

HEARING OFFICER'S REPORT

REGARDING: 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

Lisa A. Vest
Hearing Officer

February 13, 2007

1. **Background Findings:**

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. There has also been a great deal of concern 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. These public concerns, and the Department's responses to the same, will all be addressed in greater detail below. Proper notice of the hearing was provided, as required by law.

II. Summary of Record:

It should be noted that, due to a noticing error on the part of the Department (resulting in conflicting starting times for this hearing), there were actually two distinct sessions on August 23, 2006, during which the Hearing Officer presided over the formal public hearing regarding this Sea Colony application. The public hearing was initially opened at 10:00 a.m. on Wednesday, August 23, 2006, at the DNREC Auditorium at 89 Kings Highway in Dover, Delaware. Numerous members of the public were present at that time, and offered public comment for the Secretary's review regarding this application. At the conclusion of that hearing, the Hearing Officer explained to those present that the record was closing at that time, but would be re-opened at 6:00 p.m. that same evening, again, due to the fact that this hearing had been erroneously scheduled for both 10:00 a.m. and (in some areas) 6:00 p.m. The Hearing Officer further explained that this additional opportunity for public comment was being given to facilitate everyone having an equal opportunity to attend and participate, regardless of which notice they reviewed. Upon re-opening the hearing record at 6:00 p.m. on the evening of August 23rd, however, it was noted that the only persons present for the public hearing at that time were Department personnel Laura Herr and Andrew Whitman from WSLs, along with Robert Henry of Gahagan & Bryant Associates, the consultant firm retained the Applicant, Sea Colony.

At the time of the evening session of this public hearing, the Hearing Officer accepted an additional exhibit from the Department (identified below as Exhibit #13), consisting of copies of e-mail exchanges that had taken place with the Department in regard to this Sea Colony Application. This additional exhibit was compiled and entered

by the Department at the request of members of the public who had attended the morning session of this hearing. It was further explained by the Hearing Officer at the 6:00 p.m. hearing session that the record would remain open until close of business on Friday, September 1, 2006, for any additional questions or comments that either the Applicant or public may have pertaining to this permit application. The Hearing Officer further advised that any additional information received by the Department between the date of the public hearing up through September 1, 2006, would be copied and shared with all interested persons that had signed the Public Hearing sign-in sheet earlier that day at the 10:00 a.m. session. If anyone wished to further comment on that supplemental information, they would be able to submit such comment to the Hearing Officer for inclusion into the record up through Friday, September 15, 2006, at which time the record would finally close with regard to all public comment regarding this permit application. The Hearing Officer then personally contacted each person that had signed in on the sign-in sheet to advise each of them of this decision, and to make them aware of the aforementioned deadlines, should they wish to submit anything further. In her follow-up contacts with the persons identified on the sign-in sheet from the hearing, the Hearing Officer made it clear that the comments submitted between Sept. 1st and Sept. 15th were to be comments regarding the initial submissions only. Any new information not previously submitted by the Sept. 1st deadline would be considered untimely, and therefore not applicable to the proceeding at hand, thus, the importance of the first submission deadline. Documents received during these latter deadlines will be itemized below.

In order to ensure an accurate preservation of the record developed in this case, the following is an itemized listing of all materials entered into the record, both at the time of the hearing and during the post-hearing phase of this matter:

A. Department's Exhibits:

The Department entered the following exhibits into the record at the public hearing of 11/02/06:

- Exhibit #1: Copy of 7 Del.C., Ch. 72, the State of Delaware Subaqueous Lands Act;
- Exhibit #2: Copy of the State of Delaware DNREC Regulations Governing the Use of Subaqueous Lands, adopted 05/08/91, rev. 09/02/92;
- Exhibit #3: Copy of the public notice advertising Applicant's proposed project, published in the News Journal and The Delaware State News on 04/26/06;
- Exhibit #4: Wetlands and Subaqueous Lands Application of Sea Colony Recreational Association;
- Exhibit #5: Correspondence to the Department from Gahagan & Bryant Associates, Inc., consultants for the Applicant;
- Exhibit #6: Correspondence from the public to the Department regarding Sea Colony's application;
- Exhibit #7: Correspondence from the Department regarding Sea Colony's Application;
- Exhibit #8: Copy of the Department's Fee Bill;

- Exhibit #9: Copy of the Department's Fee Schedule;
- Exhibit #10: Assignment of Hearing Officer for the Sea Colony Public Hearing;
- Exhibit #11: Copy of the Notice as published in the Delaware State News and News Journal 08/02/06;
- Exhibit #12: Memorandum to the Hearing Officer from Laura M. Herr, WSLS Section Manager, dated 08/23/06, requesting the hearing record remain open for at least two weeks following the date of the hearing, due to a noticing error made by the Department to Captain Robert Martin, the requestor of this hearing;
- Exhibit #13: Copies of Department emails generated concerning this Sea Colony permit Application.

B. Applicant's Exhibits:

Robert Henry spoke at the public hearing on behalf of Sea Colony regarding this permit application. Mr. Henry works for Gahagan & Bryant Associates (hereinafter referred to as "GBA"), an engineering consulting firm located in Wilmington, Delaware. GBA was contracted by the Applicant to obtain the necessary approvals to allow them to conduct a beach replenishment project similar in scope to and during the same timeframe as the Federal Shore protection project proposed for construction in the adjacent public municipality of Bethany Beach. After a brief review of the Applicant's proposed project and listing of the steps that were taken by Sea Colony leading up to the time of the public hearing, Mr. Henry then proceeded to use his speaking time at the hearing

to address specific public concerns about this proposed project, specifically, those of Robert V. Martin, a retired U.S. Navy Captain who was the requestor of this public hearing. At the conclusion of his presentation, Mr. Henry provided the Hearing Officer with a hard copy of his discussion, including four exhibits as follows:

- Exhibit #1: Copy of correspondence dated 05/05/06 from Capt. Martin to Sarah W. Cooksey, Administrator, Delaware Coastal Programs, DNREC;
- Exhibit #2: Copy of correspondence dated 05/31/06 from Ms. Cooksey to Capt. Martin in response to the letter as identified in Exhibit #1;
- Exhibit #3: Copy of correspondence dated 05/15/06 from Capt. Martin to Mr. Andrew Whitman and Ms. Denise Rawding requesting a public hearing regarding Sea Colony's pending permit application; and
- Exhibit #4: Copy of Resolution adopted by the Town of Bethany Beach in support of Sea Colony's permit application.

For brevity's sake, this Hearing Officer's Report hereby expressly incorporates Mr. Henry's statement offered into the record at the time of the public hearing, including the aforementioned Applicant exhibits (numbered 1 through 4 therein), as identified by Mr. Henry at the public hearing, and the same is attached hereto as Exhibit "A". Further consideration to the Applicant's responses to public concerns will follow below.

C. Exhibits from Members of the Public/Comments Received at Hearing:

The first member of the public to speak at the hearing on August 23, 2006 was Captain Robert V. Martin, a retired U.S. Naval Officer and retired educator. Captain Martin resides in Georgetown in Sussex County, Delaware, and wished to be recognized not only as a private citizen, but also as a member of the Sierra Club of Southern Delaware. Entered into the record as "*Martin Exhibit #1*" at the time of the hearing was a blue portfolio given to the Hearing Officer by Captain Martin, containing 14 separate documents regarding Sea Colony's pending application. These related documents compiled by Captain Martin are preceded by a three-page statement by Captain Martin, which asserts his belief that this permit "...denies the rights of the public as defined by the Public Trust Doctrine...". This Exhibit is hereby expressly incorporated into this Hearing Officer's report, and is attached hereto as Exhibit "B". More discussion of Captain Martin's comments regarding this pending application follows below.

Steve Callanen was the next member of the public to offer commentary on this matter at the public hearing. Mr. Callanen is a resident of Ocean View, Delaware, and came to the public hearing to make a presentation on behalf of the Delaware Chapter of the Sierra Club. Mr. Callanen offered into the record a copy of his letter dated 08/22/06 to the Department in response to the DNREC public notice for the Sea Colony application. The Hearing Officer accepted the same and marked it as "*Callanen Exhibit #1*". This Exhibit is hereby expressly incorporated into this Hearing Officer's report, and is attached hereto as Exhibit

“C”. As with the other public exhibits, discussion of these comments follows below.

Lastly, John Flaherty of Common Cause of Delaware was present at the morning session of this public hearing. Upon taking the floor, Mr. Flaherty asked Mr. Henry who the lobbyist is for the Applicant in this matter, and also what role Freeman Associates plays with regard to this project. Tony Pratt, Administrator of DNREC’s Shoreline and Waterway Management Section (also present at that time) then offered what he surmised to be the situation with regard to Freeman Associates’ involvement with Sea Colony. According to Mr. Pratt, Freeman Associates was the original developer of Sea Colony condominium association. The condominium association, to the best of Mr. Pratt’s knowledge, now owns the building as a condominium ownership.

Mr. Flaherty also suggested that if, in fact, this project has any public purpose, then the State of Delaware should demand that there be a public access provision as part of this permit, should the DNREC Secretary decide to grant the same.

At the conclusion of the morning session of the hearing, Mr. Henry offered some concluding remarks to clarify an issue raised by Mr. Callanen’s comments. Specifically, the mobilization/demobilization costs referenced will still exist, whether Sea Colony proceeds with their proposed project or not. The State and Federal government will still have to pay the same costs, if and when the Bethany/South Bethany phase of the federal project takes place, regardless of action(s) taken by Sea Colony.

As mentioned previously, upon the re-opening of the evening session of this public hearing at 6:00 p.m. on August 23rd, the only persons present for the public hearing at that time were Department personnel Laura Herr and Andrew Whitman from WSLs, along with Robert Henry of Gahagan & Bryant Associates, the consultant firm retained the Applicant, Sea Colony. No additional public comment was received from anyone at that time.

D. Additional Public Submissions to the Record (Post-Hearing Phase):

As noted previously, the Hearing Officer allowed the record to remain open for all public comment on this pending permit application until close of business on Friday, September 1, 2006. Any additional information received by the Department between the date of the public hearing up through September 1, 2006, was copied and shared with all interested persons that had signed the sign-in sheet earlier that day at the 10:00 a.m. public hearing session. Again, the Hearing Officer made it clear that, should anyone wish to further comment on the supplemental information received by the Department, they would be able to submit such comment to the Hearing Officer for inclusion into the record up through Friday, September 15, 2006, at which time the record would finally close with regard to all public comment.

The following documents were received by the Hearing Officer (electronically) between September 1, 2006, and September 15, 2006:

- Steve Callanen: Copies of two News Journal articles regarding private beach replenishment, along with additional comments for the record from the Delaware Chapter of the Sierra Club, 09/01/06;

- E-mail of 09/02/06 forwarded to Laura Herr of the Department from the citizens of the “Coalition of Concerned Citizens” supporting the article written by Common Cause regarding Sea Colony’s pending permit application;
- Steve Callenen: Additional comments submitted by the Delaware Chapter of the Sierra Club, 09/15/06; article written by Katie Wais, Staff Writer of The Wave, “Sea Colony Wants in on Replenishment Projects” (09/13/06); “Just Whose Beach Is It?” article written by Kerin Magill, Sussex County Online Editor (08/01/02); Letter to the Editor from Bob Dunlap, published in the News Journal (07/21/05); and “Lightning Rod In the Sand”, American Littoral Society, Coastal Reporter, Summer, 2006, pgs. 4 & 5;
- Capt. Robert V. Martin: Additional commentary submitted 09/15/06 (including 26 photographs) concerning the situation faced by public beaches located downdrift of replenishment projects.

Lastly, during the review of the materials generated as a result of this public hearing, the Hearing Officer requested that Tony Pratt, Administrator of DNREC’s Shoreline and Waterway Management Section, review the materials submitted by the Applicant and offer an analysis/opinion of the same on behalf of the Department. In his response memorandum to the Hearing Officer dated February 13, 2007, Mr. Pratt states that the testimony offered by Robert Henry on behalf of the Applicant in this matter is “...supported by science and engineering,

and is a fair and correct representation of facts related to [this] matter...”. A copy of this response memorandum from Mr. Pratt is attached here to as Exhibit “D”, and is expressly incorporated into this Hearing Officer’s report at this time.

D. Discussion/Evaluation of Comments:

As was stated at the beginning of this report, there was a voluminous amount of public comment received as a result of the public hearing on August 23, 2006, all of which was in opposition to the granting of Sea Colony’s pending permit application. The opposition voiced regarding this project, however, was not due to any one person or group believing that beach/shoreline preservation was unnecessary, or that Sea Colony did not have either an inherent right/need to replenish their beach, nor the right to file this permit request. Rather, the primary concern amongst the public was the fact that Sea Colony is a private community looking to utilize “public” sands (i.e., sand from an offshore location owned by the State of Delaware) to build up a shoreline which would not be able to be utilized by the public, as Sea Colony restricts public access to its beach area (hence the term, “private community”). Therefore, this report will concentrate on carefully weighing all documentation received as a result of this public hearing, in order to determine whether a net public benefit can be realized as a result of this project, should the Secretary grant Sea Colony’s pending permit application concerning their beach replenishment proposal.

In reviewing the State of Delaware’s program history concerning the replenishment of municipal ocean beaches with offshore sand resources, Departmental policy has always been one of active encouragement toward

communities replenishing their beaches, be they public or private, including (but certainly not limited to) private communities adjacent to and downdrift from public beaches. Over the years, DNREC has encouraged communities to actively participate in such replenishment efforts, providing that they pay the cost of the dredging and placement of the sand on their respective beaches. In this present case, the Applicant has stated for the record that they 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.

As for the State of Delaware charging a fee for the actual sand that is dredged from offshore sources to be placed on a private beach such as Sea Colony (as some public comment suggests), it should be noted that the State has never charged any such fee in the past, and to do so at this point would, in spirit, go against the Department's policy of encouragement of such endeavors as mentioned above. Furthermore, DNREC has no mechanism in place to charge any entity for beach replenishment material taken from public subaqueous lands, nor does the Delaware Coastal Management Program (DCMP) have any enforceable policies that directly address this concern, as pointed out by Ms. Cooksey in her response letter to Capt. Martin dated May 31, 2006 (see Applicant's Exhibit #2, attached hereto as Exhibit "A").

Another major concern voiced by the public at this hearing was that, should this permit application be granted, DNREC would be "giving away public property (sand)", and would thereby be allowing a "conversion of ownership" of that property. There is no permanence, however, with regard to the act of beach

replenishment, and thus no actual sand “ownership” occurs. Due to littoral drift and the overall coastal processes which affect shoreline states such as Delaware, it is a generally accepted scientific conclusion that sand, regardless of its placement along Delaware’s shoreline, will begin to drift shortly after being placed at any given location (hence the continual need for shore replenishment in our State). It is the Department’s belief that the use of sand to replenish 2,300 linear feet of beach at Sea Colony will (1) extend the length of the proposed Federal project at Bethany Beach, (2) will, due to the proposed project’s design, match the elevation of the Bethany project, and (3) will result in a more stable replenishment project to the State’s shoreline over time, thus creating a net benefit to the public in general. See Cooksey ltr. of 05/31/06, previously identified as contained within Exhibit “A”, attached hereto. Sand placed at the Applicant’s beach will be subject to the aforementioned natural forces that will, over time, eventually move sand away from Sea Colony (the private beach) through Bethany or South Bethany (which are public beaches), thus effectuating a public benefit in the long run. Additionally, the Applicant must still adhere to Delaware’s Beach Protection Act and the Regulations Governing Beach Protection and the Use of Beaches, thus ensuring beaches and their sand resources, whether public or private, are utilized in a responsible manner.

Despite the argument of ultimate net benefit to public beaches, however, some opponents to this permit application maintain the position that “public property (i.e., sand) is still public property”, and that the public in general must have a right of public domain to access this property. Delaware law does

recognize the restriction of the general public from access to some private beach communities, and does so by withholding public funds and requiring the private communities to pay for the cost of replenishing their beaches. However, given (1) the temporary nature of the benefits from the sand placed at Sea Colony; (2) the benefits which will accrue to both the public infrastructure landward of Sea Colony and the adjacent public beaches; and (3) the costs being borne by Sea Colony to place the sand into the littoral system, it does not seem reasonable to expect the private land owner at Sea Colony to relinquish his right of privacy.

Although the concern of “public equity” is certainly referenced in several public comments generated by this public hearing, this permit application process is not the appropriate venue to be arguing the applicability of the Public Trust Doctrine to the management of resources in coastal states such as Delaware, specifically, the merits of public trust issues with regard to access of private beachfronts by the general public. Rather, the issue at hand in this permitting application, and the true scope of the public hearing requested as a result of the same, is whether Sea Colony should be allowed, at its own expense, to obtain the necessary approvals to replenish its beachfront, and whether granting their permit application currently pending with the Department will effectuate an overall net benefit to the citizens of Delaware.

The DCMP has enforceable policies regarding the use of State funding for beach replenishment projects. Executive Order No. 43 directs the State to restrict the use of State beach protection funds for privately owned beaches unless and until those beaches are opened for public use. State funds will not be directly

utilized for this proposed project at Sea Colony, and, as such, the project is consistent with this policy.

As noted above, the State of Delaware has never charged a fee for the actual sand dredged from offshore sources, regardless of the placement of such sand (as the State has no mechanism to charge any entity for beach replenishment material taken from public subaqueous lands), nor does the Delaware Coastal Management Program (DCMP) have any enforceable policies that directly address this concern. Nevertheless, the Sierra Club raises the question of what the estimated current value is of the 290,000 cubic yards of state-owned beach quality sand, and offers some suggestions concerning this issue in their submission to the Department dated 08/22/06 (previously entered into the record at the public hearing as "*Callanen Exhibit #1*", and attached hereto as Exhibit "C").

Again, a balancing act must be performed with regard to this issue, taking into consideration the intrinsic worth of the sand as it lay offshore in its present location versus the public benefit that it would provide after being dredged up and placed at Sea Colony, ultimately enhancing the overall stability of Delaware's shoreline. It is arguable that the utilization of this "public" sand to replenish Sea Colony's private beachfront initially (which will lead to an enhancement and stabilization of the public beach shorelines surrounding the Applicant's location in the near future), will effectuate an overall net public benefit that far outweighs the worth of the sand as it 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. And, again, even if such a mechanism was in place to do so, the charging of a fee to Sea Colony to obtain this sand would be in opposition to the historic policy of the Department, which has been to encourage beach communities to take an active role in beach replenishment projects such as the one currently proposed by the Applicant.

IV. Conclusions and Recommendations:

The Department has historically encouraged the replenishment of both public and private beaches. Beach replenishment projects protect not only the beachfront and adjacent landowners, but inland infrastructures, such as roads, electrical lines, sewer and water mains, and surrounding public and private property. Shore protection projects are vital to protecting coastal property and infrastructure from storm damage and flooding. They also maintain the State's valuable tourism industry, which is heavily dependent on healthy beaches. Delaware's Subaqueous Lands Act Regulations ("SLA Regs.") provide that "an application may be denied if the activity could cause harm to the environment, either singly or in combination with other activities or existing conditions...". SLA Regs., Section 3.01. In this case, there is no evidence of the proposed project causing any harm to the environment. Rather, the Department believes that the science and engineering documentation referenced by the Applicant and its consulting firm represents "...long held scientific opinion that DNREC accepts as foundation for the way [DNREC] manage[s] the beaches of the State." See Pratt memo of 02/13/07, attached hereto as Exhibit "D".

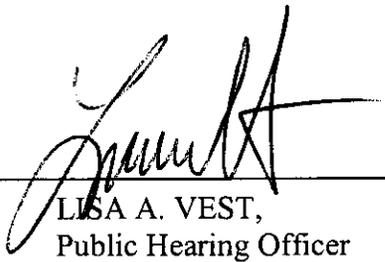
Based on the record developed in the course of this hearing, it is my opinion that the Applicant has complied with all of the requests and requirements of the Department with respect to obtaining an amendment to Sea Colony's existing permit for this proposed beach replenishment project under the jurisdiction of the Wetlands and Subaqueous Lands Section. In addition, I recommend that the following findings be made with regard to this permit application:

1. Proper notice of this 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.

In light of the above findings, I recommend that a permit be issued to Sea Colony by the Department in the customary manner at this time, which will 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.

In addition, I recommend issuing the attached Secretary's Order to effectuate this purpose and adopting the Hearing Officer's findings and conclusions as expressed hereinabove.



LISA A. VEST,
Public Hearing Officer

EXHIBIT "A"

**Statement by Robert Henry, Gahagan & Bryant Associates
Agent for the Sea Colony Recreational Association
August 23, 2006**

Good morning. My name is Robert Henry. I work for Gahagan & Bryant Associates (GBA), an engineering consulting firm located in Wilmington, DE. GBA was contracted by the Sea Colony Recreational Association to obtain the necessary approvals to allow them to conduct a beach replenishment project similar in scope to and during the same timeframe as the federal shore protection project proposed for construction in the adjacent public municipality of Bethany Beach.

The project proposed for Sea Colony would involve the placement along 2,350 linear feet of beach of approximately 290,000 cubic yards of sand obtained by hydraulic dredging from an offshore borrow source located in the Atlantic Ocean approximately 2.5 miles east of the project site.

Applications for a State Subaqueous Lands Permit and a Federal Consistency Determination were submitted to DNREC's Wetlands & Subaqueous Lands Section and Delaware Coastal Programs Section on March 31, 2006, respectively. An application for a federal permit was submitted to the Philadelphia District of the US Army Corps of Engineers on April 12, 2006.

A public notice advertising the request for consistency determination was issued on April 9, 2006. In response to that notice Robert V. Martin, Capt. US Navy Ret., sent a letter dated May 5, 2006, requesting that "a Public Hearing be held to discuss the procedural implications and the largesse of the Coastal Management Programs, DNREC, regards the use of public property for restricted and private use" (Applicant's Exhibit 1). Mr. Martin's request was denied by letter dated May 31, 2006, from Sarah W. Cooksey, Administrator, Delaware Coastal Programs (Applicant's Exhibit 2).

A public notice advertising the application for a subqueous lands permit was issued on April 26, 2006. In response to that notice Mr. Martin sent a letter dated May 15, 2006, requesting that "a Public Hearing be held relating to the use of public owned material for use by a private recreational association's at an exclusive and private property" (Applicant's Exhibit 3). This request was not received by the advertising agency until after the close of the 20-day notice period.

In response to that request, I was told that agency staff attempted to contact Mr. Martin to set up an informal meeting with him to discuss the concerns presented in his letter, perhaps avoiding the need for a public

hearing. I was informed that he responded with a letter saying that "It is not practical for me to meet with you at this time. Also, I see no redeeming purpose in a discussion of my concerns."

At this time I would like to address those concerns, which were referred to in Mr. Martin's letter of May 15th and enumerated in his letter of May 5th:

1. **Comment:** This is an objection to the use of Public Owned material, as represented by DNREC, The State of Delaware, for private use. Site "E", a Public Owned Resource, referred to in the April 9, 2006 Public Notice, has a limited quantity of material for beach replenishment and will be a primary source for beach replenishment of Public Beaches for a minimum of 50 years, which is the recognized time frame for Joint Federal and State Beach Replenishment Projects. There are local contractors for sand material, which could be placed on private beaches. Private contractors have been used many times by the Cape Shores Community over the past several years. The Division of Soil and Water, DNREC, is very familiar with the Cape Shores Projects.

Response: First, the work performed at Cape Shores is not directly analogous to that proposed for Sea Colony. The quantity of material proposed for this project would require almost 20,000 truckloads. This makes it impractical, in terms of both time and local impacts to air quality, roads and traffic, to perform as a truck haul project.

Second, since 1988, when the State initiated its program of replenishing municipal ocean beaches with offshore sand resources, it has actively encouraged private communities, which are adjacent to and downdrift from public beaches, to participate in the replenishment efforts, providing they pay the cost of the dredging and placement of the sand on their respective beaches. Past participants include North Shores (1998 and 2005), North Indian Beach (1994 and 1998), Sea Colony (1989 and 1998) and Middlesex Beach (1989). I believe the reason for this encouragement is the recognition of the coastal engineering relationship that the longevity of a beach replenishment project, all other things being equal, varies directly as the square of the project length. That is to say, the longer (along the coast) a project is the longer it will last. The placement of sand at Sea Colony will, in effect, lengthen the project proposed for Bethany Beach and should result in reduced maintenance costs for the public project. In addition, sand placed 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, provides enhanced protective and recreational benefits to adjacent public beaches. These benefits were recognized by the Town of Bethany Beach, which passed a resolution supporting this project on August 18, 2006 (Applicant's Exhibit 4).

2. **Comment:** This is also an objection to costs being paid with public tax dollars for replenishing privately owned beaches. Costs include more than the transportation of replenishment material from a dredge site to a target beach. "Ability to pay for all costs" is not a sufficient requirement

Response: All costs related to this project will be paid by the Sea Colony Recreational Association.

3. **Comment:** The right of the Division of Soil and Water, DNREC, to give away public owned property, in this instance sand from an offshore location owned by the public (The State of Delaware) is a questionable right.
4. **Comment:** By giving away public property (sand), DNREC is performing a "conversion of ownership" of that property.

Response: These comments imply a permanence to the action of replenishment. As noted previously, the coastal processes that necessitate the periodic replenishment of beaches will continue. Sand placed at Sea Colony will eventually move through Bethany or South Bethany.

5. **Comment:** Public use of public property: No matter how it is described by DNREC, public property (in this instance sand) is still public property and therefore the public has a right of public domain to access this property. The right of access means that the "private beach" is no longer private, and that the public must have safe and proper egress and exit. It is more than evident to beach users that privately owned beaches are enforceably closed to the general public. It is also evident that public parking spaces are non-existent.

Response: It is true that public access to privately owned beaches is restricted. The law recognizes this, however, by withholding public funds and requiring the private communities to pay for the cost of replenishing their beaches. In light of the temporary nature of the benefits from the placed sand, as noted above; the benefits that accrue to the public infrastructure landward of the private development and the adjacent public beaches; and the costs being

borne by the private entity to get the sand into the littoral system, it would seem unreasonable to expect the private owner to give up his right of privacy.

In summary, Mr. Martin believes that if Sea Colony is issued a permit for this project they should be charged a fee for the sand that is removed from offshore and placed on their beach.

Since 1988, the State has actively encouraged participation by private communities in replenishment efforts. To date, the State has never charged a fee for sand dredged from offshore sources and placed on private beaches. These precedents and the significant benefits to adjacent public beaches of increased protection and reduced maintenance costs argue against instituting a fee for this sand.

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89 Kings Highway
Dover, DE 19901

In re: Consistency Determination, Delaware Coastal Management Programs, DNREC, Public Notice dated 4/09/2006, Div of Soil and Water Conservation, for Sea Colony Recreational Association, Sussex County, Delaware.

Encl: Copy of April 9, 2006 Public Notice in re: Consistency Determination for Sea Colony Replenishment.

Dear Ms Cooksey:

Please accept this as a letter of protest of the manner, procedure, and protocol as well as the responsibility implied by the above named Public Notice of Consistency Determination.

1. This is an objection to the use of Public Owned material, as represented by DNREC, The State of Delaware, for private use. Site "E", a Public Owned Resource, referred to in the April 9, 2006 Public Notice, has a limited quantity of material for beach replenishment and will be a primary source for beach replenishment of Public Beaches for a minimum of 50 years, which is the recognized time frame for Joint Federal and State Beach Replenishment Projects. There are local contractors for sand material which could be placed on private beaches. Private contractors have been used many times by the Cape Shores Community over the past several years. The Division of Soil and Water, DNREC, is very familiar with the Cape Shores Projects.
2. This is also an **objection to costs being paid with public tax dollars** for replenishing privately owned beaches. **Costs include more than the transportation of replenishment material from a dredge site to a target beach.** "Ability to pay for all costs" is not a sufficient requirement
3. **The right of the Division of Soil and Water, DNREC,** to give away public owned property, in this instance sand from an offshore location owned by the public (The State of Delaware) **is a questionable right.**
4. By giving away public property (sand), **DNREC is performing a "conversion of ownership"** of that property.
5. Public use of public property: No matter how it is described by DNREC, public **property (in this instance sand) is still public property and therefore the**

public has a right of public domain to access this property. The right of access means that the "private beach" is no longer private, and that the public must have safe and proper egress and exit. It is **more than evident** to beach users that **privately owned beaches are enforceably closed to the general public.** It is **also evident that public parking spaces are non-existent.**

The statement "This project will be performed in concert with and adjoin the Federal replenishment project at Bethany Beach (previously authorized). (06.072)" included in the above named and attached Public Notice of April 9, 2006, **does not necessarily mean that the Sea Colony request has been approved,** only that the Bethany Beach project has been approved. The contents of this notice may be misleading.

I further request that a Public Hearing be held to discuss the procedural implications and the largesse of the Coastal Management Programs, DNREC, regards the use of public property for restricted and private use.

I will appreciate the courtesy of an early response to this letter.
Thank you for your attention and consideration.

Sincerely yours,



Robert V. Martin Capt. US Navy, Ret.

CC: The Honorable George H. Bunting, State Senator.
The Honorable Carl C. Danberg, Delaware Attorney General.
The Honorable R. Thomas Wagner Jr. Delaware State Auditor
Sierra Club, Delaware
Green Delaware, Alan Muller
Common Cause Delaware, John Flaherty

May 31, 2006

Captain Robert V. Martin, US Navy Retired
201 Wilson St.
Georgetown, DE 19947

Re: Sea Colony Beach Replenishment Project (FC 06.072)

Dear Captain Martin:

The Delaware Coastal Management Program (DCMP) is in receipt of your letter dated May 5, 2006 regarding FC 06.072, a proposed beach replenishment project at the Sea Colony resort in Sussex County, Delaware. In this letter, you object to the use of a public resource (sand) for the benefit of a private entity (Sea Colony Recreational Association, Inc.). Specifically, you question: 1) whether the applicant could obtain sand from an upland source; 2) whether the applicant will bear the true cost of the project; 3) whether DNREC is performing a conversion of ownership of the sand resource, and; 4) whether it is appropriate that Sea Colony remain a private beach after the replenishment project.

Applications for Federal Consistency Certification are reviewed based upon the approved enforceable policies of the DCMP. These policies are available on-line at the following web address:

<http://www.dnrec.state.de.us/dnrec2000/Divisions/Soil/dcmp/2004%20Policy%20Document.pdf>.

Enforceable policies for beach management include Delaware's Beach Preservation Act (7 Delaware Code, Chapter 68), Delaware's Regulations Governing Beach Protection and the Use of Beaches, and Executive Order No. 43, August 15, 1996.

We have considered your comments and offer the following responses:

Upland Sand Source:

The proposed project will extend the proposed Federal project at Bethany Beach and is designed to match the elevation of the Bethany project. As such, the proposed Sea Colony project requires approximately 290,000 cubic yards of material. An average dump truck can hold between ten and fifteen cubic yards of material; construction of this project using truck-fill will require, at minimum, over 19,000 truckloads of material. A project of this size is not feasible utilizing

an upland source. The applicant has utilized upland sand sources for small replenishment projects in past years.

The DCMP does not have enforceable policies that directly address this concern.

Cost of Project:

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 and permitting assistance. The State has no mechanism to charge any entity for beach replenishment material taken from public subaqueous lands.

The DCMP does not have enforceable policies that directly address this concern.

Conversion of Sand Ownership:

The State of Delaware has historically encouraged the replenishment of both public and private beaches. Beach replenishment projects protect not only the beachfront and adjacent landowners, but inland infrastructure (roads, electrical lines, sewer and water mains) and surrounding public and private property. In this specific case, the use of sand to replenish 2,300 linear feet of beach at Sea Colony will extend the length of the public project at Bethany Beach and will result in a more stable replenishment project over time; a net benefit to the public. In addition, sand placed at Sea Colony becomes available to the littoral system and is subject to natural forces that cause sand to drift. Generally, sand on beaches north of Fenwick Island moves northward; sand placed at Sea Colony will move northward to Bethany Beach, increasing the lifespan of the public replenishment project there.

Further, Sea Colony will not "own" the sand on their beach. As stated above, the sand placed at Sea Colony will be subject to natural forces that will, over time, move sand in a northward direction. In addition, the applicant must still adhere to Delaware's Beach Protection Act and the Regulations Governing Beach Protection and the Use of Beaches. These regulations ensure beaches and their sand resources, whether public or private, are utilized in a responsible manner. Permits and authorizations are required for any construction activities that may affect the beach or configuration of sand.

The DCMP does not have any enforceable policies that directly address this concern; however, there are general policies that encourage the preservation, protection and enhancement of beaches to mitigation erosion. As stated above, the proposed project will contribute to the stability of the Bethany Beach project and will contribute sand to the littoral system.

Beach Access:

The DCMP has enforceable policies regarding the use of State funding for beach replenishment projects. Executive Order No. 43 directs the State to restrict the use of State beach protection funds for privately owned beaches unless and until those beaches are opened for public use. State funds will not be directly utilized for the proposed project and as such, the project is consistent with this policy.

To the extent practicable, your concerns and comments have been taken into consideration during the DCMP review of the proposed project for Federal Consistency Certification.

Your letter also requested that a public hearing be held to discuss the “procedural implications and the largesse of the Coastal Management Program.” Public hearings can be held to allow additional opportunity for public input regarding a proposed project’s consistency with the enforceable policies of the DCMP. Because the DCMP has no enforceable policies regarding the issue of sand ownership, a public hearing would have no impact on how the DCMP could modify this project through the Federal Consistency process. Legislative changes at the State level would be necessary to address your concerns. Therefore, a public hearing will not be held.

I hope that I have adequately addressed your comments and concerns. Please contact me at (302) 739-9283 if you have additional questions or concerns.

Sincerely,

Sarah W. Cooksey, Administrator
Delaware Coastal Programs

SWC/sel

Cc: file 06.072
David Ormond – DE A.G. Office

RECEIVED

MAY 17 2006

Robert V. Martin Capt. US Navy Ret.
 201 Wilson Street
 Georgetown, DE 19947
 May 15, 2006
 Ph/Fax (302) 856-6742
 E-mail: Naviator@ce.net

Mr. Andrew Lehtinen

Ms. Denise J. Rawding
 DNREC Div. of Water Resources
 Wetlands and Subaqueous Lands Section
 89 Kings Highway
 Dover, DE 19901

Re: Public Notice, April 26, 2006:
 Sea Colony Recreational Association,
 Amend Permit: To add additional
 182,000 cubic yards beach fill to permit.

Ref. and Encl:

1. DNREC Public Notice Apr. 9, 2006, re:
 Sea Colony Recreational Association
 Beach Replenishment
2. Copy of letter dated May 5, 2006 to
 Administrator Coastal Management Programs.
3. Copy of cover letter to Senator G. Bunting
4. Copy of cover letter sent to the Delaware Atty.
 General and DE State Auditor (similar letters)
5. DNREC Pub Notice Apr 26, '05

Dear Mr. Lehtinen:

Dear Ms. Rawding:

This letter is a request for a clarification of seemingly conflicting permit requests related to Sea Colony Recreational Association beach replenishment. The Apr 9, '06 DNREC Public Notice stated 290,000 cubic yards of beach fill material, and your April 26, '06 stated an additional 182 000 for a total of 290,000 cubic yards beach fill material. Both notices referred to a permit which implies approval. It seems that such may not be the case, as the implication is that this permit has been approved. This would not apparently appear to be correct, as the approval was for a Federal and State of Delaware Joint 50 Year Replenishment Project, which in no way includes any private party participation.

If my interpretation of the above stated Public Notices is correct, please consider this letter a protest to an arbitrary procedure relating to allowing private participation to a Federal-State Public Funded Project, as well as the arbitrary permitting of the use of public owned material for private use, in this case, sand from a public owned dredge site source. It is further requested that a Public Hearing be held relating to the use of public owned material for use by a private recreational association's at an exclusive and private property.

The attached letter to the Administrator, Coastal Management Programs further explains the need for clarification, and consideration...

Thank you for your attention and acknowledgement of this communication.

Sincerely Yours,

A handwritten signature in black ink that reads "Robert V. Martin". The signature is written in a cursive style with a prominent initial "R" and a long horizontal stroke at the end.

Robert V. Martin Capt. US Navy Ret.

TOWN OF BETHANY BEACH

Resolution to support the application of the Sea Colony Recreation Association to add approximately 290,000 cubic yards of sand to their beach in a project to coincide with the anticipated Bethany - South Bethany Federal Beach Replenishment Project.

Whereas Sea Colony Recreation Association has applied for a permit to "piggyback" on the Bethany - south Bethany Beach Federal Beach Replenishment Project, and

Whereas, the Sea Colony Recreation Association proposes to pay for transportation costs of the sand with private (non-public) funds, and

Whereas, it is well recognized in the coastal engineering profession that the longer (lengthwise) a beachfill project is, all other things being equal, the more stable it is over time, and

Whereas, the participation of Sea Colony in the reconstruction project will offer protection to public infrastructure, and

Whereas, past participation of Sea Colony in beach renourishment projects has benefitted Bethany Beach,

Be it hereby resolved by the Town Council of The Town of Bethany Beach to support the application of the Sea Colony Recreation Association to add approximately 290,000 cubic yards of sand to their beach in a project to coincide with the anticipated Bethany - South Bethany Federal Beach Replenishment Project.

ADOPTED by the Town of Bethany Beach, Delaware this 18th day of August, 2006.

Approved:

(absent)

Mayor

Carol A. Brinkley

Vice-Mayor

Mike...

Treasurer

Harold...

Council

Ken...

Council

Wayne...

Council

Chris...

Council

[Signature]

Town Manager

Attest:

Lia Kai

Town Clerk

EXHIBIT "B"

Commentary of Robert V. Martin- Commentary Presented at the Public Hearing: Wednesday, August 23, 2006, DNREC Building, Dover, Delaware. I am representing myself as a private citizen, and also, as a member of the Sierra Club of Southern Delaware, I am privileged to speak on their behalf.

Commentary regards the Public Trust Doctrine and Beach Replenishment Related to Private Beaches and Denial of Public Use When private and exclusive Beaches are replenished with Public Owned Sand.

Case in Point: Permit request by the Sea Colony Recreational Association at Bethany Beach, DE, to replenish their exclusive and private beach with 290,000 cubic yards of public owned sand from a Public Owned sand source offshore of Bethany Beach as part of the approved 50 year Federal and State Replenishment Plan for Bethany Beach and South Bethany Beach.

My name is Robert V. Martin. I am a retired U.S. Naval Officer, and a retired Educator. I have been an avid surf fisherman for over 60 years and am highly interested in proper beach preservation. I am highly interested in viable procedures to preserve this natural and threatened resource which has become a national attraction, and the availability of all of Delaware beaches to all citizenry.

The Public Trust Doctrine is over 1500 years old and its' concern over the availability and use of the shore was brought to America by Pilgrims from England. Attachments to this commentary discuss the Public Trust Doctrine in more detail. Attachments also include copies of communications with DNREC related to this permit.

The Sea Colony Recreational Association is just that. It exists to accommodate the pleasures of the occupants of Sea Colony properties and condo units, either rental or owner occupied. The Sea Colony beach is exclusive and private, as is the beach of its neighbor immediately to the South, the private community of Middlesex. Just south of Middlesex is the community of South Bethany. The receding dune and State Park beach lies between Middlesex and the town of Fenwick, DE.

South Bethany

DNREC is allowing the Sea Colony Recreational Association to "Piggy back" on the approved Federal and State 50 year Replenishment Project which is scheduled for Bethany Beach and South Bethany. The sand for the replenishment will come from an offshore public owned source. The sand is

public owned. I note that although the material used for the replenishment of these exclusive and private beaches is still owned by the Delaware Public, the public is denied access and the use of these beaches. I believe that this is an absolute violation of the Public Trust Doctrine. The Sea Colony Recreational Association will pay nothing for this public owned material. It will be a gift from DNREC. This raises the question: By what authority does DNREC give away public property?

Sea Colony may have a private contract with the Great Lakes Dredge and Dock Company to deliver sand to their beach, but will not be required to pay a fair share of the mobilization and demobilization costs of the dredge equipment needed for the project. As they are not paying for the sand, an analogy would be like paying for the transportation costs only, when buying an automobile, and then getting the automobile for nothing. Quite a bargain at the expense of Delaware tax payers. Saving the Sea Colony money by allowing them to participate in a joint Federal and State 50 year Replenishment Project, the cost of which is apportioned 65% Federal and 35% State, may be of interest to the Federal Government and its Rules and Regulations. An additional analogy would be when a road is being paved by the Dept of Public Transportation of Delaware, a resident alongside the road be allowed the use of the equipment and the material required to pave his private driveway, whatever length. I don't believe that would happen.

I again suggest that there may be Federal interest in the procedure.

When publishing notices related to private beach replenishment and Federal projects DNREC uses phrases like "Coincide with", "in Conjunction with", "in Concert With". Those terms do not necessarily mean that the private beach request has been Federally approved. Actually, DNREC is giving away public property. I suggest that this is, in a sense, a "Conversion of Ownership" of that property, the legality of which needs clarification.

DNREC has stated that the replenishment of a private beach will benefit the public beaches because of a natural drift of the eroding replenishment in the direction of the public beaches such as Bethany, Rehoboth, Dewey and others. The sand will only be on the private beach temporarily, so it will really be a public benefit. Possibly there might be a rental charge for this temporary private benefit. If DNREC's contention were true, we would not have to replenish any beach downstream of a "natural sand drift". There is no natural sand only replenished sand from offshore sources. DNREC officials have

repeatedly stated that the eroded sand lies just off the beach and will come back during quieter summer wave action. Of course, that is why we must regularly replenish our beaches. Possibly some of the eroded replenished sand will come back, but most will add to Hen and Chicken Shoals, the tip of Cape Henlopen Point, or wash out to the continental shelf and beyond.

There has never been a “hands on study” of the littoral drift or natural long shore sand drift along Delaware’s shores. Some real documentation of the quantity and grain size of any longshore sand drift is needed. The use of “sand streamer traps” could provide a degree of documentation rather than the Army Corps use of computer mathematical models. Repeating unknowns and undocumented opinions become much like the propaganda of the Third Reich of WW II. Repeat misinformation enough times and even the perpetrator will begin to believe it.

Delaware Executive Order #43, August 15, 1996 directs that the State restrict the use of beach protection preservation funds for private owned beaches unless and until those beaches are opened for public use. As State and Federal moneys are being used to provide the means for the delivery of replenish material, and are giving away the replenishment material, I believe that this Executive Order applies.

I submit that this permit denies the rights of the public as defined by the Public Trust Doctrine, especially that the material being used to replenish a private beach is public owned material, and the public is being denied access and use of that beach. That being so, I recommend that the request from the Sea Colony Recreational Association be denied. Future request from the Sea Colony Recreational Association should only be considered when all related facets including financial obligations, public access and use, and compliance with all State and Federal policies and regulations are met.

CONTENTS OF SUBMITTED MATERIALS August 23, 2006

Public Hearing re: Sea Colony Recreational Association beach replenishment to be held as part of a Federal-State 50 Year Replenishment Project for Bethany Beach and South Bethany Beach, Delaware.

Materials include:

- 1. May 5, 2006 Letter to Ms Cooksey, DCMP from R. V. Martin.**
- 2. May 8, 2006 Letter to Senator G. Bunting from R.V. Martin.**
- 3. May 8, 2005 Letter to Atty General, Delaware from R.V. Martin.**
- 4. May 8, 2006 Letter to State Auditor, DE from R.V. Martin .**
- 5. May 15, 2006 Letter to Ms Rawding, DNREC from R.V. Martin.**
- 6. May 25, 2006 Letter from D. Ormond, Deputy Atty Gen DE to R.V. Martin**
- 7. July 14 , 2006 Letter to A. Whitman, DNREC, from R.V. Martin**
- 8. Public Beach Use: Michigan Supreme Court Ruling**
- 9. Legal Reporter of Mississippi, Alabama Sea Grant Consortium re; Public Trust Doctrine.**
- 10. Connecticut Dept. of Environmental Protection re: Public Trust**
- 11. Texas Environmental Profiles re: Beach Access.**
- 12. Environmental News re: Public Use of Beaches.**
- 13. Sussex County Snapshots: "Just Whose Beach Is It"**
- 14. Sea Colony properties description flyers**

Robert V. Martin Capt. US Navy Ret
 201 Wilson Street
 Georgetown, DE 19947
 May 5, 2006
 Phone/Fax: (302) 856-6742
 E-mail: naviator@ce.net

Ms. Sarah W. Cooksey, Administrator
 Delaware Coastal Programs
 DNREC
 89 Kings Highway
 Dover, DE 19901

In re: Consistency Determination, Delaware Coastal Management Programs, DNREC, Public Notice dated 4/09/2006, Div of Soil and Water Conservation, for Sea Colony Recreational Association, Sussex County, Delaware.

Encl: Copy of April 9, 2006 Public Notice in re: Consistency Determination for Sea Colony Replenishment.

Dear Ms Cooksey:

Please accept this as a letter of protest of the manner, procedure, and protocol as well as the responsibility implied by the above named Public Notice of Consistency Determination.

1. This is an objection to the use of Public Owned material, as represented by DNREC, The State of Delaware, for private use. Site "E", a Public Owned Resource, referred to in the April 9, 2006 Public Notice, has a limited quantity of material for beach replenishment and will be a primary source for beach replenishment of Public Beaches for a minimum of 50 years, which is the recognized time frame for Joint Federal and State Beach Replenishment Projects. There are local contractors for sand material which could be placed on private beaches. Private contractors have been used many times by the Cape Shores Community over the past several years. The Division of Soil and Water, DNREC, is very familiar with the Cape Shores Projects.
2. This is also an **objection to costs being paid with public tax dollars** for replenishing privately owned beaches. **Costs include more than the transportation of replenishment material from a dredge site to a target beach.** "Ability to pay for all costs" is not a sufficient requirement
3. **The right of the Division of Soil and Water, DNREC,** to give away public owned property, in this instance sand from an offshore location owned by the public (The State of Delaware), **is a questionable right.**
4. By giving away public property (sand), **DNREC is performing a "conversion of ownership"** of that property.
5. Public use of public property: No matter how it is described by DNREC, public **property (in this instance sand) is still public property and therefore the**

public has a right of public domain to access this property. The right of access means that the “private beach” is no longer private, and that the public must have safe and proper egress and exit. It is **more than evident** to beach users that **privately owned beaches are enforceably closed to the general public. It is also evident that public parking spaces are non-existent.**

The statement “**This project will be performed in concert with and adjoin the Federal replenishment project at Bethany Beach (previously authorized). (06.072)**” included in the above named and attached Public Notice of April 9, 2006, **does not necessarily mean that the Sea Colony request has been approved**, only that the Bethany Beach project has been approved. The contents of this notice may be misleading.

I further request that a Public Hearing be held to discuss the procedural implications and the largesse of the Coastal Management Programs, DNREC, regards the use of public property for restricted and private use.

I will appreciate the courtesy of an early response to this letter.
Thank you for your attention and consideration.

Sincerely yours,

Robert V. Martin Capt. US Navy, Ret.

CC: The Honorable George H. Bunting, State Senator.
The Honorable Carl C. Danberg, Delaware Attorney General.
The Honorable R. Thomas Wagner Jr. Delaware State Auditor
Sierra Club, Delaware
Green Delaware, Alan Muller
Common Cause Delaware, John Flaherty

201 Wilson Street
Georgetown, DE 19947
May 8, 2006
Ph/Fax: 856-6742
E-mail: RMartin@dnrec.de.gov

The Honorable George H. Bunting Jr, State Senator
P.O. Box 1401
Dover, DE 19903

- Enc.: 1. Copy of Letter to Administrator, Coastal Management Programs in re: Sea Colony Recreational Association.
2. DNREC Public Notice Re; Sea Colony Recreation Association. Dated April 9, 2006
3. Copy of Cover Letter sent to the Attorney General State Auditor Offices (same letter).

Dear Senator Bunting:

The enclosed are copies of communications to the Administrator Coastal Management Programs, DNREC, as well as communications to the offices of Attorney General and State Auditor.

I am aware that you have had a long and sincere interest in the welfare of Delaware beaches, and rightfully so. This is not a protest to beach replenishment, as beach replenishment is presently the only viable means of shore preservation. There is a need, however, to examine procedures, costs, and responsibilities of replenishment projects managed by state agencies related to beach replenishment.

The attached should be explanatory. It will be my pleasure to answer any question that you may have regards the enclosed.

Thank you for your attention and for any comment.

Sincerely yours,

Robert V. Martin

201 Wilson Street
Georgetown DE 19947
May 8, 2006
Ph/Fax: (302) 856-6742
Email: Robert.V.Martin@de.gov

The Honorable Carl C. Danberg, Delaware Attorney General
102 Water Street
Dover, DE 19904

- Enc: 1. Copy of letter dated May 5, 2006 to Administrator Coastal Management Programs re: Sea Colony Recreational Assoc.
2. Copy of DNREC Public Notice, April 9, 2006 re: Sea Colony Recreational Association.

The Honorable Attorney General:

Attached are copies of communications to the office of Coastal Management Programs, DNREC, DE.

It appears that the State of Delaware is giving away public property in the form of mined offshore sand to a private association, in this instance, The Sea Colony Recreational Association. DNREC authorization for a private organization to participate in a joint Federal and State funded project, for whatever purpose, does not appear to be sufficient to meet the Federal Regulations related to offshore mining of minerals by a private recreational organization. It would seem that special permits be required by both the State and Federal Governments for this private enterprise, otherwise why couldn't privately owned companies in the business of selling sand be allowed to participate as well.

The private organization may be taking advantage of the Dredge Company's equipment mobilized for the Federal-State beach replenishment, and also pay for the transport of this material from the dredge site to the private beach as well as shaping the beach, but there does not appear to be any arrangement for the private organization to pay for the public owned material itself. A simplified analogy would be paying for the transportation cost of an automobile and then getting the automobile free. Quite a bargain. It's a wonder that commercial enterprises do not contest this procedure.

Thank you for your attention and comment.

Sincerely yours,

Robert V. Martin, Capt. US Navy Ret.

201 Wilson Street
Georgetown DE 19947
May 8, 2006
Ph/Fax: (302) 856-6742
Email: Naviator@ce.net

The Honorable R. Thomas Wagner Jr. Delaware State Auditor
401 Federal Street
Townsend Building Suite 1
Dover, DE 19901

- Enc. 1. Copy of letter dated May 5, 2006 to Administrator Coastal Management Programs re: Sea Colony Recreational Association.
2. Copy of DNREC Public Notice, April 9, 2006 re Sea Colony Recreational Association.

The Honorable R. Thomas Wagner Jr:

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The private organization may be taking advantage of the Dredge Company's equipment mobilized for the Federal-State beach replenishment, and also pay for the transport of this material from the dredge site to the private beach as well as shaping the beach, but there does not appear to be any arrangement for the private organization to pay for the public owned material itself. A simplified analogy would be paying for the transportation cost of an automobile and then getting the automobile free. Quite a bargain. It's a wonder that commercial enterprises do not contest this procedure.

Thank you for your attention and comment.

Sincerely yours,

Robert V. Martin, Capt. US Navy Ret.

Robert V. Martin Capt. US Navy Ret.
201 Wilson Street
Georgetown, DE 19947
May 15, 2006
Ph/Fax (302) 856-6742
E-mail: rmartin@coast.net

Ms. Denise J. Rawding
DNREC Div. of Water Resources
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

Re: Public Notice, April 26, 2006:
Sea Colony Recreational Association,
Amend Permit: To add additional
182,000 cubic yards beach fill to permit.

Ref. and Encl:

1. DNREC Public Notice Apr. 9, 2006, re:
Sea Colony Recreational Association
Beach Replenishment
2. Copy of letter dated May 5, 2006 to
Administrator Coastal Management Programs.
3. Copy of cover letter to Senator G. Bunting
4. Copy of cover letter sent to the Delaware Atty.
General and DE State Auditor (similar letters)
5. DNREC Pub Notice Apr 26, '05

Dear Ms. Rawding:

This letter is a request for a clarification of seemingly conflicting permit requests related to Sea Colony Recreational Association beach replenishment. The Apr 9, '06 DNREC Public Notice stated 290,000 cubic yards of beach fill material, and your April 26, '06 stated an additional 182 000 for a total of 290,000 cubic yards beach fill material. Both notices referred to a permit which implies approval. It seems that such may not be the case, as the implication is that this permit has been approved. This would not apparently appear to be correct, as the approval was for a Federal and State of Delaware Joint 50 Year Replenishment Project, which in no way includes any private party participation.

If my interpretation of the above stated Public Notices is correct, please consider this letter a protest to an arbitrary procedure relating to allowing private participation to a Federal-State Public Funded Project, as well as the arbitrary permitting of the use of public owned material for private use, in this case, sand from a public owned dredge site source. It is further requested that a Public Hearing be held relating to the use of public owned material for use by a private recreational association's at an exclusive and private property.

The attached letter to the Administrator, Coastal Management Programs further explains the need for clarification, and consideration...

Thank you for your attention and acknowledgement of this communication.

Sincerely Yours,

Robert V. Martin Capt. US Navy Ret.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

**CARL C. DANBERG
Attorney General**

PLEASE REPLY TO: Civil Kent County Environmental Unit

May 25, 2006

Robert V. Martin, Capt., U.S. Navy Retired
201 Wilson Street
Georgetown, DE 19947

RE: Your letter dated May 8, 2006; Consistency Determination

Dear Captain Martin:

Attorney General Carl Danberg has forwarded to me your letter to him, along with the copy of your letter to Sarah Cooksey, Administrator, Delaware Coastal Program. We appreciate your involvement and concern regarding the consistency determination and the proposed participation by the Sea Colony Recreational Association in the Bethany Beach replenishment project. I have spoken with Ms. Cooksey, and my understanding is that she intends to timely respond to your letter to her. I will review this matter and the concerns raised in your letter, confer with my management, and then contact you. In the meantime, should you have any further questions or concerns, please feel free to contact me.

Very truly yours,

David L. Ormond, Jr.
Deputy Attorney General

cc: Kevin P. Maloney, Deputy Attorney General
Environmental Unit
Wilmington Office

Robert V. Martin, Capt., US Navy Ret.
201 Wilson Street
Georgetown, DE 19947
July 14, 2006

Mr/ Andrew Whitman, Project Scientist
DNREC Div. of Water Resources
Wetlands and Subaqueous Lands Section
Dover, DE 19901

Re: Sea Colony Recreational Association, Beach Replenishment
Public Notice dated April 26, 2006

Dear Mr. Whitman:

This is in response to your 22 June, '06 E-mail response to my 16 May, '06 letter relative to the Sea Colony replenishment request, and your telephone message of 10 July, '06 left on my phone answering machine. The space on the answering machine is "time limited", therefore I may not have received your entire message.

Thank you for both responses. Your 22 June, '06 e-mail included the statement: "After review of your comments, it was determined that your request for a public hearing should be honored". I presume that this determination was made by the Division of Water Resources. The message left on my phone answering machine on July 10, '06 included the statement: "Since you were the only respondent to the project, we would like to have a very informal meeting with you and have..(garbled)..I am the project scientist, and... (garbled)...Laura Herr...(garbled)... and the consultant...to... Bob Henry...the four of us could sit down and go over your concerns. Like I said, it would be informal (pause) no legal representation. We can sit down and *iron things out* without having to rent a facility, court reporter and all....."

Thank you for the offer of a very informal meeting. It is not practical for me to meet with you at this time. Also, I see no redeeming purpose in a discussion of my concerns.

Thank you for your time and attentions.

Sincerely yours,

Robert V. Martin, Capt., US Navy Ret.

Michigan Court Rules that Public Has Right to Walk along Great Lakes Beaches

August, 2005

TRAVERSE CITY, Mich. — People can stroll along Michigan's 3,200 miles of Great Lakes beaches whether lakefront property owners like it or not, the state Supreme Court ruled. The court unanimously sided with Joan M. Glass, who sued her neighbors over access to the Lake Huron waterfront. The neighbors said she was trespassing. The justices disagreed over the *appropriate boundary of the public area, but a five-member majority held that the public can wander anywhere between the water's edge and the ordinary high water mark.*

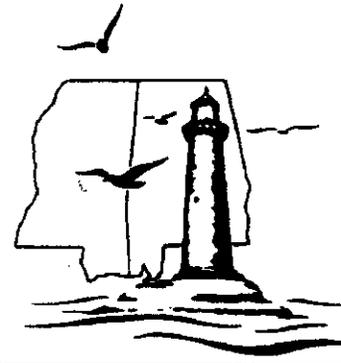
The decision overturned an appeals court ruling that the state owns that land -- but that owners of adjacent property have exclusive use of it and can kick others out. "It's a tremendous victory for the public interest and for Michigan's economy, much of which is based on tourism and access to Great Lakes beaches," said Keith Schneider, deputy director of the Michigan Land Use Institute.

"The bottom line is there's this stretch the public has the right to use," said Pamela Burt, attorney for Glass. Ernie Krygier, president of Save Our Shoreline, a lakefront property rights group, said the group's board would meet to consider its options. About 70 percent of Michigan's shoreline on lakes Michigan, Huron and Erie is privately owned, according to the Surfrider Foundation, a nonprofit environmental group.

Source:  AP

WATER LOG

A Legal Reporter of the Mississippi-Alabama
Sea Grant Consortium



Public Trust Doctrine Protects Beach Access *Claim that Doctrine Doesn't Exist in Connecticut Fails*

Leydon v. Greenwich, 57 Conn. App. 712 (2000).

Tammy L. Shaw, J.D.

In the second round of what is becoming a well-known legal dispute over the public's right to beach access in Connecticut, that state's Appellate Court ruled that a Greenwich municipal ordinance violates the public trust doctrine. The challenged ordinance provides that only residents of the town may enter municipally-held parks and beaches, granting non-resident visitors access only if accompanied by a Greenwich resident and upon payment of a fee. This

decision reverses a lower court's ruling that the public trust doctrine is not applicable to dry sand beaches in Connecticut and that the plaintiff failed to prove, beyond a reasonable doubt, that the Greenwich ordinance is invalid.

The public trust doctrine asserts that a state such as Connecticut holds lands under tidal and navigable waterways in trust for its citizens. Citizens have the right to use those lands for navigation, fishing, commerce and recreation, and access to the unique coastal and aquatic resources is essential to the utility of the doctrine. (See box, page 3.)

See Public Trust Doctrine, page 2

Executive Order Calls for National System of Marine Protected Areas

Kristen M. Fletcher, J.D., LL.M.

In May, President Clinton signed an Executive Order calling for the expansion and protection of Marine Protected Areas (MPAs) across the nation. Drawing on existing local, state and federal MPAs, the Order seeks to

- Strengthen the management and protection of existing MPAs;
- Establish new or expanded MPAs;
- Develop a national system of MPAs; and
- Compel Federal agencies to avoid causing harm to MPAs and consult regarding MPAs.

The broad definition of MPA as "any area of the marine environment reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein" will include many sites in the Gulf of

See Executive Order, page 8

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Editor's Note . . .

Loggerhead Turtle v. Volusia County, Florida, 92 F. Supp. 2d 1296 (M.D. FL. 2000).

In Issue 18:4, we reported that the Eleventh Circuit found that an incidental take permit issued to Volusia County, Florida which permits takings of sea turtles caused by driving, did not permit takings caused by artificial lighting. On remand to determine whether the County's lighting ordinance violated the Endangered Species Act, the court found no evidence to support liability, holding that the lighting ordinance properly acts to prohibit, restrict and limit artificial beachfront lighting.

Sierra Club v. Glickman, 156 F.3d 606 (5th Cir. 1999).

In Issue 18:4, we reported that the Fifth Circuit held the Sierra Club did have standing to sue the Department of Agriculture over endangered species' dependence on water from the Edwards Aquifer in Texas. The decision was affirmed upon rehearing en banc, on January 21, 2000.

Driscoll v. Adams, 181 F.3d 1285 (11th Cir. 1999).

In Issue 19:4, we reported that the Eleventh Circuit found a landowner liable for violations under the Clean Water Act, even though the necessary storm water discharge permit was not available because there were other permits available. The United States Supreme Court denied certiorari on May 15, 2000.



WATER LOG is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its goal is to increase awareness and understanding of coastal problems and issues.

To subscribe to WATER LOG free of charge, contact: Mississippi-Alabama Sea Grant Legal Program, 518 Law Center, University, MS, 38677, phone: (662) 915-7775, or contact us via e-mail at: waterlog@olemiss.edu. We welcome suggestions for topics you would like to see covered in WATER LOG.

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For information about the Legal Program's research, ocean and coastal law, and issues of WATER LOG, visit our homepage at <http://www.olemiss.edu/orgs/masglp>

Residents Only

Brenden Leydon, a resident of the state of Connecticut, filed suit after being turned away by security guards when he attempted to jog onto Greenwich Point, a 147 acre park and beach area located on Long Island Sound. Leydon argued that municipal parks and beaches are public forums that must be open to everyone. He later amended his complaint raising the public trust doctrine by claiming that states hold navigable waters, including the shoreline, in trust for public use and that Greenwich's exclusion of out-of-towners violates that longstanding doctrine.

The policies regarding Greenwich Point Park reach as far back as 1919 and derive from state statutes that give Greenwich authority to establish and maintain public parks and bathing beaches.¹ In subsequent amendments, the town was given authority to enact ordinances and appropriate municipal funds to govern the use of and conduct in the parks and beaches by the *inhabitants of the town*.² It is this language that the town relied upon in enacting a municipal ordinance that provides, in part, that only inhabitants of the town may *enter, remain upon, or use the town's parks*.³ Greenwich maintains that it has legislative authority to exclude non-residents from its municipal parks and that this same legislation abolished the public trust doctrine, as to municipally-held parks and beaches.

The town argues, alternatively, that the public trust doctrine does not exist in Connecticut and that case law provides that the public trust lands extend only to navigable waters and the land beneath them and not to dry sand beaches, such as the one at issue here.

Beach Access

The Connecticut Appellate Court addressed the issue beginning first with the defendants' claim that the public trust doctrine does not exist in Connecticut. Greenwich argues that case law has never applied the doctrine to areas of dry sand beaches, such as the one at issue here. The town attempts to draw a distinction between the public

The Public Trust Doctrine

The public trust doctrine provides that title to navigable waters, tide waters and the living resources of these waters is held under a special title by the State in trust for the benefit, use and enjoyment of the public. Each state has authority to apply the doctrine according to its own laws and policies but the principles of the doctrine remain that while lands adjacent to navigable waters and tidelands may be conveyed into private ownership or, as in this case, municipal ownership, those lands are still subject to the trust, with the public as beneficiary. This includes the public's right to use and enjoy navigable waters and tidelands for a variety of activities such as navigation, commerce, fishing, recreation and other activities deemed to be within the scope of the doctrine. Since this use and enjoyment, necessarily, implies access to the waters, the doctrine assumes some type of public access to the shore.

park "trust" doctrine, arguing that it applies only to parks, and the traditional public trust doctrine, arguing that it applies only to submerged lands below the low water mark. The court disagrees. Listing Connecticut cases over the last 100 years, the appellate panel finds clear indication that the

defendants argue that by conferring on the municipality the authority to establish and conduct public parks and beaches, the legislative acts override the public trust doctrine. Citing the fundamentals of statutory construction, the court holds that statutes cannot be read to abolish existing legal principles, like the public trust doctrine, unless the acts expressly overrule the doctrine. The court states, "if the legislature intended the town's bathing beaches to be either nonpublic or for the sole use of the town's residents, or both, the legislature could have so stated."⁴ In the absence of any such express provision, a clear and unambiguous reading of the statutes reveals no such intent to abolish the public trust doctrine.

"if the legislature intended the town's bathing beaches to be either nonpublic or for the sole use of the town's residents, or both, the legislature could have so stated."

Conclusion

The appellate court determined that the ordinance was improper as a matter of law for the town to decline to apply the public trust doctrine to the facts of this case and that the plaintiff did not fail to prove that the Greenwich ordinance violated public policy and the public trust doctrine. The defendants have vowed to appeal the decision, during which time the ordinance restricting beach access to town residents will remain in force. ✓

right known as the public trust doctrine has been applied to parks and beaches to all residents and discrimination between residents and nonresidents, violates the doctrine. The court holds that both doctrines apply in this case, and that both the park

The court then turns to the defendants' claim that the legislature has abolished the public trust doctrine as applied to Greenwich.

ENDNOTES

1. Sec. Acts 103, No. 103.
2. Sec. Act 60, No. 71.
3. Greenwich Municipal Code § 7-37.
4. *Leydon v. Greenwich*, 57 Conn. App. 712, at 723.



Office of Long Island Sound Programs

Fact Sheet

The Public Trust

What are the public's rights along Connecticut's shore?

Connecticut's shore belongs to the people--not just in terms of our environmental and cultural heritage, but in a specific legal sense as well. Under the common law public trust doctrine, a body of law dating back to Roman times, all coastal states as sovereigns hold the submerged lands and waters waterward of the mean high water line in trust for the public. The general public may freely use these lands and waters, whether they are beach, rocky shore, or open water, for traditional public trust uses such as fishing, shellfishing, boating, sunbathing, or simply walking along the beach. In Connecticut, a line of state Supreme Court cases dating back to the earliest days of the republic confirm that private ownership ends at mean high water line, and that the state holds title to the lands waterward of mean high water, subject to the private rights of littoral or riparian access.

1. What is the public trust area?

The public trust area comprises submerged lands and waters waterward of the mean high water line in tidal coastal, or navigable waters of the state of Connecticut. On the ground, the public trust area extends from the water up to a prominent wrack line, debris line, or water mark. In general, if an area is regularly wet by the tides, you are probably safe to assume that it is in the public trust. The public trust area is also sometimes referred to as tidelands, and is defined as "public beach" by the Connecticut Coastal Management Act, C.G.S. 22a-93(6).

2. What rights does the public have within the public trust area?

"Public rights include fishing, boating, hunting, bathing, taking shellfish, gathering seaweed, cutting sedge, and of passing and repassing. . ." *Orange v. Resnick*, 94 Conn. 573 (1920).

"It is settled in Connecticut that the public has the right to boat, hunt, and fish on the navigable waters of the state." *State v. Brennan*, 3 Conn. Cir. 413 (1965). The public has the right to fish and shellfish over submerged private lands, *Peck v. Lockwood*, 5 Day 22 (1811).

The public has the right to pass and repass in navigable rivers, *Adams v. Pease* 2 Conn. 481 (1818) .

The public may gather seaweed between ordinary high water and low water, *Chapman v. Kimball* 9 Day 38 (1831).

3. Where does private property end?

In almost every case, private property ends, and public trust property begins, at the mean high water line (often referred to as "high water mark" in court decisions). Mean high water is the average of high tides

over a defined period, and its elevation can be obtained from standard references, including the U.S. Army Corps of Engineers Tidal Flood Profile charts.

The public owns up to "high water mark," *Simons v. French*, 25 Conn. 346 (1856).

Title of riparian proprietor terminates at ordinary high water mark, *Mather v. Chapman*, 40 Conn. 382 (1873).

"High water mark" = "mean high water mark" = "ordinary high water mark." Private ownership of submerged lands is possible, only when basins are dredged from upland, or from inland, non-navigable waters. *Michalczo v. Woodmont*, 175 Conn. 535 (1978).

4. What rights does the adjacent private landowner have within the public trust area?

The adjacent landowner has the exclusive riparian or littoral right of access to navigable water. This does not mean that the owner can exclude others from the adjacent waters, but that only the owner may get to the water from his or her upland, as by constructing a dock or other structures where appropriate and appropriately authorized. In terms of access, navigable waters are equivalent to a public road, and a dock serves the same purpose as a private driveway. A littoral landowner may not exclude the public from lawful uses of the public trust area, just as an upland owner cannot exclude the public from driving or walking on the street in front of his or her house. Of course, nuisance behavior in the public trust, such as littering, intoxication, etc. would constitute a breach of the peace, just as if done by neighbors on adjacent upland property.

5. How does the public trust doctrine relate to coastal regulation and permitting?

Both the U.S. Army Corps of Engineers and the Connecticut Department of Environmental Protection, Office of Long Island Sound Programs (OLISP) regulate activities such as dredging, filling, and construction waterward of the high tide line, and in tidal wetlands. The high tide line, defined by statute and often associated with the one-year frequency flood event, is **landward** of the mean high water line; thus, the area subject to coastal regulation is greater than the public trust area, and includes an area of private ownership between the two tide lines. Because OLISP considers public trust interests in the course of permit proceedings, it is sometimes a source of confusion that the State's permitting requirements overlap with its ownership interest. In practice, however, OLISP's single permit process coordinates both sources of legal authority.

6. How can I find out more?

There is considerable scholarly analysis of the public trust doctrine throughout the United States, mostly in legal and coastal management journals and conferences. A good place to start is the one-volume study Putting the Public Trust Doctrine to Work, a June 1997 report of the National Public Trust Study, or by contacting OLISP at (860) 424-3034.

--Remember, whether you are a waterfront property owner or simply a member of the general public, the Department of Environmental Protection is committed to protecting your rights on the shore.

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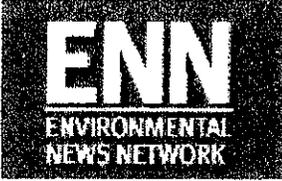
Take Action

In the United States, the ownership of coastal beaches varies from state to state, and each coastal state's response to the question of ownership has been developed through legislation and court cases. The dispute over beach ownership and access is complicated by, among other factors, the categorization of beaches: the wet sand or tidelands, the dry sand beach from mean high water to the vegetation line, and the uplands that lie landward of dunes. However, due to the law's reliance on the public trust doctrine of English common law, it is generally recognized that the public owns the tidelands, though some coastal states have allowed private ownership to the low-tide line.¹⁷ For example, 90 percent of Maine's coastline is privately owned, while about 90 percent of Oregon's coast is public.¹⁸ States like Maine have allowed private ownership all the way to the low-tide line.

In Texas, the wet beach is state-owned submerged land held in trust for the public by the General Land Office (GLO), but the dry beach can be privately held land subject to public easement. The public has retained this easement—the right to use and enjoy the dry beach—by virtue of a tradition dating back to European settlers when the beach was actually used as a road. In the nineteenth century, for instance, a stagecoach line traveled the beaches of Galveston Island. Today Texas beaches quite literally continue to be used as roads; not only are vehicles allowed to drive on many coastal beaches, but some local coastal governments maintain the beach surface for that purpose. Since 1959, with the enactment of the Texas Open Beaches Act, the legislature has guaranteed the public's right of access and use of Texas beaches that are accessible by public road or public ferry.

Of the 367 miles of Texas coastal beaches, 293 miles are open for public use. Of these, 173 miles are considered accessible to the public. In this context, "accessible" is defined by state law as "accessible by driving along the shore or by walking no more than one mile from a point that can be reached by a two-wheel-drive vehicle."¹⁹ Under rules developed by the GLO, local governments have the option of limiting vehicular traffic on beaches as long as adequate off-beach parking is developed. Local governments also have primary responsibility for developing and maintaining public entrances to beaches. To ensure a minimum of public entrances, the GLO, at the direction of the state legislature, created beach access rules. All coastal communities were required to develop access plans based on these rules by August 1993 for approval by the GLO. Resource planners are aware that increased beach access may also increase the public use of beaches, which in turn might increase the amount of beach trash and also threaten dunes, coastal vegetation, and other coastal resources.

7. Beaches, Dunes, and Barrier Islands



ENN FULL STORY

Michigan Court Rules that Public Has Right to Walk along Great Lakes Beaches

August 01, 2005 — By John Flesher, Associated Press

TRAVERSE CITY, Mich. — People can stroll along Michigan's 3,200 miles of Great Lakes beaches whether lakefront property owners like it or not, the state Supreme Court ruled.

The court on Friday unanimously sided with Joan M. Glass, who sued her neighbors over access to the Lake Huron waterfront. The neighbors said she was trespassing.

The justices disagreed over the appropriate boundary of the public area, but a five-member majority held that the public can wander anywhere between the water's edge and the ordinary high water mark.

The decision overturned an appeals court ruling that the state owns that land — but that owners of adjacent property have exclusive use of it and can kick others out.

"It's a tremendous victory for the public interest and for Michigan's economy, much of which is based on tourism and access to Great Lakes beaches," said Keith Schneider, deputy director of the Michigan Land Use Institute.

"The bottom line is there's this stretch the public has the right to use," said Pamela Burt, attorney for Glass.

Ernie Krygier, president of Save Our Shoreline, a lakefront property rights group, said the group's board would meet to consider its options.

About 70 percent of Michigan's shoreline on lakes Michigan, Huron and Erie is privately owned, according to the Surfrider Foundation, a nonprofit environmental group.

Source: Associated Press

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Just Whose Beach Is It?

By Kerin Magill
SC Online Editor

NOTE: Kerin Magill is Content Editor of Sussex County Online. Her column, "Sussex Snapshots", appears each Thursday on this site.

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July 2002
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So whose beach is it, anyway?

Some people think Delaware's sandy beaches are like the sky -- they belong to everyone.

Some, most notably those who have plunked down millions for oceanfront homes, think the beach -- at least what's between their homes and the Atlantic Ocean -- belongs to them.

Some of the private communities along the coastline are downright militant in their quest to keep "outsiders" off their beaches. Sussex Shores, just north of the town of Bethany Beach, has erected a fence down to the water line and posts guards at the boundary. You can walk along the water's edge at Sussex Shores, but don't stop walking or you'll be hustled along.

The Bethany Beach Landowners Association, in a letter dated June 4, 2002, asked Attorney General Jane Brady for her help in enforcing something called the Public Trust Doctrine, which lays out the public's right of access to beaches for recreation.

What is the Public Trust Doctrine? It originated in 6th century Roman law, and has been extended to all 50 states, which hold in trust lands

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including tidal lands or beaches. In the United States, there are 88,633 miles of tidal lands under public trust.

Originally, the Public Trust Doctrine was limited to uses such as navigation, but in recent years, according to a 1990 study, the uses have been extended to include such things as sunbathing, swimming, strolling and "just being there."

"Over the centuries, the Public Trust Doctrine has kept pace with the changing times, assuring the public's continued use and enjoyment of these lands and waters," wrote David C. Slack, attorney for the Coastal States Organization and project manager for the 1990 National Public Trust Study.

The study, funded by the Coastal Zone Management Act, called the Public Trust Doctrine a "powerful tool" for ensuring access to lands in the public trust. And Brady acknowledged in her June 24 letter to BBLA president Calvin Baldwin that Delaware's tidal lands are held in trust "for the public's benefit" through the Public Trust Doctrine.

But -- and this is a big but -- Brady also said in Delaware, private ownership extends to the low tide mark. And Delaware courts have not kept pace with other states, apparently, because the state's courts have not recognized public rights beyond navigation, fishing and police power.

In neighboring New Jersey, Brady said, the state owns the "foreshore," the area between high and low tide marks, as well as the dry sand adjacent to it.

The attorney general essentially wished the Bethany Beach folks well and told them they should seek help at the legislative level if they wish to change things. Brady referred to Delaware's interpretation of the Public Trust Doctrine as "the state of the law" in Delaware -- interesting choice of words, I thought.

When the issue of public access to "private" beaches came up at the July 26 Bethany Beach Town Council meeting, a Sussex Shores resident took umbrage at what he hadn't heard yet, but apparently felt was coming -- an allegation that the community has taken public funds for beach replenishment and should be forced to allow public access to its beaches.

"We take care of our own beaches," said John Neff of Sussex Shores.

Well, not according to Bob Henry, who heads the Shoreline and Waterway Management Section of the state's Department of Natural Resources and Environmental Control.

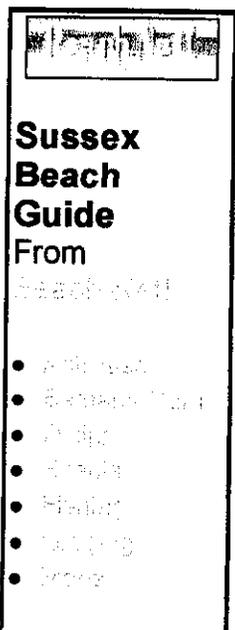
Henry said that Sussex Shores has never contracted for sand to be pumped onto its beaches, as has neighboring Bethany Beach, as well as Sea Colony and Middlesex Beach to the south. Both of those private

company.

For details, visit www.dnr.state.de.us or call us at 537-4198.

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communities footed the entire bill for their portion of the project.

"We encourage it," Henry said of widespread participation in replenishment. Why? Because the longer a beach replenishment project is, the more stable the newly widened beaches are, he explained.

Henry said as far as he knows, the most Sussex Shores residents have done to maintain their beach is to put up dune fencing and plant dune grass to help maintain the dune line.

But has the private community benefitted from publicly funded beach replenishment projects in Bethany Beach? Absolutely, according to Henry.

"They benefit to a large degree from our activity in Bethany Beach," he said. Not only do the state's replenishment projects include a "taper area" at either end -- which Henry said often extends onto "private" beaches -- but it's also a fact that sand deposited onto beaches will drift onto other areas, and in this area, the natural drift is to the north.

According to Henry, however, that benefit is not enough for Sussex Shores to be considered a public beach. Well, gosh, no, they didn't ask for that extra sand, but heck yeah, they'll take it. Even if it means buying a little more fencing to keep out the riff-raff.

Bethany Beach, in jumping on this particular bandwagon, has fired the opening salvo in what could be an interesting battle. Their reasoning for seeking more public access to private beaches is certainly valid -- with homes going up at an alarming rate within a few miles of the coast, there is a growing premium on beach sand on which to plant your umbrellas. And there are only so many places for all those new residents to go.

Parking in Bethany Beach continues to be tricky to find on peak beach days. Lines to get into state park beaches routinely snake onto Route 1 on sultry summer days. Clearly, there's a public beach shortage in Delaware.

As longtime area resident Joy Cadden said at the Bethany Beach meeting, she grew up in towns just inland from there thinking of Bethany Beach as "my beach." While she's never lived in the resort town, Cadden now owns a business there and wants the town to thrive.

Many like Cadden, who live in Coastal Sussex because they love it here, have a hard time with the concept of "no beach access" signs posted in so many communities. An area that used to be known for its quaintness and family atmosphere is now becoming overrun with ostentatious "McMansions." Heck, there's even a gated community in Ocean View now, with homes that look like they should be in O.J. Simpson's old neighborhood.

Cal Baldwin and the BBLA may not have gotten the answer they were

- Replenishment
- Beach-Net!
- Fenwick Island
- Delaware

* Beach-Net! is a service of Coastal Images Inc., Fenwick Island, Delaware.

hoping for from our attorney general. There's no doubt that getting any changes through the General Assembly would be quite an undertaking. Even Bethany Beach's attorney, John T. "Terry" Jaywork, said he thinks there will be many complex legal issues involved.

Not to mention the sheer logistics -- if the beaches were opened, just where in these private enclaves would the huddled masses park? And whether Bethany Beach gets any help from other coastal towns in its quest remains to be seen.

But it would be interesting to see what the First State's lawmakers can do with a 1,500-year-old doctrine.

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Sea Colony

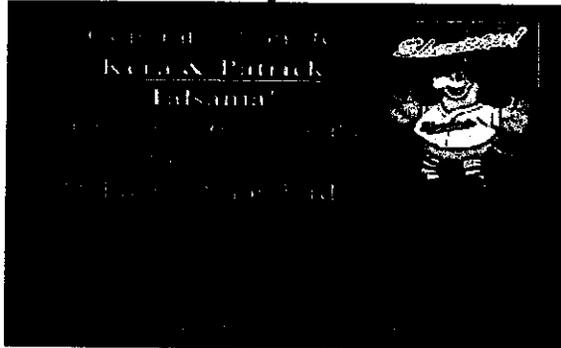
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About Sea Colony



Sea Colony is the premier family beach and tennis resort community, located in Bethany Beach, Delaware. The private resort community, composed of 2200 oceanfront condominiums, spacious townhomes and private single-family homes, is within steps of the ocean.

Owners and guests have exclusive access to a half mile of guarded beach, 12 pools, 34 tennis courts, world-class tennis facilities and instructors, and a Fitness Center with an Olympic-size indoor pool and a variety of programs for every age. This beautifully landscaped community, with around-the-clock security, has biking and walking trails, playground and picnic areas, as well as trees and parks. Surrounded by wide open spaces on nearly all sides, there is a sense of peace and spaciousness. And yet the community is within walking distance to quaint shops and services and only minutes away from tax-free outlet shopping at nearby Rehoboth Beach. Golfers can spend days on the region's many championship golf courses.



When visiting Sea Colony, be sure to tune in to Channel 37, for daily events, activities and sponsorships.

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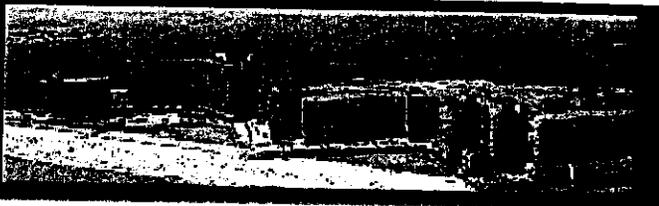


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Properties marked with have floorplans and photos of each property.

| Property Address | Style | BR | BATH | Price |
|----------------------------|-------|-------|------|-------------|
| <u>410 Annapolis House</u> | Condo | 3 | 2.5 | \$2600-2800 |
| <u>407 Brandywine</u> | Condo | 2 | 2 | \$1825 |
| <u>507 Georgetown</u> | Condo | 2+Den | 2 | \$2095 |
| <u>802 Georgetown</u> | Condo | 2+Den | 2 | \$995.-2055 |
| <u>809 Harbour House</u> | Condo | 2+Den | 2 | Call |
| <u>404 Island House</u> | Condo | 2+Den | 2 | \$675-1995 |

SEA COLONY OCEANFRONT RENTALS



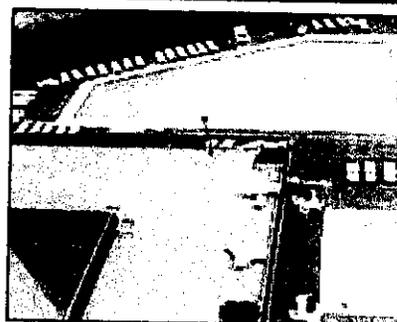
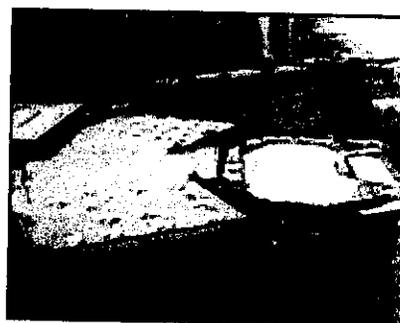
Bethany Beach, Delaware 1-800-221-0070

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Bethany Beach Rentals Sea Colony East

[Sea Colony East Map Click Here](#)

- A half mile of private and uncrowded white ocean beach.
- 26 tennis courts (4 indoors).
- Grand beach promenade with landscaped sitting area & sun filled plazas.
- Nine outdoor **swimming pools**.
- Two indoor **swimming pools**, Indoor whirlpool, Fully equipped **game room**.
- Convenience store and shops, Bike rentals.
- Summer Kiddie Kamp.
- Full calendar of summer events (barbeques, dances, entertainment).
- Recreational activities supervised by recreational director.
- Tennis clinics year round.
- Oceanside balconies overlooking beach.
- Ocean views from living area through **sliding glass doors**.
- Decorator designed open kitchen with pass through **breakfast bar**.
- All electric **kitchen appliances** including built in dishwasher and disposal.
- Most with **self-cleaning oven**, **frost free** refrigerator, **washer**, **dryer** units.
- Individual four season climate control heating & **air conditioning** system.
- Shuttle bus to beach from Tennis community.
- 7 lakes and ponds, walking trails, hike paths.
- There is an additional per person per week user fee. (Call for new rate)
- Parking for Sea Colony - One reserved parking space is provided. Cars must vacate by 10 a.m. on check-out day. Campers, boats, trailers and other oversized vehicles are not permitted at Sea Colony. Parking rule violations are subject to towing at vehicle owner's expense.



| Property | VT | Address | Bedrooms | Baths | Sleeps | Rental Rates |
|----------|----|---------------------------------------|----------|-------|--------|---------------|
| K101 | 🏠 | 2BA Annapolis | 1 | 1.5 | 4 | \$1300-\$1500 |
| K118 | | 2HA Annapolis | 3 | 2.5 | 6 | \$2500 |
| K103 | | 109 Annapolis House | 1 | 1.5 | 6 | \$400-\$1500 |
| K154 | | 206 Annapolis House | 2 | 2 | 6 | \$650-\$1350 |
| K104 | | 402 Annapolis House | 1 | 1.5 | 4 | \$1000-\$1240 |
| K102 | 🏠 | 502 Annapolis House | 1 | 1.5 | 4 | \$500-\$1600 |
| | 🏠 | 504 Annapolis House | 2 | 2 | 6 | \$1800-\$2000 |
| K105 | | 708 Annapolis House | 1 | 1.5 | 4 | \$400-\$1500 |
| K299 | | 1AS Brandywine Garden | 3 | 2.5 | 8 | \$800-\$3000 |

| | | | | | | |
|------|---|-------------------------------------|-------|-----|---|---------------|
| K133 | | <u>2ES Brandywine Garden</u> | 2 | 2 | 6 | \$1500-\$2300 |
| K134 | 🏠 | <u>105 Brandywine House</u> | 2 | 2 | 6 | \$1400-\$1700 |
| K113 | 🏠 | <u>203 Brandywine House</u> | 1 | 1.5 | 4 | \$500-\$1500 |
| K109 | | <u>303 Brandywine House</u> | 1 | 1.5 | 4 | \$400-\$1050 |
| K110 | | <u>309 Brandywine House</u> | 1 | 1.5 | 6 | \$500-\$1400 |
| K111 | | <u>405 Brandywine House</u> | 2 | 2 | 8 | \$500-\$1900 |
| K107 | 🏠 | <u>408 Brandywine House</u> | 1 | 1.5 | 8 | \$875-\$1350 |
| K156 | | <u>407 Brandywine House</u> | 2 | 2 | 6 | \$500-\$1900 |
| K151 | | <u>504 Brandywine House</u> | 2 | 2 | 6 | \$500-\$2200 |
| K157 | 🏠 | <u>505 Brandywine House</u> | 2 | 2 | 6 | \$1000-\$1800 |
| K159 | | <u>506 Brandywine House</u> | 2 | 2 | 6 | \$500-\$2000 |
| K114 | 🏠 | <u>602 Brandywine House</u> | 1 | 1.5 | 4 | \$500-\$1250 |
| K160 | 🏠 | <u>607 Brandywine House</u> | 2 | 2 | 6 | \$500-\$1950 |
| K152 | | <u>608 Brandywine House</u> | 1 | 1.5 | 4 | \$650-\$1500 |
| K301 | | <u>610 Brandywine House</u> | 3 | 2.5 | 8 | \$2200-\$2500 |
| K131 | 🏠 | <u>802 Brandywine House</u> | 1 | 1.5 | 4 | \$600-\$1400 |
| K135 | | <u>809 Brandywine House</u> | 1 | 1.5 | 4 | \$750-\$1400 |
| K116 | | <u>202 Chesapeake House</u> | 1 | 1.5 | 4 | \$600-\$1500 |
| K303 | 🏠 | <u>210 Chesapeake House</u> | 3 | 2.5 | 8 | \$600-\$2200 |
| K164 | | <u>305 Chesapeake House</u> | 2 | 2 | 8 | \$1150-\$2250 |
| K165 | | <u>502 Chesapeake House</u> | 1 | 1.5 | 6 | \$1200-\$1600 |
| K163 | 🏠 | <u>504 Chesapeake House</u> | 2 | 2 | 6 | \$650-\$2100 |
| K178 | | <u>507 Chesapeake House</u> | 2 | 2 | 6 | \$700-\$2000 |
| K115 | 🏠 | <u>609 Chesapeake House</u> | 1 | 1.5 | 4 | \$500-\$1400 |
| K130 | 🏠 | <u>802 Chesapeake House</u> | 1 | 1.5 | 4 | \$500-\$1450 |
| K312 | | <u>101 Dover House</u> | 3 | 2 | 8 | \$700-\$2500 |
| K127 | 🏠 | <u>403 Dover House</u> | 1 | 1.5 | 4 | \$465-\$1500 |
| K170 | | <u>405 Dover House</u> | 2 | 2 | 6 | \$1200-\$2000 |
| K125 | 🏠 | <u>708 Dover House</u> | 1 | 1.5 | 4 | \$465-\$1500 |
| K184 | 🏠 | <u>L4 North Edgewater House</u> | 2 | 2 | 6 | \$825-\$2250 |
| K175 | | <u>204 North Edgewater House **</u> | 2 | 2 | 4 | \$2000-\$2300 |
| K174 | 🏠 | <u>301 North Edgewater House</u> | 2 | 2 | 6 | \$500-\$2400 |
| K172 | 🏠 | <u>304 North Edgewater House</u> | 2 | 2 | 6 | \$500-\$2100 |
| K185 | | <u>902 North Edgewater House</u> | 2 | 2 | 6 | \$1260-\$2200 |
| K180 | | <u>1004 S Edgewater House</u> | 2 | 2 | 6 | \$850-\$2,050 |
| K309 | 🏠 | <u>1100 Center Edgewater House</u> | 2+Den | 2 | 8 | \$2600 |

| | | | | | | |
|------|---|-----------------------------------|------------|-----|----|----------------|
| K173 | | <u>1202 North Edgewater House</u> | 2 | 2 | 4 | \$500-\$2100 |
| K176 | 🏠 | <u>1401 North Edgewater House</u> | 2 | 2 | 6 | \$900-\$2450 |
| K200 | 🏠 | <u>107 Farragut House</u> | 2+Den | 2 | 8 | \$1750-\$2500 |
| K202 | 🏠 | <u>206 Farragut House</u> | 2+Den | 2 | 8 | \$600-\$3010 |
| K203 | 🏠 | <u>309 Farragut House</u> | 2+Den | 2 | 6 | \$2500 |
| K204 | | <u>601 Farragut House*</u> | 2+Den | 2 | 6 | \$2150 |
| K210 | 🏠 | <u>705 Farragut House</u> | 2+Den | 2 | 8 | \$500-\$2150 |
| K265 | | <u>709 Farragut House</u> | 2+Den | 2 | 6 | \$750-\$2100 |
| K804 | 🏠 | <u>804 Farragut House</u> | 2+Den | 2 | 6 | \$2500-\$2850 |
| K212 | 🏠 | <u>812 Farragut House</u> | 2+Den | 2 | 6 | \$1950-\$2400 |
| K213 | | <u>PH03 Farragut House</u> | 2+Den+Loft | 2 | 8 | \$800-\$2300 |
| K214 | | <u>PH05 Farragut House</u> | 2+Den+Loft | 2 | 8 | \$500-\$2,700 |
| K216 | 🏠 | <u>PH06 Farragut House</u> | 2+Den+Loft | 2 | 6 | \$3,600 |
| K215 | | <u>PH10 Farragut House</u> | 2+Den+Loft | 2 | 8 | \$2700 |
| K223 | | <u>311 Georgetown House **</u> | 2+Den | 2 | 8 | \$1675-\$2800 |
| K228 | | <u>312 Georgetown House</u> | 2+Den | 2 | 8 | \$1500-\$2300 |
| K227 | | <u>410 Georgetown House</u> | 2+Den | 2 | 6 | \$1000-\$2000 |
| K222 | | <u>411 Georgetown House</u> | 2+Den | 2 | 6 | \$500-\$2,500 |
| K225 | 🏠 | <u>503 Georgetown House</u> | 2+Den | 2 | 8 | \$1800-\$2400 |
| K224 | | <u>506 Georgetown House</u> | 2+Den | 2 | 6 | \$500-\$2,500 |
| K226 | | <u>802 Georgetown House **</u> | 2+Den | 2 | 6 | \$1550-\$2100 |
| K230 | | <u>811 Georgetown House</u> | 2+Den | 2 | 6 | \$550-\$2100 |
| K232 | 🏠 | <u>101 Harbour House</u> | 2+Den | 2 | 6 | \$1150-\$1850 |
| | | <u>108 Harbour House</u> | 2+Den | 2 | 6 | \$500-\$2,500 |
| K232 | 🏠 | <u>111 Harbour House</u> | 2+Den | 2 | 8 | \$500-\$2,300 |
| K234 | 🏠 | <u>401 Harbour House **</u> | 2+Den | 2 | 8 | \$500-\$2150 |
| K235 | | <u>411 Harbour House</u> | 2+Den | 2 | 8 | \$575-\$2200 |
| K242 | | <u>604 Harbour House</u> | 2+Den | 2 | 6 | \$500-\$2000 |
| K243 | | <u>611 Harbour House</u> | 2+Den+Loft | 2 | 6 | \$500-\$2150 |
| K233 | | <u>PH09 Harbour House **</u> | 2+Den+Loft | 2.5 | 8 | \$1900-\$2250 |
| K240 | 🏠 | <u>PH10 Harbour House</u> | 3+Den+Loft | 3 | 10 | \$2950 |
| K247 | | <u>101 Island House **</u> | 2+Den | 2 | 8 | \$500-\$2100 |
| K248 | | <u>105 Island House</u> | 3 | 2 | 8 | \$1900-\$2550 |
| K250 | 🏠 | <u>203 Island House</u> | 2+Den | 2 | 6 | \$550-\$2100 |
| K246 | 🏠 | <u>211 Island House</u> | 2+Den | 2 | 8 | \$500-\$2100 |
| K258 | 🏠 | <u>212 Island House</u> | 2+Den | 2 | 8 | \$1150-\$2,500 |

| | | | | | | |
|------|---|-----------------------------|------------|---|---|---------------|
| K256 | | <u>301 Island House</u> | 2+Den | 2 | 8 | \$950-\$2,600 |
| K260 |  | <u>411 Island House</u> | 2+Den | 2 | 8 | \$600-\$2000 |
| K264 | | <u>501 Island House</u> | 3 | 2 | 8 | \$1700-\$2100 |
| K261 | | <u>502 Island House</u> | 2+Den | 2 | 6 | \$1700-\$2200 |
| K263 | | <u>701 Island House**</u> | 2+Den | 2 | 6 | \$500-\$2,500 |
| K253 | | <u>703 Island House</u> | 2+Den | 2 | 6 | \$1650-\$2100 |
| K251 | | <u>710 Island House</u> | 2+Den | 2 | 8 | \$1800-\$2275 |
| K254 | | <u>803 Island House</u> | 2+Den | 2 | 6 | \$750-\$2000 |
| K257 | | <u>809 Island House</u> | 2+Den | 2 | 8 | \$500-\$2500 |
| K259 |  | <u>810 Island House</u> | 2+Den | 2 | 8 | \$2100-\$2300 |
| K262 | | <u>PH07 Island House **</u> | 2+Den+Loft | 2 | 8 | \$1000-\$2200 |

* Friday to Friday
 ** Sunday to Sunday

Sea Colony East Map Click Here

To rent a property or for more information, call **1-800-221-0070** or 302-539-3001,
rentals@tanseywarner.com

• Important Reminders •

CHECK-IN LOCATION

Tansey-Warner, Inc.
 Pennsylvania Avenue - Across From Sea Colony
 Bethany Beach, DE 19930
 Call us Toll Free. 1-800-221-0070 or 302-539-3001.

RENTALS

Available Friday to Friday, Saturday to Saturday, or Sunday to Sunday. Check with us. Weekends available in t season. Three night minimum. Seasonal and year-round rentals also available.

CHECK-IN TIME

2:00 P.M. to 5:00 P.M. on Saturday
 Sunday Check-In Time 2 P.M. to 3:00 P.M.
 If arriving after 5 p.m., please call office to make arrangements for access to property.

CHECK-OUT TIME

Check-out promptly by 10 a.m. so the property may be readied for the next guest. There will be a fee imposed c check outs. We ask that you leave the property neat and orderly, including:

- 1. Remove all food from refrigerator.
- 2. Dishes and cooking utensils should be clean and properly stored.
- 3. Beds made.
- 4. Furniture should be left arranged as you found it.
- 5. Check all drawers and closets for items that may be left behind.
- 6. Close all windows and lock the doors when leaving and return the keys promptly to Tansey-Warner, Ir
- 7. Remove and properly dispose of garbage.

We are not responsible for any items left in unit or for theft. Tenants are responsible for the property until all key tags and parking permits are returned.

DEPOSIT

All reservations require a 50 percent deposit + tax and a \$40.00 non-refundable processing fee within ten days making the reservation.

TAX

Rental properties in Bethany, South Bethany and Fenwick Island are subject to rental tax. This is in addition to rental amount.

FINAL PAYMENT

The balance of your lease is due upon arrival. We can accept personal checks for the balance if received 30 days prior to your arrival. At check-in we require certified checks, money orders, traveler's checks or exact cash. This is a reflection on your credit; simply necessary to process owners' funds promptly. **WE DO NOT ACCEPT CREDIT CARDS or PERSONAL CHECKS AT CHECK-IN.** For a quicker check-in, please pay balance due 4 weeks prior arrival!!

CANCELLATIONS

In case of cancellation or transfer to another property, any monies received will be forfeited unless we are able to re-rent the property for the entire time period. If the property is re-rented, your deposit will be returned less a 15% cancellation fee for the entire rental amount. The \$40.00 processing fee is non-refundable. No sublets or transfers will be allowed. No refunds due to "Acts of God."

LINENS

Bring your own linens, towels, soap and paper products. Some units do provide blankets. For linen rental service contact Bethany Rental Service at 302-539-6244 or 1-800-321-1592

TELEPHONE

Long distance calls must be charged to a credit card or home phone. There will be an additional \$5.00 billing charge for any long distance calls made from the rental property.

CATV

Some owners furnish TV and VCR but these cannot be guaranteed because of limited repair service in the area (if unit has TV).

PETS

NO PETS ARE PERMITTED IN ANY RENTAL PROPERTY.

DAMAGE

Tenant is financially responsible for theft or damage to accommodations during his occupancy.

PARKING REGULATIONS

Boats, jet skis, campers, trailers or any other oversized vehicles are not permitted in any private development. Violations are subject to towing at owner's expense.

CHARCOAL GRILLS

Fire Ordinance - None allowed in any multiple unit buildings, or on decks, balconies, etc.

INSPECTIONS

Properties are available for your inspection from January 2006 on.

RENTAL BROCHURE

Tansey-Warner, Inc. is not responsible for any printing errors in this website. We may receive new accounts and prices are subject to change (unless you have a lease!).

LOCK-OUT CHARGE

There will be a \$50.00 fee for lock-outs during the hours the office is closed, payable when tenant is admitted to property.

HOUSEKEEPING

Any problems must be reported to the Rental Office within 24 hours.

LOST & FOUND

Must be claimed at guest's expense within two weeks of departure. All items left over two weeks will be donated to charity.

PARKING PERMITS

South Bethany, Middlesex, Sea Colony and Bethany require all full-time and part-time residents to have a parking permit tag on all cars parked on the streets. Please follow the parking regulations for the area you are in. If you are uncertain about the regulations, please call our office or the local police station. There are also signs posted on the streets (usually at each end of the street). Police will fine and tow if a car is found in violation. Our office will provide the necessary tag(s) to each tenant, if the owner has supplied them to us. Please note that the permits are not guaranteed or provided to those renting on the ocean-side. These permits are used the entire summer season. Sea Colony reserves a total of 2 parking spaces per rental. NO EXCEPTIONS.

PLEASE NOTE:

If you have a medical condition (i.e. allergies, asthma, etc.), please let us know, as some of our properties are close to the ocean. After hours emergencies phone numbers are located on the Rental Department door.

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EXHIBIT "C"



Callahan
Exh. #1
Delaware Chapter, Sierra Club
38986 Bayfront Drive
Ocean View, DE 19970

22 August 2006

Denise Rawding
Wetlands and Subaqueous Lands Section
DNREC
89 Kings Highway, Dover, DE, 19901

Subject: DNREC - Wetlands and Subaqueous Lands Section,
Legal Notice, Permit Application/Public Hearing, August 23, 2006, 10 a.m. in the
DNREC Auditorium at 89 Kings Highway, Dover, DE.
Application Description: Sea Colony Recreation Association, Inc., subaqueous lands
application 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.
Notice Start Date: August 2, 2006.

Dear Ms. Rawding,

In response to subject DNREC Public Legal Notice for replenishment of the private ocean beach
of the Sea Colony Recreation Association, Inc., the following public equity concerns, comments
and questions are hereby submitted on behalf of the Delaware Chapter, Sierra Club:

1) The beach replenishment at Sea Colony is "to **coincide** with the Federal Beach Replenishment
Project along the Atlantic Coast at Bethany Beach, Sussex County, Delaware."

QUESTIONS: What will be the mobilization and demobilization costs for the hydraulic
dredging equipment deployed for the Federal Beach Replenishment Project at Bethany Beach?
What are the "**mobilization and demobilization**" costs to be paid by Delaware and the U.S.
Army Corps of Engineers? What percentage of these mobilization and demobilization costs are
to be borne by the Sea Colony Recreation Association, Inc.?

PUBLIC EQUITY CONCERNS: If the Sea Colony Recreation Association, Inc., is not
paying a fair and equitable percentage of mobilization and demobilization expenses, are not the
federal and state governments subsidizing a significant portion of the beach replenishment
expense for the private Sea Colony Recreation Association, Inc.? Is it legal to divert federal
funds for the replenishment of private beaches that deny public access? Why is it not appropriate
and equitable for the Sea Colony Recreation Association, Inc., to pay its fair share of the
mobilization and demobilization costs borne by the state and federal governments?

2) It is assumed that the Sea Colony Recreation Association, Inc., intends to pay a dredging
company to pump and transport 290,000 cubic yards of beach quality sand to its private beach
from the offshore public land of Delaware. It also is assumed that the Sea Colony Recreation

Association, Inc., expects to receive a free gift of 290,000 cubic yards of beach quality sand from DNREC.

QUESTIONS:

- (a) What legal authority authorizes DNREC to donate state-owned property (beach quality sand) free-of-charge to a private recreation association?
- (b) What is the estimated current value of 290,000 cubic yards of state-owned beach quality sand?

COMMENTS: The value of this sand can be estimated by determining what a private contractor would charge for an equivalent quantity of beach quality sand delivered from an upland source. For example, in February 2005, one of the largest construction firms in Sussex County said it would charge \$147.40 to deliver a 14 cubic yard truckload of sand to the ocean beach at the private community of North Shores, located a short distance north of Rehoboth Beach. Of the \$147.40, \$80.00 represented the delivery cost. Therefore, the sand cost was approximately \$67.40, or \$4.81 per cubic yard. At this 2005 cubic yard unit price, 290,000 cubic yards of sand would be worth approximately \$1,394,900. What would a contractor currently charge for delivery of 290,000 cubic yards of beach quality sand from an upland source to the private Sea Colony Recreation Association, Inc., beach?

The dollar value of beach quality sand can also be estimated by examining the increasing government cost of mining this sand from offshore sites for Delaware's public beaches. Suitable offshore borrow sites for beach quality sand are now located a greater distance from the public beaches in need of frequent replenishment. As the sources of suitable beach quality sand move further offshore, the taxpayer cost (both federal and state) for future replenishment of Delaware's public beaches increases. For example, the recent Rehoboth and Dewey Beach replenishments consisted of sand hydraulically dredged from an approved offshore site located 2-3 miles southeast of Indian River Inlet. If DNREC donates hundreds of thousands of cubic yards of sand, free-of-charge, from currently approved state borrow sites, the state is depleting a valuable resource that will not be available for future public beach replenishment projects.

QUESTIONS: To what extent will accelerated public beach erosion, resulting from sea level rise and storms, increase the monetary value of approved offshore borrow sites containing beach quality sand? What will be the increased cost to state and federal taxpayers to retrieve sand from borrow sites located further from public beaches? Based on estimated future public beach replenishment needs, what is the potential future value of the 290,000 cubic yards of beach quality sand that the private Sea Colony Recreation Association, Inc., expects to receive as a gift from the state?

PUBLIC EQUITY CONCERNS: If the Sea Colony Recreation Association, Inc., is not paying the state for the sand removed from the state's approved offshore borrow site, is not the state subsidizing a significant portion of the beach replenishment expense for the private Sea Colony Recreation Association, Inc.? If the state's gift of sand from currently approved borrow sites increases the cost of Delaware's public beach replenishment projects over the next fifty years, will not the U.S. Army Corps of Engineers be expected and obligated to pay 65 percent of these increased costs with taxpayer money?

3) The private Sea Colony Recreation Association, Inc., does not allow public use of its private beach.

PUBLIC EQUITY CONCERNS: If any federal or state funds are used to subsidize replenishment of the Sea Colony Recreation Association, Inc., private beach, don't these subsidies entitle public use of the Sea Colony Recreation Association, Inc., beach? If not, why

not? Why doesn't DNREC demand public access to any beach that receives free sand from public subaqueous land?

4) DNREC has attempted to justify its subsidy of sand replenishment on private beaches based on the hypothetical assumption that a significant portion of the sand placed on the private beach will eventually migrate, as a result of wind and wave action, along the seashore to adjacent public beaches; DNREC thereby claims the public will belatedly derive benefit from private beach replenishment projects.

PUBLIC EQUITY CONCERNS: What beach profile measurements has DNREC made in the past, or will DNREC make in the future, to quantify the amount of sand eventually deposited on the public beach adjacent to the private Sea Colony Recreation Association, Inc., beach? What action will be taken to determine the monetary value of the quantity of sand that actually reaches the public beach? How will this dollar value be compared to the state subsidy of free sand, and equipment mobilization and demobilization costs for replenishment of the private Sea Colony Recreation Association, Inc., beach?

5) In the past DNREC has justified its subsidy of sand replenishment on private beaches based on the claim such areas are important to the state because: (1) they are heavily used recreational beach areas; and (2) they provide erosion and storm damage protection to public, commercial and private structures and infrastructure landward of the coastline.

COMMENTS: Such sweeping beneficial public claims fail to emphasize or prioritize the primary beneficiaries of private beach replenishment projects in areas that deny public access. Such statements by DNREC are misleading because they incorrectly imply that private beach replenishment projects have as a primary objective protection of "public structures and infrastructure landward of the coastline." The Sea Colony Recreation Association, Inc., beach replenishment project will primarily protect and conserve the **PRIVATE** coastal water resource of this private association, not public interests.

6) DNREC has previously donated free-of-charge publicly owned state sand from off-shore borrow sites, to not only the Sea Colony Recreation Association, Inc., but also to the private ocean-front communities of North Shores and Middlesex in Sussex County, Delaware.

QUESTION: For how many years has DNREC been donating free sand to these private ocean front entities and what is this sand's total estimated dollar value?

7) On December 30, 2004, on behalf of the private ocean front community of North Shores, DNREC submitted to the U.S. Army Corps of Engineers a request to modify the August 13, 2004, DNREC application for "a Department of the Army Permit to conduct beach replenishment activities, by hydraulic dredge method, along a 2.6 mile stretch of shoreline extending from the northern town limits of Bethany Beach to the southern limits of the Town of South Bethany, **including the private communities of Sea Colony and Middlesex**, in Sussex County, Delaware." DNREC's permit modification request included, "***a completed permit application form and environmental questionnaire, along with plan drawings, a list of adjacent property owners, photographic prints, and a request for consistency certification from the Delaware Coastal Management Program,***" plus submission of a considerable amount of supplemental information.

QUESTIONS: Why haven't the private ocean-front communities of North Shores and Middlesex, and the Sea Colony Recreation Association, Inc., been required to employ private consultants to prepare their previous beach replenishment permits? How many dollars have North Shores, Middlesex, and the Sea Colony Recreation Association, Inc., paid DNREC for previous permit application services rendered on their behalf by DNREC?

8) Delaware's "BEACHES 2000, Report to the Governor," dated June 21, 1988, determined, "*It should be the state's policy that private beach communities that do not promote access to the general public should pay the full cost of any beach management project for that community.*"¹ This action was recommended, "*to ensure that a fair and equitable policy is developed,*"² and the BEACHES 2000 ADVISORY COMMITTEE "*unanimously agreed*"³ with this policy statement. The "BEACHES 2000 Report" was prepared by a ten member PLANNING GROUP consisting of Mark R. Chura, Derek Crawford, Jeff Dayton, Larry Donnelly, Bill Freeborn, **Bob Henry, John Hughes**, Bob Jordan, **Tony Pratt**, and Bruce Winn, with the aid of a twenty member ADVISORY COMMITTEE consisting of Dr. Arnold Bass, **George H. Bunting, Jr.**, Pat Campbell-White, **Richard S. Cordrey, Robert A. Dalrymple**, Mike Ferguson, James Harty, Dr. Karl B. Justus, **Dr. John C. Kraft**, Mary Pat Kyle, **Dr. Evelyn Maurmeyer**, Robert McKim, Fred Mertes, Barbara B. Porter, Alfred Stango, William H. Stevenson, J. Bruce Vavala, Mayor Kimber Vought, Jack Williamson, and Jay D. Wingate.

PUBLIC EQUITY CONCERNS: Why is this "BEACHES 2000" state policy recommendation for promoting public beach access being ignored by DNREC? What is required to implement it? It is perplexing and dismaying from a public equity standpoint that members of the BEACHES 2000 PLANNING GROUP and ADVISORY COMMITTEE have been unsuccessful in implementing an effective state policy requiring private beach communities or associations to pay the "*full cost*" of beach management projects if they refuse to promote beach access to the general public.

9) Sarah W. Cooksey, Administrator of DNREC's Delaware Coastal Management Program (DCMP), in a May 31, 2006, letter to Captain Robert V. Martin, U.S. Navy Retired, stated, "The DCMP has enforceable policies regarding the use of State funding for beach replenishment projects. **Executive Order No. 43 directs the State to restrict the use of State beach protection funds for privately owned beaches unless and until those beaches are opened for public use.** (bold font emphasis added) **State funds will not be directly utilized for the proposed (Sea Colony) project and as such, the project is consistent with this policy.**"

The DCMP Federal Consistency Policy Document,⁴ dated August 2004, states, "To the **maximum extent possible** the following system of priorities shall be utilized for the expenditure of limited beach preservation funds: . . . **f. The last priority shall be given to privately owned, restricted beaches. In fact, all beach protection funds and State disaster-related reconstruction aid shall be restricted unless and until the beaches are opened to public use.**"⁵

QUESTIONS: How can DNREC defray a large portion of equipment mobilization and demobilization costs, and donate 290,000 cubic yards of valuable state-owned beach quality sand for the Sea Colony Recreation Association's beach replenishment project and not consider that state funds are being directly utilized for the proposed project? Precisely, what is meant by DNREC's statement, "*State funds will not be directly utilized for the proposed project*"? What is the distinction between the expenditure of "State funds," and the donation of State resources possessing significant financial value, represented by the State's payment of equipment mobilization and demobilization costs, and the donation of valuable state-owned beach quality sand? Isn't this DNREC distinction simply a matter of semantics or accounting strategy?

¹ Page 15.

² Page 14.

³ Appendix I, Page 6.

⁴ Page 25, Paragraph 16,

(<http://www.dnrec.state.de.us/dnrec2000/Divisions/Soil/dcmp/2004%20Policy%20Document.pdf>).

⁵ Authority – Executive Order No. 43, August 15, 1996.

COMMENTS: The DCMP Federal Consistency Policy Document makes it perfectly clear that the lowest and last priority for the state's expenditure of limited beach preservation funds "*shall be given to privately owned, restricted beaches.*" If the donation of state-owned sand for the Sea Colony Recreation Association's beach replenishment project represents a "*disaster-related reconstruction aid,*" it then follows that such aid "*shall be restricted unless and until the beaches are opened to public use.*" The DCMP Federal Consistency Policy Document makes no mention of what measures constitute *direct* utilization of State funds for *disaster-related reconstruction aid.*

10) If private beach-front communities and associations, such as Sea Colony Recreation Association, Inc., choose to deny public access to their beaches, the Sierra Club requests that DNREC: a) not provide private beach replenishment sand free-of-charge from off-shore subaqueous land belonging to the state; b) not subsidize private beach replenishment projects by using state funds to pay for dredging equipment mobilization and demobilization costs; and c) not prepare private beach replenishment permit applications on behalf of the applicants, unless the state is reimbursed for all expenses incurred.

11) The Sierra Club requests timely answers to the public equity concerns and questions contained in this letter.

Respectfully submitted,



Steve Callanen, Chairman

Coastal & Inland Armoring, Beach Enhancement, Dredging & Wetlands Subcommittee,
Delaware Chapter, Sierra Club

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Copy to:

David Keifer, Chair, Delaware Chapter, Sierra Club

Richard Anthony, Chair, Southern Delaware Group, Sierra Club

EXHIBIT "D"

**Shoreline and
Waterway
Management Section**

Memo

To: Lisa Vest
From: Tony Pratt *TP*
CC:
Date: February 13, 2007
Re: Testimony of Robert Henry

I have reviewed the testimony of Robert Henry on behalf of the Sea Colony Recreational Association for the public hearing on August 23, 2006 to consider Sea Colony Recreational Association's application for a subaqueous lands application. In my opinion, Mr. Henry's testimony is supported by science and engineering, and is a fair and correct representation of facts related to the matter before you. I do not dispute any points made by Mr. Henry. He represents long held scientific opinion that DNREC accepts as foundation for the way we manage the beaches of the state.

