

APPENDIX O

COASTAL BARRIER RESOURCES ACT COMPLIANCE



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NY 10278-0090

Environmental Analysis Branch

February 14, 2019

Mr. David Stilwell
Field Supervisor
U.S. Fish and Wildlife Service
3817 Luker Road
Cortland, New York 13045

Subject: Atlantic Coast of Long Island, Fire Island Inlet to Montauk Point (FIMP), New York Coastal Storm Risk Management Project, Coastal Barrier Resource Act (CBRA)

Dear Mr. Stilwell:

The U.S. Army Corps of Engineers, New York District (District) is pleased to provide the final project description for the FIMP General Reevaluation Report (GRR) and Environmental Impact Statement (EIS) (Enclosure 1).

The District, New York State Department of Environmental Conservation (NYSDEC) and their local partners, and other agencies, including the U.S. Fish and Wildlife Service (Service) have participated in extensive coordination to finalize the project description, in particular the details of the Coastal Process Features (CPFs) which are designed to achieve no net loss of sediment into the back bay system as part of the mutually acceptable plan as well as for compliance with Section 7 of the Endangered Species Act by creating early successional habitat for piping plovers (*Charadrius melodus*).

The following updates have been made to the project based on the extensive sponsor, local partner, resource agency and public coordination since the release of the July 2016 Draft GRR and EIS:

1. Updated sand quantities in tables and text
2. Additional language regarding "no net loss" of sediment (how to achieve the goal of approximately 4.2 million cubic yards of sand)CY
3. Additional section on proactive breach response triggers (ex: Southampton transitioned from Proactive to Reactive for Real Estate purposes)
4. Updated discussion of Downtown Montauk related to beach nourishment
5. Additional language describing that vacant land will be acquired as part of mainland nonstructural plan
6. Updated description of current list of CPFs, including renumbering sites and the removal of sites that do not have landowner support and are no longer included (Cupsogue, Sunken Forest, Point of Woods, Carrington, Regan Property)

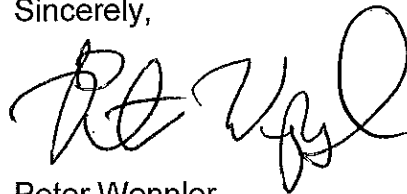
7. Incorporated an updated CPF table with quantities to achieve the approximate 4.2 MCY. The quantity in the table alone will not achieve the 4.2 MCY quantity and therefore Adaptive Management will be utilized to reach the overall total
8. Included a description of mainland CPF's.

The purpose of this letter is to reaffirm and supplement the District's March 29, 2017 request for Service concurrence for the FIMP project exception determination under Section 6 of CBRA (16 U.S.C. § 3505). The Project falls within portions of three Coastal Barrier Resource System (CBRS) units.

Please refer to attached completed CBRA Determination Template provided by the Service's CBRA website (Enclosure 2).

Based on this review, the District has concluded that the Project meets the above-referenced exceptions and therefore is consistent with the purposes of CBRA. The District request that the Service notify us if you do not concur with this determination. To facilitate your review, please find enclosed maps that overlay the Project on each of the respective CBRA zones (Enclosure 3) to illustrate where the Project overlaps into these zones. If you should have any questions, please contact Mr. Robert J. Smith of my staff at 917-790-8729.

Sincerely,



Peter Weppeler
Chief, Environmental Analysis Branch

cc
USFWS-LIFO

Enclosure 1 FIMP Final Project Description
Enclosure 2 CBRA Determination Template
Enclosure 3 Maps that overlay the Project on each of the respective CBRA zones

USFWS CBRA PROJECT INFORMATION

(per Template)

Project Location

The action or project is located in Suffolk county, New York within (or partially within) Unit(s) NY-59/59P, F-12 and F-13/13P of the Coastal Barrier Resources System (CBRS).

Description of the Proposed Action or Project

The Recommended Plan for the Fire Island to Montauk Point New York Hurricane Sandy project area provides a systems approach for Coastal Storm Risk Management (CSRM) that balances the risks to human life and property, while maintaining and restoring the natural coastal processes and ecosystem integrity. The Second Interim Report of the Disaster Relief Appropriations Act, 2013 designates that the Fire Island Inlet to Montauk Point, NY, Coastal Risk Management Study meets the criteria for an “Authorized But Unconstructed” project and therefore, this study is being completed at full federal expense. The initial construction will be 100% federally funded, if constructed using the authority of PL113-2.

Applicable Exception(s) under 16 U.S.C. 3505(a)

Identify the appropriate exception(s) for the action or project under the CBRA (16 U.S.C. 3505(a)).

General Exceptions

- 16 U.S.C. 3505(a)(1): Any use or facility necessary for the **exploration, extraction, or transportation of energy resources** which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.
- 16 U.S.C. 3505(a)(2): The **maintenance or construction of improvements of existing Federal navigation channels** (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System Unit was included within the CBRS.
- 16 U.S.C. 3505(a)(3): The maintenance, replacement, reconstruction, or repair, but not the expansion, of **publicly owned or publicly operated roads, structures, or facilities that are essential links** in a larger network or system.
- 16 U.S.C. 3505(a)(4): **Military activities** essential to national security.
- 16 U.S.C. 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto.

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(per Template)

Specific Exceptions

These exceptions must also be consistent with all three purposes of the CBRA (see "Justification" section below).

- 16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
- 16 U.S.C. 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto.
- 16 U.S.C. 3505(a)(6)(C): Projects under the **Land and Water Conservation Fund Act** of 1965 (16 U.S.C. 4601-4 through 11) and the **Coastal Zone Management Act** of 1972 (16 U.S.C. 1451 et seq.).
- 16 U.S.C. 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- 16 U.S.C. 3505(a)(6)(E): Assistance for **emergency actions essential to the saving of lives and the protection of property and the public health and safety**, if such actions are performed pursuant to sections 5170a, 5170b, and 5192 of title 42 **and are limited to actions that are necessary to alleviate the emergency.**
- 16 U.S.C. 3505(a)(6)(F): Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of **publicly owned or publicly operated roads, structures, and facilities.**
- 16 U.S.C. 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system.

Justification for Exception(s)

Based on the District's review, going east to west, the project affects the following units: F12 Southampton, F-13/F-13P Tiana Beach and NY-59/59P Fire Island, NY 59P, but meets the exceptions provisions under Section 6 of the CBRA. The purpose of the Project is to strengthen the natural protective features of the south shore of Long Island's barrier system for coastal storm damage protection. It does not seek to encourage encroachment of development or alterations to the coastal barriers.

For units F-12 and F-13/13P, the District determined that the Project meets the following additional conditions under 16 U.S.C. § 3505 which provides rationale that the project be exempt "if the expenditure is for the maintenance or construction of

USFWS CBRA PROJECT INFORMATION

(per Template)

improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the placement of dredge material related to such maintenance or construction.” The Project's proposed improvements to inlet sediment management will provide navigation benefits to three inlets (Shinnecock, Moriches and Fire Island Inlet) by decreasing the frequency of maintenance dredging and affording safer passage through the inlets and will allow for better retention of sediment which will decrease shoaling within the navigation channel maintaining critical access to U.S. Coast Guard Stations at Moriches and Shinnecock Inlets. The project includes sand bypassing at the inlets within units F-12 and F13/13P. These activities include dredging of sand from the inlet and placing sand on the down drift beach. These actions are designed to mimic the natural movement of sand that would occur in the absence of the inlet. Both the dredging and placement fall within this category.

For the parts of the project affecting NY-59/59P, this activity falls under the CBRA's exception for “nonstructural projects for shoreline stabilization...designed to mimic, enhance, or restore a natural stabilization system.” 16 U.S.C. §3505(a) (6)(G). The Project meets §505(a) (6) (G)'s precondition that it be consistent with the CBRA's purposes. The Project minimizes the loss of human life by replacing the beach to its original pre-Sandy condition in order to avoid further erosion and loss of Fire Island, and to reestablish the functionality of these beaches as part of the coastal barriers that contribute to the resiliency of upland communities. Additional loss of the beach could result in the damage to structures on Fire Island, damage and loss to structures within the backbay communities of the mainland of Long Island and potentially resulting in the loss of life. The Project involves renourishing a beach with sand and not the development of buildings or structures that the CBRA seeks to avoid. By keeping Fire Island National Seashore, Robert Moses State Park and Smith Point County Park as a public beach. These beaches are popular summer recreational destinations within the New York City area and provides much needed comfort to persons of all ages and socioeconomic backgrounds during hot summer days. The beach nourishment activities at these areas are protective of life, safety and the environment (without the Project, the beach can continue to erode, impacting the wildlife and natural resources of the project area). Federal funding is not being used for commercial or residential development that CBRA construes as wasteful. Rather the federal funding is being used for a beneficial purpose that is consistent with the CBRA's purpose.

It is noted that for the units designated at “P”, known as otherwise protected areas, the only Federal funding prohibition is Federal flood insurance.

The legislative history of the CBRA supports the finding that the project falls within the exemptions. See S. REP. NO. 419, 97th Cong., 2d Sess. 8 (Oct. 1, 1982) (listing, as an exemption from the CBRA, “[n]onstructural projects such as the planting of dune grass or beach nourishment which mimic, enhance, or restore natural stabilization systems would be permitted for shoreline stabilization”); H.R. REP. NO. 841, 97th Cong., 2d Sess. 17 (Oct. 18, 1982) (“Nonstructural projects for shoreline stabilization, such as the planting of dune grass or other beach nourishment which mimic, enhance,

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(per Template)

or restore natural stabilization systems would be permitted [under the CBRA.]”); Coastal Barrier Resources Act Advisory Guidelines, 48 Fed. Reg. 45,664, 45,667 (Oct. 6, 1983) (noting that “[t]he legislative history cites the planting of dune grass or other beach nourishment activities as examples of these projects”). See also 127 Cong. Rec. 7572 (Apr 28, 1981) (remarks of Sen. John Chafee, the CBRA’s sponsor) (specifically naming “dredge and fill activities” as an exception to the CBRA’s prohibition on federal assistance).

Contact Information

Include contact information and where the response should be sent.

Peter Wepler
Chief, Environmental Analysis Branch
U.S. Army Corps of Engineers - Planning
26 Federal Plaza - Room 2151
New York, NY 10278-0090

U.S. Fish and Wildlife Service Response

Below is the Service's response to Army Corps of Engineers request for a consultation under the CBRA for the Fire Island to Montauk Point New York Hurricane Sandy project for Coastal Storm Risk Management (CSRM) This response represents the Service’s opinion. **The final decision regarding the expenditure of funds for this action or project rests with the Federal funding agency.** The Army Corps of Engineers has fulfilled its obligation to consult with the Service under the CBRA for this particular action or project within the CBRS. Please note that any new commitment of Federal funds associated with this action or project, or change in the project design and/or scope, is subject to the CBRA’s consultation requirement.

The Service has reviewed the information provided by The Army Corps of Engineers , and believes the referenced action/project is:

- Not located within a System Unit of the CBRS and the CBRA does not apply (except with respect to the restrictions on Federal flood insurance)
- Located within a System Unit of the CBRS and meets the exception(s) to the CBRA selected above
- Located within a System Unit of the CBRS and meets different exception(s) than the one(s) selected above (see additional information/comments below)
- Located within a System Unit of the CBRS and does not meet an exception to the CBRA (see additional information/comments below)

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(per Template)

- Due to many competing priorities, the Service is unable to provide an opinion on the applicability of the CBRA's exceptions to this action/project at this time. The Army Corps of Engineers may elect to proceed with the action/project if it has determined that the action/project is allowable under the CBRA. Please note that any new commitment of Federal funds associated with this action/project or a related future project is subject to the CBRA's consultation requirement.

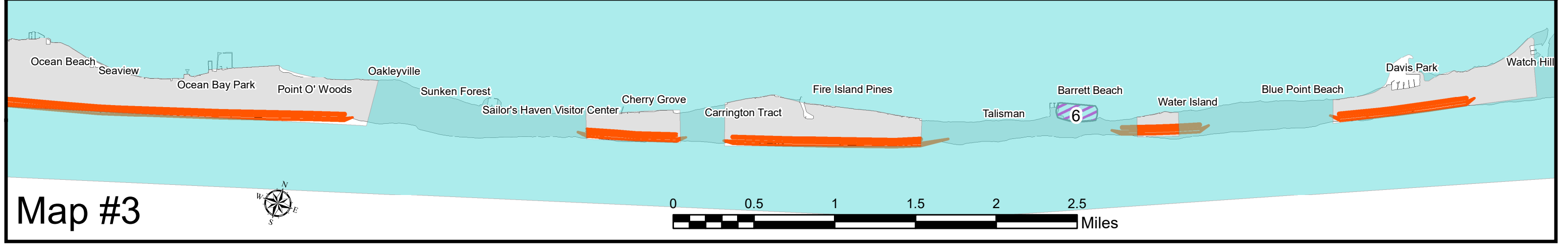
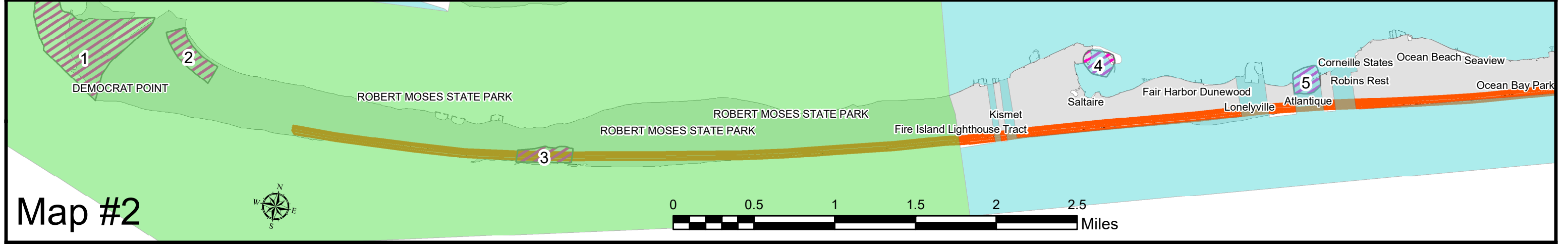
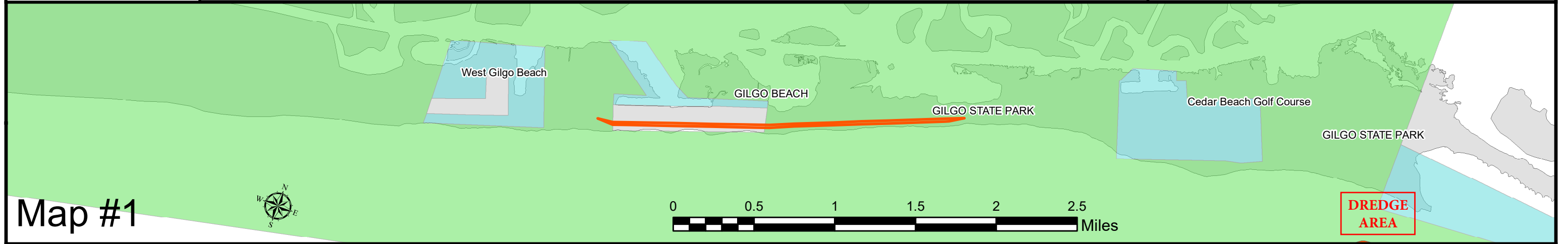
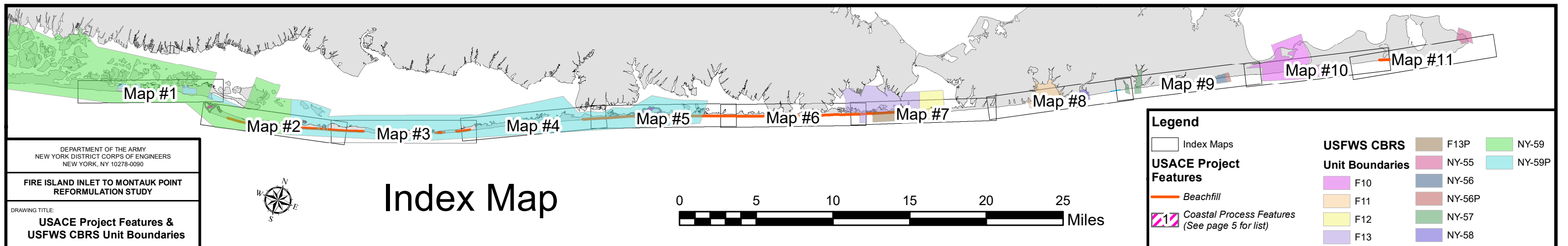
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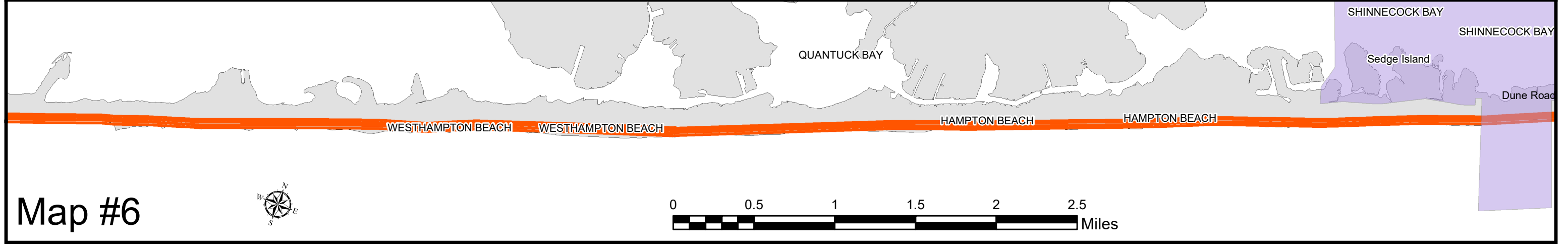
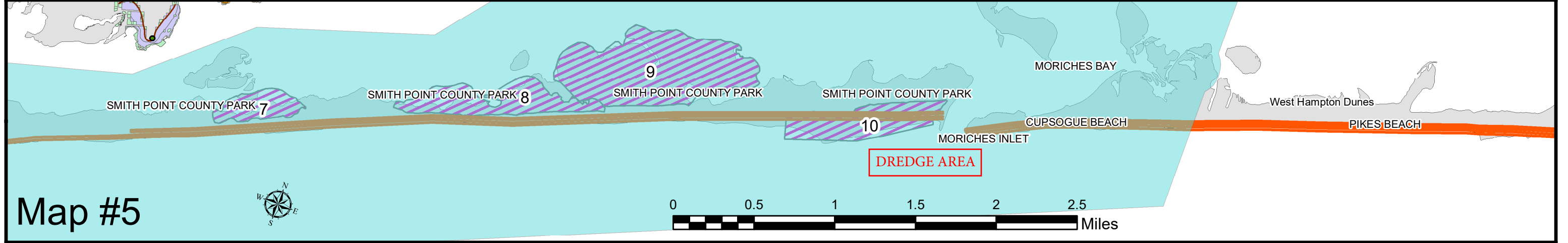
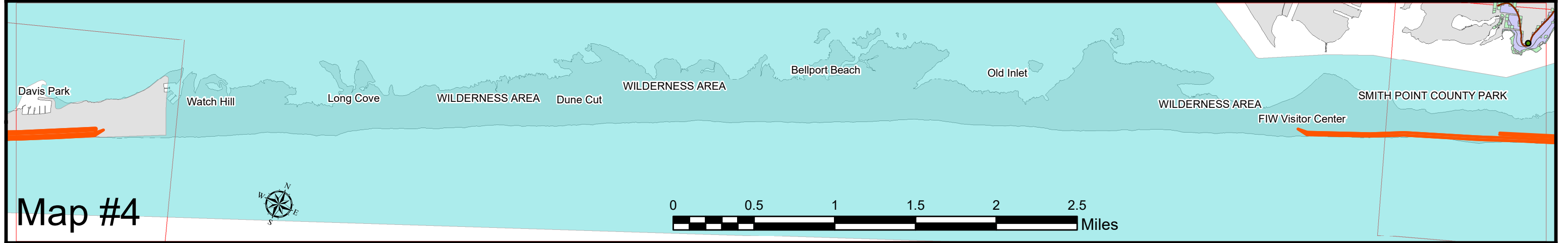
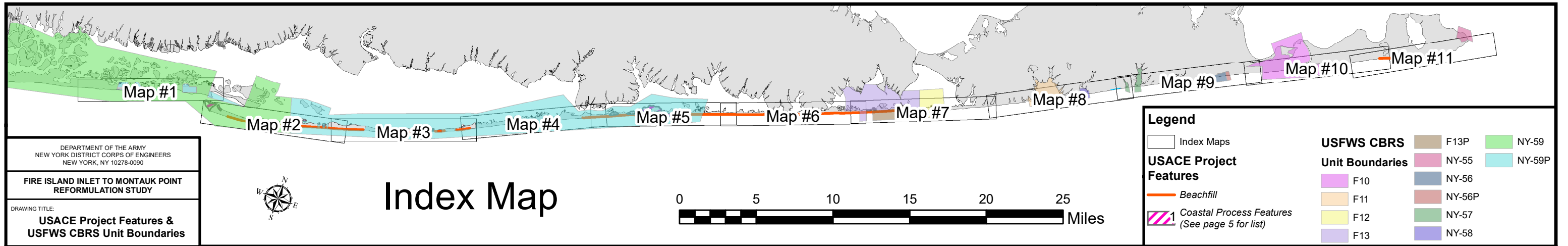
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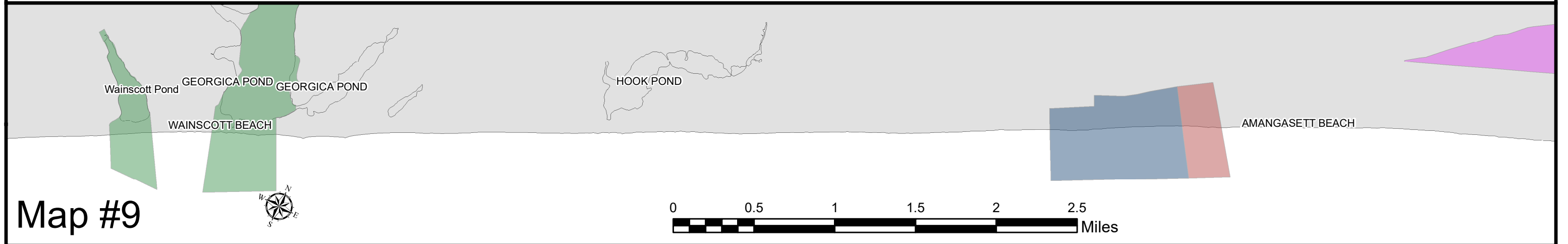
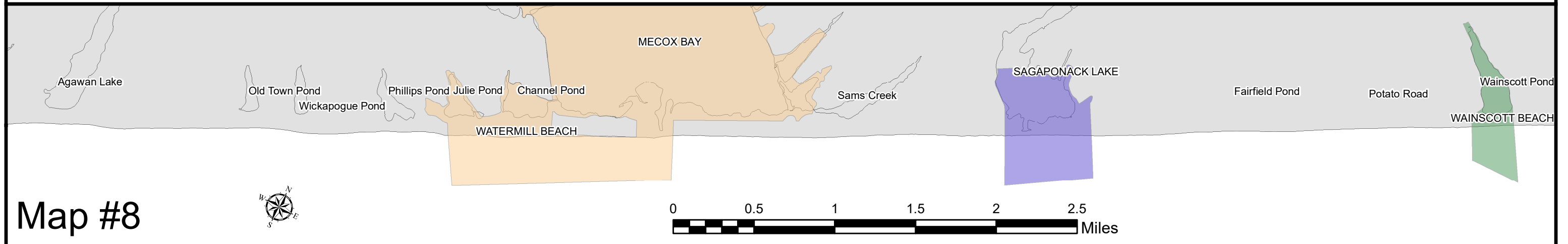
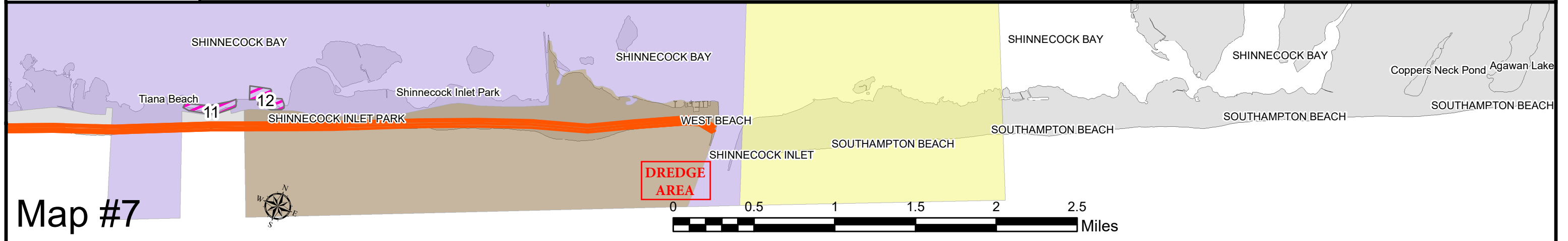
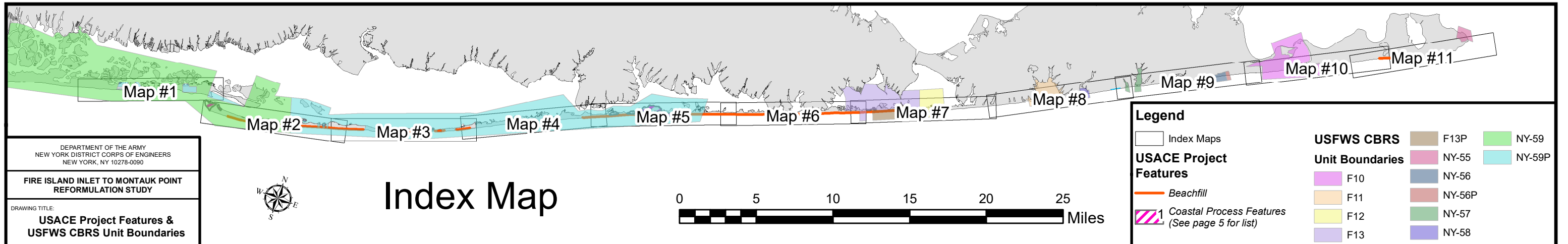
This response does not constitute consultation for any project pursuant to section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) or comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*); nor does it preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

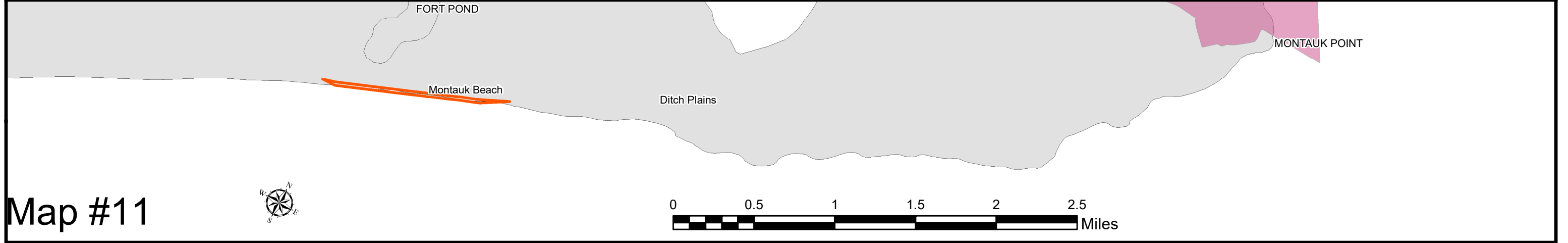
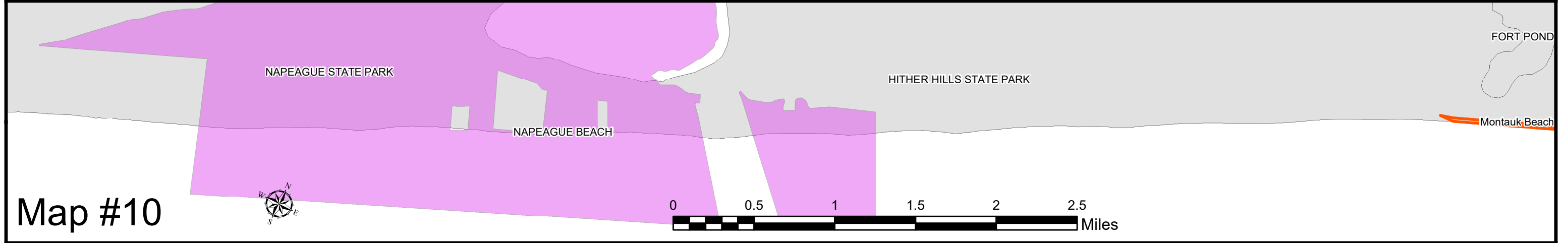
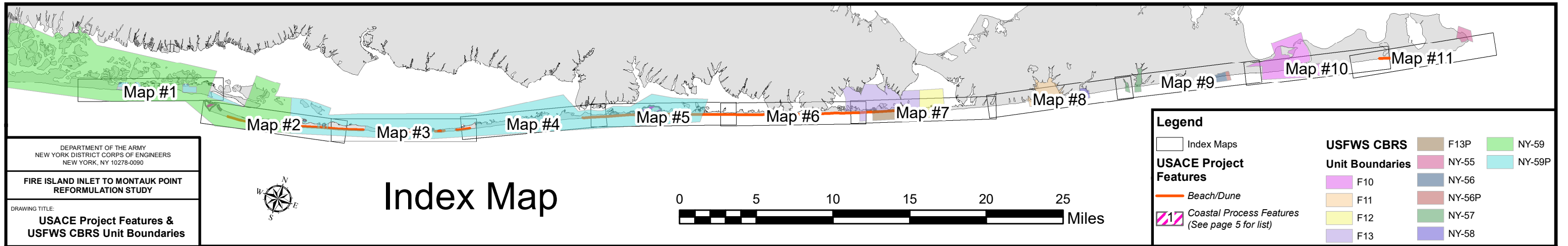
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CPF Number	CPF Name	CPF Purpose	CPF Description
1	Democrat Point West	ESA	Regrade and devegetate; modify pond to improve functionality of existing wetland/create new foraging habitat; conserve on site sand volume.
2	Democrat Point East	ESA	Regrade and devegetate bay side; modify sand stockpiles to form barrier between recreation and ESA areas; conserve on site sand volume.
3	Dunefield West of Field 4	ESA	Devegetate ocean side; maintain vegetation buffer with road on north side.
4	Clam Pond	CSRM	Bay side fill placement to simulate cross island transport; possible living shoreline on north side per adaptive management plan.
5	Atlantique to Corneille	CSRM	Bay side fill placement to simulate cross island transport.
6	Talisman	CSRM	Bay side fill placement to simulate cross island transport.
7	Pattersquash Reach	CSRM/ESA	Devegetate bay side; shallow water bay side fill placement; south boundary follows Burma Rd alignment, includes physical barrier.
8	New Made Island Reach	CSRM/ESA	Devegetate bay side; shallow water bay side fill placement; south boundary follows Burma Rd alignment, includes physical barrier.
9	Smith Point County Park Marsh	CSRM	Bay side marsh restoration; fill placement to simulate cross island transport; regrade marsh elevation filling ditches and creating channels for tidal exchange.
10	Great Gun	ESA	Devegetate ocean side parcel.
11	Dune Rd Bayside Shoreline	CSRM	Bay side fill placement; bulkhead/groin removal; possible additional fill within offshore channel.
12	Tiana Bayside Park	CSRM	Bay side fill placement at east side of site; PED will determine fate of existing gabions.