

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations of Articles 15 and 25 of  
the New York State Environmental Conservation Law  
and Parts 608 and 661 of Title 6 of the Codes, Rules  
and Regulations of the State of New York

-by-

**420 KENT AVENUE LLC,**

Respondents.

Site: 416 Kent Avenue  
Brooklyn, NY 11249  
Block 2128 Lot 5

**ORDER ON CONSENT**

**DEC FILE NO. R2-20150205-61**

**Jurisdiction**

1. The Department of Environmental Conservation (“the Department” or “DEC”) is a department of the State of New York (“the State”) with authority under section 3-0301 of the Environmental Conservation Law (“ECL”) to enforce the environmental laws of the State and the rules, regulations and orders issued pursuant to that authority.
2. Pursuant to article 15 of the ECL and title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”) Part 608, the Department has administrative jurisdiction over and is responsible for regulating the placement of fill in the navigable waters of the State or wetlands adjacent thereto.
3. The Department has administrative jurisdiction over the management of tidal wetlands and tidal wetland adjacent areas of the State and thus regulates, among other activities, the placement of fill and other materials or structures therein by requiring permits for such activities pursuant to article 25 of the ECL and NYCRR Part 661.

**Respondent**

4. Respondent 420 Kent Avenue LLC (“Respondent”) is the owner of a parcel having a mailing address of 416 Kent Avenue, Brooklyn, New York 11249.

**The Site**

5. The “Site” is identified as property located at 416 Kent Avenue, Brooklyn, New York 11249 (Kings County Tax Block 2128, Lot 5).
6. The Site is adjacent to the East River, which at the Site is mapped as a tidal wetland as part of the official tidal wetland inventory, tidal wetlands map number 586-506. The East River is a navigable water of the State.

7. The northwestern shoreline area of the Site, located from former South 8th Street to the northern property line, is situated within a regulated tidal wetland adjacent area.
8. Respondent took title to the Site on February 4, 2015, prior to which time Respondent conducted no operations at the Site and had no responsibility for or right to make any physical modifications to the Site. Respondent is not an affiliate of the prior Site owner.

**Facts**

9. Pursuant to an inspection on January 15, 2015, DEC staff observed that, on/before January 15, 2015, the following had occurred:
  - a. Placement of fill (i.e., a non-engineered concrete block seawall, associated backfill, concrete debris/rubble, and a concrete pad) within the regulated tidal wetland and tidal wetland adjacent area;
  - b. Construction of a concrete pad partially in the tidal wetland, tidal wetland adjacent area, and water of the State, at grade with the previously existing adjacent paved area; and
  - c. Construction of a concrete walkway seaward of the existing steel/timber bulkhead located west and northwest of the existing building, in the regulated tidal wetland and water of the State.
10. The activities described in paragraph 9, were done without a permit from DEC.

**Applicable Law**

11. ECL § 15-0505 and 6 NYCRR Part 608 prohibit the excavation and placement of fill in the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the State and that are inundated at mean high water level or tide, without a permit from the DEC.
12. ECL § 25-0401(1) and 6 NYCRR § 661.8 prohibit regulated activities in a tidal wetland or regulated tidal wetland adjacent area without a permit from DEC.
13. ECL § 25-0401(2) and 6 NYCRR § 661.4(ee)(1) define “regulated activity” to include, among other activities:
  - a. “any form of dumping, filling or depositing, either directly or indirectly of any soil, stones, sand, gravel, mud rubbish or fill of any kind;”
  - b. “any form of pollution;”
  - c. “any other activity within a tidal wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland;” and
  - d. “any other new activity within a tidal wetland or on an adjacent area which directly or indirectly

may substantially alter or impair the natural condition or function of any tidal wetland.”

14. 6 NYCRR § 661.4(b)(1) defines “adjacent area” to encompass any land immediately adjacent to a tidal wetland within whichever of the following limits is closest to the most landward tidal wetland boundary, as such most landward tidal wetlands boundary is shown on an inventory map:

- a. “300 feet landward of said most landward boundary of a tidal wetland, provided, however, that within the boundaries of the City of New York this distance shall be 150 feet;” or
- b. “to the seaward edge of the closest lawfully and presently existing (i.e., as of August 20, 1977), functional and substantial fabricated structure (including, but not limited to, paved streets and highways, railroads, bulkheads and sea walls, and rip-rap walls) which lies generally parallel to said most tidal wetland landward boundary and which is a minimum of 100 feet in length as measured generally parallel to such most landward boundary, but not including individual buildings;” or
- c. “to the elevation contour of 10 feet above mean sea level...”

15. 6 NYCRR § 661.4(ee)(2) states that “[r]egulated activity shall include, but not be limited to, any activity listed in sub division (b) of section 661.5 of this Part as a generally compatible use-permit required (GCp), presumptively incompatible use-permit required (PIp), incompatible use (I) or permit required (P) for applicable area.”

16. Uses that are designated as GCp, PIp, I, or P are subject to the permit requirements of 6 NYCRR Part 661 (see 6 NYCRR § 661.5[a]).

17. ECL § 71-1107 provides for a civil penalty of up to five thousand dollars (\$5,000) for each violation of section 15-0505 as well as criminal sanctions and injunctive relief.

18. ECL § 71-2503 authorizes the imposition of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of Article 25 as well as injunctive relief.

19. The activities set forth in paragraph 9 violated ECL §§ 15-0505 and 25-0401 and 6 NYCRR Parts 608 and 661.

20. In settlement of Respondent’s civil liability for the aforesaid violations, Respondent neither admits nor disputes the violations set forth herein, affirmatively waives its rights to notice and hearing in the manner provided by law and consents to the payment of the sums specified below, and the issuance and entry of this Order. Respondent agrees to be bound by the terms, provisions and conditions contained herein.

**NOW, having considered this matter and being duly advised, it is ORDERED:**

- I. Respondent shall carry out its obligations set forth in the attached Schedule of Compliance (“Schedule A”) which is hereby made part of this Order. Should Respondent transfer or otherwise convey the subject property or any controlling interest therein, it shall impose the obligation to comply with said Schedule and all other terms and conditions of this Order on the successor or assign by contract. Respondent shall submit to DEC a copy of any transfer of a

controlling interest for the Site within five (5) days of the execution thereof or at least thirty (30) days prior to any such conveyance, whichever shall be earlier.

- II. Civil Penalty: With respect to the aforesaid violations, Respondent shall not be liable to pay a civil penalty.
- III. Permit Requirement/Schedule of Compliance: Respondent, its successors and assigns shall apply for any required DEC permits for future work on the Site to be conducted by, or on behalf of Respondent and obtain them before doing any such work, except that a DEC permit shall not be required for the performance of the work described in the annexed Schedule of Compliance.
- IV. Access: For the purpose of monitoring compliance with this Order, duly authorized representatives of DEC shall be permitted access to the subject site and to relevant records without prior notice during reasonable hours at such times as may be desirable or necessary in order to inspect and determine the status of the property.
- V. Violation of this Order: In the event that DEC determines that there is a violation of this Order on Consent, DEC reserves the right to initiate actions based upon the violation(s) of this Order on Consent and also to seek penalties for such additional violations (including continued violations) that occur after the date of this Order.
- VI. Binding Effect: The provisions of this Order shall be deemed to bind Respondent, its successors and assigns, and all persons, officers, directors, employees, agents acting under or for Respondent, including, but not limited to, any successor in title to the Site or any interest therein.
- VII. Indemnification: Respondent shall indemnify and hold harmless New York State, DEC and any of their employees, agents or contractors for all claims, actions, damages and costs resulting from Respondent's acts in fulfillment or attempted fulfillment of the provisions of this Order.
- VIII. Settlement and Reservation of Rights.
  - a. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described herein.
  - b. Except as provided in Subparagraph VIII.a. of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resource damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.
  - c. DEC reserves the right to require Respondent to take any additional measures required by law to protect human health and the environment, subject to Respondent's procedural rights under the State Administrative Procedures Act and DEC Uniform Procedures Regulations at 6 NYCRR Parts 620 to 622.
- IX. Communication: All reports, submissions, and certifications herein required shall be made to:

New York State Department of Environmental Conservation, Region 2  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101-5407  
Attn: Marine Resources Program

A copy of each shall also be sent to Jessica Steinberg Albin, Assistant Attorney, at the same address.

The DEC file number appearing on the first page of this Order shall be endorsed on the face of each such submission.

X. Miscellaneous:

- a. No changes in this Order shall be binding upon DEC unless such changes are authorized in writing by the DEC Region 2 Director.
- b. This Order constitutes the entire agreement of the parties hereto. No informal advice, guidance, suggestions, plans, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.
- c. This Order resolves only those violations specifically described herein and does not relieve Respondent of liability for any acts, omissions or violations not articulated herein nor does it relieve Respondent of any liability pursuant to the jurisdiction of any other local, state or federal agency.

XI. Effective Date: The effective date of this Order shall be the date upon which it is signed on behalf of DEC.

In the matter of 420 Kent Avenue LLC

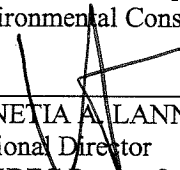
R2-20150205-61

DATED: Long Island City, New York

March 3, 2015

JOSEPH J. MARTENS  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
VENETIA A. LANNON  
Regional Director  
NYSDEC Region 2

To: 420 Kent Avenue LLC  
c/o Spitzer Enterprises  
730 Fifth Avenue  
New York, NY 10019

**SCHEDULE OF COMPLIANCE  
SCHEDULE A**

**RESPONDENTS: 420 KENT AVENUE LLC  
DEC FILE NO. R2-20150205-61**

- I. Within sixty (60) days after the effective date of this Order**, Respondent must submit to NYSDEC Region 2, Attn.: George Stadnik, Marine Resources Program, 47-40 21<sup>st</sup> Street, Long Island City, NY 11101, for review and approval two (2) plan and section view drawings for the restoration of the affected tidal wetland and tidal wetland adjacent area on Block 2128 Lot 5 (“the Restoration Plan”), with appropriate notes, which must include, at a minimum, the following:
- 1.1 Remove the area of concrete pad depicted with blue hatching as shown on the attached Site Plan (SK-020515; Page 1 of 1) on Lot 5.
  - 1.2 Remove the portion of the concrete walkway located on top and seaward of the steel sheetpile and concrete combined sewer overflow (“CSO”) wall bulkheads.
  - 1.3 Remove the non-engineered concrete block seawall and all non-natural materials (e.g., concrete rubble debris, bricks, etc.) in the area of the blue hatching on the attached Site Plan (SK-020515; Page 1 of 1) on Lot 5 and as depicted on the attached Section MR0.1 and all non-natural materials seaward of the concrete block seawall to the spring low water line.
  - 1.4 After removal, stabilize the slope with an engineered rock rip rap revetment, consisting of 3 layers, with a minimum 3 ton tow stone, 2 to 6 inch gravel blanket stone (5 to 10 pounds in weight), 100 to 300 pound core stone, and 1 to 1.5 ton cap stones, all underlain with geo-textile fabric, as depicted on the attached Sections MR1.0 and 1.1.
- III. Within ninety (90) days after the Department approves the Restoration Plan**, Respondents must commence implementation of the Restoration Plan.
- IV. Within fifteen (15) days after completing the Restoration**, Respondents must:
- Submit to DEC color photographs of such size, detail and sharpness and taken in such sequence that the photos clearly and completely depict the various locations and restoration activities in a manner that a compliance determination could be made by solely using those photographs.
- V.** Respondent shall notify the Department, in writing, of the date of commencement of restoration work and the expected duration of the work. If weather or seasonal conditions prevent the start of activities, or if Respondent needs additional time to complete the work described in this Schedule A, Respondent shall advise the Department in writing that additional time is needed. The Department shall grant a reasonable request for an extension.
- VI. Within two (2) weeks after the effective date of this Order**,
- (1) Respondent must enter in the property record of Kings County Tax Block 2128 Lot 5 maintained

by the City Register for the borough of Brooklyn, a notice covenant with the following language, having inserted the missing information where indicated:

THIS DECLARATION is made by 420 Kent Avenue LLC, whose address is c/o Spitzer Enterprises, 730 Fifth Avenue, NY 10019, to be entered in the record for certain real property located in the Borough of Kings, City and State of New York, Kings County Tax Block 2128 Lot 5.

This parcel contains a tidal wetlands area regulated under New York State law by the New York State Department of Environmental Conservation ("DEC"). DEC has jurisdiction over tidal wetlands and a buffer area (the adjacent area), which generally measures 150 feet landward of the most landward boundary of a mapped tidal wetland. The official tidal wetland maps can be viewed at the DEC Region 2 offices.

Article 25 of the New York State Environmental Conservation Law (the Tidal Wetlands Act) provides that **anyone conducting a regulated activity within a tidal wetland or tidal wetland adjacent area must first obtain a permit from the New York State Department of Environmental Conservation.** Conducting a regulated activity without a permit constitutes a violation. Any violation of the Tidal Wetlands Act can result in a significant penalty (at the time of this indenture up to \$10,000 per day for each violation) as well as criminal sanctions and injunctive relief.

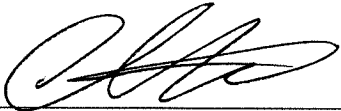
Regulated activities include, for example,

- any form of draining, dredging, excavation, and removal (directly or indirectly) of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland;
- any form of dumping, filling, or depositing (directly or indirectly) of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;
- the erection of any structures or roads, the driving of any pilings, or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and
- any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area;
- any subdivision of land.

This list is not complete. It is therefore advisable to contact the New York State Department of Environmental Conservation, Region 2, Marine Resources Program **prior** to any activity within the tidal wetland or tidal wetland adjacent area to clarify whether or not a permit is required.



Signed,



[authorized signatory]

State of New York )  
 ) ss.:  
County of NEW YORK )


On the 2 day of MARCH in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally appeared CHARLES LOUIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument the individual(s) or the person upon whose behalf the individual(s) acted, executed the instrument.

(2) Submit proof of filing to the DEC at the address listed in paragraph IX. of this Order.

**CONSENT BY RESPONDENT  
420 KENT AVENUE LLC**

Respondent **420 Kent Avenue LLC** consents to the issuance and entry of the foregoing Order without further notice, waives its rights to a hearing herein and agrees to be bound by the terms, conditions and provisions of this Order.

420 Kent Avenue LLC

BY:  (SIGNATURE)

NAME: CHARLES MORISI (PRINT)

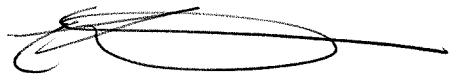
TITLE OF OFFICER: AUTH. SIGNATOR. (PRINT)

DATED: 2 March 2015 (PRINT)

**ACKNOWLEDGMENT**

State of New York )  
County of New York ) ss.:

On this 2 day of MARCH, 2015, before me personally came CHARLES MORISI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, who being duly sworn, deposed and stated that (s)he is the AUTH. SIGNATOR. of 420 KENT AVENUE LLC, the corporation described in and which executed the foregoing instrument, and that (s)he was authorized by said corporation to execute the foregoing instrument.

  
\_\_\_\_\_  
Notary Public

**EKATERYNA KOSIW**  
**Notary Public - State of New York**  
**No. 01K06271994**  
**Qualified in Kings County**  
**My Commission Expires Nov. 13, 2016**



NO.	DATE	REVISION

**CONSULTANTS**

OWNER:  
420 Kent Avenue LLC  
170 South Avenue  
New York, NY 10019  
T: (212) 765-6170

STRUCTURAL, GEOTECHNICAL, MARINE, CIVIL,  
MECHANICAL ENGINEERING GROUP  
100 South 4th Street  
Brooklyn, NY 10014  
T: (845) 353-6400

MEP:  
MS ENGINEERING D.P.C.  
18 West 52nd Street  
New York, NY 10019  
T: (914) 523-1444

CODE CONSULTANT:  
METROPLAN GROUP P.C.  
22 Convent Street, 10th Floor  
New York, NY 10027  
T: (212) 233-6344

LANDSCAPE ARCHITECT:  
MWA ASSOCIATES LLC  
85 Park Ave  
Rutherford, NJ 07070  
T: (201) 933-7859

ENVIRONMENTAL:  
SARGENT  
31 Park Place, 380 West 51st Street, 8th Floor  
New York, NY 10019  
T: (212) 479-5400

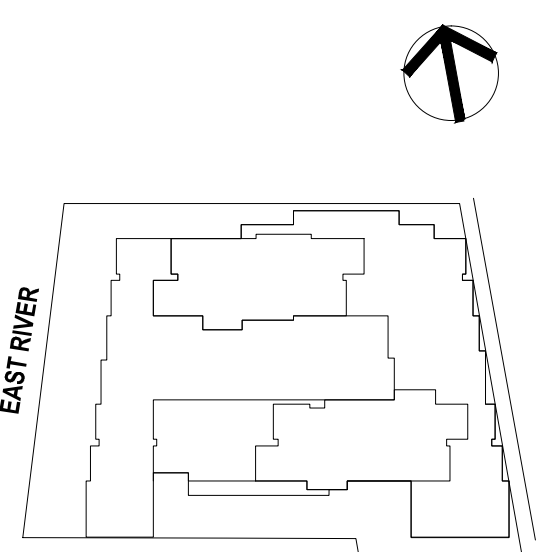
ELEVATOR:  
JEKINS & HUNTINGTON Inc.  
1331 Avenue of the Americas, Suite 500  
New York, NY 10020  
T: (212) 696-1818

PARKING:  
SAM SCHWARTZ ENGINEERING  
502 2nd Avenue  
New York, NY 10017  
T: (212) 599-8010

FAÇADE:  
AAS+CONSULTING  
40 North Street #20  
New York, NY 10013  
T: (212) 757-56

**KEY PLAN**

420 KENT AVENUE, BROOKLYN, NY 10019  
BLOCK: 2154  
LOT: 16  
ZONING MAP: 12c

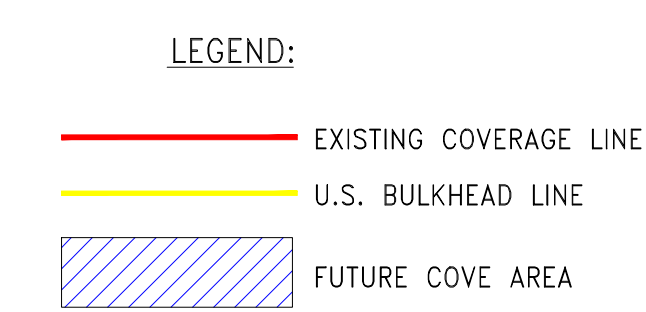


**420 KENT AVENUE**

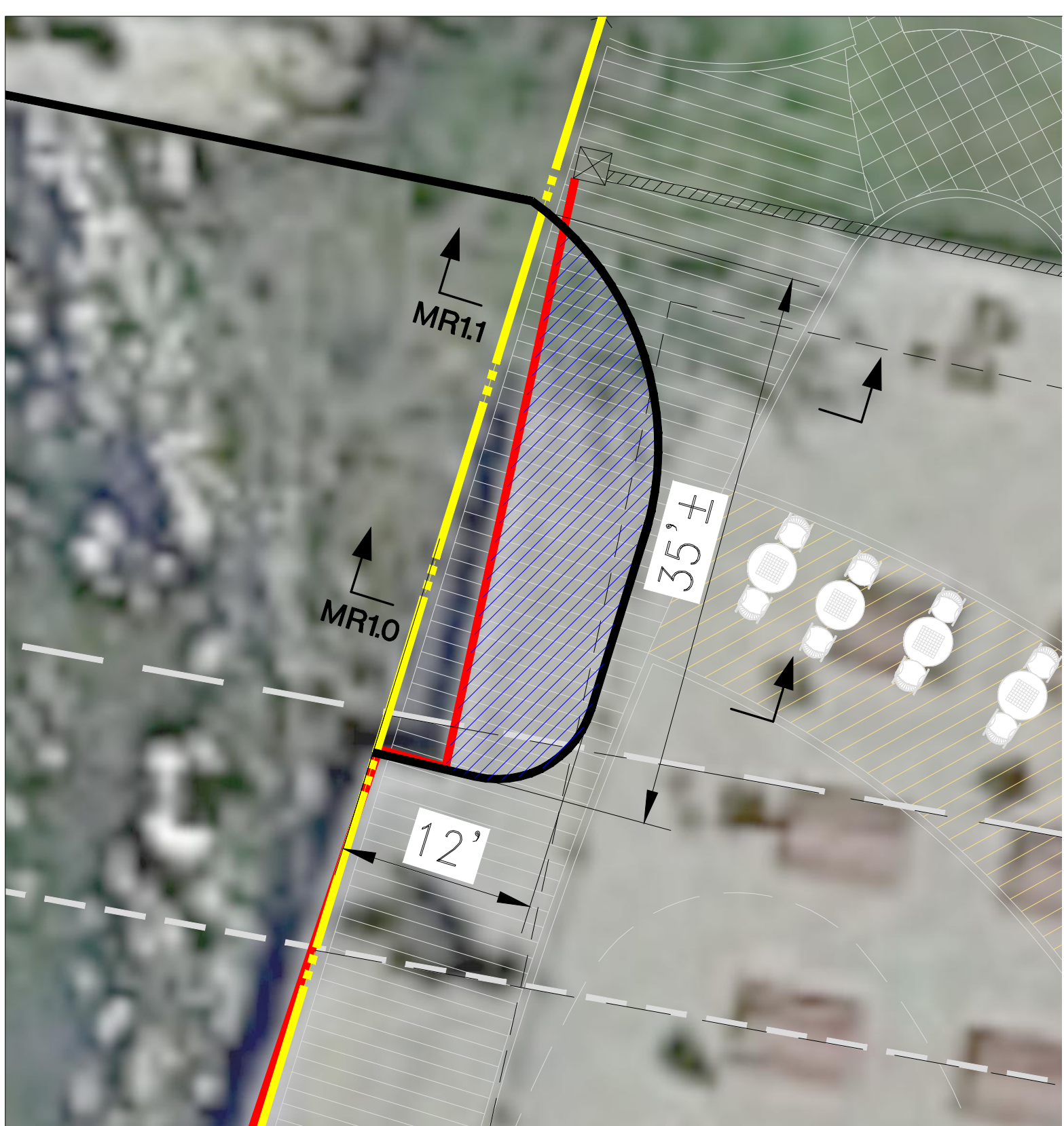
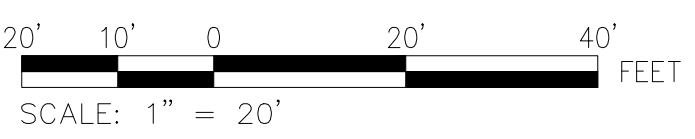
PROJECT NO: 1915.00 SCALE: AS NOTED

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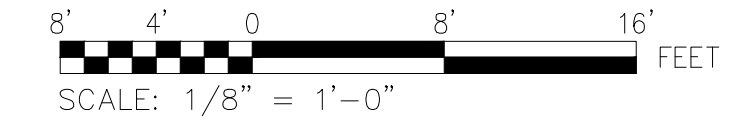
**SK-022615**



**PROPOSED SITE PLAN**

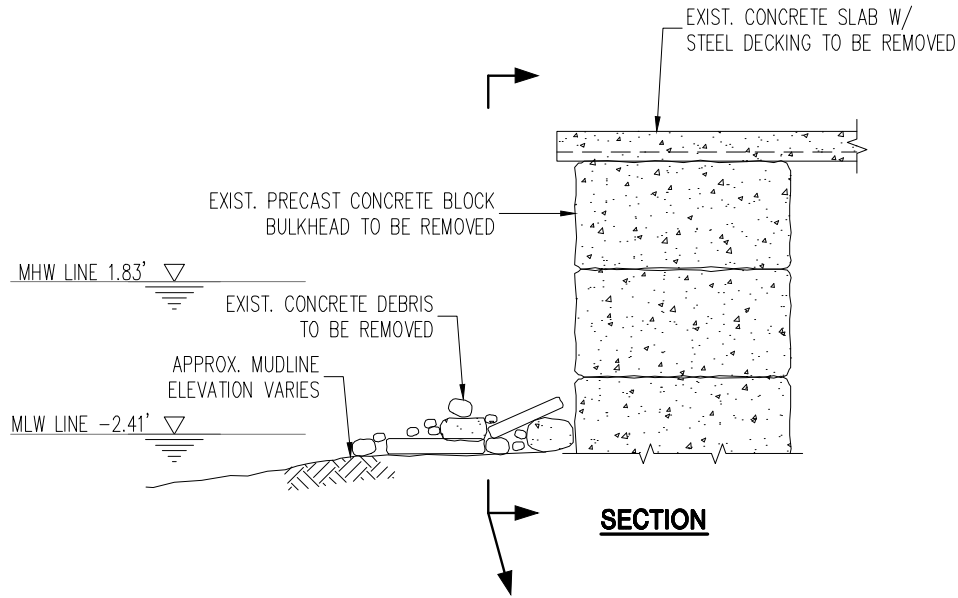


**PART PLAN**

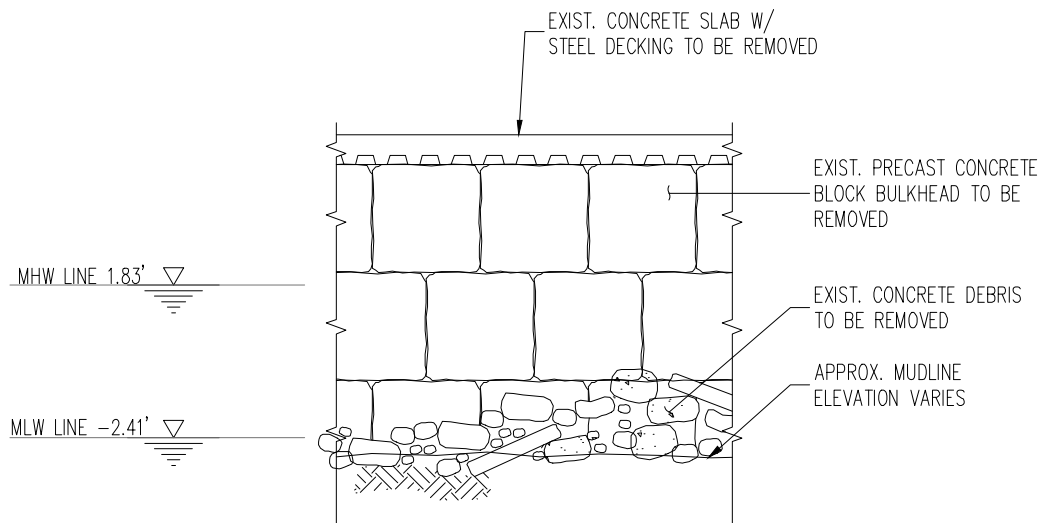




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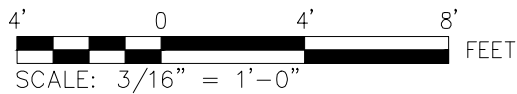
**SECTION**



**ELEVATION**

**TYPICAL EXISTING CONDITION  
CONCRETE BLOCK BULKHEAD**

NOTE: ELEVATIONS SHOWN REFERENCE NAVD88.



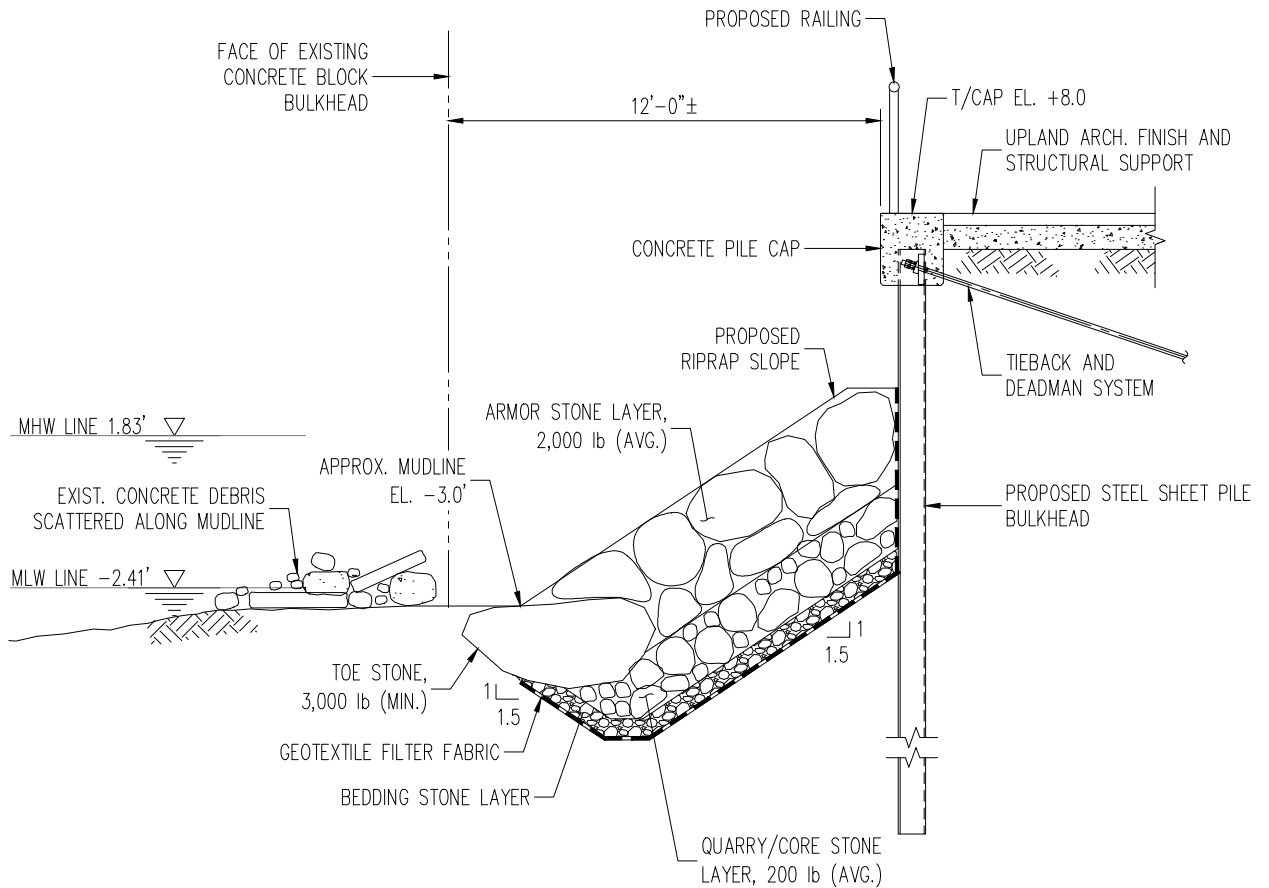
M. G. McLAREN, P.C.  
100 Snake Hill Road, West Nyack, NY 10994  
Tel. (845) 353-6400 Fax. (845) 353-6509 www.mgmclaren.com

SHEET TITLE	EXISTING CONDITION	
PROJECT	420 KENT AVENUE BROOKLYN, NEW YORK	

PROJ. NO.	141002.30
SCALE	AS NOTED
DATE	2/26/2015
DRAWN BY	EHC
CHECKED BY	DVD

DRAWING NO.	<b>MR0.1</b>
1 OF 3 SHTS	

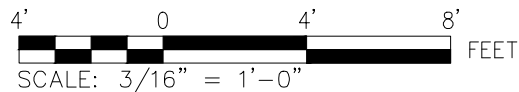
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NOTE: ALL EXPOSED CONCRETE DEBRIS AND OTHER NON-NATURAL MATERIALS SHALL BE REMOVED TO SPRING LOW WATER LINE.

### PROPOSED SOUTH SECTION

NOTE: ELEVATIONS SHOWN REFERENCE NAVD88.



**McLaren**  
ENGINEERING GROUP



applied ingenuity

M. G. McLAREN, P.C.

100 Snake Hill Road, West Nyack, NY 10994

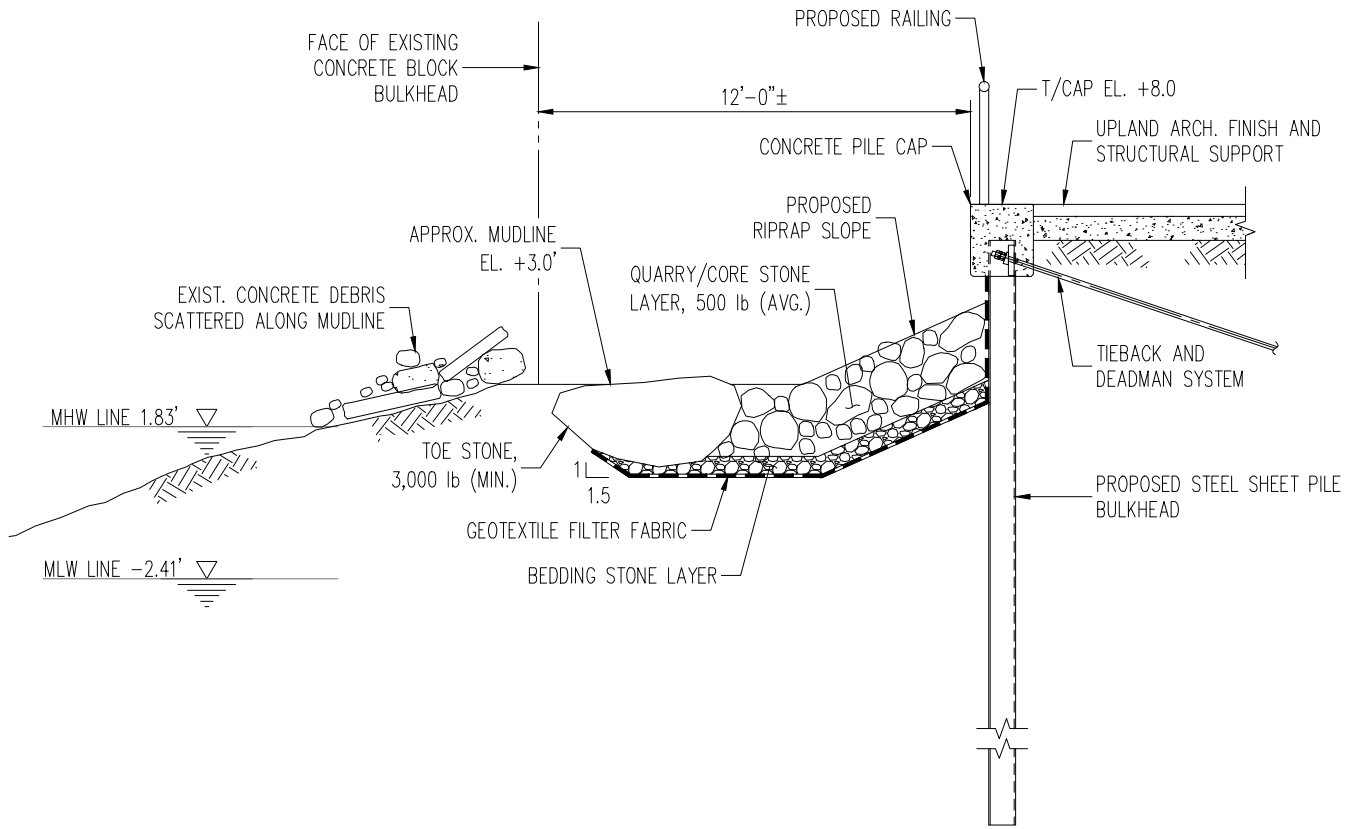
Tel. (845) 353-6400 Fax. (845) 353-6509 www.mgmclaren.com

SHEET TITLE	PROPOSED SECTION - 1
PROJECT	420 KENT AVENUE BROOKLYN, NEW YORK

PROJ. NO.	141002.30
SCALE	AS NOTED
DATE	2/26/2015
DRAWN BY	EHC
CHECKED BY	DVD

DRAWING NO.	MR1.0
2 OF 3 SHTS	

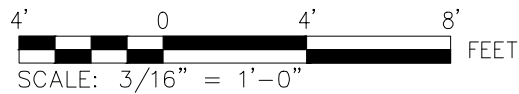
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NOTE: ALL EXPOSED CONCRETE DEBRIS AND OTHER NON-NATURAL MATERIALS SHALL BE REMOVED TO SPRING LOW WATER LINE.

### PROPOSED NORTH SECTION

NOTE: ELEVATIONS SHOWN REFERENCE NAVD88.



M. G. McLAREN, P.C.  
100 Snake Hill Road, West Nyack, NY 10994  
Tel. (845) 353-6400 Fax. (845) 353-6509 www.mgmclaren.com

SHEET TITLE  
**PROPOSED SECTION - 2**

PROJECT  
**420 KENT AVENUE  
BROOKLYN, NEW YORK**

PROJ. NO. 141002.30  
SCALE AS NOTED  
DATE 2/26/2015  
DRAWN BY EHC  
CHECKED BY DVD

DRAWING NO.  
**MR1.1**  
3 OF 3 SHTS