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## 5. EVIDENCE OF STATE AND/OR FEDERAL APPROVALS

The project requires permits from the following authorities:

- Maine Department of Environmental Protection (DEP) – In July of 2017, the project received a Natural Resource Protection Act (NRPA) Individual permit under the Maine DEP Chapter 310 and 315 regulations.
- U.S. Army Corps of Engineers – The project received authorization from the USACOE on November 7, 2017, with amended authorization for timing of work on January 18, 2018..
- National Environmental Policy Act (NEPA) – Use of federal funding requires review and compliance with NEPA. An environmental assessment was prepared in accordance with NEPA and reviewed and accepted by MaineDOT and US F&WS.
- Board of Harbor Commissioners Port of Portland – A Marine Construction Permit was approved by the Board on July 13, 2017; the permit has an approval date of December 21, 2017.

### Attachments

- MEDEP NRPA Authorization
- ACOE Permit
- ACOE Permit Amendment
- BOHC Permit

Note: A copy of the full Environmental Assessment Report can be provided upon request.



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

July 2017

CPB2, LLC  
C/o James Brady  
Post Office Box 7987  
Portland, ME 04112

RE: Natural Resources Protection Act Application, Portland, DEP #L-27367-4E-A-N

Dear Mr. Brady:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 822-6300 or at [robert.green@maine.gov](mailto:robert.green@maine.gov).

Sincerely,

Robert L. Green, Jr., Project Manager  
Bureau of Land Resources

pc: File



DEPARTMENT ORDER

IN THE MATTER OF

CPB2, LLC	) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
FORE STREET MARINA	) WATER QUALITY CERTIFICATION
L-27367-4E-A-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310 and 315 of Department rules, the Department of Environmental Protection has considered the application of CPB2, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to expand and upgrade the existing marina located at 58 Fore Street in the City of Portland and operated by Portland Yacht Services. The 69-slip marina has approximately 25,900 square feet of floating wooden docks, ranging between four and ten feet in width, an asphalt boat ramp, and limited upland area for parking and staging and pre-dates the Natural Resources Protection Act (NRPA). The new marina will consist of 147 slips and approximately 5,700 linear feet of floating docks, three wave attenuators, two gangways, a marina services building with a deck over the water, and a boardwalk running along the length of the property in the adjacent upland.

The marina will be arrayed with a 14-foot wide by approximately 575-foot long float string that will run the length of the property, parallel to shore, and will provide access from the marina services building to all of the slips. Attached to the main access float string will be five “stems” with widths ranging from eight to 14 feet. The “stem” floating docks will provide boat slips by way of four-foot wide floating docks with lengths from 25 to 45 feet arranged perpendicular to and located on either side of the five main “stem” floating docks. A six-foot wide by 200-foot long dinghy floating dock, providing shore side access for boats moored offshore around the marina, will be located on the west end of the access float string and directly in front of the marina services building. Shore access from the marina is provided by two, eight-foot wide by 80-foot long gangways.

The eastern end of the marina will be equipped with a wave attenuator float that will be used to access four heavy duty floating docks designed to service larger (125-200 feet long) mega-yachts. The wave attenuator/access float will be 20 feet wide and 409 feet long, and each heavy duty floating dock will be 12-14 feet wide and 125-200 feet long for a total length of 675 feet. Additionally, three wave attenuator floats, each 20 feet wide and 480, 389, and 150 feet long, will be placed immediately seaward of the marina.

The floating docks will be secured with an estimated 54, 10-ton anchor blocks. The heavy duty floating docks and the wave attenuator floats will be secured with 70, 20-ton anchor blocks. The entire marina will be fitted with pedestal lights. The end of the middle “stem” floating dock will be equipped as a fuel dock and includes a boat pumpout station. The portion of the marina servicing the larger yachts will be fitted with four flush mount, in-slip fuel connections.

Shore side development includes a new 2,400 square foot marina services building. This pile-supported building will be located within the footprint of the existing boat ramp and partially over the coastal wetland. The building includes a 2,567 square foot deck that will also extend over the coastal wetland. A boardwalk, 12-foot wide by 510-foot long, will extend from the marina services building to the eastern end of the property. This boardwalk will maintain the existing pedestrian access between the Eastern Prom and the wharf-side commercial district of Portland.

The proposed project will directly alter approximately 101 square feet of coastal wetland to set steel piles for the marina services building and indirectly impact approximately 37,635 square feet of coastal wetland due to shading from the marina floats and 3,772 square feet of coastal wetland due to shading from the building and deck. The proposed project is shown a set of plans, the first of which is titled “Overall Existing Marina Site Plan”, prepared by Woodard and Curran and dated March, 2017, with a last revision date on any of the sheets of April, 2017.

B. Current Use of the Site: The project site includes the developed shoreline on Lot 2 at 58 Fore Street in the City of Portland, known as the Portland Company Complex. The proposed marina is located within the existing 13-acre submerged lands lease held by the applicant.

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

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

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

The proposed project is located in Portland Harbor, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The proposed project will be viewed by the general public moving along the pedestrian walkway that connects the Eastern Prom to the Ocean

Gateway Complex and the businesses on Commercial Street. Given the developed nature in and around the project site, the proposed project is consistent with the existing uses of this portion of Portland Harbor. No permanent changes to the scenic and aesthetic values of the property, when viewed from the protected natural resource or the pedestrian walkway, are anticipated.

The application included a Photometric Plan indicating light intensities of less than 1.0 foot-candles extending five feet beyond each pedestal light structure. The application also included a Spill Prevention, Control and Countermeasure Plan that identifies the location of fuel tanks, lines, and dispensing locations. The Plan also outlines the actions and responsibilities for addressing petroleum releases within the project area, both on land and in the water.

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

The application included a plan sheet that depicts the maneuvering area around the project site. The west side of the marina is designed for smaller vessels and includes maneuvering lanes of 85 feet. The east side of the marina is designed for mega-yachts and includes maneuvering lanes of 400 feet. The Department finds that the proposed project should not cause any significant adverse impact to navigation or recreation based on the nature of the project and its location.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of this portion of Portland Harbor.

3. SOIL EROSION:

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

Construction of the building, boardwalk, utilities, and site improvements will be performed on land. Work will take place in accordance with the most recent version of the Maine Best Management Practices (BMP's) erosion and sedimentation control guidelines.

Anchor and float placement will occur using a barge. Soil disturbance resulting from the installation of pilings is not expected to be a significant source of sediment because the piles will be driven into the substrate.

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

4. HABITAT CONSIDERATIONS:

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

The shoreline of the project site is a combination of seawall and riprap slope. Because of previous dredging operations, the highest annual tide line is along the edge of the seawall or riprap slope. The marina is located in the subtidal area of Portland Harbor.

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site.

The Department of Marine Resources stated that the project as proposed would not cause any significant adverse impact to marine resources.

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

5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use lumber treated with chromated copper arsenate (CCA) to construct elements of the floating docks and wave attenuator floats. These units will be constructed off-site and brought in by barge. To protect water quality, all CCA-treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the installation of the floating docks and wave attenuator floats at the project site.

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

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly alter approximately 101 square feet of coastal wetland to set steel piles for the marina services building. The applicant proposes to indirectly impact approximately 37,635 square feet of coastal wetland due to shading from the

floating docks and wave attenuator floats and 3,772 square feet of coastal wetland due to shading from the building and deck.

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

A. **Avoidance.** An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. The applicant submitted an alternatives analysis for the proposed project completed by Woodard and Curran and dated March 10, 2017. The purpose of the project is to expand the existing marina to make it a full service, year-round recreational boating facility, providing berths for more boats and to accommodate mega-yachts. The no-action alternative was dismissed because it would not meet the project purpose. The applicant determined that alternate locations within the Portland Harbor are not available for a project of this size. The marina layout was designed to accommodate the anticipated slip demands of the boating public, including those of mega-yachts that are now being moored offshore. The location of the marina building is sited between the edge of the water and an existing right-of-way. Based on the project purpose and these considerations, the applicant stated that there is no other practicable alternative to the proposed project that would avoid impacts to the coastal wetland.

B. **Minimal Alteration.** In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of coastal wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant determined that the length of the marina float system is the minimum necessary for providing the required number of berths. The applicant also reduced the width of the floating docks to more closely match the foot traffic around the berths with wider floating docks nearer the center and toward the marina services building. Siting restrictions for the marina services building, access between the building and float system will be provided by a deck that is cantilevered over the resource. The area of the deck is the minimum size necessary to allow for movement of people and services between the marina and the upland. To limit the footprint of the building, the applicant proposes to construct a two-story structure and limit its use to essential marine services only.

C. **Compensation.** In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the

resource, which is the threshold over which compensation is generally required. Further, the proposed project is not expected not have an adverse impact on marine resources as determined by DMR. Given the disturbed nature of the existing site and that the proposed project will be constructed over coastal wetland that has already been filled or dredged, the proposed project is not expected not have an adverse impact on wildlife habitat. For these reasons, the Department determined that compensation is not required.

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

7. OTHER CONSIDERATIONS:

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

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

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA treated lumber is cured as described in Finding 5.



- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of CPB2, LLC to expand the existing marina as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

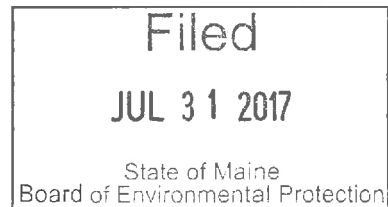
1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the installation of the floating docks and wave attenuator floats at the project site.

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

DONE AND DATED IN AUGUSTA, MAINE, THIS 31 DAY OF July, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Marc Allen Robert Case for  
 For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

RLG/L27367AN/ATS#81633



## Natural Resources Protection Act (NRPA) Standard Conditions

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

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: March 2012**

**Contact: (207) 287-2811**

### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

## **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

## **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

## **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## **II. JUDICIAL APPEALS**

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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REPLY TO  
ATTENTION OF

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

Regulatory Division  
CENAE-R-RDC  
Permit Number: NAE-2017-00732

CPB2, LLC  
P.O. Box 7987  
Portland, Maine 04112

Gentlemen:

Attached are two copies of a Department of the Army permit authorizing your project. **Please sign both copies of the permit and return one signed copy to this office at the address above.** A fee of \$100.00 is required. Please enclose a check made payable to "FAO New England District", and return it with the signed permit copy. Please ensure your address and social security number, or tax identification number for businesses, are on the check. The authorized work cannot start until we receive a complete, signed copy of the permit.

You are required to complete and return the attached forms to this office:

1. Preliminary Jurisdictional Determination Form to be submitted along with your signed copy of the permit.
2. Work Start Notification Form at least two weeks before the anticipated work start date.
3. Compliance Certification Form within one month following the completion of the authorized work.

This permit is a limited authorization containing a specific set of conditions. Please read the permit thoroughly to familiarize yourself with those conditions, **including any conditions contained on the attached state water quality certification.** If a contractor does the work for you, both you and the contractor are responsible for ensuring that the work is done in compliance with the permit's terms and conditions, as any violations could result in civil or criminal penalties.

The Corps of Engineers has consulted with the National Marine Fisheries Service ("NMFS") regarding the effects of your project on Essential Fish Habitat ("EFH") designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS did not provide EFH conservation recommendations and instead deferred to the Endangered Species Act consultation process between the Corps and the U.S. Fish & Wildlife Service. The consultation process resulted in conditions designed to minimize potential impacts to Atlantic and shortnose sturgeon and other fisheries. The conditions may be found on Page 5 of the attached permit.

This letter contains an approved jurisdictional determination for your subject site and a proffered permit for your proposed project. If you object to either this determination or decision, you may request an administrative appeal under Corps regulations at 33 CFR 331. A combined Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form, and flow chart explaining the appeals process and your options, are attached to this letter. If you desire to appeal this determination, you must submit a completed RFA form along with any supporting or clarifying information to James Haggerty; Administrative Appeals Review Officer; North Atlantic Division, Corps of Engineers; North Atlantic Fort Hamilton Military Community, Bldg. 301; General Lee Avenue; Brooklyn, NY 11252-6700. Contact info: (347) 370-4650 or james.w.haggerty@usace.army.mil.


In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP.

You may not appeal conditions contained in the State water quality certification or the CZM consistency determination under this program as they are automatically included in the Federal permit. This authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law.

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

If you have any questions regarding this correspondence, please contact Jay Clement at 207-623-8367 at our Manchester, Maine Project Office.

Sincerely,

  
Frank J. Del Giudice  
Chief, Permits and Enforcement Branch  
Regulatory Division

Attachments

Copy Furnished:  
Lauren Swett  
Woodard & Curran  
41 Hutchins Drive  
Portland, Maine 04101

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: CPB2, LLC		File Number: NAE-2017-00732	Date:
Attached is:			See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
<input checked="" type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
<input type="checkbox"/>	PERMIT DENIAL	C	
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D	
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.**

**A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.**

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New England District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the New England District Engineer. Your objections must be received by the New England District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the New England District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the New England District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT: You may accept or appeal the permit**

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New England District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New England District Engineer.

**C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New England District Engineer.**



**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New England District Engineer.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Ruth M. Ladd  
CENAE-R  
U.S. Army Corps of Engineers, New England District  
696 Virginia Road  
Concord, MA 01742-2751  
Telephone: (978) 318-8818  
Email: ruth.m.ladd@usace.army.mil

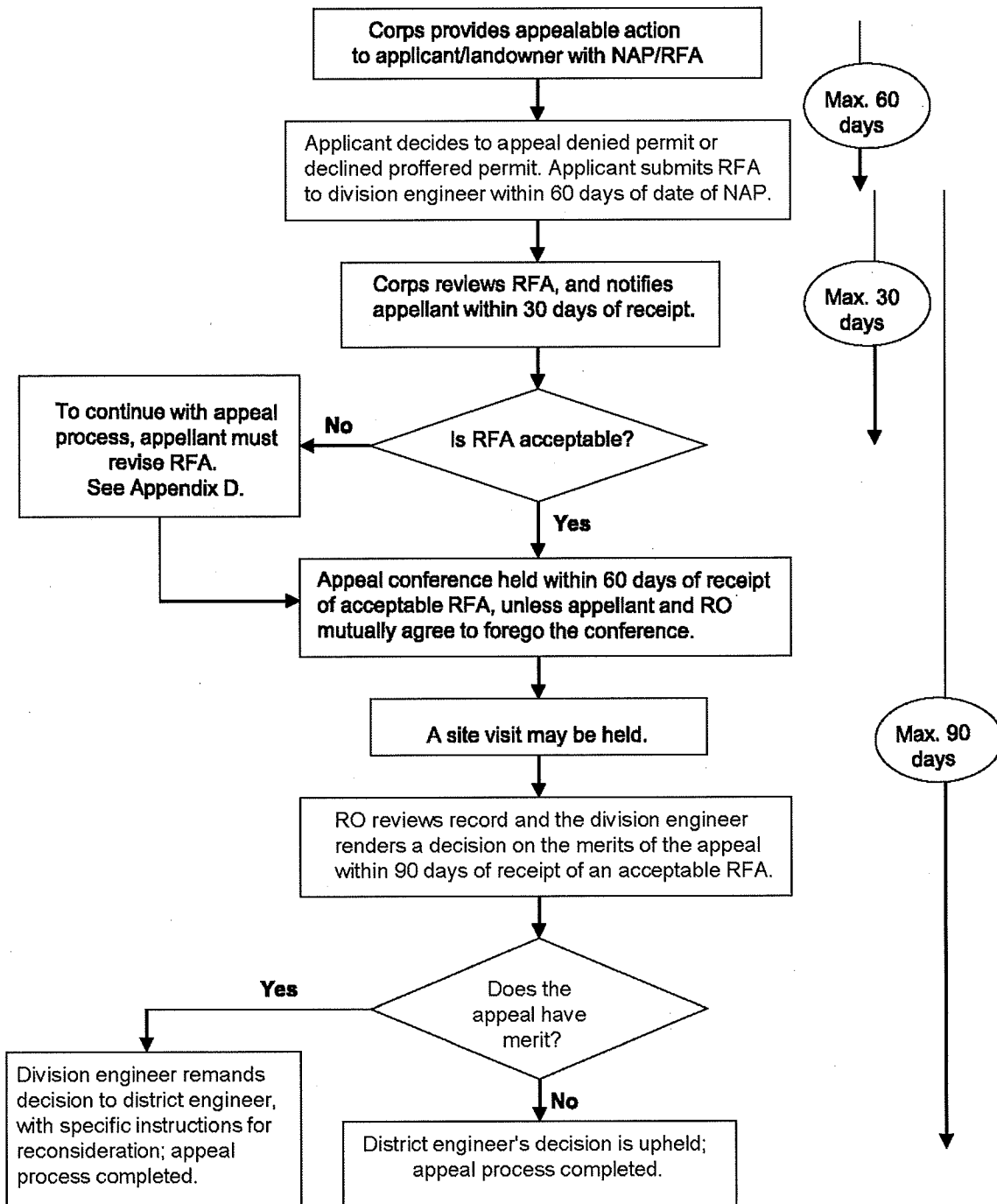
If you only have questions regarding the appeal process you may also contact:

Mr. James W. Haggerty  
Administrative Appeals Review Officer  
North Atlantic Division, Corps of Engineers Fort Hamilton  
Military Community Bldg. 301, General Lee Avenue Brooklyn,  
NY 11252-6700  
Telephone: (347) 370-4650  
Email: james.w.haggerty@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

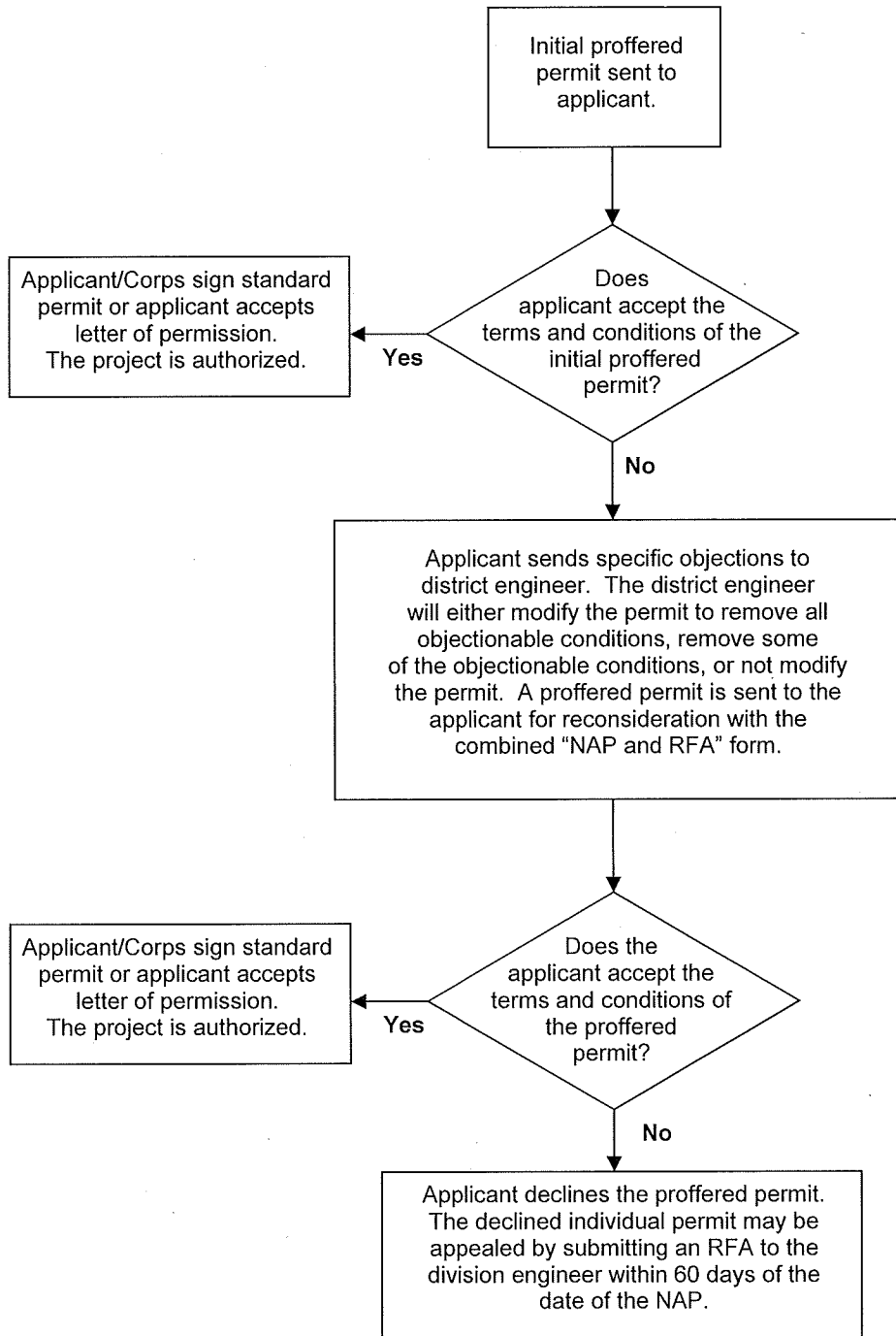
	Date:	Telephone number:
_____ Signature of appellant or agent.		

## Administrative Appeal Process for Permit Denials and Proffered Permits

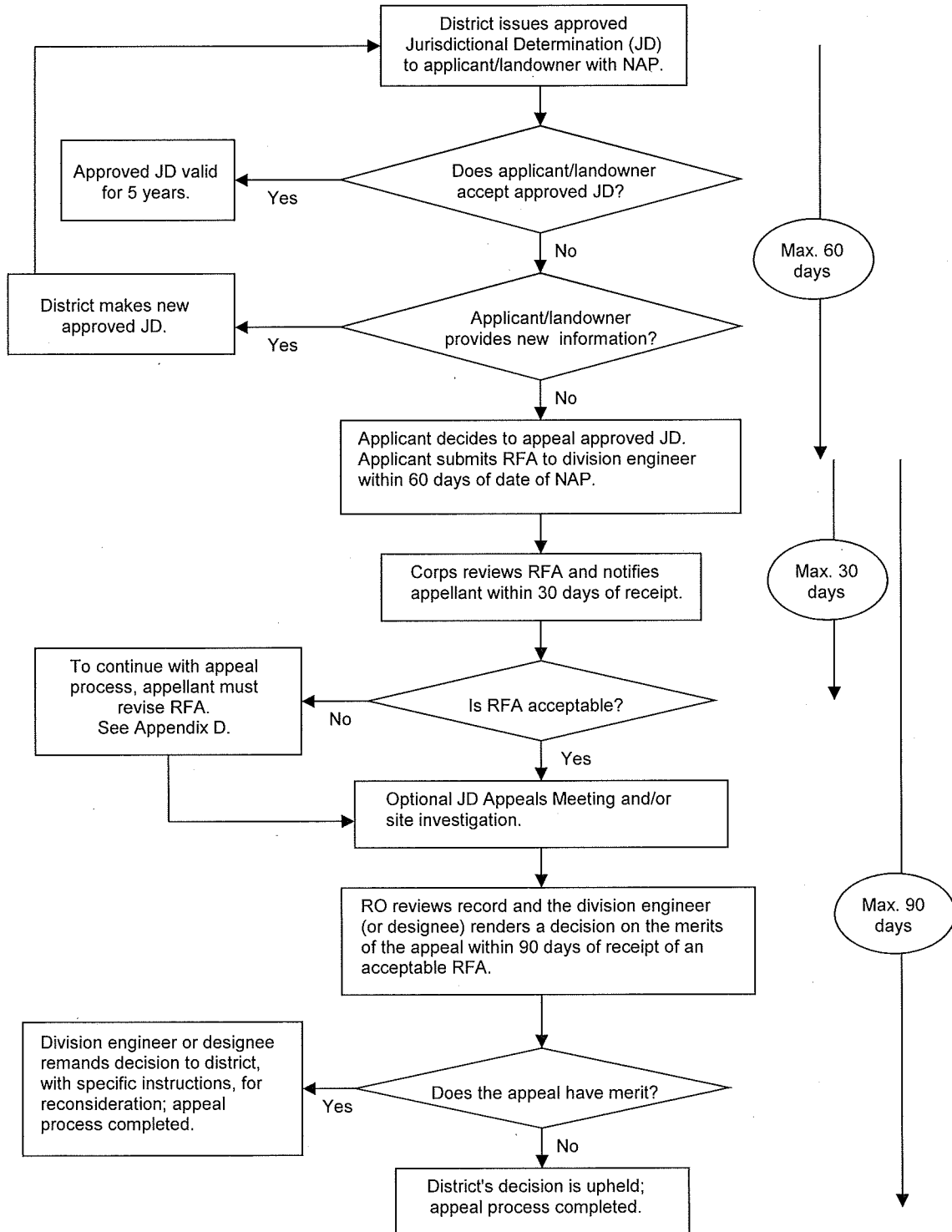


NOTE: If new information is provided to the Corps, the applicant will be asked if the applicant wishes to revise the project or record. If so, the appeal will be withdrawn and the case returned to the District for appropriate action. If not, then the Division Engineer will rule on the merits of the appeal based on the administrative record without consideration of the new information. However, the new information may cause the District Engineer to take action under 33 CFR 325.7, independent of the appeal process.

## Applicant Options with Initial/Proffered Permit



## Administrative Appeal Process for Approved Jurisdictional Determination



**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3/27/17**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New England District; CPB2, LLC; NAE-2017-00732**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Maine County/parish/borough: Cumberland City: Portland  
Center coordinates of site (lat/long in degree decimal format): Lat. 43.663010° N, Long. -70.242272° W.  
Universal Transverse Mercator: Zone 19

Name of nearest waterbody: Portland Harbor

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Casco Bay

Name of watershed or Hydrologic Unit Code (HUC): Maine Coastal; 01050002

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: 3/27/17

Field Determination. Date(s): Multiple; most recent 2/24/17

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: Located approx. 50 miles north of the Maine-New Hampshire border, Portland Harbor is the nearest deepwater port to Europe. Principal commerce items consist of imports of crude petroleum and chemicals, export of wood pulp, coastal receipts and reshipment of petroleum products, and internal receipts of fresh fish. About 55% of the tonnage is crude oil, which is trans-shipped by pipelines to refineries in Montreal, Quebec. The harbor also supports a regional coastal island ferry system and a large recreational fleet.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: 1400 linear feet: 3100 width (ft) and/or          acres.

Wetlands:                  acres.

**c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters.**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain:

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW: **Portland Harbor and Casco Bay.**

Summarize rationale supporting determination: The project site is subject to the ebb & flood of the tide and is therefor navigable pursuant to Section 10 of the Rivers & Harbors Act of 1899. Portland Harbor is also a TNW. Located approx. 50 miles north of the Maine-New Hampshire border, Portland Harbor is the nearest deepwater port to Europe. Principal commerce items consist of imports of crude petroleum and chemicals, export of wood pulp, coastal receipts and reshipment of petroleum products, and internal receipts of fresh fish. About 55% of the tonnage is crude oil, which is trans-shipped by pipelines to refineries in Montreal, Quebec. The harbor also supports a regional coastal island ferry system and a large recreational fleet.

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: **Pick List**  
Drainage area: **Pick List**  
Average annual rainfall: inches  
Average annual snowfall: inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.  
Project waters are **Pick List** river miles from RPW.  
Project waters are **Pick List** aerial (straight) miles from TNW.  
Project waters are **Pick List** aerial (straight) miles from RPW.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

- Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet  
Average depth: feet  
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts           | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles         | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock         | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> Bed and banks  |   |
| <input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):  |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:            |   |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

(iii) **Chemical Characteristics:**

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup> A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup> Ibid.



Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:        acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain:
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately (        ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
  - TNWs: 1400 linear feet 3100 width (ft), Or,          acres.
  - Wetlands adjacent to TNWs:          acres.
2. RPWs that flow directly or indirectly into TNWs.
  - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
  - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:  
  
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.  
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
 which are or could be used for industrial purposes by industries in interstate commerce.  
 Interstate isolated waters. Explain:  
 Other factors. Explain:

Identify water body and summarize rationale supporting determination:

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.  
Identify type(s) of waters:
- Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Available in administrative record.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
  - Corps navigable waters' study: Portland Harbor.
  - U.S. Geological Survey Hydrologic Atlas: Available on line.
    - USGS NHD data.
    - USGS 8 and 12 digit HUC maps.
  - U.S. Geological Survey map(s). Cite scale & quad name: 1:25,000; Portland West.
  - USDA Natural Resources Conservation Service Soil Survey. Citation: Cumberland County.
  - National wetlands inventory map(s). Cite name: Portland West.
  - State/Local wetland inventory map(s):
  - FEMA/FIRM maps: Portland, Maine.
  - 100-year Floodplain Elevation is: 10 (National Geodetic Vertical Datum of 1929)
  - Photographs:  Aerial (Name & Date): Google Earth imagery or otherwise available through Maine OGIS; multiple dates.  
or  Other (Name & Date): Ground photos provided by agent; multiple dates.
- Previous determination(s). File no. and date of response letter: The Corps has made multiple JDs in Portland Harbor including most recently on the adjacent marine terminal parcel.
  - Applicable/supporting case law:
  - Applicable/supporting scientific literature:
  - Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**



**US Army Corps  
of Engineers**®  
New England District

**INDIVIDUAL PERMIT  
WORK-START NOTIFICATION FORM**  
(Minimum Notice: Two weeks before work begins)

\*\*\*\*\*  
\* MAIL TO: U.S. Army Corps of Engineers, New England District \*  
\* Permits and Enforcement Branch \*  
\* Regulatory Division \*  
\* 696 Virginia Road \*  
\* Concord, Massachusetts 01742-2751 \*  
\*\*\*\*\*

Corps of Engineers Permit No. NAE-2017-00732 was issued to the CPB2, LLC on \_\_\_\_\_ . This work is located in Portland Harbor at Portland, Maine. The permit authorized the permittee to redevelop and expand an existing recreational marina with associated waterfront re-development.

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

**PLEASE PRINT OR TYPE**

**Name of Person/Firm:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone Numbers:** ( ) \_\_\_\_\_ ( ) \_\_\_\_\_

**Proposed Work Dates:**     **Start:** \_\_\_\_\_     **Finish:** \_\_\_\_\_

**Permittee/Agent Signature:** \_\_\_\_\_     **Date:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_     **Title:** \_\_\_\_\_

**Date Permit Issued:** \_\_\_\_\_     **Date Permit Expires:** \_\_\_\_\_

\*\*\*\*\*

**FOR USE BY THE CORPS OF ENGINEERS**

**PM:** \_\_\_\_\_ Clement     **Submittals Required:** \_\_\_\_\_ No  
**Inspection Recommendation:** \_\_\_\_\_ Inspect as convenient



**US Army Corps  
of Engineers**®  
New England District

(Minimum Notice: Permittee must sign and return notification  
within one month of the completion of work.)

**COMPLIANCE CERTIFICATION FORM**

**USACE Project Number:** NAE-2017-00732

**Name of Permittee:** CPB2, LLC

**Permit Issuance Date:** \_\_\_\_\_

Please sign this certification and return it to the following address upon completion of the activity and any mitigation required by the permit. You must submit this after the mitigation is complete, but not the mitigation monitoring, which requires separate submittals.

\*\*\*\*\*  
\* MAIL TO: U.S. Army Corps of Engineers, New England District \*  
\* Policy Analysis/Technical Support Branch, ATTN: Ruth Ladd \*  
\* Regulatory Division \*  
\* 696 Virginia Road \*  
\* Concord, Massachusetts 01742-2751 \*  
\*\*\*\*\*

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

**I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the above referenced permit, and any required mitigation was completed in accordance with the permit conditions.**

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date of Work Completion

( ) \_\_\_\_\_

( ) \_\_\_\_\_

Telephone Number

Telephone Number

DEPARTMENT OF THE ARMY PERMIT

Permittee CPB2, LLC; P.O. Box 7987; Portland, Maine 04112

Permit No. NAE-2017-00732

Issuing Office New England District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:**

Redevelop and expand an existing recreational marina with associated waterfront re-development in Portland Harbor at Portland, Maine. The existing 69-slip marina will be replaced with a 141-slip facility consisting of a line of floats running parallel to shore with four float systems attached perpendicular to the southeast with associated finger float systems. The northern and seaward lines

**Project Description Continued on Page 4**

This work is shown on the attached plans entitled, "CPB2, LLC, PORTLAND, MAINE 04102" on 18 sheets dated "March 2017" and "April 2017".

**Project Location:**

In Portland Harbor at Portland, Maine

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the work authorized ends on December 31, 2022. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

1. The permittee shall ensure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for work.

**Special Conditions continued on Page 4**

**Further Information :**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.



e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

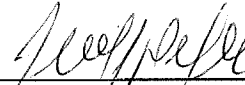
6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)

\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
\_\_\_\_\_  
Frank J. Del Giudice  
Chief, Permits & Enforcement Branch  
For District Engineer

11-7-2017  
\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEE)

\_\_\_\_\_  
(DATE)

## **Project Description Continued from Page 1**

of floats will integrate a subsurface wave attenuator element. A similarly designed 150'x 20' float will be moored just southwest of the main marina footprint to provide additional wave protection to the facility. All floats will be bottom moored and the marina system will be accessed from ramps extending from the shore.

Appurtenant elements include a fuel dock and holding tank pump out central to the marina layout, a pile supported deck extending from shore and over a former boat ramp to support a marina operations building, and a dinghy dock. Upland elements will include commercial and residential development and re-development, parking, and a pedestrian boardwalk. The marina will provide the services of power, fuel, marine pump out, general slip space and larger yacht berthing.

## **Special Conditions continued from Page 2**

If the permit is issued after the construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract as a change order. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

2. This authorization requires you to 1) notify us before beginning work so we may inspect the project, and 2) submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. The permittee shall complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work.

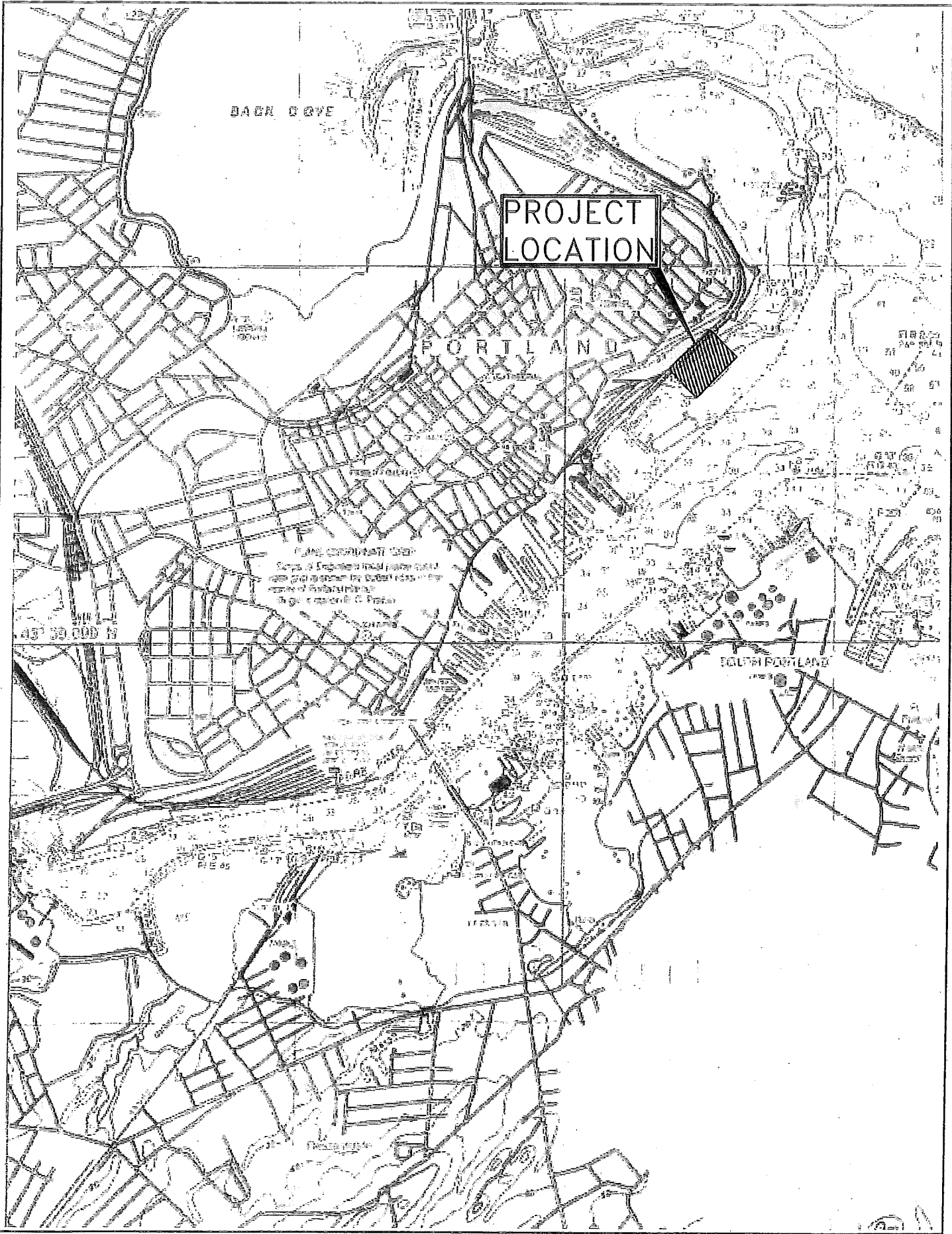
3. Adequate sedimentation and erosion control devices, such as geo-textile silt fences or other devices capable of filtering the fines involved, shall be installed and properly maintained to minimize impacts during construction. These devices must be removed upon completion of work and stabilization of disturbed areas. The sediment collected by these devices must also be removed and placed upland, in a manner that will prevent its later erosion and transport to a waterway or wetland.

4. No temporary fill (e.g., access roads, cofferdams) may be placed in waters or wetlands unless specifically authorized by this permit. If temporary fill is used, it shall be disposed of at an upland site and suitably contained to prevent its subsequent erosion into a water of the U.S., and the area shall be restored to its original contours (but not higher) and character upon completion of the project. During use, such temporary fill must be stabilized to prevent erosion or, in the case fill placed in flowing water (rivers or streams), clean washed stone should be used.

## **Special Conditions Continued on Page 5**

### Special Conditions Continued from Page 4

5. Except where stated otherwise, reports, drawings, correspondence and any other submittals required by this permit shall be marked with the words "Permit No. NAE-2017-00732" and shall be addressed to "Inspection Section, CENAE-R, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751." Documents which are not marked and addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit.
  
6. Work involving pile installation/removal shall adhere to the following conditions:
  - a. All pile driving operations shall be conducted between Nov. 8<sup>th</sup> - Apr. 9<sup>th</sup>.
  - b. Vibratory hammers may be used to install any size and quantity of wood, concrete or steel piles without restriction, save the above time of year restriction.
  - c. If impact hammers are used, equipment shall be limited to one hammer and <50 piles installed/day.
  - d. The contractor shall insure that a wood cushion is used between the impact hammer and steel piles.
  - e. A "soft-start" technique will be used at the beginning of pile driving operations to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. Soft starts require an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period between subsequent three-strike sets. The soft-start procedure will be conducted any time hammering ceases for more than 30 minutes.
  - f. For the methods above - in-water noise levels shall not exceed >187dB cSEL re 1 $\mu$ Pa or 206dB peak re 1 $\mu$ Pa at a distance >10m from the pile being installed, and in-water noise levels >150dB peak re 1 $\mu$ Pa shall not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise below 150dB peak re 1 $\mu$ Pa) must be provided between work days.
  - g. Existing derelict, degraded or abandoned piles in the project area that are affected by project activities shall be pulled or cut at the mudline, removed and properly disposed of in an upland location landward of MHW or OHW and not in wetlands, tidal wetlands, their substrate or mudflats.



PROJECT  
LOCATION

PORTLAND

FOURTH PORTLAND

PLANE COORDINATE GRID  
Corps of Engineers fixed plane grid  
with grid extension for distant edges of the  
harbor of Portland, Maine.  
Original adopted in 1885.

45° 39' 00" N

PORTLAND HARBOR CHART

CPB2, LLC  
PORTLAND, MAINE 04102

JOB NO: 227007.50  
DATE: MARCH 2017  
SCALE: 1"=2000'



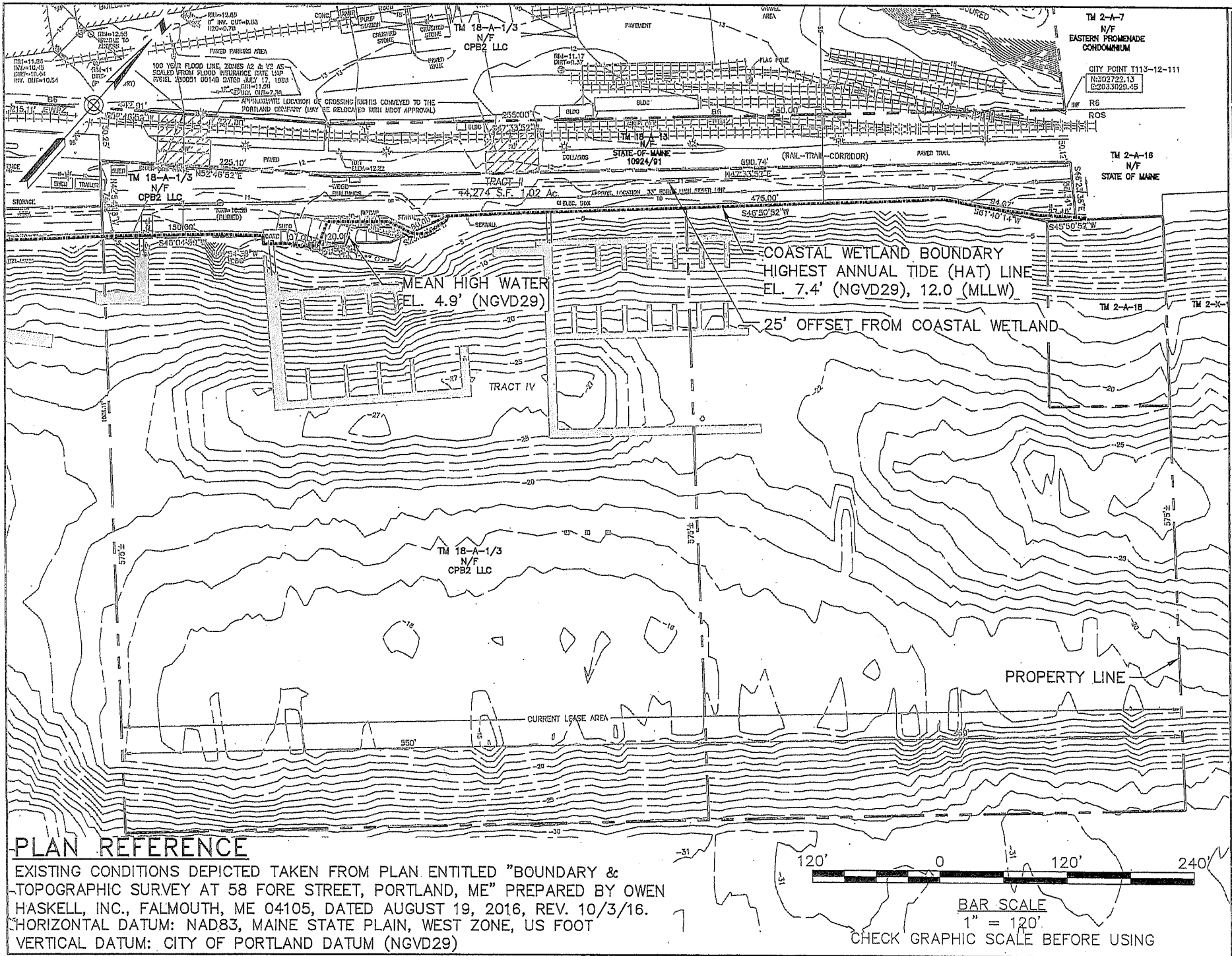
41 Hutchins Drive  
Portland, Maine 04102  
800.426.4262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

DESIGNED BY: N/A	CHECKED BY: DAS
DRAWN BY: BCM	227007.03 USGS MARINA.DWG

MARINA NRPA PERMIT

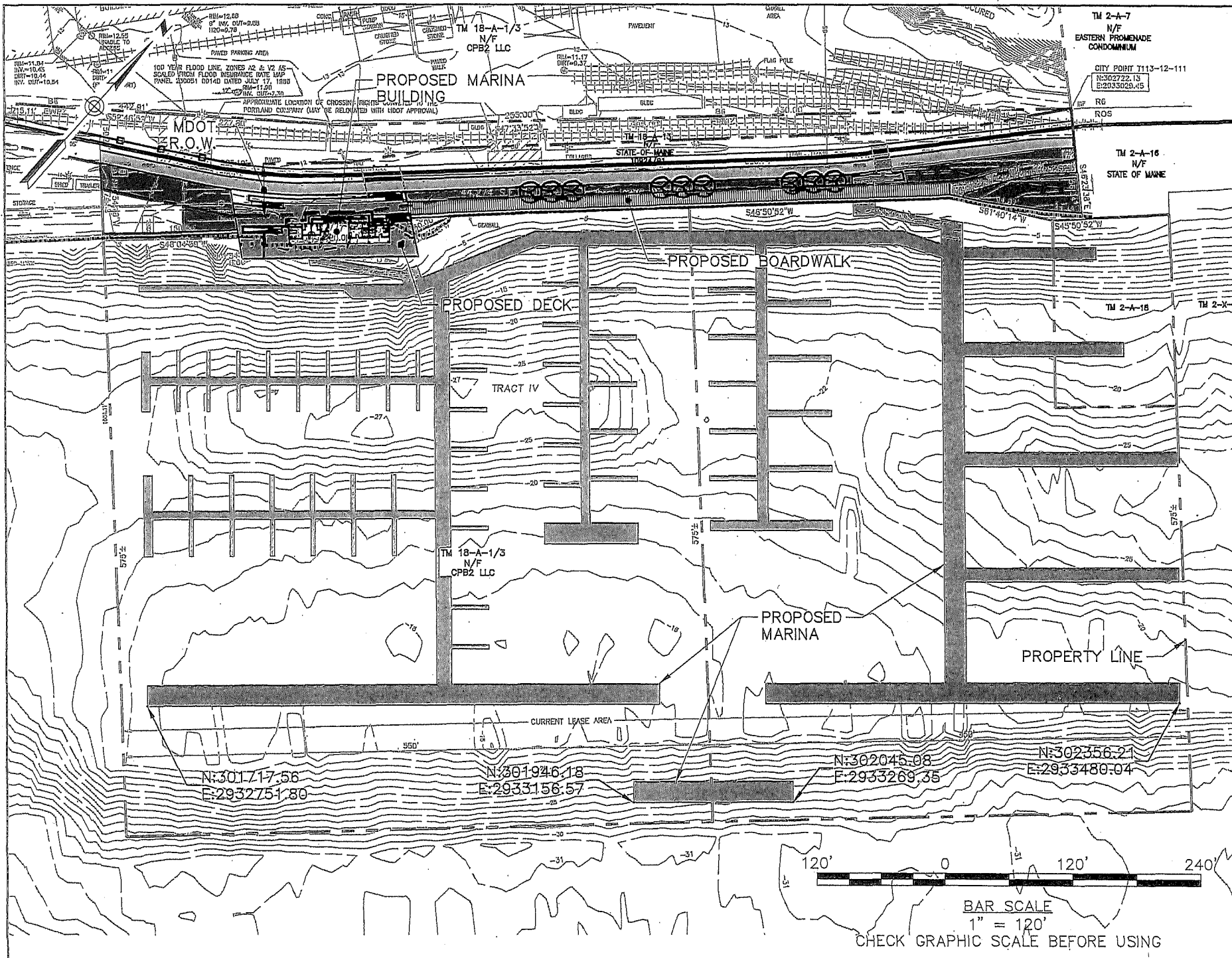
CHART



### PLAN REFERENCE

EXISTING CONDITIONS DEPICTED TAKEN FROM PLAN ENTITLED "BOUNDARY & TOPOGRAPHIC SURVEY AT 58 FORE STREET, PORTLAND, ME" PREPARED BY OWEN HASKELL, INC., FALMOUTH, ME 04105, DATED AUGUST 19, 2016, REV. 10/3/16.  
HORIZONTAL DATUM: NAD83, MAINE STATE PLAIN, WEST ZONE, US FOOT  
VERTICAL DATUM: CITY OF PORTLAND DATUM (NGVD29)





JOB NO: 227007.50 DATE: APRIL 2017 SCALE: 1"=120'		FIGURE 1
CPB2, LLC PORTLAND, MAINE		
OVERALL EXISTING MARINA SITE PLAN		MARINA NRPA PERMIT
DESIGNED BY: BCM	CHECKED BY: DAS	WOODWARD & CURRAN
DRAWN BY: BCM	227007.03 MARINA FIGS.dwg	
41 Hutchins Drive Portland, Maine 04102 800.426.4262   www.woodwardcurran.com		
COMMITMENT & INTEGRITY DRIVE RESULTS		



JOB NO. 227007.50 DATE: APRIL 2017 SCALE: 1"=120' <b>FIGURE 2</b>
CPB2, LLC PORTLAND, MAINE MARINA NRPA PERMIT
<b>OVERALL PROPOSED MARINA SITE PLAN</b>
DESIGNED BY: BCM CHECKED BY: DAS DRAWN BY: BCM 227007.03 MARINA_FIG2.dwg
41 Hutchins Drive Portland, Maine 04102 800.466.4262   www.woodardcurran.com COMMITMENT & INTEGRITY DRIVE RESULTS <b>WOODARD &amp; CURRAN</b>

**FOR PERMITTING PURPOSES ONLY  
"NOT FOR CONSTRUCTION"**

**LEGEND**

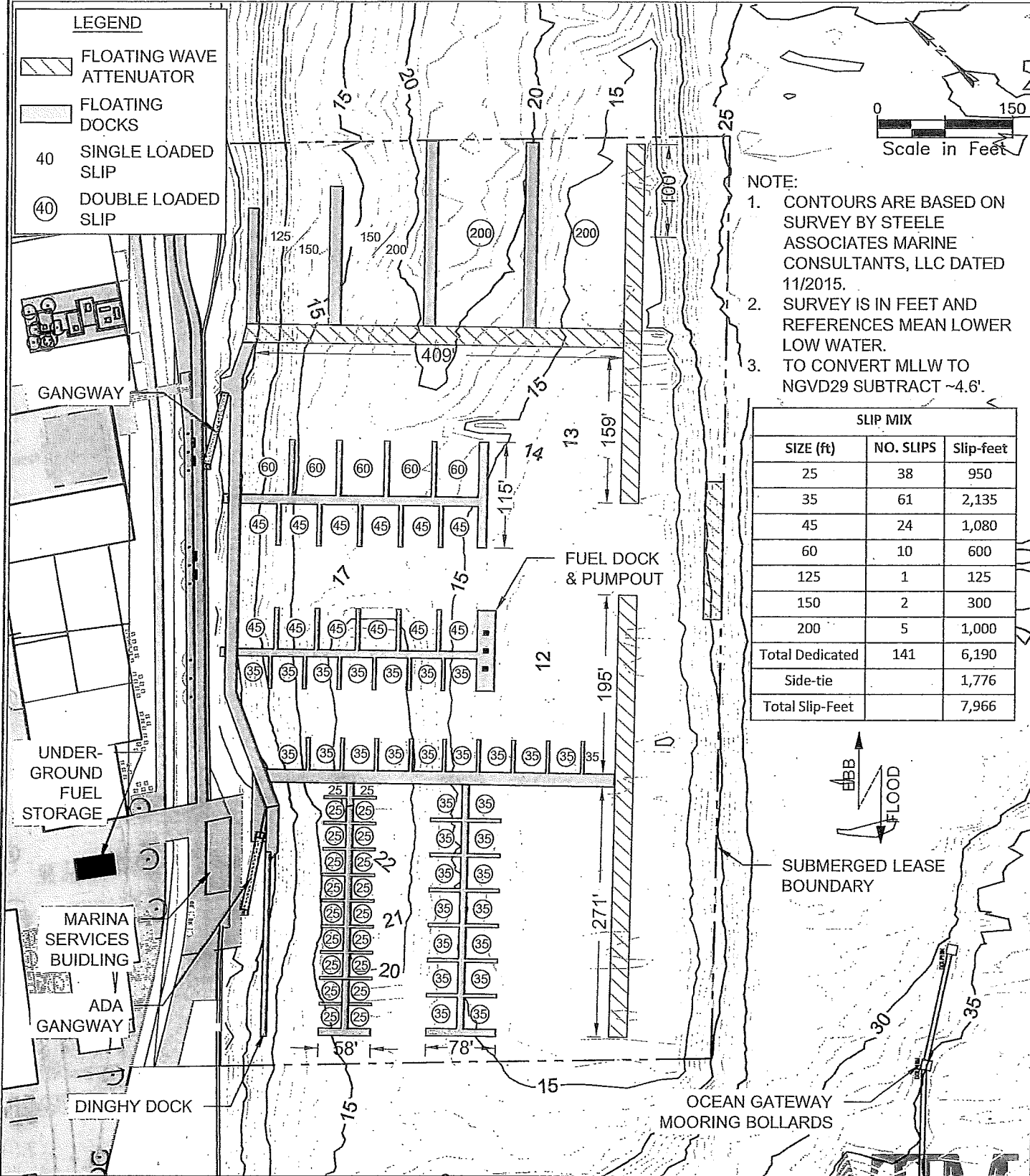
-  FLOATING WAVE ATTENUATOR
-  FLOATING DOCKS
-  40 SINGLE LOADED SLIP
-  40 DOUBLE LOADED SLIP



**NOTE:**

1. CONTOURS ARE BASED ON SURVEY BY STEELE ASSOCIATES MARINE CONSULTANTS, LLC DATED 11/2015.
2. SURVEY IS IN FEET AND REFERENCES MEAN LOWER LOW WATER.
3. TO CONVERT MLLW TO NGVD29 SUBTRACT ~4.6'.

SLIP MIX		
SIZE (ft)	NO. SLIPS	Slip-feet
25	38	950
35	61	2,135
45	24	1,080
60	10	600
125	1	125
150	2	300
200	5	1,000
<b>Total Dedicated</b>	<b>141</b>	<b>6,190</b>
<b>Side-tie</b>		<b>1,776</b>
<b>Total Slip-Feet</b>		<b>7,966</b>



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600.426.4262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

**PROPOSED IMPROVEMENTS**

DESIGNED BY: BVM      CHECKED BY: DAC  
DRAWN BY: ECM      12/06/2015 VARN. 1/GE.dwg

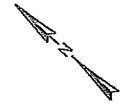
CPB2, LLC  
PORTLAND, MAINE

MARINA NRPA PERMIT



JOB NO.: 17007.M  
DATE: MARCH 2017  
SCALE: N.T.S.

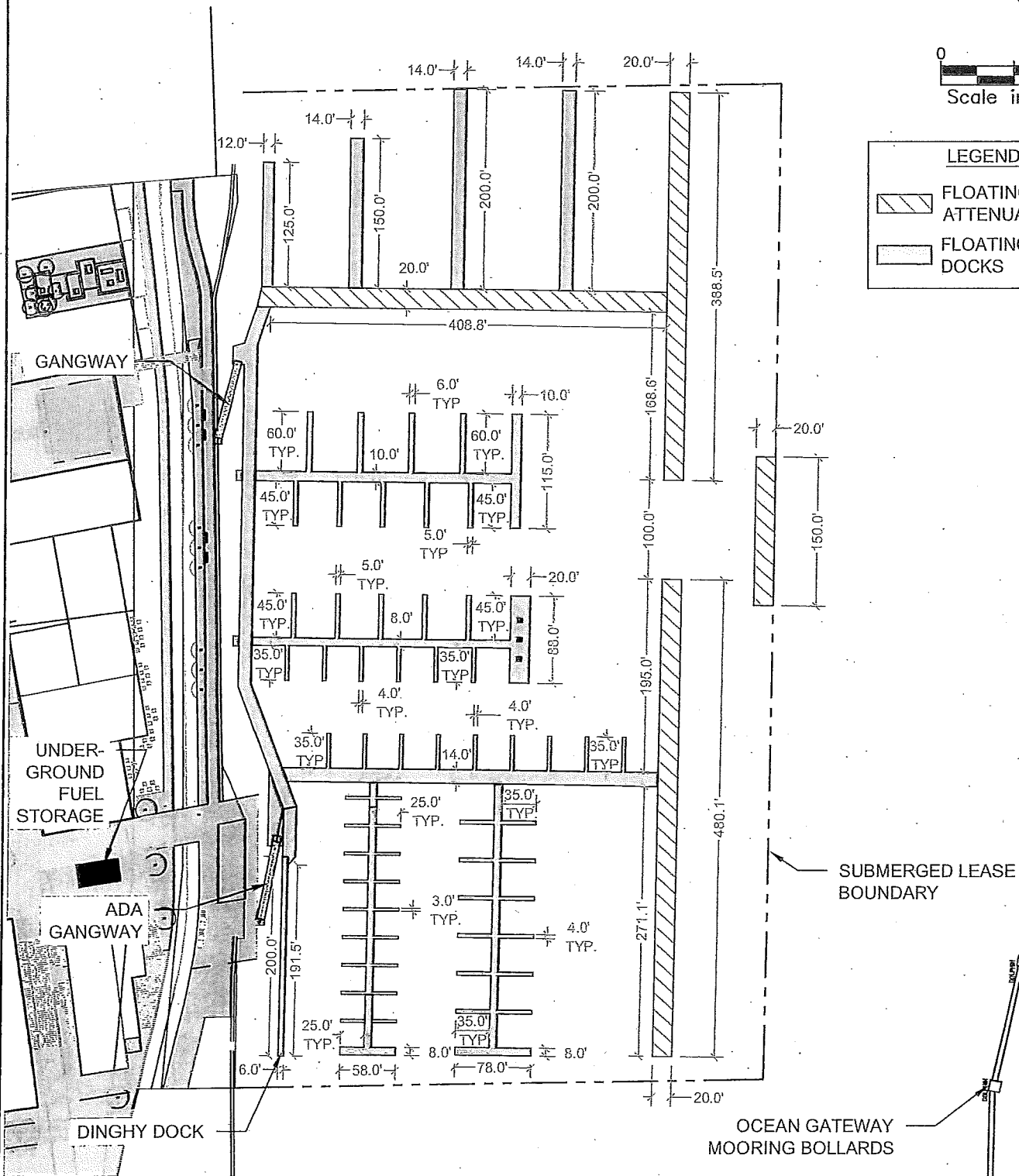

FIGURE 3

FOR PERMITTING PURPOSES ONLY  
 "NOT FOR CONSTRUCTION"



**LEGEND**

-  FLOATING WAVE ATTENUATOR
-  FLOATING DOCKS

41 Hutchins Drive  
 Portland, Maine 04102  
 800.426.4262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

**PROPOSED IMPROVEMENTS**

DESIGNED BY: BCM	CHECKED BY: DAF
DRAWN BY: BCM	DATE: 03/07/2017

CPB2, LLC  
 PORTLAND, MAINE

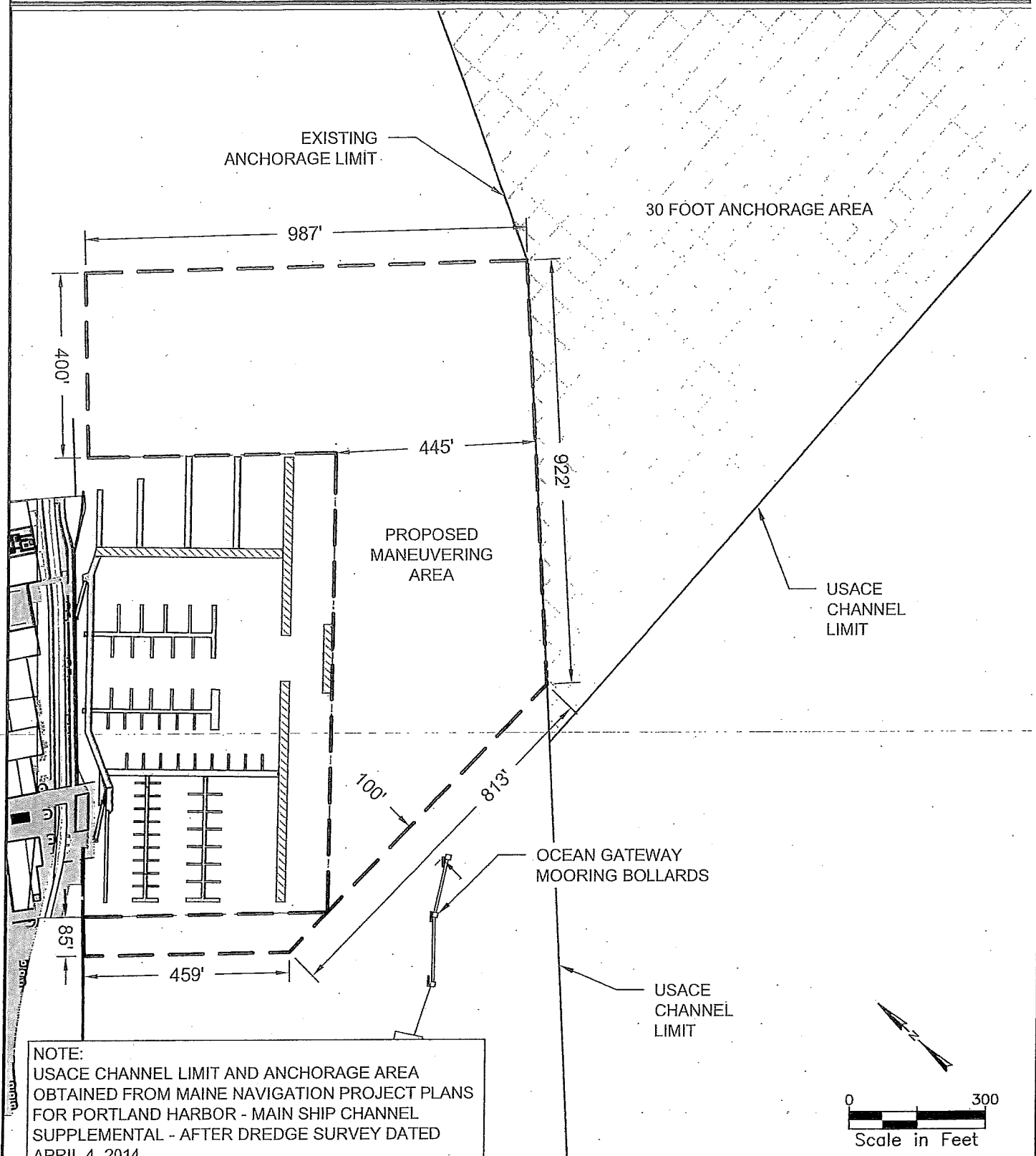
MARINA NRPA PERMIT

JOB NO: 2016-001-00  
 DATE: MARCH 2017  
 SCALE: 1" = 100'

**FIGURE 4**



FOR PERMITTING PURPOSES ONLY  
 "NOT FOR CONSTRUCTION"



NOTE:  
 USACE CHANNEL LIMIT AND ANCHORAGE AREA  
 OBTAINED FROM MAINE NAVIGATION PROJECT PLANS  
 FOR PORTLAND HARBOR - MAIN SHIP CHANNEL  
 SUPPLEMENTAL - AFTER DREDGE SURVEY DATED  
 APRIL 4 2014



**WOODARD & CURRAN**  
 41 Hutchins Drive  
 Portland, Maine 04102  
 603.426.4262 | www.woodardcurran.com  
 COMMITMENT & INTEGRITY DRIVE RESULTS

**PROPOSED VESSEL  
 MANEUVERING AREAS**

DESIGNED BY: BCM  
 CHECKED BY: DAS  
 DRAWN BY: BCM  
 227097 OF MARINA-02.dwg

CPB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

JOB NO: 227097.dwg  
 DATE: MAR-04-2014  
 SCALE: N.T.S.

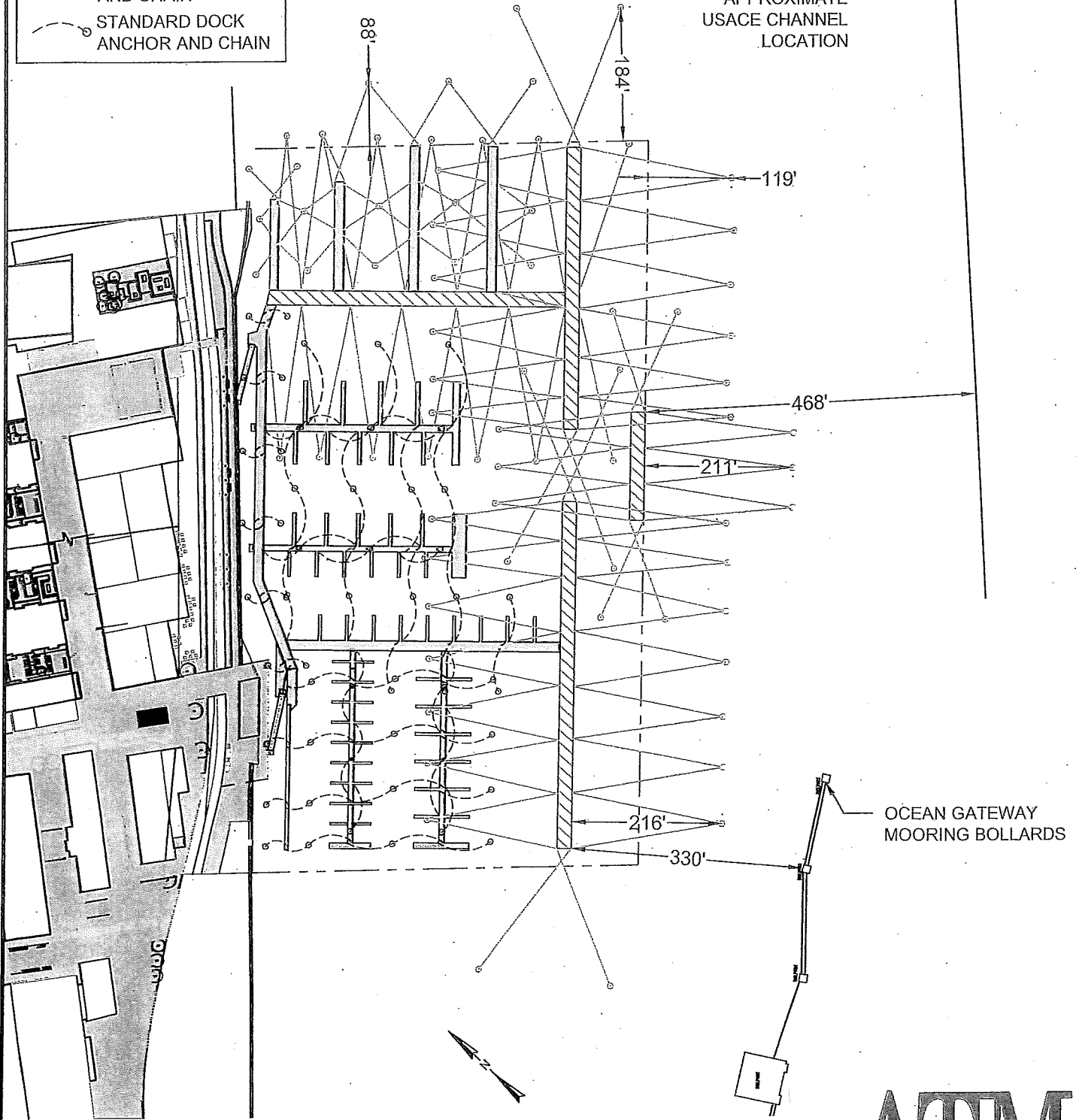
**FIGURE 5**

FOR PERMITTING PURPOSES ONLY  
 "NOT FOR CONSTRUCTION"

LEGEND

- ATTENUATOR/HEAVY DUTY DOCK ANCHOR AND CHAIN
- - -○- - - STANDARD DOCK ANCHOR AND CHAIN

APPROXIMATE  
 USACE CHANNEL  
 LOCATION



OCEAN GATEWAY  
 MOORING BOLLARDS

0 200  
 Scale in Feet



41 Hutchins Drive  
 Portland, Maine 04102  
 606.426.4262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

PROPOSED ANCHOR  
 PLAN OVERVIEW

DESIGNED BY: BCW CHECKED BY: DAS  
 DRAWN BY: PCV 277007.02 MAR NA FCS.dwg

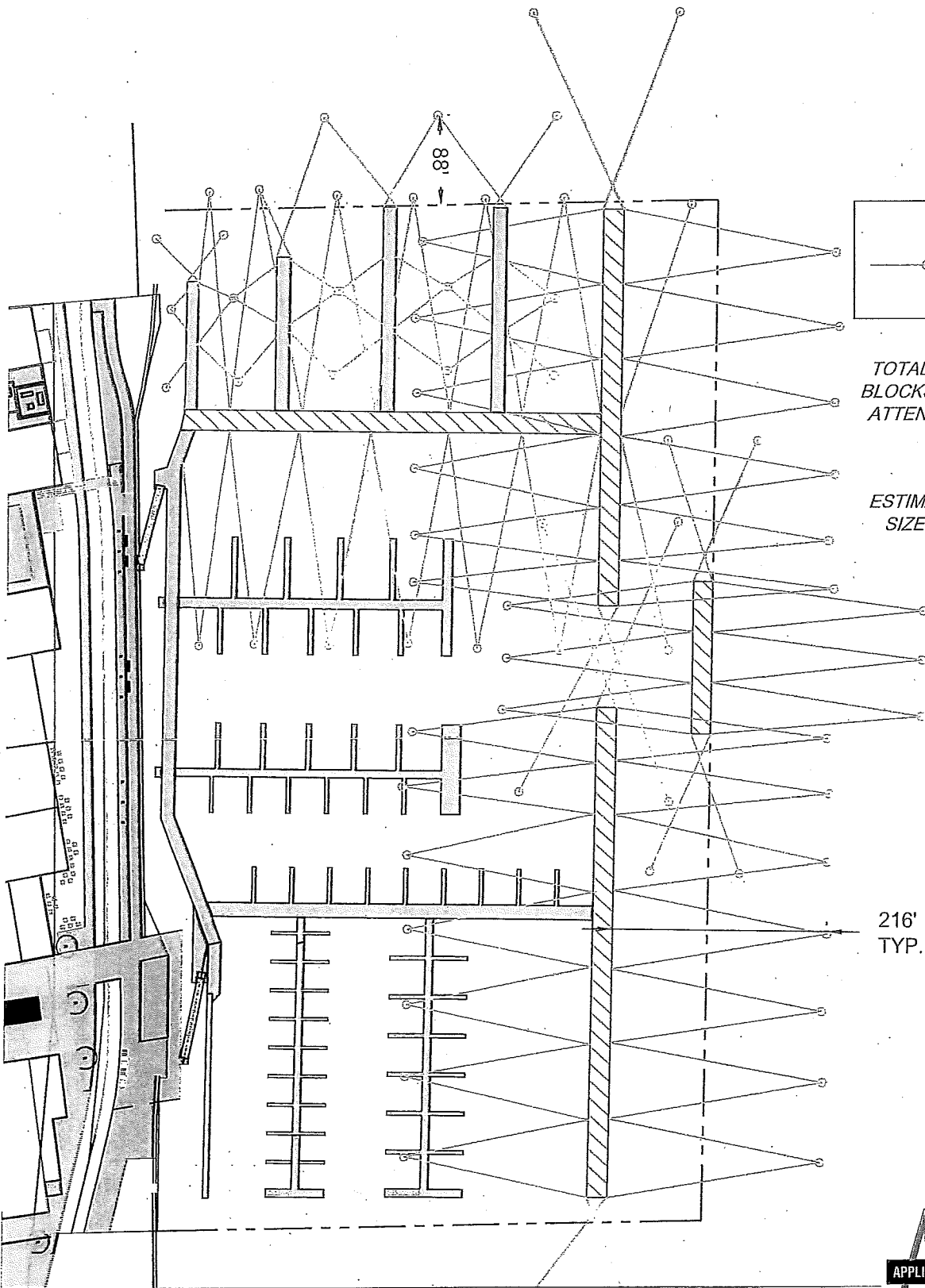
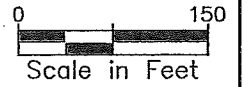
CPB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

JOB NO: 2027.01  
 DATE: 11/14/17  
 SCALE: 1"=10'

FIGURE 6

FOR PERMITTING PURPOSES ONLY  
 "NOT FOR CONSTRUCTION"

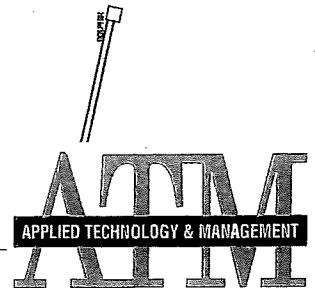


**LEGEND**  
 —○ ATTENUATOR/HEAVY DUTY DOCK ANCHOR AND CHAIN

TOTAL ESTIMATED ANCHOR BLOCKS FOR FLOATING WAVE ATTENUATORS/HEAVY DUTY DOCKS  
**70**

ESTIMATED ANCHOR BLOCK SIZE 8'Lx8'Wx5'H (20 TON)

216'  
 TYP.



41 Hutchins Drive  
 Portland, Maine 04102  
 600.426.4262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

PROPOSED ANCHOR PLAN  
 FOR WAVE ATTENUATOR &  
 HEAVY DUTY DOCK

DESIGNED BY: BCM CHECKED BY: DAS  
 DRAWN BY: BCM 227067 02 MARINA PKG.dwg

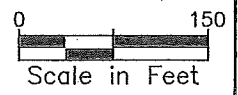
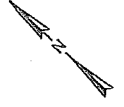
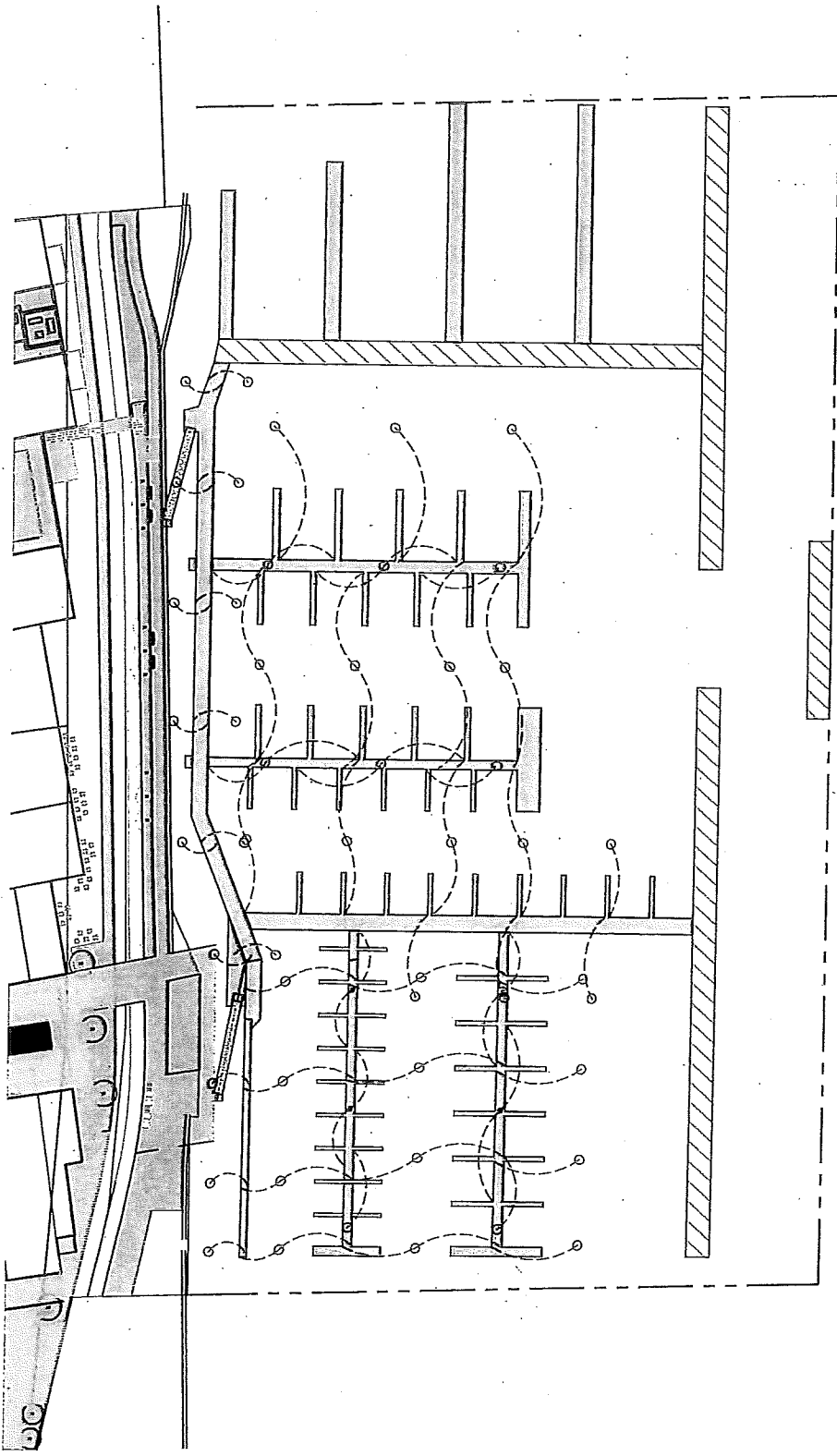
CPB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

JOB NO: 2007030  
 DATE: MARCH 2017  
 SCALE: N.T.S.

FIGURE 7

FOR PERMITTING PURPOSES ONLY  
 NOT FOR CONSTRUCTION



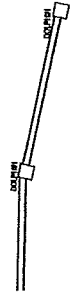
LEGEND

- STANDARD DOCK ANCHOR AND CHAIN

TOTAL ESTIMATED ANCHOR BLOCKS FOR STANDARD FLOATING DOCKS

**54**

ESTIMATED ANCHOR BLOCK SIZE 6'Lx6'Wx4'H (10 TON)



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COMMITMENT & INTEGRITY DRIVE RESULTS

PROPOSED ANCHOR PLAN  
 FOR STANDARD MARINA  
 FLOATING DOCKS

DESIGNED BY: BCM      CHECKED BY: TJS  
 DRAWN BY: BCM      2/27/07 01: VAPNA: FRS.sag

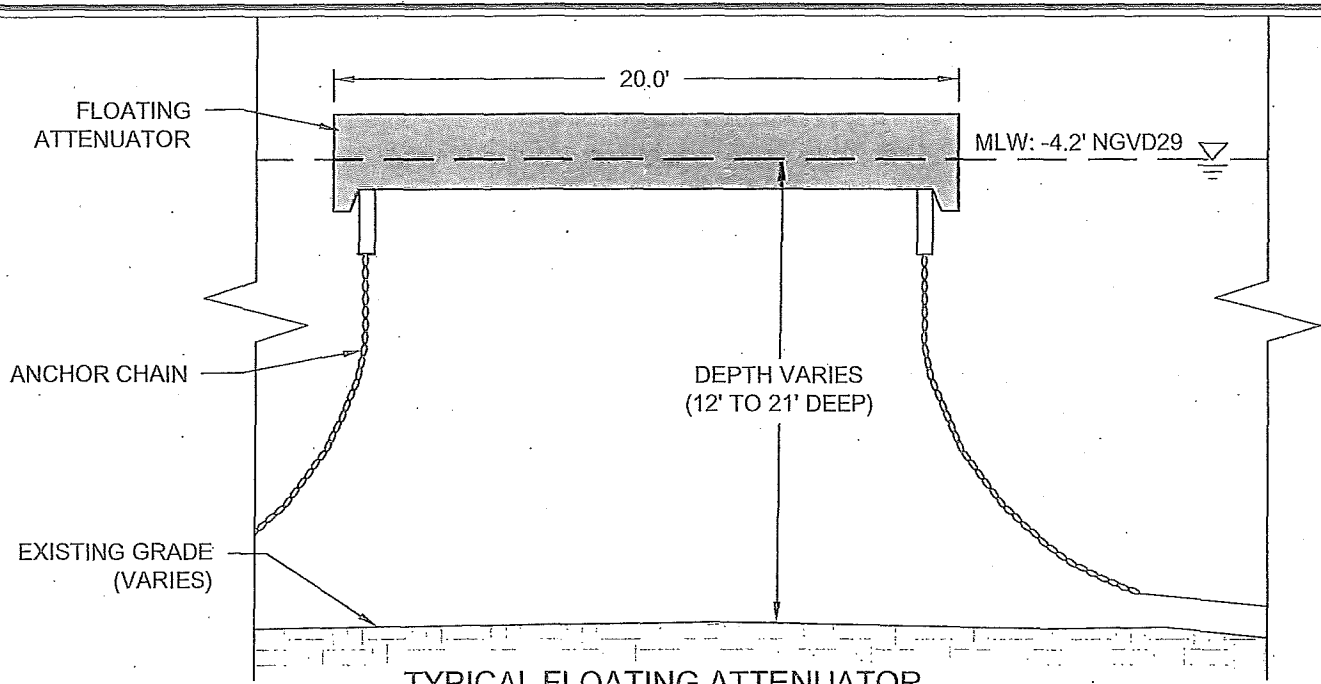
CPB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

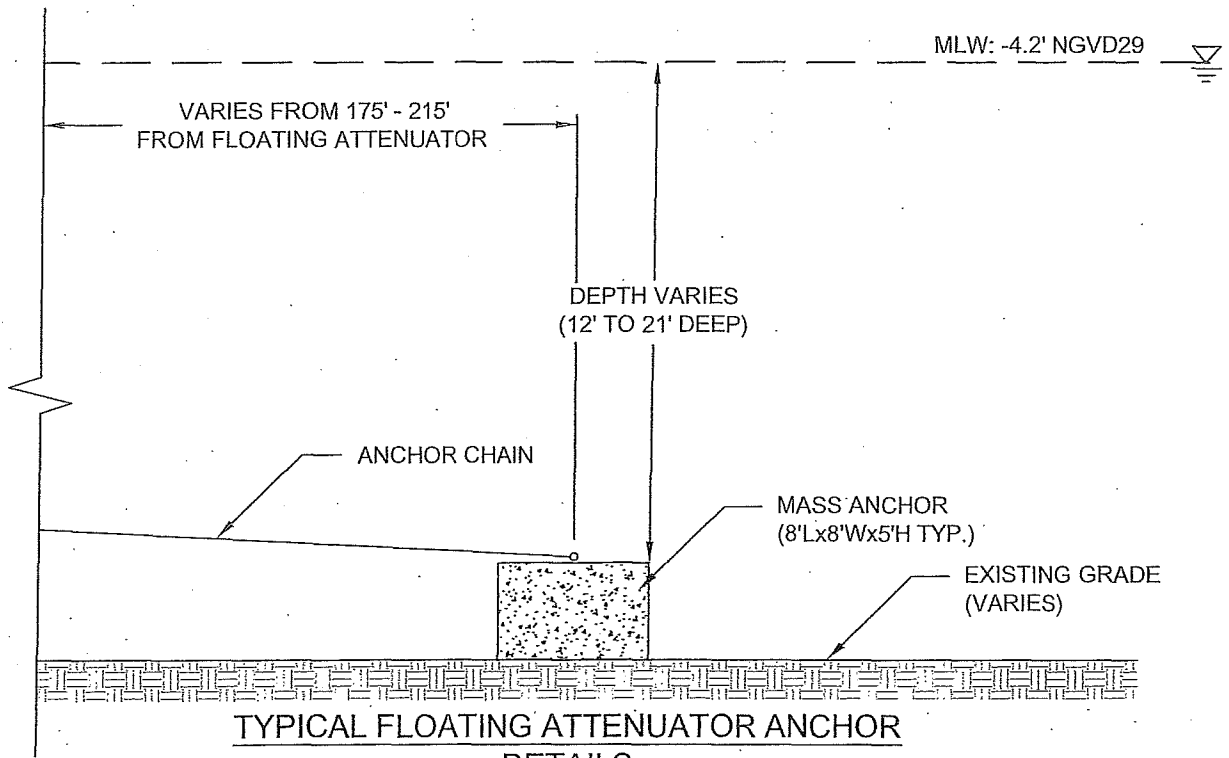
JOB NO: 2700750  
 DATE: MARCH 2007  
 SCALE: 1/4" = 1'-0"

FIGURE 8

FOR PERMITTING PURPOSES ONLY  
 "NOT FOR CONSTRUCTION"



**TYPICAL FLOATING ATTENUATOR  
 DETAILS**  
 (SCALE: 1" = 6')



**TYPICAL FLOATING ATTENUATOR ANCHOR  
 DETAILS**  
 (SCALE: 1" = 10')

**NOTES:**

1. DIMENSIONS ARE IN FEET.
2. ANCHOR LAYOUT AND DOCK SIZES MAY VARY DEPENDING ON SELECTED CONTRACTOR AT TIME OF CONSTRUCTION.



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COMMITMENT & INTEGRITY DRIVE RESULTS

**TYPICAL DETAILS OF  
 FLOATING ATTENUATOR DOCKS**

DESIGNED BY: BCM	CHECKED BY: BAF
DRAWN BY: BCM	257067 01 MARINA 10CS.dwg

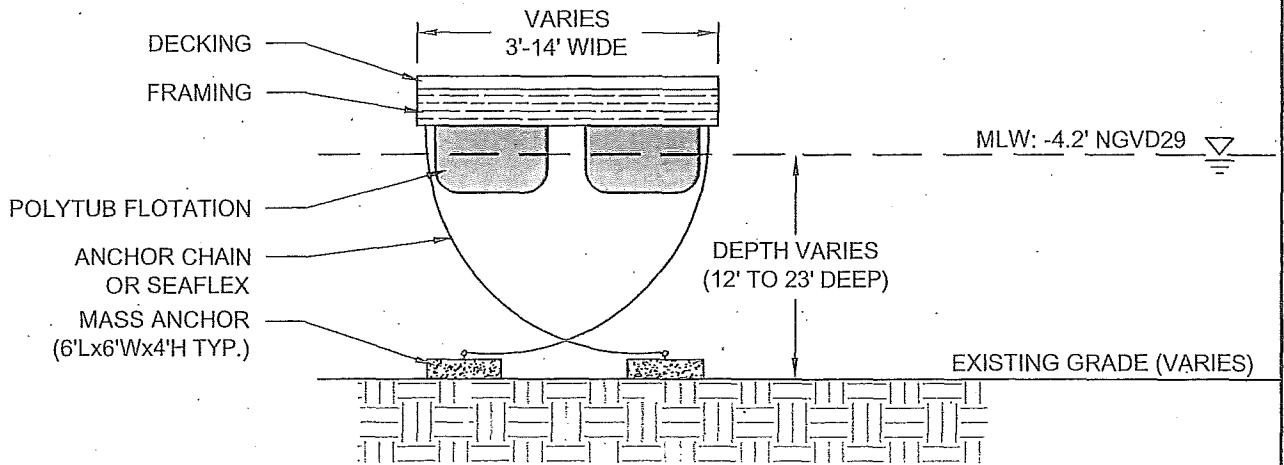
CPB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

DATE: MAR 2011  
 SCALE: 1" = 6'

FIGURE 9

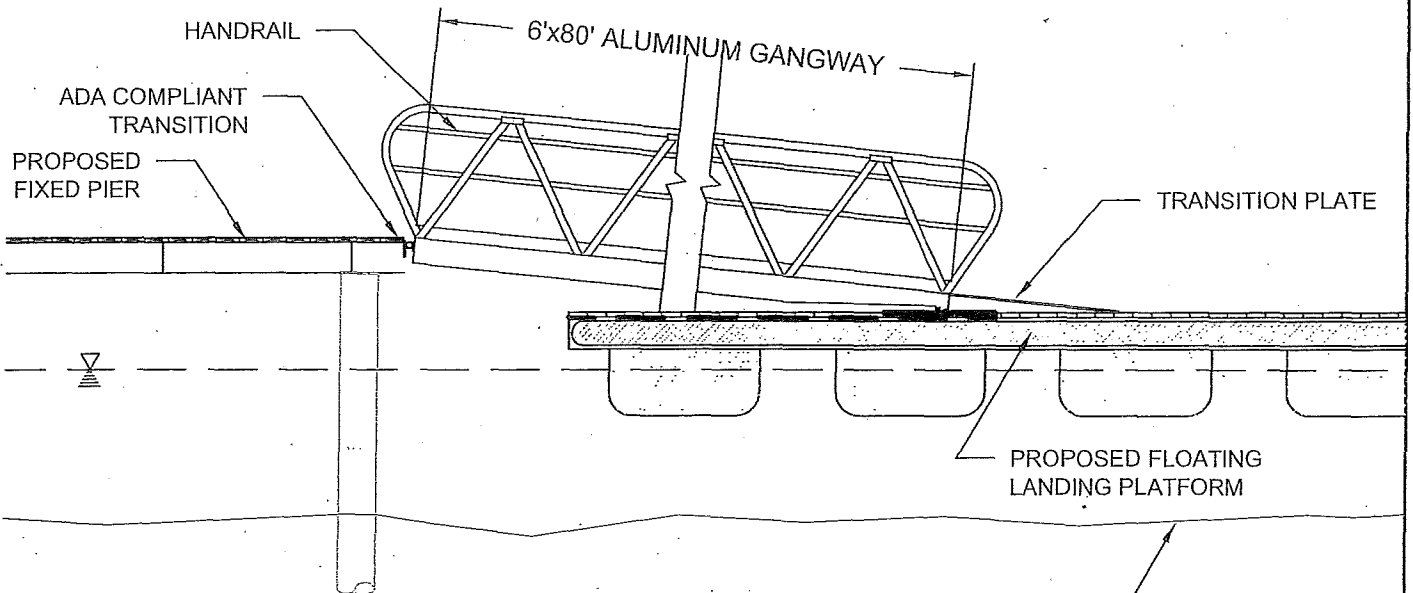
**FOR PERMITTING PURPOSES ONLY  
"NOT FOR CONSTRUCTION"**



**NOTES:**


1. DIMENSIONS ARE IN FEET.
2. ANCHOR LAYOUT AND DOCK SIZES MAY VARY DEPENDING ON SELECTED CONTRACTOR AT TIME OF CONSTRUCTION.

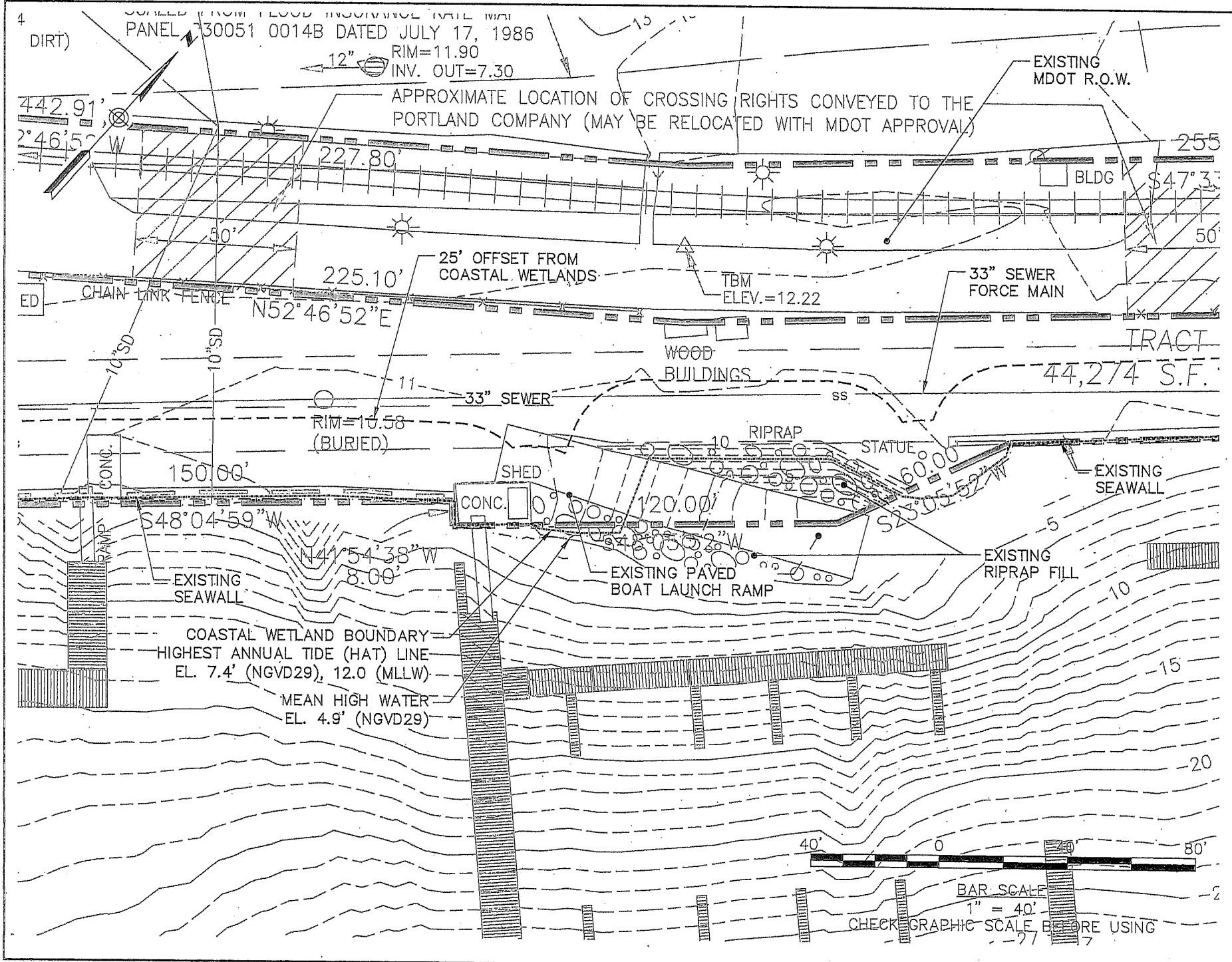
**TYPICAL FLOATING DOCK SECTION  
MAIN PIER WALKWAY  
(NOT TO SCALE)**



**TYPICAL GANGWAY DETAILS  
(NOT TO SCALE)**



 <p>41 Hutchins Drive Portland, Maine 04102 800.426.4262   www.woodardcurran.com</p> <p>COMMITMENT &amp; INTEGRITY DRIVE RESULTS</p>	<p><b>TYPICAL FLOATING DOCK &amp; GANGWAY DETAILS</b></p>		<p>CPB2, LLC PORTLAND, MAINE</p>	<p>JOB NO.: 102750 DATE: MARCH 2017 SCALE: N.T.S.</p>
	<p>DESIGNED BY: BCW DRAWN BY: BCW</p>	<p>CHECKED BY: JAC 20170307 VARNA: CC.nag</p>	<p>MARINA NRPA PERMIT</p>	<p><b>FIGURE 10</b></p>



4  
 DIRT)  
 CORRECTED FROM FLOOD INSURANCE RATE MAP  
 PANEL 330051 0014B DATED JULY 17, 1986  
 12" RIM=11.90  
 INV. OUT=7.30

APPROXIMATE LOCATION OF CROSSING RIGHTS CONVEYED TO THE  
 PORTLAND COMPANY (MAY BE RELOCATED WITH MDOT APPROVAL)

EXISTING  
 MDOT R.O.W.

BLDG

25' OFFSET FROM  
 COASTAL WETLANDS

TBM  
 ELEV.=12.22

33" SEWER  
 FORCE MAIN

CHAIN LINK FENCE

WOOD  
 BUILDINGS

TRACT  
 44,274 S.F.

33" SEWER

RIPRAP

STATUE

EXISTING  
 SEAWALL

150'00'

SHED

EXISTING PAVED  
 BOAT LAUNCH RAMP

EXISTING  
 RIPRAP FILL

S48°04'59"W

N41°54'38"W

EXISTING  
 SEAWALL

COASTAL WETLAND BOUNDARY  
 HIGHEST ANNUAL TIDE (HAT) LINE  
 EL. 7.4' (NGVD29), 12.0 (MLLW)

MEAN HIGH WATER  
 EL. 4.9' (NGVD29)



BAR SCALE  
 1" = 40'  
 CHECK GRAPHIC SCALE BEFORE USING

JOB NO: 227007.50  
 DATE: APRIL 2017  
 SCALE: 1"=40'  
 FIGURE 12

CPB2, LLC  
 PORTLAND, MAINE  
 MARINA NRPA PERMIT

MARINA BUILDING  
 EXISTING CONDITIONS  
 SITE PLAN  
 DESIGNED BY: N/A  
 CHECKED BY: DAS  
 DRAWN BY: ECM  
 227007.03 MARINA\_TPS.dwg

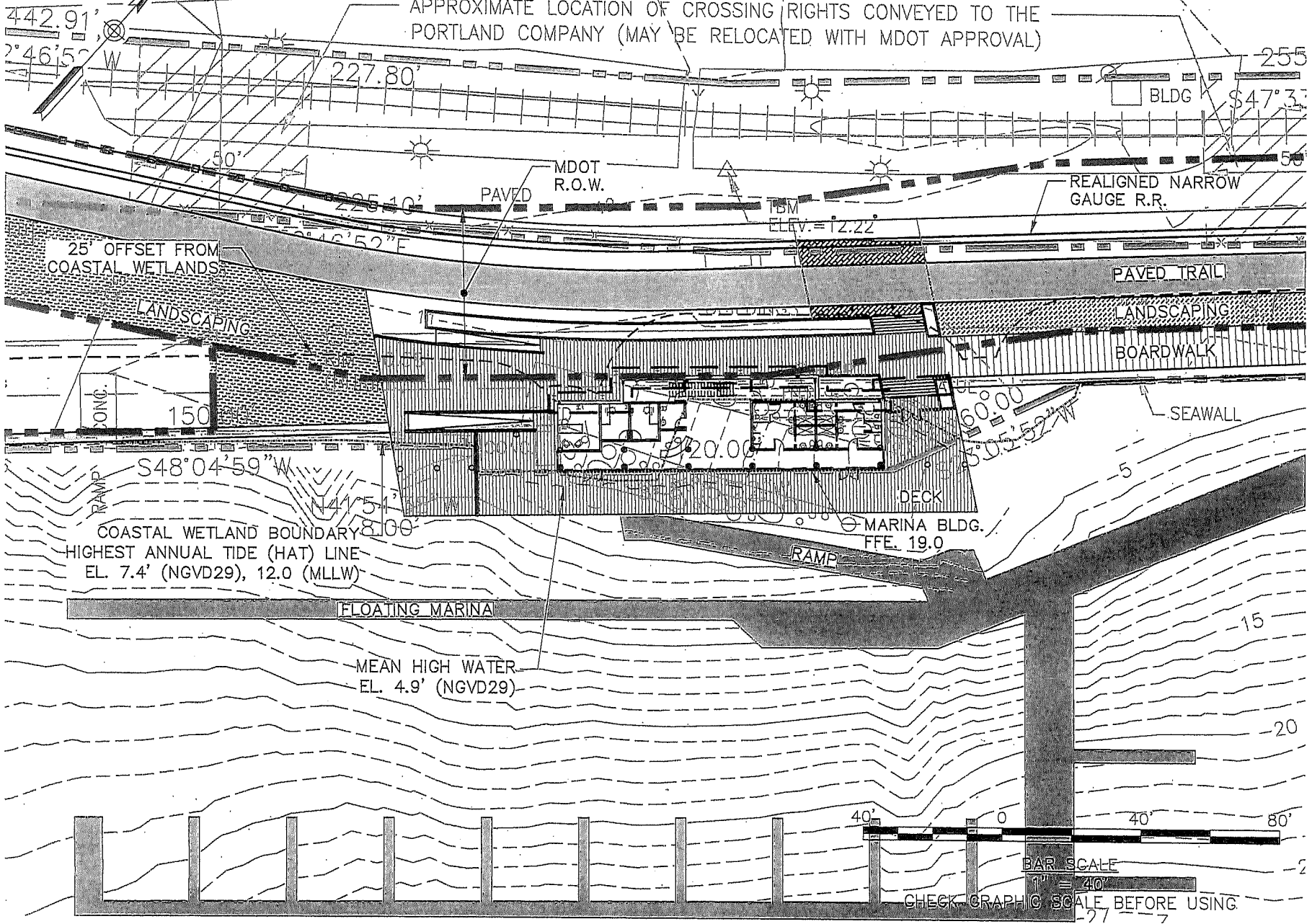
41 Hutchins Drive  
 Portland, Maine 04102  
 800.426.4262 | www.woodwardcurran.com  
 COMMITMENT & INTEGRITY DRIVE RESULTS  
 WOODWARD  
 & CURRAN

4

DIRT)

COPIED FROM FLOOD INSURANCE RATE MAP  
PANEL 30051 0014B DATED JULY 17, 1986  
12" RIM=11.90  
INV. OUT=7.30

APPROXIMATE LOCATION OF CROSSING RIGHTS CONVEYED TO THE  
PORTLAND COMPANY (MAY BE RELOCATED WITH MDOT APPROVAL)



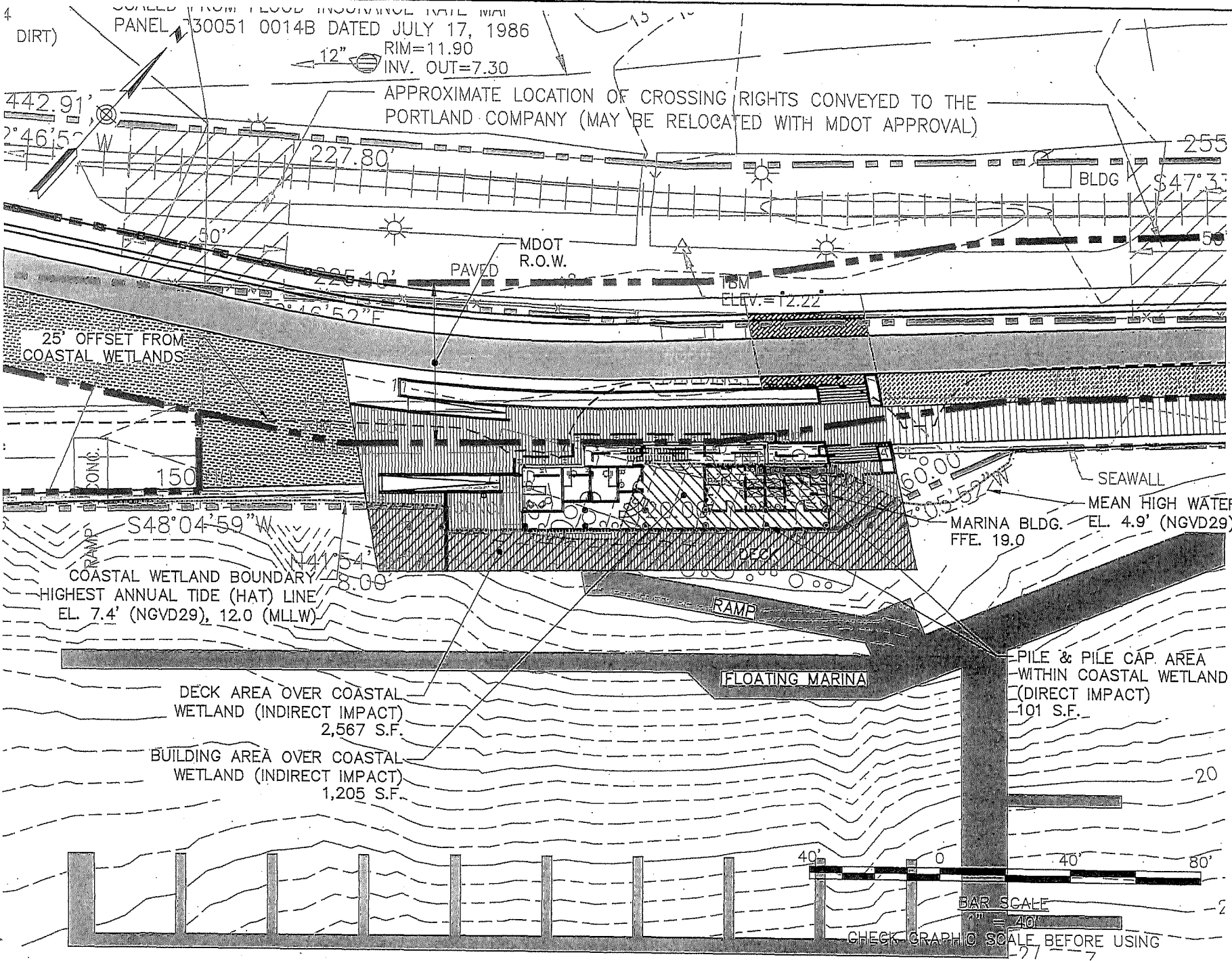
JOB NO. 227007.03  
DATE: APRIL 2017  
SCALE: 1"=40'  
FIGURE 13

CPB2, LLC  
PORTLAND, MAINE  
MARINA NRPA PERMIT

MARINA BUILDING  
PROPOSED SITE PLAN  
DESIGNED BY: BCH  
DRAWN BY: BCH  
CHECKED BY: DAS  
227007.03 MARINA PGS.dwg

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JOB NO: 227007.50  
 DATE: APRIL 2017  
 SCALE: 1"=40'

FIGURE 14

CFB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

MARINA BUILDING  
 PROPOSED IMPACTS  
 PLAN

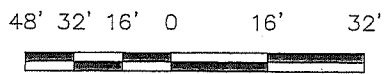
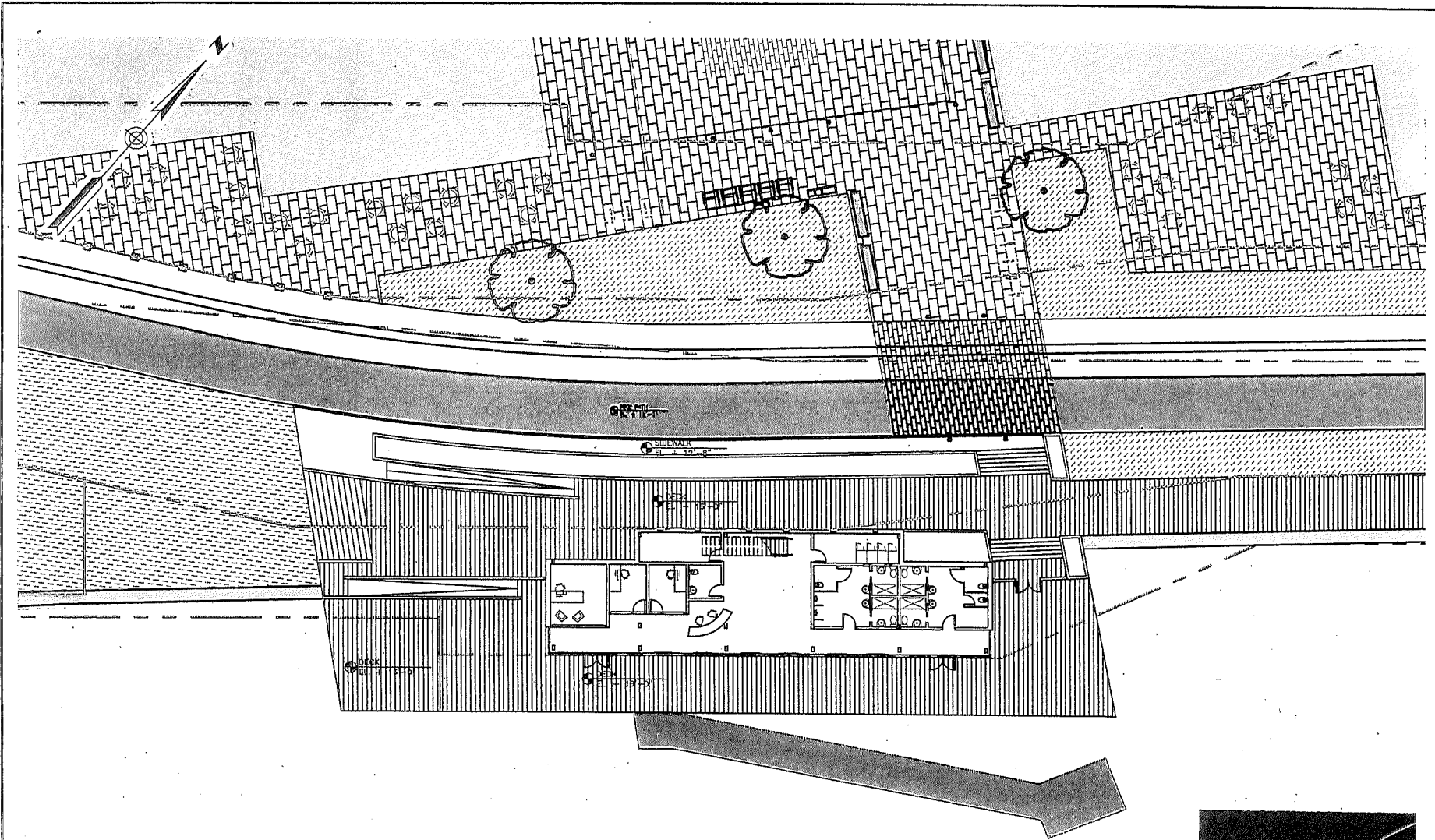
DESIGNED BY: BCM  
 DRAWN BY: BCM

CHECKED BY: DAS  
 227007.03 MARINA\_FIGS.dwg

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COMMITMENT & INTEGRITY DRIVE RESULTS

WOODARD  
& CURRAN



BAR SCALE  
 1/32" = 1'-0"  
 CHECK GRAPHIC SCALE BEFORE USING

JOB NO: 227007.50  
 DATE: MARCH 2017  
 SCALE: 1/32"=1'-0"

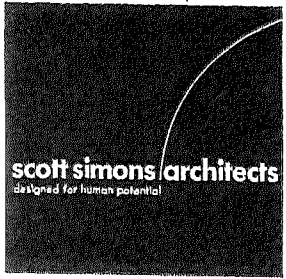
FIGURE 15

CPB2, LLC  
 PORTLAND, MAINE

MARINA NRPA PERMIT

MARINA BUILDING  
 ARCHITECTURAL SITE  
 PLAN

DESIGNED BY: BCK  
 CHECKED BY: DAS  
 DRAWN BY: BCK  
 227007.03 MARINA\_FIGS.dwg

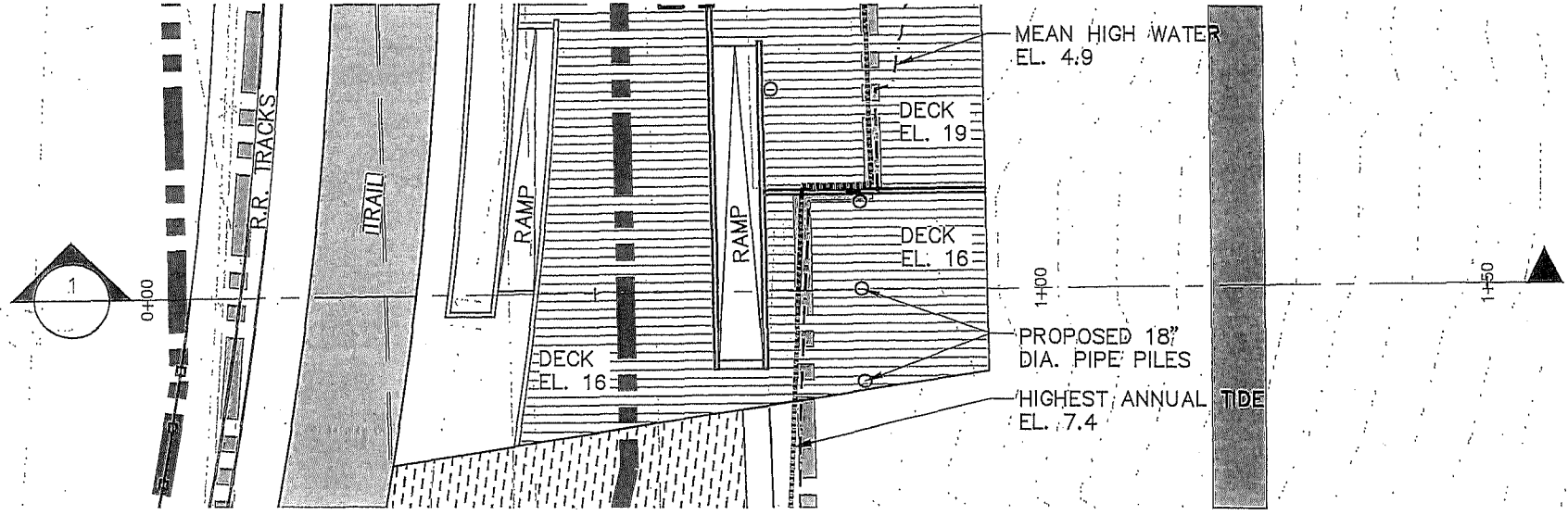


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 Portland, Maine 04102  
 800.426.4262 | www.woodscorran.com

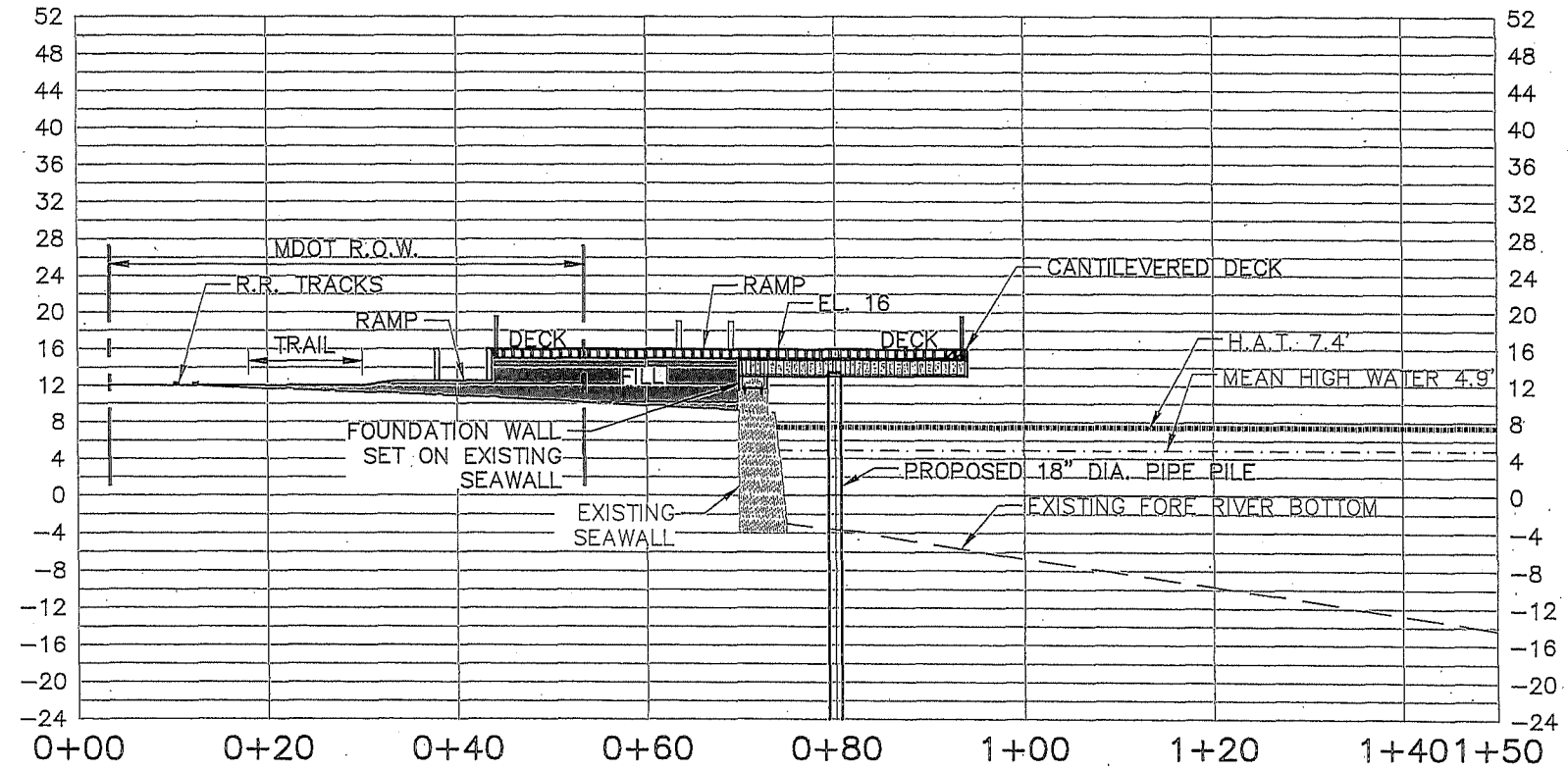
75 York Street  
 Portland, Maine 04101  
 simonsarchitects.com  
 207.772.4656



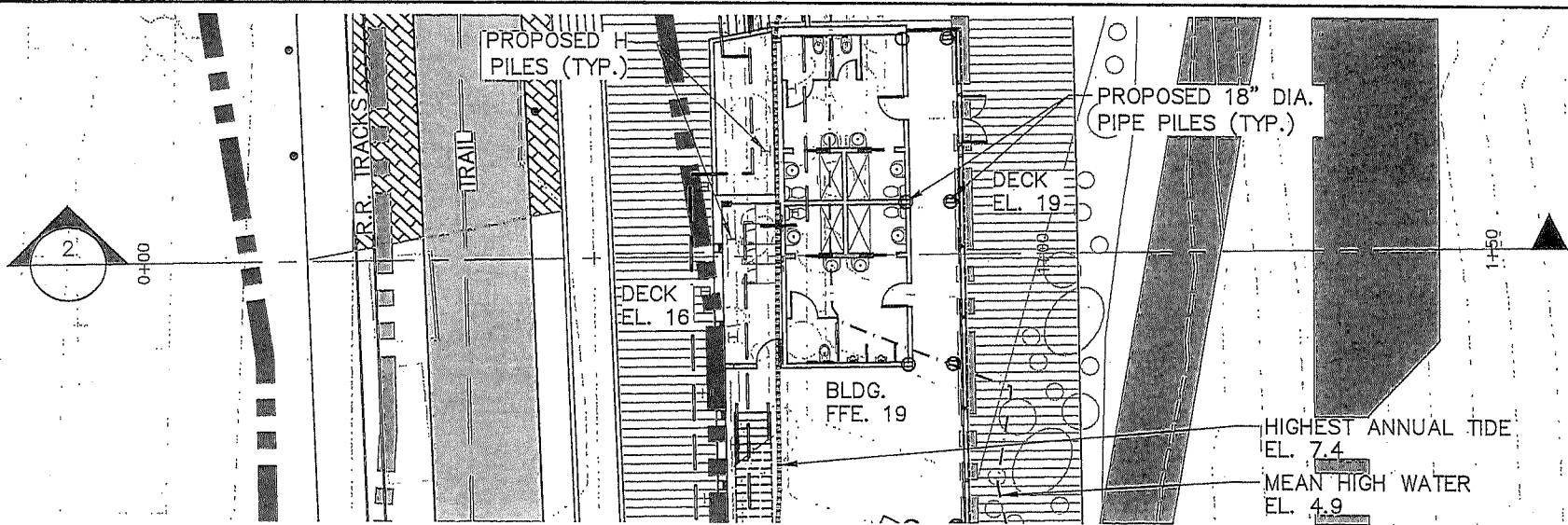
COMMITMENT & INTEGRITY DRIVE RESULTS



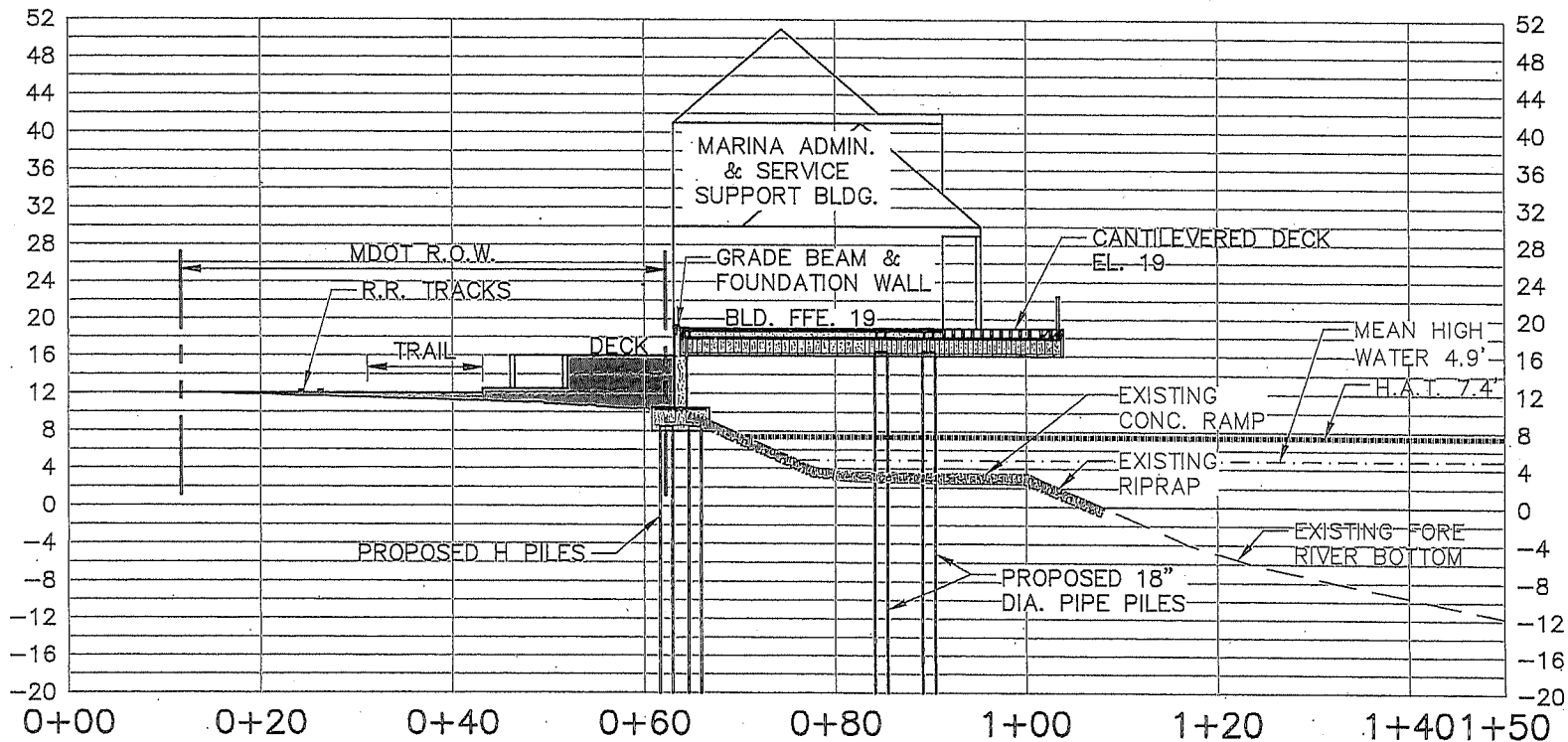
### SECTION 1



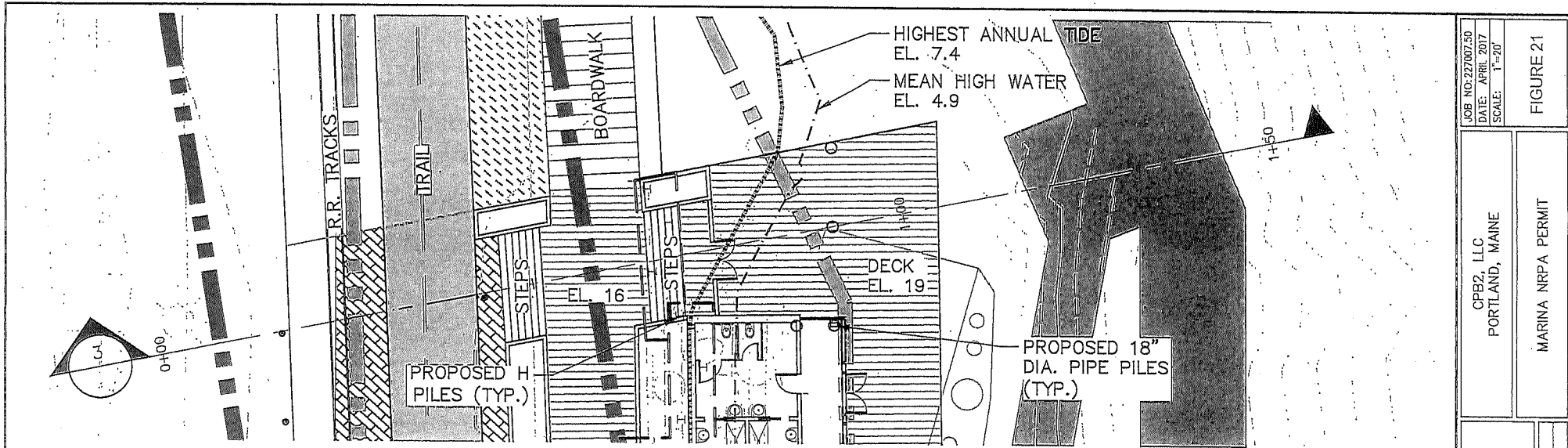
JOB NO: 227007.50 DATE: APRIL 2017 SCALE: 1"=20'	<b>FIGURE 19</b>
CFB2, LLC PORTLAND, MAINE	MARINA NRPA PERMIT
<b>MARINA BUILDING SECTION 1</b>	
DESIGNED BY: BCM DRAWN BY: BCM	CHECKED BY: DAS 227007.03 MARINA FIGS.dwg
41 Hutchins Drive Portland, Maine 04102 800.426.4262   www.woodardcurran.com COMMITMENT & INTEGRITY DRIVE RESULTS <b>WOODARD &amp; CURRAN</b>	



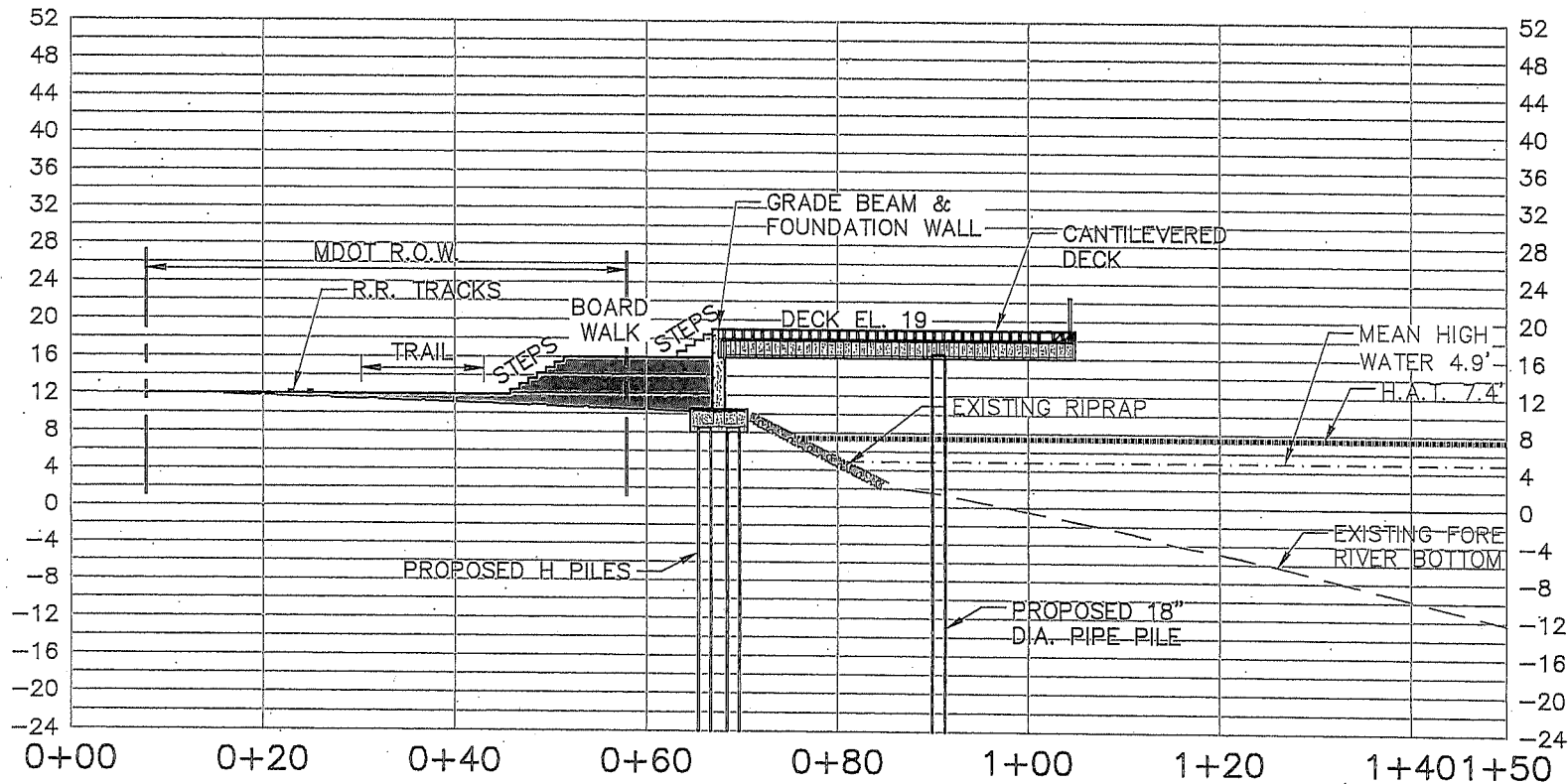
### SECTION 2



JOB NO: 227007.50 DATE: APRIL 2017 SCALE: 1"=20'		FIGURE 20
CFB2, LLC PORTLAND, MAINE		MARINA NRPA PERMIT
MARINA BUILDING SECTION 2		
DESIGNED BY: BCM	CHECKED BY: DAS	227007.03 MARINA FIGS.dwg
41 Hutchins Drive Portland, Maine 04102 800.426.4682   www.woodardcurran.com		
COMMITMENT & INTEGRITY DRIVE RESULTS		



### SECTION 3



JOB NO: 227007.50 DATE: APRIL 2017 SCALE: 1"=20'		FIGURE 21
CPB2, LLC PORTLAND, MAINE		MARINA NRPA PERMIT
MARINA BUILDING SECTION 3		DESIGNED BY: BCM CHECKED BY: DAS DRAWN BY: BCM
44 Hutchins Drive Portland, Maine 04102 800.468.4682   www.woodardcurran.com		COMMITMENT & INTEGRITY DRIVE RESULTS
WOODARD & CURRAN		



**Board of Harbor Commissioners  
Port of Portland, Maine**

Tom W. Dobbins, Harbor Commissioner  
Kevin j Battle, Harbor Master  
2 Portland Fish Pier Marine Trade Center Suite 105 Portland, ME 04101  
Office: 207-772-8121 / Cell: 207-831-6962  
Harbor Commissioner, Port of Portland Maine

**MARINE CONSTRUCTION PERMIT**

**TO BE POSTED IN A CONSPICUOUS PLACE AT THE CONSTRUCTION SITE!**

To... *Woodard & Curran Professional Engineers, 41 Hutchins Drive Portland Maine*

The undersigned, Board of Harbor Commissioners for the Harbor of Portland, has carefully considered your application, dated the **13<sup>th</sup> day of JULY, 2017**, for a permit authorizing: **The redevelopment of the current marina located at 58 Fore St. Portland on the Fore River to an upscale new marina**

Having given public notice of this pending application, as required by law, and therein designated the **13<sup>th</sup> day of July, 2017 at 5 o'clock** in the afternoon prevailing time as the time when they would meet in the **Portland City Hall** to examine this issue and here all interested parties, and having met at the time and place mentioned and examined the location of this proposed, Marine Construction Project, and having heard all interested parties, the Board of Harbor Commissioners for the Harbor of Portland hereby issues this permit which authorizes you to proceed under all applicable local and federal regulations hereinafter stated, and to maintain within the limits mentioned, namely: **(All components to be in place or completed in less than 12 months of the date permit issued.)**

In addition, the construction project described above must be surrounded by a containment boom unless the Board of Harbor Commissioners for the Harbor of Portland has waived this requirement in writing, either as part of the above-listed conditions, or in a separate statement.

This permit is limited authorization, which contains a stated set of conditions with which the permit holder must comply. If a contractor performs the work for you, both you and the contractor are responsible for assuring that the work is done in conformance with the conditions and limitations of this authorization. Please be sure that the person who will be performing the work has read and understands these conditions.

Performing any work not specifically authorized by this permit, or that fails to comply with its conditions, may subject you to the enforcement provisions of Harbor Commission regulations. If any change in plans or construction methods is found necessary, please contact the Harbor Commission immediately to discuss modifications to your authorization. Any change must be approved by the Harbor Commission before it is undertaken.

Nothing in this permit shall be construed to justify or authorize any invasion to the private rights of others. Moreover, nothing in this permit shall limit or modify the authority of the Board of Harbor Commissioners for the Harbor of Portland with its applicable statute. Attested copies will be submitted to the U. S. Army Corps of Engineers, the Department of Environmental protection, the City of Portland, and the City of South Portland.

In Witness, Whereof, the members of the Board of Harbor Commissioners for the Harbor of Portland hereunto set their hands and affix their corporate seal on this ~~13<sup>th</sup> day of July, 2017~~ **21 DEC 2017 KJB**

The work authorized to this permit must be completed one year on or before the date that this permit is issued!



*Kevin j Battle*  
.....  
*Tom W. Dobbins*  
.....  
*Ann Van Voorhis*  
.....  
*Samuel J. Haley*  
.....  
*Patrick J. [Signature]*  
.....



REPLY TO  
ATTENTION OF

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

JANUARY 18, 2018

Regulatory Division  
CENAE-RDC

Lauren Swett, PE  
Woodard & Curran  
41 Hutchins Drive  
Portland, Maine 04102

Dear Ms. Swett:


This concerns Department of the Army permit, number NAE-2017-00732, which authorized the redevelopment and expansion of an existing recreational marina with associated waterfront re-development in Portland Harbor at Portland, Maine.

In accordance with your request, Special Condition 6a of the permit is hereby amended to authorize an extension of the window within which pile driving operations may be conducted. All pile driving operations shall be conducted between Nov. 8<sup>th</sup> and May 27<sup>th</sup> of any year.

All other conditions of the original permit, including the remainder of Special Condition 6, remain in full force and effect.

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

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

  
Frank J. Del Giudice  
Chief, Permits & Enforcement Branch  
Regulatory Division