

March 4, 2021

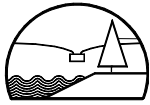
Freeport Coastal Waters Commission
Attn: Charles Tetreau -Harbor Master; Jeffrey Stenzel- Chairman
Town of Freeport
30 Main Street
Freeport, ME 04032-1209

Subject: **HYC Burwell Hoist and Float Improvements- Site Plan Update**
Dixon Wharf Road, South Freeport, Maine

Dear Charles, Jeff,

This letter and attachments serve to supplement and update the Coastal Waters Wharfing Out application that was submitted for waterfront improvements at the Harraseeket Yacht Club dated July 15, 2020. The proposed work was tabled at the December 9, 2020 meeting following a Commission request for additional information concerning Right, Title and Interest. The source of additional information and the basis for minor revisions to the application is outlined below.

1. "Boundary Retracement Survey" by Little River Land Survey; Inc for the Harraseeket Yacht Club dated Feb 5, 2021. This plan shows property boundaries and references the attached letter from Verrill Dana dated Dec 9, 2020 that addresses HYC Right, Title, and Interest.
2. "Topographic Survey" by Little River Land Survey; Inc for the Harraseeket Yacht Club dated Feb 2, 2021. This updates topographic and bathymetric information for the property.
3. Sheet C-1 (Rev E) Site Plan by Baker Design Consultants. This plan was submitted with the original Wharfing Out Application dated July 15, 2020. The tabulated Float Inventory and Gangway Inventory data have been updated in accordance with the new survey base mapping as noted.
 - a. Floats
No changes have been made to the footprint of the proposed hoist or the existing or proposed float system from that shown on Sheet C-1 that was included in the original application with the exception that the Float J run has been cut back from 2 No. 8x32 floats to 1 No. 8 x 22.5 float.
 - b. Mean Low Water (MLW) line
This is shown further landward on the plan to reflect additional soundings at the toe of the existing embankment. This changes the designation of Floats N and Floats K from intertidal to subtidal.



HYC Hoist and Float Improvements
Dixon Wharf Road, South Freeport, Maine

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Page 2 of 2

On behalf of the Harraseeket Yacht Club, please consider this supplemental information together with the original application for a wharfing Out permit at the Coastal Waters Commission meeting on March 10, 2021.

Please let me know if you have any questions regarding the information provided or need more information.

Sincerely,

BAKER DESIGN CONSULTANTS, Inc.

A handwritten signature in cursive script, appearing to read "Barney Baker". The signature is written in black ink and is positioned below the printed name.

Barney Baker, PE
HYC Volunteer
JN: 19-74

CC:

HYC Commodore Adam White
Nick Adams- Freeport Code Enforcement Officer
Caroline Pelletier- Freeport Town Planner
Karen Foust- Maine Submerged Lands Coordinator
Alison Sirois- Maine Department of Environmental Protection
LeeAnn Neale- Maine Project Office-Army Corps of Engineers

GORDON R. SMITH
COUNSEL
gsmith@verrill-law.com
207-253-4926

Verrill Dana LLP
One Portland Square
Portland, Maine 04101-4054
Main 207-774-4000

December 9, 2020

VIA EMAIL

Adam White, Commodore
Harraseeket Yacht Club
P.O. Box 82
Dixon Wharf Road
South Freeport, Maine 04078

Re: HYC Title, Right or Interest to Wharf Out

Dear Adam,

You have asked me to review the title, right or interest of the Harraseeket Yacht Club (“HYC”) to property over which HYC is proposing to install floats and a boat hoist. Specifically, I understand that the Freeport Coastal Waters Commission (“Commission”) has requested that HYC clarify its title, right or interest to wharf out under Article XIII of the Freeport Coastal Waters Ordinance (“CWO”). Accordingly, this letter addresses HYC’s administrative standing to apply for and obtain a wharfing out permit from the Commission.

1. Administrative Standing

The CWO does not itself impose a requirement that a permit applicant demonstrate title, right or interest. However, even in the absence of such an ordinance provision, courts have required an applicant to have administrative standing through title, right or interest in the land that is being regulated. *Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me. 1974). “An applicant for a license or permit to use property in certain ways must have the kind of relationship to the site that gives him a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license he seeks.” *Tomasino v. Town of Casco*, 2020 ME 96, ¶ 11.

The purpose of requiring administrative standing is “to prevent an applicant from wasting an administrative agency’s time by applying for a permit or license that he would have no legally protected right to use.” *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983). A municipal board’s determination of an applicant’s title, right or interest does not require, and is not the appropriate forum for, an adjudication of the applicant’s private property rights. *Tomasino*, 2020 ME 96, ¶ 8.

Title, right or interest sufficient to confer administrative standing can take various forms, including, for example, a fee simple interest conveyed by a recorded deed, a lease, an easement, a purchase and sale agreement, or a disputed property law claim. *See, e.g., Tomasino*, 2020 ME 96 (easement); *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40 (Me. 1983) (purchase and sale agreement); *Southridge Corp. v. Bd. of Env'tl. Prot.*, 655 A.2d 345 (Me. 1995) (adverse possession claim).

Thus, the Commission may require HYC to provide some form of title, right or interest in the intertidal and subtidal property on which HYC proposes to construct the floats and hoist described in its application.

2. HYC Title, Right or Interest by Deed

HYC purchased its property in 1955. The property description in HYC's relevant deed (Cumberland County Book 2246, Page 335) describes HYC's property sideline as running "to the high water mark" and HYC's seaward property boundary as "running along the high water mark." This language in a deed will typically exclude ownership of the adjacent intertidal zone. Thus, on its face, HYC's deed does not confer title, right or interest to install structures below the high water mark. A thorough review of HYC's chain of title could influence the interpretation of this property description, however I think that effort is unnecessary for the purpose of demonstrating administrative standing.

3. HYC Title, Right or Interest by Adverse Possession

I understand the following facts regarding HYC's historical use and occupation of its property. In approximately 1957, HYC installed a ramp, floats and piles to provide access to the water from its property. This early construction included some intertidal fill, a wooden pier in approximately the same footprint as the pier that is in place today, and a seaward face float over subtidal land that effectively enclosed the HYC intertidal area. In the late 1960's, a finger of fill was added to the north side of the original pier. In 1971, the upland was extended seaward, creating the area where HYC's parking area now sits, by placement of fill in the intertidal zone pursuant to a permit issued by the U.S. Army Corps of Engineers. This manmade upland now occupies the majority of what used to be the intertidal land adjacent to HYC's upland property, extending almost to the low water mark. In 1980, HYC replaced the original wooden pier with the pier that is currently in place. In the 1990's, the interior subtidal floats that extend north and south of the pier were added.

I understand that during this time, the parking area, pier, floats and surrounding waters have been used exclusively by HYC members and their guests, and that HYC has long claimed ownership of this area.

Based on the installation, maintenance and use of these structures, it appears that HYC has a prima facie claim of adverse possession to the intertidal area. *See Harvey v. Furrow*, 2014 ME 149, ¶ 11 ("To succeed in a claim of adverse possession, a claimant must demonstrate that his or her use of the property was (1) actual, (2) open, (3) visible, (4) notorious, (5) hostile, (6) under a claim of right, (7) continuous, and (8) exclusive for over twenty years."); *see also Colquhoun v. Webber*, 684 A.2d 405, 410 (Me. 1996) ("[F]ee title vests in the adverse possessor

December 9, 2020

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at the end of the adverse possession period and no judicial action is necessary to effectuate the transfer.”).

Where such a claim exists, it constitutes the necessary title, right or interest to confer administrative standing on a permit applicant. *Southridge Corp.*, 655 A.2d 345 (Me. 1995). In *Southridge*, the mere long-term existence of a septic system on a disputed parcel of land was “sufficient evidence of interest to support the administrative determination that [the applicant] had standing to seek the after-the-fact permit.” 655 A.2d at 348. The fact that an applicant’s adverse possession claim might ultimately prove unsuccessful “neither deprives [the applicant] of their current interest in the land nor their administrative standing.” *Id.* The long-term existence of HYC’s parking area, pier and floats can be viewed as analogous to the septic system that was sufficient evidence of interest in *Southridge*.

Thus, under relevant Maine law and the facts that you have provided to me, the Commission is authorized to find that HYC has sufficient title, right and interest in the intertidal area where HYC proposes to install the floats and hoist.

4. HYC Title, Right or Interest by Submerged Lands Lease

For the two additional floats HYC seeks to install below the low water mark on the north side of the pier, HYC’s title, right or interest is based on a submerged lands lease issued in 2010 by the Maine Bureau of Parks and Land, which has been provided to the Commission. I understand that the proposed floats are within the ‘shadow’ of the seaward HYC face dock that defines the limits of the 2010 lease. I also understand that HYC is coordinating with the Maine Bureau of Parks and Lands to modify to the existing lease to include the additional proposed subtidal floats.


If you have any questions, please let me know.

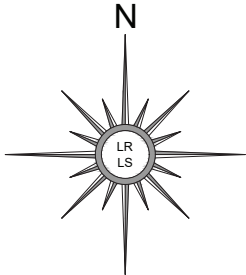
Sincerely,



Gordon R. Smith

cc: Barney Baker

<h1 style="text-align: center;">HARRASEEKEET YACHT CLUB</h1> <p style="text-align: center;">PO BOX 82, DIXON WHARF ROAD SOUTH FREEPORT, MAINE 04078</p>	
<p>RECORD OWNER</p>	
<p>SITE</p> <p style="text-align: center;">5 DIXON WHARF ROAD FREEPORT, MAINE</p>	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 60%;"> <h1 style="text-align: center;">LITTLE RIVER</h1>  <p style="text-align: center;">LAND SURVEYING, INC.</p> <p style="text-align: center;">ME PLS #2376 NH LLS #957</p> <p style="text-align: center;">PO BOX 332, LISBON FALLS MAINE 04252 (207) 841-0056</p> </div> <div style="width: 35%;"> <p>DATE: JANUARY 18, 2021 REVISED: FEB. 5, 2021</p> <hr/> <p>SCALE: 1" = 20'</p> <hr/> <p>PROJECT: 20-119 DRAWING: 20-119</p> <hr/> <p>DRAWN BY: TJC CHECKED BY: JJC</p> </div> </div>	



SOURCE
SPCS - 1983 MAINE WEST

LEGEND

- RIGHT OF WAY
- PROPERTY LINE
- ABUTTING PROPERTY LINE
- HISTORICAL RECORD LINE
- BUILDING
- PAVEMENT
- GRAVEL
- UTILITY POLE AND ANCHOR
- WATER VALVE
- SANITARY SEWER STRUCTURE
- ELECTRICAL STRUCTURE
- STORMWATER STRUCTURE
- LIGHT POLE
- FLAG POLE
- LANDSCAPED BED
- RIP RAP
- STONE PATIO
- ROCKWEED
- CONTOURS - MAJOR
- CONTOURS - MINOR
- EDGE OF VEGETATION



JERAMIAH J. RAITT PLS #2376

20 10 0 20 40 60
SCALE IN FEET

GENERAL NOTES

- 1) RECORD OWNER: HARRASEEKET YACHT CLUB, SEE DEED BOOK 2246, PAGE 335 DATED SEPTEMBER 6, 1955. FOR INFORMATION RELATED TO BOUNDARY LINES SEE A PLAN ENTITLED "RETRACEMENT SURVEY, RECORD OWNER HARRASEEKET YACHT CLUB" OF NEAR OR EVEN DATE HERewith BY THIS SURVEYOR. ALL BOOK AND PAGE NUMBERS ARE TO THE CUMBERLAND COUNTY REGISTRY OF DEEDS.
- 2) BEARINGS ARE REFERENCED TO THE STATE PLANE COORDINATE SYSTEM OF 1983, MAINE WEST ZONE, AS DETERMINED BY STATIC GNSS OBSERVATION WITH POST PROCESSING BY THE NATIONAL GEODETIC SURVEY ONLINE POSITIONING USER SERVICE.
- 3) ELEVATIONS ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) AS DETERMINED BY STATIC GNSS OBSERVATION WITH POST PROCESSING BY THE NATIONAL GEODETIC SURVEY ONLINE POSITIONING USER SERVICE.
- 4) A PORTION OF THE PROJECT AREA IS SHOWN IN A SPECIAL FLOOD HAZARD AREA, ZONE AS, (AREAS OF 100-YEAR FLOOD, BASE FLOOD ELEVATIONS AND FLOOD HAZARD FACTORS DETERMINED) AS DEPICTED ON THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF FREEPORT, MAINE WITH COMMUNITY-PANEL NUMBER 230046 0014 B AND AN EFFECTIVE DATE OF JANUARY 17, 1985. THE BASE FLOOD ELEVATION OF 11 FEET IN THE NGVD29 DATUM SHOWN THEREON IS EFFECTIVELY THE SAME AS AN ELEVATION OF 10.35 FEET IN THE NAVD88 DATUM. THAT ELEVATION IS DEPICTED.
- 5) A PORTION OF THE PROJECT AREA IS SHOWN IN SPECIAL FLOOD HAZARD AREAS, ZONES AE AND VE, AS DEPICTED ON THE PRELIMINARY FLOOD INSURANCE RATE MAP FOR CUMBERLAND COUNTY WITH MAP NUMBER 2300500559F AND A PRELIMINARY DATE OF APRIL 14, 2017. THE BASE FLOOD ELEVATION OF 14 FEET IN NAVD88 IS SHOWN.
- 6) THE HIGHEST ANNUAL TIDE ELEVATION (HAT) OF 6.5 FEET WAS TAKEN FROM TIDE TABLES PUBLISHED ONLINE BY THE MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR SOUTH FREEPORT, MAINE.
- 7) THE MEAN HIGHER HIGH WATER (MHHW) ELEVATION OF 4.85 FEET, THE MEAN HIGH WATER (MHW) ELEVATION OF 4.4 FEET, THE MEAN LOW WATER (MLW) ELEVATION OF -4.8 FEET AND THE MEAN LOWER LOW WATER (MLLW) ELEVATION OF -5.15 FEET (ALL NAVD88) WERE DERIVED FROM THE VERTICAL DATUM TRANSFORMATION UTILITY DEVELOPED JOINTLY BY NOAA'S NATIONAL GEODETIC SURVEY, OFFICE OF COAST SURVEY AND CENTER FOR OPERATIONAL OCEANOGRAPHIC PRODUCTS AND SERVICES.

TOPOGRAGHC SURVEY

HARRASEEKET YACHT CLUB

PO BOX 82, DIXON WHARF ROAD
SOUTH FREEPORT, MAINE 04078

SITE

5 DIXON WHARF ROAD
FREEPORT, MAINE

LITTLE RIVER

LAND SURVEYING, INC.
ME PLS #2376 NH LLS #957
PO BOX 332, LISBON FALLS MAINE 04252
(207) 841-0056

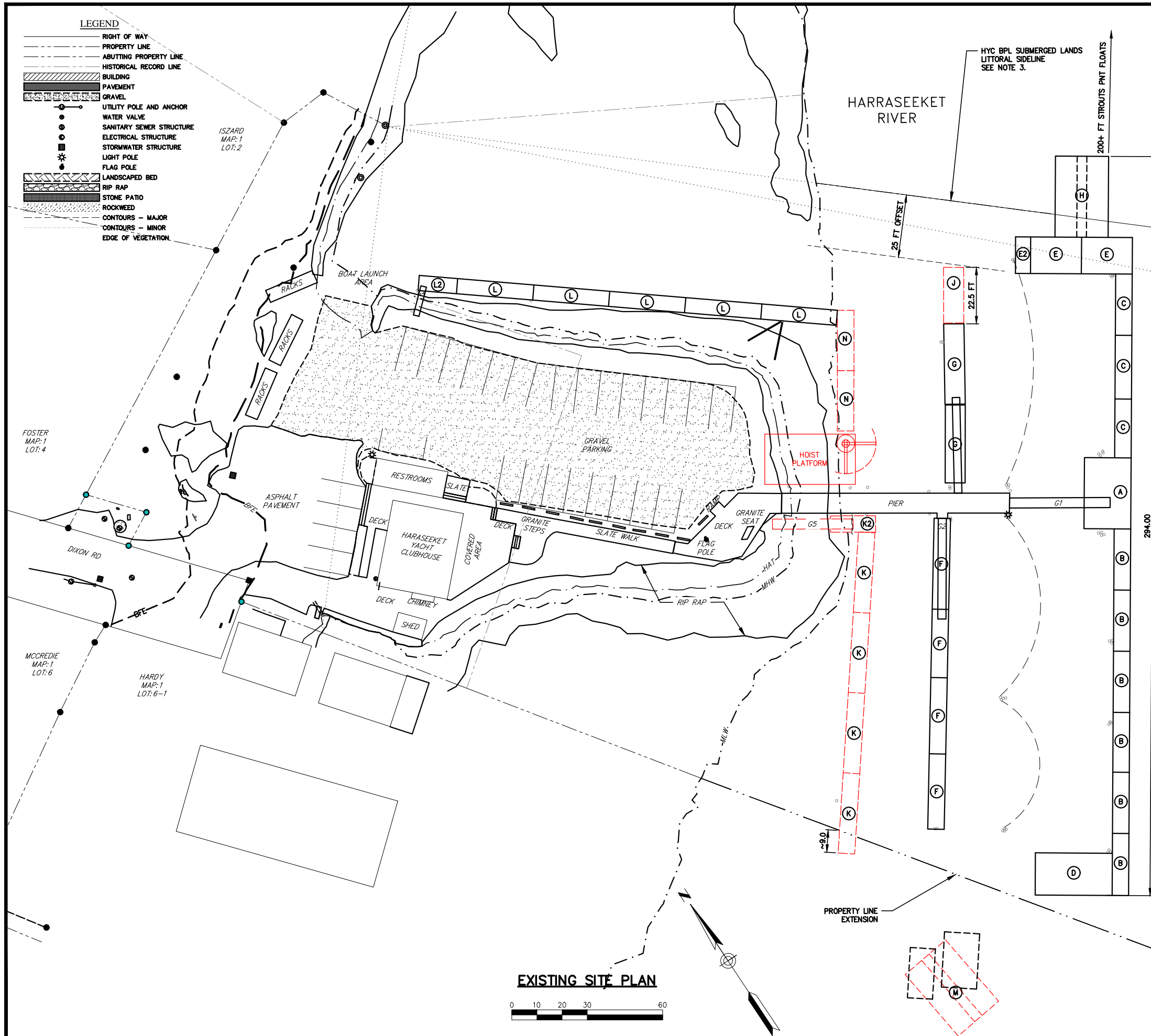
DATE: JANUARY 18, 2021
REVISED: FEB. 2, 2021

SCALE:
1" = 20'

PROJECT: 20-119
DRAWING: 20-119

DRAWN BY: TJC
CHECKED BY: JUR

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PROJECT ELEVATIONS (BY DATUM)			
ELEVATION	CHART (ft)	NAVD88 (ft)	Reference Notes
FEMABFE (Prelim 2017)	19.15	14.00	FEMA Zone VE (EL 14.0 NAVD88)
Clubhouse Finish Floor EL	15.70	10.55	2021 Retracement Survey
FEMABFE (Effective 1985)	15.50	10.35	FEMA Zone A5 (EL 11.0 NGVD29)
Existing Timber Pier Deck EL	14.70	9.55	2003 Topo Survey
Highest Annual Tide	11.65	6.50	2018 MEDEP Predictions
MHHW	10.00	4.85	BASED ON TIDAL BM "PORTLAND"
MHW	9.55	4.40	
NAVD88	5.15	0.00	
NGVD29	4.52	-0.75	
MLW	0.34	-4.81	
MLLW	0.00	-5.15	

GANGWAY INVENTORY			
Location	Submerged Lands Projection		
	Length	Width	Area SF
Beyond MLW			
G1 40' Gangway from Pier to Float A	29.00	4	116
G2 40' Gangway from Pier to Float F	4.00	3.33	13
G3 40' Gangway from Pier to Float G	4.00	3.33	13
Total			143
Intertidal Footprint (nic Float Footprint)			
G4 12' Ramp from Parking Lot to Float L	2.50	2.25	6
G5 32' Unconnected	21.00	4.00	84
Total			90

2021 FLOAT INVENTORY				
Location	Total			
	Quantity	Length	Width	Area SF
Beyond MLLW				
A Main	1	28.25	18.58	524.9
B Front West	6	24.33	6.58	960.7
C Front East	3	24.50	6.58	483.6
D West End	1	30.50	16.75	510.9
E East End	2	20.25	14.50	587.3
E2 East End	1	6.00	14.50	87.0
F Inside West	4	31.00	6.58	815.9
G Inside East	2	32.17	8.00	514.7
H Sailing Dinghy	1	32.25	21.17	682.7
J Inside East	1	22.50	8.00	180.0
K Inside West	4	32.00	6.50	832.0
K2 Gs Landing	1	13.50	6.50	87.8
N Inside East	2	24.00	6.50	312.0
M Sailing Dinghy	1	32.25	21.17	682.7
Fixed Pier beyond Low Water		67.00	8.00	536.0
Hoist Platform beyond Low Water		6.25	20.00	125.0
Submerged Lands Total				7923.1
Inter Tidal				
L2 G+ Landing	1	30.33	6.00	182.0
L Back East	5	30.33	6.00	909.9
K2 Gs Landing	1	4.50	6.50	29.3
Fixed Pier Inter Tidal		16.00	8.00	128.0
Hoist Platform Inter Tidal		29.75	20.00	595.0
Intertidal Total				1662.2
Total Area Overall				9585.2

- NOTES
1. BASE MAPPING TAKEN FROM BOUNDARY RETRACEMENT SURVEY FOR HARRASEEKET YACHT CLUB BY LITTLE RIVER LAND SURVEYING, INC. DATED 5FEB21.
 2. ALL ELEVATIONS ARE TO NAVD88 UNLESS OTHERWISE NOTED.
 3. THE NORTHERN LITTORAL LINE IS DETERMINED USING THE INTERSECTION OF UPLAND PROPERTY LINES WITH HIGH-WATER IN ACCORDANCE WITH MAINE SUBMERGED LANDS RULES GUIDANCE WITHOUT CONSIDERATION OF THE EXTENSIVE HISTORY OF SHOREFRONT ALTERATION AT THE HYC PROPERTY.

NOT FOR CONSTRUCTION

BAKER DESIGN CONSULTANTS
Civil, Marine, and Structural Engineering
7 Spruce Road • Freeport • Maine • 04032 • 207-846-9724 • info@bakerdesignconsultants.com

DESIGNED BY: BUB

DRAWN BY: JLD

CHECKED BY: BUB

SCALE: AS SHOWN

SITE PLAN

HARRASEEKET YACHT CLUB

BURWELL HOIST

FREEPORT, MAINE

SHEET TITLE:

DATE: FEB 2020

CONTRACT NO.: 19-74

SHEET NO.: C-1

REV.: E