



**US Army Corps
of Engineers**
Philadelphia District

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

Public Notice

Public Notice No.
CENAP-OP-R-2014-973

Date
AUG 20 2015

Application No.
CENAP-OP-R-2014-973

File No.
CENAP-OP-R-2014-973-23

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: Daniel Wien

AGENT: Charles C. Miller, Environmental Consulting, Inc.

WATERWAY: Lee Joseph Creek and Rehoboth Bay

LOCATION: 25867 Berry Street (Tax Parcel 2342500000200), Long Neck, Millsboro, Sussex County, Delaware.

ACTIVITY: The applicant, Mr. Daniel Wien, has applied for a Department of the Army permit to maintenance dredge a tidal lagoon, construct a bulkhead, maintain bank stabilization materials, install timber structures and enhance tidal wetlands adjacent to Lee Joseph Creek at 25867 Berry Street (Tax Parcel 2342500000200), Long Neck, Millsboro, Sussex County, Delaware.

The lagoon was excavated in 1960 and has been used for the mooring of Mr. Wien's private, recreational vessels and those of his neighbors since that time. Mr. Wien proposes to excavate 889 cubic yards of sandy sediment, which has accumulated across the mouth of the lagoon, using a mechanical excavator. The lagoon would be restored to a navigable depth of -3.0 feet Mean Low Water. The material would be placed on uplands on Mr. Wien's property, with the exception of 178 cubic yards which would be placed within an eroded section of the adjacent tidal marsh as described below.

The project site is located on the southwest side of Rehoboth Bay, directly downwind of high energy northeasterly storms, particularly in the winter months. The lagoon is protected to the northeast by a spit of vegetated tidal marsh, which has experienced advanced erosion in recent years caused by the aforementioned storms. The over-wash material from the storms has transferred substantial deposits of material over and from the tidal marsh spit into the lagoon, restricting tidal flushing of the lagoon and causing unsafe navigational ingress/egress. As a result of the over-wash, portions of the marsh have experienced vegetation loss and soil erosion.

In order to stabilize the north shoreline of the lagoon and reduce future erosion, the applicant proposes to install 560 linear feet of C-loc interlocking vinyl bulkhead with timber pilings along this shoreline. In addition to the bulkhead, the applicant proposes to maintain 93 linear feet of stone and concrete groin installed on the north side of the marsh spit in 2003.

As mentioned above, Mr. Wien intends to enhance/restore portions of the tidal marsh spit which have been damaged by storms. To accomplish this, he proposes to spread 178 cubic yards of the dredged material onto the surface of the spit raising the elevation of the eroded areas to conform to the elevation of the undamaged wetland surface. Following grading, the restored areas would be planted with native tidal marsh vegetation composed of *Spartina patens* and *Iva frutescens*. The restoration activities would affect 0.36 acre of the wetland spit.

In addition to the dredging, stabilization and enhancement activities described above, the applicant also proposed to install the following structures within the lagoon:

- Repair and relocate within the lagoon an existing 12' x 18' crabbing pier which was damaged by Hurricane Sandy,
- Remove and Re-install an existing 9' x 12' pier,
- Install a 4' x 24' finger pier along the existing boat ramp at the inner end of the lagoon.

This project was authorized by the Delaware Wetlands and Subaqueous Lands Program on April 30, 2014 under permits SP-036/09, SP-391/09 and WE-037/09. The project also received a Delaware Coastal Zone Consistency determination from the DDNREC, Coastal Program on April 21, 2015 (FC 2014.0126).

PURPOSE: The purpose of the project is to provide private recreational access to navigable waters for navigational purposes, and to enhance and protect tidal wetlands from further erosion.

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. The project is intended for the maintenance of navigation and the rehabilitation of an eroding wetland and lagoon bank. It should be noted that the lagoon was constructed in 1960 and has not, until now, needed any maintenance dredging. Recent erosion of the wetland spit and over-wash from the bay has deposited sediment primarily at the outer end of the lagoon, causing the current interference with navigation into and out of it. The inner end of the lagoon is better protected from storms and mostly maintains its original water depths. It is hoped that the proposed stabilization and rehabilitation of the wetland spit will better protect the outer end of the lagoon, thereby minimizing future dredging episodes. Based upon the restorative nature of the proposed wetland activity, the applicant is not proposing to conduct any compensatory mitigation for the work.

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. The Philadelphia District has determined that the proposed project is of such limited nature and scope that little likelihood exists for the proposed action to impact an historic property. The District has determined that the project will have no effect on properties eligible for or listed in the National Register of Historic Places.

Essential Fish Habitat: 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).

Effects of the Project: The project is located in Essential Fish Habitat identified on sheet 81 of the Guide to Essential Fish Habitat Designations in the Northeastern United States, Volume IV: New Jersey and Delaware, dated March 1999. 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 butterfish (*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*).

Analysis of the Effects: The proposed work would occur in a small area of waters within an active, man-made navigational lagoon subject to regular boating activity and substantial erosion and deposition. For this reason the work area is considered 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, the Corps of Engineers has determined that the proposed maintenance project 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.

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.

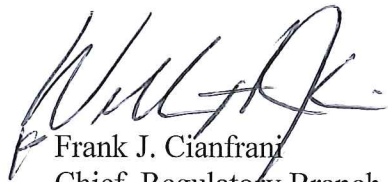
In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. 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

NATIONWIDE PERMIT #27 PCN: AQUATIC HABITAT RESTORATION, ESTABLISHMENT, AND ENHANCEMENT

IN: 15,680 sq. ft. (0.36 acre) of mudflats, sandy overwash, and wetlands (including old dredge spoils), adjacent to Lee Joseph Creek (tributary of Rehoboth Bay)

AT: 25867 Berry Street
Long Neck, Sussex County, DE 19966
Tax Map Parcel #2-34-25.00-2:00

APPLICANT: M. Daniel Wien

DATE: January 16, 2015

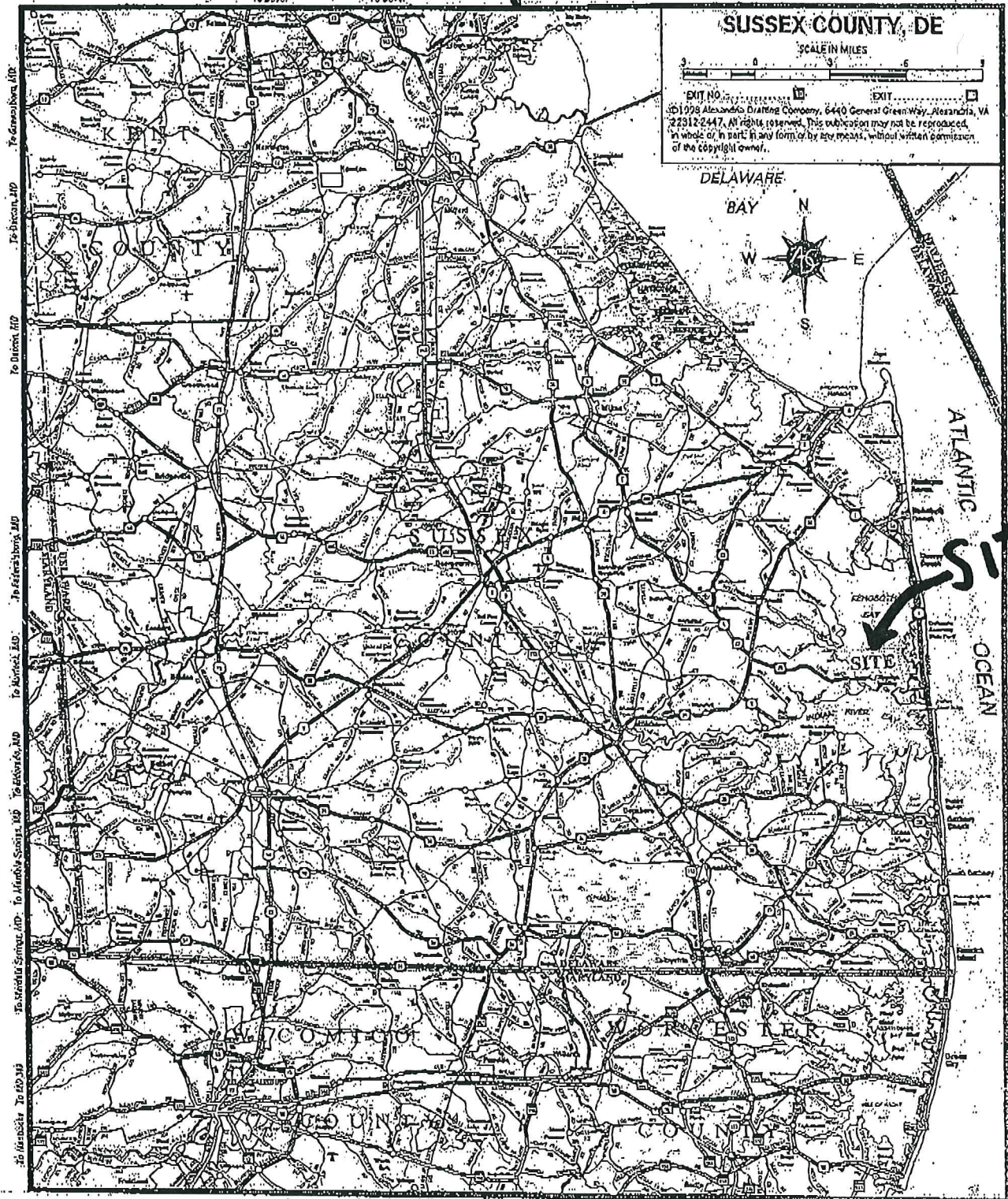


Figure 1. Map of Sussex County, Delaware, showing site location, Long Neck.

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NATIONWIDE PERMIT #21 PCN: AQUATIC HABITAT
RESTORATION, ESTABLISHMENT, AND ENHANCEMENT
IN:
15,680 sq. ft. (0.36-acre) of mudflats, sandy overwash,
and wetlands (including old dredge spoils),
adjacent to Lee Joseph Creek (tributary of Rehoboth Bay)

AT:
25867 Perry Street

Long Neck, Sussex County, DE 19966

Tax Map Parcel #2-34-25.00-2.00.

APPLICANT: M. Daniel Wien

DATE: January 16, 2015

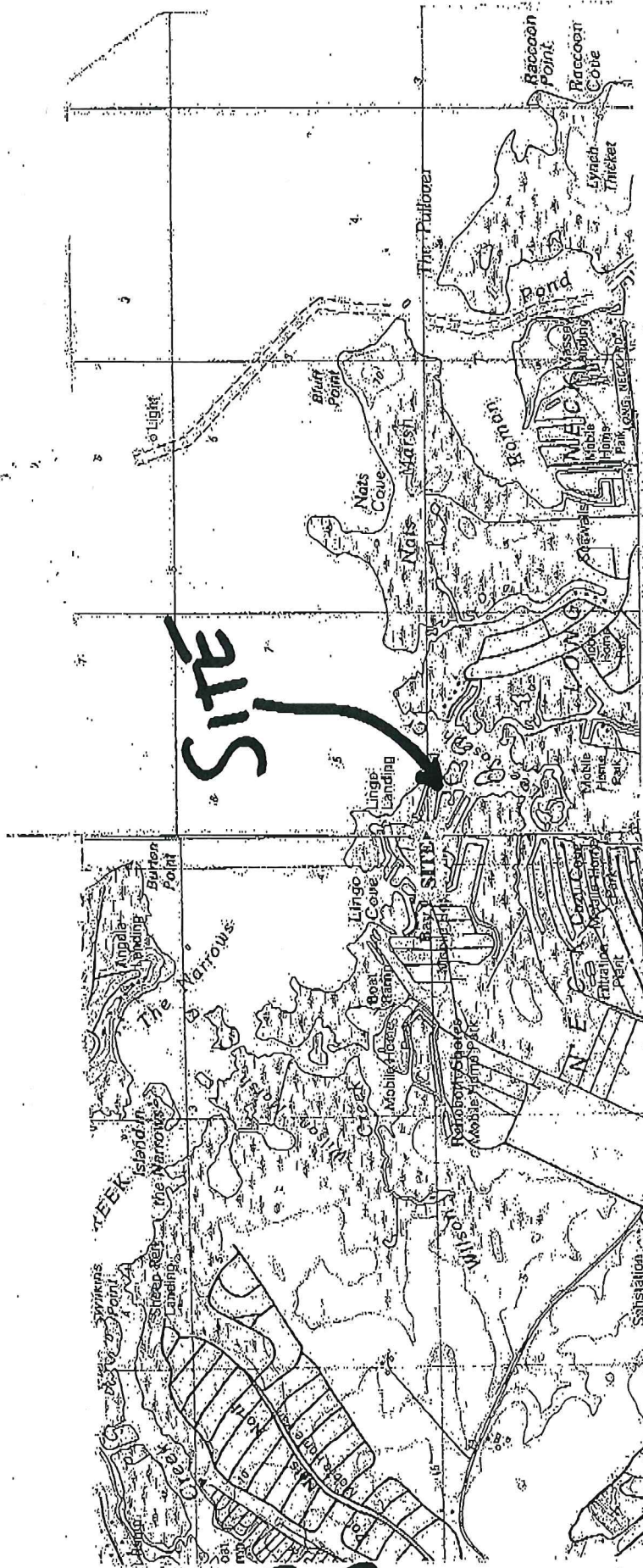
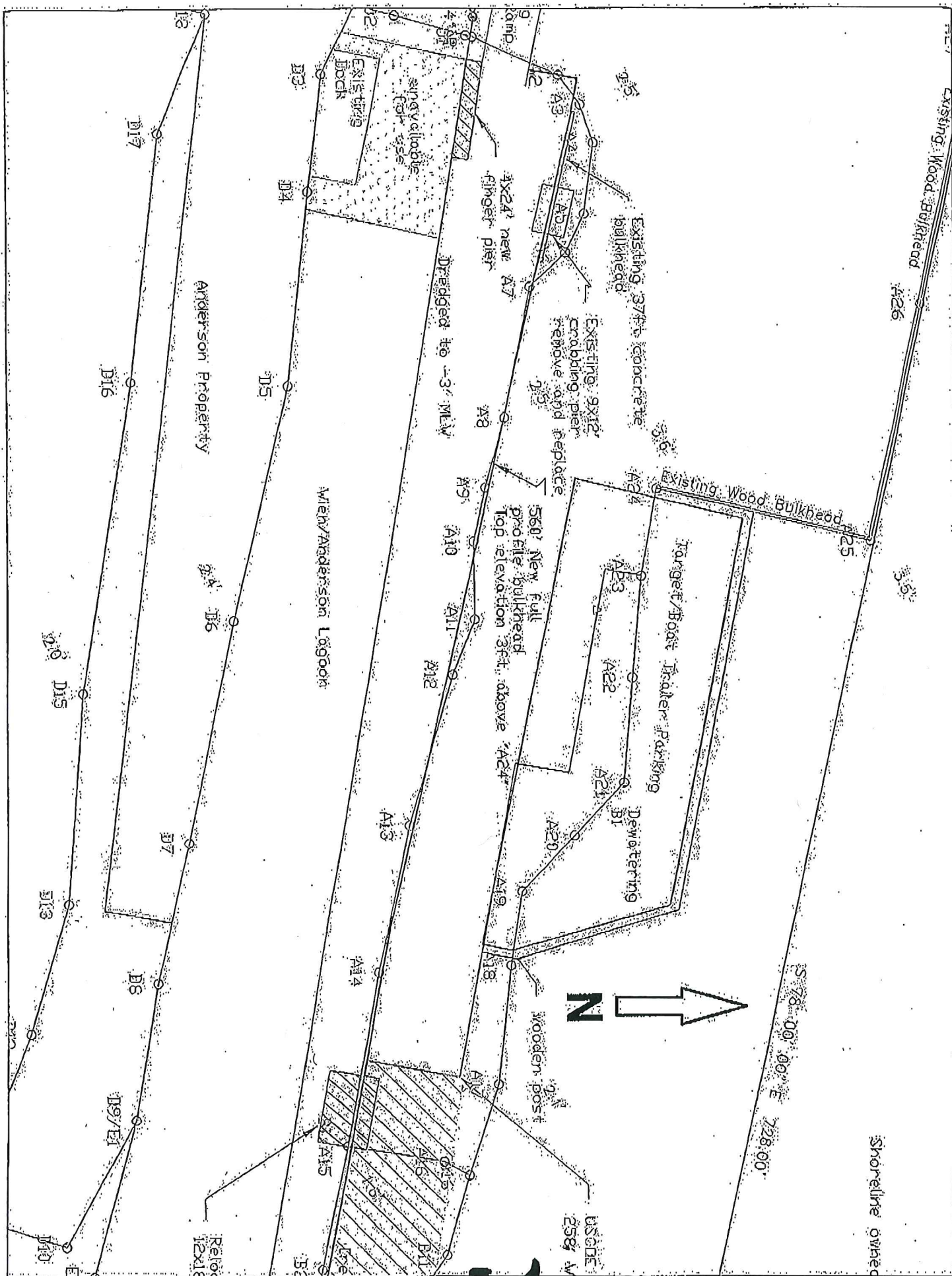


Figure 7: Site location on USGS topographic maps, Rehoboth Beach, Delaware quadrangle (east) and Fairmount, Delaware quadrangle (west). Site is adjacent to Lee Joseph Creek (tributary of and Rehoboth Bay). Scale: 1" = 2,000'.

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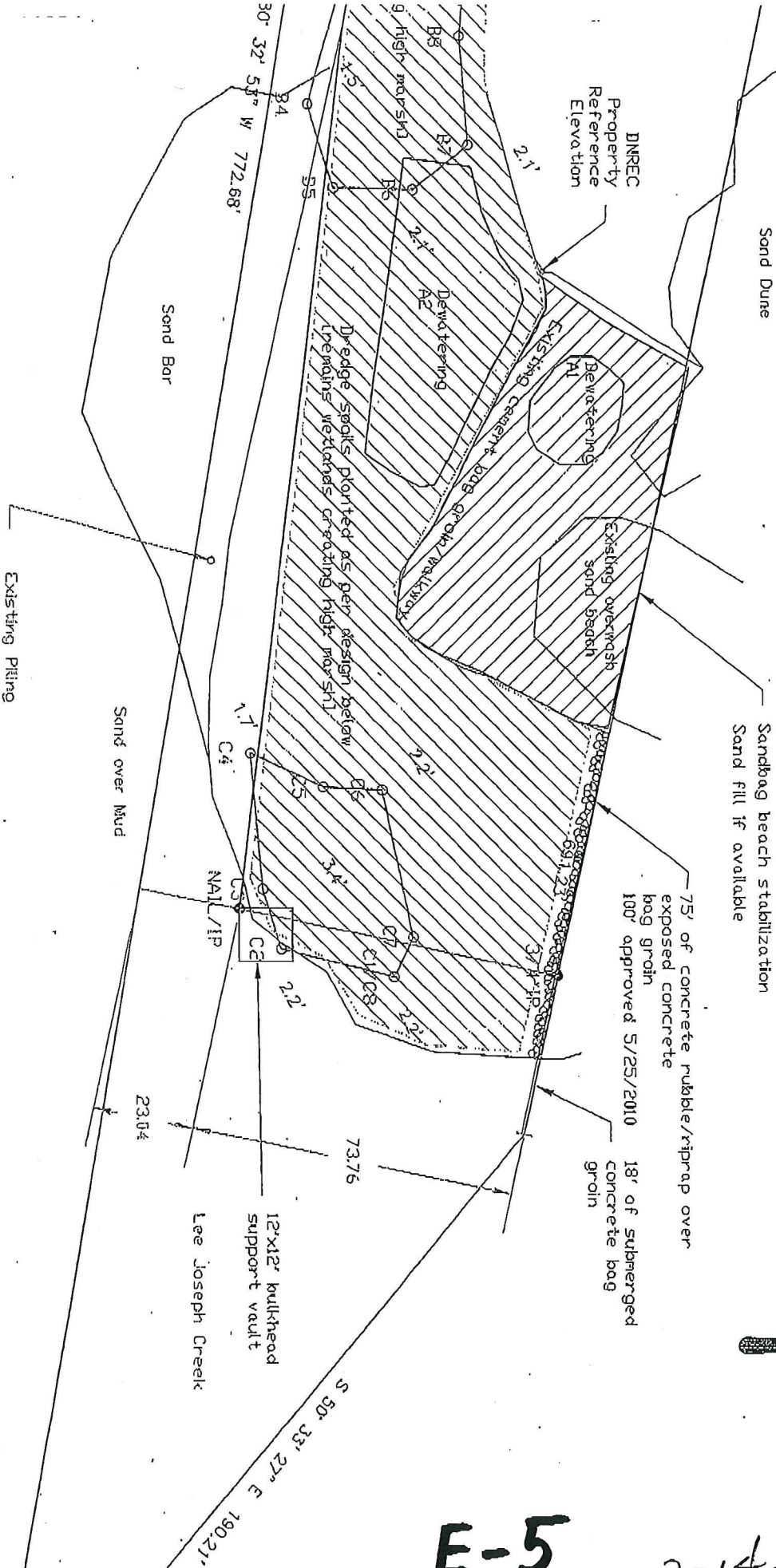
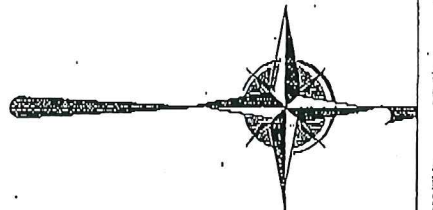
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Rehaboth Bay

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