



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
106 HOGAN ROAD, SUITE 8  
BANGOR, MAINE 04401

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

PAUL R. LEPAGE  
GOVERNOR

# PERMIT

## AMENDMENT A TO WETLANDS ALTERATION PERMIT WL 0024

The staff of the Maine Land Use Planning Commission (LUPC or Commission), after reviewing the application and supporting documents submitted by Beach Island Inc. (Applicant or Permittee) for Amendment A to Wetlands Alteration Permit WL 0024, finds the following facts:

1. Applicant: Beach Island Inc.  
Attn: Robert Byrne  
27 Topstone Road  
Ridgefield, Connecticut 06877-3410
2. Agent: Prock Marine Company  
Attn: Devin Prock  
2793 Winslows Mills Road  
Waldoboro, Maine 04572
3. Date of Completed Application: April 07, 2015
4. Location of Proposal: Beach Island, Hancock County, Maine  
Maine Revenue Service Map HA059; Plan 01; Lot 687
5. Zoning: Wetland Protection Subdistrict (P-WL1)  
Shoreland Protection Subdistrict (P-SL1)  
Preliminary FEMA VE (EL 14)
6. Lot Size: 75<sup>±</sup> Acres (owned)
7. Shoreland Structures: Permanent Docking Structure (Pier) (5 ft. by 65 ft.)  
Temporary Ramp (Gangway)  
Temporary Float
8. Wetlands Alteration Permit WL 0024 by Special Exception, issued to Ann B. Poffinberger on May 07, 1992, authorized the reconstruction of a 4 foot wide by 70 foot long pre-Commission permanent docking structure, a temporary ramp and a float which were destroyed in January of 1992.

9. The Applicant now proposes to reconstruct the 4 foot wide by 70 foot long permanent docking structure into a 5 foot wide by 65 foot long permanent docking structure. The dock would be located in the same location as the previous dock, and would extend 6 feet landward and 59 feet seaward of the mean high water level. The existing temporary ramp (gangway) and temporary float would be attached to the proposed permanent docking structure on a seasonal basis as before.
10. The project would be designed, constructed, anchored, braced, and pinned as outlined in Wetland Alteration Permit application WL 24, in Exhibits E-1, E-2 and E-3, dated March 03, 2015, attached at the end of this permit amendment and incorporated herein by reference.
11. The proposal would impact, by shading, approximately 325 square feet of P-WL1 - wetland of special significance. Construction of the pier would be completed from a barge and would be with hand tools. No disturbance of the ocean bottom is expected.
12. The Applicant stated that it would be infeasible to utilize a temporary docking structure in place of the legally existing permanent pier which is currently utilized by multiple dwellings on the island; the Applicant also stated that there are no other docks or piers located on Beach Island so there are no other alternative landing piers which offer safe egress and ingress onto and off of the island for the residents.
13. The Maine Department of Agriculture, Conservation & Forestry's Submerged Lands Program in the Bureau of Parks and Lands, reviewed the application and stated that the proposal would meet the Bureau's seasonal exemption and that no submerged lands lease or easement would be needed.
14. The Maine Department of Inland Fisheries and Wildlife reviewed the application and state that because the proposal would be replacing an existing structure, no additional impacts to wildlife are anticipated.
15. The U. S. Army Corps of Engineers received a copy of the application and did not comment on the proposal.
16. Shoreland alterations, including reconstruction of permanent docking structures, may be allowed within P-WL and P-SL subdistricts upon issuance of a permit from the Commission according to 12 M.R.S.A. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III (*Ch. 10.23,N,3,c,(11) and Ch. 10.23,L,3,c,(16)*).
17. To be granted a permit, permanent docking structure proposals must meet the General Criteria for Approval, Section 10.24, and the Criteria for Wetland Alterations, Section 10.25,P, in addition to any applicable requirements set forth in Section 10.27,O. Permanent docking structures proposed in a (P-FP) Flood Prone Protection Subdistrict, or in an area identified on a Federal Emergency Management Agency (FEMA) Flood Hazard Boundary or Flood Insurance Rate Map, must also meet the applicable provisions of Section 10.25,T (*Ch. 10.27,O*).
18. Coastal wetlands, together with areas below the high water mark of tidal waters and extending seaward to the limits of the State's jurisdiction are designate as P-WL1: wetlands of special significance (*Ch. 10.23,N,2,a,(1),(b)*).

19. Tier 3 reviews are for projects altering any area of P-WL1 wetlands (*Ch. 10.25,P,1,c,(3)*).
20. Projects requiring Tier 3 review must (*applicable requirements set forth in Section 10.25,P for this proposal*):
  - A. *Avoidance*. Not cause a loss in wetland area, functions and values if there is a practicable alternative to the project that would be less damaging to the environment. Each Tier 3 application must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist (*Ch. 10.25,P,2,a,(2)*);
  - B. *Minimal Alteration*. Limit the amount of wetland to be altered to the minimum amount necessary to complete the project (*Ch. 10.25,P,2,b*);
  - C. *Water Quality*. Comply with applicable water quality standards (*Ch. 10.25,P,2,c*);
  - D. *Compensation*. Provide off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values (*Ch. 10.25,P,2,b*). If a proposed activities requires a permit and will alter 500 or more square feet of P-WL1 wetland, the Commission may require, as a condition of approval, mitigation, including compensation, in conformance with the provisions of Section 10.25,P,2 (*Ch. 10.25,P,1,b,(2)*). The Commission may waive the requirement for a functional assessment, compensation, or both. The Commission may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The Commission may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant (*Ch. 10.25,P,2,e,(2)*); and
  - E. *No Unreasonable Impact*. Have no unreasonable impact on the wetland (*Ch. 10.25,P,2,f*).
21. A permit for reconstruction of a permanent docking structure (*applicable requirements set forth in Section 10.27,O for this proposal*):
  - A. shall not be issued unless the permanent docking structure is legally existing, shall be reconstructed in the same location, must not extend farther into the waterbody than the existing structure, shall not include reconstruction of any other structure, and must meet the construction standards in Section 10.27,O,4 (*Ch. 10.27,O,1,a*);
  - B. shall not be issued unless the docking structure was functional within a two year period immediately preceding the damage, destruction, or removal (*Ch. 10.27,O,1,b*);
  - C. may not take place within significant wildlife habitat, as defined in Section 10.02 of the Commission's *Land Use Districts and Standards* (Standards), or impact rare plants and natural communities, as identified by the Maine Natural Areas Program. Reconstruction may not take place within 250 feet of essential wildlife habitat, as defined in 12 M.R.S.A., Chapter 713, Subchapter V, Sections 7754 and 7755-A unless the applicant has obtained approval from the Maine Department of Inland Fisheries and Wildlife (*Ch. 10.27,O,1,c*);
  - D. The reconstructed docking structure must be in the same location on the shoreline as the existing structure, except that when possible, reconstructed structures not meeting the minimum property line setback must be relocated to meet the property line setback (*Ch. 10.27,O,1,d*);
  - E. must not interfere with, or reduce the opportunity for, existing navigation and recreational uses of the site (*Ch. 10.27,O,1,e*);
  - F. must not (along with any activities associated with the reconstruction) alter the hydrology of the waterbody, permanently interfere with natural flow, or cause impoundment of the waterbody in excess of the existing structure. Fish passage must not be blocked (*Ch. 10.27,O,1,f*);

- G. must be pile-supported where feasible. Construction methods, such as rock filled cribs, that place fill below the normal high water mark of tidal waters may only be allowed where the applicant demonstrates by a preponderance of evidence that non-fill construction techniques are not practicable (*Ch. 10.27,O,4,a*); and
- H. use preferred untreated lumber, although pressure-treated wood approved by the U.S. Environmental Protection Agency for dock construction may be used. Creosote or pentachlorophenol (PCP) treated wood must not be used (*Ch. 10.27,O,4,c*).

22. The facts are otherwise as represented in Wetlands Alteration Permit application WL 0024, subsequent amendment requests and supporting documents.

**Based upon the above Findings, the staff Concludes that:**

1. The proposed permanent docking structure meets the applicable requirements set forth in Section 10.25,P for a Tier 3 review. Specifically, the Applicant submitted an alternative analysis which demonstrated that no practicable alternative exists which would be less damaging to the environment while providing safe and reliable ingress and egress, free from risk, during use of the island. In addition, the Applicant has limited the amount of P-WL1 wetland altered to the minimum amount necessary by constructing the smallest pier possible for its intended use and its ocean/island location. Further, the site of the dock has been shown to be in an area free of ecologically sensitive resources, the dock has had no unreasonable impact on the wetland, and the reconstruction will comply with applicable water quality standards. Lastly, the Commission has waived the functional assessment and compensation. The permanent impacts have been limited to less than 500 square feet of P-WL1 Wetland Protection Subdistrict and any impacts to wetland functions and values from reconstructing this pre-Commission permanent docking structure will be insignificant.
2. The proposed permanent docking structure meets the applicable requirements set forth in Section 10.27,O. Specifically, the permanent dock is legally existing, will be reconstructed in the same location as the original structure, will not extend further into the waterbody than the existing dock, will not alter hydrology, natural flow or fish passage, is not located within significant wildlife habitat or with 250 feet of essential wildlife habitat, and does not impact rare plants and natural communities.

Further, the proposal will meet the construction standards in Section 10.27,O,4. The Applicant has shown that a temporary dock is infeasible and that while the structure does have one crib set upon ledge, no fill is being placed below the mean high water level.

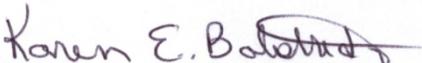
3. If carried out in compliance with the Conditions below, the proposal will meet the applicable requirements of the Commission's Standards and the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.

**Therefore, the staff Approves the amendment request of Beach Island Inc. with the following Conditions:**

1. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.
2. Appropriate and effective erosion control practices shall be utilized before, during and after construction of the project.
3. The proposal shall be constructed and maintained in conformance with the *Standards for Permanent Docking Structures*, Section 10.27, O of the Commission's Standards, revised September 01, 2013, a copy of which is attached.
4. The permittee shall secure and comply with all applicable licenses, permits, authorizations, and requirements of all federal, state, and local agencies including but not limited to: the Department of the Army, Army Corps of Engineers; the Department of Marine Resources; the Bureau of Parks and Lands, Submerged Lands Program; the Federal Emergency Management Agency; the Maine Department of Inland Fisheries and Wildlife; and U.S. Fish and Wildlife Service.
5. The use of untreated lumber is preferred, although pressure-treated wood approved by the U.S. Environmental Protection Agency for dock construction may be used. Creosote or pentachlorophenol (PCP) treated wood must not be used.
6. Once construction is complete, the permittee shall submit a self-certification form, notifying the Commission that all conditions of approval of this permit have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of this permit.
7. All Conditions of Wetlands Alteration Permit WL 0024 shall remain in effect except as altered by this amendment.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT BANGOR, MAINE, THIS 9<sup>TH</sup> DAY OF APRIL, 2015.

By:   
\_\_\_\_\_   
for Nicholas D. Livesay, Executive Director

Proposed Replacement Pier to replace existing 4' wide x 70' long pier. The new pier would use a single granite crib to support a single span walkway pier from shore. Granite would be secured to ledge with hot dipped galvanized 1" diameter steel pins. Beams on replacement pier would be glue laminated pressure treated southern yellow pine. Decking and railing would also be treated southern yellow pine. All fasteners and hardware would be stainless steel or hot dipped galvanized.

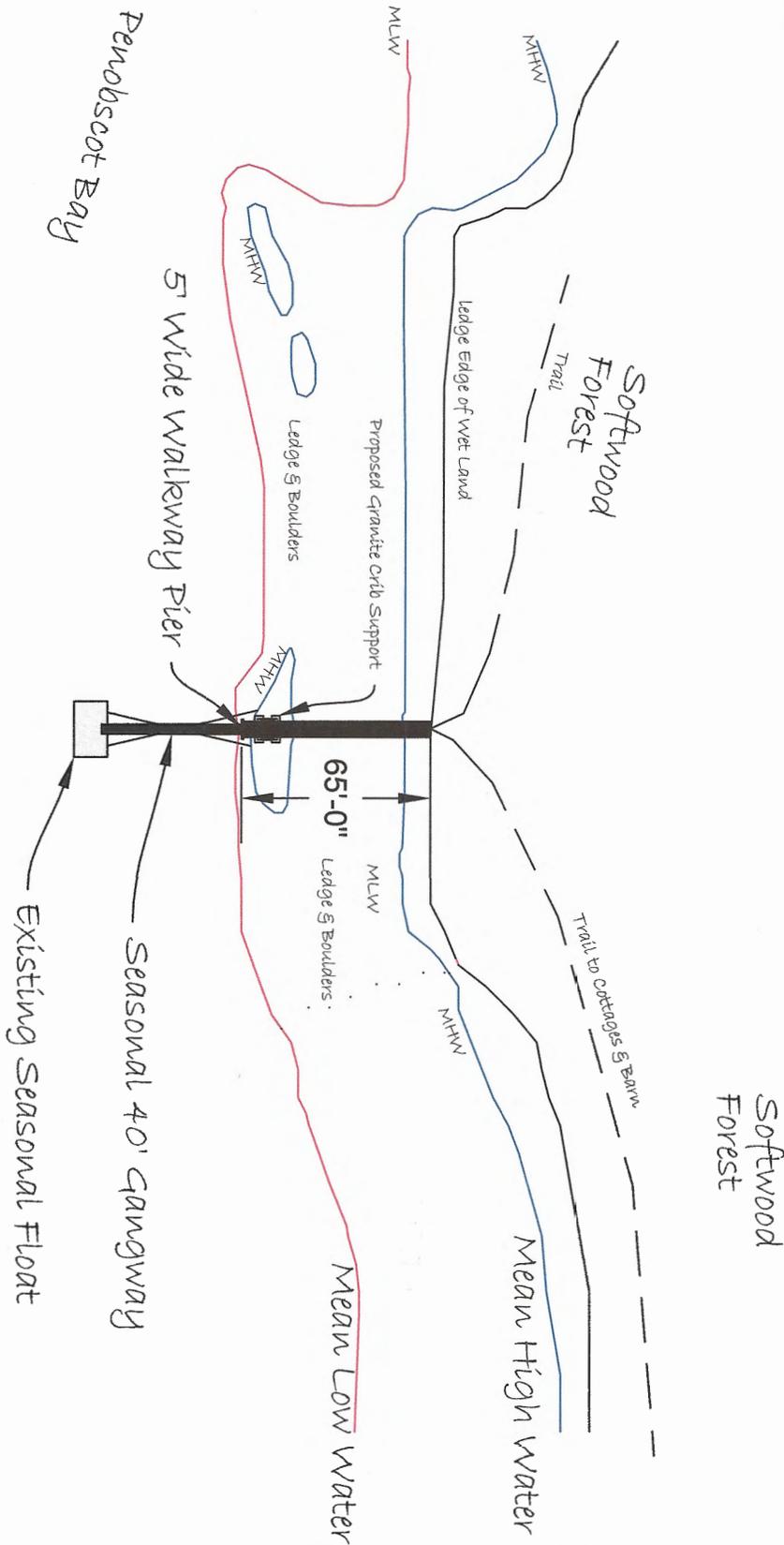


Exhibit E Site Plan "Plan View"

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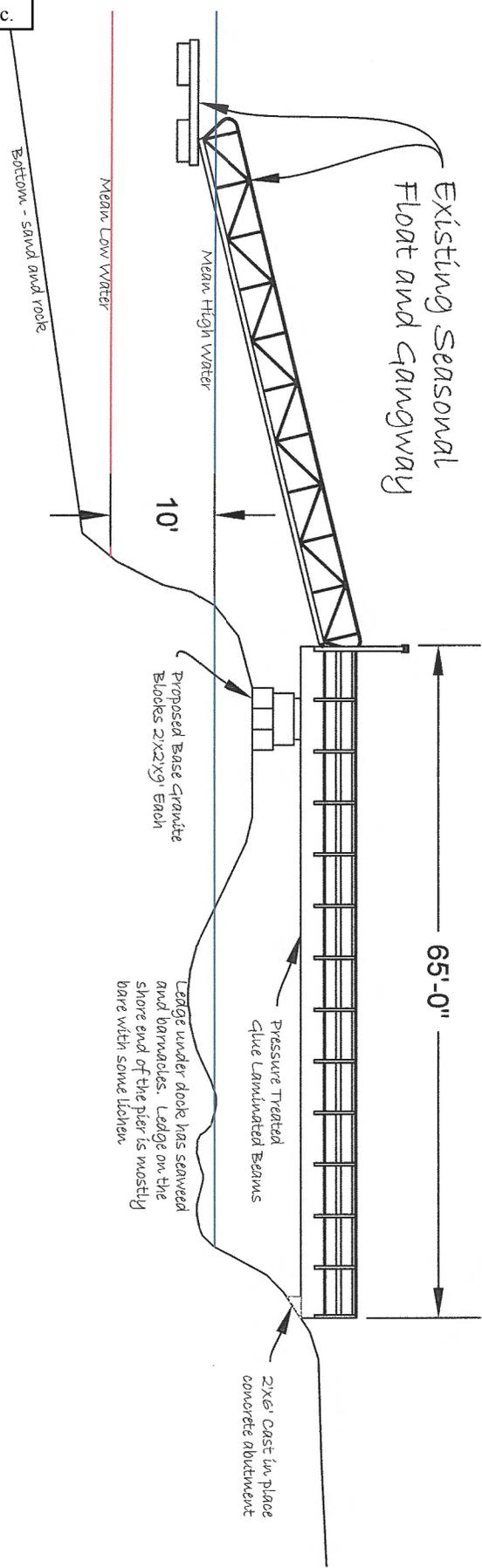
DRAWN BY:  
 Devin Prock  
 2793 Winslows Mills Rd  
 Waldoboro, ME 04572

AGENT:  
 Devin Prock

Proposed Replacement Pier  
 For: Beach Island Inc.

AT: Beach Island	STATE: MAINE	SHEET: 1 OF 3
CNTY: Hancock	DATE: 03.13.2015	SCALE: 1/64" = 1'-0"

EXHIBIT:  
 E-1

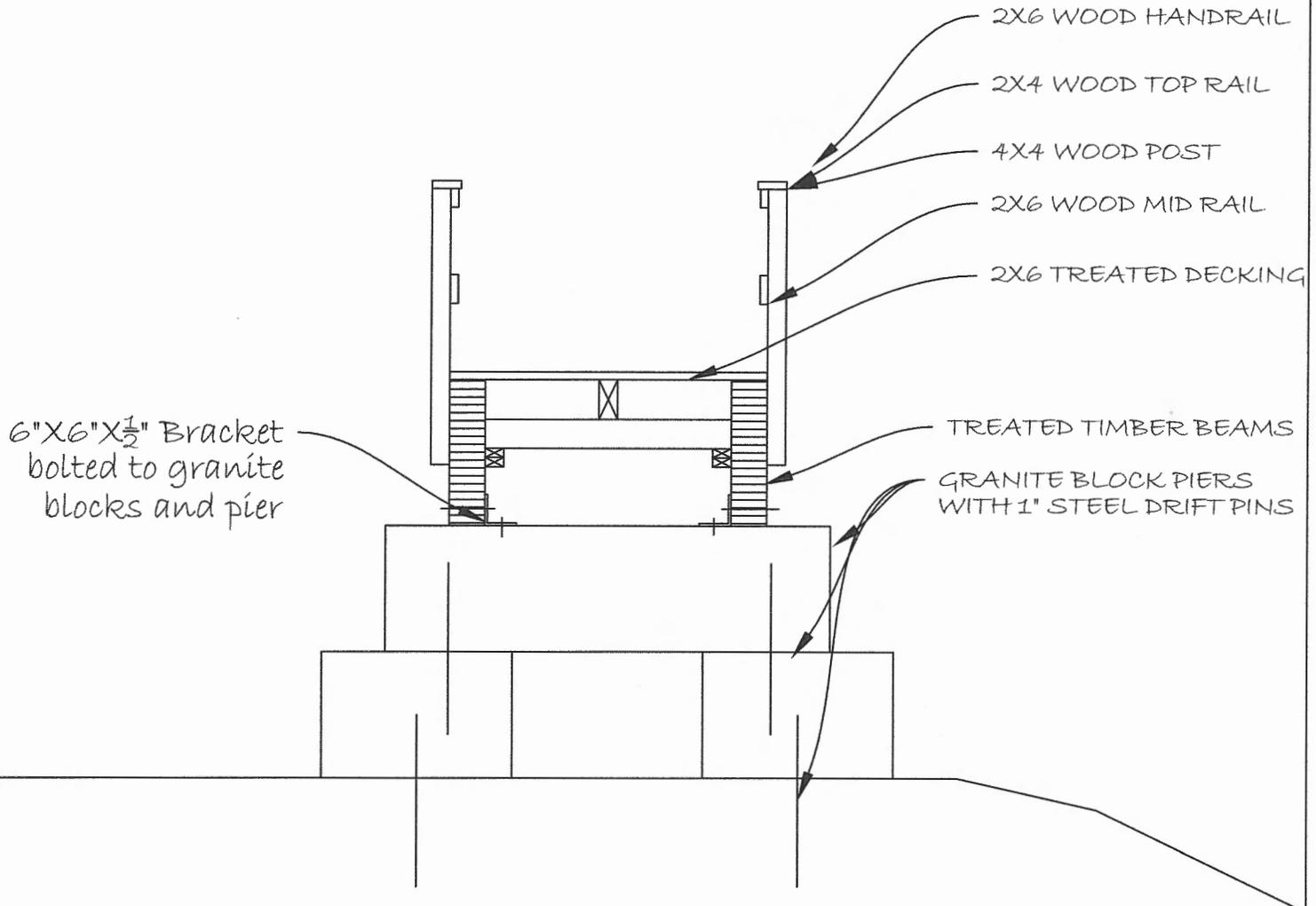


Access to pier is by trails through dense softwood forest.

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Exhibit E Site Plan "Elevation View"

DRAWN BY: Devin Prock 2793 Winslows Mills Rd Waldoboro, ME 04572	AGENT: Devin Prock	Proposed Replacement Pier For: Beach Island Inc.			EXHIBIT:  E-2
		AT: Beach Island	STATE: MAINE	SHEET: 2 OF 3	
		CNTY: Hancock	DATE: 03.13.2015	SCALE: 1/16" = 1'-0"	



6"X6"X $\frac{1}{2}$ " Bracket bolted to granite blocks and pier

2X6 WOOD HANDRAIL  
 2X4 WOOD TOP RAIL  
 4X4 WOOD POST  
 2X6 WOOD MID RAIL  
 2X6 TREATED DECKING  
 TREATED TIMBER BEAMS  
 GRANITE BLOCK PIERS WITH 1" STEEL DRIFT PINS

GENERAL NOTES

1. ALL STRUCTURE TIMBERS SHALL BE 1.0# CCA SOUTHERN YELLOW PINE
2. ALL HARDWARES FASTENERS SHALL BE HOT DIPPED GALVANIZED.
3. GRANITE BLOCKS WILL BE PINNED TO LEDGE

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LUPC - DOWNEAST

WALKWAY PIER SECTION

SHEET:

E-3

DRAWN BY: Devin Prock 2793 Winslows Mills Rd Waldoboro, ME 04572	AGENT: Devin Prock	Proposed Replacement Pier For: Beach Island Inc.		
		AT: Beach Island	STATE: MAINE	SHEET: 3 OF 3
		CNTY: HANCOCK	DATE: 03.13.2015	SCALE: $\frac{3}{8}$ " = 1'-0"

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**O. PERMANENT DOCKING STRUCTURES**

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Except as hereinafter provided, permanent docking structures not in conformance with the standards of this Section are prohibited.

To be granted a permit, permanent docking structure proposals must meet the General Criteria for Approval, Section 10.24, and the Criteria for Wetland Alterations, Section 10.25,P, in addition to any applicable requirements set forth in this Section. Permanent docking structures proposed in a (P-FP) Flood Prone Protection Subdistrict, or in an area identified on a Federal Emergency Management Agency (FEMA) Flood Hazard Boundary or Flood Insurance Rate Map, must also meet the applicable provisions of Section 10.25,T.

**1. Reconstruction of Permanent Docking Structures.**

- a.** A permit for reconstruction shall not be issued unless the permanent docking structure is legally existing. For docks larger than the size limitations for new or expanded docks in Section 10.27,O,2,b, the size of the reconstructed dock must be no more than 90 percent of the size of the original structure. The dock shall be reconstructed in the same location, except as provided for in Section 10.27,O,1,d. The reconstructed structure must not extend farther into the waterbody than the existing structure. Reconstruction of a permanent docking structure shall not include reconstruction of any other structure, such as a shed or boathouse, which is attached to the docking structure, except as provided for in a (D-MT) Maritime Development Subdistrict. Reconstructed docks must meet the construction standards in Section 10.27,O,4.
- b.** An application to obtain a permit to reconstruct a permanent docking structure must be completed and filed within two years of the date of damage, destruction, or removal; and a permit shall not be issued unless the docking structure was functional within a two year period immediately preceding the damage, destruction, or removal.
- c.** Reconstruction may not take place within significant wildlife habitat, as defined in Section 10.02 of the Commission's Land Use Districts and Standards, or impact rare plants and natural communities, as identified by the Maine Natural Areas Program. Reconstruction may not take place within 250 feet of essential wildlife habitat, as defined in 12 M.R.S.A., Chapter 713, Subchapter V, Sections 7754 and 7755-A unless the applicant has obtained approval from the Maine Department of Inland Fisheries and Wildlife.
- d.** The reconstructed docking structure must be in the same location on the shoreline as the existing structure, except that when possible, reconstructed structures not meeting the minimum property line setback must be relocated to meet the property line setback.
- e.** The reconstructed docking structure must not interfere with, or reduce the opportunity for, existing navigation and recreational uses of the site.
- f.** The reconstructed docking structure and activities associated with reconstruction must not alter the hydrology of the waterbody, permanently interfere with natural flow, or cause impoundment of the waterbody in excess of the existing structure. Fish passage must not be blocked.

- g. Activities associated with reconstruction of docking structures located in flowing waters must take place between July 15 and October 1. In standing waters, activities must be conducted during a period of low water, and for flowed lakes when the lake bottom is exposed.

## 2. New or Expanded Permanent Docking Structures.

### a. Special Exception Criteria for Permanent Docking Structures on Tidal and Non-Tidal Waters.

- (1) New or expanded permanent docking structures may be approved only where the applicant has demonstrated by substantial evidence that:
  - (a) The siting, location and size of such structure will not interfere with navigation; and
  - (b) In the case of a permanent docking structure to serve private, non-commercial activities, it is infeasible to utilize a temporary docking structure due to unusual or extraordinary physical conditions of the site, including, but not limited to, conditions that will not allow anchoring of a temporary structure or wind and wave action sufficient to preclude the use of a temporary structure. The burden of proof is on the applicant to demonstrate the necessary site conditions; or
  - (c) In the case of a permanent docking structure to serve public or institutional activities, a permanent docking structure is necessary for public safety and convenience; or
  - (d) In the case of a permanent docking structure to serve commercial or industrial activities, a permanent docking structure is reasonably necessary, and a temporary docking structure is not feasible or adequate to provide for public safety and convenience.

- (2) The special exception criteria of “no alternative site” shall be judged according to the following:

- (a) Proximity to a public or commercial dock.

For private, non-commercial docks on the mainland, the following shall constitute “an alternative site reasonably available to the applicant”:

- (i) An existing public or commercial dock located within 15 road miles or 5 miles by water of the applicant’s proposed development; or
- (ii) A proposed public or commercial dock located within 15 road miles or 5 miles by water of the applicant’s proposed development, provided such a facility is proposed for construction within 2 years of the date of the application.

For private, non-commercial docks located on an island, the following shall constitute “an alternative site reasonably available to the applicant”:

- (iii) An existing public or commercial dock located on the island where the applicant’s dock would be located; or

- (iv) A proposed public or commercial dock located on the island where the applicant's dock would be located, provided such a facility is proposed for construction within 2 years of the date of the application;
  - (b) Proximity to other means of access. For private, non-commercial docks, an existing sandy beach area where a small boat may be landed and pulled ashore shall constitute "an alternative site reasonably available to the applicant"; and
  - (c) Proximity to less ecologically sensitive areas. An alternative site that would result in the least environmental impact while still providing access shall constitute "an alternative site reasonably available to the applicant". Ecologically sensitive areas include, but are not limited to, areas defined as Significant Wildlife Habitat in Section 10.02; eel grass beds; salt marsh or emergent marsh vegetation; or other high value fisheries and wildlife habitat.
- b. Maximum Dimensions.** The new or expanded permanent docking structure must be no longer or wider than is necessary for the use intended, and meet the following:
- (1) **Tidal Waters.**
    - (a) Maximum length. A dock must not be constructed within a marked navigable channel, and
      - (i) A private, non-commercial dock must extend no farther than 100 feet beyond the mean lower low water level, or no farther than is necessary to achieve a draft of 5 feet of water at mean lower low water, whichever is less; or
      - (ii) A public or commercial dock must extend no farther than 100 feet beyond the mean lower low water level, or no farther than is necessary to achieve a draft of 8 feet of water at mean lower low water, whichever is less; and
    - (b) Maximum width. A private, non-commercial dock must be no wider than 8 feet.
  - (2) **Non-Tidal Waters.**
    - (a) Maximum length.
      - (i) A private, non-commercial dock must extend no farther than 50 feet beyond the normal high water mark; or
      - (ii) A public or commercial dock must extend no farther than 75 feet beyond the normal high water mark; and
    - (b) Maximum width. A private, non-commercial dock must be no wider than 8 feet.

**3. Normal Maintenance and Repair.**

- a. In accordance with Section 10.02, normal maintenance and repair of permanent docking structures does not require a permit.
- b. Except as provided for in a (D-MT) Maritime Development Subdistrict, boathouses and floatplane hangers may be maintained in accordance with the provisions for normal maintenance and repair in Section 10.02, but may not be reconstructed.

**4. Construction Standards.**

- a. New or expanded docking structures must be constructed using methods, such as pilings, that allow for free flowing water and fish passage beneath the dock. Reconstructed docking structures must be pile-supported where feasible. Construction methods, such as rock filled cribs, that place fill below the normal high water mark of tidal or non-tidal waters may only be allowed where the applicant demonstrates by a preponderance of evidence that non-fill construction techniques are not practicable;
- b. When located over eel grass beds, or salt or emergent marsh vegetation that is ten feet or greater in width, the deck height above the substrate must be at least equal to the dock's width;
- c. The use of untreated lumber is preferred, although pressure-treated wood approved by the U.S. Environmental Protection Agency for dock construction may be used. Chromated copper arsenate (CCA) treated wood must not be used in freshwater environments. Creosote or pentachlorophenol (PCP) treated wood must not be used.
- d. Uncured concrete must not be placed directly in the water. Concrete must be pre-cast and cured at least three weeks before placing it in the water or, where necessary, must be placed in forms and must cure at least one week before the forms are removed; and
- e. Except within (D-MT) Maritime Development Subdistricts, new or expanded permanent docks must not include or accommodate non-water dependent structures, including but not limited to, gazebos, screen houses, or other enclosed or semi-enclosed structures.