



**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. <b>CENAP-OP-R-2019-194</b>	Date <b>March 19, 2019</b>
Application No. <b>CENAP-OP-R-2019-194</b>	File No. <b>CENAP-OP-R-2019-194-23</b>
In Reply Refer to: <b>REGULATORY BRANCH</b>	

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:** Dewey Beach Enterprises, Incorporated

**AGENT:** Evelyn M. Maurmeyer, Ph.D., Coastal & Estuarine Research, Inc.

**WATERWAY:** Rehoboth Bay

**LOCATION:** Tax Map Parcel 3-34-23.06-1.00, Van Dyke and Dickinson Avenues, Town of Dewey Beach, Sussex County, Delaware (Lat. 38.68933°N/Long.-75.07616°W).

**ACTIVITY:** Dewey Beach Enterprises, Incorporated has applied for a Department of the Army permit to conduct activities in waters of the United States intended to improve public recreational access to Rehoboth Bay at the Ruddertowne commercial development in Dewey Beach, Delaware. The elements of the project are as follows:

1. Construct a 95' long x 21-inch diameter reinforced concrete (RCP) storm-water outfall pipe with a 12' x 18' stone rip-rap splash apron at its terminus;
2. Improve an existing storm-water outfall pipe by constructing a 40' long, 21-inch diameter RCP extension to an existing 55' long, 30-inch elliptical storm-water outfall pipe with a 12' x 18' rip-rap splash apron at its terminus;
3. Re-construct and expand a sandy public beach area;
4. Construct a 415' x 16' public bay-walk (see attached plans for location);
5. Construct a 40' x 8' public fishing/crabbing pier (see attached plans for location).

To recreate the beach, the applicant proposes to discharge 4900 cubic yards of sandy material below the high tide line of the bay, adjacent to the existing bulk-headed uplands. The purpose of the discharge is to restore and expand the width and raise the elevation of the public-access, recreational bay beach at this location, and to protect the proposed outfall pipes. The discharge would result in the placement of sand within 0.52 acre of tidal waters below the high tide line.

There are no wetlands or submerged aquatic vegetation at the discharge site. The terminal end of the pipes would be protected by 8 cubic yards of R-4 stone. The beach and the existing outfall

were previously authorized by the Corps of Engineers on June 19, 2013 under permit CENAP-OP-R-2013-170. Since that time, much of the beach has been damaged by storm erosion and is in need of replenishment. The pipe extension is intended to provide an outfall beyond the water-ward end of the beach. This outfall drains storm-water from Van Dyke Avenue. The new outfall would drain storm-water from upland portions of the Ruddertowne commercial complex.

**PURPOSE:** The purpose of the project is to maintain public recreational access to Rehoboth Bay at the Ruddertowne complex.

#### **AVOIDANCE/MINIMIZATION/COMPENSATION STATEMENT:**

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 "no action" alternative would result in continuing beach erosion from storm waves (and long-term sea level rise), which would reduce the size of the recreational public-access beach so that fewer and fewer families would be able to utilize this resource, which is a safe, low-energy, child-friendly beach along Rehoboth Bay. Continued erosion over the long term would also threaten the various adjacent structures (restaurants, businesses). Avoidance of rip-rap scour protection at the end of the pipe would result in scour and erosion, possibly contributing to the undermining and collapse of the outfall structures.

The beach replenishment project has been minimized to the greatest extent feasible while still ensuring the longevity of the project. Previous nourishment events have involved smaller volumes of fill material, only to be washed away within a few years due to on-going erosion. As proposed, the project is anticipated to have a 10-year lifespan (barring unforeseen weather events such as hurricanes and severe northeasters.) The size of the outfall splash apron has been minimized to the greatest extent feasible while still providing protection from scour and undermining.

The dimensions of the public bay-walk have been determined per mutual agreement between the applicant and the Town of Dewey Beach and are designed to be ADA compliant. The wide public promenade would allow safe and comfortable pedestrian access even on crowded summer evenings and weekends. The 8 foot width of the proposed pier is designed to meet DDNREC guidelines for public (municipal) structures. The 40 foot length is intended to provide access to adequate water depths for fishing and crabbing.

Because the proposed activities would not cause the loss of wetlands or other special aquatic sites, the applicant is not proposing any compensatory mitigation.

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 (ESA) as amended. As a result, consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the United States Fish and Wildlife Service pursuant to Section 7 of the ESA is not necessary. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The Magnuson-Stevens Fishery Conservation and Management Act requires all federal agencies to consult with the NOAA Fisheries on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). A preliminary review of this application indicates that EFH is present within the project area. The Philadelphia District will evaluate the potential effects of the proposed actions on EFH and will consult with NOAA Fisheries if appropriate. Consultation will be concluded prior to the final decision on this permit application.

The USACE Cultural Resource Specialist has reviewed the proposed permit action for potential impacts to Historic Properties eligible for or listed on the National Register of Historic Places. The Philadelphia District has determined that the project site has been so extensively modified that little likelihood exists for the proposed project to impact an historic property.

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 30 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

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.

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) 736-9764, by email at [john.g.brundage@usace.army.mil](mailto:john.g.brundage@usace.army.mil), or by writing to the above address.



Edward E. Bonner  
Chief, Regulatory Branch

PROPOSED 415' x 16' PUBLIC BAYWALK  
AND 40' X 8' PUBLIC FISHING PIER;

IN: Rehoboth Bay

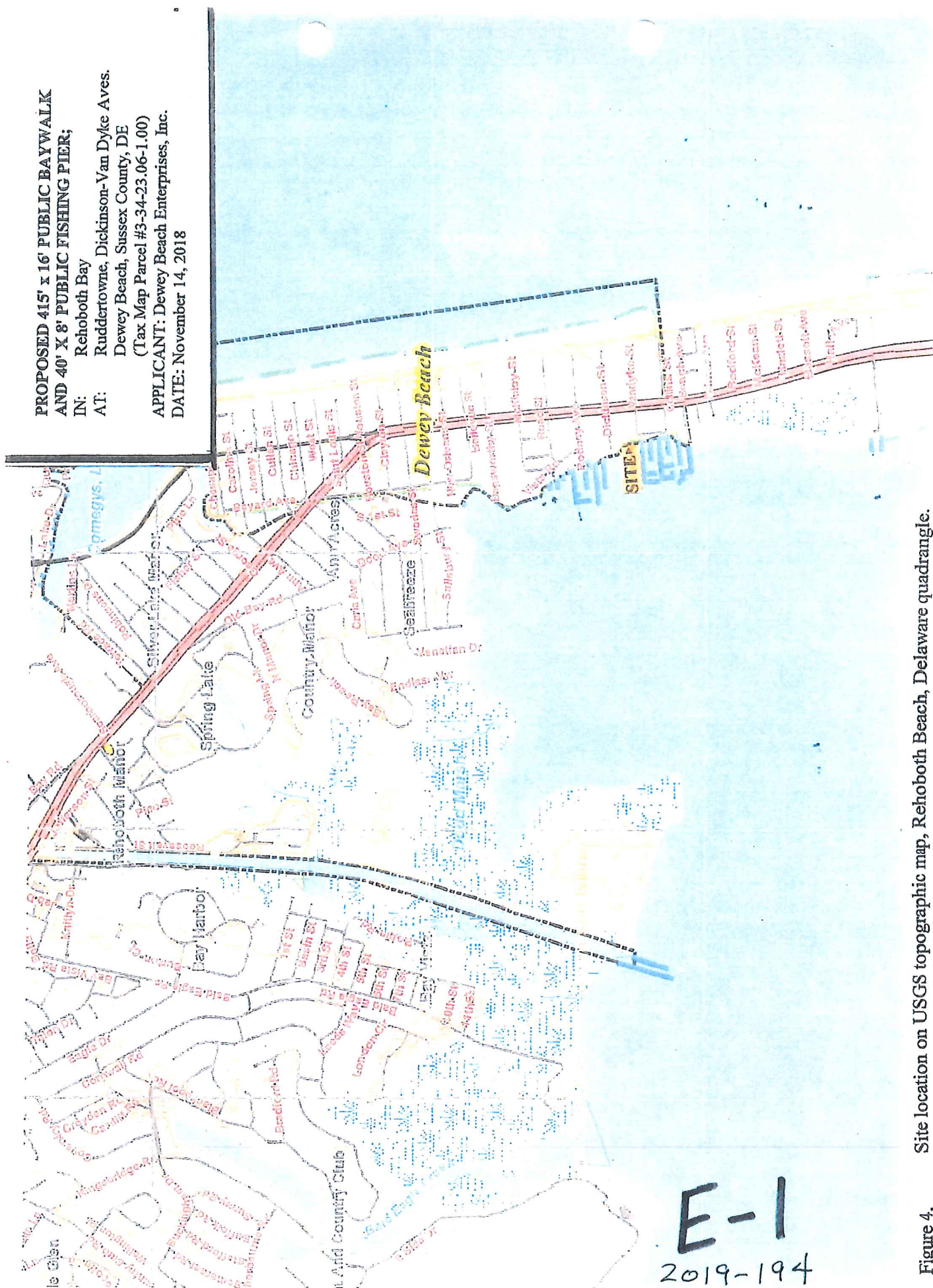
AT: Ruddertowne, Dickinson-Van Dyke Aves.

Dewey Beach, Sussex County, DE

(Tax Map Parcel #3-34-23.06-1.00)

APPLICANT: Dewey Beach Enterprises, Inc.

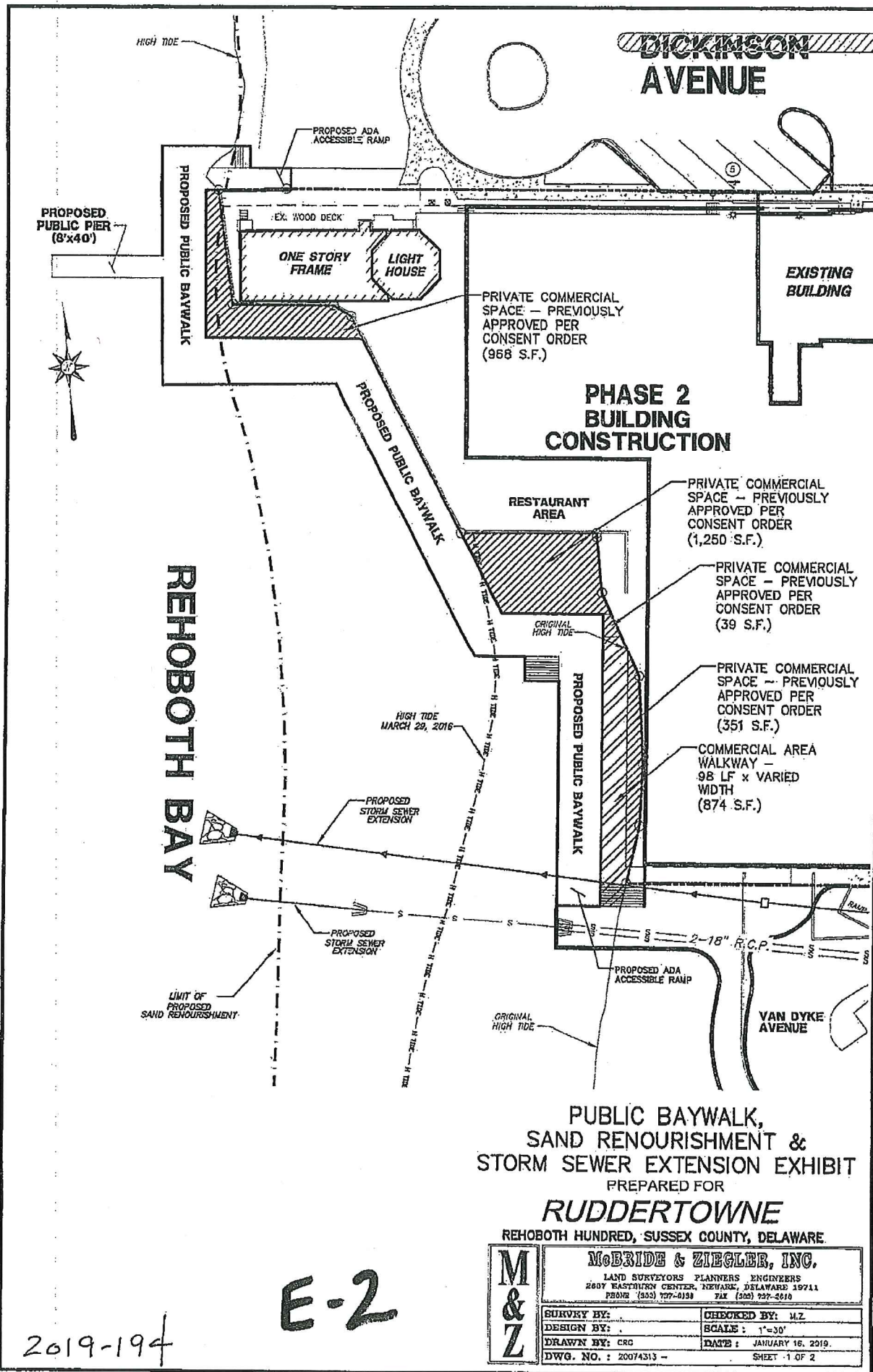
DATE: November 14, 2018



E-1  
2019-194

Figure 4. Site location on USGS topographic map, Rehoboth Beach, Delaware quadrangle. Site is adjacent to Rehoboth Bay.





**PROPOSED 41' x 16' PUBLIC BAYWALK  
AND 40' X 8' PUBLIC FISHING PIER**

IN: Rehoboth Bay

AT: Ruddertowne, Dickinson-Van Dyke Aves.

Dewey Beach, Sussex County, DE

(Tax Map Parcel #3-34-23.06-1.00)

APPLICANT: Dewey Beach Enterprises, Inc.

DATE: November 14, 2018

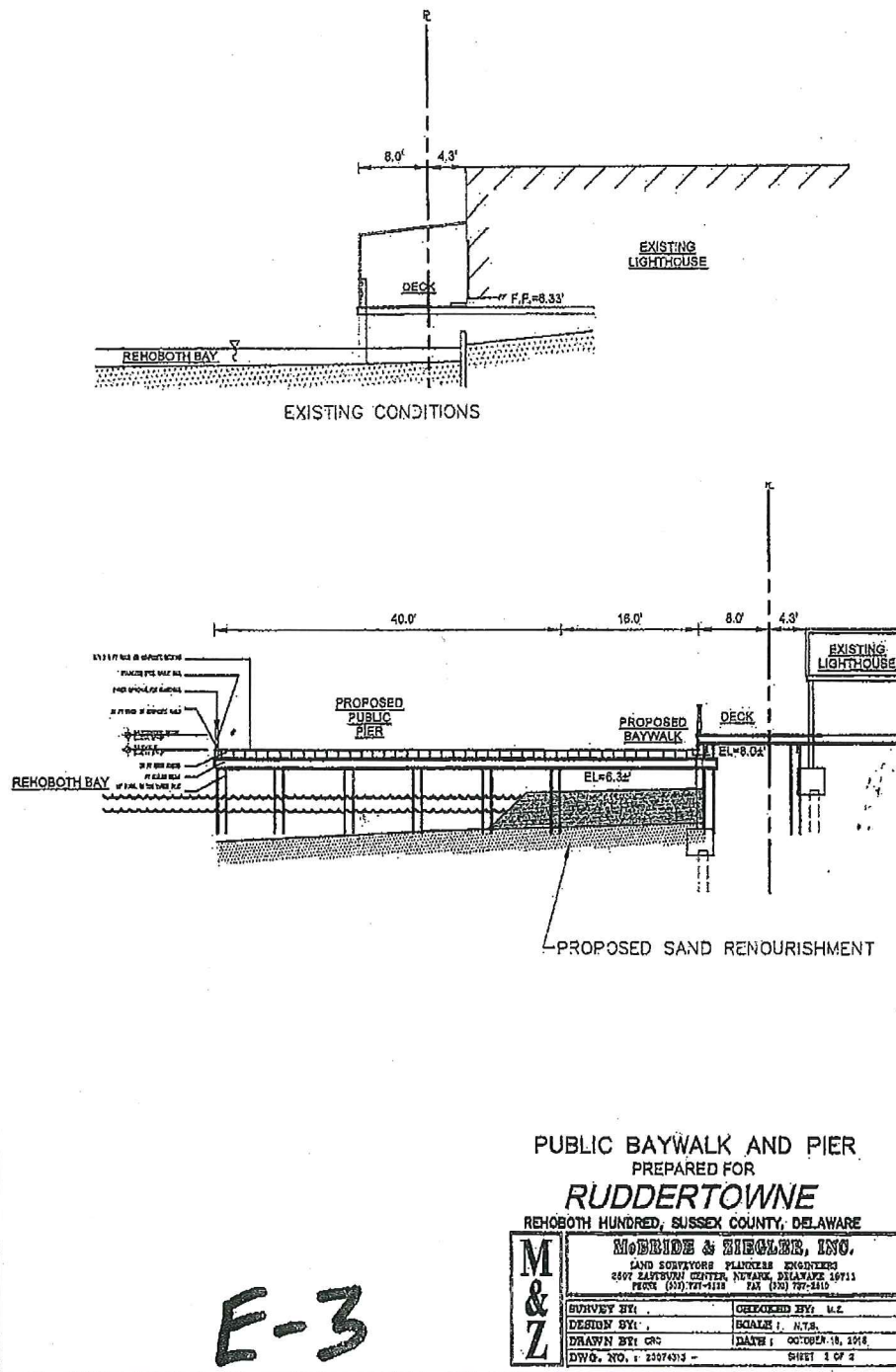


Figure 8.

Cross-sections of existing conditions and proposed project (prepared by McBride & Ziegler, Inc.). Application for proposed sand renourishment shown on plan was submitted to Corps on December 28, 2017.

2019-194