

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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In the Matter of the Application of

RIVERKEEPER, INC., THE CARY INSTITUTE OF  
ECOSYSTEM STUDIES, INC., JOHN MYLOD, ANTHONY  
OLHEISER, EILEEN HAYDEN and HOLLY WAHLBERG,

Petitioners,

for a judgment pursuant to Article 78 and  
Section 3001 of the Civil Practice Law and Rules,

Index No. 2011-4208

-against-

**Stipulation and  
Order Discontinuing  
Proceeding**

The CITY OF POUGHKEEPSIE, a municipal corporation,  
the COMMON COUNCIL OF THE CITY OF POUGHKEEPSIE,  
JOHN TKAZYIK, in his capacity as Mayor of the City of  
Poughkeepsie, and SEAWAY NAVIGATION AND TOURS,  
LTD., a domestic corporation,

Respondents.  
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This Stipulation is executed this 5<sup>th</sup> day of September, 2012, between Petitioners Riverkeeper, Inc., Cary Institute of Ecosystem Studies, Inc., John Mylod, Anthony Olheiser, Eileen Hayden and Holly Wahlberg (collectively, "Petitioners") and Respondents City of Poughkeepsie, a municipal corporation ("City"), the Common Council of the City of Poughkeepsie, John Tkazyik, in his capacity as Mayor of the City of Poughkeepsie (collectively "Municipal Respondents") and Seaway Navigation and Tours, Ltd., a domestic corporation ("Seaway").

WHEREAS, Petitioners commenced this hybrid Article 78 proceeding and declaratory judgment action by filing a verified petition/complaint ("Petition") on June 29, 2011, alleging violations by Respondents of the State Environmental Quality Review Act ("SEQRA"), the common law public trust doctrine and the City's Waterfront Consistency Review Law set forth at Chapter 18 1/2 of the Code of Ordinances, City of Poughkeepsie.

WHEREAS, Respondents were all served with process on June 29, 2011;

WHEREAS, by a "so ordered" stipulation, Respondents have filed a Record of the underlying proceedings, but have not yet answered the Petition, nor have any of the parties filed memoranda of law in support of, or in opposition to, the Petition, nor has any discovery been conducted by any of the parties; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation without further proceedings and without regard to the merits of the case, and without admitting or denying fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned counsel on behalf of the respective parties and the party appearing pro-se, and ordered by the Court, as follows:

1. Municipal Respondents hereby represent to Petitioners and the Court that they have filed applications with the New York State Department of Environmental Conservation and the U.S Army Corps of Engineers for permission to add a total of three (3) 20-foot dock extensions to the existing Waryas Park floating dock for a total of sixty (60) additional feet of dock space, and that all necessary permits and other permissions necessary to add these additional sixty (60) feet of dock space to the Waryas Park floating dock have been obtained in accordance with the "Waryas Park Dock 2011" plan dated June 6, 2011 (Exhibit A) and the "Waryas Park Dock 2012" plan dated April 24, 2012 (Exhibit B).

2. The City shall install and maintain the northernmost 20-foot dock extension such that it will be available for use by the public on or before August 17, 2012. The City represents that as of the date of this Stipulation it has already installed the northernmost 20-foot dock extension, and Petitioners acknowledge that the 20-foot dock extension has been installed.

3. Subject to Paragraph 4, below, commencing in the spring of 2013, and each spring thereafter, the City shall simultaneously install the permitted sixty (60) feet of dock extensions with the original Waryas Park floating dock such that the original floating dock and all permitted dock extensions shall simultaneously be installed together and maintained throughout the boating season as a single dock. Such installation shall be complete by no later than May 15th of each year.

4. The City and Seaway are parties to an Amended License Agreement dated May 2, 2011. In the event that this Amended License Agreement between the City and Seaway is ever further amended or terminated such that Seaway permanently ceases to dock any vessel at, or to otherwise utilize, the Waryas Park floating dock, the above obligations concerning the annual installation of dock extensions shall terminate as of the following spring installation of the Waryas Park floating dock; provided, however, that said termination of the City's obligations to annually install the sixty (60) feet of dock extensions shall apply only as long as the entirety of the original sixty-eight (68) foot Waryas Park floating dock is held by the City solely for the public's use and enjoyment of Waryas Park and public access to the Hudson River, and is not regularly utilized by Seaway, or by any other person or business entity, for purposes of operating a tour boat business or any other commercial operation that impedes public access to the Hudson River.

5. Commencing with the installation of the sixty (60) feet of dock extensions with the original Waryas Park floating dock in 2013, as described in Paragraph 3, above, during each boating season the City shall maintain a minimum of sixty (60) feet of floating dock space at Waryas Park solely for the public's use and enjoyment of Waryas Park and public access to the Hudson River.

6. Upon the City's installation of the 20-foot dock extension in the summer of 2012, as described in Paragraph 2, above, Seaway shall immediately commence docking its tour boat only at the southernmost portion of the Waryas Park floating dock such that all of the open space on the dock (the dock space not blocked by the tour boat and her mooring lines when she is

moored) shall be contiguous and on the northernmost portion of the floating dock nearest to the boat launch area.

7. Upon the City's installation of the entirety of the sixty (60) feet of dock extensions beginning in 2013, as described in Paragraph 3, above, Seaway shall continue to utilize only the southernmost portion of the Waryas Park floating dock as described in Paragraph 6, above. Upon the installation of the full sixty (60) feet of dock extensions in 2013, the sixty southernmost feet of dock space may be appropriately marked with signage to indicate that this southernmost area is reserved for Seaway's use. Such signage may not be utilized until the full sixty (60) feet of dock extensions have been installed with the original Waryas Park floating dock each year.

8. In full consideration for all of the above, Petitioners hereby agree to discontinue this proceeding, with all parties assuming their own litigation costs and legal fees. Thus, upon entry of this Stipulation and Order by the Court, the Petition herein shall be deemed dismissed with prejudice; provided, however, that the Court shall retain jurisdiction over this Stipulation and Order for purposes of enforcing its terms, if necessary.

9. Any communications between the parties hereto after this Stipulation has been executed by the parties and so ordered by the Court shall be made to the party representatives as follows:

For the Petitioners:

Phillip Musegaas  
Hudson River Program Director  
Riverkeeper, Inc.  
20 Secor Road  
Ossining, New York 10562  
(914) 478-4501 Ext. 224  
[phillip@riverkeeper.org](mailto:phillip@riverkeeper.org)

With a copy to:

Daniel E. Estrin  
Pace Environmental Litigation Clinic, Inc.  
78 North Broadway  
White Plains, New York 10603  
(914) 422-4343  
[destrin@law.pace.edu](mailto:destrin@law.pace.edu)

For Respondent Seaway Navigation & Tours, LTD:

Captain Jeffrey S. Pyle  
Seaway Navigation & Tours Ltd  
PO Box 392  
Baldwinsville, NY 13207  
(866) 797-9024  
[info@empirecruiselines.com](mailto:info@empirecruiselines.com)

For the Municipal Respondents:

City of Poughkeepsie  
Office of the Corporation Counsel  
62 Civic Center Plaza  
Poughkeepsie, NY 12601  
(845) 451-4065

With a copy to:

City of Poughkeepsie  
City Administrator  
62 Civic Center Plaza  
Poughkeepsie, NY 12601  
(845) 451-4072

10. This Stipulation and Order represents the entire agreement between and among the parties hereto with regard to the subject matter hereof. This Stipulation and Order may be executed in one or more counterparts, each of which taken together shall constitute one and the same document, and facsimile or electronically scanned signatures shall be acceptable as originals.

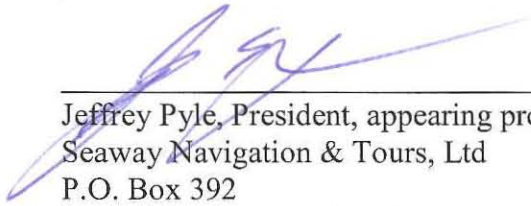
11. The attorneys and party representative for the parties signing this Stipulation represent that they have the authority to bind the respective parties they represent hereto.



\_\_\_\_\_  
Daniel E. Estrin  
Pace Environmental Litigation Clinic, Inc.  
*Attorneys for Petitioners*  
78 North Broadway  
White Plains, New York 10603  
(914) 422-4343  
[destrin@law.pace.edu](mailto:destrin@law.pace.edu)



\_\_\_\_\_  
Scott Volkman  
Gellert & Klein, P.C.  
*Attorneys for Municipal Respondents*  
75 Washington Street  
Poughkeepsie, New York 12601  
(845) 454-3250  
[svolkman@gklaw.us](mailto:svolkman@gklaw.us)



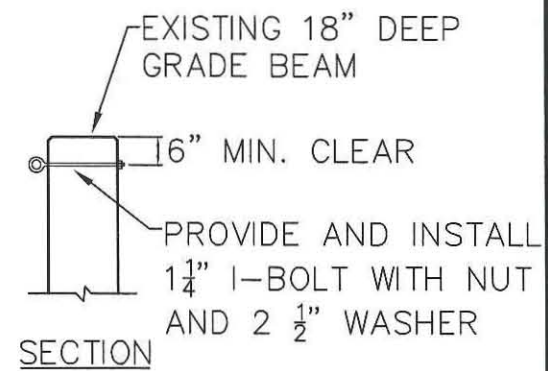
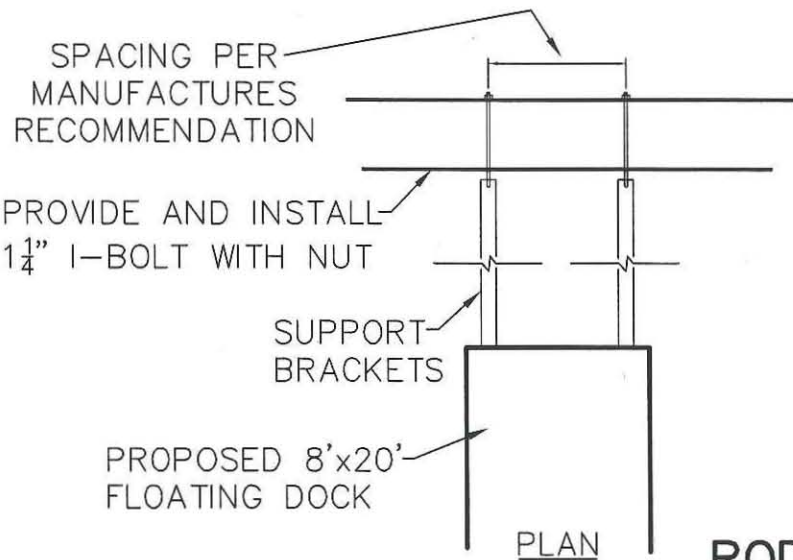
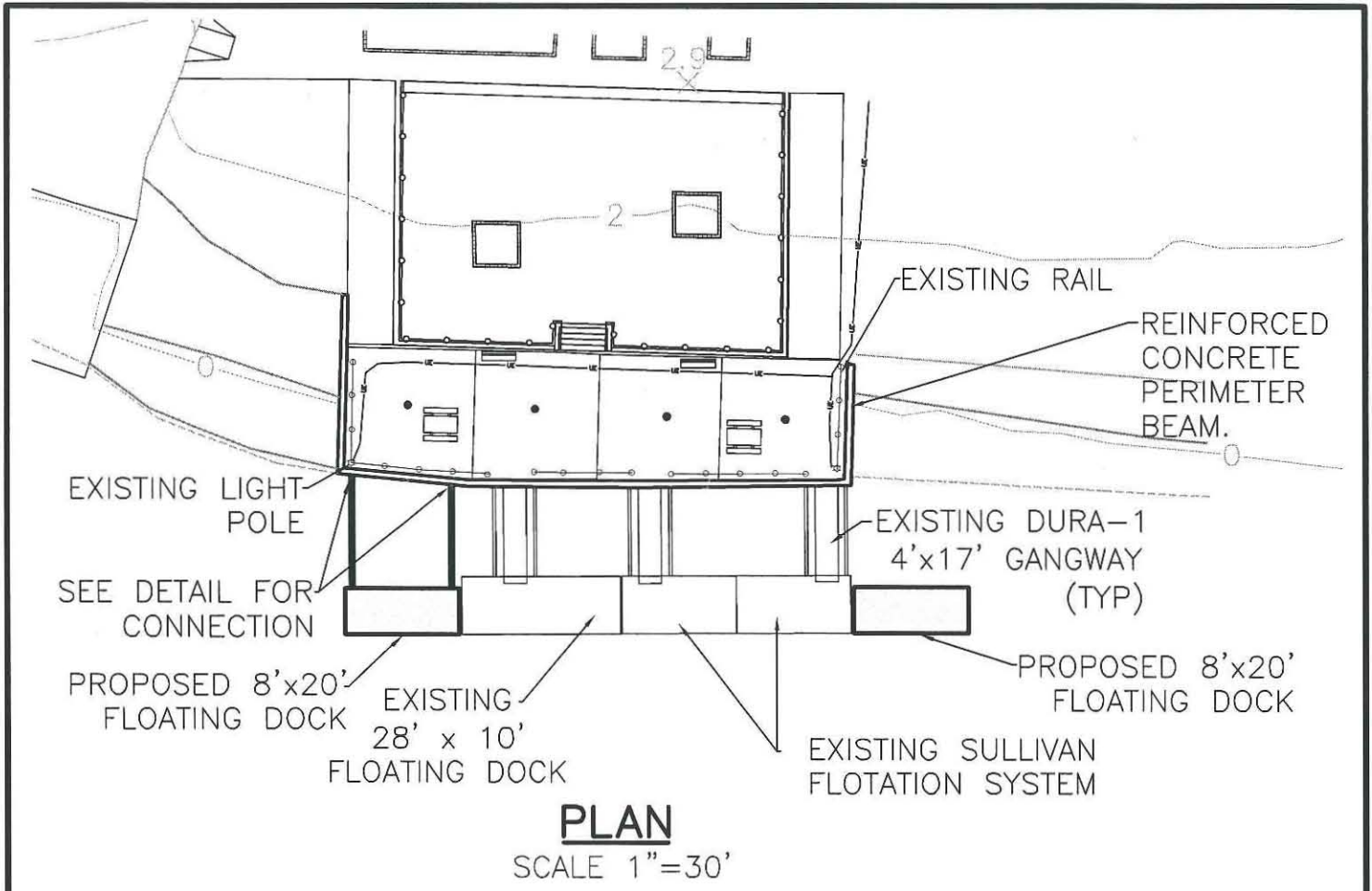
\_\_\_\_\_  
Jeffrey Pyle, President, appearing pro-se  
Seaway Navigation & Tours, Ltd  
P.O. Box 392  
Baldwinsville, New York 13207  
(866) 797-9024  
[jeff@empirecruiselines.com](mailto:jeff@empirecruiselines.com)

**SO ORDERED:**


  
\_\_\_\_\_  
**Hon. Christine Sproat**  
**Justice, New York Supreme Court**

**Dated: Poughkeepsie, New York**  
*September 6, 2012*

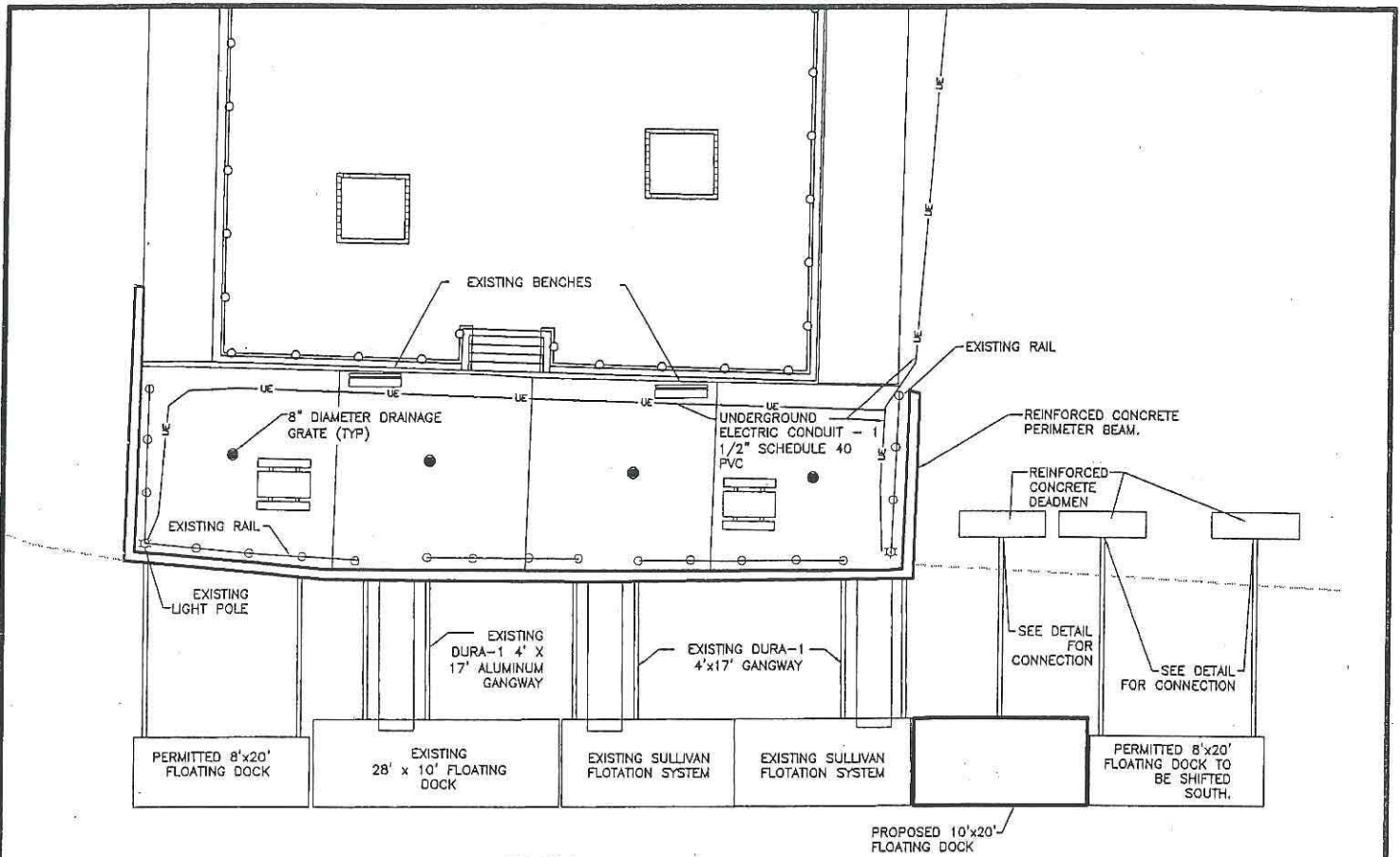




**ROD AND BOLT DETAIL**  
SCALE 1"=4'

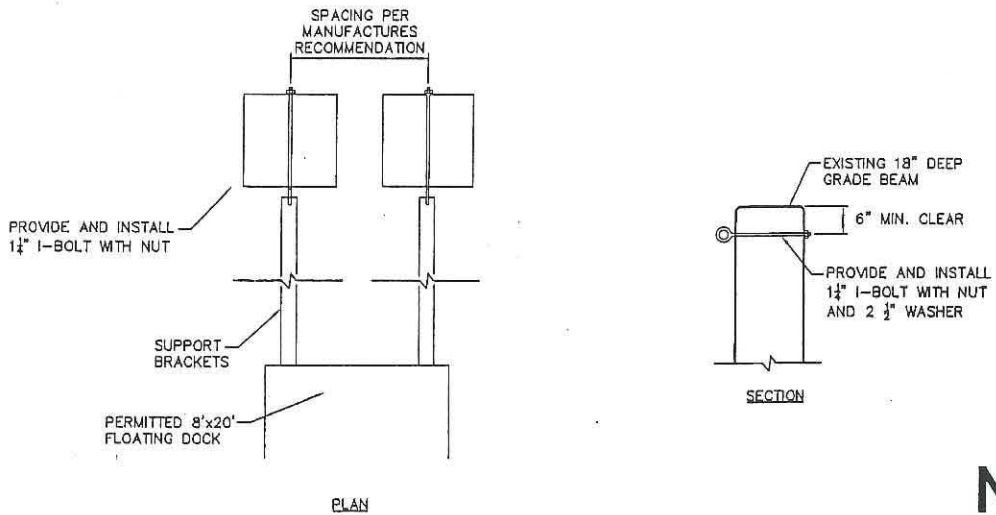
<b>CITY OF POUGHKEEPSIE</b> <b>ENGINEERING DEPARTMENT</b>  62 CIVIC CENTER PLAZA POUGHKEEPSIE, NY 12601	PROJECT: WARYAS PARK	<b>WARYAS</b> <b>PARK DOCK</b> <b>2011</b>	
	DATE: 06-06-2011		
	SCALE: AS NOTED		
	DRAWN BY: JTK		





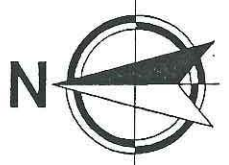
**PLAN**

SCALE: 1"=20'-0"



**ROD AND BOLT DETAIL**

SCALE: 1"=4'-0"



**CITY OF POUGHKEEPSIE  
ENGINEERING DEPARTMENT**

62 CIVIC CENTER PLAZA  
POUGHKEEPSIE, NY 12601

PROJECT: WARYAS PARK

DATE: 04-24-2012

SCALE: AS NOTED

DRAWN BY: JWT

**WARYAS  
PARK DOCK  
2012**

