



**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. <b>CENAP-OP-R-2018-460</b>	Date <b>July 9, 2018</b>
Application No. <b>CENAP-OP-R-2018-460</b>	File No. <b>CENAP-OP-R-2018-460-85</b>
In Reply Refer to: <b>REGULATORY BRANCH</b>	

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:** Dogwood Acres Homeowners Association

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

**WATERWAY:** Indian River Bay

**LOCATION:** West Lagoon Road in Dagsboro, Sussex County, Delaware  
(Lat. 38.56611°N/Long. -75.184897°W).

**ACTIVITY:** The applicant proposes to conduct hydraulic maintenance dredging to a depth of -4' MLW in the artificial tidal lagoon and its associated access channel (approximately 2,800 linear feet) within the Dogwood Acres community in Dagsboro, Sussex County, Delaware. The dredged material will be hydraulically pumped to an existing confined disposal site located at the eastern end of Piney Neck Road in Dagsboro, Sussex County, Delaware. The location and extent of the work is indicated on the attached plans identified as E-1 through E-7.

There is no record of maintenance dredging occurring since the lagoons were originally excavated in the 1960's. Current bathymetry indicates lagoon depths range from -2 MLW to -4 MLW. The Delaware Department of Natural Resources and Environmental Control (DDNREC), Division of Watershed Stewardship, Shorelines and Waterways Section are contracted to perform the dredging and disposal during the fall/winter of 2018/2019. The confined disposal facility is owned by the DDNREC, Division of Fish and Wildlife and a disposal agreement is pending.

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

**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

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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 maintain navigable depths for safe access to/from and within the lagoon. Work will occur in the fall/winter months as to not degrade water quality during times of anadromous fish migration and/or spawning. The hydraulic dredging method will minimize turbidity, further minimizing water quality impacts. The dredged material will be hydraulically pumped to an existing confined disposal site located at the eastern end of Piney Neck Road. Because impacts to wetlands as a result of the pipe placement for dredge material disposal are temporary and there are no other impacts to wetlands or other special aquatic sites, the applicant is not proposing to conduct any compensatory mitigation for the work.

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 (ESA) as amended. As a result, consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the United States Fish and Wildlife Service pursuant to Section 7 of the ESA is not necessary. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The Magnuson-Stevens Fishery Conservation and Management Act requires all federal agencies to consult with the NOAA Fisheries on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). A preliminary review of this application indicates that EFH is present within the project area. The Philadelphia District will evaluate the potential effects of the proposed actions on EFH and will consult with NOAA Fisheries as appropriate. Consultation will be concluded prior to the final decision on this permit application.

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 has been so extensively modified that little likelihood exists for the proposed project 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 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.

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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.

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.

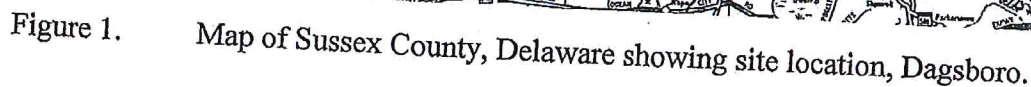
Additional information concerning this permit application may be obtained by calling Michael Yost at (267) 240-5278, by email at [michael.d.yost@usace.army.mil](mailto:michael.d.yost@usace.army.mil), or by writing this office at the above address.



Edward E. Bonner  
Chief, Regulatory Branch



**PROPOSED 5,300 C.Y. HYDRAULIC MAINTENANCE  
DREDGING TO -4' MLW, WITH DISPOSAL AT  
PINEY NECK CONFINED DISPOSAL FACILITY "A"**  
IN: Dogwood Acres lagoons and access channel  
AT: West Lagoon Road, Dogwood Acres,  
Dagsboro, Sussex County, DE 19939  
APPLICANT: Dogwood Acres Homeowners Assoc.  
DATE: May 29, 2018





E-2

**PROPOSED 5,300 C.Y. HYDRAULIC MAINTENANCE  
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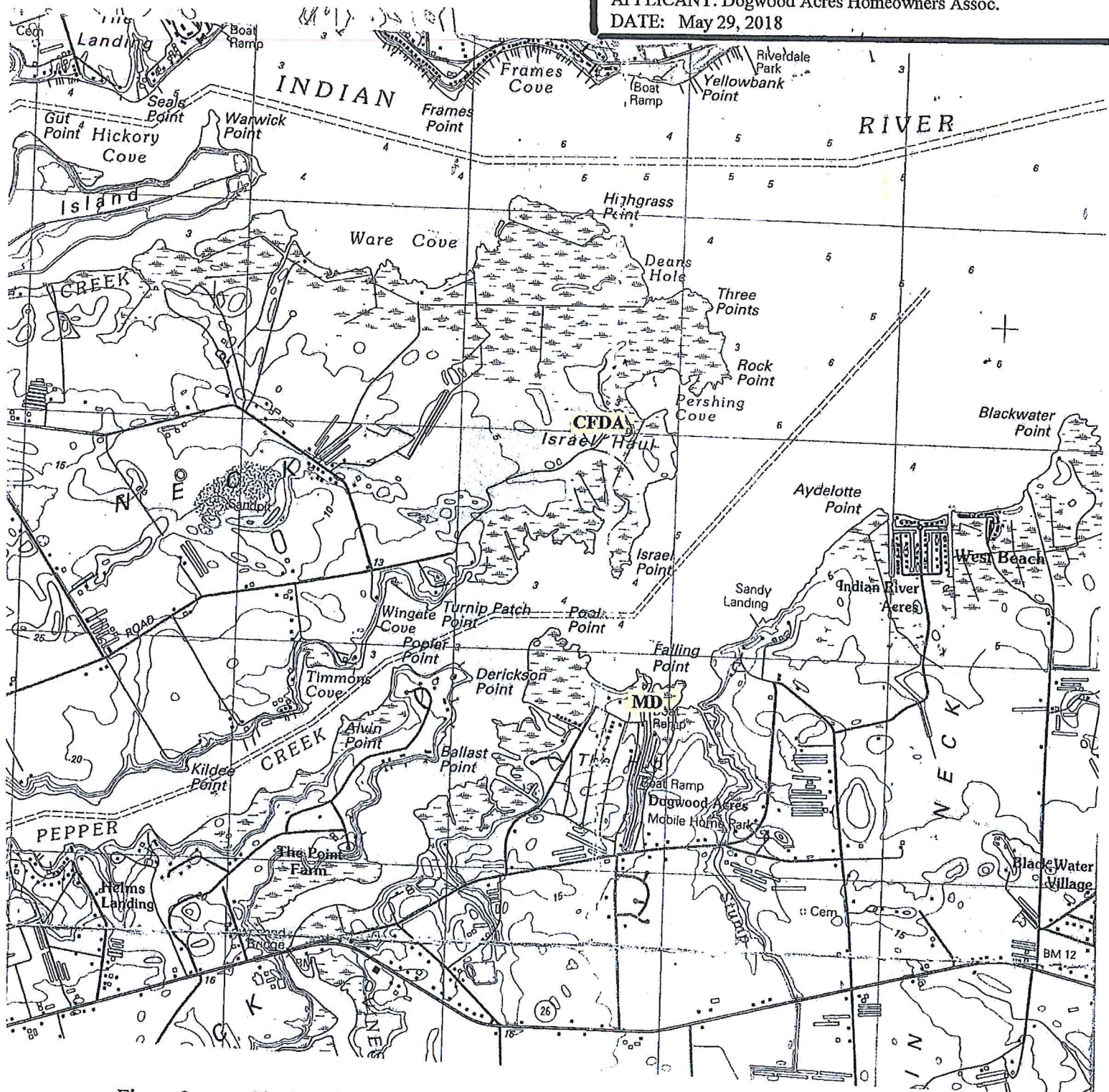


Figure 3. Site location on U.S.G.S topographic map, Frankford, Delaware showing maintenance dredging (MD) site, Dogwood Acres lagoon, adjacent to Pepper Creek; and disposal site, Confined Disposal Facility A (CDFA), Piney Neck, adjacent to Pepper Creek near its confluence with Indian River Bay. Scale: 1" = 2,000'.



E-3

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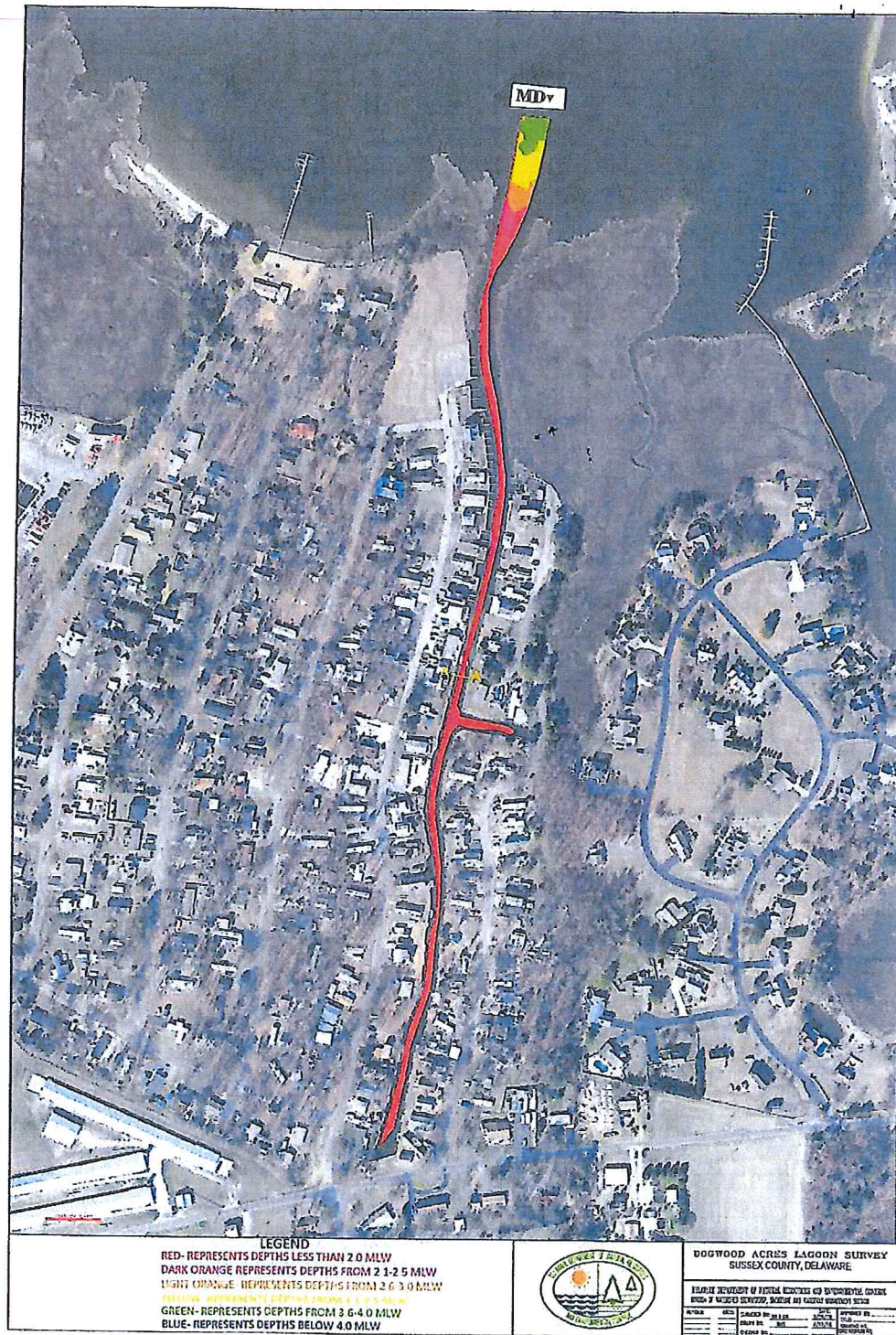


Figure 4a. Aerial photograph showing maintenance dredging (MD) site, Dogwood Acres lagoon and entrance channel, adjacent to Pepper Creek (image and depth data provided by Chuck Williams, DNREC Shoreline and Waterway Section).



E-4

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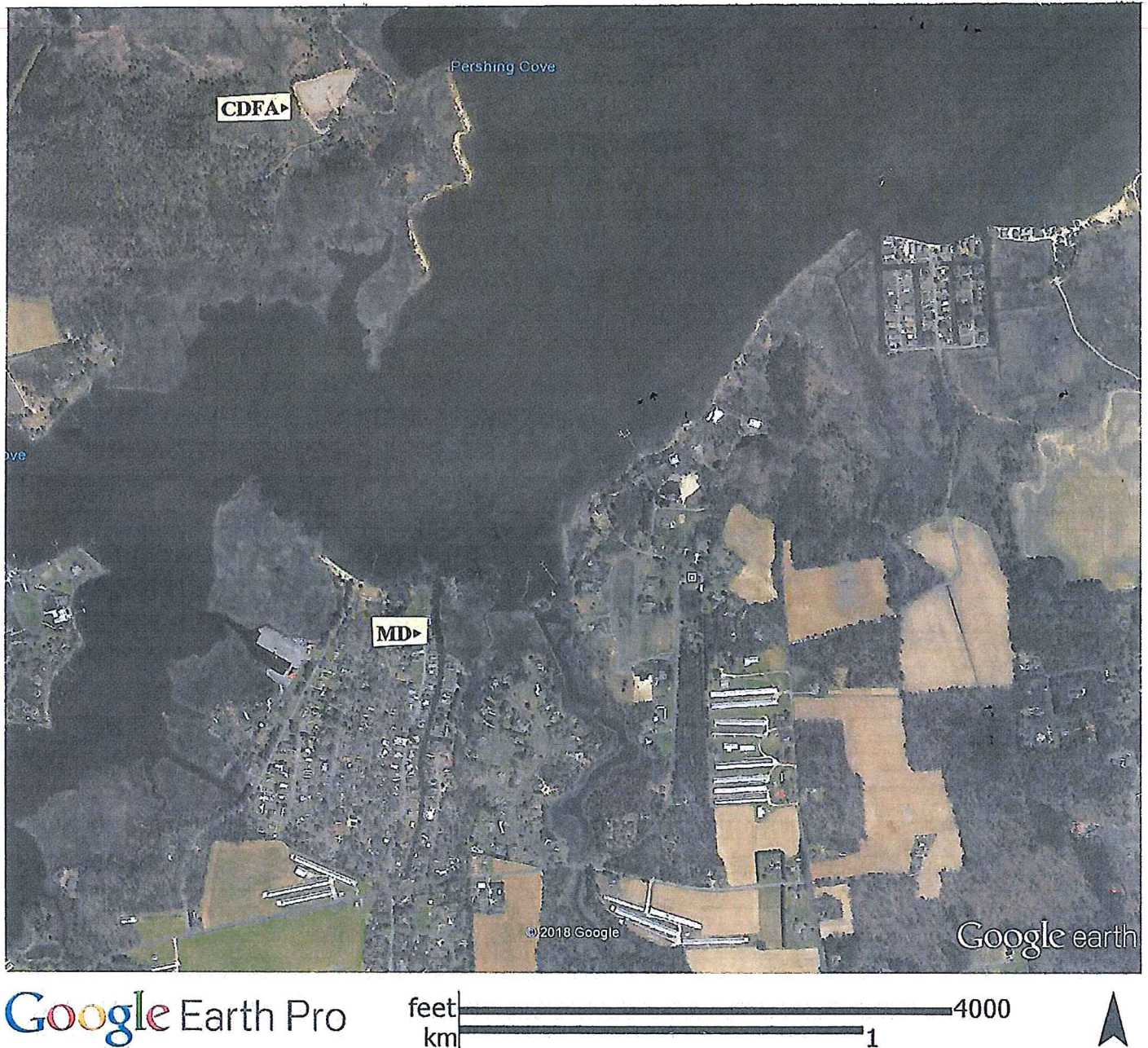


Figure 4b. GoogleEarth 2017 aerial photograph showing maintenance dredging (MD) site, Dogwood Acres lagoon and entrance channel, adjacent to Pepper Creek, and disposal site, Confined Disposal Facility A (CDFA), Piney Neck, approximately 3,800' from lagoon entrance.



E-5

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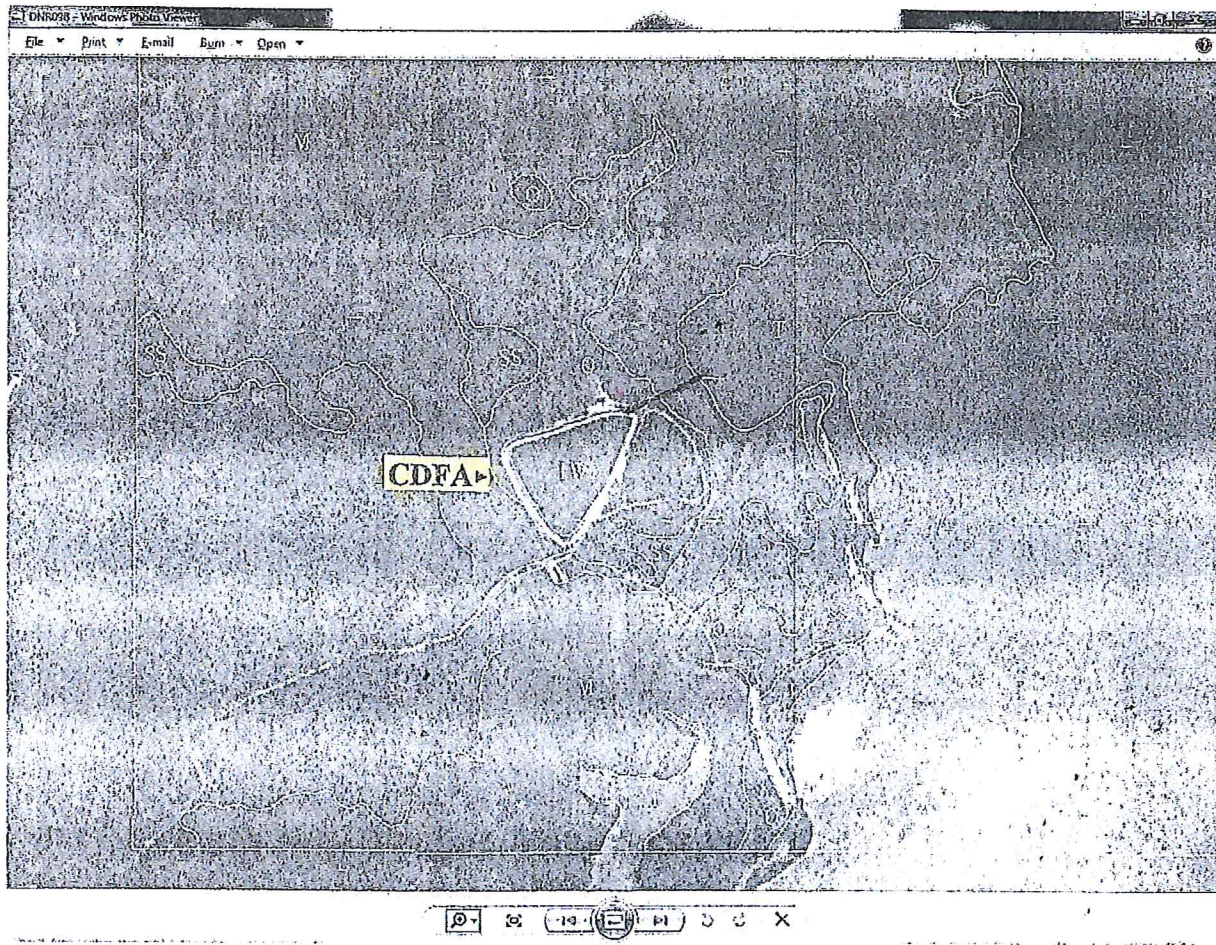


Figure 6b.

State of Delaware DNREC wetland map #098 (1988 photobase) showing disposal site, Confined Disposal Facility A (CDFA), Piney Neck, adjacent to Pepper Creek near confluence with Indian River Bay. Site is mapped IW (impounded water). Wetlands mapped M (marsh) and T (tidal mudflats, in some cases vegetated/sand bars) are located between disposal site and waterway.



E-6

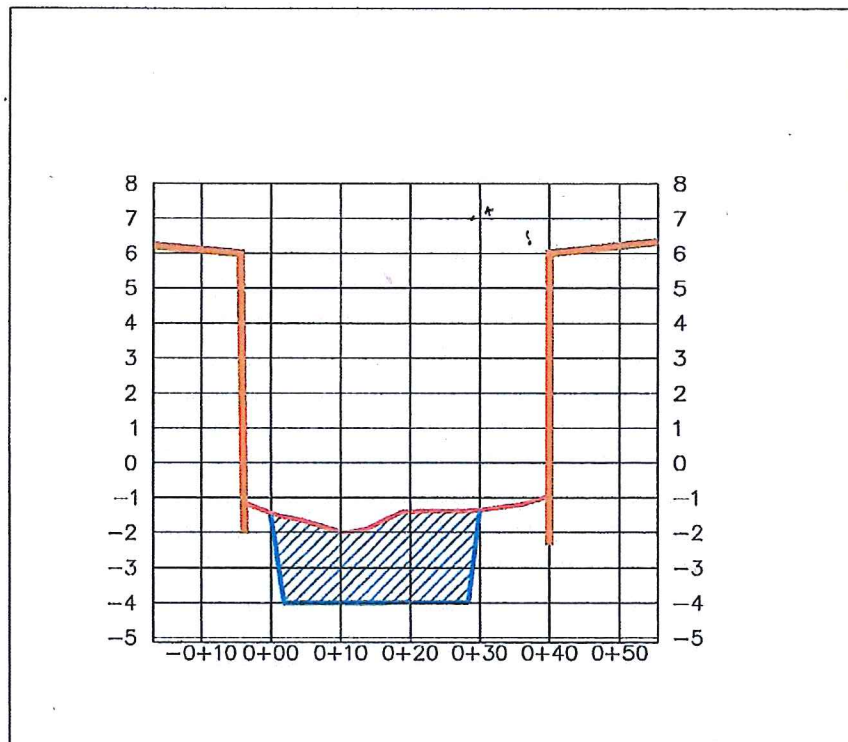
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TYPICAL CROSS SECTION A-A

DOGWOOD ACRES PROPOSED MAINTENANCE DREDGING

SCALE: 1" = 20 FEET

DATUM: MEAN LOW WATER

Figure 8. Representative cross-section showing existing and proposed depth (provided by Chuck Williams, DNREC Shoreline and Waterway Section).



E-7

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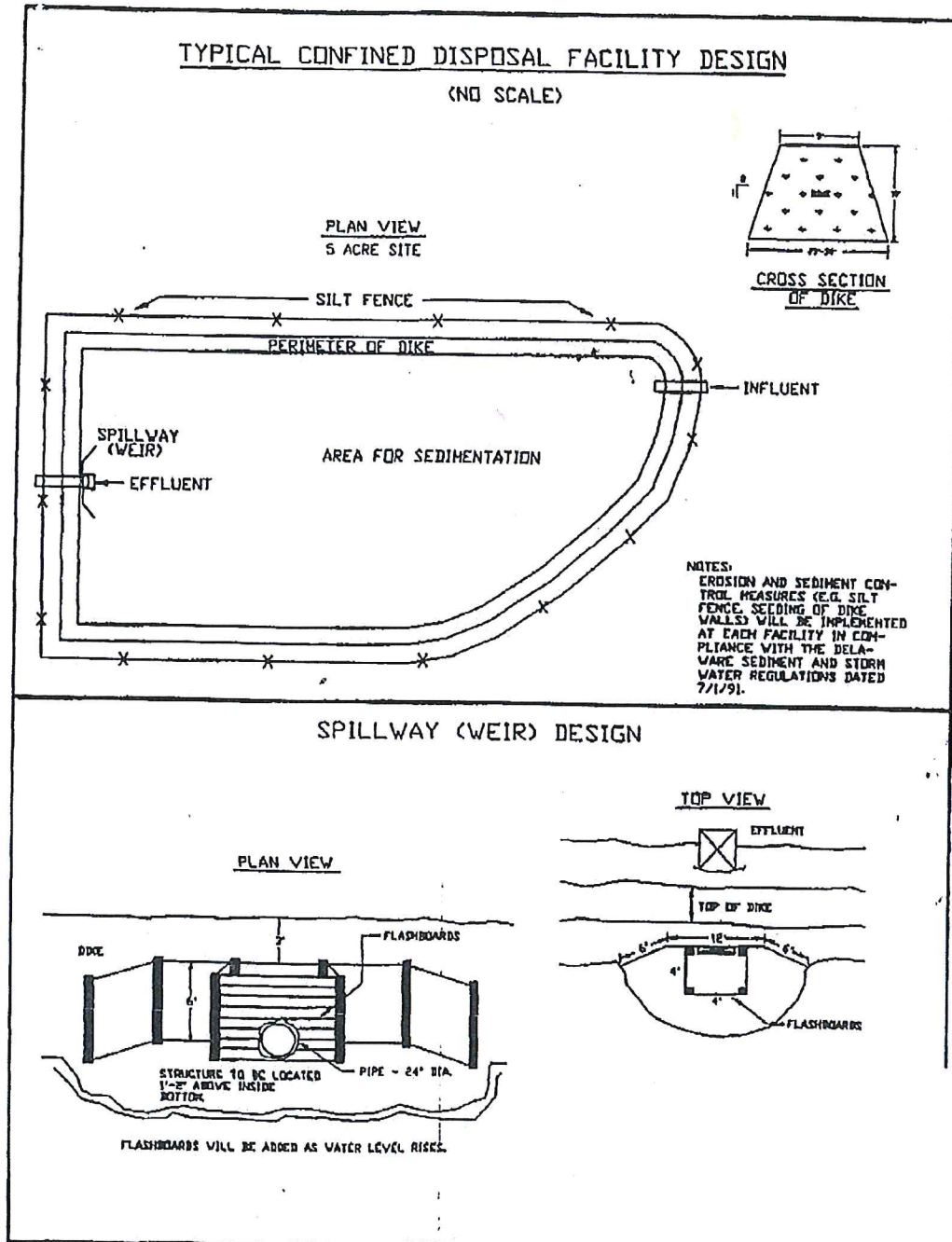


Figure 9. Plan view and cross-section of Confined Disposal Facility (provided by DNREC Shoreline and Waterway Management Section).