



Office of the
Inspector General
Commonwealth of Massachusetts

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Inspector General

Assignment of Moorings to
Private Businesses in
Newbury, Massachusetts

March 2011

Massachusetts Office of the Inspector General

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Executive Summary

The Office of the Inspector General (OIG) received a complaint from a concerned Newbury, MA (Town) resident in March, 2010 regarding the Town's handling of certain matters pertaining to waterway issues within Newbury boundaries. Specifically, the complaint raised a question of fairness and equity regarding the Town's assignment of multiple moorings to private businesses located on the Parker River. Additionally the complaint alleged certain conflicts of interest associated with the appointment of members of a Harbormaster Advisory Task Force (Task Force) by the Newbury Board of Selectmen (Newbury BOS). The conflict of interest allegation focused on the claim that the persons appointed to the Task Force either have businesses or are associated with businesses that were directly affected by some of the recommendations made by the Task Force to the Selectmen. Upon receipt of the complaint, the Inspector General ordered an investigation to determine the validity of the allegations described above.

The OIG investigation in Newbury focused on several important issues. First among them is whether the Town acted fairly and equitably in assigning numerous commercial moorings to Parker River based businesses when some members of the public wait as long as fifteen years to receive a private mooring from the Town? Second, did the Town act prudently in not rescinding all of the commercial moorings it assigned to River Front Marine Sports Inc. (River Front) in 2009 when River Front refused to pay its commercial mooring fees for an entire year? Third, did River Front expand its boat structures in the Parker River without receiving the appropriate expansion authorizations from the Army Corps of Engineers (Army Corps) and the Department of Environmental Protection (DEP)? Fourth, does the River Front expansion of its boat structures in the Parker River contravene express Army Corps of Engineers (Army Corps) Guidelines and present a serious public safety issue for the boating public? Fifth, did the appointment of persons with clear Parker River private business interests to the Task Force by the Newbury BOS and the adoption by the Newbury BOS of their subsequent recommendations amount to a conflict of interest with respect to some Task Force members and extremely poor judgment by the Newbury BOS? Sixth, did the Newbury BOS decision to grandfather the number of commercial moorings traditionally

assigned by the Harbormaster to various businesses located on the Parker River violate State law and DEP regulations with respect to the assignment of moorings by harbormasters? Seventh, did the Newbury BOS Chairman's advocacy on behalf of his father with two former owners of River Front's waterfront property resulting in payments from them totaling \$22,000.00 dollars and his attempt to obtain similar payments from River Front's current owner amount to a conflict of interest when he voted as a Newbury BOS member to discontinue commercial mooring fees for private waterfront businesses in Newbury? The facts developed concerning these issues will be discussed in turn.

The investigation disclosed that the Town of Newbury issues two types of mooring permits. The first type is identified as a private mooring permit. The Town fee for a private mooring is based upon a cost of \$4.00 dollars per foot for the length of a boat. These private mooring permits are issued to private boat owners by the Town. The second type is known as a commercial mooring permit. Historically, multiple commercial mooring permits have been issued annually to certain waterway based private businesses that operate along the Parker River. Specifically, several private businesses and a local Country Club have a designated number of commercial moorings assigned to them by the Harbormaster every year. These businesses include River Front Marine Sports Inc. (River Front); Fernald's Marine; the Pert Lowell Company Inc. (Pert Lowell); and the Old Town Country Club (Country Club). The Newbury Harbormaster advised that in 2008, River Front received commercial mooring permits for 41 boats; Fernald's Marine received 30 commercial mooring permits; Pert Lowell received 9 permits and the Country Club received 15 commercial mooring permits. The Harbormaster advised that these business entities have received approximately the same number of commercial mooring permits from the Town for several years.

The Harbormaster advised that the Newbury BOS discontinued commercial mooring fees in 2010. Prior to 2010, commercial mooring fees were set at \$200.00 dollars for a commercial mooring dock (a two boat mooring float) and \$100.00 dollars for a commercial mooring (one boat).

There are five separate areas in Newbury waters where private moorings are located. Each of these areas has a separate waiting list that is controlled by the Harbormaster. If an opening arises on a particular list, the Harbormaster will provide the opportunity to the next person on that particular list. Boat owners can be placed on more than one private mooring list. Private mooring areas east of the Route 1A Bridge have waiting lists that can last up to fifteen years.

Conversely, the Harbormaster has no control over filling vacancies that occur with respect to commercial moorings. Control over these moorings is entirely in the hands of the businesses that receive them once permits are issued by the Harbormaster. The business owners exclusively decide who is placed upon the commercial moorings assigned to them. The Harbormaster has no input in these decisions and the public waiting lists that exist for private moorings are inapposite for their commercial counterparts. The Harbormaster has no knowledge of whether any of the businesses that receive commercial moorings have a waiting list for their moorings. The boat owners that rent a commercial mooring space or a slip from a private entity like River Front, in addition to the River Front rental fee, must pay the Town a Waterways Permit fee based upon a charge of \$3.00 dollars per foot per boat.

An OIG Senior Investigator, acting in an undercover capacity, telephonically contacted one of the River Front owners and inquired about the purchase of a particular boat from River Front. The River Front owner stated that the boat's current price was \$16,000.00 dollars but the price will be raised to \$17,000.00 on 2/1/11. The River Front owner advised that the boat's current price would remain at \$16,000.00 if the undercover investigator purchased the boat and agreed to rent a slip from River Front for the upcoming boating season. The River Front owner also advised that River Front currently charges \$1,782.00 as a slip rental fee for boats 18' feet long or less and \$1,782.00 plus \$99.00 per foot for boats longer than 18' feet. It appears likely that River Front charges similar rental fees to boat owners that rent commercial moorings from them as well. Based on the above described discourse, it appears very likely that a similar bargain would have been offered by River Front if the matter involved receiving an immediate mooring. It has been the experience of the OIG obtained from other

investigations that private businesses often use the availability of mooring space within their control as an incentive to customers considering the purchase of expensive boats from them.

The Harbormaster advised that in March, 2009, he invoiced River Front in the amount of \$4,100.00 for its commercial moorings for 2009. He based this figure upon the number of commercial moorings River Front had used in the previous year. River Front refused to pay its commercial mooring fees to the Town in 2009, despite numerous efforts by the Harbormaster to obtain payment. Notwithstanding River Front's refusal to pay, the Town allowed them to continue to operate and control the commercial moorings assigned to them for the entire year. No attempt was made by the Town to assert authority and control over these moorings and rescind River Front's mooring permits based upon a failure to pay on the part of River Front. Finally, in the first week of April, 2010, approximately one week after the Town received a letter from OIG signaling the initiation of an investigation involving moorings; River Front sent a check to the Town for its 2009 commercial moorings in the amount of \$2,900.00. The check purported to be payment in full for its 2009 moorings, notwithstanding the fact that it had been billed in the amount of \$4,100.00.

The Harbormaster later learned that River Front's position on the \$2,900.00 payment was based in part upon its use of 14 mooring docks (two boats per mooring dock) instead of 19 mooring docks that it used the previous year. The Harbormaster does not believe that the Town should accept the \$2,900.00 check as payment in full. He explained that in his view, River Front cannot have it both ways. On the one hand, River Front should not be able to receive and exercise control over 19 mooring docks (two boats per dock) and on the other hand, agree to pay for only 14, because they were unable to rent the other 5 mooring docks. It is his position, that if a business applies for and receives 19 mooring docks, they should pay for 19. If they choose to pay for only 14, the other 5 should revert to the Town; these moorings should be

converted to private moorings; and the vacancies should be filled from the Town waiting lists in a fair and equitable manner.¹

The Harbormaster advised that the Town subsequently decided to accept partial payment from River Front for its 2009 moorings and attempt to collect additional money later on. He continues to believe that River Front should pay the Town \$4,100.00.

This investigation has revealed that River Front expanded its boat structures located in the Parker River in front of and extending west in the river for several hundred feet without the express approval of the Army Corps and the DEP. The OIG has examined plans submitted to Army Corps in April, 2010 by River Front for approval of an extension of several TDocks further into the Parker River and the addition of a new TDock to the west of its other TDocks. These plans also show two 220 foot floating docks located toward the far side of River Front's property in the Parker River. It appears that River Front wishes to place these new floating docks in the Parker River in the future to replace its existing commercial moorings. The Harbormaster has informed OIG that the work on this expansion plan with the exception of the two 220 foot floating docks was already completed by River Front before River Front received Army Corps approval in June 2010.

The OIG has reviewed existing DEP records regarding the River Front property in Newbury and found no approval by DEP for River Front's above described expansion. In fact, there is nothing in the DEP records showing that River Front has even notified DEP of its intent to expand its TDocks and place more permanent 220 foot long floating docks toward the far side of the Parker River. The fact that River Front completed its TDock expansion without notifying DEP and obtaining a new Chapter 91 license or an amendment to its existing license from DEP is most troubling. This was done in spite of the fact that River Front's current Chapter 91 license specifically requires prior DEP notification and approval for any substantial expansion of existing approved structures.

¹ OIG makes a recommendation in this report to the effect that if a private business refuses to pay mooring fees for all of the moorings issued to it in a given year, the mooring permits for all of its moorings should be rescinded by the Harbormaster and the vacancies should be filled by other boaters taken from the public waiting list.

A DEP Official has also reviewed the DEP file pertaining to River Front's Marina at 292 High Road, Newbury and confirmed that it contains no expansion notification to DEP by River Front and no DEP approval of any expansion of River Front's TDocks.

According to the Army Corps, River Front submitted expansion plans in 2003 to the Army Corps that are similar to (but not identical with) the River Front plans approved by the Army Corps in June, 2010. The Army Corps informed OIG that it requested additional information from River Front in 2003 by letter which was sent to the wrong address. The Army Corps advised that River Front decided to initiate its expansion plan when it did not hear back from the Army Corps. This was done by River Front in spite of the fact that it had been involved in an identical review process by the Army Corps in 1994 and received a specific letter from the Army Corps authorizing their plan. It appears that River Front knew the correct Army Corps procedure and deliberately ignored it when it did not hear back from Army Corps in 2003.

The Harbormaster advised that his office notified the Army Corps in 2009 that River Front had expanded its structures in the Parker River and inquired as to whether River Front had the proper Army Corps permit. The Harbormaster's inquiry to the Army Corps resulted in a compliance review by the Army Corps of River Front's existing structures in the summer of 2009. The Army Corps review discovered that River Front had expanded its boat structures without a proper Army Corps permit. The final result was that the Army Corps approved River Front's expansion retroactively by letter on June 11, 2010. **(See attached Army Corps letter June 11, 2010 and the River Front expansion plan dated April 14, 2010, Attachment One)**. The Army Corps issued to River Front a new Massachusetts General Permit which authorized the expansion that River Front had already built.

The Harbormaster advised that prior to the Army Corps issuing River Front its new permit, he informed the Army Corps that he had serious concerns regarding River Front's expansion plan. The Harbormaster informed the Army Corps that his concerns involved public safety issues and public access to Newbury waterway issues. He explained that River Front's 2010 expansion plan (now retroactively approved by the

Army Corps) would, in his opinion, create a significant risk of a boat collision in the area of the river in front of and to the west of the River Front property. Moreover, River Front's expansion gives River Front control of approximately 75% of the Parker River in front of and to the west of River Front's property, substantially limiting public access to the river in that area. The Harbormaster advised that the Army Corps approved River Front's plan in contravention of its own guidelines which require that 50% of a particular waterway be free and open for public use. The Harbormaster conducted his own study of the river depth in front of River Front's property. He concluded that the safest and deepest channel for boat traffic in that location was through the water area where River Front had already expanded its TDocks before receiving the Army Corps approval.

This investigation has disclosed that the Newbury Board of Selectmen (Newbury BOS) appointed a group of six individuals to serve on a Task Force created by the Newbury BOS to provide them with recommendations on various waterway issues that have arisen regarding Newbury waters. The six individuals were appointed to serve on the Task Force in October 2009. The Task Force was identified as the Harbormaster Advisory Task Force (Task Force). The OIG has learned that the Task Force issued a report of its findings and recommendations to the Newbury BOS in February 2010. This report recommended among other things, that the Newbury BOS order that commercial mooring fees be discontinued; that waterway permits for non powered boats be discontinued; and that the number of commercial moorings allotted to each commercial entity be grandfathered. The Newbury BOS voted to accept and implement the above enumerated recommendations from the Task Force in March, 2010.

The investigation has revealed that many of the individuals appointed to serve on the Task Force by the Newbury BOS were not disinterested citizens seeking to serve only community interests. In fact, several of the Task Force members have significant private business interests that are directly related to Newbury waterways. For example, the Task Force Chairperson and her husband own and operate The Pert Lowell Company (Pert Lowell); a Parker River based business entity. Pert Lowell has commercial moorings assigned to it by the Town and builds wooden and fiberglass sail boats, row boats and skiffs for sale. Some of these boats can operate without a motor.

A second example involves the fact that another appointee to the Task Force is an employee of another Parker River based business known as Fernald's Marine and is the son of the owner. Fernald's Marine has several commercial moorings assigned to it by the Town. Moreover this company sells canoes, kayaks, sailboats and skiffs to the public. Several of these boats can operate without a motor. A third example is found in the fact that certain Task Force members have a connection to the Old Town Country Club (Country Club) which is located on the banks of the Parker River. The OIG has learned that one of the Task Force members owns the property that the Country Club is located on and rents the property to the Country Club. Another Task Force member may be related by marriage to a Country Club officer. The Country Club has several commercial moorings assigned to it by the Town.

The Harbormaster has pointed out what he believes is a conflict of interest to the Newbury BOS and Town officials. However, his opinion was ignored and the Newbury BOS chose to accept the recommendations of the Task Force to discontinue commercial mooring fees, waterway fees for non powered boats and to grandfather the number of commercial moorings assigned to several private businesses including Pert Lowell, Fernald's Marine and the Country Club.

During interview with the OIG, the Chairman of the Newbury BOS admitted that he knew that the Task Force Chairperson had a direct connection with Pert Lowell and another Task Force member ran Fernald's Marine. He also informed the OIG that he and other Newbury BOS members knew that Pert Lowell, Fernald's Marine and the Country Club had commercial moorings assigned to them but did not consider this fact when adopting the Task Force recommendations described above.

The Newbury BOS decision to grandfather the number of commercial moorings provided by the Town to certain business entities along the Parker River was inappropriate for another reason. M.G.L. c. 91, §10A requires Commonwealth harbormasters to issue mooring permits annually. Moreover, DEP regulation 310 C.M.R. §9.07(1) & (2) make it quite clear that the issuance of mooring permits is to be under the control of the harbormaster and persons seeking permits must apply to the

harbormaster in writing on an annual basis. It is the harbormaster who controls the issuance of permits on an annual basis. The Newbury BOS have no authority to contravene the express tenets of state law and regulations and grant a specific number of permits provided to certain businesses in perpetuity.

Finally, the OIG investigation has revealed a potential conflict of interest involving the Chairman of the Newbury BOS (Chairman). The OIG has not made any conclusions regarding this conflict of interest issue because matters of this nature are within the purview of the Massachusetts State Ethics Commission. The investigation disclosed the fact that the Chairman is a direct abutter to the River Front property located on the Parker River. During interview with the OIG, the Chairman advised that he is the owner of the property immediately adjacent to and west of River Front's property on the river. He advised that his father gave him this land. The Chairman advised that in the past, prior to becoming a Newbury Selectman, he approached the owner of River Front and a former owner of River Front's property (then known as Jimmy's Marine Service) and told them that their boat structures were encroaching on his property rights because they extended beyond the property boundary in front of his land in the river. He advised that he sought financial compensation from both owners in the form of rent. He advised that both owners rebuffed his attempts and he did not receive any money.

Later during the investigation, the OIG discovered a letter in the records of the DEP written by the owner of Jimmy's Marine Service (Jimmy's Marine) that indicated that a \$12,000.00 payment had been made to the Newbury BOS Chairman's family by the Jimmy's Marine owner many years ago (before the Chairman became a Newbury BOS member). The OIG subsequently interviewed the Jimmy's Marine owner and confirmed that he made a \$12,000.00 payment in 1989.

The OIG reinterviewed the Chairman who subsequently admitted approaching the Jimmy's Marine owner and seeking a payment from him because his boat structures encroached upon his father's land. He advised that his father received \$12,000.00 from the Jimmy's Marine owner. The Chairman also admitted that he approached another prior owner of the same property when it was known as the Parker River Yacht Yard

(Parker River YY) and requested money from the Parker River YY owner as well. He advised that the Parker River YY owner paid his father approximately \$1,000.00 dollars to settle the encroachment issue. This also happened before he became a member of the Newbury BOS. The Chairman stated with respect to both payments that he forgot to tell the OIG about them during his first interview.

The OIG subsequently interviewed the Parker River YY owner concerning this matter. The Parker River YY owner advised that the Chairman approached him and told him that his boat structures were interfering with his father's property rights. The Parker River YY owner was further told that the father wanted a "piece of the action." The Parker River YY owner advised that he paid the father \$10,000.00.

Notwithstanding the Chairman's admitted requests for financial remuneration made to three successive owners of the land adjacent to his own, and payments totaling \$22,000.00 dollars to the Chairman's father by two former owners of the River Front property, the Chairman voted on Task Force recommendations that directly benefitted the current owner of the River Front property. The Chairman voted to discontinue mooring fees for private businesses on the river and to grandfather the number of commercial moorings allotted to these businesses. River Front holds the largest number of commercial moorings allotted to private businesses in Newbury waters.

Investigative Details

Interview of Harbormaster

The Newbury Harbormaster was interviewed by the OIG concerning the allegations set forth in the complaint. He advised that he has held the job of Harbormaster since July 2007 and was an Assistant Harbormaster off and on for several years in Newbury before that. He advised that there are six Assistant Harbormasters that work under him in Newbury.

The Harbormaster advised that Newbury waters have about 200 to 250 private moorings. These private moorings include one boat moorings and two boat mooring docks (also known as floating docks). The mooring docks are floats which allow for two boats to be connected to the float. A mooring permit is required for each boat moored at a private mooring in Newbury waters. The fee to a boat owner for a private mooring permit is based upon a cost of \$4.00 dollars per foot for the length of a boat. All other boats operating in Newbury waters must have a waterway permit issued by the Town. The fee for the waterway permits is based upon the length of the particular boat and the cost is \$3.00 dollars per foot. The Harbormaster advised that there are about 30 to 40 private mooring docks which normally have two boats moored on each of them. The remainder of the private moorings has one boat attached to them.

The Harbormaster advised that there are five separate areas in Newbury waters where private moorings are located. Each area has its own separate waiting list. People who hope to obtain a private mooring space in Newbury waters can choose which waiting list they wish to be on. One person can choose to be placed upon more than one list. If an opening comes up on a particular list, the next person on that list is offered the open spot. The Harbormaster advised that mooring areas east of the Route 1A Bridge in Newbury have waiting lists that take as long as 15 years for persons to obtain a mooring. Mooring areas to the west of the Bridge are down to about a year wait. The Harbormaster advised that there is no restriction on the number of private moorings a person can have.

The Harbormaster advised that Newbury also has commercial moorings. Newbury permits these commercial moorings to be operated and controlled by commercial businesses that operate in Town waters. Four private businesses and a local Country Club have commercial moorings that they control. He identified the businesses that control commercial moorings as the River Front Marine Sports Inc. (River Front); Fernald Marine; the Pert Lowell Company; and the Old Town Country Club.

The Harbormaster advised that River Front has 3 commercial boat moorings and 19 commercial mooring docks that have the capability of handling 2 boats per dock. River Front can handle a total of 41 boats on the commercial moorings assigned to them and usually all 41 slots are filled. Fernald Marine has 30 commercial moorings assigned to them; the Pert Lowell Company has 9 commercial moorings; and the Old Town Country Club has 15 commercial moorings. The Harbormaster advised that these commercial entities have had approximately the same number of commercial moorings assigned to them for many years.

The Harbormaster advised that prior to changes made by the Newbury BOS in 2010, (Selectmen discontinued commercial mooring fees in March 2010) he would send each business that held commercial moorings an annual bill to pay the Town for the moorings they controlled. Each business would pay for the moorings they controlled by check. After the Harbormaster received payment, he sent each business entity a letter which informed them of the mooring numbers for each mooring controlled by the particular entity.

The business owners decide who is assigned to each of the commercial moorings they control. The Harbormaster has no control or input over who is assigned to the commercial moorings by the business entities. However each of the boat owners who receive a commercial mooring are required to obtain a waterway permit from the Harbormaster. The Town waterway permit fee for boat owners renting commercial moorings or slips from private businesses such as River Front is \$3.00 per foot times the length of the boat. The Harbormaster advised that prior to 2010, when commercial mooring fees were discontinued, commercial mooring fees were set at \$200.00 for each

commercial mooring dock (two boats per mooring dock) and \$100.00 for each commercial mooring (one boat) that business entities controlled.

An OIG Senior Investigator, acting in an undercover capacity, telephonically contacted one of the River Front owners and inquired about the purchase of a particular boat from River Front. The River Front owner stated that the boat's current price was \$16,000.00 but the price will be raised to \$17,000.00 on 2/1/11. The River Front owner advised that the boat's current price would remain at \$16,000.00 if the undercover investigator purchased the boat and agreed to rent a slip from River Front for the upcoming boating season. The River Front owner also advised that River Front currently charges \$1,782.00 as a slip rental fee for boats 18' feet long or less and \$1,782.00 plus \$99.00 per foot for boats longer than 18' feet. Rental costs to boat owners who rent commercial moorings from River Front are likely to be similar if not identical to slip rentals.

The Harbormaster has no knowledge of whether any of the private businesses on the Parker River that control commercial moorings have any sort of waiting list regarding the assignment of moorings under their control. The Harbormaster advised that these businesses do not utilize the public mooring waiting lists to fill vacancies that arise on the business controlled commercial moorings. The Harbormaster advised that River Front is a full service business that sells boats, repairs boats and services boats.

The Harbormaster advised that Newbury has a Harbormaster Advisory Task Force (Task Force) which has six people assigned to it. The Harbormaster advised that the Task Force members were appointed by the Newbury BOS. The Harbormaster advised that the appointments were made in October 2009. The Harbormaster advised that several of the Task Force members have private business interests that are related to waterways under the control of the Town. For example, one member's father is the owner of Fernald's Marine and this Task Force member has worked for his father at the business all of his life. Fernald's Marine, located on the Parker River, sells non motorized boats such as kayaks and canoes, as well as sailboats and skiffs.

The Task Force Chairperson and her husband own the Pert Lowell Company; another Parker River based company that sells wooden and fiberglass sailboats, rowboats and skiffs. Some of these boats operate without motors. Another Task Force member is a sole proprietor who installs moorings for private individuals. He may also install moorings for the Pert Lowell Company and the Old Town Country Club. Another member owns a large parcel of land on the water in Newbury. This is the land that the Old Town Country Club is located on. The Country Club rents the land from him on an annual basis.² This member also works at the Pert Lowell Company part time. One of the Task Force's member's sons owns a marine repair business in Newbury known as Mike's Marine.

The Harbormaster advised that the Task Force submitted several recommendations to the Newbury BOS for their consideration. One of the recommendations involved the discontinuance of commercial mooring fees and another involved declaring that each business entity that has commercial moorings should be permitted to keep the numbers they have at their current levels, i.e. grandfather the number of moorings for each entity. A third Task Force recommendation involved the discontinuance of waterway fees for non powered boats. The Harbormaster advised that based upon the personal business interests that many of the Task Force members have regarding the Task Force recommendations, there appears to be a clear conflict of interest involved in the recommendation to discontinue fees for commercial moorings and non powered boats and to grandfather commercial moorings at current levels. Nonetheless, The Harbormaster advised that the Newbury BOS voted to accept these recommendations of the Task Force during a Board meeting on March 23, 2010. The Board's vote did away with commercial moorings fees, waterway fees for non powered boats and grandfathered the number of commercial moorings currently held by companies such as Fernald's Marine, Pert Lowell and the Old Town Country Club.

Fernald's Marine, Pert Lowell, and the Old Town Country Club directly benefitted from the Newbury BOS decision to discontinue commercial mooring fees and to grandfather

² The OIG has also developed information which indicates that a Task Force member's relative by marriage may be an Officer of the Old Town Country Club.

the number of commercial moorings assigned to them. The Harbormaster advised that Fernald's Marine sells canoes, kayaks, sailboats and skiffs and also directly benefitted from the Newbury BOS decision to discontinue waterway fees for non powered boats. Pert Lowell also sells boats that can operate without a motor.

The Harbormaster advised that River Front owns water frontage that is approximately 200 feet in length. River Front has several floating structures (TDocks with finger slips, hereinafter TDocks) that extend initially from River Front's frontage property into the Parker River. These TDocks are connected to one another in the Parker River and extend approximately 1100 feet along the shore line west of the Route 1A Bridge. Each of these TDocks has numerous private boats docked at them. The boat owners rent the TDock finger slips from River Front. These structures are not moorings and Newbury receives no fees from River Front for boats docked at these TDocks.

The Harbormaster advised that River Front has provided to the Army Corps new plans (plans dated December 31, 2009) and is seeking Army Corps approval for an extension of their TDocks further out into the Parker River. The Harbormaster provided a copy of a photo of what the waterway in front of and adjacent to River Front looks like and a copy of the River Front plans provided to the Army Corps regarding River Front's extension of its TDocks. **(See attached photo and River Front plans, Attachment Two)**. The Harbormaster also observed that River Front had already built the extensions to its TDocks without prior Army Corps authorization and was seeking Army Corps approval retroactively for its completed work.

The Harbormaster provided the OIG with a copy of an email between a Project Manager for the Army Corps and himself that is relevant to the above mentioned River Front expansion of their TDocks. In this email, dated April 11, 2010, the Harbormaster informed the Army Corps that he was concerned that the River Front plan, if approved by the Army Corps, would result in vessels being severely restricted from accessing the water way on the inland side of River Front at low tide. The Harbormaster opined that this would have an adverse effect on the public's right to equal access of the waterway. The email further comments on River Front's expansion plan in general and states, "Our

concern with the plan is that the public is essentially locked out of that section of the [Parker] river. Would it be possible that the Riverfront [River Front] “floating” docks be place (sic) west of their current attached docks along the southern bank of the river? Without that change, Riverfront would have a monopoly on that section of the river. The public would be forced to travel a longer distance to get their boats.”

During a subsequent interview, the Harbormaster elaborated on his concerns regarding the River Front expansion plan provided to the Army Corps. He advised that in the summer of 2009, an Assistant Harbormaster raised the issue with him as to whether River Front had a proper Army Corps permit that authorized the expansion of their TDocks further into the middle of the Parker River, as well as the addition of a new TDock. The Harbormaster subsequently had contact with the Army Corps Project Manager regarding the issue. The Harbormaster advised that in the summer of 2009 the Army Corps Project Manager took a series of Aerial photographs of the River Front property which included its TDocks and moorings. The Army Corps Project Manager later displayed these photos to the Harbormaster. The OIG displayed a series of photos to the Harbormaster that were obtained from the Army Corps pertaining to River Front’s location. The Harbormaster stated that these were the same photos shown to him earlier by the Army Corps Project Manager. The Harbormaster observed that these photos show that River Front had already added to and extended its TDocks before obtaining approval from the Army Corps.

The Harbormaster was informed by the Army Corps that the number and size of the TDocks that River Front had in the water in 2009 were more than what the Army Corps had authorized by previous permit in 1994. The Harbormaster advised that he attended a meeting in January 2010 which also included the Army Corps Project Manager, the owners of River Front, the River Front attorney and the Newbury Town Counsel. The Harbormaster stated that the meeting concluded with the Army Corps Project Manager stating that River Front was in violation of their 1994 permit authority because they expanded their approved structures without Army Corps permission. According to the Harbormaster, the Army Corps Project Manager stated that he decided not to require River Front to remove the unauthorized structures because they were already in place.

The Harbormaster advised that the Army Corps Project Manager's resolution of the problem was disturbing because he believed that River Front's unauthorized expansion not only provides River Front with substantial control over that section of a public waterway but also presents a significant public safety issue. He explained that boats traveling up and down the Parker River through the narrow channel now available in front of River Front are presented with substantial collision risks. He advised that navigating through the narrow channel is already a complicated process due to changing river currents, weather issues and high and low tide. By the expansion of River Front's TDocks further into the river, coupled with River Front's moorings which are located toward the middle of the river from the other side (**See attached Army Corps photos, Attachment Three**), the Harbormaster opined that the risk of a collision between a boat traveling through the narrow passage way in front of the River Front property and a boat attempting to travel down river from a River Front TDock or mooring is now significantly greater. The Harbormaster brought his safety concerns to the attention of the Army Corps Project Manager while River Front's application for retroactive Army Corps approval was pending. As explained later in this report, the Army Corps officially approved River Front's expansion retroactively in June, 2010, the safety concerns of the Harbormaster notwithstanding.

The Harbormaster further advised that the Army Corps decision to retroactively approve River Front's unauthorized expansion ignores Army Corps Guidelines. The Harbormaster advised that the Army Corps has a guideline that states that TDocks may not extend beyond 25% of the length of the particular waterway from one shoreline across to the other shoreline. Further, the Army Corps guideline states that 50% of the particular waterway should be free and open for public use. (**See attached Army Corps Guidelines, Attachment Four**). The Harbormaster advised that River Front now controls approximately 75% of the river in front of and west of its property.³ The Harbormaster conducted his own study of the river depth in front of and to the west of River Front's property and concluded that the safest and deepest channel for boat traffic

³ The OIG estimates that River Front boat structures extend from directly in front of the River Front property approximately 800 feet west in the Parker River.

at this location was through the water area where River Front had expanded its TDocks without Army Corps approval. He provided the OIG with a photo that charts the safest course for boats to travel through this area. He also informed the Army Corps of this information prior to its decision to retroactively approve River Front's expansion in June 2010. **(See attached Photo dated 9/9/2009, Attachment Five).**

The Harbormaster also reiterated that in addition to the numerous TDocks owned and operated by River Front, this business entity also has 3 commercial moorings and 19 commercial mooring docks under their control which can handle 41 additional boats. These moorings are located in the Parker River in the middle of the river and some to the far side of the river, closer to the shore line across from River Front. The Harbormaster provided a copy of an email message from the owner of River Front, dated April 4, 2008 to the Harbormaster. This email discloses that River Front provides docking space for approximately 150 boats annually. He also observed that River Front's new plan submitted to the Army Corps for approval seeks authorization to replace its current moorings with two 220 foot mooring docks which will likely take up more space in the river and have more boats attached to them.

The Harbormaster advised that the Chairman of the Newbury BOS owns a large plot of land that abuts the River Front land along the Parker River to the west of River Front's property. River Front's TDocks located in the Parker River run parallel to the Chairman's river front property line for several hundred feet. The Harbormaster advised that the Army Corps has another guideline which in effect states that floats owned by one riverfront property owner should not come within 25 feet of the property line of the abutting waterfront property owner. He advised that it appears that River Front's TDocks which extend substantially beyond the Chairman's property line are in violation of the Army Corps guideline **(See attached Army Corps Guidelines, Attachment Four).**

The Harbormaster advised that he sent an invoice to River Front for payment for the moorings under River Front control on March 22, 2009 in the amount of \$4,100.00. He advised that this invoice was based upon the number of moorings River Front used in

2008. River Front did not pay the Town's invoice for the moorings under its control. According to the Harbormaster two phone calls were placed to River Front about the outstanding bill but it remained unpaid. On July 6, 2009 an overdue bill notice was sent to River Front but no payment was forthcoming. Nonetheless, River Front continued to control and operate its commercial moorings for the entire calendar year of 2009 even though no payment was made to the Town. No attempt was made by the Town to take back these moorings from River Front because the required permit fees had not been paid. River Front was allowed to conduct its normal business with respect to these moorings, i.e. renting the mooring spaces to the general public at a rate of \$70.00 per foot per boat.

The Harbormaster advised that this situation remained static until a week after the Inspector General sent a letter to the Town Administrator requesting Town records relating to moorings in April 2010.⁴ At that time River Front offered to settle its outstanding debt to the Town by paying them \$2,900.00. He advised that River Front sent a check payable to the Town, dated April, 6, 2010 in the amount of \$2,900.00. The Memo section of this check stated, "2009 Permits Paid In Full." The Harbormaster furnished the OIG with an email that he received from the Town Administrator, dated April 28, 2010. In the email, the Town Administrator informed the Harbormaster that River Front states that they had fewer docks in the water in 2009, which accounts for the \$1,200 difference in what they are paying versus what the Town billed them for. The Harbormaster advised that he informed his reporting authority, the Newbury Police Chief, by letter dated May 30, 2010 that if River Front's claim that they reduced the number of mooring docks they used in 2009 is accurate, River Front owes the Town \$3,500.00. He arrived at this figure by the following means: 14 mooring docks x \$200.00 = \$2,800.00; 3 commercial moorings x \$100.00 = \$300.00; 1 commercial hauling permit x \$400.00 = \$400.00 (total amount \$3,500.00).

The Harbormaster advised that he did not believe that the Town should accept River Front's settlement offer of \$2,900.00. The Harbormaster was instructed to accept River

⁴ The OIG letter was sent to the Town Administrator on March 31, 2010.

Front's check in the amount of \$2,900.00 by the Newbury Chief of Police. The Chief told him to accept River Front's check as partial payment of the bill with the understanding that the Town will pursue the outstanding balance due.

The Harbormaster advised that he did not believe that River Front should be able to dictate to the Town the number of moorings that it would pay for in a given year. He explained that in 2008, River Front received and paid for 19 mooring docks. He advised that River Front has had 19 mooring docks assigned to it for several years. However as explained above, after refusing to pay for these moorings at all throughout 2009, River Front stated that it only had 14 mooring docks in the water during 2009 and only should have to pay for 14. The Harbormaster opined that River Front should not be able to have it both ways. If they have 19 mooring docks assigned to them by the Town, they should be required to pay for 19 mooring docks. If they choose to reduce the number of moorings used to 14, the additional unused moorings should revert to Harbormaster control and be filled from the Town waiting list in a fair and equitable manner. They should not be able to refuse to pay mooring fees on the unused mooring docks but hold them in reserve for the next season in case they are needed. He advised that this is manifestly unfair to the public interest and flies in the face of the control over moorings furnished to the Harbormaster by State law and Department of Environmental Protection (DEP) regulations.

Finally, the Harbormaster advised that it is his belief that the decision of the Newbury BOS to grandfather the number of moorings previously granted by the Harbormaster to various private businesses along the Parker River was inappropriate. He opined that this decision limits the specific authority over control of moorings granted to the Harbormaster by State law and DEP regulations. He advised that moorings were intended by the Legislature to be under the strict control of the Harbormaster for the benefit of the public on the public waterways. He opined that it was not the intention of the Legislature to grant control over moorings in the public waterways to private entities to use for private gain. He stated that to give private businesses exclusive control over the number of moorings they have in perpetuity is not consistent with the will of the Legislature. He pointed out that such exclusive control could be extended to future

purchasers of riverfront businesses or passed down through the estates of the owners of these businesses. This was never intended by the Legislature when it enacted laws regulating moorings in public waters.

Interview of Chairman of the Board of Selectmen

The Chairman of the Newbury BOS was interviewed at the Newbury Town Hall, 25 High Road, Newbury, MA and advised that he has been a member of the Newbury BOS for the past five years and has been the Chairman for about the last eighteen months. He advised that the Newbury BOS has five members and the operations of the Town are run by the Town Administrator.

The Chairman advised that in 2009, the Newbury BOS received numerous complaints from various parties concerning the manner in which the Newbury Harbormaster's office was being run. In order to properly address these complaints, the Newbury BOS decided to seek input from parties that made regular use of the Newbury waterways. He advised that one of the complaints received concerned high mooring fees and another related to fees for the use of kayaks and canoes. With respect to mooring fees, the Chairman advised that about three years ago the Newbury BOS approved raising mooring fees. He stated that the Newbury BOS had second thoughts about whether the fees should have been raised as much as they were. As mentioned above, the Newbury BOS decided to seek input from the people who made regular use of the Parker River.

The Chairman advised that the Newbury BOS decided to establish a waterways advisory committee which became known as the Harbormaster Advisory Task Force (Task Force). This body was established in the fall of 2009. The Chairman thought that the local newspaper, "The Daily News", probably published an article requesting persons interested in serving on the Task Force to make their interest known to the Newbury BOS. He advised that the Newbury BOS subsequently received letters and emails from interested parties. The Newbury BOS met on two occasions and voted for the applicants they thought would be best to serve on the Task Force.

The Chairman advised that six individuals were selected to serve on the Task Force. Included among those selected were two persons directly connected with private entities doing business on the Parker River. He explained that the Task Force Chairman and her husband own and operate a Parker River based business known as the Pert Lowell Company (Pert Lowell). He advised that another Task Force member appointed by the Newbury BOS runs another Parker River based business known as Fernald Marine. The Chairman advised that another person selected to serve on the Task Force by the Newbury BOS missed several meetings and was replaced by a new member. The Chairman advised that the person selected by the Newbury BOS as a replacement on the Task Force is the owner of the property being rented by the Old Town Country Club (Country Club) which is also located on the Parker River. The Country Club has several commercial moorings assigned to it by the Harbormaster.

The Chairman advised that he and the other Newbury BOS members knew that Pert Lowell, Fernald Marine and the Country Club had commercial moorings issued to them by the Town. However, he advised that the Newbury BOS did not consider this fact when deciding whether to adopt the Task Force recommendation to discontinue commercial mooring fees. He advised that the Newbury BOS adopted the recommendation of the Task Force to discontinue commercial mooring fees because they believed it would be more equitable for the private boat owners who moored their boats on commercial moorings operated by the waterfront businesses. He explained that these boat owners already pay a waterways fee to operate their boats on the Parker River directly to the Town and in addition pay the cost of the commercial mooring fees charged by the Town to the waterfront businesses. He explained that this happens because the businesses offering commercial moorings to boat owners inflate their rental fees to cover the cost of the commercial mooring fees they pay to the Town.

The Chairman advised that the Newbury BOS believed that these boat owners in effect were paying twice to operate their boats on the Parker River and that this was not equitable. The Chairman was informed by a Deputy Inspector General that the decision to discontinue commercial mooring fees only guaranteed that the private businesses would no longer be obligated to pay. Nothing in the Newbury BOS decision obligated

the private businesses renting moorings to private boat owners to discount their total fees to the boat owners.

The Chairman advised that in retrospect he now recognizes that a potential conflict of interest existed when persons who had a financial and business interest on the Town waterways made recommendations to the Newbury BOS that benefited them financially. He stated that he believes that the other Selectmen share his belief in this regard. The Chairman advised that he has changed his mind with respect to commercial mooring fees being paid by waterfront businesses. He now believes that the Town should reinstate commercial mooring fees and in his view, the fees for private moorings and commercial moorings should be the same.⁵

A Deputy Inspector General informed the Chairman that it was his understanding that the owner of River Front refused to pay his commercial mooring fees owed to the Town in 2009. The Chairman was advised that the Town had billed River Front \$4,100.00 for the mooring fees and River Front refused to pay. He was further advised that River Front offered to pay the Town \$2,900.00 in full settlement of its \$4,100.00 obligation. The Chairman advised that he was not sure of the exact amounts but was aware of the problem.

The Chairman advised that he understood that River Front's owner had delivered a check for less than his full obligation to the Town and wanted it to be accepted as payment of the full amount owed. The Chairman stated that prior to River Front's owner sending the check to the Town, he ran into the owner by coincidence. The owner informed the Chairman that he wanted to settle the debt he owed for the moorings by

⁵ The Inspector General disagrees with this point of view and strongly believes that private businesses who are allotted multiple moorings by the Town should pay higher fees than persons receiving one private mooring. After all, the purpose of the fees is to provide the local harbormaster with the financial resources to provide safety and security services to persons and businesses using the local waters. The activity involving boats in local waters is vastly increased by private businesses operating in these waters. Reason and common sense suggest that private businesses and their customers use more of the harbormaster resources than anyone else. It is only fair that they pay more for these services than single mooring boat owners.

giving the Town an amount of money that was less than what he owed. The Chairman told him that he did not have the authority to waive fees and bills and told him that he should discuss the matter with the Town Administrator. The Chairman advised that he later told the Town Administrator to expect a visit from River Front's owner.

The Town Administrator later told the Chairman that River Front's owner tried to settle the mooring fee matter with him. The Chairman stated that the Town Administrator sought advice from Town Counsel on the matter. According to the Chairman, Town Counsel opined that it was not worth the effort to try and obtain the full amount owed by River Front and that they should accept the offer of less than the full amount as payment in full. The Chairman advised that he does not know if the Town cashed River Front's check and accepted it as payment in full.

The Deputy Inspector General informed the Chairman that the Town, pursuant to State law has full authority over moorings and mooring fees. He was told that in the event of a refusal to properly pay mooring fees, the Town had every right to take away all the moorings assigned to River Front.

The Chairman advised that his father gave him 70 acres of land that abuts the River Front property. Both properties face onto the Parker River at the water's edge. The Chairman advised that River Front's property used to be owned by a company known as Jimmy's Marine Service inc. (Jimmy's Marine). The Chairman advised that before River Front bought the land, the Chairman approached the Jimmy's Marine owner and told him that his finger slips were encroaching on his property rights because they were extending in front of his land. The Chairman told the Jimmy's Marine owner that he wanted rent money from Jimmy's Marine. The Chairman advised that the finger slips that River Front has now were basically the same as what Jimmy's Marine's owner had when he was the owner.

The Chairman advised that the Jimmy's Marine owner denied the Chairman's money request and went to speak with a lawyer. The Chairman advised that he assumed that the lawyer told the Jimmy's Marine owner that he had to pay something to the Chairman because shortly thereafter, Jimmy's Marine's owner declared bankruptcy and the

Newburyport Bank foreclosed on the property. The Bank then sold the property to River Front's owner who named it River Front Marine Sports, Inc. The Chairman advised that he received no money from Jimmy's Marine.

The Chairman advised that about 15 years ago he approached the father of River Front's current owner, and asked him for rent money because River Front's finger slips were encroaching on his property rights, i. e. extending in the water in front of his land. The father denied the Chairman's rent request and told him that he would have to obtain a better lawyer. The Chairman advised that he sought legal advice from a high priced Boston law firm and was told that he would have to provide a \$50,000.00 retainer for the firm to represent him. The Chairman decided that this cost was exorbitant and decided not to push the matter. The Chairman advised that he has no agreement with River Front regarding the finger slips extending in front of his land and has received no money or anything of value from River Front regarding this issue.

Interview of Army Corps of Engineers Project Manager

On June 30, 2010 the Project Manager for the Army Corps of Engineers (Army Corps) was interviewed concerning Army Corps's interaction with River Front Marine Sports Inc. (River Front) in Newbury. The Project Manager advised that the Army Corps notified River Front by letter dated April 12, 1994 that it had reviewed River Front's application "to expand the existing marina by installing additional moorings and reconfiguring the floats in the Parker River as depicted on the attached plans ... dated April 1987." The letter stated that the Army Corps determined that River Front's Plan qualified for authorization under Army Corps regulations.

The Project Manager advised that the Army Corps sent a second letter to River Front on June 11, 2010. This letter states, "[w]e have reviewed your application to install and maintain additional floats for your marina facility. The additional floats consist of (12) 4' x 20', (4) 4' x 25', (4) 6' x 20', (3) 8' x 20', (22) 6' 20' floats. ... The work is shown on the attached pages entitled "FLOATING DOCKS, RENTAL MOORINGS AND PIPE ANCHORS PARKER RIVER ESSEX MA" ... dated APRIL 14, 2010."

The 2010 letter provides Army Corps approval for River Front's expansion and included an Army Corps Massachusetts General Permit. The Army Corps letter to River Front concludes with the following language, "This permit does not obviate the need to obtain other federal, state, or local authorizations required by law" This statement in the Army Corps letter makes clear that an Army Corps General Permit should not be construed in any way as relieving the recipient's obligation to follow and adhere to all state and local laws and regulations pertaining to its existing boat structures or future boat structures. The Army Corps Project Manager advised that there was no cost to River Front for the issuance of the new Army Corps permit. The Project Manager provided to the OIG several pictures of River Front's set up on the Parker River which were taken by him on August 20, 2009. **(See attached Army Corps photographs, Attachment Three).**

The Project Manager advised that River Front's new Army Corps permit provides Army Corps authorization for River Front's expansion of structures in the Parker River. The new permit authorizes from a federal perspective River Front's expansion of existing structures and a new one as well. The new permit also authorizes the placement of two 220 foot floats toward the other side of the river. He advised that these two floats will replace the moorings that River Front currently has.

The Project Manager informed the OIG in January, 2011 that River Front submitted revised plans to the Army Corps in 2003 in an effort to seek approval for an expansion of their Parker River based boat structures. He advised that when the Army Corps received the River Front plans for expansion in 2003, they sent a letter to River Front for additional information. The Project Manager advised that the Army Corps letter was sent to the wrong address and was never received by River Front. The Project Manager advised that River Front thought that it had the Army Corps's permission to expand because the Army Corps never responded to its expansion plan request and proceeded to expand as indicated in its 2003 plan submitted to the Army Corps. The Project Manager provided the OIG with a copy of River Front's 2003 expansion plan.

The OIG has reviewed River Front's Army Corps 2003 plan and compared it with River Front's 2010 Army Corps plan. This review disclosed two differences. The first difference involves the placement by River Front on the 2010 Plan of two 220 foot mooring docks on the far side of the river. The second difference involves a small extension of one TDock in River Front's 2010 plan that was not shown on River Front's 2003 plan. As mentioned above, the Army Corps has issued to River Front a General Permit authorizing River Front's boat structures as they appear on River Front's 2010 plan.

Interview of Officials from the Massachusetts Department of Environmental Protection

On September 15, 2010 the OIG met with several officials from the Massachusetts Department of Environmental Protection (DEP), Division of Wetlands & Waterways. Among other things, the OIG requested DEP to provide records concerning its involvement with River Front and any predecessor owner of the River Front property located at 292 High Road on the Parker River in Newbury. Records subsequently provided by DEP disclose that Jimmy's Marine Service, Inc. (Jimmy's Marine) received a letter from DEP dated March 2, 1990 which granted to Jimmy's Marine a DEP License authorizing Jimmy's Marine to perform certain activities pursuant to M.G.L. c. 91 and DEP regulation 310 C.M.R. 9.00 (Chapter 91 License). The letter states that, "Any unauthorized substantial change in use or substantial structural alteration of any structure or fill authorized by this license shall render it void." When River Front purchased the property at 292 High Road, Newbury, the original Chapter 91 License that had been issued to Jimmy's Marine by DEP became the property of River Front. The Chapter 91 license issued to Jimmy's Marine was accompanied by certain enumerated written conditions. These conditions included the following:

- "Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways license Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void."

- “This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee ... and afforded them a reasonable opportunity to correct said noncompliance.”
- “Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner ... thereof.”

The OIG interviewed a DEP Official in January 2011 concerning the materials located in the DEP file regarding River Front’s property at 292 High Road on the Parker River in Newbury. The Official advised that he reviewed the DEP file in question and found nothing to indicate that River Front ever applied for a new Chapter 91 License from DEP or an amendment to its existing License to authorize an expansion of its TDocks in the Parker River. The official explained that if River Front expanded its TDocks in the river, they would need DEP approval in the form of a new Chapter 91 License or an amendment to its existing License. He advised that his review of the file shows no indication that River Front ever even notified DEP that it was contemplating any expansion of its existing facilities.

The DEP records show that the owner of Jimmy’s Marine paid the DEP \$27,752.00 for its Chapter 91 License. The Chapter 91 License issued by DEP to Jimmy’s Marine was identified as License Number 2268, dated March 2, 1990. The License application submitted by Jimmy’s Marine included a plan which disclosed a drawing of the structures involved. **(See attached plan drawing approved March 2, 1990, Attachment Six).** As mentioned above, the Chapter 91 License issued by DEP to Jimmy’s Marine was subsequently passed on to River Front when River Front purchased the property at 292 High Road. As a successor owner of the property at 292 High Road, River Front is bound by the same DEP License constraints that bound Jimmy’s Marine when it received this DEP License originally.

DEP records show that River Front sought and received permission from DEP to perform bulkhead and pier modifications to their property at 292 High Road in May, 1998. The DEP informed River Front by letter dated May 8, 1998 that they would be

authorized to undertake the proposed work, i.e. the removal of a travel pier and the reinforcement of a failing bulkhead,⁶ without the need to file an application for a new Chapter 91 License. The DEP letter made reference to 310 CMR 9.00, Regulation 9:22, entitled “Maintenance, Repair and Minor Modifications” and specifically, Section (3) of Regulation 9:22 which reads, “The licensee may undertake minor modifications to a licensed project without filing an application for license or license amendment. Such modifications are limited to: structural alterations which are confined to the existing footprint of the ... structures being altered and which represent an insignificant deviation from the original specifications of the license....”

DEP records contain an “Order of Conditions” issued by the Newbury Conservation Commission to the Parker River Yacht Yard, Inc. (Parker River YY), 292 High Road, Newbury, MA issued on February 4, 1987. Parker River YY was the name of the business at 292 High Road that was later sold to Jimmy’s Marine. Records disclose that the Jimmy’s Marine property at 292 High Road, Newbury, MA was later purchased by River Front. The “Order of Conditions”, among other things, required Parker River YY to seek Conservation Commission approval before expanding docking space.

The DEP records contain a hand written note from a DEP official which states that he was contacted by the owner of Jimmy’s Marine on November 13, 1989. The Jimmy’s Marine owner informed the official that an abutter to the Jimmy’s Marine property at 292 High Road was not willing to enter into a written agreement pertaining to abutter rights but the Jimmy’s Marine owner paid the abutter \$12,000.00 for access rights to the water in front of the abutter’s property. The note indicated that the Jimmy’s Marine owner will send DEP a letter further explaining the situation. The DEP records also contain a letter to a DEP official from the Jimmy’s Marine owner dated, November 24, 1989. This letter states, “This past year I paid \$12,000.00 dollars to the _____ family because he alleged that my docks interfered with his land.”

⁶ This language describing the project’s scope was found in a letter sent to DEP by a person representing River Front dated April 6, 1998.

The OIG located and interviewed the former owner of the River Front property at 292 High Road, Newbury, MA in December, 2010. The former owner of the River Front property purchased it in 1988 and named it Jimmy's Marine Service, Inc. (Jimmy's Marine). He advised that after he purchased the property he was surprised to learn that he would have to pay the Massachusetts Department of Environmental Protection (DEP) over \$27,000.00 for a DEP (Chapter 91) License to operate the Marina. He advised that he also received another surprise when an abutter of his newly acquired High Street property contacted him by phone. The abutter informed him that the Jimmy's Marine docks were interfering with his land rights because they extended far beyond the property line in front of the abutter's property. The abutter told the Jimmy's Marine owner that he believed he was entitled to receive rent on a monthly basis from the Jimmy's Marine owner. The Jimmy's Marine owner stated that he made a onetime payment to the abutter of \$12,000.00.⁷ He recalled sending a letter to DEP informing them of this payment to the abutter's family.

The OIG interviewed another former owner of the River Front property at 292 High Road, Newbury, MA in January, 2011. This individual owned the property from 1979 to 1989 and operated it as the Parker River Yacht Yard (Parker River YY). He advised that he sold the property in 1989 to a new owner who named it Jimmy's Marine Service Inc. The former owner of the Parker River YY was approached in person by the son of his abutter in 1987. The abutter's son told the former owner that his water structures were interfering with his father's property rights. He told the former owner that his father wanted a "piece of the action" regarding Parker River YY's total revenue. The former owner advised that finally after some further discussions, he decided to pay the abutter \$10,000.00. He subsequently wrote a check to the abutter in the amount of \$10,000.00 which was drawn on Parker River YY's business account. He advised that there was no discussion about further payments between himself and the abutter's son. He advised

⁷ The OIG has reason to believe that the Jimmy's Marine owner was contacted by the abutter's son who requested the money. OIG also believes that the payment of \$12,000.00 went to the abutter himself and not the abutter's son. The OIG believes that both the abutter and his son had the same first name and that the abutter's son is the current Chairman of the Newbury BOS.

that he sold the property to Jimmy's Marine the following year and never paid anything more to the abutter.

Second Interview of the Chairman of the Board of Selectmen

In January, 2011 the Chairman of the Newbury Board of Selectmen was interviewed a second time in an attempt to clear up a discrepancy between a portion of his initial statement to the OIG and statements made to the OIG by two former owners of the River Front property. During his initial interview in September, 2010 the Chairman informed the OIG that he had approached the owner of Jimmy's Marine, 292 High Road, Newbury, MA and asked him for rent money because the Jimmy's Marine property was encroaching on his property rights as an abutter. He further advised that the Jimmy's Marine owner turned him down and went to see a lawyer. He advised that he received no money from the Jimmy's Marine owner. During this initial interview he never mentioned that he had attempted to obtain a payment from another owner of this property when it was owned and operated under the name Parker River YY.

The OIG informed the Chairman that the OIG had discovered a letter in a DEP file written by the former owner of Jimmy's Marine which informed DEP that the Jimmy's Marine owner had paid the abutter's family \$12,000.00. The Chairman advised that he forgot to mention this to the OIG during his initial interview. The Chairman advised that he contacted the Jimmy's Marine owner of 292 High Road, Newbury, MA on the telephone and told him that the boat structures owned by Jimmy's Marine were located in front of his (the Chairman's) father's land. The Chairman informed the Jimmy's Marine owner that he needed to obtain his father's permission for the boat structures to be located in front of his father's property. Moreover, that he needed to pay his father some money in order to obtain that permission. The Chairman advised that the Jimmy's Marine owner agreed to pay his father \$12,000.00 to resolve the abutter problem. He stated that the Jimmy's Marine owner sent a check for \$12,000.00 to his father's address in Newbury. He advised that the owner of Jimmy's Marine made no other payments to his father.

The Chairman advised that prior to the property at 292 High Street being owned by the Jimmy's Marine owner, it was owned and operated by another owner and operated under the name Parker River Yacht Yard (Parker River YY). He advised that when the property was operated under the name Parker RiverYY, he approached the owner on behalf of his father and asked him for money because Parker RiverYY was encroaching on his father's property rights with its boat structures. He advised that this owner agreed to pay his father approximately \$1,000.00 dollars to settle the issue.⁸ The Chairman assumed that the owner paid his father by check. He stated that he forgot to mention this information to the OIG during his initial interview.

Interview of the Owner of River Front Marine Sports Inc.

The owner of River Front Marine Sports Inc. (River Front), was interviewed telephonically on January 26, 2011. The owner stated that he and his brother are co-owners of River Front. He advised that his father was also a part owner of River Front at one time. He stated that his father had passed away a couple of months ago.

The owner advised that the Chairman of the Newbury Board of Selectmen (Newbury BOS) never approached him and asked him for rent money or a payment of money because the owner's boat structures extended beyond the Chairman's property line in the Parker River in front of the Chairman's property. He advised that he does not know whether the Chairman had ever approached his brother or father in this regard. He advised that he would speak to his brother about it and call the OIG if he learned anything relevant.

The owner advised that River Front submitted a plan involving their boat structures in the Parker River for approval by the Army Corps of Engineers (Army Corps) in 1994. The Army Corps subsequently approved the plan. He advised that River Front submitted new plans to the Army Corps in 2003 for approval of some additions River

⁸ Based upon the Chairman's failure to admit these two payments during his initial interview, OIG credits the former Parker River YY owner's statement that he paid \$10,000.00 to the Chairman's father rather than the \$1,000.00 amount recalled by the Chairman.

Front wanted to build on their existing boat structures. He advised that it is his understanding that the Army Corps misplaced the records regarding River Front's 2003 plan submission and it did not get approved by the Army Corps. The owner advised that he learned from his Operations Manager (no longer with River Front) at that time that things were moving along well with an expectation of Army Corps approval regarding River Front's 2003 plans. He explained that in as much as approval from the Army Corps was expected, River Front went ahead and implemented some of the additions shown on the 2003 plans. He advised that in 2010 River Front submitted a new request for approval to the Army Corps regarding the boat structures they had in the Parker River in 2010. He advised that the Army Corps has officially approved their existing set up in the Parker River in 2010.

The owner advised that some of the additions to their boat structures (additions which did not exist in 1994) that are now in the Parker River were done prior to Army Corps approval in 2010 and some are in the process of being done at the present time. The owner was asked to furnish the precise nature of the additional work completed and the date of completion of this additional work that was done before official Army Corps approval in 2010. The owner at this point inquired as to "where is this going"? He brought up the fact that he had earlier retained a lawyer to deal with certain waterways issues with the Town of Newbury and stated that he wished to speak with his lawyer before answering any more questions. The OIG declined to answer his question concerning the direction of our investigation and told him that he had a right to speak with his lawyer if he wished to do so.

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Analysis, Conclusions and Recommendations

The Office of the Inspector General (OIG) has conducted several investigations into allegations of private businesses abusing the rights of the public in connection with their control and use of moorings in public waters. Two of these investigations, which occurred in Harwich in 2003 and Chatham in 2006, resulted in a public report and a public letter issued by the Inspector General with specific findings of fact and recommendations for action by the municipalities involved and in the Chatham matter, the Massachusetts Department of Environmental Protection (DEP).⁹ This report provides specific details of a third OIG investigation conducted in 2010-2011 into allegations of abuse with respect to the Town of Newbury's assignment of moorings to commercial entities and conflict of interest in the Newbury Board of Selectmen's (Newbury BOS) appointment of persons with private waterway business interests to the Harbormaster Advisory Task Force (Task Force). The issues raised during the OIG investigation in Newbury are discussed below.

Mooring Assignments and Waiting Lists

In 2000, the Massachusetts Supreme Judicial Court, in the matter of Farfard v. Conservation Com'n of Barnstable, 432 Mass. 194, stated "[t]he waters and the land under [waters] beyond the line of private ownership are held by the State, both as owner of the fee and as the repository of sovereign power, with a perfect right of control in the interest of the public." Moreover, the Court explained that the "history of the origins of the Commonwealth's public trust obligations and authority, as well as jurisprudence and legislation spanning two centuries, persuades us that only the Commonwealth, or an entity to which the Legislature properly delegated authority, may administer public trust oaths." By this language, the Court reaffirmed the absolute duty of the Legislature and other public entities to ensure that public waters are to be held in public trust for the benefit of the public.

⁹ See the Publications section of the OIG website for the details of the OIG public report in the Harwich matter and the OIG public letter in the Chatham matter. www.mass.gov/ig.

Pursuant to M.G.L. c. 91, §10A, the Massachusetts Legislature has, consistent with the view of the Supreme Judicial Court, authorized municipal harbormasters to issue mooring permits for moorings in public waters. The Commonwealth's Department of Environmental Protection (DEP) has been charged with the responsibility of creating regulations that interpret c. 91, §10A. Accordingly, DEP has created Waterways Regulation, 310 C.M.R. §9.07(1) which requires municipal harbormasters to issue mooring permits to prospective applicants under such terms, conditions and restrictions that are deemed necessary by the harbormaster. Further, DEP created regulation, 310 C. M. R. §9.07(2)(a) which requires municipal harbormasters to create fair and equitable written procedures for the assignment of persons on waiting lists to new or vacant boat moorings in public waters. The responsibility for deciding who should be assigned to new and vacant moorings in public waters was clearly delegated to municipal harbormasters.

DEP has also promulgated regulation 310 C. M. R. §9.07(2)(d) which reads in pertinent part as follows: "Nothing in 310 C.M.R. §9.07 shall be construed to prevent moorings for which permits are issued from being assigned to individual patrons or members of such [recreational boating] facility." In the past, individuals representing the interests of private business entities operating in public waters have suggested that regulation §9.07(2)(d) grants to private entities the right to assign moorings to persons of their choice, as long as they have received mooring permits from the Town. As mentioned above, 310 C.M.R. §9.07(2)(a) requires municipal harbormasters to create fair and equitable written procedures for the assignment of persons on waiting lists to new and vacant moorings in public waters. To the extent that private entities interpret regulation §9.07(2)(d) to give them carte blanche with respect to assignment of moorings under their control, such interpretation is in direct contravention of the spirit and the letter of §9.07(2)(a). The latter section charges municipal harbormasters with the duty of insuring that new and vacant moorings are assigned fairly and equitably from a waiting list.

Investigations conducted by this Office in Harwich in 2003; Chatham in 2006 and Newbury in 2010-2011 have determined that private waterway based businesses place

persons on moorings under their control without consulting with the local harbormaster. The Harbormasters at the time of these investigations had no input whatsoever in deciding who would be placed on moorings controlled by private businesses when they become vacant. The various Harbormasters created waiting lists for the assignment of new and vacant moorings as mandated by DEP regulation §9.07(2)(a). However, these lists, created for the fair and equitable assignment of moorings to the public, were never used to fill vacancies for moorings under the control of private businesses. In fact, our investigation in Chatham revealed that private boatyards were ready and willing to provide moorings quickly and expeditiously to customers who are willing to spend significant amounts of money to purchase boats from them. This was also the case in Harwich and now appears to be the case in Newbury as well.

In Newbury, the owner of River Front informed an OIG Senior Investigator, acting in an undercover capacity, that he could save \$1,000.00 dollars on the purchase of a new motor powered boat if he also agreed to rent a slip from River Front for the upcoming boating season. There is little reason to believe that River Front's offer would be any different if the undercover investigator had requested a mooring instead of a slip. All the while, hundreds of members of the public in waterfront municipalities across the Commonwealth wait for years, marooned on painfully slow moving municipal lists, for vacancies on moorings controlled by these municipalities to open up.

Boat moorings in public waters should be available to all of the public on a fair and equal basis. Vacancies in boat moorings under the control of private entities, even when covered by permits issued by local harbormasters, should not be left to the unfettered discretion of private businesses.

This kind of power cannot be left in the hands of individuals who do not represent the interests of the public at large.

By enacting M.G.L. c. 91, §10A, the Legislature intended to place the control of moorings in the hands of municipal harbormasters. The reason for this is clear and simple. The Legislature wisely recognized that municipal waters are to be held in trust for the benefit of all the people. Moreover, it was understood that for this to happen, the

power to control moorings in public waters must be given to persons that would be held accountable to the people. Public officials who do not act in the best interest of the people, who act arbitrarily without fairness, are accountable to the people and can be swiftly removed from office. When this power is delegated to private interests, accountability to the public, fairness and equity disappear. Accountability is replaced by personal interest and private gain.

Unless §9.07(2)(d) is interpreted to mean that private entities can assign moorings to their patrons only if they are at the top of a publicly controlled waiting list, it stands in contradiction to the broader provisions of c. 91, §10A and §9.07(2)(a).

River Front Marine Inc.'s Refusal to Pay Mooring Fees in 2009 and the Adequacy of the Town's Response

The Newbury Harbormaster invoiced River Front \$4,100.00 as the annual fee for its assigned commercial moorings for the 2009 boating season in March, 2009. He subsequently made numerous additional requests for payment of the fee. River Front rebuffed these requests during the remainder of 2009. Finally in April, 2010, approximately a week after the OIG began its investigation in Newbury River Front offered to pay the Town \$2,900.00 as payment in full for its 2009 commercial moorings and forwarded a check to the Town for that amount. The Harbormaster later learned that River Front's position on the \$2,900.00 check was that it only used 14 of the 19 mooring docks assigned to it in 2009 and was therefore only willing to pay the Town for the mooring docks it actually used. The Town took no action to take back control over the commercial moorings issued to River Front after its refusal to pay the fee during 2009. River Front was permitted to rent these moorings to the public and receive significant revenue, notwithstanding its failure to pay the annual fee. Any reasonable person reviewing the matter could only conclude that control over these commercial moorings had been ceded to River Front by the Town in direct contravention of Massachusetts law and DEP regulations.

As mentioned above, the Massachusetts Legislature by enacting M.G.L. c. 91, §10A, made it abundantly clear that control over moorings in public waters is in the hands of

local harbor masters. This statute authorizes the harbor masters to issue mooring permits “upon such terms, conditions and restrictions as he shall deem necessary.” The statute further states unequivocally that moorings installed “without the permission of the harbor master shall be considered a public nuisance and may be removed by the harbor master at the expense of the owner” Moreover, the statute explicitly permits municipalities to charge reasonable fees for mooring permits and provides an explicit appeal process to DEP for anyone who believes that they have been treated unfairly by the harbor master.

River Front’s refusal to pay the Town for its multiple commercial moorings in 2009 flies in the face of established law. In the event that River Front had a legitimate argument concerning the fairness of the mooring fee, the Massachusetts Legislature provided them in c. 91, §10A with the appropriate method for appeal through DEP. Instead, River Front arrogantly and steadfastly refused to pay. The Town, instead of exercising its statutory power of control over moorings and taking back all of River Front’s allotted moorings, simply and incredibly acquiesced in the face of River Front’s recalcitrance and did nothing. River Front was permitted to continue operation and control over its allotted moorings as though they had paid the required fee. They were able to rent these moorings to the boating public without paying their fair share to the Town. All the while, other businesses with far fewer moorings allotted to them, had to pay the mooring fees to the Town in order to operate their businesses in Town waters. The Town did not have to take River Front to court to collect the required fees. The Town could have simply taken all of the moorings allotted to River Front back from them as long as they remained adamant in their refusal to pay.

River Front’s offer to pay the Town \$2,900.00 as payment in full for its 2009 moorings is apparently based upon a claim that they only were able to rent 14 of the 19 mooring docks allotted to them by the Town in 2009. Mooring fees should not be based upon whether a private business is able to rent all of its allotted moorings for a given boating season. Rather, mooring fees should be based entirely upon the number of moorings applied for and received by a business entity for a given season. When River Front is allotted 19 mooring docks for a particular season, they should pay mooring fees for 19

mooring docks. If River Front only uses 14 mooring docks for that season, River Front must accept the economic risk involved in doing business. Failure to rent all of its allotted moorings is no excuse for refusing to pay the required fees. Failure of River Front to pay the full amount for their allotted moorings should result in the Town reclaiming control over all of River Front's allotted moorings and making them available to the public by means of the Harbormaster controlled waiting lists.

River Front Marine Sports Inc.'s Unauthorized Expansion of its Boat Structures in the Parker River

According to 310 C.M.R. §9.05(1)(a) an application for a license amendment must be submitted to the Massachusetts Department of Environmental Protection (DEP) for any addition to structures not previously authorized by DEP. DEP records disclose that DEP issued a Chapter 91 License to River Front's predecessor owner of the Marina property at 292 High Road, Newbury, MA on March 2, 1990. The Chapter 91 License, No. 2268 was issued to Jimmy's Marine Service Inc. (Jimmy's Marine), and approved boat structures that were in the Parker River in Newbury at that time. This Chapter 91 License, No. 2268 was transferred to River Front when River Front subsequently purchased the property at 292 High Road.

The OIG reviewed the DEP file on River Front's Parker River Marina (292 High Road, Newbury, MA) in September, 2010. The file contains a copy of the DEP Chapter 91 License #2268 originally issued by DEP to the former owner of the River Front property on March 2, 1990. As previously mentioned, this License was subsequently passed on to River Front when it purchased the property. The file also contains documents which involve River Front requesting permission in March and April, 1998 from DEP to remove a travel pier and reinforce a failing bulkhead without the need to file an application for a new Chapter 91 License. DEP approved River Front's request by letter dated May 8, 1998 without requiring River Front to obtain a new Chapter 91 License or amend its existing License. DEP made it clear in the letter that it was approving minor modifications only and that these could be done without a new License or License amendment. The letter also made clear that the work must be confined to the existing footprint of the structures and be insignificant in nature.

The OIG has learned from the Newbury Harbormaster and the Army Corps of Engineers (Army Corps) that River Front has extended several of its existing TDocks, added an additional TDock to its boat structures and has the intention of adding two 220 foot floats to its existing boat facilities in the Parker River. This has been accomplished without DEP notification or approval. Army Corps photographs taken in 2009 and the statement of the Newbury Harbormaster provide strong evidence for the fact that River Front accomplished much of this work before receiving Army Corps approval in 2010.

DEP regulation 310 C.M.R. §9.05(1)(a) requires an application for a license or a license amendment to be submitted to DEP regarding any addition or improvement of any structures not previously authorized. No license is required for maintenance, repair or minor modifications of previously approved licensed structures.¹⁰

River Front's 1998 request of the DEP to approve minor modifications of its existing boat structures without amending its Chapter 91 License shows without a shadow of a doubt that River Front knew that it needed DEP approval for any extension/addition to its existing boat structures. DEP's response to River Front's 1998 request made it crystal clear that anything done by River Front beyond a minor modification to existing structures required a new or amended Chapter 91 License. Notwithstanding this clear and unequivocal DEP instruction to River Front, River Front's owners proceeded to extend its TDocks and add to them without notifying DEP or seeking and obtaining DEP approval. Moreover, River Front did the same thing with respect to the Army Corps without obtaining Army Corps's explicit approval. The Army Corps's 2010 approval of River Front's expansion was issued after much of River Front's expansion had already been completed.

The OIG attempted during interview of one of the River Front owners to learn the precise scope and date of completion of work performed by River Front to extend and add on to its boat structures before the Army Corps approval in 2010. The owner did not answer the question. Instead he inquired as to the direction of the OIG investigation and stated he wished to speak with his lawyer before continuing with the interview.

¹⁰ 310 C.M.R. §9.05(3)(a).

River Front's expansion of its existing boat structures in the Parker River without prior DEP authorization was clearly inappropriate and illegal.

River Front Marine Sports Inc.'s Expansion of Its Parker River Boat Structures, Army Corps Guidelines and Public Safety

During the summer of 2009 the Newbury Harbormaster had reason to believe that River Front has expanded some of its TDocks and added to them without the express approval of the Army Corps of Engineers (Army Corps). The Harbormaster initiated contact with the Army Corps. The Army Corps subsequently performed a compliance inspection of River Front's Parker River boat structures and took aerial photographs of the location in August 2009. The Harbormaster was informed by the Army Corps that the number and size of the TDocks that River Front had in the River in August 2009 were more than what Army Corps had authorized by permit in 1994.

According to the Harbormaster, in January 2010 he attended a meeting which included the Army Corps, the River Front owners, their attorney, and the Newbury Town Counsel. The Harbormaster advised that during the meeting, the Army Corps concluded that River Front did not obtain proper Army Corps approval for its boat structure expansion. However, the Army Corps did not require River Front to remove the unauthorized structures and approved them retroactively in June, 2010.

As mentioned previously, the Harbormaster had expressed concern about this outcome because he continues to believe that River Front's expansion without prior approval from the Army Corps and DEP provides River Front with substantial private control over a significant portion of a public waterway. Moreover, he believes that River Front's current boat structures in the Parker River represent a significant danger to public safety, notwithstanding the Army Corps's retroactive approval of River Front's work. He estimated that River Front's expanded TDocks extend far more into the River than the

25% recommended by Army Corps Guidelines.¹¹ He opined that in fact when River Front's boat structures are combined with the two 220 foot mooring docks that River Front intends to place in the water, River Front will control approximately 75% of the water space from one side of the river to the other. The Harbormaster believes that this kind of control not only violates Army Corps Guidelines which call for 50% of any waterway to remain open for public navigation but also presents a clear and present danger of collision between boats traveling through the River Front controlled area and boats exiting the River Front dock area. The Harbormaster's own work on this public safety issue shows that the deepest and therefore safest channel for boats to travel through the River Front location is directly through the area where River Front expanded its TDocks without appropriate authority. The Harbormaster advised that he brought his concerns to the Army Corps's attention to no avail.

The Appointment of Harbormaster Advisory Task Force Members by the Newbury Board of Selectmen, the Acceptance by the Board of Task Force Recommendations and the Grandfathering of Commercial Moorings to Private Businesses

The Newbury Board of Selectmen (Newbury BOS) in 2009 appointed several individuals to serve on a newly established committee known as the Harbormaster Advisory Task Force (Task Force). As explained earlier in this report, several of the persons appointed by the Newbury BOS to serve on the Task Force have significant connections to private businesses operating on the Parker River. These businesses include the Pert Lowell Company, Fernald's Marine and the Old Town Country Club.

Some of the Task Force members connected with these businesses have a direct financial interest in them, and nonetheless made specific recommendations to the

¹¹ Army Corps Guidelines for the placement of fixed and floating structures in navigable US waterways, including rivers, state, "[A] reasonable area of public water should be maintained in the public interest to sustain activities not specifically related to simply transiting the area in safety. Such activities are cruising, fishing, sail boarding, swimming, water skiing, etc. which require open, unobstructed water and should not be eliminated for private interest. In such areas, no structure should extend more than 25% of the waterway ... This will maintain 50% of the width as open water, an even split, between public and private interest."

Newbury BOS that would benefit the businesses financially. For example, the Task Force members recommended that fees for commercial moorings and non motor powered boats be discontinued. Moreover, they recommended that the number of commercial moorings historically provided to these businesses be grandfathered. This action on the part of certain Task Force members who had a direct or indirect connection with businesses that would benefit financially from the Task Force recommendations raises serious ethical issues that should be referred to the Massachusetts State Ethics Commission for review.

The Newbury BOS, either knew or should have known that some of the members appointed by them to serve on the Task Force had connections to private businesses that would benefit financially from Task Force recommendations. Accordingly, the Selectmen should have declined to appoint them to the Task Force from the beginning. In fact, the Chairman of the Newbury BOS admitted that he and other Newbury BOS members knew that the Pert Lowell Company, Fernald's Marine, and the Old Town Country Club had commercial moorings allotted to them by the Town. Further, the Chairman admitted knowing that persons appointed to the Task Force were directly connected financially with those businesses. Moreover, having made the inappropriate decision to appoint them, the Newbury BOS should not have voted to accept recommendations from a Task Force that was so obviously acting from a position of personal interest. Accepting and implementing Task Force recommendations to discontinue commercial mooring fees, fees for non motor powered boats, and to grandfather the number of moorings allotted to private businesses demonstrates extremely poor judgment on the part of Newbury BOS members.

The decision by the Newbury BOS to grandfather the moorings allotted by the Town to businesses like the Pert Lowell Company, Fernald's Marine, and the Old Town Country Club, apparently in perpetuity, not only amounts to poor judgment but is also illegal for another reason. M.G.L. c. 91, §10A requires Commonwealth harbormasters to issue mooring permits annually. Likewise, DEP regulation 310 C.M.R. §9.07(1) & (2) makes it perfectly clear that the issuance of mooring permits is to be under the control of harbormasters and persons wishing to have a permit must seek it in writing from the

harbormaster annually. Granting commercial moorings to private businesses in perpetuity instead of annually as required by law and regulation is patently illegal.

The Chairman of the Newbury Board of Selectmen's Request for Money from Former Owners of the River Front Marine (River Front) Property and the Current River Front Owner and His Vote to Discontinue Mooring Fees Which Directly Benefitted River Front

During his initial interview with the OIG, the Newbury BOS Chairman advised that prior to his election to the Newbury BOS, he approached a former owner of the River Front property on the Parker River and sought rent money because of boat structures that were encroaching upon his land. Likewise at a later time he approached the father of the current owners of River Front, in the presence of the man's son (now a co-owner of River Front with his brother) with a similar request for money. He stated that both owners rejected his request and he received nothing.¹²

During the OIG investigation, information was received that indicated that the Chairman's family had in fact received a payment from a former owner of the River Front property. The OIG conducted a second interview with the Chairman in which he admitted that he approached two former owners of the River Front property for money on behalf of his father and both paid his father as a result of his efforts. He advised that his father received \$12,000.00 from one and approximately \$1,000.00 from the other. The Chairman also explained that he forgot to mention these payments during his initial interview.

The OIG has confirmed the \$12,000.00 payment to the Chairman's father during interview of one former owner. An interview of the second former owner of the River

¹² As mentioned previously in this report, OIG also interviewed one of the current owners of River Front and inquired as to his knowledge of an approach by the Chairman to himself or any family member to request money because of interference with his property rights. He denied that the Chairman ever approached him for money and claimed no knowledge of an approach by the Chairman to his father. On the latter point, during the OIG interview, the Chairman advised that when he approached River Front's current owner's father to request money, River Front's current owner was present at that time.

Front property confirmed that he also made a payment to the Chairman's father but the payment was \$10,000.00 and not the \$1,000.00 claimed by the Chairman.

The Chairman's decision to vote on the Task Force's recommendation to discontinue commercial mooring fees for Parker River based businesses, including River Front, and to grandfather the moorings for these businesses was inappropriate and displayed a serious error in judgment. Given the Chairman's admitted, albeit understated, history of approaching former owners of the River Front property for money in his role as the son of a private abutter and the two payments made to his father resulting from his efforts, the Chairman's vote which directly benefits the current owner of the River Front property raises a serious ethical question that should be referred to the State Ethics Commission for review. Moreover, the claim he made to the OIG that he did not remember the payments, amounting to \$22,000.00, rings hollow and strains credulity. The first obligation of any public official to his constituency is honesty and integrity. The Chairman's conduct in this matter reveals that he has fallen far short of the high standards that are to be expected from all public officials.

In light of the foregoing discussion and analysis, the Inspector General makes the following recommendations:

- The Department of Environmental Protection (DEP) is requested to reexamine the efficacy of regulation 310 C.M.R. §9.07(2)(d) which can be construed by recreational boating facilities to give them carte blanche authority to place whomever they wish on moorings issued to them by municipalities. DEP is urged to clarify the language in this regulation to make it clear that persons being considered for an open vacancy on one of these moorings must be taken from a list maintained by the harbormaster that is maintained in a fair and equitable way.
- DEP is requested to conduct an immediate compliance audit with respect to River Front's unauthorized expansion of its TDocks in the Parker River and its apparent wish to place two 220 foot long floating docks in the river. DEP is requested to consider as part of its review, the efficacy of approving River Front's expansion to date and its plan for further expansion in light of the serious public safety concerns raised by the Harbormaster.
- DEP is also requested to consider the breath of control of waterway space that River Front has exercised and intends to exercise in the Parker River. In

the last analysis, the Harbormaster estimates that River Front will control approximately 75% of the public waterway in front of and to the west of their property for several hundred feet.

- DEP is requested to review the River Front expansion plans submitted to the Army Corps of Engineers (Army Corps) by River Front in 2010 with a view toward making a determination on whether the two 220 foot floating docks pictured in the plans are moorings under the control of the Harbormaster or boat structures under the control of DEP. If they are boat structures, DEP should make a determination in consultation with the Harbormaster as to whether the proposed location of these docks presents a public safety issue for the boating public.
- The Newbury Harbormaster should contact DEP and obtain a determination of whether River Front's proposed 220 foot floating docks are structures or moorings. If they are moorings, they fall under the jurisdiction of the Harbormaster. The fact that the Army Corps approved them does not preclude Harbormaster control and the Harbormaster may, pursuant to state law and regulation, take whatever action he deems necessary concerning the location of these floating docks to insure public safety and smooth public boating travel through this area of the river.
- The Army Corps of Engineers is requested to review and reevaluate the efficacy of its decision to retroactively approve River Front's application for the Massachusetts General Permit issued to River Front in June, 2010. This should be done in light of the public safety issues raised by the Newbury Harbormaster which are detailed in this report.
- The Town of Newbury should immediately take all necessary steps to collect the full amount of commercial mooring fees owed by River Front Marine Sports, Inc. (River Front) for 2009. River Front should be billed based upon the number of moorings issued to them in a given year rather than the number they are able to rent to boat owners. Failure to pay the correct amount in a timely fashion should result in immediate cancellation of all of their mooring permits for the entire season and the filling of vacancies from Town controlled waiting lists.
- The Town of Newbury should immediately review and rescind its decision to discontinue commercial mooring fees; fees for non powered boats; and its decision to grandfather the number of moorings provided to private businesses in light of the serious potential conflict of interest and legal issues raised in this report. The OIG strongly recommends that the Town require commercial entities to pay annual mooring fees. The OIG also believes that commercial mooring fees should be higher than private mooring fees because commercial entities require more Harbormaster supervision and resources.

- The Town of Newbury should immediately report to the Massachusetts State Ethics Commission the facts and details concerning the appointment of the members of the Harbormaster Advisory Task Force (Task Force), including the known relationships that any of the Task Force members had with Parker River private businesses, and the adoption by the Newbury BOS of recommendations made by these Task Force members that benefitted these businesses financially or otherwise. A copy of the Town's report to the Ethics Commission should be sent directly to the Inspector General.
- The Town of Newbury should immediately report to the State Ethics Commission the facts concerning the Newbury BOS Chairman's decision to vote to adopt the Task Force's recommendation to discontinue commercial mooring fees and grandfather moorings for private businesses, including River Front after he had solicited payments from two past owners of the River Front property and also the father of the present owner of River Front. A copy of this report should be sent directly to the Inspector General.
- The Town of Newbury should immediately contact the Newbury Conservation Commission (NCC) to determine whether River Front has obtained the NCC permission to expand its boating structures in the Parker River and if not whether the NCC still has an interest in reviewing what River Front has done and intends to do in this regard. The DEP file on the property at 292 High Road, Newbury contains an "Order of Conditions" pursuant to M.G.L. c. 131, §40, issued by the Newbury Conservation Commission on 2/4/1987. Among other things, the Order states, "Further expansion of the docking space should be passed through the Commission before anything is done."

Attachments

Attachment One: Army Corps letter June 11, 2010 and the River Front expansion plan dated April 14, 2010

Attachment Two: Photo and River Front plans

Attachment Three: Army Corps photographs

Attachment Four: Army Corps Guidelines

Attachment Five: Photo dated 9/9/2009

Attachment Six: Plan drawing approved March 2, 1990

Attachment One



REPLY TO
ATTENTION OF

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

June 11, 2010

Regulatory Division

CENAE-R-PEA

File Number: NAE-2009-1676

David & John Moulton
Riverfront Marine Sports
292 High Road
Newbury, Massachusetts 01951

Dear Mr. Moulton:

We have reviewed your application to install and maintain additional floats for your marina facility. The additional floats consist of (12) 4' x 20', (4) 4' x 25', (4) 6' x 20', (3) 8' x 20', (22) 6' x 20' floats. This project is located in the Parker River at 292 High Street, Newbury, Massachusetts. The work is shown on the attached plans entitled "FLOATING DOCKS, RENTAL MOORINGS AND PIPE ANCHORS PARKER RIVER ESSEX MA", on 8 sheets, and dated "APRIL 14, 2010".

Based on the information you have provided, we have determined that the proposed activity will have only minimal individual or cumulative environmental impacts on waters of the United States, including wetlands. Therefore, this work is authorized as a Category 2 activity under the attached Federal permit known as the Massachusetts General Permit (GP). This work must be performed in accordance with the terms and conditions of the GP.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS has not provided EFH conservation recommendations.

You are responsible for complying with all of the GP's requirements. Please review the attached GP carefully, in particular the GP conditions beginning on Page 5, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document and this authorization letter are at the project site throughout the time the work is underway.

~~This GP expires on January 21, 2015. Activities authorized under this GP that have commenced (i.e., are under construction) or are under contract to commence before this GP expires will have until January 21, 2016 to complete the activity under the terms and general conditions of the current GP. For work within Corps jurisdiction that is not completed by January 21, 2016, you will need to reference any reissued GP to see if your project is still authorized under Category 1 (no application required), or Category 2 (application required). If it is no longer authorized you must submit an application and receive written authorization before you can continue work within our jurisdiction. Please contact us immediately if you change the plans or construction methods for work within our jurisdiction. This office must approve any changes before you undertake them.~~

This authorization requires you to complete and return the attached Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals).

This authorization presumes that the work as described above and as shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, submit a request for an approved jurisdictional determination in writing to this office.

This permit does not obviate the need to obtain other federal, state, or local authorizations required by law, as listed on Page 2 of the GP. Performing work not specifically authorized by this determination or failing to comply with any special condition(s) provided above or all the terms and conditions of the GP may subject you to the enforcement provisions of our regulations.

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>

Please contact David Keddell, of my staff at 978-318-8692 if you have any questions.

Sincerely,

Karen Kirk Adams
Chief, Permits & Enforcement Branch
Regulatory Division

Attachments

*gms
PM*

Back

Copies Furnished:

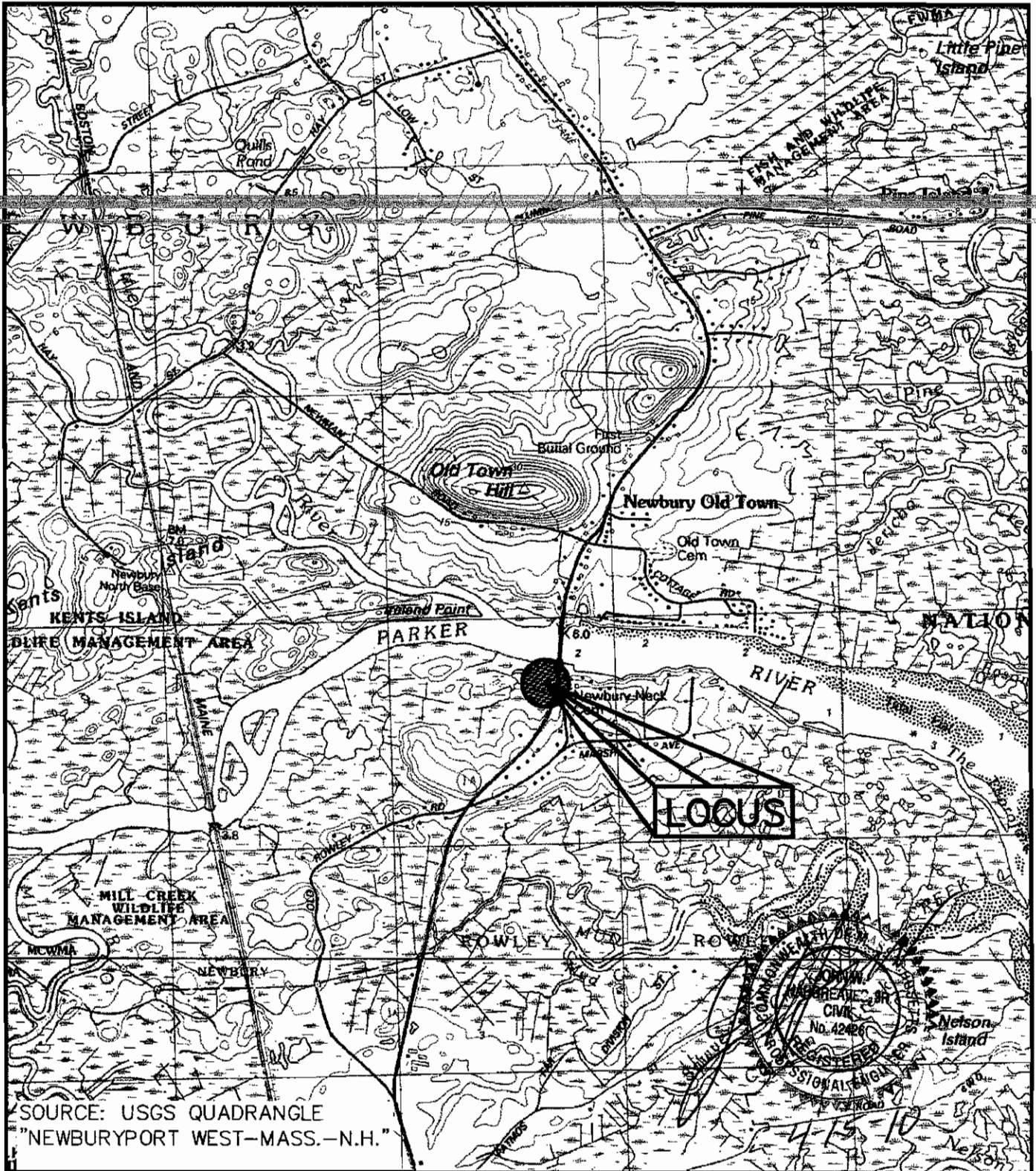
~~Ed Reiner, U.S. EPA, Region 1, Boston, Massachusetts, reiner.ed@epa.gov~~

Christopher Boelke, National Marine Fisheries Service, Gloucester, Massachusetts,
christopher.boelke@noaa.gov

Rachel Freed, DEP NERO, Wetland and Waterways, Wilmington, Massachusetts,
rachel.freed@state.ma.us

Robert Boeri, Coastal Zone Management, Boston, Massachusetts, Robert.Boeri@state.ma.us

John Hargreaves, PE, GA Consultants, Inc., 101 Pine Island Road, Newbury, Massachusetts
01951 jharg101@hotmail.com



SOURCE: USGS QUADRANGLE
 "NEWBURYPORT WEST-MASS.-N.H."

PURPOSE: ENLARGE MARINA
 CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
 MHW=8.8'
 HTL=11.5

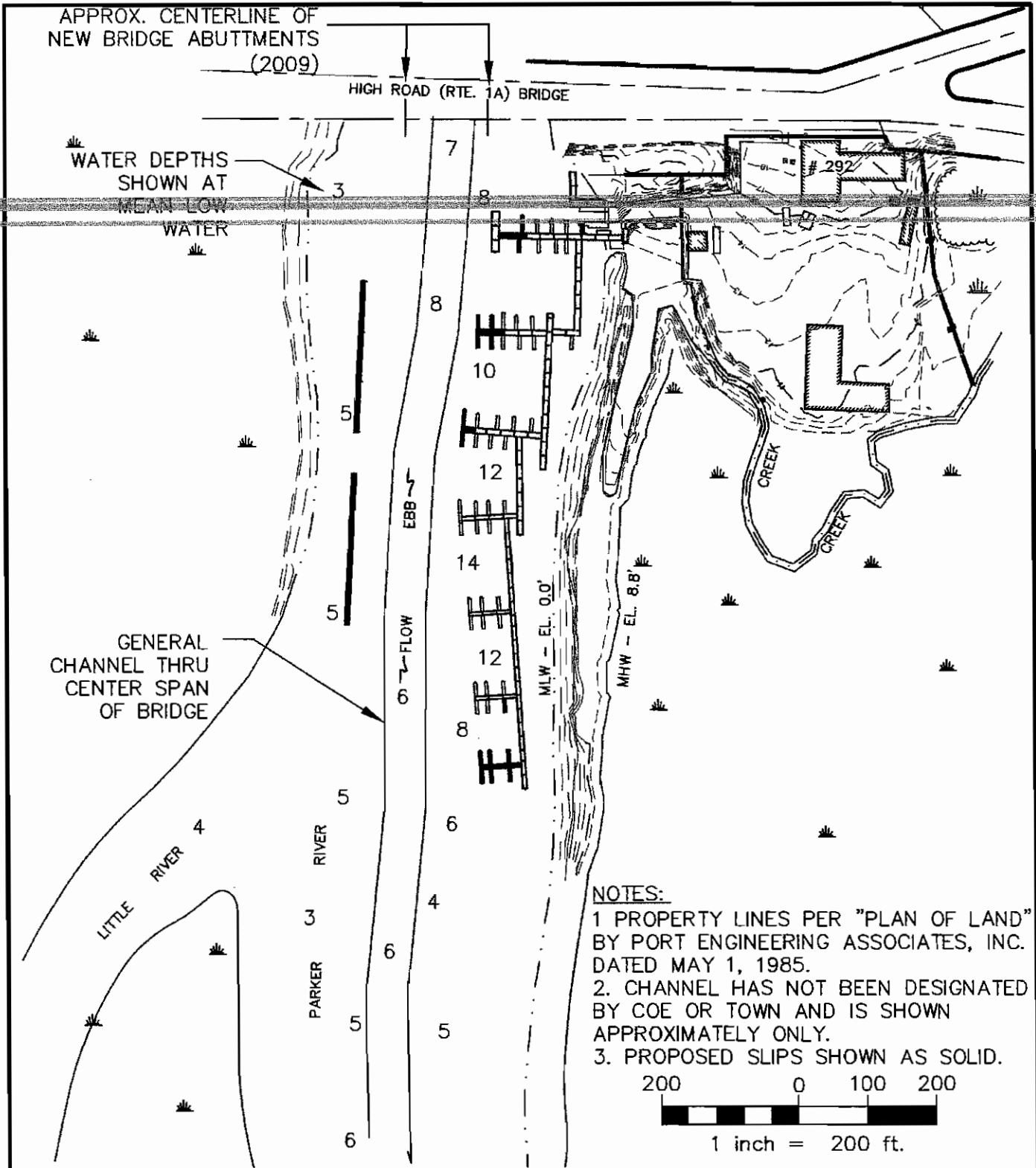
GA CONSULTANTS, INC.
 101 PINE ISLAND ROAD, NEWBURY, MA

VICINITY MAP
 SCALE: 1"=2000'

APPLICATION BY:
 RIVERFRONT MARINE SPORTS
 292 HIGH ROAD
 NEWBURY, MA

FLOATING DOCKS, RENTAL
 MOORINGS AND PIPE
 ANCHORS PARKER RIVER
 ESSEX COUNTY, MA

DATE: APRIL 14, 2010
 SHEET 1 OF 8



PURPOSE: ENLARGE MARINA PROVIDING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW=8.8'
HTL=11.5

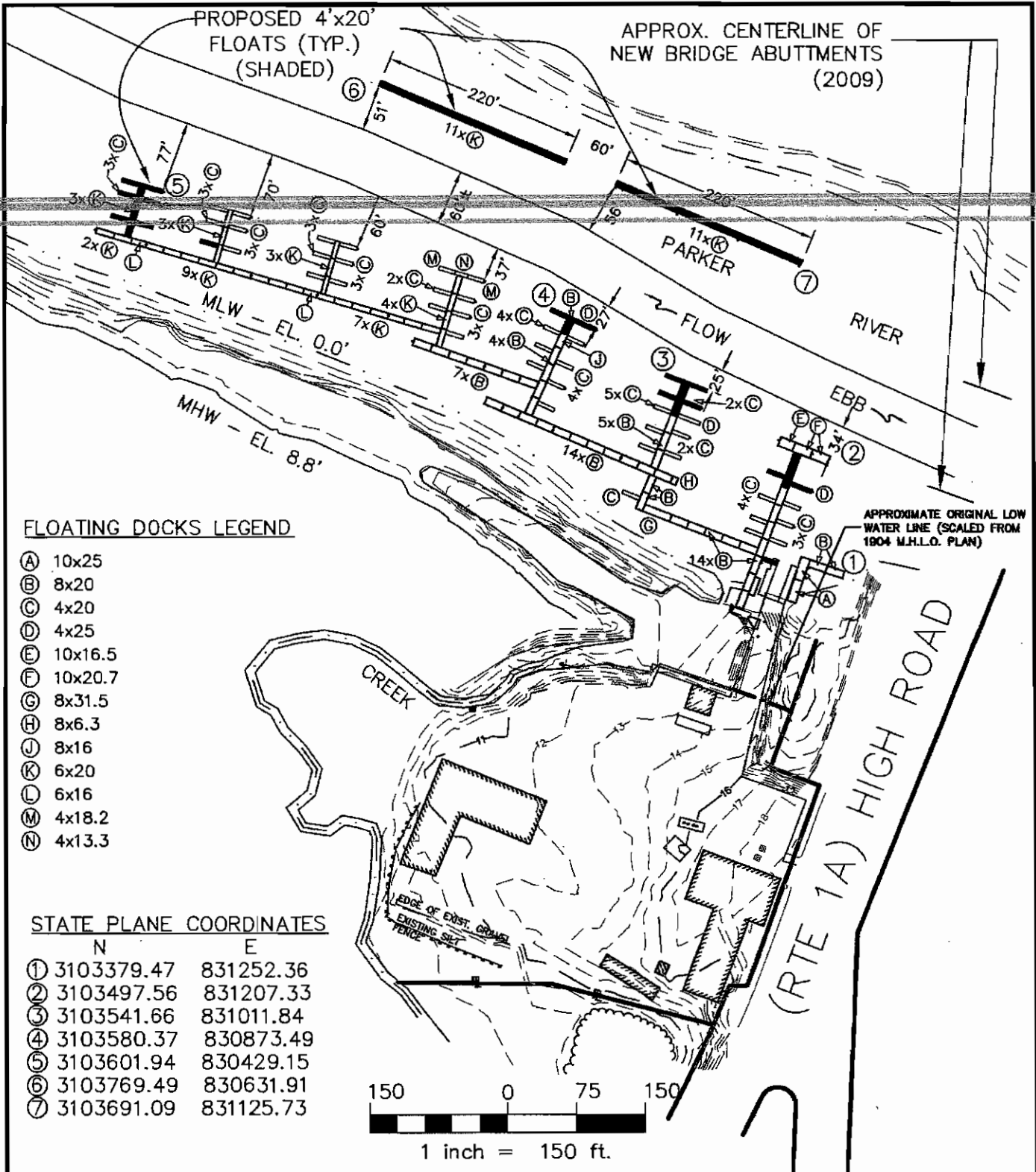
GA CONSULTANTS, INC.
101 PINE ISLAND ROAD, NEWBURY, MA

PLAN VIEW
SCALE: 1"=200'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL MOORINGS AND PIPE ANCHORS PARKER RIVER ESSEX COUNTY, MA

DATE: APRIL 14, 2010
SHEET 2 OF 8

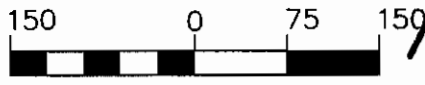


FLOATING DOCKS LEGEND

- (A) 10x25
- (B) 8x20
- (C) 4x20
- (D) 4x25
- (E) 10x16.5
- (F) 10x20.7
- (G) 8x31.5
- (H) 8x6.3
- (J) 8x16
- (K) 6x20
- (L) 6x16
- (M) 4x18.2
- (N) 4x13.3

STATE PLANE COORDINATES

	N	E
①	3103379.47	831252.36
②	3103497.56	831207.33
③	3103541.66	831011.84
④	3103580.37	830873.49
⑤	3103601.94	830429.15
⑥	3103769.49	830631.91
⑦	3103691.09	831125.73



PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW=8.8'
HTL=11.5

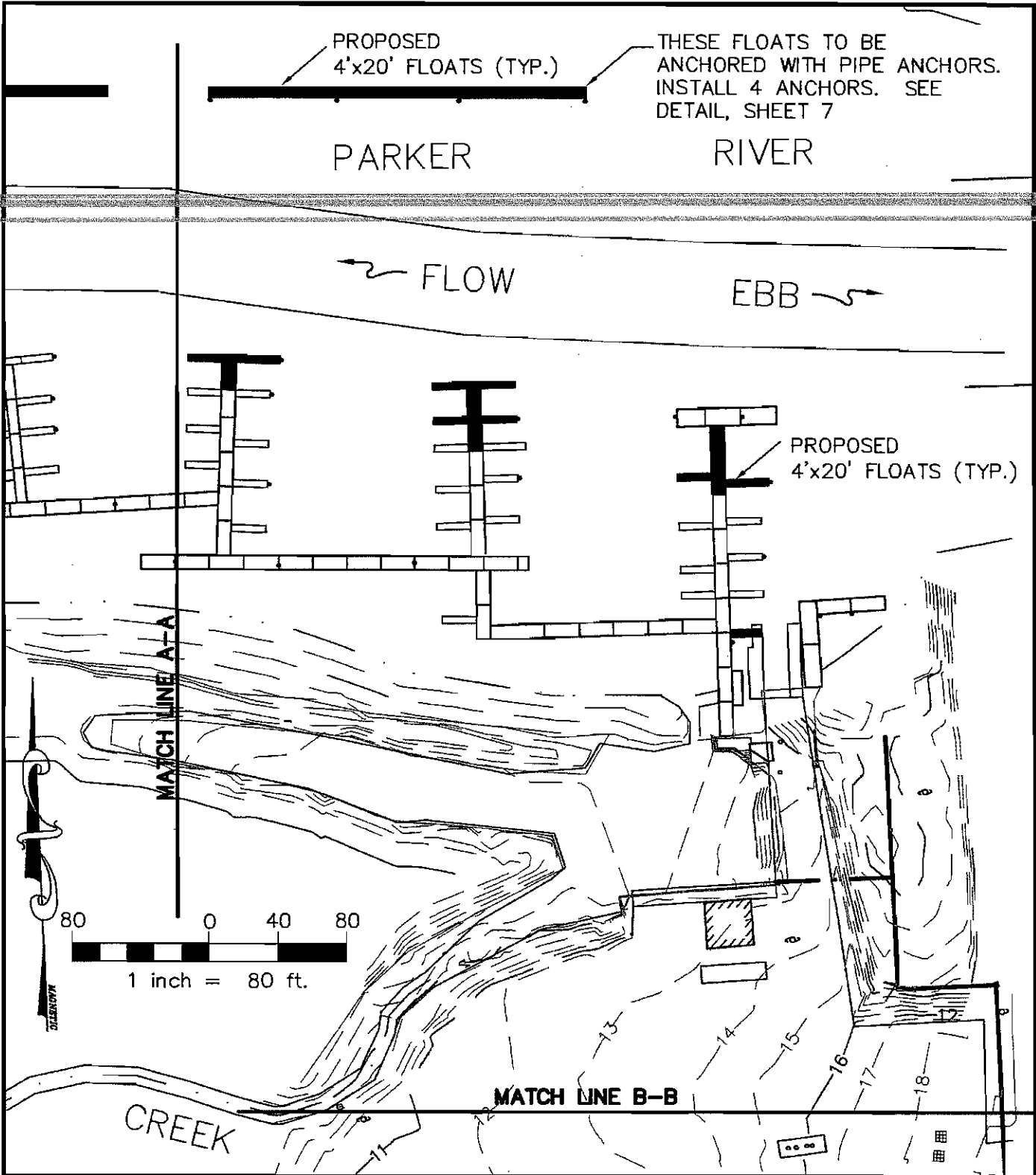
GA CONSULTANTS, INC.
101 PINE ISLAND ROAD, NEWBURY, MA

PLAN VIEW
SCALE: 1"=150'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: APRIL 14, 2010
SHEET 3 OF 8



PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW:=8.8'
HTL:=11.5

GA CONSULTANTS, INC.
101 PINE ISLAND ROAD, NEWBURY, MA

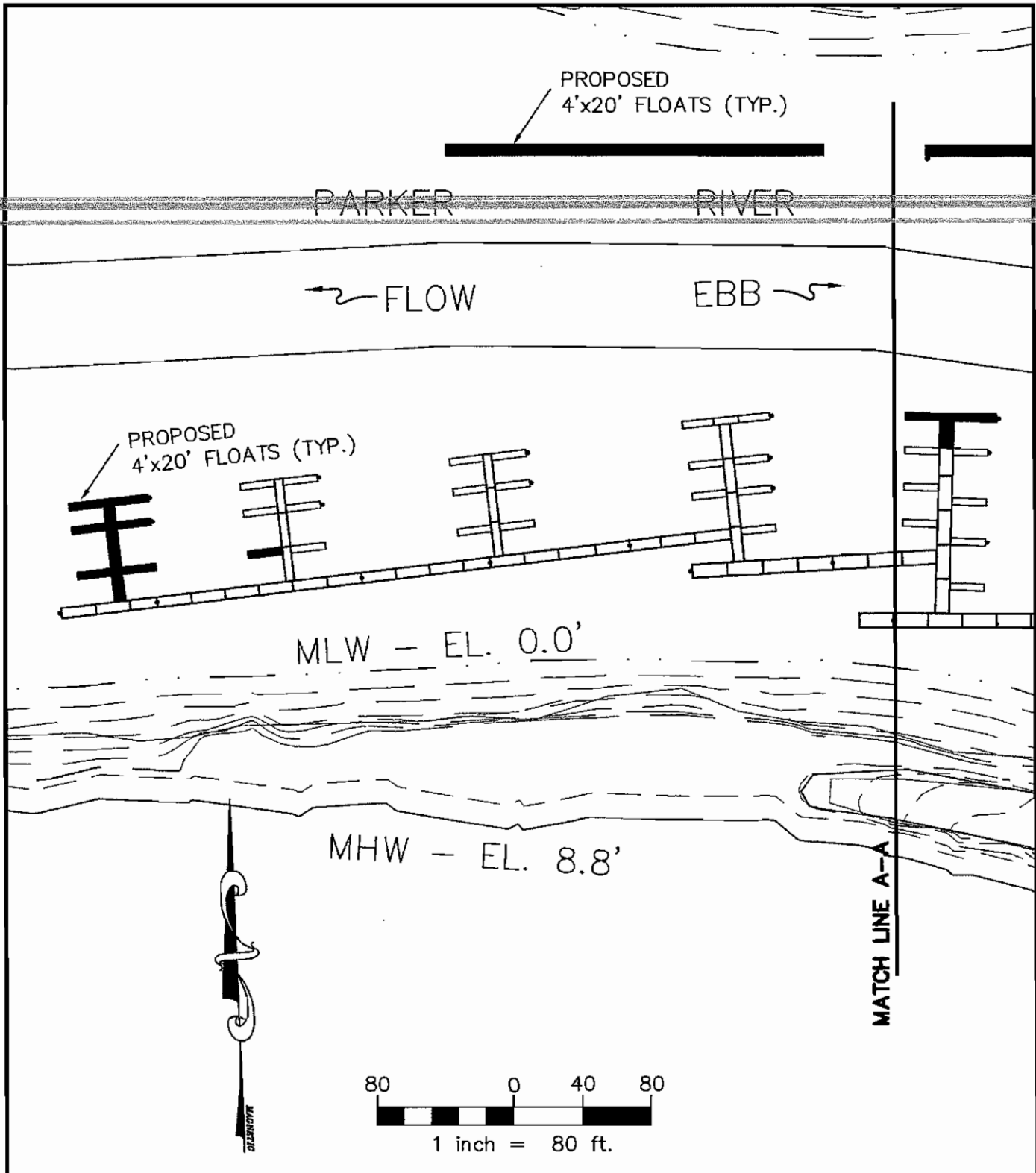
PLAN VIEW

SCALE: 1"=80'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: APRIL 14, 2010
SHEET 4 OF 8



PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW:=8.8'
HTL:=11.5

GA CONSULTANTS, INC.
101 PINE ISLAND ROAD, NEWBURY, MA

PLAN VIEW

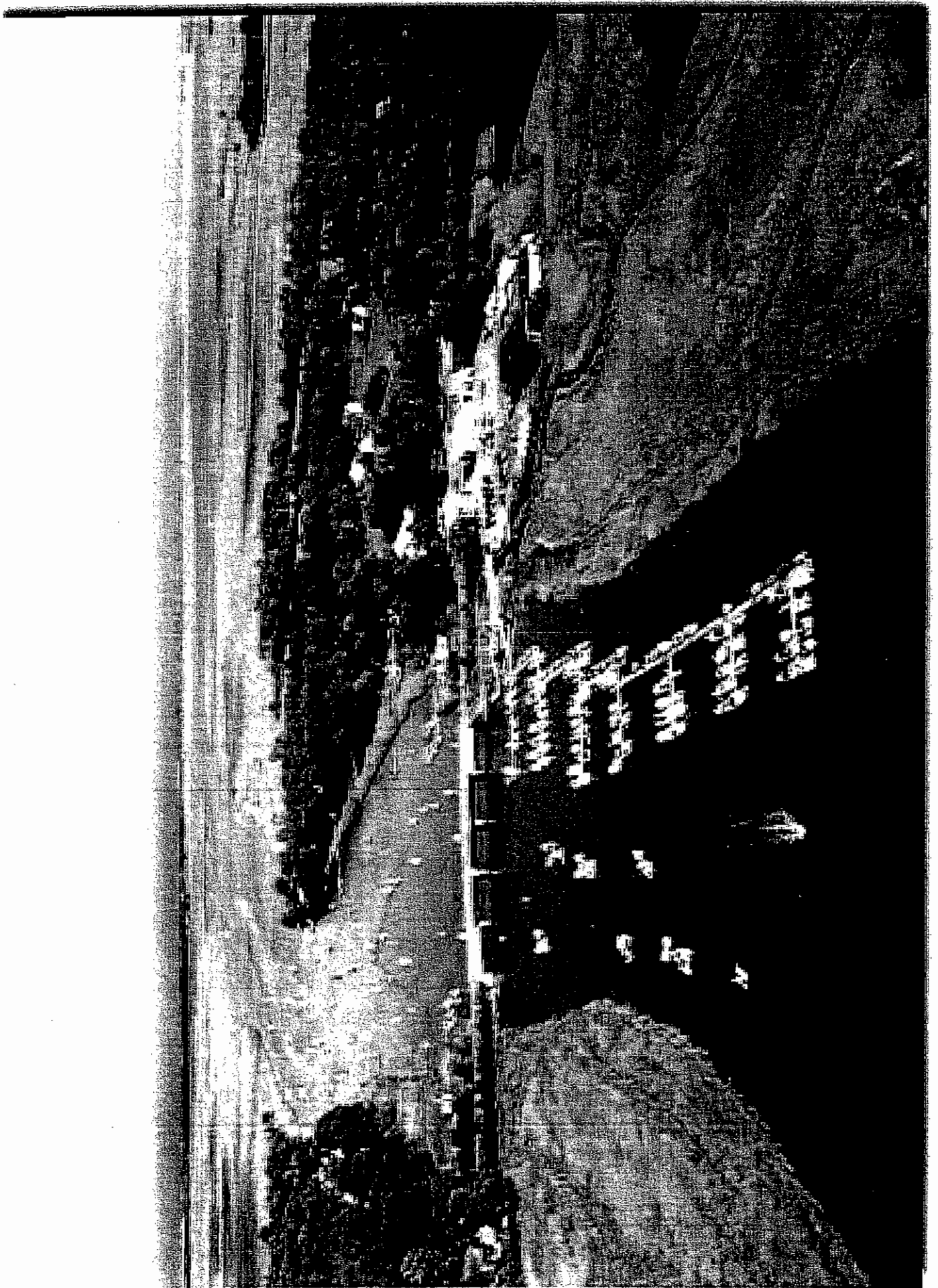
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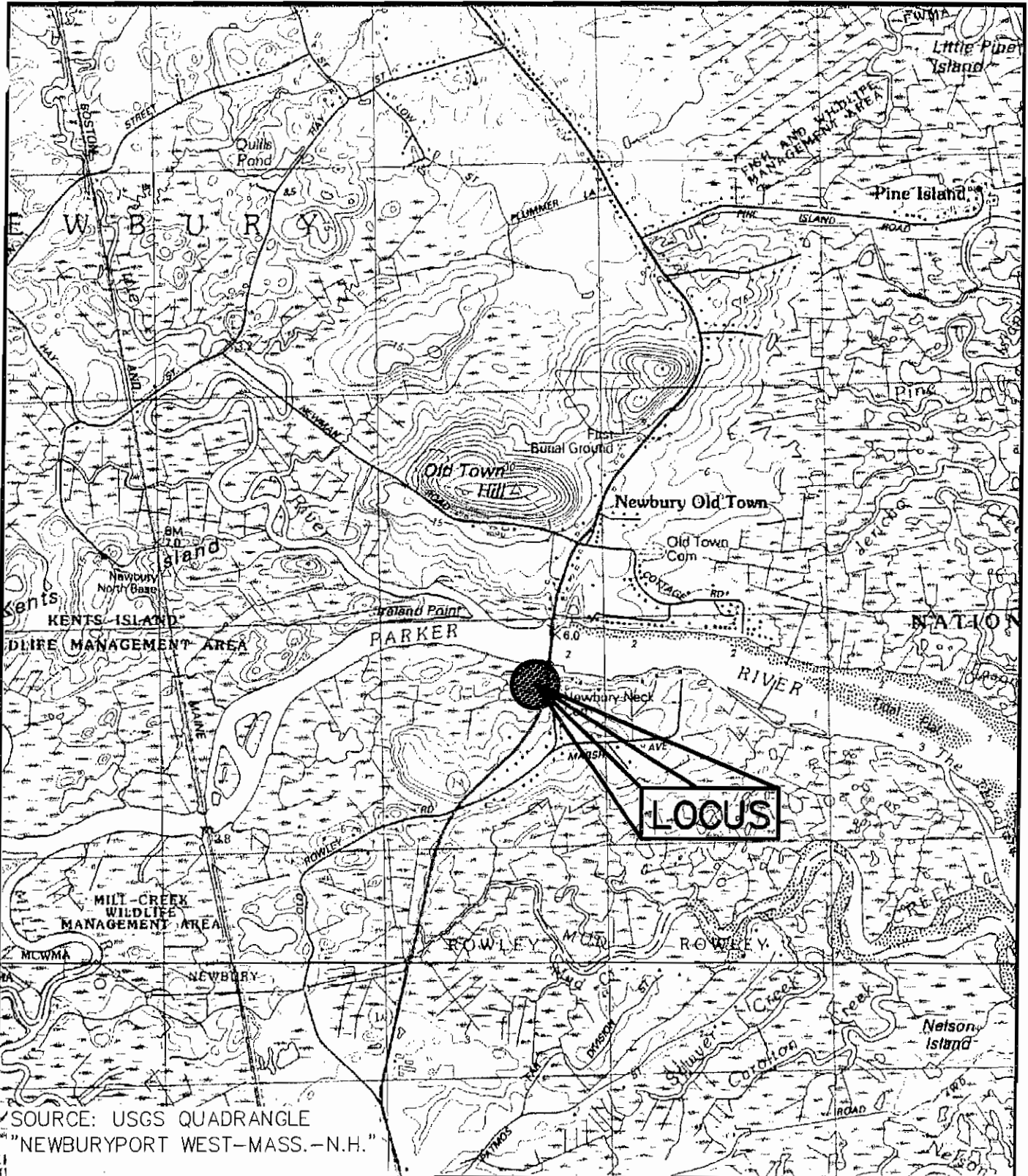
APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: APRIL 14, 2010
SHEET 5 OF 8

Attachment Two





PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW =8.8'
HTL =11.5

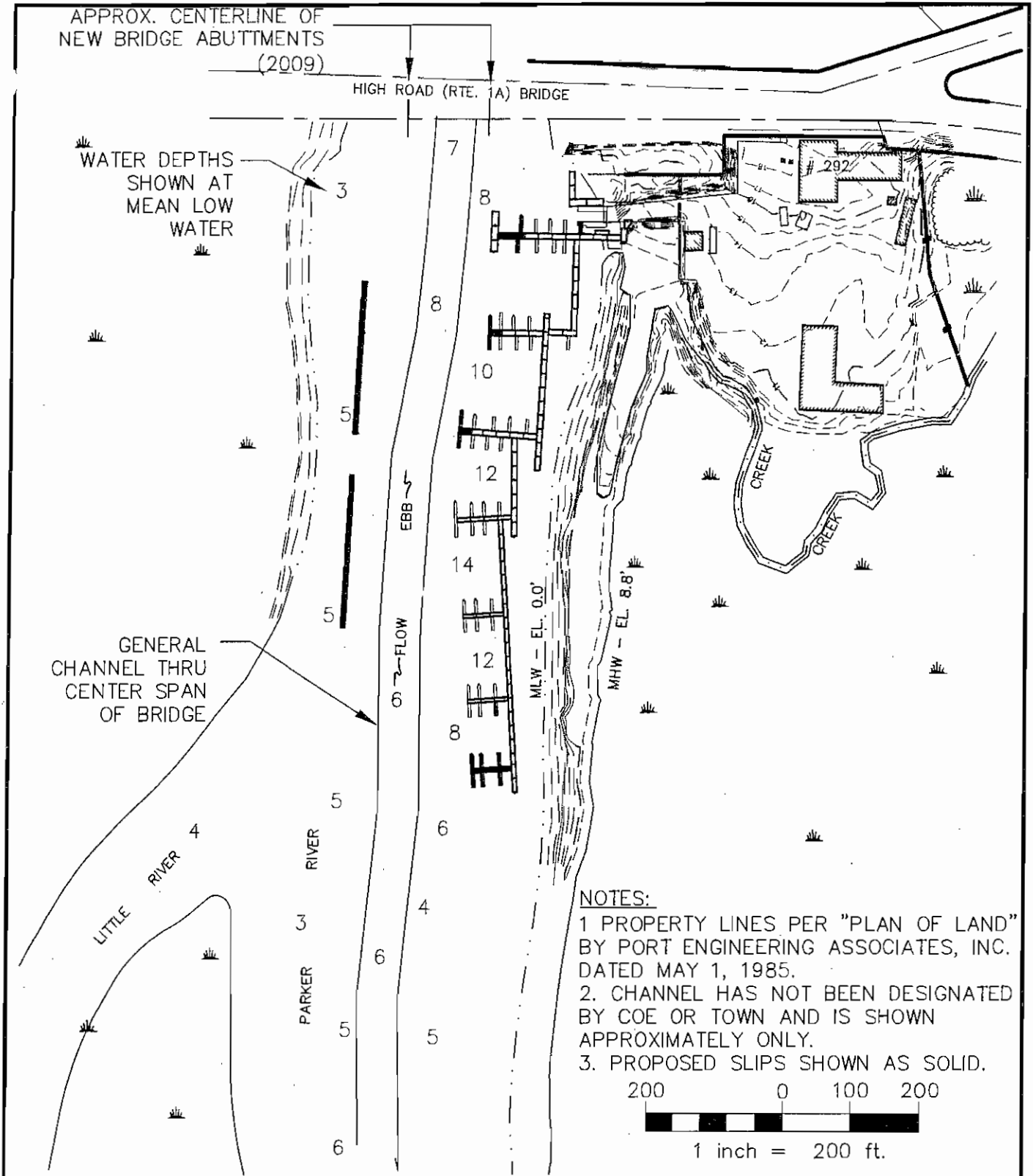
GA CONSULTANTS, INC.
10 STATE STREET NEWBURYPORT, MA

VICINITY MAP
SCALE: 1"=2000'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: DEC. 31, 2009
SHEET 1 OF 8



PURPOSE: ENLARGE MARINA PROVIDING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW=8.8'
HTL=11.5

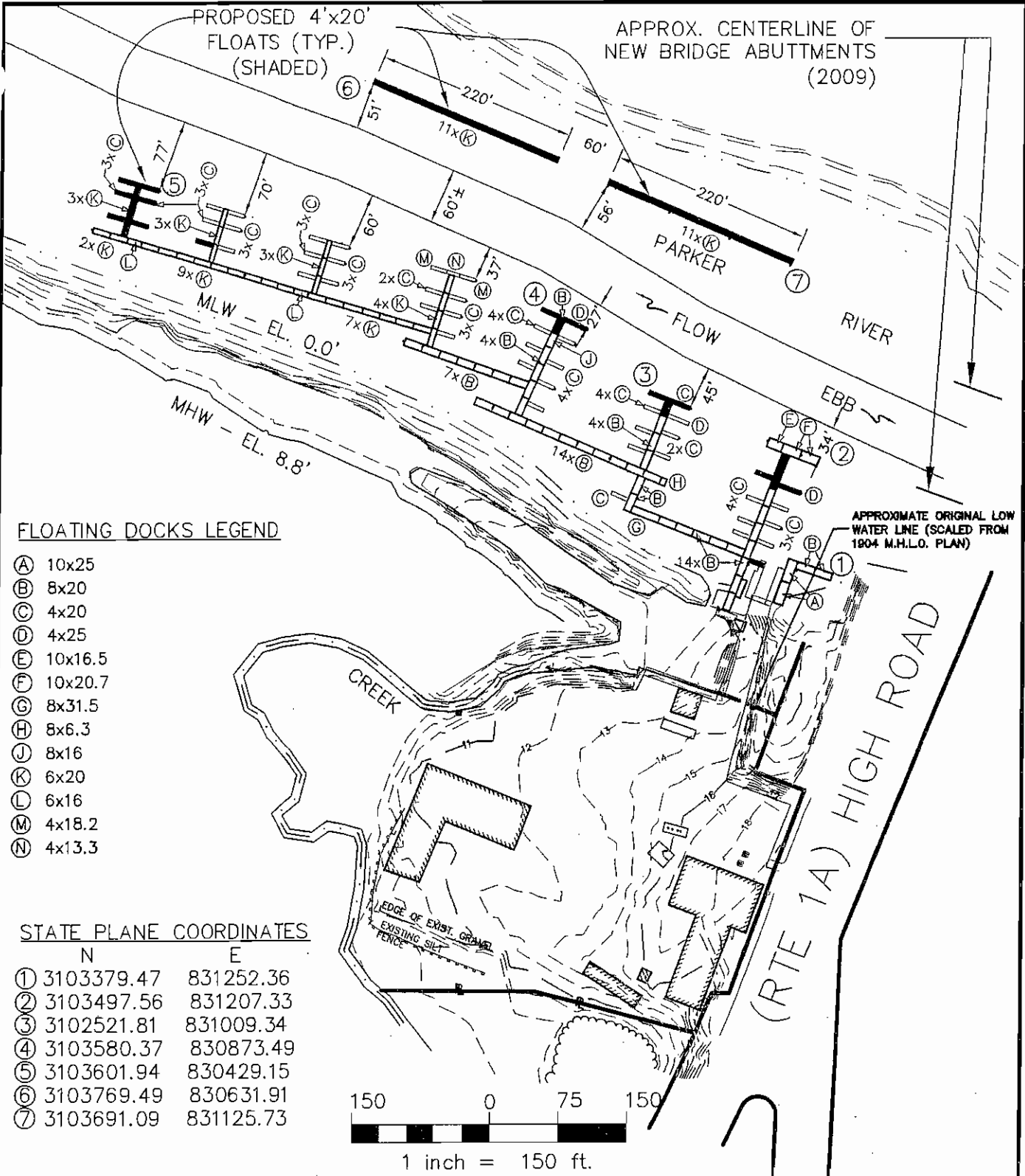
GA CONSULTANTS, INC.
10 STATE STREET NEWBURYPORT, MA

PLAN VIEW
SCALE: 1"=200'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL MOORINGS AND PIPE ANCHORS PARKER RIVER ESSEX COUNTY, MA

DATE: DEC. 31, 2009
SHEET 2 OF 8

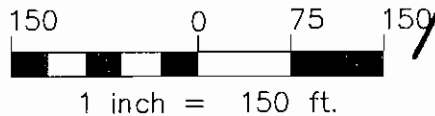


FLOATING DOCKS LEGEND

- (A) 10x25
- (B) 8x20
- (C) 4x20
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STATE PLANE COORDINATES

	N	E
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⑥	3103769.49	830631.91
⑦	3103691.09	831125.73



PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW: =8.8'
HTL: =11.5

GA CONSULTANTS, INC.
10 STATE STREET NEWBURYPORT, MA

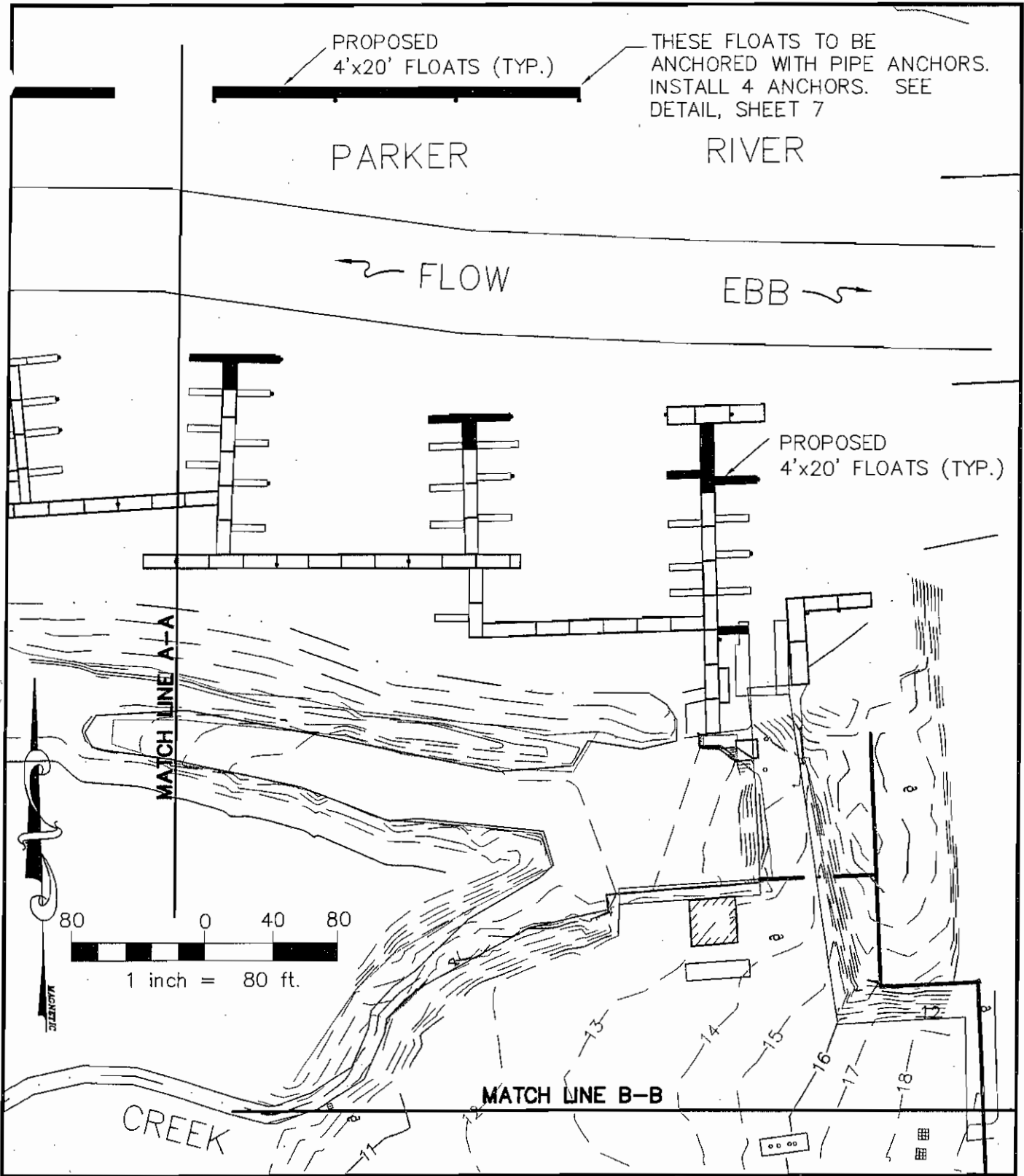
PLAN VIEW

SCALE: 1"=150'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: DEC. 31, 2009
SHEET 3 OF 8



PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW:=8.8'
HTL:=11.5

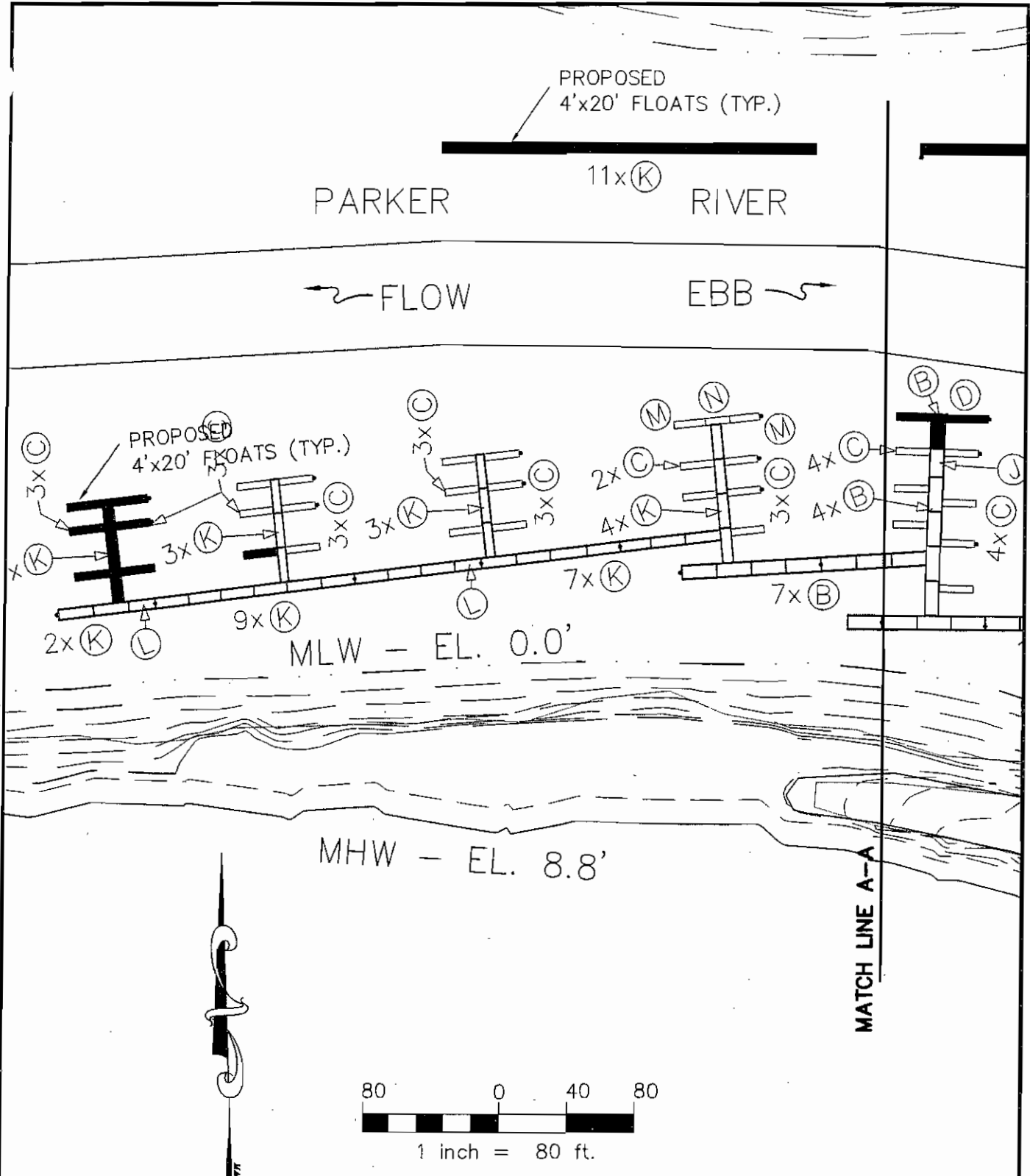
GA CONSULTANTS, INC.
10 STATE STREET NEWBURYPORT, MA

PLAN VIEW
SCALE: 1"=80'

APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: DEC. 31, 2009
SHEET 4 OF 8



PURPOSE: ENLARGE MARINA
CREATING ADDITIONAL SLIPS

DATUM: MLW=0.0'
MHW:=8.8'
HTL:=11.5

GA CONSULTANTS, INC.
10 STATE STREET NEWBURYPORT, MA

PLAN VIEW
SCALE: 1"=80'

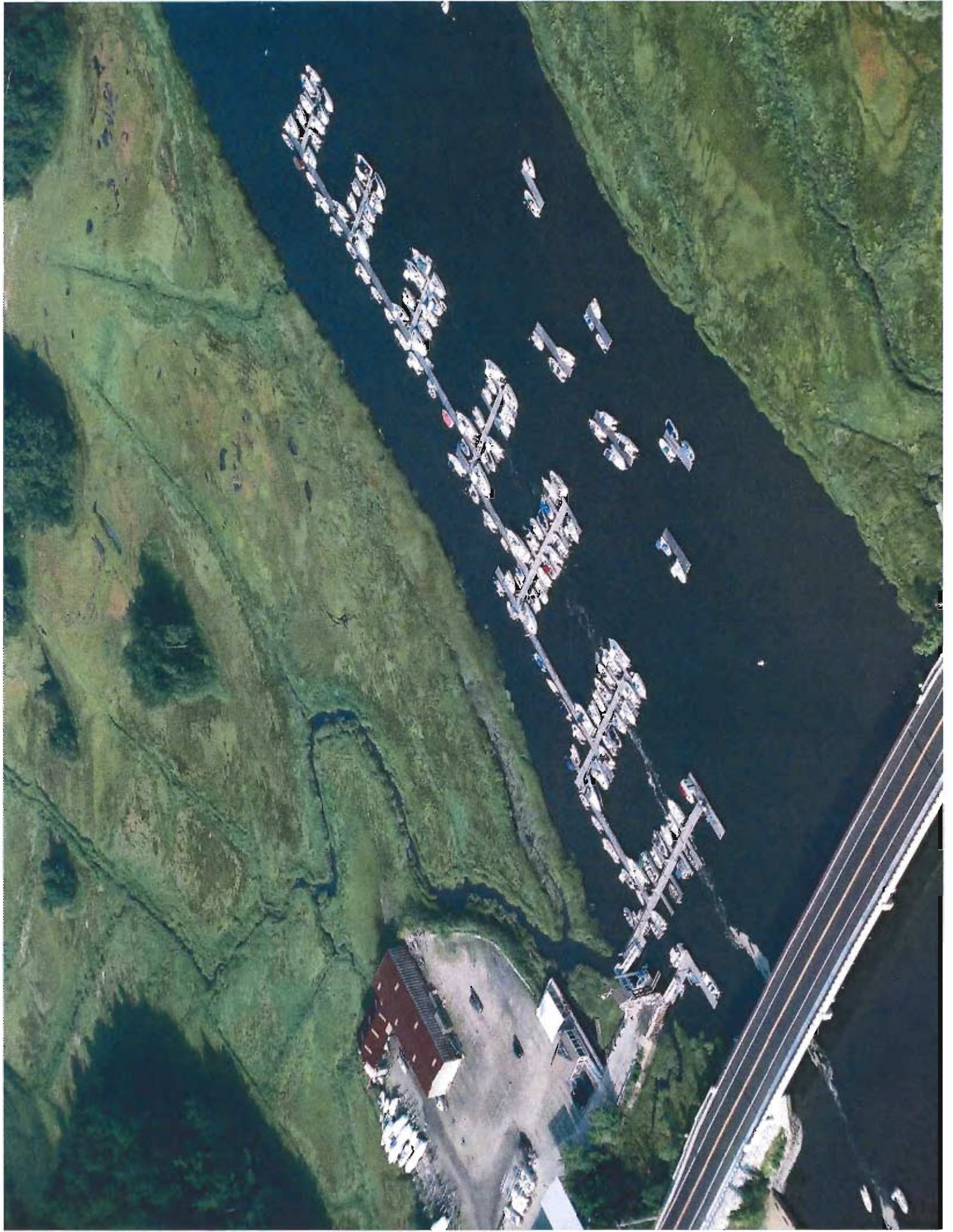
APPLICATION BY:
RIVERFRONT MARINE SPORTS
292 HIGH ROAD
NEWBURY, MA

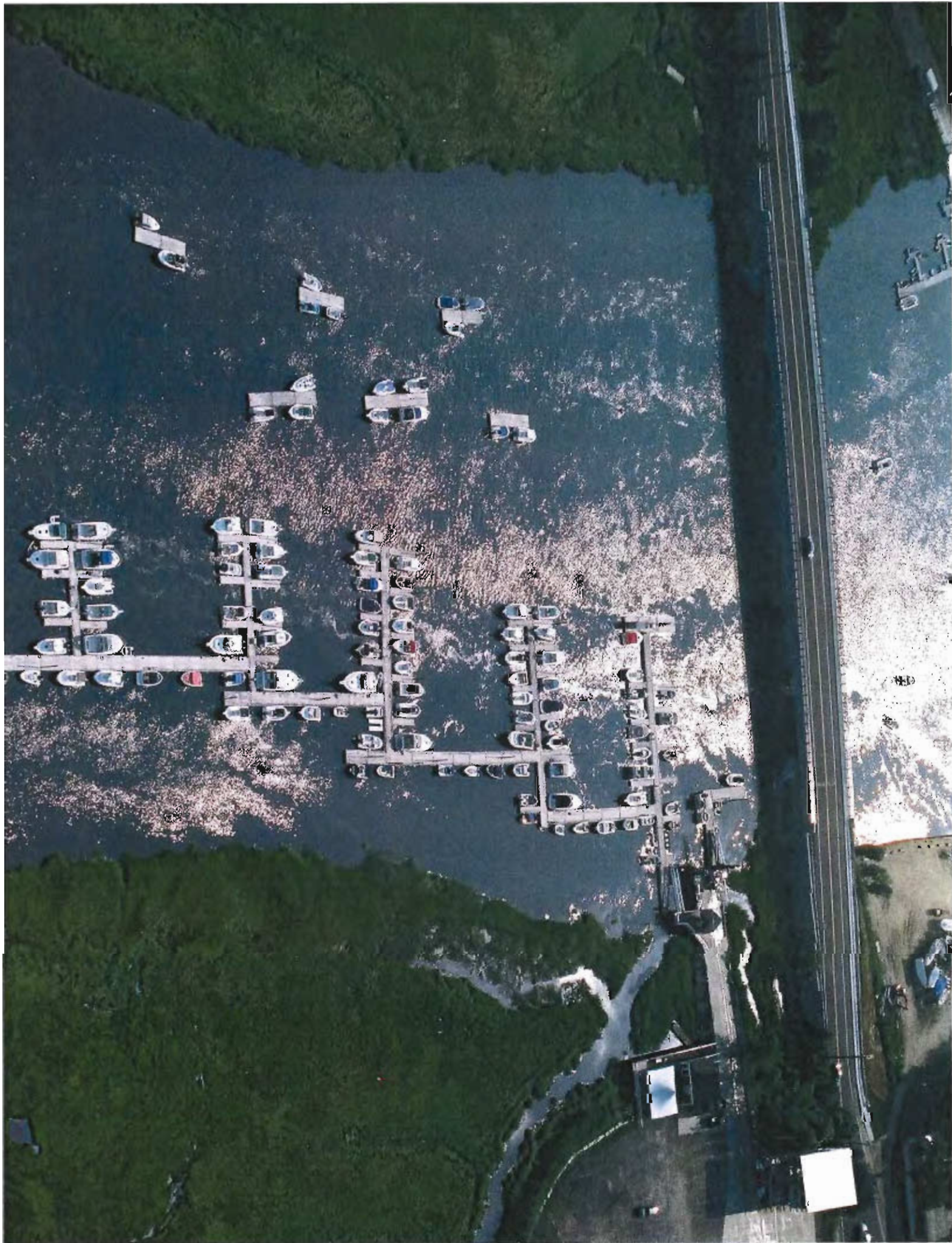
FLOATING DOCKS, RENTAL
MOORINGS AND PIPE
ANCHORS PARKER RIVER
ESSEX COUNTY, MA

DATE: DEC. 31, 2009
SHEET 5 OF 8

Attachment Three







Attachment Four

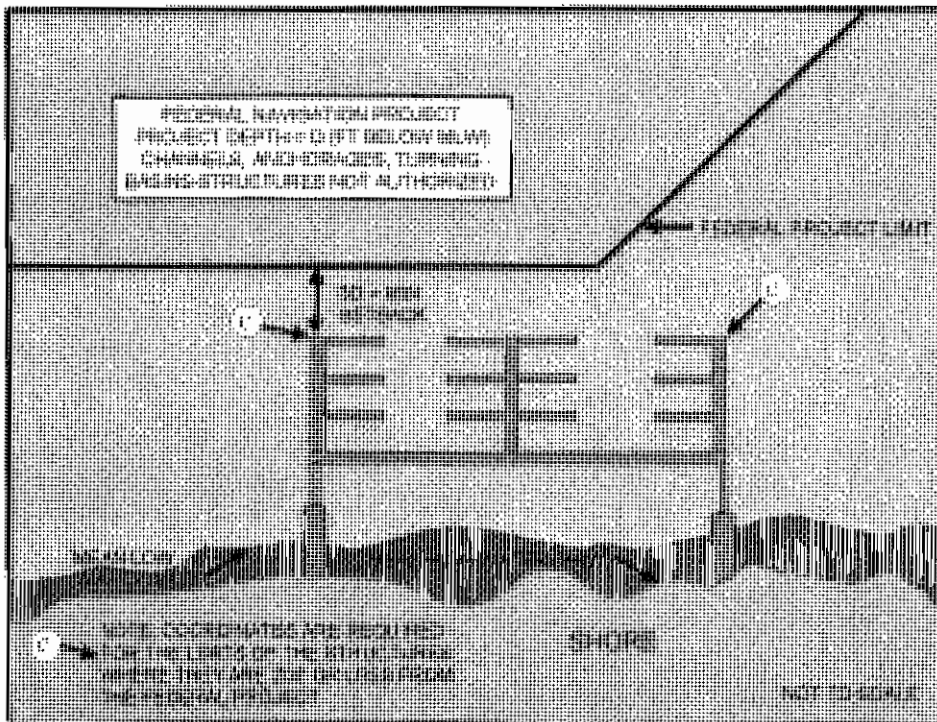


**US Army Corps
of Engineers** ®
New England District

Guidelines

For the placement of fixed and floating structures in navigable waters of the United States by the Regulatory Program of the New England District, U.S. Army Corps of Engineers

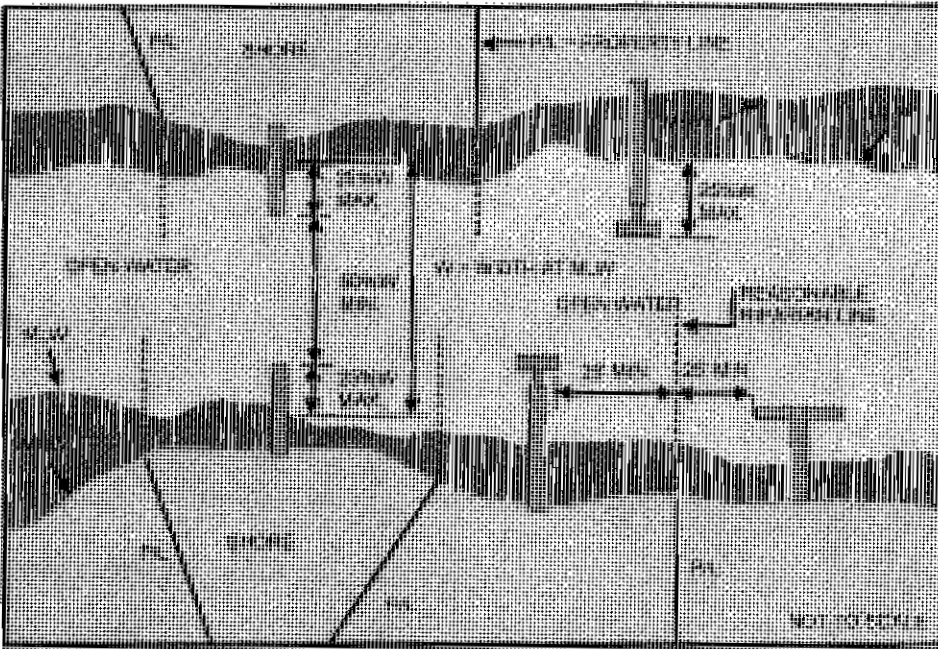
1. These guidelines have been developed due to the intense pressures of development in our coastal waters and on the adjacent land which have led to increasing conflict between users of these resources. They attempt to provide common sense guidance in allocating space for structures in navigable waters, recognizing reasonable use expectations of the general public and waterfront landowners. These guidelines do not constitute policy or regulation. They do, however, provide guidance for project design which typically will not generate adverse public comment or result in permit denial.
2. There is no statutory or regulatory prohibition against the Corps issuing regulatory permits authorizing structures or other work in Federal Navigation Project (FNP). However, the Corps permit regulations require district and division commanders to consider the extent to which that proposed work may be in conflict with the uses (and their respective navigational requirements) at issue when the FNP was authorized as well as with subsequent maintenance dredging activities. In general, the Corps discourages and has not permitted structures in FNPs, except as noted in paragraph 6 below. FNPs are typically channels, turning basins and anchorages.
3. In those cases where a project is proposed within two hundred feet (200') of a FNP the applicant shall determine and show the state plane coordinates for the extreme lateral limits of his project, the point on structures furthest beyond mean high water (MHW), and the point of closest approach of any structure to the FNP (see sketch no. 1).



Sketch No. 1: Illustration of guidelines for structures near federal navigation projects.

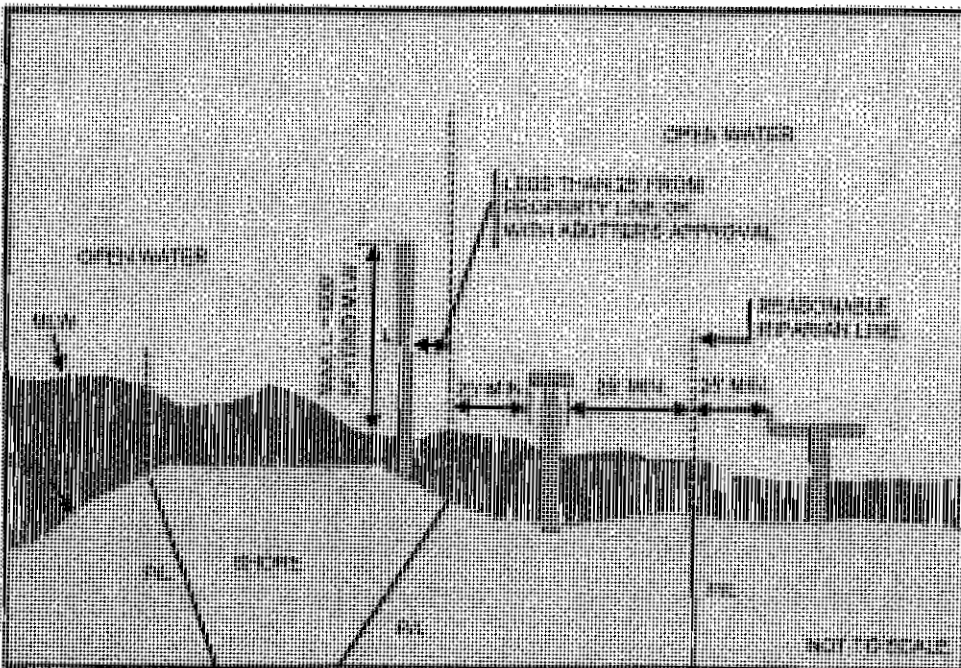
4. Similarly, structures which may cause an intrusion into FNP's will typically not be permitted. FNP's are channels and anchorages created at public expense. Examples of intrusions are permanently moored vessels, fish harvesting devices, etc.
5. To preclude intrusions into FNP's, appropriate setbacks for structures from the project limits may be established on a case by case basis. The setbacks can be determined using appropriate criteria such as:
 - A. Project maintenance requirements. The typical setback shall be a horizontal distance three (3) times the authorized project depth since Corps projects often specify, for dredging purposes, side slopes of 3H: 1V. This will, over the long term, minimize the need, expense, and inconvenience of forcing people to remove structures to dredge (see sketch no. 1).
 - B. Traditional navigation patterns where because of type and size of vessel, channel conditions, fishing or recreational activities, etc. closer approach of structures to a FNP is not in the public interest.
 - C. The configuration and capacity of structures proposed adjacent to FNP's to facilitate intrusion into it. An example would be a pier capable of mooring vessels longer than itself which would extend into the FNP. Such structures would require a greater setback than noted above.
 - D. The presence of adjacent, authorized structures where it would be reasonable for new facilities to conform to their length to provide safe access to the new structure. In some instances this might authorize a smaller setback than noted above.
6. An exception to the guideline regarding FNP's, structures may be favorably considered where the applicant is a state or local government who would place such structures in a Federal Anchorage to provide greater or more effective use to the public, with the condition that such facilities would be available on an equal access basis to all citizens of the U.S.
7. In a linear waterway, i.e., river, canal, narrow estuary, etc., a reasonable area of public water should be maintained in the public interest to sustain activities not specifically related to simply transiting the area in safety. Such activities are cruising, fishing, sail boarding, swimming, water skiing, etc. which require open, unobstructed water and should not be eliminated for private interest.

In such areas, no structure should extend more than 25% of the waterway width at mean low water. This will maintain 50% of the width as open water, an even split, between public and private interest (see sketch no.2).



Sketch No. 2: Guidance on length of structures in linear waterways.

8. A maximum intrusion into a waterway in areas where there is not a physical width constriction is also desirable to preclude excessive loss of public water usage. In general, new structures should conform in length to adjacent structures and customary usage of the surrounding area. In areas where existing structures and usage do not seem applicable, a reasonable maximum authorized distance beyond mean low water of 600 feet (the traditional cable length) will be used. This may be modified if necessary for site specific conditions or public benefit (see sketch no. 3).



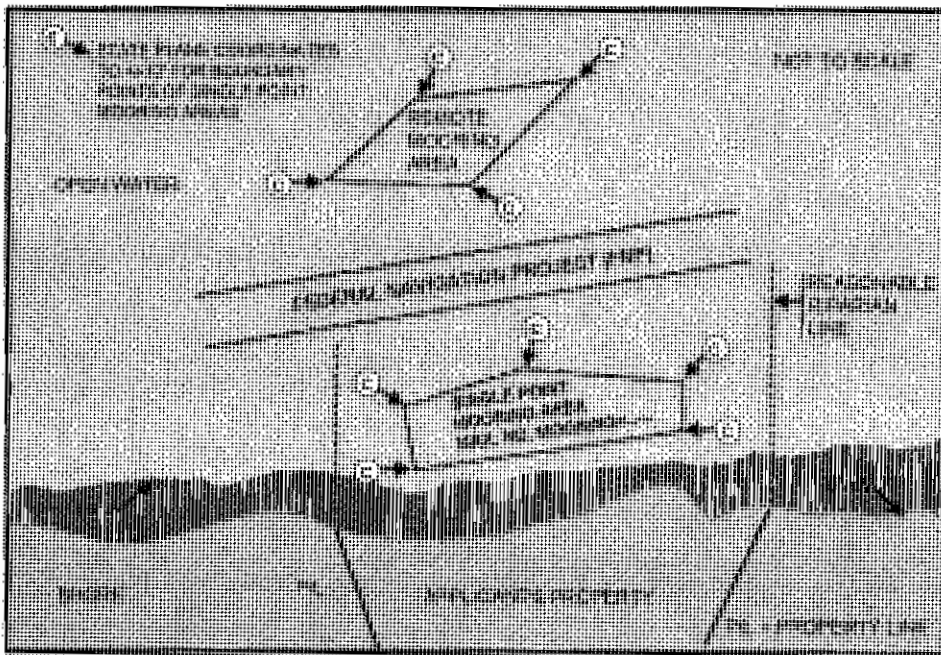
Sketch No. 3: Guidance on spacing structures relative to adjacent properties and maximum length beyond mean low water (MLW).

9. Numerous conflicts between neighboring waterfront property owners have arisen during our permit review process concerning the spacing of projects relative to riparian lines (demarcations of rights in the water associated with owning waterfront property). These conflicts are generally concerned with access to piers and floats for mooring vessels. We typically require a minimum setback from the reasonable riparian boundary of 25 feet. This is based on the fact that a median sized recreational vessel length is in the range of 32 feet. A minimum turning distance for such a vessel is 1.5 times its own length or 48 feet which we have rounded to 50 feet. Each adjacent facility provides half the required turning distance, which is an equitable distribution of the resource (see sketch no. 3).

If abutting property owners reach a mutual agreement regarding structures which has a lesser setback, that setback may be authorized, if the applicant agrees to record any ensuing Corps permit which will have that agreement as a condition and the abutter's letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

10. Fields of individual single point moorings shall be defined by a polygonal area whose angle points are defined by coordinates, to within 10 feet, in the applicable state plane coordinate system and by a maximum number of moorings authorized within it. A rule of thumb for the area needed by a vessel on a single point mooring is a circle with a radius equal to vessel length plus five times the depth of water at high tide. This can be reduced but the minimum should be length plus three times water depth.

These mooring fields should be in reasonably close proximity to the applicant's property and preferably encompassed by his reasonable riparian lines and far enough offshore to keep noise disturbance to other shore owners in reasonable limits and not restrict reasonable future development by these owners. If mooring areas remote from the applicant's property are proposed, a clear description of why this is necessary and what are the potential positive and negative impacts to the public's use of the water may occur (see sketch no. 4).



Sketch No. 4: Illustration of guidelines for single point mooring fields.

**U.S. Army
Corps of Engineers
New England District**



Navigation

May 22, 2007

Rivers & Harbors Act of 1899

- **The Rivers and Harbors Act of 1899 requires approval from the Corps of Engineers for any work or structures in or affecting navigable waters of the United States.**

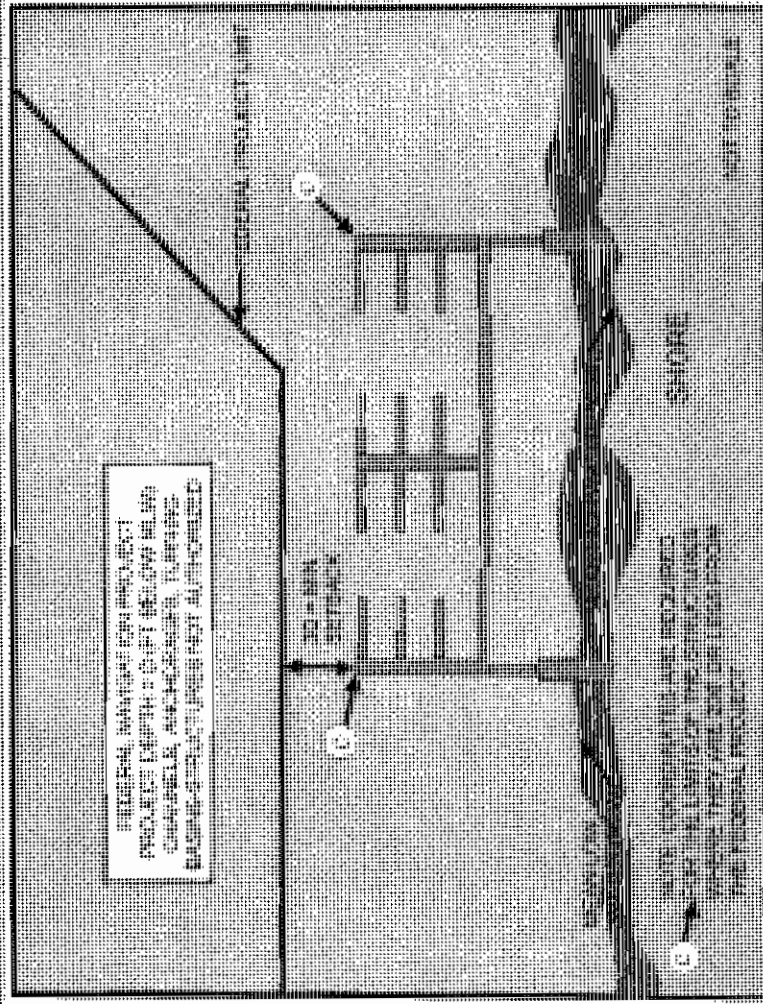
Guidance

- The New England District, U.S. Army Corps of Engineers has developed guidance for the placement of fixed and floating structures in navigable waters. This guidance does not constitute policy or regulation.
- Proposed activities in the areas of FNPs (Federal Navigation Projects) will be evaluated to insure that they are compatible with the purposes of the project.

Guidance (Continued)

- To prevent encroachments into FNPs, recommended setbacks for structures from the FNP limits will be established on a case by case basis. The setbacks can be determined using the following criteria:
 - The typical setback shall be a horizontal distance three (3) times the authorized project depth since Corps projects often specify, for dredging purposes, side slopes of 3H:1V. This will, over the long term, minimize the need, expense, and inconvenience of forcing people to remove structures to perform dredging or surveys. (See Sketch No. 1)
 - Traditional navigation patterns where because of the type and size of the vessel, existing channel conditions, fishing or recreational activities, closer approach of structures to a FNP is not in the public interest.
 - A greater setback than noted above could be required if the proposed vessels moored at proposed structures would extend into FNPs.
 - The presence of adjacent, authorized structures where it would be reasonable for new facilities to conform to their length to provide safe access to the new structure. In some instances this might authorize a smaller setback than noted above.

Sketch I

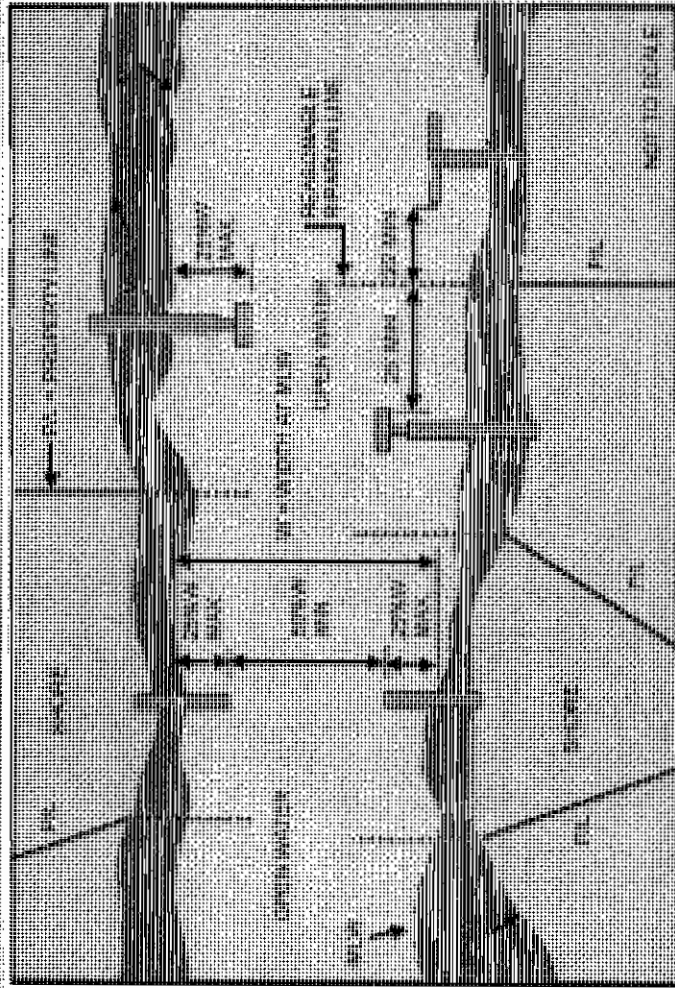


SKETCH NO. 1: ILLUSTRATION OF GUIDELINES FOR STRUCTURES NEAR FEDERAL NAVIGATION PROJECTS

Guidance (Continued)

- An exception to this guidance would be if the applicant is a state or local government proposing to place structures in a Federal Anchorage to provide use to the public with the condition that such facilities would be available on an equal access basis to all citizens of the United States.
- In waterways where there are no FNPs, a reasonable area of public water should be maintained in the public interest to sustain activities such as cruising, fishing, sail boarding, swimming, water skiing, etc. which require open, unobstructed water and should not be eliminated for private interest.
- In such areas, no structure should extend more than 25% of the waterway width at mean low water. This will maintain 50% of the width as open water, an even split, between public and private interest. (See Sketch No. 2)

Sketch 2



SKETCH NO. 2: GUIDANCE ON LENGTH OF STRUCTURES IN LINEAR WATERWAYS

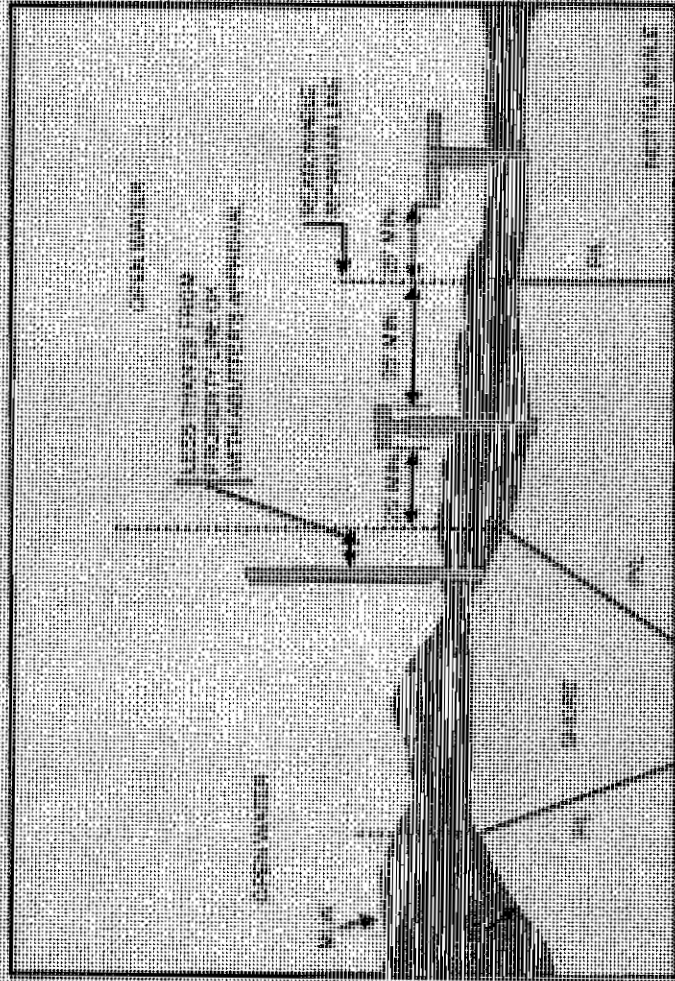
Guidance (Continued)

- New structures proposed in waterways where there is not a width constriction should conform in length to adjacent structures and customary usage of the surrounding area. In areas where this is not applicable, a reasonable distance will be considered.
- Due to numerous conflicts between neighboring waterfront property owners over access to piers and floats for mooring vessels, we typically require a minimum setback from the reasonable riparian boundary of 25 feet. This is based on the fact that a median sized recreational vessel length is in the range of 32 feet. A minimum turning distance for such a vessel is 1.5 times its own length or 48 feet which we have rounded to 50 feet. Each adjacent facility provides half the required turning distance, which is an equitable distribution of the resource. (See Sketch No. 3.) This setback may be modified for site specific conditions.

Guidance (Continued)

- If abutting property owners reach a mutual agreement regarding structures with a smaller setback, that setback may be authorized if either a signed agreement between the parties or a letter of no objection from the abutting property owners is sent to the Corps.

Sketch 3

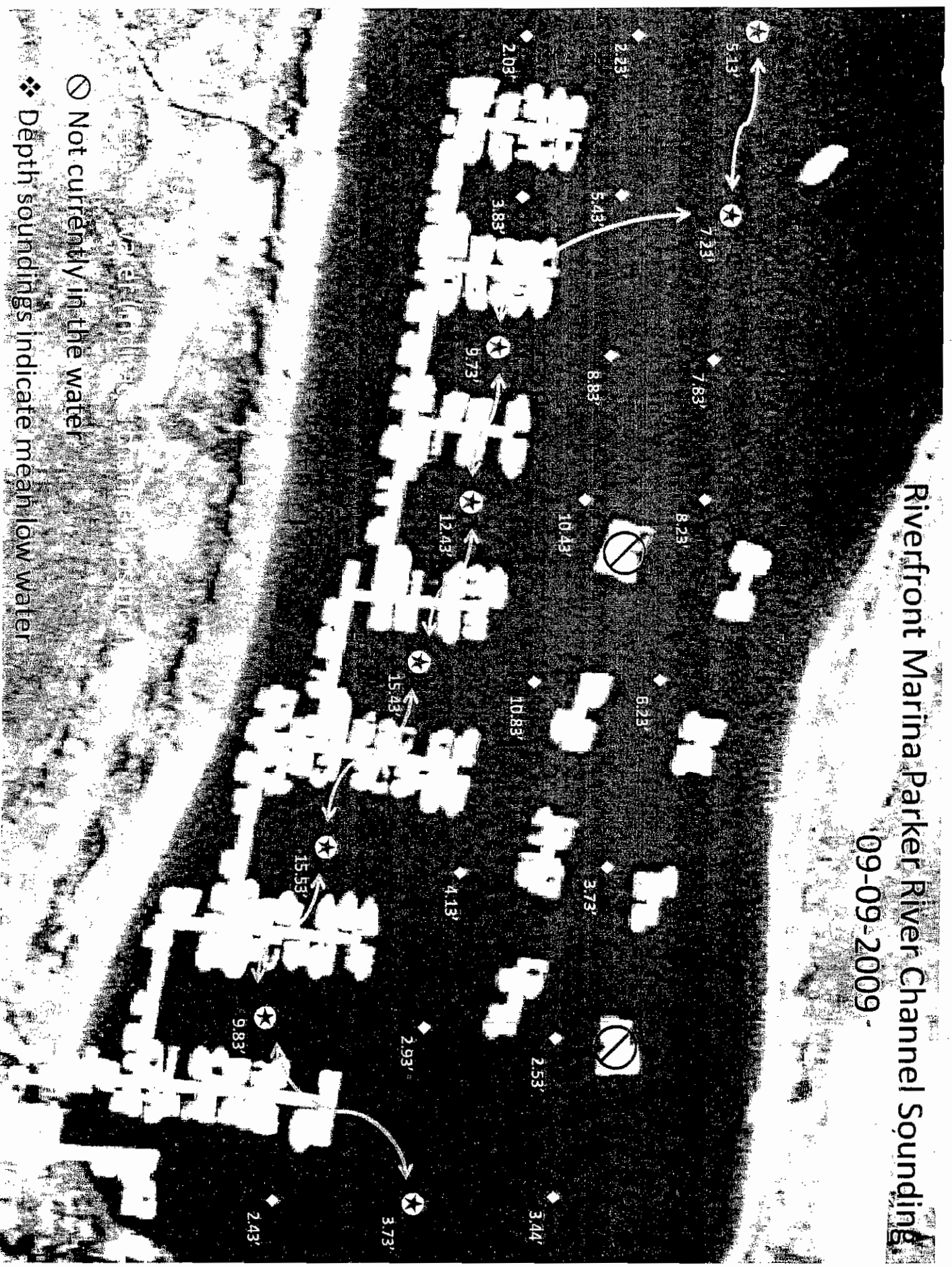


SKETCH NO. 3. GUIDANCE ON SPACING STRUCTURES RELATIVE TO ADJACENT PROPERTIES

Attachment Five

Riverfront Marina Parker River Channel Sounding

09-09-2009



⊗ Not currently in the water

◆ Depth soundings indicate mean low water

Attachment Six



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Protection

Daniel S. Greenbaum
Commissioner

One Winter Street
Boston, Massachusetts 02108

March 2, 1990

Jimmy's Marine Service, Inc.
c/o James B. Irving
5 Grace Road
Danvers, MA 01923

RE: Waterways Application No. 87-185/License No. 2268
Parker River, Newbury Essex County

Dear: Mr.

The Department of Environmental Protection has approved the enclosed referenced license authorizing you to perform certain activities pursuant to G.L. Chapter 91 and regulations 310 CMR 9.00.

Any unauthorized substantial change in use or substantial structural alteration of any structure or fill authorized by this license shall render it void.

Furthermore, this license must be recorded at the referenced Registry of Deeds within 60 days from date of issuance. Work or change in use authorized by this license shall not commence until said license and plans are recorded and the Department has received written notification of the date, book and page number of record. Please complete and return the enclosed Notification Form to this office. You are also required to notify the Department in writing of the date the authorized work or change in use is completed.

Sincerely,
ORIGINAL SIGNED BY

John A. Simpson
Section Chief
Waterways Regulation Program

JAS/RP/rp

cc: DEP-Region NE, Wetlands File No.50-189
U. S. ACOE, Regulatory Functions Branch w/enc.
Office of Coastal Zone Management w/enc.
Newbury Harbormaster
MEPA, Janet McCabe w/enc.

The Commonwealth of Massachusetts

No. 2268



ИЦРГРН.

Jimmy's Marine Service, Inc.

of -- Newbury --, in the County of -- Essex -- and Commonwealth aforesaid, has applied to the Department of Environmental Protection* for license to -- maintain a marina -----

and has submitted plans of the same; and whereas due notice of said application, ~~and of the time and place fixed for a hearing thereon,~~ has been given, as required by law, to the -- Board of Selectmen -- of the Town -- of -- Newbury -----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said

Jimmy's Marine Service Inc. -- subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to -- maintain a marina -----

in and over the waters of -- The Parker River -- in the -- Town -- of Newbury -- and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. 2268, (5 sheets).

*Pursuant to Stat. 1989, c.240, s.101, "The Department of Environmental Quality Engineering shall be known as the Department of Environmental Protection," hereinafter in this document referred to as "the Department" or "DEP".

The structures hereby authorized shall be limited to the following use:
To provide a public recreational boating facility. -----

Any contract or other agreement for the exclusive use of berths
authorized herein shall have a maximum term of one year and may be
renewable upon expiration for an additional period of up to one year. --

Please see page three for additional conditions to this license. -----

Duplicate of said plan, number 2268 is on file in the office of said
Department, and original of said plan accompanies this License, and is to
be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
2. This license is granted upon the expressed condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This license may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP Division of Water Pollution Control.

The amount of tide-water displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said ---- Jimmy's Marine Service, Inc. ---- by paying into the treasury of the Commonwealth -- two dollars and zero cents (\$2.00) -- for each cubic yard so displaced, being the amount hereby assessed by the said Department. (1636 cu. yds. = \$3272.00)

Nothing in this License shall be construed as to impair the legal rights of any person.

This License shall be void unless the same and the accompanying plans are recorded within 60 days from the date hereof, in the Registry of Deeds for the -- Southern -- District of the County of -- Essex. -----

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this Second day of March in the year nineteen hundred and ninety

Commissioner

Director

Section Chief

[Handwritten signatures]

Christy Galle-Smith

J. A. Singer

Department of
Environmental
Protection

THE COMMONWEALTH OF MASSACHUSETTS

This License is approved in consideration of the payment into the treasury of the Commonwealth by the said -- Jimmy's Marine Service, Inc.

of the further sum of -- twenty-four thousand, four hundred, eighty dollars and zero cents (\$24480.00)

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the hand of the Commonwealth.

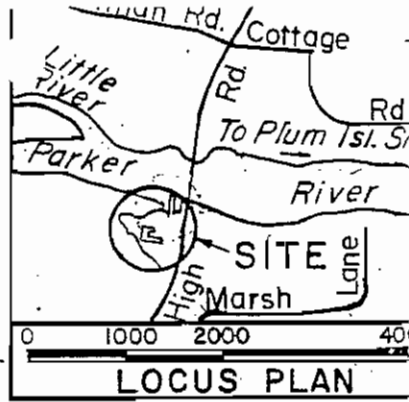
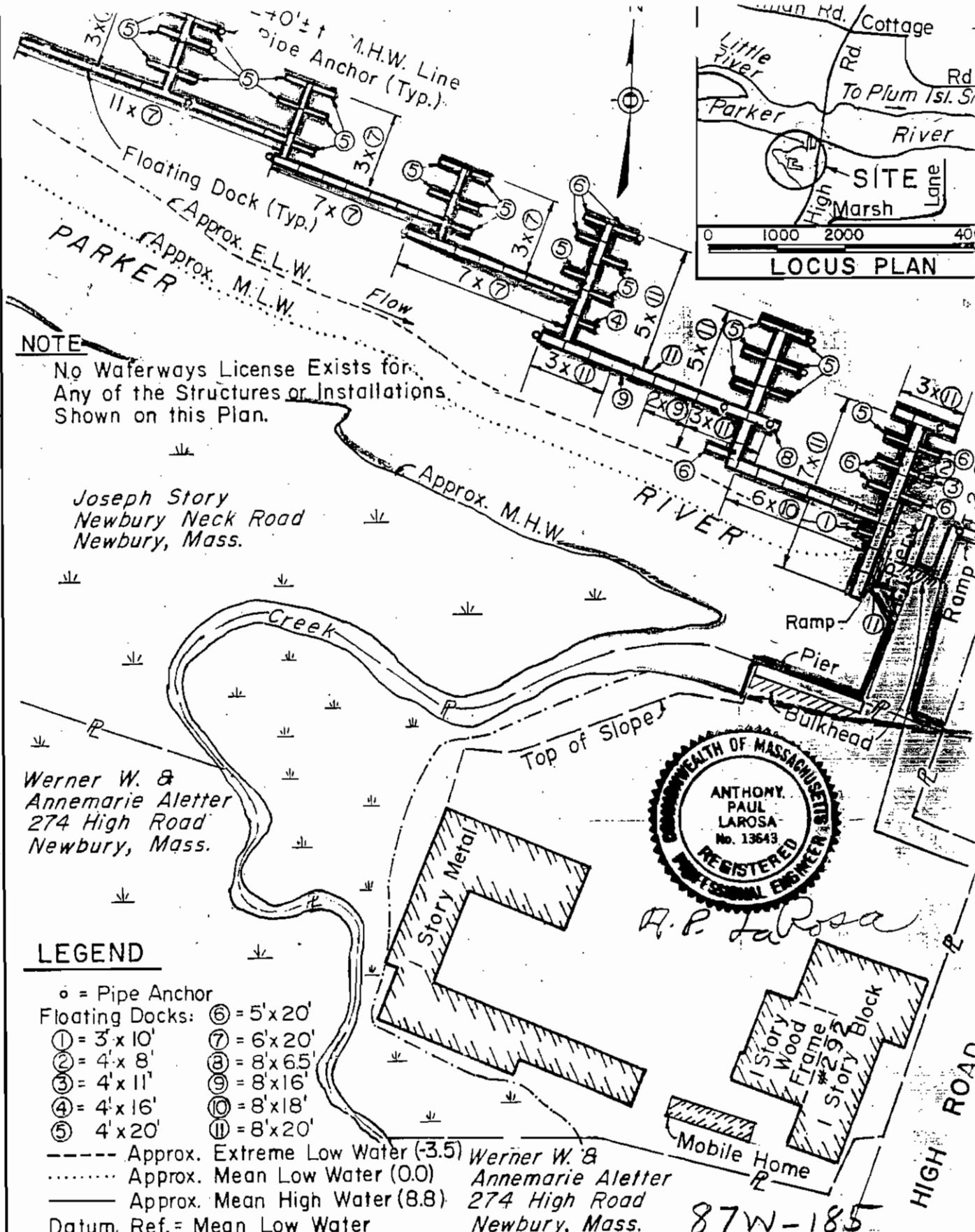
BOSTON

[Handwritten signature]

Governor

Approved by the Governor

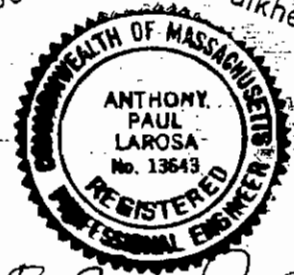
A TRUE COPY — ATTEST
[Handwritten signature]
DEPARTMENT OF ENVIRONMENTAL
QUALITY ENGINEERING
Commonwealth of Massachusetts



NOTE
 No Waterways License Exists for Any of the Structures or Installations Shown on this Plan.

Joseph Story
 Newbury Neck Road
 Newbury, Mass.

Werner W. &
 Annemarie Aletter
 274 High Road
 Newbury, Mass.



A. P. Larosa

LEGEND

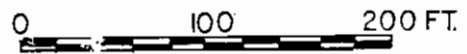
- = Pipe Anchor
- Floating Docks:

⑥ = 5'x20'
① = 3'x10'
② = 4'x8'
③ = 4'x11'
④ = 4'x16'
⑤ = 4'x20'
⑦ = 6'x20'
⑧ = 8'x6.5'
⑨ = 8'x16'
⑩ = 8'x18'
⑪ = 8'x20'

- Approx. Extreme Low Water (-3.5)
- Approx. Mean Low Water (0.0)
- Approx. Mean High Water (8.8)
- Datum. Ref. = Mean Low Water

Werner W. &
 Annemarie Aletter
 274 High Road
 Newbury, Mass.

87W-185



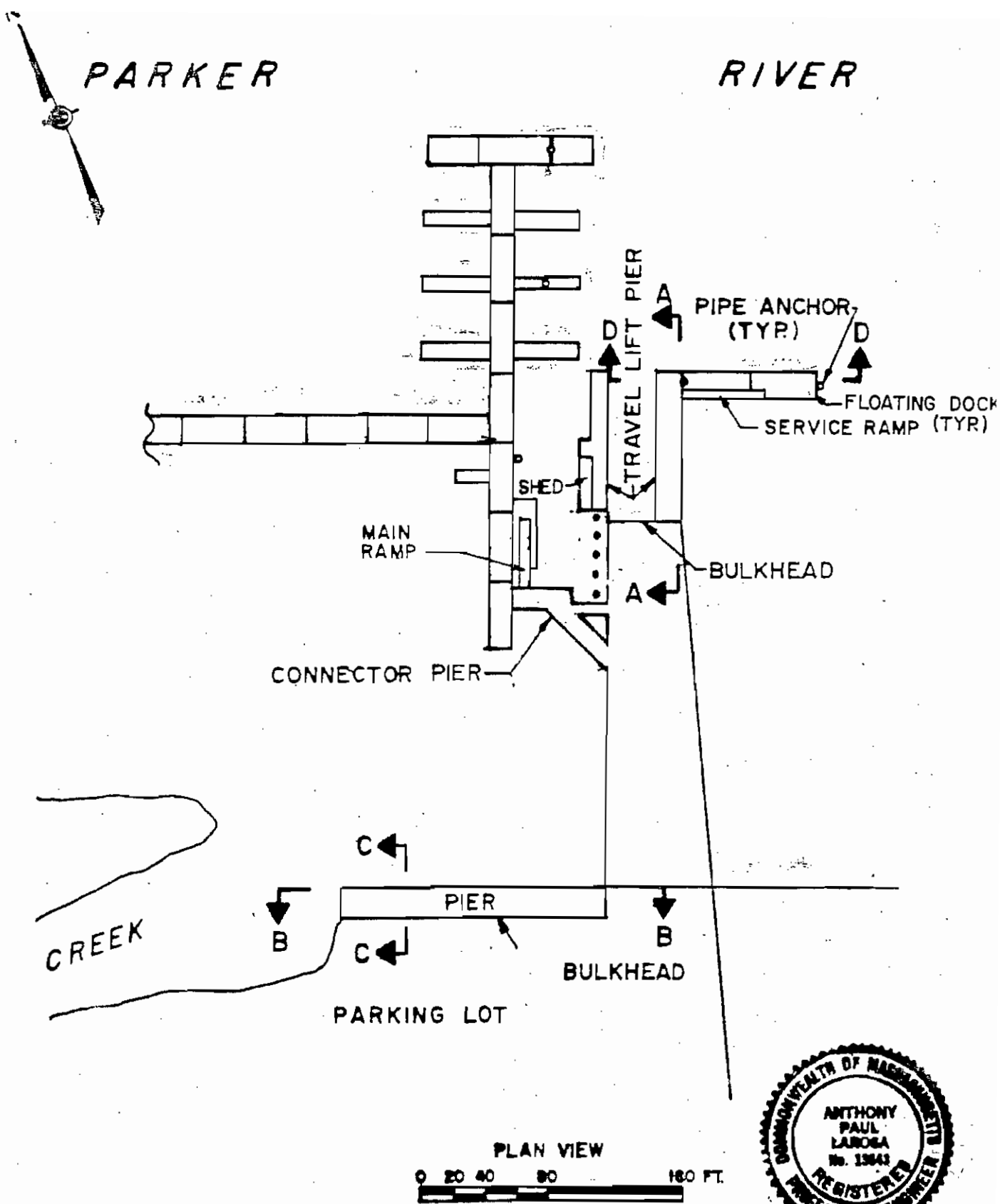
SHEET 1 of 5

PLAN ACCOMPANYING PETITION OF JIMMY'S MARINE SERVICE, INC. FOR WATERWAY STRUCTURES (FLOATING DOCKS, RENTAL MOORINGS AND PIPE ANCHORS) AT PARKER RIVER, NEWBURY MASS. DECEMBER 1989

LICENSE PLAN NO. 2268
 Approved by Department of Environmental Protection of Massachusetts
Christy Fort Small COMMISSIONER
J. J. S. [Signature] SECTION CHIEF
 MAR - 2 1990

PARKER

RIVER



87W-185

A. P. Larosa

SHEET 2 of 5
 PLAN ACCOMPANYING PETITION OF
 JIMMY'S MARINE SERVICE, INC. FOR
 WATERWAY STRUCTURES (FLOATING
 DOCKS, RENTAL MOORINGS AND
 PIPE ANCHORS) AT PARKER RIVER
 NEW BEDFORD, MASS. DECEMBER 1988

LICENSE PLAN NO. 2268
 Approved by Department of Environmental Protection
 Date: MAR - 2 1990