



**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-2018-763-23	Date September 20, 2018
Application No. CENAP-OP-R-2018-763	File No. CENAP-OP-R-2018-763
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: W&D Cropper Family Limited Partnership

AGENT: Coastal and Estuarine Research Inc. Lewes, Delaware

WATERWAY: Pepper Creek

LOCATION: The Cropper Oyster House, 31197 Helms Landing Road, Tax Map Parcel 2-33-7.00-52.00, Dagsboro, Sussex County, Delaware (38.56056N/-75.21497W.)

ACTIVITY: The applicant proposes to conduct mechanical maintenance dredging in Pepper Creek at the Cropper Oyster House, 31197 Helms Landing Road, Tax Map Parcel 2-33-7.00-52.00, Dagsboro, Sussex County, Delaware. The proposal is to remove by mechanical means approximately 1350 cubic yards of accumulated muddy sand sediment to a depth of -4' MLW from the existing boat launch ramp and berthing area located along the bulkhead at the old Cropper Oyster House. The dimensions of the dredging area are: 60 feet long by 150 feet wide off the front of the bulkhead; 135 feet long by 30 feet wide off the launch ramp; and 90 feet long by 20 feet wide off the eastern bulkhead. Dredging would occur from the uplands using a long reach excavator and a barge-mounted excavator, if necessary.

The material would be transported by truck (0.34 mile) to an existing upland confined disposal site, owned by the applicant at the Gull's Way Campground, located off of Shell Road, Dagsboro, Sussex County, Delaware (Tax Map Parcel 2-33-11.00-90.00).

PURPOSE: The project purpose is to restore and maintain navigable depths at the boat launch and berth, providing access to navigable waters for the purpose of navigation.

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 project is for the removal of accumulated sediment from an active boat ramp and berthing area. The dredging would be conducted using mechanical methods, thereby entirely avoiding discharges of dredged or fill material into waters of the United States. The "no action" alternative would result in continued sedimentation and shoaling of Pepper Creek at this location, making launching, berthing and ingress/egress difficult, especially at low tides. Dredging would occur to a depth of -4' MLW, thereby matching the controlling depth of Pepper Creek. 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.

A preliminary review of this application indicates that the proposed work would not affect listed species or their critical habitats pursuant to Section 7 of the Endangered Species Act (ESA) as amended. As a result, consultation with NOAA Fisheries 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 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 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 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.

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 John Brundage at 302-736-9763, by email at john.g.brundage@usace.army.mil, or by writing to 1203 College Park Drive, Suite 103, Dover, Delaware 19904.



Edward E. Bonner
Chief, Regulatory Branch

**PROPOSED 1,350 C.Y. MECHANICAL DREDGING
TO -4' MLW WITH DISPOSAL AT EXISTING
UPLAND CONFINED DISPOSAL AREA**

IN: Pepper Creek (tributary of Indian River Bay)
AT: Old Oyster House, 31197 Helms Landing Road
Dagsboro, Sussex County, DE 19939
Tax Map Parcel #2-33-7.00-52.00
APPLICANT: W&D Cropper Family L.P.
DATE: August 28, 2018

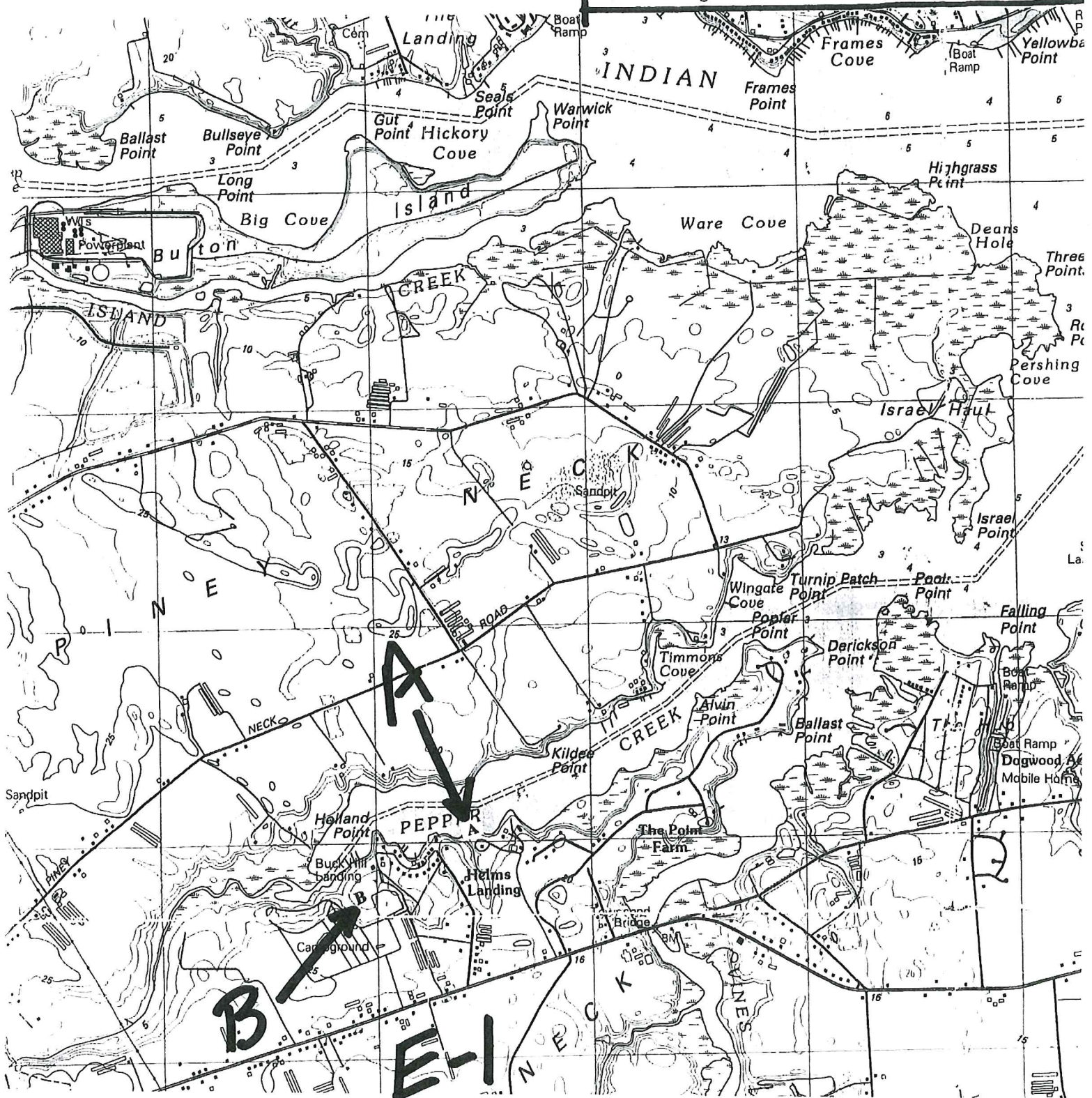


Figure 4. U.S.G.S. topographic map, Frankford, Delaware quadrangle, showing dredging site (A), adjacent to Pepper Creek (tributary of Indian River Bay), and inland, upland confined disposal site (B). Scale: 1" = 2,000'.

2018-763

**PROPOSED 1,350 C.Y. MECHANICAL DREDGING
TO -4' MLW WITH DISPOSAL AT EXISTING
UPLAND CONFINED DISPOSAL AREA**

IN: Pepper Creek (tributary of Indian River Bay)
AT: Old Oyster House, 31197 Helms Landing Road
Dagsboro, Sussex County, DE 19939
Tax Map Parcel #2-33-7.00-52.00
APPLICANT: W&D Cropper Family L.P.
DATE: August 28, 2018

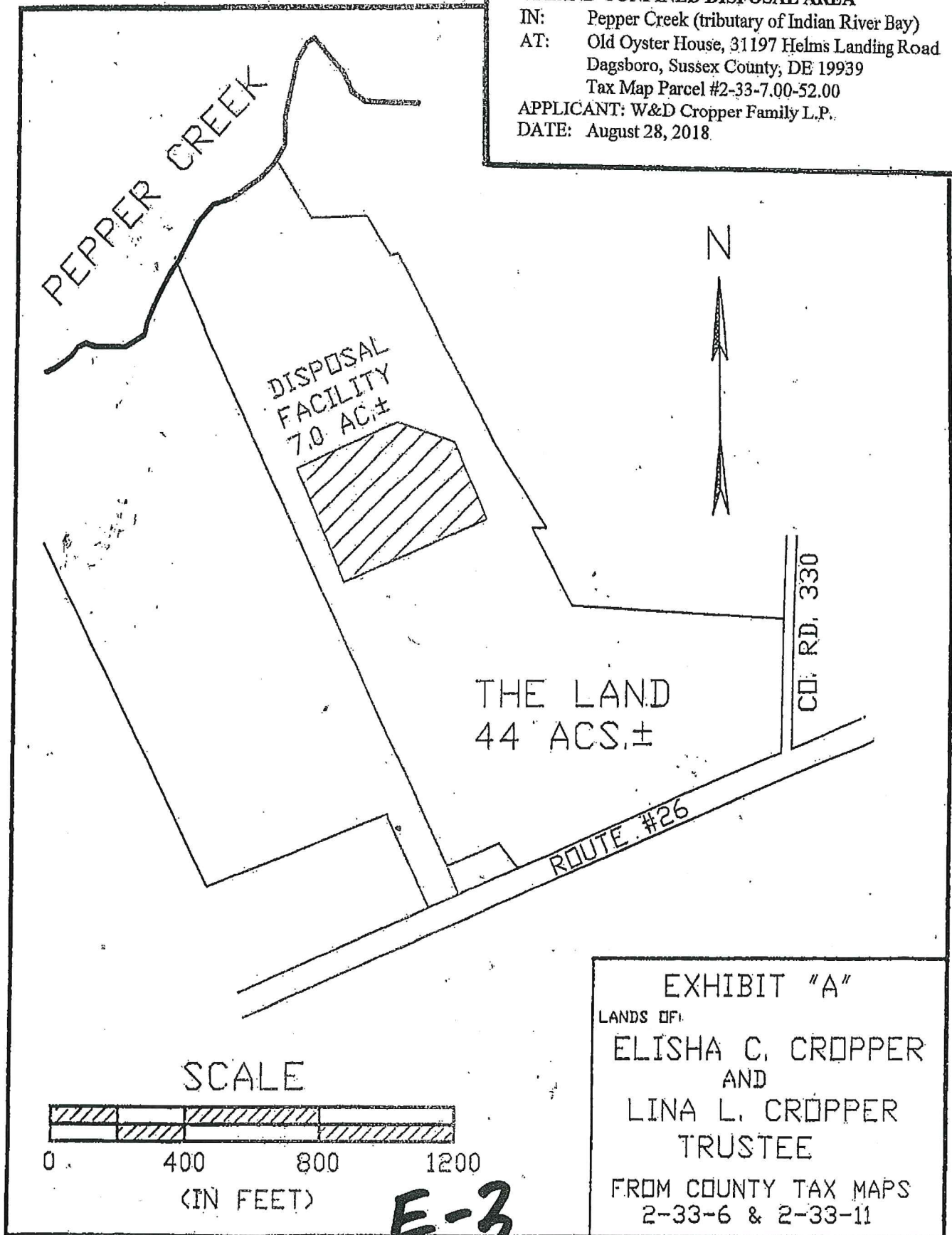


Figure 11. Site plan showing existing 7-acre dredged material disposal facility, Gulls Way Campground, Dagsboro, Sussex County, Delaware (Tax Map Parcel #2-33-11.00-90.00).

2018-763