

Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

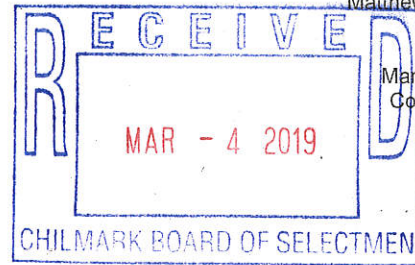
# Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

MAR 01 2019



Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

Brian Vanderhoop  
c/o Kara E. Shemeth  
Schofield, Barbini & Hoehn, Inc.  
P.O. Box 339  
Vineyard Haven, MA 02568

**RE: ISSUANCE OF CHAPTER 91 WATERWAYS LICENSE**  
**Waterways License Application No. W18-5196, License No. DRAFT**  
**Brian Vanderhoop, Menemsha Harbor, Menemsha Lease Lot "F" (1 Boathouse Road)**  
**Town of Aquinnah and Town of Chilmark**

Dear Sir/Madam,

The Department of Environmental Protection has tentatively approved the referenced License Application. Pursuant to 310 CMR 9.14(2)(b) a Draft Waterways License is enclosed with revised plans. A copy is also being forwarded to the following parties as required by 310 CMR 9.14(6)(d).

**Chilmark Board of Selectmen**  
**Chilmark Planning Board**  
**Chilmark Harbormaster**  
**Debbie Packer**

A valid Waterways License shall be issued twenty-one (21) days from the date of issuance of this Draft License, if the Department has not received a written appeal. Information and procedures for appeal of this Draft license are described below.

Notice of Appeal Rights:

A) Appeal Rights and Time Limits

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, including no less than five (5) residing in the municipality in which the proposed project is located, and who have submitted written comments within the public comment period; (d) the municipal official in the affected

**Waterways License Application No. W18-5196, License No. DRAFT****Brian Vanderhoop, Menemsha Lease Lot "F" (1 Boathouse Road), Menemsha Harbor, Town of Aquinnah and Town of Chilmark**

municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) CZM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

Case Administrator  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108.

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the DEP at:

Department of Environmental Protection  
Wetlands and Waterways Program  
20 Riverside Drive  
Lakeville, MA 02347

**B) Contents of Hearing Request**

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) the DEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request, and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "person aggrieved" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the DEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

**C) Filing Fee and Address**

A copy of the Notice of Claim along with a DEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox

Waterways License Application No. W18-5196, License No. DRAFT

Brian Vanderhoop, Menemsha Lease Lot "F" (1 Boathouse Road), Menemsha Harbor, Town of Aquinnah and Town of Chilmark

P.O. Box 4062  
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

If you have any questions concerning this DRAFT license, please contact Carlos T. B. Fragata at (508) 946 - 2873.

Sincerely,



David E. Hill, Environmental Engineer  
Wetlands and Waterways Program

cc: w/enc. Ben Lynch, Waterways Section Chief, DEP Boston  
Town of Chilmark Harbormaster (Commentor)  
Town of Chilmark Board of Selectmen (Commentor)  
Town of Chilmark Planning Board (Commentor)  
Debbie Packer (Commentor)

# The Commonwealth of Massachusetts



No. DRAFT

MAR 01 2019

**Whereas, Brian Vanderhoop**

of -- Aquinnah -- in the County of -- Dukes -- and Commonwealth aforesaid, has applied to the Department of Environmental Protection for a license to -- maintain an existing building, pier and piles for water dependent commercial uses --

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 Aquinnah and Town of Chilmark. --

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 --

Brian Vanderhoop --, 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 an existing building, pier and piles for water dependent commercial uses --

in and over the waters of -- Menemsha Harbor -- at Menemsha Lease Lot "F" (1 Boathouse Road) --, in the -- Towns -- of -- Aquinnah and Chilmark -- and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. DRAFT (2 sheet(s)).

The structures hereby authorized shall be limited to the following uses: docking and boating access to navigable waters for commercial fishermen and storage of fishing gear and other water dependent purposes associated with commercial fishing.

This license supersedes Interim Approval No. 10877, issued on December 9, 2005 to Lynn and Susan Murphy, and License No. 13770, issued on November 19, 2014 to Brian Vanderhoop.

This license will expire thirty (30) years from the date of License issuance. By written request of the licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in the original license.

#### SPECIAL WATERWAYS CONDITIONS:

1. In accordance with any license condition, easement, or other public right of lateral passage that exists on the subject property lying between the high and low watermarks, the Licensee shall allow the public in the exercise of such rights to pass freely around all structures within such intertidal area. Accordingly, the Licensee shall place and maintain, in good repair, a public access sign on both the northerly/southerly sides of the building authorized herein, adjacent to the mean high water shoreline. Said signs shall be designed in accordance with the signage specifications provided by the Department, attached hereto, and be posted **within sixty (60) days of License issuance**. Nothing in this condition shall be construed as preventing the Licensee from excluding the public from portions of said structure(s) or property not intended for lateral passage.
2. In partial compensation for private use of structures on tidelands of the Commonwealth, which interferes with the rights of the public to use such lands, the Licensee shall allow the public to pass on foot, for any purpose and from dawn to dusk, within the area of the subject property lying seaward of the high water mark. This condition shall not be construed to prevent the Licensee from taking reasonable measures to discourage unlawful activities by users of the area(s) intended for public passage, including but not limited to trespassing on the adjacent private areas and deposit of refuse of any kind or nature in the water or on the shore. Further, the exercise by the public of free on-foot passage in accordance with this condition shall be considered a permitted use to which the limited liability provisions of M.G.L. c.21, s.17c apply.
3. If, at any time in the future, a determination is made that the existing spiles (free standing piles) within Chilmark boundaries authorized herein pose(s) a substantial threat to the environment, natural resources, navigation and/or public rights, the Department hereby reserves the right to require complete or partial removal of said spiles. Such removal shall take place upon written notice from the Department.
4. Vessels shall be moored such that they do not become grounded at any tide.
5. No dredging (including, but not limited to effects of prop wash) is permitted herein.
6. All work authorized herein shall be completed within five (5) years of the date of license issuance. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Applicant submits to the Department, thirty (30) days prior to the expiration of said construction period, a written request to extend the period and provides an adequate justification for said extension.
7. Within sixty (60) days of completion of the licensed project, the Licensee shall request in writing that the Department issue a Certificate of Compliance in accordance with 310 CMR 9.19. The request shall be accompanied by a certification by a registered professional engineer licensed in the Commonwealth that the project was completed in accordance with the License.

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Duplicate of said plan, number DRAFT 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 express 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, §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 Wetlands and Waterways.
  9. This License authorizes structure(s) and/or fill on:
    - Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.
    - Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.
    - Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.
    - Navigable River and Streams. The Licensee shall not restrict the public's right to use and pass freely, for any lawful purpose, in the Waterways.
- No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this license.
10. Unless otherwise expressly provided by this license, the licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said -- Brian Vanderhoop -- 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 said Department ( 1 cubic yard(s) = \$2.00).

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

This License shall be void unless the same and the accompanying plan are recorded within 60 days from the date hereof, in the Registry of Deeds for the County of Dukes.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand nineteen.

Commissioner \_\_\_\_\_

Department  
of Environmental  
Protection

Program Chief \_\_\_\_\_

THE COMMONWEALTH OF MASSACHUSETTS

This license is approved in consideration of the payment into the treasury of the Commonwealth by the said -- Brian Vanderhoop --

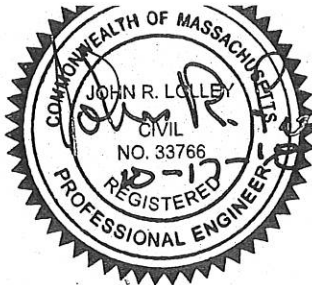
of the further sum of -- two thousand eight hundred eight dollars and zero cents ( \$2,808.00) --

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

BOSTON,

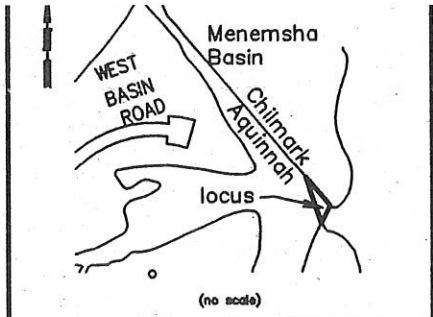
Approved by the Governor.

\_\_\_\_\_  
Governor



graphic scale—feet

Plan View  
1" = 20'

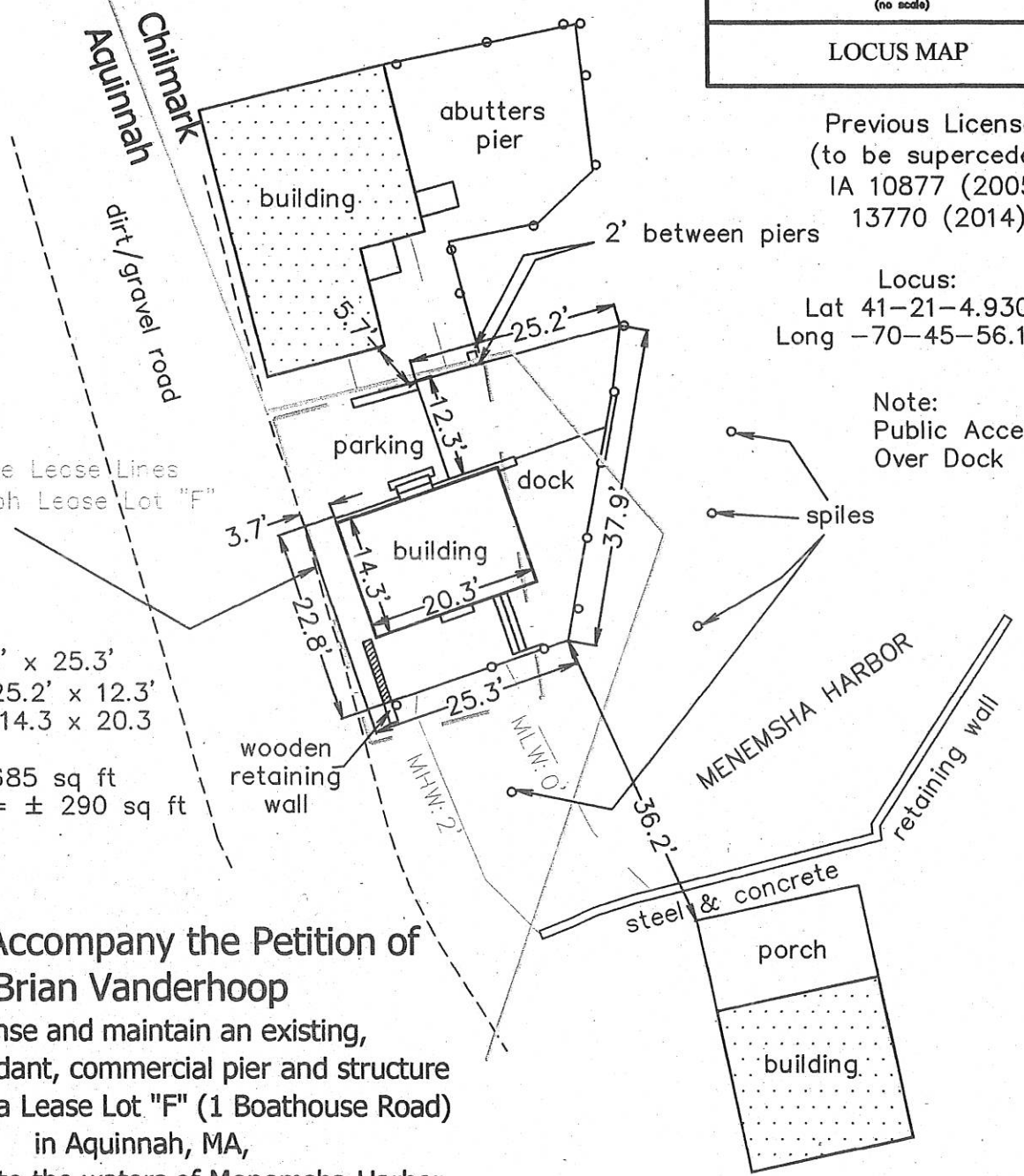


LOCUS MAP

Previous Licenses  
(to be superceded):  
IA 10877 (2005)  
13770 (2014)

Locus:  
Lat 41-21-4.930  
Long -70-45-56.120

Note:  
Public Access  
Over Dock



Approximate Lease Lines  
for Aquinnah Lease Lot "F"

Pier:  
3.7' x 22.8' x 25.3'  
x 37.9' x 25.2' x 12.3'  
Structure: 14.3 x 20.3

Pier = ± 685 sq ft  
Structure = ± 290 sq ft

**Plan to Accompany the Petition of  
Brian Vanderhoop**  
to license and maintain an existing,  
water-dependant, commercial pier and structure  
on Menemsha Lease Lot "F" (1 Boathouse Road)  
in Aquinnah, MA,  
extending into the waters of Menemsha Harbor  
in Chilmark, MA

SCALE: 1" = 20' DATE: April 24, 2018  
revised September 13, 2018

SCHOFIELD, BARBINI & HOEHN, INC.  
LAND SURVEYING CIVIL ENGINEERING

12 SURVEYOR'S LANE, Box 339  
VINEYARD HAVEN, MASS. 02568  
508-693-2781  
KSHEMETH@SBHINC.NET

SHEET 1 OF 2 SHEETS JOB. NO. MV-11317

LICENSE PLAN NO. **DRAFT**  
Approved by Department of Environmental Protection  
of Massachusetts  
MAR 01 2019

W18-5196

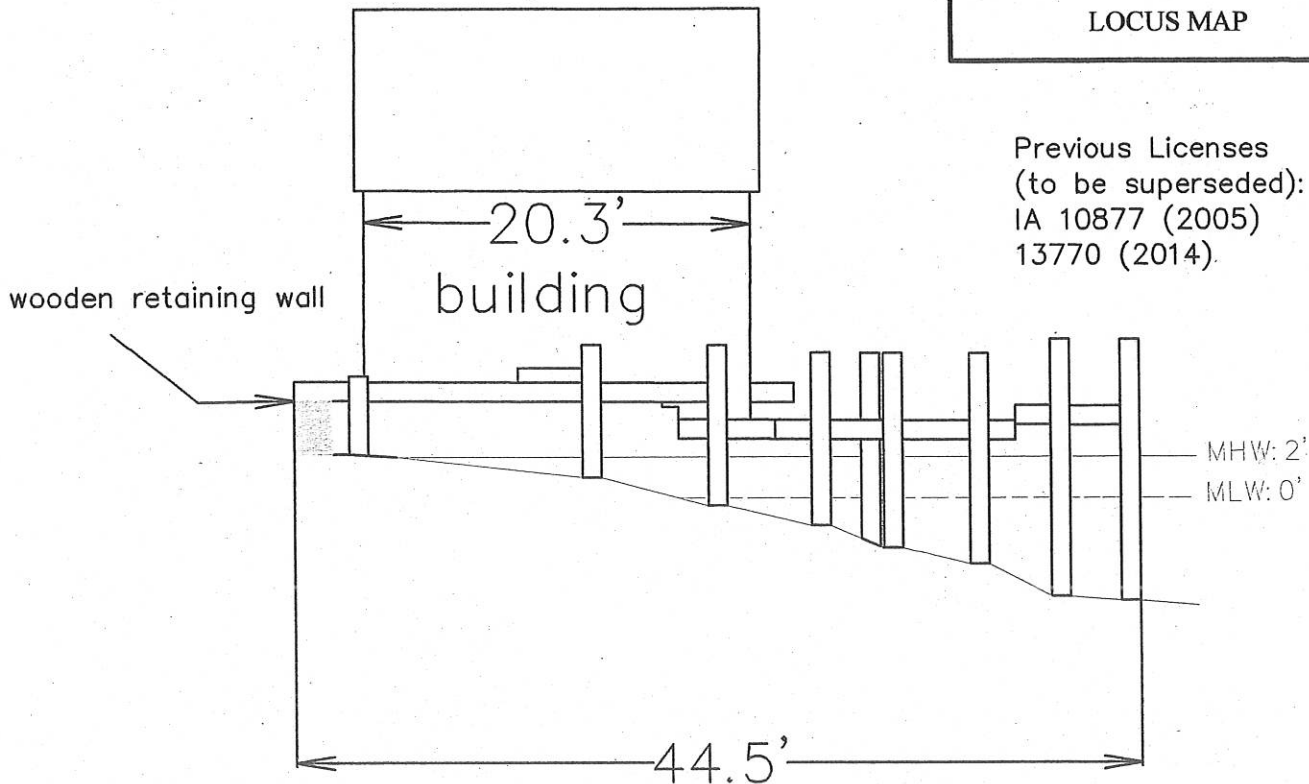
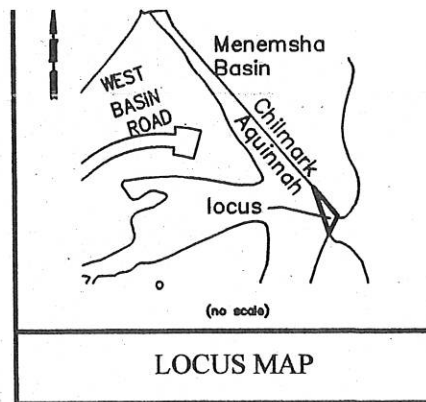
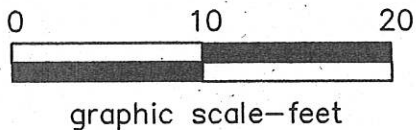


Notes:  
Public Access  
Over Dock

.60 Cubic Yards of  
Displacement between  
MHW and MLW

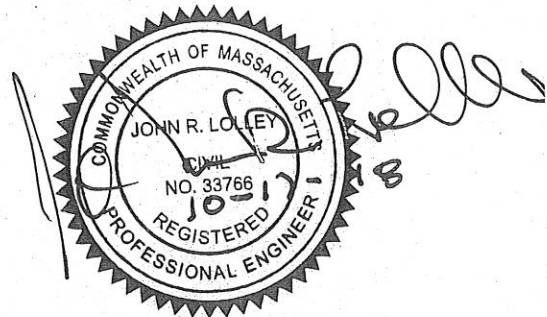
### Section View

1" = 10'

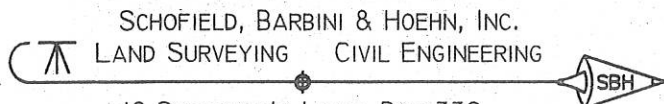


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SCALE: 1" = 10' DATE: April 24, 2018  
Revised September 13, 2018



12 SURVEYOR'S LANE, Box 339  
VINEYARD HAVEN, MASS. 02568  
508-693-2781  
KSHEMETH@SBHINC.NET

SHEET 2 OF 2 SHEETS JOB. NO. MV-11317

**DRAFT**

LICENSE PLAN NO.  
Approved by Department of Environmental Protection  
Date: