for Waterfront Facility Management. He has nearly twenty years of leadership, management and engineering experience in projects relating to marine and coastal structures. Mr. Austin is a professional engineer and ADCI certified commercial diver, specializing in waterfront structure inspection and conditions assessment. In addition, his extensive experience includes designs for new and deteriorated structures along with development of mooring and fender systems. He has excellent communication skills focusing on cost-effective results while developing positive relationships with clients, architects engineers, local officials, and contractors. Mr. Austin's career reflects his sharp sense of ethics while positively contributing to project teams.

Project Summary – Waterfront Inspection

Facility condition inspections performed for Port Authorities, Terminal Operators and Public & Private Clients operating or managing waterfront structures such as piers, wharves, and bulkheads. The scope of services included performing above and underwater inspections and compiling the results into comprehensive reports. The reports summarized the observations along with providing prioritized recommended repairs, with cost estimates, to restore the facility to a satisfactory condition. Additionally, per client requirements, the reports also contained video/photographic documentation, structural load calculations, and cost estimates.

US Navy OCONUS & CONUS Facility Condition Inspection(s)

Performed for the Naval Facilities Engineering Command (NAVFAC) in support of naval and other military installations within the continental United States and internationally.

Key Installations Inspected: CNIC Naval Base Guam, Naval Amphibious Base Little Creek, Naval Support Facility Diego Garcia, the Atlantic Undersea Test and Evaluation Center (AUTEC), Naval Air Station Patuxent River, and Naval Reserve Center Fort Schuyler.

Port & Terminal Facility Condition Assessment(s)

Performed for public and private agencies that manage maintenance for container & bulk carriers, passenger ships and recreational vessel facilities; domestically and internationally.

Key Port Facilities Inspected: The Port Authority of New York & New Jersey, The Jacksonville Port Authority, The Port of Long Beach, The Port of Los Angeles, Port Everglades, Ports America Seagirt Container Terminal, Chelsea Piers (NYC), the Brooklyn Navy Yard, and the Sultan of Oman's Private Yacht Pier.

MOTEMS & Energy Facility Condition Inspection and Assessment(s)

Performed for various waterfront energy facilities and oil terminal operators, including facilities requiring inspections in compliance with California Building Code Chapter 31, Appendix F – "Marine Oil Terminal Engineering and Maintenance Standards."

Key Facilities Inspected: Kinder Morgan Pasadena and Galena Park Terminals, PSEG Marion Dock, Astoria PowerGen, ConEdison 74th Street Wharf & Tunnels, Tesoro Golden Eagle Refinery Avon and Amorco Terminals, Shell Deer Park Marine Terminal, and Kuwaiti Oil Company.

Citywide Waterfront Facility Inspection(s) - New York, NY

Performed for various clients in New York City, including the NYC Economic Development Corporation (NYCEDC), Hudson River Park Trust (HRPT), and the NYC Department of Park and Recreation (NYCDPR).

Key New York Facilities Inspected: Pier 16, Pier 17, Pier 42, Pier 57, Yankee Pier, Brooklyn Bridge Park, Hunter's Point, 65th Street Rail Transfer Bridges, Mill Basin, Rockaway Beach Bulkhead and the 23rd Street Bulkhead.

Profession Registration

Professional Engineer, New York (085255)
Professional Engineer, Illinois (62057445)

Education

MS Architecture & Const. Management
(Illinois Institute of Technology)
BS Civil / Structural Engineering
(Michigan State University)
AA Architecture

Training & Certification

ADCI Air Diver Certification Diver
Diving Certification Board of Canada
Transportation Worker ID Credential (TWIC)
OSHA 30-Hour Construction Safety
PADI Rescue Diver Certification
NAUI Underwater Instructor Certification
TDI Advanced Nitrox Gas Diver
DAN Advanced Oxygen & First Aid
DAN Hazardous Marine Life Training
Automated External Defibrillator

Publications & Awards

Consulting Engineers Council of Illinois Engineering Excellence Award – Sheridan Road Bridge Reconstruction (1999)

The City of New York Department of Design and Construction Certificate of Appreciation (2011)

Adon M. Austin, P.E.

Director of Waterfront Facility Management

Project Summary – Waterfront Inspection (cont'd)

Bridge, Dam and Waterway Underwater Inspection(s) with Bathymetric Survey(s)
Performed for New York and Connecticut state agencies responsible for maintaining reservoir dams, inspections included above and underwater inspections upstream and downstream dam faces, spillways, intake gates and adjacent shoreline protection.
Key Facilities Inspected: Hinckley Reservoir Dam and the Nepaug Reservoir Dam

Project Summary – Rehabilitation Engineering

Naval Air Station Patuxent River – Patuxent River, MD
Performed for the Naval Facilities Engineering Command (NAVFAC), the scope of work included developing the results from a previously inspected facility into preliminary and final technical design specifications and drawings to repair a deteriorated concrete pier. The effort included developing cost estimates at various project stages along with consulting during the design / build phase.

Tiffany Street Pier Rehabilitation - New York, NY
Performed for the New York City Department of Parks and Recreation, the scope of work included an above and underwater investigation to assess the damage resulting from Super-Storm Sandy, preparing an inspection report assessing the observed conditions, rehabilitation recommendations, cost estimates, and development of contract technical documents including plans and specifications.

Berth 30 to 34 Fender Reconstruction – Port Newark, NJ
Performed for the Port Authority of New York & New Jersey, the scope of work included an investigation and replacement of the fender system along Berths 30, 32 and 34 in Port Newark. The project comprised replacing nearly 1,600 linear feet of timber fender system with a cellular fender & panel scheme. The effort included preparing design calculations and technical specifications and drawings.

Weehawken Recreational Pier – Weehawken, NJ
Performed for the Township of Weehawken, the scope of work included the schematic, preliminary and final designs for a recreational 600-ft recreational pier extending into the Hudson River. The pier, which is designed to be supported on concrete friction piles, provides unique public access to the waterfront through learning pods and a kayak launch.

Sheridan Road Bridge – Lake Forest, IL
Performed for the Illinois Department of Transportation, the scope of work included preparing technical drawings and specifications to replace an existing severely deteriorated structure with a new bridge featuring similar architectural elements while maintaining current safety standards. The project earned the ACED Engineering Excellence Award.

Project Summary – Construction Support Services

Sheepshead Bay Bulkhead Construction - New York, NY
Performed for the New York City Economic Development Corporation, the scope included full-time resident engineering services during the construction of nearly 3,000 linear feet of steel sheet pile bulkhead. The project included monitoring the construction to verify the effort met the drawings and specifications, evaluating contractor submittals, responding to contractor information & change-order requests and reviewing pay requests.

Manhattan Cruise Terminal Pier 92 Construction Duration Inspections – New York, NY
Performed for the construction manager contracted by the New York City Economic Development Corporation, the scope of services included performing above and underwater special inspections to monitor and verify the construction. In addition to repairs to the deck soffit, the project included encasing individual piles and pile clusters supporting Pier 92.

Cryder House Seawall Repair - New York, NY
Performed for a private client, the scope included full-service engineering comprising an inspection of damages resulting from Superstorm Sandy, development of an inspection report recommending repairs, preparing technical specifications and drawings, creating a bid manual containing general conditions & the owner / contractor contract, bid solicitation and construction administration. During construction, the effort included monitoring the contractor, responding to contractor information & change-order requests and reviewing pay requests.

Stevenson Expressway Kedzie & California Avenue Bridges – Chicago, IL
Performed for the Illinois Department of Transportation, the scope of work included construction administration services during the replacement of two existing deteriorated bridges, including residential engineering, review of contract work, and responding to contractor requests for information & submittals.

EXHIBIT B

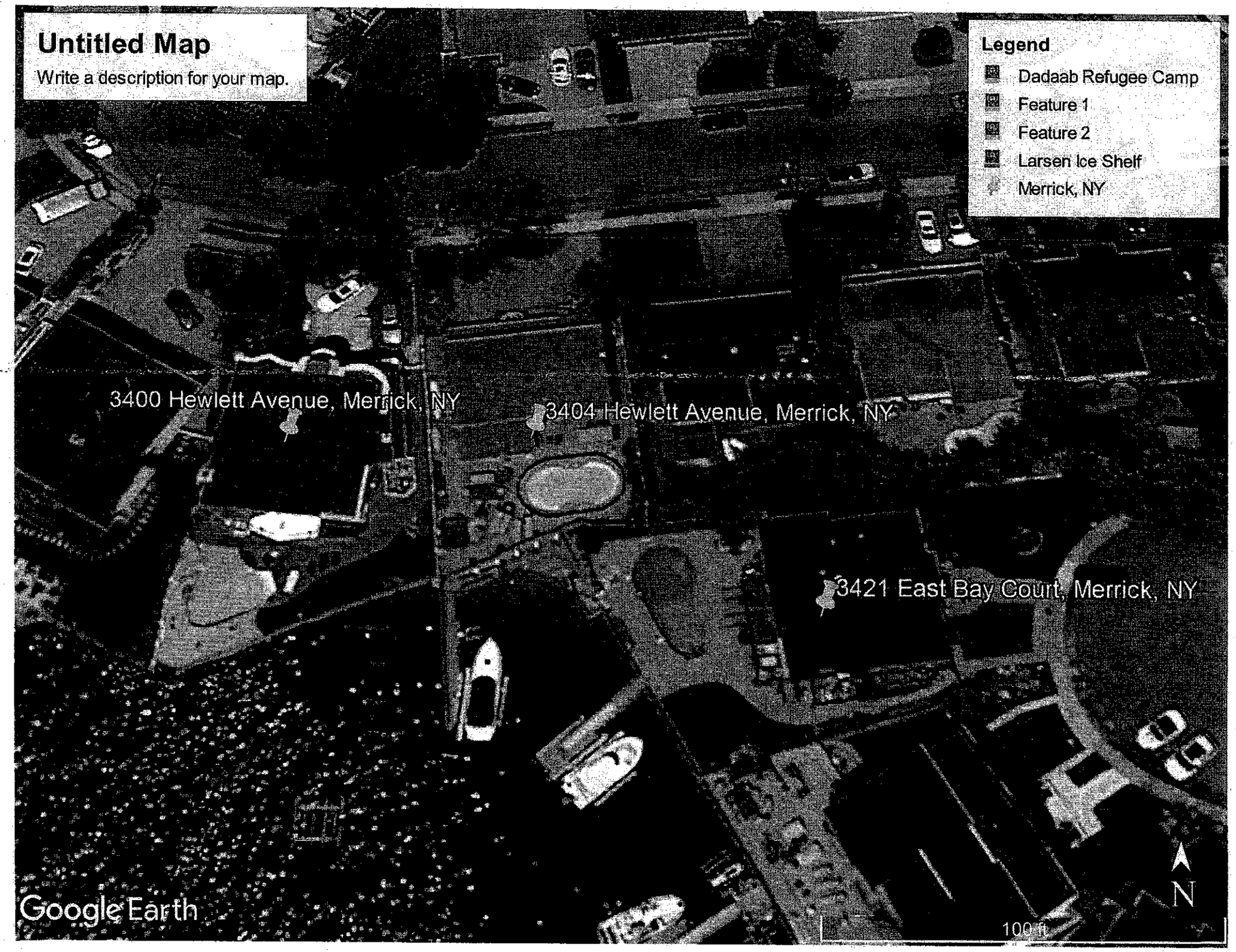

Untitled Map
Write a description for your map.
Legend
Dadaab Refugee Camp
Feature 1
Feature 2
Larsen Ice Shelf
Merrick, NY
3400 Hewlett Avenue, Merrick, NY
3404 Hewlett Avenue, Merrick, NY
3421 East Bay Court, Merrick, NY
N
100 ft
Google Earth

EXHIBIT C

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No._____ Date Received_____

Name	Address	Telephone No.
1. **APPLICANT:** MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. **OWNER:** MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. **CONTRACTOR:** KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No._____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No._____
Disability Benefit Insurance Filed: YES [✓] NO [ ] *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES [ ] NO [✓] *(Submit Form C105.21)*

4. LOCATION OF WORK SITE:
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES [ ] NO [✓]

5. USE OF UPLAND PROPERTY: Business _____ Proposed Res. 1 Exist.Res. X Other_____

6. USE OF PROPOSED WATERWAYS STRUCTURE: Commercial _____ Non-commercial X Houseboat _____

7. DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY. 40X4 (160 SF) PIER, 20X10 (200 SF) FLOATING DOCK W/ RAMP AND 4-PILE VESSEL LIFT. NO DREDGING IS PROPOSED.

8. OWNER'S STATEMENT: *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

_____
Signature of Owner

9. APPLICANT'S STATEMENT: *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

_____
Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

AREA (FT²)		
MOORING PILES		
BULKHEAD (L.F.)		
TOTAL FEE		

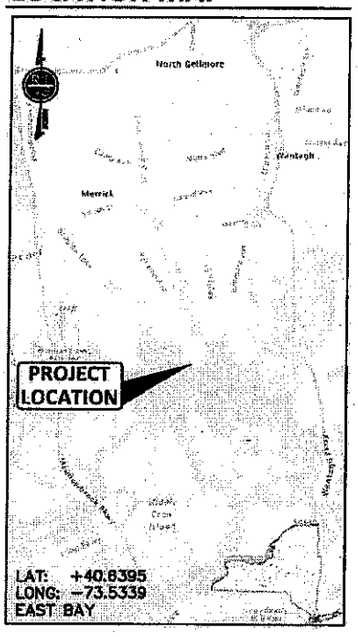
PERMIT NO. _____ RECEIPT NO. _____
DATE ISSUED _____ CHECKED BY _____
APPROVED BY _____

CWF12-4 10/00

BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
26 MARCH 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENEUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516−595−3483
EMAIL: CONTACT@RT−WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08−30−2017
B:	USACE COMMENTS	09−19−2017
C:	NYSDEC COMMENTS	04−27−2018
D:	NYSDEC COMMENTS	07−23−2018
E:	TOH PIER REVISION	03−26−2019

SKETCH INDEX

SK−1	TITLE SHEET & LOCATION MAP
SK−2	FACILITY PLAN
SK−3	HYDROGRAPHIC STUDY
SK−4	BULKHEAD SECTION
SK−5	FIXED PIER & FLOATING DOCK
SK−6	BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

- SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	−0.1	MEAN SEA LEVEL
MLW	±0.0	−1.9	MEAN LOW WATER
MLLW	−0.1	−2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

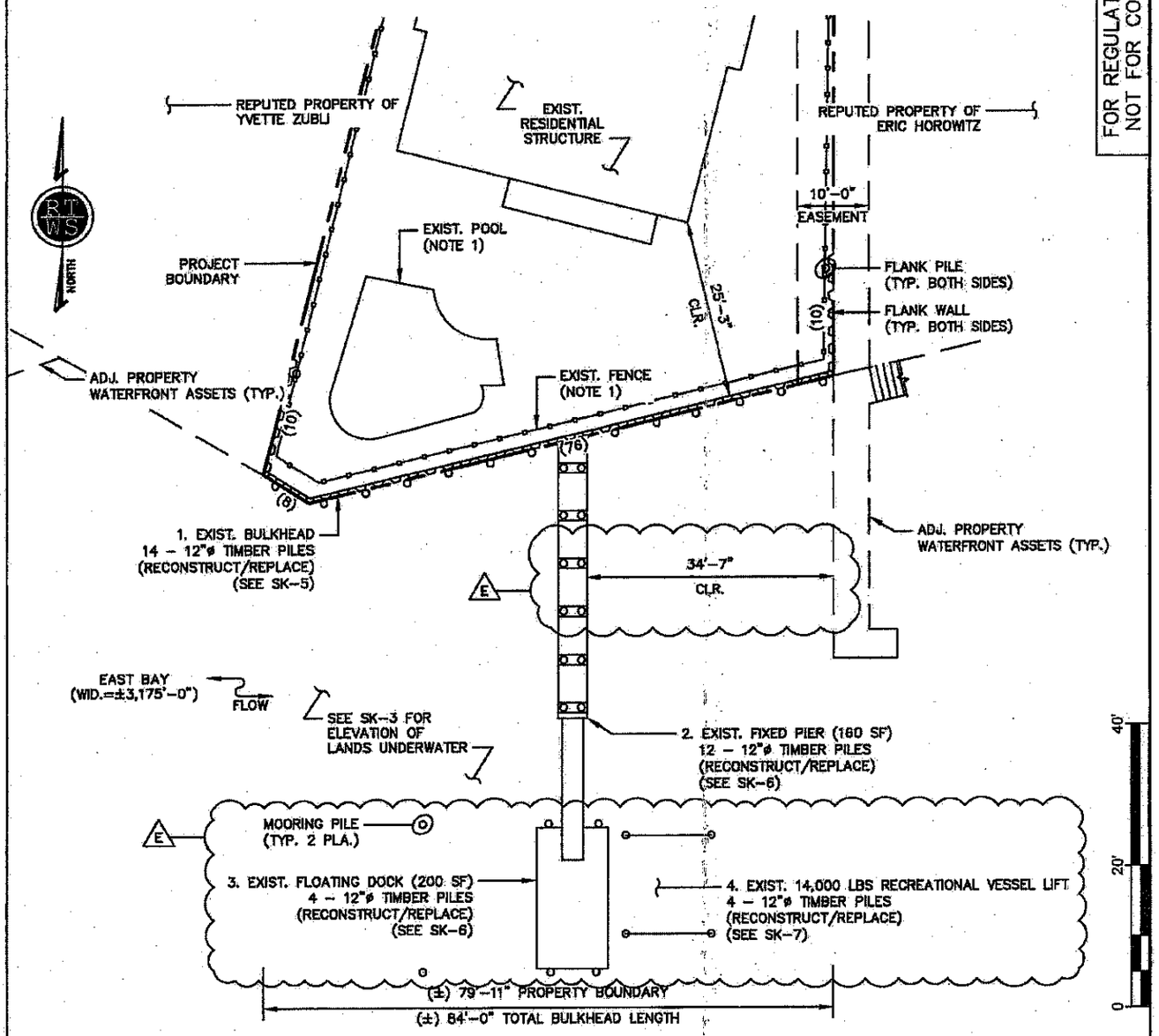
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER−WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 84 LF BULKHEAD SHALL BE REPLACED IN−PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER−WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4−PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-1	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	N/A	Rising Tide | Waterfront Solutions
1 OF 6 SHEET(S)	DRAWN BY JMK		DATE 03/26/19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. E	SHEET TITLE SHEET & LOCATION MAP

SCHEDULE D – SUMMARY OF PROPOSED ACTIVITY				
ITEM	UM	SIZE	AREA	NOTE(S)
1. BULKHEAD	FT	84	---	2
2. FIXED PIER	FT	40 X 4	160 SF	1
3. FLOATING DOCK	FT	20 X 10	200 SF	1
4. VESSEL LIFT	EA	1	---	1

NOTE(S):
1. LAWFULLY EXISTING OVER-WATER STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.
2. LAWFULLY EXISTING STRUCTURE REMAINING IN PLACE (I.E. NOT DESTROYED BY SUPERSTORM SANDY).

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



FACILITY PLAN

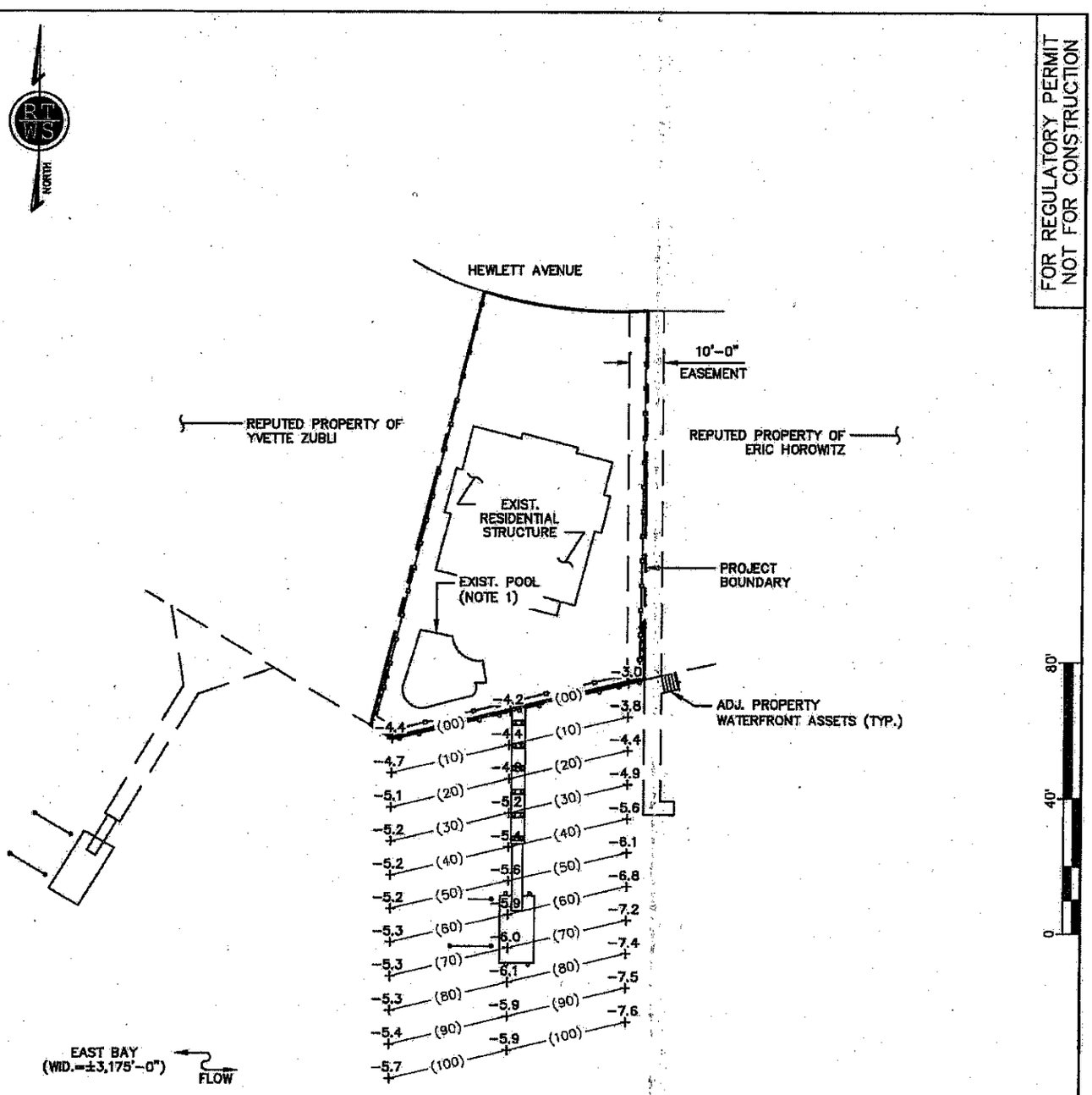
SCALE: 1:20

LEGEND:
(XX) BULKHEAD LENGTH IN FEET

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-2	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:20	Rising Tide | Waterfront Solutions
2 OF 6 SHEET(S)	DRAWN BY JMK		DATE 03/26/16	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. E	SHEET FACILITY PLAN

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



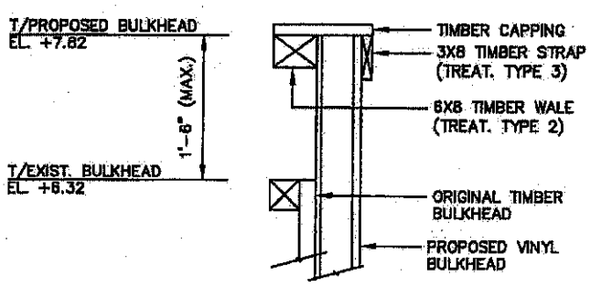
PLAN
HYDROGRAPHIC STUDY

SCALE: 1:40

LEGEND:
-X.X: LAND UNDERWATER ELEVATION (NAVD 88)
-(XX)-: HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

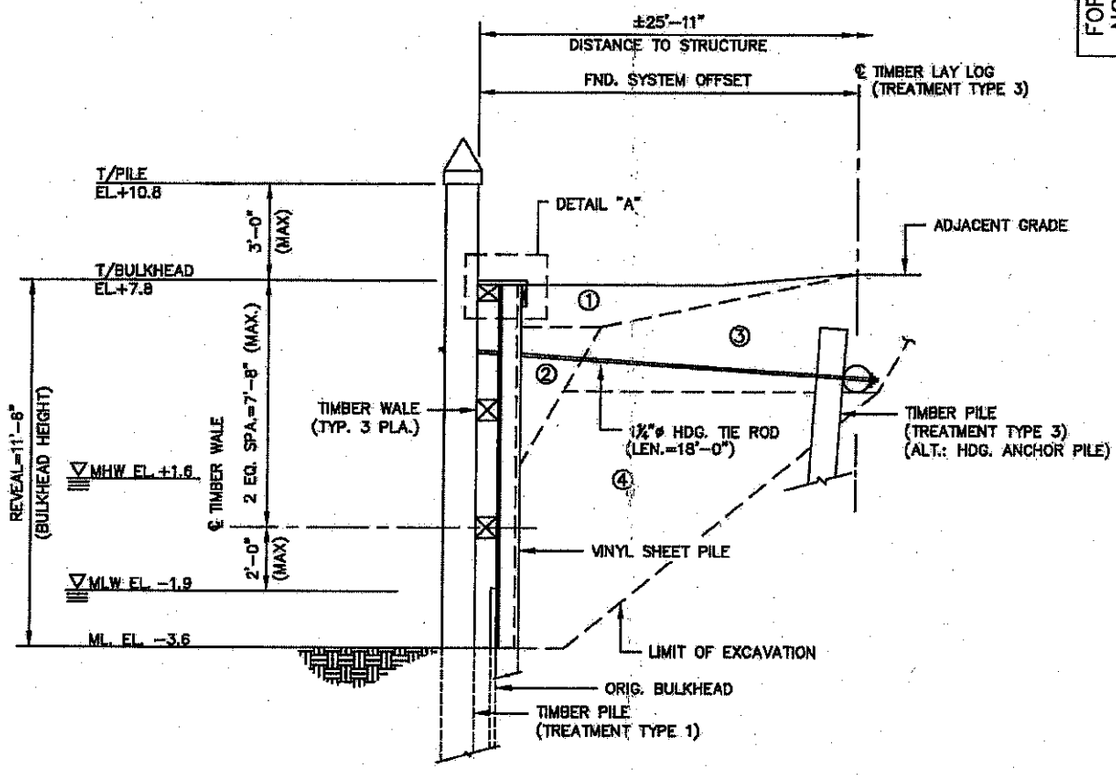
SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-3	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:40	Rising Tide | Waterfront Solutions
3 OF 6 SHEET(S)	DRAWN BY JMK		DATE 03/26/16	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. E	SHEET HYDROGRAPHIC STUDY



A / SK-5 DETAIL
T/BULKHEAD DEFINITION N.T.S.

TABLE 2 - FILL DESIGNATIONS		
ITEM	DESCRIPTION	QUANTITY
1	PLACED FILL REQ'D FOR 18" ELEVATION	24 CY
2	REPLACED ERODED/LOST FILL	0 CY
3	RECLAIMED/ORIGINAL FILL	80 CY
4	RECLAIMED/ORIGINAL FILL OR DREDGE SPOILS	152 CY

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

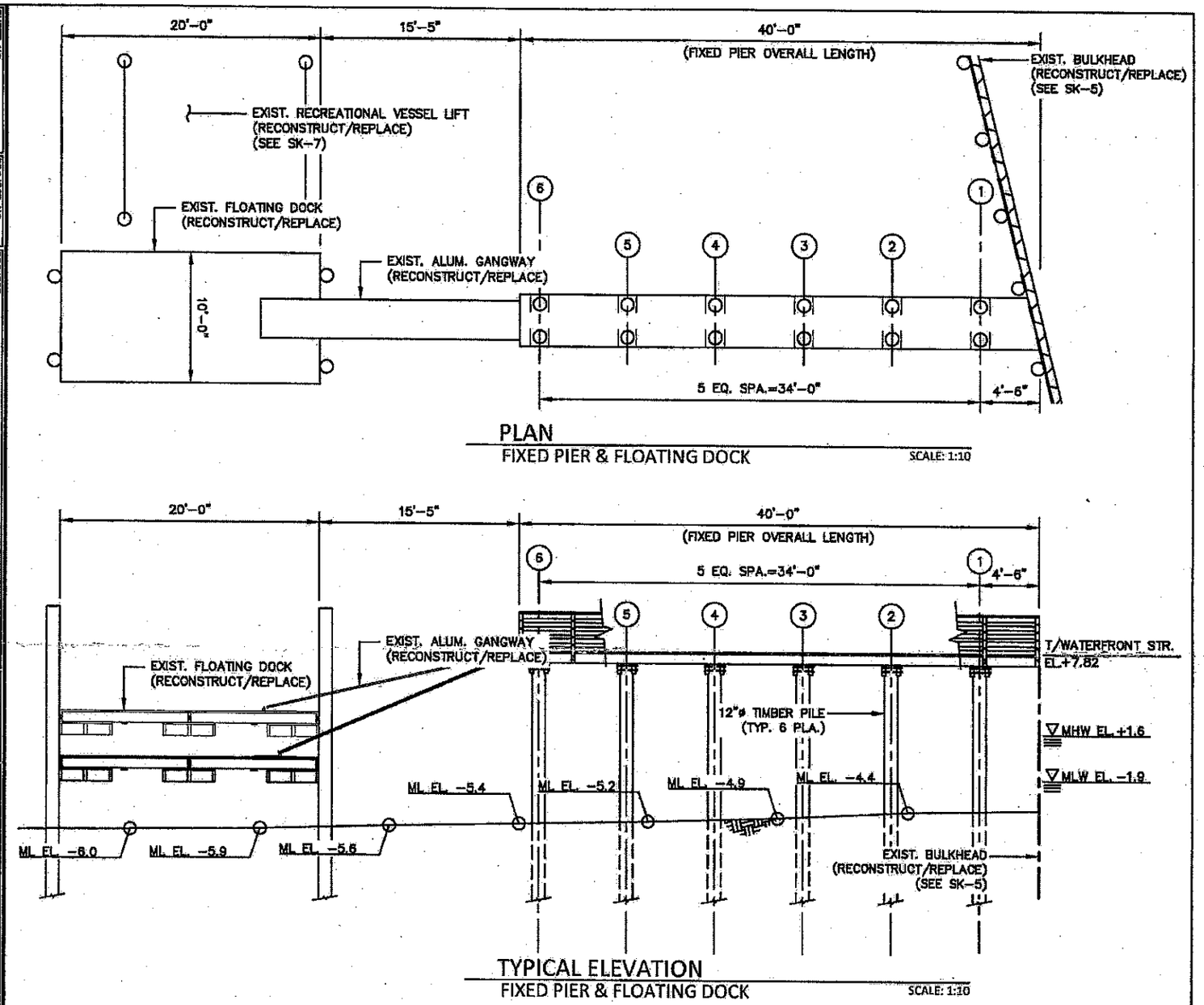


B / SK-4 SECTION
BULKHEAD/PLATFORM SCALE: 1:5

TABLE 3 - TIMBER TREATMENT		
TREATMENT TYPE	CCA RETENTION	DESCRIPTION
1	2.5	CCA TREATED PER AWPA-P5
2	2.5	CCA TREATED PER LATEST AWPA STANDARDS, COMMODITY SPECIFICATION A.P 3.0
3	1.5	

NOTE 1: APPURTENANCE(S) TO BE REMOVED/REINSTALLED AS DIRECTED BY HOMEOWNER. NOT SHOWN FOR CLARITY.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-4	P170731.00	BULKHEAD REPLACEMENT	1:5	Rising Tide | Waterfront Solutions
4 OF 6 SHEET(S)	DRAWN BY JMK	PREPARED FOR MR. JOHN BORTOLIS	DATE 03/26/19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	LOCATED AT 3400 HEWLETT AVENUE	REVISION NO. E	SHEET BULKHEAD/PLATFORM SECTION
		MERRICK, NY 11566 EAST BAY NASSAU COUNTY		



FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

SHEET NO. SK-5
5 OF 6 SHEET(S)

PROJECT NO. P170731.00
DRAWN BY JMK
CHECKED BY AMA

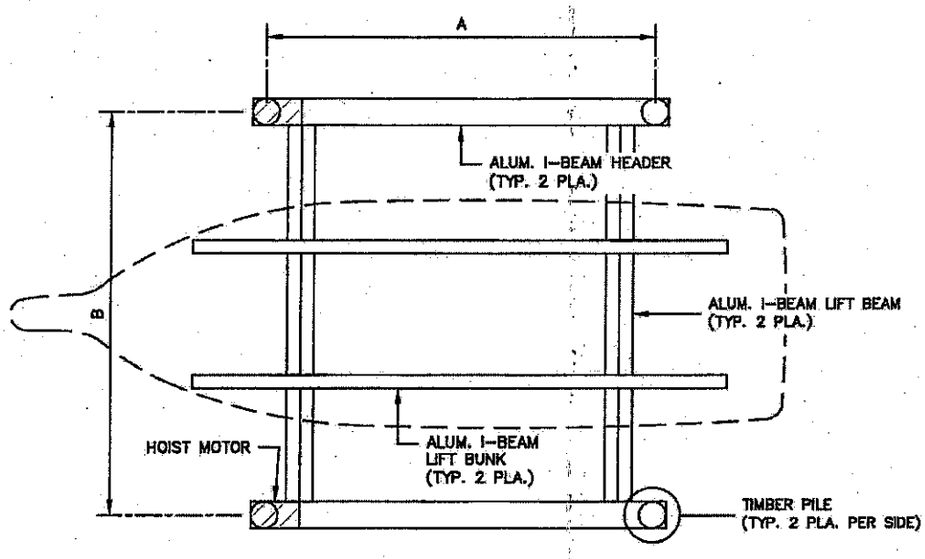
PROJECT
BULKHEAD REPLACEMENT
PREPARED FOR
MR. JOHN BORTOLIS
LOCATED AT
3400 HEWLETT AVENUE
MERRICK, NY 11566
EAST BAY
NASSAU COUNTY

SCALE 1:10
DATE 03/26/19
REVISION NO. E

Rising Tide | Waterfront Solutions
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NEW YORK 11570

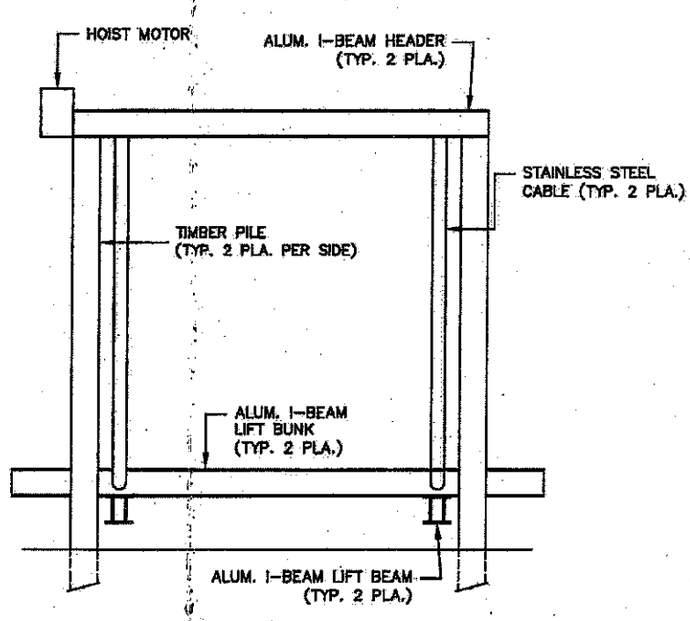
SHEET
FIXED PIER & FLOATING DOCK

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
BOAT LIFT

SCALE: 1:5

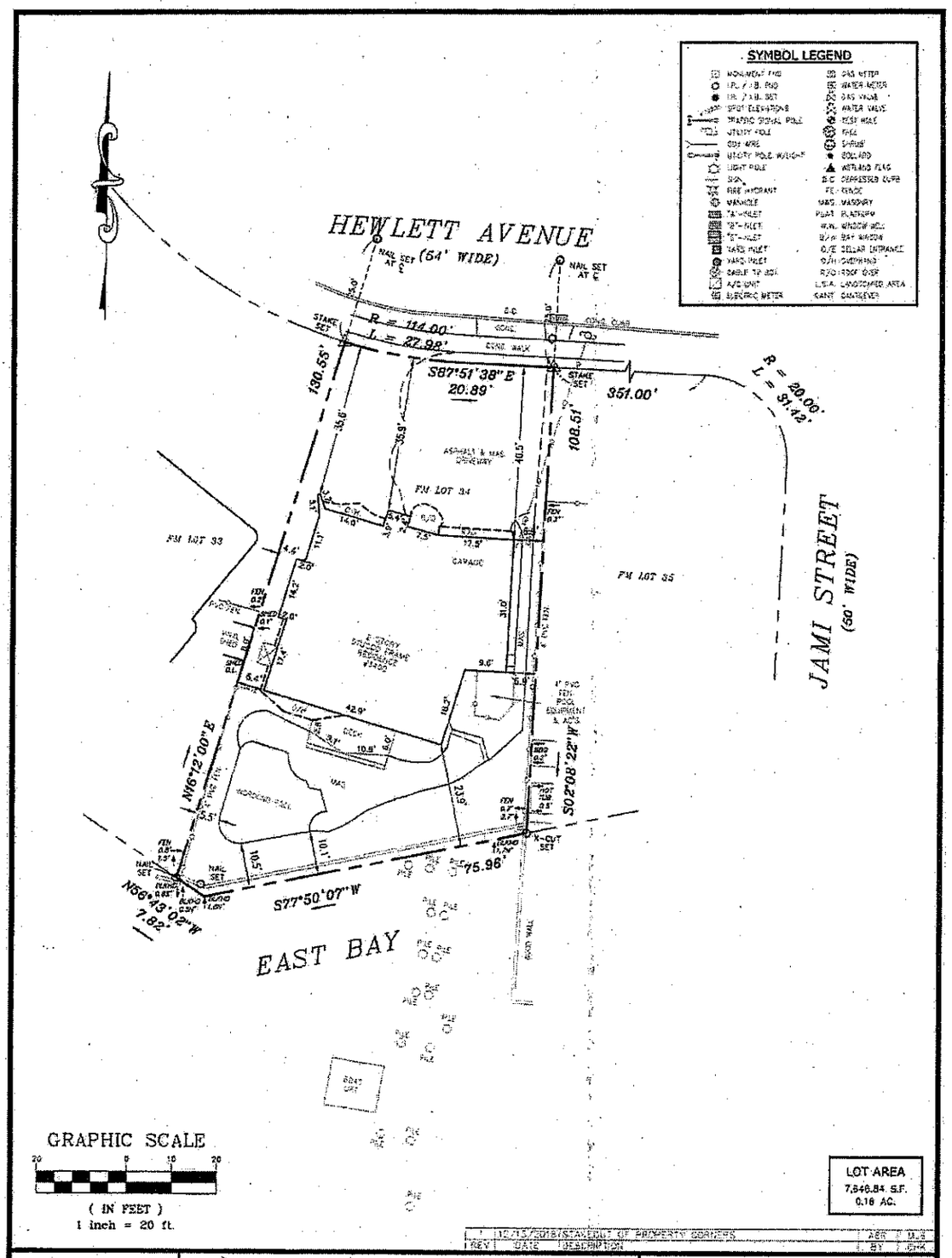


ELEVATION
BOAT LIFT

SCALE: 1:5

SCHEDULE A - ALL SPACING TO CENTER OF PILE			
LIFT CAPACITY	A	B	RECOMMENDED PILING SIZES
5,000 LBS	11'-0"	10'-0"	10"Ø
7,000 LBS	12'-0"	12'-0"	10"Ø
10,000 LBS	12'-0"	12'-6"	10"Ø
14,000 LBS	12'-0"	12'-6"	10"Ø
18,000 LBS	14'-0"	14'-0"	12"Ø
22,000 LBS	12'-0"	16'-0"	12"Ø
27,000 LBS	16'-0"	16'-0"	12"Ø
33,000 LBS	18'-0"	18'-0"	12"Ø

SHEET NO. SK-6 6 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 03/26/19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. E	SHEET BOAT LIFT



REV	DATE	DESCRIPTION	BY	CHK
1	10/15/2018	ESTABLISHMENT OF PROPERTY CORNERS	ABR	MJS

SCALICE LAND SURVEYING P.C.
Always On Point

DR.: MC	CREW.: JRS	SCALE: 1" = 20'	NASSAU TAX MAP NO. 63-322-34
DATE SURVEYED: 11/26/2018		JOB No. N18-2553	

SURVEY OF PROPERTY

LOT 34, BLOCK 322
MAP OF
RIVIERA SHORES
SECTION NO. 1
FILE DATE: 01/19/1965 MAP NO. 7862
SITUATE
MERRICK, TOWN OF HEMPSTEAD
NASSAU COUNTY, NEW YORK

Photo 1 – Taken 30 August 2017

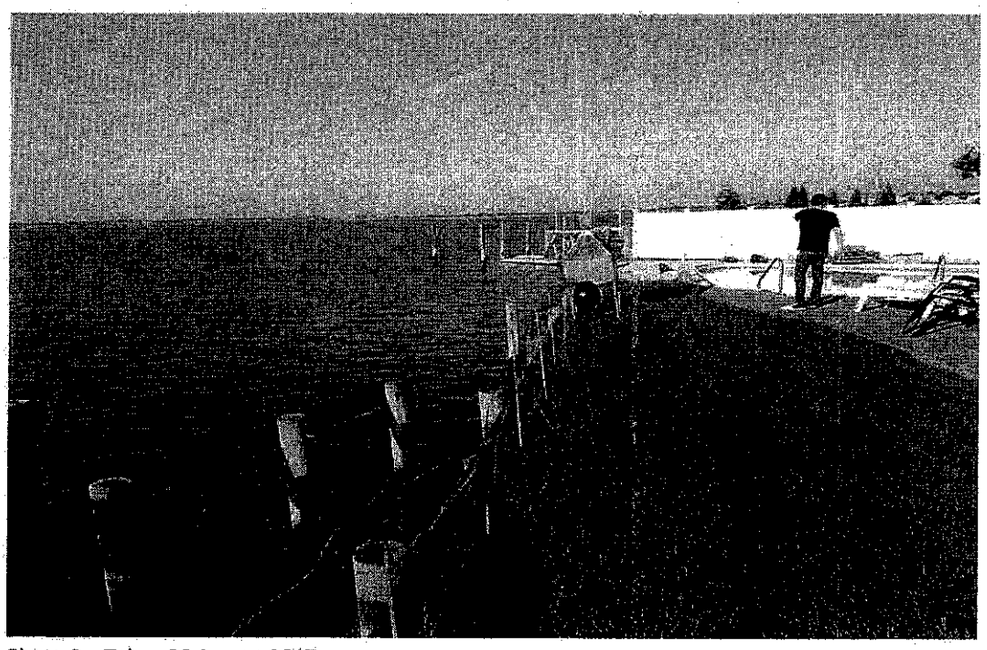


Photo 2 – Taken 30 August 2017

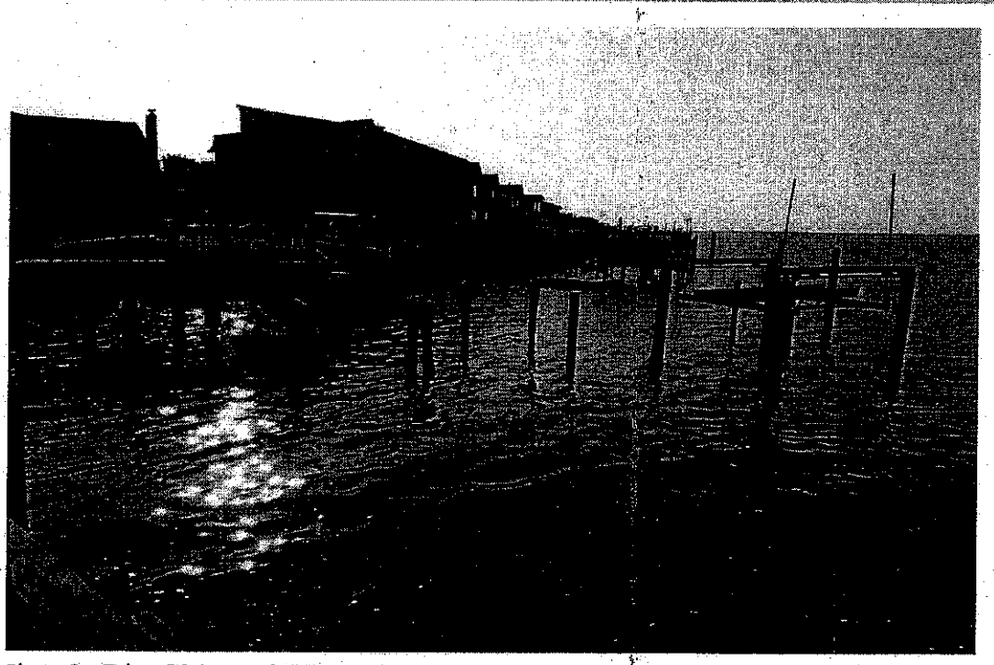


Photo 3 – Taken 30 August 2017

Photo 4 – Taken 30 August 2017

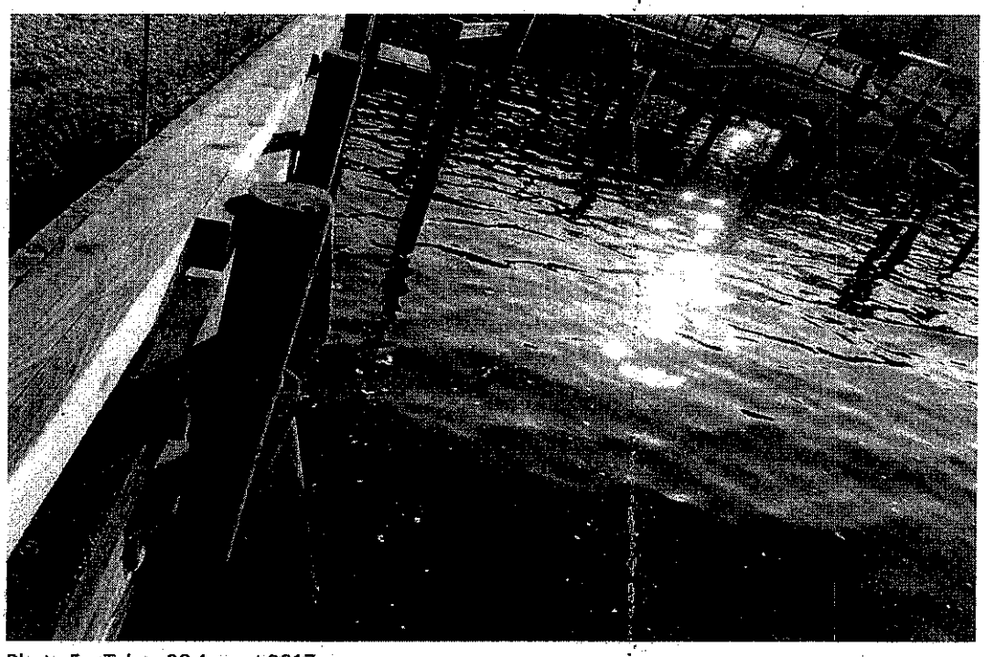


Photo 5 – Taken 30 August 2017

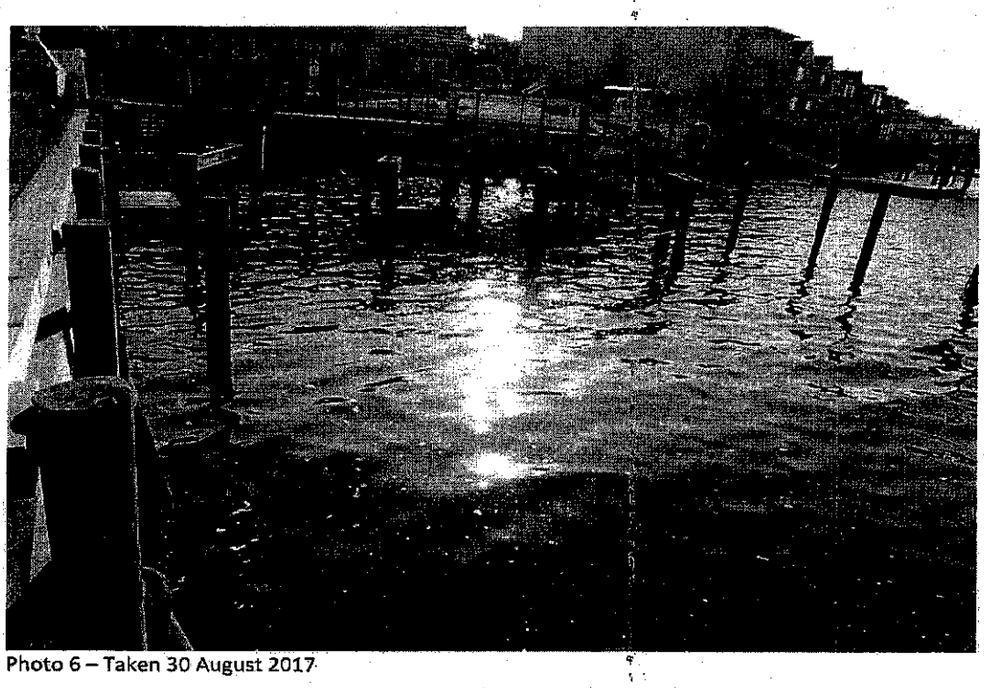


Photo 6 – Taken 30 August 2017

NC CLERK

NASSAU COUNTY CLERK'S OFFICE
ENDORSEMENT COVER PAGE

Recorded Date: 07-07-2015
Recorded Time: 3:42:35 p

Liber Book: D 13229
Pages From: 808
To: 811

Control
Number: 1565
Ref #: RE 021440
Doc Type: D01 DEED

Record and Return To:
HARRY F GEORGE PC
2631 MERRICK ROAD
STE 406
BELLMORE, NY 11710

Location:	Section	Block	Lot	Unit
HEMPSTEAD (2820)	0063	00322-00	00034	

Consideration Amount: 855,000.00

Taxes Total	3,420.00
Recording Totals	340.00
Total Payment	3,760.00

DAC001

THIS PAGE IS NOW PART OF THE INSTRUMENT AND SHOULD NOT BE REMOVED
MAUREEN O'CONNELL
COUNTY CLERK

201507070156 5

a
855,000
NC CLERK

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT-THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 25th day of June , 2015

BETWEEN

George Adler, Trustee of the George Adler Living Trust residing at 3400 Hewlett Ave, Merrick, NY 11566

party of the first part, and

John Bortolis, residing at 670 Ewyngate Dr, Valley Stream, NY 11580

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ----------Eight hundred fifty-five thousand and 00/100 ($855,000 00)---------- dollars paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

SEE SCHEDULE A ATTACHED HERETO

Said premises being the same premises conveyed to the party of the first part, George Adler, Trustee of the George Adler Living Trust by deed dated February 26, 2009 from George Adler and recorded on May 27, 2009 in the Nassau County Clerk's Office in Liber 12505, CP 402

Said premises being known as and by 3400 Hewlett Avenue, Merrick, NY 11566

Section 63, Block 322, Lot 34

DTX
$3420

SEC
63.

Blk
322

LOT
34

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof, TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises, TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose The word "party" shall be construed as if it read "parties" when ever the sense of this indenture so requires

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written

IN PRESENCE OF

George Adler, Trustee of the George Adler Living Trust

Standard N Y B T U Form 8002 - Bargain and Sale Deed, with Covenant against Grantor's Acts – Uniform Acknowledgment
Form 3290

NC CLERK

CIS ABSTRACT INC. Title: CIS-15-0238N

SCHEDULE A:

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at Merrick. Town of Hempstead County of Nassau and State of New York. known as and by Lot 34 in Block 322 as shown on a certain map entitled: "Map of Riviera Shores. Section No. 1", which map was filed in the Office of the Clerk of the County of Nassau on January 1965 as Map No. 7862. and which Lot is bounded and described, according to said Map, as follows:

BEGINNING at a point on the southerly side of Hewlett Avenue, distant 351 feet westerly from the extreme westerly end of the arc connecting the westerly side of Jami Street with the southerly side of Hewlett Avenue;

RUNNING THENCE: South 02 degrees 08 minutes 22 seconds West. 108.51 feet;

THENCE: South 77 degrees 50 minutes 07 West, 75.96 feet;

THENCE: North 56 degrees 43 minutes 02 seconds, 7.82 feet;

THENCE: North 16 degrees 12 minutes 00 seconds East. 130.55 feet to the southerly side of Hewlett Avenue;

THENCE: Easterly along the southerly side of Hewlett Avenue the following 2 courses and distances:

1. along the arc of a circle bearing to the left having a radius of 114 feet, a distance of 27,98 feet;

2. South 87 degrees 51 minutes 38 seconds East, 20.89 feet to the point or place of BEGINNING

CIS ABSTRACT
24 Woodbine Ave.
Suite 16
Northport, NY 11768
1-888-TITLENY

NC CLERK

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of NASSAU , ss

On the 25th day of June in the year 2019
before me, the undersigned, personally appeared
George Adler
personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

LISA GEORGE
Notary Public, State of New York
No. 02GE6164315
Qualified in Nassau County
Commission Expires April 16, 2019

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year
before me, the undersigned, a Notary Public in and for said State, personally appeared
the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they resides in

(If the place of residence is in a city, include the street and street number if any, thereof),
that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year
before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of , County of , ss:
*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the day of in the year
before me, the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

Bargain and Sale Deed With Covenants

Title No.

George Adler, Trustee of the George Adler Living Trust

John Bortolis

SECTION 63
BLOCK 322
LOT 34
COUNTY OR TOWN Nassau

DISTRIBUTED BY
YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396

RETURN BY MAIL TO:

HARRY F. GEORGE, PC
2631 Merrick Road, Suite 406
Bellmore, NY 11710

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 1
SUNY @ Stony Brook, 50 Circle Road, Stony Brook, NY 11790
P: (631) 444-0365 | F: (631) 444-0360
www.dec.ny.gov

September 13, 2018

Mr. John Bortolis
3400 Hewlett Ave
Merrick, NY 11566

RE: Permit No.: 1-2820-03179/00003

Dear Permittee:

In conformance with the requirements of the State Uniform Procedures Act (Article 70, ECL) and its implementing regulations (6NYCRR, Part 621) we are enclosing your permit for the referenced activity. Please carefully read all permit conditions and special permit conditions contained in the permit to ensure compliance during the term of the permit. If you are unable to comply with any conditions, please contact us at the above address.

Also enclosed is a permit sign which is to be conspicuously posted at the project site and protected from the weather and a Notice of Commencement/Completion of Construction. Please note, the permit sign and Notice of Commencement/Completion of Construction form are sent to either the permittee or the facility application contact, not both.

Sincerely,

Gene R. Zamojcin
Environmental Analyst

GRZ/ls

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

PERMIT

Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
JOHN BORTOLIS
3400 HEWLETT AVE
MERRICK, NY 11566

Facility:
BORTOLIS PROPERTY
3400 HEWLETT AVE
MERRICK, NY 11566

Facility Application Contact:
ADON AUSTIN
RISING TIDE WATERFRONT SOLUTIONS
486 SUNRISE HWY STE 102
ROCKVILLE CENTRE, NY 11570
(516) 595-3483

Facility Location: in HEMPSTEAD in NASSAU COUNTY **Village:** Merrick
Facility Principal Reference Point: NYTM-E: 623.966 NYTM-N: 4499.781
Latitude: 40°38'22.5" Longitude: 73°32'02.3"
Project Location: 3400 Hewlett Ave - Watercourse - South Oyster Bay
Authorized Activity: In-place removal and replacement of the existing 84 linear foot functional bulkhead and two returns with an increase in elevation of up to 18 inches and backfill. Removal of the over-the-water platform remnants. Removal and reconstruction of the damaged fixed pier, ramp, boat lift and floating dock structures. All authorized activities must be in strict conformance with the attached plans stamped NYSDEC approved on 9/13/2018. (GRZ)

Permit Authorizations

Tidal Wetlands - Under Article 25
Permit ID 1-2820-03179/00003
New Permit Effective Date: 9/13/2018 Expiration Date: 9/12/2023
Water Quality Certification - Under Section 401 - Clean Water Act
Permit ID 1-2820-03179/00004
New Permit Effective Date: 9/13/2018 Expiration Date: 9/12/2023
Excavation & Fill in Navigable Waters - Under Article 15, Title 5
Permit ID 1-2820-03179/00005
New Permit Effective Date: 9/13/2018 Expiration Date: 9/12/2023

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: SUSAN ACKERMAN, Deputy Regional Permit Administrator
Address: NYSDEC Region 1 Headquarters
SUNY @ Stony Brook|50 Circle Rd
Stony Brook, NY 11790 -3409

Authorized Signature: _____ Date 9/13/2018

Distribution List

ADON AUSTIN
Marine Habitat Protection
EUGENE R ZAMOJCIN

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITION

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: TIDAL WETLANDS; WATER QUALITY CERTIFICATION; EXCAVATION & FILL IN NAVIGABLE WATERS

1. **Post Permit Sign** The permit sign enclosed with this permit shall be posted in a conspicuous location on the worksite and adequately protected from the weather.

2. **Notice of Commencement** At least 48 hours prior to commencement of the project, the permittee and contractor shall sign and return the top portion of the enclosed notification form certifying that they are fully aware of and understand all terms and conditions of this permit. Within 30 days of completion of project, the bottom portion of the form must also be signed and returned, along with photographs of the completed work.

3. **No Construction Debris in Wetland or Adjacent Area** Any debris or excess material from construction of this project shall be completely removed from the adjacent area (upland) and removed to an approved upland area for disposal. No debris is permitted in wetlands and/or protected buffer areas.

4. **Storage of Equipment, Materials** The storage of construction equipment and materials shall be confined to the upland area landward of the bulkhead or on a barge.

5. **Clean Fill Only** All fill shall consist of clean sand, gravel, or soil (not asphalt, slag, flyash, broken concrete or demolition debris).

6. **Grade to Match That Adjacent to Bulkhead** All fill must be graded to match the elevation of the land immediately adjacent to the bulkhead.

7. **Backfilling** All peripheral berms, cofferdams, rock revetments, seawalls, gabions, bulkheads or other approved shoreline stabilization structures shall be completed prior to placement of any fill material behind such structures.

8. **Replacement Bulkhead Maximum Height** The top elevation of the replacement bulkhead shall be no more than 18 inches higher than the existing bulkhead.

9. **No Seaward Extension of Bulkhead** The new bulkhead shall be constructed in place of the existing bulkhead with no seaward extension of the outermost bulkhead face.

10. **No Structures on Bulkhead** No permanent structures shall be installed on the authorized bulkhead without first obtaining written department approval (permit, modification, amendment).

11. **Excavation for Bulkhead/Structure** Prior to any construction or removal of bulkheads and other shoreline stabilization structures all backfill shall be excavated landward of the structure and retained so as not to enter the waterway, tidal wetland or protected buffer area.

12. **No Runoff Over or Through Bulkhead or into Wetland** There shall be no discharge of runoff or other effluent over or through any bulkhead or shoreline stabilization structure or into any tidal wetland or protected buffer area.

13. **Use of Treated Wood** The use of wood treated with Pentachlorophenol or other wood treatment not specifically approved by the Department for use in wetlands and/or marine waters, is strictly prohibited in the construction of structures that will be in contact with tidal waters.

14. **Float Installation** The float shall be installed only at the approved location with a minimum water depth of 2½ feet, measured at apparent low tide.

15. **No Dredging or Excavation** No dredging, excavating or other alteration of shoreline or underwater areas is authorized by this permit, nor shall issuance of this permit be construed to suggest that the Department will issue a permit for such activities in the future.

16. **No Permanent Structures on Dock** No permanent structures shall be installed on dock/catwalk/float without first obtaining written Department approval (permit, modification, or amendment).

17. **Docks at Property Lines** Docks/catwalks/floats must not:

    a. extend laterally beyond property lines,

    b. interfere with navigation, or

    c. interfere with other landowners riparian rights.

18. **Pilings at Property Lines** Pilings shall not:

    a. extend laterally beyond property lines,

    b. interfere with navigation, or

    c. interfere with other landowners riparian rights.

19. **Boat Lifts at Property Lines** Boat lift/davit shall not:

    a. extend laterally beyond property lines,

    b. interfere with navigation, or

    c. interfere with other landowners riparian rights.

20. **No Structures on Pilings** No structures, other than structures specifically authorized by this permit, shall be constructed on pilings without further authorization from the department (permit, modification or amendment).

21. **Install, Maintain Erosion Controls** Necessary erosion control measures, i.e., straw bales, silt fencing, etc., are to be placed on the downslope edge of any disturbed area. This sediment barrier is to be put in place before any disturbance of the ground occurs and is to be maintained in good and functional condition until thick vegetative cover is established.

22. **Contain Exposed, Stockpiled Soils** All disturbed areas where soil will be temporarily exposed or stockpiled for longer than 48 hours shall be contained by a continuous line of staked haybales / silt curtains (or other NYSDEC approved devices) placed on the seaward side between the fill and the wetland or protected buffer area. Tarps are authorized to supplement these approved methods.

23. **No Interference With Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.

24. **State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

25. **State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

26. **State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

27. **Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by Rising Tide Waterfront Solutions (six sheets), last revised 7/23/18 and stamped NYSDEC approved on 9/13/2018.

28. **Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. **Water Quality Certification** The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. **Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. **Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. **Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 1 Headquarters
SUNY @ Stony Brook|50 Circle Rd
Stony Brook, NY11790-3409

4. **Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Excavation & Fill in Navigable Waters, Tidal Wetlands, Water Quality Certification.

5. **Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

a. materially false or inaccurate statements in the permit application or supporting papers;

b. failure by the permittee to comply with any terms or conditions of the permit;

c. exceeding the scope of the project as described in the permit application;

d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;

e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. **Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification
The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit
The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits
The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

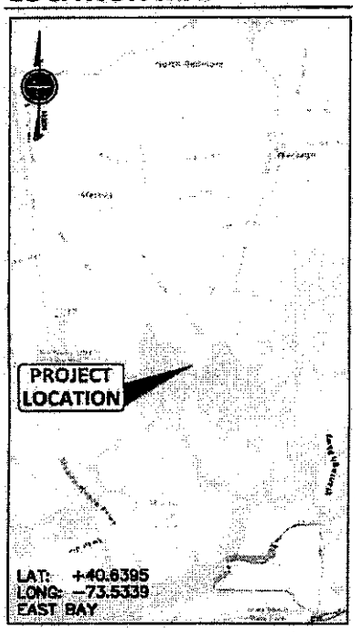
BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
23 JULY 2018

1/6

NYSDEC
APPROVED AS PER TERMS
AND CONDITIONS OF
PERMIT NO. 1-2825-03179/Sheet 3
DATE 9/13/2018 DRI

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENEUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516-595-3483
EMAIL: CONTACT@RT-WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08-30-2017
B:	USACE COMMENTS	09-19-2017
C:	NYSDEC COMMENTS	04-27-2018
D:	NYSDEC COMMENTS	07-23-2018

SKETCH INDEX

SK-1 TITLE SHEET & LOCATION MAP
SK-2 FACILITY PLAN
SK-3 HYDROGRAPHIC STUDY
SK-4 BULKHEAD SECTION
SK-5 FIXED PIER & FLOATING DOCK
SK-6 BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

- SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	-0.1	MEAN SEA LEVEL
MLW	±0.0	-1.9	MEAN LOW WATER
MLLW	-0.1	-2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER-WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 84 LF BULKHEAD SHALL BE REPLACED IN-PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER-WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4-PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

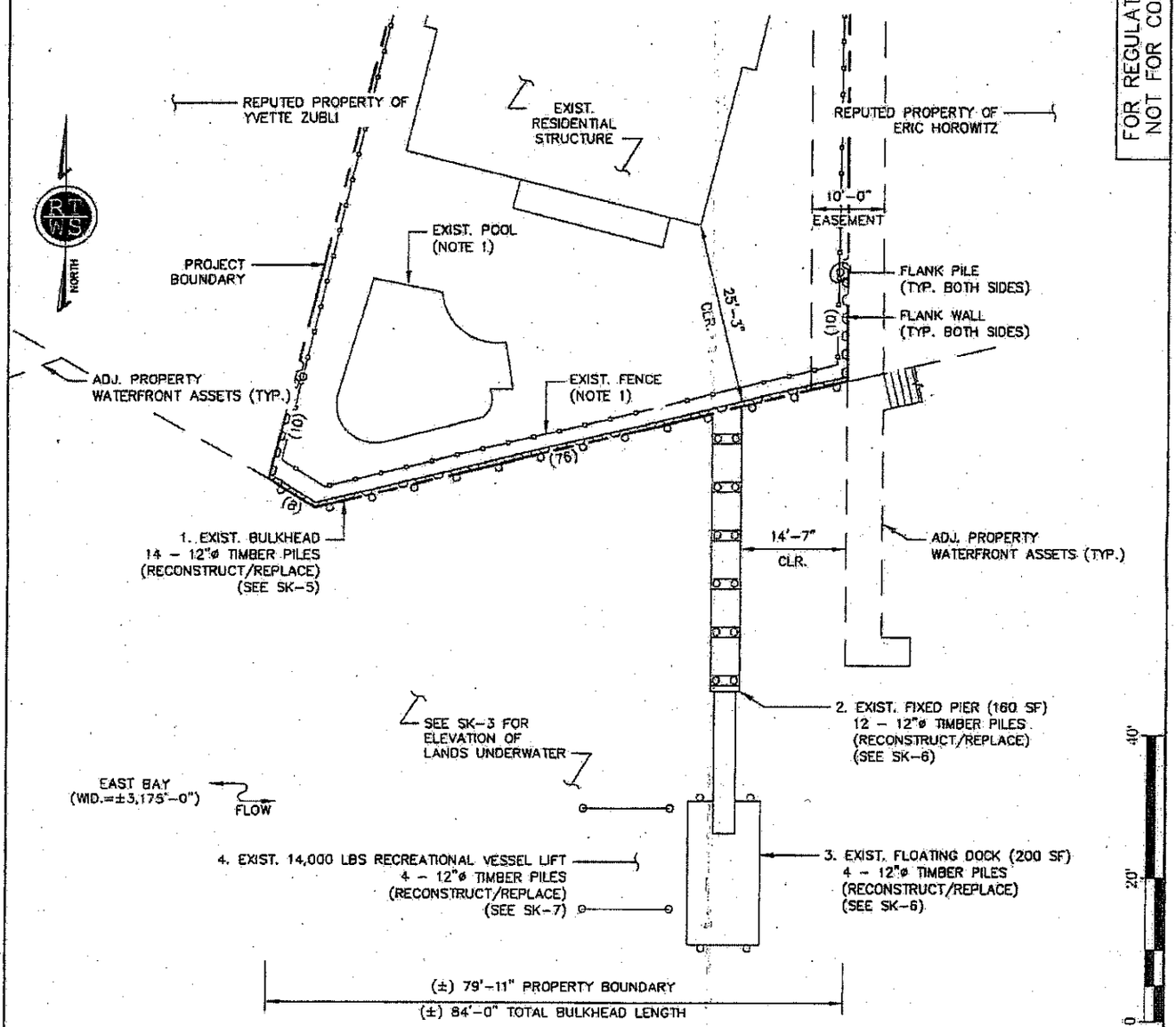
SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-1	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	N/A	Rising Tide | Waterfront Solutions 486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	DRAWN BY: JMK		DATE: 07/23/18	
1 OF 6 SHEET(S)	CHECKED BY: AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO.: D	SHEET: TITLE SHEET & LOCATION MAP

2/6

SCHEDULE D – SUMMARY OF PROPOSED ACTIVITY				
ITEM	UM	SIZE	AREA	NOTE(S)
1. BULKHEAD	FT	84	--	2
2. FIXED PIER	FT	40 X 4	160 SF	1
3. FLOATING DOCK	FT	20 X 10	200 SF	1
4. VESSEL LIFT	EA	1	--	1

NOTE(S):
1. LAWFULLY EXISTING OVER-WATER STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.
2. LAWFULLY EXISTING STRUCTURE REMAINING IN PLACE (I.E. NOT DESTROYED BY SUPERSTORM SANDY).

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



FACILITY PLAN

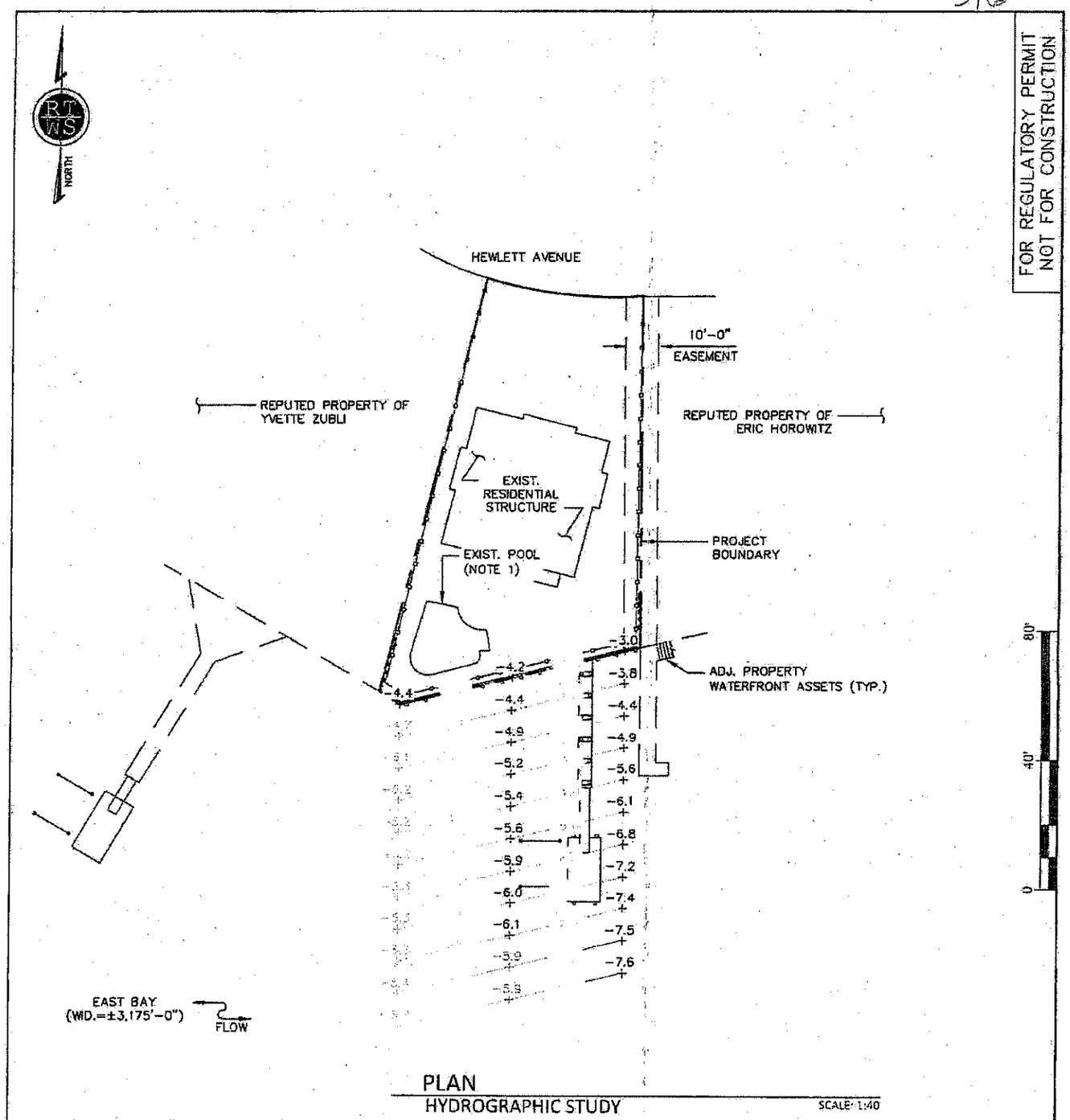
SCALE: 1:20

LEGEND:
(XX) BULKHEAD LENGTH IN FEET

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-2	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	1:20	Rising Tide | Waterfront Solutions
2 of 6 SHEET(S)	DRAWN BY JWK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET FACILITY PLAN

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



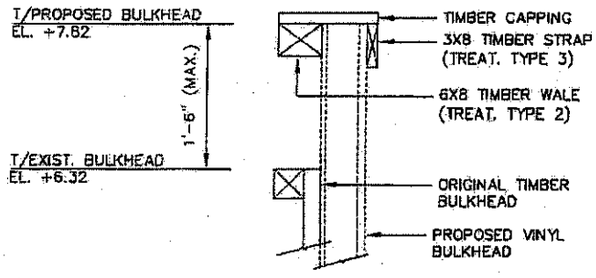
PLAN
HYDROGRAPHIC STUDY

SCALE: 1:40

LEGEND:
-X.X: LAND UNDERWATER ELEVATION (NAVD 88)
HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

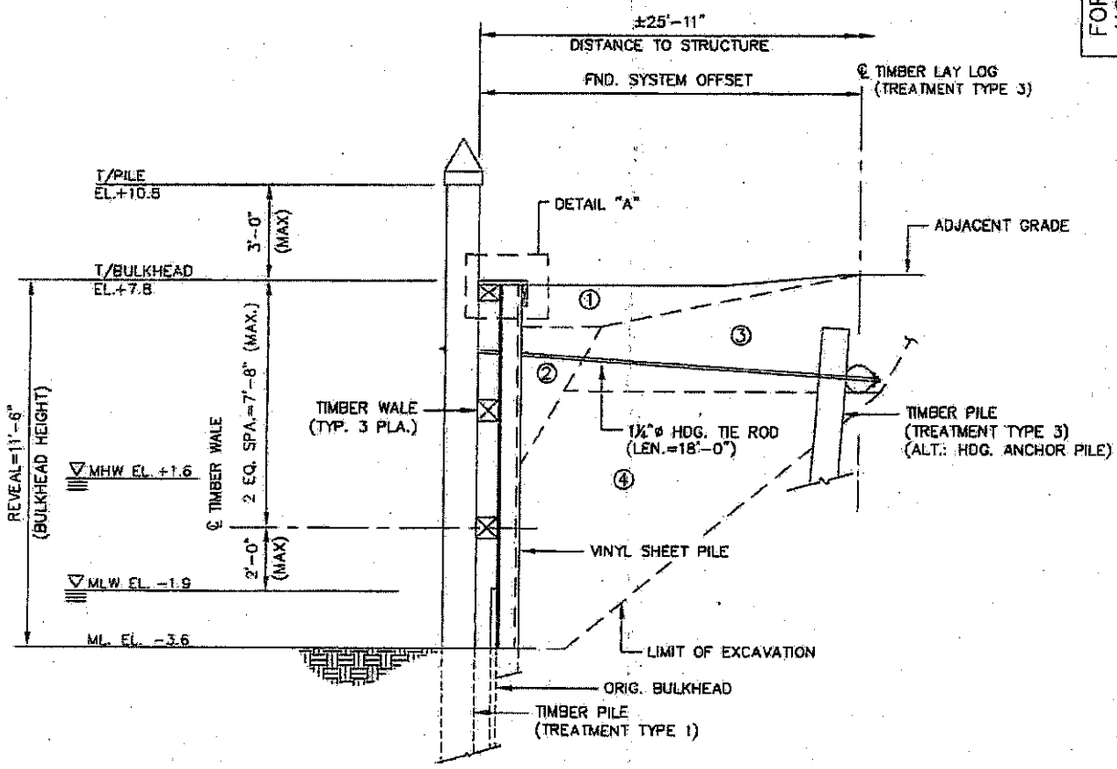
SHEET NO. SK-3 3 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:40	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET HYDROGRAPHIC STUDY



A / SK-5 DETAIL
T/BULKHEAD DEFINITION N.T.S.

TABLE 2 - FILL DESIGNATIONS		
ITEM	DESCRIPTION	QUANTITY
1	PLACED FILL REQ'D FOR 18" ELEVATION	24 CY
2	REPLACED ERODED/LOST FILL	0 CY
3	RECLAIMED/ORIGINAL FILL	80 CY
4	RECLAIMED/ORIGINAL FILL OR DREDGE SPOILS	152 CY

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

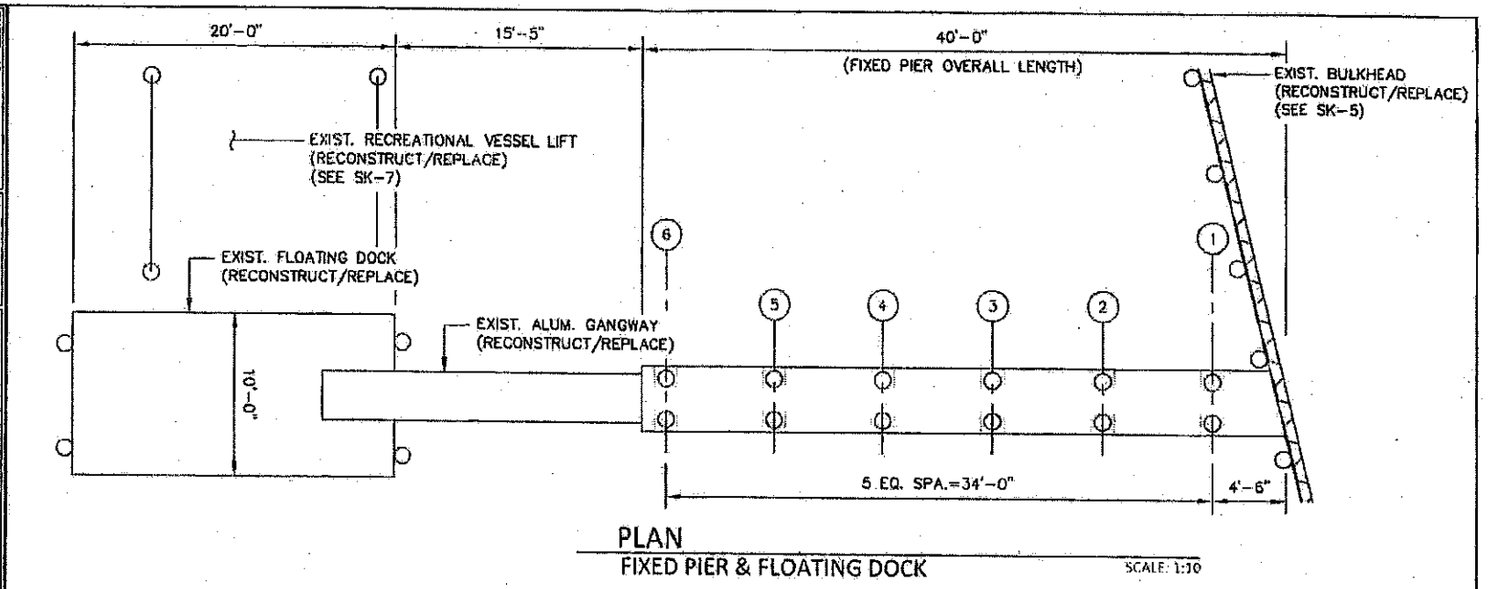


B / SK-4 SECTION
BULKHEAD/PLATFORM SCALE: 1:5

TABLE 3 - TIMBER TREATMENT		
TREATMENT TYPE	CCA RETENTION	DESCRIPTION
1	2.5	CCA TREATED PER AWPA-P5
2	2.5	CCA TREATED PER LATEST AWPA STANDARDS, COMMODITY SPECIFICATION A P 3.0
3	2.5	

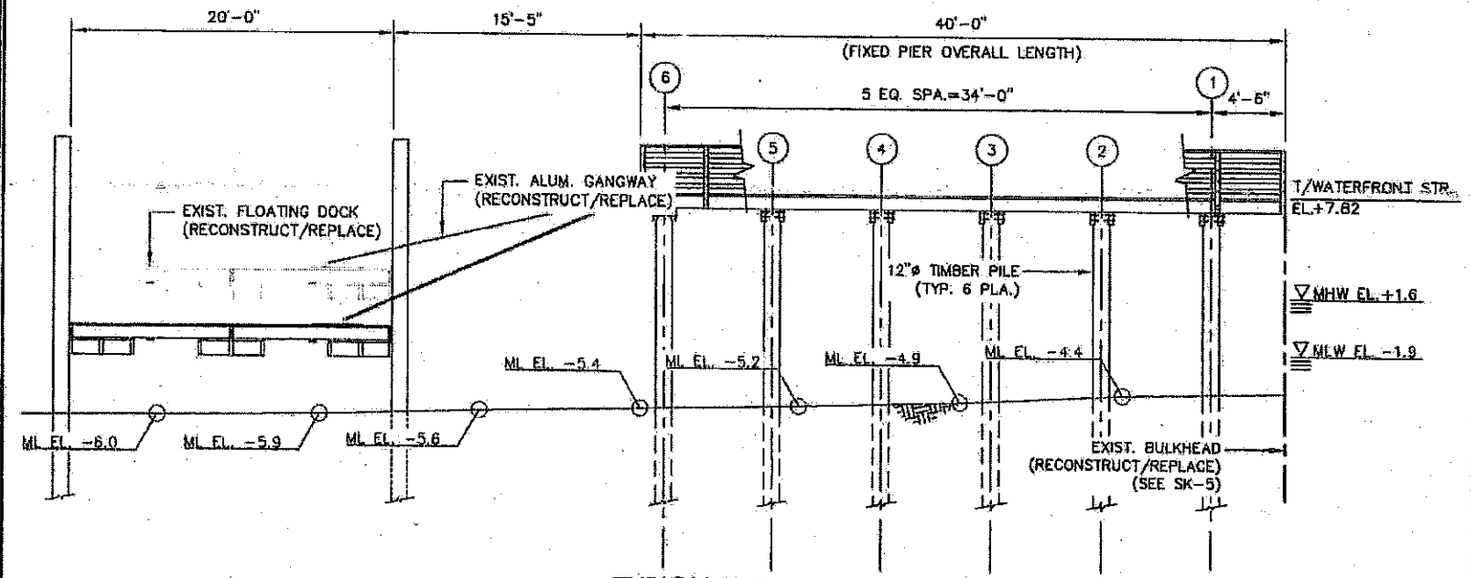
NOTE 1: APPURTENANCE(S) TO BE REMOVED/REINSTALLED AS DIRECTED BY HOMEOWNER. NOT SHOWN FOR CLARITY.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-4	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	1:5	Rising Tide | Waterfront Solutions
4 OF 6 SHEET(S)	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BULKHEAD/PLATFORM SECTION



PLAN
FIXED PIER & FLOATING DOCK

SCALE: 1:10



TYPICAL ELEVATION
FIXED PIER & FLOATING DOCK

SCALE: 1:10

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

SHEET NO. SK-5 5 OF 6 SHEET(S)

PROJECT NO. P170731.00
DRAWN BY JMK
CHECKED BY AMA

PROJECT
BULKHEAD REPLACEMENT
PREPARED FOR
MR. JOHN BORTOLIS
LOCATED AT
3400 HEWLETT AVENUE
MERRICK, NY 11566
EAST BAY
NASSAU COUNTY

SCALE 1:10
DATE 07/23/18
REVISION NO. 0

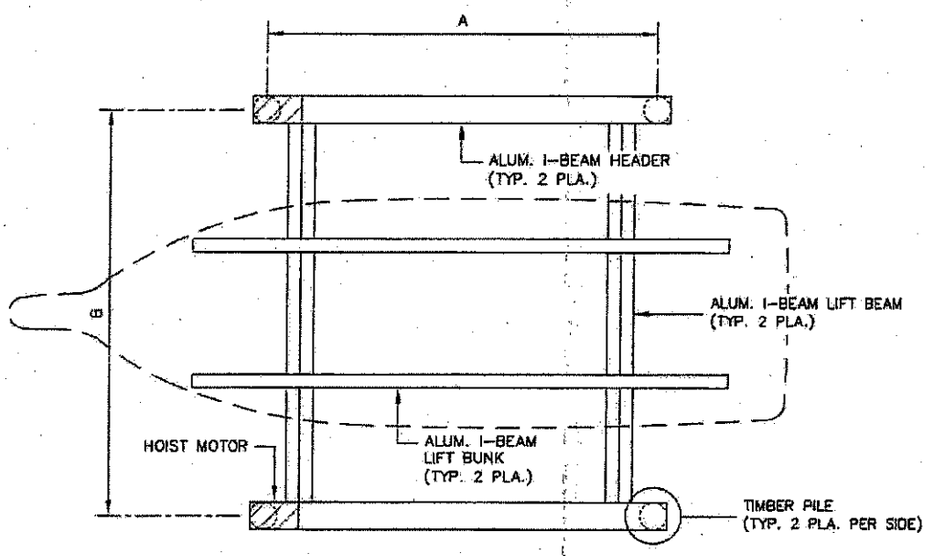
Rising Tide | Waterfront Solutions
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NEW YORK 11570

SHEET
FIXED PIER & FLOATING DOCK

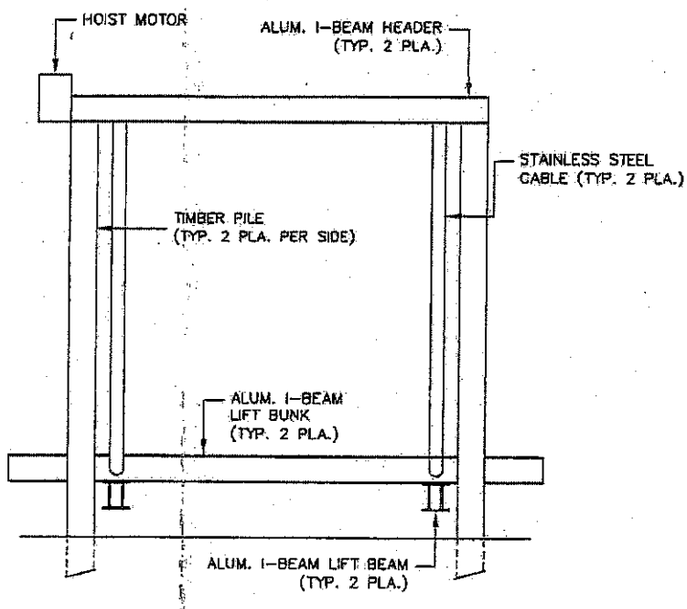
5/6

6/6

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
BOAT LIFT
SCALE: 1:5



ELEVATION
BOAT LIFT
SCALE: 1:5

SCHEDULE A - ALL SPACING TO CENTER OF PILE

LIFT CAPACITY	A	B	RECOMMENDED PILING SIZES
5,000 LBS	11'-0"	10'-0"	10"Ø
7,000 LBS	12'-0"	12'-0"	10"Ø
10,000 LBS	12'-0"	12'-6"	10"Ø
14,000 LBS	12'-0"	12'-6"	10"Ø
18,000 LBS	14'-0"	14'-0"	12"Ø
22,000 LBS	12'-0"	16'-0"	12"Ø
27,000 LBS	15'-0"	15'-0"	12"Ø
33,000 LBS	18'-0"	18'-0"	12"Ø

SHEET NO. SK-6 6 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JHK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BOAT LIFT

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

REGULATORY BRANCH

SEP 13 2018

SUBJECT: Permit File Number NAN-2017-01214-EME by John Bortolis in East Bay (South Oyster Bay)

1. PERMITTEE:
John Bortolis
3400 Hewlett Avenue
Merrick, NY 11566

2. On September 11, 2017, the New York District of the U.S. Army Corps of Engineers received a request for Department of the Army authorization for the following work:

> [Under Nationwide Permit Number 3 (MAINTENANCE)], reconstruct previously authorized structures destroyed by Hurricane Sandy, including a fixed pier, four (4) feet wide by 40 feet long; ramp, three (3) feet wide by 20 feet long; float, ten (10) feet wide by 20 feet long; and elevated boat lift on the west side of the float, 10-feet wide by 19-feet long, with four (4) 12-inch diameter timber piles. The deck, pier, and ramp will be supported by a total of twenty-eight (28) 12-inch diameter timber piles. In addition, replace, in-place and in-kind, approximately 83-linear feet of existing vinyl bulkhead up to 18-inches higher.

The project is located in East Bay, at 3400 Hewlett Avenue, in the town of Hempstead, Nassau County, New York.

3. The specific applicant-provided details are as shown on the attached permit drawings, titled "Bulkhead Replacement", dated July 23, 2018, prepared by Rising Tide Waterfront Solutions.

4. This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District of the U.S. Army Corps of Engineers.

5. Based on the information submitted to this office and accomplishment of any required notification in accordance with the applicable federal requirements, our review of the subject work indicates that an individual Department of the Army permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Number 3 (MAINTENANCE) in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). The nationwide permits are prescribed at Reissuance of Nationwide Permits in the Federal Register dated January 6, 2017 (82 FR 1860). The subject work may be performed without further authorization from this office provided it complies with

Sections A through D of NWP Number 3 (MAINTENANCE); New York District regional conditions; the following work-specific Special Conditions listed below; and any applicable regional conditions added by the State of New York.

6. Other than the work-specific Special Conditions listed below, the 2017 nationwide general permits in the State of New York, including their final regional conditions, water quality certifications, and coastal zone concurrence statements are available at:

www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/Regional%20Gen%20Permit/PN-RB%20NAN%20FinalRegionalConditionsWQC%20CZMforNYdated%2021-MAR-2017.pdf

If you require a specific paper copy, please contact our Regulator-of-the-Day at 917-790-8511 to request one be mailed to you. Please be sure to have the above eighteen-character file number readily available when you call.

7. Work-specific Special Conditions:

(A) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

(B) The permittee shall sign and submit the attached compliance certification form to this office **within 30 days of COMPLETION** of the regulated activity authorized by this permit and any mitigation work required by Special Condition.

(C) To avoid impacts to species listed under the Endangered Species Act, turbidity curtains, or other methods to control turbidity, shall be used when operationally feasible and ESA-listed species may be present.

(D) The permittee, and their agents, shall take actions to prevent construction materials, including debris, from entering any waterway to become drift or pollution hazards.

8. Please note that this nationwide permit (NWP) verification is based on a preliminary jurisdictional determination (JD). A preliminary JD is not appealable. If you wish, prior

to commencement of the authorized work you may request an approved JD, which may be appealed, by contacting the New York District, U.S. Army Corps of Engineers for further instruction. To assist you in this decision and address any questions you may have on the differences between preliminary and approved jurisdictional determinations, please review U.S. Army Corps of Engineers Regulatory Guidance Letter No. 16-01, which can be found at:

http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_6-01_app1-2.pdf

9. This verification is valid until **March 18, 2022**, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid until March 18, 2022, if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

10. In order for us to better serve you and others, please complete our Customer Service Survey located at:

http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx

11. If any questions should arise concerning this authorization, please contact Ms. Lisa Grudzinski, of my staff, at (917)790-8428. If you have general questions or require a specific paper copy, please contact our Regulator-of-the-Day at (917)790-8511 to request one be mailed to you. Please be sure to have the above eighteen-character file number readily available when you call.

Sincerely,

Ronald R. Pinzon
Chief, Eastern Section

Enclosures

Copies furnished: Rising Tide Waterfront Solutions, Attn: Adon Austin (agent)

NATIONWIDE GENERAL PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM

Permit File Number: NAN-2017-01214-EME
Permittee: John Bortolis
Location: 3400 Hewlett Avenue, town of Hempstead, Nassau County, New York.

Date Permit Letter Issued: SEP 13 2018

Within 30 days of the completion of the activity authorized by this nationwide general permit and any mitigation required in the verification letter, please sign this certification and return it to the address at the bottom of this form.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the permit's terms and conditions you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced nationwide general permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

_____ _____
Signature of Permittee Date

FOLD THIS FORM INTO THIRDS, WITH THE BOTTOM THIRD FACING OUTWARD. TAPE IT TOGETHER AND MAIL TO THE ADDRESS BELOW OR FAX (212) 264-4260.

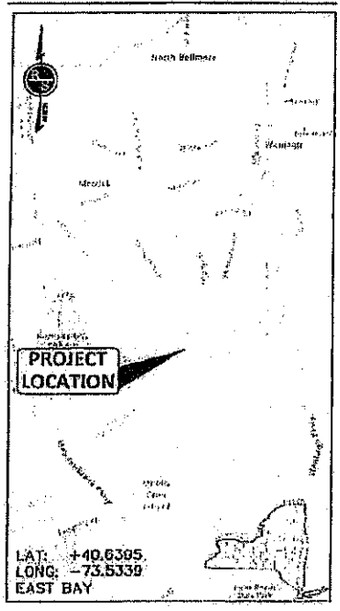
PLACE
STAMP
HERE

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
ATTN: CENAN-OP-RE
NEW YORK, NEW YORK 10278-0090

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
23 JULY 2018

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENEUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516-595-3483
EMAIL: CONTACT@RT-WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08-30-2017
B:	USACE COMMENTS	09-19-2017
C:	NYSDEC COMMENTS	04-27-2018
D:	NYSDEC COMMENTS	07-23-2018

SKETCH INDEX

SK-1	TITLE SHEET & LOCATION MAP
SK-2	FACILITY PLAN
SK-3	HYDROGRAPHIC STUDY
SK-4	BULKHEAD SECTION
SK-5	FIXED PIER & FLOATING DOCK
SK-6	BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

- SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	-0.1	MEAN SEA LEVEL
MLW	±0.0	-1.9	MEAN LOW WATER
MLLW	-0.1	-2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER-WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 84 LF BULKHEAD SHALL BE REPLACED IN-PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER-WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4-PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

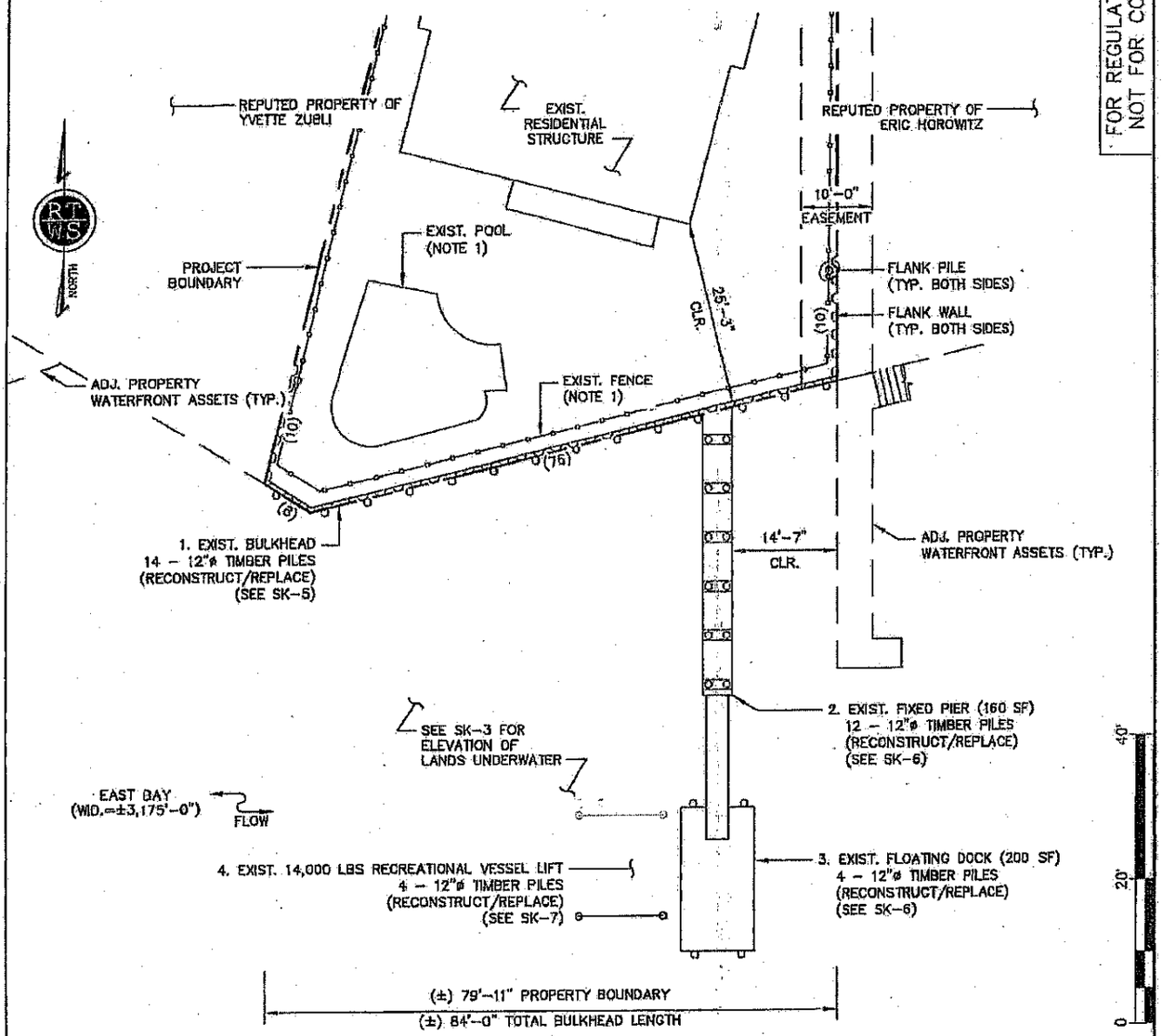
SHEET NO.	PROJECT NO.	PROJECT	SCALE	Rising Tide | Waterfront Solutions
SK-1	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	N/A	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
1 or 6 SHEET(S)	DRAWN BY JMK		DATE 07/23/18	SHEET TITLE SHEET & LOCATION MAP
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. D	

SEP 13 2018

SCHEDULE D – SUMMARY OF PROPOSED ACTIVITY				
ITEM	UM	SIZE	AREA	NOTE(S)
1. BULKHEAD	FT	84	---	2
2. FIXED PIER	FT	40 X 4	160 SF	1
3. FLOATING DOCK	FT	20 X 10	200 SF	1
4. VESSEL LIFT	EA	1	---	1

NOTE(S):
1. LAWFULLY EXISTING OVER-WATER STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.
2. LAWFULLY EXISTING STRUCTURE REMAINING IN PLACE (I.E. NOT DESTROYED BY SUPERSTORM SANDY).

FOR REGULATORY PERMIT NOT FOR CONSTRUCTION



FACILITY PLAN

SCALE: 1:20

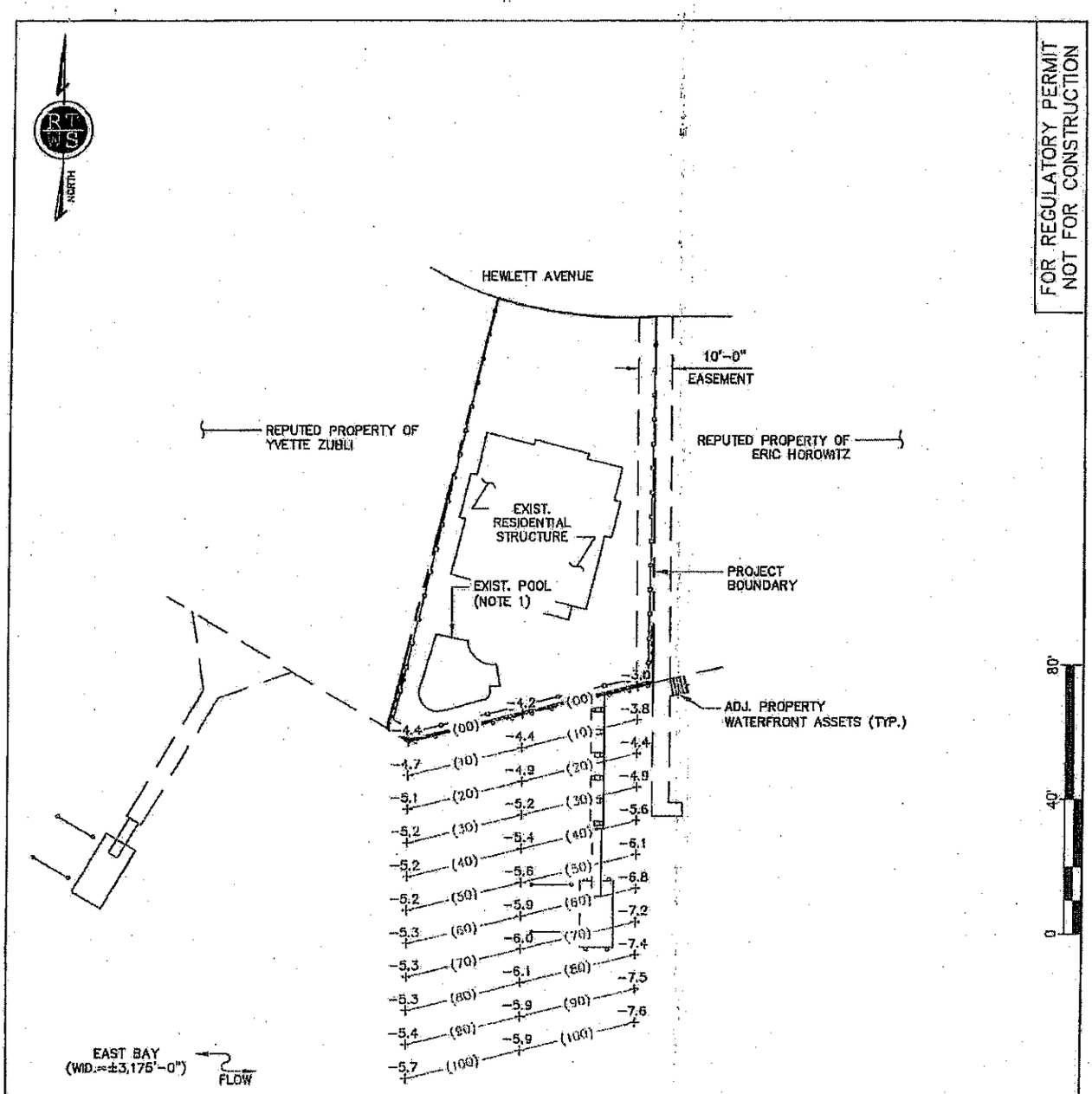
LEGEND:
(XX) BULKHEAD LENGTH IN FEET

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	Rising Tide | Waterfront Solutions
SK-2	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:20	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
2 OF 6 SHEET(S)	DRAWN BY JWK		DATE 07/23/18	
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. 0	SHEET FACILITY PLAN

SEP 13 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
HYDROGRAPHIC STUDY

SCALE: 1:40

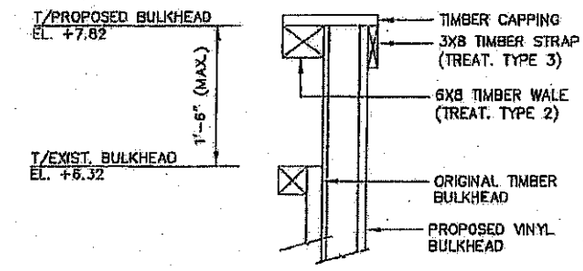
LEGEND:
-X.X: LAND UNDERWATER ELEVATION (NAVD 88)
-(XX)-: HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	Rising Tide | Waterfront Solutions
SK-3	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:40	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
3 OF 6 SHEET(S)	DRAWN BY: JWK		DATE: 07/23/18	
	CHECKED BY: AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO.: 0	SHEET: HYDROGRAPHIC STUDY

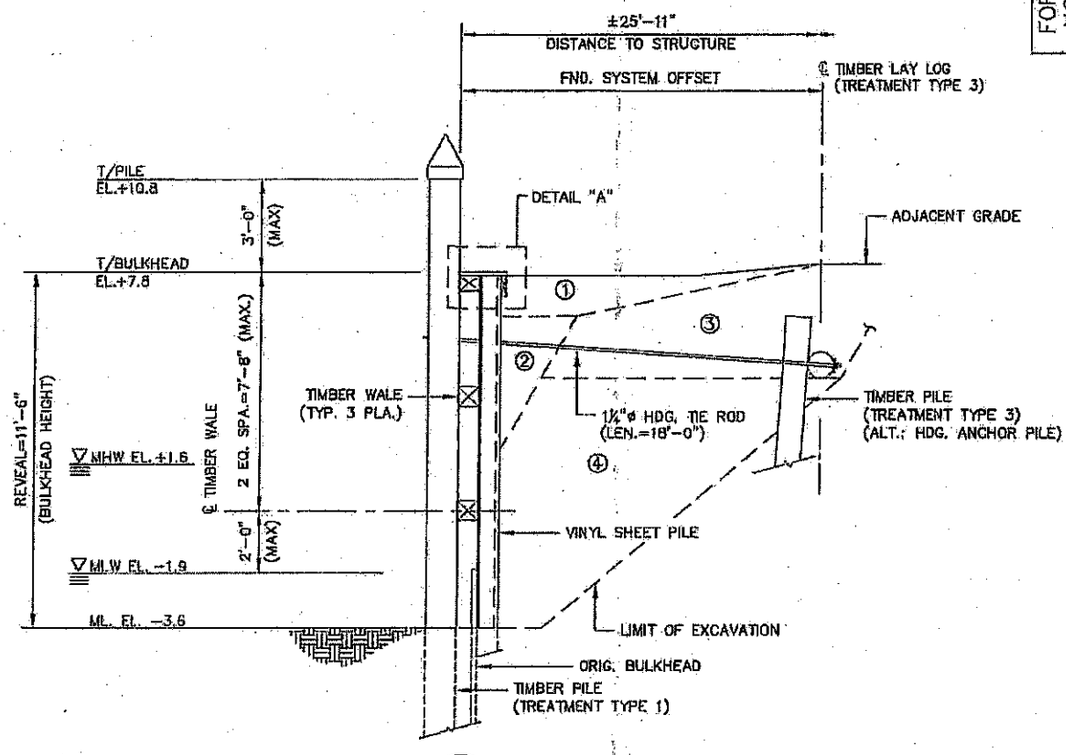
SEP 13 2018

TABLE 2 - FILL DESIGNATIONS		
ITEM	DESCRIPTION	QUANTITY
1	PLACED FILL REQ'D FOR 18" ELEVATION	24 CY
2	REPLACED ERODED/LOST FILL	0 CY
3	RECLAIMED/ORIGINAL FILL	80 CY
4	RECLAIMED/ORIGINAL FILL OR DREDGE SPOILS	152 CY



A / SK-5 DETAIL
T/BULKHEAD DEFINITION N.T.S.

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



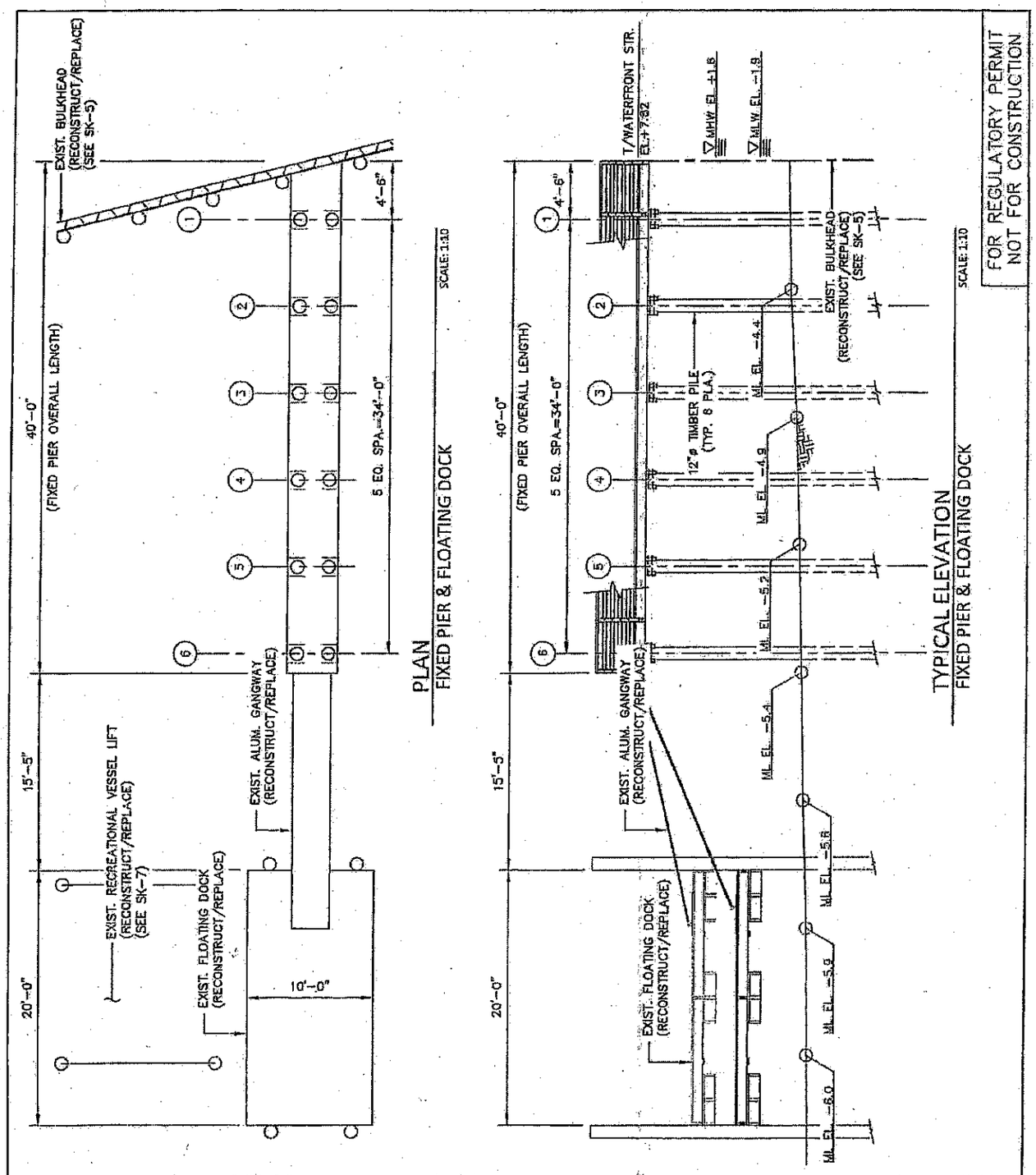
B / SK-4 SECTION
BULKHEAD/PLATFORM SCALE: 1:5

TABLE 3 - TIMBER TREATMENT		
TREATMENT TYPE	CCA RETENTION	DESCRIPTION
1	2.5	CCA TREATED PER AWPA-P5
2	2.5	CCA TREATED PER LATEST AWPA STANDARDS, COMMODITY SPECIFICATION A.P 3.0
3	1.5	

NOTE 1: APPURTENANCE(S) TO BE REMOVED/REINSTALLED AS DIRECTED BY HOMEOWNER. NOT SHOWN FOR CLARITY.

SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-4	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	1:5	Rising Tide | Waterfront Solutions
4 OF 6 SHEET(S)	DRAWN BY JWK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BULKHEAD/PLATFORM SECTION

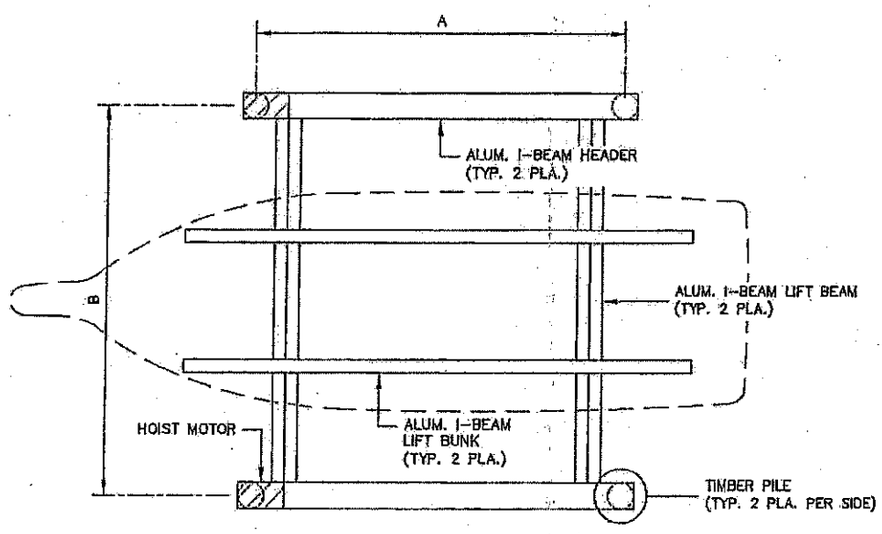
SEP 13 2018



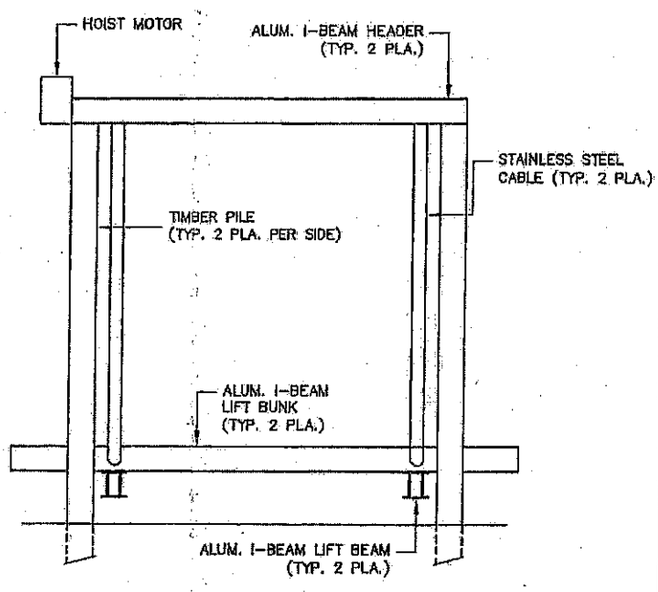
SHEET NO.	PROJECT NO.	PROJECT	SCALE	
SK-5	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:10	Rising Tide | Waterfront Solutions
5 of 6 SHEET(S)	DRAWN BY JWK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. D	SHEET FIXED PIER & FLOATING DOCK

SEP 13 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
BOAT LIFT
SCALE: 1:5



ELEVATION
BOAT LIFT
SCALE: 1:5

SCHEDULE A - ALL SPACING TO CENTER OF PILE			
LIFT CAPACITY	A	B	RECOMMENDED PILING SIZES
5,000 LBS	11'-0"	10'-0"	10"ø
7,000 LBS	12'-0"	12'-0"	10"ø
10,000 LBS	12'-0"	12'-6"	10"ø
14,000 LBS	12'-0"	12'-6"	10"ø
18,000 LBS	14'-0"	14'-0"	12"ø
22,000 LBS	12'-0"	16'-0"	12"ø
27,000 LBS	16'-0"	16'-0"	12"ø
33,000 LBS	18'-0"	18'-0"	12"ø

SHEET NO. SK-6 6 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JWK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BOAT LIFT

SEP 13 2018

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

June 4, 2018

Mr. Mathew Kehoe
Rising Tide Waterfront Solutions
Principal Director
48 Sunrise Highway, Suite 102
Rockville Centre, New York 11570

Re: **F-2018-0540** *(formerly F-2017-0834)*
U.S. Army Corps of Engineers/New York District Permit Application – John Bortolis
Replacement of previously authorized over the water-storm damaged structures with similar dimension and foot-print to include in-place replacement of: 84 linear feet of bulkhead, 160 square feet over the water platform, 40'x4' fixed pier, 20'x10' floating dock and four (4) pile 1400 lbs. boat lift per plans dated 4/27/2018
General Concurrence – Modification of Previously Reviewed Activity

Dear Mr. Kehoe:

The Department of State received your updated plans and policy responses on May 21, 2018.

The Department of State has determined that the proposal outlined in the updated plans, meets the Department's general consistency concurrence criteria. Therefore, further review of the proposed activity by the Department of State, and the Department's concurrence with an individual consistency certification for the proposed activity, are not required.

This General Concurrence is without prejudice to and does not obviate the need to obtain all other applicable licenses, permits, other forms of authorization or approval that may be required pursuant to existing State statutes. Specifically, it appears that you may require authorization from the New York State Department of Environmental Conservation (DEC). Please contact the DEC region 1 office to determine if their authorization is required.

When communicating with us regarding this matter, please contact us at (518) 474-6000 and refer to our file #F-2018-0540.

Sincerely,

Jeffrey Zappieri
Supervisor, Consistency Review Unit
Office of Planning, Development and
Community Infrastructure

JZ/dn

NEW YORK STATE OF OPPORTUNITY. | Department of State

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/08/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Atlantic Agency Huntington, Inc
1152 E Jericho Turnpike
Huntington, NY 11743

CONTACT NAME: VA1
PHONE (A/C, No, Ext): 631.244.7784 x2 FAX (A/C, No): 631.709.5014
E-MAIL ADDRESS: CS@atlanticagency.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	Evanston Insurance Co	35378
INSURER B :	NATIONAL GENERAL INSURANCE	12130
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

INSURED

KITZEN CONSTRUCTION LLC
4071 GREENTREE DRIVE
OCEANSIDE, NY 11572

COVERAGES CERTIFICATE NUMBER: 00000000-0 REVISION NUMBER: 25

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			9CD6592-2	05/03/2018	05/03/2019	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 50,000
							MED EXP (Any one person)	$ 1,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER							$
B	AUTOMOBILE LIABILITY			2003946066-01	06/14/2018	06/14/2019	COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$ 50,000
	OWNED AUTOS ONLY / X SCHEDULED AUTOS						BODILY INJURY (Per accident)	$ 100,000
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$ 50,000
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N / N/A						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Breakwater Construction Including Excavation / Grading of land / paint and drywall / Marina Operators construction Liability - Job: 3187 Eastern Pkwy, Baldwin, NY 11510 - The Certificate of Insurance is issued subject to all policy terms, conditions, limitations, exclusions and language of the policy.

CERTIFICATE HOLDER

Town of Hempstead Waterways
1 Parkside Rd Dr
POINT LOOKOUT, NY 11569

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Eric Hubert

(VA1)

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Printed by VA1 on January 08, 2019 at 11:18PM

New York State Insurance Fund

Workers' Compensation & Disability Benefits Specialists Since 1914

8 CORPORATE CENTER DR, 2ND FLR, MELVILLE, NEW YORK 11747-3166

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^^^^^^ 812393653
ATLANTIC AGENCY HUNTINGTON INC
1469 DEER PARK AVE
NORTH BABYLON NY 11703

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
KITZEN CONSTRUCTION LLC 4071 GREENTREE DR OCEANSIDE NY 11572	TOWN OF HEMPSTEAD WATERWAYS 1 PARKSIDE RD DR POINT LOOKOUT NY 11569

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
H2388 426-5	412342	05/03/2018 TO 05/03/2019	1/8/2019

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2388 426-5, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW, AND, WITH RESPECT TO OPERATIONS OUTSIDE OF NEW YORK, TO THE POLICYHOLDER'S REGULAR NEW YORK STATE EMPLOYEES ONLY.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THIS POLICY DOES NOT COVER THE SOLE PROPRIETOR, PARTNERS AND/OR MEMBERS OF A LIMITED LIABILITY COMPANY.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

Sherwin Taylor

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 959751568

U-26.3

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
KITZEN CONSTRUCTION LLC
ATTN: STEVEN KITZEN
4071 GREENTREE DRIVE
OCEANSIDE, NY 11572

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

1b. Business Telephone Number of Insured
516-375-7015

1c. Federal Employer Identification Number of Insured or Social Security Number
812393653

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
TOWN OF HEMPSTEAD WATERWAYS
1 PARKSIDE RD DR
POINT LOOKOUT, NY 11569

3a. Name of Insurance Carrier
ShelterPoint Life Insurance Company

3b. Policy Number of Entity Listed in Box "1a"
DBL485782

3c. Policy effective period
05/06/2018 to 05/05/2020

4. Policy provides the following benefits:
- [x] A. Both disability and paid family leave benefits.
- [ ] B. Disability benefits only.
- [ ] C. Paid family leave benefits only.

5. Policy covers:
- [x] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 1/8/2019 By _____
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 516-829-8100 Name and Title Richard White, Chief Executive Officer

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note:** Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. **Insurance brokers are NOT authorized to issue this form.

TOWN OF HEMPSTEAD
DEPARTMENT OF
CONSERVATION AND WATERWAYS

PERMIT

STRUCTURES IN WATERWAYS

Type of Use: Commercial ( ) Residential (X)

Permit Number 7156-065-19* Date July 17, 2019

Sec. 63 Block 322 Lot/s 34

Issue to John Bertolis

Address 3400 Hewlett Ave., Merrick 11566

Name of Waterway (s) East Bay

*Replaces previous permit #776 last amended on 7/8/19.

A permit to construct and maintain in safe condition:

One 40'x4' pier to ramp to 20'x10' floating dock with 4 pile boat lift on West side of float. Any structures/mooring of any kind strictly prohibited on East side entire structure, pier, ramp & float.

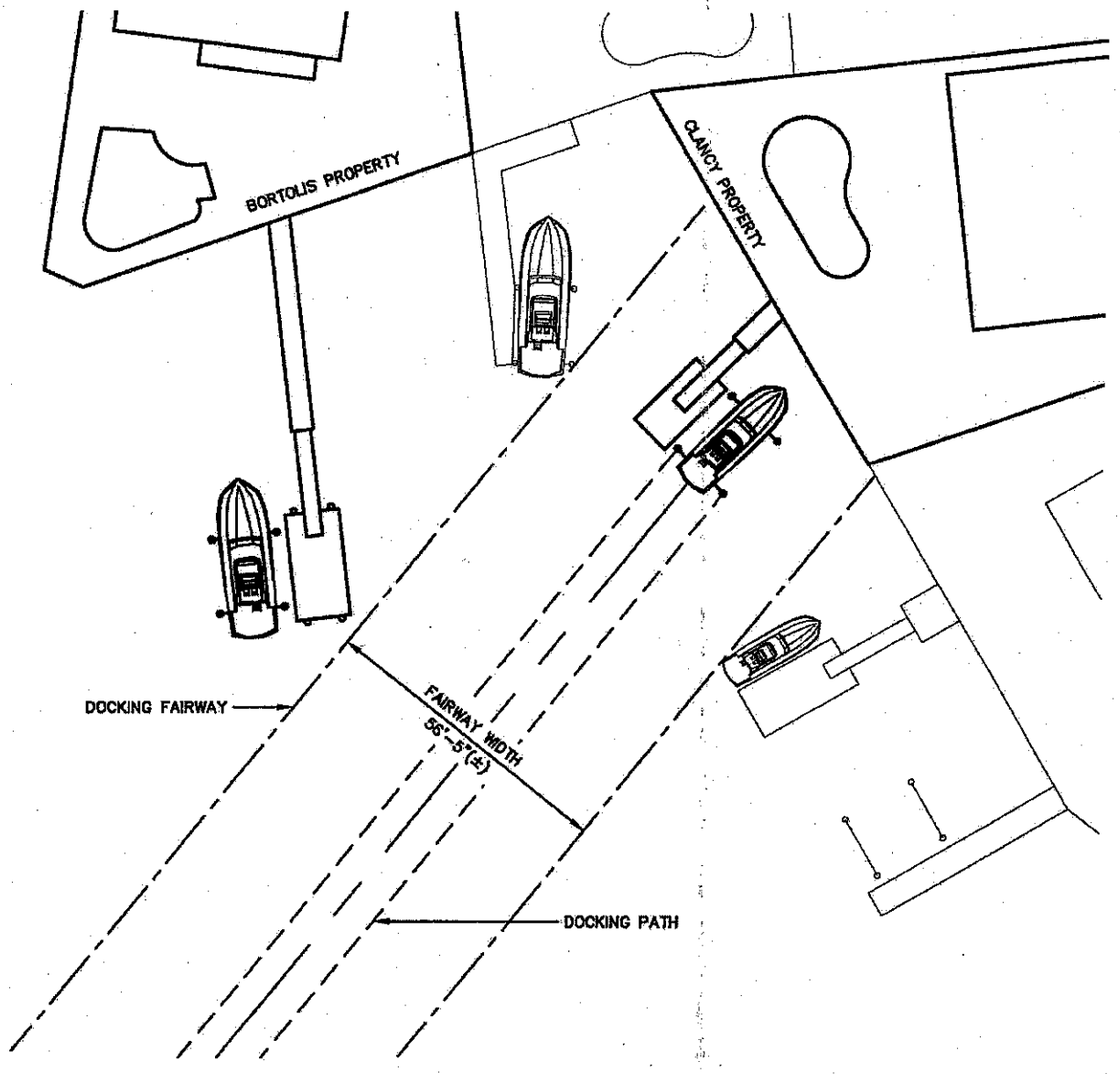
GENERAL CONDITIONS

1. No structure shall infringe on adjacent property owner's riparian rights or in any way cause a hazard to navigation.
2. This permit must be conspicuously displayed at the site of work.
3. Permit issued subject to inspection at all times.
4. All bulkheading to be constructed wholly within property line of ownership.
5. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, N.Y.S. Dept. of Environmental Conservation or local government which may be required.
6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description, resulting from the said project.

Thomas E Dolan

PERMIT ADMINISTRATOR

EXHIBIT F



PLAN
DOCKING FAIRWAY - CLANCY

SCALE: 1"=30'-0"

SHEET NO. F-1 1 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JHK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET CLANCY DOCKING FAIRWAY

EXHIBIT E

EXHIBIT D

TOWN OF HEMPSTEAD
DEPARTMENT OF
CONSERVATION AND WATERWAYS

PERMIT

STRUCTURES IN WATERWAYS

To Rising Tide

Type of Use: Commercial ( ) Residential (X)

Permit Number 776-065-19* Date March 27, 2019

Sec. 63 Block 322 Lot/s 34

Issue to John Bortolis

Address 3400 Hewlett Ave., Merrick 11566

Name of Waterway (s) East Bay

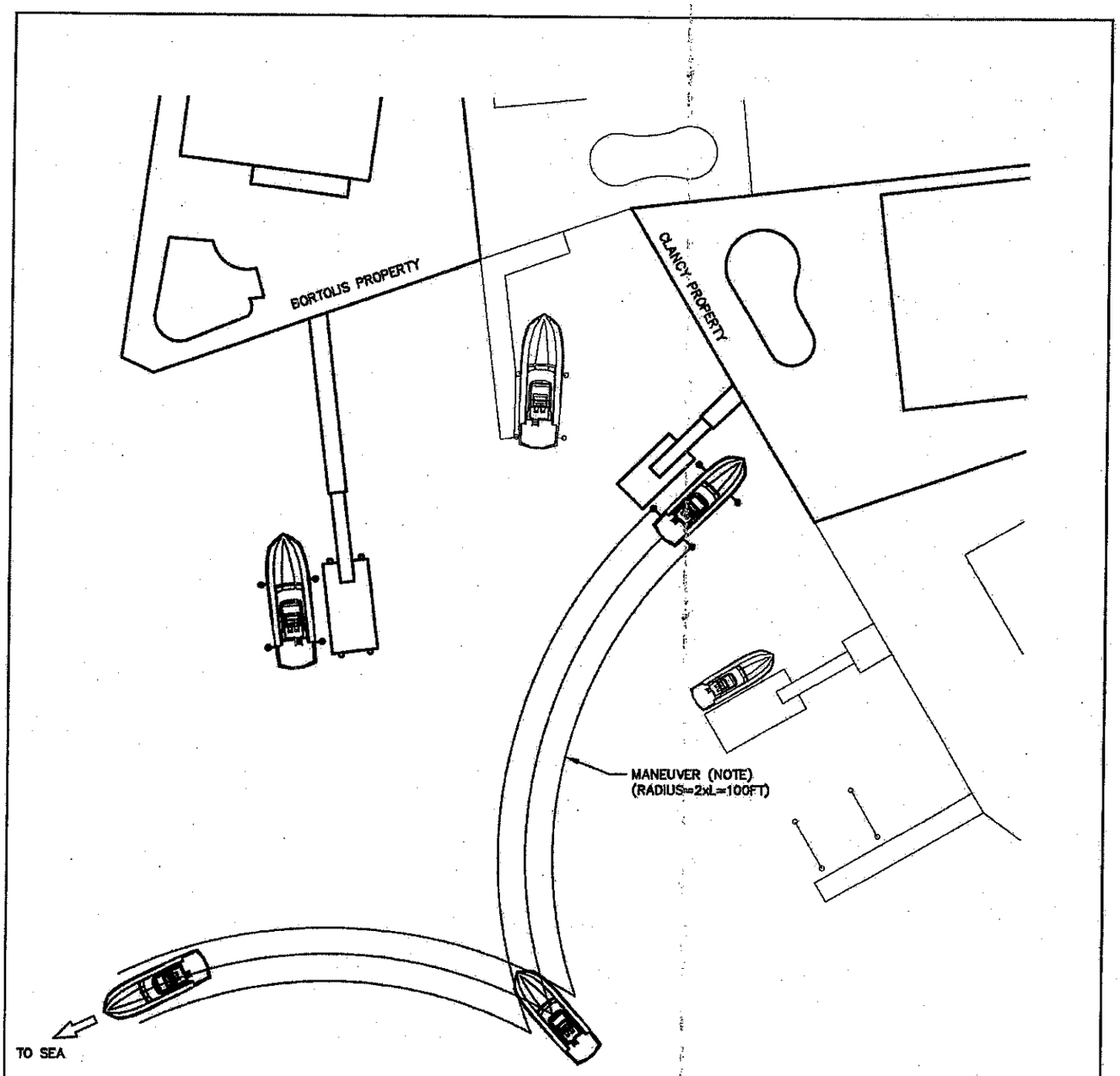
A permit to construct and maintain in safe condition:

*Amend original permit, structures moved westward approx. 35' from property line: 40'x4' pier, ramp, 20'x10' float and 4-pile boat lift located on east side of float.

GENERAL CONDITIONS

1. No structure shall infringe on adjacent property owner's riparian rights or in any way cause a hazard to navigation.
2. This permit must be conspicuously displayed at the site of work.
3. Permit issued subject to inspection at all times.
4. All bulkheading to be constructed wholly within property line of ownership.
5. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, N.Y.S. Dept. of Environmental Conservation or local government which may be required.
6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description, resulting from the said project.

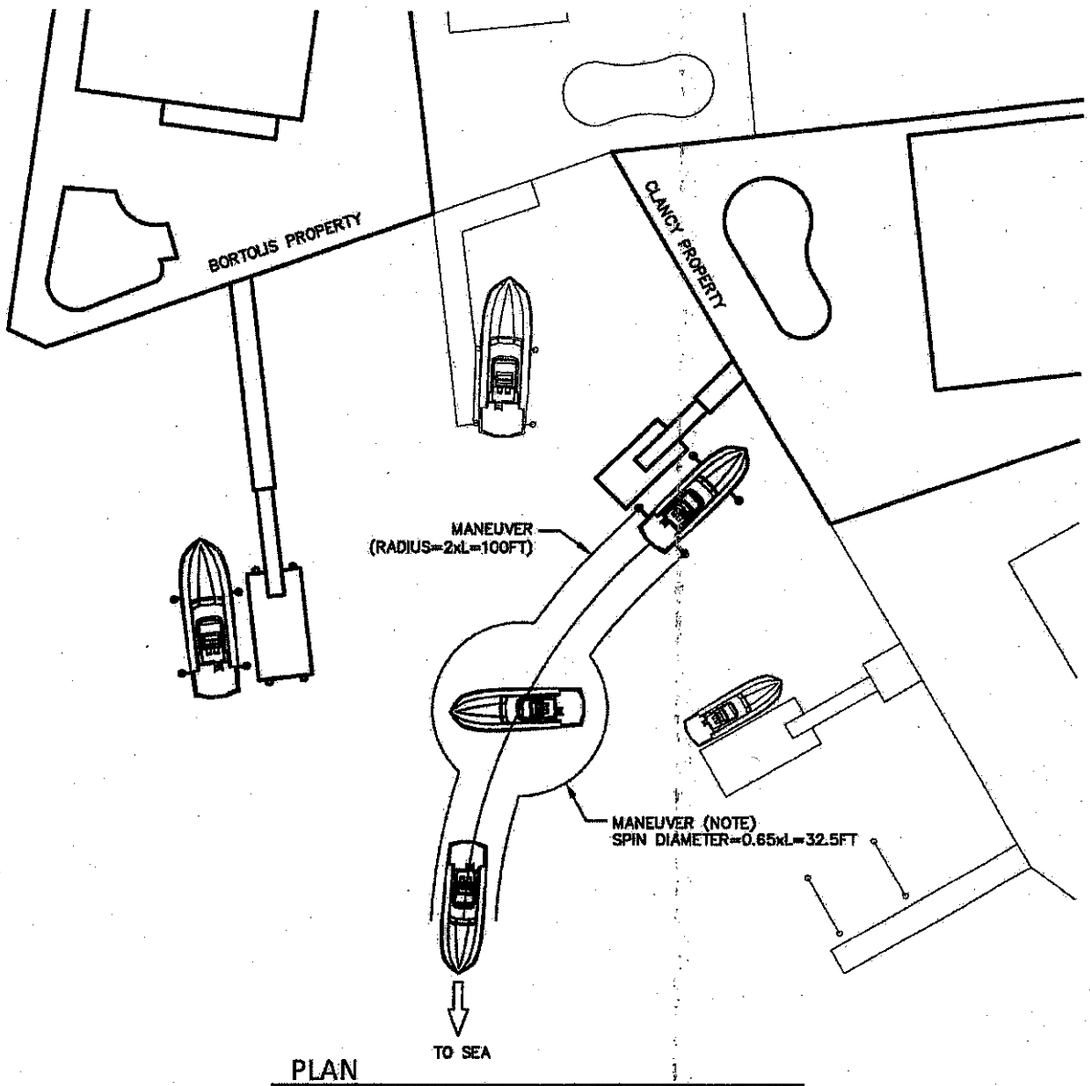
PERMIT ADMINISTRATOR



PLAN
REVERSE AND PIVOT - CLANCY
SCALE: 1"=30'-0"

NOTE: MANEUVER ILLUSTRATES THE AVAILABLE TURN RADII PER ASCE RECOMMENDATIONS FOR A 50FT VESSEL OPERATING IN WIND AND CURRENT CONDITIONS . THE AVAILABLE MANEUVER PROVIDES A TURN RADIUS OF 100'-0" FT, WHICH IS 2 TIMES A 50FT VESSEL LENGTH.

SHEET NO. F-2 2 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JMK	PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL.	DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	REVISION NO. 0	SHEET CLANCY REVERSE AND PIVOT

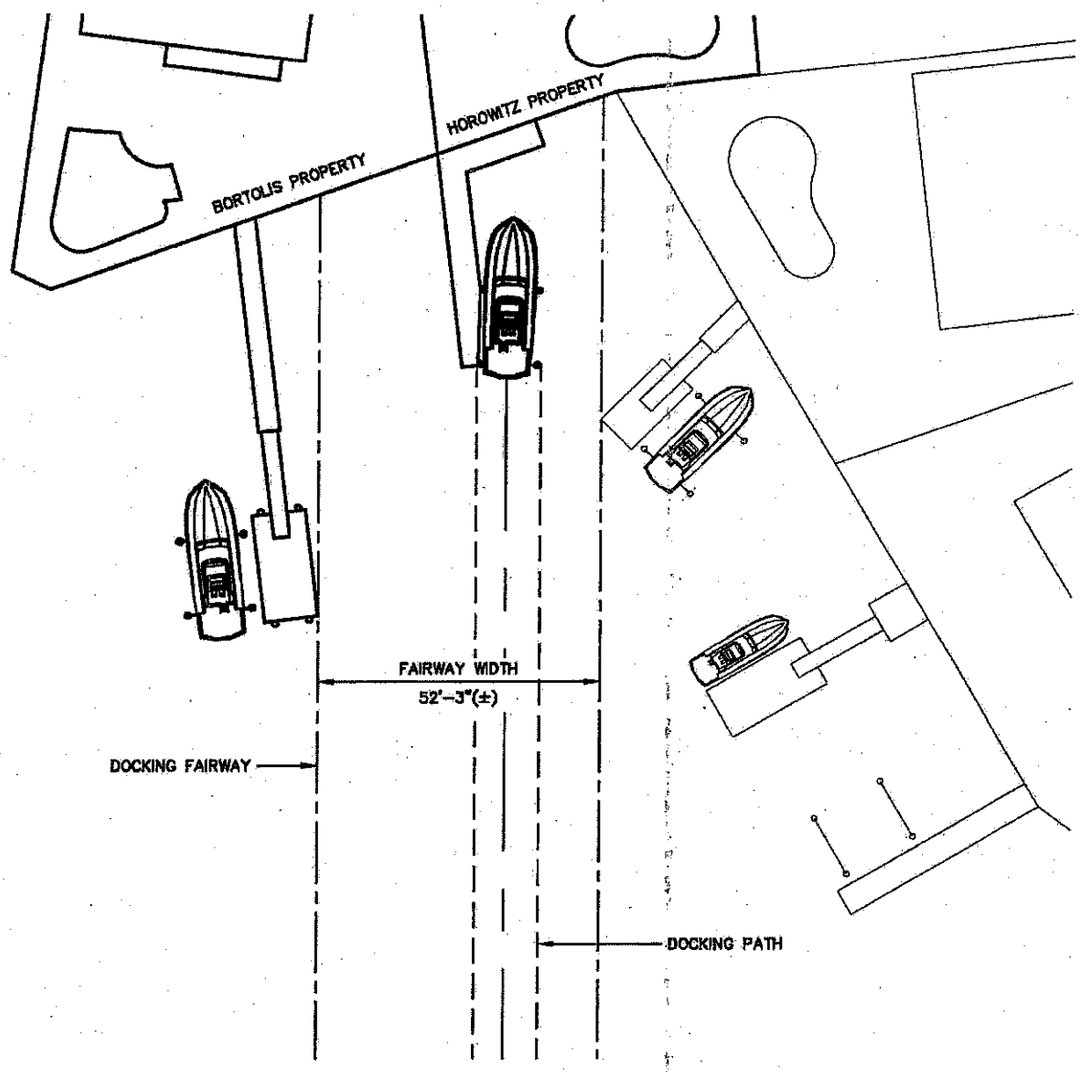


PLAN
REVERSE AND ROTATE - CLANCY

SCALE: 1"=30'-0"

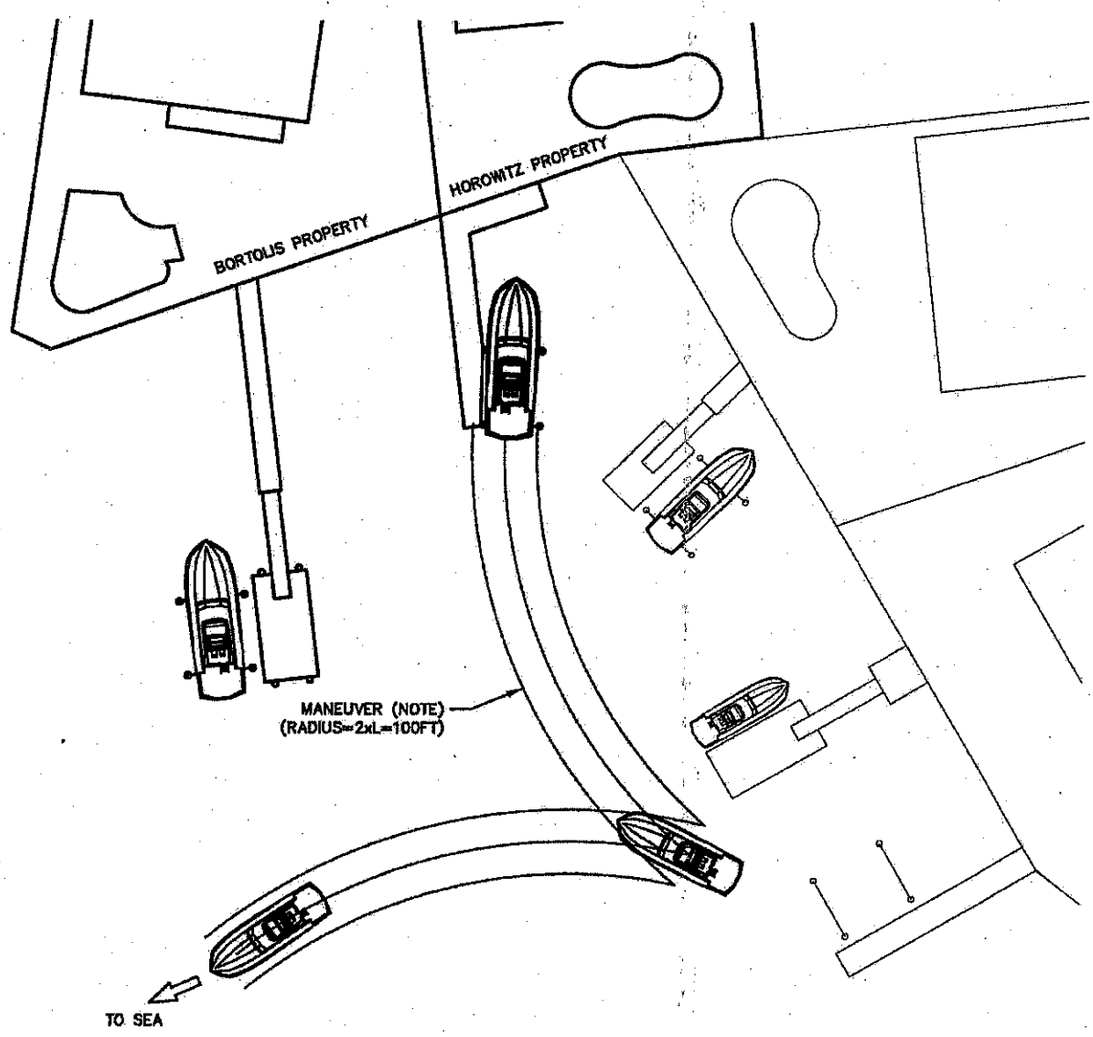
NOTE: MANEUVER ILLUSTRATES THE AVAILABLE SPIN DIAMETER PER ASCE RECOMMENDATIONS FOR A 50FT VESSEL OPERATING IN WIND AND CURRENT CONDITIONS. THE AVAILABLE MANEUVER PROVIDES A SPIN DIAMETER OF 32'-6" FT, WHICH IS 0.65 TIMES A 50FT VESSEL LENGTH.

SHEET NO. F-3	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
3 OF 11 SHEET(S)	DRAWN BY JWK	PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL.	DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	LOCATED AT 3400 HEWLETT AVENUE	REVISION NO. 0	SHEET CLANCY REVERSE AND ROTATE
		MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY		



PLAN
DOCKING FAIRWAY - HOROWITZ SCALE: 1"=30'-0"

SHEET NO. F-4 4 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JWK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET HOROWITZ DOCKING FAIRWAY

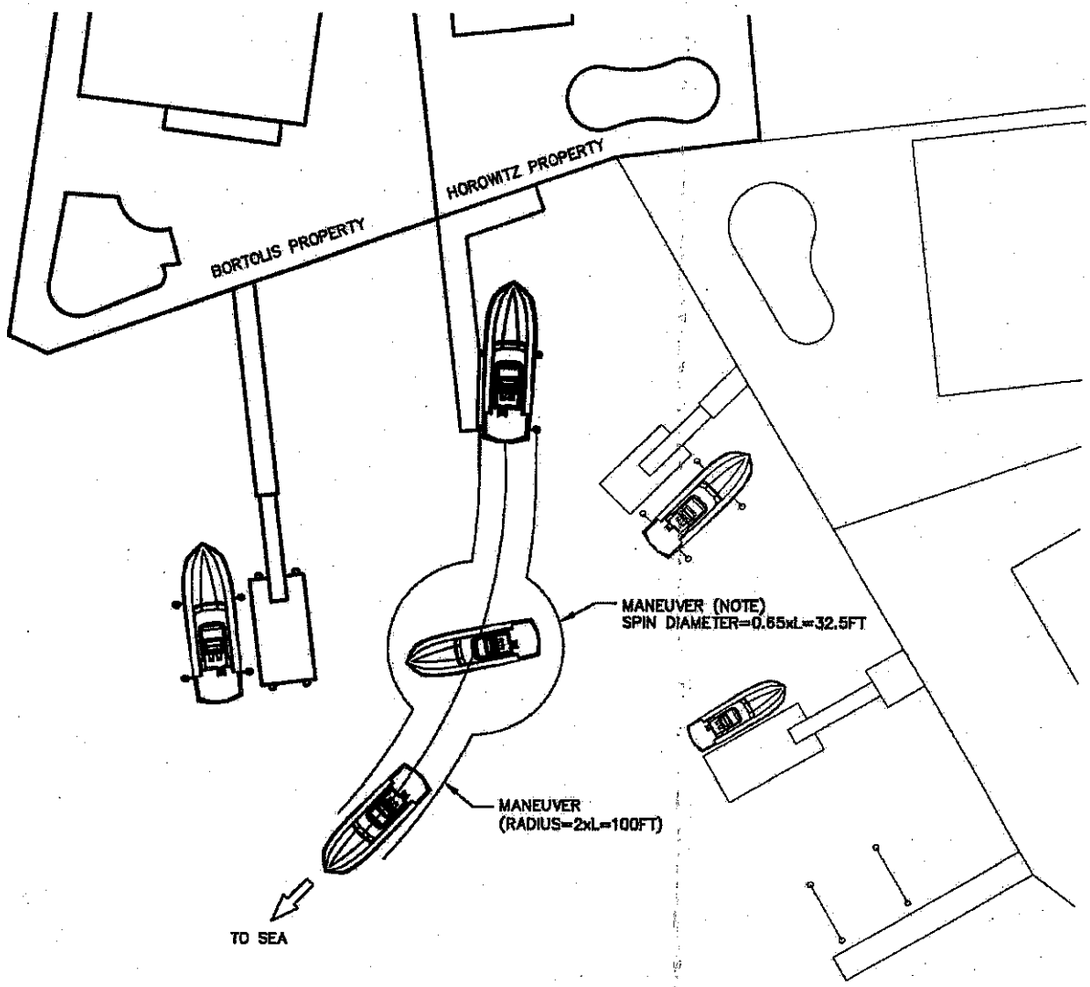


PLAN

REVERSE AND PIVOT - HOROWITZ SCALE: 1"=30'-0"

NOTE: MANEUVER ILLUSTRATES THE AVAILABLE TURN RADII PER ASCE RECOMMENDATIONS FOR A 50FT VESSEL OPERATING IN WIND AND CURRENT CONDITIONS . THE AVAILABLE MANEUVER PROVIDES A TURN RADIUS OF 100'-0" FT, WHICH IS 2 TIMES A 50FT VESSEL LENGTH.

SHEET NO. F-5 5 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JWK	PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL.	DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY.	REVISION NO. 0	SHEET HOROWITZ REVERSE AND PIVOT



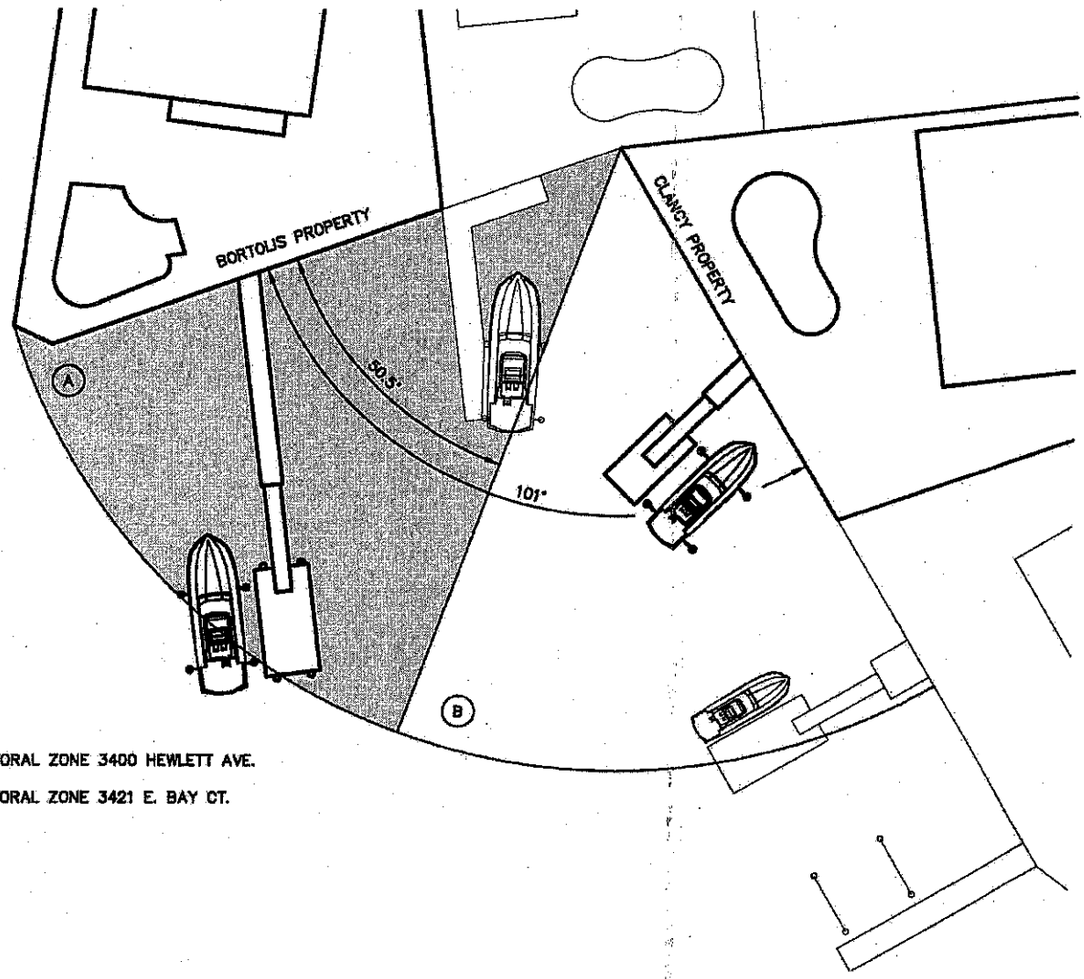
PLAN

REVERSE AND ROTATE - HOROWITZ SCALE: 1"=30'-0"

NOTE: MANEUVER ILLUSTRATES THE AVAILABLE SPIN DIAMETER PER ASCE RECOMMENDATIONS FOR A 50FT VESSEL OPERATING IN WIND AND CURRENT CONDITIONS. THE AVAILABLE MANEUVER PROVIDES A SPIN DIAMETER OF 32'-6" FT, WHICH IS 0.65 TIMES A 50FT VESSEL LENGTH.

SHEET NO. F-6	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
6 OF 11 SHEET(S)	DRAWN BY JMK	PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL.	DATE 08-22-19	456 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	REVISION NO. 0	SHEET HOROWITZ REVERSE AND ROTATE

EXHIBIT G



(A) LITTORAL ZONE 3400 HEWLETT AVE.

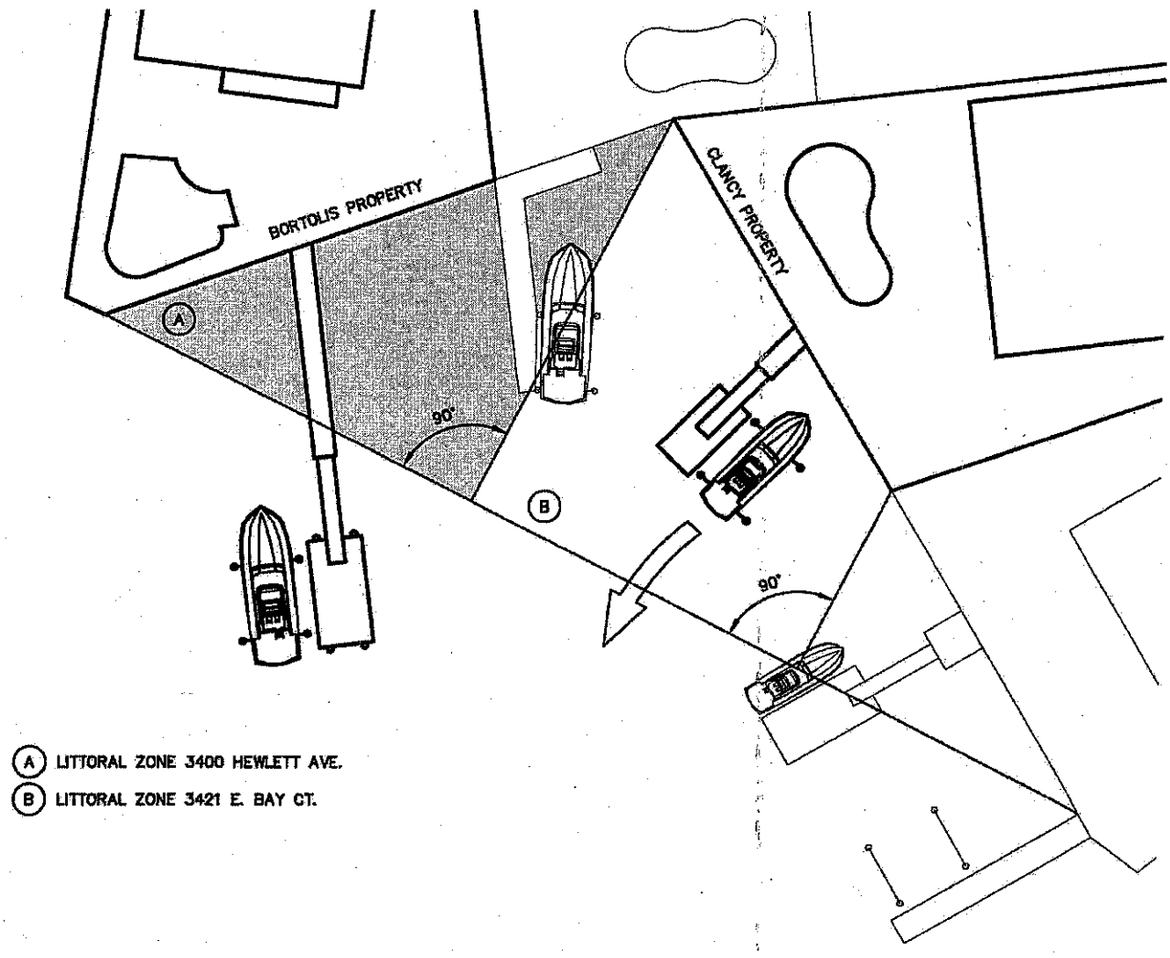
(B) LITTORAL ZONE 3421 E. BAY CT.

PLAN

BULKHEAD BISECT METHOD - CLANCY

SCALE: 1"=30'-0"

SHEET NO. G-1 7 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JWK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET CLANCY BULKHEAD BISECT METHOD

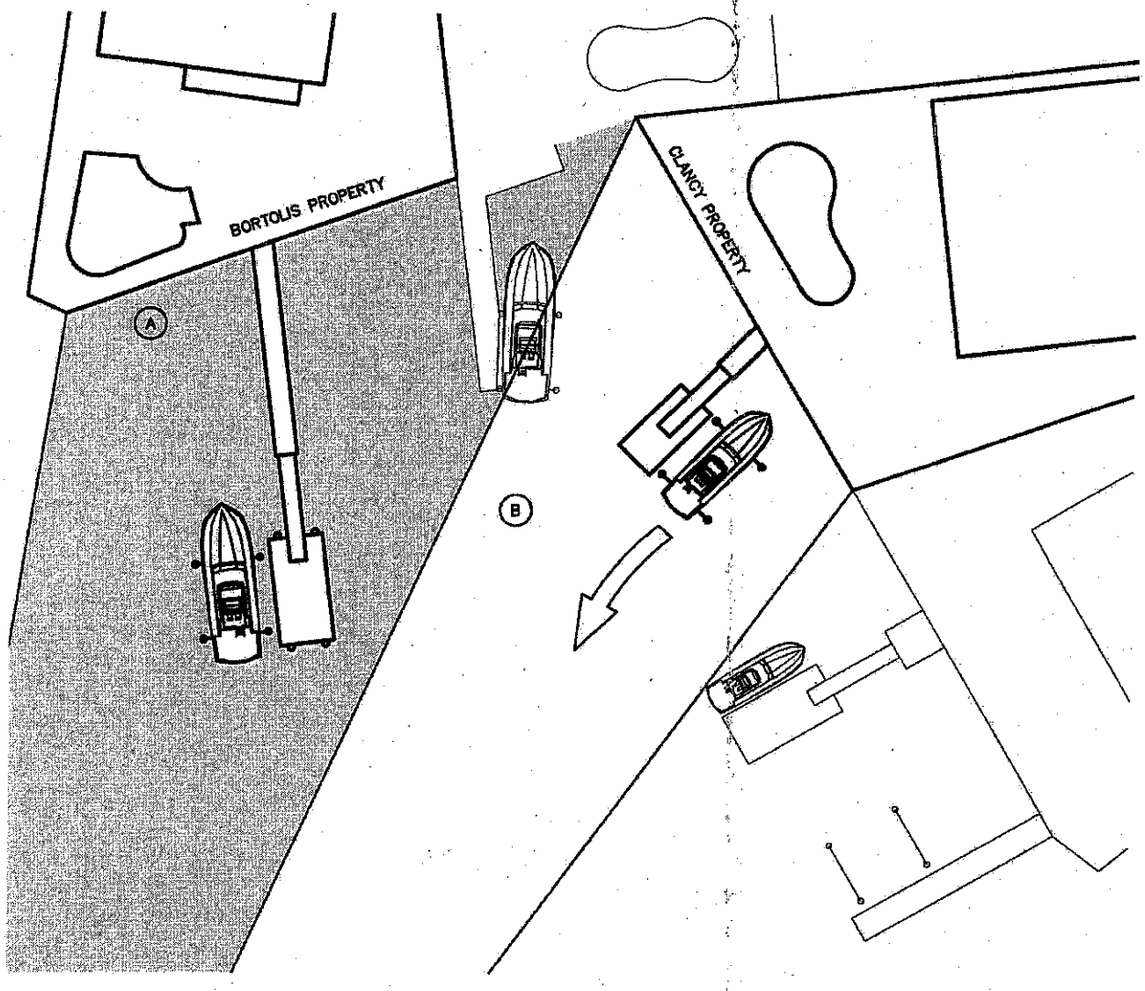


PLAN

PERPENDICULAR METHOD - CLANCY

SCALE: 1"=30'-0"

SHEET NO. G-2 8 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JWK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	REVISION NO. 0	SHEET CLANCY PERPENDICULAR METHOD

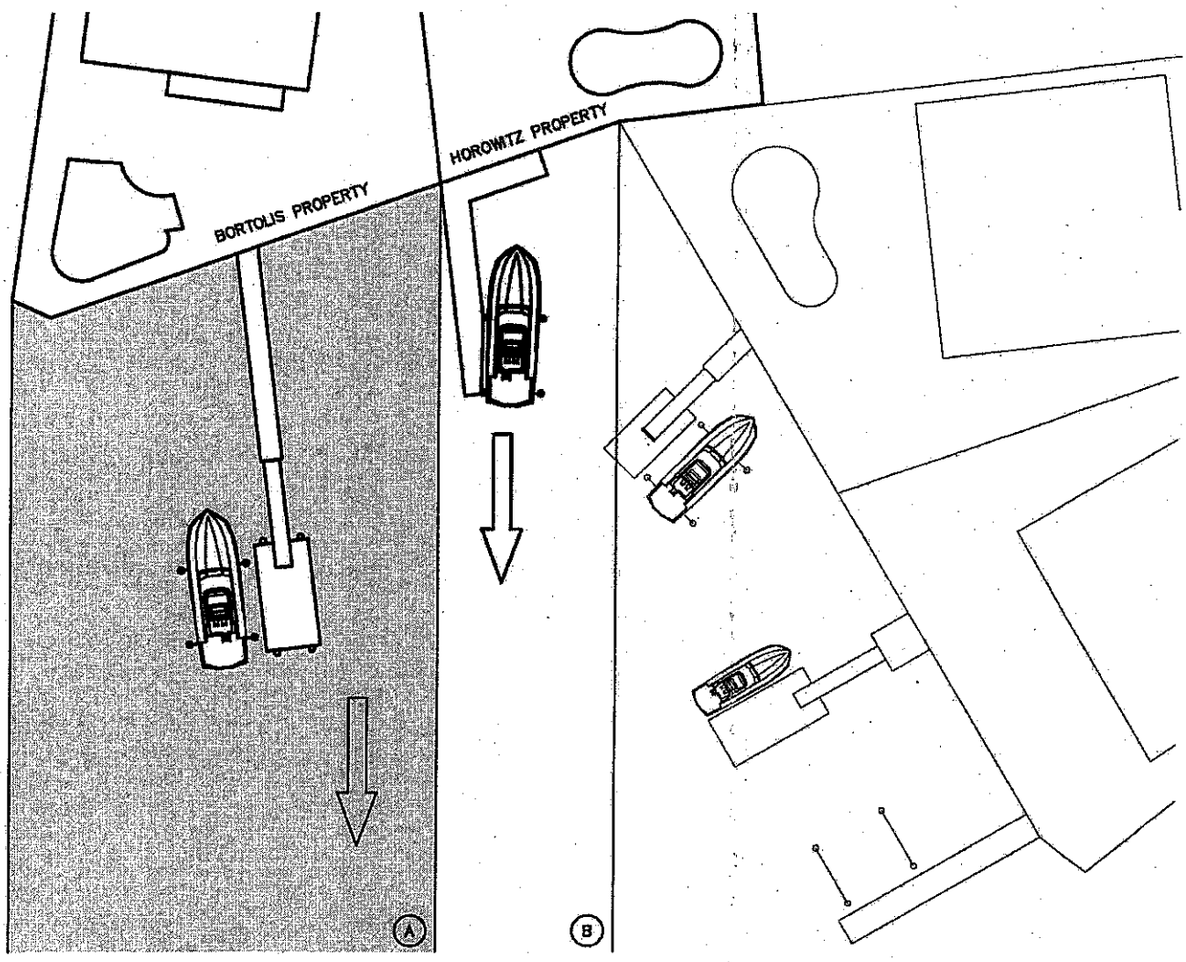


(A) LITTORAL ZONE 3400 HEWLETT AVE.

(B) LITTORAL ZONE 3421 E. BAY CT.

PLAN
LONG LAKE METHOD - CLANCY SCALE: 1"=30'-0"

SHEET NO. G-3 9 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET CLANCY LONG LAKE METHOD



PLAN
LONG LAKE METHOD - HOROWITZ SCALE: 1"=30'-0"

(A) LITTORAL ZONE 3400 HEWLETT AVE.
(B) LITTORAL ZONE 3404 HEWLETT AVE.

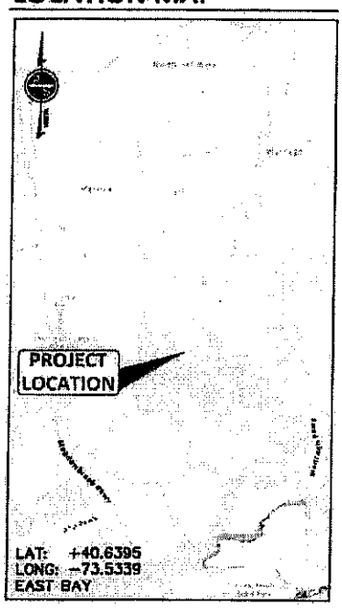
SHEET NO. G-4 10 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE	SCALE 1"=30'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA	MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	REVISION NO. 0	SHEET HOROWITZ LONG LAKE METHOD

EXHIBIT H

BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
26 MARCH 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENEUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516-595-3483
EMAIL: CONTACT@RT-WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08-30-2017
B:	USACE COMMENTS	09-19-2017
C:	NYSDEC COMMENTS	04-27-2018
D:	NYSDEC COMMENTS	07-23-2018
E:	TOH PIER REVISION	03-26-2019

SKETCH INDEX

SK-1	TITLE SHEET & LOCATION MAP
SK-2	FACILITY PLAN
SK-3	HYDROGRAPHIC STUDY
SK-4	BULKHEAD SECTION
SK-5	FIXED PIER & FLOATING DOCK
SK-6	BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

- SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

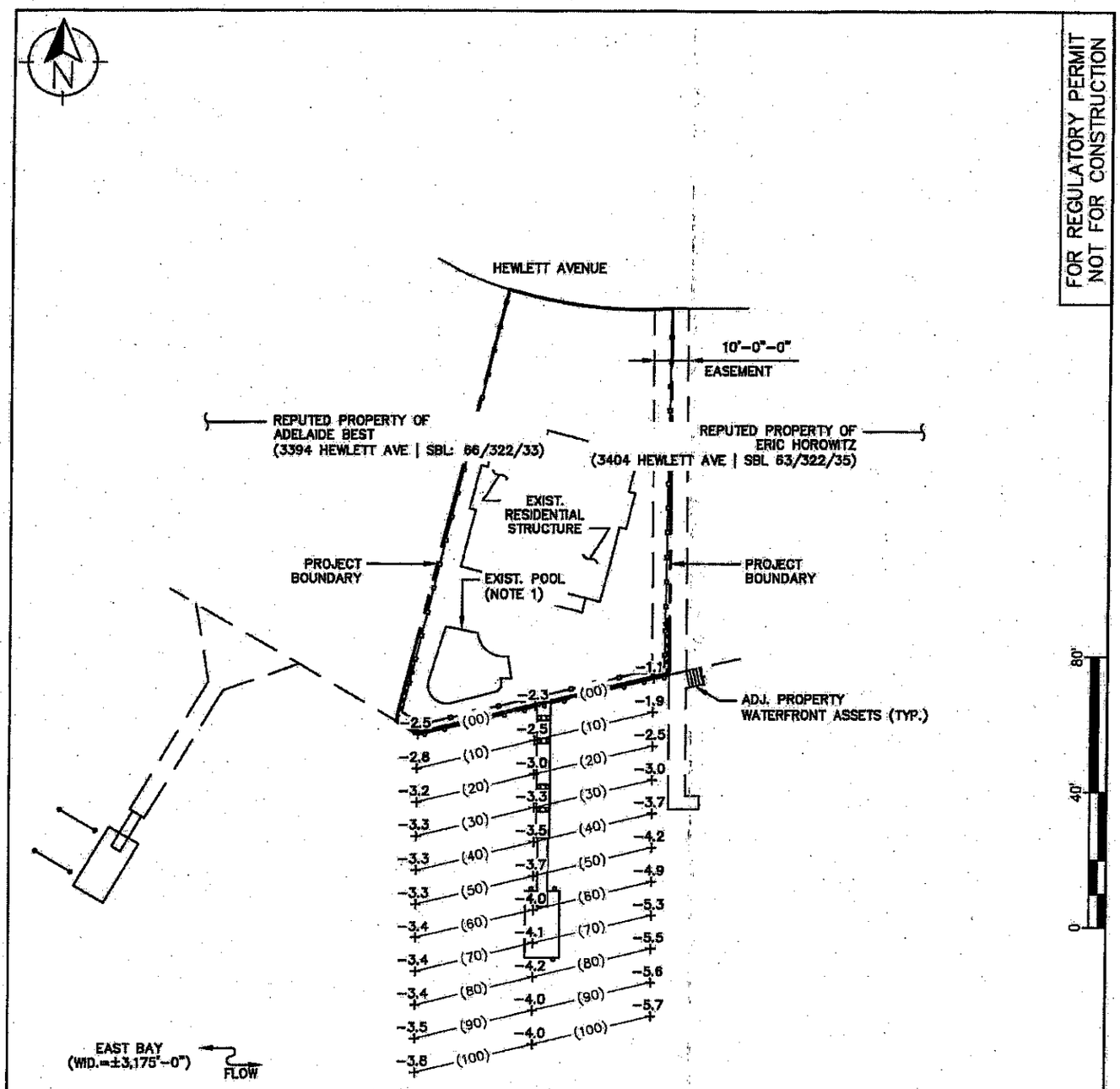
POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	-0.1	MEAN SEA LEVEL
MLW	±0.0	-1.9	MEAN LOW WATER
MLLW	-0.1	-2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER-WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 84 LF BULKHEAD SHALL BE REPLACED IN-PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER-WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4-PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

SHEET NO. SK-1 1 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE N/A	Rising Tide | Waterfront Solutions
	DRAWN BY JNK		DATE 03/26/19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. E	SHEET TITLE SHEET & LOCATION MAP

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



HYDROGRAPHIC STUDY

LANDS UNDERWATER (DATUM: MLW ELEVATION)

SCALE: 1"=40'-0"

LEGEND:
-X.X: LAND UNDERWATER ELEVATION (MLW)
-(XX)-: HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE: LANDS UNDERWATER ELEVATION (DATUM: MLW ELEVATION) IS EQUIVALENT TO WATER DEPTH AT/ABOUT LOW TIDE.

SHEET NO. I-1 11 OF 11 SHEET(S)	PROJECT NO. P170731.01	PROJECT VESSEL MANEUVERING / USE AREA PREPARED FOR JEFFREY B. CLANCY/JENNIFER CLANCY V JOHN BORTOLIS, ET. AL. LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST MERRICK BAY NASSAU COUNTY	SCALE 1"=40'-0"	Rising Tide | Waterfront Solutions
	DRAWN BY JWK		DATE 08-22-19	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET LANDS UNDERWATER - MLW

Case No.: 30158 **Permit No.: 776-065-19** **Resolution No.: 920-2019**

TOWN BOARD
TOWN OF HEMPSTEAD
In the Matter of

JOHN BORTOLIS
3400 Hewlett Avenue
Merrick, New York
Section: 63 - Block: 322 - Lot: 34

AFFIDAVIT

SAHN WARD COSCHIGNANO, PLLC
Attorneys for Applicant, John Bortolis
Office and Post Office Address, Telephone
333 Earle Ovington Boulevard, Suite 601
Uniondale, New York 11553
(516) 228-1300

Council Members
DOROTHY L. GOOSBY
BRUCE A. BLAKEMAN
ERIN KING SWEENEY
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR
THOMAS E. MUSCARELLA

SYLVIA A. CABANA
Town Clerk

DONALD X. CLAVIN, JR.
Receiver of Taxes

THOMAS E. DOHENY, JR.
Commissioner

THOMAS O. DAUSCHER
Deputy Commissioner

Town of Hempstead
Department
Of
Conservation & Waterways

1401 LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

LAURA A. GILLEN
Supervisor

August 14, 2019

Re: Clancy/Horowitz/Bortolis on Merrick Bay

Dear Mr. Kovit:

In regard to the above-referenced matter, it is the position of this department that the structural configuration and the placement of the Bortolis pier and floating dock authorized by the issuance of our July 17, 2019 permit presents no hazard to navigation.

I note that this permit encompasses relocation of the pier by 20 feet to the west from where it was originally proposed by Bortolis. Further, after Clancy started litigation against Bortolis, claiming a violation of his riparian rights, this office determined with the support of the Town Attorney's office to modify the prior permit. Specifically, we further required that the proposed boat-lift be relocated to the west side of the projection, and that the east side be kept free of any structures or mooring of boats or anything else. The July 17th permit reflects these new requirements, and they fully eliminate any colorable claims of a menace to navigation, or interference with the riparian rights of Clancy or Horowitz. They provide both Clancy and Horowitz with a clear, straight, ample and unobstructed riparian access to and from Merrick Bay. Simply stated, the July 17th modified permit should have ended this case.

As such, I believe that the Town Board in its discretion should not suspend the permit. Further, in the absence of any legitimate claim of a menace to navigation or violation of riparian rights, the Town Board should decline to hold a hearing, and instead allow the pending court case to proceed to conclusion.

I understand that Clancy and Horowitz would like Bortolis to reduce the length of his structural projection out into Merrick Bay from the currently authorized 75 feet to 60 feet, and have declined to end the litigation unless he does so. However, whereas the structure presents no hazard to navigation or violation of their riparian rights at 75 feet, I believe it would be bad practice to do so. Indeed, it is for this Department, and not the neighbors of a permit applicant, to decide the dimensions, configuration and placement of structures in the waterway.

Thomas E. Doheny
Commissioner
Conservation & Waterways

cc: Richard Regina, Town Board
Mitchell Pitneck, Council to Supervisor

FARRELLFRITZ P.C
ATTORNEYS

John C. Armentano
Counsel

Direct Dial: 631.367.0719
Direct Fax: 631.367.0788
jcarmentano@farrellfritz.com

100 Motor Parkway
Hauppauge, NY 11788
www.farrellfritz.com

Our File No.: 35907-100

August 20, 2019

Via Fed Ex and Email
Supervisor Laura A. Gillen and
The Town of Hempstead Town Board
One Washington Street
Hempstead, New York 11550
Email: lgillen@tohmail.org

Re: Supplement for Request to Suspend Dock Permit Pending a Town Board Hearing To Review Structure Posing Menace to Navigation Pursuant to Town Code § 168-8
Permit No.: 7156-065-19 (Replaces previous permit #776 last amended on 7/8/19)
Permit Date: July 17, 2019
Permittee: John Bortolis
Premises: 3400 Hewlett Avenue, Merrick, New York (NCTM: 63-322-34)

Supervisor Gillen and Members of the Town Board:

As you know, we represent Jeffrey and Jennifer Clancy (the "Clancys") who reside at 3421 East Bay Court, Merrick and Eric and Elizabeth Horowitz (the "Horowitzes") who reside at 3404 Hewlett Avenue, Merrick. As part of this application, we also represent Steven and Pamela Eplan (the "Eplans") who reside at 3439 East Bay Court, Merrick and Lyle Rosman ("Rosman") who resides at 3433 East Bay Court, Merrick. The issuance of the above-referenced permit ("Permit") allows Mr. Bortolis to construct a pier, dock and boat-lift ("Dock") that creates a menace to navigation and dangerous conditions for the Clancys, Horowitzes, Eplans, and their guests and passengers, in utilizing their own docks and accessing navigable water.

This submission supplements the Clancys' and Horowitzes' letter requests dated July 15, 2019 and July 29, 2019 for the Town Board to suspend, investigate and hold a hearing on the above-referenced Permit and are incorporated herein by reference.

The Permit expressly prohibits any structures or moored vessels on the east side of Mr. Bortolis's dock because these pose dangerous conditions for navigability. The Department of Conservation & Waterways ("DCW") admitted as much by amending the Permit in its own discretion, and without notice or a hearing, to (i) relocate the boat lift from the east side to the west side of the dock and (ii) prohibit any structures or mooring on the east side of the dock.

These conditions help to alleviate some of the dangerous conditions, but not all of them because the dock's length itself is a menace to navigation. Despite the DCW amending the Permit, the current configuration of Bortolis's dock still creates dangerous boating conditions

In support of our request for review, we have attached an analysis prepared by our riparian rights expert, Louis Gnip, L.S., which summarizes the navigation hazards posed by Mr. Bortolis's dock and explains why the DCW's purported solution of merely placing the boat lift on the other side of the dock will not cure the danger. Mr. Gnip also recommends mitigation being a 50-foot Bortolis Dock See, Louis Gnip Affidavit.

We also submit the supporting affidavits of Jeffrey Clancy and Steven Eplan noting that tidal, wave and wind conditions affect a vessel's ability to dock, moor, launch and navigate in the subject area. In fact, on July 31, 2019, Mr. Bortolis' contractor effectively shut down the cove for two days by leaving his barge and tender boat perpendicular to Bortolis's dock. If Mr. Bortolis's dock was shorter, this dangerous condition could have been avoided. See, enclosed photograph. photo

It is evident that the current Permit configuration creates an unavoidable menace to navigation. Accordingly, we request that the Town Board (i) suspend the Permit for 30 days (ii) investigate the Permit and Mr. Bortolis's Dock, (iii) schedule, notice and hold a hearing thereon, (iv) modify the Permit to remove the dangers to navigation and (v) remove the menacing structure(s).

Thank you for your prompt consideration of this matter.

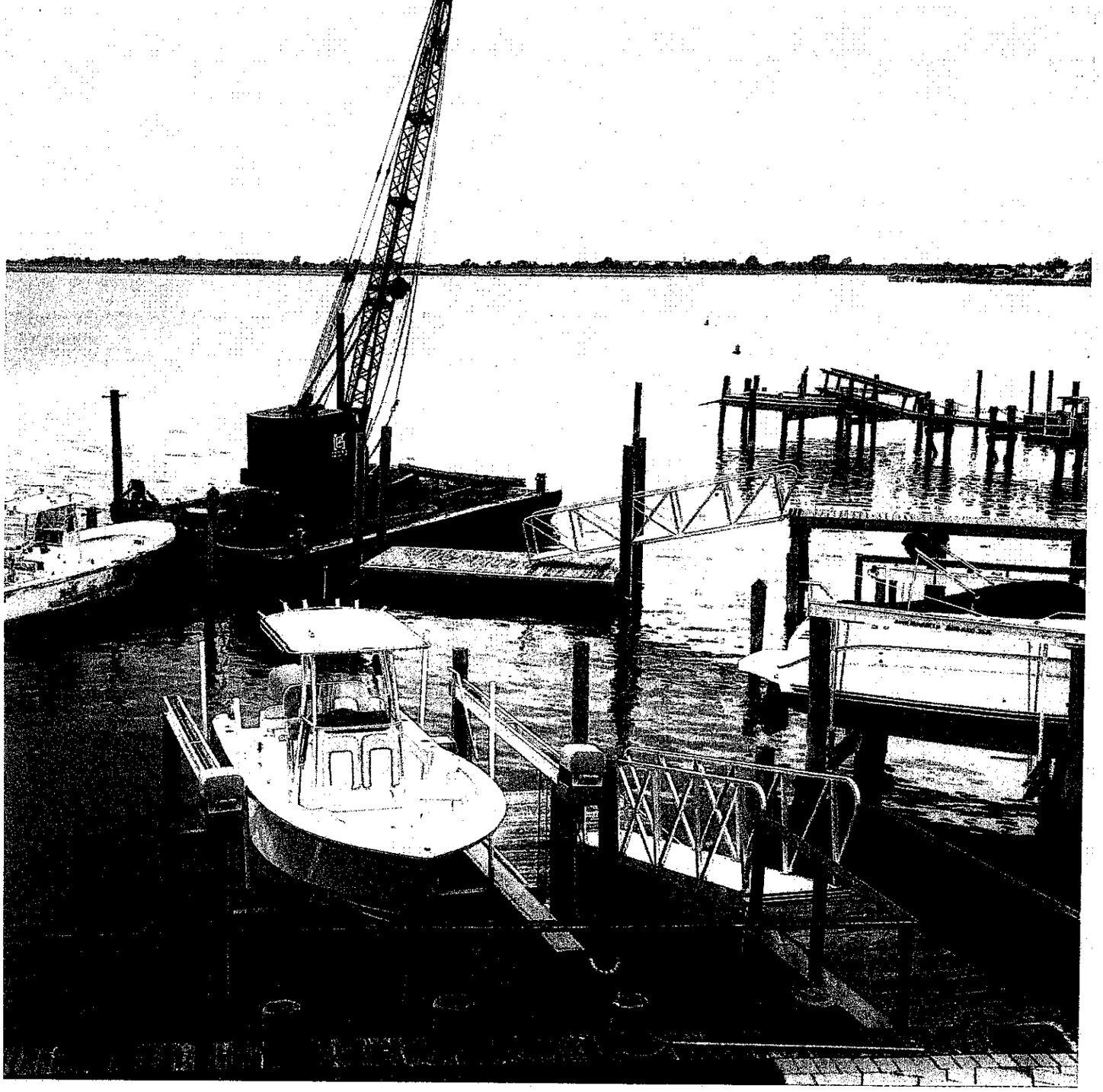
Respectfully submitted,

John C. Armentano

Encls.

CC:

Town Board Members (via Fed Ex and Email)
Dorothy L. Goosby
Thomas E. Muscarella
Bruce A. Blakeman
Anthony P. D'Esposito
Erin King Sweeney
Dennis Dunne, Sr.
Charles S. Kovit, Esq. (via Email)
Chief Deputy Town Attorney
Mitchell Pitnick, Esq. (via Email)
Counsel to the Supervisor
Sahn Ward Coschignano (via Email)
c/o Christian Browne, Esq.
c/o Ralph Branciforte, Esq.
The Clancys (via Email)
The Horowitzes (via Email)



Affidavit of Jeffrey Clancy

RE: STRUCTURE IN WATERWAY AT 3400 HEWLETT AVENUE, MERRICK, UNDER TOWN OF HEMPSTEAD PERMIT #776-065-19 PURSUANT TO TOWN BOARD RESOLUTION NO. 920-2019	**AFFIDAVIT OF JEFFREY B. CLANCY IN SUPPORT OF FINDING THAT BORTOLIS DOCK IS A MENACE TO NAVIGATION**

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

I, JEFFREY B. CLANCY, being duly sworn, deposes and says:

1. As discussed below, this is an appeal pursuant to Town Code §168-8 and brought to restrain, John Bortolis, an adjacent property owner from interfering with safe navigation in East Bay, Merrick, New York that is subject to public navigation rights and private riparian rights.

2. My wife, Jennifer Clancy, and I own and reside at 3421 East Bay Court, Merrick, Town of Hempstead, New York. We purchased our property on June 8, 2014, and it is our primary residence.

3. The rear yard of my property is bulk headed along East Bay and my dock is within a cove formed by my property and the properties of Steve Eplan ("Eplan"), Eric and Elizabeth Horowitz ("Horowitzes") and John Bortolis ("Bortolis"), which are also bulk headed. The rear portions of our respective properties are adjacent to East Bay, are bulk headed and angle towards each other. See aerial photograph. Exhibit "1"

4. My dock extends out approximately 32 feet into the cove. The Horowitzes property forms the interior angle of the cove and extends approximately 40 feet into the cove. The Eplan's dock is directly south of my property and extends approximately 35 feet into the cove. See attached as Exhibit "2" my Army Corps of Engineers April 30, 2015 permit which details piers in the cove.

5. At the time my wife and I were considering purchasing our property and throughout the time we were in contract negotiations to buy our home and closed on our property, the property that Bortolis subsequently purchased did not have a dock. Our property's location on Merrick Bay, and its unimpeded access to the waterway, were the primary reasons we purchased our home.

6. Bortolis purchased his property on or around June 15, 2015, at which time it did not have a dock.

7. With no notice, on or about around April 2, 2019, I looked out the window and saw in the water behind my backyard, a dock with mooring piles being constructed at the Bortolis property. I immediately sought and obtained a Temporary Restraining Order (TRO) in Nassau Supreme Court *Clancy v Bortolis* Nassau Sup Ct Index # 19-000373.

8. This was remarkable because I had twice alerted the Town in 2016 as to the issues of navigation in the cove area. See correspondence attached hereto as Exhibit "3".

9. On June 26, 2019, the TRO was lifted against the Town, as result of the Court granting the Town Attorney's Office motion to dismiss for failure to exhaust administrative remedies under Town Code §168-8. See attached order of June 26, 2019 attached hereto as Exhibit "4".

10. On July 16, 2019, the TRO was lifted as to Bortolis with understanding that an appeal of the location of the Bortolis dock would be brought before the Town Board.

11. Bortolis recently completed building a pier, gateway, floating dock and boat lift (collectively "Dock") which extends at least 75 to 80 feet into the cove and poses a danger and a menace to navigation.

12. Bortolis built his dock perpendicular to mine, and it juts all the way out into the cove with its terminus directly behind my boat lift. Due to the convergence docks in this little

cove, whenever my wife and I dock or disembark, we face the danger of crashing into Bortolis's dock, especially if there is any wind, swell or current.

13. Bortolis's completed dock extends twice as far than any of my neighbors into the same waterway and creates dangerous and hazardous conditions that significantly interferes with the navigation of our boat to and from our dock.

14. Bortolis's dock encroaches over the water fronting my bulkhead and prevents me from maneuvering my boat on and off our boat lift without being in fear of calamity each and every time we wish to enjoy the waterway.

15. Bortolis can easily maintain a dock within his own riparian zone and with generous access to the navigable water depth– without interfering with our use of our property, dock and vessel. He chooses not to.

16. It is my understanding that Bortolis dock permit and its approvals are expressly contingent upon Bortolis not violating anyone else's riparian rights, including mine, or creating a danger to navigability. Specifically, Bortolis's Department of Conservation and Waterways ("DCW") permit conditions require that no structure, boat or vessel infringe on the adjacent property owners' rights of general right of access to the navigable waters. Clearly, Bortolis's Dock violates one or more of the permit provisions.

17. Moreover the DCW has recognized the danger and menace to navigation posed by Bortolis's dock in at least two ways.

18. First, the DCW, on its own and without notice or a hearing, relocated Bortolis's boat lift from the east side of his dock (directly behind my dock and boat lift) to the west side of his Dock (towards East Bay). While this relocation provided partial relief, Bortolis's dock itself continues to create hazardous boating conditions.

19. Second, DCW, on its own and without notice or a hearing, added an additional condition to the permit for Bortolis's dock that prohibits him from placing a structure or mooring any vessel on the east side of his dock. This is also problematic because Bortolis violated this condition twice during the first week after the permit issued, and there is not telling whether Bortolis will continue to violate this permit condition to the detriment of me and my wife.

20. Moreover, DCW's prohibition of utilizing the east side of Bortolis's Dock is dangerous because vessels may require mooring or docking on one side or the other based upon wave, wind and tidal conditions.

21. On windy days, or when there is a strong current, I have great difficulty maneuvering my boat to navigable waters. See Exhibit "5" aerial photograph taken on August 11, 2019.

22. In fact, recently, on or about August 3, 2019, my neighbor, Eplan, crashed into the east side of Bortolis's Dock. See, Steve Eplan affidavit.

23. Bortolis's Dock juts out too far and it must be cut-back to allow for safer navigability within the cove for entry to and departure from our boat lifts and docks. Shortening the length of Bortolis's Dock to 50 or 60 feet would also allow him to use both sides of his Dock without limitation.

24. Reduction in length creates safer conditions for Bortolis, his guests and invitees, and for everyone else who must enter and navigates within the cove.

25. The massive length of Bortolis's dock adds to the confusion of dock pilings, endangering navigations in the cove.

26. Having no exclusive right to the length of a particular dock, Bortolis's dock location and length are for no other purpose than to convenience Bortolis and the inconvenience of the

several other waterfront homes in the vicinity.

27. Notwithstanding these issues, pursuant to Town Code §168-9, no structure shall be placed in such a manner as to interfere with navigation.

28. The current configuration of the dock impair navigation and is a nuisance to neighboring property owners and boat traffic in general.

29. The menace to navigation posed by Bortolis's Dock can easily be resolved by reducing the length to 50 or 60 feet, or by relocating it to Bortolis's westerly property line.

30. Finally, the Bortolis dock was improperly granted, arbitrary and capricious as a matter of law and an abuse of discretion, since among other things, it violated the very rules, regulations and conditions imposed by the Town of Hempstead on structures in waterways including, *inter alia*, violating Town Code §168-9 prohibiting the maintenance of any structure which would interfere with navigation or public use of the waterway, and further violating standard permit conditions which does not permit any structure or boat to infringe on adjacent owners' rights of access to navigable waters

31. Based upon the foregoing, I urge the Town Board to suspend Bortolis's Dock permit, review same and either (i) reduce Bortolis's Dock length to 50 or 60 feet, or (ii) relocate Bortolis's Dock to the far western-edge of his property line for increased navigation in the area.

JEFFREY B. CLANCY

Sworn to before me this
17th day of August, 2019

Notary Public

KYLE MORAN
Notary Public – State of New York
NO. 01MO6361296
Qualified in Nassau County
My Commission Expires Jul 3, 2021

Exhibit 1

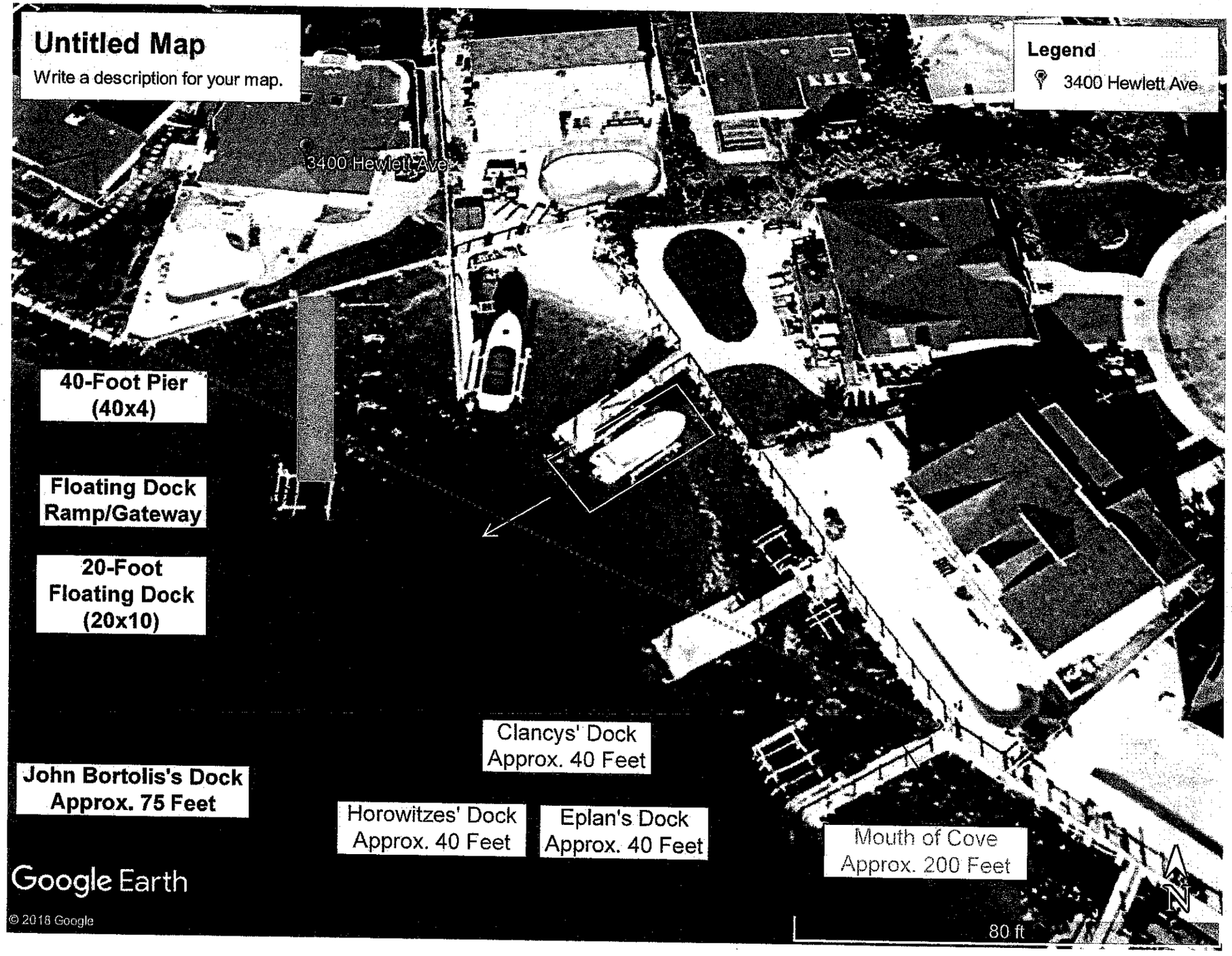

Untitled Map
Write a description for your map.
Legend
3400 Hewlett Ave
3400 Hewlett Ave
40-Foot Pier
(40x4)
Floating Dock
Ramp/Gateway
20-Foot
Floating Dock
(20x10)
Clancys' Dock
Approx. 40 Feet
John Bortolis's Dock
Approx. 75 Feet
Horowitzes' Dock
Approx. 40 Feet
Eplan's Dock
Approx. 40 Feet
Mouth of Cove
Approx. 200 Feet
Google Earth
© 2018 Google
80 ft
N

Exhibit 2

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

APR 30 2015

Regulatory Branch

Subject: Department of Army Permit Number NAN-2015-00260
Issued to Jennifer Clancy

Jennifer Clancy
3421 East Bay Court
Merrick, NY 11566

Dear Ms. Clancy:

We have completed our review of Application Number NAN-2015-00260-ETA.

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), you are hereby authorized by the Secretary of the Army:

ACTIVITY: Construct a 4-foot-wide by 10-foot-long fixed pier; 30-inch-wide by 15-foot-long walk-ramp; 8-foot-wide by 15-foot-long float; a boat lift; and 3-foot-wide by 7-foot-long stairway. All work shall be done in accordance with the attached plans, subject to Special Condition 1, which is hereby made part of this permit.

WATERWAY: East Bay

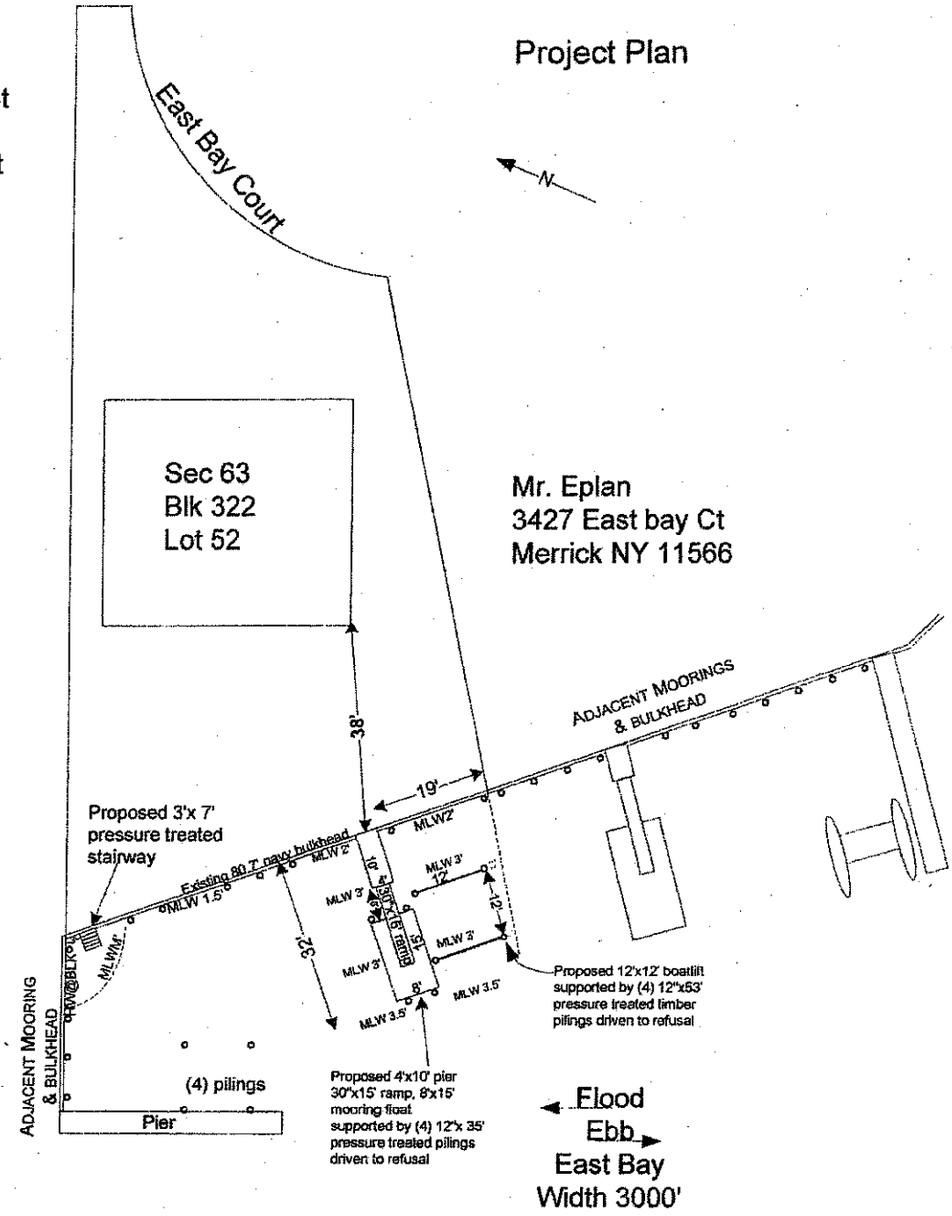
LOCATION: Merrick, Nassau County, New York

The activity authorized herein must be completed within three years of the date of this permit. This authorization is subject to the enclosed conditions. Please find enclosed two forms to be used to submit to this office, as required, the dates of commencement and completion for the authorized activity.

This authorization is conditional on the applicant's receipt of the required coastal zone management concurrence or waiver from New York State department of State (NYSDOS). No work may be accomplished until the required approval from NYSDOS has been obtained.

Please note that this verification is based on a preliminary jurisdictional determination (JD). A preliminary JD is not appealable. If you wish, prior to commencement of the authorized work you may request an approved JD, which may be appealed, by contacting the New York District, U.S. Army Corps of Engineers for further instruction. To assist you in this decision and address any questions you may have on the differences between preliminary and approved jurisdictional determinations, please

Applicant: Jennifer Clancy
Project Site: 3421 East Bay Ct
Merrick NY 11566
Proposed: Pier, Mooring Float
& Boatlift
Scale 1" = 30'
Prepared: Bulkhead
Permits by Gary inc
2 Whaleneck Drive
Merrick NY 11566
January 2, 2015



NAN-2015-00260-ETA

Exhibit 3

Jeffrey B. Clancy
3421 East Bay Court
Merrick, NY 11566
516.526.9231
jeffbclancy@hotmail.com

June 21, 2016

Robert Wenegenofsky
Environmental Analyst
Town of Hempstead Department of Conservation & Waterways
Lido Blvd.
P.O. Box 180
Point Lookout, NY 11569-0180

Re: Structures in Waterways Permitting East Bay Court/Hewlett Avenue, Merrick

Dear Mr. Wenegenofsky:

I'm writing to follow up to your February 9, 2016 letter (copy enclosed) and in light of recent developments with respect to the issues raised in my February 2, 2016 letter (copy enclosed).

Your February 9 letter noted that my concerns were not relevant at the time because no applications are pending for 3400 Hewlett Avenue, Section 63, Block 322, Lot 34. However, it has come to my attention that the owner of 3400 Hewlett Avenue is actively planning modifications to the bulkhead and pier structures and a permit application may have also been filed or will soon be filed.

As your February 9 letter noted, inside corner bulkheads like the area in question are problematic and present a challenge to allot mooring for all the parties concerned. You also noted that your office's key focus is access to navigable water and that a person is not allowed to erect all kinds of structures that may impede access for adjacent properties.

I reiterate that those points are the basis of this follow-up letter. The remnants of the pier and boat lift structures at 3400 Hewlett Avenue are more than three times larger than what your office permitted me to build in July 2015. Moreover, the "footprint" of those structures already impedes access to my dock (and both of my adjacent neighbors' docks), causing me to come within two or three feet of those structures to move my boat in and out of my dock. This becomes very dangerous with the slightest of wind, which is common in this area.

It is my opinion that 3400 Hewlett Avenue should be required to move the pier and boat lift structure to the opposite side of the property (away from the corner) and be significantly reduced in size (similar to the footprint of what I was permitted to build given the crowding and navigation concerns).[1] I also note that your office required me to revise my proposed plans to move my pier structure further (approximately 20') away from my neighbor on the opposite side

[1] My permitted pier is approximately 10' in length, I have 80' of bulkhead. 3400 Hewlett Avenue previously had a pier approximately 50' in length, and have approximately 50' of bulkhead.

of 3400 Hewlett Avenue. The remnants of the pier at 3400 Hewlett Avenue is within inches of the immediately adjacent home and its pier.

Please do not hesitate to contact with any questions or concerns or if you wish to discuss this issue in more detail. I would encourage and would appreciate a site visit from your office to better understand the extremely disproportionate pier structure at 3400 Hewlett Avenue and the significant navigation issues that already exist.

Sincerely,

Jeffrey Clancy

CC: Jim D'Ambrosio
Army Corps of Engineers
James.d'ambrosio@usace.army.mil

Council Members
DOROTHY L. GOOSBY
GARY HUDES
EDWARD A. AMBROSINO
BRUCE A. BLAKEMAN
ERIN KING SWEENEY

NASRIN G. AHMAD
Town Clerk

DONALD X. CLAVIN, JR.
Receiver of Taxes

STEPHEN D'ESPOSITO
Commissioner

Town of Hempstead
Department of Conservation & Waterways

LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

ANTHONY J. SANTINO
Supervisor

February 9, 2016

Mr. Jeffrey B. Clancy
3421 East Bay Court
Merrick, New York 11566

Re: Structures in Waterways Permitting
East Bay Court/Hewlett Avenue, Merrick

Dear Mr. Clancy,

This will acknowledge receipt of your 2/2/16 letter on the referenced subject. I understand your concerns with future permitting of mooring structures in your area. Areas such as yours where the waterway and bulkheads are not in a straight line, but rather form an inside corner are always problematic and present a challenge to amicably allot mooring for all parties concerned.

In your letter you state that some of the properties did not have "water rights". This is not entirely correct. All waterfront owners have a right of "access" to navigable water, "access" being the key word here. Access does not mean that a person can erect all kinds of structures that may in some way impede access for adjacent properties.

When reviewing permit applications the guideline is to consider the "minimum" necessary to reach navigable water, and not infringe on access to adjacent properties.

Your concerns about what may or may not happen on adjacent properties is not relevant at this time since no applications for these properties are pending. However, a copy of your letter and this response will be placed in our files on the adjacent properties so that your concerns will be considered when a permit application is filed. Please be advised that a permit is required for repair, replacement or modification of existing structures.

Should you have any questions I can be reached at 516-897-4111.

Sincerely,

RW:nap

ROBERT WENEGENOFSKY
Environmental Analyst

CC to the File:
3400 Hewlett Avenue, Section 63, Block 322, Lot 34
3404 Hewlett Avenue, Section 63, Block 322, Lot 35
3421 Hewlett Avenue, Section 63, Block 322, Lot 52

Jeffrey B. Clancy
3421 East Bay Court
Merrick NY, 11566
516-526-9231
jeffbclancy@hotmail.com

February 2, 2016

Permit Administrator
Robert Wenegenofsky
Town of Hempstead
Department of Conservation & Waterways
P.O. Box 180
Lido Blvd
Point Lookout, NY 11569

Re: Navigational Hazard for Section: 63 | Block: 322 | Lot: 00520

Dear Mr. Wenegenofsky:

I am writing at the recommendation of your colleague Nancy Palmer following our phone call on February 2, 2016. Following is a brief description of the navigational hazard/waterway issue I am experiencing at my above-address.

- I purchased my home at 3421 East Bay Court in July 2014 ("3421 EBC"), which has approximately 80' of bulkhead but at the time had no pier or floating dock. My bulkhead shares a corner with 3404 Hewlett Avenue, Merrick (the "Adjacent Home").
- The Adjacent Home has approximately 30' of bulkhead and currently has a pier approximately 40' in length. This pier runs parallel to my bulkhead. (Please see attached photos.)
- The home on the opposite side of the Adjacent Home at 3400 Hewlett Avenue, Merrick (the "White House") has approximately 60' of bulkhead and a pier approximately 50' in length. The White House's pier/dock/boatlift were damaged in Hurricane Sandy and only the pilings remain. The White House's pier previously ran parallel to the Adjacent Home's pier (pre-Sandy), about 8' apart.
- During the past year both the Adjacent Home and the White House have been purchased by new owners.
- During the Spring 2015 I filed and was granted the necessary permits, including with your office, to build an approximate 10' pier with a ramp, a small floating dock and a boat lift, which was completed around July 2015. During the application and permit process your office was focused on the crowding issues in this "corner" of the bay and only authorized a 10" pier due to already existing piers of both the Adjacent House and the White House, as well as my neighbors on the opposite side of my property. I note that most homes in my neighborhood have piers in the 30' to 40' length.
- My bulkhead permit expeditor/designer noted from the land survey that several of the White House's pilings were illegal and not properly permitted (please see attached

- photos of their prior location). I approached the former owner regarding his structure, showed him the survey, and after some back-and-forth the then owner agreed to allow my dock-builder to remove them.

As you can see from the attached photos there is significant crowding in this corner of the bay. During the permit-application process your office requested that we move my proposed pier towards the corner (and away from my neighbor on the opposite side of my house) to avoid crowding and navigational issues, which we did.

Currently, in order to get my boat on my lift I have to almost parallel park to avoid the remaining piers from the White House. I also come within feet of the pier of the Adjacent House. My concern is that the new owner of the Adjacent House will try to dock a boat/add a boat lift, although I'm not certain where it would fit given the Adjacent House's current pier. My bigger concern is that the new owner of the White House will try to rebuild under the current footprint, which would make it almost impossible to safely navigate my boat in and out of my dock. Finally, my other concern is that should both the Adjacent House and the White House rebuild and/or expand their current structures and there is a storm, my property will be compromised and at risk given the proximity of all the piers, docks and boats in this corner.

Also, although I concede it may not be at issue, there is the equitable concern of permitting one lot to build a 30'-40' pier (with 30'-60' of bulkhead), while restricting an adjacent home with 80' of bulkhead to build a 10' pier.

I also want to note the historic issues that several neighbors have shared with me. The Adjacent House never had water rights until they built the current pier (I believe in approximately 2006). The former owners of both the White House and the Adjacent House had an ongoing feud over water rights. They ultimately compromised by agreeing not to object to the White House building the current pier footprint (with floating dock and boat lift) that is nearly 60' in length in exchange for the Adjacent House building a 40' pier despite not having previous water rights. The then current owner of my home was in foreclosure and agreed not to object. Full disclosure -- this is the "neighborhood story" and I'm not certain of all of the details or its accuracy.

My concern and the reason I am writing you today is twofold:

1. Given the current navigational issues I am experiencing, whether your office would be willing to do a site-visit to determine whether it would be appropriate to require the White House to remove additional pilings that are blocking my water rights and reasonable access to my bulkhead; and/or
2. In the event the current owner of the White House attempts to rebuild the existing structure, whether requiring additional permits or not, your office would not permit simply rebuilding on the current footprint. Instead, requiring to build a smaller pier (*i.e.*, approximately 10' in length) and (most importantly) move his pier/dock/boatlift to the other side of his bulkhead (*i.e.*, to the west of his current pilings) to alleviate the navigation issues and crowding.

I look forward to discussing this issue with you in more detail and providing any additional information you may require. Please understand that my intention is only to avoid future

disputes in the event either property was authorized to rebuild and/or expand their dock-structures without fully taking into consideration my concerns and navigation issues.

Sincerely,

Jeffrey Clancy

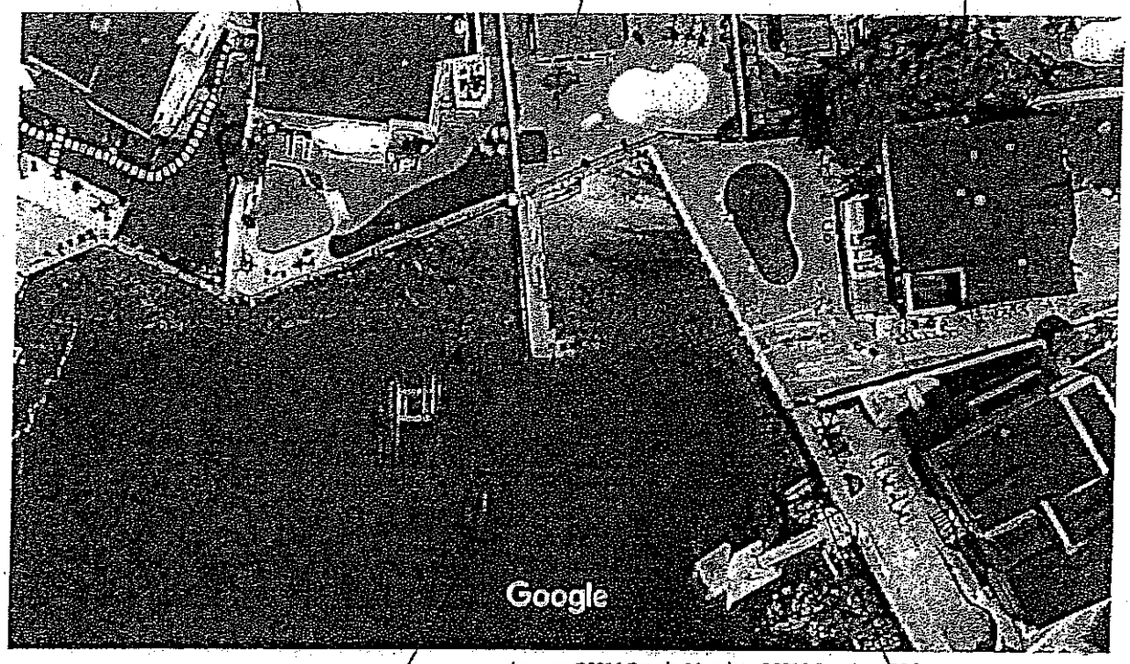
CC: Jim D'Ambrosio
Army Corps of Engineers
James.d'ambrosio@usace.army.mil

Google Maps

White House - 3400 Hewlett

Adjacent House - 3404 Hewlett

3421 EBC - My House



Imagery ©2016 Google, Map data ©2016 Google 20 ft

Remaining Pilings f/ White House / 3400 Hewlett

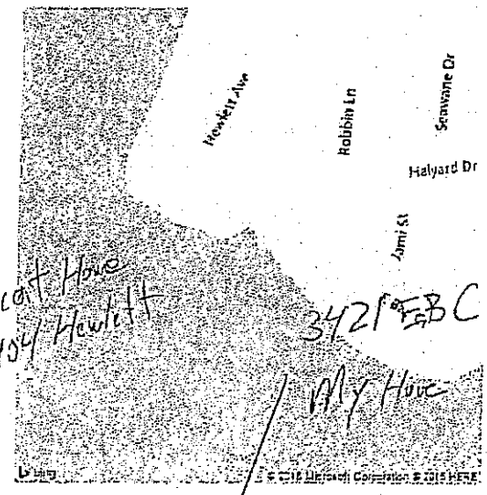
My Current pier/ramp/floating dock/lift

bing maps

Notes

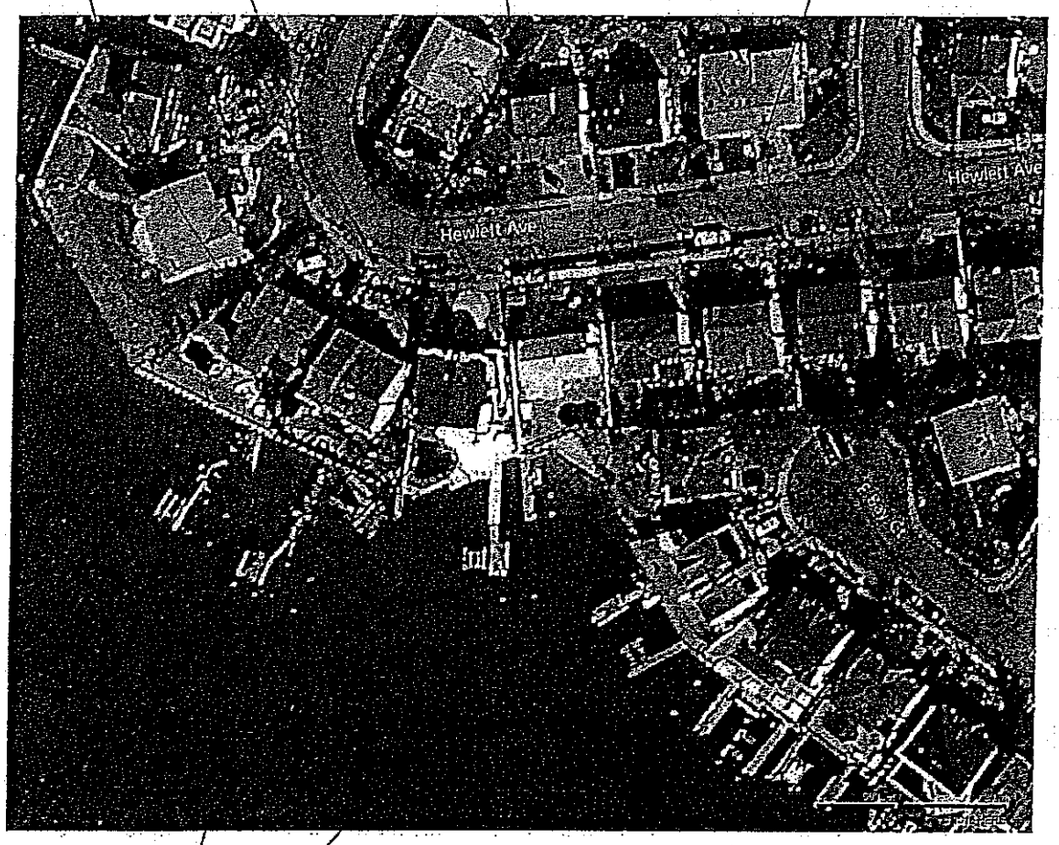
Type your notes here

3400 Hewlett
Open Bulkhead where
new pier should be moved



White House -
3400 Hewlett

Adjacent House
3404 Hewlett



Pilings f/ White House/3400 Hewlett

My property line/water rights

Exhibit 4

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

TRIAL/IAS, PART 21
NASSAU COUNTY

In the Matter of the Application of
JEFFREY B. CLANCY, JENNIFER CLANCY, ERIC HOROWITZ and ELIZABETH HOROWITZ,

Petitioners(s)-Plaintiff(s),

for a Judgment pursuant to Article 78 of the Civil Practice Law and Rules and for Other Relief

-against-

JOH BORTOLIS, TOWN OF HEMPSTEAD, THOMES E DOHENY, JR., COMMISSIONER TOWN OF HEMPSTEAD DEPARTMENT OF CONSERVATION & WATERWAYS,

Respondent(s)-Defendant(s).

Index No.: 373/19

Motion Seq. No.: 001 & 002
Motion Submitted: 5/6/19

The following papers read on this motion:

Order to Show Cause/Supporting Exhibits/Memorandum of Law.....X
Notice of Motion/Supporting Exhibits.....X
Memorandum of Law in Opposition to Motion.....X
Opposition to Order to Show Cause//Supporting Exhibits/
Memorandum of Law.....X
Petition.....X
Answer to Petition.....X
Supplemental Petition.....X
Answer to Supplemental Petition.....X

Petitioners-Plaintiffs, Jeffrey B. Clancy, Jennifer Clancy (the Clancys), Eric Horowitz and Elizabeth Horowitz (the Horowitzs), move this court (Motion Seq. 001) for preliminary injunctive relief against Respondents-Defendants, John Bortolis (Bortolis), The Town of Hempstead (the Town), and Thomas E. Doheny, Jr. Commissioner Town of Hempstead Department of Conservation & Waterways (Comm. Doheny). Bortolis opposes the motion. The Town moves separately (Motion Seq. 002) to dismiss the petition based on Petitioners' failure to exhaust all administrative remedies. Petitioners oppose the motion.

The Clancys commenced this hybrid Article 78/declaratory relief action by verified petition and complaint dated April 4, 2019. A supplemental petition and complaint was served which added the Horowitzs as Petitioners-Plaintiffs. Bortolis has submitted answers to the petition and supplemental petition.

The parties are all neighbors and have waterfront property in Merrick, County of Nassau. The Horowtizs live in between the Clancys and Bartolis. The Clancys and the Horowitzs had existing docks that they utilized for boating. Bartolis, who bought his property in 2015, petitioned the Town for permission to build a pier, leading to a dock, off of his property. There had been a dock there previously but it was destroyed by Hurricane Sandy and never rebuilt. The Town issued the permit, which allowed Bartolis to build a pier leading to a dock, and annexed to the dock a boat lift. The pier and dock would extent out 70 to 80 feet from Bartolis' property.

Bartolis and the Horowitzs live on Hewlett Avenue while the Clancys live on East Bay Court. The rear of the Bartolis and Horotwitz properties face South, more or less, and their docks jut out to the south. The rear of the Clancy property faces west, more or less, and their pier and dock juts out to the west. The shoreline of the Bartolis property running east connects to the Horowtitz property, which, while running east, is then met by the Clancy shoreline at a near right angle. The Clancy and Horowitz piers and docks jut out no more than 40 feet. Because the Bartolis pier and dock will jut out at least 70 feet, and because Bartolis intends to put his boat lift on the east side of his dock, the Horowitzs and Clancys complain that their riparian rights are being impacted. A picture of the area from above shows that, prior to Bartolis putting in his dock, the Horowtizs and Clancys had unobstructed access to their docks by boat. If Bartolis is allowed to complete his pier and dock, and is allowed to dock his boat on the east side of the dock, both neighbors, but the Horowitzs in particular, will no longer have the ease of access that they previously enjoyed. For this reason, they each move to enjoin Bartolis from completing his dock.

On April 5, 2019, the Clancys presented an order to show cause for, *inter alia*, a preliminary injunction, with a temporary restraining order (TRO), to the Hon. Anna Anzalone of this court. Judge Anzalone granted the TRO preventing Bartolis from continuing to build the pier and dock. The matter was assigned to this court and on May 3, 2019, oral argument was held. During the oral argument it was discussed that the Horowitzs would be added to the petition and complaint. The stay currently remains in

effect. The court notes that Petitioners allege that Bartolis continued to work on the pier and dock after the TRO, while Bartolis submits it was only work performed to prevent damage to the existing structures.

The petition and complaint contain six causes of action, to wit: 1) Pursuant to CPLR Art. 78, annulling the permit, 2) declaring the permit annulled, 3) seeking a permanent injunction enjoining Bartolis from interfering with Petitioners' navigable waters and directing the Town to revoke or rescind the permit, 4) issuing an injunction directing Bartolis to remove the existing structures, 5) pursuant to RPAPL §15, declaring the riparian rights of the parties, and 6) directing Comm. Doheny to "impose and enforce" Town Code Section 168 against Bartolis. Because the Town's motion impacts all, except, potentially, the Fifth Cause of Action, the court will first address whether Petitioners' were required to exhaust administrative remedies.

THE TOWN'S MOTION TO DISMISS (MOTION SEQ. 002)

A person who wishes to challenge an administrative agency's determination must first exhaust all available administrative remedies. (*Abreu v. New York City Police Dept.*, 182 AD2d 414 [2d Dept 1992]). The only exceptions to this rule are when the agency's determination is being challenged as unconstitutional, or it is alleged the agency has wholly exceeded its grant of power, or if resort to the administrative remedies would be futile. (*Watergate II Apartments v. Buffalo Sewer Authority*, 46 NY2d 52 [1978]).

Town of Hempstead Code §168-8 holds:

> Any structure, mooring pile or spile, except bulkheading, erected or installed under this chapter, shall at all times be maintained by the permittee, his successor or assignee of the adjacent upland, in good repair and condition and not as a menace to navigation or to persons using the structure, mooring pile or spile, and the Town Board, upon finding reasonable cause to believe that the permittee, his successor or assignee of the adjacent upland has failed to comply with this section, may forthwith suspend any permit issued under this chapter for a period not to exceed 30 days, and after a hearing, on written notice mailed to the permittee, his successor or assignee of the adjacent upland at his last known address, and at least 10 days prior to such hearing, may revoke such permit and remove or repair such structure, mooring pile or spile and charge the permittee, his successor or assignee of the adjacent upland with the expense of such removal or repair.

The Town argues that the Town's right to revoke a permit and direct a hearing take place to determine if permitee's structure, mooring pile or spile fails to comply with 168-8 is a remedy Petitioners' herein were required to exhaust first before commencing litigation.

In opposition, Petitioners make a number of arguments. The first is that §168-8 does not apply because the "structure" has not yet been "erected or installed". The court finds this argument, at best, seeks to elevate form over substance. Clearly there is a structure that has been erected. It has not yet been completed, but enough of it exists to have encouraged Petitioners to commence this proceeding, and to then complain that Bartolis continued to work on it. Further, §168-1 defines "structure" as including: "[A]ny submerged or underground cables, pipes, or any fixtures crossing any waterway; a float or series of floats, a pier, a dock, mooring pile or spile, and any fixture or appurtenance extending under, to, over or into the navigable waters, and bulkheading." Clearly, the

amount of the pier that has been completed thus far falls within "any fixture or appurtenance extending under, to, over or into the navigable waters".

Second, Petitioners argue that the "plain language" of the section bars application herein because the section is merely an enforcement mechanism to ensure structures are not allowed to fall into disrepair. However, the exact wording states: "Any structure, mooring pile or spile...shall at all times be maintained by the permittee...in good repair and condition and *not as a menace to navigation...*". (Emphasis added). The court agrees that the section can be read to mean that a structure that has fallen into disrepair can be a menace to navigation, but it can also be read to mean that the permitee must maintain the structure so as to both not fall into disrepair, *and* to also not be a menace to navigation. Under the latter interpretation, which the court favors, one structure blocking another clearly is a menace to navigation.

Third, Petitioners assert that §168-8 "does not provide for a private right to seek review of a permit". Petitioners offer no legal support for this assertion, and the court finds it curious when considering that the Town itself is arguing this is what they must do. Clearly, if Petitioners attempted to use such a remedy, and were rejected by the Town for that reason, Petitioners would be free to come back to this court to seek their remedy, and to seek appropriate sanctions against the Town Attorney for, in essence, directly lying to the court. Further, the court notes that the Town, in their moving papers, have already stated that should the TRO be lifted, their first course of action would be to modify the permit to direct Bartolis to place the boat lift on the west side of the dock. In other words, Petitioners may not even have to make a formal application as the Town has already

indicated their agreement that the boat lift be moved. This is yet another statement by the Town that if, not lived up to, would be subject to reargument and potential sanctions if found untrue.

Petitioners' fourth argument is that the Clancys did already attempt to use such a remedy based upon certain letters they wrote to Comm. Doheny in 2016. It appears the first letter was written prior to a permit application being submitted, and the second letter was written prior to a permit being granted. Clearly, a permit must be issued before a hearing can be held to consider revoking it.

Next, Petitioners argue that only the court can determine the parties' riparian rights. The court agrees with Petitioners on this argument. As a result, the court will not dismiss the Fifth Cause of Action.

Finally, Petitioners argue that seeking the exhaustion of administrative remedies would be futile. As discussed, *supra*, in light of the Town's agreement to immediately address the permit, once the TRO is lifted, such an argument is rendered meritless.

Regarding the Fifth Cause of Action, the court faces a quandary. On the one hand, failure to vacate the TRO means the Town cannot revoke and reissue the permit, even though that appears to be the most appropriate outcome. On the other hand, vacating the TRO could result in Bartolis finishing his pier and dock, and even assuming he was directed to place the boat lift on the west side, the court could still determine that it impedes upon Petitioners' riparian right, at which point Bartolis would be faced with having to tear down the recent construction and rebuild it in a manner that does not impede on Petitioners' riparian rights. To be clear, this court would order that exact thing

should it be determined that the Petitioners' riparian rights were being impeded.

As a result, the safest course of action to protect everyone's rights is relieve the Town and Comm. Doheny from the restraints of the TRO to allow them to act as they have stated they will act. The TRO will remain in effect as to Bartolis. However, the Town has not given the court a time frame for how long such action will take, and the court does not find it appropriate to leave the TRO in place indefinitely. Therefore the TRO will expire at 11:00 a.m. on Tuesday, July 16, 2019. All parties are directed to appear before the court on that date, at that time, to address whether there is a need, or grounds, to extend the TRO.

Petitioners' motion for a preliminary injunction is DENIED without prejudice, with leave to renew once a determination is made on the TRO on July 16, 2019.

Accordingly, it is hereby

ORDERED, that the Town's motion (Motion Seq. 002) is GRANTED to the extent that the First, Second, Third, Fourth and Sixth Causes of Action are dismissed, with leave to renew upon exhaustion of administrative remedies; and it is further

ORDERED, that the TRO is vacated as to the Town and Comm. Doheny; and it is further

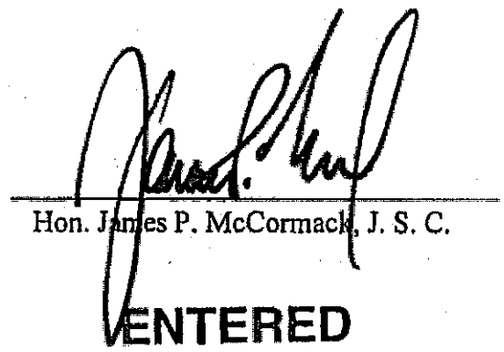
ORDERED, that the TRO will expire in full on Tuesday, July 16, 2019 at 11:00 a.m., at which date and time all parties are directed to appear before the court; and it is further

ORDERED, that Petitioners' motion for a preliminary injunction (Motion Seq. 001) is DENIED without prejudice, with leave to renew once a determination is made

regarding the TRO

This foregoing constitutes the Decision and Order of the Court.

Dated: June 26, 2019
Mineola, N.Y.



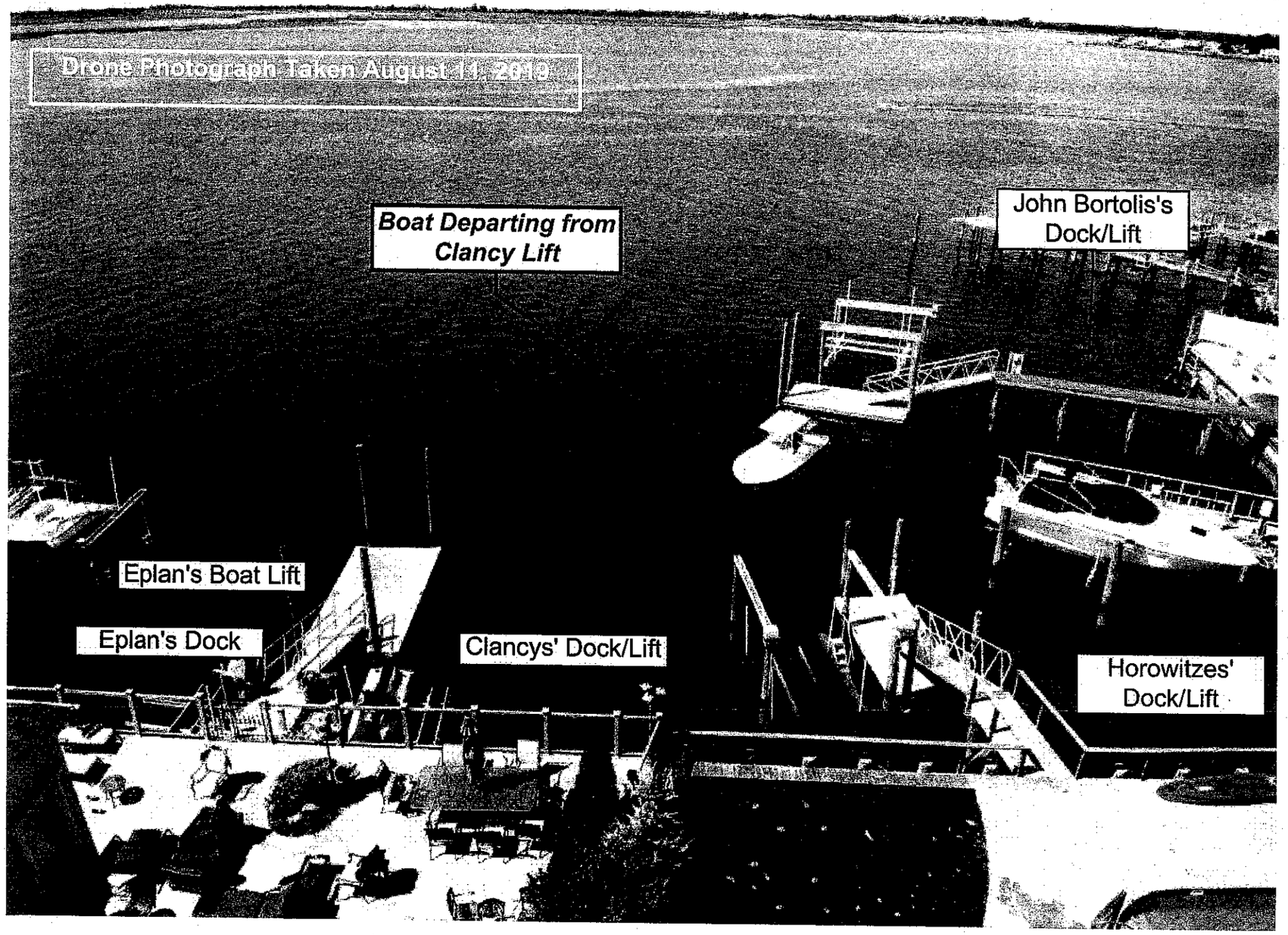
Hon. James P. McCormack, J. S. C.

ENTERED

JUN 28 2019

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Exhibit 5


Drone Photograph Taken August 11, 2019
Boat Departing from Clancy Lift
John Bortolis's Dock/Lift
Eplan's Boat Lift
Eplan's Dock
Clancys' Dock/Lift
Horowitzes' Dock/Lift

Affidavit of Louis Gnip

RE: STRUCTURE IN WATERWAY AT 3400 HEWLETT AVENUE, MERRICK, UNDER TOWN OF HEMPSTEAD PERMIT #776-065-19 PURSUANT TO TOWN BOARD RESOLUTION NO. 920-2019	**AFFIDAVIT OF LOUIS GNIP, PLS IN SUPPORT OF FINDING THAT BORTOLIS DOCK IS A MENACE TO NAVIGATION**

STATE OF NEW YORK)
)ss.:
COUNTY OF SARATOGA)

LOUIS J. GNIP, being duly sworn, deposes and says:

1. This affidavit is submitted in support of Jeffrey Clancy, *et al.* petitioner to the Town Board of Hempstead claims and allegations that the Town of Hempstead and Town of Hempstead Department of Conservation & Waterways ("DCW") (collectively the "Town") improperly issued a permit to John Bortolis ("Bortolis") for the construction of a dock.

2. I am a land surveyor licensed and registered in the State of New York (1974). I am the President of Gnip Land Surveying and, since 1974, I have been involved in property surveys for acquisition, disposition, litigation, or planning purposes. From 1965 to 2001[1], I was employed by the State of New York in connection with survey and management of real property; surveying existing state-owned lands, lands for acquisition and disposition (including preparation of legal deed descriptions), and issues involving litigation; I reviewed and investigated grant applications involving lands now or formerly underwater, including field reviews via Section 75 of the Public Lands Law; I investigated complaints via Section 32 of the Navigation Law dealing with interference of riparian/littoral rights or free and direct access to upland owners of navigable waters in the State of New York; and, I surveyed and reviewed special projects in litigation by the

[1] I was drafted in August 1965 as a result of the Vietnam War and was honorably discharged in July of 1967 and resumed my service with the State.

Attorney General's Office, as well as testified in court or Grand Jury proceedings. My resume is annexed as Exhibit "1."

3. I have conducted programs and lectures on a variety of topics, including deed description interpretation, boundary evidence, law, and title problems involving lands underwater.

4. I have reviewed numerous cases which determined riparian rights for landowners abutting an artificial canal, including a 2004 case which involved this very waterway in Merrick, New York. *See, Errico v Weinstein*, 25 Misc3d 1224(A) [Sup Ct Nassau Co 2009].

5. I am currently serving as an expert witness for Mr. and Mrs. Clancy and Mr. and Mrs. Horowitz in their active litigation against Mr. Bortolis regarding the riparian rights of the respective parties . See, *Clancy v Bortolis* [Sup Ct. Nassau Co Index # 373-2019]

6. In connection with my analysis, I have reviewed the essential documents necessary to determine the boundaries of the parties' riparian rights. I reviewed aerial photographs, current tax maps, maps prepared for Bortolis and the deeds for the subject properties.

7. I have also reviewed Permit No.:7156-065-19 which replaces previous permit #776 last amended on 7/8/19) dated: July 17, 2019 ("Permit").

8. This submission supplements the Clancys' and Horowitzes' request for the Town Board to suspend, investigate and hold a hearing on the above-referenced Permit.

9. The Permit expressly prohibits any structures or moored vessels on the east side of Mr. Bortolis's dock because these pose dangerous conditions for navigability. The Department of Conservation & Waterways ("DWC") admitted as much by amending the Permit in its own discretion to relocate the boat lift from the east side to the west side of the dock and prohibit any structures or mooring on the east side of the dock.

10. A copy of the amended Permit is attached as Exhibit "2." These conditions help to alleviate some of the dangerous conditions, but not all of them because the dock's length itself is a menace to navigation and interferes with the riparian rights of Clancy and Horowitz.

11. Our prior submissions note that a reduction of the dock's length from 75 feet to 60 feet would allow for Mr. Bortolis to utilize both sides of his dock safely, and that this option was proposed to Mr. Botrolis and the DCW. Mr. Bortolis and DCW, unfortunately, rejected the 60-foot option.

12. Our submissions also note that tidal, wave and wind conditions affect a vessel's ability to dock, moor, launch and navigate in the subject area, and that having the option to dock or moor on either side is safer for Mr. Bortolis, his guests and invitees.

13. Mr. Bortolis's Dock creates a menace to navigation and must be modified. The bulkheaded rear-yards of the Clancys, the Horowitzes and Mr. Bortolis effectively forms nearly a right-angle and create a cove of converging docks.

14. The Clancys and the Horowitzes had existing docks extending outwards from their bulkheads before the DCW issued the Permit and Mr. Bortolis built his Dock. The Clancys' property is the most easterly and their dock is built-out 35 feet westward into the cove.

15. The Horowitzes' property is directly to the west of the Clancys and their dock is built-out 40 feet southward out into the cove. Mr. Bortolis's property is directly adjoining and to the northwest of the Horowitzes and the Bortolis dock is built-out 75 feet southward out into the cove. An aerial photograph of the cove configuration is annexed as Exhibit "3."

16. The Permit allows Mr. Bortolis to build his Dock 75 feet into the cove, where no one else in the cove has a dock longer than 40 feet. This astonishing and unjustifiable length results in Mr. Bortolis's Dock extending across the Clancys' and Horowitzes' rear-yards and docks,

effectively trapping them and blocking direct access to navigable waters of East Bay within their riparian zones.

17. In order to access East Bay, the Clancys and Horowitzes must encounter and circumnavigate Mr. Bortolis's Dock and pilings, which task is aggravated by tidal, wind and waves conditions. This endeavor can be dangerous and unnecessarily increases the risk of bodily harm and property damage.

18. In support of this request for review, I have attached my analysis which summarizes the navigation hazards posed by Mr. Bortolis's Dock and explains why the DCW's purported solution of merely placing the boat lift on the west side of the Dock will not cure the danger.

19. In my expert opinion, I recommend mitigation in the form of reducing Mr. Bortolis's dock to 50 feet. A copy of my analysis is annexed as Exhibit "4." A photograph taken August 11th depicting the arrangement of the structures within the cove is annexed as Exhibit "5."

20. Not only does the Permit allow a dock that is twice as large (100% larger) than the Clancys', the Horowitzes' and the other docks within the cove, but the Dock's length is unjustified because it allows Mr. Bortolis to reach water depths of seven feet, which is two or three times deeper than a depth necessary for navigation.

21. Finally, the goal of determining riparian boundaries is to arrive at a fair and equitable access for all landowners concerned, and an adjustment must be made which would afford Clancy reasonable access as well as Bortolis, and his neighbors to the east, the Horowitzes. *See, Muraca v Meyerwitz*, 11 Misc3d 1061(A) [Sup Ct Nassau Co 2006].

22. Pursuant to riparian rights case law, Bortolis cannot have a structure which violates the riparian rights of both his adjoining neighbors and must allow for their unobstructed ingress and egress.

23. In sum, it is my expert opinion, based on my many years of experience as a land surveyor, particularly in regard to riparian rights, and under New York State law, that the appropriate method to apply is the Perpendicular Method, as shown on Exhibits "5," with appropriate adjustments in order to give the Clancys and the Horowitzes the fair and equitable use of their properties.

24. Further, it is quite clear that the Bortolis structure and boat extend well beyond his riparian boundary area to the southeast. The structure is simply too large for the limited riparian boundary area apportioned to Mr. Bortolis.

LOUIS J. ONIP

Sworn to before me this
26th day of August 2019

Notary Public

MICHELLE L KNIGHT
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KN6385829
Qualified in Schenectady County
My Commission Expires 01-14-2023

4" = "4" "FF\8351978.2" "" FF\8351978.2

Exhibit 1

832 Rock City Road
Ballston Spa, NY 12020-2903

Phone 518-885-4978
Cel 518-944-0970
E-mail lgnp@nycap.rr.com

Louis J. Gnip, PLS (Licensed 1974; PLS #49022)

Summary of qualifications

Owner of the firm, Gnip Land Surveying, a family business, since 1974 involved in property surveys for acquisition, disposition, litigation, or planning purposes. From 1965 to 2001, employed by the State of New York involving survey and management of real property. Surveyed existing state-owned lands, lands for acquisition and disposition (including preparation of legal deed descriptions), and issues involving litigation. Reviewed and investigated grant applications involving lands now or formerly underwater, including field reviews via Section 75 of the Public Lands Law. Investigated complaints via Section 32 of the Navigation Law dealing with interference of riparian/littoral rights or free and direct access to upland owners of navigable waters in the State of New York. Surveyed and reviewed special projects in litigation by the Attorney General's Office, and testified in court or Grand Jury proceedings.

Education

- 1962 Graduate of Ballston Spa High School, Saratoga County, NY.
- 1965 Graduate of the New York State Ranger School at Wanakena, NY (Extension of the State University of New York College of Forestry at Syracuse, NY.)
- Completed many continuing education courses throughout career at various colleges, conferences, and seminars throughout the State, including Association of Towns Conference in New York City, Pace University School of Law clinics held in Albany, NY., and Syracuse University.

Professional experience

10/75 - 4/78 New York State Dept. of Environmental Conservation
Regional Land Surveyor (DEC Region 7, Syracuse, NY)

- Responsible for survey boundary lines and management of approximately 250,000 acres of state-owned lands covering nine counties. Conducted surveys or contracted and reviewed consultant surveys for matters involving land acquisition, disposition, or litigation. Performed deed research to determine record ownership of land or disputes of title. Developed maps and reports for projects reviewed.

5/78 – 4/86 New York State Dept. of Environmental Conservation
Land Surveyor (DEC Central Office, Albany, NY)

- Assisted regional offices throughout the State with the management of state-owned lands and in matters involving land acquisition and disposition. Projects were coordinated with the New York State Department of Law. Involved with preparation and litigation of matters involving land disputes or claims against the State of New York.

5/86 – 8/98 New York State Office of General Services

Public Land Surveyor Examiner (Albany, New York)

- Contracted, reviewed or performed surveys and mapping of lands underwater, canal lands and other state-owned lands proposed for sale, transfer or other disposition, including acquisition of land. Conducted, contracted and reviewed surveys of state-owned land boundaries; prepared detailed reports on the State's interest in lands after examining abstracts of title, maps, records, grants and other documents, acted as a technical survey advisor in preparing recommendations pertaining to the rights of the State, Federal and private parties regarding disposition, occupancy and other factors affecting state-owned lands; represented the State of New York in cases of litigation in determining land boundaries including outshore riparian or littoral rights. Assisted in the development of the Rules and Regulations promulgated to administer Section 32 of the Navigation Law. Prepared and conducted continuing education courses regarding riparian/littoral rights and the State's lands underwater program at the New York State Association of Professional Land Surveyors Conferences held throughout the State of New York.

9/98 – 2001 New York State Office of General Services

Assistant Director, Division of Land Utilization

- Provided administrative guidance and leadership for the Division and functioned as the chief administrative/management person responsible for the daily Division activities and operations; supervision of two bureau program heads; implemented program and policy initiatives and insured that programs operated at optimum levels.

Professional memberships

- Member of the New York State Association of Professional Land Surveyors for a total of 42 years
- Current member, 33 years, of Eastern New York Society of Professional Land Surveyors having served as a member of their Board of Directors and Finance Committee Chairman.
- Former member of the Central New York Society of Professional Land Surveyors.

Community Activities

- Councilman for the Town of Milton, Saratoga County, NY 1994-2001
- Supervisor of the Town of Milton, Saratoga County, NY 2002-2003.
- Past Exalted Ruler and Past District Deputy Grand Exalted Ruler of the Benevolent and Protective Order of Elks, Ballston Spa Lodge #2619.
- Member of the American Legion Post 234.

- Member of the Milton Grange No. 685.
- Member of the Aircraft Owners and Pilots Association.
- Past Member of the Adirondack Soaring Group, Inc.
- Member of National Rifle Association.

Hobbies Hunting, fishing, bowling, and flying.

Personal 1965 – 1967 Served in the U.S. Army and was honorably discharged with the rank of Sergeant.

Father of four daughters and four grandchildren; married to wife Rosemary for 49 years and reside at 832 Rock City Road, Ballston Spa, NY.

(Revised 4/2019)

Exhibit 2

TOWN OF HEMPSTEAD
DEPARTMENT OF
CONSERVATION AND WATERWAYS

PERMIT

STRUCTURES IN WATERWAYS

Type of Use: Commercial ( ) Residential (X)

Permit Number 776-065-19* Date March 27, 2019

Sec. 63 Block 322 Lot/s 34

Issue to John Bortolis

Address 3400 Hewlett Ave., Merrick 11566

Name of Waterway (s) East Bay

A permit to construct and maintain in safe condition:

*Amend original permit, structures moved westward approx. 35' from property line: 40'x4' pier, ramp, 20'x10' float and 4-pile boat lift located on east side of float.

GENERAL CONDITIONS

1. No structure shall infringe on adjacent property owner's riparian rights or in any way cause a hazard to navigation.
2. This permit must be conspicuously displayed at the site of work.
3. Permit issued subject to inspection at all times.
4. All bulkheading to be constructed wholly within property line of ownership.
5. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, N.Y.S. Dept. of Environmental Conservation or local government which may be required.
6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description, resulting from the said project.

Thomas E. Dokas

PERMIT ADMINISTRATOR

Council Members
DOROTHY L. GOOSBY
EDWARD A. AMBROSINO
BRUCE A. BLAKEMAN
ERIN KING SWEENEY
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR.

SYLVIA A. CABANA
Town Clerk

DONALD X. CLAVIN, JR
Receiver of Taxes

THOMAS E. DOHENY JR.
Commissioner

THOMAS O. DAUSCHER
Deputy Commissioner

Town of Hempstead
Department
of
Conservation & Waterways
1401 LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

LAURA A. GILLEN
Supervisor

March 27, 2019

John Bortolis
3400 Hewlett Ave.
Merrick, NY 11566

Dear Mr. Bortolis,

Please be advised that your application for Structures in Waterways has been approved and Permit No.776-065-19* has been issued in accordance with the application and plan submitted.

This permit must remain on the premises and be available for inspection at all times.

We direct your attention to the condition on your permit to obtain further authorization to do this work from:

Department of the Army
New York District, Corps of Engineers
Regulatory Affairs
26 Federal Plaza
New York, New York 10278-0090
(917)790-8511

New York State Department of Environmental Conservation
Department of Regulatory Affairs
Building 40 – SUNY – Room 219
Stony Brook, New York 11794
(631)444-0355

Sincerely,

Thomas E. Doheny, Jr.
Commissioner

*amended

TD:jmw
enclosures

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No. 061-19 Date Received 3/26/19

Name	Address	Telephone No.
1. **APPLICANT:** MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. **OWNER:** MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. **CONTRACTOR:** KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No. _____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No. _____
Disability Benefit Insurance Filed: YES ☑ NO ☐ *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES ☐ NO ☑ *(Submit Form C105.21)*

4. **LOCATION OF WORK SITE:**
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES ☐ NO ☑

5. **USE OF UPLAND PROPERTY:** Business _____ Proposed Res. _____ Exist.Res. X Other _____
6. **USE OF PROPOSED WATERWAYS STRUCTURE:** Commercial _____ Non-commercial X Houseboat _____
7. **DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:**
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY. REPLACE 84 LF OF BULKHEAD IN PLACE WITH 18-IN INCREASE IN ELEVATION. ~~RECONSTRUCT 40X4 (160 SF) PIER, 20X10 (200 SF) FLOATING DOCK W/ RAMP AND 4 PILE VESSEL LIFT. NO DREDGING IS PROPOSED.~~

8. **OWNER'S STATEMENT:** *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

Signature of Owner

9. **APPLICANT'S STATEMENT:** *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

SF #770 EASEMENT.

AREA (FT²)		
MOORING PILES		
BULKHEAD (L.F.)	84	
TOTAL FEE	$42.00	

PERMIT NO. _____
DATE ISSUED _____
RECEIPT NO. _____
CHECKED BY _____
APPROVED BY _____

CWF12-4 10/00

TOWN OF HEMPSTEAD
DEPARTMENT OF CONSERVATION & WATERWAYS
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569

STRUCTURE PERMIT APPLICATION

Application No. 065-19 Date Received 5/27/19

Name	Address	Telephone No.
1. **APPLICANT:** MR ADON AUSTIN, PE	486 SUNRISE HWY STE 102, ROCKVILLE CENTRE, NY, 11570	(516) 595-3483
2. **OWNER:** MR. JOHN BORTOLIS	3400 HEWLETT AVE, MERRICK, NY, 11566	(917) 340-9440
3. **CONTRACTOR:** KITZEN CONSTRUCTION	4071 GREENTREE DR, OCEANSIDE, NY 11572	(516) 375-7015

Workers' Compensation Cert. No. _____ Exp. Date _____ *(Submit Form C105.2)*
Insurance Company ATLANTIC AGENCY HUNTINGTON INC Policy No. _____
Disability Benefit Insurance Filed: YES [✓] NO [ ] *(Submit Form D120.1)*
Exempt from Workers' Compensation Law: YES [ ] NO [✓] *(Submit Form C105.21)*

4. **LOCATION OF WORK SITE:**
(a) Address 3400 HEWLETT AVE, MERRICK, NY, 11566
(b) Section 63 Block 322 Lot(s) 34 (c) Zoning _____
(d) Name of Waterway EAST BAY
(e) Is there a Town/County Drain Easement on Property? YES [X] NO [✓]

5. **USE OF UPLAND PROPERTY:** Business _____ Proposed Res. _____ Exist.Res. X Other _____
6. **USE OF PROPOSED WATERWAYS STRUCTURE:** Commercial _____ Non-commercial X Houseboat _____
7. **DESCRIPTION OF PROPOSED WORK AND ESTIMATED COSTS:**
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING WATERFRONT STRUCTURES DESTROYED BY SUPERSTORM SANDY 40X4 (160 SF) PIER, 20X10 (200 SF) FLOATING DOCK W/ RAMP AND 4-PILE VESSEL LIFT. NO DREDGING IS PROPOSED.

8. **OWNER'S STATEMENT:** *I do hereby state that I am the Owner of the subject premises and that I have authorized the filing of this application for the work described herein; and I agree to conform to all applicable laws of the Town of Hempstead.*

Signature of Owner

9. **APPLICANT'S STATEMENT:** *I agree to comply with all the rules and regulations of the local law of the Town of Hempstead regulating the construction and use of structures in waterways, and all other applicable laws of the Town of Hempstead.*

Signature of Applicant

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

AMEND # 776
PIER MOVED WEST / lift flipped to EAST side of float.

AREA (FT²)		
MOORING PILES	N/C	
BULKHEAD (L.F.)		
TOTAL FEE		

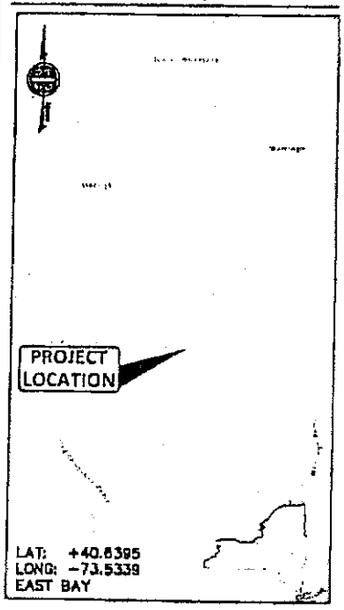
PERMIT NO. _____ RECEIPT NO. _____
DATE ISSUED _____ CHECKED BY _____
APPROVED BY _____

CWF12-4 10/00

BULKHEAD REPLACEMENT
3400 HEWLETT AVENUE
MERRICK, NY 11566
23 JULY 2018

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

LOCATION MAP



PROJECT INFORMATION

LOCATION

PRIVATE RESIDENCE OF MR. JOHN BORTOLIS, 3400 HEWLETT AVENUE, IN THE TOWN OF HEMPSTEAD, NASSAU COUNTY, NEW YORK ALONG EAST BAY.

PROJECT NOTIFICATION

COMMENCEMENT NOTIFICATION TO REGULATORY AGENCY SHALL BE SUBMITTED, AS REQUIRED, BY SELECTED CONTRACTOR PRIOR TO THE START OF WORK.

GENERAL CONTACT INFORMATION

RISING TIDE WATERFRONT SOLUTIONS, PLLC
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NY 11570
PHONE: 516-595-3483
EMAIL: CONTACT@RT-WS.COM

DEFINITION(S)

AUTHORITY: MR. JOHN BORTOLIS
ENGINEER: RISING TIDE WATERFRONT SOLUTIONS, PLLC
CONTRACTOR: TO BE DETERMINED

REVISION(S)

A:	JOINT PERMIT APP	08-30-2017
B:	USACE COMMENTS	09-19-2017
C:	NYSDEC COMMENTS	04-27-2018
D:	NYSDEC COMMENTS	07-23-2018

SKETCH INDEX

SK-1	TITLE SHEET & LOCATION MAP
SK-2	FACILITY PLAN
SK-3	HYDROGRAPHIC STUDY
SK-4	BULKHEAD SECTION
SK-5	FIXED PIER & FLOATING DOCK
SK-6	BOAT LIFT

SCHEDULE A - OVER-WATER COVERAGE ADDITION/REMOVAL

ITEM	QUANTITY (SF)	
	PRE-EVENT	EXISTING
ADDITION(S)	+0.00	+0.00
DEMO/REMOVAL	-0.00	-0.00
NET ADD/REMOVAL	-0.00	-0.00

* SCHEDULE(S) COMPARE PROPOSED ACTION WITH EXIST. STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.

SCHEDULE B - TIDAL AREA CUT/FIL

ITEM	QUANTITY (CY)			
	PRE-EVENT		EXISTING	
	MHW	MHWS	MHW	MHWS
FILL	+0.00	+0.00	+0.00	+0.00
CUT	-0.00	-0.00	-0.00	-0.00
NET CUT/FILL	-0.00	-0.00	-0.00	-0.00

SCHEDULE C - TIDAL CHART ELEVATION(S)

POSITION	MLW	NAVD88	DESCRIPTION
MHWS	+4.1	+2.2	MEAN HIGH WATER SPRING
MHHW	+3.8	+1.9	MEAN HIGHER HIGH WATER
MHW	+3.5	+1.6	MEAN HIGH WATER
MSL	+1.8	−0.1	MEAN SEA LEVEL
MLW	±0.0	−1.9	MEAN LOW WATER
MLLW	−0.1	−2.0	MEAN LOWER LOW WATER

PROJECT DESCRIPTION

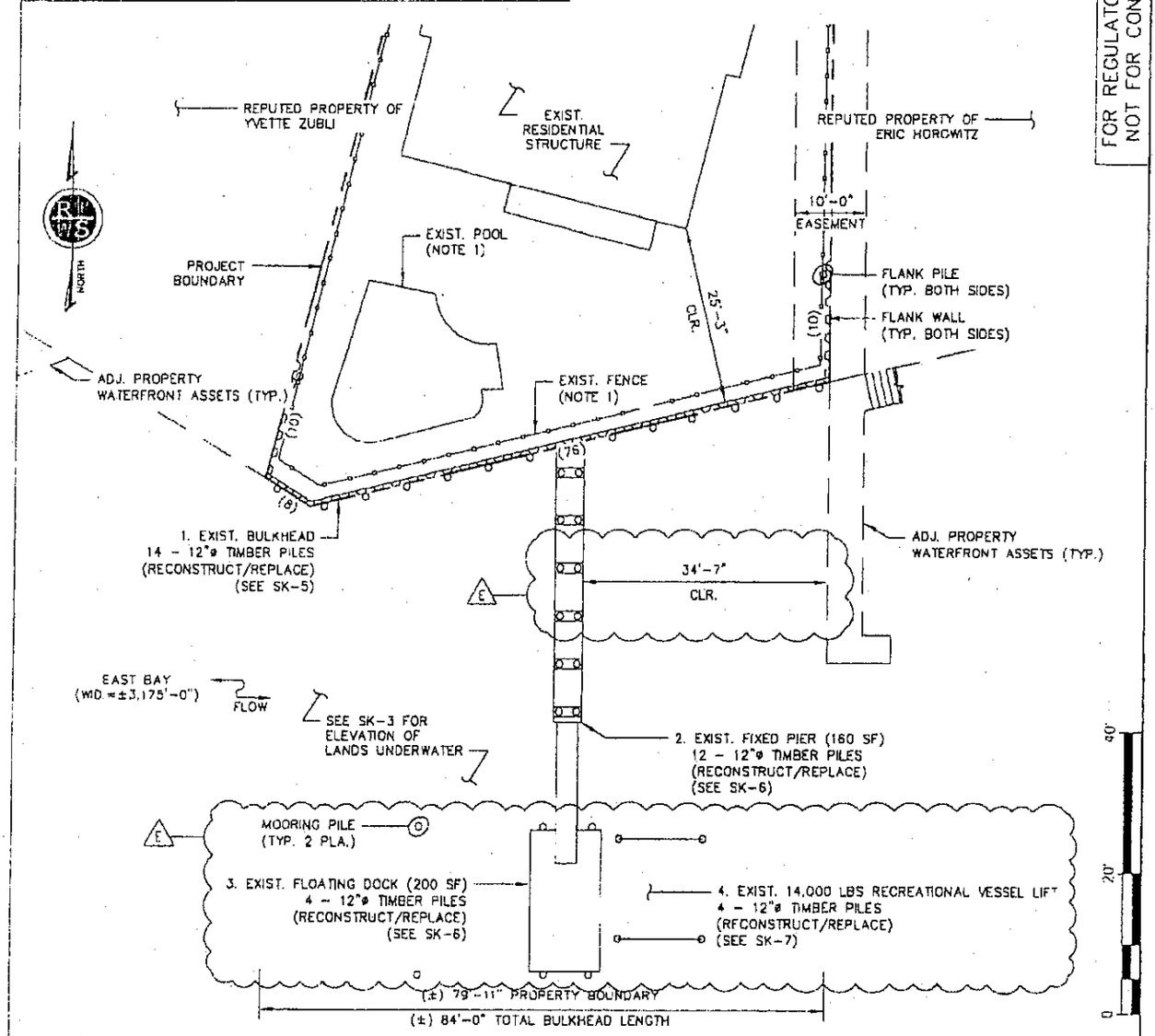
RECONSTRUCT/REPLACE LAWFULLY EXISTING & FUNCTIONING BULKHEAD AND OVER-WATER STRUCTURES DESTROYED BY SUPERSTORM SANDY. 64 LF BULKHEAD SHALL BE REPLACED IN-PLACE BY A NAVY STYLE BULKHEAD WITH AN 18 IN. INCREASE IN ELEVATION. OVER-WATER STRUCTURES TO BE RECONSTRUCTED INCLUDE: (A) 40X4 (160 SF) TIMBER PIER; (B) 20X10 (200 SF) FLOATING DOCK W/ RAMP; AND (C) 4-PILE VESSEL LIFT. PROPOSED ACTIVITY DOES NOT INCLUDE DREDGING.

SHEET NO. SK-1 1 of 6	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE N/A	Rising Tide | Waterfront Solutions
	DRAWN BY JHK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. D	SHEET TITLE SHEET & LOCATION MAP

SCHEDULE D – SUMMARY OF PROPOSED ACTIVITY				
ITEM	UM	SIZE	AREA	NOTE(S)
1. BULKHEAD	FT	84	--	2
2. FIXED PIER	FT	40 X 4	160 SF	1
3. FLOATING DOCK	FT	20 X 10	200 SF	1
4. VESSEL LIFT	EA	1	--	1

NOTE(S):
1. LAWFULLY EXISTING OVER-WATER STRUCTURE(S) DESTROYED BY SUPERSTORM SANDY.
2. LAWFULLY EXISTING STRUCTURE REMAINING IN PLACE (I.E. NOT DESTROYED BY SUPERSTORM SANDY).

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



FACILITY PLAN

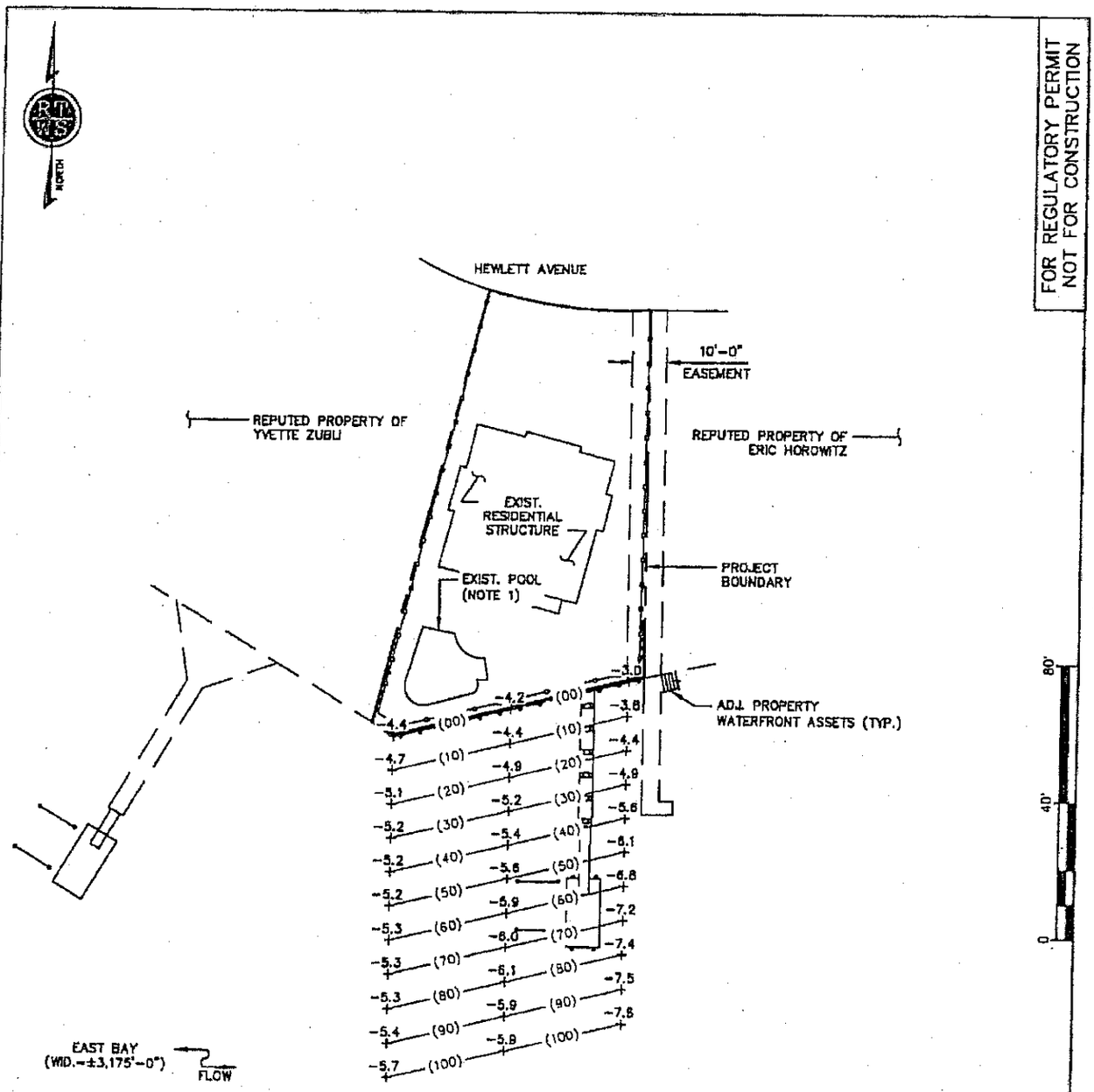
SCALE 1:20

LEGEND:
(XX) BULKHEAD LENGTH IN FEET

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

SHEET NO	PROJECT NO.	PROJECT	SCALE	Rising Tide | Waterfront Solutions
SK-2	P170731.00	BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE	1:20	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
2 OF 6 SHEET(S)	DRAWN BY JWK		DATE 03/26/16	SHEET
	CHECKED BY AMA	MERRICK, NY 11566 EAST BAY NASSAU COUNTY	REVISION NO. E	FACILITY PLAN

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

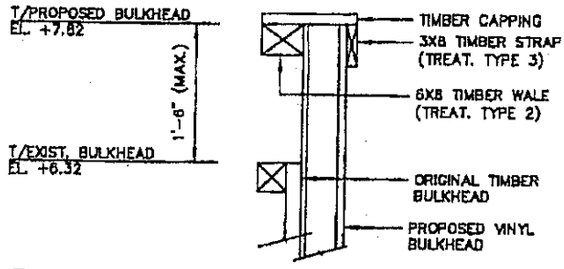


PLAN
HYDROGRAPHIC STUDY
SCALE: 1:40

LEGEND:
-X.X: LAND UNDERWATER ELEVATION (NAVD 88)
-(XX)- HORIZONTAL OFFSET FROM BULKHEAD FACE

NOTE(S):
1. REMOVE/REINSTALL AS DIRECTED BY HOMEOWNER.
2. NO DREDGING PROPOSED.

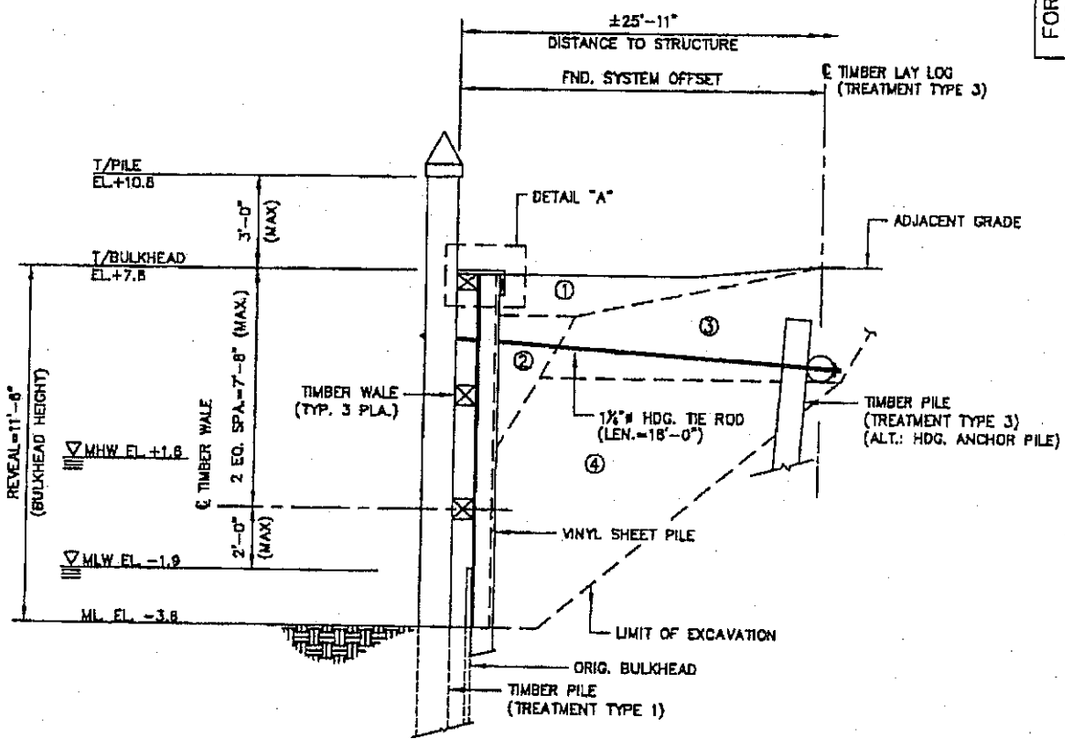
SHEET NO. SK-3 3 of 8 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:40	Rising Tide Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. D	SHEET HYDROGRAPHIC STUDY



A
SK-5
DETAIL
T/BULKHEAD DEFINITION
N.T.S.

TABLE 2 - FILL DESIGNATIONS		
ITEM	DESCRIPTION	QUANTITY
1	PLACED FILL REQ'D FOR 18" ELEVATION	24 CY
2	REPLACED ERODED/LOST FILL	0 CY
3	RECLAIMED/ORIGINAL FILL	80 CY
4	RECLAIMED/ORIGINAL FILL OR DREDGE SPOILS	152 CY

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

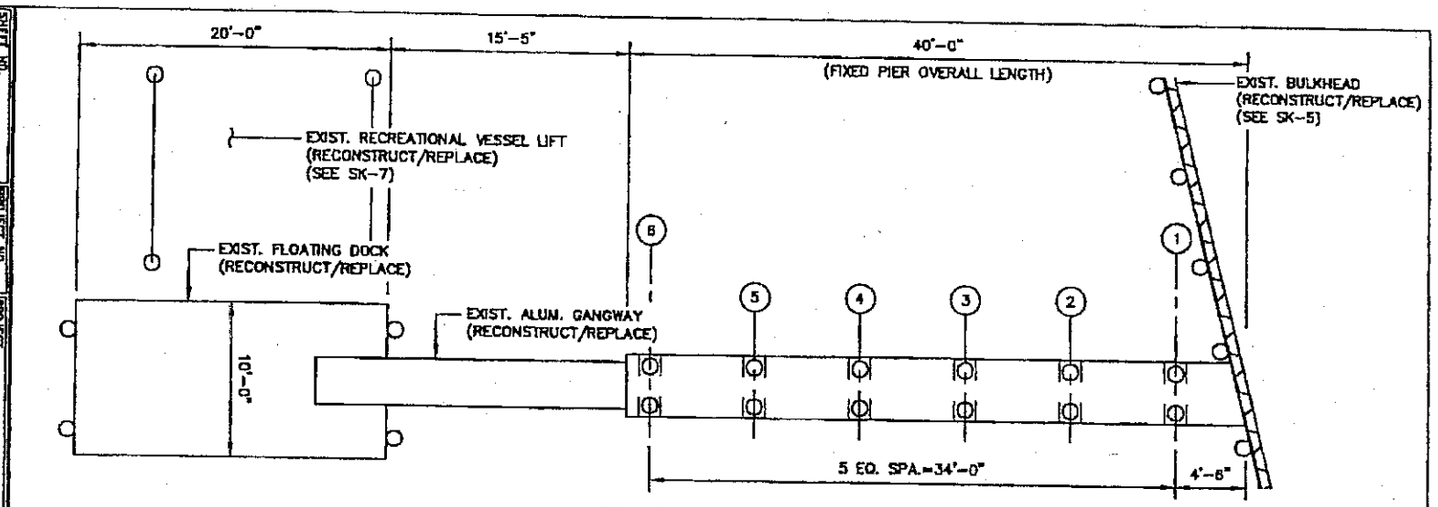


B
SK-4
SECTION
BULKHEAD/PLATFORM
SCALE: 1:5

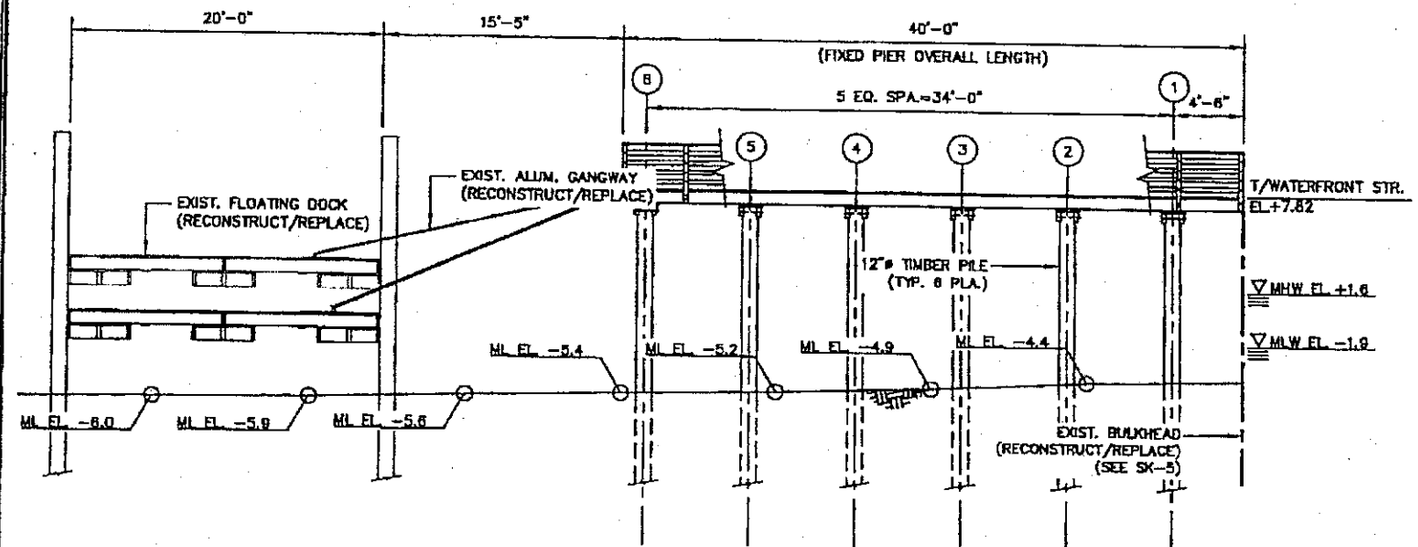
TABLE 3 - TIMBER TREATMENT		
TREATMENT TYPE	CCA RETENTION	DESCRIPTION
1	2.5	CCA TREATED PER AWPA-P5
2	2.5	CCA TREATED PER LATEST AWPA STANDARDS, COMMODITY SPECIFICATION A.P 3.0
3	1.5	

NOTE 1: APPURTENANCE(S) TO BE REMOVED/REINSTALLED AS DIRECTED BY HOMEOWNER. NOT SHOWN FOR CLARITY.

SHEET NO. SK-4 4 of 6 SHEETS	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BULKHEAD/PLATFORM SECTION



PLAN
FIXED PIER & FLOATING DOCK
SCALE: 1:10



TYPICAL ELEVATION
FIXED PIER & FLOATING DOCK
SCALE: 1:10

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION

SHEET NO. SK-5
5 of 6 SHEETS

PROJECT NO. P170731.00
DRAWN BY JHK
CHECKED BY AMA

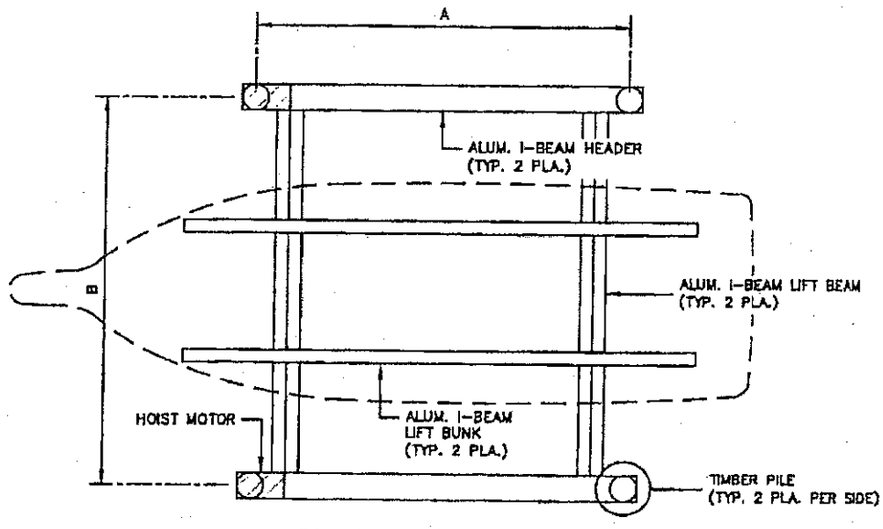
PROJECT
BULKHEAD REPLACEMENT
PREPARED FOR
MR. JOHN BORTOLIS
LOCATED AT
3400 HEWLETT AVENUE
MERRICK, NY 11566
EAST BAY
NASSAU COUNTY

SCALE 1:10
DATE 07/23/18
REVISION NO. D

Rising Tide | Waterfront Solutions
486 SUNRISE HIGHWAY, SUITE 102
ROCKVILLE CENTRE, NEW YORK 11570

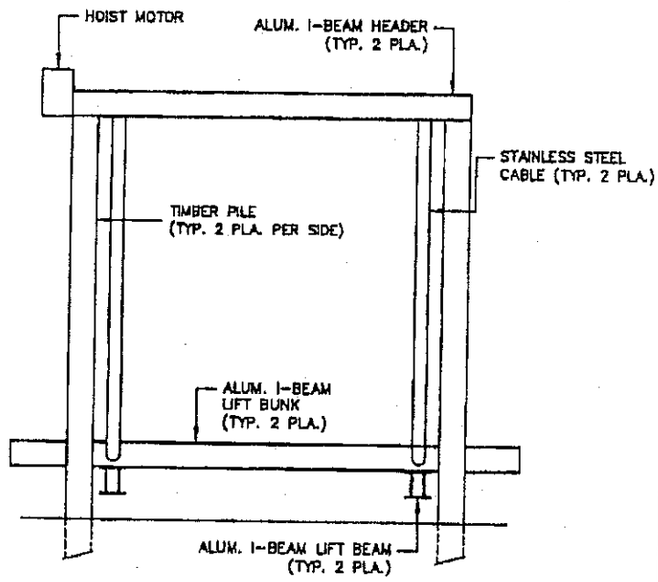
SHEET
FIXED PIER & FLOATING DOCK

FOR REGULATORY PERMIT
NOT FOR CONSTRUCTION



PLAN
BOAT LIFT
SCALE: 1:5

SCHEDULE A - ALL SPACING TO CENTER OF PILE			
LIFT CAPACITY	A	B	RECOMMENDED PILING SIZES
5,000 LBS	11'-0"	10'-0"	10"Ø
7,000 LBS	12'-0"	12'-0"	10"Ø
10,000 LBS	12'-0"	12'-6"	10"Ø
14,000 LBS	12'-0"	12'-6"	10"Ø
18,000 LBS	14'-0"	14'-0"	12"Ø
22,000 LBS	12'-0"	16'-0"	12"Ø
27,000 LBS	16'-0"	16'-0"	12"Ø
33,000 LBS	18'-0"	18'-0"	12"Ø



ELEVATION
BOAT LIFT
SCALE: 1:5

SHEET NO. SK-6 6 OF 6 SHEET(S)	PROJECT NO. P170731.00	PROJECT BULKHEAD REPLACEMENT PREPARED FOR MR. JOHN BORTOLIS LOCATED AT 3400 HEWLETT AVENUE MERRICK, NY 11566 EAST BAY NASSAU COUNTY	SCALE 1:5	Rising Tide | Waterfront Solutions
	DRAWN BY JMK		DATE 07/23/18	486 SUNRISE HIGHWAY, SUITE 102 ROCKVILLE CENTRE, NEW YORK 11570
	CHECKED BY AMA		REVISION NO. 0	SHEET BOAT LIFT

Exhibit 3

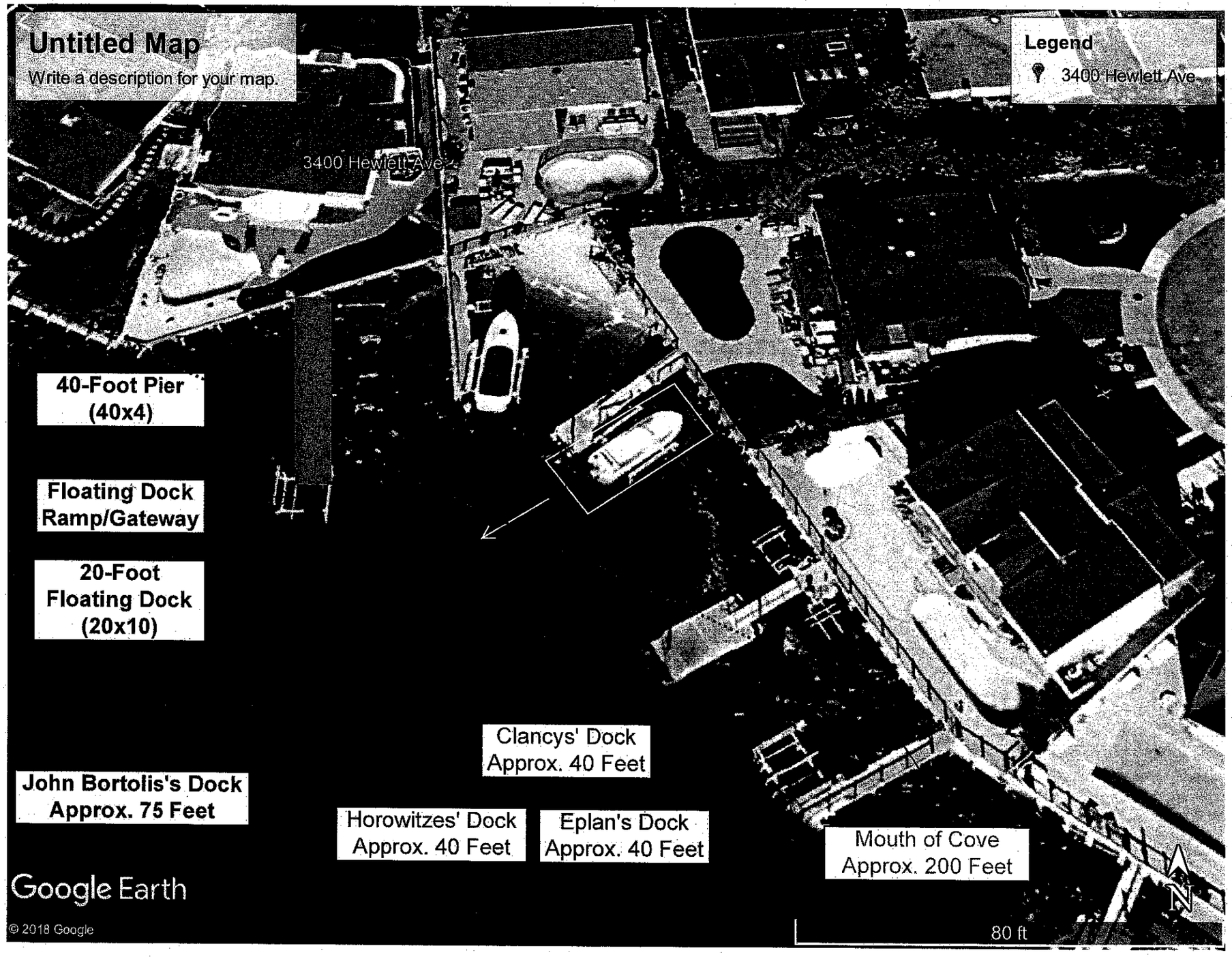

Untitled Map
Write a description for your map.
Legend
3400 Hewlett Ave
3400 Hewlett Ave
40-Foot Pier
(40x4)
Floating Dock
Ramp/Gateway
20-Foot
Floating Dock
(20x10)
Clancys' Dock
Approx. 40 Feet
John Bortolis's Dock
Approx. 75 Feet
Horowitzes' Dock
Approx. 40 Feet
Eplan's Dock
Approx. 40 Feet
Mouth of Cove
Approx. 200 Feet
Google Earth
© 2018 Google
80 ft
N

Exhibit 4

Sketch Map Narative – NAS-30-4A & 4
Showing the Bortolis Dock outshore at 75'
From the Upland Bulkhead within the East Bay Cove
At Merrick, Town of Hempstead, County of Nassau, State of New York

Having reviewed the documents provided in connection with the above matter involving outshore Riparian Zones, I have determined that the appropriate method to apply is the "Perpendicular Method" as employed by the State of New York in areas of their jurisdiction. Outshore improvements that have taken place over the years in this East Cove Bay were allowed without consideration of the Perpendicular Method. This has violated the upland owner's right of free and direct navigation to their upland properties. The Bortolis structure extended obout 75 feet outshore and was recently destroyed by Hurricane Sandy.

The Perpendicular Method is constructed by establishing a base line between the headlands with a perpendicular line drawn therefrom to each respective upland owner's property lines as shown on the map referenced above.

The issue of free and direct navigation occurred at the time Mr. Bortolis applied for a permit to reconstruct his dock facility in the previous location prior to his dock being destroyed. It is unfortunate that the agencies reviewing this proposal did not consider the effect of navigation of neighboring properties within the cove area after complaints were made by neighboring owner Clancy. There are presently four owners in the cove area, however, the only ones involved are Bortolis, Horowitz and Clancy.

It is my opinion that the Bortolis dock plan extends too far into the cove area forcing neighboring owners to navigate into other neighboring riparian areas. A dock location closer to the bulkhead is feasible as a navigable water depth of 4.5 feet is all that is necessary for the type of watercraft involved. The current Bortolis plan occupies not only his riparian area but the total area of Horowitz and a portion of Clancy. This forces Horowitz to utilize Clancy's riparian zone for ingress and egress from his upland property. No one is totally blocked from navigation, however, it requires them to maneuver using various navigational methods for access, especially during times of high winds.

It is only proper at this time of dock reconstruction by Bortolis that a modified version to the Perpendicular Method be considered to minimize encroachments to neighboring land owners and provide fair and equitable navigational access to their properties. Shortening the length of the Bortolis dock can accomplish this. I have prepared a Sketch Map No. NAS-30-4 that would shorten the Bortolis dock from 75 feet to 50 feet from the bulkhead line that could accomplish this. This plan shows a moored boat to the east and boat lift to the west. I have incorporated soundings on my Sketch Map that were taken from a Hydrographic Study Plan, Sheet No. SK-3 dated 3/26/16 by Rising Tide/Waterfront Solutions made for Mr. Bortolis. This plan shows the water depth at the dock structure to be between 5.2 to 5.6 feet based on the North American Vertical Datum (NAVD) 88. This proposal minimizes the encroachments and provides for adequate water depth and reasonable navigation to neighboring owners.

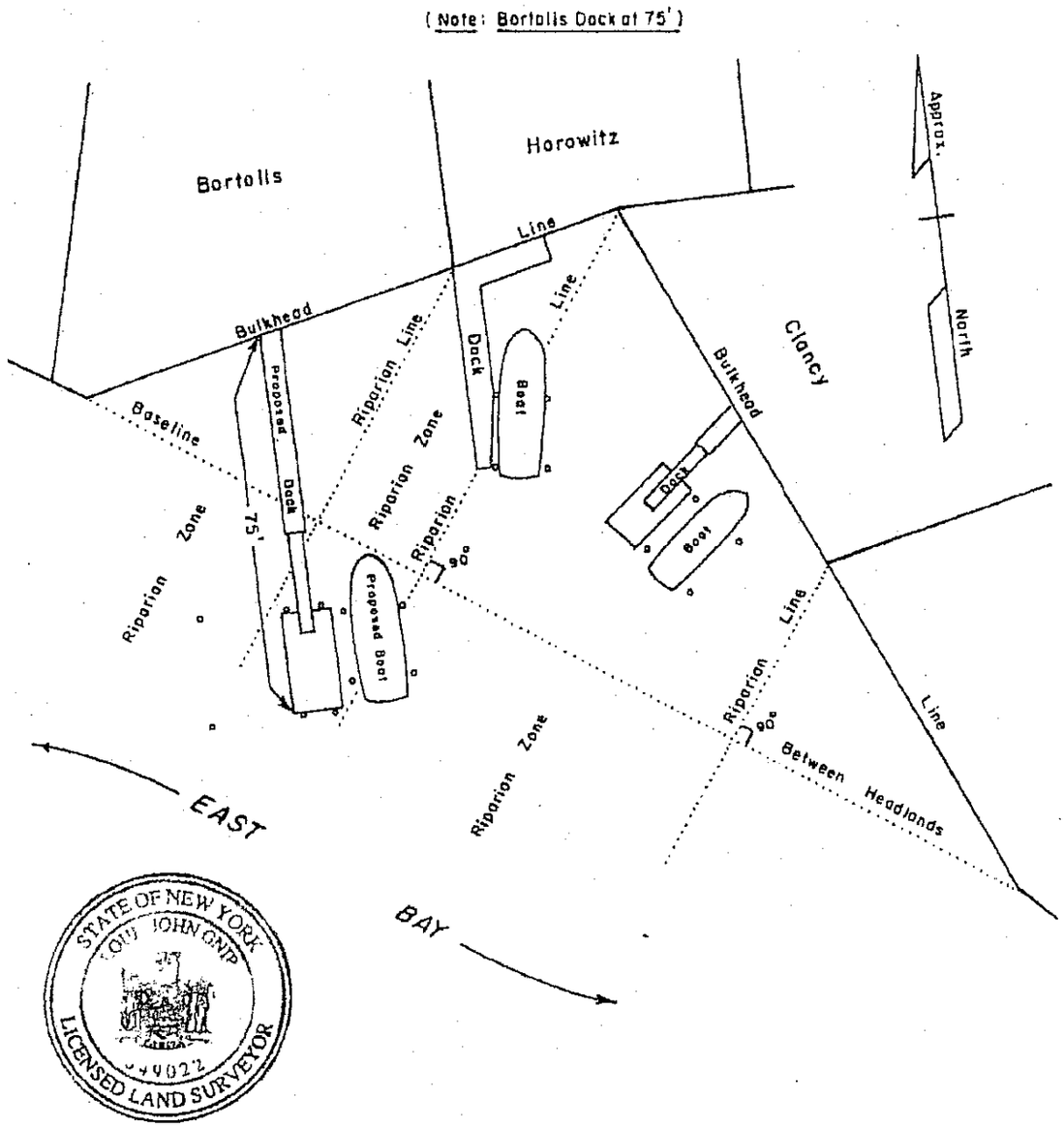
The Town of Hempstead's mitigation of placing the boat lift on the west side of the 75 foot dock is insufficient to address the issue of navigability. This is not a viable solution because the dock length is excessive within navigable waters and still presents a navigable issue to the upland neighboring property owners within the cove area.

It should also be pointed out that DEC permits have provisions that no docks, catwalks, floats, pilings, and boat lift/davit shall extend laterally beyond property lines, interfere with navigation, or interfere with other landowner riparian rights. Item "D" of their permit indicates that the permittee has no right to trespass or interfere with riparian rights. A dock structure of 75 feet outshore in this cove area certainly violates the provisions of the DEC permit.

Therefore, a modified version of the Perpendicular Method is encouraged so as to provide the Clancy's and Horowitz's fair and equitable use of their respective riparian zones.

Respectfully submitted,

Louis J. Gnip, Land Surveyor
Dated: July 11, 2019



STATE OF NEW YORK
LOUIS JOHN GNIP
049022
LICENSED LAND SURVEYOR

SKETCH MAP Showing Cove Area of East Bay at Merrick, Town of Hempstead, County of Nassau, State of New York with existing and proposed outshore improvements. Riparian Zones are established using the "Perpendicular Method" for a cove area. The proposed dock/boat for Bortolis is shown according to the modified facility plan SK-2. The improvements according to the proposal herein shown transgresses into the riparian zones of both Horowitz and Clancy.

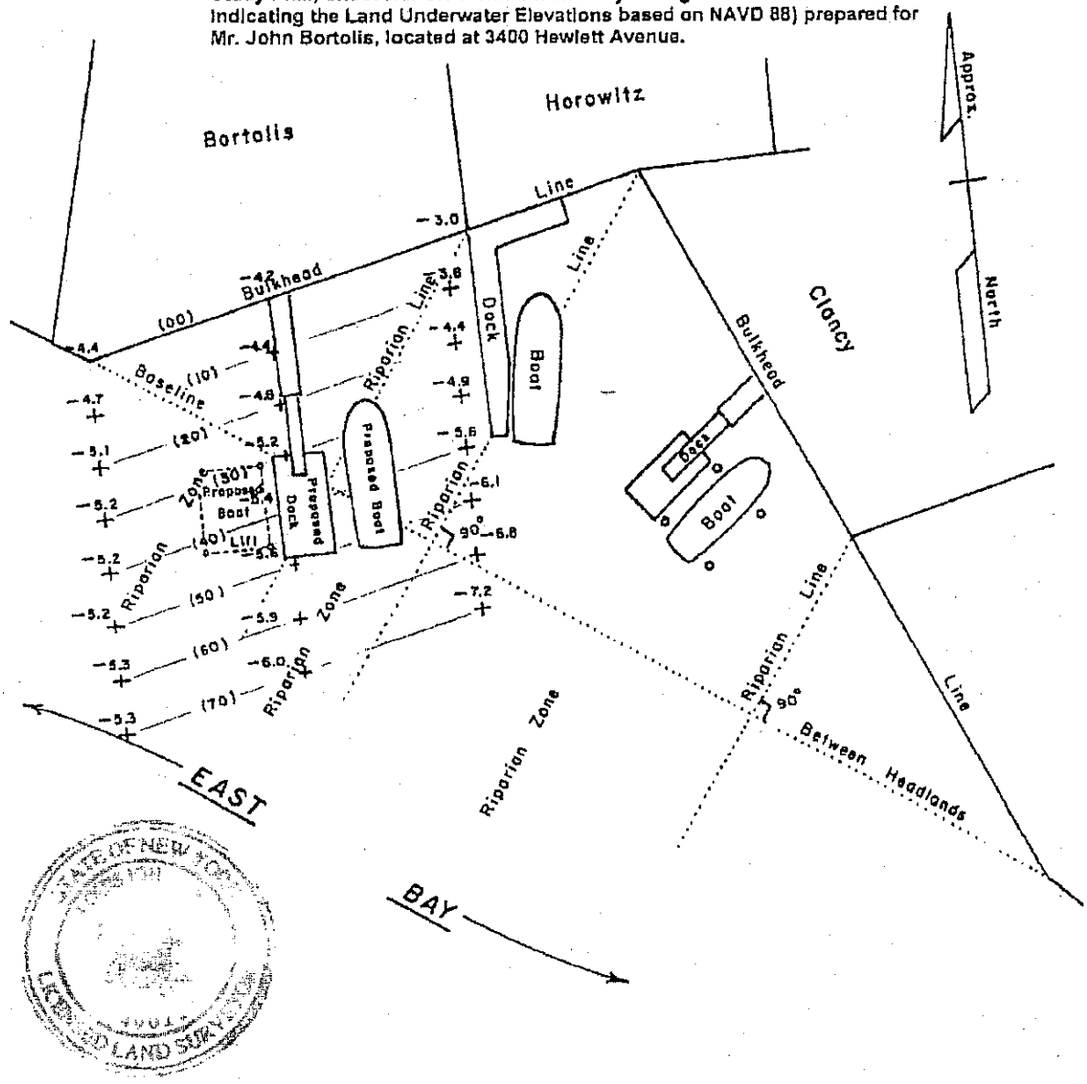
Map Scale 1" = 30 Feet

By: Louis J. Gnip, L.S. 49022
Dated: May 8, 2019

NAS - 30-4 A

(Note : Bortolis Dock at 50')

(Note: Soundings as shown on this map were taken from a Hydrographic Study Plan, Sheet No. SK-3 dated 3/26/16 by Rising Tide/Waterfront Solutions indicating the Land Underwater Elevations based on NAVD 88) prepared for Mr. John Bortolis, located at 3400 Hewlett Avenue.



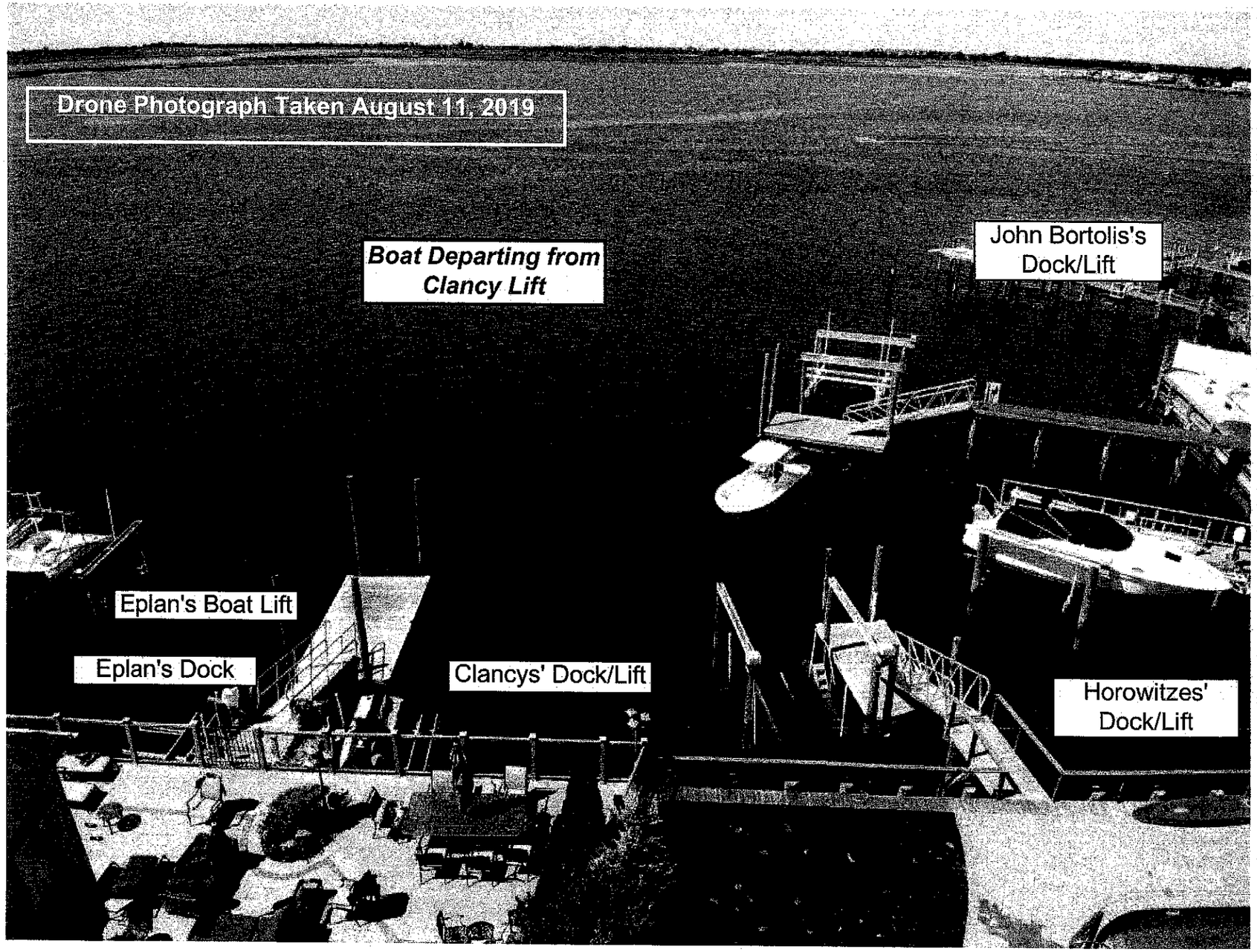
SKETCH MAP Showing Cove Area of East Bay at Merrick, Town of Hempstead, County of Nassau, State of New York with existing and proposed outshore improvements. Riparian Zones are established using the "Perpendicular Method" for a cove area. The proposed dock/boat for Bortolis has been shortened by 25 feet from the current plan to minimize the adverse effect that such outshore improvements have on free and direct navigational access for all neighboring upland owners within this cove area.

Map Scale 1" = 30 Feet

By: Louis J. Gnip, L.S. 49022
Dated: May 2, 2019 (Revised: July 11, 2019)

NAS - 30-4

Exhibit 5


Drone Photograph Taken August 11, 2019
Boat Departing from Clancy Lift
John Bortolis's Dock/Lift
Eplan's Boat Lift
Eplan's Dock
Clancys' Dock/Lift
Horowitzes' Dock/Lift

Affidavit of Steve Eplan

RE: STRUCTURE IN WATERWAY AT 3400 HEWLETT AVENUE, MERRICK, UNDER TOWN OF HEMPSTEAD PERMIT #776-065-19 PURSUANT TO TOWN BOARD RESOLUTION NO. 920-2019	**AFFIDAVIT OF STEVEN EPLAN IN SUPPORT OF FINDING THAT BORTOLIS DOCK IS A MENACE TO NAVIGATION**

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

I, STEVEN EPLAN, being duly sworn, depose and say:

1. I own and reside at 3427 East Bay Court, Merrick, Town of Hempstead, New York. I have lived in Merrick for my most of my life, I grew up on East Bay Court and I have owned and lived in my current home on East Bay Court for 20 years.

2. The rear yard of my home is bulkheaded along East Bay and my dock is within the cove formed by my property and the properties of Jeffrey and Jennifer Clancys ("Clancys"), Eric and Elizabeth Horowitz ("Horowitzes") and John Bortolis ("Bortolis"). I am the easternmost property within the cove, and Bortolis is the westernmost.

3. Bortolis recently completed building a pier, gateway, floating dock and boat lift (collectively "Dock") which extends at least 75 feet into the cove and poses a danger and a menace to navigation.

4. In fact, within two weeks of Bortolis completing his Dock, my boat crashed into his Dock.

5. On the morning of Saturday, August 3, 2019, I was navigating my boat towards my boatlift – when my engine stalled.

6. I knew what had happened and what the problem was, but I could not resolve the situation and restart my engine in time to correct my course because the cove conditions quickly

pushed my boat across the cove towards Bortolis's Dock.

7. The wind, tide and current, as well as the wave action resulting from bay water hitting the bulkheading and returning as waves, thrust my boat across the cove towards Bortolis's Dock.

8. I had to push-off of Bortolis's Dock with my bare hands to protect my boat.

9. My son was able to come to my rescue with a wave runner. He tied-up to my boat with the wave runner and brought me back to my boat lift.

10. Bortolis witnessed my boat crashing into his Dock.

11. Bortolis came out when I crashed into his Dock and failed to offer me assistance.

12. Fortunately, the wind and water were not stronger than they were that morning; otherwise, I would have been at a much great risk of bodily harm, and my boat would have been at much greater risk of being damaged or destroyed.

13. Over the years, I have personally assisted and helped rescue boaters within the cove on five separate occasion.

14. Moreover, everyone within the cove has a dock length of *less than 40 feet* – except Bortolis, whose Dock length is at least 75 feet.

15. We all reach navigable water with our Docks, which are *half as long* as Bortolis's Dock.

16. Not only is his Dock extraordinarily and unjustifiably long, but it juts-out directly into the middle of the cove, and poses a danger to navigability within the cove, as well as entry to and return from East Bay.

17. The distance across the mouth of the cove, from the east corner of my property to the west corner of Bortolis's property, is only about 200 feet.

18. There is no reason why Bortolis's Dock should be placed where it is and at that length. There is every reason to shorten it or relocated it to the western edge of his property – away from my dock, the Clancys' dock and the Horowitzes' dock, so that we can safely leave from and return to our docks and lifts.

19. The Town Board should suspend Bortolis's Dock permit, reconsider the length and location and cut-back the length or relocate the Dock, before more people crash into the Dock and get seriously hurt, or worse.

STEVEN EPLAN

Sworn to before me this
19th day of August, 2019.

Notary Public

ANN O. MASTEN
Notary Public - State of New York
No. 01MA6340741
Qualified in Suffolk County
My Commission Expires 04/25/2020

Council Members

DOROTHY L. GOOSBY
BRUCE A. BLAKEMAN
ANTHONY P. D'ESPOSITO
DENNIS DUNNE, SR.
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Receiver of Taxes

THOMAS E. DOHENY, JR.
Commissioner

THOMAS O. DAUSCHER
Deputy Commissioner

Town of Hempstead
Department
of
Conservation & Waterways
1401 LIDO BOULEVARD
P.O. BOX 180
POINT LOOKOUT, N.Y. 11569-0180
(516) 431-9200

LAURA A. GILLEN
Supervisor

INTEROFFICE MEMO

TO: Richard Regina

FROM: Thomas E. Doheny, Jr.

DATE: November 20, 2019

SUBJECT: Issuance of Structure in the Waterway Permits to Mr. Bortolis of 3400 Hewlett Avenue, Merrick, NY Permit No. 766-065-19

As a result of Justice MacCormack's decision of June 26, 2019, required modifications to the most recent permit application consisting of the reduction of the pier length of 15' and relocation of a proposed boat lift from the east side of the pier to the west side, in order to relieve concern of adjacent neighbors regarding proper access of their landing structures and navigability, Mr. Bortolis, in his structure application of 2016, had his entire pier, ramp, and float moved to the west by 20 feet to reduce neighbor navigation issues.

As the result of both permits, 2016 and 2019, the Department approved the amended changes to this structure, and based on the Department's judgment, finds there is no navigational constraints associated with either the Horowitz or Clancy property.

Respectfully,

TD