



**US Army Corps
of Engineers** ®
New England District
696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

Comment Period Begins: 4 January 2011
Comment Period Ends: 4 February 2011
File Number: NAE 2005-01394
In Reply Refer To: Mr. Brian E. Valiton
Phone: (978) 318-8166
E-mail: brian.e.valiton@usace.army.mil

The District Engineer has received a permit application from the applicant below to **conduct work in waters of the United States** as described below.

APPLICANT: Hyannis Marine, c/o Wayne Kurker

ACTIVITY: To dredge a number of areas within the Hyannis Marine marine basin to various specified depths, with upland disposal of the material. The work involves dredging of approximately 8200 cu. yds. of material to various depths (ranging from a depth of -8 feet m.l.w. to a depth of - 16 feet m.l.w.) from an area of approx. 56,600 sq. ft. Some of the dredging is new and some is deepening of existing permitted areas.

The work is described on the enclosed plans entitled "APPLICATION BY WAYNE KURKER TO DREDGE IN HYANNIS INNER HARBOR BARNSTABLE & YARMOUTH, BARNSTABLE CO., MA" on 6 sheets, and dated "January 22, 2008 and revised on October 7, 2008" with a separate locus sheet. The notation "PROPOSED FEDERAL CHANNEL LIMIT" on sheets 1, 2 and 3 of the drawings is meaningless for the purpose of this notice and will be eliminated from any permitted drawings. The line shown refers to the limits of proposed dredging. The applicant is proposing to deepen a portion of the Federal navigation channel at private expense. The area will still be the Federal navigation channel and will be open to the public to navigate through even if deepened by the applicant.

WATERWAY AND LOCATION OF THE PROPOSED WORK

This work is proposed in Hyannis Inner Harbor at 1 Willow Street, Hyannis, Massachusetts. The proposed location is on the USGS Hyannis quadrangle sheet at zone 19 UTM coordinates 4611420.00 N and 0393850.00 E.

AUTHORITY

Permits are required pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
 Section 404 of the Clean Water Act
 Section 103 of the Marine Protection, Research and Sanctuaries Act).

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

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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 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.

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).

The dredging portion of this project will impact approximately 56,600 SF of Essential Fish Habitat (EFH) for Atlantic butterfish (eggs, larvae, juveniles, adults), Atlantic cod (adults), Atlantic mackerel (eggs, larvae, juveniles, adults), winter flounder (eggs, larvae, juveniles, adults), windowpane flounder (adults), long-finned squid (juveniles, adults), summer flounder (eggs, larvae, juveniles, adults), scup (juveniles, adults), black sea bass (larvae, juveniles, adults), surf clam (juveniles, adults), king mackerel (eggs, larvae, juveniles, adults), Spanish mackerel (eggs, larvae, juveniles, adults), and cobia (eggs, larvae, juveniles, adults). Habitat at this site can be described as silt and sand. The sediments in the vicinity of the Hyannis Marine property are "...soft, black and muddy with a strong odor of sulphides..." (ESSENTIAL FISH HABITAT ASSESSMENT FOR MAINTENANCE DREDGING AT HYANNIS MARINA, rec'd by Corps 12/8/2008). Loss of this habitat is not likely to adversely affect any species utilizing the area since the harbor bottom is of poor habitat quality and any life stages of any species utilizing the area would only be present during the months when dredging would not be occurring because of the State imposed time of year restrictions. The only species which might be present during the time when dredging would occur is winter flounder. Studies by the applicant's consultants, Woods Hole Group, from 2003 to 2006, did not reveal the presence of winter flounder at the applicant's property during the months of February, March and April. In addition, the substrate in the basin is of poor habitat value for winter flounder spawning. Therefore, the District Engineer has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is being conducted and will be concluded prior to the final decision.

SECTION 106 COORDINATION

Based on his initial review, the District Engineer has determined that little likelihood exists for the proposed work to impinge upon properties with cultural or Native American significance, or listed in, or eligible for listing in, the National Register of Historic Places. Therefore, no further consideration of the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary. This determination is

based upon one or more of the following:

- a. The permit area has been extensively modified by previous work.
- b. The permit area has been recently created.
- c. The proposed activity is of limited nature and scope.
- d. Review of the latest published version of the National Register shows that no presence of registered properties listed as being eligible for inclusion therein are in the permit area or general vicinity.
- e. Coordination with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer(s).

ENDANGERED SPECIES CONSULTATION

The New England District, Army Corps of Engineers has reviewed the list of species protected under the Endangered Species Act of 1973, as amended, which might occur at the project site. It is our 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 any Federally listed endangered or threatened species or their designated critical habitat. By this Public Notice, we are requesting that the appropriate Federal Agency concur with our determination.

The States of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved **Coastal Zone Management Programs**. Where applicable the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. By this Public Notice, we are requesting the State concurrence or objection to the applicant's consistency statement.

The following authorizations have been applied for, or have been, or will be obtained:

- (X) Permit, License or Assent from State.
- (X) Permit from Local Wetland Agency or Conservation Commission.
- (X) Water Quality Certification in accordance with Section 401 of the Clean Water Act.

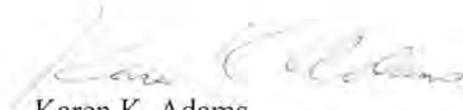
In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. **Comments should be submitted in writing by the above date.** If you have any questions, please contact Mr. Brian Valiton at (978) 318-8166, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

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.

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THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.



Karen K. Adams
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 e-mail her at bettina.m.chaisson@usace.army.mil. 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.

NAME: _____
ADDRESS: _____



The Woods Hole Group
 81 Technology Park Drive
 E. Falmouth, MA 02536

Wayne Kurker
 21 Arlington Street
 Hyannis, Massachusetts

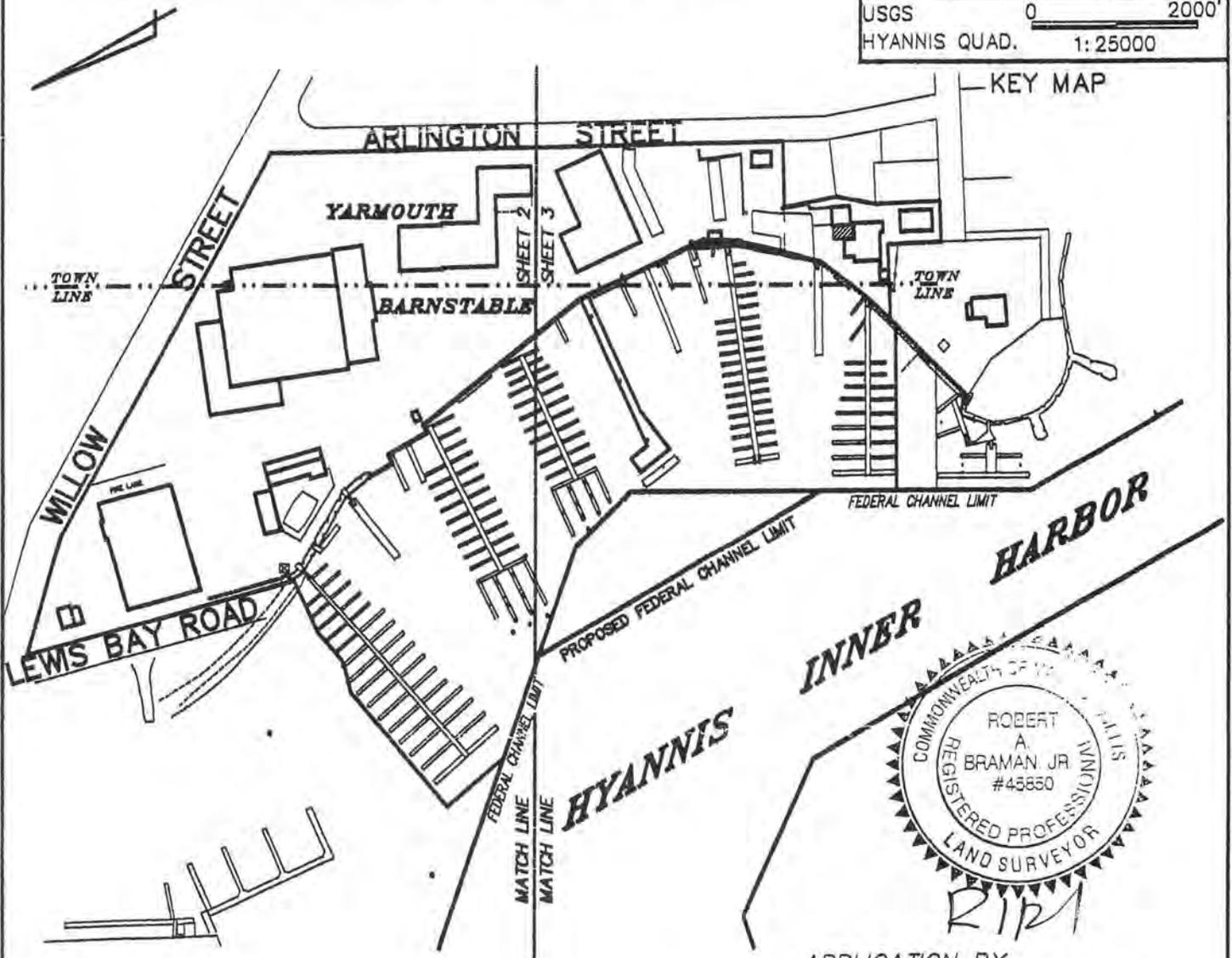
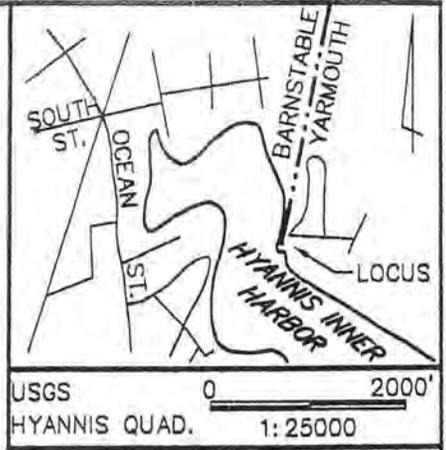
USGS Quadrangle

NOTES:

ELEVATIONS SHOWN ARE IN FEET & TENTHS
 BASED ON THE PLANE OF MEAN LOW WATER.
 MINUS FIGURES REPRESENT DEPTHS
 BELOW THAT SAME PLANE

REFER TO COE PERMIT NUMBERS
 199202228, 199700576, 199800554, 200002833 & 20051934.

TOTAL IMPROVEMENT DREDGING= 8200± CUBIC YARDS



LOCATION PLAN



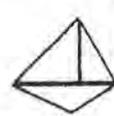
SCALE: 1" = 200'

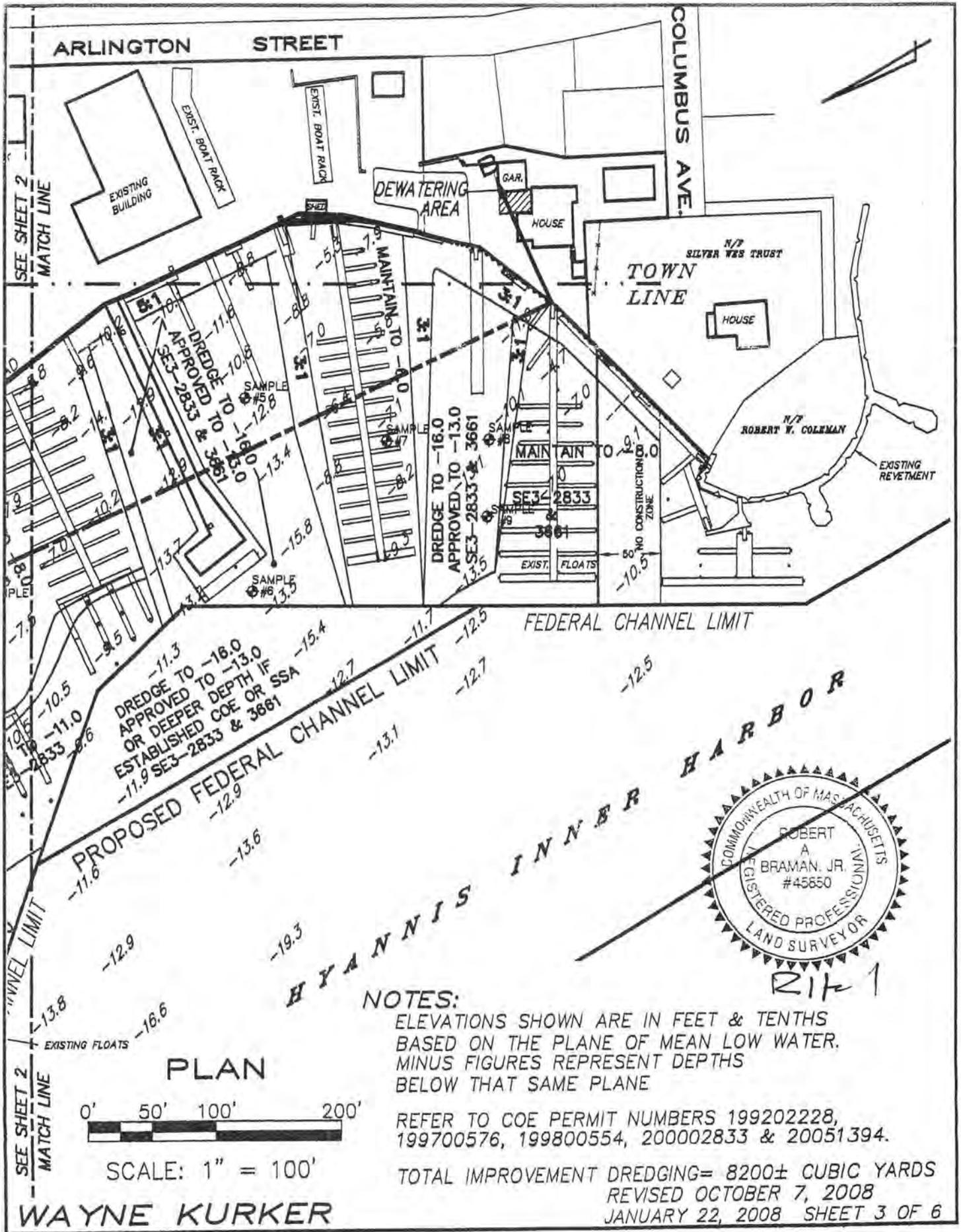
REVISED OCTOBER 7, 2008



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APPLICATION BY
WAYNE KURKER
 TO DREDGE IN
HYANNIS INNER HARBOR
 BARNSTABLE & YARMOUTH, BARNSTABLE CO., MA.
 JANUARY 22, 2008 SHEET 1 OF 6

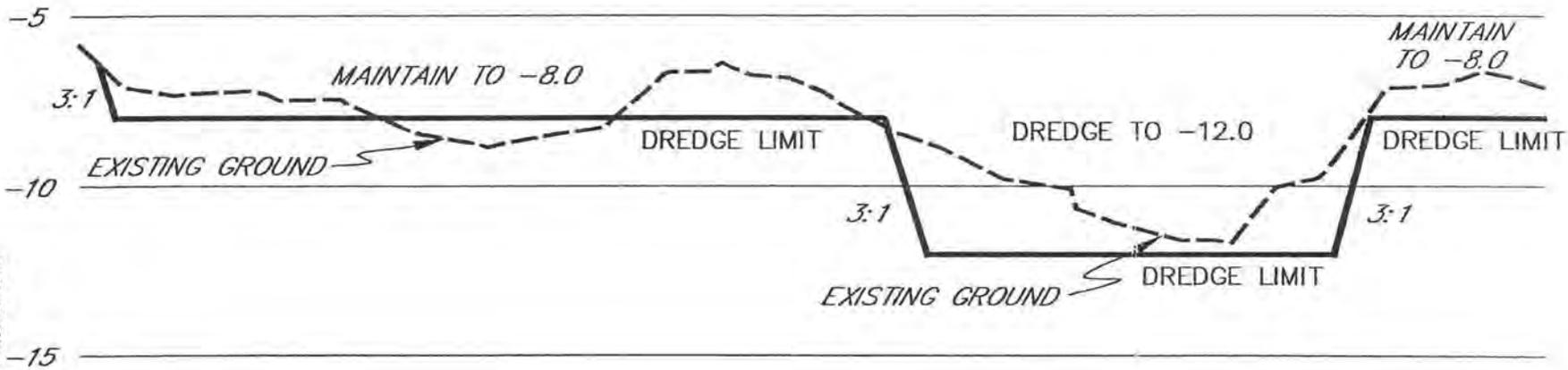
 **BRAMAN SURVEYING & ASSOCIATES, LLC**
 LAND SURVEYORS AND CIVIL ENGINEERS
 140 MARION ROAD, WAREHAM, MA 02571



WAYNE KURKER

REVISED OCTOBER 7, 2008
JANUARY 22, 2008

SHEET 4 OF 6



SECTION "A-A"

SCALE:
 HORIZONTAL: 1"=50'
 VERTICAL: 1"=5'

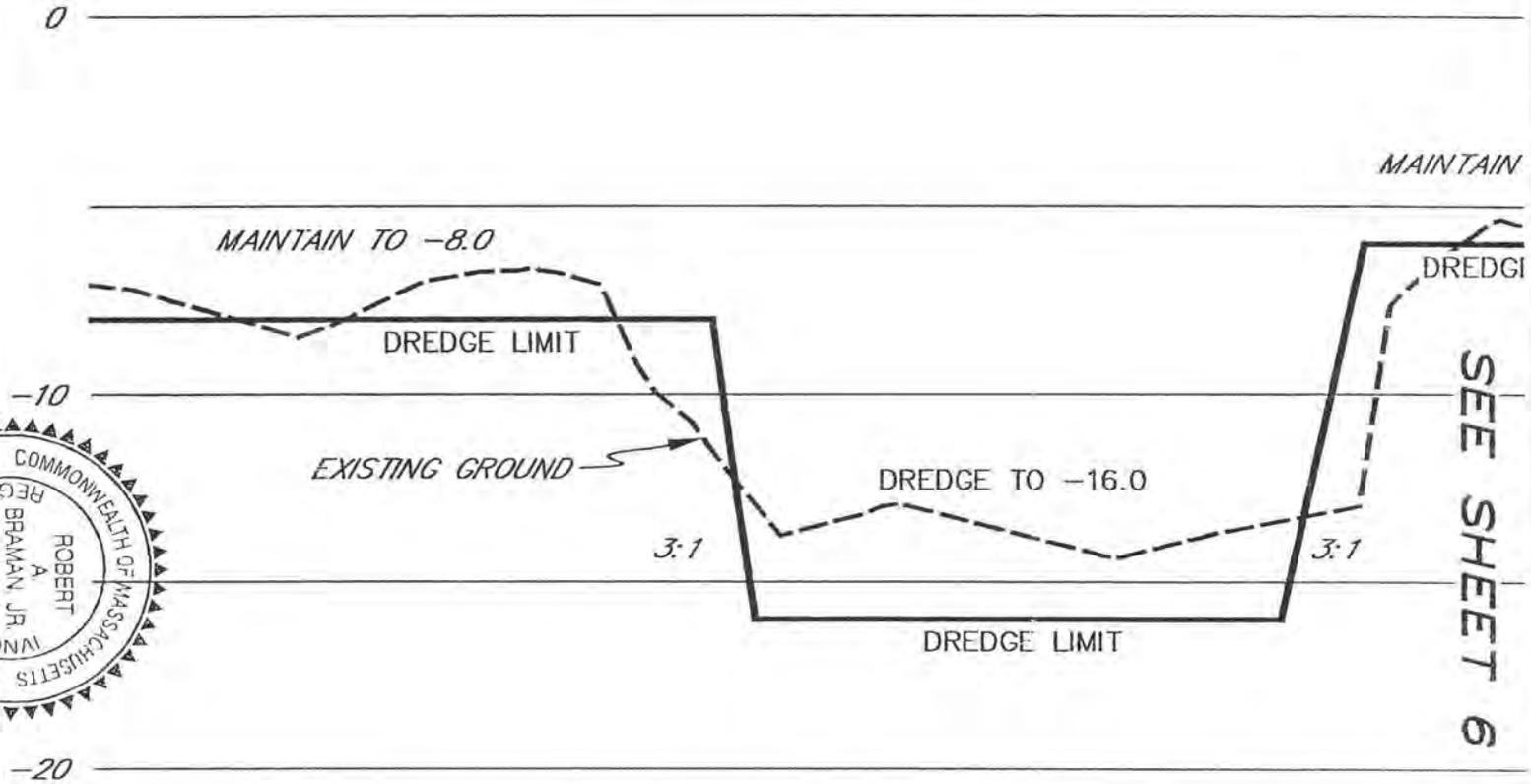


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TOTAL IMPROVEMENT DREDGING= 8200± CUBIC YARDS



SECTION "B-B"

SCALE:

HORIZONTAL: 1"=50'

VERTICAL: 1"=5'

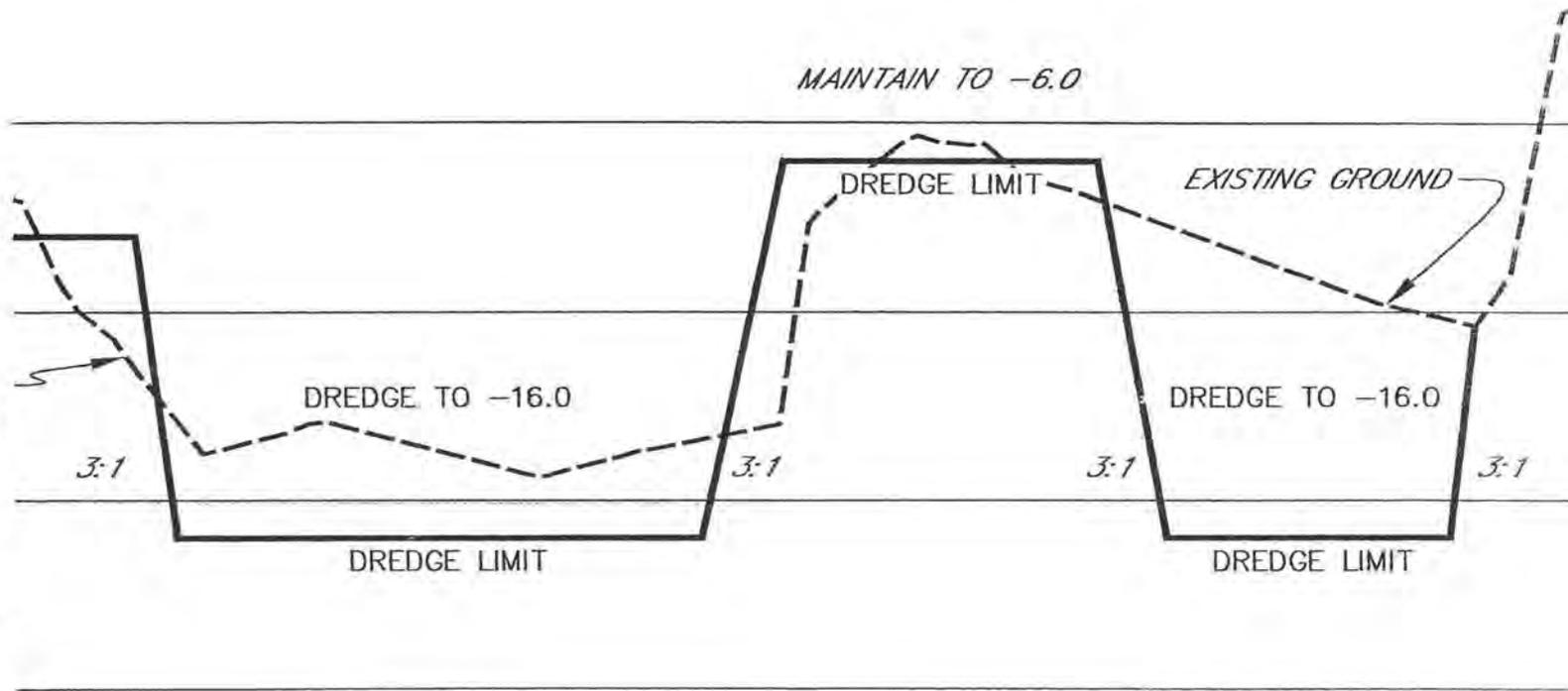
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SEE SHEET 5



SECTION "B-B"

SCALE:
 HORIZONTAL: 1"=50'
 VERTICAL: 1"=5'

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