



SHORELINE AND WATERWAY MANAGEMENT SECTION Coastal Construction Application

Public Notice No. WSS20240470 Date: 12/15/2024

Application Submitted: **12/06/2024**

To place 8,500 cubic yards of sand on the beach

Cape Shores Community, Lewes, Sussex County, Delaware (Tax Parcel: 335-5.00-240.00)

Tax Map # **335-5.00-240.00, 335-5.00-240.00**

Applicant Information

Name: Jessica Fedetz

Property Type: Residential: Community

Activities:

- Shore Protection Structures/Work
 - Beach nourishment : Seaward

Site Work:

Will there be any lot clearing or excavation at the site?

No

Will any sand be removed from the site?

Will sand or fill be added to the site?

Yes

What will be the reason for placement of sand or fill?

Reason for placement of sand or fill

Since 2000, the Cape Shores Homeowner's Association (CSHOA), separately and jointly with the Department of Natural Resources and Environmental Control (DNREC), has placed supplemental sand on the Delaware Bay Beach through numerous truck fill renourishment projects. The area requires regular beach fill projects in order to maintain a sufficiently wide public recreational beach and to provide protection for the homes and infrastructure of the Cape Shores community.

The proposed renourishment project is consistent with recommendations in the report "Beach Nourishment Evaluation at Cape Shores", Delaware prepared by Aptim Coastal Planning and Engineering, Inc. (September 2017). The project will place up to approximately 8,500 cubic yards of material on the beach which has suffered erosion due to storms that occurred since the placement of 23,000 cubic yards of sand in early 2023. Verdantas plotted the latest points that were provided by DNREC surveys. There are three locations along Breakwater Beach at Cape Shores included. DNREC provided survey data for the as-builts after the joint 2023 CSHOA/DNREC project of 23,000 CY and another survey conducted in December 2023. The latest data set was from July, 2024. Profiles were developed for the three locations. Based on those profiles, calculations were done to estimate the volume needed for replenishment to rebuild to the beach to the proposed condition expected from the joint 2023 project. Verdantas estimate is that approximately 8,000 CY are needed.

This proposed project calls for utilization of capacity allowed for under the current State and federal permits. The Delaware Subaqueous Lands permit (SP-208/22) and Water Quality certification (WQC 208

/22)) were issued on 1/20/2023 (attached). SP-208/22 allows construction through 1/20/2026 and authorizes the placement of 31,500 cubic yards of material on an annual basis based on information provided by DNREC which prepared the applications and partnered with CSHOA in the 2023 project. According to DNREC, approximately 23,000 cubic yards of material was placed under the current permit. CSHOA is proposing to place up to 8,500 cubic yards of material for a total placement of 31,500 cubic yards.

The US Army Corps of Engineers (USACE) issued NAP-2018-00045-85 February 10, 2023. The permit expires December 31, 2027. The permit authorized the placement of 31,500 cubic yards through the authorization period. As a result, CSHOA is proposing the placement of the remaining capacity of 8,500 yards. This material will be placed above the mean low water line.

What method will be used to deposit the material? Is road approval necessary?

Sand will be hauled to the site located on Cape Henlopen Drive, Lewes, via truck from the Melvin L. Joseph Construction Co. sand and gravel operation located on S. duPont Highway, Georgetown, DE. Sand will be transported on to the beach using the eastern beach crossing access area within the community that has historically been used for past beach fill projects. Sand will then be transported to the construction location by equipment. Grading and dune construction will be performed by bulldozer and other appropriate equipment.

Road approval is not necessary.

How much sand will be added?

8500 Cubic yards

What will be the source of the sand/fill?

Melvin L. Joseph Construction Co. sand and gravel operation

What method will be used to deposit the sand/fill?

Truck

Do you know who will be conducting the work?

Yes

Contractor Name

Melvin L. Joseph Construction Co.

Contractor Phone number

3028567396

Wetlands:

Will any work be occurring on regulated wetlands located on this lot?

No

Septic:

Is there a septic system on the lot?

No

What is the Septic Permit # of the system (optional)?

**Topographic survey and design
document**


 DUFFIELD ASSOCIATES
 Soil, Water & the Environment
 5460 LIMESTONE ROAD
 WILMINGTON, DE 19808-1212
 TEL: 302.239.8434
 FAX: 302.239.8455
 GREENS IN DESIGN, MARYLAND
 PENNSYLVANIA AND NEW JERSEY
 EMAIL: DUFFIELD@DUFFIELD.COM

DESIGNED BY: SMH
 DRAWN BY: SMH
 CHECKED BY: AR
 FILE: PSURFACE.dwg

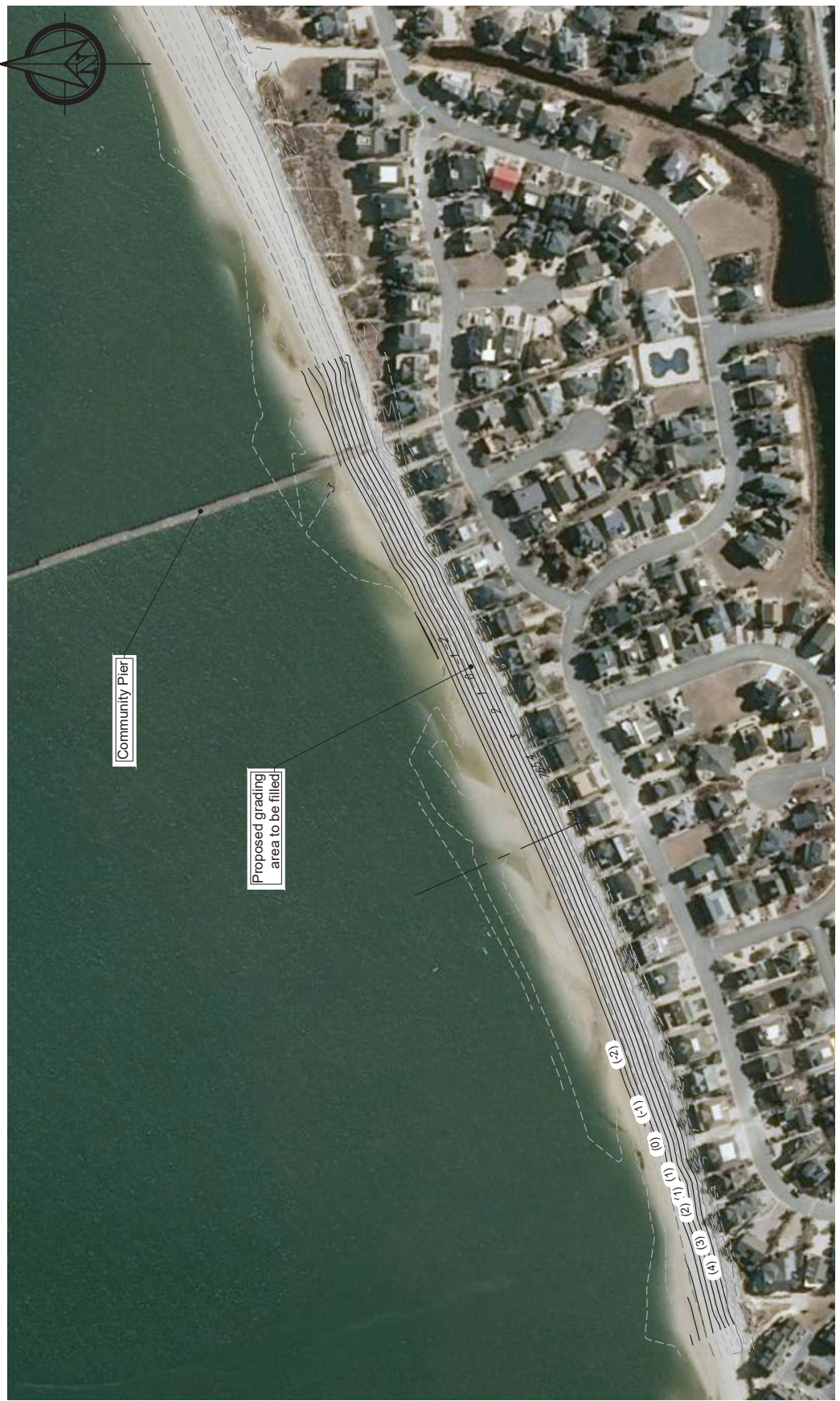
CITY OF LEWES ~ SUSSEX COUNTY ~ DELAWARE
CAPE SHORES BEACH FILL
GRADING PLAN

DATE: JANUARY 25, 2022

SCALE: 1" = 200'

PROJECT NO. 14313

SHEET: FIGURE 1



Deed/Lease/Sales contract

THIS IS AN AGREEMENT OF LEASE, made and entered into this 29 day of August, A.D., 1991, by and between THE CITY OF LEWES, a municipal corporation of the State of Delaware, party of the first part, hereinafter referred to as "Lessor."

-AND-

CAPE SHORES ASSOCIATES, a partnership of the State of Delaware, with Offices in Milford, Kent County, Delaware, party of the second part, hereinafter referred to as "Lessee."

W I T N E S S E T H:

IN CONSIDERATION of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

1. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor:

ALL those certain lots, pieces and parcels of land; situate, lying and being on Lewes Beach, Lewes and Rehoboth Hundred, Sussex County, Delaware, and more particularly described as Lots 1 through 222, inclusive, Cape Shores, as shown on a plot of lots of record in the Office of the Recorder of Deeds, in and for Sussex County, in Plot Book 43 at Page 204.

2. It is mutually agreed by the parties hereto that the term of this Lease shall be for a term of ninety-nine (99) years, commencing on the 14 day of August, A.D. 1991, terminating on the 14 day of August,

by
LAW OFFICES
JNNELL & RAYSON
SEORSETOWN, DEL.

2405 111 8/30/91 CTX-EX SU .00

9687 333 8/30/91 TX-EX ST .00

A.D. 2090, provided, however, that this Lease may be renewed at the option of the Lessee for a further period of ninety-nine (99) years which option, if exercised, must be exercised by an Application in writing to the City Council of The City of Lewes, after the 1st day of May, A.D. 2090, and before the 15th day of June, A.D. 2090, and if so exercised shall convey to the Lessee for a further term of ninety-nine (99) years the right of possession of the premises herein described, said notice to be by certified mail with return receipt requested and postage prepaid addressed to Lessor, the said term to commence on the 14 day of August, A.D. 2090, and terminating on the 14 day of August, A.D. 2189.

3. Lessee agrees to pay to Lessor as annual rental, including taxes, for the term of this Lease or any renewal or extension thereof a sum not to exceed Six Percent (6%) of fair market value of the lands so leased and Two Percent (2%) of the fair market value of the improvements located on the leased land such fair market value to be determined from time to time by Lessor or such amount as may be permitted by the Charter of Lessor but in no event shall the annual rental, including taxes, be less than the amount specified herein. Lessee agrees that the land described in Paragraph 1 above shall be used solely for residential purposes for one

(1) single-family dwelling and for no other purpose or purposes without the express written consent of Lessor first being had and obtained. Lessee further agrees to pay to Lessor the sum of One Million Seven Hundred Twenty Thousand Five Hundred Dollars (\$1,720,500.00), said sum to be paid in two hundred twenty-two (222) installments of Seven Thousand Seven Hundred* Fifty Dollars (\$7,750.00) each as the interest in each lot is transferred by Lessee. Upon payment of each installment, Lessor will execute and deliver to Lessee a Release releasing any claim to the sum of One Million Seven Hundred Twenty Thousand Five Hundred Dollars (\$1,720,500.00) for the lot which is transferred. The Release shall be prepared and recorded at the expense of Lessee and the form of each Release shall be approved by the City Solicitor of Lessor.

4. Lessee agrees to comply with all laws, ordinances and lawful orders and regulations issued by any governmental authority which affect the said leased premises.

5. Lessee agrees to be responsible for and to pay any Delaware transfer tax or other tax imposed because of the transfer by Lessor to Lessee or because of the continuing lease between the parties hereto.

6. Lessee agrees during the term of this Lease or any renewal or extension thereof, to be liable for and to discharge all charges assessed against said leased premises, including, but not limited to, real estate taxes, sewer service charges, water service charges, fuel, electricity, front footage assessment, and any other charges imposed by any public authority.

7. Lessee agrees during the term of this Lease or any renewal or extension thereof, to defend and hold Lessor harmless from any liability for damages to any person or any property in or upon the said leased premises, including the person and property of Lessee and its agents, servants or employees and all persons in and upon the said premises at the invitation of or with the consent of Lessee. It is mutually agreed by the parties hereto that during the term of this Lease or any renewal or extension thereof that all property kept, stored or maintained in or upon the said leased premises shall be so kept, stored or maintained at the sole risk of Lessee. Lessee further agrees not to suffer nor give cause for the filing of any lien against the herein leased premises by any person, firm or corporation for any reason whatsoever without the written consent of Lessor first being had and obtained, which consent shall not be unreasonably withheld.

8. Lessee agrees during the term of this Lease or any renewal or extension thereof, to keep in full force and effect a policy of public liability insurance with respect to the said leased premises in which both Lessor and Lessee shall be named as parties insured thereby and with such limits as shall be determined by Lessor from time to time to be adequate protection for both Lessor and Lessee. Lessee agrees to furnish Lessor with a certificate or certificates of insurance or other acceptable evidence that such insurance is in full force and effect at all times.

9. Lessee agrees that this Lease shall not be assigned nor shall any subsequent assignee of Lessee assign the Lease unless and until prior written consent shall have been received from Lessor which said consent shall be given by Lessor upon the furnishing to Lessor of the names and addresses of the new assignee.

10. Lessee agrees that if, during the term of this Lease or any renewal or extension thereof, any rental due and payable from Lessee to Lessor shall be unpaid for a period of fifteen (15) days after payment is due and payable, or if Lessee shall violate any of the other covenants, agreements, stipulations or conditions set forth herein, and if such default shall continue for a period of fifteen (15) days after written notice thereof from Lessor to Lessee and to any

mortgagee of Lessee who advised Lessor in writing that it desires a copy of said notice and to whom and what address such notice shall be sent, Lessor may, at its option, declare this Lease forfeited and the term hereof ended. If this Lease is declared forfeited and the term hereof ended, Lessee agrees to remove himself and all effect from said leased premises without damage to the freehold and further agrees that Lessor shall have the immediate right of re-entry.

11. Lessee agrees that if Lessor, during the term of this Lease or any renewal or extension thereof, waives any covenant or condition of this Lease to be kept or maintained by Lessee, such waiver shall not be construed as a waiver of any subsequent breach of the same or different covenant or condition.

12. Lessee agrees that if, during the term of this Lease or any renewal or extension thereof, all or any part of the said lease premises are taken by the exercise of eminent domain, this Lease shall terminate as of the date possession is taken by the condemnor.

13. Lessee agrees that the invalidity or unenforceability of any provision hereunder shall not affect nor impair any other provision of this Lease.

14. Lessor agrees that Lessee, upon the payment of the rental reserved herein and the performing of the other covenants, conditions and terms hereof, shall and may lawfully, peacefully and quietly have, hold, use, occupy, possess and enjoy the said leased premises during the term hereof.

15. It is mutually agreed by the parties hereto that the terms "Lessor" and "Lessee" used in this Lease shall refer to and bind not only the parties hereto but also their respective heirs, executors, administrators, successors or assigns. It is further mutually agreed by the parties hereto that whenever the singular is used in this Lease, the same shall include the plural and the masculine gender when used herein shall include the feminine and the neuter genders.

IN WITNESS WHEREOF, Lessor has caused this Agreement of Lease to be executed by its proper corporate officers and its corporate seal to be hereunto affixed, and Lessee has caused this Agreement of Lease to be executed by all its General Partners by their respective corporate partners and their respective corporate seals to be hereunto affixed, the day and year first above written.

THE CITY OF LEWES

By: Arthur A. Stango
Mayor

Attest: J. H. Rhodes
Secretary

OFFICES
L. & RAYSON
ETOWN, DEL.

CAPE SHORES ASSOCIATES

BY: FISCHER DEVELOPMENT CORPORATION
GENERAL PARTNER

By: [Signature]
President

Attest: Robert A. Fischer
Asst Secretary

BY: IPM PROPERTIES, INC.,
GENERAL PARTNER

By: [Signature]
President

Attest: [Signature]
Secretary



STATE OF DELAWARE :
COUNTY OF SUSSEX : ss.

BE IT REMEMBERED, that on this 29th day of August, A.D. 1991, personally came before me, The Subscriber, a Notary Public for the State and County aforesaid, ALFRED A. STANGO, Mayor of The City of Lewes, a municipal corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said municipal corporation; that the signature of the Mayor is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said municipal corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the City Council of the said municipal corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Elaine Marie Bisbee
Notary Public
ELAINE MARIE BISBEE NOTARY PUBLIC
My Commission Expires Aug. 14, 1993

NOTARY PUBLIC
DELAWARE

STATE OF DELAWARE :
 : ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 28 day of August, A.D. 1991, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, PRESTON L. DYER, President of IPM PROPERTIES, INC., a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said Corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the Board of Directors of the said Corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

William E. Wright

Notary Public

WILLIAM E. WRIGHT
NOTARY PUBLIC DELAWARE
MY COMMISSION EXPIRES: 10-06-92

DALLAS D. GREEN
DOC. SURCHARGE PAID

91 AUG 30 PM 1:09

RECORDER OF DEEDS
SUSSEX COUNTY

LAW OFFICES
INNELL & RAYSON
GEORGETOWN, DEL.

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-AND-

CAPE SHORES ASSOCIATES, a partnership of the State of Delaware, with Offices in Milford, Kent County, Delaware, party of the second part, hereinafter referred to as "Lessee."

W I T N E S S E T H:

IN CONSIDERATION of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

1. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor:

All those certain public areas designated as P-1 through P-6, inclusive, as shown on a plot of Cape Shores, said plot being of record in the Office of the Recorder of Deeds, in and for Sussex County, in Plot Book 43, at Page 204, together with all streets located in the development known as Cape Shores and shown on a plot of Cape Shores of record as aforesaid.

2. It is mutually agreed by the parties hereto that the term of this Lease shall be for a term of ninety-nine (99) years commencing on the 14 day of August, A.D. 1991, terminating on the 14 day of August, A.D. 2090, provided, however, that this Lease may be renewed at

LAW OFFICES
NNELL & HAYSON
CORSETOWN, DEL.

2406 111 8/30/91 CTX-EX SU .00

9688 333 8/30/91 TX-EX ST .00

the option of the Lessee for a further period of ninety-nine (99) years with option, if exercised, must be exercised by an application in writing to the City Council of The City of Lewes, after the 1st day of May, A.D. 2090, and before the 1st day of June, A.D. 2091, and if so exercised shall convey to the Lessee for a further term of ninety-nine (99) years the right of possession of the premises herein described, said notice to be certified mail with return receipt requested and postage prepaid addressed to Lessor, the said term to commence on the 14 day of August, A.D. 2090, and terminating on the 14 day of August, A.D. 2189.

3. Lessor agrees that no annual rental shall be charged to Lessee unless and until Sussex County or its successor imposes a tax upon the property, in which event Lessee agrees to pay to Lessor as annual rental, including taxes, for the term of this Lease or any renewal or extension thereof a sum not to exceed Six Percent (6%) of fair market value of the lands so leased and Two Percent (2%) of the fair market value of the improvements located on the leased land such fair market value to be determined from time to time by Lessor or such amount as may be permitted by the Charter of Lessor but in no event shall the annual rental, including taxes, be less than the amount specified herein. Lessee agrees that the land described in Paragraph 1 above shall be used solely for

purposes as shown on the plot plan, of record as aforesaid, and for no other purpose or purposes without the express written consent of Lessor first being had and obtained.

4. Lessee agrees to comply with all laws, ordinances and lawful orders and regulations issued by any governmental authority which affect the said leased premises.

5. Lessee agrees to be responsible for and to pay any Delaware transfer tax or other tax imposed because of the transfer by Lessor to Lessee or because of the continuing lease between the parties hereto.

6. Lessee agrees during the term of this Lease or any renewal or extension thereof, to be liable for and to discharge all charges assessed against said leased premises, including but not limited to, real estate taxes, sewer service charges, water service charges, fuel, electricity, front footage assessment, and any other charges imposed by any public authority.

7. Lessee agrees during the term of this Lease or any renewal or extension thereof, to defend and hold Lessor harmless from any liability for damages to any person or any property in or upon the said leased premises, including the person and property of Lessee, and its agents, servants or employees and all persons in and upon the said premises at

the invitation of or with the consent of Lessee. It is mutually agreed by the parties hereto that during the term of this Lease or any renewal or extension thereof that all property kept, stored, or maintained in or upon the said leased premises shall be so kept, stored or maintained at the sole risk of Lessee. Lessee further agrees not to suffer nor to give[^] cause for the filing of any lien against the herein leased premises by any person, firm or corporation for any reason whatsoever without the written consent of Lessor first being had and obtained, which consent shall not be unreasonably withheld.

8. Lessee agrees during the term of this Lease or any renewal or extension thereof, to keep in full force and effect a policy of public liability insurance with respect to the said leased premises in which both Lessor and Lessee shall be named as parties insured thereby and with such limits as shall be determined by Lessor from time to time to be adequate protection for both Lessor and Lessee. Lessee agrees to furnish Lessor with a certificate or certificates of insurance or other acceptable evidence that such insurance is in full force and effect at all times.

9. Lessee agrees that this Lease shall not be assigned nor shall any subsequent assignee of Lessee assign the Lease unless and until prior written consent shall have been

received from Lessor which said consent shall be given by Lessor upon the furnishing to Lessor of the names and addresses of the new assignee.

10. Lessee agrees that if, during the term of this Lease or any renewal or extension thereof, any rental due and payable from Lessee to Lessor shall be unpaid for a period of fifteen (15) days after payment is due and payable, or if Lessee shall violate any of the other covenants, agreements, stipulations or conditions set forth herein, and if such default shall continue for a period of fifteen (15) days after written notice thereof from Lessor to Lessee and to any mortgagee of Lessee who advises Lessor in writing that it desires a copy of said notice and to whom and what address such notice shall be sent, Lessor may, at its option, declare this Lease forfeited and the term hereof ended. If this Lease is declared forfeited and the term hereof ended, Lessee agrees to remove himself and all effects from said leased premises without damage to the freehold and further agrees that Lessor shall have the immediate right of re-entry.

11. Lessee agrees that if Lessor, during the term of this Lease or any renewal or extension thereof, waives any covenant or condition of this Lease to be kept or maintained by Lessee, such waiver shall not be construed as a waiver of any subsequent breach of the same or different covenant or condition.

12. Lessee agrees that if, during the term of this Lease or any renewal or extension thereof, all or any part of the said leased premises are taken by the exercise of eminent domain, this Lease shall terminate as of the date possession is taken by the condemnor.

13. Lessee agrees that the invalidity or unenforceability of any provision hereunder shall not affect nor impair any other provision of this Lease.

14. Lessor agrees that Lessee, upon the payment of the rental reserved herein and the performing of the other covenants, conditions and terms hereof, shall and may lawfully, peacefully and quietly have, hold, use, occupy, possess and enjoy the said leased premises during the term hereof.

15. It is mutually agreed by the parties hereto that the terms "Lessor" and "Lessee" used in this Lease shall refer to and bind not only the parties hereto but also their respective heirs, executors, administrators, successors or assigns. It is further mutually agreed by the parties hereto that whenever the singular is used in this Lease, the same shall include the plural and the masculine gender when used herein shall include the feminine and the neuter genders.

IN WITNESS WHEREOF, Lessor has caused this agreement of Lease to be executed by its proper corporate officers and its corporate seal to be hereunto affixed, and Lessee has caused this Agreement of Lease to be executed by its proper corporate partners and their respective corporate seals to be hereunto affixed, the day and year first above written.

THE CITY OF LEWES

By: Alfred A. Stango
Mayor

Attest: John A. Wood
Secretary

CAPE SHORES ASSOCIATES CORPORATION

BY FISCHER DEVELOPMENT CORPORATION

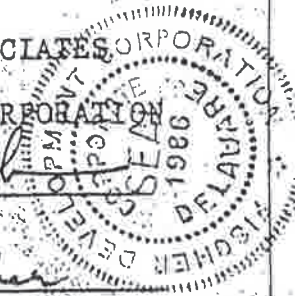
By: Richard S. Fisher
President

Attest: Robert A. Fischer
Asst Secretary

BY IPM PROPERTIES, INC.

By: Philip D. [Signature]
President

Attest: Denis F. Silvestro
Secretary



LAW OFFICES
INNELL & RAYSON
GEORGETOWN, DEL.

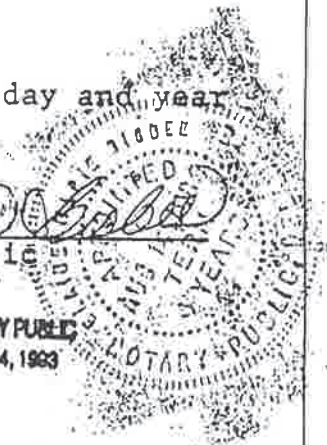
STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 29th day of August, A.D. 1991, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, ALFRED A. STANGO, Mayor of The City of Lewes, a municipal corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said municipal corporation; that the signature of the Mayor is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said municipal corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering of said Indenture was first duly authorized by resolution of the City Council of the said municipal corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Elaine Marie Bissee
Notary Public

ELAINE MARIE BISSEE NOTARY PUBLIC
My Commission Expires Aug. 14, 1993




STATE OF DELAWARE
COUNTY OF SUSSEX

ss.

BE IT REMEMBERED, that on this 28 day of August,
A.D. 1991, personally came before me, the Subscriber, a
Notary Public for the State and County aforesaid, RICHARD S.
FISCHER, President of FISCHER DEVELOPMENT CORPORATION, a
corporation of the State of Delaware, party to this
Indenture, known to me personally to be such, and
acknowledged this Indenture to be his act and deed, and the
act and the deed of the said corporation; that the signature
of the President is in his own proper handwriting; that the
seal affixed is the common and corporate seal of the said
Corporation duly affixed by its authority; and that the act
of signing, sealing, acknowledging and delivering the said
Indenture was first duly authorized by resolution of the
Board of Directors of the said Corporation.

GIVEN under my Hand and Seal of Office, the day and year
aforesaid.


Notary Public

WILLIAM E. WRIGHT
NOTARY PUBLIC DELAWARE
MY COMMISSION EXPIRES: 10-05-92

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 28 day of August, A.D. 1991, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, PRESTON L. DYER, President of IPM PROPERTIES, INC., a corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said Corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said Indenture was first duly authorized by resolution of the Board of Directors of the said Corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

William E. Wright
Notary Public

WILLIAM E. WRIGHT
NOTARY PUBLIC DELAWARE
MY COMMISSION EXPIRES: 10-05-92

CITY OF LEWES	
REALTY TRANSFER TAX	
TRANSFER #	<u>794-91</u>
CANCELLED BY	<u>RLM</u>
AMOUNT OF TAX	<u>exempt</u>
DATE RECORDED	<u>08/30/91</u>

DALLAS D. GREEN
DOC. SURCHARGE PAID

91 AUG 30 PM 1:11

RECORDER OF DEEDS
SUSSEX COUNTY

C · A · P · E S H O R E S



400-A East Cape Shores Drive
 Lewes, Delaware 19958
 Office (302) 645-4800
 Fax (302) 645-4907

ATLANTIC
 OCEAN



CAPE
 HENLOPEN
 STATE
 PARK
 (1000 ACRES)

OTE This rendering is for conceptual purposes only and is subject to change without notice at developer's discretion. This map is not to scale.



November 13, 2024

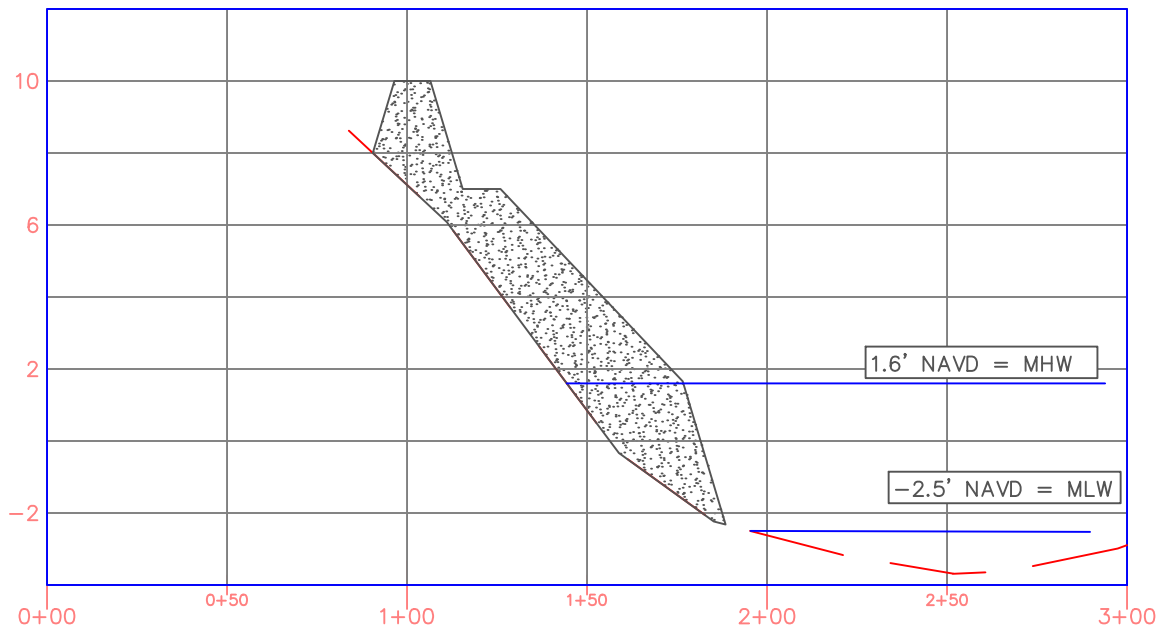
Wetlands

- | | | | | | |
|---|--------------------------------|---|-----------------------------------|---|----------|
|  | Estuarine and Marine Deepwater |  | Freshwater Emergent Wetland |  | Lake |
|  | Estuarine and Marine Wetland |  | Freshwater Forested/Shrub Wetland |  | Other |
| | |  | Freshwater Pond |  | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Structure profile view document

CS - LRP21+90



SCALE: H: 1" = 50'
 V: 1" = 5'

Scale: As Shown Date: 04/07/22

Designed by: Others

Drawn by: J. Faries, P.E.

Checked by: A. Norton

Sheet No. 4 of 4

Cape Shores Truck Fill
 Permit Plans

COASTAL
 SUSSEX COUNTY, DELAWARE

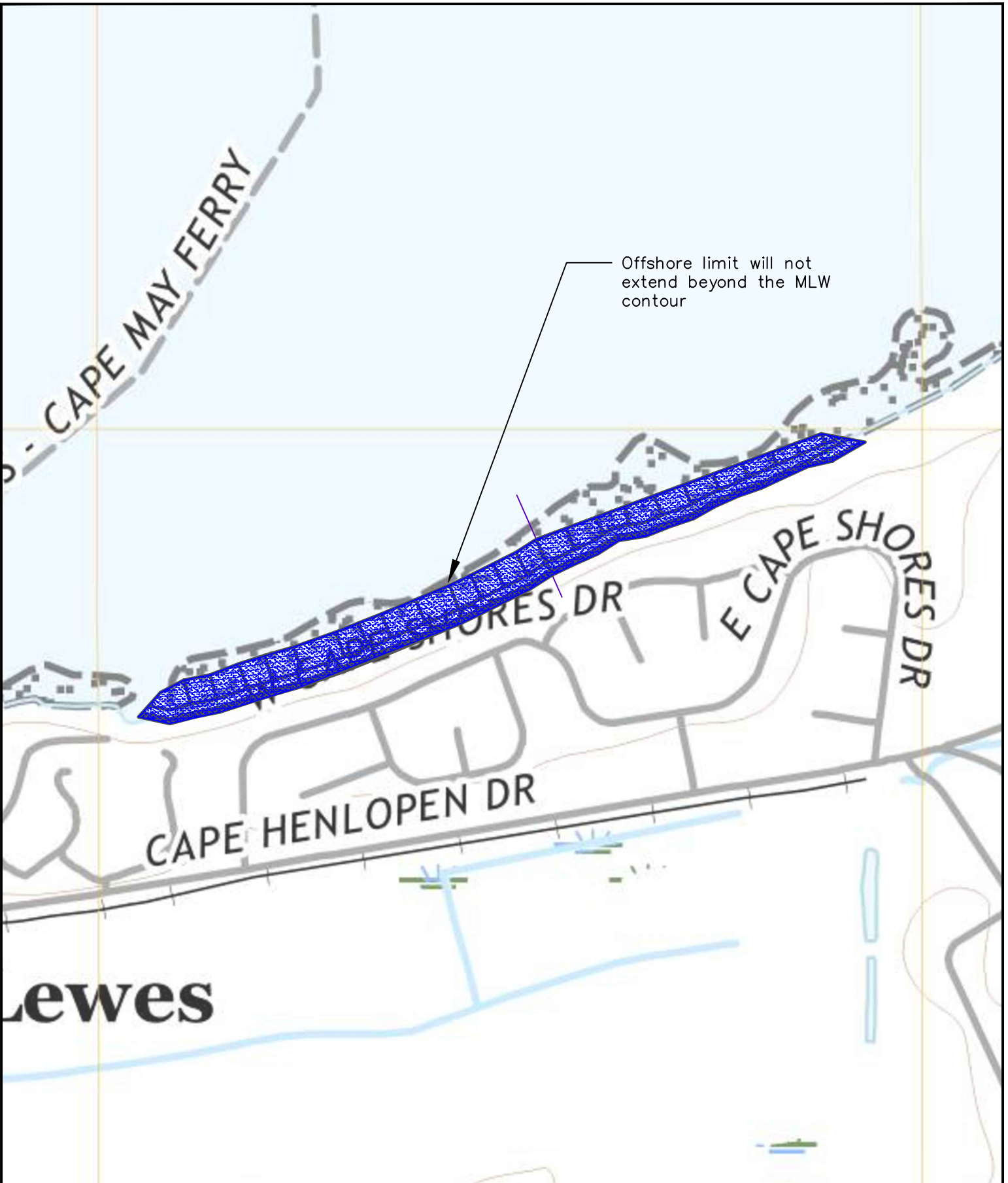


DELAWARE DEPARTMENT OF
 NATURAL RESOURCES AND
 ENVIRONMENTAL CONTROL

Division of Watershed Stewardship
 Shoreline and Waterway Section

Dover Office
 285 Beiser Blvd.
 Dover DE, 19904
 Phone: (302) 739 - 9921

Lewes Office
 901 Pilottown Rd
 Lewes DE, 19958
 Phone: (302) 855 - 7290



Scale: 1" = 500'	Date: 04/07/22
Designed by: Others	
Drawn by: J. Faries, P.E.	
Checked by: A. Norton	
Sheet No. 2 of 4	

**Cape Shores Truck Fill
Permit Plans**

 COASTAL
 SUSSEX COUNTY, DELAWARE

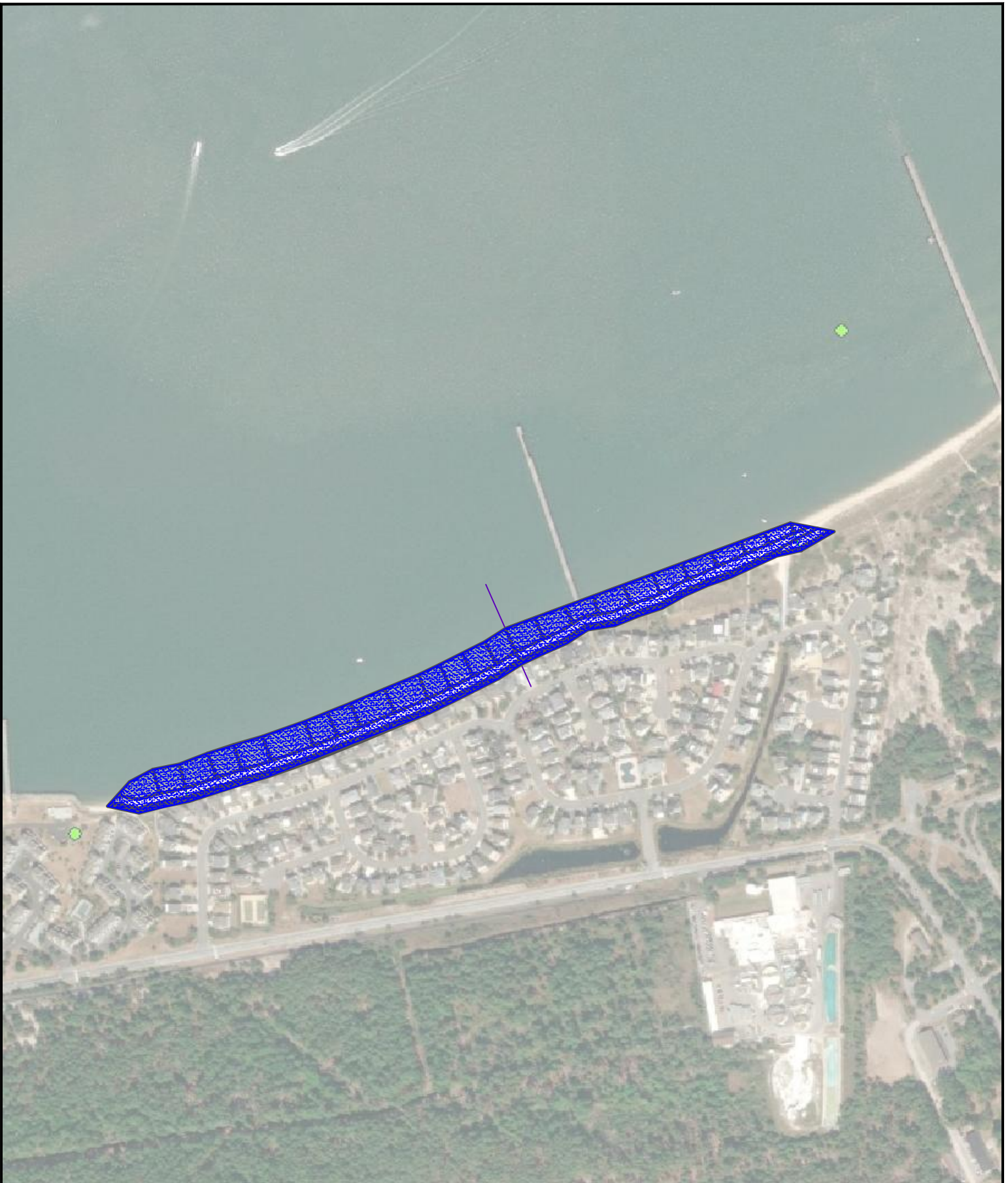


DELAWARE DEPARTMENT OF
**NATURAL RESOURCES AND
 ENVIRONMENTAL CONTROL**

Division of Watershed Stewardship
 Shoreline and Waterway Section

Dover Office
 285 Beiser Blvd.
 Dover DE, 19904
 Phone: (302) 739 - 9921

Lewes Office
 901 Pilottown Rd
 Lewes DE, 19958
 Phone: (302) 855 - 7290



Scale: 1" = 500'	Date: 04/07/22
Designed by: Others	
Drawn by: J. Faries, P.E.	
Checked by: A. Norton	
Sheet No. 3 of 4	

Cape Shores Truck Fill Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE

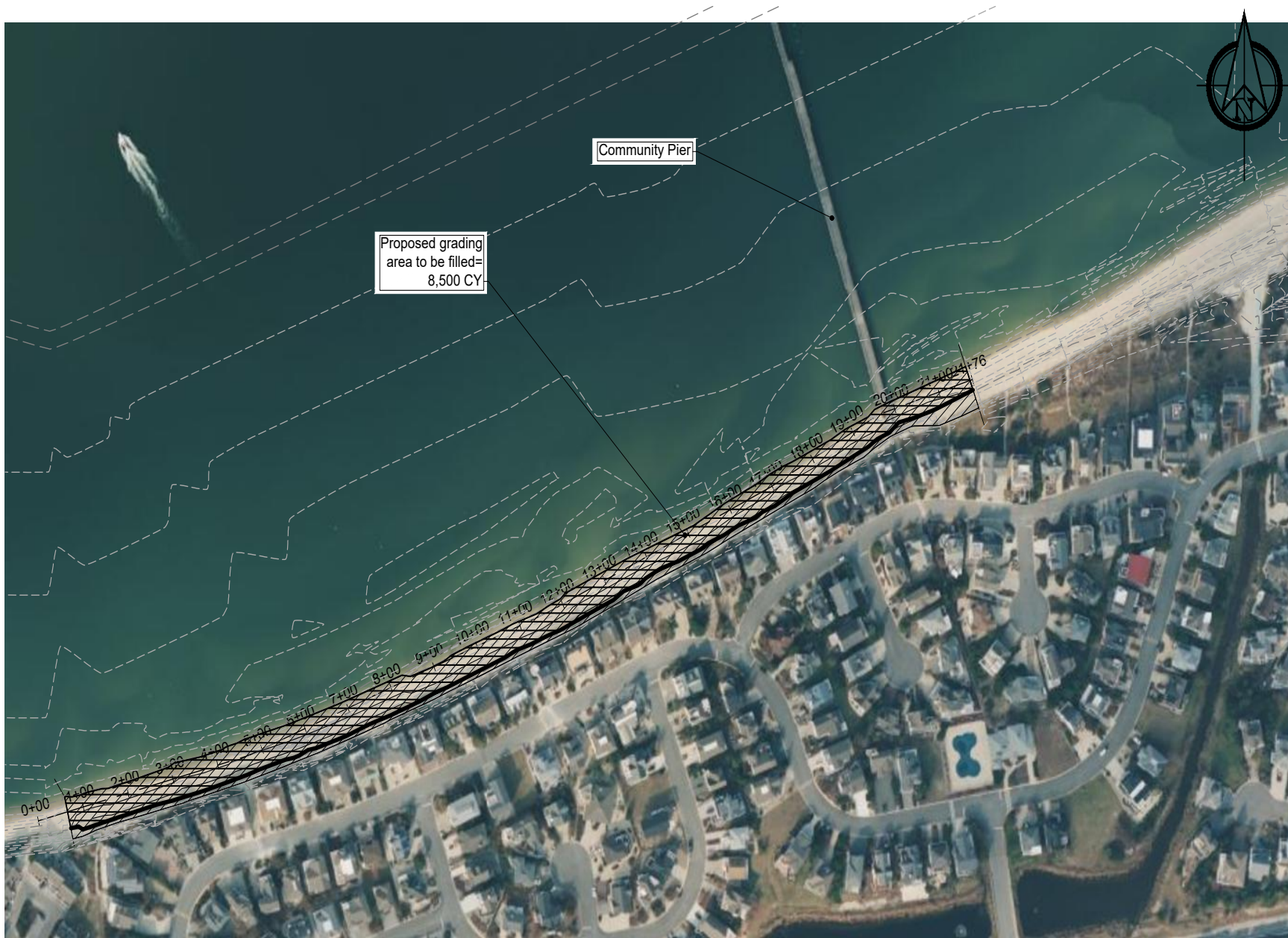


DELAWARE DEPARTMENT OF
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DESIGNED BY:	SMH
DRAWN BY:	SMH
CHECKED BY:	AR
FILE:	PSURFACE_ALL GRADING.dwg

GRADING AREA SHORELINE FILL
CAPE SHORES BEACH FILL
 CITY OF LEWES - SUSSEX COUNTY - DELAWARE

DATE:
 FEBRUARY 23, 2022



SCALE:
 1"=200'

PROJECT NO.
 14313

SHEET:
 FIGURE 1

The conceptual plan shows typical existing (pre-nourishment) profiles and proposed (post nourishment) profiles. The renourishment project involves the placement of 8,500 CY of sand along 2,176 linear feet of beach at Cape Shores (an average of 3.9 CY/linear foot of beachfront).

LEGEND

-  GRADING AREA BELOW MHW
-  GRADING AREA ABOVE MHW



Adjacent property owners document

Property Owners Immediately Adjacent to Site

**Port Lewes Resorts
P.O. Box 637
Lewes, DE 19958**

**State of Delaware
Department of Natural Resources and Environmental Control
Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901**



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
100 PENN SQUARE EAST
PHILADELPHIA PENNSYLVANIA 19107-3390

February 10, 2023

Regulatory Branch

SUBJECT: Final Department of the Army Permit NAP-2018-00045-85
Cape Shores Beach Nourishment SX
DNREC Permit SP-208/22 and WQC-208/22
Central coordinates (38.784215°N, 75.108676°W)

Janice Erich
Cape Shores Homeowners Association
17563 Nassau Commons Boulevard
Lewes, Delaware 19958
erichjanice@gmail.com

Dear Ms. Erich:

On August 15, 2022 this office received an application for a Department of the Army (DA) Permit. Please find **enclosed** with this letter your DA Permit authorizing you to place approximately 31,500 cubic yards of sand from an upland borrow source to replenish 3,200 linear feet of beach and dune pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344). This project is located at the Cape Shores residential community shoreline, tax map parcel 3-35-5.00-240.00 in Lewes, Sussex County, Delaware. Also **enclosed** are the approved permit plans for this project which are referenced in your DA Permit.

Carefully review all the terms and conditions of your DA Permit and understand them fully. Performing any work not specifically authorized by the permit or failing to comply with its conditions may subject you and/or your contractor to the enforcement provisions of our regulations. If a contractor performs the work for you, both you and the contractor are responsible for assuring the work is done in conformance with the conditions and limitations of this permit. Please be sure the person who will do the work has read and understands the conditions of the permit.

Your permit requires that this office is notified of the commencement and completion of the permitted work. To assist you in meeting this requirement, **enclosed** is a "Notification of Commencement" form and a "Notification of Completion" form which must be signed and returned to this office within the specified timeframes (see Special Condition 4). Also **enclosed** is a notice of authorization (ENG Form 4336) which is required to be conspicuously displayed at the site of work.

If any material changes in the location or plans of the permitted work are found necessary, notification with revised plans should be submitted promptly to this office.

Revised plans must be approved by this office as required by law before operations on the permitted work can begin.

Should you have any questions regarding your permit, you may contact Michael D. Yost at (267) 240-5278 or michael.d.yost@usace.army.mil.

Sincerely,

Todd A. Hoernemann
Chief, Application Section I

Enclosures

cc:
Terry Deputy, DDNREC
Kathleen Bergin, DDNREC

DEPARTMENT OF THE ARMY PERMIT

Permittee: Janice Erich, Cape Shores Homeowners Association

Permit No.: NAP-2018-00045-85

Issuing Office

Department of the Army
U.S. Army Corps of Engineers, Philadelphia District
100 South Independence Mall West
Philadelphia, Pennsylvania 19106-3400

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 or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Place approximately 31,500 cubic yards of sand from an upland borrow source to replenish 3,200 linear feet of beach and dune pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

All work is to be completed in accordance with the attached permitted plan(s) (see Special Condition 1).

Project Location: This project is located at the Cape Shores residential community shoreline, tax map parcel 3-35-5.00-240.00 in Lewes, Sussex County, Delaware.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **December 31, 2027**. 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 may 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 must 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 archeological 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 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.

Special Conditions:

1. All work shall be completed in accordance with the attached project plan(s) identified as CAPE SHORES TRUCK FILL PERMIT PLANS, prepared by the Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, Shoreline and Waterway Section, dated April 7, 2022, 4 sheets. These plans are hereby made part of this permit.

2. Construction activities shall not result in the disturbance or alteration of greater than 3 acres of waters of the United States.

3. Any deviation in construction methodology or project design from that shown on the above noted drawings must be approved by this office, in writing, prior to performance of the work. All modifications to the above noted project plans shall be approved, in writing, by this office. No work shall be performed prior to written approval of this office.

4. This office shall be notified at least 10 days prior to the commencement of authorized work by completing and signing the enclosed "Notification of Commencement Form"; and this office shall be notified within 10 days of the completion of the authorized work by completing and signing the enclosed "Notification of Completion Form".

5. 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.

6. The Special Conditions imposed by the Delaware Department of Natural Resources and Environmental Control (DDNREC) on your DDNREC CZM concurrence shall also be conditions to this Department of the Army permit.

7. The permittee is 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.

8. Beach work shall not occur between April 1 to September 1 to avoid impacts to horseshoe crabs, migrating shorebirds, sandbar sharks and sand tiger sharks.

9. Work occurring below the high tide line shall be conducted during periods of low tide to minimize turbidity and sedimentation.

10. The composition of sand fill deposited from an inland borrow source shall consist of clean sand material consistent with native beach material and must be free of debris, trash, oils, grease, asphalt, other contaminants, and unsuitable materials.

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 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act.

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 projects.

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.

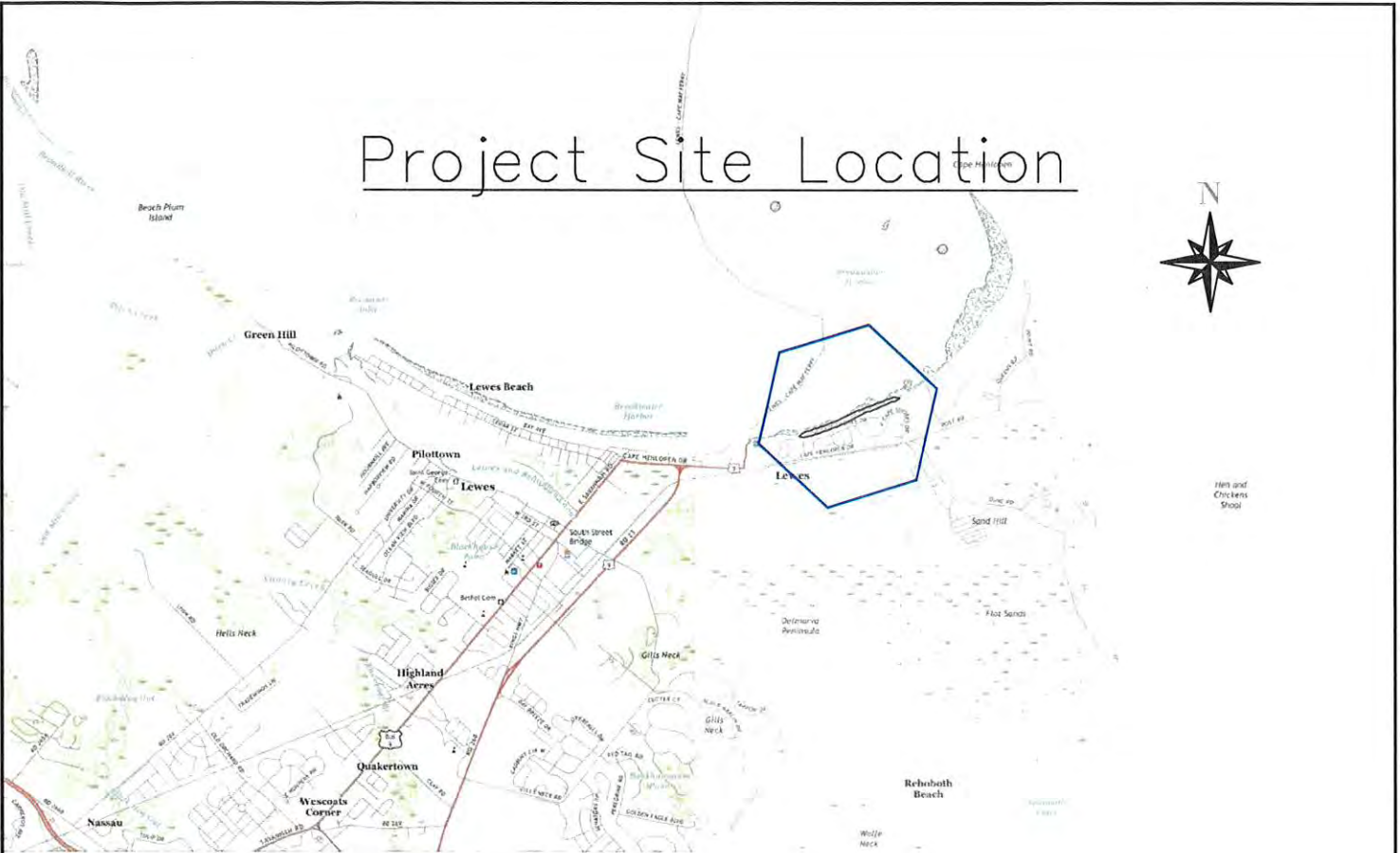
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

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 below.

(Transferee)

(Date)

Project Site Location



Scale: 1" = 5000' Date: 04/07/22

Designed by: N/A

Drawn by: J. Faries, P.E.

Checked by: A. Norton

Sheet No. 1 of 4

Cape Shores Truck Fill Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE



DELAWARE DEPARTMENT OF
**NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

Division of Watershed Stewardship
Shoreline and Waterway Section

Dover Office
285 Beiser Blvd.
Dover DE, 19904
Phone: (302) 739 - 9921

Lewes Office
901 Pilottown Rd
Lewes DE, 19958
Phone: (302) 855 - 7290



Scale: 1" = 500' Date: 04/07/22
 Designed by: Others
 Drawn by: J. Faries, P.E.
 Checked by: A. Norton
 Sheet No. 3 of 4

Cape Shores Truck Fill Permit Plans

COASTAL
 SUSSEX COUNTY, DELAWARE

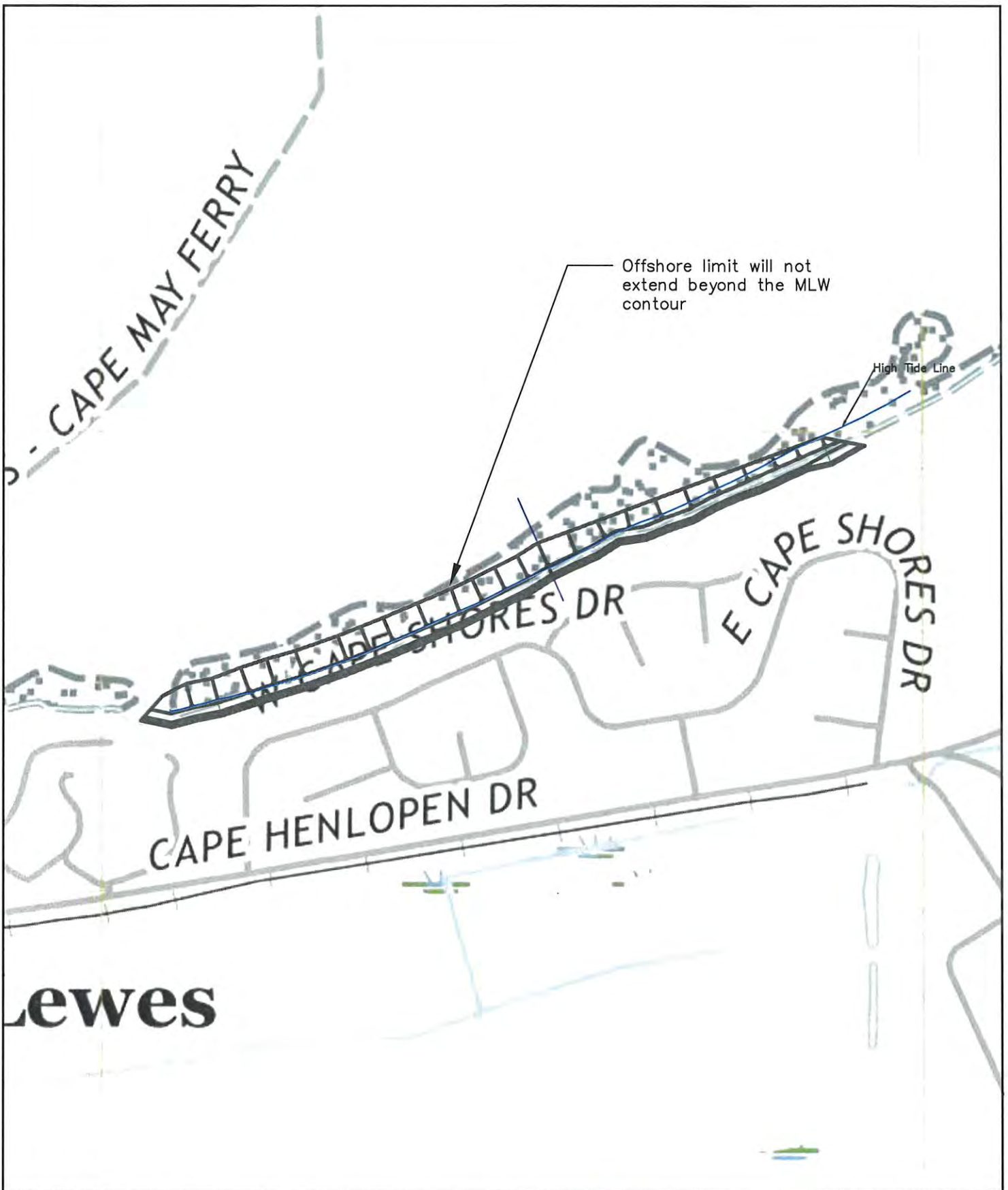


DELAWARE DEPARTMENT OF
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 901 Pilottown Rd
 Lewes DE, 19958
 Phone: (302) 855 - 7290



Scale: 1" = 500' Date: 04/07/22

Designed by: Others

Drawn by: J. Faries, P.E.

Checked by: A. Norton

Sheet No. 2 of 4

Cape Shores Truck Fill Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE



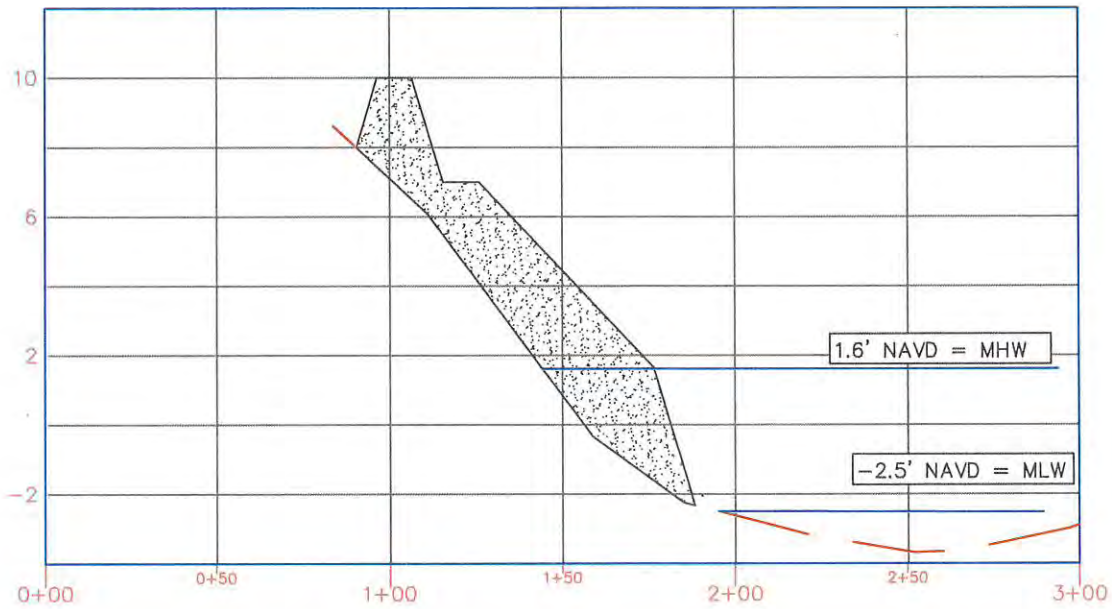
DELAWARE DEPARTMENT OF
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Phone: (302) 739 - 9921

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901 Pilottown Rd
Lewes DE, 19958
Phone: (302) 855 - 7290

CS - LRP21+90



SCALE: H: 1" = 50'
 V: 1" = 5'

Scale: As Shown Date: 04/07/22

Designed by: Others

Drawn by: J. Faries, P.E.

Checked by: A. Norton

Sheet No. 4 of 4

Cape Shores Truck Fill
 Permit Plans

COASTAL
 SUSSEX COUNTY, DELAWARE



DELAWARE DEPARTMENT OF
 NATURAL RESOURCES AND
 ENVIRONMENTAL CONTROL

Division of Watershed Stewardship
 Shoreline and Waterway Section

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 285 Beiser Blvd.
 Dover DE, 19904
 Phone: (302) 739 - 9921

Lewes Office
 901 Pilottown Rd
 Lewes DE, 19958
 Phone: (302) 855 - 7290



**US Army Corps
of Engineers**
Philadelphia District

NOTIFICATION OF COMMENCEMENT

Permittee Name:	File Number:	County, State:
Janice Erich, Cape Shores HOA	NAP- 2018-00045-85	Sussex, Delaware
INSTRUCTIONS		
<p>Complete and sign this form and return it to PhiladelphiaDistrictRegulatory@usace.army.mil at least 10 days before commencement of the activity authorized by this permit. If you do not have the means to return this form electronically, you may print this document and mail it to:</p> <p style="margin-left: 40px;">U.S. Army Corps of Engineers Philadelphia District Attn: CENAP-OPR 100 South Independence Mall West Philadelphia, PA 19106-3400</p> <p>Please Note: The permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. Failure to return this notification form or failure to perform work in compliance with the permit, may result in administrative, civil and/or criminal penalties, or the subject permit may be suspended or revoked.</p>		
CERTIFICATION		
I have received authorization from the Philadelphia District Regulatory Branch to:		
The authorized work will begin on or about:		
The company/name and address of the contractor completing the work is:		
I <u>hereby certify</u> that the work authorized by the above referenced permit shall be completed in accordance with all of the terms and conditions of the above noted permit.		
Permittee Signature:	Date:	Telephone Number:
Contractor Signature:	Date:	Telephone Number:



**US Army Corps
of Engineers**
Philadelphia District

NOTIFICATION OF COMPLETION

Permittee Name:	File Number:	County, State:
Janice Erich, Cape Shores HOA	NAP- 2018-00045-85	Sussex, Delaware
INSTRUCTIONS		
<p>Complete and sign this form and return it to PhiladelphiaDistrictRegulatory@usace.army.mil within 10 days after completion of the activity authorized by this permit. If you do not have the means to return this form electronically, you may print this document and mail it to:</p> <p style="margin-left: 40px;">U.S. Army Corps of Engineers Philadelphia District Attn: CENAP-OPR 100 South Independence Mall West Philadelphia, PA 19106-3400</p> <p>Please Note: The permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. Failure to return this notification form or failure to perform work in compliance with the permit, may result in administrative, civil and/or criminal penalties, or the subject permit may be suspended or revoked.</p>		
CERTIFICATION		
I have received authorization from the Philadelphia District Regulatory Branch to:		
The authorized work began on:		
The authorized work was completed on:		
The company/name and address of the contractor that completed the work is:		
I <u>hereby certify</u> that the work authorized by the above referenced permit has been completed in accordance with all of the terms and conditions of the above noted permit.		
Permittee Signature:	Date:	Telephone Number:
Contractor Signature:	Date:	Telephone Number:



**US Army Corps
of Engineers**
Philadelphia District

We are soliciting your views and comments concerning the processing of your Department of the Army permit application request. Any input, positive or otherwise, on procedures, timeliness, fairness, etc., would be appreciated.

Please write your comments in the space provided below and return to the Philadelphia District Regulatory Branch at PhiladelphiaDistrictRegulatory@usace.army.mil or if you do not have the means to return this form electronically you may print this document and mail to:

U.S. Army Corps of Engineers Philadelphia District
Attn: CENAP-OPR
100 South Independence Mall West
Philadelphia, PA 19106-3400

FILE NUMBER: _____

(Example NAP-2020-01234-56)

COMMENTS:

Thank you for taking the time to provide feedback which we can use to acknowledge great performance, correct problems and generally improve our business practices.



US Army Corps
of Engineers®

**THIS NOTICE OF AUTHORIZATION MUST BE
CONSPICUOUSLY DISPLAYED AT THE SITE OF WORK.**

A permit to conduct beach nourishment activities along the shoreline
at the Cape Shores residential community

has been issued to Janice Erich, Cape Shores Homeowners Association on 10-Feb-2023

Address of Permittee 17563 Nassau Commons Boulevard, Lewes, Delaware 19958

Permit Number

NAP-2018-00045-85

For: _____
Ramon Brigantti, P.E.
Lieutenant Colonel, Corps of Engineers
District Commander

ENG FORM 4336, Jul 81 (33 CFR 320-330) EDITION OF JUL 70 MAY BE USED

(Proponent: CECW-0)



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**WETLANDS &
WATERWAYS SECTION**

PHONE
(302) 739-9943

January 20, 2023

Name: Cape Shores Homeowners Association
Contact: Janice Erich, President
c/o: SeaScape Management Company
17563 Nassau Commons Blvd.
Lewes, DE 19958

RE: Project (WQC- 208/22)

Dear Ms. Erich

The Wetlands and Waterways Section of the Delaware Department of Natural Resources and Environment Control (DNREC) has completed its review of the above referenced project. This letter is in response to the request for a water quality certification dated July 14, 2022, and received on August 15, 2022, submitted by Moffatt & Nichol on behalf of Cape Shores Homeowners Association and DNREC's Division of Watershed Stewardship.

PROPOSED ACTION

Cape Shores Homeowners Association is proposing to conduct beach renourishment and dune restoration by placing approximately 31,500 cubic yards of clean sand material from an upland borrow source by truck along 3,200 linear feet of shoreline along the Delaware Bay within the Cape Shores Community, Lewes, Sussex County, Delaware (Tax Parcel: 335-5.00-240.00). The proposed activity is resulting in a discharge from a point source into a water of the United States and therefore requires an Individual Water Quality Certification.

WATER QUALITY CERTIFICATION UNDER THE CLEAN WATER ACT

Pursuant to 40 CFR Part 121, a Section 401 water quality certification is required for any federal license or permit that authorizes an activity that may result in a discharge. According to 40 CFR §121.1, the term "discharge" refers to a discharge from a point source into a water of the United States. The direct placement of fill in the proposed location and as indicated on the attached plans is considered a discharge.

WATER QUALITY ANALYSIS

The DNREC Wetlands and Waterways Section reviewed the project in accordance with 7 Del. Admin. Code 7401 Surface Water Quality Standards, 7 Del. Admin. Code 7201 Regulations Governing the Control of Water Pollution, and §§ 301, 302, 303, 306, and 307 of the federal Clean Water Act. In addition, section staff coordinated with the following agencies as part of the review:

- DNREC Division of Fish & Wildlife
- DNREC Division of Watershed Stewardship
- DNREC Division of Division of Climate, Coastal and Energy

PUBLIC PARTICIPATION

In accordance with 7 Del Admin. Code 7201, the public was invited to participate in the review of the Cape Shores Homeowners Association proposed project. Public notice of this proposed action was published in the Delaware State News, The News Journal, DNREC public notices list service, and sent to adjacent property owners on October 26, 2022. The public was given 20 days to comment on this notice.

The DNREC, Division of Fish and Wildlife provided public notice comments to the DNREC, Wetlands and Waterways Section on October 31, 2022. Additionally, one (1) public comment was submitted to us on November 13, 2022, from the Port Lewes Community, expressing their concerns about the project scope and the need to address sediment disposition around the Port Lewes community and the Lewes Ferry Terminal.

The final comments are enclosed, and the prescribed recommendations have been incorporated in the enclosed associated Subaqueous Lands Permit no. 208/22.

DECISION

Based on its review and pursuant to U.S. Environmental Protection Agency regulations (40 CFR 121), the DNREC Wetlands and Waterways Section conditionally certifies that the discharge from this project as proposed will comply with water quality requirements provided the material comes from the sources identified and is placed according to the enclosed project plans that have been provided.

The following conditions are necessary to ensure the discharges associated with the proposed project comply with water quality standards in Delaware.

Specific Conditions:

- 1) The composition of sand fill deposited from an inland borrow source shall consist of clean sand material consistent with native beach material and must be free of debris, trash, oils, grease, asphalt, other contaminants, and unsuitable materials (7 Del. Admin Code § 7401 – 5.6.1.3)
- 2) If the material specification and or source location differs from the information provided with the application, the permittee shall provide a pre-construction notification to DNREC Wetlands and Waterways Section including information demonstrating that the proposed discharge of fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols. (7 Del. Admin. Code § 7401 - 5.1 and 7 Del. Admin. Code § 7201 – 5.10.2.1).

Please be advised that this water quality certification review does not negate the need for other authorizations that may be required.

Thank you for the opportunity to review and respond to the Cape Shores Homeowners Association water quality certification request. If you have any questions, please contact me at (302) 739-9943.

Sincerely,



Matthew R. Jones, Section Manager
Wetlands and Waterways Section

Enclosures:

- Subaqueous Lands Permit no. 208/22
- Project Plans
- State of Delaware-Shoreline Management-Sand CS/DSSP Bid Packet
- DNREC, Division of Fish and Wildlife Final Comments
- Public Comments & Responses
- Surface Water Quality Standards (7 Del. Admin. Code § 7401)
- Regulations Governing the Control of Water Pollution (7 Del. Admin. Code § 7201)

cc: Michael Yost, USACE
Mike Snyder, DNREC DCMP
Terry Deputy, DNREC- DWS
Kathleen Bergin, DNREC-DWS
Steven Smailer-DNREC-DOW
Janice Erich, President, Cape Shores



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**WETLANDS &
WATERWAYS SECTION**

PHONE
(302) 739-9943

Cape Shores Homeowners Association
Attention: Janice Erich, President
c/o: SeaScape Management Company
17563 Nassau Commons Blvd.
Lewes, DE 19958
Tax Parcel: 3-35-5.00-240.00

Subaqueous Lands Permit: SP-208/22
Associated Permit(s): WQ-208/22 Date of
Issuance: 1/20/2023
Construction Expiration Date: 1/20/2026
Amended Date: N/A

SUBAQUEOUS LANDS PERMIT

GRANTED TO:

Cape Shores Homeowners Association

TO CONDUCT BEACH RENOURISHMENT AND DUNE RESTORATION:

- To place approximately 31,500 cubic yards of clean sand by truck from an upland borrow source along 3,200 linear feet of shoreline.

LOCATED ON PRIVATE SUBAQUEOUS LANDS:

**Along the Bayshore
Within the limits of the Cape Shores Community
Lewes, Sussex County, Delaware**

Pursuant to the provisions of 7 Del. C. 7205, the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 20th day of January A.D. 2023 to construct the above referenced project in accordance with the approved plans (4 sheets), as approved on January 20, 2023; and the application dated August 12, 2022, and received by this Division on August 18, 2022, with subsequent information received on September 19, 2022, November 13, 2022, November 15, 2022, November 23, 2022, January 5, 2023 and January 9, 2023.

WHEREAS, Cape Shores Homeowners Association, owners of certain adjoining lands to the Delaware Bay, has applied for permission to place approximately 31,500 cubic yards of sand from an upland borrow source along 3,200 linear feet of shoreline and;

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW THEREFORE, this Permit is issued subject to the attached Subaqueous Lands General Conditions and the following special conditions:

SPECIAL CONDITIONS

1. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
2. The permittee is responsible to ensure that all workers are informed of the provisions of the Permits. All workers shall be trained in the proper avoidance of protected environmental resources and be made aware of the limits of construction in environmentally protected areas.
3. This Permit is granted for the purpose of beach restoration and storm protection, as stated in the Permit application. Any other use without prior approval shall constitute reason for this Permit being revoked.
4. The Wetlands and Waterways Section shall be notified at least five (5) working days prior to any work beginning.
5. The composition of sand fill deposited from an inland borrow source shall consist of clean sand material consistent with native beach material and must be free of debris, trash, oils, grease, asphalt, other contaminants, and unsuitable materials.
6. If the material specification and or source location differs from the information provided with the application, the permittee shall provide a pre-construction notification to DNREC Wetlands and Waterways Section including information demonstrating that the proposed discharge of fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.
7. Prior to the commencement of beach nourishment activities, the permittee shall consult with the U.S. Fish and Wildlife Service and the DNREC Division of Fish and Wildlife, Species Conservation and Research Program to identify the presence of State and/or federally listed shore nesting species, including Piping Plover, Red Knot, American Oystercatcher, Least Tern, Common Tern, and Black Skimmer.
8. To avoid impacts to shorebirds, no work shall take place between April 15th to June 7th. Please note that because red knots are a federally protected species, Section 7 consultation with the U.S. Fish and Wildlife Service may be necessary.
9. To avoid impacts to beach nesting shorebirds no work shall take place between March 1st to September 15th.

10. The project site is a spawning area for horseshoe crabs. To avoid impacts to this species, no work shall take place between April 15th to August 30th.
11. Four different species of seals are known to occupy the Lewes Harbor area in the winter months. These species include the harbor seal (*Phoca vitulina*), harp seal (*Pagophilus (Phoca) groenlandicus*), gray seal (*Halichoerus grypus*), and hooded seal (*Cystophora cristata*). Marine mammals such as harbor seals are protected under the Marine Mammal Protection Act of 1972 (MMPA) which prohibits the “take” of all marine mammal species. Under the MMPA, the term “take” is defined as “harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Furthermore, “harassment” is defined as “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild, or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering”. If any seals are encountered on the beach during sand replenishment, NOAA recommends that people remain at least 50 yards away from them to comply with the MMPA. If seals are likely to be encountered, the Division of Fish and Wildlife recommends that Cape Shores HOA applies for an Incidental Harassment Authorization (IHA) with NOAA at least 5-8 months prior the start of the project.
12. The final beach profile shall be inspected upon completion of the beach fill placement to ensure compliance with the approved plans and desired beach profile. The beach profile shall continue to be monitored for a period of 18 months after completion to ensure the desired beach profile is maintained.
13. All equipment and machinery utilized in construction shall arrive on-site in a clean condition and shall be maintained free of fluid leaks. An emergency spill kit shall be available on-site to handle any fluid leaks or spills from machinery.
14. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook, so as to minimize entry and dispersal of sediment and other contaminants in surface waters.
15. The work authorized by this Permit is subject to the terms and conditions of the appropriate Department of the Army Individual Permit.
16. **The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.**

IN WITNESS WHEREOF, I, Matthew R. Jones, the duly authorized representative of Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this 20th day of January, 2023.

Matthew Jones

By Matthew R. Jones, Section Manager
Division of Water-Wetlands and Waterways Section



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**WETLANDS &
WATERWAYS SECTION**

PHONE
(302) 739-9943

**SUBAQUEOUS LANDS PERMIT
CONTRACTOR'S COMPLETION REPORT
POST-CONSTRUCTION**

Subaqueous Lands Permit Number: SP-208/22

Name: Cape Shores Homeowners Association

Address: Along the Bayshore
Cape Shores Community

Parcel #: 3-35-5.00-240.00

I hereby certify that I have constructed the project authorized by the above-referenced Subaqueous Lands Permit in accordance with the approved plans for the project.

Printed Name of Contractor

Name of Company

Contractor's Signature

Date

Telephone Number

Upon completion of construction, this form shall be completed, signed by the contractor, and mailed to the Wetlands and Waterways Section at:

**DNREC
Wetlands and Waterways Section
89 Kings Highway
Dover, Delaware 19901**

This form must be received by the Department within ten days of the date that construction is completed.

=====
For official use only

Compliance inspection date _____ *Built in accordance with plans* *Yes* *No*

Scientist: Matthew Jones

Affix
Proper
Postage
Here

Mail to:
DNREC – Wetlands and Waterways Section
89 Kings Highway
Dover, DE 19901

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WETLANDS AND WATERWAYS SECTION

PERMIT NO.: SP-208/22

CONSTRUCTION EXPIRATION DATE: 1/20/2026

TO CONDUCT BEACH RENOURISHMENT AND DUNE RESTORATION:

- **TO PLACE APPROXIMATELY 31,500 CUBIC YARDS OF CLEAN SAND BY TRUCK FROM AN UPLAND BORROW SOURCE ALONG 3,200 LINEAR FEET OF SHORELINE.**

LOCATED ON PRIVATE SUBAQUEOUS LANDS:

**Along the Bayshore
Within the limits of the Cape Shores Community
Lewes, Sussex County, Delaware**

ISSUED TO: Cape Shores Homeowners Association

LOCATION OF WORK: Same as above

**DISPLAY THIS CERTIFICATE IN A HIGHLY
VISIBLE LOCATION ON THE JOB SITE.**

Authorized by: Matthew Jones



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS &
WATERWAYS SECTION

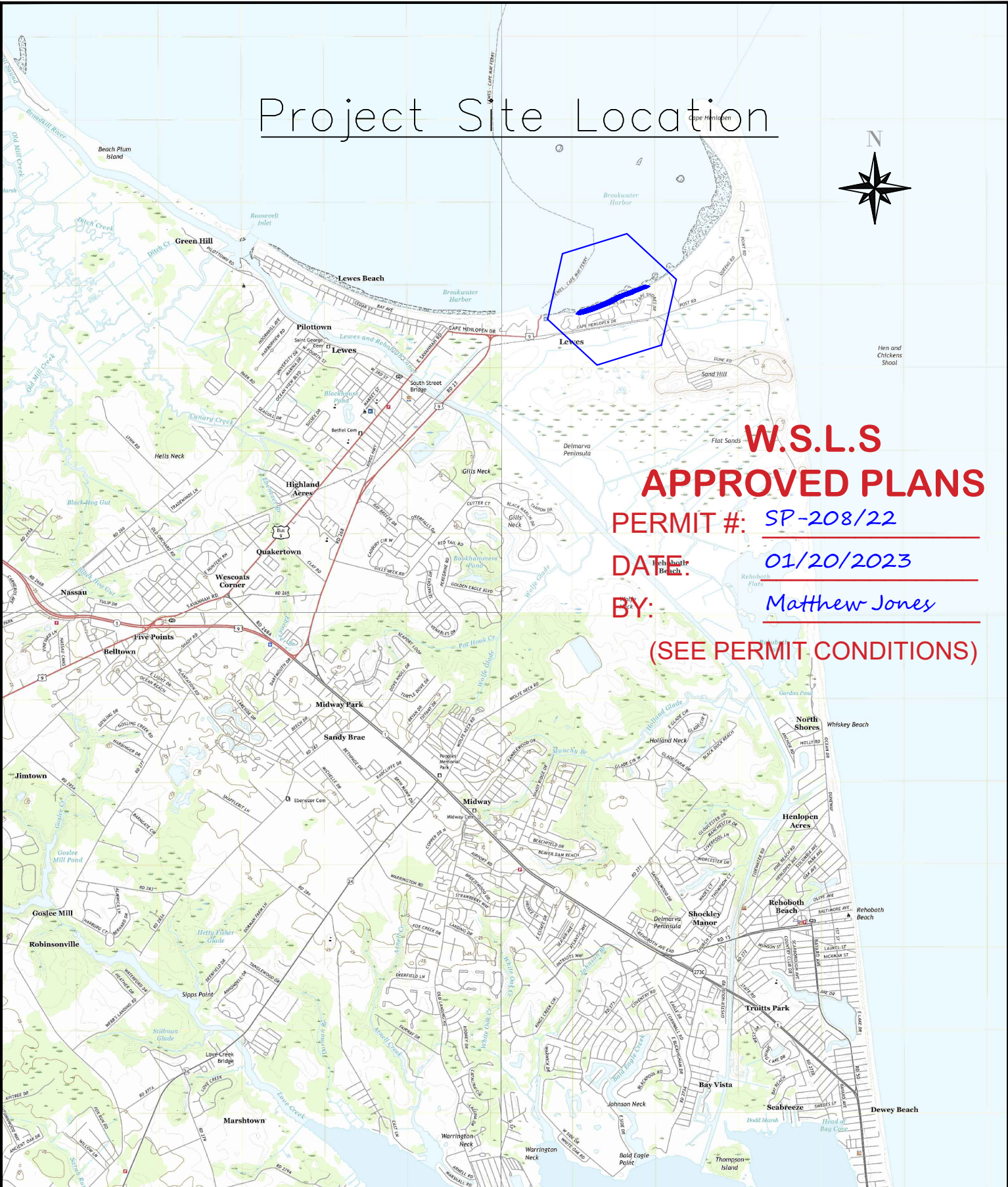
PHONE
(302) 739-9943

GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. The activities authorized herein shall be undertaken in accordance with the Permit conditions, the final stamped and approved plans, and with the information provided in the Permit application.
3. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
4. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Permit shall exceed the dimensions for that structure identified on Page One of this Permit.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Permit authorization.
8. The issuance of this Permit does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Permit does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating.
10. This Permit authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Permit being revoked.
11. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
12. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.
13. The permittee shall maintain all authorized structures and activities in a good and safe condition.

15. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
16. The permittee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the permittee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The permittee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
17. No construction shall occur after the construction expiration date identified on Page One of this Permit. The permittee may file a construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
18. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the permittee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Permit. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Permit is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the permittee shall obtain the written consent of the Department to transfer the Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.
21. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Permit.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Permit shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. Failure to comply with any of the terms or conditions of this Permit may result in enforcement action which could include the revocation of this Permit and subsequent restoration of the site to preconstruction conditions.

Project Site Location



**W.S.L.S
APPROVED PLANS**

PERMIT #: SP-208/22

DATE: 01/20/2023

BY: Matthew Jones

(SEE PERMIT CONDITIONS)

Scale: 1" = 5000'	Date: 04/07/22
Designed by:	N/A
Drawn by:	J. Faries, P.E.
Checked by:	A. Norton
Sheet No.	1 of 4

Cape Shores Truck Fill Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE



DELAWARE DEPARTMENT OF
NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

Division of Watershed Stewardship
Shoreline and Waterway Section

Dover Office
285 Beiser Blvd.
Dover DE, 19904
Phone: (302) 739 - 9921

Lewes Office
901 Pilottown Rd
Lewes DE, 19958
Phone: (302) 855 - 7290

W.S.L.S APPROVED PLANS

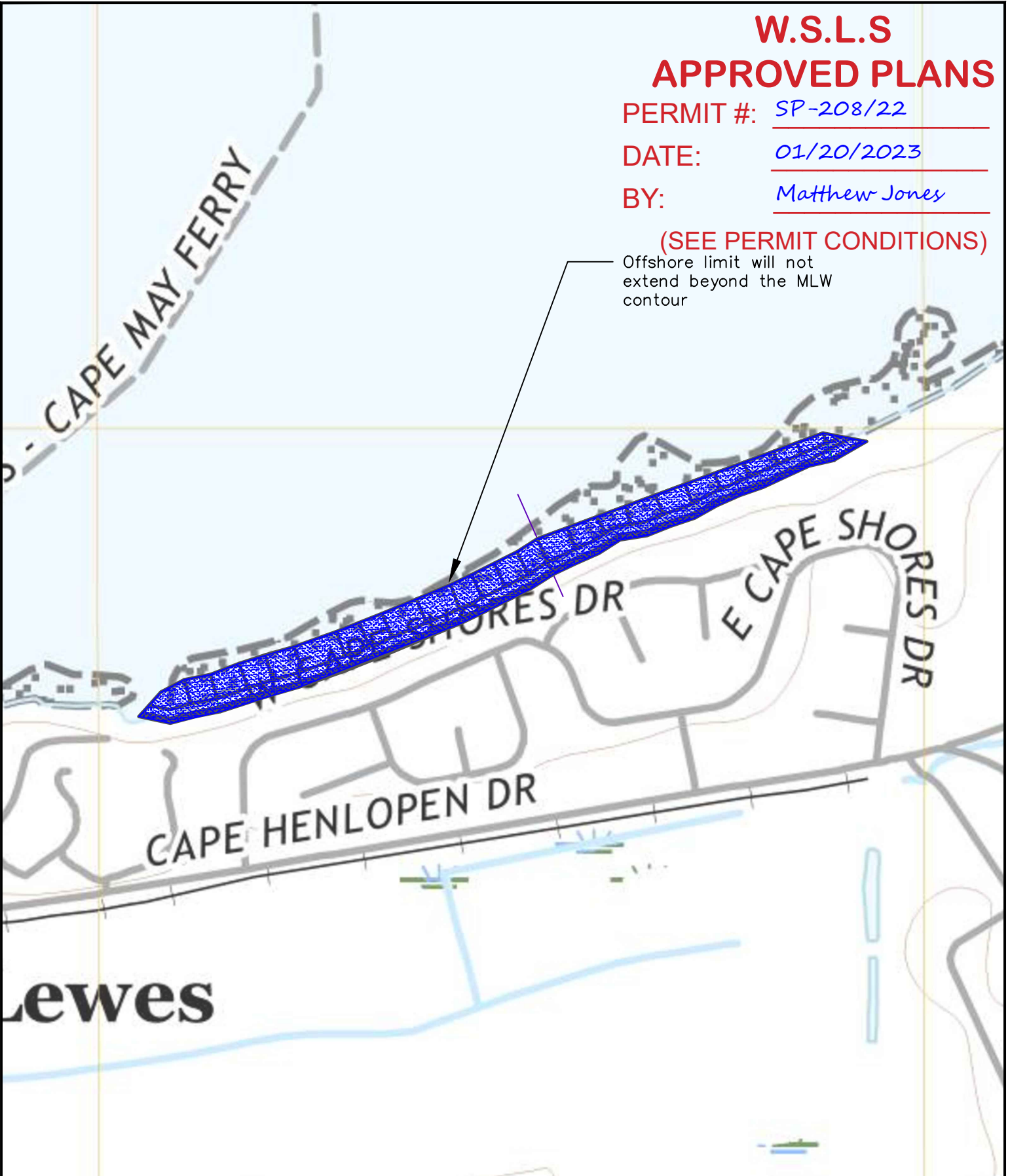
PERMIT #: SP-208/22

DATE: 01/20/2023

BY: Matthew Jones

(SEE PERMIT CONDITIONS)


Offshore limit will not extend beyond the MLW contour



Scale: 1" = 500'	Date: 04/07/22
Designed by: Others	
Drawn by: J. Faries, P.E.	
Checked by: A. Norton	
Sheet No. 2 of 4	

Cape Shores Truck Fill
Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE



DELAWARE DEPARTMENT OF
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ENVIRONMENTAL CONTROL

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901 Pilottown Rd
Lewes DE, 19958
Phone: (302) 855 - 7290

W.S.L.S APPROVED PLANS

PERMIT #: SP-208/22

DATE: 01/20/2023

BY: Matthew Jones

(SEE PERMIT CONDITIONS)



Scale: 1" = 500'	Date: 04/07/22
Designed by:	Others
Drawn by:	J. Faries, P.E.
Checked by:	A. Norton
Sheet No.	3 of 4

Cape Shores Truck Fill Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE



DELAWARE DEPARTMENT OF
NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

Division of Watershed Stewardship
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W.S.L.S APPROVED PLANS

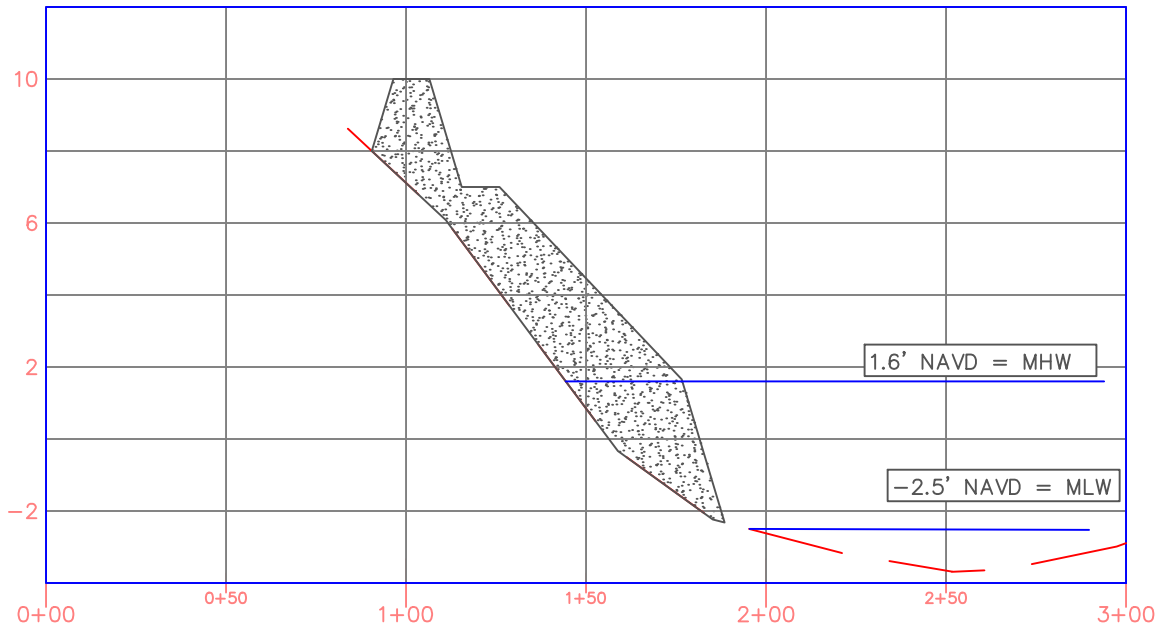
PERMIT #: SP-208/22

DATE: 01/20/2023

BY: Matthew Jones

(SEE PERMIT CONDITIONS)

CS - LRP21+90



SCALE: H: 1" = 50'
V: 1" = 5'

Scale: As Shown Date: 04/07/22

Designed by: Others

Drawn by: J. Faries, P.E.

Checked by: A. Norton

Sheet No. 4 of 4

Cape Shores Truck Fill Permit Plans

COASTAL
SUSSEX COUNTY, DELAWARE



DELAWARE DEPARTMENT OF
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DELAWARE DEPARTMENT OF
**NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

State of Delaware

Shoreline Management- Sand CS/DSSP

Invitation to Bid

Contract No. NAT22310-SAND

September 1, 2022

- *Deadline to Respond* -
September 26, 2022
2:00 PM (Local Time)

Version: 9/1/2021

CONTRACT NO. NAT22310-SAND

ALL BIDDERS:

The enclosed packet contains an "INVITATION TO BID" for NAT22310-SAND. The invitation consists of the following:

- I. DEFINITIONS and GENERAL PROVISIONS
 - A – GENERAL PROVISIONS
 - B – AWARD AND EXECUTION OF CONTRACT
 - C – GENERAL AUTHORITY
 - D – EQUAL OPPORTUNITY
- II. SPECIAL PROVISIONS
- III. TECHNICAL SPECIFICATIONS
- IV. BID QUOTATION REPLY SECTION

SAMPLE REPORTS

- 1 – MONTHLY USAGE REPORT SAMPLE
- 2 – SUBCONTRACTING (2ND TIER) QUARTERLY REPORTING SAMPLE

ATTACHMENTS

- A – BID QUOTATION
- B – NO BID REPLY FORM
- C – NON-COLLUSION STATEMENT AND ACCEPTANCE
- D – SUBCONTRACTOR INFORMATION FORM
- E – BUSINESS REFERENCES
- F – ITB EXCEPTIONS
- G – CONFIDENTIAL AND PROPRIETARY INFORMATION
- H – OFFICE OF SUPPLIER DIVERSITY (OSD) APPLICATION
- I – PERFORMANCE BOND
- J – BID BOND

In order for your bid to be considered, the bid quotation reply section shall be executed completely and correctly and returned in a sealed envelope clearly displaying the contract number, by September 26, 2022 at 2:00PM (Local Time).

Bids shall be submitted to:

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship
285 Beiser Boulevard, Suite 102
Dover, DE 19904

Please review and follow the information and instructions contained in the general and special provisions section of the invitation. Should you need additional information, please contact Joanna French, PE at Joanna.French@delaware.gov.

**Department of Natural Resources and Environmental Control
Division of Watershed Stewardship**

**I. DEFINITIONS
AND
GENERAL PROVISIONS**

The attached Definitions and General Provisions apply to all contracts and are part of each invitation to bid. The requirement to furnish a bid bond and performance bond is applicable unless waived in the Special Provisions. Should the General Provisions conflict with the Special Provisions, the Special Provisions shall prevail. Bidders or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting bid.

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

DEFINITIONS

Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

STATE: The State of Delaware

AGENCY: State Agency as noted on cover sheet.

BID: The offer of the bidder submitted on the approved form and setting forth the bidder's prices for performing the work or supplying the material or equipment described in the specifications.

BIDDER OR VENDOR: Any individual, firm, or corporation formally submitting a Bid for the material or work contemplated, acting directly or through a duly authorized representative.

BIDDER'S DEPOSIT: The security designated in the Bid to be furnished by the bidder as a guaranty of good faith to enter into a contract with the Agency if the work to be performed or the material or equipment to be furnished is awarded to the bidder.

BID INVITATION: The "bid invitation" or "invitation to bid" is a packet of material sent to vendors and consists of General Provisions, Special Provisions, specifications, and enclosures.

BOND: The approved form of security furnished by the Vendors and its surety as a guaranty of good faith on the part of the Vendor to execute the work in accordance with the terms of the contract.

CONTRACT: The written agreement covering the furnishing and delivery of material or work to be performed.

CONTRACTOR: Any individual, firm, or corporation with whom a contract is made by the Agency.

DESIGNATED OFFICIAL: The agent authorized to act for the Agency.

GENERAL PROVISIONS: General Provisions are instructions pertaining to contracts in general. They contain, in summary, requirements of laws of the State, policies of the Agency, and instructions to vendors.

ITB: Invitation to Bid.

LOCAL TIME: Eastern Standard Time/Eastern Daylight Time

SPECIAL PROVISIONS: Special Provisions are specific conditions or requirements peculiar to the contract under consideration and are supplemental to the General Provisions. Should the Special Provisions conflict with the General Provisions, the Special Provisions shall prevail.

SURETY: The corporate body which is bound with and for the contract, or which is liable, and which engages to be responsible for the contractor's payments of all debts pertaining to and for its acceptable performance of the work for which it has contracted.

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

SECTION A - GENERAL PROVISIONS

1. BID INVITATION

See "Definitions".

2. BID FORMS

The invitation to bid shall contain pre-printed forms for use by the vendor in submitting its bid. The forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, etc.

3. INTERPRETATION OF ESTIMATES

The attention of bidders is called to the fact that, unless stated otherwise, any quantities given in the Bid form are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract.

An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

4. SILENCE OF SPECIFICATIONS

The apparent silence of the specifications as to any detail, or the apparent omission from it of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the vendor.

5. EXAMINATION OF SPECIFICATIONS AND PROVISIONS

The bidder shall examine carefully the Bid and the contract forms for the material contemplated. The bidder shall investigate and satisfy itself as to the conditions to be encountered, quality and quantities of the material to be furnished, and the requirements of the Special Provisions and the contract. The submission of a Bid shall be conclusive evidence that the bidder has made examination of the aforementioned conditions.

6. KEY ITB DATES/MILESTONES

The following dates and milestones apply to this ITB and subsequent contract award. Vendors are advised that these dates and milestones are not absolute and may change due to unplanned events during the bid and award process.

Activity	Due Date
ITB Availability to Vendors	September 1, 2022
Written Questions Due No Later Than (NLT)	September 12, 2022
Written Answers Due/Posted to Website NLT	September 16, 2022
Bids Due NLT	September 26, 2022 at 2:00pm local time
Public Bid Opening	September 26, 2022 at 2:00pm local time
Contract Award	Will occur within 30 days of bid opening

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

7. INQUIRIES & QUESTIONS

We welcome your interest in working with us, and we will be pleased to answer any questions you may have in formulating your response to this Invitation to Bid.

All questions with regard to the interpretation of this Invitation must be received in writing by September 12, 2022. All questions will be answered in writing by September 16, 2022 and posted on <http://bids.delaware.gov/> website. All questions must make specific reference to the section(s) and page numbers from this Invitation to Bid where applicable. Oral explanations or instructions will not be binding.

8. PREPARATION OF BID

- a. **The bidder's Bid shall be written in ink or typewritten** on the form provided.
- b. If items are listed with a zero quantity, bidder shall state unit price **ONLY** (intended for open end purchases where estimated requirements are not known). The Bid shall show a total bid price for each item bid and the total bid price of the Bid excluding zero quantity items.

9. PRICES QUOTED

The prices quoted are those for which the material will be furnished F.O.B. Ordering Agency and include all charges that may be imposed during the period of the contract.

All prices must be quoted in U.S. Dollars.

10. DISCOUNT

No qualifying letter or statements in or attached to the Bid, or separate discounts will be considered in determining the low bid except as may be otherwise herein noted. Cash or separate discounts should be computed and incorporated into unit bid price(s).

11. SAMPLES OR BROCHURES

Samples or brochures may be required by the agency for evaluation purposes. They shall be such as to permit the Agency to compare and determine if the item offered complies with the intent of the specifications.

12. BID GUARANTY; BID BOND

Unless Bid Bond has been waived as noted in the Special Provisions, each bidder shall submit with its Bid a guaranty in sum equal to at least 10% of the total value of its bid, according to Delaware Code Title 29, Section 6927(a).

Each vendor shall furnish a bond to the State of Delaware for the benefit of **Department of Natural Resources and Environmental Control, Division of Watershed Stewardship** in the amount equal to 10% of the respective bid value. The bond shall be drawn upon an insurance or bonding company authorized to do business in the State of Delaware. A certified check made out to the State of Delaware, **Division of Watershed Stewardship** in an amount equal to 10% of the respective proposed value may be submitted in lieu of a Bid bond.

13. ITB DESIGNATED CONTACT

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Joanna French, PE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship
285 Beiser Boulevard, Suite 102
Dover, DE 19904
Joanna.French@delaware.gov

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

14. DELIVERY OF BIDS

Bids shall be delivered in sealed envelopes and shall bear on the outside the name and address of the bidder as well as the designation of the contract. Bids forwarded by U.S. Mail shall be sent first class to the address listed below. Bids forwarded by delivery service other than the U.S. Mail or hand delivered must be delivered to the address listed below. All bids must clearly display the bid number on the envelope.

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship
285 Beiser Boulevard, Suite 102
Dover, DE 19904
ATTN: Joanna French

All Bids will be accepted at the time and place set in the advertisement. Bidder bears the risk of delays in delivery and any costs for returned Bids. Bids received after the time set for public opening will be returned unopened.

15. WITHDRAWAL OF BIDS

A bidder may withdraw its Bid unopened after it has been deposited, if such a request is made prior to the time set for the opening of the Bid.

16. PUBLIC OPENING OF BIDS

The bids shall be publicly opened at the time and place specified by the Agency. Bidders or their authorized representatives are invited to be present.

17. PUBLIC INSPECTION OF BIDS

If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

18. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of its Bid or Bids:

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

- a. More than one Bid for the same contract from an individual, firm, or corporation under the same or different names.
- b. Evidence of collusion among bidders.
- c. Unsatisfactory performance record as evidenced by past experience.
- d. Any suspension or debarment of the parent company, subsidiary or individual involved with the vendor by federal, any state or any local governments within the last five (5) years.
- e. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.
- f. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the Bid incomplete, indefinite, or ambiguous as to its meaning.
- g. Non-attendance of mandatory pre-bid meetings may be cause of disqualification.

19. ADDENDA TO THE INVITATION TO BID (ITB)

If it becomes necessary to revise any part of this ITB, revisions will be posted at <http://bids.delaware.gov/> . By submitting an offer to the State, vendors have acknowledged receipt, understanding and commitment to comply with all materials, revisions, and addenda related to the Invitation to Bid.

20. LOBBYING AND GRATUITIES

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this ITB or the award of a contract resulting from this ITB shall have their Bid immediately rejected and shall be barred from further participation in this ITB.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this ITB upon agreement or understanding for a commission, or a percentage, brokerage, or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this ITB without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this ITB shall be conducted in strict accordance with the manner, forum and conditions set forth in this ITB.

21. SOLICITATION OF STATE EMPLOYEES

Until contract award, vendors shall not, directly, or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's Bid.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting

STATE OF DELAWARE

Department of Natural Resources and Environmental Control

Division of Watershed Stewardship

employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

22. INDEPENDENT CONTRACTORS

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations, or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period.

23. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third-party governmental entity determines that the State of Delaware is a dual employer, or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

24. WORK PERFORMED IN A STATE BUILDING

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees. At the present time these include, but not limited to, wearing a mask in all State buildings and the policy for State employees regarding vaccination. The vaccination policy is located at <https://dhr.delaware.gov/policies/documents/covid19-vaccination-and-test-policy.pdf> . For clarity, State buildings are those owned or leased by the State.

SECTION B - AWARD AND EXECUTION OF CONTRACT

1. CONSIDERATION OF BIDS

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- a. After the Bids have been opened, the bids will be tabulated, and the results will be made available to the public. Tabulations of the bids will be based on the correct summation of items at the unit price bid.
- b. The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to advertise for new Bids, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

2. MATERIAL GUARANTY

Before any contract is awarded, the successful bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

3. CONTRACT AWARD

Within thirty days from the date of opening Bids, the contract will be awarded or the Bids rejected.

4. EXECUTION OF CONTRACT

The bidder to whom the award is made shall execute a formal contract and bond within twenty days after date of official notice of the award of the contract.

If the successful bidder fails to execute the required contract and performance bond, as aforesaid, within twenty days after the date of official notice of the award of the contract, its Bid guaranty shall immediately become forfeited as liquidated damages. Award will then be made to the next lowest qualified bidder of the work or re-advertised, as the Agency may decide.

5. REQUIREMENT OF CONTRACT PERFORMANCE BOND

Unless Performance Bond has been waived as noted in the Special Provisions, successful bidders shall furnish a Performance Bond simultaneously with the execution of the formal contract, to the State of Delaware for the benefit of the Agency with surety in the amount of 100% of the total contract award or as otherwise provided in the Special Provisions. Said bonds shall be conditioned upon the faithful performance of the contract. Performance Bonds are not required at the time of bid submission.

The bond forms shall be provided by the Agency and the surety shall be acceptable to the Agency.

6. WARRANTY

The successful bidder(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

7. THE CONTRACT(S)

The contract(s) with the successful bidder(s) will be executed with the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship.

8. RETURN OF BIDDER'S DEPOSIT

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The deposits shall be returned to the successful bidder upon the execution of the formal contract. The deposits of unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or rejection of their bids.

9. INFORMATION REQUIREMENT

The successful bidders shall be required to advise the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship of the gross amount of purchases made as a result of the contract.

10. CONTRACT EXTENSION

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months.

11. SUPPLEMENTAL SOLICITATION

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

SECTION C – GENERAL AUTHORITY

1. AUTHORITY OF AGENCY

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of the Agency shall be final and binding.

2. LAWS TO BE OBSERVED

The contractor is presumed to know and shall strictly comply with all National, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The contractor shall indemnify and save harmless the State of Delaware, the Agency, and all Officers, Agency and Servants thereof against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by itself or by its employees.

3. APPLICABLE LAW AND JURISDICTION

This bid, any resulting contract, and any and all litigation or other disputes arising therefrom, in connection with, or related hereto shall be governed by the applicable laws, regulations and rules of evidence of the State of Delaware. Bidder submits to personal jurisdiction in the State of Delaware. Any and all litigation or other disputes arising out of, in connection with, or relating to this bid, and any resulting contract, shall be brought exclusively in a court in the State of Delaware or the United States District Court of the District of Delaware as applicable.

4. PERMITS AND LICENSES

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the contractor at its own expense.

5. PATENTED DEVICES, MATERIAL AND PROCESSES

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- a. The contractor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner and shall file a copy of this agreement with the Agency.
- b. The contractor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

6. EMERGENCY TERMINATION OF CONTRACT

- a. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
- b. In the event the contractor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

7. TAX EXEMPTION

- a. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510> . Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the Bid may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the contractor. Each bidder shall take its exemption into account in calculating its bid for its work.

8. OR EQUAL (PRODUCTS BY NAME)

Specifications of products by name are intended to be descriptive of quality or workmanship, finish and performance. Desirable characteristics are not intended to be restrictive. Substitutions of products for those named will be considered provided the vendor certifies that the function, characteristics, performance and endurance qualities of the material offered is equal or superior to that specified.

9. BID EVALUATION AND AWARD

The Department of Natural Resources and Environmental Control, Division of Watershed Stewardship will award this contract to the lowest responsible bidder(s) which in their judgment best serves the interest of the State of Delaware in accordance with Delaware Code Title 29, Section 6923(k). Personnel with experience and technical background may be utilized by the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship in making judgment. In case of error in price extension, the unit price(s) shall prevail.

10. INVOICING

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After the awards are made, the agencies participating in the bid may forward their purchase orders to the successful bidder(s) in accordance with State Purchasing Procedures. The State will generate a payment voucher upon receipt of an invoice from the vendor.

11. SEVERABILITY

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

12. ASSIGNMENT OF ANTITRUST CLAIMS

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

SECTION D - EQUAL OPPORTUNITY

1. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the contractor agrees as follows:

- a. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- b. During the performance of this contract, the contractor agrees as follows:
 1. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the

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following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin.”
- c. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies, or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

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II. SPECIAL PROVISIONS

1. CONTRACT REQUIREMENTS

This contract will be issued to cover the requirements for providing the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship with sand for shoreline management activities at various sites in Sussex Counties as specified in Part III – Technical Specifications.

2. AGENCY USE CONTRACT

Pursuant to 29 *Del. C.* § 6904(e) respectively, if no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

3. CONTRACT PERIOD

Within 30 days from the date of opening proposals, the contract(s) will be awarded, or the proposals rejected. Each vendor's contract shall be valid for one year from the date of execution. Each contract may be renewed for three (3) additional one (1) year extension periods through negotiation between the contractor and Department of Natural Resources and Environmental Control, Division of Watershed Stewardship. Negotiation must be initiated no later than ninety (90) days prior to the termination of the current agreement.

4. PRICES

Prices shall remain firm for the term of the contract. All prices shall be quoted in U.S. Dollars.

Vendors are not restricted from offering lower pricing at any time during the contract term.

5. NUMBER OF COPIES WITH MAILING OF BID

To be considered, all Bids must be submitted in writing and respond to the items outlined in this ITB. The State reserves the right to reject any non-responsive or non-conforming Bids. Each Bid must be submitted with one paper copy and one electronic copy on CD or DVD media disk. One of the copies shall be marked "Master Copy" and will contain original signatures in all locations requiring a vendor signature. The remaining copies do not require original signatures.

6. COOPERATIVES

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation. State of Delaware terms will take precedence.

7. POTENTIAL CONTRACT OVERLAP

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

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8. SUPPLEMENTAL SOLICITATION

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

9. PRICE ADJUSTMENT

The Vendor is not prohibited from offering a price reduction on its services or material offered under the contract. The State is not prohibited from requesting a price reduction on those services or material during the initial term or any subsequent options that the State may agree to exercise.

If agreement is reached to extend this contract beyond the initial term period, the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship shall have the option of offering a determined price adjustment and shall not exceed the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

10. SHIPPING TERMS

F.O.B. destination; freight pre-paid.

11. QUANTITIES

The attention of bidders is called to the fact that, unless stated otherwise, the quantities given in the Bid are best estimates and are given as a basis for the comparison of bids. Quantities ordered may be increased or decreased by any eligible agency as deemed necessary during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.

Prior contract utilization may be viewed on the Delaware Open Data Portal <https://data.delaware.gov/>. The Government and Finance data sets provide Central Contract Line Item Spend by Fiscal Year among several additional data products. Past usage shall not be considered a guaranteed future volume.

12. ELECTRONIC CATALOG

At the discretion of Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, the successful vendor(s) may be required to submit their items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

13. FUNDING OUT

The continuation of this contract is contingent upon funding appropriated by the legislature.

14. BID BOND REQUIREMENT

The Bid Bond requirement has been waived.

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15. PERFORMANCE BOND REQUIREMENT

The Performance Bond requirement has been waived.

16. MANDATORY INSURANCE REQUIREMENTS

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
 1. \$1,000,000 combined single limit each accident, for bodily injury;
 2. \$250,000 for property damage to others;
 3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
 4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* § 2118; and
 5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Department of Natural Resources and Environmental Control
Division of Watershed Stewardship
Contract No: NAT22310-SAND
State of Delaware
285 Beiser Boulevard, Suite 102
Dover, DE 19904

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Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

17. BASIS OF AWARD

Department of Natural Resources and Environmental Control, Division of Watershed Stewardship shall award this contract to the lowest responsible and responsive bidder(s) who best meets the terms and conditions of the bid. The award will be made on basis of price, product evaluation, and prior history of service and capability.

Department of Natural Resources and Environmental Control, Division of Watershed Stewardship reserves the right to reject any or all bids in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware, pursuant to 29 *Del. C.* § 6926.

18. STATE OF DELAWARE BUSINESS LICENSE

Prior to receiving an award, the successful vendor shall either furnish Department of Natural Resources and Environmental Control, Division of Watershed Stewardship with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899-8750 or by telephone to one of the following numbers: (302) 577-8201 - Public Service, (302) 577-8205 - Licensing Department.

Information regarding the award of this contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

19. INDEMNIFICATION

a. General Indemnification

By submitting a Bid, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract.

b. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without

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limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

1. Procure the right for the State of Delaware to continue using the Product(s);
2. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
3. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

20. OWNERSHIP OF INTELLECTUAL PROPERTY

All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the State of Delaware. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the State to evidence the State's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

21. NON-PERFORMANCE

In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may terminate any individual orders in accordance with Special Provisions, Item labeled "TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS" below and purchase equivalent product on the open market. Regarding any such open market purchase, payment for any difference in cost or expense in excess of the contract prices for reasonably equivalent products or services herein shall be the responsibility of the Vendor and shall be submitted to the State no later than 30 days following the delivery of the State's invoice detailing the open market purchase. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

22. FORCE MAJEURE; APPLICABILITY

Neither the Recipient nor the Government shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:

- a) Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;
- b) Diseases, plagues, quarantine, epidemics or pandemics;
- c) Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or

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- d) The State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

Notwithstanding the content of subparagraphs (a) through (d) of this paragraph, Recipient agrees that any event giving rise to *Force Majeure* as defined herein shall not relieve the Recipient of the obligation to perform and carry out any of the Mandatory Terms and Conditions set forth in this document.

23. CONTRACTOR NON-ENTITLEMENT

State of Delaware Contractors for Materiel and for Services shall not have legal entitlement to, nor seek business from another Contractors' Central Contract. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract as they are not a "Covered Agency" as defined by Title 29 Chapter 69 of the State Procurement Code.

24. EXCEPTIONS

Bidders may elect to take **minor exception** to the terms and conditions of this ITB. Department of Natural Resources and Environmental Control, Division of Watershed Stewardship shall evaluate each exception according to the intent of the terms and conditions contained herein but Department of Natural Resources and Environmental Control, Division of Watershed Stewardship must reject exceptions that do not conform to State bid law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening.

Exceptions must be submitted utilizing Attachment F to be considered. Department of Natural Resources and Environmental Control, Division of Watershed Stewardship maintains sole discretion to reject any vendor exceptions that are submitted.

25. MANDATORY USAGE REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Sample Report 1) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to vendorusage@delaware.gov with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15th will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured and prices paid. Reports are required monthly, including those with "no spend". Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future Bids.

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In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Sample Report 2.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's contract manager on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contracts spend during the covered periods shall result in a report even if the contract has expired by the report due date.

26. BUSINESS REFERENCES

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

PLEASE DO NOT UTILIZE STATE OF DELAWARE PERSONNEL AS REFERENCES.

27. ORDERING PROCEDURE

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, email, fax, or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs, or conditions.

28. PURCHASE ORDERS

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **NAT22310-SAND** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

29. BILLING

The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.

30. PAYMENT

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

31. PRODUCT SUBSTITUTION

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All items delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the Bid unless specific approval is given by Department of Natural Resources and Environmental Control, Division of Watershed Stewardship to do otherwise. However, awarded vendors are highly encouraged to offer any like substitute product (s); either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost savings to the state exists. In such cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

32. OPPORTUNITY BUYS

The Secretary for the Department of Natural Resources and Environmental Control can waive use of an agency contract pursuant to 29 *Del. C.* § 6911(d). A process has been developed to permit any vendor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a contract. See [Opportunity Buy Flowchart](#). The Director will afford any vendor on an existing contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted vendor prior to a waiver being granted.

33. I FOUND IT CHEAPER

The Secretary for the Department of Natural Resources and Environmental Control can waive use of an agency contract pursuant to 29 *Del. C.* § 6911(d). A process has been developed to permit any State employee or Vendor to identify a lower price for material and or services for consideration despite the existence of a contract. See [I Found It Cheaper Flowchart](#). The Director will afford any Vendor on an existing contract an opportunity to match or to beat the I Found It Cheaper suggestion and if not matched or beaten, approve the purchase via a waiver.

34. BID/CONTRACT EXECUTION

Both the non-collusion statement that is enclosed with this Invitation to Bid and the contract form delivered to the successful bidder for signature **shall** be executed by a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware, Enter Agency Name.

The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at <http://esupplier.erp.delaware.gov>. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching". If the Taxpayer ID and name do not match, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-672-5000.

35. VENDOR RESPONSIBILITY

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this ITB whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's Bid by completing Attachment D, and are subject the approval and acceptance of Department of Natural Resources and Environmental Control, Division of Watershed Stewardship.

36. PERSONNEL, EQUIPMENT AND SERVICES

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- a. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
- b. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
- c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment D are considered approved upon award. Changes to those subcontractor(s) listed in Attachment D must be approved in writing by the State.

37. FAIR BACKGROUND CHECK PRACTICES

Pursuant to 29 *Del. C.* [§ 6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 *Del. C.* [§ 711\(g\)](#) for applicable established provisions.

38. VENDOR BACKGROUND CHECK REQUIREMENTS

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

Delaware Sex Offender Central Registry at:
<https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract but may provide support or off-site premises service for contract vendors. Should an individual be identified, and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

39. DRUG TESTING REQUIREMENTS FOR LARGE PUBLIC WORKS

Pursuant to 29 *Del. C.* [§6908\(a\)\(6\)](#), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 *Del. C.* [§6962](#).

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Final publication of the identified regulations can be found at the following:

[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

40. LIFE CYCLE COSTING

If applicable, the specifications contained within this ITB have been developed through Life Cycle Cost Analysis that will allow the State to realize the lowest total cost of ownership and operation over the useful life of the equipment

41. MINIMUM WAGE RATES

Work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php> .

42. PREVAILING WAGE

The prevailing wage law, 29 Del.C. §6960, is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting and decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed.

43. ENVIRONMENTAL PROCUREMENT PRODUCTS

- a. Energy Star - If applicable, the Contractor must provide products that earn the ENERGY STAR rating and meet the ENERGY STAR specifications for energy efficiency in order to keep overall event costs to a minimum. The Contractor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products.
- b. Green Products – third party certification of green products accepted from GSS w/approved green certification shall be offered wherever available in addition to or as a substitute for non-green products.
- c. Contractors shall report all green items procured during the monthly reporting period using the Usage Report that will be provided to the awarded Vendor(s).
- d. Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found: [Environmentally Preferred Purchasing Policy](#)

44. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

The individual orders may be terminated as follows:

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a. Termination for Cause

If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations, or if the Vendor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.

b. Termination for Convenience

The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

c. Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

45. DISPUTE RESOLUTION

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

46. REMEDIES

Except as otherwise provided in this solicitation, including but not limited to Section 45 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

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47. TERMINATION OF CONTRACT

The contract resulting from this ITB may be terminated as follows by Department of Natural Resources and Environmental Control, Division of Watershed Stewardship.

a. Termination for Cause

If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

b. Termination for Convenience

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

c. Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

48. CHANGES

Both parties may, from time to time, require changes in the services to be provided by the Vendor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by and between the Agency and the Vendor shall be incorporated in written amendments to the Purchase Order or contract.

49. AFFIRMATION

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

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50. AUDIT ACCESS TO RECORDS

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

51. IRS 1075 Publication (If Applicable)

a. Performance

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the contractor or the contractor's responsible employees.

The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

The contractor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

b. Criminal/Civil Sanctions

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Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. Inspection

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this

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contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

52. ASSIGNMENT

This contract shall not be assigned except by express prior written consent from the Agency.

53. NOTICE

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**Director, DNREC, Division of Watershed Stewardship
RE: NAT22310-SAND
State of Delaware
285 Beiser Boulevard, Suite 102
Dover, DE 19904**

54. VENDOR EMERGENCY RESPONSE POINT OF CONTACT

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty-four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the Bid as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

55. SUBCONTRACTS

Subcontracting is permitted under this ITB and contract. However, every subcontractor shall be identified in the Bid (Attachment D) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the ITB and with all local, State and Federal Laws. The Vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

If a company elects to be a subcontractor for another vendor, the subcontractor may not independently bid on this solicitation.

56. AGENCY'S RESPONSIBILITIES

The Agency shall:

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- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Vendor to the Agency and render to the Vendor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Vendor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible.
Corrective Action Report

57. CONFIDENTIALITY

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's Bid will be treated as confidential during the evaluation process. As such, vendor Bids will not be available for review by anyone other than the State of Delaware/Bid Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information until a fully executed contract is received, unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a once a fully executed contracts is received, the content of all vendor Bids are subject to FOIA's public disclosure obligations and exemptions.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Bids must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their Bid without including confidential business information, they must adhere to the following procedure or their Bid may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their Bid as confidential business information.

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Vendor(s) may submit portions of a Bid considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a Bid accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed. A vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a Bid or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a Bid may enter the public domain.

58. NO PRESS RELEASES OR PUBLIC DISCLOSURE

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

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III. TECHNICAL SPECIFICATIONS

Contract Title: Shoreline Management Sand CS/DSSP
Contract No. NAT22310-SAND

MATERIAL

Nominally fifty-three thousand (53,000) tons of sand, divided by location as described below in CONSTRUCTION METHODS section. Sand shall be natural or manufactured sand and shall be clean and free from roots and other organic matter, trash or debris. In addition, the sand shall not contain minerals which may be potentially staining, e.g. iron, clay. The sand shall be white, pale tan or light gray in color and shall match one or more of the colors classified by the Munsell® Soil Color Charts as described below. Gradation test reports shall be submitted prior to delivery of sand to the project site.

Median Grain Size (d50): 0.3mm to 1.18mm
Maximum Material retained on #4 sieve: 3 percent
Maximum material passing #200 sieve: 3 percent

Dry Munsell® Color Hue: 2.5Y, 5Y or 10YR
Value/Chroma: 6/1, 7/1, 7/2, 7/3, 8/1, 8/2, 8/3

CONSTRUCTION METHODS

This contract includes the itemization of sand at the following locations:

1. Cape Shores - 45,000 tons
2. Delaware Seashore State Park, North Inlet Day Area –8000 tons

TOTAL: 53,000 TONS

Vendor will deliver sand via roadways to designated staging area(s) at each location specified in this section.

NOTE: Vendor must be capable of providing a minimum of 1,500 tons of sand per day at a project location.

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IV. BID QUOTATION REPLY SECTION

Contract No. NAT22310-SAND

Shoreline Management Sand CS/DSSP

Please fill out the attached forms fully and completely and return with your bid in a sealed envelope clearly displaying the contract number to Department of Natural Resources and Environmental Control, Division of Watershed Stewardship by September 26, 2022 at 2:00PM (Local Time) at which time bids will be opened.

Bids shall be submitted to:

**STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship
285 Beiser Boulevard, Suite 102
Dover, DE 19904**

PUBLIC BID OPENINGS

The public bid opening ensures the citizens of Delaware that contracts are being bid fairly on a competitive basis and comply with Delaware procurement laws. The agency conducting the opening is required by law to publicly open the bids at the time and place specified and the contract shall be awarded within thirty (30) days thereafter. The main purpose of the bid opening is to reveal the name(s) of the bidders(s), not to serve as a forum for determining the apparent low bidders. The disclosure of additional information, including prices, shall be at the discretion of the contracting agency until such time that the responsiveness of each bid has been determined.

After receipt of a fully executed contract(s), the Delaware public and all bidders are invited to make an appointment with the contracting officer in order to review pricing and other non-confidential information.

NOTE: ONLY THE BIDDER'S NAME WILL BE READ AT THE BID OPENING

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

Attachment A

Contract No.: NAT22310-SAND

Contract Title: Shoreline Management and CS/DSSP

BID QUOTATION

Item Number	Location/Destination	Nominal Quantity (tons)	Unit Price (per ton)	Total Amount
1	Cape Shores	45,000	\$ 21.98	\$ 989,100.00
2	Delaware Seashore State Park - North Inlet Day Area	8,000	\$ 21.98	\$ 175,840.00
3			\$	\$
4			\$	\$
5			\$	\$

DELIVERY

Ship Stock _____ days ARO

Ship Non-Stock _____ days ARO

CONTRACT TOTAL VALUE \$ 1,164,940.00

COMPANY

M L Joseph Sand & Gravel

25136 Dupont Blvd

Georgetown, DE 19947

DATE September 20, 2022

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

Attachment B

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship
285 Beiser Boulevard, Suite 102
Dover, DE 19904

NO BID REPLY FORM

Contract No. **NAT22310-SAND**

Contract Title: **Shoreline Management Sand CS/DSSP**

To assist us in obtaining good competition on our Request for Bids, we ask that each firm that has received an invitation, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Bidder's List by so indicating below, or do not return this form or bona fide bid.

Unfortunately, we must offer a "No Bid" at this time because:

- 1. We do not wish to participate in the bid process.
- 2. We do not wish to bid under the terms and conditions of the Request for Bid document. Our objections are:

- 3. We do not feel we can be competitive.
- 4. We cannot submit a Bid because of the marketing or franchising policies of the manufacturing company.
- 5. We do not wish to sell to the State. Our objections are: _____

- 6. We do not sell the items/services on which Bids are requested.
- 7. Other: _____

FIRM NAME

SIGNATURE

We wish to remain on the Bidder's List **for these goods or services.**

We wish to be deleted from the Bidder's List **for these goods or services.**

PLEASE FORWARD NO BID REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.

STATE OF DELAWARE
 Department of Natural Resources and Environmental Control
 Division of Watershed Stewardship

Attachment C

CONTRACT NO.: NAT22310-SAND **TITLE:** Shoreline Management Sand
DEADLINE TO RESPOND: September 26, 2022

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this Bid, and further certifies that it is not a sub-contractor to another Vendor who also submitted a Bid as a primary Vendor in response to this solicitation submitted this date to the State of Delaware, Department of Natural Resources and Environmental Control, Division of Watershed Stewardship.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment F, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Natural Resources and Environmental Control, Division of Watershed Stewardship.

COMPANY NAME ML Joseph SAND & Gravel Co. INC. (Check one)

<input checked="" type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

NAME OF AUTHORIZED REPRESENTATIVE Kenneth Adams

SIGNATURE *Kenneth Adams* TITLE President

COMPANY ADDRESS 25136 Dupont Blvd Georgetown, DE 19947

PHONE NUMBER 302-856-7396 FAX NUMBER 302-856-1725

EMAIL ADDRESS Kadams@melvinjoseph.com

FEDERAL E.I. NUMBER 51-0330067 STATE OF DELAWARE LICENSE NUMBER 1991831157

COMPANY CLASSIFICATIONS: CERT. NO.:	Certification type(s)	Circle all that apply	
		Minority Business Enterprise (MBE)	Yes
	Woman Business Enterprise (WBE)	Yes	<input checked="" type="radio"/> No
	Disadvantaged Business Enterprise (DBE)	Yes	<input checked="" type="radio"/> No
	Veteran Owned Business Enterprise (VOBE)	Yes	<input checked="" type="radio"/> No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	<input checked="" type="radio"/> No

The above table is for informational and statistical use only.

PURCHASE ORDERS SHOULD BE SENT TO: (COMPANY NAME) ML Joseph Sand & Gravel Co. Inc.

ADDRESS 25136 Dupont Blvd Georgetown DE 19947

CONTACT Kenneth Adams

PHONE NUMBER 302-856-7396 FAX NUMBER 302-856-1725

EMAIL ADDRESS Kadams@melvinjoseph.com

AFFIRMATION: Within the past five (5) years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?
 YES _____ NO if yes, please explain _____

THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED FOR YOUR BID TO BE CONSIDERED

SWORN TO AND SUBSCRIBED BEFORE ME this 19th day of September, 20 22

Notary Public Kathy S Armstrong

My commission expires 01-11-2025
 KATHY S. ARMSTRONG

City of Georgetown

County of Sussex

NOTARY PUBLIC
 STATE OF DELAWARE State of Delaware

My Commission Expires January 11, 2025

STATE OF DELAWARE
 Department of Natural Resources and Environmental Control
 Division of Watershed Stewardship

Attachment D

SUBCONTRACTOR INFORMATION FORM

Contract No. **NAT22310-SAND**
 Contract Title: **Shoreline Management Sand CS/DSSP**

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. NAT22310-SAND	2. Proposing Vendor Name: <i>ML Joseph SAND & Gravel</i>	3. Mailing Address <i>25136 Dupont Blvd Georgetown, De 19947</i>
4. SUBCONTRACTOR		
a. NAME <i>ML JOSEPH SAND & Gravel Co.</i>	4c. Company OSD Classification: Certification Number:	
b. Mailing Address: <i>25136 Dupont Blvd Georgetown, De 19947</i>	4d. Women Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR <i>Supply Beach sand to Cape Shores (8,000 Tons) Supply Beach Sand to North Inlet DAY AREA (45,000 T)</i>		
6a. NAME OF PERSON SIGNING	7. BY (Signature)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING	<i>[Signature]</i>	<i>9-20-22</i>
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING	<i>[Signature]</i>	<i>9-19-22</i>

Use a separate form for each subcontractor

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

Attachment E

BUSINESS REFERENCES

Contract No. **NAT22310-SAND**

Contract Title: **Shoreline Management Sand CS/DSSP**

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list the contract(s).

- | | |
|---|---------------------------------------|
| Contact Name & Title: | Skip Jones, President |
| Business Name: | Atlantic Concrete |
| Address: | 812 NE Front St.
MILFORD, DE 19963 |
| Email: | |
| Phone # / Fax #: | 302-422-8017 |
| Current Vendor (YES or NO): | Yes |
| Years Associated & Type of Work Performed: | 28 years, Supply State Approved SAND |

- | | |
|---|--|
| Contact Name & Title: | JOE TAYLOR |
| Business Name: | RIVER Asphalt |
| Address: | 30548 Thorogoods Rd
DAGSBORO DE 19939 |
| Email: | JTAYLOR@HKGROUP.COM |
| Phone # / Fax #: | 302-934-7635 |
| Current Vendor (YES or NO): | YES |
| Years Associated & Type of Work Performed: | 12 years, Supply STATE Approved SAND |

- | | |
|---|---|
| Contact Name & Title: | Steve Wilson |
| Business Name: | Allan Myers |
| Address: | 22351 JOSEPH RD
Georgetown, DE 19947 |
| Email: | STEVE.WILSON@ALLANMYERS.COM |
| Phone # / Fax #: | 302-864-9285 |
| Current Vendor (YES or NO): | Yes |
| Years Associated & Type of Work Performed: | 10 years, Supply STATE Approved SAND |

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.



**The Office of Supplier Diversity (OSD) has moved to the
Division of Small Business (DSB)**

Supplier Diversity Applications can be found here:
<https://business.delaware.gov/osd/>

Completed Applications can be emailed to: OSD@Delaware.gov

For more information, please send an email to OSD:
OSD@Delaware.gov or call 302-577-8477

Self-Register to receive business development information here:
<https://business.delaware.gov/directory-of-certified-businesses/>

New Address for OSD:

Office of Supplier Diversity (OSD)
State of Delaware
Division of Small Business
820 N. French Street, 10th Floor
Wilmington, DE 19801

Telephone: 302-577-8477 Fax: 302-736-7915

Email: OSD@Delaware.gov

Web site: <https://business.delaware.gov/osd/>

Dover address for the Division of Small Business

Local applicants may drop off applications here:

Division of Small Business
99 Kings Highway
Dover, DE 19901
Phone: 302-739-4271

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

Attachment I

BOND HAS BEEN WAIVED

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Division of Watershed Stewardship

Attachment J

Bid Bond

BOND HAS BEEN WAIVED



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF FISH & WILDLIFE
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**DIRECTOR'S
OFFICE**

PHONE
(302) 739-9910

Requested by: November 15, 2022
Sent on: October 31, 2022

Catherine Bronson
Department of Natural Resources and Environmental Control
Wetlands and Waterways Section
89 Kings Highway
Dover, DE 19901

Subject: Pending Applications for Subaqueous and/or Wetlands Projects
Re: Public Notice # 21

Subaqueous Lands Permit

W&D Cropper Family LP (233-11.00-91.00-Dredging Location & 233-11.00-90.00-Disposal Site)-To hydraulically maintenance dredge up to 6,667 cubic yards of material, dredging to a depth of -4 feet below mean low water from the Gull Ways Campground Marina in Pepper Creek at Crab Pier Drive, Dagsboro, Sussex County, DE, and disposing of the material at a previously authorized confined disposal facility located on site.

DFW Comments:

Anadromous Species

Sampling conducted by our Division's fisheries staff revealed that Pepper Creek supports a large number of juvenile migratory fish and is thus considered an important nursery area in the Inland Bays. Several species of particular commercial and recreational importance utilize the creek and could be impacted by this project. A primary species of concern for this project is summer flounder (*Paralichthys dentatus*) which utilize the creek as a nursery area. We request that dredging **not** occur from **March 1st to September 30th** to allow time for young of the year to grow large enough to be less vulnerable to habitat-altering activities and then migrate out of the system. This window should minimize the number of young of the year flounder impacted by the project.

Lewes Yacht Club (3-35-4.14-51.00-Dredging Location & 3-35-4.00-13.04-Disposal Site)- To hydraulically maintenance dredge up to 4,600 cubic yards of material, dredging to a depth of -6 feet below mean low water from the marina basin at the Lewes Yacht Club, adjacent to the Lewes and Rehoboth Canal, located at 2701 Cedar Street, Lewes, Sussex County, DE and

disposing of the material at a confined disposal facility, off of Park Road, in Lewes, Sussex County, DE.

DFW Comments:

State-rare Fish

A population of *Apeltes quadracus* (fourspine stickleback) is found within the Lewes-Rehoboth Canal. This species is dependent on calm, shallow, heavily vegetated waters for its habitat and for spawning. Measures should be taken to avoid impacts to submerged aquatic vegetation and to decrease downstream sedimentation during construction. **If** aquatic vegetation is prevalent in the project area, in-water work should not occur from **April 1st – May 30th** to minimize impacts to spawning activities.

American Eel

Previous work conducted by the Division of Fisheries had indicated the larval ingress of eels at the Roosevelt Inlet. Therefore, **no** dredging should occur from **March 1st - June 30th** to reduce the impact on this species.

Anadromous Fish Species

Sampling conducted by our Division's fisheries staff revealed that Lewes-Rehoboth Canal supports a large number of juvenile migratory fish and is thus considered an important nursery area in the Inland Bays. Several species of particular commercial and recreational importance utilize the creek and could be impacted by this project. A primary species of concern for this project is Summer Flounder (*Paralichthys dentatus*) which utilize the canal as a nursery area. We request that dredging **not** occur from **March 1st to September 30th** to allow time for young of the year to grow large enough to be less vulnerable to habitat-altering activities and then migrate out of the system. This window should minimize the number of young of the year flounder impacted by dredging.

University of Delaware (335-4.00-13.01-Dredging Location & 335-4.00-13.04-Disposal Site)-To hydraulically maintenance dredge up to 17,800 cubic yards of material, dredging up to a depth of -12 feet below mean low water from the marina basin at the University of Delaware-College of Earth, Ocean and Environment, adjacent to the Lewes and Rehoboth Canal, located at 700 Pilottown Road, Lewes, Sussex County, DE and disposing of the material at a confined disposal facility, off of Park Road, in Lewes, Sussex County, DE.

DFW Comments:

State-rare Fish

A population of *Apeltes quadracus* (fourspine stickleback) is found within the Lewes-Rehoboth Canal. This species is dependent on calm, shallow, heavily vegetated waters for its habitat and for spawning. Measures should be taken to avoid impacts to submerged aquatic vegetation and to decrease downstream sedimentation during construction. **If** aquatic vegetation is prevalent in the project area, in-water work should not occur from **April 1st – May 30th** to minimize impacts to spawning activities.

American Eel

Previous work conducted by the Division of Fisheries had indicated the larval ingress of eels at the Roosevelt Inlet. Therefore, **no** dredging should occur from **March 1st - June 30th** to reduce the impact on this species.

Anadromous Fish Species

Sampling conducted by our Division's fisheries staff revealed that Lewes-Rehoboth Canal supports a large number of juvenile migratory fish and is thus considered an important nursery area in the Inland Bays. Several species of particular commercial and recreational importance utilize the creek and could be impacted by this project. A primary species of concern for this project is Summer Flounder (*Paralichthys dentatus*) which utilize the canal as a nursery area. We request that dredging **not** occur from **March 1st to September 30th** to allow time for young of the year to grow large enough to be less vulnerable to habitat-altering activities and then migrate out of the system. This window should minimize the number of young of the year flounder impacted by dredging.

Subaqueous Lands Permit and Water Quality Certification Requests

Cape Shores Homeowners Association (3-35-5.00-240.00)-To place up to 31,500 cubic yards of sand material from an inland borrow source along 3,200 linear feet of beach along the Delaware Bay within Cape Shores, Lewes, Sussex County, DE. Additionally, the applicant requests for a Section §401 Water Quality Certification. Approval is being requested to permanently fill subaqueous lands with approximately 31,500 cubic yards of fill material.

DFW Comments:

Migratory Shorebirds (incl. Red Knot)

Slaughter Beach provides critically important habitat for migratory shorebirds, including the federally threatened red knot (*Calidris canutus rufa*), as they stop over in Delaware to acquire food resources and reach their optimum body condition (weight gain) before migrating to their Arctic nesting grounds. Each year, red knot and other shorebirds stop here to feed on horseshoe crab eggs. In order to avoid interrupting red knot activity during this critical stage of their migration, we recommend a time of year restriction of project activities between **April 15th to June 7th**. Note that because the federally threatened red knot may be affected, Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) may be necessary. Please contact Julie Thompson-Slacum with the USFWS at 410-573-4595 or at Julie_Thompson-Slacum@fws.gov.

Beach Nesting Birds

Currently, there are no records of state-rare or federally listed plants, animals or natural communities at this project site. However, this project may create suitable habitat for beach nesting birds, including the federally listed piping plover (*Charadrius melodus*). Considering that this site connects to Cape Henlopen State Park where this species and others nest, it is possible that this new beach area would be attractive for nesting as well.

The local breeding population of piping plovers in Delaware has increased in recent years. This increase in local breeding pairs suggests prospecting piping plovers, such as young birds, may be seeking previously unoccupied novel breeding habitat. Thus, a time of year restriction from **March 1st to September 15th** shall be implemented for piping plover and other beach nesting species. If work cannot be completed outside of this time frame, please coordinate with Coastal

Avian Biologist, Henrietta Bellman at (302) 735-3612 or Henrietta.Bellman@delaware.gov on possibilities to minimize impacts to beach nesting shorebirds.

We will likely survey for beach nesting birds for several years following the completion of this project. Not only will this survey allow the detection and subsequent protection of any nests that are found, but it will also provide data regarding beach nourishment projects and the potential to create suitable nesting habitat. If piping plover nest within the project site, the applicant will need to coordinate and cooperate with Federal and State Agencies on the protection and management of this new nesting habitat.

Horseshoe Crabs

The project site is a known high-density spawning area for horseshoe crabs. Work should not be conducted from **April 15th to August 30th** to ensure that this species is not impacted. We further encourage beach renourishment be performed in a manner that maintains the existing slope to that which naturally exists, as well as the use of sand of similar grain size to that which naturally exists. For more information, please contact Jordan Zimmerman at (302) 735-2960 or Jordan.Zimmerman@delaware.gov.

Pinnipeds

Four different species of seals are known to occupy the Lewes Harbor area in the winter months. These species include the harbor seal (*Phoca vitulina*), harp seal (*Pagophilus (Phoca) groenlandicus*), gray seal (*Halichoerus grypus*), and hooded seal (*Cystophora cristata*). Marine mammals such as harbor seals are protected under the Marine Mammal Protection Act of 1972 (MMPA) which prohibits the “take” of all marine mammal species. Under the MMPA, the term “take” is defined as “harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Furthermore, “harassment” is defined as “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild, or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering”. If any seals are encountered on the beach during sand replenishment, NOAA recommends that people remain at least 50 yards away from them to comply with the MMPA. If seals are likely to be encountered, the Division of Fish and Wildlife recommends that Cape Shores HOA applies for an Incidental Harassment Authorization (IHA) with NOAA at least 5-8 months prior the start of the project.

The Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship (Adjacent to 5-00-11517-01-2900-00001)- To place up to 28,000 cubic yards of sand material from an inland borrow source along 1,500 linear feet of beach. The orientation of the renourishment project begins at the southern Murderkill River entrance channel jetty and extends to the southernmost residence along South Bowers Beach along the Delaware Bay Lewes, Sussex County, DE. Additionally, the applicant requests for a Section §401 Water Quality Certification. Approval is being requested to permanently fill subaqueous lands with approximately 28,000 cubic yards of fill material.

DFW Comments:

Migratory Shorebirds (incl. Red Knot)

Bowers Beach provides critically important habitat for migratory shorebirds, including the federally threatened red knot (*Calidris canutus rufa*), as they stop over in Delaware to acquire

food resources and reach their optimum body condition (weight gain) before migrating to their Arctic nesting grounds. Each year, red knot and other shorebirds stop here to feed on horseshoe crab eggs. In order to avoid interrupting red knot activity during this critical stage of their migration, we recommend a time of year restriction of project activities between **April 15th to June 7th**. Note that because the federally threatened red knot may be affected, Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) may be necessary. Please contact Julie Thompson-Slacum with the USFWS at 410-573-4595 or at [Julie Thompson-Slacum@fws.gov](mailto:Julie.Thompson-Slacum@fws.gov).

Horseshoe Crabs

The project site is a known high-density spawning area for horseshoe crabs. Work should not be conducted from **April 15th to August 30th** to ensure that this species is not impacted. We further encourage beach renourishment be performed in a manner that maintains the existing slope to that which naturally exists, as well as the use of sand of similar grain size to that which naturally exists. For more information, please contact Jordan Zimmerman at (302) 735-2960 or Jordan.Zimmerman@delaware.gov.

Diamondback Terrapin

The diamondback terrapin (*Malaclemys terrapin*) is a brackish water turtle found in the state's coastal inland bays, Delaware Bay, and its tidal brackish tributaries. It spends most of its life in the water, until spring when (primarily) females seek open upland sandy areas to lay eggs. The diamondback terrapin is listed as a Species of Greatest Conservation Need (SGCN) in the Delaware Wildlife Action Plan. Primary threats to this species are 1) loss of open upland sandy nesting habitat resulting from development, 2) loss of access to habitat due to alteration of the shoreline (bulkheading and riprap), 3) road mortality along roadways, and 4) predation of nests and hatchlings. The project site contains potential nesting habitat for terrapins. Work should not be conducted during the nesting and incubation period from **May 15th to October 1st**. For more information, please contact our state Herpetologist, Nate Nazdrowicz at (302) 735-8688 or Nathan.Nazdrowicz@delaware.gov.

The Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship- To place up to 40,000 cubic yards of sand material from an inland borrow source along 4,700 linear feet of beach. The orientation of the renourishment project begins at the Slaughter Beach Firehouse and extends southward to the northernmost property of the Isaac Shores subdivision along the Delaware Bay, Slaughter Beach, Sussex County, DE. Additionally, the applicant requests for a Section §401 Water Quality Certification. Approval is being requested to permanently fill subaqueous lands with approximately 40,000 cubic yards of fill material.

DFW Comments:

Migratory Shorebirds (incl. Red Knot)

Slaughter Beach provides critically important habitat for migratory shorebirds, including the federally threatened red knot (*Calidris canutus rufa*), as they stop over in Delaware to acquire food resources and reach their optimum body condition (weight gain) before migrating to their Arctic nesting grounds. Each year, red knot and other shorebirds stop here to feed on horseshoe crab eggs. In order to avoid interrupting red knot activity during this critical stage of their migration, we recommend a time of year restriction of project activities between **April 15th to**

June 7th. Note that because the federally threatened red knot may be affected, Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) may be necessary. Please contact Julie Thompson-Slacum with the USFWS at 410-573-4595 or at Julie_Thompson-Slacum@fws.gov.

Beach Nesting Birds

The local breeding population of piping plover (*Charadrius melodus*) in Delaware has increased in recent years. This increase in local breeding pairs suggests prospecting piping plovers, such as young birds, may be seeking previously unoccupied novel breeding habitat. This project may create suitable habitat for beach nesting birds, including the federally listed piping plover and the state endangered American oystercatcher (*Haematopus palliatus*). Considering that this site is in close proximity to National Wildlife Refuge lands where this species and others nest, it is possible that this area would be attractive for nesting as well. Therefore, we recommend a time of year restriction from **March 1st to September 15th** for nesting and migrating shorebirds. If work cannot be completed outside of this time frame, please coordinate with Coastal Avian Biologist, Henrietta Bellman at (302) 735-3612 or Henrietta.Bellman@delaware.gov on possibilities to minimize impacts to beach nesting shorebirds.

We also recommend that the site be monitored for beach nesting bird presence starting as early as is practicable during the nesting season (no later than April 15th) following construction. Monitoring should continue throughout the nesting season, so long as birds are present within or adjacent to the project area. If piping plover nest within the project site, the applicant will need to coordinate and cooperate with Federal and State Agencies on the protection and management of this new nesting habitat.

Horseshoe Crabs

The project site is a known high-density spawning area for horseshoe crabs. Work should not be conducted from **April 15th to August 30th** to ensure that this species is not impacted. We further encourage beach renourishment be performed in a manner that maintains the existing slope to that which naturally exists, as well as the use of sand of similar grain size to that which naturally exists. For more information, please contact Jordan Zimmerman at (302) 735-2960 or Jordan.Zimmerman@delaware.gov.

Diamondback Terrapin

The diamondback terrapin (*Malaclemys terrapin*) is a brackish water turtle found in the state's coastal inland bays, Delaware Bay, and its tidal brackish tributaries. It spends most of its life in the water, until spring when (primarily) females seek open upland sandy areas to lay eggs. The diamondback terrapin is listed as a Species of Greatest Conservation Need (SGCN) in the Delaware Wildlife Action Plan. Primary threats to this species are 1) loss of open upland sandy nesting habitat resulting from development, 2) loss of access to habitat due to alteration of the shoreline (bulkheading and riprap), 3) road mortality along roadways, and 4) predation of nests and hatchlings. The project site contains potential nesting habitat for terrapins. Work should not be conducted during the nesting and incubation period from **May 15th to October 1st**. For more information, please contact our state Herpetologist, Nate Nazdrowicz at (302) 735-8688 or Nathan.Nazdrowicz@delaware.gov.

Subaqueous Lands Lease

Artesian Water Company, Inc. (0901900032)-To install by directional bore a 24-inch diameter 94 foot long water main at a minimum of 15 feet below the mudline under the Christina River at 540 Stanton Christina Road, Newark, New Castle County, DE.

DFW Comments:

Drilling

The project description indicates that direct impacts to waterbodies would be avoided through use of trenchless construction methods, such as horizontal directional drill; therefore, no time of year restrictions or other measures are requested for anadromous fish species or for resident gamefish species. If this changes, please contact us again for further guidance. We would likely request that in-water work not occur from March 1st to June 30th to allow time for summer flounder (*paralichthys dentatus*) young of the year, which utilize the Christina River for spawning and nursery habitats and migratory corridors, to grow large enough to be less vulnerable to habitat-altering activities and then migrate out of the system.

Although the use of a directional drill has less of an impact than other methods, such as trenching, there is still a potential for frac-outs to occur which could impact wetlands and water bodies within the project area. Therefore, we highly recommend that a frac-out contingency plan be in place prior to the start of project activities. The contingency plan should include the following:

1. A provision to contain materials released,
2. A clean-up protocol, and
3. Arrangements for an experienced representative (drilling crew or consultant) to watch the site at all times so that the operation can be shut down immediately in the event a frac-out occurs.

In addition, on-site staff should have access to the DNREC 24-hour hotline (**1-800-662-8802**) to report any environmental release or fish kill. Immediate notification of any environmental release is imperative.

Please also contact our fisheries section:

- Monday – Friday, 8:00am to 4:30pm:
 - **Non-tidal Waters:** Edna Stetzar (Edna.Stetzar@delaware.gov or (302) 270-9136)
 - **Tidal Waters:** Garry Glanden (Garry.Glanden@delaware.gov or (302) 222-6842)
 - If neither Edna nor Garry can be reached: Fisheries Section ((302)-739-9914)
- After Hours, Weekends and Holidays:
 - Kent Com (302-739-4580 or 1-800-662-8802)

Please feel free to contact me with any questions or if you require additional information.

Sincerely,



Danielle Ellis
Environmental Review Coordinator
Phone: (302) 223-2446
6180 Hay Point Landing Road
Smyrna, DE 19977

<DNRECHearingComments@delaware.gov>; Pongratz, Jennifer L. (DNREC) <Jennifer.Pongratz@delaware.gov>

Cc: Janice Erich <erichjanice@gmail.com>

Subject: Port Lewes Concern regarding Cape Shores permit application for subaqueous land sand dump

To: Catherine Bronson, DNREC Wetlands and subaqueous lands section catherine.bronson@delaware.gov
Shawn Garvin, DNREC Secretary shawn.garvin@delaware.gov
DNREC Hearing Comments DNRECHearingComments@delaware.gov

Jennifer Pongratz, DNREC Division of Watershed Stewardship jennifer.pongratz@delaware.gov

Subject: Port Lewes Concern regarding Cape Shores permit application for subaqueous land sand dump

Port Lewes is a condominium community next to Cape Shores on the east City of Lewes beach. Every two years Cape Shores dumps tons of new sand to restore their part of the beach. Within weeks much of the sand is gone because a major storm has washed it out into the bay. Sometimes this happens even before the total sand has been dumped. This is the source of Port Lewes' concern.

Port Lewes has no issue with Cape Shores request to dump up to 31,500 cubic yards of sand refreshing the beach. **The problem is WHERE it goes when it washes away as it inevitably will.**

The sand goes to 3 spots:

- **It builds sand bars and makes the shoreline shallower.** The result is higher waves and more destruction of the beach during storms like Nor'easters.
- **It washes around our Port Lewes fishing pier.** The pier is a popular asset for our Port Lewes condominium. The result is that it is possible now to walk to our pier from the sand bars; that the area around the pier is more shallow inhibiting fishing; and presents a danger to children who may jump from the pier (despite warning signage).
- **It has washed over to the Lewes Ferry Terminal pier.** The result is that the area has become too shallow for state tall ships to dock. The State of Delaware tall ship Kalmar Nickel and New Jersey's tall ship The AJ Meerwald regularly visited the Lewes Ferry for weeks allowing tourists to sail out into the Delaware Bay. They stopped coming to Lewes because the dock is too shallow.

If DNREC approves the Cape Shores sand request, Port Lewes requests that DNREC at the same time approve dredging "old Cape Shores sand" from at least the sand bars and around the Port Lewes pier.

Port Lewes appreciates the consideration of DNREC to the consequences of the Cape Shores sand refresh.

Barbara Brownridge Walsh
President, Port Lewes Council

brownridge@verizon.net

cell: 301-775-4877

Re: Port Lewes Concern Regarding Cape Shores Permit Application

Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Thu 1/12/2023 8:36 AM

To: Barbara Brownridge Walsh <brownridge@verizon.net>

Good morning Mrs. Brownridge Walsh,

I'm confirming that I have received your comments regarding the Cape Shores Permit Application.

Thank you,

Matthew Jones | Wetlands and Waterways Section

Department of Natural Resources and Environmental Control

89 Kings Hwy | Dover, DE 19901 | Office: 302.739.9943

From: Barbara Brownridge Walsh <brownridge@verizon.net>

Sent: Tuesday, January 10, 2023 4:30 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Cc: Bergin, Kathleen (DNREC) <Kathleen.Bergin@delaware.gov>; Hayden, Jesse (DNREC) <Jesse.Hayden@delaware.gov>

Subject: RE: Port Lewes Concern Regarding Cape Shores Permit Application

Matthew, thanks very much for responding to Port Lewes' concern about the impact of Cape Shores focused beach replenishment. I want to be clear that Port Lewes is not opposing Cape Shores beach replenishment in 2023 nor do we request a public hearing. We recognize the damaged state of the Cape Shores beach and their need to repair it prior to beach season. We want to be a good neighbor.

However, every time the Cape Shores beach is replenished it washes out into the bay, sometimes even before the full replenishment is completed. We watch it. So, Port Lewes requests continued study and hopefully a resolution of the migration of the Cape Shores sand westward under and around the Port Lewes pier. We can now walk to the pier during low tide! It is dangerous if foolhardy children jump off our pier (even with signage warning of shallow water). Our pier is a very popular asset enjoyed by our unit owners and guests. We do want to take issue with the referenced 2017 study that says the sand migrates East not West. The boundaries of that study in the picture below stopped at the Cape Shores property line and did not include Port Lewes to the West! The only pier referenced in the study is the Cape Shores pier where the sand migrates to the east. Please see the picture below. Perhaps an update is needed for that study with a broader view that includes sand migration WESTward to Port Lewes and the DRBA Ferry pier.



Figure 1. Study area location map. Approximate east and west limits of Cape Shores Homeowners Association are delineated.

If there is study that includes dredging (possibly in connection with the DRBA Ferry area), we request that Port Lewes be contacted and considered. Thank you for including our Port Lewes concerns in your continued evaluations.

Barbara Brownridge Walsh
President, Port Lewes Council

brownridge@verizon.net

cell: 301-775-4877

From: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Sent: Monday, January 9, 2023 10:02 AM

To: brownridge@verizon.net

Cc: Bergin, Kathleen (DNREC) <Kathleen.Bergin@delaware.gov>; Hayden, Jesse (DNREC) <Jesse.Hayden@delaware.gov>

Subject: Port Lewes Concern Regarding Cape Shores Permit Application

Good morning Mrs. Brownridge Walsh,

In response to the comments received on behalf of the Port Lewes community on November 13, 2022, DNREC-Division of Water, in collaboration with the Division of Watershed Stewardship, has prepared a response to address your concerns about the Cape Shores beach replenishment project.

The Department recognizes the concerns of the local communities around the Cape Shore beach nourishment project. Similar concerns about the fate of nourishment sand have been raised previously, prompting a research study performed by APTIM Coastal Planning and Engineering, INC in 2017 (attached). Alternatives to the previous beach nourishment program were

investigated and identified for future planning purposes. The current permit application incorporates some of the results of that study.

While the movement of sediments does account for a shallower shoreline in this area in general, the 2017 study identifies that the sand accumulating on the sand bar located 400-600 ft offshore likely belongs to a different origin source than previous beach nourishment cycles. The significant majority of nourishment sand was observed to migrate to the east following construction. This conclusion was derived from the distinct variation in grain size within the offshore profile and known grain sizes from previous beach nourishment projects. Fine grains of sand (.16mm to .26mm) were found accumulating from -2 feet NAVD offshore. The expected nourishment sand material (.45mm to 1.16mm) was most commonly found above -2 feet NAVD. This means that the finer grain particles are more likely consistent with historic bay sediment movements and sand arriving around Cape Henlopen than current beach nourishment projects. Removal of these sand bars will change the offshore profile and could potentially increase the sediment transport of material in the offshore direction if taken from areas greater than or equal to -10 NAVD. This will also increase the potential for wave formation creating a potentially negative result to the Cape Shores and Port Lewes community because bigger waves can form in deeper water. Care needs to be taken when nearshore sandbars are considered to be modified; and DNREC is interested in studying these features as sand sources in the near future.

Without a renourishment cycle to the Cape Shore Beachfront, the public beach will continue to atrophy. The accretional sand found east of Cape Shores would not service a large renourishment event due to the limited annual recirculation rates. Dredging the sand from around the pier as suggested will require a rigorous study of the sediment, and consideration of habitat impacts. Due to the heavy financial burden of those studies, it is more economical at this time to continue to service this beach via truck fill. There are future plans to perform those studies, however.

The Ferry/DRBA would need to apply for a dredging permit in order to dredge around their dock.

Please let us know if you have any further questions.

Thank you,

Matthew Jones | Section Manager | Division of Water- Wetlands and Waterways Section

Department of Natural Resources and Environmental Control

89 Kings Hwy | Dover, DE 19901 | Office: 302.739.9943