Public Notice

US Army Corps of Engineers
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice No.
CENAP-OP-R-2014-234-24

Date
FEB 11 2015

Application No.

File No.

In Reply Refer to:
REGULATORY BRANCH

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: American Littoral Society
18 Hartshorne Drive, Suite 1
Highlands, New Jersey 07732

WATERWAY: Delaware Bay

LOCATION: Decimal Latitude: 39.114195° North; Longitude: -74.891949° West
The proposed work would take place off-shore from South Reeds Beach, between Reeds Beach and Cooks Beach Roads, in Middle Township, Cape May County, New Jersey. The work would occur off-shore from Block 29, Lots 1 and 2 (property owned by the U.S. Fish and Wildlife Service as part of the Cape May National Wildlife Refuge), and within an existing shellfish lease (A-23) held by Elder Point Oyster Company. A location map is included with this notice.

ACTIVITY: The applicant proposes to construct an experimental oyster reef in Delaware Bay. The project would include placement of two rows of bagged conch shells 200 feet long (each) in a parallel herringbone pattern. The configuration would be comprised of an inner row of bagged conch shell that is 1' (2 shell bags) high from the bottom and approximately 50' off-shore from the toe of the beach slope (approximately 150 feet waterward of the mean high water line or MHWL). The outer row would be 2' (3 shell bags) high, 5' wide and approximately 100' off-shore from the toe of the beach slope (approximately 200 feet waterward of the MHWL). The rows would consist of reef segments that are 5' x 10' each, with 5-foot gaps between segments to allow for horseshoe crab movement. Reef segments would be staked in place with rebar. A total of 30 segments would cover approximately 1,500 square feet (0.034 acre) within the overall 0.28-acre project area.

Oyster cultivation racks and bags would be installed between the two rows of bagged conch shell. The racks would be made of bent rebar, with legs resting on the bottom and 12 to 18 inches of clearance underneath. Mesh bags filled with shells would be placed on the racks for oyster culture. Each segment of racks would measure 3' x 10' with 2' spacing between segments (within rows), and 5'-wide aisle-ways between rows. A total of 42 oyster rack segments would cover 1,260 square feet (0.029 acre) within the overall 0.28-acre project area.

All in-water installation activities (including transport from land) would be by hand, with placement of the reef bags scheduled to be completed no later than April 14, 2015. Any permit issued by this office would prohibit installation work (reef bags or oyster racks) from April 15 through June 15, inclusive, of any year. The proposed oyster racks are intended solely for over-wintering of stock. While the supporting racks would remain in place year-round, the mesh bags would be installed no earlier than October 1, and removed no later than April 1, of any given year. The applicant proposes to monitor biological and physical responses to the reef over a two-year period. Monitoring would include oyster recruitment and survival, reef fauna, reef integrity and horseshoe crab impacts.

The applicant has stated the following as their position with regard to (a) avoidance and minimization of impacts to aquatic resources and (b) compensatory mitigation for such impacts:

(a) (excerpt taken from larger statement) "... Reef construction will not be conducted during horseshoe crab spawning season or red knot migratory stopover. Best and Adaptive Management Practices will be incorporated into project plan, and were developed in cooperation with the US Fish and Wildlife Service (USFWS). Intensive biological and physical surveys of the site and adjacent beach will be implemented in cooperation with the NJDFW. If monitoring data determines reef placement to be an impingement hazard to the horseshoe crab, the American Littoral Society will remove the reef. Short-term and localized impacts on water quality due to increased turbidity are anticipated during construction, but will quickly diminish after construction is complete."

(b) (excerpt taken from larger statement) "Compensatory mitigation should not be required. The project is a habitat restoration project. ..."

The applicant has received a Coastal General Permit Number 29 from the New Jersey Department of Environmental Protection for the proposed project on July 25, 2014 (NJDEP file number 0506-14-0015.1).

PURPOSE: In their application, the applicant has stated "The purpose of the project is to:

1. Establish near-shore, non-harvested, oyster habitat (a reef structure made of mesh bags with whelk shell) to test whether it creates sheltered water for breeding horseshoe crabs;
2. measure oyster colonization of reef structure over a one-year period;
3. measure permeability of the oyster reef to horseshoe crab movements to and from spawning beaches; and
4. Evaluate the efficacy of the reef for shoreline protection."

A preliminary review of this application indicates that the proposed work is not likely to adversely affect the following federally listed species, or their critical habitat pursuant to Section 7 of the Endangered Species Act (ESA) as amended: the threatened red knot (Calidris canutus rufa) and the endangered Atlantic sturgeon, New York Bight DPS (Acipenser oxyrinchus oxyrinchus). As the evaluation of this application continues, additional information may become available which could modify this preliminary determination. The U.S. Fish and Wildlife Service (Service) is providing federal funding for this project. As such, they are the lead federal agency responsible for compliance and consultation under Section 7 of the ESA. The Corps of Engineers will cooperate with the Service and other agencies regarding potential impacts to federally listed species.

The decision whether to issue (or modify) 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 (or modification) 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.

The permit area may yield resources eligible for inclusion in the National Register of Historic Places. An investigation for the presence of potentially eligible historic properties may be required by the lead federal agency. As the lead federal agency, the U.S. Fish and Wildlife Service (Service) is responsible for completion of the Section 106 process. The Corps of Engineers will cooperate with the Service and other agencies regarding potential impacts to cultural resources within the permit area.

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 (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect 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 62, indicates that the proposed project, as described in this public notice, would not have a substantial (i.e. not more than minimal) adverse effect on the EFH of any managed species. As previously noted, the U.S. Fish and Wildlife Service (Service) is the lead federal agency for this project. The Corps of Engineers has volunteered to undertake the necessary EFH assessment and consultation with NMFS. The Corps will cooperate with the Service and other agencies regarding potential impacts to managed species. We have determined that winter flounder (Pseudopleuronectes americanus) is a managed species with EFH that would

potentially be adversely affected by the project. In addition, the project area is a Habitat Area of Particular Concern (HAPC) for sandbar shark (Charcharinus plumbeus), as the shallow waters of Delaware Bay are important pupping and nursery habitat.

Analysis of the Effects: This determination is made based on the fact that the area proposed for reef and oyster rack placement is shallow water habitat. While the adults and juveniles of winter flounder are highly motile, and would be able to avoid the disturbance from reef and oyster rack placement, eggs and larvae of this species may be affected. However, the proposed impact area is a relatively dynamic area along the shore, which is subject to waves and sand movement. It would not be optimal for spawning, eggs or larvae. Water depths are roughly 2 feet at mean low water, and the bottom may become partially exposed at more extreme low tides. Furthermore, the installation activities would be done by hand at low tide, which would minimize impacts to any managed species, including sandbar shark. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination. The project would not have more than minimal impact on the EFH of any other managed species. Significant cumulative impacts are not anticipated, due to the nature of the impact area. No adverse effects on prey species are anticipated.

Corps of Engineers View: Based upon the above analysis, the Corps of Engineers has determined that the proposed project would not have a substantial adverse effect (i.e. not more than minimal adverse effect) on the EFH of managed species, or upon their life stages listed in the above referenced EFH guide, either individually, cumulatively or synergistically. This includes direct, indirect, site-specific and/or habitat-wide impact on EFH. The proposed project would not eliminate, diminish, nor disrupt the functions of EFH. No conservation recommendations are proposed at this time to further minimize the adverse effect on these species. This determination may change as a result of consultation with the National Marine Fisheries Service.

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.

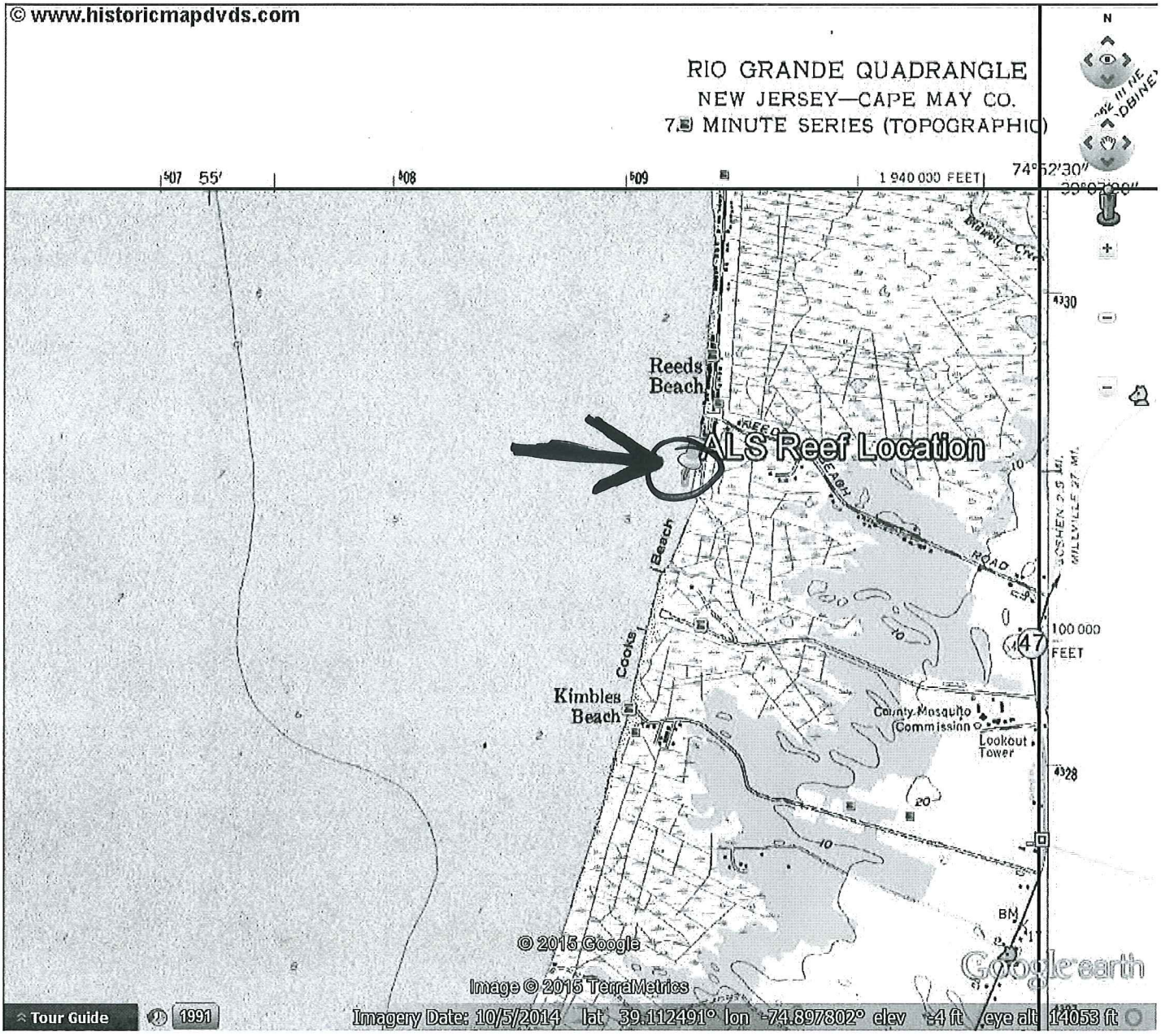
In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is necessary from the State government in which the work is located. Any comments concerning the work described above which relate to Water Quality considerations should be sent to this office with a copy to the State.

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.

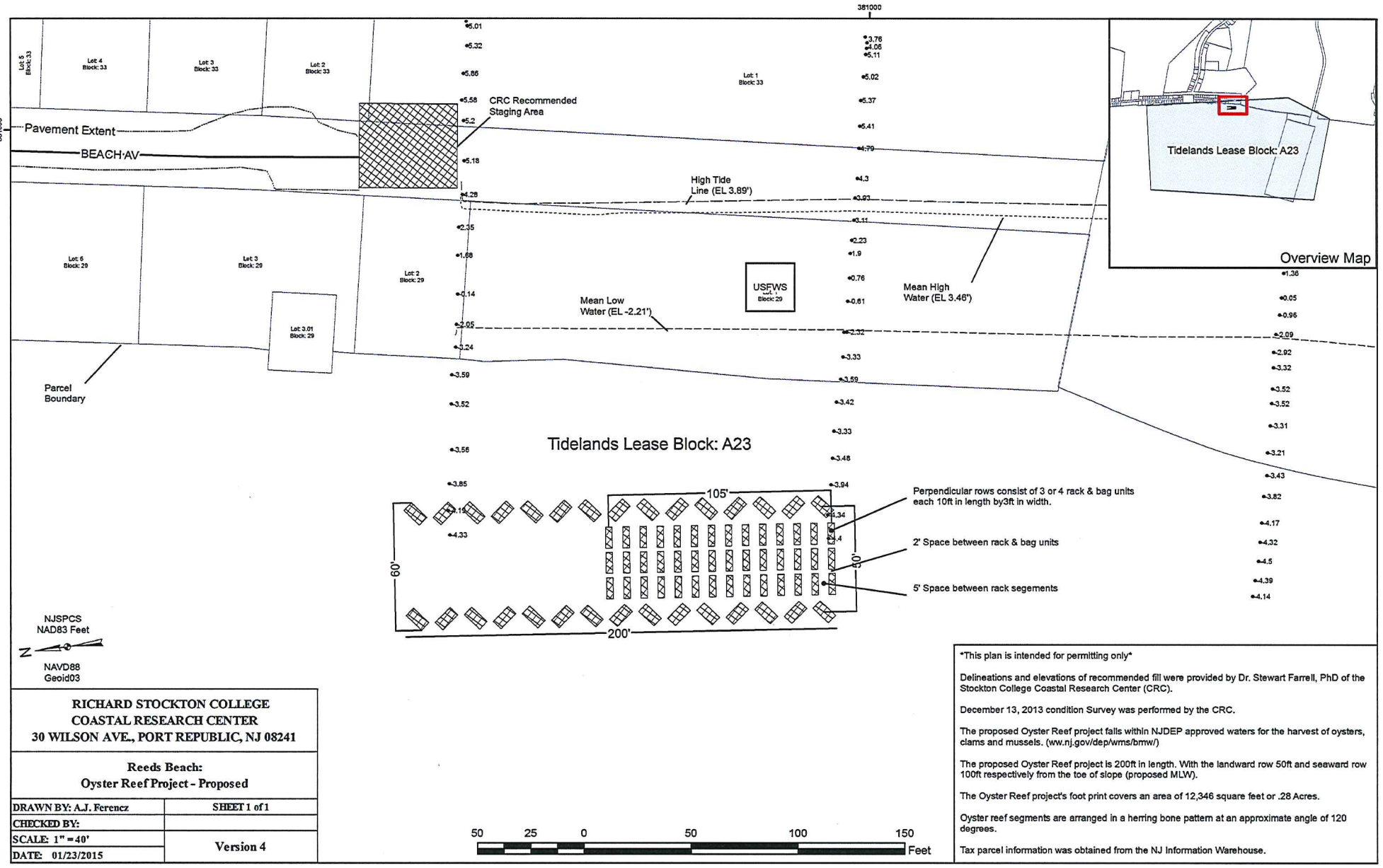
Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Additional information concerning this permit application may be obtained by calling James Boyer at (215) 656-5826, by electronic mail to James.N.Boyer@usace.army.mil, or by writing to this office at the above address.

Frank J. Cianfrani
Chief, Regulatory Branch



Google Earth with over-lay of U.S.G.S. "Rio Grande" Quadrangle



RICHARD STOCKTON COLLEGE COASTAL RESEARCH CENTER 30 WILSON AVE., PORT REPUBLIC, NJ 08241	
Reeds Beach: **Oyster Reef Project - Proposed**	
DRAWN BY: A.J. Ferencz	SHEET 1 of 1
CHECKED BY:	
SCALE: 1" = 40'	Version 4
DATE: 01/23/2015	

This plan is intended for permitting only

Delineations and elevations of recommended fill were provided by Dr. Stewart Farrell, PhD of the Stockton College Coastal Research Center (CRC).

December 13, 2013 condition Survey was performed by the CRC.

The proposed Oyster Reef project falls within NJDEP approved waters for the harvest of oysters, clams and mussels. (ww.nj.gov/dep/wms/bmw/)

The proposed Oyster Reef project is 200ft in length. With the landward row 50ft and seaward row 100ft respectively from the toe of slope (proposed MLW).

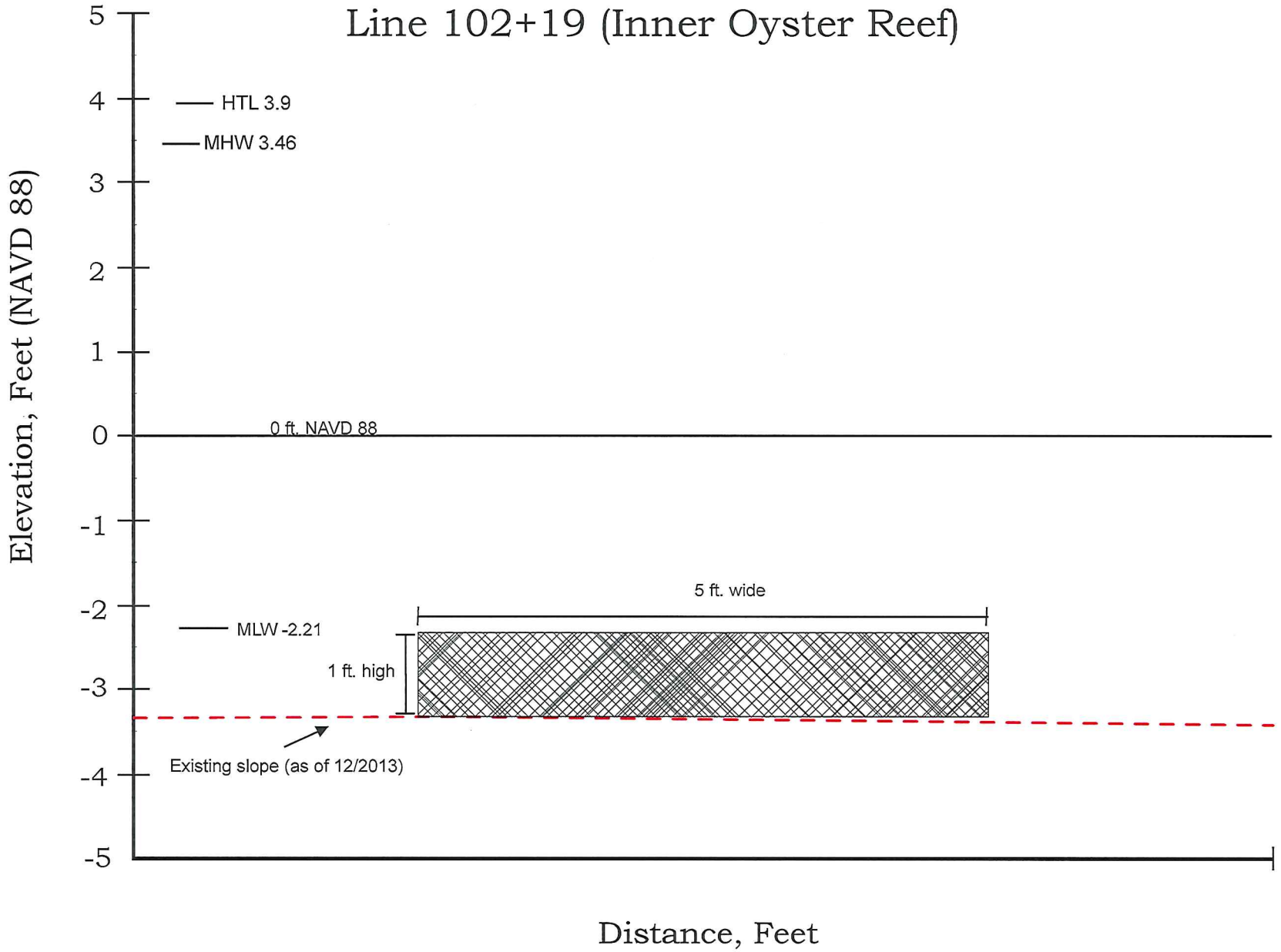
The Oyster Reef project's foot print covers an area of 12,346 square feet or .28 Acres.

Oyster reef segments are arranged in a herring bone pattern at an approximate angle of 120 degrees.

Tax parcel information was obtained from the NJ Information Warehouse.

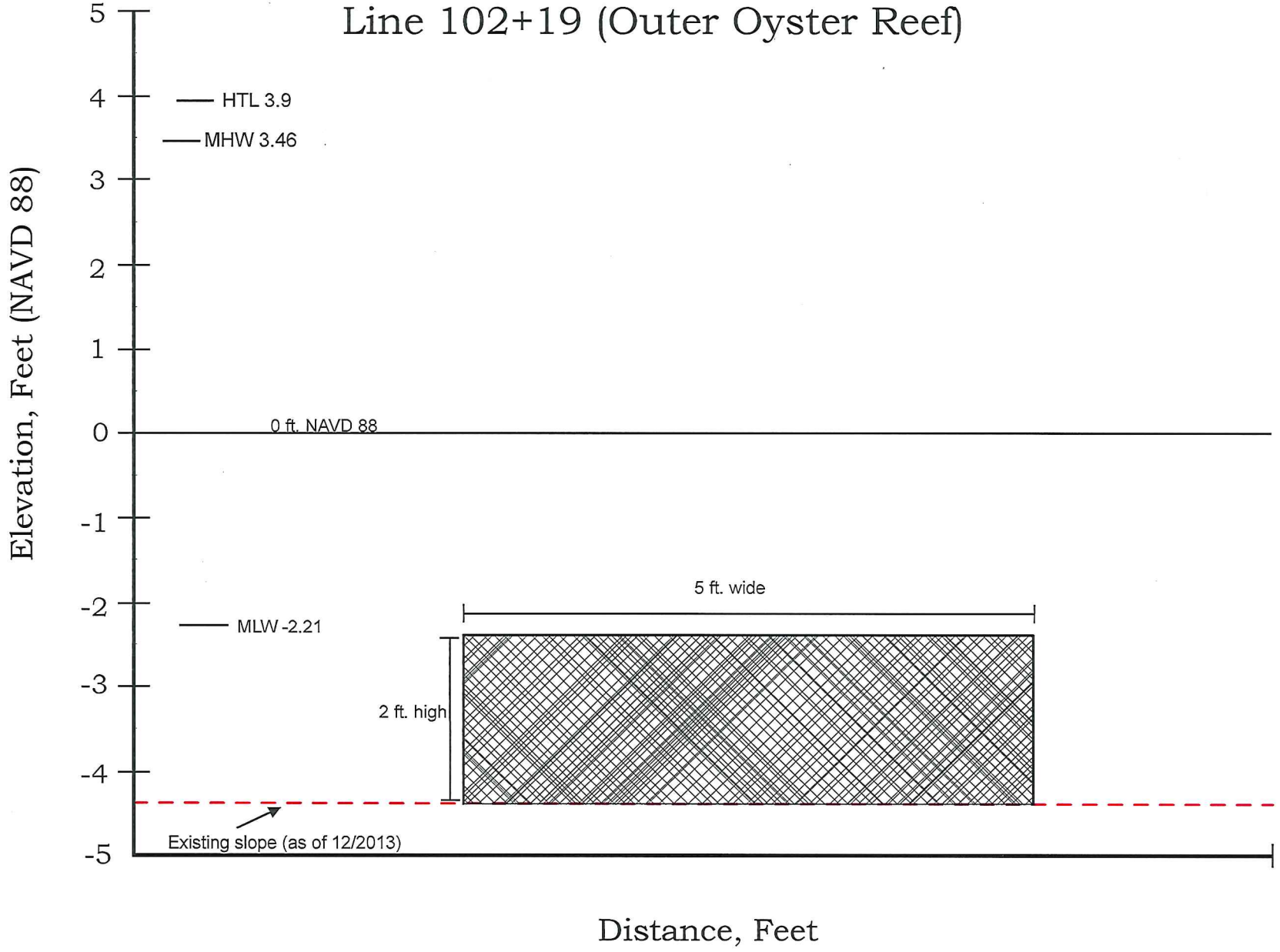
Reeds Beach, New Jersey

Line 102+19 (Inner Oyster Reef)



Reeds Beach, New Jersey

Line 102+19 (Outer Oyster Reef)



Reeds Beach, New Jersey

Line 102+19 (Middle Oyster Reef)