



# PUBLIC NOTICE

US Army Corps  
of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, N.Y. 10278-0090  
ATTN: Regulatory Branch

**In replying refer to:**  
Public Notice Number: NAN-2014-01272-EYA  
Issue Date: 5 June 2015  
Expiration Date: 5 July 2015

## To Whom It May Concern:

The New York District, Corps of Engineers 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), Section 404 of the Clean Water Act (33 U.S.C. 1344).

**APPLICANT:** Downs Creek LLC  
C/O Robert McCall  
P.O. Box 271  
Cutchogue, NY 11935

**ACTIVITY:** Channel excavation and fill placement with 10 year maintenance

**WATERWAY:** Downs Creek, a tributary to Peconic Bay

**LOCATION:** Village of Cutchogue, Town of Southold, Suffolk County, New York

A detailed description and plans of the applicant's activity are enclosed to assist in your review.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts 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 reasonably may be expected to 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, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership 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 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.

**PLEASE USE THE 18-CHARACTER FILE NUMBER ON ALL CORRESPONDENCE**

**CENAN-OP-RE  
PUBLIC NOTICE NO. NAN-2014-01272-EYA**

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO REACH THIS OFFICE BEFORE THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity. Comment in writing could be mailed to US Army Corps of Engineers, New York District – ATTN: Regulatory Branch, 26 Federal Plaza, Room 1937, New York, N.Y. 10278.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments, including names and addresses, will be made a part of the administrative record, available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary to consider this application. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

Our preliminary determination is that the activity for which authorization is sought herein is not likely to affect any Federally endangered or threatened species or their critical habitat. However, pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the District Engineer is consulting with the appropriate Federal agency to determine the presence of and potential impacts to listed species in the project area or their critical habitat.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act (Public Law 104-267), requires all Federal agencies to consult with the National Oceanic and Atmospheric Administration Fisheries Service (NOAA/FS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The proposed work, fully described in the attached work description, could cause the disruption of habitat for various lifestages of some EFH-designated species as a result of a temporary increase in turbidity during construction. However, the New York District has made the preliminary determination that the site-specific adverse effects are not likely to be substantial because it is expected that fish populations would avoid the small area of disturbance. Further consultation with NOAA/FS regarding EFH impacts and conservation recommendations is being conducted and will be concluded prior to the final decision.

Based upon a review of the latest published version of the National Register of Historic Places, there are no known sites eligible for, or included in, the Register within the permit area. Presently unknown archeological, scientific, prehistorical, or historical data may be lost by work accomplished under the required permit.

Reviews of activities pursuant to Section 404 of the Clean Water Act will 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 the applicant will obtain a water quality certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act prior to a permit decision.

Pursuant to Section 307 (c) of the Coastal Zone Management Act of 1972 as amended [16 U.S.C. 1456 (c)], for activities under consideration that are located within the coastal zone of a state

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which has a federally approved coastal zone management program, the applicant has certified in the permit application that the activity complies with, and will be conducted in a manner that is consistent with, the approved state coastal zone management program. By this public notice, we are requesting the state's concurrence with, objection to, or waiver of the applicant's certification. No permit decision will be made until one of these actions occurs. For activities within the coastal zone of New York State, the applicant's certification and accompanying information is available from the Consistency Coordinator, New York State Department of State, Division of Coastal Resources and Waterfront Revitalization, Coastal Zone Management Program, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231, Telephone (518) 474-6000. Comments regarding the applicant's certification, and copies of any letters to this office commenting upon this proposal, should be so addressed.

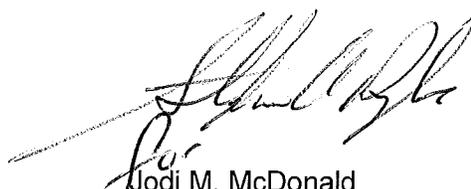
In addition to any required water quality certificate and coastal zone management program concurrence, the applicant has obtained or requested the following governmental authorization for the activity under consideration:

- New York State Department of Environmental Conservation (NYSDEC) Permit ID 1-4738-00219/00008-00010 dated April 9, 2015
- New York State Department of State Coastal Zone Concurrence Certificate F-2014-0641

In order for us to better serve you, please complete our Customer Service Survey located at: <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>

It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice. If you have any questions concerning this application, you may contact this office at (917) 790 - 8092 and ask for Jun Yan.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>



Jodi M. McDonald  
Chief, Regulatory Branch

Enclosures

**WORK DESCRIPTION**

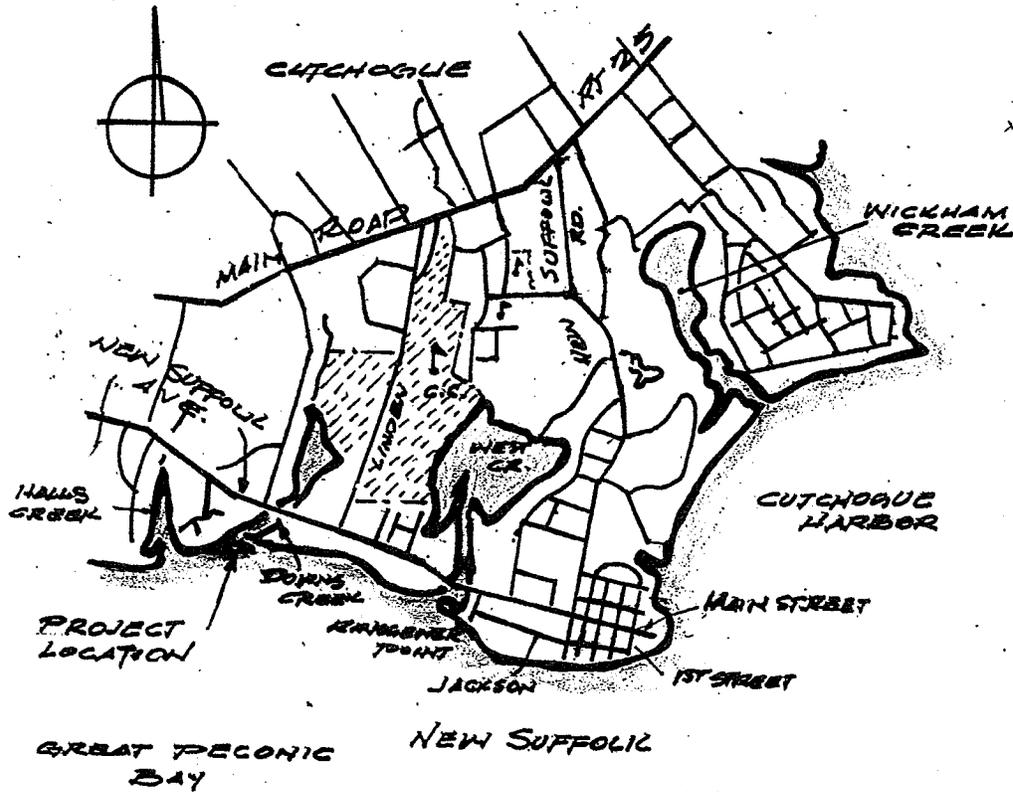
The applicant, Downs Creek LLC, has requested Department of the Army authorization for channel excavation and fill placement in Downs Creek, at 10230 New Suffolk Avenue, in the Village of Cutchogue, Town of Southold, Suffolk County, New York.

The work would involve excavation/dredging of a new 25-foot to 30-foot wide inlet in Downs Creek to Peconic Bay to 2 feet below mean low water, regrade both banks of the new inlet, and construction of a new dike closing off the existing silted in creek inlet and reusing approximately 3,000 cubic yards of excavated material as fill for the closing. Work will be performed using one excavator and one loader over a period of 7 days. Approximately three (3) future dredging events within a 10-year period are anticipated to remove sand from the excavated channel.

The applicant has stated that they have avoided, minimized, and mitigated for impacts proposed to the maximum extent practicable by limiting construction to the smallest area practicable, the impacts are only temporary and the project would increase open water circulation in the area.

Additional protection are provided within the NYSDEC permit dated April 9, 2015, which stated that no work shall be conducted from April 1st thorough August 31st of any calendar year to protect piping plover and least tern nesting areas and that all materials deposited on beach shall be of compatible grain size to the naturally occurring beach.

The stated purpose of this project is to restore tidal circulation within Downs Creek as the current inlet has been silted in.



VICINITY MAP



PROPOSED:

**DOWN'S CREEK:** EXCAVATE A NEW 30'x100' WIDE OUTLET CHANNEL FOR CREEK TO PECONIC BAY. REGRADE BOTH BANKS ON SIDES OF NEW OUTLET. CONSTRUCT NEW 32.25'x90' DIRT CLOSING OFF EXISTING CREEK OUTLET CHANNEL REUSING THE EXCAVATED MATERIAL AS FILL FOR THE CLOSING.

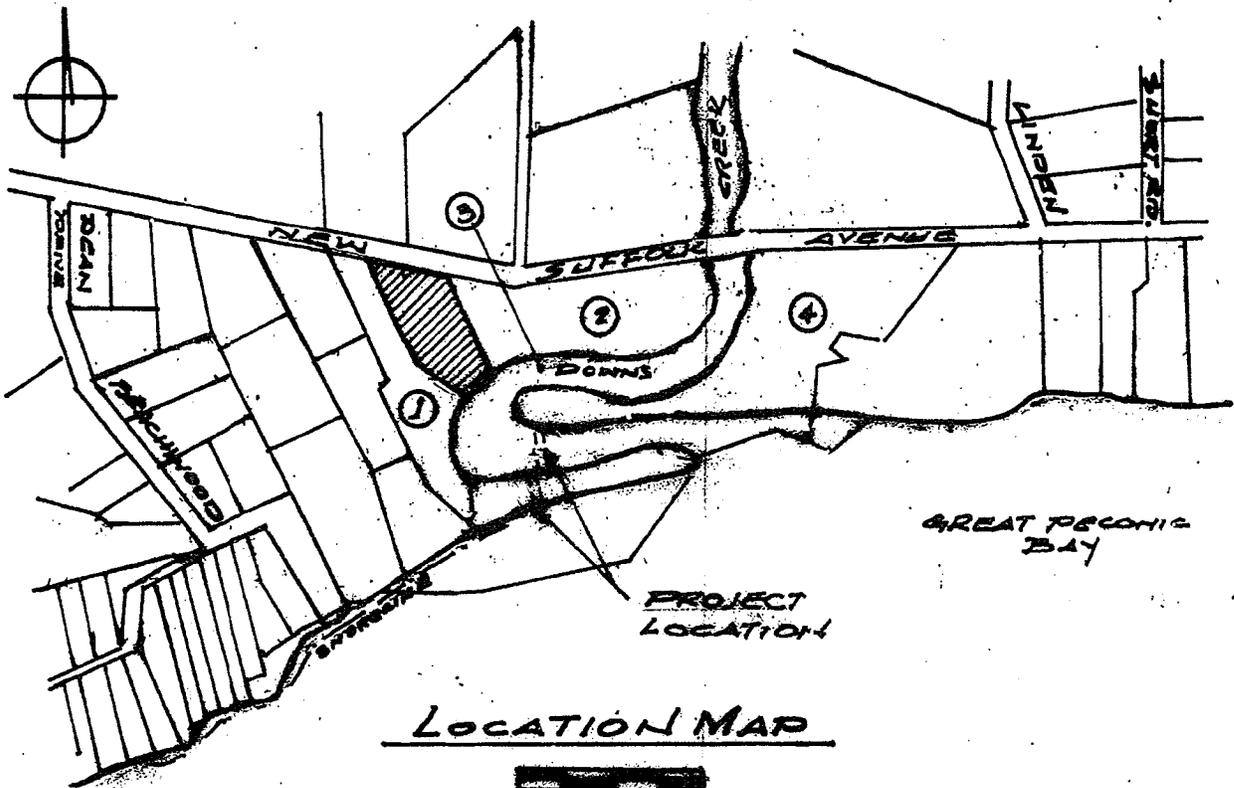
ACCESS: BY WATER USING DARGE

APPLICANT

LMNY LLC - REMCC LLC -  
 DOWN'S CREEK LLC  
 % RUSSELL MCCALL  
 P.O. Box 271  
 CUTCHOGUE, NY 11935  
 10230 NEWSUFFOLK AVENUE  
 SCTM:1000-116-6-4  
 JAN. 23, 2015 SEPT. 12, 2014

PREPARED BY:

COSTELLO MARINE CONTRACTING CORP.  
 P.O. Box 2124 GREENSBORO, NC 27433  
 (601) 477-1199



400ft  
 40°59'23"N 72°29'46"W

ADJACENT PROPERTY OWNERS:

- ① RUSSELL McCALL  
 JBMNY LLC  
 RUSTY NY LLC  
 275 SPRING STREET SW  
 ATLANTA, GA. 30303  
 10140 NEW SUFFOLK AVE.
- ② DRUE WEILD QUALIFIED  
 PERSONAL RESIDENCE TRUST  
 DAVID WEILD QUALIFIED  
 PERSONAL RESIDENCE  
 484 SIWANDY PLACE  
 PELHAM, N.Y. 10803  
 10450 NEW SUFFOLK AVE.

- ③ TOWN OF SOUTHOLD  
 P.O. Box 1179  
 SOUTHOLD, N.Y. 11571  
 UNDERWATER LAND
- ④ RUSSELL C. McCALL  
 275 SPRING STREET SW  
 ATLANTA, GA. 30303  
 11600 NEW SUFFOLK AVE.

APPLICANT

LMNY LLC - REMC LLC -  
 DOWNS CREEK LLC  
 c/o RUSSELL McCALL  
 P.O. BOX 271  
 CUTCHEQUA, N.Y. 11935  
 10250 NEW SUFFOLK AVENUE  
 JCTM 1000-116-G-A  
 JAN. 23, 2015 SEPT. 12, 2014

PREPARED BY:  
 COSTELLO MARINE CONTRACTING CORP.  
 P.O. Box 2124 GREENPORT, NY 11944  
 (631) 477-1199



SURFACE AREA TO BE EXCAVATED

80' X 100' = 8000 SQ. FT.

Vol. TO BE EXCAVATED

30' X 6.5' = 195 SQ. FT. / LINEAL FOOT

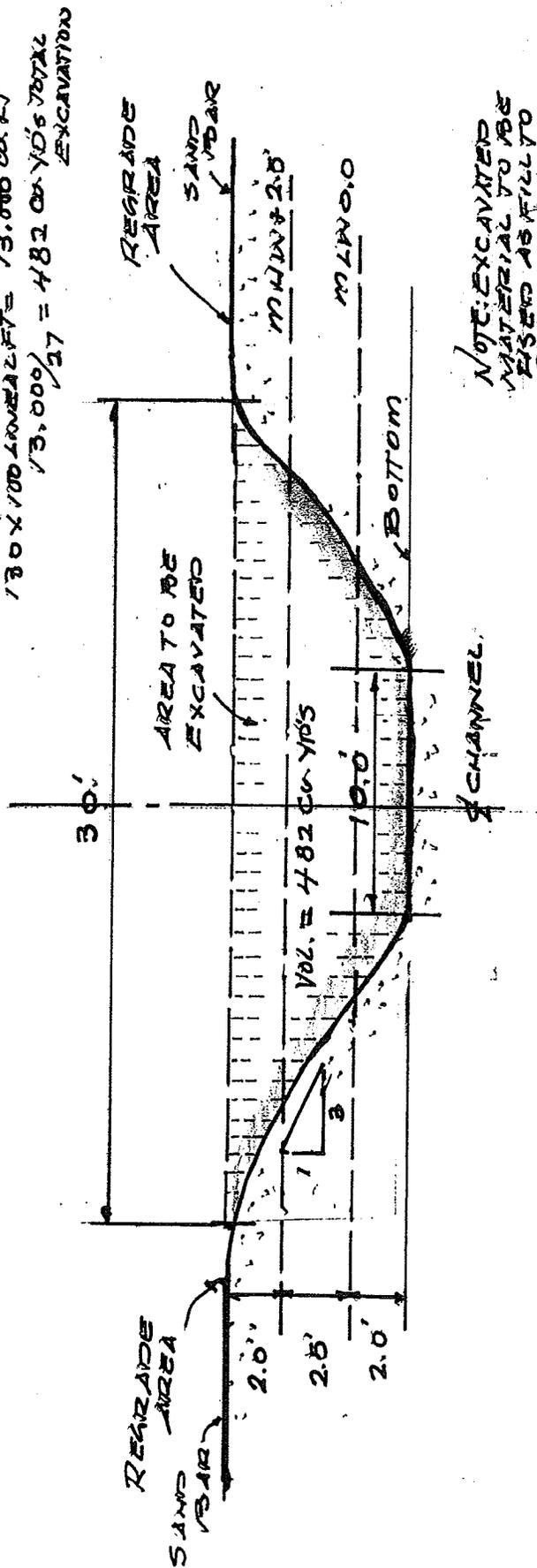
LESS  $\frac{10' \times 6.5}{2} \times 2 = 65$  SQ. FT.

190

- 65

$\frac{130 \text{ SQ. FT. / LINEAL FOOT}}{130 \times 100 \text{ LINEAL FEET}} = 13,000 \text{ CU. FT.}$

$\frac{13,000}{27} = 482 \text{ CU. YDS. TOTAL EXCAVATION}$



DETAIL - NEW OUTLET CHANNEL

APPLICANT

LIMNY LLC - REMCC LLC  
DOWNS CREEK LLC  
910 RUSSELL MCGALL  
PO. BOX 271

CUTCORQUE, N.Y. 11935  
10230 NEW SUFFOLK AVENUE  
SCTM-1050 - N6-S-4

SEPT. 12, 2014 JAN. 23, 2015

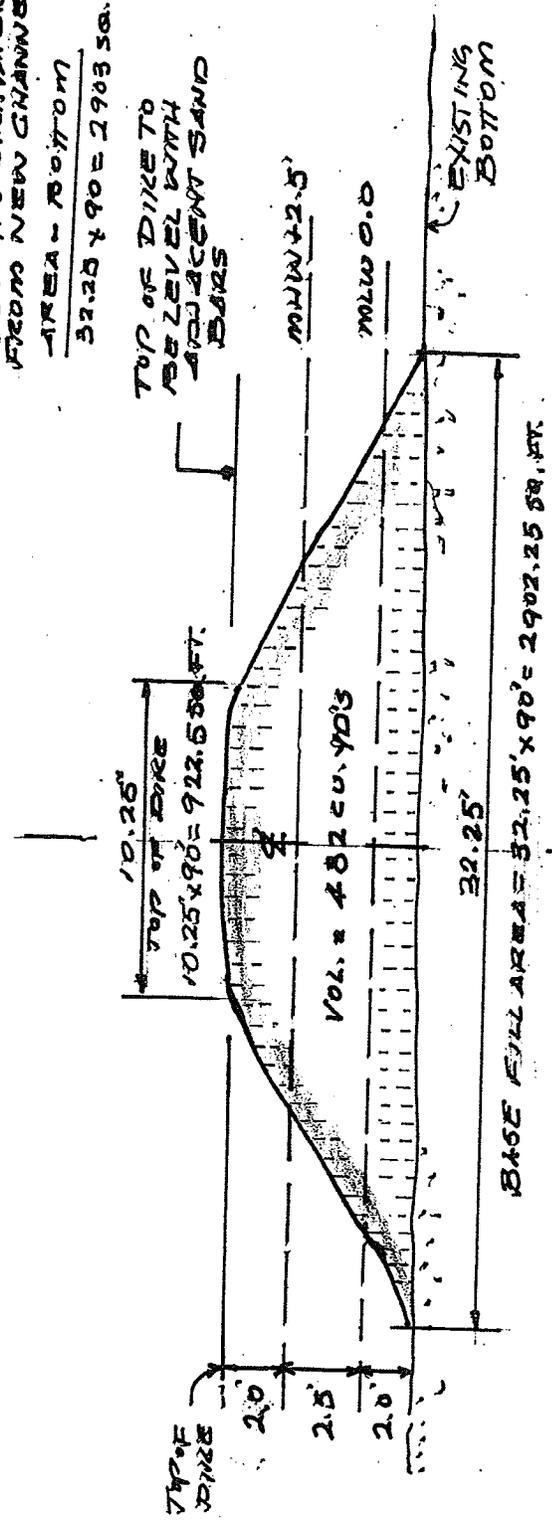
PREPARED BY:

COSTELLO MARINE CONTRACTING CORP.  
710. BOX 2124 GREENPORT, N.Y. 11944  
(609) 477-1199

FILL VOLUME

$32.25' \times 6.5' = 209.63 \text{ SQ. FT.}$   
 $\frac{209.63 \times 2}{2} = 209.63$   
 $144.63 \text{ SQ. FT.}$   
 $124.63 \times 90' = 11,216.7 \text{ CU. YD.}$   
 $\frac{11,216.7}{27} = 415.43 \text{ CU. YD.}$

TOTAL VOL. OF FILL AVAIL.  
 482 CU. YDS EXCAVATED  
 FROM NEW CHANNEL  
AREA - BOTTOM  
 $32.25 \times 90 = 2902.5 \text{ SQ. FT.}$



DETAIL - NEW DIKE - EXISTING CHANNEL

APPLICANT  
 LMMY LLC - REMCC LLC  
 DO WNS CREEK LLC  
 40 RUSSELL MCGILL  
 120. BOX 271  
 COTCHOGUE, N.Y. 11935  
 10230 NEW SUFFOLK AVENUE  
 5 CTM-1000-11656-4



PREPARED BY:  
 COSTELLO MARINE CONTRACTING CORP.  
 P.O. BOX 2134 GREENPORT, N.Y. 11944  
 (609) 477-1177

SEPT. 12, 2014 JAN. 23, 2015