



**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-2016-895

Date

Application No.
CENAP-OP-R-2016-895

File No.

CENAP-OP-R-2016-895-85

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).

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: Fred J. Downs and John S. Burton Sr.

AGENT: Evelyn M. Maurmeyer, Ph.D., Coastal and Estuarine Research, Inc.

WATERWAY: Artificial tidal lagoon adjacent to Love Creek

LOCATION: 21891 Back Bay Lane and 22892 Waterfront Lane, Lewes, Sussex County, Delaware Tax Map Parcels 2-34-12.00-78.00 and 79.00 (Lat.38.68856°N/Long.-75.14614°W).

ACTIVITY: The applicants have requested a Department of the Army permit to conduct mechanical maintenance dredging of approximately 698 cubic yards of accumulated sediment to a depth of -3' MLW from a shared, artificial tidal lagoon between 21891 Back Bay Lane and 22892 Waterfront Lane (Tax Map Parcel #2-34-12.00-78.00 and 79.00) Lewes, Sussex County, Delaware. The dredging of the lagoon was originally authorized by a Department of the Army Permit NAPOP-R-72-843-2 and by a Water and Air Resources Commission of the State of Delaware Permit SL-457/1971. Dredging will be conducted via land-based excavator operating from the upland access road on the southwestern side of the lagoon. The excavated material will be placed in trucks and transported to an upland area, approximately 0.2 miles from the dredge site to an upland property owned by the applicant, John S. Burton Sr. The location of the project is indicated on the attached plans identified as E-1 through E-5.

PURPOSE: The purpose of the project is to maintain navigable depths in the lagoon.

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 mechanical dredging will maintain navigable depths within the lagoon. The accumulated sediment will be mechanically excavated and placed in trucks with no more than incidental fall back, minimizing potential discharges. 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, 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 lagoon 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 an 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 butterflyfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristus striata*), surf clam (*Spisula solidissima*), spiny dogfish (*Squalus acanthias*), 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*), and scalloped hammerhead shark (*Sphyrna lewini*).

The proposed work, which is the subject of this application, would occur during the winter months in an artificial tidal lagoon 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 lagoon. 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. Further, 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 further 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, 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, 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.

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 D. Yost at (267) 240-5278, by email at michael.d.yost@usace.army.mil or by writing this office at the above address.

Edward E. Bonner
Chief, Regulatory Branch

2016-895 E-1

MAP
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**PROPOSED 650± C.Y. MECHANICAL MAINTENANCE
DREDGING TO -3' MLW, WITH UPLAND DISPOSAL**
IN: Lagoon and basin adjacent to Love Creek, Rehoboth Bay
AT: 21891 Back Bay Lane and 22892 Waterfront Lane
 Lewes, Sussex Co., DE 19958
 Tax Map Parcels #2-34-12.00-78.00 and 79.00
APPLICANTS: Fred Downs and John S. Burton, Sr.
DATE: August 11, 2016

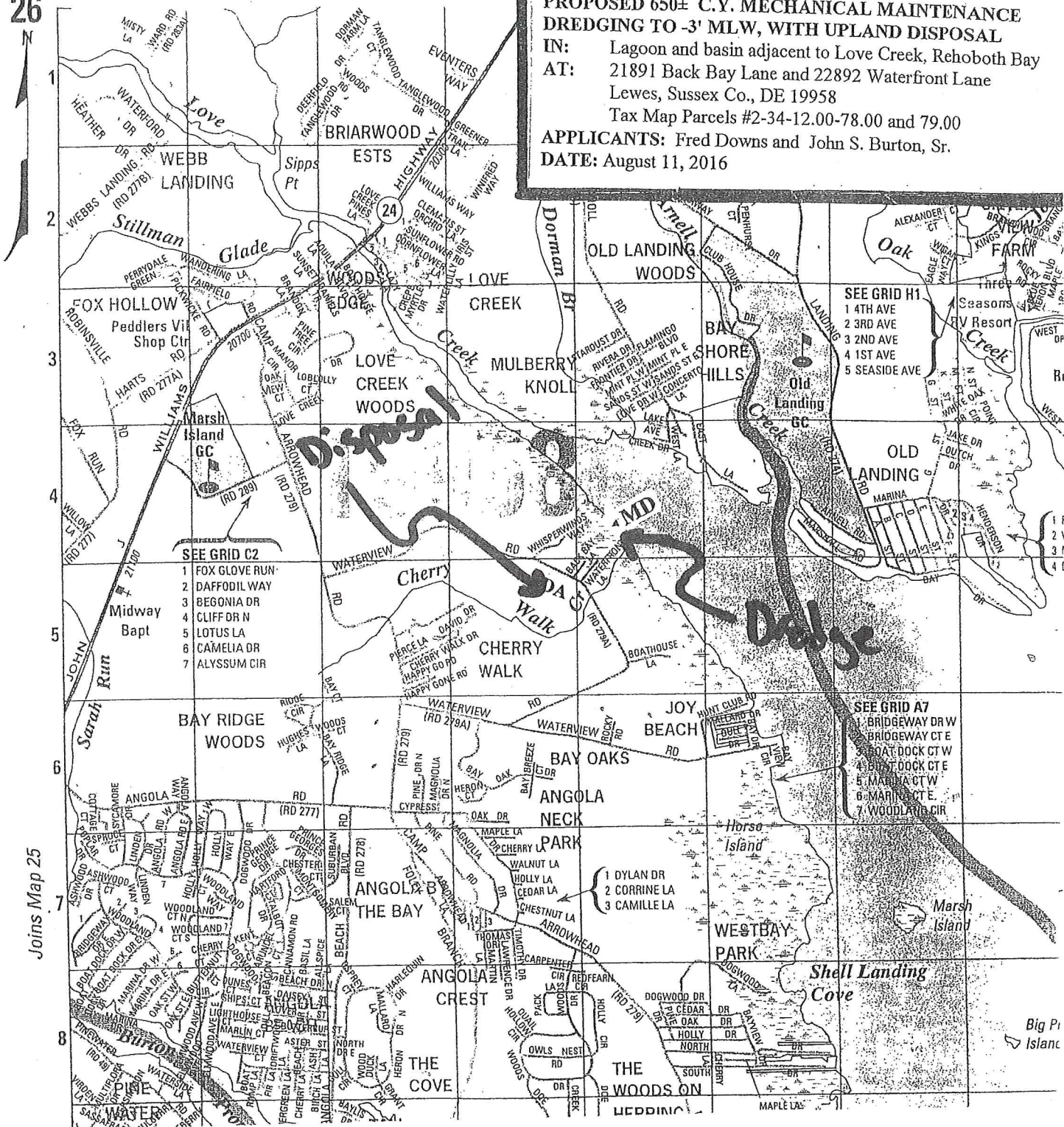


Figure 2.

Map showing maintenance dredging (MD) site location, shared lagoon between 21891 Back Bay Lane (Downs) and 22892 Waterfront Lane (Burton), Lewes, Sussex County, Delaware. Directions to site (from Dover, DE): SR-1 southbound; Sussex County, Delaware. Directions to site (from Dover, DE): SR-1 southbound toward beaches; left onto John J. Williams Highway (Route 24) westbound; cross Love Creek bridge; left at traffic light at Peddler's Village onto Camp Arrowhead Road; left onto Waterview Road; continue around curve, site is on left, enter at Back Bay Lane or Waterfront Lane. Disposal area (DA) is wooded upland area across Waterview Road. Also see Figure 3.

2016-895

E-2

**PROPOSED 650± C.Y. MECHANICAL MAINTENANCE
DREDGING TO -3' MLW, WITH UPLAND DISPOSAL**
IN: Lagoon and basin adjacent to Love Creek, Rehoboth Bay
AT: 21891 Back Bay Lane and 22892 Waterfront Lane
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Google earth

feet
meters | 100 | 500



Figure 6. GoogleEarth® 2015 aerial photograph of maintenance dredging site, shared lagoon between 21891 Back Bay Lane (Downs) and 22892 Waterfront Lane (Burton), Lewes, Sussex County, Delaware. Applicants propose to conduct 650 ± c.y. mechanical maintenance dredging (L = 530', w = 15'±, plus 30' x 30' basin at Burton property, to a depth of -3' MLW), with disposal at upland wooded area (owned by John S. Burton, Sr.) across Waterview Road (see Figure 10).

E-3

IN: Lagoon and basin adjacent to Love Creek, Rehoboth Bay
AT: 21891 Back Bay Lane and 22892 Waterfront Lane
 Lewes, Sussex Co., DE 19958
 Tax Map Parcels #2-34-12.00-78.00 and 79.00
APPLICANTS: Fred Downs and John S. Burton, Sr.
DATE: August 11, 2016

Sussex County Mapping

Layer Visibility

☒ **Addresses/Parcels**

☒ 911 Addresses

Id?

☒ Parcel Labels☒ ☐ Parcels☒ Id?☒ Annotation☒ County Districts☒ Schools/Libraries☒ Hydrology☒ Tax Index☒ Transportation☒ **Statewide**

Search Parcels:

HELP!

Tax ID

Selected Features:

Parcels (1)

1) 234-12.00-78.00

Zoom

PINWASSEMENTUNIT	234-12.00-78.00
DEED_BOOK_PG	D 2367 168
Name	DOWNES, FREDERICK J & TINA B
Mailing Address	21891 BACK BAY LN
CITY	LEWES
STATE	DE
ZIPCODE	19958
DESCRIPTION	WIRT 279
COUNCILMAN	4
FIRE	86
SCHOOL	6
LANDUSE	RS

Selected Features (1)

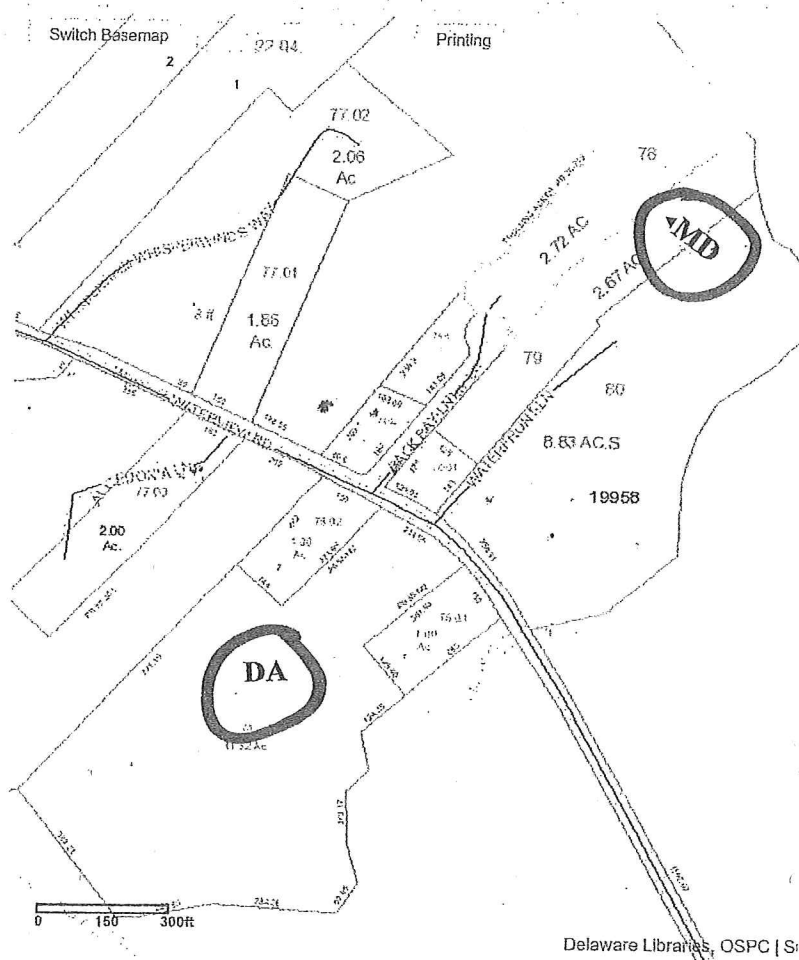
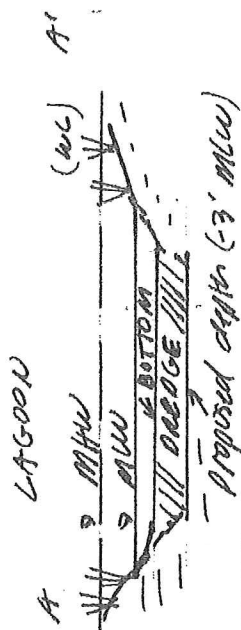


Figure 3. Sussex County Tax Map #2-34-12.00 showing maintenance dredging (MD) site location, shared lagoon parcels 78.00 (Downs) and 79.00 (Burton); and disposal area (DA), parcel 76.00 (Burton).

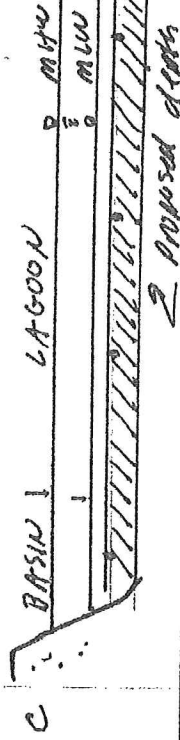
2016-895 E-4

PROPOSED 650± C.Y. MECHANICAL MAINTENANCE
DREDGING TO -3' MLW, WITH UPLAND DISPOSAL
IN: Lagoon and basin adjacent to Love Creek, Rehoboth Bay
AT: 21891 Back Bay Lane and 22892 Waterfront Lane
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DATE: August 11, 2016

TRANSVERSE CROSS-SECTION (1"=10'±)



LONGITUDINAL CROSS-SECTION (1"=10'±)



PLAN VIEW

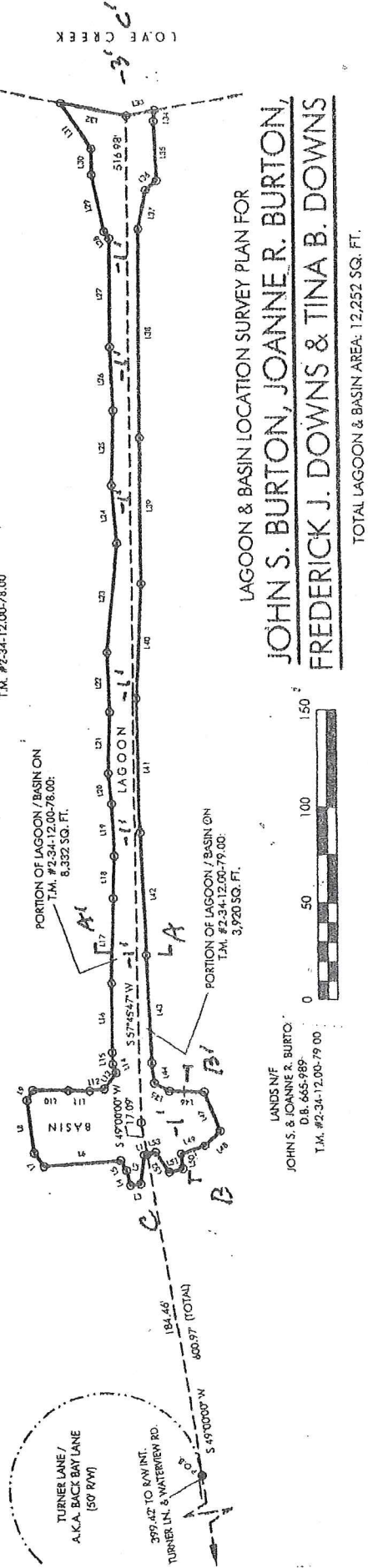
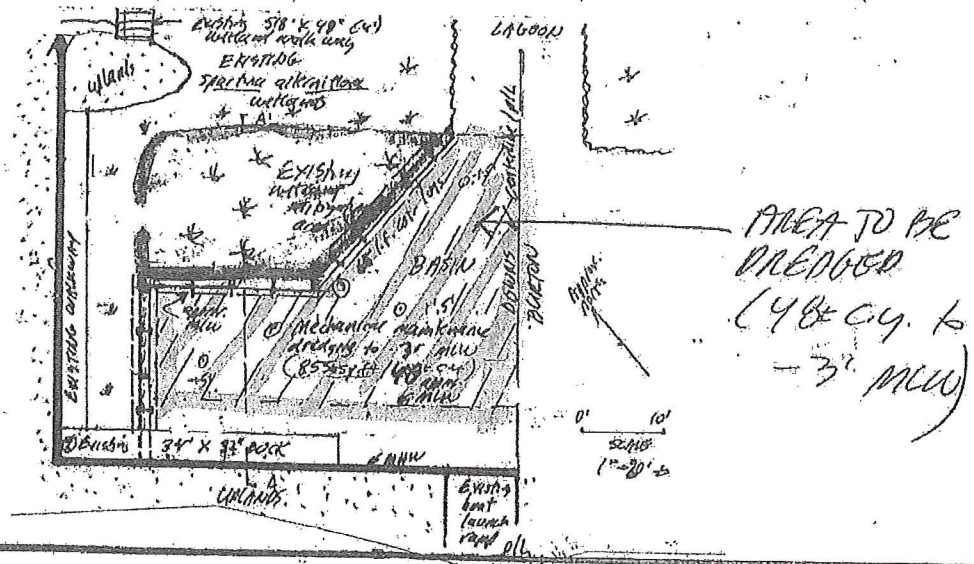


Figure 9. Plan view and cross-section sketches showing existing and proposed MLW depths.

2016-895 E-5

698 E
 PROPOSED 650+ C.Y. MECHANICAL MAINTENANCE
 DREDGING TO -3' MLW, WITH UPLAND DISPOSAL
 IN: Lagoon and basin adjacent to Love Creek, Rehoboth Bay
 AT: 21891 Back Bay Lane and 22892 Waterfront Lane
 Lewes, Sussex Co., DE 19958
 Tax Map Parcels #2-34-12.00-78.00 and 79.00
 APPLICANTS: Fred Downs and John S. Burton, Sr.
 DATE: August 11, 2016 *Revised Aug. 15, 2016*

(a) PLAN VIEW (1"=20'±)



(b) CROSS-SECTION (1"=20'±)

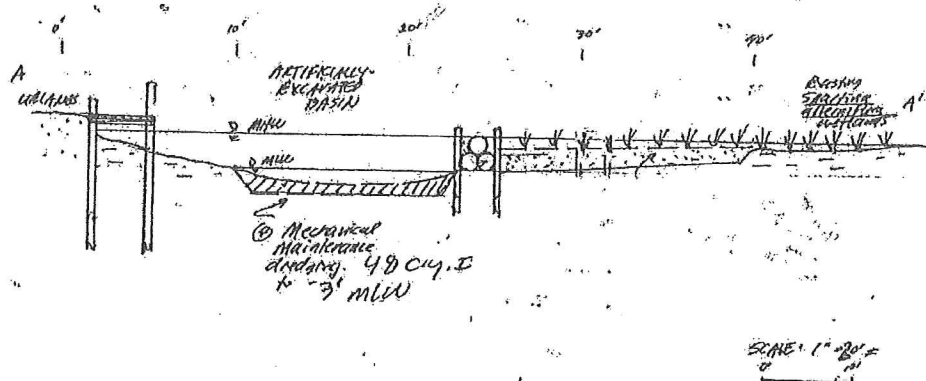


Figure 9a. Plan view and cross-section sketches showing existing and proposed MLW depths, Downs basin.