



**US Army Corps  
of Engineers**  
Philadelphia District

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

# Public Notice

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Public Notice No.  
**CENAP-OP-R-2017-168**

Date

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Application No.  
**CENAP-OP-R-2017-168**

File No.

**CENAP-OP-R-2017-168-85**

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In Reply Refer to:  
**REGULATORY BRANCH**

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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:** Indian River Acres Property Owners Association, Inc.

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

**WATERWAY:** Indian River Bay

**LOCATION:** Indian River Acres, Dagsboro, Sussex County, Delaware  
Tax Map Parcels 3-34-7.00-37.00 and 37.21  
(Lat. 38.5744°N/Long.-75.17088°W).

**ACTIVITY:** The Indian River Property Owners Association has applied for a 10-year maintenance dredging permit. The applicant proposes to conduct hydraulic maintenance dredging to a depth of -3' MLW in the community's artificially excavated tidal lagoons and two access channels in the Indian River Bay. The dredged material will be hydraulically pumped approximately 4,500 linear feet across Pepper Creek to an existing confined disposal site situated on 259.42 acres of a Delaware Division of Fish and Wildlife owned property (Tax Map Parcel 2-33-7.00-8.00). The project plans, identified as E-1 through E-5, are attached.

**PURPOSE:** The purpose of the project is to maintain navigable depths within the lagoons and safe access to/from the lagoons.

**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 within the lagoons and safe access to/from the lagoons. The proposed dredging would only take place in previously authorized areas and to the previously authorized depth of -3' MLW. The dredged material will be hydraulically pumped approximately 4,500 linear feet across Peppers Creek to an existing confined disposal site situated on 259.42 acres of a Delaware Division of Fish and Wildlife owned property (Tax Map Parcel 2-33-7.00-8.00). Wetlands would only be impacted temporarily in the winter months by the project for placement of the hydraulic pipeline to the confined disposal area. As such, 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 project site are considered too shallow 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. Furthermore, based on Tribal review preferences derived through consultation, formal government to government consultation is not required due to the limited scope of project.

Essential Fish Habitat: 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).

Effects of the Project: The project is located in Essential Fish Habitat identified on sheet 81 of the *Guide to Essential Fish Habitat Designations in the Northeastern United States, Volume IV: New Jersey and Delaware*, dated March 1999. The following managed species of fish have been listed in the guide as occurring in the vicinity of the project: Atlantic cod (*Gadus morhua*)(adult life stage), red hake (*Urophycis chuss*)(egg, larvae and juvenile life stage), windowpane flounder (*Scophthalmus aquosus*)(all life stages), monkfish (*Lophius americanus*)(egg and larvae life stages), bluefish (*Pomatomus saltatrix*)(juvenile life stage), Atlantic butterflyfish (*Peprilus triacanthus*)(juvenile and adult life stages), summer flounder (*Paralichthys dentatus*)(juvenile and adult life stages), black sea bass (*Centropristus striata*)(adult life stage), king mackerel (*Scomberomerus cavalla*) (all life stages), Spanish mackerel (*Scomberomerus maculatus*)(all life stages), cobia (*Rachycentron canadum*)(all life stages), Atlantic sea herring (*Clupea harengus*), sand tiger shark (*Carcharias taurus*)( larvae and adult life stages), Atlantic sharpnose shark (*Rhizopriondon terraenovae*)(adult life stage), dusky shark (*Carcharhinus obscurus*)(larvae life stage), sandbar shark (*Carcharhinus plumbeus*)(larvae, juvenile and adult life stages) and scalloped hammerhead shark (*Sphyrna lewini*)(juvenile life stage).

Analysis of the Effects: The proposed work which is the subject of this application would occur in a small area of waters within tidal lagoons subject to regular boating activity. Furthermore, the access channels to be dredged are subject to substantial wake energy and wave energy. 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. Impacts would be primarily temporary in nature, during the actual dredging period or for a short duration afterward. Substrate conditions typically return to preconstruction conditions and the benthic community recovers through recolonization. Furthermore, the proposed dredging would occur in the winter months as to not degrade water quality during times of anadromous fish migration and/or spawning.

Corps of Engineers View: Based upon the above analysis, the Corps of Engineers has determined that the proposed project would not have substantial direct, indirect, site-specific, or habitat-wide impacts on EFH, or upon the managed species and their life stages listed in the above referenced EFH guide, either individually, cumulatively or synergistically. The proposed project would not eliminate, diminish, nor 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](mailto:michael.d.yost@usace.army.mil), or by writing this office at the above address.

Edward E. Bonner  
Chief, Regulatory Branch

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E-1

**PROPOSED 10,000 C.Y. HYDRAULIC MAINTENANCE DREDGING TO -3' MLW, WITH DISPOSAL AT PINEY NECK CONFINED DISPOSAL FACILITY "A"**

IN: Artificial lagoons and access channels, Indian River Bay

AT: Indian River Acres, Sussex Road.

Dagsboro, Sussex County, DE

Tax Map Parcels #1-34-7.00-37.00 and 37.21

APPLICANT: Indian River Acres Property Owners Assoc.

DATE: March 29, 2017

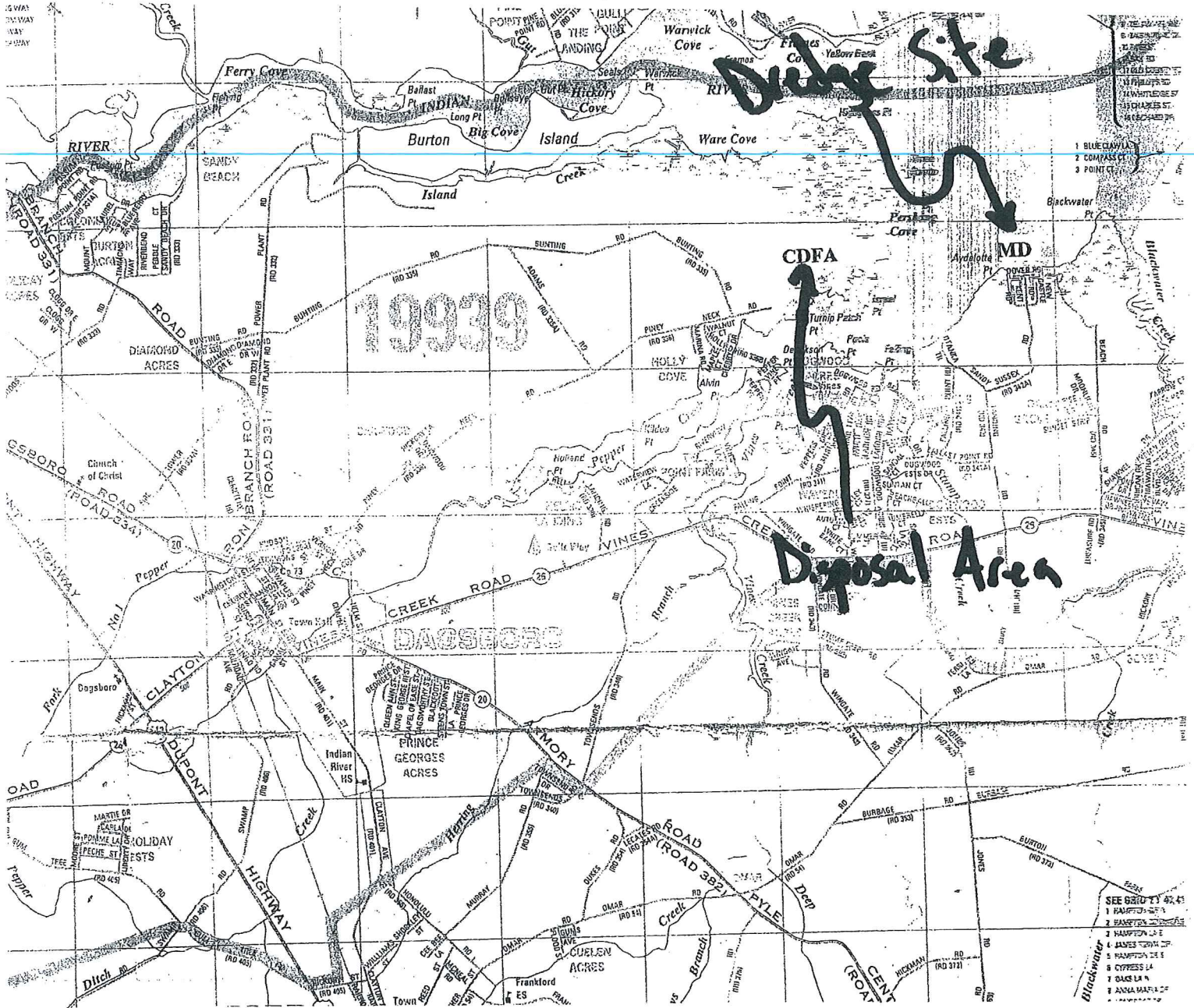


Figure 2.

Map of Dagsboro and vicinity, Sussex County, Delaware showing maintenance dredging (MD) site, Indian River Acres and disposal site, Confined Disposal Facility A (CDFA), Piney Neck. Directions to Indian River Acres (from Dover, DE): Route 113 southbound (through Millsboro) toward Dagsboro; left onto Route 20 (Dagsboro Road) to Dagsboro; continue southbound on Main Street, left onto Route 26 (Vines Creek Road) eastbound; left onto Sandy Landing Road; right at fork onto Sussex Road to Indian River Acres. Directions to disposal site: Return to Route 26 westbound to Dagsboro; right onto Main Street; right onto Piney Neck Road all the way to the end. Also see Figure 3.

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E-2

PROPOSED 10,000 C.Y. HYDRAULIC MAINTENANCE  
DREDGING TO -3' MLW, WITH DISPOSAL AT  
PINEY NECK CONFINED DISPOSAL FACILITY "A"  
IN: Artificial lagoons and access channels, Indian River Bay  
AT: Indian River Acres, Sussex Road,  
Dagsboro, Sussex County, DE  
Tax Map Parcels #1-34-7.00-37.00 and 37.21  
APPLICANT: Indian River Acres Property Owners Assoc.  
DATE: March 29, 2017

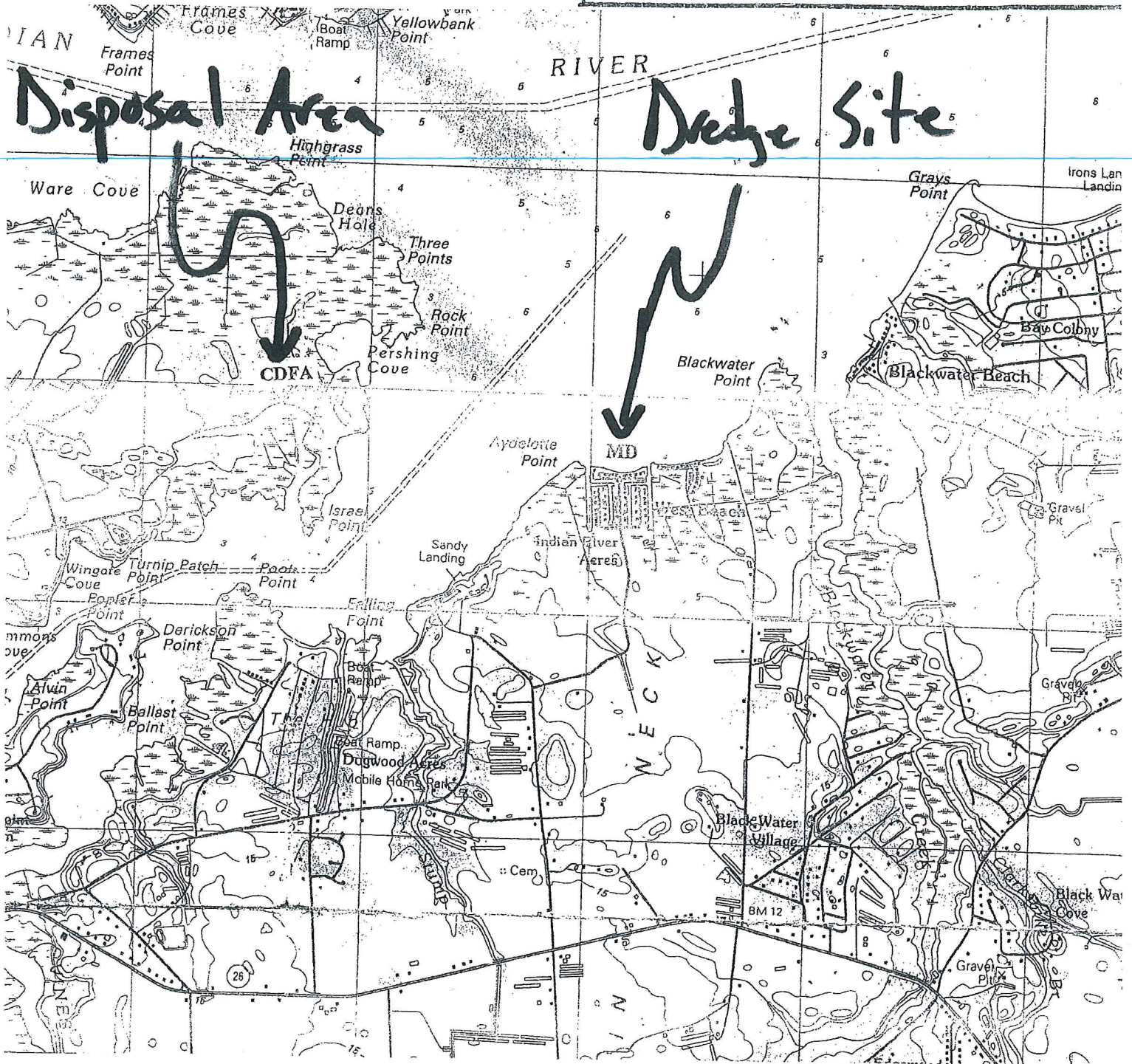


Figure 5. Site location on U.S.G.S topographic map, Frankford, Delaware showing maintenance dredging (MD) site, artificially-excavated lagoons adjacent to Indian River Bay at Indian River Acres, including two access channels; and disposal site, Confined Disposal Facility A (CDFFA), Piney Neck, adjacent to Pepper Creek near its confluence with Indian River Bay. Scale: 1" = 2,000'.

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E-3

Green Mark Channel

PROPOSED 10,000 C.Y. HYDRAULIC MAINTENANCE DREDGING TO -3' MLW, WITH DISPOSAL AT PINEY NECK CONFINED DISPOSAL FACILITY "A"  
 IN: Artificial lagoons and access channels, Indian River Bay  
 AT: Indian River Acres, Sussex Road, Dagsboro, Sussex County, DE  
 Tax Map Parcels #1-34-7.00-37.00 and 37.21  
 APPLICANT: Indian River Acres Property Owners Assoc.  
 DATE: March 29, 2017

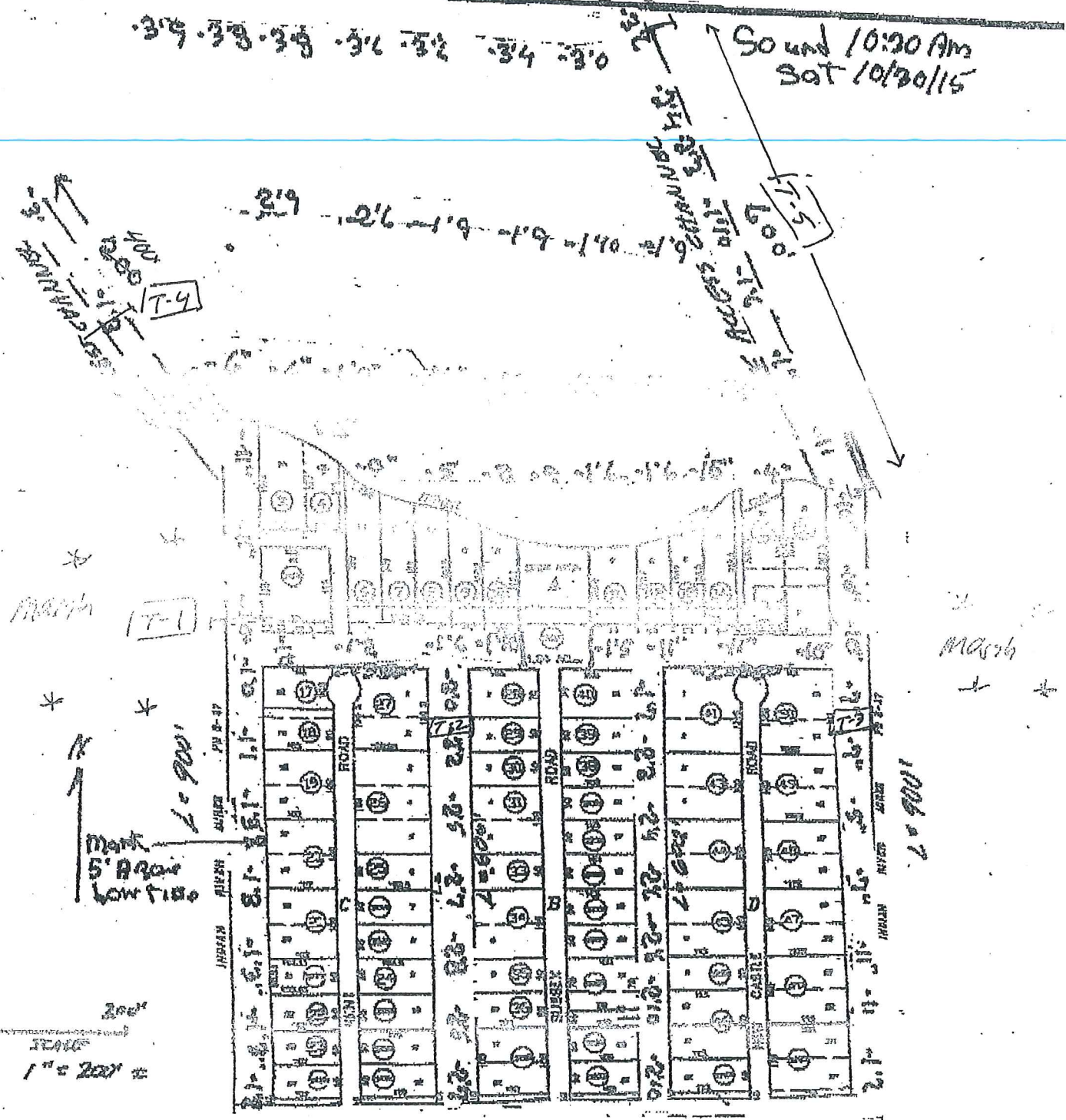


Figure 11. Plan view of Indian River Acres showing depths in lagoons and access channels as measured by applicants on October 30, 2015.

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E-4

PROPOSED 10,000 C.Y. HYDRAULIC MAINTENANCE  
 DREDGING TO -3' MLW, WITH DISPOSAL AT  
 PINEY NECK CONFINED DISPOSAL FACILITY "A"  
 IN: Artificial lagoons and access channels, Indian River Bay  
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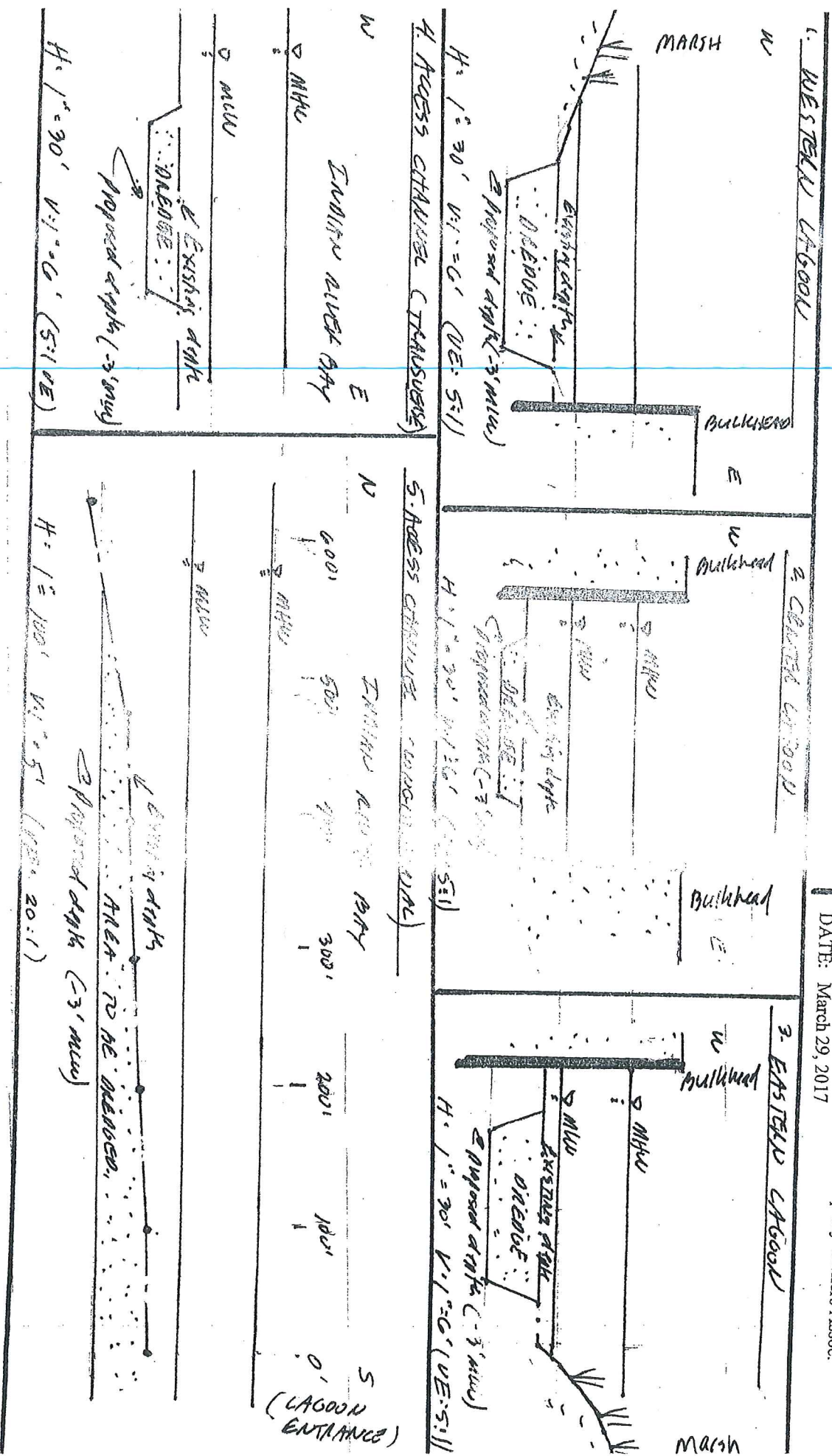


Figure 12. Cross-section diagrams showing existing (2015) and proposed depths. See Figure 11 for locations of transects.



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E-5

**PROPOSED 10,000 C.Y. HYDRAULIC MAINTENANCE  
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IN: Artificial lagoons and access channels, Indian River Bay

AT: Indian River Acres, Sussex Road,  
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APPLICANT: Indian River Acres Property Owners Assoc.

DATE: March 29, 2017

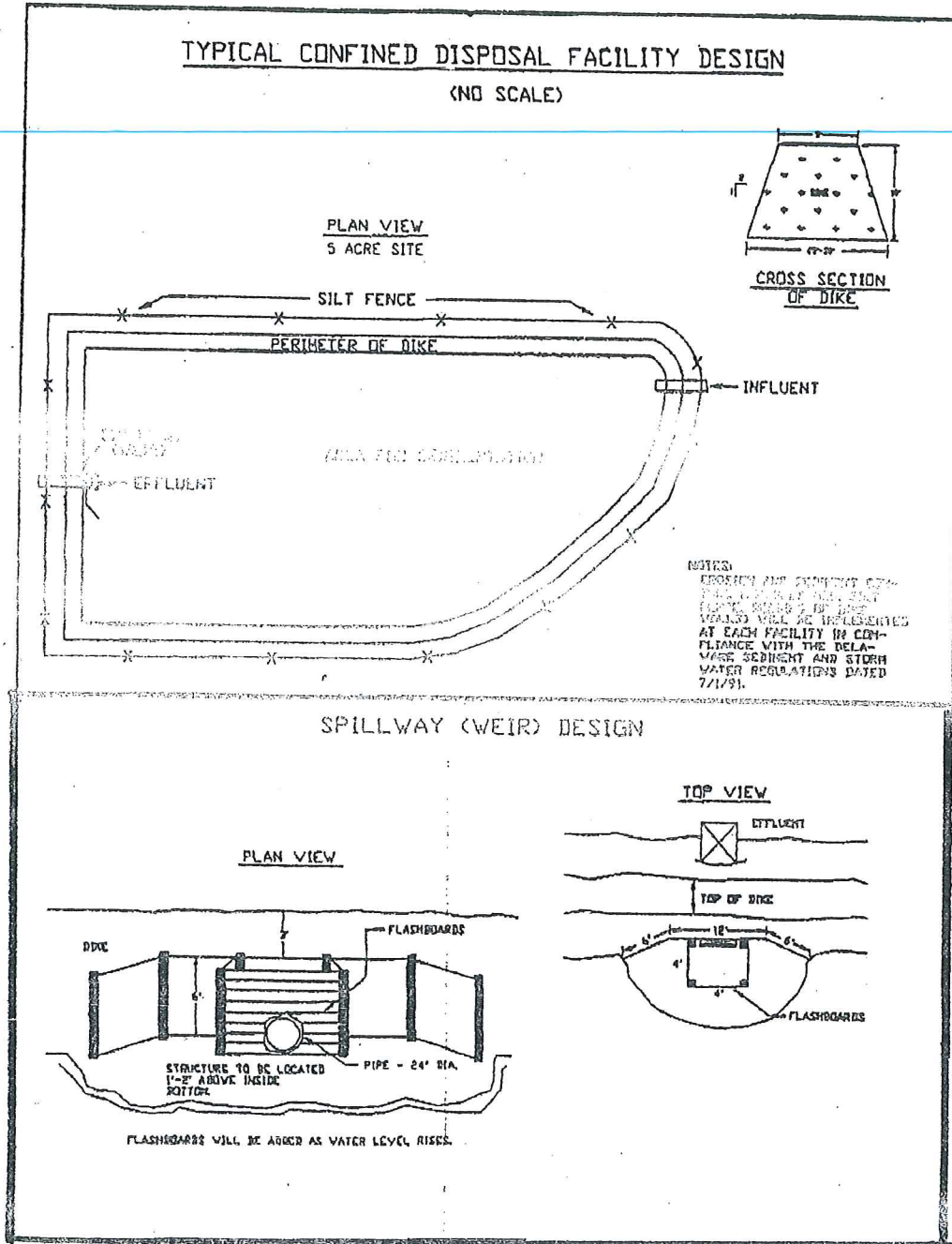


Figure 13. Plan view and cross-section of Confined Disposal Facility (provided by DNREC Shoreline and Waterway Management Section).