



# 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-2021-00511-EMI**  
Issue Date: **October 28, 2021**  
Expiration Date: **November 29, 2021**

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) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

APPLICANT: Whaleneck Marina, LLC  
3000 Whaleneck Drive  
Merrick, New York 11566

ACTIVITY: Boat Slip Closures

WATERWAY: Merrick Creek, a tributary of East Hempstead Bay

LOCATION: 3000 Whaleneck Drive, Merrick, Town of Hempstead, Nassau 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.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND EMAILED TO REACH THIS OFFICE BEFORE THE EXPIRATION DATE OF THIS NOTICE,

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otherwise, it will be presumed that there are no objections to the activity.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. Comments provided will become part of the public record for this permit application. All written comments, including contact information, 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 email 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 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

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permit decision will be made until one of these actions occur. 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

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. Please send all comments and questions concerning this application to [Christopher.W.Minck@usace.army.mil](mailto:Christopher.W.Minck@usace.army.mil).

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>.

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

**FOR AND IN BEHALF OF**  
Stephan A. Ryba  
Chief, Regulatory Branch

Enclosures

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**WORK DESCRIPTION**

The permit applicant, Whaleneck Marina, LLC has requested Department of the Army (DA) authorization to close four (4) boat slips and stabilize the shoreline. The project is located in Merrick Creek, a tributary of East Hempstead Bay at 3000 Whaleneck Drive, Merrick, Town of Hempstead, Nassau County, New York.

The proposed work would involve the following:

Heading from south to north:

Construct approximately 16 linear feet of bulkhead to close the existing slip and discharge approximately 88 cubic yards of clean fill and/or dredged material over a 16-foot-wide by 27-foot-long area (432 square feet) below the plane of Spring High Water (SHW). Additionally, dredge approximately 5 cubic yards over an approximately 16-foot-long by 10-foot-long area in front of the new bulkhead with resultant dredged material to be placed to fill the boat slip.

Construct approximately 44 linear feet of bulkhead to close the existing slip and discharge approximately 300 cubic yards of clean fill and/or dredged material over a 44-foot-wide by 37-foot-long area (1,628 square feet) below the plane of SHW. Additionally, dredge approximately 10 cubic yards over an approximately 44-foot-wide by 10-foot-long area in front of the new bulkhead with resultant dredged material to be placed to fill the boat slip.

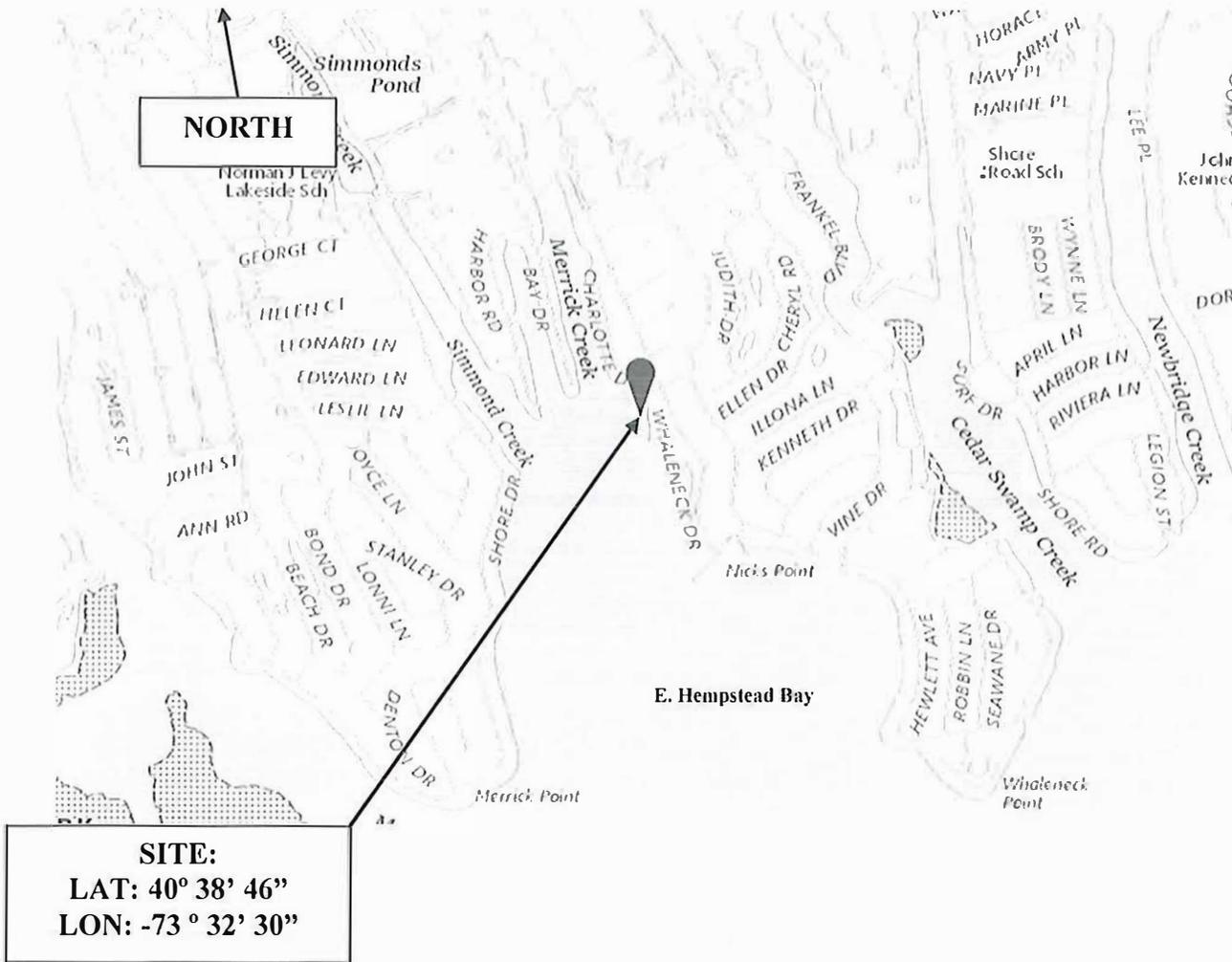
Construct approximately 20 linear feet of bulkhead to close the existing slip and discharge approximately 150 cubic yards of clean fill and/or dredged material over a 20-foot-wide by 38-foot-long area (760 square feet) below the plane of SHW. Additionally, dredge approximately 5 cubic yards over an approximately 20-foot-wide by 10-foot-long area in front of the new bulkhead with resultant dredged material to be placed to fill the boat slip.

Construct approximately 15 linear feet of bulkhead to close the existing slip and discharge approximately 95 cubic yards of clean fill and/or dredged material over a 15-foot-wide by 31-foot-long area (465 square feet) below the plane of SHW. Additionally, dredge approximately 5 cubic yards over an approximately 15-foot-wide by 10-foot-long area in front of the new bulkhead with resultant dredged material to be placed to fill the boat slip.

To offset the filling of the boat slips, the applicant will create open waters by excavating landward of an approximately 260 linear foot section of existing bulkhead, approximately 2,750 cubic yards of material to a depth of four feet below the plane of Mean Low Water over an approximately 3,724-square-foot area including a 10-foot-wide area waterward of the previously existing bulkhead. Following excavation, remove the approximately 260 linear foot section of bulkhead and install landward of the excavated area, approximately 95 linear feet of bulkhead to connect the remaining existing bulkhead sections.

The applicant has stated that they have avoided, minimized, and mitigated for potential impacts proposed to the maximum extent practicable by excavating an upland area to offset the fill to be placed into Waters of the United States. The applicant will create a net of 37 square feet of open waters as a result of the project. Any potential impacts would be offset by the net creation of waters and by implementing best management practices such as utilizing turbidity/silt curtains during construction .

The stated purpose of this project is to create land to allow for an upland residential development.



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**PROPOSED SLIP CLOSURE & BULKHEAD REMOVAL**

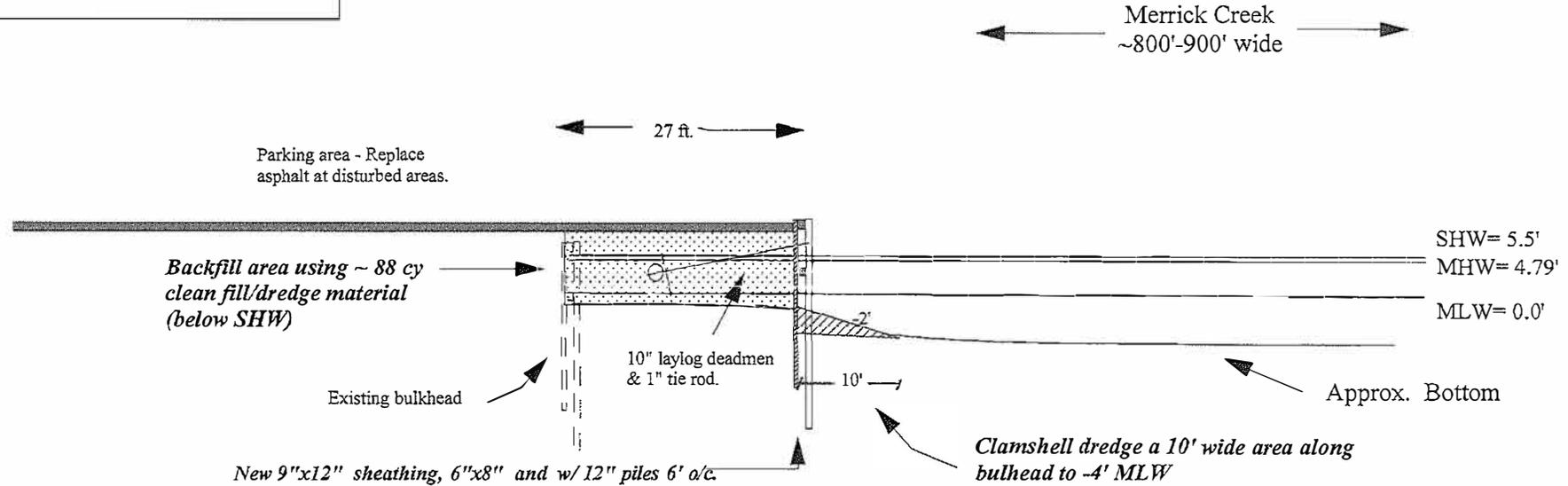
Scale: 1 inch = 500ft

**Whaleneck Marine LLC**  
**300 Whaleneck Dr**  
**Merrick, NY**

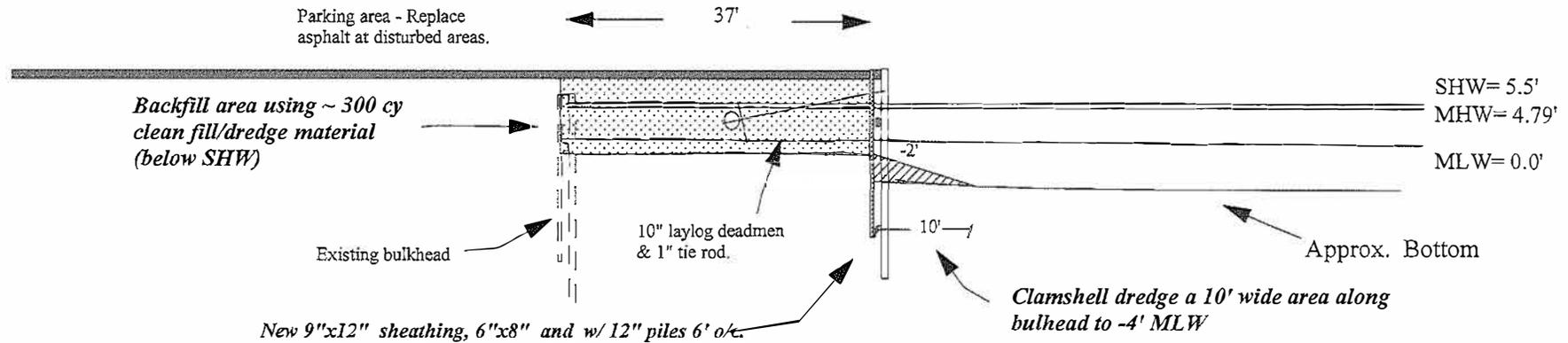


**PROFILE THROUGH SLIP CLOSING/BULKHEAD REMOVAL**

Section at 16'x27' slip



Section at 37'x 44' slip



Notes:  
All timber material CCA & Hardware hot-dip galv.  
Dredge material mostly sandy silt.  
Not detailed for construction. Contractor to determine all materials specifics/conditions in the field prior to construction.

Applicant: Whaleneck Marina

Location: 3000 Whaleneck Dr.  
Merrick, NY 11566

NCTM Sec: 63, Blk 148, Lots  
173-182, 187-195

Scale: One inch = Twenty feet

Proposal: Bulkhead replace & slip closing

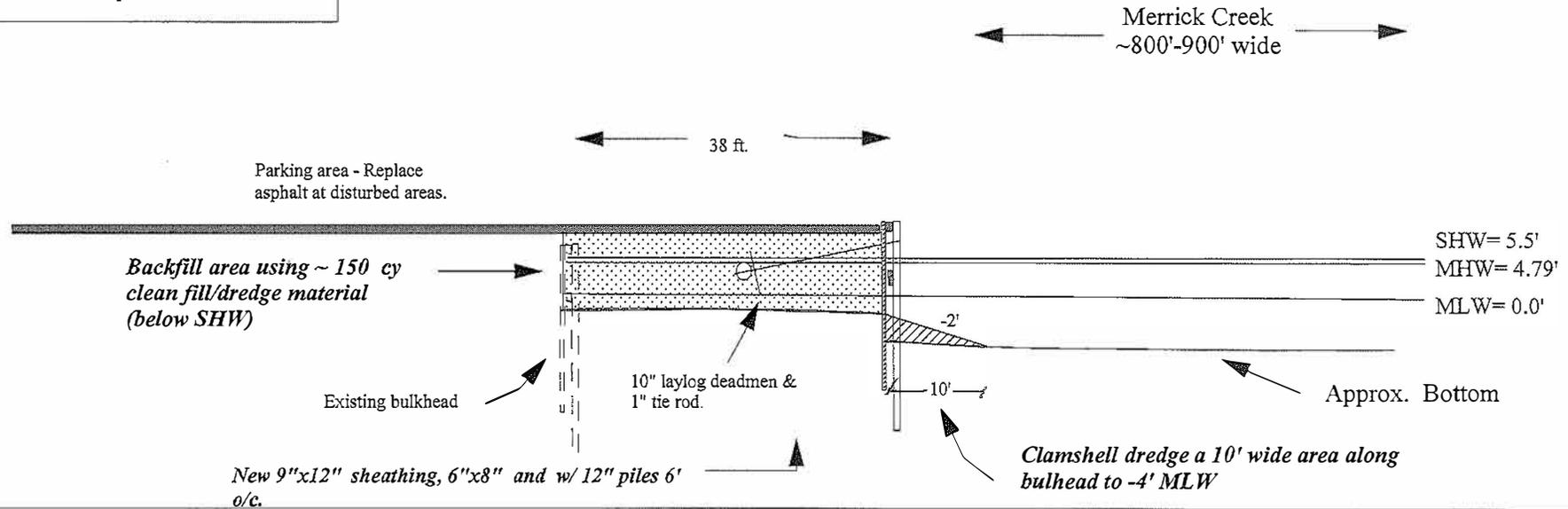
Appl. By: Ocean Consulting  
262 Weidner Ave.  
Oceanside, NY 11572  
(516) 764-8534

Datum: Mean Low Water

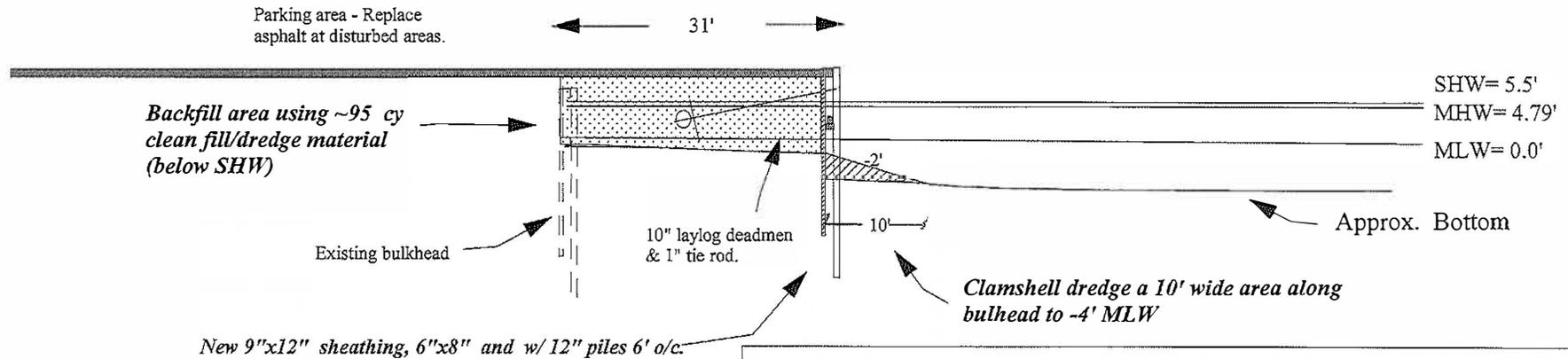
Date: 12-APR-21 REV: 27-JUL-21

PROFILE THROUGH SLIP CLOSING/BULKHEAD REMOVAL

Section at 20'x38' slip



Section at 15'x 31' slip



Notes:  
All timber material CCA & Hardware hot-dip galv.  
Dredge material mostly sandy silt.  
Not detailed for construction. Contractor to determine all materials specifics/conditions in the field prior to construction.

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