

## DEPARTMENT OF THE ARMY

PLEASE SIGN AND SUBMIT THE COMPLETION FORM ATTACHED TO THIS PERMIT

BUFFALO DISTRICT, CORPS OF ENGINEERS 1776 NIAGARA STREET BUFFALO, NEW YORK 14207-3199

July 10, 2019

Regulatory Branch

SUBJECT: Letter of Permission - Processing No. LRB-1998-5050037.

Mr. Theodore Behnken Sand Beach Conservancy District PO Box 54 Oak Harbor, Ohio 43449

Dear Mr. Behnken:

Please refer to your request for a Department of the Army (DA) permit to perform maintenance dredging of a navigable water of the U.S. located south of the Sand Beach residential area in Carroll Township Ottawa County, Ohio.

UPON RECOMMENDATION OF THE CHIEF OF ENGINEERS, PURSUANT TO SECTION 10 OF THE RIVERS AND HARBORS ACT OF 3 MARCH 1899 (33 U.S.C. 403), THEODORE BEHNKEN OF THE SAND BEACH CONSERVANCY DISTRICT, DESIGNATED THE PERMITTEE, IS HEREBY GRANTED PERMISSION TO DREDGE APPROXIMATELY 8,326 CUBIC YARDS (CY) OF MATERIAL FROM A NAVIGABLE WATER OF THE U.S. LOCATED SOUTH OF THE SAND BEACH SUBDIVISION. THE CHANNEL WILL BE DREDGED TO A DEPTH OF APPROXIMATELY 569.00 INTERNATIONAL GREAT LAKES DATUM (IGLD) 1985 OVER A DISTANCE OF APPROXIMATELY 1.35 MILES (7,141 FEET) STARTING NEAR 8863 SAND BEACH ROAD AND EXTENDING EASTWARD TO APPROXIMATELY 7805 SAND BEACH ROAD. THE DREDGING WILL OCCUR ALONG BOTH SIDES OF THE CHANNEL FOR APPROXIMATELY 5,841 LINEAR FEET WHERE THE CHANNEL IS 18 FEET WIDE AND DREDGING WILL LIMITED TO NORTH SIDE OF THE CHANNEL FOR APPROXIMATELY 1,300 LINEAR FEET WHERE THE CHANNEL IS 14 FEET WIDE. THE DREDGED MATERIALS ARE TO BE PLACED IN AN UPLAND AREA LOCATED ON LOTS 204 TO 213 ON  $7^{\mathrm{TH}}$  STREET IN ACCORDANCE WITH ATTACHED PERMIT PROVISIONS, CONDITIONS AND DRAWINGS WHICH ARE INCORPORATED IN AND MADE A PART HEREOF.

Be advised that unexploded ordnance have been discovered in past dredging operations in the area including the mouth of the Toussaint River.

PLEASE NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

Regulatory Branch

SUBJECT: Letter of Permission - Processing No. LRB-1998-5050037.

This letter is an initial proffered permit for your proposed project. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above decision, you must submit a completed RFA form to our office within 60 days of the date on this letter.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the District Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by August 19, 2019.

It is not necessary to submit an RFA if you do not object to the decision in this letter.

The District Commander must be informed of commencement and completion of the authorized work. Please use the forms enclosed. Commencement indicates your acceptance and agreement to comply with the permit terms and conditions.

Questions pertaining to this matter should be directed to Paul Wetzel at (419) 898-3812, or by writing to the following address: Mr. Brian Swartz, U.S. Army Corps of Engineers, Buffalo District, Oak Harbor Field Office, 240 Lake Street, Unit D, Oak Harbor, Ohio 43449, or by email at: brian.p.swartz@usace.army.mil.

Dated this July 10, 2019

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Marke Saladeury For Diane C. Kozlowski Chief, Regulatory Branch

Enclosures

### PERMIT CONDITIONS

### GENERAL CONDITIONS:

- 1. The time limit for completing the work authorized ends on July 10, 2024. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
- 2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
- 3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- 4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
- 5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
- 6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
- 7. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

### **FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

# SECTION 10 OF THE RIVERS AND HARBORS ACT OF 3 MARCH 1899 (33 U.S.C. 403)

- 2. Limits of this authorization.
- a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.
- 3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
- 5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

### SPECIAL CONDITIONS:

- 1. At the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, the permittee must allow access to the project site to determine compliance with the conditions of this permit.
- 2. That you are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
- 3. The permittee must place the dredged material at the approved upland placement site located at Lots 204 to 213 on 7<sup>th</sup> Street, as depicted on Sheets 3 of 6 and 6 of 6. The dredged material must be contained with siltation control measures to preclude reentry into any waters of the U.S., including wetlands. Use of any other placement site must be coordinated with this office and may require prior written approval from the U.S. Army Corps of Engineers, Buffalo District.
- 4. The permittee is prohibited from performing in-water work between (April 15th and June 30th) to preclude adverse impacts on the spawning, nursery, and feeding activities of indigenous fish species.
- 5. To reduce any potential adverse effects on the Federally endangered Indiana bat (*Myotis sodalis*), trees (woody stems greater than 5 inches Diameter at Breast Height) must not be cut between April 1 and September 30, of any year.
- 6. To reduce any potential adverse effects on the Federally threatened Northern long-eared bat (*Myotis septentrionalis*), trees (woody stems greater than 3 inches Diameter at Breast Height) must not be cut between April 1 and September 30, of any year.

- 7. The proposed project lies within the range of the Kirtland's warbler (*Setophaga kirtlandii*), a federally-listed Endangered species under the Endangered Species Act. To avoid and minimize any potential adverse effects to the warbler, the clearing, removal, and/or modification of any scrub/shrub or forested habitat shall not occur between April 22nd to June 1st and August 15th to October 15th of any year. The permittee is responsible for ensuring all contractors executing any shrub or tree clearing activities are aware of these work restriction timeframes required to avoid and minimize effects to the warbler.
- 8. Dredging operations must be strictly controlled to minimize spillage and re-suspension of bottom sediments.
- 9. This permit does not authorize the placement of fill material in any water of the United States, including wetlands, for the purpose of temporary structures that include, but are not limit to, groins, cofferdams, work pads, laydown areas, and access roads.
- 10. All necessary precautions must be taken to preclude the contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious substance associated with the project.
- 11. Maintenance dredging under this authorization shall not be extended beyond the maximum period of ten (10) years. A new permit application will need to be submitted for dredging activities beyond this period. It is recommend to submit any time extension request to this office at least three (3) months prior to the expiration date of the initial five-year period.

TRANSFERE	E HEREBY	AGREES	TO COMPI	LY WITH
THE TERMS	AND CONI	OITIONS (	OF THIS PE	RMIT.*

Transferee	Date	

\*Note: When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date in the space provided. A copy of this signed permit and statement shall be forwarded to the Buffalo District at the following address:

U.S. Army Corps of Engineers Buffalo District Regulatory Branch 1776 Niagara Street Buffalo, New York 14207

# NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applica	ant: Mr. Theodore Behnken - Sand Beach Conservancy District	File Number: LRB-1998-5050037	Date July 10, 2019
Attache			See Section below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter o	f permission)	A
X	PROFFERED PERMIT (Standard Permit or Letter of permissi		В
	PERMIT DENIAL		C
	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		Е

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg\_materials.aspx or Corps regulations at 33 CFR Part 331.

- A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.
- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- •OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT: You may accept or appeal the permit
- •ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- •APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.
- •ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- ●APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO	O AN INITIAL PROFFERED F	PERMIT
REASONS FOR APPEAL OR OBJECTIONS: (Describe your	reasons for annealing the decision	or your objections to an initial
proffered permit in clear concise statements. You may attach additional professions and the statements of the statements of the statement of t	ional information to this form to	clarify where your reasons or
objections are addressed in the administrative record.)	ional information to this form to t	starriy whore your roadons or
objections are addressed in the administrative record.		
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ADDITIONAL INFORMATION: The appeal is limited to a rev	ew of the administrative record, t	he Corps memorandum for the
record of the appeal conference or meeting, and any supplemental	information that the review office	r has determined is needed to
clarify the administrative record. Neither the appellant nor the Co.	rps may add new information or a	nalyses to the record. However,
you may provide additional information to clarify the location of i	nformation that is already in the a	dministrative record.
POINT OF CONTACT FOR QUESTIONS OR INFORMATI		
If you have questions regarding this decision and/or the appeal		ding the appeal process you may
process you may contact:	also contact:	
Francisco Jon May Common		
Mr. Brian Swartz	Jacob Siegrist	
U.S. Army Corps of Engineers	Regulatory Appeals Review Off	icer
Oak Harbor Field Office	US Army Corps of Engineers	
240 Lake Street, Unit D	Great Lakes and Ohio River Div	rision
Oak Harbor, Ohio 43449	550 Main Street, Room 10524	
(419) 898-3491; FAX: (419) 898-4292	Cincinnati, Ohio 45202-3222	
email: paul.f.wetzel@usace.army.mil	Phone: 513-684-2699 Fax: 513-	684-2460
cinan. paul.i. wetzentgusaec.army.iim	1 Hone, 313 001 2033 1 ax. 313	001 2100
RIGHT OF ENTRY: Your signature below grants the right of en	try to Corps of Engineers person	nel, and any government
consultants, to conduct investigations of the project site during the		
notice of any site investigation, and will have the opportunity to pa	orticipate in all site investigations	a oo pro riada a 15 daj
notice of any site investigation, and will have the opportunity to pa	Date:	Telephone number:
	1040.	1 Stophono numoor.
Signature of appellant or agent.		
orginature or appendix or agent.		<u></u>

### **IMPORTANT**

This form must be completed and mailed to the District Commander at: Regulatory Branch, US Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, <u>prior to commencement</u> of any work authorized by Department of the Army Permit No. LRB-1998-5050037 (Letter of Permission).

Date:

July 10, 2019 Oak Harbor Ottawa County Ohio

Mr. David Leput Regulatory Branch U.S. Army Corps of Engineers 1776 Niagara Street Buffalo, New York 14207

Dear Mr. Leput:

You are hereby notified that the work authorized under Department of the Army Permit No. LRB-1998-5050037, issued to Mr. Theodore Behnken, Sand Beach Conservancy District, to dredge approximately 8,326 CY of material from an existing 1.35 mile channel located south of the Sand Beach residential area and place the dredged material an upland area located on Lots 204 to 213 at 7 <sup>th</sup> Street, Oak Harbor, Ohio will be started on or about (Month/Day/Year).			
The first work to be un	dertaken is as follow	rs:	
In commencing the work, I accepermit.	cept and agree to cor	nply with the terms and conditions of the	
Ву:			
(Authorized Signature)	(Title)		
Permittee Telephone Number:			
File Closed: July 10, 2019			

### **IMPORTANT**

This form must be completed and mailed to the District Commander at: Regulatory Branch, US Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, immediately upon completion of work authorized by Department of the Army Permit No LRB-1998-5050037 (Letter of Permission).

Date:

July 10, 2019 Oak Harbor Ottawa County Ohio

Mr. David Leput Regulatory Branch U.S. Army Corps of Engineers 1776 Niagara Street Buffalo, New York 14207

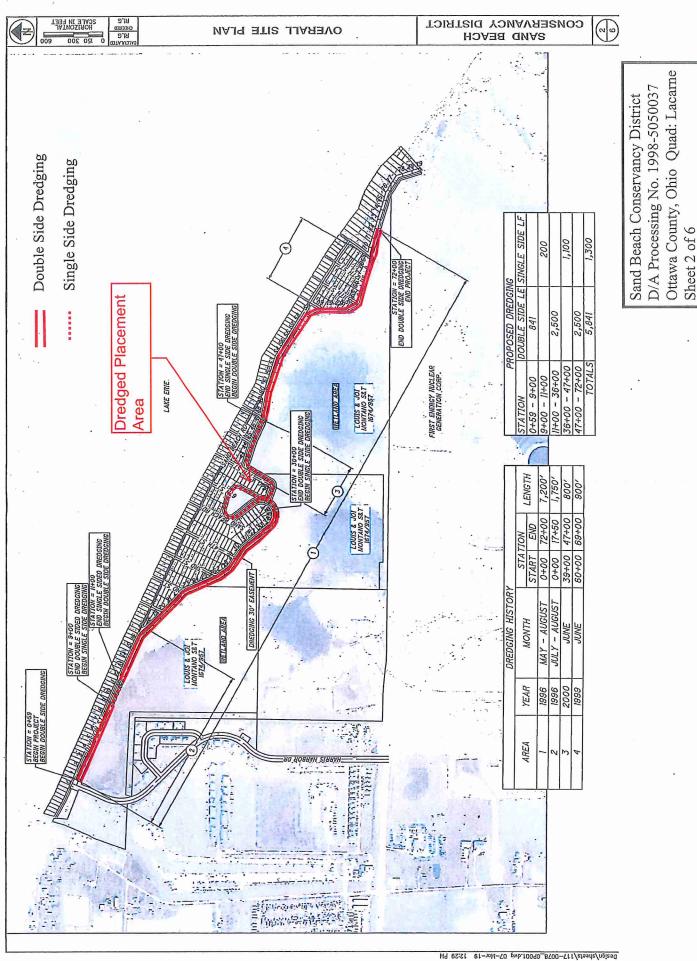
File Closed: July 10, 2019

Dear Mr. Leput:

LRB-1998-5050037, issued to I dredge approximately 8,326 CY	Mr. Theodore Behr of material from and place the dream rbor, Ohio was (co	zed under Department of the Army Pernken, Sand Beach Conservancy District an existing 1.35 mile channel located staged material an upland area located or ompleted/discontinued) on	t, to south of
If Discontinued:			
The work iswork authorized by this permit	_ percent complete shall have been co	e. The following remains to be done be impleted:	efore all
By:(Authorized Signature)	(Title)	Date:	
Permittee Telephone Number:	` ,		

SITE ong Beach

Sand Beach Conservancy District D/A Processing No. 1998-5050037 Ottawa County, Ohio Quad: Lacarne Sheet 1 of 6

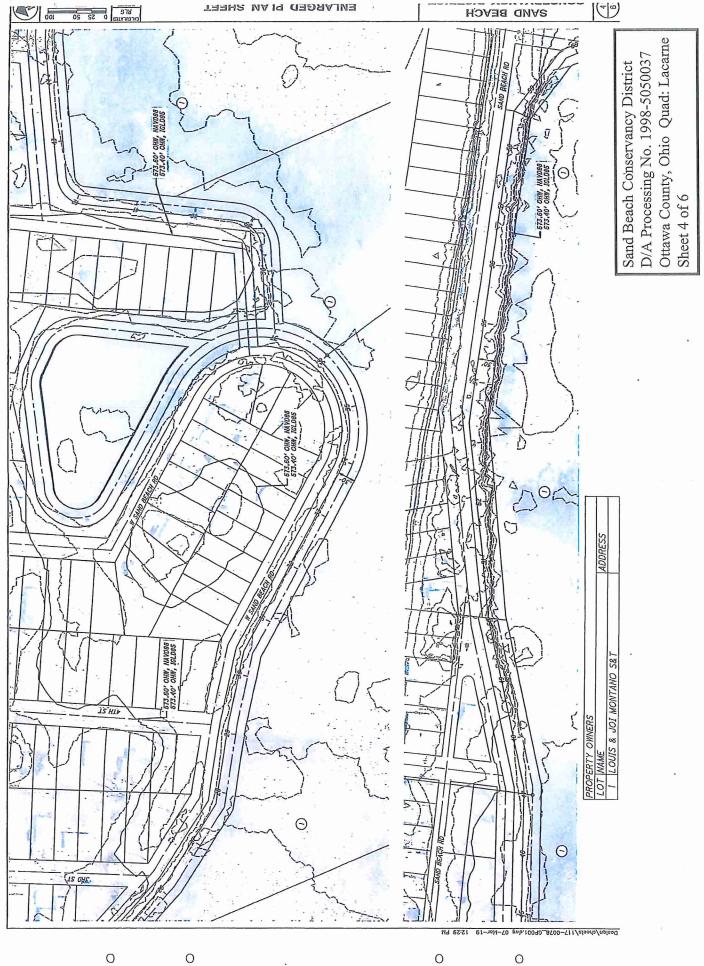


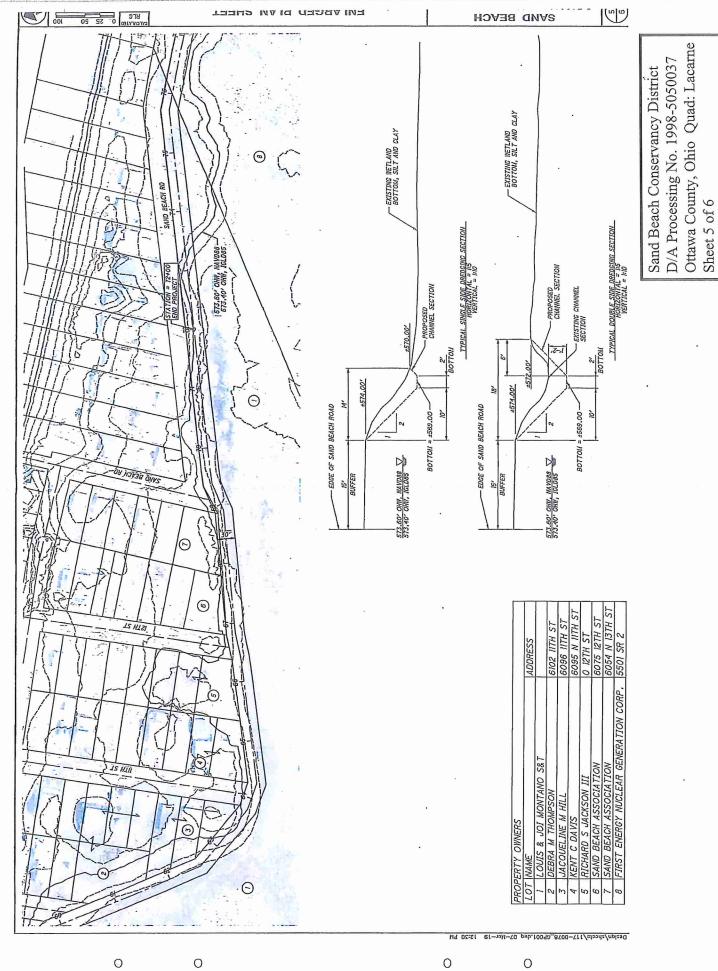
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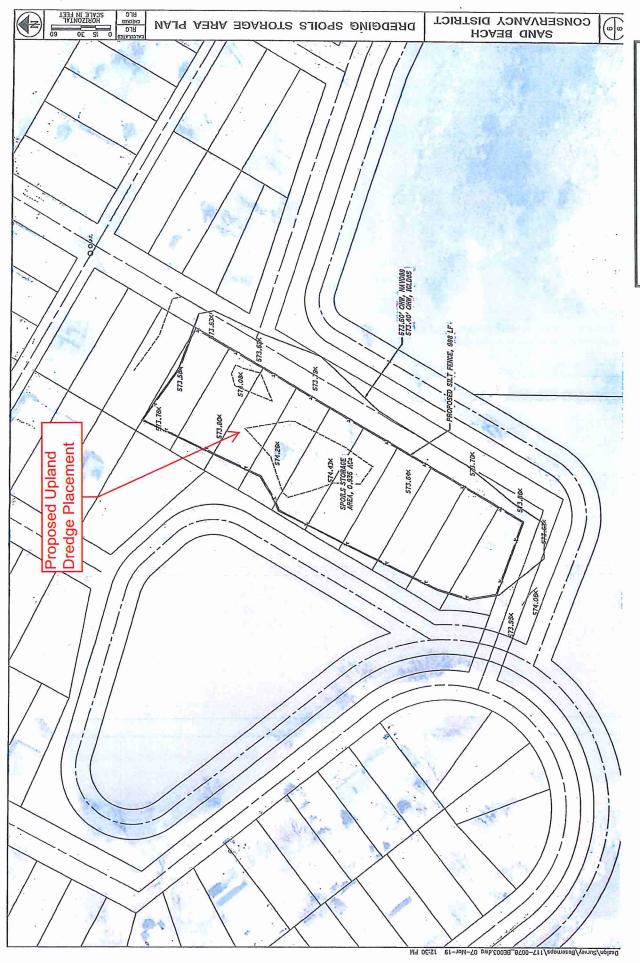


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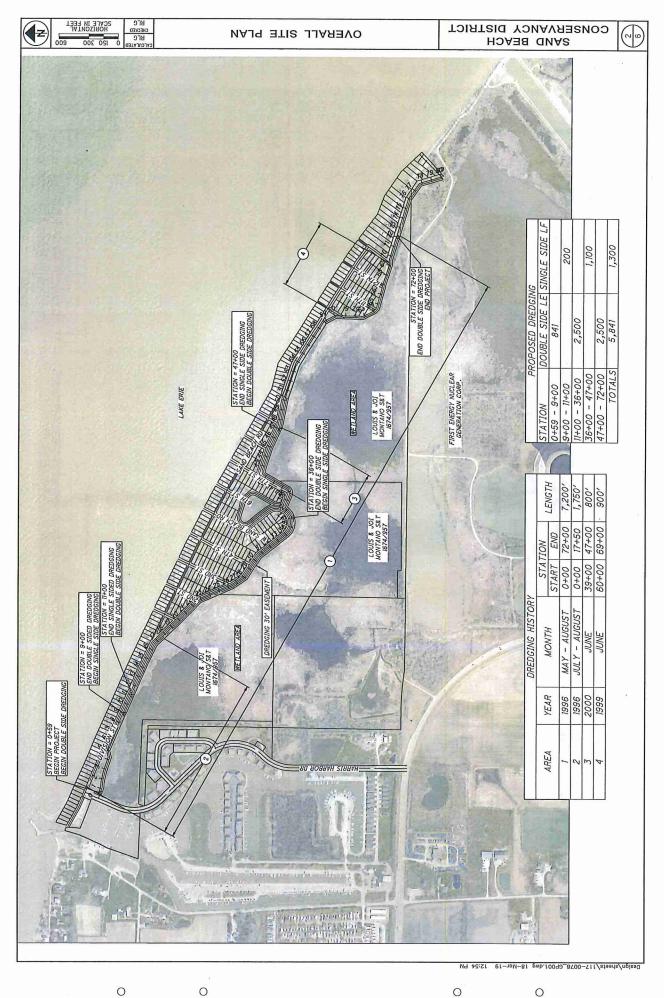
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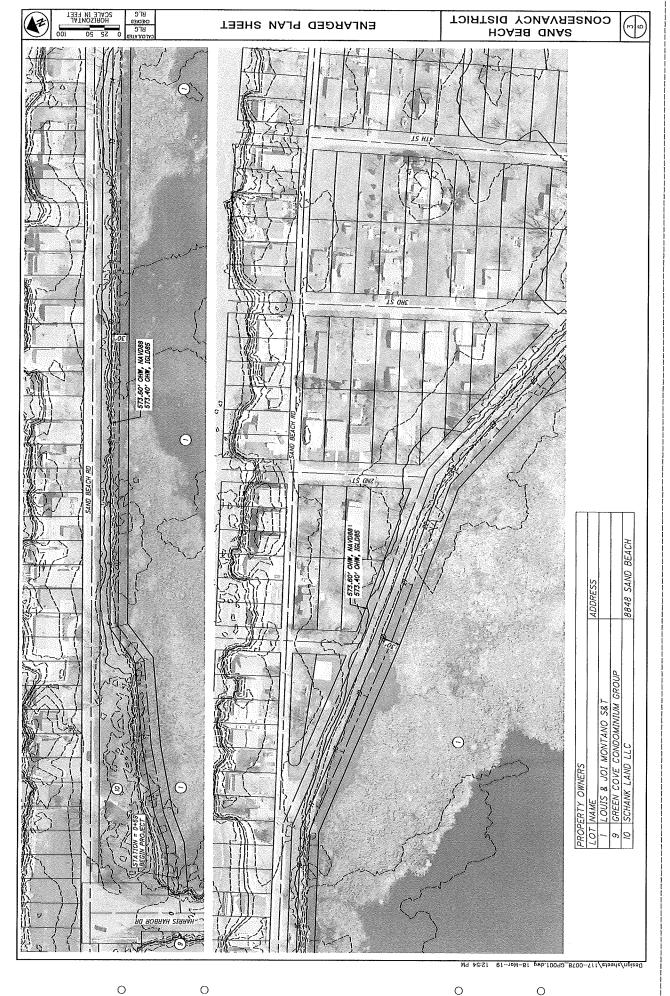
Sand Beach Conservancy District D/A Processing No. 1998-5050037 Ottawa County, Ohio Quad: Lacarne Sheet 6 of 6

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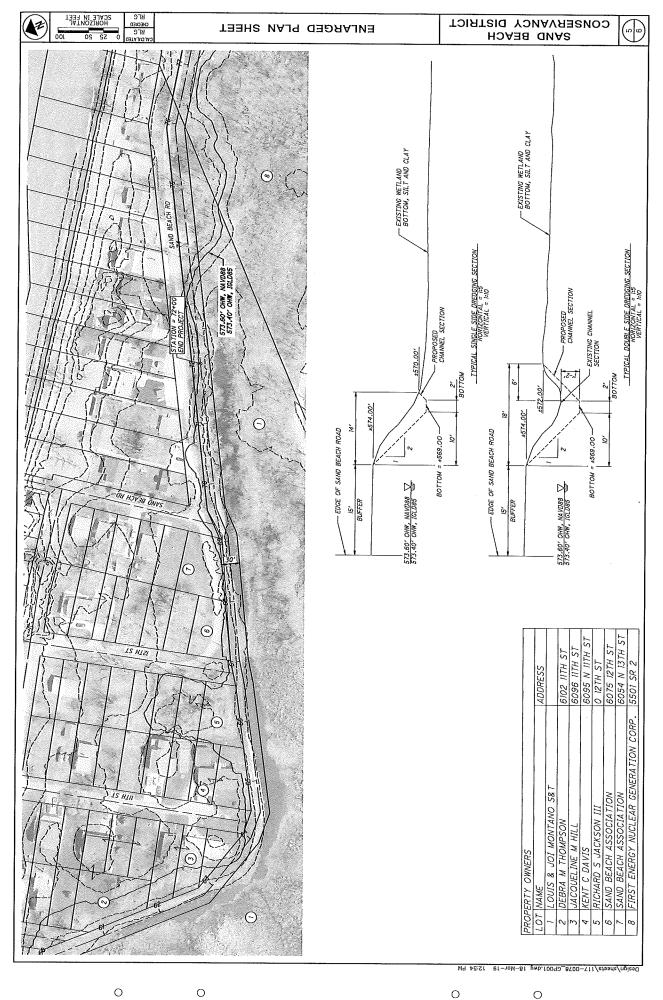
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OREDGING SPOILS STORAGE AREA PLAN SAND BEACH CONSERVANCY DISTRICT CHANNEL DREDGING INDEX OF SHEETS: PROFESSIONAL ENGINEERING AND SURVEYING CONSULTANTS 6622 WEST HARBOR ROAD, PORT CLINTON, OHIO 43452 OFFICE: (419) 898-9200 FAX: (419) 898-2259 2019 PLAN PREPARED BY: | ASSOCIATES BEC LATITUDE: N 41.609119° LONGITUDE: E -83.092516° LOCATION MAP SITE ADDRESS: 8661 W SAND BEACH RD OAK HARBOR, OH 43449 Ö

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