

Secretary's Order No.: **2007-W-0006**

RE: Wetlands and Subaqueous Lands Section Application of Sea Colony Recreational Association to amend an existing permit to add an additional 182,000 cubic yards of beach fill material for a total of 290,000 cubic yards for beach replenishment at Sea Colony, to coincide with the Federal Beach Replenishment Project along the Atlantic Coast at Bethany Beach, Sussex County, Delaware

Date of Issuance: February 22, 2007

Effective Date: February 22, 2007

I. Background

On Wednesday, August 23, 2006, the Department of Natural Resources and Environmental Control held a public hearing in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware, in order to receive comments with regard to the Wetlands and Subaqueous Lands Section Application of Sea Colony Recreational Association, Inc., to amend an existing permit to add an additional 182,000 cubic yards of beach fill material for a total of 290,000 cubic yards for beach replenishment at Sea Colony, to coincide with the Federal Beach Replenishment Project along the Atlantic Coast at Bethany Beach,

Sussex County, Delaware. This proposed project for Sea Colony would involve sand placement along 2350 linear feet of their beach. The Applicant proposes to obtain this sand by hydraulically dredging it from an off-shore borrow source located in the Atlantic Ocean approximately two and one-half miles east of the project site. Sea Colony is a private beach community, as is the beach of its neighbor located immediately to the South, the private community of Middlesex. South of Middlesex is the public community of South Bethany Beach. Located north of Sea Colony is Bethany Beach, which is also a public community open to the citizens of Delaware.

A tremendous amount of public comment was generated as a result of the aforementioned public hearing. A great deal of concern was voiced by the neighboring communities regarding certain aspects of this WSLs permit application, both at the time of the public hearing and in the written comments that were provided to the Department subsequent to the aforementioned hearing. The record was left open after the hearing until September 15, 2006 to allow for further public comment regarding this application. Subsequent to the public hearing of August 23, 2006, the Hearing Officer prepared her Report dated February 13, 2007, and that Report, including its attachments, is expressly incorporated herein to this Order.

The February 13, 2007 Hearing Officer's Report reviews and summarizes the record developed throughout this permit application process, and recommends issuance of the requested amendment to Sea Colony's existing WSLS permit to allow them to proceed with its proposed project of beach replenishment for its community. I agree with the Report and adopt it as part of this Order along with its reasons.

II. Findings

1. Proper notice of the hearing was provided as required by law.
2. Any permits issued must be consistent with the application and supporting documents and shall include such customary and necessary conditions for protection of the environment as are authorized by existing laws and regulations.
3. The proposed project poses no adverse environmental impacts to the existing shoreline of Sea Colony, or to its beach community neighbors to either the north or south of the proposed project site;
4. The placement of sand at Sea Colony will essentially lengthen the project proposed for Bethany Beach, and should result in reduced maintenance costs for the public beaches neighboring the proposed project site;
5. Sand placement at Sea Colony provides increased protection of public infrastructure landward of the private development and, as it

migrates over time in response to wave action, will provide enhanced protective and recreational benefits to adjacent public beaches;

6. The proposed project at Sea Colony will contribute to the stability of the Bethany Beach project, and will contribute sand to the littoral system in general;

7. The State of Delaware has, to date, never charged a fee for sand dredged from offshore sources and placed on private beaches, nor is there any mechanism in place by which DNREC would be allowed to do so. These facts, along with the net benefits to adjacent public beaches as described above, make the suggestion of instituting a fee for sand both illogical and unfeasible at this time;

8. The Applicant will bear all costs associated with the transport and placement of sand on their property, and has secured the services of an engineering consultant for technical assistance regarding same;

9. The utilization of this “public” sand to replenish Sea Colony’s private beachfront initially will lead to an enhancement and stabilization of the public beach shorelines surrounding the Applicant’s location in the near future, thus effectuating an overall net public benefit that outweighs the worth of the sand as it currently exists underwater and offshore in its present location, despite the fact that no actual dollar amount is being charged by the State of Delaware for the procurement of such sand dredged from this offshore “public” location;

10. For reasons set forth in detail in the Hearing Officer's Report, which is expressly incorporated herein, the record supports issuance of the permit amendment as requested by the Applicant.

III. Order

In view of the above findings, it is hereby ordered that the requested amendment to Sea Colony's existing WSLs permit be issued, consistent with its application, supporting documents, and regulatory requirements as addressed in the Hearing Officer's report and the record developed in this matter. These permits shall include customary and necessary conditions as appropriate for protection of the environment.

IV. Reasons

The record demonstrates compliance with all necessary requirements under the jurisdiction of the Wetlands and Subaqueous Lands Section as set forth in the record developed in this matter, which provides not only an accurate summary of the compliance demonstration but also offers conclusions which support the issuance of the appropriate permit amendment for this project.

/s/ John A. Hughes
John A. Hughes
Secretary