



**US Army Corps  
of Engineers**  
Philadelphia District

Wanamaker Building  
100 Penn Square East  
Philadelphia, PA 19107-3390  
ATTN: CENAP-OP-R

# Public Notice

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Public Notice No.	Date
CENAP-OP-R-2012-1083	NOV 14 2012
Application No.	File No.
CENAP-OP-R-2012-1083	CENAP-OP-R-2012-1083-23

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In Reply Refer to:  
REGULATORY BRANCH

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This District 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).

The purpose of this notice is to solicit comments and recommendations from the public concerning issuance of a Department of the Army permit for the work described below.

**APPLICANT:** The Cape Shores Homeowners Association

**AGENT:** Coastal and Estuarine Research, Inc.

**WATERWAY:** Delaware Bay at Breakwater Harbor

**LOCATION:** Cape Shores residential community, Tax Map Parcel 3-35-5.00-240.00, Lewes, Sussex County, Delaware.

**ACTIVITY:** The Cape Shores Homeowners Association, in conjunction with the Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship (DDNREC), has applied for a Department of the Army permit to conduct beach replenishment activities on Delaware Bay at the Cape Shores residential community, Tax Map Parcel 3-35-5.00-240.00, Lewes, Sussex County, Delaware. The effects of hurricane Sandy and the recent northeasterly storm have substantially damaged the shoreline.

The applicant proposes to discharge sand from an upland borrow site onto the beach at Breakwater Harbor to replenish sand lost as a result of the above mentioned coastal storms and seasonal erosion. The proposal calls for the placement of 25,000 cubic yards of sand along 2250 linear feet of shoreline, recreating the lost beach and restoring a gentler beach slope. The beach-compatible sand would be trucked to the site from the Melvin Joseph Construction Company sand pit located at 25136 DuPont Boulevard, Sussex County, Delaware. This project would not involve any dredging activities or activities affecting wetlands or other special aquatic sites.

**PURPOSE:** The purposes of the project are to provide protection for waterfront homes during coastal storms and to restore a recreational beach for the residents of Cape Shores and the public.

On April 10, 2008, the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency published a *Final Rule on Compensatory Mitigation for the Losses of Aquatic Resources* (33 CFR 325 and 332 and 40 CFR 230). The rule took effect on June 9, 2008. In

accordance with 33 CFR Part 325.1(d)(7) of the rule, the applicant has stated that the proposed project has been designed to avoid and minimize adverse effects on the aquatic environment to the maximum extent practicable, and has further documented that compensatory mitigation is not necessary. The following aspects and features of the project demonstrate the applicant's efforts in this regard.

The project cannot be avoided entirely because it is, by its nature, a water-dependent activity. Absent the proposed beach replenishment, the residents of Cape Shores and their homes would be placed in jeopardy by future storms and seasonal erosion. However, the applicant has designed the project to ensure that the beach would be restored to its pre-storm dimensions and profile but would not expand the size of the beach. In addition, the project would occur within the tidal zone of the Breakwater Beach shoreline, an area of shallow sandy substrate which does not support wetlands or other special aquatic sites. Because no wetlands or other special aquatic sites would be impacted by the project, the applicant is not proposing to conduct any compensatory mitigation for the work. Furthermore, disposal of the material upon the shoreline for the purpose of beach replenishment is, in this case, a beneficial use of that material by furthering the goal of shoreline conservation within the Delaware Bay.

A preliminary review of this application indicates that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The decision whether to issue a permit will be based on an evaluation of the activity's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and welfare of the people. A Department of the Army permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

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.

Comments on the proposed work should be submitted, in writing, within 15 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Review of the National Register of Historic Places indicates that no registered properties or properties listed as eligible for inclusion therein are located within the permit area of the work. On May 30, 2012, the Philadelphia District authorized the Cape Shores HOA to conduct beach replenishment work at this site under Department of the Army permit CENAP-OP-R-2012-82. That authorization permitted Cape Shores to place a smaller volume of sand (5000 cubic yards) at the site to replace that which had been lost to seasonal erosion. As part of our review, the District consulted with the Delaware State Historic Preservation Officer and the Philadelphia District Cultural Resource Specialist and Tribal Liaison. As a result of our review and consultation, the Corps of Engineers has determined that the permit area has been so extensively modified that little likelihood exists for the proposed project to impact an historic property. In conclusion, the District has determined that the project will have no effect on properties eligible for or listed in the National Register of Historic Places. Furthermore, we have determined that tribal consultation would not be required because the project has no potential to affect archaeological resources.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act 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 effect Essential Fish Habitat (EFH). A preliminary assessment of the species listed in the "Guide to Essential Fish Habitat Designations in the Northeastern United States, Volume IV: New Jersey and Delaware", dated March 1999, specifically page 81. The following managed species of fish have been listed in the guide as occurring in the vicinity of the project: winter flounder (*Pleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), red hake (*Urophycis chuss*), bluefish (*Pomatomus saltatrix*), Atlantic sea herring (*Clupea harengus*), long finned squid (*Loligo pealei*), short finned squid (*Illex illecebrosus*), Atlantic butterflyfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristus striata*), surf clam (*Spisula solidissima*), ocean quahog (*Artica islandica*), spiny dogfish (*Squalus acanthias*), Atlantic mackerel (*Scomber scombrus*), king mackerel (*Scomberomerus cavalla*), Spanish mackerel (*Scomberomerus maculatus*), cobia (*Rachycentron canadum*), sandbar shark (*Carcharhinus obscurus*), sand tiger shark (*Odontaspis Taurus*), and dusky shark (*Carcharhinus plumbeus*).

As mentioned above, on May 30, 2012, the Philadelphia District authorized the Cape Shores HOA to conduct beach replenishment work at this site under Department of the Army permit CENAP-OP-R-2012-82. That authorization permitted Cape Shores to place a smaller volume of sand (5000 cubic yards) at the site to replace that which had been lost to seasonal erosion. As part of our review, the District consulted with the National Marine Fisheries Service (NMFS) with regard to EFH, and concluded that the beach replenishment work would not adversely affect EFH provided recommendations made by the NMFS would be included in the authorization as permit special conditions. The permit conditions prohibit the work from occurring between April 15 and September 15 in order to minimize impacts to sandbar sharks and horseshoe crabs. In addition, the conditions require the use of best management practices

including distributing and re-grading the sand in a water-ward direction beginning from the uplands during the low-tide phase of the tidal cycle.

**Analysis of the Effects:** Although the proposed work would result in an expansion of the volume of sand authorized on May 30, 2012, it is not intended to increase the footprint of the original beach which existed at that time. In addition, the project would occur in waters and on substrates that are in a naturally turbid, erosional state, exposed to high seasonal wave energy. Much of the work would occur within the intertidal zone, between the high and low tides, an unlikely spawning or nursery area for the managed species. Consequently, concentrations of the sessile life stages (eggs and larva) of the listed species are not expected to be within the work area. The pelagic adults and juveniles of the listed species are highly mobile and capable of avoiding impacts associated with the work.

**Corps of Engineers View:** Based upon the above analysis and our previous coordination with the NMFS on this project, the Corps of Engineers has determined that the proposed project, with the inclusion of permit special conditions, would not have substantial direct, indirect, site-specific, or habitat-wide impacts on EFH, or upon the managed species and their life stages listed in the above referenced EFH guide, either individually, cumulatively or synergistically. The proposed project would not eliminate, diminish, nor disrupt the functions of EFH. However, to arrive at this conclusion, the Corps of Engineers has determined that it would be appropriate to include the previous recommendations of the NMFS as special conditions of the permit.

**Proposed Mitigation:** Because the impacts of the proposed work on EFH have been determined to be minor, the Corps of Engineers has determined that mitigative measures are not necessary.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. The applicant has stated that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program. No permit will be issued until the State has concurred with the applicant's certification or has waived its right to do so. Comments concerning the impact of the proposed and/or existing activity on the State's coastal zone should be sent to this office, with a copy to the State's Office of Coastal Zone Management.

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is necessary from the State government in which the work is located. Any comments concerning the work described above which relate to Water Quality considerations should be sent to this office with a copy to the State.

The evaluation of the impact of the work described above on the public interest 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.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Additional information concerning this permit application may be obtained by calling John Brundage at 302-736-9763 between the hours of 1:00 and 3:30 p.m. or writing this office at the above address.



Frank J. Cianfrani  
Chief, Regulatory Branch

**PROPOSED 25,000 C.Y. BEACH RENOURISHMENT PROJECT:**

IN: 2,250' of beach adjacent to Breakwater Harbor, Delaware Bay

AT: Cape Shores, Lewes, Sussex County, DE 19958

Tax Map Parcel #3-35-5.00-240.00

APPLICANT: Cape Shores Homeowners Association

DATE: September, 2012

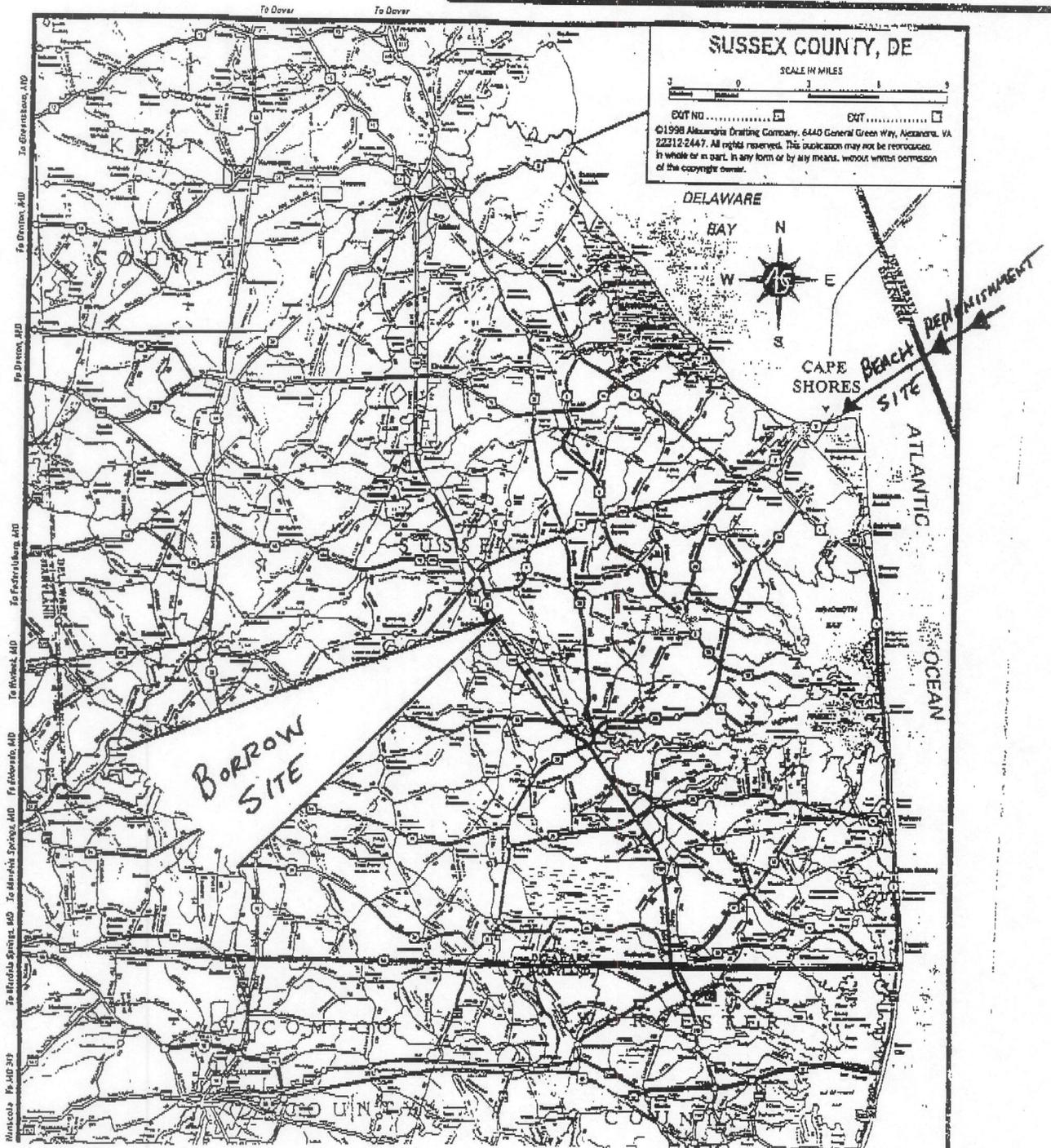


Figure 1. Map of Sussex County, Delaware showing proposed beach nourishment project site, Cape Shores, Lewes. Scale as shown.

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**PROPOSED 25,000 Y. BEACH RENOURISHMENT PROJECT:**

IN: 2,250' of beach adjacent to Breakwater Harbor, Delaware Bay

AT: Cape Shores, Lewes, Sussex County, DE 19958

Tax Map Parcel #3-35-5.00-240.00

APPLICANT: Cape Shores Homeowners Association

DATE: September, 2012

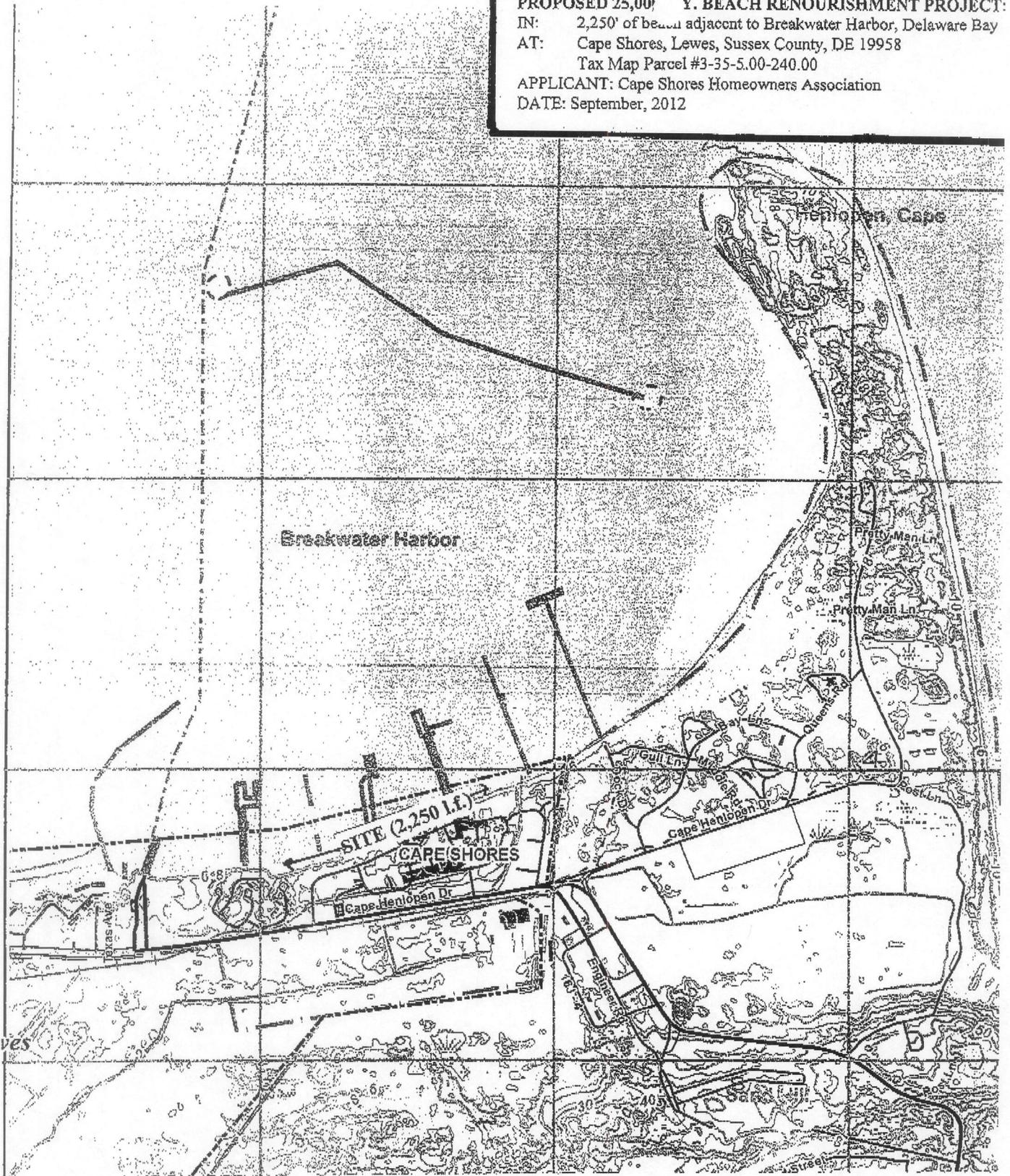
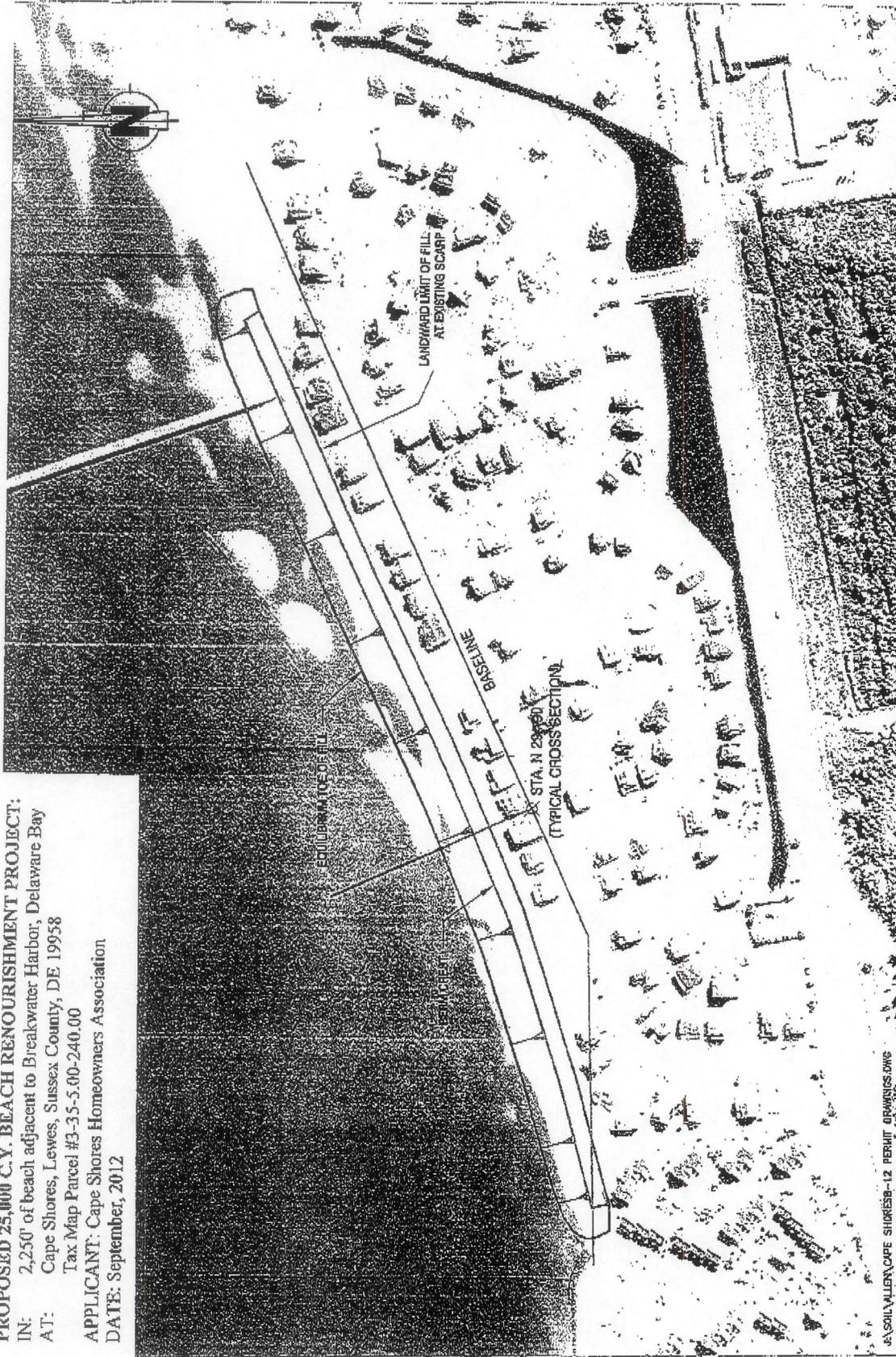


Figure 5. Site location on USGS topographic map, Cape Henlopen, Delaware quadrangle. Site is adjacent to Breakwater Harbor, Delaware Bay. Source: Delaware DataMil. (Note: Not all piers exist at present time; see Figure 4 for 2010 aerial photograph.)

**PROPOSED 25,000 C.Y. BEACH RENOURISHMENT PROJECT:**  
 IN: 2,250' of beach adjacent to Breakwater Harbor, Delaware Bay  
 AT: Cape Shores, Lewes, Sussex County, DE 19958  
 Tax Map Parcel #3-35-5.00-240.00  
 APPLICANT: Cape Shores Homeowners Association  
 DATE: September, 2012



**PROPOSED 25,000 C.Y. BEACH RENOURISHMENT PROJECT:**  
 IN: BEACH ADJACENT TO BREAKWATER HARBOR, DELAWARE BAY  
 AT: CAPE SHORES, LEWES, SUSSEX COUNTY, DELAWARE 19958  
 TAX MAP PARCEL # 3-35-5.00-240.00  
 APPLICANT: CAPE SHORES HOMEOWNERS ASSOCIATION  
 DATE: AUGUST, 2012

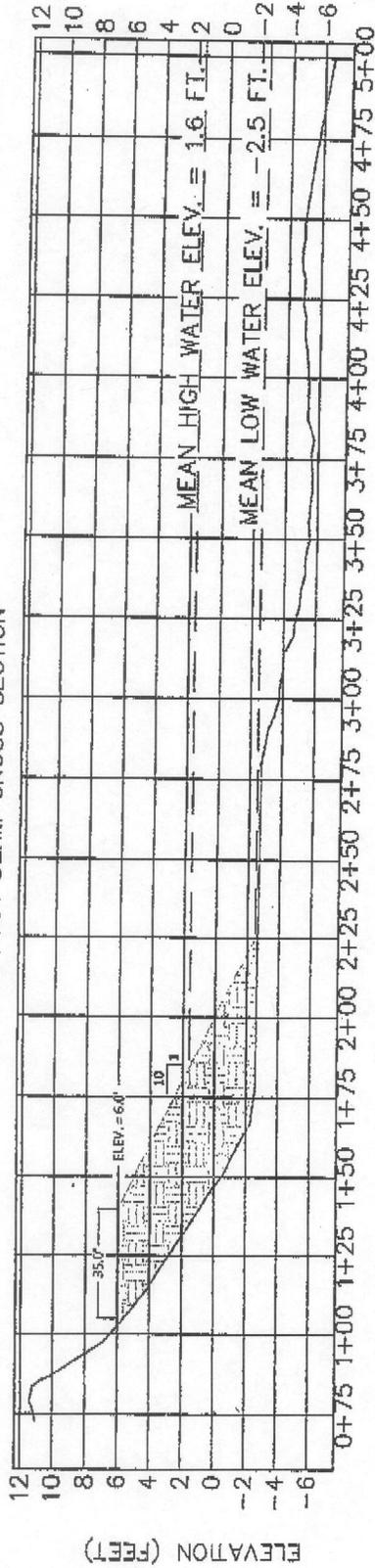
Figure 9. Plan view of proposed 25,000 c.y. beach renourishment project along 2,250 linear feet of beach adjacent to Breakwater Harbor, Delaware Bay at Cape Shores, Lewes, Sussex County, Delaware. (Prepared by DNREC Division of Watershed Stewardship, Shoreline & Waterway Management Section.)

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**PROPOSED 25,000 C.Y. BEACH RENOURISHMENT PROJECT:**  
 IN: 2,250' of beach adjacent to Breakwater Harbor, Delaware Bay  
 AT: Cape Shores, Lewes, Sussex County, DE 19958  
 Tax Map Parcel #3-35-5.00-240.00  
 APPLICANT: Cape Shores Homeowners Association  
 DATE: September, 2012

N 29+90  
 TYPICAL CROSS SECTION  
 35 FOOT BERM CROSS SECTION



DISTANCE (FEET)

**DISCLAIMER**  
 The information depicted on this map represent the results of surveys made on the dates indicated and can only be considered as indicating existing conditions on or about the dates surveyed.

STATE OF DELAWARE  
 DEPARTMENT OF TRANSPORTATION  
 DIVISION OF HIGHWAYS  
 12 PERMIT DRAWING  
**LEGEND**  
 --- EXISTING CONTOUR JULY 2012  
 --- FILL DESIGN

- NOTES:**
1. ELEVATIONS SHOWN HEREON ARE BASED ON M.A.S.D. 88
  2. VERTICAL SCALE AS SHOWN (EXAGGERATION = 50)
  3. SURVEY DATES: JULY 24, 2012 & AUGUST 7, 2012
  4. CONTROL STATIONS: GPS 55 & GPS 55A

**PROPOSED 25,000 C.Y. BEACH RENOURISHMENT PROJECT:**  
 IN: BEACH ADJACENT TO BREAKWATER HARBOR, DELAWARE BAY  
 AT: CAPE SHORES, LEWES, SUSSEX COUNTY, DELAWARE 19958  
 Tax Map Parcel # 3-35-5.00-240.00  
 APPLICANT: CAPE SHORES HOMEOWNERS ASSOCIATION  
 DATE: AUGUST, 2012

Figure 10. Existing and proposed cross-sections, 25,000 c.y. beach renourishment project along 2,250 linear feet of beach adjacent to Breakwater Harbor, Delaware Bay at Cape Shores, Lewes, Sussex County, Delaware. (Prepared by DNREC Division of Watershed Stewardship, Shoreline & Waterway Management Section.)

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