



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice

Public Notice No.
CENAP-OP-R-2016-532

Date

Application No.
CENAP-OP-R-2016-532

File No.

CENAP-OP-R-2016-532-85

In Reply Refer to:
REGULATORY BRANCH

This District has received an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The purpose of this notice is to solicit comments and recommendations from the public concerning issuance of a Department of the Army permit for the work described below.

APPLICANT: Bay Colony Marina Slip Owners Association (SOA)

AGENT: Dr. Evelyn M. Maurmeyer, Coastal & Estuarine Research, Inc.

WATERWAY: Bay Colony Marina/Indian River Bay

LOCATION: Bay Colony Marina, Dagsboro, Sussex County, Delaware
Tax Map Parcel 1-34-3.00-1.01
(Lat. 38.5821°N/Long. -75.15441°W).

ACTIVITY: The applicant, Bay Colony Marina SOA, has applied for a Department of the Army permit to construct a 35' x 4' pier and 6' x 30' dock adjacent to an existing boat ramp, as well as a 10-year maintenance dredging permit. The applicant proposes to conduct hydraulic maintenance dredging of approximately 3,870 cubic yards of accumulated sediment to a depth of -5' MLW from a portion of the Bay Colony Marina located in, Dagsboro, Sussex County, Delaware. The dredged material will be hydraulically pumped into Geotubes located on the Bay Colony Marina parking lot. Once the material is dewatered, the material will be trucked to an upland disposal area off-site. The dimensions of the structures and the proposed maintenance dredging area are indicated on the attached plans identified as E-1 through E-7.

The Bay Colony Marina entrance and access channel was originally excavated from uplands in the late 1980's/early 1990's. Previous maintenance dredging was conducted in 2001 and 2010 under authorization from a Department of the Army Permit, CENAP-OP-R-2000-831 (expired on December 31, 2010).

PURPOSE: The purpose of the courtesy pier and dock is to provide for safe loading/off-loading and temporary mooring while using the boat ramp. The purpose of the hydraulic maintenance dredging is to maintain navigable depths in the boat slips and marina access channel.

AVOIDANCE/MINIMIZATION/COMPENSATION STATEMENT: On April 10, 2008, the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency published a *Final Rule on Compensatory Mitigation for the Losses of Aquatic Resources* (33 CFR 325 and 332 and 40 CFR 230). The rule took effect on June 9, 2008. In accordance with 33 CFR Part 325.1(d)(7) of the rule, the applicant has stated that the proposed project has been designed to avoid and minimize adverse effects on the aquatic environment to the maximum extent practicable, and has further documented that compensatory mitigation is not necessary. The following aspects and features of the project demonstrate the applicant's efforts in this regard.

The project cannot be avoided entirely because it is, by its nature, a water-dependent activity. The proposed maintenance dredging will provide safe and adequate access to boat slips and the marina. The dredging footprint has been minimized to those areas that have accumulated sediment to a depth greater than -5 MLW. Dredging to a depth of -5 MLW will tie into the existing contour in the Indian River Bay as well as the interior portion of the Marina. The dredged material will be hydraulically pumped to Geotubes located in the Bay Colony Marina parking lot and later trucked off-site to an upland disposal area. The courtesy pier and dock will provide for safe loading/off-loading and temporary mooring while utilizing the boat ramp. The dimensions of the pier and dock have been minimized to comply with Delaware Department of Natural Resources and Environmental Control guidelines as well as State Programmatic General Permit guidelines for community structures. Because no wetlands or other special aquatic sites would be impacted by the project, the applicant is not proposing to conduct any compensatory mitigation for the work.

All waters along the Mid-Atlantic region, including tidal rivers and streams and coastal estuaries have been identified by the National Marine Fisheries Service as being within the estimated range of the five distinct population segments of the Atlantic Sturgeon, which are listed as threatened or endangered pursuant to the Endangered Species Act. Based upon the existing conditions and marina facilities, this area is not expected to be utilized by the Atlantic Sturgeon or any other threatened or endangered species under the responsibility of the National Marine Fisheries Service. Furthermore, the Delaware Division of Fish and Wildlife has conducted trawl surveys from April through October at 12 sample stations within the Indian River, Indian River Bay, and the Rehoboth Bay since 1986 without a sturgeon ever being recorded. In addition, seasonal restrictions would be implemented to avoid and minimize effects to the Indian River Bay. The coastal waters of Delaware are also utilized by marine mammals and sea turtles. The water depths and conditions within the marina are considered too shallow, confined, and disturbed for utilization by any federally listed marine mammals. Further, these waterways would offer little or no foraging value for any federally listed sea turtles. A preliminary review of this application indicates that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The decision whether to issue a permit will be based on an evaluation of the activity's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be

considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and welfare of the people. A Department of the Army permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments on the proposed work should be submitted, in writing, within 15 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Review of the National Register of Historic Places indicates that no registered properties or properties listed as eligible for inclusion therein are located within the permit area of the work. The Philadelphia District has determined that the proposed project is of such limited nature and scope that little likelihood exists for the proposed action to impact a historic property. The District has determined that the project will have no effect on properties eligible for or listed in the National Register of Historic Places.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The project is located in Essential Fish Habitat identified in the *Guide to Essential Fish Habitat Designations in the Northeastern United States*. The following managed species of fish have been listed in the guide as occurring in the vicinity of the project: Atlantic cod (*Gadus morhua*), red hake (*Urophycis chuss*), winter flounder (*Pseudopleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), Atlantic sea herring (*Clupea harengus*), monkfish (*Lophius americanus*), bluefish (*Pomatomus saltatrix*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristus striata*), king mackerel (*Scomberomorus cavalla*), Spanish mackerel (*Scomberomorus maculatus*), cobia (*Rachycentron canadum*), sand tiger shark (*Carcharias taurus*), Atlantic angel shark (*Squatina dumerili*), Atlantic sharpnose shark (*Rhizopriondon terraenovae*), dusky shark (*Carcharhinus plumbeus*), sandbar shark (*Carcharhinus plumbeus*), scalloped hammerhead shark (*Sphyrna lewini*) and tiger shark (*Galeocerdo cuvieri*).

The proposed work which is the subject of this application would occur in a small area of waters located within an active marina subject to regular boating activity. For these reasons the proposed work area is an unlikely spawning or nursery area for the managed species. Consequently, concentrations of the sessile life stages (eggs and larva) of the listed species are not expected to be within the area under review. The pelagic adults and juveniles of the listed species are highly mobile and capable of avoiding such impacts as may be associated with the work. The proposed dredging would not permanently alter any existing habitats within the marina basin. The disturbance to the benthic communities would be temporary and would re-establish after completion of the dredging activities. In addition, the species listed above could easily avoid the dredging operation and the construction of the pier and dock. Furthermore, the use of Geotubes to dewater the dredged material and the implementation of a seasonal restriction to prohibit any dredging activities during the summer months when these species normally occur in the project vicinity would minimize any adverse effects to these resource values. Based upon a review of the available information and the requirement of a seasonal restriction for the dredging activity and the installation of the courtesy dock and pier, this office has determined the proposed project would not have substantial direct, indirect, site-specific, or habitat-wide impacts on EFH, or upon the managed species and their various life stages, either individually, cumulatively or synergistically. Other than the temporary disturbances during the actual dredging operations and the construction of the courtesy dock and pier, the proposed project would not eliminate, diminish, or disrupt the functions of EFH.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. The applicant has stated that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program. No permit will be issued until the State has concurred with the applicant's certification or has waived its right to do so. Comments concerning the impact of the proposed and/or existing activity on the State's coastal zone should be sent to this office, with a copy to the State's Office of Coastal Zone Management.

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is necessary from the State government in which the work is located. Any comments concerning the work described above which relate to Water Quality considerations should be sent to this office with a copy to the State.

The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Additional information concerning this permit application may be obtained by calling Michael Yost at (267) 240-5278, by email to michael.d.yost@usace.army.mil, or by writing this office at the above address.

Samuel L. Reynolds
Acting Chief, Regulatory Branch

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PROPOSED CONSTRUCTION OF A 35' X 4' COURTESY PIER
 AND 6' X 30' COURTESY DOCK (MINOR MARINA ALTERATION),
 AND 3,870± C.Y. HYDRAULIC MAINTENANCE DREDGING (TO -5' MLW)
 IN: Bay Colony Marina (artificially-excavated basin adjacent to Indian River Bay
 AT: Bay Colony, Dagsboro, Sussex County, DE 19939
 Tax Map Parcel #1-34-3.00-1.01
 APPLICANT: Bay Colony Marina SOA
 DATE: June 7, 2016

E-1

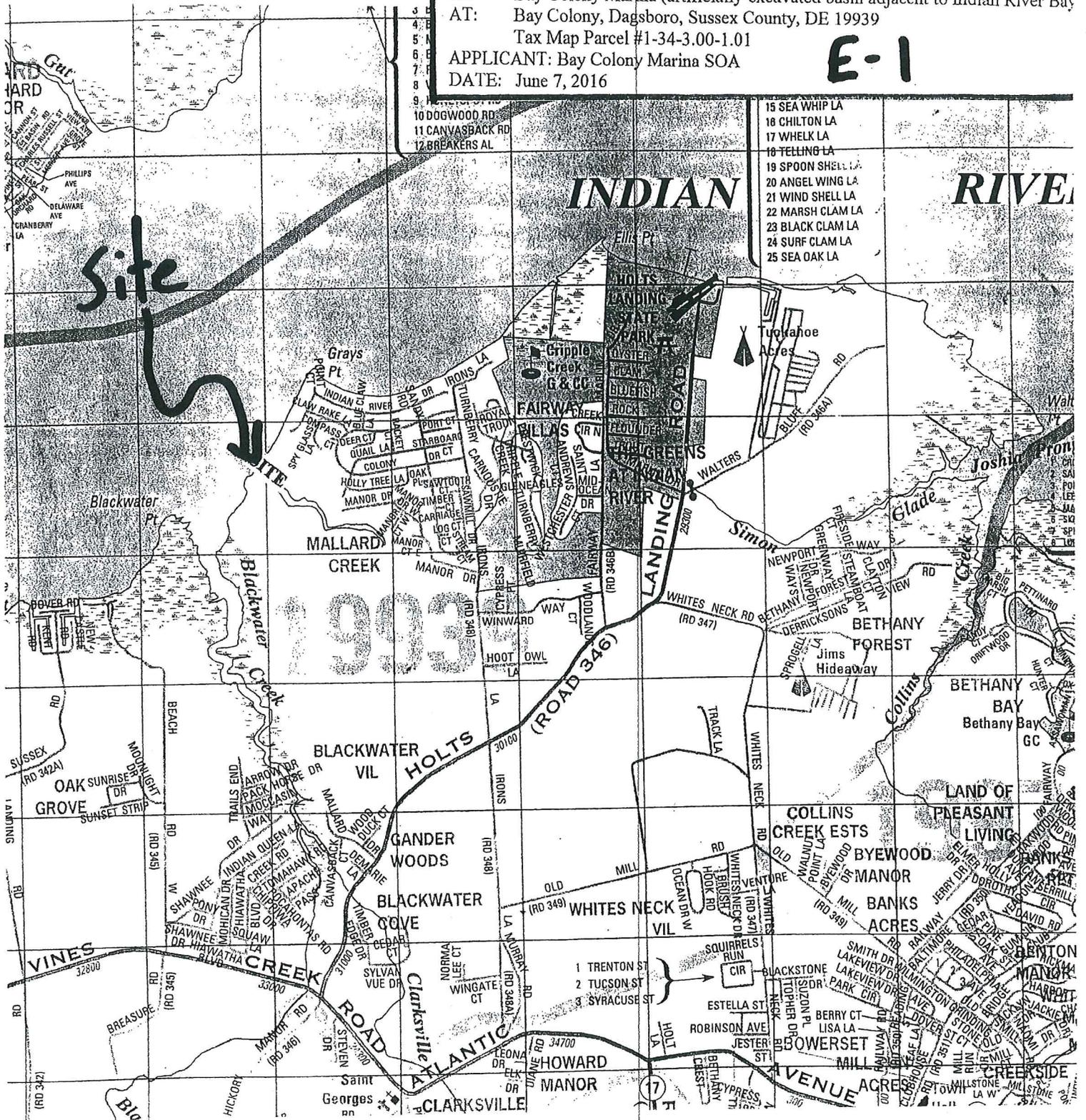


Figure 2. Map of Dagsboro area, Delaware, showing site location, Bay Colony Marina. Directions to site (from Dover, DE): SR-1 southbound to Bethany Beach; west (right) onto Route 26; continue approximately 4.5 miles to Irons Lane; right onto Irons Lane; left into Bay Colony at Colony Drive; continue on Colony Drive to marina at Quail Lane/Holly Tree Lane. Also see Figure 3.

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E-2

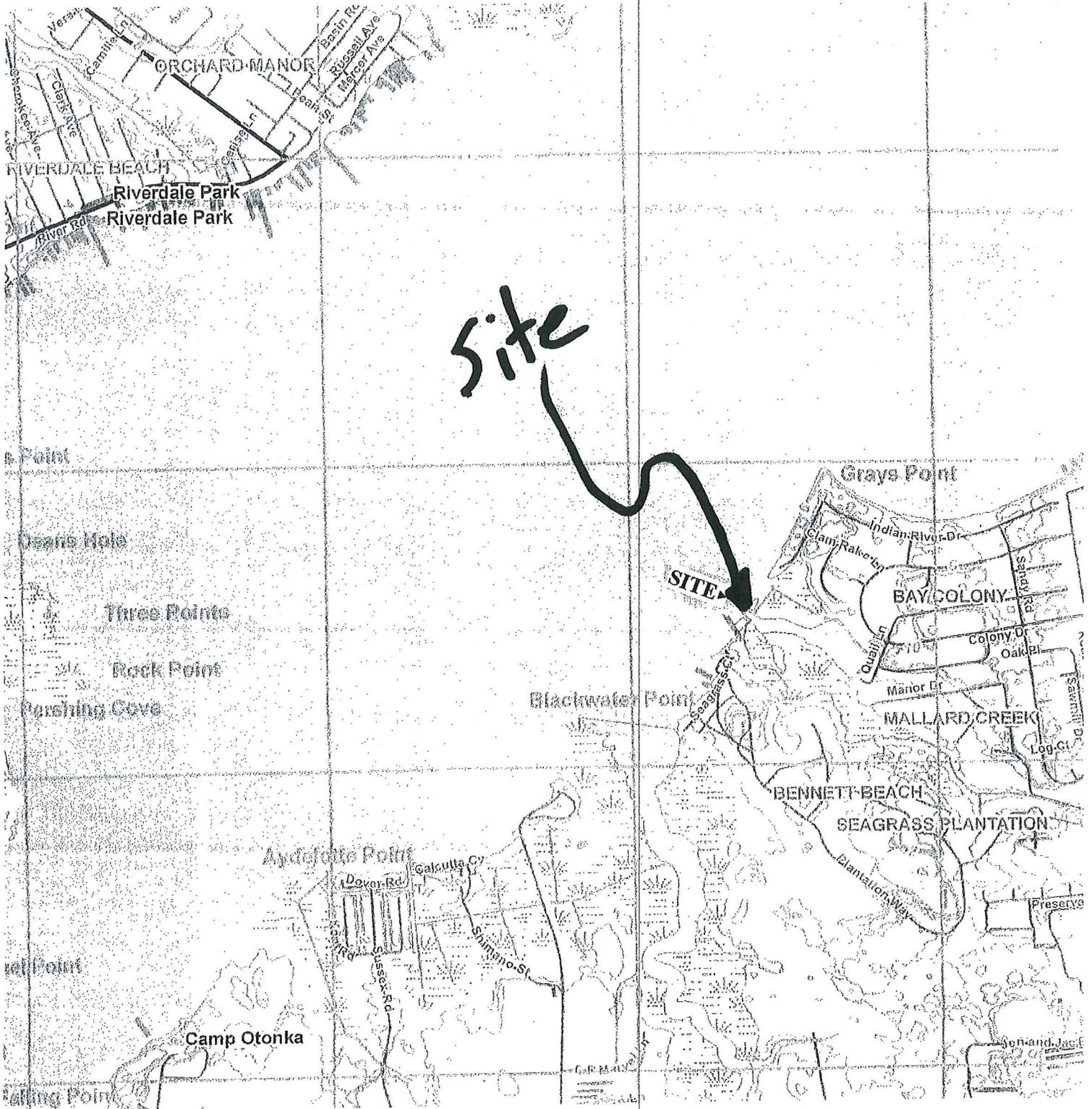


Figure 4. USGS topographic map, Frankford, Delaware quadrangle, showing location of Bay Colony Marina, artificially-excavated basin adjacent to Indian River Bay, Dagsboro, Sussex County, Delaware. Scale: 1" = 2,000'.

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E-3



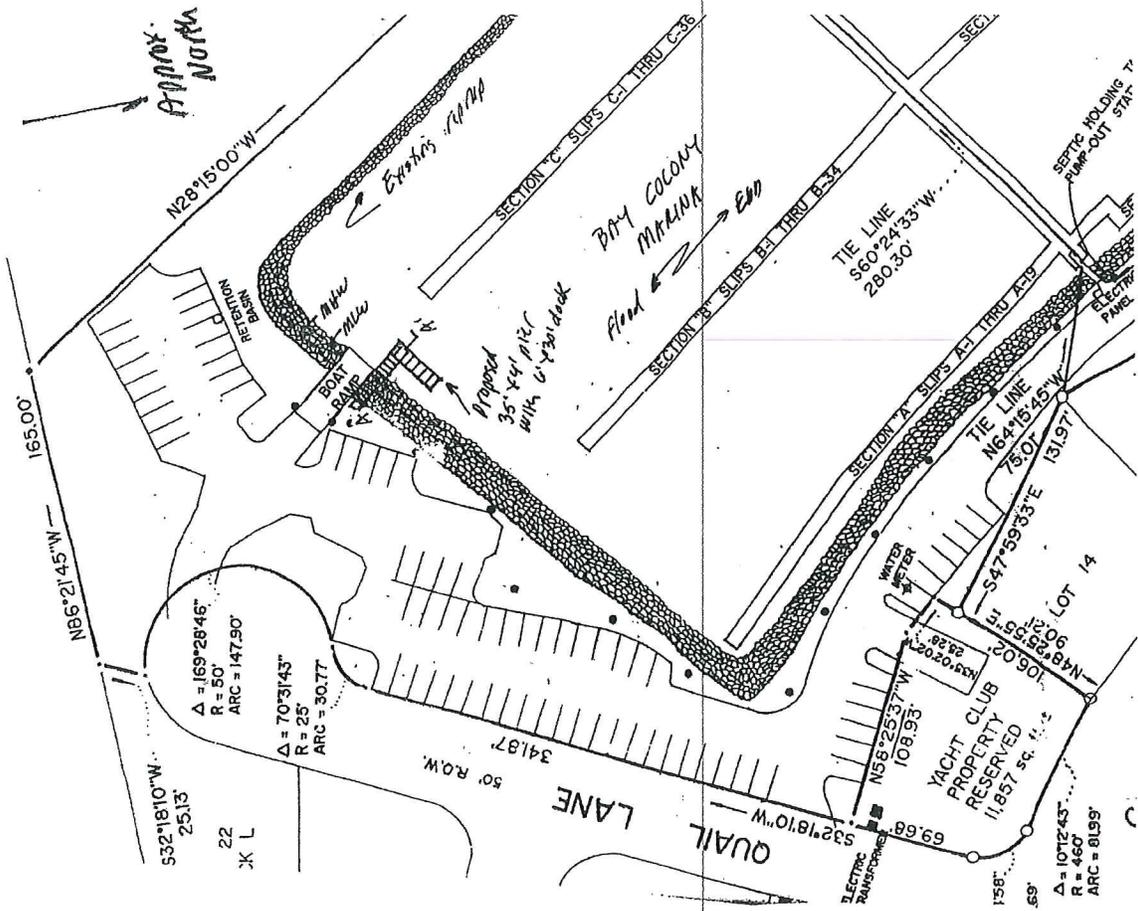
Google earth



Figure 6. GoogleEarth® 2015 aerial photograph of site, Bay Colony Marina, artificially-excavated basin adjacent to Indian River Bay, Dagsboro, Sussex County, Delaware. Applicant proposes to install a 35' x 4' pier and 6' x 30' dock adjacent to existing boat launch ramp (minor marina alteration), and to conduct 3,870± c.y. hydraulic maintenance dredging to a depth of -5' MLW, with disposal into Geotubes® to be located in the upland parking area at the inner end of the marina. Purpose of pier and dock is to provide temporary, courtesy docking facilities for boats using launch ramp. Purpose of maintenance dredging is to restore navigable depths in marina basin and entrance channel.

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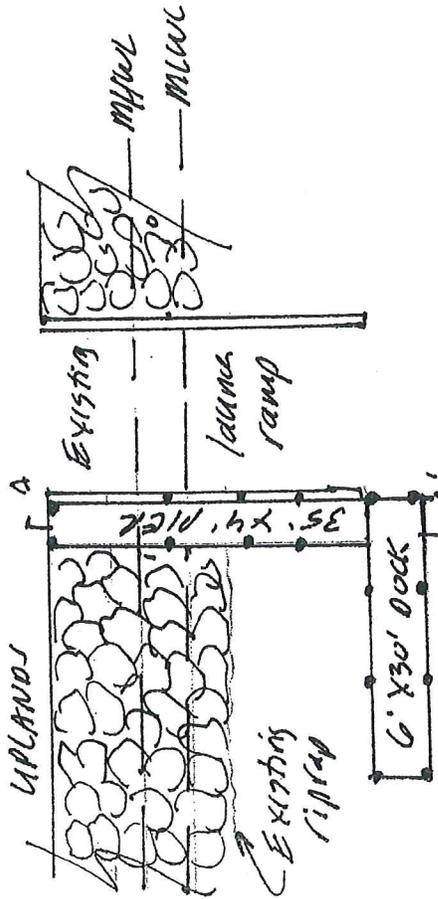
(A) VICINITY MAP (1" = 100' ±)



PROPOSED CONSTRUCTION OF A 35' X 4' COURTESY PIER AND 6' X 30' COURTESY DOCK (MINOR MARINA ALTERATION), AND 3,870± C.Y. HYDRAULIC MAINTENANCE DREDGING (TO -5' MLW) IN: Bay Colony Marina (artificially-excavated basin adjacent to Indian River Bay)
 AT: Bay Colony, Dagsboro, Sussex County, DE 19939
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(B) PLAN VIEW (1" = 20' ±)



(C) CROSS-SECTION (1" = 20' ±)

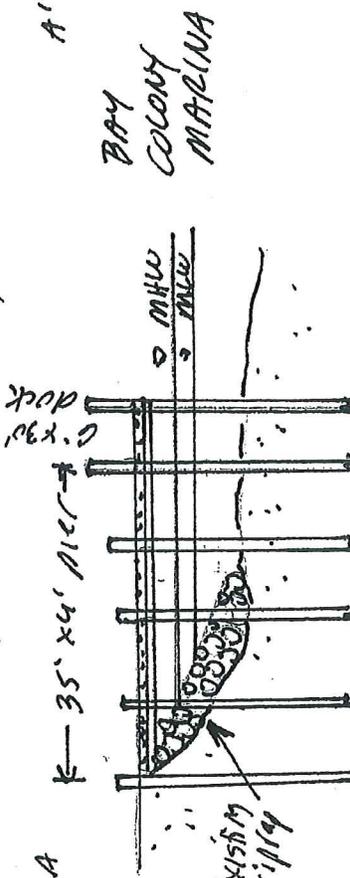


Figure 8. Plan view and cross-section of proposed 35' x 4' pier and 6' x 30' dock adjacent to existing boat launch ramp.

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E-5

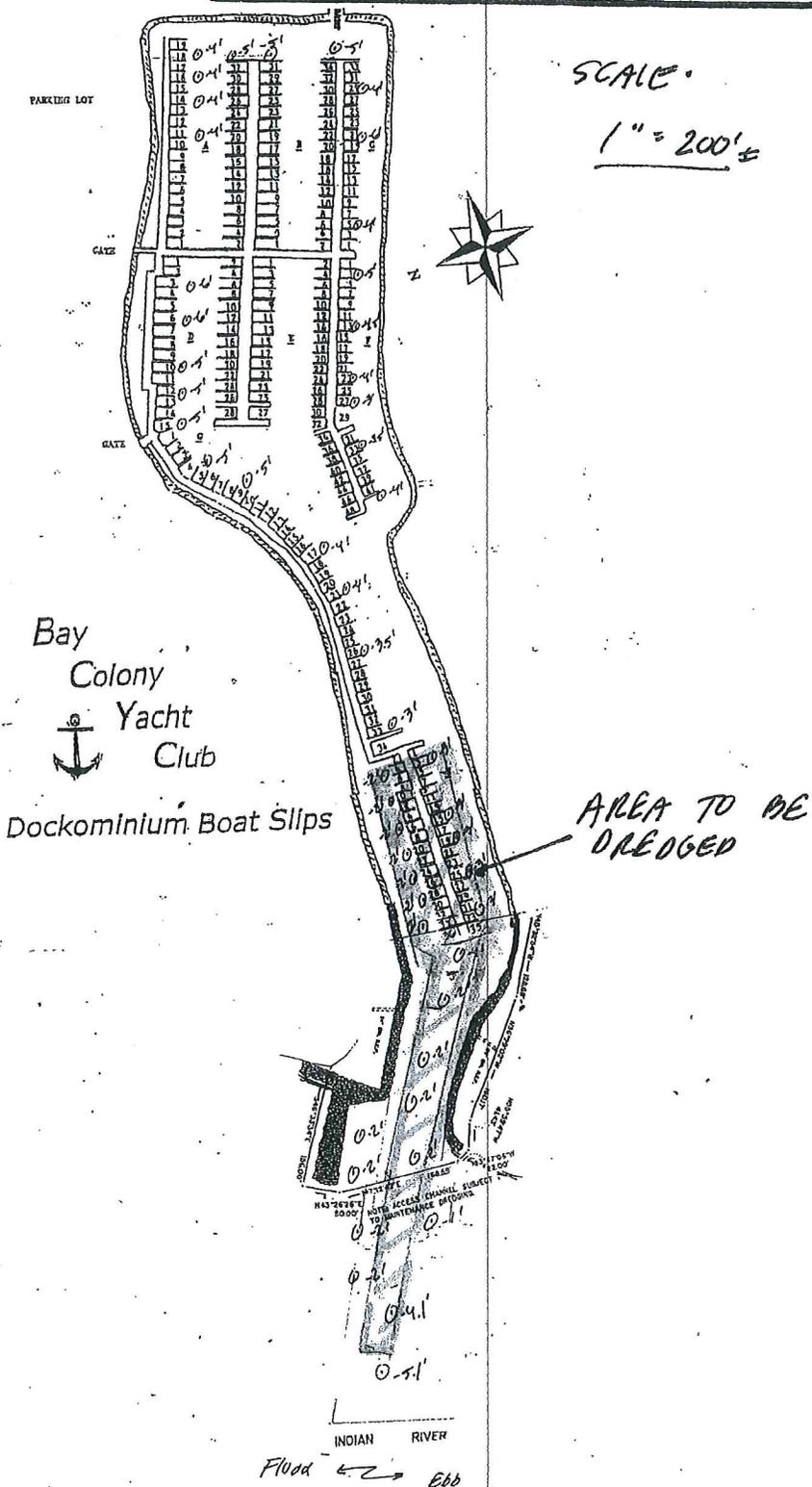
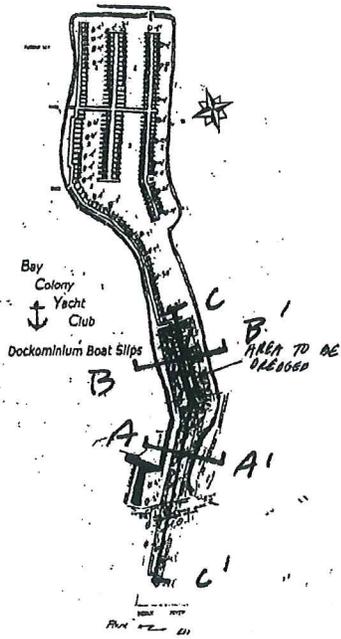


Figure 10.

Plan view of Bay Colony Marina and entrance channel showing existing MLW depths, as measured on site on July 21, 2015 by Evelyn Maurmeyer, CER, Inc., and Brian Emery and Gary Carpenter, Bay Colony Slip Owners Association.

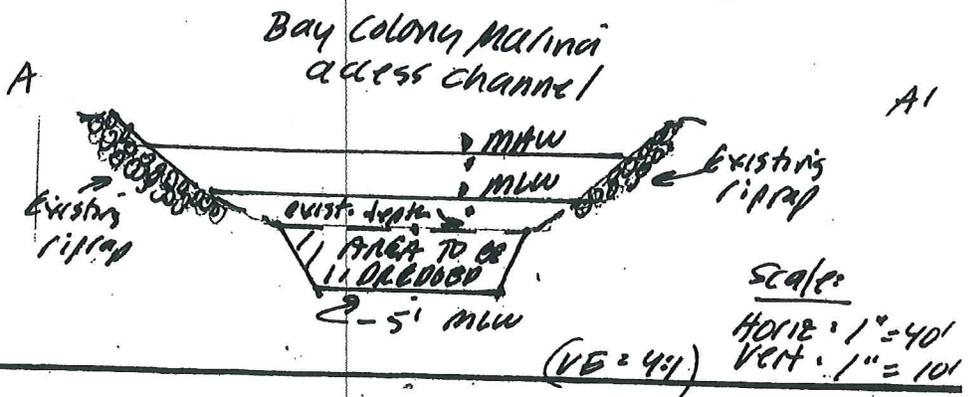
(a) TRANSECT LOCATIONS



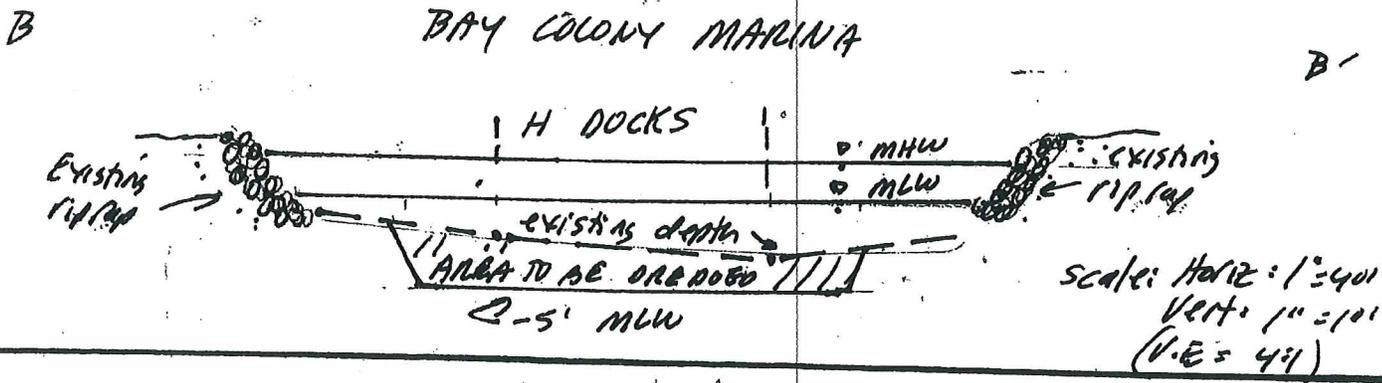
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E-6

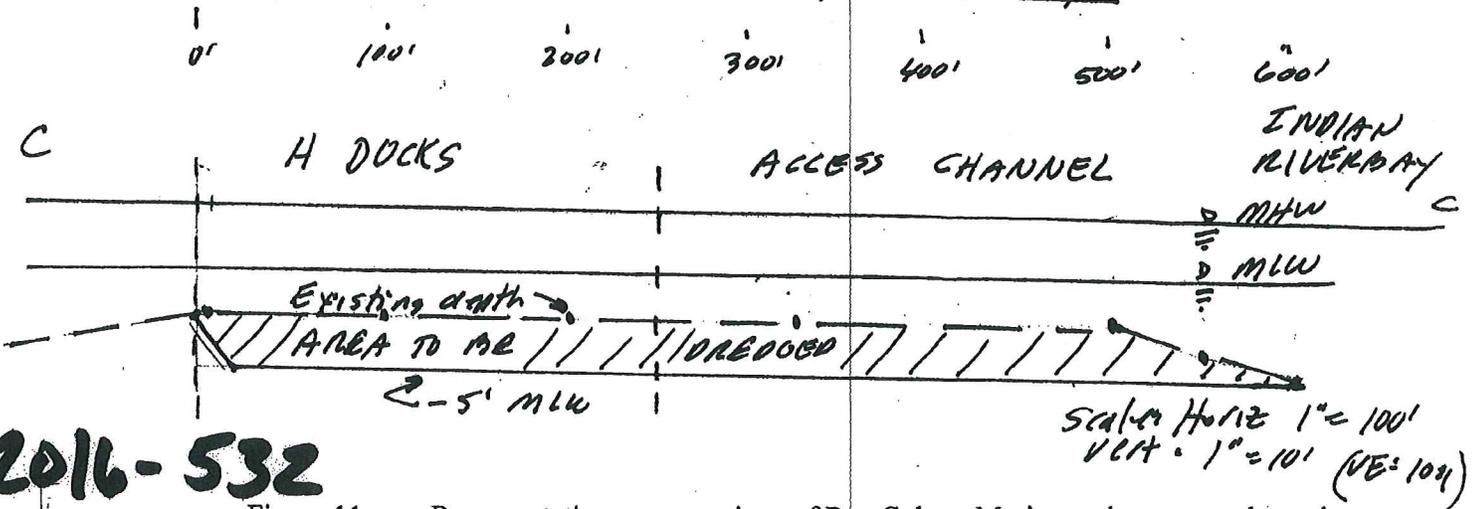
(b) TRANSECT A-A' (access channel)



(c) TRANSECT B-B' (H DOCKS, BAY COLONY MARINA)



(d) TRANSECT C-C' : H DOCKS TO INDIAN RIVER BAY



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Figure 11. Representative cross-sections of Bay Colony Marina and entrance channel showing existing and proposed MLW depths.

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E-7

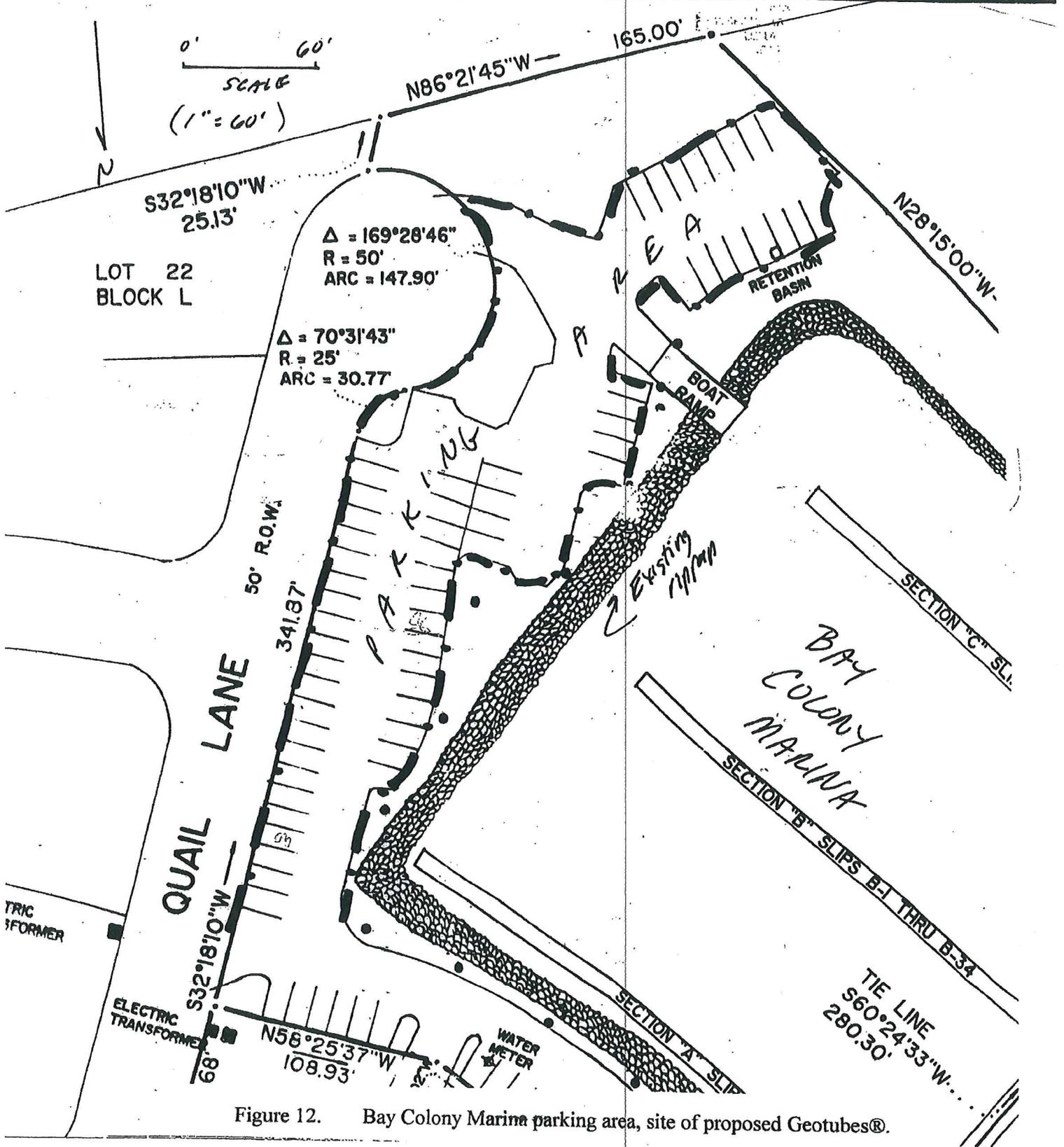


Figure 12. Bay Colony Marina parking area, site of proposed Geotubes®.