

## **PUBLIC NOTICE**

US Army Corps of Engineers ® New England District Maine Project Office 442 Civic Center Drive, Suite 350 Augusta, Maine 04330

Comment Period Begins: 23 June 2020 Comment Period Ends: 23 July 2020 In Reply Refer To: Colin M. Greenan E-mail:

colin.m.greenan@usace.army.mil

Permit Number NAE-2020-00214

The District Engineer has received a permit application to conduct work in waters of the United States from the Portland Harbor Commission, 2 Portland Fish Pier, Suite 105, Portland, Maine 04101. This work is proposed in Portland Harbor (Fore River) at both Portland and South Portland, Maine. The work proposed is at multiple sites located on the USGS PORTLAND WEST and PORTLAND EAST, ME quadrangle sheets.

The work involves the dredging of accumulated sediment at 47 separate waterfront sites including 21 piers, 10 marinas, a public boat launch, and a commercial barge landing. The cumulative dredge volume including a 1-foot allowable over-dredge is approximately 244,678 cubic yards over approximately 46.8 acres. Dredge sites have been designed with 3:1 side slopes to minimize sloughing and erosion. Dredging is expected to be done using barge-mounted mechanical equipment. Dredged material will be placed in a hopper barge or dump scow for transport and disposal. The dredging events are expected to take place for at least five seasons and between November 1<sup>st</sup> and March 15<sup>th</sup> of any year.

Dredged material generated from the work is proposed for the yet to be constructed Portland Harbor confined aquatic discharge (CAD) cell located at latitude 43.645931°N; and longitude -70.251492°W (Corps file number NAE-2017-01950).

Two of the 47 dredge sites will directly affect mapped eelgrass beds. The two sites are at Port Harbor Marine at South Portland and the East End Beach Barge Landing at Portland. To compensate for the unavoidable impacts to approximately 1.2 acre of eelgrass, the applicant is proposing to restore approximately 2.5 acres of eelgrass within Portland Harbor and Casco Bay by removing existing moorings from eelgrass and converting mooring tackle to conservation moorings. Compensation will be implemented before any dredging of eelgrass begins. In the event that the full 2.5 acres of eelgrass is not restored, the applicant has proposed a prorated purchase of credits from the Maine Natural Resource Conservation Fund (Maine's In-Lieu-Fee program). The applicant is proposing these measures seeking to lessen the project's impact on aquatic resources. This notice solicits comments on these proposed measures from the interested or affected public as well as those agencies who speak to the public interest. It also solicits recommendations for alternative sites or measures not yet identified by the applicant. After receipt of the comments, the Corps of Engineers will obtain any necessary additional information from the applicant and determine whether the proposed measures are practicable and serve to help compensate for this project's unavoidable impacts.

This work is shown on the attached plans entitled "Portland Harbor Commission Portland Harbor Waterfront Dredging" in 4 sheets undated and 28 sheets dated "2019.11.13" and "2020-03-24" respectively.

## **AUTHORITY:**

A Corps	s of Engineers Permit is required pursuant to:
X	Section 10 of the Rivers and Harbors Act of 1899
X	Section 404 of the Clean Water Act
	Section 103 of the Marine Protection, Research and Sanctuaries Act.
X	Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408)

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

The U.S. Army Corps of Engineers, New England District (Corps), 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. The Corps will consider all comments received 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.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also 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, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972, as amended.

The alternatives considered in the dredged material disposal analysis fall into four general categories: beneficial use, upland disposal, confined disposal, and open-water disposal. The feasibility of disposal alternatives was analyzed relative to the physical and chemical quality of samples of the anticipated dredged material, the volume of material to be dredged, the availability of suitable disposal and beneficial use sites, and the cost of disposal. Analysis of sample sediments proposed for dredging were found to be unsuitable for open water disposal as they contain contaminants likely resulting from historic industrial activity and stormwater runoff from within the harbor.

Based on the physical and chemical characteristics of samples of the anticipated dredged material, the lack of suitable alternate disposal or beneficial use sites and costs, the most feasible, practical, cost-effective and environmentally acceptable alternative for the disposal of dredged materials generated from the proposed dredging is disposal at the requested, yet to be constructed Portland Harbor CAD Cell. The District Engineer has made the preliminary determination that the material is acceptable for disposal at this disposal site.

Any permit issued for this project will likely include special conditions requiring the hopper barges or dump scows to come to a complete stop when disposing of the material at the disposal site. There will also likely be a

time of year restriction included as a special condition which prohibits dredging during ecologically sensitive times of years.

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (ESSENTIAL FISH HABITAT): The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 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"). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

The dredging portion of this project will impact approximately 46.8 acres of EFH. Substrate at these working waterfront sites is described as sandy silts to silty sands with some areas of exposed marine clay. It is common for the substrate in and around the harbor's working waterfronts to also include cobble, concrete and brick debris, pile and timber remnants, and assorted marine debris reflective of over 300 years of marine activity. In addition, approximately 1.2 acre of eelgrass will be impacted. The disposal of dredged material is proposed for the yet to be constructed Portland Harbor CAD Cell which also provides EFH. The proposed dredging and subsequent disposal of dredged material into the CAD cell will result in an adverse effect to EFH; however, the District Engineer has made the preliminary determination that the site-specific adverse effect will not be substantial while considering of the proposed compensation plan for eelgrass. Consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is on-going and will be concluded prior to the final decision.

**SECTION 7 OF THE ENDANGERED SPECIES ACT:** The Corps has reviewed the application for the potential impact on Federally-listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act as amended. The District Engineer has made the preliminary determination that the proposed activity for which authorization is being sought is designed, situated or will be operated/used in such a manner that it is not likely to adversely affect a listed species or their critical habitat. The Corps is consulting with NOAA Fisheries and the U.S. Fish and Wildlife Service on listed species under their jurisdiction and Endangered Species Act consultation will be concluded prior to the final decision.

**SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT:** The Corps has initiated consultation with the Maine Historic Preservation Commission and Maine's Indian Tribes pursuant to Section 106 of the National Historic Preservation Act of 1966 as amended. The District Engineer has made the preliminary determination that the proposed work is not likely to affect properties listed in, or eligible for listing in, the National Register of Historic Places. The Corps will continue review and consultation to fulfil requirements under the Historic Preservation Act as part of the permit review process.

**OTHER APPROVALS:** The activities proposed herein will also require permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project. The proposed alteration involves dredging activities within the channel within the authorized limits of the Federal Navigation Project at 8 of the 47 sites. A permit pursuant to Section 10/404 shall not be granted until the Section 408 permission is issued. Through this public notice we are soliciting information necessary to inform the Corps evaluation and review. The Section 408 permission point of contact for this project is William M. Kavanaugh, and can be contacted at <a href="william.m.kavanaugh@usace.army.mil">william.m.kavanaugh@usace.army.mil</a>.

The applicant has supplied the Maine Department of Environmental Protection (MaineDEP) with a permit application for the work described in this public notice and is requesting that the Department either grant or waive Water Quality Certification in accordance with Section 401 of the Clean Water Act. Comments regarding the applicant's Permit/Water Quality Certification request may be submitted in writing to: Nick Livesay, Director, Bureau of Land Resources, Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333 or <a href="mailto:nick.livesay@maine.gov">nick.livesay@maine.gov</a>.

**COMMENTS:** In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. **Comments should be submitted in writing by the above date.** If you have any questions, please contact Colin M. Greenan at <a href="mailto:colin.m.greenan@usace.army.mil">colin.m.greenan@usace.army.mil</a> at our Augusta, Maine Project Office.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

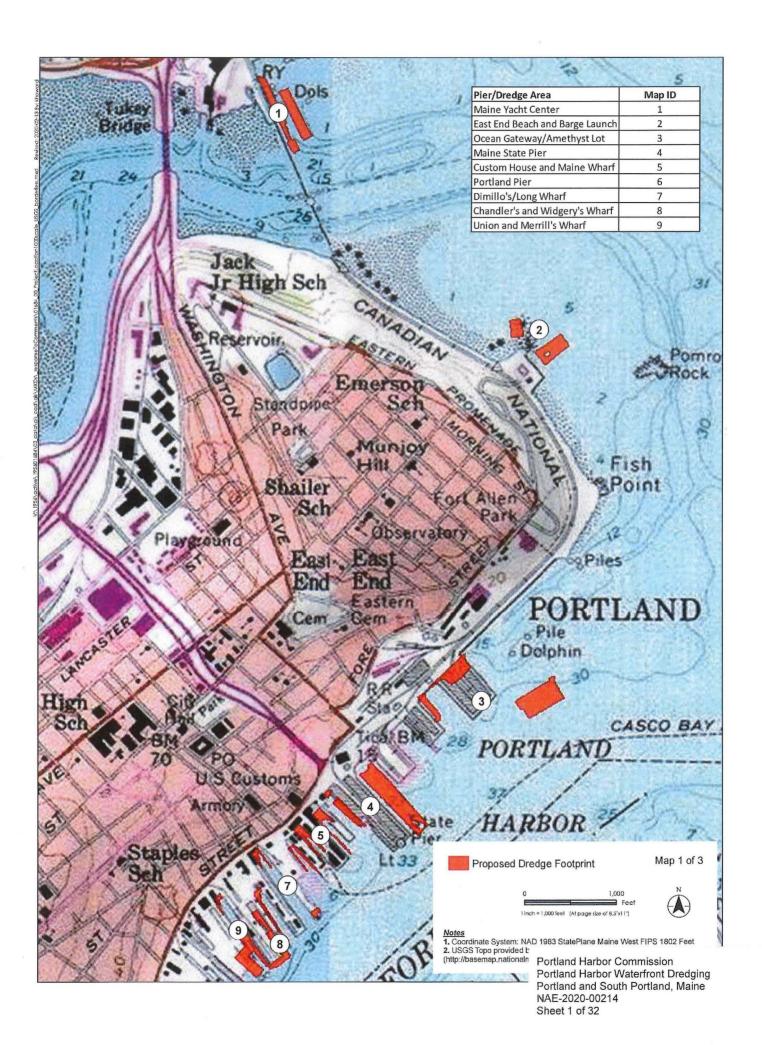
The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

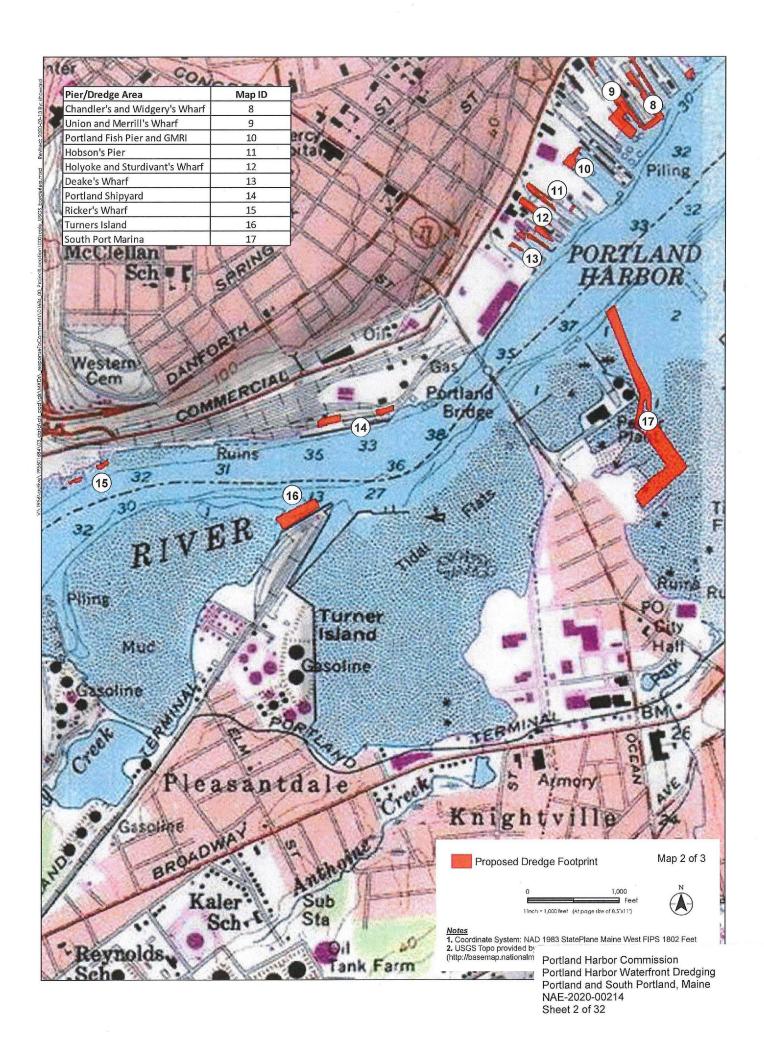
## THIS NOTICE IS <u>NOT</u> AN AUTHORIZATION TO DO ANY WORK.

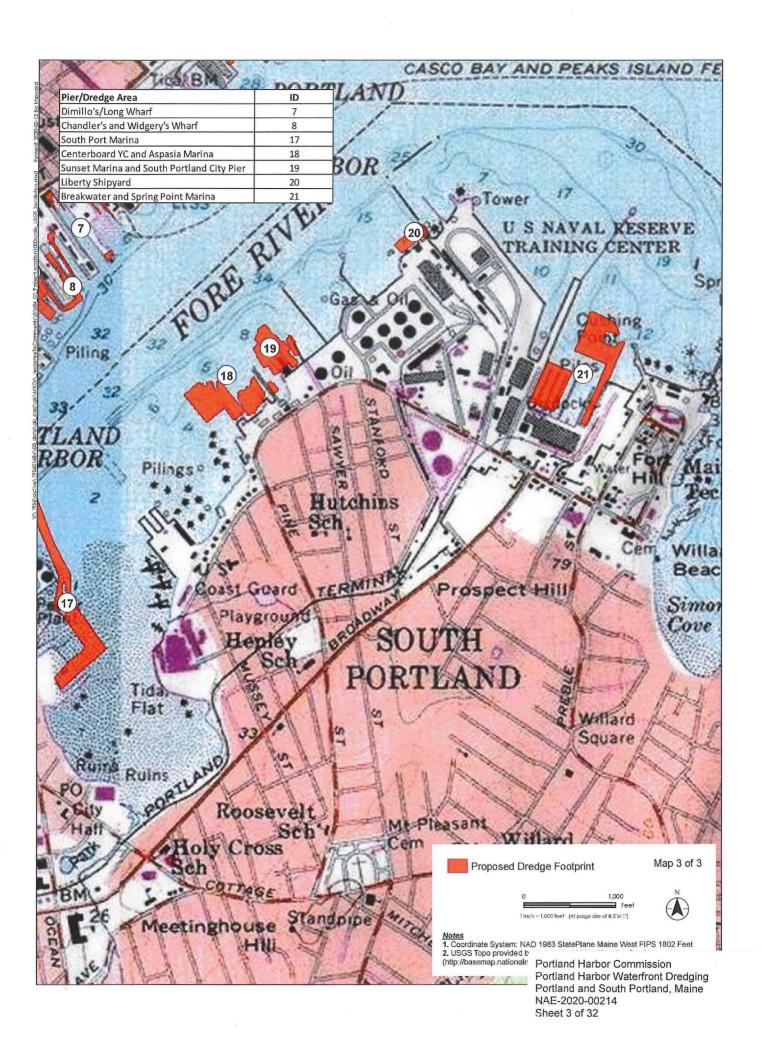
Frank J. Del Giudice Chief, Permits and Enforcement Branch Regulatory Division

If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or <a href="mailto:bettina.m.chaisson@usace.army.mil">bettina.m.chaisson@usace.army.mil</a>. You may also check here ( ) and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

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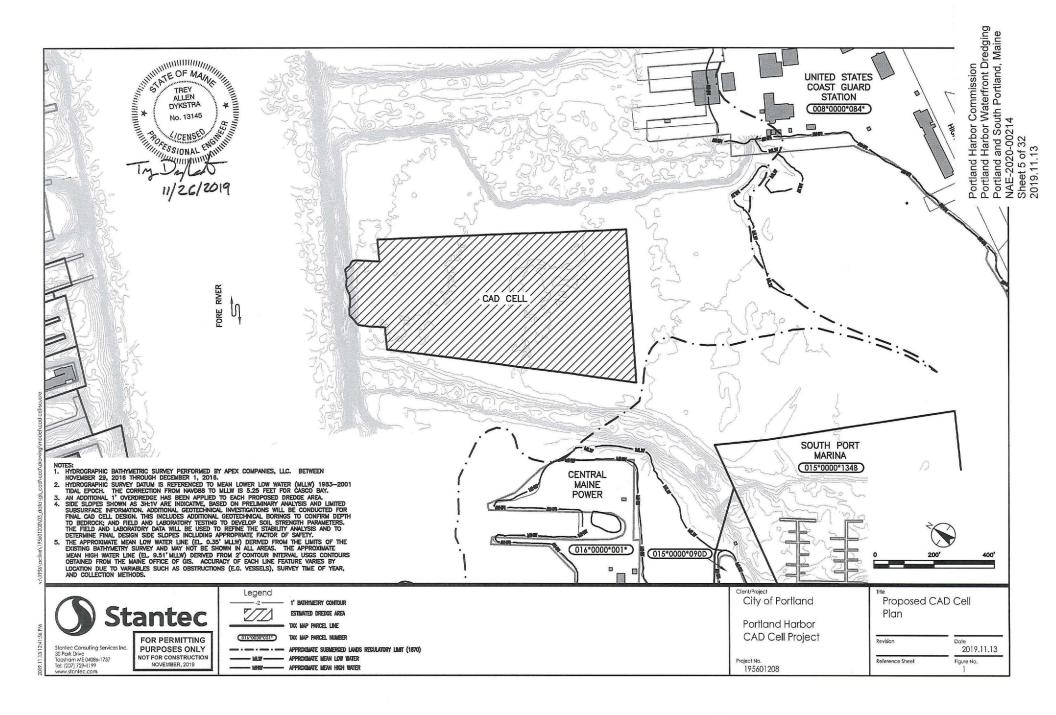


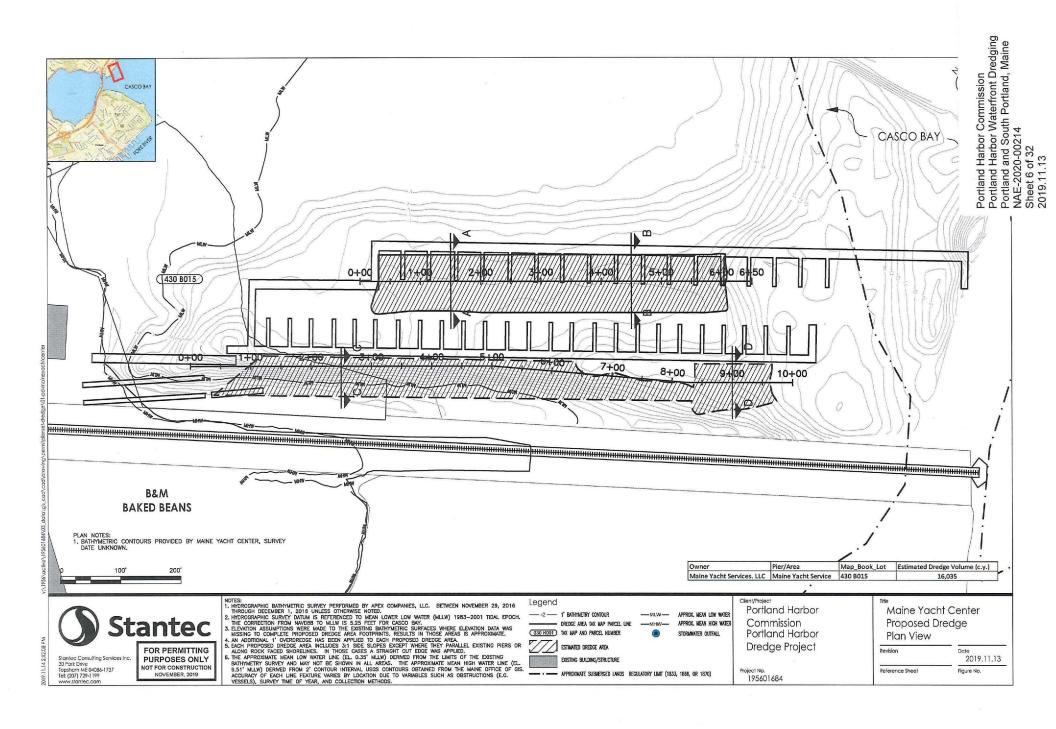
Attachment 1: Activity Description COVE BACK PORTLAND o Pite Dolphin SCO BAY AND PEAKS ISLAND FERR PORTLAND HARBOR End **PROJECT** AREA SOUTH PORTLAND RIVER Knightville ottage Far Mountainvi Park

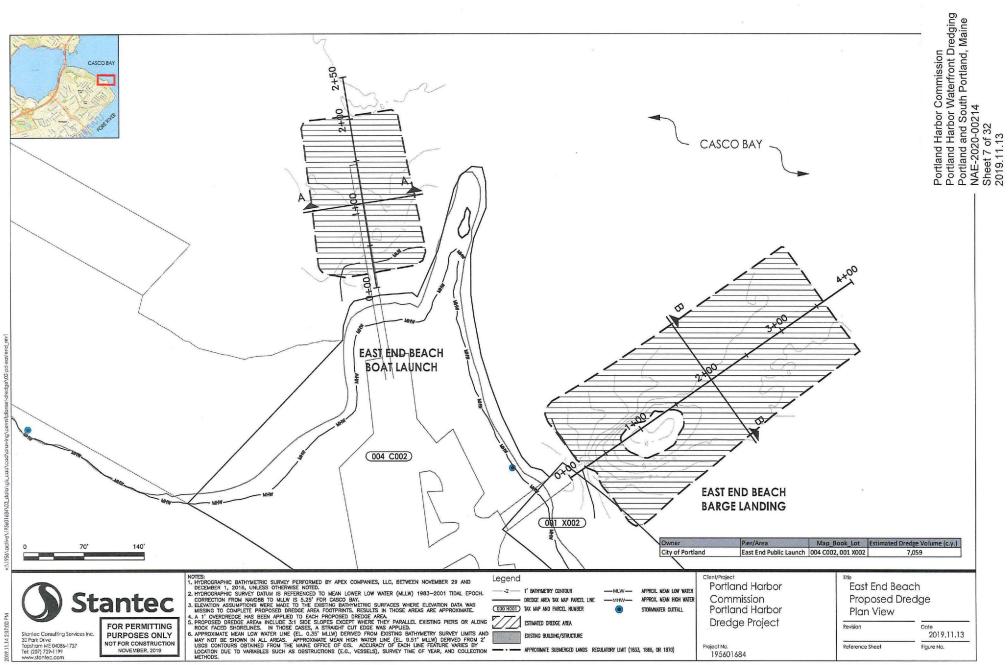
Figure 1. Project Location: 7.5 Minute Series USGS Topographic Quadrangle - Portland, ME

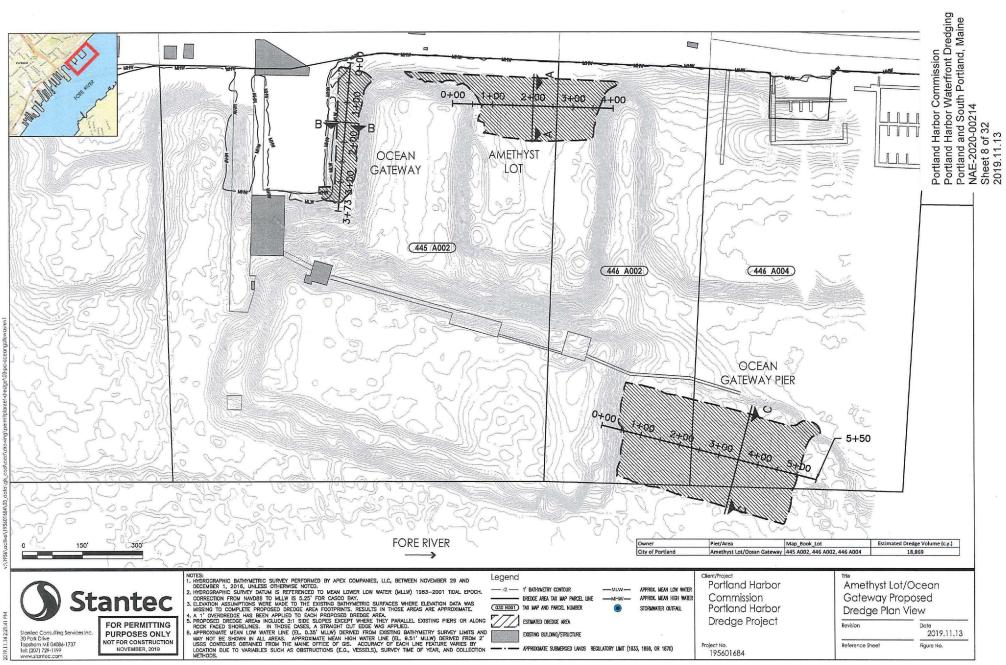


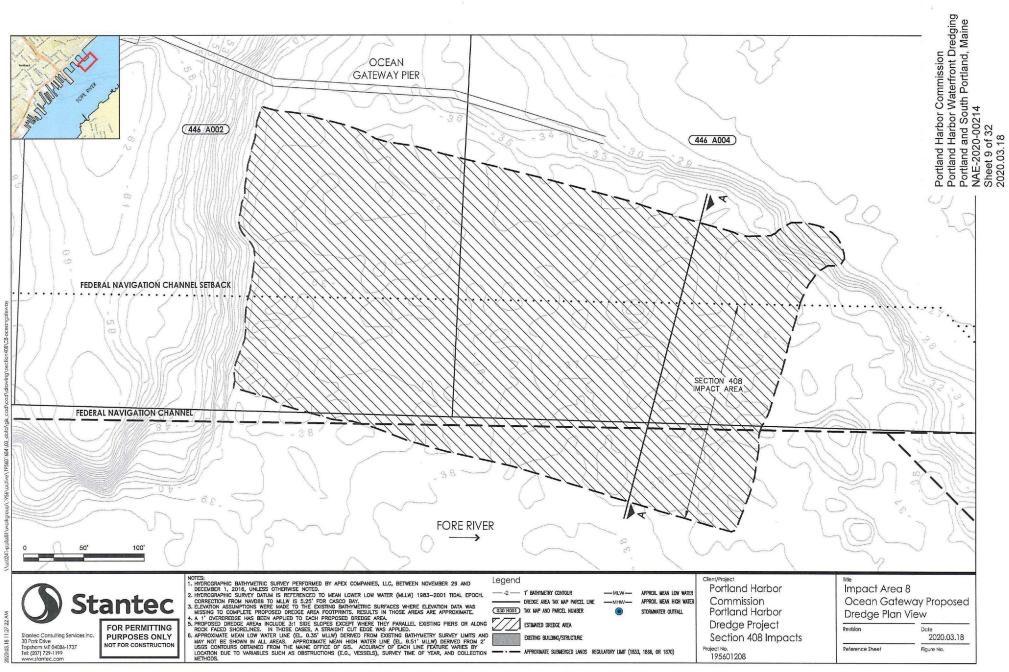
NOTION TO STATE THE WALL TO STATE PLANE Maine West FIPS 1802 Feet 2. USGS Topo provided by The National Map Mapping Service (http://basemap.nationalmap.gow/arogis/services/USGS/magery/Topo).

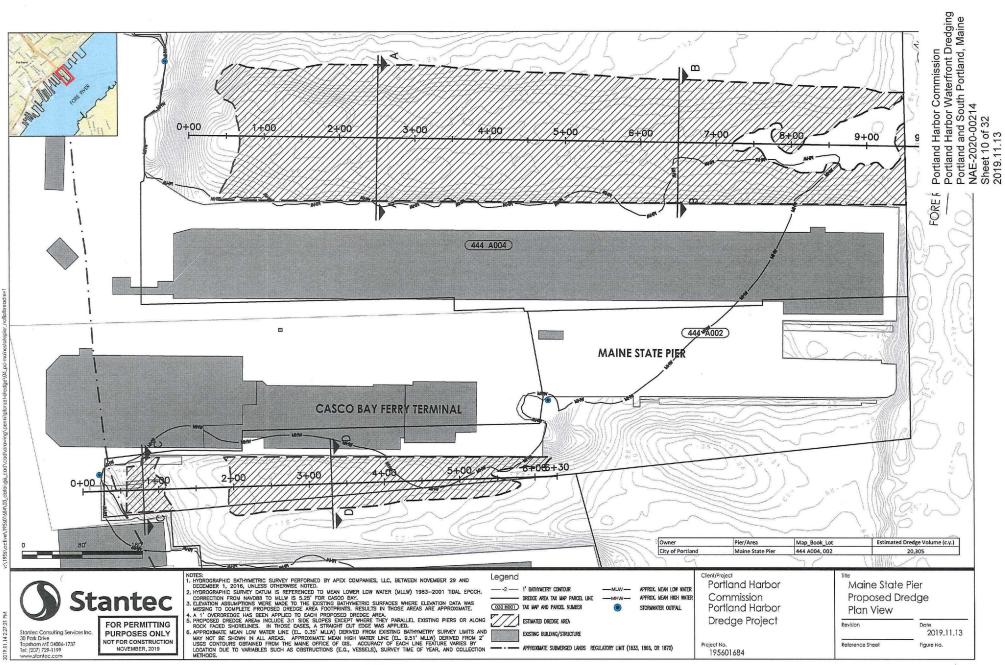


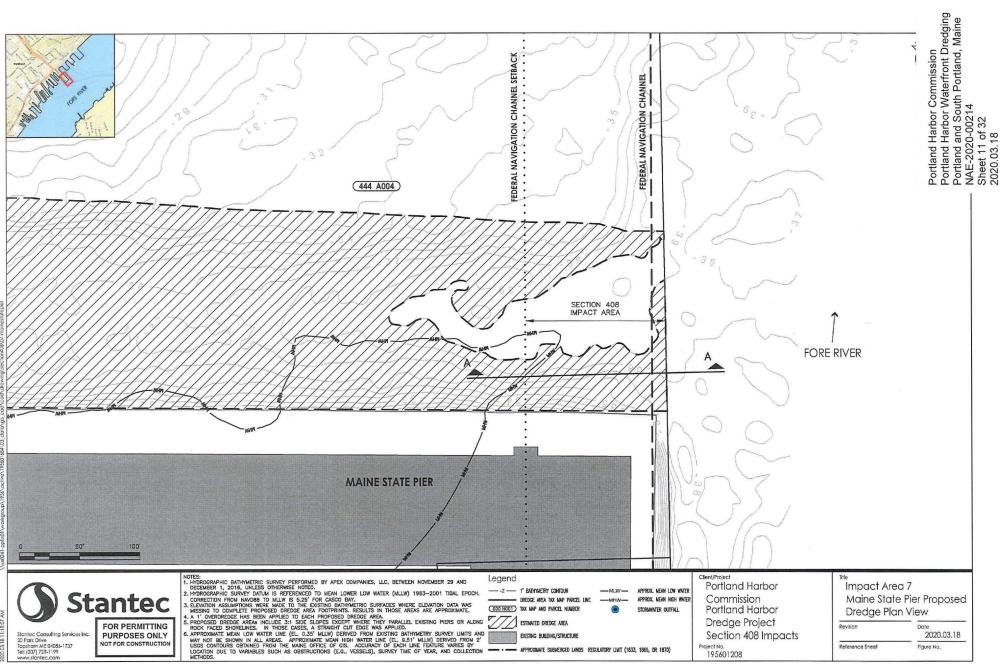




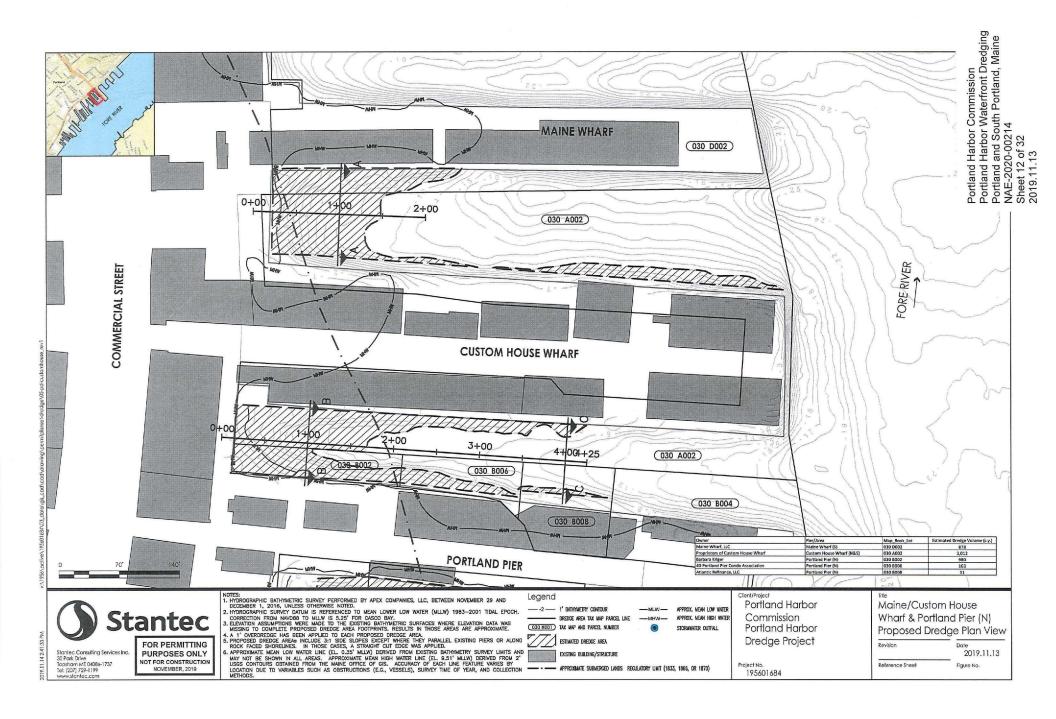


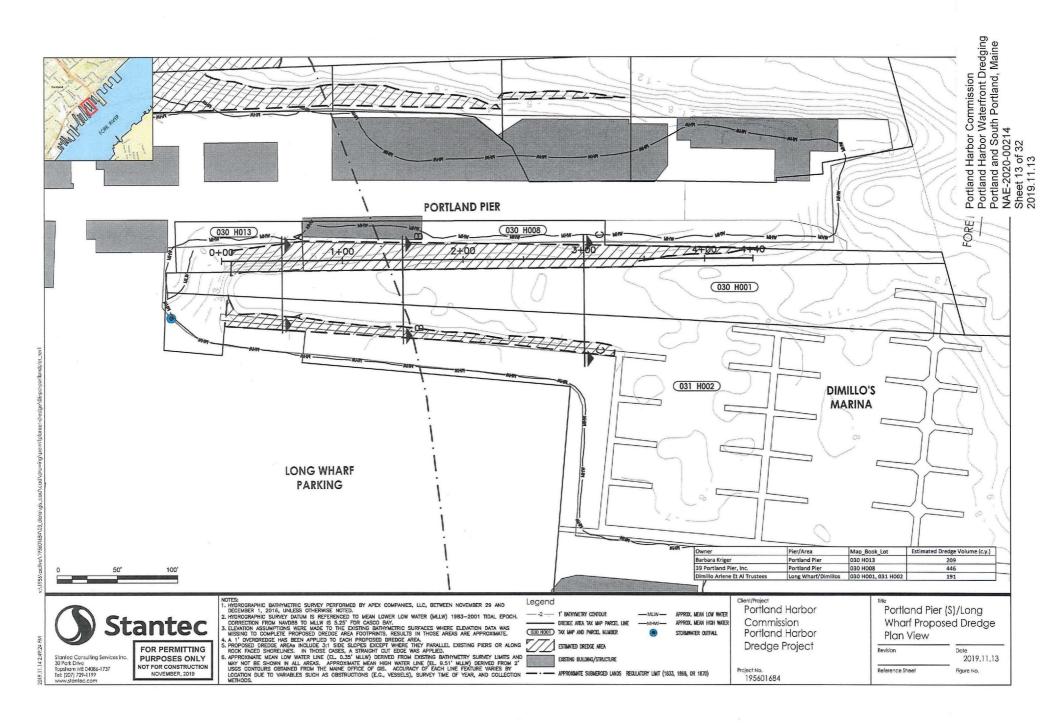


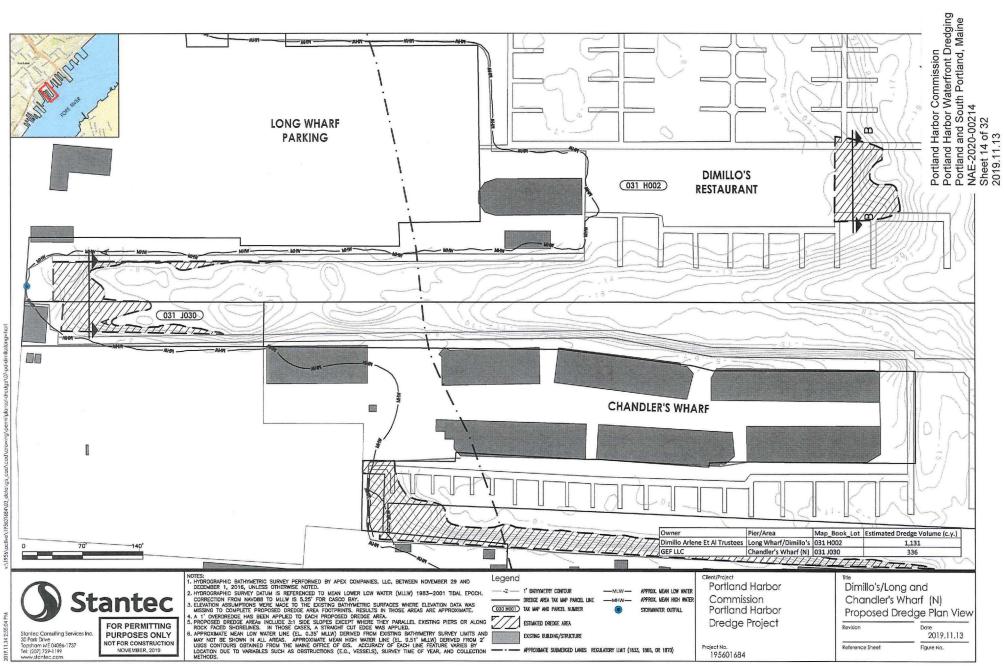


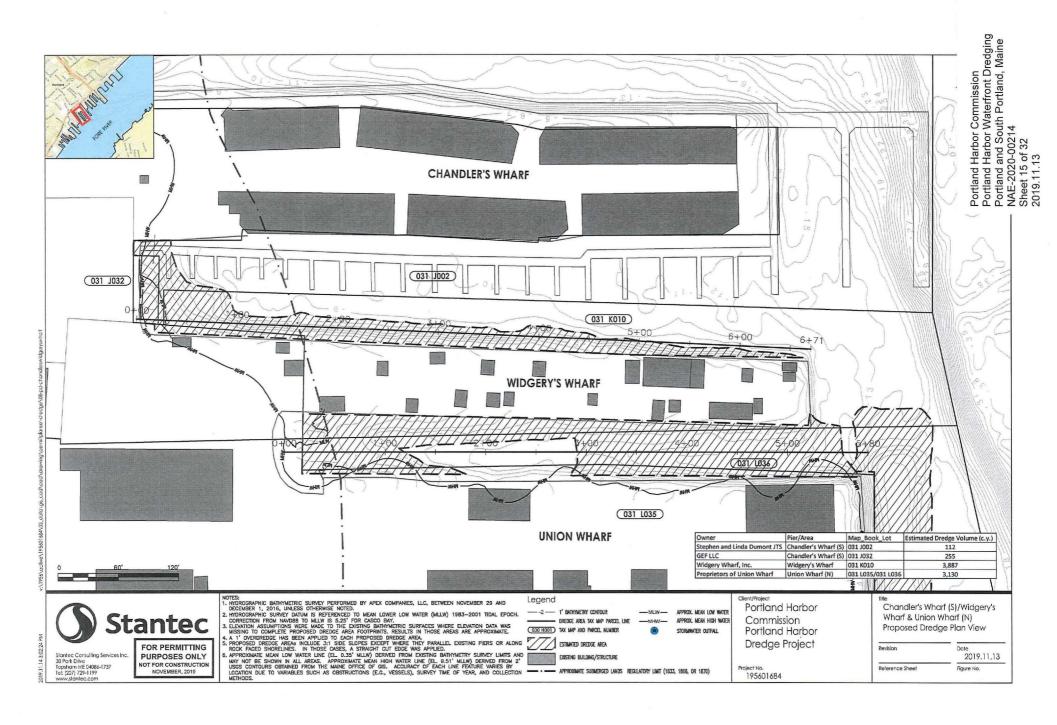


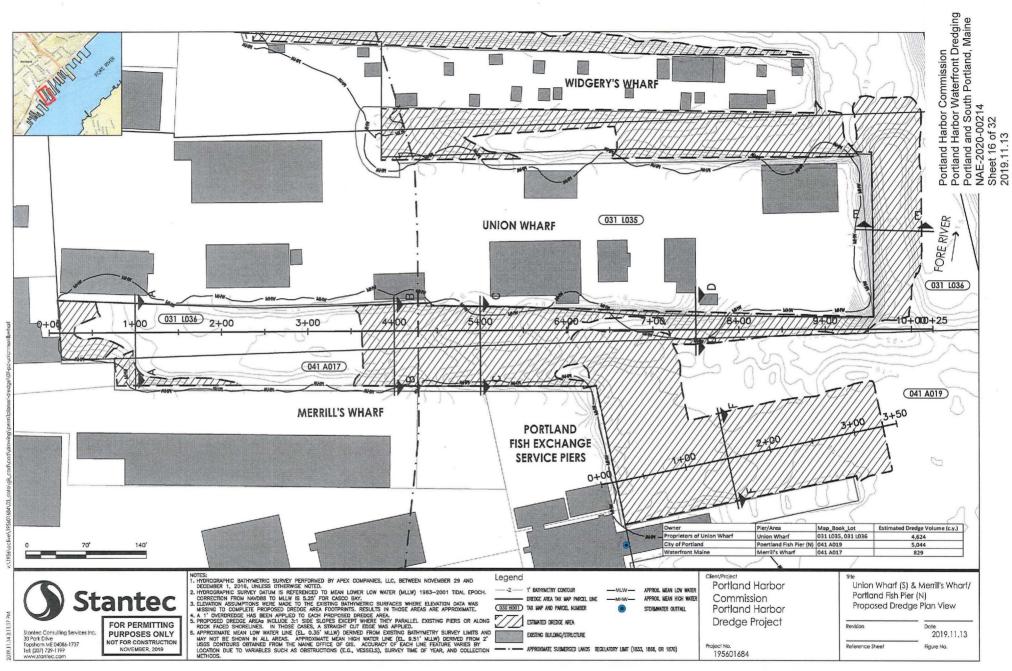
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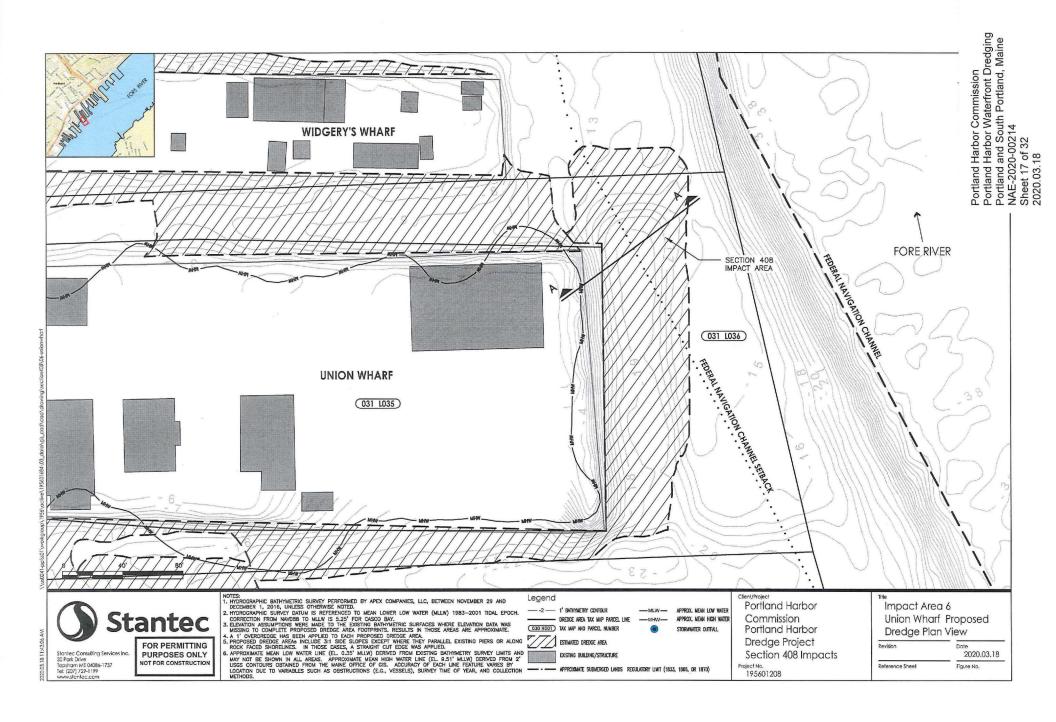


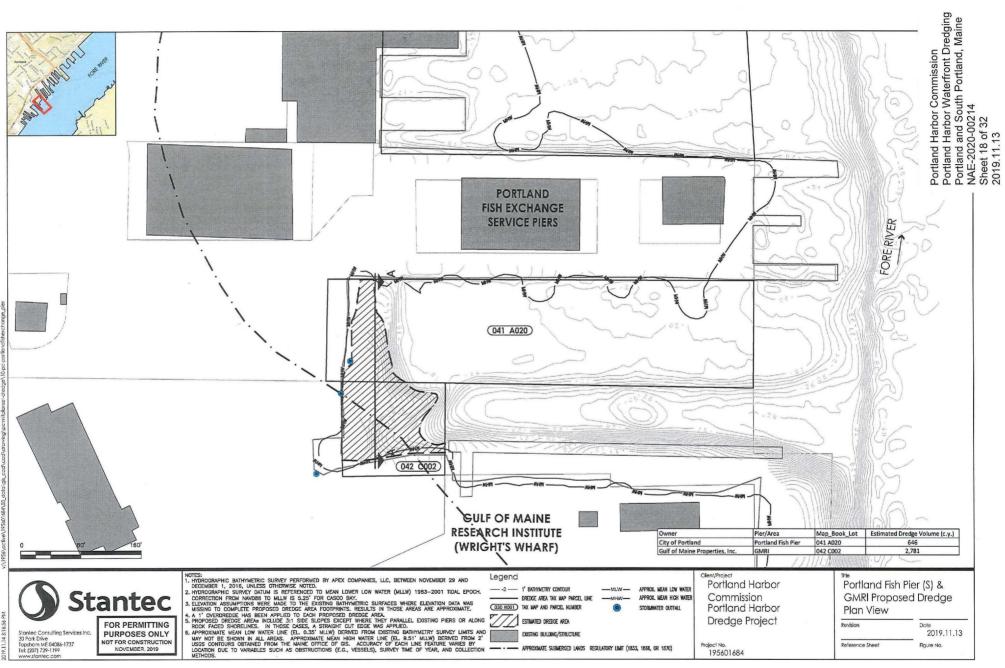


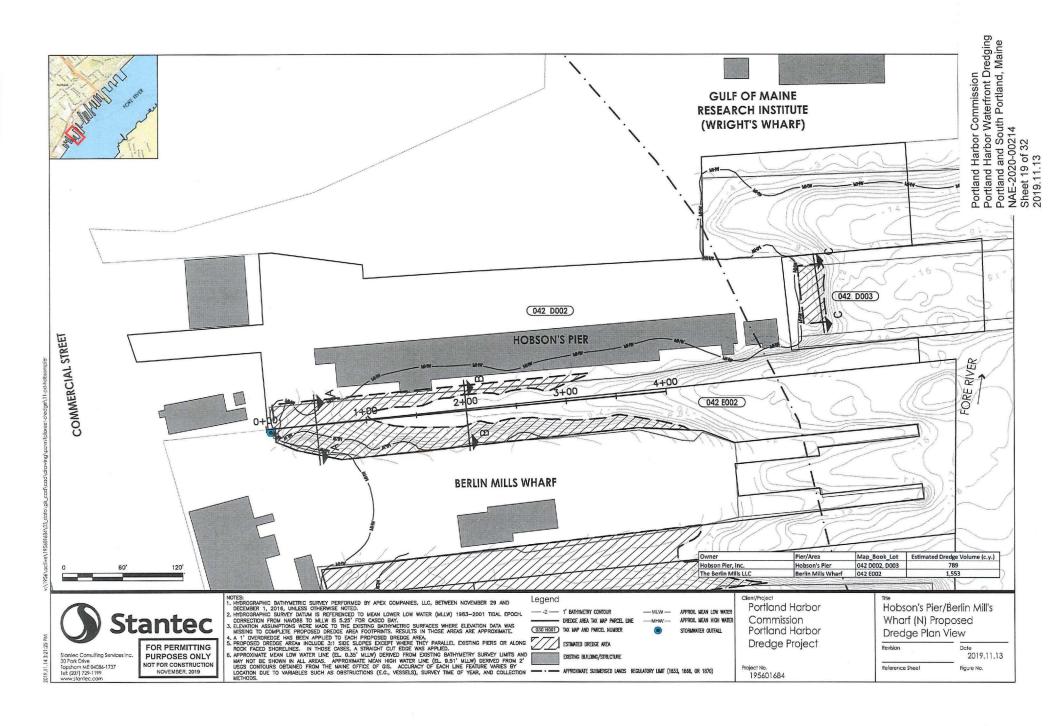


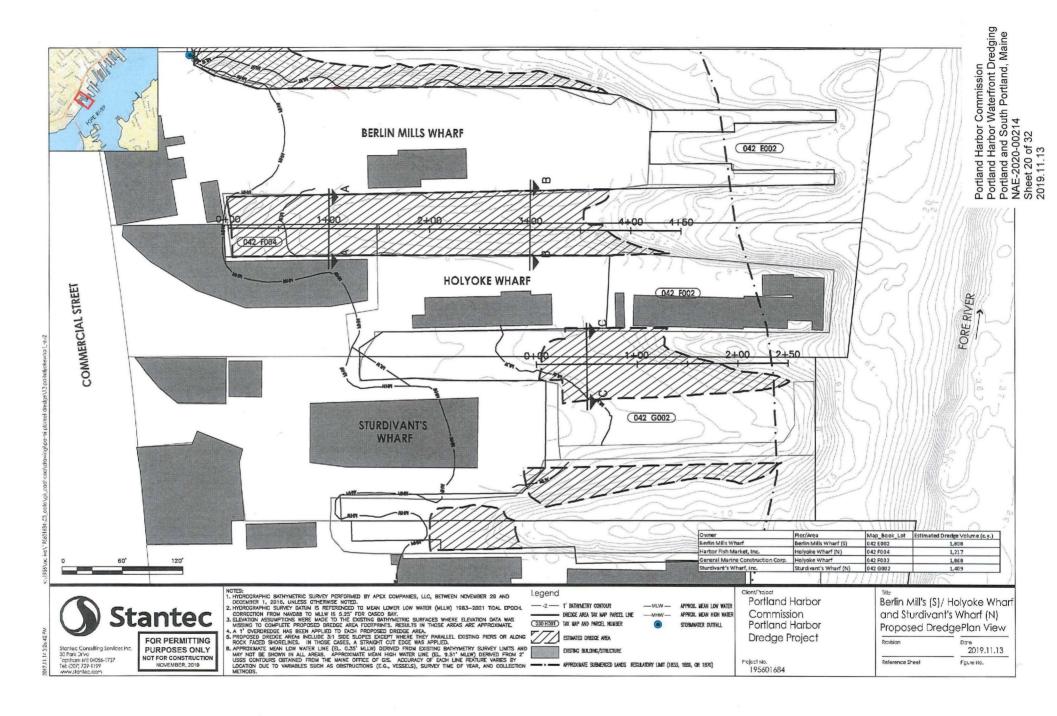


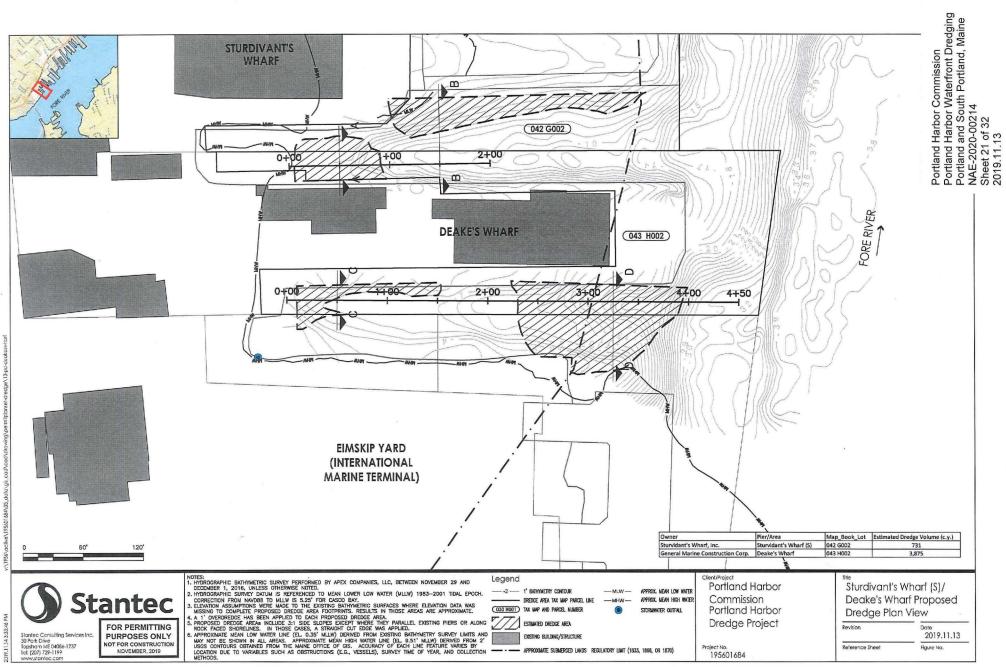


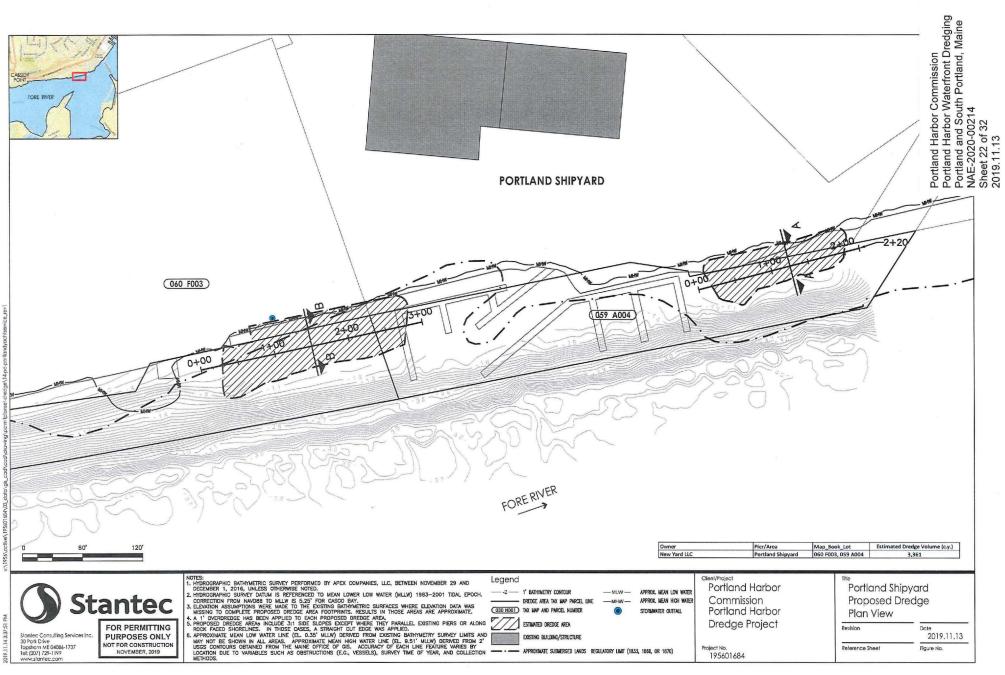


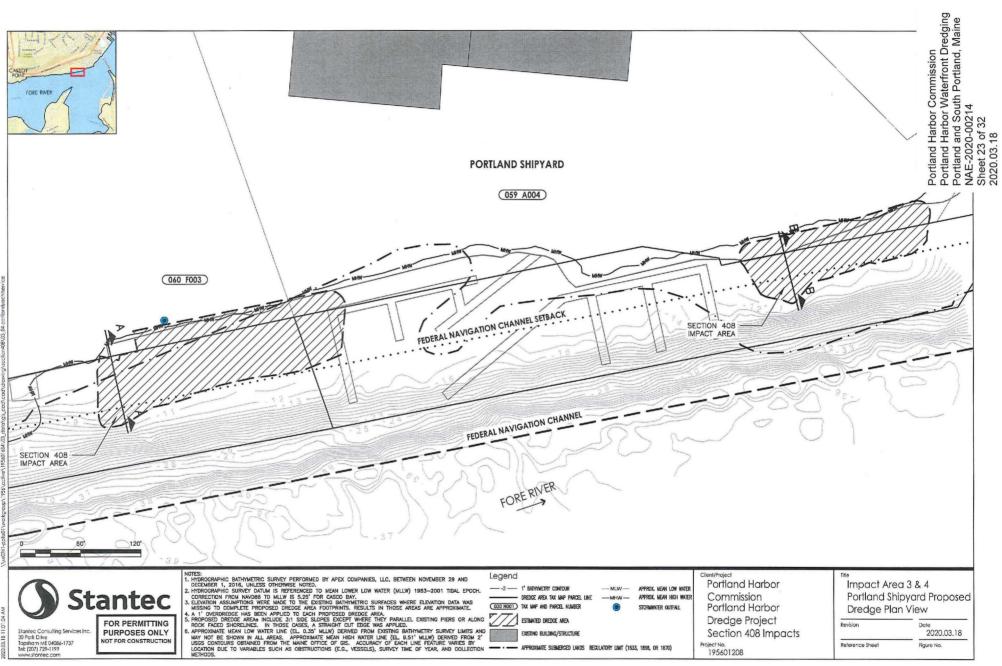


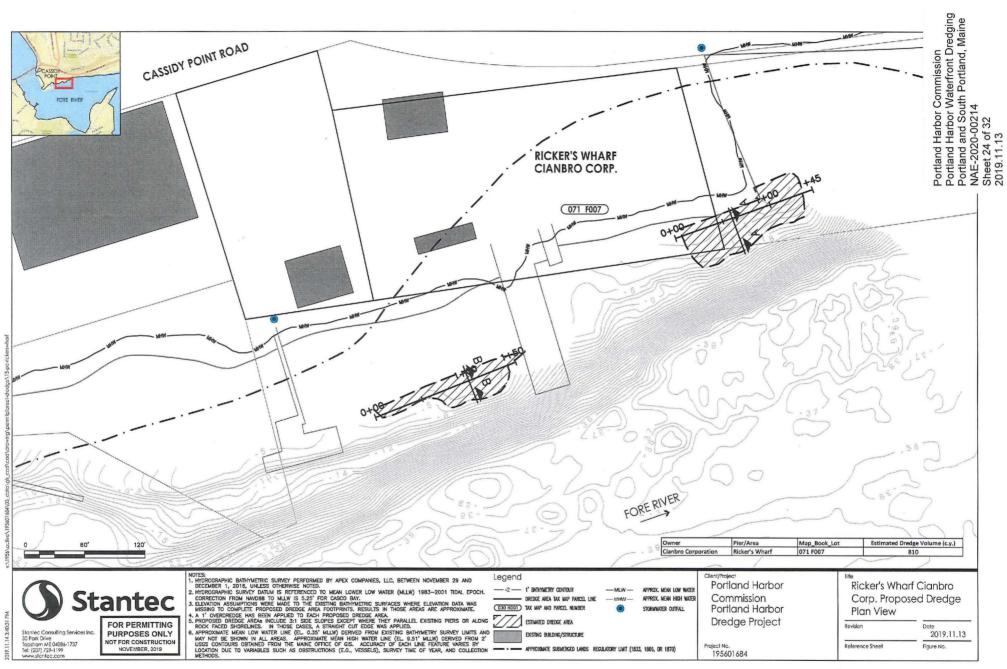


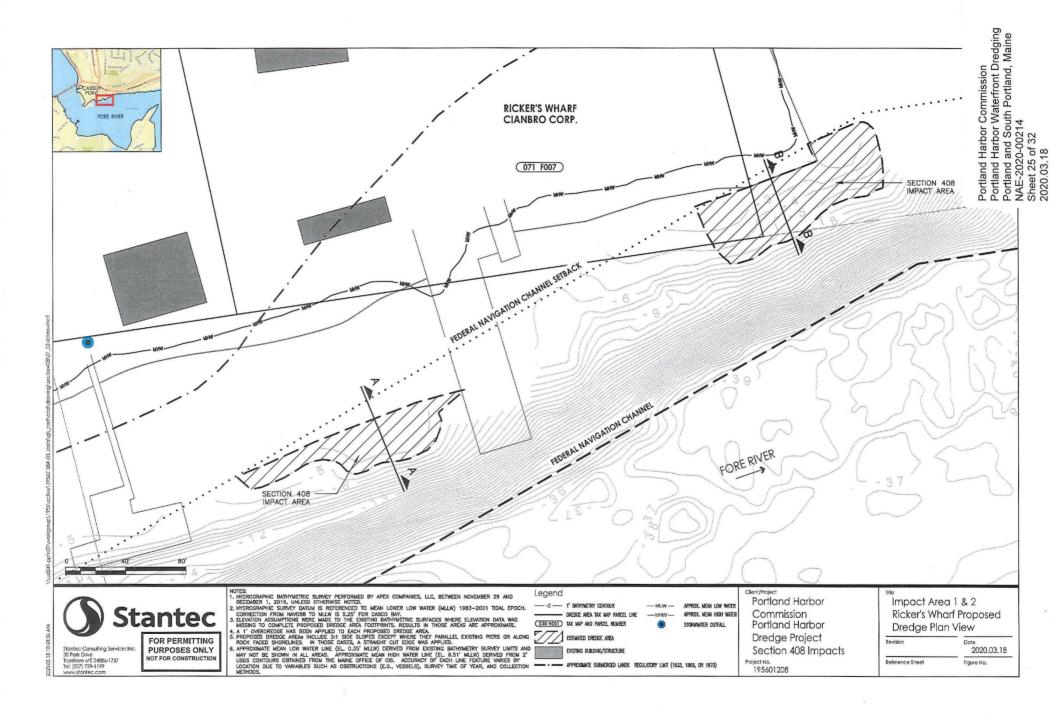


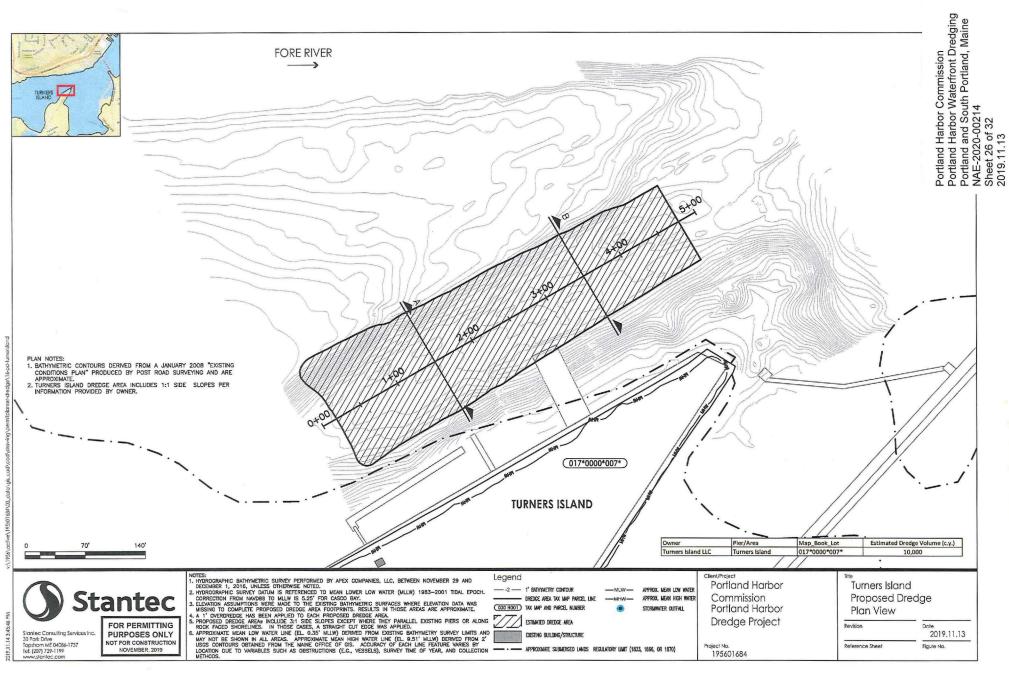


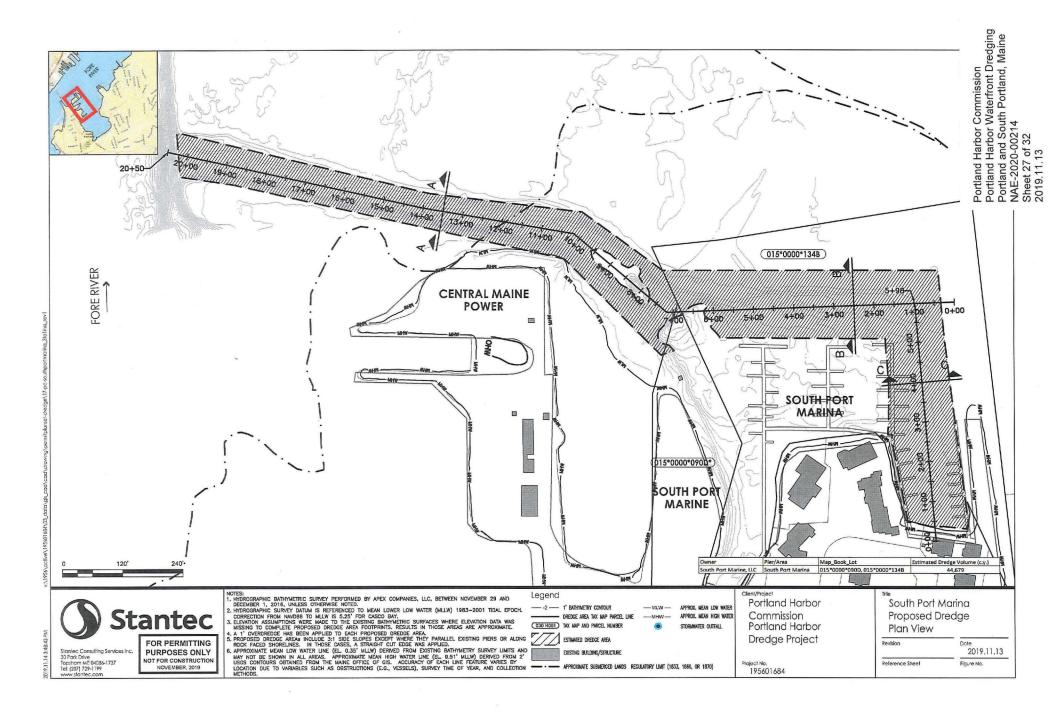


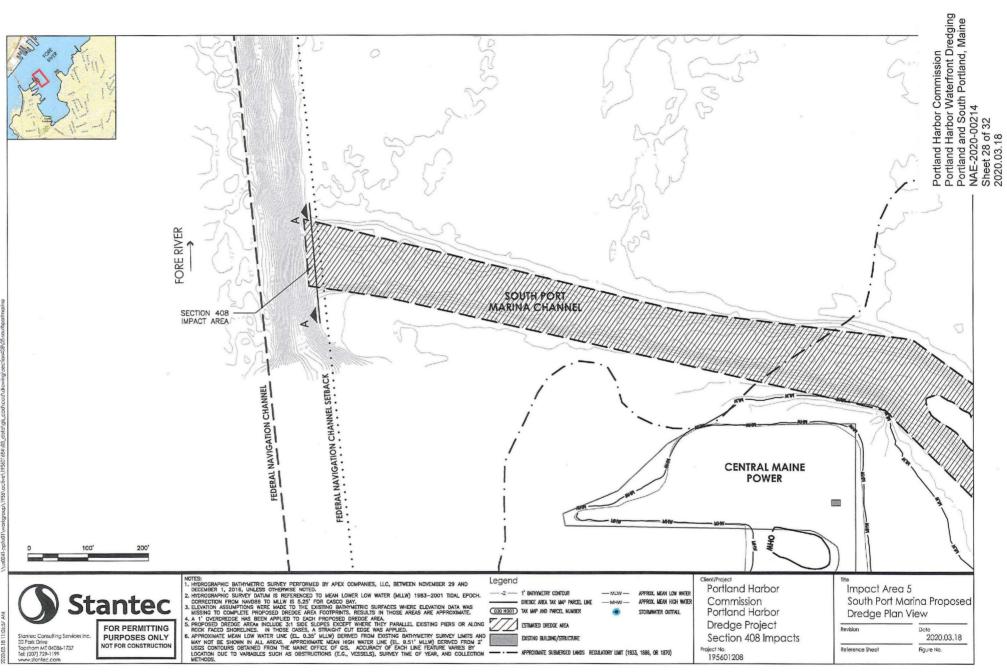


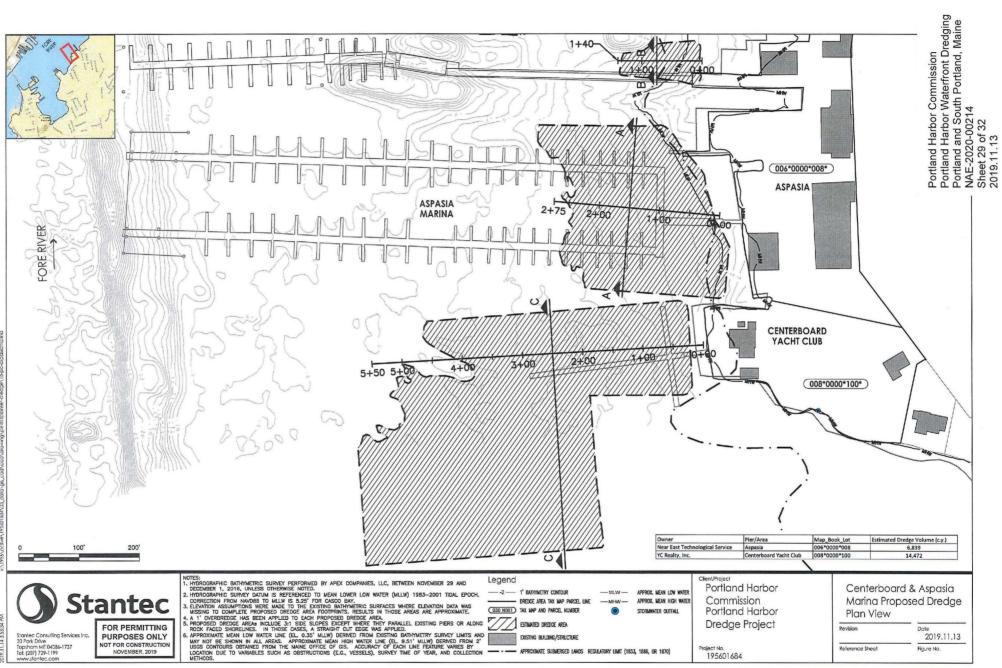


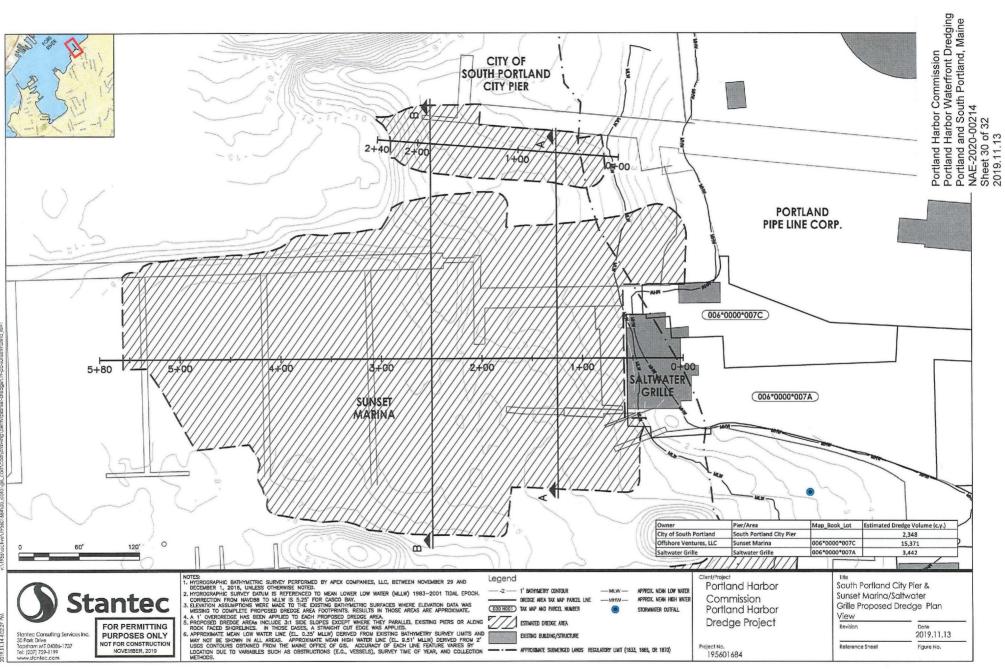












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