

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JENKINSON’S PAVILLION, a corporation of
the State of New Jersey and JENKINSON’S
SOUTH, INC., a corporation of the State of
New Jersey

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS, NEW JERSEY;
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and agency of the State of
New Jersey; BOROUGH OF POINT
PLEASANT BEACH, a municipal corporation
of the State of New Jersey

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiffs Jenkinson’s Pavilion, a corporation of the State of New Jersey and Jenkinson’s South, Inc., a corporation of the State of New Jersey, (collectively “Plaintiffs”), bring this action, *inter alia*, (a) for a declaration as a matter of law that the United States Army Corps of Engineers

(“USACOE”) has not required, and does not require, for purposes of the “Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project,” the acquisition of perpetual rights in private property for purposes of establishing recreational public beaches landward of the area already subject to public ownership and rights of public user pursuant to the New Jersey Public Trust Doctrine, and (b) enjoining the Defendants from taking actions in furtherance of the “Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project,” in advance of a determination on the relief requested in this Complaint. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over all claims against the USACOE under U.S. Const., Art. III, §2, ¶1.

2. This action arises under the Administrative Procedure Act (5 U.S.C. §§702 and 706(2)(A)(B) and (D)); the Declaratory Judgment Act (28 U.S.C. § 2201); the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655); and the Uniform Regulations contained in 49 C.F.R. Part 24 (collectively the “Uniform Property Acquisition Laws”); therefore, this Court has jurisdiction by virtue of 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction and/or pendent jurisdiction over any state law claims asserted against Defendants because those claims arise from a common nucleus of operative facts with those claims arising under federal law.

4. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b), inasmuch as Plaintiffs’ properties, which are the subject of this action, are situated within this District and the events giving rise to the claim occurred within this District.

THE PARTIES

5. Plaintiff Jenkinson's Pavilion, a corporation of the State of New Jersey, is the owner in fee simple, or holder of an easement or lease for use of real property as shown on the official tax map of the Borough of Point Pleasant Beach, Ocean County, New Jersey and used for the purposes as set forth in the table below:

Block	Lot	Owner	Use and Description
120	1.01	Jenkinson's Pavilion	"Jenkinsons Aquarium" and parking lot. Located on landward side of boardwalk
120	1.02	Jenkinson's Pavilion	234 Ocean Avenue; Improved; Located on landward of boardwalk
180	1	Jenkinson's Pavilion	"Inlet Parking Lot" - large, hundreds of cars parking lot at terminus of Broadway; Includes structure used as preparation area for Inlet Restaurant. Located landward of Boardwalk
180	p/o 2	Harborhead Condominium Assoc.	Easement in favor of Jenkinson's Pavilion Corp. encumbering beach seaward of Boardwalk
180	3	Jenkinson's Pavilion	"Inlet Restaurant" (1-Story bar at Broadway stub adjacent to area leased from Trend Condos)
212	1.02	Jenkinson's Pavilion	300 Boardwalk. "Jenkinsons Pavilion" restaurant, bar, arcade, night club, deck
212	1.03	Jenkinson's Pavilion	250 Boardwalk – Bathrooms and portion of side deck of Jenkinsons Pavilion; ramp for public beach access
212	2	Jenkinson's Pavilion	Beachfront – Includes entertainment stage – overlaps with "Inlet Restaurant" on 180/3. Concerts, events.
211.1	1	Jenkinson's Pavilion	"Jenkinsons Sweet Shop", business offices, legal games of chance, The Funhouse, parking lot, located landward of Boardwalk

211.1	2	Storeno, Storeno, Storeno, LP	“Joey Tomatoes” restaurant and offices; miniature golf course; licensed games of chance. Owned by principals of Jenkinson’s Pavilion.
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6. Plaintiff Jenkinson’s South, Inc., a corporation of the State of New Jersey, is the owner in fee simple of real property or holder of a long term lease of real property as shown on the official tax map of the Borough of Point Pleasant Beach, Ocean County, New Jersey and used for the purposes as set forth in the table below:

83.01	1.01	Jenkinson's South Inc.	“Jenkinsons South Amusement Park” landward of the Boardwalk
83.01	4	Jenkinson's South Inc.	“Jenkinsons South Amusement Park” landward of the Boardwalk
83.02	2	Jenkinson's South Inc.	Two structures containing licensed amusement games and beach seaward of Boardwalk
83.02	3	Jenkinson's South Inc.	“Little Mac’s” Restaurant and picnic area and Beach seaward of Boardwalk
210.01	4, 5, 6	405 Boardwalk Investors, LLC	”Frank’s Fun Center Arcade”; “Boardwalk Bar and Grill” Restaurant and associated parking; landward of Boardwalk; 405 Boardwalk Investors, LLC is owned by principals of Jenkinson's Pavilion and Jenkinson's South Inc. and others.
210.02	1	Jenkinson's South Inc.	Beach seaward of Boardwalk
210.02	2	Jenkinson's South Inc.	Beach seaward of Boardwalk
210.02	p/o 3, 4	Palermo Beach Corp.	“Palermos’ beach area seaward of Boardwalk leased by Jenkinsons South, Inc. containing 239.76 feet of boardwalk frontage

7. Defendant United States Army Corps of Engineers (“USACOE”) is a division of the United States Department of Defense having legal authority pursuant to the Clean Water Act (33 U.S.C. §1344(a) & (d)), to regulate certain waters of the United States and having legal

authority to participate in a shore protection and beach renourishment project pursuant to the Water Resources Development Act of 1986, Public Law 99-662.

8. Defendant, New Jersey Department of Environmental Protection (“NJDEP”) is an agency of the State of New Jersey.

9. Defendant Borough of Point Pleasant Beach (the “Borough”) is a municipal corporation of the State of New Jersey located in Ocean County, New Jersey.

ALLEGATIONS COMMON TO ALL COUNTS

Plaintiffs Properties

10. Plaintiff’s title to its properties and real estate interests seaward of the Boardwalk in the Borough extends to the mean high water line of the Atlantic Ocean.

11. Plaintiff’s properties include substantial commercial real estate and beach improvements as described above.

12. Plaintiff’s properties, including lands subject to leases and easements, are assessed for real estate tax purposes in excess of \$58,000,000.

13. Plaintiff’s uses have existed in substantially their existing form for many decades and are a popular landmark along the New Jersey coast and constitute a major and principal attraction to the Borough of Point Pleasant Beach.

14. Plaintiffs’ operations at their properties attract some 450,000 to 500,000 members of the public to Plaintiffs’ beaches as fee-based beachgoers on an annual basis.

15. Plaintiffs employ a total of some 1,400 persons on a seasonal basis in connection with their combined beach-oriented operations.

16. Plaintiff’s lands between the Boardwalk and the Atlantic Ocean are open to the public for a fee and has been open to the public for a fee throughout Plaintiffs’ ownership.

17. Plaintiff provides fee-based parking and free bathroom facilities to the public utilizing its facilities.

The Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project

18. The USACOE is engaged in a project known as the “Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project” (the “Project”).

19. The Project is one of several similar projects along the New Jersey coastline in which USACOE has entered into agreements with the NJDEP to construct hurricane and storm damage reduction measures consisting of an engineered dune system and beach replenishment.

20. In 1986, Congress approved Section 934 of the Water Resources Development Act of 1986, Public Law 99-662, which authorized the United States to extend Federal participation in periodic beach nourishment for shore protection projects for a period not exceeding fifty years after the commencement of the period of initial construction.

21. The legislative purpose, authorization, and associated appropriation of funds, of the federally funded Project is limited to the construction and maintenance of protective sand dunes, berms, and engineered beaches to protect the New Jersey shores from flooding and erosion due to storms.

22. In June, 2002, the Army Corps of Engineers prepared a “Final Feasibility Report and Integrated Environmental Impact Statement (EIS)” (the “EIS”) concerning the Project.

23. The EIS described the project as one consisting of “Berm and dune restoration utilizing beach fill with periodic sand nourishment” and “construction of a beach berm and dune.”

24. Congress authorized construction of the “Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project” (the “Project”) in Section 1001 (32) of Public Law 110-114, 121 Stat. 1041, more commonly known as the “Water Resources Development Act of 2007.”

25. Congressional authorization for the Project was specified as that project described in, and in accordance with, the plans, and subject to the conditions, set forth in the Report of the Chief of Engineers of the USACOE dated December 30, 2003.

26. A true copy of the Report of the Chief of Engineers of the USACOE dated December 30, 2003 is annexed hereto as Exhibit 1.

27. The Report of the Chief of Engineers of the USACOE dated December 30, 2003, Paragraph 2 thereof, describes the Project as consisting of construction of a “dune and berm using sand obtained from offshore borrow sources.”

New Jersey Executive Order 140

28. On September 15, 2013, the Governor of the State of New Jersey issued Executive Order 140 which directed a newly-created office in the NJDEP “to acquire the necessary interests in real property to undertake Flood Hazard Risk Reduction Measures.”

29. A true copy of Executive Order 140 is annexed hereto as Exhibit 2.

30. The “Flood Hazard Risk Reduction Measures” described in Executive Order 140 were defined as "protective sand dunes, berms, and engineered beaches."

31. The acquisitions authorized by Executive Order 140 are coextensive, and are intended to be coextensive, both in spatial extent and in terms of specific property rights to be acquired, with the acquisitions necessary and required for the Project to be carried out by the USACOE.

32. Executive Order 140 does not authorize takings by the NJDEP or any municipality of the State of New Jersey for purposes of creating recreational public beaches at all, much less upon private land landward of the spatial limits of the Public Trust Doctrine.

Agreement Between USACOE and NJDEP

33. Pursuant to 33 U.S.C. 426(e), after authorization by Congress and before commencement of construction of a shore protection project, the Secretary of the Army is required to enter into a written agreement with a non-Federal interest with respect to the project.

34. Pursuant to 33 U.S.C. 426(e), shore protection projects affecting shores other than public, i.e. private property, are eligible for Federal assistance if there is a benefit such as that arising from public use or from the protection of nearby public property or if the benefits to those shores are incidental to the project.

35. Insofar as the Project affects or benefits lands, including beaches, outside the spatial limitations of the Public Trust Doctrine, such affects or benefits are incidental to the Project.

36. Pursuant to 33 U.S.C. 2213 (i), the non-Federal sponsor of shore protection projects, in the case of the Project, NJDEP, is required to obtain, and required to obtain only, those lands, easements, rights-of-way, and dredged material disposal areas required for the Project.

37. On or about July 18, 2014, USACOE and NJDEP entered into a Project Partnership Agreement (the “PPA”) for the purpose of implementing the Project.

38. A true copy of the PPA is annexed hereto as Exhibit 3.

39. The Project is defined in the PPA as a “sand fill dune and berm.” [PPA, Art. 1, Para. A.]

40. Pursuant to the PPA, NJDEP, as “non-Federal sponsor,” is required to acquire the lands, easements, and rights-of-way necessary and required for the Project.

41. Pursuant to the PPA, NJDEP, as “non-Federal sponsor,” is required to ensure the “continued public use” of “shores” protected by the Project. [PPA, Art. II, Para. L.] (emphasis added)

42. New Jersey common law establishes a pre-existing right of public ownership of the shore seaward of the mean high water line together with a right of public user of an area of dry sand landward of the mean high water line reasonably necessary for recreation.

43. The foregoing rule of law is termed the Public Trust Doctrine. *Matthews v. Bay Head*, 95 N.J. 306; 471 A.2d 355 (1984).

44. The shore affected by the Project is, has been, and will be subject to a right of public user pursuant to the Public Trust Doctrine.

45. To the extent dry lands are newly-created seaward of the existing mean high water line as a result of the Project, such lands, as a matter of New Jersey law, shall be owned by the State of New Jersey. *City of Long Branch v. Liu*, 203 N.J. 464 (2010).

46. No acquisitions of private property are necessary in connection with the Project for purposes of creating a right for public use of the shore.

47. There are no “storm protection” characteristics associated with the creation of rights of the general public to use privately-owned land for public beach recreation landward of the area subject to the Public Trust Doctrine.

48. A Congressionally-authorized requirement, if any, that the USACOE assure public rights of use to the shore in connection with the Project as it relates to Plaintiffs’ properties is satisfied by the preexisting New Jersey Public Trust Doctrine.

Representations by the Defendants

49. Pursuant to the PPA, the USACOE is required to determine the real property interests needed for construction, operation, maintenance, and periodic renourishment of the Project. [PCA, Art. III, Para A.]

50. Pursuant to the PPA, the USACOE is required to provide NJDEP with a general written description, including maps, of the real property interests the USACOE determines must be provided for USACOE construction, operation, maintenance, and periodic renourishment of the Project. [PCA, Art. III, Para A.]

51. In connection with the Project, officials of Defendant USACOE represented in writing to officials of affected coastal municipalities that the property rights required for the Project were only those “needed to construct and maintain the improvements” required by the Project.

52. Officials of USACOE conceded in writing that if an action or any item had not been specifically authorized by Congress for the Project, the USACOE “could not do or construct it.” [Exhibit 4, p.2]

53. Officials of USACOE also represented that the project design documents describe the project as authorized by Congress and describe the actions for which the USACOE required rights to perform the Project authorized by Congress.

54. An example of the foregoing representations are set forth in a correspondence dated January 30, 2013 from the ACOE to the Mayor of the Borough of Mantoloking. [Exhibit 4 annexed hereto]

55. The project design documents provided to Plaintiffs by representatives of NJDEP during meetings described below do not contain any reference to, or require any action concerning, the creation of public beaches in perpetuity upon private property landward of the

area subject to a pre-existing right of public ownership of the shore seaward of the mean high water line together with a right of public user of an area of dry sand landward of the mean high water line reasonably necessary for recreation.

56. An example of such representations to the public on the part of USACOE is annexed hereto as Exhibit 4.

57. The NJDEP has represented to the USACOE, and the USACOE has represented to the public, through the USACOE “Manasquan Inlet to Barnegat Storm Damage Reduction Project, Ocean County, NJ Final Environmental Assessment (EA)” dated May, 2014, that private beach clubs shall remain private and eligible to charge for admission to private beaches as a matter wholly at the sufferance of the NJDEP to so permit such use:

NJDEP allows private beach clubs to remain private and allow them to sell badges to the public for a reasonable fee. Through these easements the state plans on allowing these clubs to operate in the same manner i.e. selling badges to the public. NJDEP has removed all crossovers from private property from the project plan. These are not required for the NFS [Non-Federal Sponsor] to meet the project access requirement. (emphasis added)

58. A true copy of Appendix B to the “Manasquan Inlet to Barnegat Storm Damage Reduction Project, Ocean County, NJ Final Environmental Assessment (EA)” dated May, 2014 (Response to Comments of American Littoral Society at p. 5) is annexed hereto as Exhibit 5.

59. The representations of the NJDEP and the USACOE are inconsistent with and in conflict with the rights authorized, necessary and required by the USACOE for the Project and at variance with the rights sought to be acquired by the NJDEP and the Borough and other municipalities cooperating with the NJDEP as set forth in the Deed referred to below, in connection with the Project as described below.

The Deed of Dedication and Perpetual Storm Damage Reduction Easement Sought by NJDEP and Borough

60. In advance of commencement of the Project, the NJDEP solicited from thousands of owners of private property affected by the Project, including Plaintiffs, the voluntary execution, without consideration, of a certain “Deed of Dedication and Perpetual Storm Damage Reduction Easement” (the “Deed”)

61. A true copy of the general form of Deed employed at the outset of NJDEP’s attempts to secure voluntary executions of the Deed is annexed hereto as Exhibit 6.

62. The form of the Deed was prepared by the NJDEP.

63. NJDEP has consistently asserted that funding for the Project from the USACOE is contingent upon acquisition of the property and rights described in the Deed.

64. The Deed states that the USACOE “will not participate in the Project unless the Grantees acquire the real property interest herein described in all real property needed for the Project;...” [Exhibit 6, p.1]

65. The NJDEP has directed all coastal municipal corporations affected by the Project to employ the Deed in substantially the form provided by NJDEP.

66. NJDEP has employed the Deed in the form provided by NJDEP in connection with acquisitions by NJDEP of similar New Jersey coastal storm protection projects and intends to, and has, employed the Deed in connection with acquisitions for the Project.

67. The Deed purports to convey to the NJDEP and the Borough a “perpetual and assignable easement and right-of-way” to permit, *inter alia*, the grantee NJDEP or Borough to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach ... (emphasis added)

68. At the same time that the Deed conveys a perpetual and assignable right to the Grantee NJDEP and/or Borough to operate a public beach, the same instrument recites that,

“nothing herein is intended or shall be deemed to change the ‘overall character’ of the Property as private property.” [Deed, p. 3]

69. At the same time that Deed describes the entirety of the owners’ tax block and lot as the property encumbered by a grant of a perpetual easement, the Deed recites that the Deed will “also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach and ocean” which Public Trust area does not extend beyond the limits established by law.

70. The Public Trust Doctrine already ensures “permanent public access, use and enjoyment of the beach and ocean,” and requires no “implementation,” and therefore the Deed can be construed, or misconstrued, as creating rights in the public greater than those already in existence under the Public Trust Doctrine.

71. The Deed also purports, *inter alia*, to define what constitutes “consideration” or “compensation” for the conveyance; to impose perpetual beach maintenance obligations upon municipal corporations; and amendments to municipal zoning ordinances in the absence of compliance with the Municipal Land Use Law.

72. The Deed states that the grantor/property owner, i.e. Plaintiffs, “desires to cooperate” with Defendant in imposing a public beach on their private property; states that “...the Grantor [Plaintiffs] “acknowledges that it will benefit from the successful implementation of the Project”; that Plaintiff accepts as “consideration” for the conveyance “the benefits to be received....”

Communications Between the Parties

73. In connection with the Project, representatives of the Office of the New Jersey Attorney General and the NJDEP met with property owners in coastal municipalities affected

by the Project in an effort to secure the owner's voluntary execution and conveyance of the Deed.

74. The statements and explanations provided to property owners in coastal municipalities affected by the Project by representatives of the Office of the New Jersey Attorney General and the NJDEP in connection with the Deed are substantially identical to the statements and explanations provided to Plaintiffs as described below.

75. By correspondence dated April 3, 2013, counsel for the Borough wrote to Plaintiffs and requested Plaintiffs to execute the form of Deed annexed to the letter.

76. The Deed provided to Plaintiffs was in substantially the form described in the foregoing allegations.

77. A true copy of the correspondence dated April 3, 2013 and annexed Deed is annexed hereto as Exhibit 7.

78. By correspondence dated May 6, 2013, counsel for the Borough wrote to Plaintiffs and requested Plaintiffs to execute the form of Deed annexed to the letter.

79. The correspondence dated May 6, 2013 aforesaid stated that the Borough had “no authority to change any of the State's language from the Deed.” [p.1 Para 1.]

80. A true copy of the correspondence dated May 6, 2013 and annexed Deed [Exemplar Deed as to Block 210.02 Lots 1 & 1 included] is annexed hereto as Exhibit 8.

81. By correspondence dated May 13, 2013, the Commissioner of the NJDEP wrote to Plaintiffs and requested Plaintiffs to execute the Deed.

82. The correspondence aforesaid stated that, “Property owners who convey easements still retain the right to use and enjoy the beach. The public will also be permitted use of the replenished beach.” [p.2, Para. 2]

83. It is self-evident that an owner of a fee simple title which grants an “easement” over that property for a perpetual public beach will “still retain the right to use and enjoy the beach.”

84. It is also self-evident that “the public will also be permitted use of the replenished beach” inasmuch as the public already enjoys the right to use areas subject to the Public Trust Doctrine and the public will own, under New Jersey law, newly-created lands seaward of the existing high water line.

85. The foregoing statement is indicative of the doubt, ambiguity, and uncertainty concerning the extent of rights intended to be acquired by way of the Deed and is inconsistent with the terms of the Deed.

86. A true copy of the correspondence dated May 13, 2013 is annexed hereto as Exhibit 9.

87. On several occasions between March, 2014 and November, 2014, Plaintiffs’ representatives met with representatives of the NJDEP and the Office of the Attorney General of New Jersey in connection with the Project.

88. By correspondence dated March 17, 2014, special counsel to the NJDEP wrote to Plaintiffs and requested a meeting to “discuss the project and explain the project.”

89. A true copy of the correspondence dated March 17, 2014 is annexed hereto as Exhibit 10.

90. In March, 2014, Plaintiffs’ representatives met with representatives of the NJDEP and the Borough to discuss the Project as it related to Plaintiffs properties.

91. At the March, 2014 meeting, NJDEP presented Plaintiff with aerial photographs upon which had drawn lines depicting an area of land encompassing an area consisting of

substantially all of Plaintiffs' property lying between the boardwalk and the Atlantic Ocean as the area to be subjected to the perpetual rights described in the Deed.

92. The aerial photographs and maps aforesaid depict various features and limits of the Project, including "crest of dune," "toe of dune," "edge of berm," and the like, but contain no description of an area intended for establishment of a public beach.

93. The USACOE project design documents provided to Plaintiffs by NJDEP do not indicate any requirement for the full panoply of rights or covering the entire spatial area described in the Deed.

94. Based upon the Deed, the area of land sought to be encumbered by NJDEP with a perpetual public recreational beach is coterminous with the outbound extents of the Project area depicted on the maps aforesaid provided by NJDEP to Plaintiffs and is not limited to an area of land coterminous with the area of land subject to public user under the Public Trust Doctrine.

95. At the March, 2014 meeting, representatives of the NJDEP and the Borough represented to Plaintiffs that the Deed did not affect Plaintiff's ownership and right to operate their private, open-to-the-public-for-a fee beach following execution of the Deed.

96. The terms of the Deed presented to Plaintiffs and prior representations of NJDEP were inconsistent with such representations.

97. Plaintiffs were advised that the precise terms of the Deed were mandated by the USACOE and could not be modified.

98. At a subsequent meeting between the parties in the spring of 2014, this time including a representative of the Office of the Attorney General of New Jersey, Plaintiffs were advised that Plaintiffs would be provided with a "side agreement" executed by the Borough,

but not the NJDEP or the USACOE, permitting Plaintiffs to continue to have the right to operate their private, open-to-the-public-for-a fee beach subsequent to execution of the Deed.

99. As explained and described to Plaintiffs, such a “side agreement” would be unenforceable against the NJDEP to which the Deed grants, *inter alia*, a perpetual right to NJDEP to operate a public beach.

100. Plaintiffs were again advised that the precise terms of the Deed were mandated by the USACOE and could not be modified.

101. At a subsequent meeting between the parties on June 13, 2014, this time including the Commissioner of the NJDEP and the NJDEP Director of the Office of Flood Hazard Risk Reduction Measures, Plaintiffs were advised that “all NJDEP wanted” was “the ability to construct a dune system.”

102. The representations of the NJDEP and the Office of the Attorney General of New Jersey were inconsistent with and in conflict with the provisions of the Deed and prior representations of the NJDEP.

103. During all the discussions between Plaintiffs and NJDEP, the representatives of the NJDEP and the Office of the Attorney General of New Jersey represented to Plaintiffs that the exact terms and conditions of the Deed were mandated by Defendant USACOE.

104. The representations to Plaintiffs by NJDEP were in substantial conformity with statements of the Administrator of the NJDEP Office of Engineering and Construction to the effect that, according to NJDEP, the NJDEP could not authorize the USACOE to bid the Project without all required “easements” [Deeds] from shorefront owners in affected municipalities as described below.

105. For example, in connection with the Barnegat Inlet to Little Egg Inlet storm protection project being simultaneously carried out by the NJDEP and USACOE and involving a substantially identical Deed, the Administrator of the NJDEP Office of Engineering and Construction advised the Mayor of the Borough of Surf City that, “The state can not (sic) authorize the USACE to bid this project without all required easements [Deeds].”

106. During the discussions between Plaintiffs and NJDEP, the representatives of the NJDEP and the Office of the Attorney General of New Jersey represented to Plaintiffs that the form of the Deed was non-negotiable because the USACOE would not permit a modification of the list of property rights to be acquired as described in the Deed.

107. The representations of the NJDEP and the USACOE are inconsistent with and in conflict with the rights conveyed by the Deed and sought to be acquired by the NJDEP and the Borough and other municipalities cooperating with the NJDEP in connection with the Project as described below.

108. On November 14, 2014, a representative of the Office of the New Jersey Attorney General forwarded an email enclosing the NJDEP’s a modified form of Deed in an effort to have Plaintiffs execute such modified Deed.

109. A true copy of the Deed submitted to Plaintiffs on November 14, 2014 is annexed hereto as Exhibit 11.

110. The modified Deed did not resolve any of the doubt, ambiguity, and controversy concerning the Deed or the precise rights authorized or required for the Project by the USACOE as described in the within Complaint.

111. As with all prior forms of Deed presented to Plaintiffs, no metes and bounds description of land areas to be encumbered was provided beyond a description of Plaintiffs entire Tax lot designation.

112. Plaintiff has refused to execute any Deed in any form requested by the NJDEP or Borough.

Evasion of Requirements of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the New Jersey Eminent Domain Act

113. Article III Section D of the PPA requires NJDEP, as a non-Federal sponsor, to “comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655) (“Uniform Act”) , and the Uniform Regulations (“Uniform Regulations”) contained in 49 C.F.R. Part 24, in acquiring real property interests for construction, operation, maintenance, and periodic renourishment of the Project and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.”

114. The Uniform Act and Uniform Regulations require that acquisitions be carried out in a manner similar to the New Jersey Eminent Domain Act.

115. The Uniform Act and Uniform Regulations prohibit coercive action in order to induce an agreement on the price to be paid for the property.

116. During the discussions between Plaintiffs and representatives of the NJDEP and Office of the Attorney General of New Jersey, Plaintiffs were advised that the requirements of the Project would not allow sufficient time for the NJDEP or the Borough to comply with the requirements of the New Jersey Eminent Domain Act of 1971, N.J.S.A.20:3-1 *et seq.*

117. The New Jersey Eminent Domain Act of 1971 is applicable to each and every instance wherein state government, or its agencies or instrumentalities, including municipal corporations, seek to take private property for public use within the State of New Jersey .

118. The New Jersey Eminent Domain Act of 1971 requires, *inter alia*, that as a mandatory precondition to the institution of an action to condemn, the condemning agency must identify the property and rights to be condemned, prepare a map thereof, obtain an appraisal of the property and rights to be condemned, make an offer of compensation to the owner in an amount not less than the condemnor's approved appraisal, and engage in a process of bona fide negotiations with the owner.

119. The New Jersey Eminent Domain Act of 1971 provides, *inter alia*, that a condemning agency may not take possession nor an indefeasible title to property unless and until a court determines that the condemning agency has the authority, and has duly exercised the authority to condemn, and has deposited with the Clerk of the Court an amount not less than the amount of its approved appraisal.

120. Representatives of the Office of the Attorney General of New Jersey advised Plaintiffs that NJDEP and/or the Borough would "take" Plaintiffs' properties in advance of compensation therefor pursuant to asserted authority under either the New Jersey Disaster Control Act, *N.J.S.A.* App. A:9-51.5 (applicable to municipalities) or *N.J.S.A.* 12:3-64 (applicable to NJDEP).

121. Both *N.J.S.A.* App. A:9-51.5 and *N.J.S.A.* 12:3-64 are cited in Executive Order 140 as authority for takings of private property in advance of compensation to the owner thereof.

122. Neither *N.J.S.A. App. A:9-51.5* nor *N.J.S.A. 12:3-64* (partially repealed) authorize the taking of title to real estate in advance of compensation to the owner thereof in accordance with the Eminent Domain Act of 1971.

123. NJDEP has advised plaintiffs that, as to Plaintiffs' properties, NJDEP has authority to take, and has taken, or that the Borough has the authority to take, and has taken, the property rights described in the Deed.

124. The foregoing allegation is supported by the certification by NJDEP to the USACOE that the NJDEP has already acquired the lands, easements, and rights-of-way necessary and required for the Project.

125. During Plaintiffs discussions with representatives of the NJDEP and the Office of the Attorney General aforesaid, the NJDEP made a monetary offer to Plaintiffs in return for Plaintiffs' execution of the Deed.

126. The actions and statements of NJDEP and its representatives aforesaid are intended to coerce Plaintiffs to come to agreement on a price to be paid for Plaintiff's property.

127. Consistent with its position as expressed to Plaintiffs, NJDEP has asserted before this Court and the state courts its rights to take private property through means of an Administrative Order (in the case of the NJDEP) or through means of the Disaster Control Act (in the case of a cooperating municipality) without first complying with the Uniform Act and Uniform Regulations and the New Jersey Eminent Domain Act.

128. Indicative of the statewide application of the form of Deed submitted to Plaintiffs, on October 1, 2014, by Administrative Order, the NJDEP employed the Deed in substantially identical form in connection with its exercise of asserted authority under *N.J.S.A. 12:3-64* in connection with the "Barnegat Inlet to Little Egg Inlet, New Jersey hurricane and

storm damage reduction project,” a project governed by an agreement between the USACOE and NJDEP similar to the Project and proceeding simultaneously therewith.

129. The form of Administrative Order states that:

The New Jersey Department of Environmental Protection Office of Flood Hazard Risk Reduction Measures hereby immediately enters upon and takes real property interest(s) in those parcels set forth in Exhibit A.

The nature of the real property interest(s) described in the form of Deed of Easement attached hereto shall conform with those interest(s) described in the form of Deed of Easement... (emphasis added)

130. A true copy of Administrative Order 2014-13 is annexed hereto as Exhibit 12.

The Deed is annexed as Exhibit C thereto.

131. Indicative of the doubts on the part of the USACOE concerning the authority of the NJDEP to take private property other than through compliance with the Uniform Act and the Eminent Domain Act, Article 5, section D of the PPA provides that:

Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for costs incurred by the Non-Federal Sponsor:

4. to defend against claims or litigation relating to an exercise of the authority provided by N.J.S.A. App. §§ A:9-51.5-51.7 or N.J.S.A. § 12:3-64, except for costs solely related to the amount of compensation due to private owners for real property interests taken for the Project.

Project Immanency and Actions in Furtherance Thereof

132. The taking of real property interests in Plaintiffs' properties and of other similarly-affected shorefront owners for purposes of the Project is imminent.

133. NJDEP has already certified to the USACOE that NJDEP has acquired all real property interests needed for construction, operation, maintenance, and periodic renourishment of the Project.

134. The certification of the NJDEP to the USACOE was premised upon the asserted authority of the NJDEP and cooperating municipal corporations under New Jersey Disaster Control Act, *N.J.S.A. App. A:9-51.5* and *N.J.S.A. 12:3-64*.

135. Neither *N.J.S.A. App. A:9-51.5* and *N.J.S.A. 12:3-64* provide authority for the taking of private property in advance of compensation to the owner nor in advance of compliance with the New Jersey Eminent Domain Act and the Uniform Act and Uniform Regulations.

136. The taking of real property interests in Plaintiffs' properties and of other similarly-affected shorefront owners for purposes of the Project will irreparably harm Plaintiffs (and other similarly-affected shorefront owners) as their title will be encumbered or destroyed and the construction of engineered dunes on Plaintiffs' properties will result in irreversible physical changes to Plaintiffs' (and other affected) properties.

137. On or about December 17, 2013, the Borough of Point Pleasant Beach adopted Ordinance 2013-42 entitled "An Ordinance of the Borough of Point Pleasant Beach, County of Ocean and State of New Jersey, Authorizing the Acquisition of Certain Interests in Real Properties by Negotiation, Purchase, Condemnation or Eminent Domain, Said Properties Being identified on the Annexed Schedule and Parcel Maps."

138. A true copy of the Ordinance is annexed hereto as Exhibit 13.

139. Ordinance 2013-42 recites both *N.J.S.A. App. A:9-51.5* and *N.J.S.A. 12:3-64* as authority for takings of private property in advance of compensation to the owner thereof.

140. Ordinance 2013-42 recites, *inter alia*, that the purpose of said acquisitions is “for storm and damage and flood area mitigation.”

141. Ordinance 2013-42 recites, *inter alia*, that the purpose of said acquisitions is in furtherance of Flood Hazard Risk Reduction Measures authorized by Executive Order 140.

142. Ordinance 2013-42 recites, *inter alia*, that municipal acquisitions are to be conducted “in conjunction with the Office of Flood Hazard Risk Reduction Measures within the New Jersey Department of Environmental Protection.”

143. The properties identified for total or partial acquisition within Ordinance 2013-42 include Plaintiffs’ properties.

144. Ordinance 2013-42 describes the property rights to be acquired from Plaintiffs as an “irrevocable, perpetual, permanent easement” without further description.

145. Ordinance 2013-42 describes the land area to be acquired from Plaintiffs as “a portion” of tax Blocks and Lots owned or leased by Plaintiffs without any description of the precise land area to be acquired.

146. The acquisitions authorized by Ordinance 2013-42 are coextensive, and are intended to be coextensive, both in spatial extent and in terms of specific property rights to be acquired, with the acquisitions necessary for the Project to be carried out by the USACOE pursuant to the PCA.

147. Supporting Plaintiffs’ belief, the Township of Long Beach, Ocean County, New Jersey, acting in conjunction and pursuant to an agreement with the NJDEP, employed the Deed in the identical form presented to Plaintiffs and other similarly affected coastal owners in connection with a taking of private property in Long Beach Township for purposes of the Manasquan to Little Egg storm protection project.

148. Pursuant to the New Jersey Eminent Domain Act, *N.J.S.A.20:3-1 et seq.*, the condemnation process commences with an appraisal of the property to be condemned with notice to the owner and an opportunity for the owner to attend the appraisal inspection.

149. On November 13, 2014, the Borough of Point Pleasant Beach, through a real estate appraiser, notified Plaintiffs that the appraiser had been retained by the Borough of Point Pleasant Beach to perform an appraisal of “the property rights that are needed in connection with the United States Army Corps of Engineers Manasquan Inlet to Barnegat Inlet Hurricane and Storm Damage Reduction Project” with respect to the Plaintiffs’ properties.

150. By notice posted October 21, 2014, the USACOE advertised for bids of a contract to construct the Project and has announced that construction could begin in 2015.

151. A true copy of the notice posted October 21, 2014 is annexed hereto as Exhibit 14.

152. On information and belief, no construction contract has been awarded and the construction of dunes in the Borough of Point Pleasant Beach has not commenced.

FIRST COUNT

(Preliminary Injunctive Relief)

153. Plaintiffs repeat and reallege the allegations of the Allegations Common to All Counts of the complaint as if set forth at length herein.

154. Plaintiffs are likely to succeed on the merits seeking declaratory relief for the reasons set forth in the Allegations Common to All Counts.

155. A denial of the requested injunctive relief will result in irreparable harm because NJDEP will, itself or through a municipal proxy, take Plaintiffs’ private property in

advance of making compensation and will violate Plaintiffs' rights under the United States Constitution and the New Jersey Constitution.

156. A denial of the requested injunctive relief will result in irreparable harm because construction of the Project will alter Plaintiffs' unique real property and their interests therein.

157. In the absence of a declaration settling the controversy whether the USACOE may lawfully rely on the certification of the NJDEP that NJDEP has already acquired, under authority of the New Jersey Disaster Control Act, *N.J.S.A. App. A:9-51.5* or *N.J.S.A. 12:3-64*, the lands, easements, and rights-of-way necessary and required for the Project, the USACOE will go forward with a Project in violation of 33 U.S.C. 426(e)(3)(B)(i).

158. A denial of the requested injunctive relief will result in presumptive irreparable harm because, by virtue of the Takings Clause and the Due Process Clause of the United States Constitution, corollary provisions of the New Jersey Constitution and the Eminent Domain Act, this case concerns matters affecting the public interest which have been codified by law and the violations of which entitle Plaintiffs to preliminary injunctive relief even absent irreparable harm.

159. Granting a preliminary injunction will not harm the Defendant, as Plaintiffs seek to maintain the status quo pending a determination in this action.

160. The injunction sought is in the public interest. It is within the public interest to ensure that federal and state agencies act within the limits set by the United States and New Jersey Constitutions, respectively, as well as within their statutorily granted powers.

161. In the absence of a declaration settling the controversy concerning precisely what rights, covering what lands, are necessary and required for the Project by the USACOE,

hundreds of state condemnation actions, including actions affecting Plaintiffs, are threatened to be instituted in the courts of the State of New Jersey affecting the property of owners who refused to sign the Deed.

162. In the absence of a declaration settling the controversy concerning precisely what rights, covering what lands, are necessary and required for the Project by the USACOE (as opposed to rights sought by NJDEP but not required for the Project), hundreds of state condemnation actions will go forward shrouded in ambiguity, doubt and controversy concerning the scope and lawfulness of the takings resulting in wasteful, unproductive, time-consuming, expensive and unnecessary litigation.

163. The Court should exercise its discretion and not require the posting of any security upon the issuance of temporary restraints.

SECOND COUNT

(Declaratory Judgment As To Lands, Easements, and Rights-of-way Necessary and Required for USACOE Participation in the Project.)

164. Plaintiffs repeat and reallege the allegations of the First Count of the complaint as if set forth at length herein.

165. The inconsistencies between the oral and written representations of the USACOE and the NJDEP and the Borough concerning the provisions of the Deed have created an issue of doubt, ambiguity and controversy affecting Plaintiffs (as well as hundreds of New Jersey shorefront property owners) who refused to sign the Deed and are subject to an involuntary taking of their property for purposes of the Project.

166. The condemnation actions likely to be instituted as a result of the controversy concerning precisely what rights covering what lands are necessary and required for the Project by the USACOE are either unnecessary in their entirety, unnecessary in part, or subject to

multiple and duplicative litigations affecting a hundreds of property owners, including Plaintiffs, and burdening the public generally.

THIRD COUNT

(Violations of Federal and State Law in Acquiring Property Interests)

167. Plaintiffs repeat and reallege the allegations of the prior counts of the complaint as if set forth at length herein.

168. Inasmuch as the USACOE has advertised the Project for bids, it appears reasonably certain that the NJDEP has certified to USACOE that it has acquired all property rights needed for various beach replenishment projects even though it knew or should have known that the acquisition authority it relied upon violated both state and federal law.

169. The NJDEP, individually and in concert with certain municipalities involved in the Project, has claimed authority to “take” property from private property owners without complying with the requirements of the New Jersey Eminent Domain Act of 1971, *N.J.S.A.* 20:3-1, et seq., or the Uniform Property Acquisition Act.

170. Such actions include, by way of example, purporting to seize private property by issuing and recording an Administrative Order pursuant to *N.J.S.A.* 12:3-64 or a municipal “taking” pursuant to the Disaster Control Act and without following the requirements of state and federal law to give notice, appraise the property interest being sought, make an offer of compensation, negotiate in good faith and initiate an eminent domain action, including deposit of the estimated compensation with the court, if the property owner does not voluntarily agree to sell the property interest being sought.

171. Such actions are in violation of Federal and state law

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests judgment and relief as follows:

Injunctive Relief

A) A temporary restraining order and preliminary injunction enjoining and restraining USACOE from advertising or awarding any contract for the construction of the “Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project” in advance of a determination by the Court on the merits of the within action;

B) A temporary restraining order and preliminary injunction enjoining and restraining the USACOE from reliance upon any certification by the NJDEP that the NJDEP has acquired the lands, easements, and rights-of-way necessary and required for the Project as required by 33 U.S.C. 2213 (i).

C) A temporary restraining order and preliminary injunction enjoining and restraining the NJDEP from certifying to the USACOE that it has acquired the lands, easements, and rights-of-way necessary and required for the Project as required by 33 U.S.C. 2213 (i) until NJDEP has acquired all such interests as a matter of law pursuant to the New Jersey Eminent Domain Act.

D) A temporary restraining order and preliminary injunction enjoining and restraining all Defendants, or persons acting on their behalf or in concert with them, from performing appraisals, recording title instruments, filing condemnation actions, or entry upon Plaintiffs’ properties to commence construction of the Project, or for any other purpose, in advance of a determination by the Court on the merits of the within action;

E) A temporary restraining order and preliminary injunction enjoining and restraining all Defendants, or persons acting on their behalf or in concert with them, from entry

upon Plaintiffs' properties to commence construction or for any other purpose without first complying with the procedural and substantive requirements of the Uniform Property Acquisition Act and the Eminent Domain Act, *N.J.S.A. 20:3-1, et seq.*

Declaratory Relief

F) For a declaration as a matter of law of the precise extent and nature of the taking of private property that is authorized, necessary and required by the USACOE for the "Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project" including:

- a. For a declaration as a matter of law that the United States Army Corps of Engineers is not authorized to require, has not required, and does not require for purposes of the "Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project" the acquisition of perpetual rights in private property for purposes of establishing recreational public beaches landward of the area already subject to public ownership and rights of public user pursuant to the New Jersey Public Trust Doctrine.
- b. For a declaration as a matter of law that the United States Army Corps of Engineers ("USACOE") is not authorized to require, has not required, and does not require for purposes of the "Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project" the acquisition of perpetual rights in private property as stated in the Deed.
- c. A declaration invalidating any requirement of the USACOE that NJDEP obtain perpetual rights for public recreational beach use landward of the area already subject to public ownership and rights of public user pursuant to the

New Jersey Public Trust Doctrine in order to obtain funding from the Army Corps of Engineers for the Project.

G) A declaration that any certification provided by the NJDEP to the USACOE to the effect that NJDEP has, as of the present time, acquired the lands, easements, and rights-of-way necessary and required for the Project as required by 33 U.S.C. 2213 (i) is invalid and of no force or effect.

H) A declaration that the NJDEP and the Borough may only acquire rights of title and possession to real property interests in Plaintiffs' property by complying with the Eminent Domain Act of 1971 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24.

I) Such other relief as this Court deems just, proper, and equitable.

LOCAL RULE 201.1 CERTIFICATION

I hereby certify that the above referenced action is not subject to Compulsory Arbitration pursuant to Local Civil Rule 201.1 as Plaintiffs seek relief other than monetary damages.

LOCAL RULE 11.1 CERTIFICATION

172. Pursuant to Local Rule 11.1, Plaintiffs hereby certify that there are a related actions pending in any courts as follows: *Tomasi, et al v. Township of Long Beach*, United States District Court for the District of New Jersey, Civil Action No. 3:14-CV-07319-PGS-LHG; *Margate City, New Jersey v. United States Army Corps of Engineers*, et al, United States District Court for the District of New Jersey, Civil Action No. 14-CV-7303 (RMB); *Minke Family Trust v. Township of Long Beach*, Superior Court of New Jersey, Docket #OCN-L-003033-14; *Carolan, et al v. Township of Long Beach*, Superior Court of New Jersey,

Docket # OCN-L-003379-14, pursuant to which aspects of the Project and related projects including aspects in common with the Project are challenged.

McKIRDY and RISKIN, PA.
Attorneys for Plaintiffs

By: s/ JOHN H. BUONOCORE, JR.

McKirdy and Riskin. P.A.
136 South Street
Morristown, New Jersey 07960
Telephone: 973-539-8900
eminentdomain@mckirdyriskin.com

Date: December 16, 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JENKINSON'S PAVILLION, a corporation of
the State of New Jersey and JENKINSON'S
SOUTH, INC., a corporation of the State of
New Jersey

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS, NEW JERSEY;
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and agency of the State of
New Jersey; BOROUGH OF POINT
PLEASANT BEACH, a municipal corporation
of the State of New Jersey

Defendants.

Civil Action No. _____

VERIFICATION

I, EDWARD J. McGLYNN, pursuant to 28 USC Sec. 1746 declare and say:

1. I am an attorney at law of the State of New Jersey and general counsel to Plaintiffs Jenkinson's Pavilion, a corporation of the State of New Jersey and Jenkinson's South, Inc., a corporation of the State of New Jersey.

2. I have reviewed the Complaint.

3. Regarding the allegations of which I have personal knowledge, I believe them to be true.

4. Regarding the allegations of which I do not have personal knowledge, I believe them to be true based on the information and documents specifically referred to in the Complaint.

Pursuant to 28 USC Sec. 1746, I swear under the penalty of perjury that the foregoing is true and correct. Executed on December 15, 2014.

Affiant


EDWARD R. MCGLYNN

General Counsel to
Jenkinson's Pavilion and
Jenkinson's South, Inc.
300 Ocean Avenue
Point Pleasant Beach, NJ 08742
732-892-0600

EXHIBIT 1



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20310-2600

**REPLY TO
ATTENTION OF**

CECW-PM (1105-2-10a)

DEC 30 2003

SUBJECT: New Jersey Shore Protection Study, Manasquan Inlet to Barnegat Inlet

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the study of hurricane and storm damage reduction for Manasquan Inlet to Barnegat Inlet, New Jersey. It is accompanied by the report of the district and division engineers. These reports are in partial response to resolutions of the Committee on Public Works and Transportation of the House of Representatives dated 10 December 1987 and the Committee on Environment and Public Works of the United States Senate dated 15 December 1987. These resolutions requested review of existing reports of the Chief of Engineers for the entire New Jersey coast with a view to study, in cooperation with the State of New Jersey, its political subdivisions and agencies and instruments thereof, the changing coastal processes along the coast of New Jersey. Preconstruction engineering and design activities, if funded, would be continued under the study authorities cited above.

2. The reporting officers recommend constructing a dune and berm using sand obtained from offshore borrow sources. The sand fill dune and berm would extend approximately 14 miles from Berkeley Township at the boundary of Island Beach State Park northward to Point Pleasant Beach at the Manasquan Inlet south jetty.

a. The design dune would have a crest width of 25 feet and side slopes of 1V:5H. The dune crest elevation would be +22 feet North Atlantic Vertical Datum (NAVD) along the entire reach except at Seaside Heights and northern Point Pleasant Beach. At these two locations the dune design crest elevation would be +18 feet NAVD. The plan includes planting 175 acres of dune grass on the newly constructed dune. Dune crossovers for pedestrian use would be provided at 247 existing access locations, including handicap access at regular intervals. Eleven dune crossovers would be provided to accommodate service vehicles. Sand fencing would be included along the perimeter of the dune base and at each crossover to protect the dune. Approximately 206,000 linear feet of fencing would be required.

b. The design berm would be constructed to elevation +8.5 feet NAVD at all locations, except at northern Point Pleasant Beach, where berm elevation would be +11.5 feet NAVD. The berm would extend 75 feet seaward from the toe of the dune along the entire reach except at

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

Seaside Heights and northern Point Pleasant Beach. At these two locations, the berm width would be 100 feet extending seaward from the toe of the dune. At all locations, the design beach foreshore would slope 1V:10H from the berm crest down to mean high water (MHW). Below MHW, the design beach slope would parallel the existing beach slope down to the depth of closure at -26 feet NAVD.

c. The initial sand fill requirement is estimated as 10,689,000 cubic yards. This amount includes an initial fill quantity of 9,728,000 cubic yards and advance nourishment of 961,000 cubic yards. Periodic nourishment would be required at about 4-year intervals after completing the initial construction in order to maintain the integrity of the design beach template over the project life. Twelve nourishment cycles, totaling about 12,358,000 cubic yards over the 50-year period of Federal participation, are anticipated.

d. No compensatory environmental mitigation is proposed. However, monitoring during initial construction and subsequent beach nourishment cycles would be undertaken to avoid significant impacts to benthic habitats, surf clam populations, and Federally threatened species including the piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*).

3. Based on October 2003 price levels, the initial construction cost of the plan is estimated at \$62,377,000. Under cost sharing specified by the Water Resources Development Act (WRDA) of 1986, Public Law 99-662, the initial construction would be cost shared 65 percent by the Federal Government and 35 percent by the non-Federal sponsor. The Federal share of this first cost is \$40,546,000 and the non-Federal share is \$21,831,000. Cost of lands, easements, rights-of-way, relocations, and dredged material disposal areas is estimated at \$3,913,000 and will be credited toward the non-Federal sponsor's cash contribution.

4. Over the 50-year period of Federal participation, the total periodic nourishment costs are estimated to be \$103,837,000 (October 2003 price level). Based on the amendments to the WRDA of 1986 cost sharing requirements implemented in response to the WRDA of 1999, Public Law 106-53, cost sharing for the periodic nourishment would be 50 percent Federal (\$49,082,500) and 50 percent non-Federal (\$49,082,500) for sand placement costs and 100 percent non-Federal (\$5,672,000) for dune grass, sand fence, and crossover replacement costs.

5. The ultimate cost of construction which includes initial construction, project monitoring, and periodic nourishment during the 50 years of Federal participation is estimated to be \$166,214,000 (October 2003 price level). The Federal costs are estimated at \$89,628,500 and the non-Federal costs at \$76,585,500. All costs also include pre-construction engineering and design. Cost of operation, maintenance, repair, replacement, and rehabilitation is not included in this cost and is a non-Federal responsibility. The recommended cost sharing percentages presented in this report are contingent upon the District Engineer, Philadelphia, certifying that the non-Federal sponsor has provided appropriate real estate instruments ensuring public use and access as stated in law and regulation prior to initiating project construction.

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

6. The analysis of the selected plan is based on an October 2003 price level and the Federal discount rate of 5.625 percent. The selected plan, which is the national economic development (NED) plan, has primary outputs based on hurricane and storm damage reduction. The plan provides equivalent annual net benefits of approximately \$6,174,000 and has a benefit-to-cost ratio of 2.1 to 1.

7. Washington level review indicates that the plan developed is technically sound, economically justified, and socially and environmentally acceptable. The plan conforms to the essential elements of U.S. Water Resources Council's Economic and Environmental Principals and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, State, and local agencies have been considered. Currently, a portion of the project shoreline length has been identified as being owned and operated by private, for profit entities, with some additional shoreline segments that are owned by private, non-profit entities. The Philadelphia District will undertake further coordination with the non-Federal project sponsor during the preconstruction engineering and design phase to ensure that public access to all segments of the 14 mile long project is consistent with law and regulations.

8. I concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend construction of this project for hurricane and storm damage reduction in accordance with the reporting officers' recommended NED plan with such modifications as in the discretion of the Chief of Engineers may be advisable. Also, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies and other requirements including, but not limited to:

a. Provide 35 percent of initial project costs assigned to hurricane and storm damage reduction, plus 50 percent of the initial project costs assigned to protecting undeveloped public lands, plus 50 percent of initial project costs assigned to recreation, plus 100 percent of initial project costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits, and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction plus 100 percent of periodic nourishment costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits and as further specified below:

(1) Enter into an agreement which provides, prior to construction, 25 percent of design costs;

(2) Provide, during construction, any additional funds needed to cover the non-Federal share of design costs;

(3) Provide all lands, easements, and rights-of-way, and perform or ensure the performance of any relocations determined by the Federal Government to be necessary for the initial construction, periodic nourishment, operation, and maintenance of the project;

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(4) Provide, during construction, any additional amounts as are necessary to make its total contribution equal to 35 percent of initial project costs assigned to hurricane and storm damage reduction plus 100 percent of initial project costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction plus 100 percent of periodic nourishment costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits;

b. For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the completed project, or functional portion of the project, at no cost to the Federal Government, in a manner compatible with the project authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government;

c. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall relieve the non-Federal sponsor of responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance;

d. Hold and save the United States free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the United States or its contractors;

e. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;

f. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended, 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for the initial construction, periodic nourishment, operation, maintenance, repair, and rehabilitation of the project. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal Government shall perform such investigations unless the Federal Government provides the non-Federal sponsor with prior

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specific written direction, in which case the non-Federal sponsor shall perform such investigations in accordance with such written direction;

g. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the initial construction, periodic nourishment, operation, or maintenance of the project;

h. Agree that the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, and repair the project in a manner that will not cause liability to arise under CERCLA;

i. If applicable, comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act;

j. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of floodplain management plans;

k. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement;

l. Participate in and comply with applicable Federal floodplain management and flood insurance programs;

m. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized;

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n. Prescribe and enforce regulations to prevent obstruction of or encroachment on the project that would reduce the level of protection it affords or that would hinder future periodic nourishment and/or the operation and maintenance of the project;

o. Not less than once each year, inform affected interests of the extent of protection afforded by the project;

p. Publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the floodplain, and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the project;

q. For so long as the project remains authorized, the non-Federal sponsor shall ensure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based;

r. Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms;


s. Recognize and support the requirements of Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element; and

t. At least twice annually and after storm events, perform surveillance of the beach to determine losses of nourishment material from the project design section and provide the results of such surveillance to the Federal Government.

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9. The recommendation contained herein reflects the information available at this time and current departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program nor the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to Congress as a proposal for authorization and implementation funding. However, prior to transmittal to Congress, the non-Federal sponsor, the State of New Jersey; interested Federal agencies; and other parties will be advised of any modifications and will be afforded an opportunity to comment further.



ROBERT B. FLOWERS
Lieutenant General, U.S. Army
Chief of Engineers

EXHIBIT 2

EXECUTIVE ORDER NO. 140

WHEREAS, beginning on October 28, 2012, and continuing through October 30, 2012, Superstorm Sandy struck the State of New Jersey, causing unprecedented damage and destruction; and

WHEREAS, oceanfront and other flood-prone communities lacking the benefits of flood hazard risk reduction measures including protective sand dunes, berms, and engineered beaches (collectively "Flood Hazard Risk Reduction Measures") experienced significantly more catastrophic damage than surrounding communities; and

WHEREAS, recognizing the dangers posed by the absence of Flood Hazard Risk Reduction Measures, the United States Congress appropriated funds for the creation, improvement, and reconstruction of these important protections; and

WHEREAS, working collaboratively with the United States Army Corps of Engineers, New Jersey has begun the process of designing Flood Hazard Risk Reduction Measures for appropriate areas of the New Jersey coastline; and

WHEREAS, these essential Flood Hazard Risk Reduction Measures must be comprehensively constructed across the areas impacted by Superstorm Sandy and throughout the regions at risk for similar damage from future storms; and

WHEREAS, some of the land on which this system of Flood Hazard Risk Reduction Measures must be built is privately owned; and

WHEREAS, recognizing the clear and quantifiable benefit that Flood Hazard Risk Reduction Measures confer on their property, as well as their families, neighbors, and communities, many oceanfront property owners have voluntarily granted easements for the construction of Flood Hazard Risk Reduction Measures; and

WHEREAS, despite the responsible actions of these many property owners, other residents have frustrated the State's rebuilding and resiliency plans by refusing to grant easements, thereby jeopardizing the construction of Flood Hazard Risk Reduction Measures for all of

New Jersey's citizens, undermining the essential benefits of these systems, and subjecting entire communities to unnecessary risks and dangers; and

WHEREAS, these recalcitrant property owners have had ample time and notice to voluntarily agree to grant these easements to help to ensure the health, safety, and welfare of their communities; and

WHEREAS, the continued absence of Flood Hazard Risk Reduction Measures in coastal communities creates an imminent threat to life, property, and the health, safety, and welfare of those communities; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33, et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4, and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers; and

WHEREAS, in light of the significant and widespread dangers posed by Superstorm Sandy, and in order to protect the health, safety, and welfare of the people of the State of New Jersey, on October 27, 2012, I signed Executive Order No. 104 declaring and proclaiming that a State of Emergency exists in the State of New Jersey; and

WHEREAS, in Executive Order No. 104, and in accordance with N.J.S.A. App. A:9-34 and -51, I expressly reserved the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency; and

WHEREAS, employing the procedures set out in N.J.S.A. 20:3-1 et seq., public entities are empowered to condemn private property for public purposes, including the creation of Flood Hazard Risk Reduction Measures; and

WHEREAS, pursuant to N.J.S.A. 12:3-64, the New Jersey Department of Environmental Protection ("DEP") is authorized to acquire any lands in the State that it deems advisable, and may enter upon and take property in advance of making compensation therefore where for any reason it cannot acquire the property by agreement with the owner; and

WHEREAS, pursuant to N.J.S.A. App. A:9-51.5, municipalities are authorized to enter upon and take possession and control of property necessary for the construction of Flood Hazard Risk Reduction Measures; and

WHEREAS, all of the aforementioned authority is necessary to protect the public health, safety, and welfare from future natural disasters; and

WHEREAS, in order to ensure the prompt and coordinated acquisition of easements or other interests in real property necessary to facilitate the timely completion of a comprehensive system of Flood Hazard Risk Reduction Measures, it is necessary to create a single State entity responsible for the rapid acquisition of property vital to these reconstruction efforts;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the statutes of this State, do hereby ORDER and DIRECT:

1. The Commissioner of Environmental Protection shall create in the DEP the Office of Flood Hazard Risk Reduction Measures (the "Office"). The Office shall be headed by a Director appointed by the Commissioner to serve at the Commissioner's pleasure and who shall report to the Commissioner on the work of the Office. The Office shall lead and coordinate the efforts of the DEP to acquire the necessary interests in real property to undertake Flood Hazard Risk Reduction Measures and shall perform such other duties as the Commissioner may from time to time prescribe.

2. The Attorney General of the State of New Jersey, in conjunction with the Office, shall immediately take action to

coordinate those legal proceedings necessary to acquire the necessary easements or other interests in real property for the system of Flood Hazard Risk Reduction Measures.

3. The Office is authorized to call upon any department, office, division, or agency of this State for information or assistance as deemed necessary to discharge the duties of the Office. Each department, office, division, or agency is hereby required, to cooperate with the Office and to provide such assistance as is necessary to accomplish the purpose of this Order. Notwithstanding anything in this Order to the contrary, the Office shall not supplant the function of any department, office, division, or agency.

4. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede its achievement.

5. This Order shall take effect immediately.

GIVEN, under my hand and seal this
25th day of September,
Two Thousand and Thirteen, and
of the Independence of the
United States, the Two Hundred
and Thirty-eighth.

/s/ Chris Christie

Governor

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor

EXHIBIT 3

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOR
MANASQUAN INLET TO BARNEGAT INLET, NEW JERSEY
HURRICANE AND STORM DAMAGE REDUCTION PROJECT

THIS AGREEMENT is entered into this 18 day of July, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Philadelphia District (hereinafter the "District Engineer") and the New Jersey Department of Environmental Protection (hereinafter the "Non-Federal Sponsor"), represented by the Commissioner.

WITNESSETH, THAT:

WHEREAS, construction of the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project (hereinafter the "Project", as defined in Article I.A.) was authorized by Section 1001(32) of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the Project;

WHEREAS, under the Construction heading, Chapter 4, Title X, Division A of the Disaster Relief Appropriations Act of 2013, Public Law 113-2 (127 Stat. 24 - 25) enacted January 29, 2013 (hereinafter "DRAA 13"), the Secretary of the Army is directed to finance the non-Federal cash contribution for certain projects using DRAA 13 funds in accordance with the provisions of Section 103(k) of the Water Resources Development Act of 1986, Public Law 99-662; and the interest rate for such payments shall be determined in accordance with Section 106 of WRDA 1986;

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to DRAA 13 funds that will be used for construction of the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor's full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the hurricane and storm damage reduction project for Manasquan Inlet to Barnegat Inlet, New Jersey which provides for a sand fill dune and berm extending approximately 14 miles from Berkeley Township at the boundary of Island Beach State Park northward to Point Pleasant Beach at the Manasquan Inlet south jetty consisting of the following: a dune with a crest width of 25 feet and a crest elevation of +22.0 feet North American Vertical Datum of 1988 (NAVD88) along the entire reach except at Seaside Heights and northern Point Pleasant Beach where the crest elevation is +18.0 feet NAVD88, approximately 175 acres of planted dune grasses, pedestrian and service vehicle dune crossovers, and approximately 206,000 linear feet of sand fencing; a berm constructed to an elevation of +8.5 feet NAVD88 at all locations except northern Point Pleasant Beach where the berm elevation would be +11.5 feet NAVD88; and monitoring of benthic habitats, surf clam populations, and Federally threatened species including the piping plover and seabeach amaranth to avoid significant impacts, as generally described in the New Jersey Shore Protection Study, Manasquan Inlet to Barnegat Inlet, New Jersey Feasibility Study, dated June, 2002, and approved by the Chief of Engineers on December 30, 2003, and as modified by the New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet Hurricane Sandy Limited Reevaluation Report (HSLRR), dated June 16, 2014 and approved by the Division Engineer for North Atlantic Division on June 23, 2014 (hereinafter the "Decision Document").

B. The term "periodic renourishment" means the cost shared placement of suitable beach berm and dune material after the construction of the Project at appropriate intervals during the 50 year period of Federal participation that begins on the date of initiation of construction of the Project, as generally described in the Decision Document.

C. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to construction of the Project. The term includes, but is not necessarily limited to: preconstruction engineering and design costs pursuant to the terms of the May 5, 2004 Design Agreement; the Government's engineering and design costs during construction; the Non-Federal Sponsor's creditable costs and the Government's costs of investigations to identify the existence and extent of hazardous substances; the costs of historic preservation activities except for data recovery for archaeological remains; the Government's supervision and administration costs; the Government's costs of monitoring; the Government's costs of participation in the Project Coordination Team; the Non-Federal Sponsor's creditable costs for providing real property interests and performing relocations; and the Government's costs of audit. The term does not include any costs for periodic renourishment; for operation, maintenance, repair, rehabilitation, or replacement; any costs of dispute resolution; any costs for betterments; any costs for additional work; or the Non-Federal Sponsor's cost of negotiating this Agreement.

D. The term "periodic renourishment costs" means all costs incurred by the Government and Non-Federal Sponsor for each cycle of periodic renourishment in accordance with the terms of this Agreement that are directly related to periodic renourishment of the Project. The term includes, but is not necessarily limited to: the Government's engineering, design, and material placement and related costs; the Non-Federal Sponsor's creditable costs and the Government's costs of investigations to identify the existence and extent of hazardous substances; the costs of historic preservation activities except for data recovery for archaeological remains; the Government's supervision and administration costs; the Government's costs of monitoring; the Government's costs of participation in the Project Coordination Team; the Non-Federal Sponsor's creditable costs of additional real property interests and relocations; and the Government's costs of audit. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; any costs of dispute resolution; any costs for betterments; any costs for additional work; or the Non-Federal Sponsor's cost of negotiating this Agreement.

E. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material disposal areas. Acquisition of real property interests may require the performance of relocations.

F. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

G. The term "functional portion thereof" means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Engineer, although the remainder of the Project is not yet complete.

H. The term "betterment" means a difference in the construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element.

I. The term "additional work" means items of work related to, but not included in, the Project that the Government will undertake on the Non-Federal Sponsor's behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

J. The term "payment period" means a period of 30 years beginning upon the date specified in the written notice provided by the District Engineer pursuant to Article VII.B.1.

K. The term "principal amount" means that portion of the non-Federal cash contribution of the construction costs for which payment is deferred pursuant to Article VII.B., plus interest during construction determined in accordance with Article VII.B.3.b.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using DRAA 13 funds. In the event that there are insufficient DRAA 13 funds to complete construction of the Project, such completion shall be subject to receiving Federal funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

1. The Non-Federal Sponsor shall contribute 35 percent of the construction costs allocated by the Government to hurricane and storm damage reduction and 100 percent of construction costs allocated by the Government to beach improvements with exclusively private benefits. In accordance with the provisions of Article III and IV, the Non-Federal Sponsor shall provide the real property interests, relocations, and investigations for hazardous substances required for construction, operation, and maintenance of the Project. After considering the contributions provided by the Non-Federal Sponsor pursuant to the May 5, 2004 Design Agreement and the estimated amount of credit the Government expects to afford to the Non-Federal Sponsor for such real property interests, relocations, and investigations for hazardous substances, the Government shall determine the estimated cash contribution required for the Non-Federal Sponsor to meet its share of construction costs allocated to hurricane and storm damage reduction. To the extent there are sufficient DRAA 13 funds, the Government, in accordance with the provisions of Article VII.B., shall defer payment of the cash contributions that the Non-Federal Sponsor would have otherwise been required to provide during construction of the Project in order to meet its cost share. In addition, in accordance with Article VII.D., the Non-Federal Sponsor shall provide the full amount of the funds required to cover the construction costs allocated to beach improvements with exclusively private benefits.

2. When the District Engineer determines that the construction of the Project, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

3. Notwithstanding any other provision of this Agreement, the Government shall not solicit bids on any construction contract for the Project until the Government has concluded formal consultation with the National Marine Fisheries Service under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2). The Government may suspend or terminate construction of the Project pursuant to Article

VIII if the National Marine Fisheries Service finds in a Biological Opinion that construction of the Project is likely to jeopardize the continued existence of any listed species or if the Government determines that suspension or termination is warranted due to the nature or impact of any reasonable and prudent measures or terms and conditions imposed by the National Marine Fisheries Service in the Biological Opinion.

B. Subject to receiving funds appropriated by the Congress and funds provided by the Non-Federal Sponsor and in accordance with Federal laws, regulations, and policies, the Government shall undertake periodic renourishment as the Government, after consultation with the Non-Federal Sponsor, determines necessary and economically justified.

1. The Non-Federal Sponsor shall contribute 50 percent of the periodic renourishment costs allocated by the Government to hurricane and storm damage reduction for each cycle of periodic renourishment and 100 percent of the periodic renourishment costs allocated by the Government to beach improvements with exclusively private benefits. In accordance with Article III, the Non-Federal Sponsor shall provide any additional real property interests and perform any additional relocations required for a cycle of periodic renourishment. In accordance with Article IV, the Non-Federal Sponsor shall perform any additional investigations for hazardous substances required for a cycle of periodic renourishment. In accordance with Article VII.C., the Non-Federal Sponsor shall provide funds required to meet its cost share for such cycle of periodic renourishment. In addition, in accordance with Article VII.D., the Non-Federal Sponsor shall provide the full amount of the funds required to cover the periodic renourishment costs allocated to beach improvements with exclusively private benefits.

2. When the District Engineer determines that a cycle of periodic renourishment, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with copies of all as-built drawings for such work. The Government's undertaking of a cycle of periodic renourishment has no effect on the Non-Federal Sponsor's continuing responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Project. If a cycle of periodic renourishment changes those responsibilities, the Non-Federal Sponsor shall commence any additional responsibilities upon notification from the Government.

C. To the extent practicable and in accordance with Federal law and regulations, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders, prior to contract modification or if not possible as soon thereafter as possible; and all contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government may include in its solicitation an optional bid item that the contractor shall take out and maintain Comprehensive General Liability Insurance which policy shall name the Non-Federal Sponsor as an additional insured and the policy may not be cancelled, terminated, or modified without 15 calendar days written advance notice to the Government and the Non-Federal Sponsor. The Non-Federal Sponsor shall be responsible for all additional costs associated with this bid item. Moreover, the Government's Contracting Officer may decline to include such insurance requirements in any individual contract for construction of the Project where the requirements may result in a restriction in full and open competition, as defined by the Federal Acquisition Regulation, or other applicable procurement regulations. Nothing contained in this paragraph shall be construed to affect or limit in any way any rights or obligations of either party under any other provision of this Agreement, including the obligation of the Non-Federal Sponsor to hold and save the Government free from damages as described in Article X.

E. The Government, as it determines necessary, shall undertake the identification, survey, or evaluation of historic properties and other actions associated with historic preservation. All costs incurred by the Government for such work related to construction and periodic renourishment shall be included in construction costs or periodic renourishment costs, as applicable, and shared in accordance with the provisions of this Agreement except that in the unlikely event that there are costs associated with data recovery of archaeological remains, such costs shall be borne entirely by the Government.

F. At least annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government.

G. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

H. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of construction of the Project. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and storm damage risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for

their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

K. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of protection the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

L. For those shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the continued public use of such shores compatible with the authorized purpose of the Project.

M. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document.

N. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project, including periodic renourishment. Federal program funds are those funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

O. Except as provided in Article V, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

P. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

Q. The Non-Federal Sponsor may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and approval by the Division Engineer for the North Atlantic Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VII.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND
COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, maintenance, and periodic renourishment of the Project and, if applicable, any additional real property interests needed for betterments or additional work. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, maintenance, and periodic renourishment of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, maintenance, and periodic renourishment of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project or the cycle of periodic renourishment, as applicable.

C. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests that are owned by private interests, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VII.D., must provide funds sufficient to cover the costs of the acquisitions or relocations in advance of the Government performing the work. The Government shall acquire the real property interests and perform the relocations applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any clean up and response related thereto.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,

Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring real property interests for construction, operation, maintenance, and periodic renourishment of the Project and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act. No person shall be displaced from their residence or business due to an exercise of the authority provided by N.J.S.A. App. §§ A:9-51.5-51.7 or N.J.S.A. § 12:3-64 until all relocation benefits and services required to be provided prior to displacement under said Act and Uniform Regulations have been provided.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, maintenance, and periodic renourishment of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under

this Article upon direction by the Government, the Government may suspend or terminate construction but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND INVESTIGATIONS FOR HAZARDOUS SUBSTANCES

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, costs incurred after January 29, 2013 to acquire real property interests from private owners determined by the Government to be required for construction, operation, and maintenance of the Project; to perform relocations for construction, operation, and maintenance of the Project; and to perform any investigation for hazardous substances for construction, operation, and maintenance of the Project. The Government shall include in periodic renourishment costs, and credit towards the Non-Federal Sponsor's share of such costs, the costs of any additional real property interests that the Non-Federal Sponsor must acquire from private owners for periodic renourishment; the costs of any additional relocations for periodic renourishment; and the costs to perform any additional investigation for hazardous substances for periodic renourishment.

B. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the private owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1.a. through C.1.c. of this Article. For incidental costs associated with the acquisition of real property interests, for costs associated with relocations performed by the Non-Federal Sponsor, and for costs associated with investigations for hazardous substances, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided in accordance with paragraphs C.1.d., C.2., and C.3. of this Article no less frequently than on a biannual basis, to the maximum extent practicable. The Government shall provide the Non-Federal Sponsor with a list of the documents and any specific requirements necessary for credit.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs or periodic renourishment costs shall be determined and credited in accordance with the following procedures, requirements, and conditions, as well as additional guidelines to be developed and mutually agreed upon by the Government and the Non-Federal Sponsor. Such costs shall be subject to audit in accordance with Article XII.C. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest acquired from a private owner after January 29, 2013, an appraisal of the fair market value of such interest on the date of acquisition that is prepared by a qualified appraiser who is acceptable to the parties. To the maximum extent practicable, the appraisal shall meet the data documentation and reporting standards described in the Uniform Appraisal Standards for Federal Land Acquisitions (2000). The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. In the case of interests in lands subject to shore erosion, appraisals will determine fair market value considering non-speculative, reasonably calculable benefits that increase the property's value, regardless of whether those benefits are enjoyed to a lesser or greater degree by others in the community.

(1) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(2) The Government shall credit the Non-Federal Sponsor the amount actually paid to the private owner of such real property interests but not to exceed the appraised amount approved by the Government. Except for interests in lands subject to shore erosion, where the amount paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this

Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government.

(1) If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. Except as provided in paragraph C.1.b.(3) below, fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

(2) If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. However, fair market value for crediting purposes shall be the amount of the court award for the real property interests taken (or the amount of any stipulated settlement, if applicable), or the amount determined by an appraisal prepared by the Government, whichever is less.

(3) For interests in lands subject to shore erosion acquired by eminent domain proceedings, fair market value for crediting purposes shall be the lesser of the amount of the court award for the real property interests taken (or the amount of any stipulated settlement, if applicable), or the approved appraisal amount, whichever is less.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(2):

(1) the private owner is donating the property to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the property, and the Non-Federal Sponsor submits to the Government a copy of the private owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$10,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by Section 24.102(2) and submit a copy thereof to the Government for approval.

d. Incidental Costs. The Government shall include in construction costs or periodic renourishment costs, as applicable, and credit towards the Non-Federal

Sponsor's share of such costs, the incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred after January 29, 2013 in acquiring from private owners any real property interests required pursuant to Article III for construction, operation, maintenance, and periodic renourishment of the Project. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall include in construction costs or periodic renourishment costs, as applicable, and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred after January 29, 2013 in the performance of any relocations directly related to construction, operation, maintenance, and periodic renourishment of the Project.

a. For a relocation other than a highway, the costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity, the costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of New Jersey would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

d. Any credit afforded under the terms of this Agreement for the costs of relocations for construction, operation, maintenance, and periodic renourishment of the Project is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of

this Agreement, credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

3. Investigations in accordance with Article IV. The Government shall include in construction costs or periodic renourishment costs, as applicable, and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred after January 29, 2013 in the performance of any investigations for hazardous substances that may exist in, on, or under real property interests directly related to construction, operation, maintenance, and periodic renourishment of the Project.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for costs incurred by the Non-Federal Sponsor:

1. for real property interests that were previously provided as an item of local cooperation for another Federal project;
2. to provide real property interests (other than those acquired through relocations) that are owned or controlled by other public entities;
3. to provide any additional real property interests, relocations, or investigations in accordance with Article IV.A. that the Government determines are needed for betterments or additional work; or
4. to defend against claims or litigation relating to an exercise of the authority provided by N.J.S.A. App. §§ A:9-51.5-51.7 or N.J.S.A. § 12:3-64, except for costs solely related to the amount of compensation due to private owners for real property interests taken for the Project.

ARTICLE VI - PROJECT COORDINATION TEAM

To provide for consistent and effective communication, the parties shall establish a Project Coordination Team to discuss the progress of construction and significant issues or actions. The Project Coordination Team shall include the Government's Project Manager and the Non-Federal Sponsor's counterpart and one senior representative each from the Government and Non-Federal Sponsor. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE VII - METHOD OF PAYMENT

A. As of the effective date of this Agreement, the construction costs are projected to be \$167,146,000, with the Government's share of such costs projected to be \$108,645,000, the Non-Federal Sponsor's share of such costs projected to be

\$58,501,000, and the Non-Federal Sponsor's deferred payment of funds, excluding interest during construction, is projected to be \$58,501,000; the periodic renourishment costs are projected to be \$337,816,000, with the Government's share of such costs projected to be \$168,908,000, and the Non-Federal Sponsor's share of such costs projected to be \$168,908,000; the costs for betterments are projected to be \$0; and the costs for additional work are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. Deferred Payment of Cash Contributions for Construction of the Project.

1. Upon determination by the District Engineer that (1) construction of the Project is complete; or (2) construction of the Project is terminated pursuant to Article VIII, the District Engineer shall immediately issue a written notification to the Non-Federal Sponsor specifying which of the above events occurred and the day, month, and year of such occurrence.

2. Immediately after the date of the District Engineer's written notice pursuant to paragraph B.1. of this Article, the Government shall conduct a final accounting of the construction costs. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of the construction costs from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine the construction costs. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

3. The Government shall maintain records of Federal obligations each month during construction of the Project, and shall determine for each month a monthly amount equal to the non-Federal share of Federal obligations. Each monthly amount shall be assumed to have taken place at the mid-point of that month. Any additional non-Federal cash contributions required for preconstruction engineering and design conducted pursuant to the May 5, 2004 Design Agreement to meet the non-Federal cost share of construction costs shall be included in the first monthly amount.

a. In the event the Non-Federal Sponsor elects to make a payment during construction of the Project or the Government determines at any time that it does not have sufficient funds to allow the Non-Federal Sponsor to defer its cash contributions pursuant to the provisions of paragraph B. of this Article, the Non-Federal Sponsor shall provide such cash payment during construction of the Project, as determined by the Government, by delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer, or by providing an Electronic Funds Transfer of such required cash

contributions in accordance with procedures established by the Government. Interest shall be charged on the amount of each Federal obligation made in lieu of the non-Federal cash contribution for the period between the month of the applicable Federal obligation and the month of the payment by the Non-Federal Sponsor. In computing the interest charges applied to the amount of each Federal obligation, the Government shall use an interest rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity equal to the length of time in months between the month of that Federal obligation and the month of that payment by the Non-Federal Sponsor, plus a premium of one-eighth of one percentage point for transaction costs.

b. During the construction of the Project, the Government shall charge interest on each monthly amount that is not paid in accordance with paragraph B.3.a. of this Article. The interest rate shall be determined in accordance with paragraph B.5. of this Article. Interest shall be compounded annually on each anniversary of that monthly amount until the date of the District Engineer's written notice pursuant to paragraph B.1. of this Article. In the event that such notice is less than twelve months after the month of that monthly amount, or the month of the last such anniversary, if any, additional interest shall be charged for that number of months, and the additional interest shall be equal to the sum of the monthly amount plus compound interest as of any such previous anniversary, multiplied by the interest rate, multiplied by that number of months, divided by twelve.

c. During construction of the Project, the Government shall provide in writing to the Non-Federal Sponsor on a quarterly basis an accounting of all such monthly amounts incurred to date and the estimated interest applied to each monthly amount through that quarter.

4. Not later than 30 calendar days after the date of the District Engineer's written notice pursuant to paragraph B.1. of this Article, the Government shall: (1) complete the final or interim accounting, as applicable, in accordance with paragraph B.2. of this Article; (2) calculate all monthly amounts, the compound interest applied during construction of the Project to all monthly amounts, the principal amount, and the annual installments for payment of the principal amount, which shall be substantially equal; and (3) provide the Non-Federal Sponsor with written notification of the results of such accounting and such calculations. To calculate the annual installments, the Government shall amortize the principal amount over the payment period, beginning on the date of date of the District Engineer's written notice pursuant to paragraph B.1. of this Article using the interest rate determined in accordance with paragraph B.5. of this Article. If the determination of the principal amount and annual installments was based on an interim accounting, not later than 30 calendar days after completion of the final accounting, the Government shall: (1) recalculate all monthly amounts, the compound interest applied during construction of the Project to all monthly amounts, the principal amount, and the annual installments for payment of the principal amount, which shall be substantially equal; and (2) provide the Non-Federal Sponsor with written notification of the results of such final accounting and such recalculations. Any difference between the principal

amount and the recalculated principal amount shall be amortized over the remaining portion of the payment period as of the date of such notification, using the interest rate determined in accordance with paragraph B.5. of this Article.

5. In accordance with Section 106 of WRDA 1986, the interest rate to be used in computing the interest during construction of the Project under paragraph B.3.b. of this Article and in calculating or recalculating the annual installments in accordance with paragraph B.4. of this Article shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the Government fiscal year in which the first Federal construction contract for the Project is awarded, plus a premium of one-eighth of one percentage point for transaction costs.

6. Until the end of the payment period, the Government, not later than 30 calendar days prior to each five year anniversary of the date of the District Engineer's written notice pursuant to paragraph B.1. of this Article, shall complete a recalculation of the annual installments by amortizing the remaining balance of the principal amount over the remaining portion of the payment period and shall provide the Non-Federal Sponsor with such recalculated annual installments. The interest rate to be used in such recalculations shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month that represents each five year anniversary of the month preceding the Government fiscal year in which the first Federal construction contract is awarded, plus a premium of one-eighth of one percentage point for transaction costs.

7. The Non-Federal Sponsor shall pay the first annual installment, as determined in accordance with paragraph B.4. of this Article, within 30 calendar days after the date the Government provides written notification to the Non-Federal Sponsor in accordance with paragraph B.4. of this Article, by delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government. Thereafter, until the end of the payment period, the Non-Federal Sponsor shall pay an annual installment, as determined in accordance with paragraph B.4. or paragraph B.6. of this Article, as applicable, on each anniversary of the date of date of the District Engineer's written notice pursuant to paragraph B.1. of this Article, by delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

8. Notwithstanding paragraph B.7. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the principal amount, in whole or in part, at any time without penalty. In addition, there shall be no additional interest charges on any portion of the principal amount that is prepaid within 30 calendar days after the Government provides written notification to the Non-Federal Sponsor in accordance with paragraph B.4. of this Article. In the event of such prepayment, the Government, not

later than 30 calendar days after receipt of the prepayment, shall recalculate the annual installments by amortizing the outstanding portion of the principal amount over the remaining portion of the payment period as of the date of such recalculation, using the interest rate used most recently under paragraph B.4. or paragraph B.6. of this Article, and shall provide written notification to the Non-Federal Sponsor of the recalculated annual installments. The Non-Federal Sponsor shall pay the recalculated annual installments, if any, in accordance with paragraph B.7. of this Article.

9. Not later than 30 calendar days after the payment period has elapsed, the Government shall: (1) conduct an accounting and determine the total payments that the Non-Federal Sponsor has made in accordance with this Agreement; and (2) provide the Non-Federal Sponsor with written notification of the results of such accounting. In the event the non-interest component of total payments is less than the principal amount, the Non-Federal Sponsor, not later than 30 calendar days after receipt of the written notification from the Government, shall provide to the Government the amount of the shortage, by delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event the non-interest component of the total payments exceeds the principal amount, the Government shall seek such appropriations as are necessary to refund the amount of the excess to the Non-Federal Sponsor.

10. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

11. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Congress. Further, nothing in this Agreement shall commit the Government to obligate funds beyond the amount of available appropriations.

C. Payment of Funds for Periodic Renourishment.

1. For each cycle of periodic renourishment, the Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated periodic renourishment costs and the Government's and Non-Federal Sponsor's estimated shares of that cost; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable additional real property interests, relocations, and investigations for hazardous substances, and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year, which begins on October 1st of the then-current year and ends on September 30th of the following year.

2. After considering the estimated amount of credit for additional real property interests, relocations, and investigations for hazardous substances, the Government shall determine the estimated total amount of funds required from the Non-Federal Sponsor for the current cycle of periodic renourishment. No later than 60 calendar days prior to the beginning of a fiscal year in which the Government will be incurring costs of periodic renourishment, the Government shall notify the Non-Federal Sponsor in writing of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than 30 calendar days prior to the beginning of that fiscal year, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the non-Federal proportionate share of costs as those costs are incurred. If the Government determines at any time that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of periodic renourishment costs, the Government shall notify the Non-Federal Sponsor in writing of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph C.2. of this Article.

4. Upon conclusion of each cycle of periodic renourishment and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for such cycle and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds.

D. Payment of Costs for Beach Improvements with Exclusively Private Benefits, Real Property Interests, Relocations, Betterments, and Additional Work.

1. No later than 30 calendar days of receiving written notice of the amount of funds required to cover any such costs, as applicable, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by

delivering a check payable to "FAO, USAED, Philadelphia (E5)" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover any such costs, as applicable, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction or periodic renourishment of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the DRAA 13 funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient Federal funds appropriated by the Congress and cash contributions provided by the Non-Federal Sponsor to allow construction to resume.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination pursuant to this Article or Article II.A.3., the parties shall conclude their activities relating to construction or periodic renourishment of the Project or functional portion thereof, as applicable. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE IX - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT

A. The Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMR&R Manual and any subsequent amendments thereto. Nothing in this paragraph is intended to affect eligibility under Public Law 84-99 (33 U.S.C. 701n).

B. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

ARTICLE X - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, periodic renourishment, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE XI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE XII - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for maintaining books, records, documents, or other evidence pertaining to Project costs and expenses in accordance with 33 C.F.R. 33.20 for a minimum of three years after the final accounting. To the extent permitted under applicable Federal laws and regulations, the parties shall each allow the other to inspect such books, records, documents, or other evidence.

B. The Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). To the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

C. Pursuant to 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. The Government's costs of audits for construction of the Project and any cycle of periodic renourishment shall be included in construction costs or periodic renourishment costs, as applicable.

ARTICLE XIII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XIV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Commissioner
New Jersey Department of Environmental Protection
401 E. State St.
7th Floor, East Wing
P.O. Box 402
Trenton, New Jersey 08625-0402

If to the Government:

District Engineer
U.S. Army Engineer District, Philadelphia
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390

B. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XV - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS


The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the State of New Jersey, where creating such an obligation would be inconsistent with New Jersey Constitution Article 8, Section 2, Paragraphs 2 and 3, N.J.S.A. 59:13-1 et seq., and N.J.S.A. 59:1-1 et seq. of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement,
which shall become effective upon the date it is signed by the District Engineer.

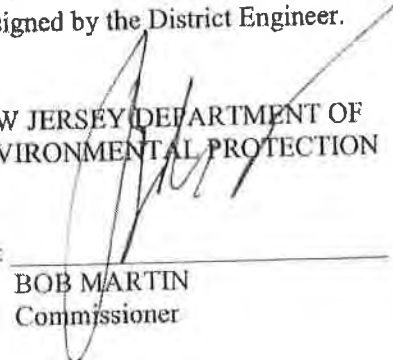
DEPARTMENT OF THE ARMY

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

BY:


MICHAEL A. BLISS
Lieutenant Colonel, U.S. Army
District Engineer

BY:


BOB MARTIN
Commissioner

DATE:

18 JUL 14

DATE:

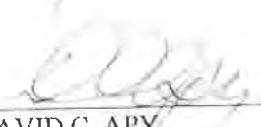
7/16/2014

CERTIFICATE OF AUTHORITY

I, David C. Apy, do hereby certify that I am the principal legal officer of the New Jersey Department of Environmental Protection, that the New Jersey Department of Environmental Protection is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the New Jersey Department of Environmental Protection in connection with the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the New Jersey Department of Environmental Protection have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

16th day of July 2014.



DAVID C. APY
Assistant Attorney General

CERTIFICATION REGARDING LOBBYING

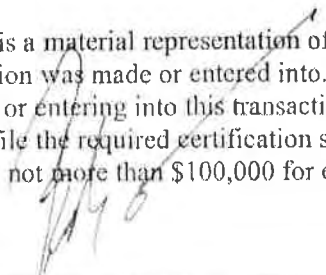
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



BOB MARTIN

Commissioner

New Jersey Department of Environmental Protection

DATE: 7/16/2014

EXHIBIT 4



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U. S. ARMY CORPS OF ENGINEERS
P. O. BOX 1715
BALTIMORE, MD 21203-1715

January 30, 2013

Real Estate Division
Civil/IIS Projects Support Branch

Honorable George C. Nebel
Mayor of the Borough of Mantoloking
P.O. Box 4391
Brick, New Jersey 08723

Dear Mayor Nebel:

This is in reference to the New Jersey Shore Protection Study, Manasquan Inlet to Barnegat Bay Hurricane Storm Damage Reduction Project. There is currently no Project Partnership Agreement (PPA) in place for this project between the New Jersey Department of Environmental Protection (NJDEP) and the Department of the Army, U.S. Army Corps of Engineers regarding the Manasquan Inlet to Barnegat Bay (Manasquan to Barnegat) Portion of the New Jersey Shore Protection Project, Ocean County, New Jersey.

In the event this project moves forward, this office would like to clarify information regarding the content of the *Deed of Dedication and Perpetual Storm Damage Reduction Easement* that would be required for the construction and maintenance of the Manasquan Inlet to Barnegat Bay (Manasquan to Barnegat) Portion of the New Jersey Shore Protection Project, Ocean County, New Jersey. Therefore, we are providing this letter to help better explain the rights requested under the easement. A copy of the final easement will be provided once finalized. This letter pertains to the section entitled "Grant of Easement."

The Grant of Easement section of this document specifically states what rights are being acquired. The New Jersey Department of Environmental Protection (NJDEP), the anticipated Non-Federal Sponsor for this project, would be acquiring ONLY the rights needed to construct and maintain the improvements to be authorized under the Manasquan Inlet to Barnegat Bay (Manasquan to Barnegat) Portion of the New Jersey Shore Protection Project.

Two of the most frequently asked questions pertain to the first phrase in the Granting clause and the terms "perpetual" and "assignable." Projects are specifically authorized for construction by Congress, and remain authorized until specifically de-authorized. As long as the project is authorized, the Non-federal Sponsor is required to maintain the project according to Operations and Maintenance Plans created for the project. The easements required for the Manasquan to Barnegat Hurricane Storm Damage Reduction Project are for the construction and maintenance of the Manasquan to Barnegat Hurricane Storm Damage Reduction Project only. As such, they

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are only required as long as the project itself is authorized. Should Congress ever de-authorize this project, landowners may request the release of the project easement on their property.

The easement is assignable to allow the NJDEP and affected municipalities the flexibility to permit other parties to enter upon the lands covered under the easement to maintain the project as indicated in the Operations and Maintenance Plans for this project or, in the event of a merger of townships or other geo-political entities, allow the resulting entity to maintain the project as authorized. Regardless of who is assigned the right to enter upon these lands, no one can do anything other than what is specifically authorized under this easement and under the Manasquan to Barnegat Project as authorized by Congress.

Items a to i under the Grant of Easement Section explicitly state what rights are being acquired. Anything not included in this list of rights cannot be performed or constructed, including boardwalks, concession stands, boat rental locations, municipal storage facilities or restrooms. Besides not being included in the list of rights stated in this section, the construction of any of these items is not included in the project as authorized by Congress. If an action or item is not specifically authorized by Congress for the project, we cannot do or construct it. Per Items a to i, the easement grants the affected municipality and the State of New Jersey the right to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;
- b. Move, temporarily store and remove equipment and supplies;
- c. Erect and remove temporary structures;
- d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Manasquan to Barnegat Storm Damage Reduction Project together with the right of public use and access;
- e. Post signs, plant vegetation on said dunes and berms;
- f. Erect, maintain, and remove silt screens and snow fences;
- g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;

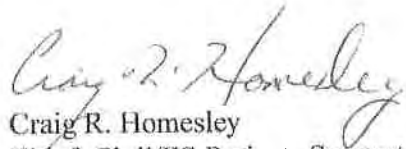
-3-

h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement;

i. Implement the Public trust doctrine and ensure permanent public access, use, and enjoyment of the beach and ocean.

No other work, construction or maintenance may be conducted on lands covered by this easement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Craig R. Homesley".

Craig R. Homesley
Chief, Civil/IIS Projects Support Branch
Real Estate Division

EXHIBIT 5

American Littoral Society Pg. 1

Comment on Draft Environmental Assessment for the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project, Ocean County, New Jersey.

On December 12, 2013, the Philadelphia District of the U.S. Army Corps of Engineers released for public comment its *Draft Environmental Assessment (Draft EA) for the Manasquan Inlet to Barnegat Inlet Coastal Storm Damage Reduction Project*. As stated in the public notice, "the Draft EA was prepared to evaluate changes to the affected environment and changes to the project since completion of the June 2002 Final Environmental Impact Statement."

The American Littoral Society ("ALS") is a national, coastal conservation organization based in Sandy Hook, New Jersey. Having carefully reviewed the Draft EA, ALS disputes the Corps' conclusion that a Supplemental Environmental Impact Statement ("Supplemental EIS") is not required. This appears to be a convenient answer to a difficult question—how does the Corps implement comprehensive storm damage reduction measures in a manner that does not negatively impact sensitive environmental areas that have been greatly impacted and altered by Superstorm Sandy? While capturing some of the intricacies of the problem—including disturbances to prime fishing habitat and dramatic changes to the project area since the 2002 Environmental Impact Statement—this Draft EA offers no cogent answer. A Supplemental EIS is clearly appropriate and necessary in this instance and the final EA should contain such a conclusion.

Consistent with the above, ALS offers the following specific comments on the Draft EA, as provided through the public notice:

The notice describes several major changes to the project which were not evaluated in the previously published National Environmental Policy Act (NEPA) document for this project, which is the Final Feasibility Report and Integrated Environmental Impact Statement (EIS) dated June 2002. (ACE 2002).

The Draft EA concludes that there are no significant environmental impacts associated with the changes necessitating further review, however, there are no substantive data, evaluations or studies provided to demonstrate this conclusion, particularly as regards the addition of an over 4 mile sheet pile steel wall within the dune proposed as a central element of the ACE project, nor of the expansion of over 2000 acres of potential borrow areas for periodic future nourishment within areas identified as "prime fishing areas." Both of these changes are fundamental, significant changes to the project requiring a demonstration of no impact beyond a simple assertion of such by the Corps.

Section 4.2 "Project Changes" describes certain changes to the project:

Since the completion of the Feasibility report in 2002, changes to the existing project conditions and further detailed analyses have resulted in changes to the selected plan, but these changes do not impact the overall scope of the project. Changes to the project involve the borrow area utilization and quantities of beachfill required. However, there have been no changes to the project design template, beachfill placement locations or changes in the overall scope of the project. [page 6]

In the aftermath of Hurricane Sandy, the Federal Highway Administration and the State of New Jersey have begun a project that will reconstruct a 12.5 mile stretch of Route 35 from Point

1.

1. The EA has sufficient information to conclude that there is no significant impact to the environment that will result from this proposed project that was not already addressed in the original EIS.

2.

2. As discussed in more detail below, the sheet pile wall is not a part of the Corps project and will be located landward of the Corps' dune and therefore will not affect the functionality or the storm damage reduction capabilities of the Corps project. With regard to borrow areas, Borrow Area F2 was identified as a future sand source in the 2002 Feasibility report and EIS and therefore does not constitute a change in conditions. The Corps has been continuing with coordination with BOEM and cultural, biological and geotechnical investigations in order to determine the future use of this site. The new borrow areas being proposed (Borrow Areas D and E) amount to an additional 554 acres. These borrow area had been coordinated with resource agencies since the 2002 documents but had not gone through the NEPA process. Borrow Area B was previously approved for use for this project but was subsequently identified as a "prime fishing area".

3.

Pleasant to Island Beach State Park. As part of this plan, the New Jersey Department of Transportation has proposed a plan to construct a steel sheet pile wall along the oceanfront of the Borough of Mantoloking and Brick Township. The wall would run parallel to, and be covered by, the dunes proposed in the USACE (2002) project (emphasis added). The sheet pile wall would be similar to the one installed at the Herbert Street breach and would be driven 30 feet into the ground and stand 16 feet above the existing grade (Figure 5). The sheet pile would serve as a last line of defense against wave attack and storm surge if the proposed dunes were to be eroded by a storm similar to Hurricane Sandy in the future. The main purpose of the sheet pile wall would be to protect Route 35 and prevent another breach from occurring. In these two municipalities, which are the narrowest populated section of the Barnegat Peninsula.

As noted earlier in this section, the erosion of the dunes in Bay Head during Hurricane Sandy uncovered a relic seawall that had been buried within the dune for approximately 100 years. Since the presence of this seawall appears to have given Bay Head a higher degree of protection than the dunes that were eroded solely of sand and completely lost in the adjacent Mantoloking, the NJDEP has permitted beach front homeowners to extend the existing seawall. The structure has been extended approximately 1,600 feet to the south front Egbert Street to Marble Place on the beach side of 17 properties. The relic seawall and the new extension will be covered by the dunes proposed in the USACE (2002) project. Current plans specify that the seawall extension in Bay Head will connect to the proposed sheetpile wall in Mantoloking with no gaps, resulting in a contiguous line of protection that utilizes underlying hard structures within the dune system. [page 11]

The underlined sentence seems to be the sole rationale for the ACE's conclusion that the wall construction within the dune of the federal project is without significant impact. It should be noted, that the dune system, and beach berm in question had not been maintained or nourished for a significant period of time – primarily due to local opposition to providing public access mandated by federal guidance; if they had been, it is entirely possible that a comparable level of protection may have been provided. The Draft EA notes several instances throughout the project area where significant dune systems in existence at the time of Hurricane Sandy provided protection to the adjacent built communities.

The existing project design and environmental impact assessment included beach nourishment and dune construction, and did not include a structural core (metal sheet pile wall) for the dune. The state of NJ now plans to construct a 4 mile long steel sheet pile wall in Mantoloking Borough and Brick Township. The EA document provides no analysis undertaken by the ACOE to evaluate the impact of this structure on the beachfill, the dune, the long-term performance of the fill, the potential erosion and scouring of the nourished beach under either storm conditions or long term, impact to renourishment schedules, changed or increased need for replacement materials, modification to periodic renourishment schedules and other potential adverse impacts of the wall.

The Draft EA provides no indication that the ACOE conducted an analysis of the impact of the wall on the nourished beach and dune, along its length and particularly at the terminus of the wall, where increased scour and erosion might occur. Further, there is no discussion of mitigation that might be

3. The proposed Route 35 protection project including the steel sheet pile wall in Mantoloking and Brick is not part of the Army Corps of Engineers Manasquan Inlet to Barnegat Inlet Storm Damage Reduction (SDR) project. Any reports or information that you may have seen that indicate that it is in any way part of the Corps SDR Project are not accurate. The project is being designed and constructed by the State of New Jersey and the local municipalities separately from the Corps. Based on information provided by the State of New Jersey, the structure, as proposed, will be placed upland above the current regulatory high water line, therefore the Corps is not involved in the formal permitting or review of the wall, nor did we undertake any modeling to assess impacts that may or may not be caused by the State and Local project, with or without the separate Corps beachfill project being constructed. To obtain further information on the Route 35 protection project and any studies that may have been done, you should contact the NJDEP-Office of Engineering and Construction for information regarding the planning, permitting, engineering and design of the Rt. 35 protection project.

In terms of any impact to our project, at the time of conducting our analysis for the Hurricane Sandy Limited Reevaluation Report for the Manasquan Inlet to Barnegat Inlet SDR project all existing conditions post Sandy were taken into consideration. The proposed New Jersey Rt. 35 protection project was only a proposal and remains unconstructed even at this time. We did note that there is the possibility the wall will be constructed at some point in the future. Through coordination with NJDEP, the sheet pile wall, as proposed, will be constructed landward of the protective dune in our project and therefore will not affect the functionality or the storm damage reduction capabilities of our project. If constructed, the proposed State sheet pile wall can be viewed as a betterment to the SDR project that will act to enhance the sustainability of the Corps project and the long-term resilience of the New Jersey shoreline. The sheet pile wall in combination with the Corps SDR project will act to reduce damages over the long term above what our project alone would reduce. This is consistent with the policies of Executive Order 13632 in that they contribute to the plan for rebuilding of critical infrastructure damaged by Hurricane Sandy in a manner that accounts for current vulnerabilities to extreme weather events and increases community and regional resilience in responding to future impacts.

incorporated to protect the project and structures immediately adjacent to and down-drift from the terminus of the wall. In fact, there is no map or locational description that relates to the overall length and location of the proposed wall, despite the fact that it is being integrated into a federally authorized project.

The fact that the project is funded by the US Department of Transportation, in partnership with the State of New Jersey, does not obviate that fact that it is located within a federally approved Corps project area.

Did the state of New Jersey consult with the ACOE on the design and location of the proposed wall prior to approval? If so, relevant consultative documents, memos, and other relevant documentation should be included in the Draft EA. If not, how can the ACOE proceed with the nourishment and dune restoration project without fully evaluating the potential impacts of the proposed wall that was never part of the previously authorized federal project?

Did the ACOE obtain an amended Federal Consistency Determination for the amended project, including the wall? If not, the project has essentially changed to a degree that a revised approval should be obtained, since the public review and comment opportunity was based on a different project. The fact that the wall is not a "Corps" project does not moot the need for a revised approval with adequate opportunity for public notice and comment.

The newly hardened core of the dune system within the approved project may significantly change the dynamic response of the project under storm conditions. The Draft EA, in its failure to discuss the effect of the wall on the rest of the nourishment project does not evaluate or discuss how the ACOE will ensure that the wall remains covered with sand, as contemplated as part of the amended project, so that the structure does not adversely impact the Federal project through increased erosion, scour and sand loss. Neither is a rationale for the omission of that information provided.

Has the ACOE evaluated the potential adverse impacts of the wall on habitat for threatened and/or endangered beach nesting birds? What was the result of this analysis?

Finally, the Draft EA does not demonstrate that the ACE completed a wave runup and overtopping analysis associated with the proposed vertical wall, as this is likely to change from the original project design and FES evaluation sans hardened core for the dune system.

In regards to Section 5.0 "Affected Environment", ALS notes that one of the reasons one needs to supplement an EIS is because the affected environmental has experienced significant change in one or more respects. Section 5.0 makes clear that the project area has experienced significant change in many respects since 2002. Given the devastating impacts of Superstorm Sandy, this conclusion should come as a surprise to no one. However, Table 3 ("Status of Affected Resources") details these changes, finding "Significant Changes" to 12 of the 27 resources listed on the Table since the 2002 EIS. With this amount of significant changes, it is really unthinkable that the Corps would attempt to undertake this project without supplementing an EIS that is more than 10 years old and clearly outdated.

4. See response to comment 3 above.

5. An updated Federal Consistency Determination was received from NJDEP on April 24, 2014 and is included in this comment/response section. While the updated Consistency Determination is based on the information provided in the Draft EA and other supplemental information, the sheet pile wall was not part of the Federal Determination since this element is not part of the Corps project. Any permits that are required for this State and FHA project are the responsibility of those agencies.

6. See response to comment 3 above.

7. Endangered species coordination is the responsibility of the agencies carrying out the work, in this case, NJDEP and FHA. Updated endangered species coordination was completed for the Corps project with the circulation of the Draft EA however, and no concerns were raised regarding the possible placement of the wall within the boundaries of the Corps project.

8. Many of the changes referred to in Table 3 are related to coordination and additional studies that have taken place since 2002 and are documented in the Draft EA. This was meant to identify that aspects of this project have been "active" since the completion of the Feasibility study and EIS. The other changes were due to Hurricane Sandy. While this storm greatly changed the appearance of the beach and dune in the project area, impacts were not significant enough to change the selected plan or design of the project. In addition, the implementation of the Corps project will serve to return the area to a state closer to pre-storm conditions while protecting the area from future storm damages.

Section 5.6.3 "Prime Fishing Areas" of The Draft EA notes that

Several locations within or near the project area are classified as Prime Fishing Areas (NJAC 7:2E-3.4) by NJDEP (Figure 9). One of these features lies within Borrow Area B and one lies within Borrow Area F2 ("The Manasquan Ridge"). These areas were originally delineated by Long and Figley (1994) in a publication titled "New Jersey's Recreational and Commercial Ocean Fishing Grounds". The mapping was updated by the NJDEP in 2003 when they surveyed charter boat, party boat and private boat captains to identify the areas they consider recreationally significant fishing areas.

Prime Fishing Areas include tidal water areas and water's edge areas, which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. [page 23]

Further, the Draft EA acknowledges that the expansion of the project to include these areas is new information beyond that assessed in the ACE 2002 document (Figure 9, page 25).

In the section discussing impact associated with changes to the project design from 2002, Section 6.5.2 Prime Fishing Areas/Fisheries Resources, the following discussion is included:

Prime Fishing Areas (as identified in NJAC 7:2E-3.4) have been updated since 2002. As depicted in Figure 9, currently both Borrow Area B and the proposed F2 borrow area contain features identified as NJ Specific Sport Ocean Fishing Grounds. Prior to construction, further coordination with the NJ Division of Fish and Wildlife and NMFS will be required to develop a plan to minimize impacts to these prime fishing areas (emphasis added). The plan may include modifying the dredging depths to maintain some of the bottom area relief or avoiding portions of the borrow area.

This section clearly demonstrates that the Corps has not assessed the impact of the proposed changes to the project, thus undermining any basis on which a finding of no significant impact may be made. If the ACE has conducted assessments that have investigated potential impacts to these prime fishing areas, they have not been included or referenced in the Public Notice. The adequacy of any "plan to minimize impacts to these prime fishing areas" should be subject to review under the Public Notice, and must logically precede any finding of no significant impact. If the ACE has conducted specific studies which support its conclusion as they relate to the impact of the expanded use of area F2 on its value as a prime fishing area, they should be provided.

We also would raise the following questions regarding necessary public access to the project, which we did not see discussed:

Public Access:

- (a) Have all beach access locations been identified within the project area? How will all beach access locations be marked for the benefit of public use?
- (b) Have the project sponsors sited beach access locations proximate to public parking areas?

9. As stated previously, the EIS identified Borrow Area F2 as a potential future sand source for the project. The Corps is still in the process of investigating this area to determine if it is a feasible source of additional sand. The EA states that further coordination with BOEM, as well as additional NEPA work will be required before this borrow area can be approved for use. Based on quantities that would be needed for future nourishment, only a portion of the area identified as F2 would be needed. In addition, it should be noted that this area was previously identified as prime fishing habitat. It is only the designation of Borrow Area B that changed.

10. Through coordination with NJDEP and NMFS, a comprehensive pre- and post- construction monitoring plan for Borrow Area B has been developed. In addition, as discussed in the Draft EA, the dredging plan has been modified to reduce the amount of sand removed from Borrow Area B and to maintain a minimum of 9 feet of relief within the borrow area. A final plan was not included in the Draft EA because it was unclear at the time the exact plan and configuration that would be acceptable to the applicable agencies. Several alternatives were presented to them during the coordination period.

(a) – (f). Based on the current plan, approximately 118 pedestrian, 17 vehicle and 24 handicap beach access/crossover locations are being proposed for the project area. Identifying the exact location and maintaining public access points are the responsibility of the non-Federal sponsor (NFS). The NFS has developed a public access and parking plan that meets all Federal requirements for public access points and parking. The NFS is aware of their obligation and has committed to implementing all aspects of the public access and parking plan prior to completion of project construction.

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- (c) Has the non-Federal sponsor demonstrated that parking restrictions (resident only, timing, etc) have been eliminated within the project area?
- (d) How will all parking areas be identified and marked for the benefit of public use?
- (e) What ordinances or municipal resolutions have been adopted to ensure that parking restrictions have been eliminated and will be precluded during the project lifetime?
- (f) Has the non-Federal sponsor ensured that parking is available along State Highway Route 35 through all project municipalities? Parking is currently provided along Route 35 in a number of project municipalities, but not all.
- (g) Has the non-Federal sponsor demonstrated that rest room facilities have been provided at reasonable intervals within the project area? Have these locations been identified and will they be marked for the benefit of public use? What entity has responsibility for maintenance of these facilities during the project lifetime? How will maintenance of these facilities be assured?

Thank you for the opportunity to comment.

Tim Dillingham, Executive Director
American Littoral Society

(a)-(f) continued. The state of New Jersey (NJDEP) does not have requirements for public access and parking. NJDEP allows private beach clubs to remain private and allow them to sell badges to the public for a reasonable fee. Through these easements the state plans on allowing these clubs to operate in the same manner i.e. selling badges to the public. NJDEP has removed all crossovers from private property from the project plan. These are not required for the NFS to meet the project access requirement.

(g). Federal Storm Damage Reduction Projects, (SDRP), do not include nor require any facilities to be constructed as part of the project. Any improvements to enhance the recreational value of shore protection projects such as bathhouses, access roads, toilet facilities, and concession areas are at the discretion of the Non Federal Sponsor, (NFS), and the local Municipalities. Provision of those facilities is not eligible for Federal assistance under the SDRP authorization, and costs for those facilities are 100% the responsibility of the NFS and are not included as project costs.

EXHIBIT 6

Prepared by:

DEED OF DEDICATION AND PERPETUAL STORM

DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION EASEMENT is made this ____ day of _____ 20__ BY AND

BETWEEN

whose address is

referred to herein as Grantor,

AND

THE BOROUGH OF MANTOLOKING, a Municipal Corporation of the State of New Jersey whose post office address is Municipal Clerk, 202 Downer Avenue, P.O. Box 247, Mantoloking, NJ 08738, AND THE STATE OF NEW JERSEY referred to herein collectively as the Grantees,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of land, located in the BOROUGH OF MANTOLOKING, County of Ocean, State of New Jersey, and identified as Block ____, Lot ____, on the official tax map of the BOROUGH OF MANTOLOKING, hereinafter the "Property," and Grantor holds the requisite interest to grant this Deed of Easement; and

WHEREAS, the Grantees recognize that the beach at Mantoloking along Northern Ocean County, New Jersey is subject to constant erosion and degradation, thereby destroying a valuable natural resource and threatening the safety and property of the Grantor and of all of the citizens of the State; and,

WHEREAS, the Grantees desire to participate with each other and the United States Army Corps of Engineers to construct the Northern Ocean County Storm Damage Reduction Project, as defined in the August 17, 2005 Project Cooperation Agreement between the Department of the Army and the State of New Jersey, hereinafter "Project"; and,

WHEREAS, in order to accomplish part of the Project, Grantees need a Perpetual Storm Damage Reduction Easement on portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers will not participate in the Project unless the Grantees acquire the real property interest herein described in all real property needed for the Project; and,

WHEREAS, the BOROUGH OF MANTOLOKING shall consider this Deed of Easement in establishing the full assessed value of any lands subject to such restrictions; and,

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and dune are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and,

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach and ocean.

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Northern Ocean County Storm Damage Reduction Project in, on, over and across that land of the Property described as the area east of the established bulkhead line as shown on the BOROUGH OF MANTOLOKING official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the BOROUGH OF MANTOLOKING, their representatives, agents, contractors and assigns to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;
- b. Move, temporarily store and remove equipment and supplies;
- c. Erect and remove temporary structures;
- d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Northern Ocean County Storm Damage Reduction Project together with the right of public use and access;
- e. Post signs, plant vegetation on said dunes and berms;
- f. Erect, maintain, and remove silt screens and snow fences;
- g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;
- h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement.

The easement reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a private dune overwalk structure in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function. Prior approval of the plans and specifications for such structures must be obtained from the BOROUGH OF MANTOLOKING and the State of New Jersey. Such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project. The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. Grantor hereby expressly agrees not to grade or excavate within the easement area or to place therein any structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the BOROUGH OF MANTOLOKING, the State of New Jersey and/or any applicable Federal agency as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the BOROUGH OF MANTOLOKING or the State of New Jersey shall become merged with any other geopolitical entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

If construction of the Project has not begun on said Property by September 30, 2020, then the Grantees, upon written request of the Grantor, shall release this easement of record at the Grantee's sole cost and expense.

Township to Maintain Beach: The Grantee agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Municipality does agree that the Lands burdened by the easement herein described shall nevermore be excluded from the calculation of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent violation or of any of Grantee's rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.

2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.

3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the
Property Owner, GRANTOR

Witnessed by:

GRANTOR

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
BOROUGH OF MANTOLOKING, GRANTEE

Witnessed by:

BY: _____
(Name of Official)

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
State of New Jersey, GRANTEE

Witnessed by:

BY: _____
(Name of Official)

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____ 20__,

personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

- 1) is named in and personally signed this Deed of Easement;
- 2) signed, sealed and delivered this Deed of Easement as his or her act and deed;
- 3) holds the requisite ownership interest and authority to execute this Deed of Easement; and
- 4) made this Deed of Easement for the full and actual consideration as set forth herein.

NOTARY PUBLIC OF THE

STATE OF NEW JERSEY

EXHIBIT 7

GERTNER MANDEL & PESLAK^{LLC}

COUNSELLORS AT LAW

PO Box 499
Lakewood, New Jersey 08701
732-363-3333
Fax: 732-363-3345

Ross D. Gertner
Master of Laws (in Taxation)
Sean D. Gertner
Member NJ, VA, MD & DC Bars
Lawrence D. Mandel
Member NJ, NY & PA Bars
Arthur M. Peslak
Member NJ & NY Bars
Registered Patent Attorney

Angelica Guzman
Member NJ Bar
Jena R. Silverman
Member NJ & NY Bars
Jerome A. Gertner
Of Counsel

April 3, 2013

Dear Property Owner

The Borough of Point Pleasant Beach desires to have a dune system rebuilt as part of planned beach replenishment projects. The United States Army Corps of Engineers requires that the State of New Jersey provide easements for the federal beach-fill project. In turn, the State turns that requirement over to the municipalities through a State Aid Agreement; thus, we are hopeful that through your assistance and cooperation, the receipt of funding from Federal and State resources to assist in these projects will occur.

The Borough has received inquiries from several property owners who privately own oceanfront beaches asking whether the Borough will construct a dune system on their property. Please be advised the Borough cannot expend public funds to make improvements on privately owned properties; however, the legal authority to construct a dune system on private property, at government expense, may occur if the Borough receives a perpetual easement granting public access between the dune and the Atlantic Ocean.

It is anticipated that the dune replenishment project will commence shortly after receipt of all necessary easements. We have also been asked to obtain and forward these easements no later than April 30, 2013.

It is our understanding that in order to proceed with the project, all beachfront property owners must participate, such that in order to have the protective dune system constructed in the Borough, the portion required to be constructed on your property requires a written easement (to be recorded in the Ocean County Clerk's Office) must be granted to the Borough prior to that date. We have been provided with an Army Corp approved easement and it is enclosed for your signature. Please note that the easement must be signed before a notary. If you sign the document, please return it to the Borough Administrator, Christine Riehl. Please note that you may come to Borough Hall if you require a notary; kindly bring proof of identity. Once filed, a copy of the filed easement will be forwarded to you for your records.

April 3, 2013


Page 2 of 2

Please note that we have been informed that the easement language has been provided and approved by the federal government and we have been asked to provide this easement while ongoing discussions are occurring in an attempt to have the language more closely mirror conditions of beach ownership in Point Pleasant Beach. I have also included a project fact sheet of 11 pages; the fact sheet provides a profile of the project. You should also be advised that as an owner in fee of the beach, beach maintenance shall remain your responsibility. In addition, pier owners will be provided additional language under separate cover.

Due to the constriction of time, it is requested that you send an e-mail to me at sgertner@gmplaw.net and copy our Borough Administrator at criehl@pointbeach.org with any questions and to advise if you wish to join in this project. The Borough is endeavoring to schedule a brief informational session on April 16 at 3:00 p.m. in Borough Hall. We will post details for the meeting on the Borough website; though certainly, please feel free to contact the Administrator's office to confirm. Again, we are hopeful to hear from you no later than April 30, 2013.

Thank you for your time and consideration to participate in this important project.

Very truly yours,



Sean D. Gertner, Esquire
Borough Attorney

Enc.

Cc: Vincent R. Barrella, Mayor
Christine Riehl, Borough Administrator
Raymond Savacool, Borough Engineer
Maryann Ellsworth, Borough Clerk
Cindy W. Randazzo, Director, Office of Local Government Assistance, NJDEP
Benjamin Keiser, Manager Bureau of Coastal Engineering, NJDEP
Toni Angelini, Sandy Regional Director, Office of the Governor



**US Army Corps
of Engineers.**
Philadelphia District

PROJECT FACTSHEET

**New Jersey Shore Protection,
Manasquan Inlet to Barnegat Inlet, NJ**

February 2012

CONGRESSIONAL DISTRICTS: Reps. Runyan (NJ-3), Smith (NJ-4)

APPROPRIATION / PHASE:
Construction, General

BUSINESS PROGRAM:
Flood and Coastal Storm Damage Reduction

AUTHORITY: Section 1001 (32) of the Water Resources Development Act of 2007.

LOCATION: The study area is located on the Atlantic coast of Ocean County, New Jersey, extending approximately 14 miles from Point Pleasant Beach to Island Beach State Park, a barrier island wildlife area.

DESCRIPTION: The study investigated flood and coastal storm damage effects with a view toward reducing impacts from coastal erosion and storms. The recommended plan calls for construction of a beachfill with a berm and dune along the study area oceanfront utilizing sand from an offshore borrow source and periodic nourishment for a period of 50 years. Initial fill requirements would be about 10 million cubic yards, with periodic nourishment at 4-year intervals with about 1 million cubic yards placed.

STATUS: The Chief of Engineers Report was completed in December 2003. This project was authorized in the 2007 Water Resources Development Act. No funding was received in FY 11 to initiate initial construction. The initiation of initial construction is dependent on the establishment of an adequate funding stream. The next steps toward initial construction once adequate funding is received is to initiate and complete the Limited Reevaluation Report; develop, approve and execute the Project Partnership Agreement; acquire the necessary real estate; complete plans and specifications; and advertise and award the construction contract.

TIMELINE	Start	Complete	Comments
Initial Construction	TBD	TBD	Dependent on Adequate funding.

FINANCIAL DATA (\$000)	Fed	Non-Fed	Total
PED	750	250	1,000
Construction	52,945	28,508	81,453

BUDGET DATA (\$000)	Comments
FY 08	0
FY 09	0
FY 10	0
FY 11	0
FY 12	0

SPONSOR: New Jersey Department of Environmental Protection

PROJECT MANAGER: Keith Watson
(215) 656-6287
keith.d.watson@usace.army.mil

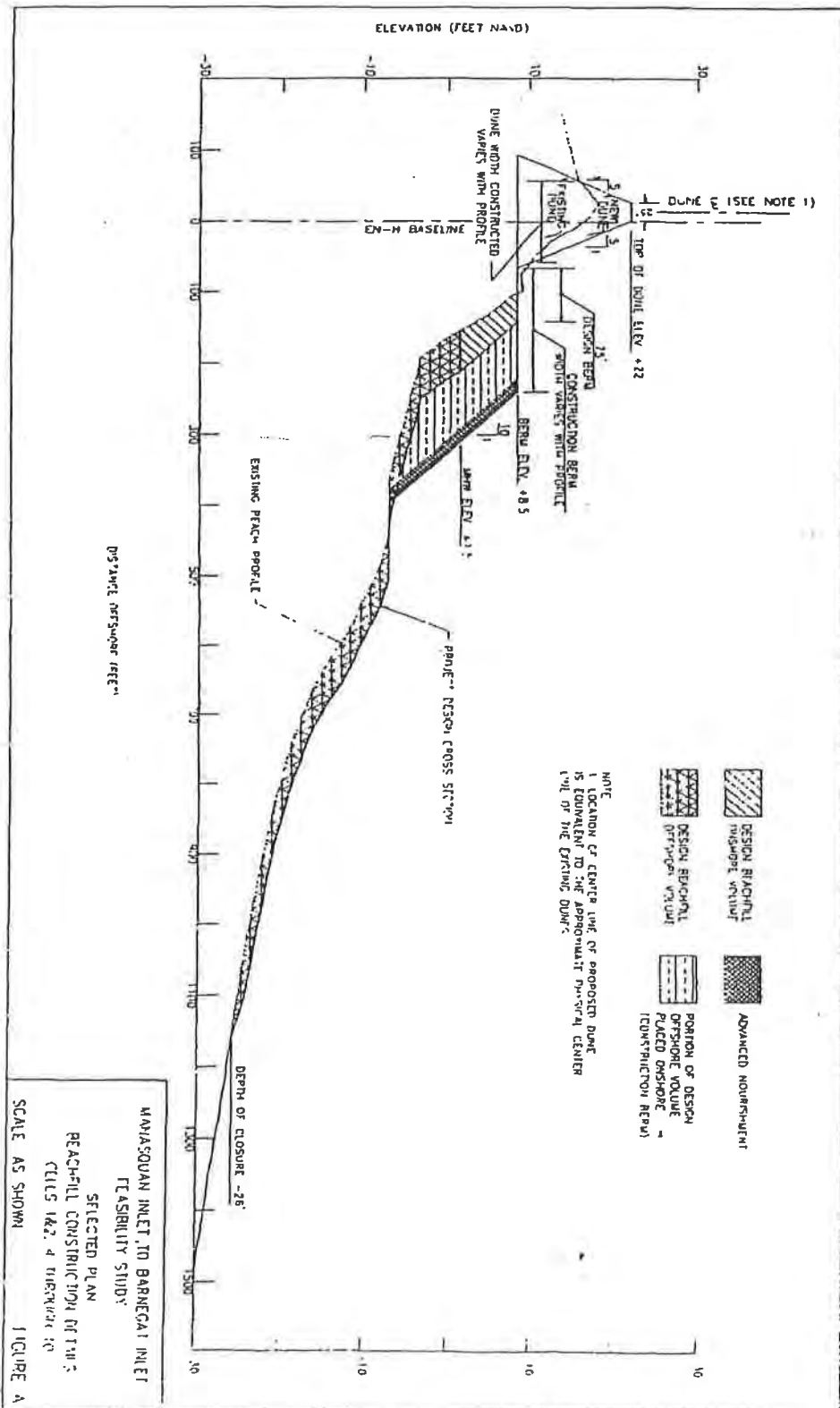
**New Jersey Shore Protection Study
Manasquan Inlet to Barnegat Inlet**

Final Feasibility Report and Integrated Environmental Impact Statement (EIS)

Description of the Selected Plan

Design Component ,	Dimension/Quantity	Remarks
Berm Elevation	+8.5 ft NAVD; +11.5 ft NAVD at northern Point Pleasant Beach	Same as average existing condition
Berm Width	75 ft; 100 ft at Seaside Heights and northern Point Pleasant Beach	Berm width measured from seaward base of dune to berm crest
Seaward Berm Slope	1:10	Same as average existing condition
Dune Elevation	+22 ft NAVD; +18 ft NAVD at Seaside Heights and northern Point Pleasant Beach	
Dune Width at Crest	25 ft	Standard Caldwell section
Dune Side Slopes	1:5	Standard Caldwell section
Dune Offset for Maintenance of Existing Structures	20 ft (as required)	Required dune offsets are reflected in selected plan layout
Length of Fill	13.7 miles	
Initial Sand Quantity	10,689,000 cu yds	Includes advanced nourishment with overfill
Periodic Nourishment Quantity	961,000 cu yds / 4 year cycle	Includes overfill
Major Replacement Quantity	1,788,000 cu yds	Includes periodic nourishment with overfill; same dune grass and sand fence quantities as initial fill
Taper Section	Tapers to existing within project reach at southern end; no taper at northern end	Manasquan Inlet south jetty functions as terminal structure at northern end
Borrow Source Location	Area A – approximately 2 miles offshore of Island Beach State Park; Area B – approximately 2 miles offshore of Mantoloking	Overfill factor of 1.5 for borrow material
Dune Grass	175 acres	18" spacing
Sand Fence	206,000 feet	Along base of dune and at crossovers
Outfall Extensions	None	
Pedestrian Dune Crossovers	247	Includes handicap access ramps
Vehicle Dune Crossovers	11	

Selected Plan - Typical Design Cross-Section with 22-ft NAVD Dune (All Communities except Seaside Heights and northern Point Pleasant Beach)



Executive Summary

ES-6

Manasquan Inlet to Barnegat Inlet
Final Feasibility Report



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20310-2600

REPLY TO
ATTENTION OF

CECW-PM (1105-2-10a)

DEC 30 2003

SUBJECT: New Jersey Shore Protection Study, Manasquan Inlet to Barnegat Inlet

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the study of hurricane and storm damage reduction for Manasquan Inlet to Barnegat Inlet, New Jersey. It is accompanied by the report of the district and division engineers. These reports are in partial response to resolutions of the Committee on Public Works and Transportation of the House of Representatives dated 10 December 1987 and the Committee on Environment and Public Works of the United States Senate dated 15 December 1987. These resolutions requested review of existing reports of the Chief of Engineers for the entire New Jersey coast with a view to study, in cooperation with the State of New Jersey, its political subdivisions and agencies and instruments thereof, the changing coastal processes along the coast of New Jersey. Preconstruction engineering and design activities, if funded, would be continued under the study authorities cited above.

2. The reporting officers recommend constructing a dune and berm using sand obtained from offshore borrow sources. The sand fill dune and berm would extend approximately 14 miles from Berkeley Township at the boundary of Island Beach State Park northward to Point Pleasant Beach at the Manasquan Inlet south jetty.

* a. The design dune would have a crest width of 25 feet and side slopes of 1V:5H. The dune crest elevation would be +22 feet North Atlantic Vertical Datum (NAVD) along the entire reach except at Seaside Heights and northern Point Pleasant Beach. At these two locations the dune design crest elevation would be +18 feet NAVD. The plan includes planting 175 acres of dune grass on the newly constructed dune. Dune crossovers for pedestrian use would be provided at 247 existing access locations, including handicap access at regular intervals. Eleven dune crossovers would be provided to accommodate service vehicles. Sand fencing would be included along the perimeter of the dune base and at each crossover to protect the dune. Approximately 206,000 linear feet of fencing would be required.

b. The design berm would be constructed to elevation +8.5 feet NAVD at all locations, except at northern Point Pleasant Beach, where berm elevation would be +11.5 feet NAVD. The berm would extend 75 feet seaward from the toe of the dune along the entire reach except at

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

* Seaside Heights and northern Point Pleasant Beach. At these two locations, the berm width would be 100 feet extending seaward from the toe of the dune. At all locations, the design beach foreshore would slope 1V:10H from the berm crest down to mean high water (MHW). Below MHW, the design beach slope would parallel the existing beach slope down to the depth of closure at -26 feet NAVD.

c. The initial sand fill requirement is estimated as 10,689,000 cubic yards. This amount includes an initial fill quantity of 9,728,000 cubic yards and advance nourishment of 961,000 cubic yards. Periodic nourishment would be required at about 4-year intervals after completing the initial construction in order to maintain the integrity of the design beach template over the project life. Twelve nourishment cycles, totaling about 12,358,000 cubic yards over the 50-year period of Federal participation, are anticipated.

d. No compensatory environmental mitigation is proposed. However, monitoring during initial construction and subsequent beach nourishment cycles would be undertaken to avoid significant impacts to benthic habitats, surf clam populations, and Federally threatened species including the piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*).

3. Based on October 2003 price levels, the initial construction cost of the plan is estimated at \$62,377,000. Under cost sharing specified by the Water Resources Development Act (WRDA) of 1986, Public Law 99-662, the initial construction would be cost shared 65 percent by the Federal Government and 35 percent by the non-Federal sponsor. The Federal share of this first cost is \$40,546,000 and the non-Federal share is \$21,831,000. Cost of lands, easements, rights-of-way, relocations, and dredged material disposal areas is estimated at \$3,913,000 and will be credited toward the non-Federal sponsor's cash contribution.

4. Over the 50-year period of Federal participation, the total periodic nourishment costs are estimated to be \$103,837,000 (October 2003 price level). Based on the amendments to the WRDA of 1986 cost sharing requirements implemented in response to the WRDA of 1999, Public Law 106-53, cost sharing for the periodic nourishment would be 50 percent Federal (\$49,082,500) and 50 percent non-Federal (\$49,082,500) for sand placement costs and 100 percent non-Federal (\$5,672,000) for dune grass, sand fence, and crossover replacement costs.

5. The ultimate cost of construction which includes initial construction, project monitoring, and periodic nourishment during the 50 years of Federal participation is estimated to be \$166,214,000 (October 2003 price level). The Federal costs are estimated at \$89,628,500 and the non-Federal costs at \$76,585,500. All costs also include pre-construction engineering and design. Cost of operation, maintenance, repair, replacement, and rehabilitation is not included in this cost and is a non-Federal responsibility. The recommended cost sharing percentages presented in this report are contingent upon the District Engineer, Philadelphia, certifying that the non-Federal sponsor has provided appropriate real estate instruments ensuring public use and access as stated in law and regulation prior to initiating project construction.

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

6. The analysis of the selected plan is based on an October 2003 price level and the Federal discount rate of 5.625 percent. The selected plan, which is the national economic development (NED) plan, has primary outputs based on hurricane and storm damage reduction. The plan provides equivalent annual net benefits of approximately \$6,174,000 and has a benefit-to-cost ratio of 2.1 to 1.

7. Washington level review indicates that the plan developed is technically sound, economically justified, and socially and environmentally acceptable. The plan conforms to the essential elements of U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, State, and local agencies have been considered. Currently, a portion of the project shoreline length has been identified as being owned and operated by private, for profit entities, with some additional shoreline segments that are owned by private, non-profit entities. The Philadelphia District will undertake further coordination with the non-Federal project sponsor during the preconstruction engineering and design phase to ensure that public access to all segments of the 14 mile long project is consistent with law and regulations.

8. I concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend construction of this project for hurricane and storm damage reduction in accordance with the reporting officers' recommended NED plan with such modifications as in the discretion of the Chief of Engineers may be advisable. Also, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies and other requirements including, but not limited to:

a. Provide 35 percent of initial project costs assigned to hurricane and storm damage reduction, plus 50 percent of the initial project costs assigned to protecting undeveloped public lands, plus 50 percent of initial project costs assigned to recreation, plus 100 percent of initial project costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits, and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction plus 100 percent of periodic nourishment costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits and as further specified below:

(1) Enter into an agreement which provides, prior to construction, 25 percent of design costs;

(2) Provide, during construction, any additional funds needed to cover the non-Federal share of design costs;

(3) Provide all lands, easements, and rights-of-way, and perform or ensure the performance of any relocations determined by the Federal Government to be necessary for the initial construction, periodic nourishment, operation, and maintenance of the project;

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

(4) Provide, during construction, any additional amounts as are necessary to make its total contribution equal to 35 percent of initial project costs assigned to hurricane and storm damage reduction plus 100 percent of initial project costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction plus 100 percent of periodic nourishment costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits;

b. For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the completed project, or functional portion of the project, at no cost to the Federal Government, in a manner compatible with the project authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government;

c. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall relieve the non-Federal sponsor of responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance;

d. Hold and save the United States free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the United States or its contractors;

e. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;

f. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended, 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for the initial construction, periodic nourishment, operation, maintenance, repair, and rehabilitation of the project. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal Government shall perform such investigations unless the Federal Government provides the non-Federal sponsor with prior

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

specific written direction, in which case the non-Federal sponsor shall perform such investigations in accordance with such written direction;

g. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the initial construction, periodic nourishment, operation, or maintenance of the project;

h. Agree that the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, and repair the project in a manner that will not cause liability to arise under CERCLA;

i. If applicable, comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act;

j. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of floodplain management plans;

k. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement;

l. Participate in and comply with applicable Federal floodplain management and flood insurance programs;

m. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized;

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n. Prescribe and enforce regulations to prevent obstruction of or encroachment on the project that would reduce the level of protection it affords or that would hinder future periodic nourishment and/or the operation and maintenance of the project;

o. Not less than once each year, inform affected interests of the extent of protection afforded by the project;

p. Publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the floodplain, and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the project;

q. For so long as the project remains authorized, the non-Federal sponsor shall ensure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based;

r. Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms;

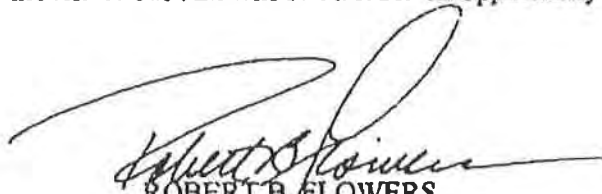
s. Recognize and support the requirements of Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element; and

t. At least twice annually and after storm events, perform surveillance of the beach to determine losses of nourishment material from the project design section and provide the results of such surveillance to the Federal Government.

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SUBJECT: New Jersey Shore Protection, Manasquan Inlet to Barnegat Inlet

9. The recommendation contained herein reflects the information available at this time and current departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program nor the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to Congress as a proposal for authorization and implementation funding. However, prior to transmittal to Congress, the non-Federal sponsor, the State of New Jersey; interested Federal agencies; and other parties will be advised of any modifications and will be afforded an opportunity to comment further.



ROBERT B. FLOWERS
Lieutenant General, U.S. Army
Chief of Engineers

Prepared by:

Sean D. Gertner, Esquire
P.O. Box 499
Lakewood, NJ 08701

DEED OF DEDICATION AND PERPETUAL STORM
DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE

REDUCTION EASEMENT IS MADE THIS ____ DAY OF 2013 BY AND BETWEEN

Jenkinson's Pavilion

Whose address is

3 Broadway, Point Pleasant Beach, NJ 08742

Referred to herein as Grantor,

AND

THE BOROUGH OF POINT PLEASANT BEACH, A Municipal Corporation of the State of New Jersey whose post office address is Municipal Clerk, 416 New Jersey Avenue, Point Pleasant Beach New Jersey, 08742-3330 AND THE STATE OF NEW JERSEY referred to herein collectively as the Grantees

WITNESSETH

WHEREAS, Grantor is the owner of the certain tract of land, located in the Borough of Point Pleasant Beach, County of Ocean State of New Jersey, and identified as Block **212**, Lot **1.03 and 2**, on the official tax map of the Borough of Point Pleasant Beach, hereinafter the "property", and Grantor holds the requisite interest to grant this Deed of Easement; and

WHEREAS, the Grantees recognize that the beach at Point Pleasant Beach, New Jersey is subject to constant erosion and degradation, thereby destroying a valuable natural resource and threatening the safety and property of the Grantor and of all of the citizens of the State; and

WHEREAS, the Grantees desire to participate with each other and the United States Army Corps of Engineers to construct the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project, as defined in the December 30, 2003 Chief's Report issued by the Department of the Army, hereinafter "project"; and,

WHEREAS, in order to accomplish part of the Project, Grantees need a Perpetual Storm Damage Reduction Easement on portions of said Property herein described; and

WHEREAS, the United States Army Corps of Engineers will not participate in the project unless the Grantees acquire the real property interest herein described in all real property needed for the Project; and

WHEREAS, the Borough of Point Pleasant Beach shall consider this Deed of Easement in establishing the full assessed value of any lands subject to such restrictions; and

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and

WHEREAS, The Grantor acknowledges that after successful implementation of the Project the beach and dune are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach and ocean.

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein;

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project, in, on, over and across that land of the Property described as **Block: 212, Lot(s) 1.03 and 2** as shown on the official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the Borough of Point Pleasant Beach, their representatives, agents, contractors and assigns to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;
- b. Move, temporarily store and remove equipment and supplies;
- c. Erect and remove temporary structures;
- d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project together with the right of public use and access;
- e. Post signs, plant vegetation on said dunes and berms;
- f. Erect, Maintain, and remove silt screens and snow fences;

- g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;
- h. Trim, cut fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement.;
- i. Implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of the beach and ocean.

The easement reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a private dune overwalk structure in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function. Prior approval of the plans and specifications for such structures must be obtained from the Borough of Point Pleasant Beach and the State of New Jersey. Such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project. The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. Grantor hereby expressly agrees not to grade or excavate within the easement area or to place therein and structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the Borough of Point Pleasant Beach the State of new Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Point Pleasant Beach or the State of New Jersey shall become merged with any other geopolitical entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon , and insure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

If construction of the Project has not begun on said property by September 30, 2020, then the Grantees, upon written request of the Grantor, shall release this easement of record at the Grantee's sole cost and expense, consistent with all applicable laws in effect at the time the release is requested.

Municipality to Maintain Beach: The Borough of Point Pleasant Beach agrees, consistent with all Federal, State and local statues and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to me maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part

of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Borough of Point Pleasant Beach agrees to the extent allowed by applicable law, that the Lands burdened by the easement herein described shall not be excluded from the calculation of minimum square footage requirements when construing applications under the zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.
2. The interpretation and performance of this Deed of easement shall be governed by the laws of the State of New Jersey.
3. If any provision of this Deed of Easement or the application thereof to any person or Circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.
5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the

WITNESS by:

Jenkinson's Pavilion, GRANTOR

Grantor

Notary Public of the State of
New Jersey

Date: _____

Accepted by the

WITNESS by:

BOROUGH OF POINT PLEASANT BEACH, GRANTEE

BY: _____

VINCENT BARRELLA, MAYOR

Notary Public of the State of
New Jersey

Date: _____

Accepted by the

WITNESS by:

State of New Jersey, GRANTEE

BY: _____

DAVE ROSENBLATT, ADMINISTRATOR

OFFICE OF ENGINEERING & CONSTRUCTION

Notary Public of the State of

New Jersey

Date: _____

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____ 2013

Personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

1. Is named in and personally signed this Deed of Easement;
2. Signed, sealed and delivered this Deed of Easement as his or her act and deed;
3. Holds the requisite ownership interest and authority to execute this Deed of Easement; and
4. Made this Deed of Easement for the full and actual consideration as set forth herein.

Notary Public of the

State of New Jersey

EXHIBIT 8

GERTNER MANDEL & PESLAK^{LLC}

COUNSELLORS AT LAW

PO Box 499
Lakewood, New Jersey 08701
732-363-3333
Fax: 732-363-3345

Ross D. Gertner
Master of Laws (in Taxation)
Sean D. Gertner
Member NJ, VA, MD & DC Bars
Lawrence D. Mandel
Member NJ, NY & PA Bars
Arthur M. Peslak
Member NJ & NY Bars
Registered Patent Attorney

Angelica Guzman
Member NJ Bar
Jena R. Silverman
Member NJ & NY Bars
Jerome A. Gertner
Of Counsel

May 6, 2013

Dear Property Owner

Re: Dune Replenishment Easement
Our File: 7141-85-03

Enclosed please find a revised Deed of Dedication and Perpetual Storm Damage Reduction Easement (hereinafter referred to as "*Deed*") as well as a Supplementary Agreement Regarding Grant of Easement to Point Pleasant Beach Borough and the New Jersey Department of Environmental Protection (hereinafter referred to as "*Agreement*") relative to the above matter. Please note that the revised Deed comes directly from the State of New Jersey provided to the Borough on May 5, 2013. My understanding is that this version of the Deed takes into account some of the public concern with regard to the form language. In addition and based on several meetings with individual property owners and State representatives, I have enclosed for your review a supplemental Agreement between the Borough of Point Pleasant Beach and yourself. Its purpose is to both qualify the existing State form Deed as well as to ensure that certain rights are granted back to the individual property owners that were arguably taken from the owner by virtue of the form language included in the State's version of the Deed. Of additional importance is the qualification of the Borough's unique circumstance not owning any beach front and having no current obligation to maintain same. The Agreement clarifies that the maintenance of the Beach is the responsibility of the individual owner. It also incorporates the concept of certain permits with CAFRA that we are aware exist between individual Borough owners and the Department of Environmental Protection. Certainly if you should desire further clarifications, we would be open to communications with regard to the Agreement; we have no authority to change any of the State's language from the Deed.

Additionally, and as you may recall, the Borough's emergency protective measures created a berm system between the storms. We understand that these berms are technically regulated as dunes by the DEP and property owners should be aware that as the beginning of a potential dune system they are governed by the Borough's Dune Ordinance which will therefore be strictly enforced. A copy of same has been enclosed for your reference. Based on this

Office Locations:
1215 East Veterans Highway, Jackson, New Jersey
1355 Campus Parkway, Suite 102, Wall, New Jersey (by appointment only)

understanding, the Borough encourages you to work on replacing and/or augmenting whatever dunes are there now as we await approval of the Federal Dune Project.

Thank you as always for your courtesies.

Very truly yours,
GERTNER, MANDEL & PESLAK, LLC



Sean D. Gertner

Encl.

cc: Vincent R. Barrella, Mayor
Christine Riehl, Administrator
Raymond Savacool, Borough Engineer
Maryann Ellsworth, Borough Clerk
Cindy Randazzo, Director, Office of Local Government Assistance, NJDEP
Benjamin Keiser, Manager Bureau of Coastal Engineering, NJDEP
Toni Angelini, Sandy Regional Director, Office of the Governor

Prepared by:
Sean D. Gertner, Esquire
1215 East Veterans Highway
Jackson, NJ 08527

DEED OF DEDICATION AND PERPETUAL STORM

DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION
EASEMENT is made this ____ day of _____ 2013 BY AND

BETWEEN

Jenkinson's South, Inc.
whose address is
500 Boardwalk, Point Pleasant Beach, New Jersey 08742
referred to herein as Grantor,

AND

THE BOROUGH OF POINT PLEASANT BEACH, a Municipal Corporation of
the State of New Jersey whose address is Municipal Clerk, 416
New Jersey Avenue, Point Pleasant Beach, NJ 08742-3330 AND **THE**
STATE OF NEW JERSEY referred to herein collectively as the
Grantees,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of
land, located in the Borough of Point Pleasant Beach, County of
Ocean, State of New Jersey, and identified as **Block 210.02,**
Lot(s) 1 and 2, on the official tax map of the Borough of Point
Pleasant Beach, hereinafter the "Property," and Grantor holds
the requisite interest to grant this Deed of Easement; and

✓

WHEREAS, the Grantees recognize that the beach at Point
Pleasant Beach, New Jersey is subject to constant erosion and
degradation, thereby destroying a valuable natural resource and
threatening the safety and property of the Grantor and of all of
the citizens of the State; and,

WHEREAS, the Grantees desire to participate with each other
and/or the United States Army Corps of Engineers to construct
the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction
Project, as defined in the December 30, 2003 Chief's Report
issued by the Department of the Army, hereinafter "Project";
and,

WHEREAS, in order to accomplish part of the Project,
Grantees need a Perpetual Storm Damage Reduction Easement on
portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers will not
participate in the Project unless the Grantees acquire the real
property interest herein described in all real property needed
for the Project; and,

WHEREAS, the Borough of Point Pleasant Beach shall consider
this Deed of Easement in establishing the full assessed value of
any lands subject to such restrictions; and,

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and dune are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and,

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantees an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project in, on, over and across that land of the Property described as **Block 210.02, Lot(s) 1 and 2**, as shown on the Borough of Point Pleasant Beach official tax maps for the Blocks and Lots listed above for use by the State of New Jersey and the Borough of Point Pleasant Beach, their representatives, agents, contractors and assigns to:

a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;

b. Move, temporarily store and remove equipment and supplies;

c. Erect and remove temporary structures;

d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project together with the right of public use and access;

e. Post signs, plant vegetation on said dunes and berms;

f. Erect, maintain, and remove silt screens and snow fences;

g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;

h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement;

The easement reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a private dune overwalk structure in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function. Prior approval of the plans and

specifications for such structures must be obtained from the Borough of Point Pleasant Beach and the State of New Jersey. Such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project. The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. Grantor hereby expressly agrees not to grade or excavate within the easement area or to place therein any structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the Borough of Point Pleasant Beach, the State of New Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Point Pleasant Beach or the State of New Jersey shall become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

If construction of the Project has not begun on said Property by September 30, 2025, then the Grantees, upon written request of the Grantor, shall release this easement of record at the Grantees' sole cost and expense, consistent with all applicable laws in effect at the time the release is requested.

Municipality to Maintain Beach: The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the Grantees or otherwise permit the Grantees or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Lands burdened by the easement herein described shall not be excluded from the calculation of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent violation or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.
2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.
5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.
6. Structures not part of the project are not authorized.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the
Jenkinson's South, Inc.,
GRANTOR

Witnessed by:

GRANTOR

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
BOROUGH OF POINT PLEASANT BEACH, GRANTEE

Witnessed by:

BY: _____
Vincent Barrella, Mayor

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
STATE OF NEW JERSEY, GRANTEE

Witnessed by:

BY: _____
Dave Rosenblatt
Administrator
Office of Engineering & Construction

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____ 2013,

personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

- 1) is named in and personally signed this Deed of Easement;
- 2) signed, sealed and delivered this Deed of Easement as his or her act and deed;
- 3) holds the requisite ownership interest and authority to execute this Deed of Easement; and
- 4) made this Deed of Easement for the full and actual consideration as set forth herein.

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

(5)

**Supplementary Agreement Regarding Grant of Easement to Point Pleasant Beach
Borough and the New Jersey Department of Environmental Protection**

This Supplementary Agreement ("Agreement") is made on this ____ day of ____, 2013, by and between

Jenkinson's South, whose address is 500 Boardwalk, Point Pleasant Beach, New Jersey 08742

referred to as the "Owner"

and,

THE BOROUGH OF POINT PLEASANT BEACH, a Municipal Corporation of the State of New Jersey having offices at 416 New Jersey Ave., Point Pleasant Beach, New Jersey referred to as the "Borough".

The word "Owner" shall also include all future owners of the "Property" (hereinafter defined) and such Owner's successors and/or assigns, and the word "Borough" shall also include all of the Borough's successors and/or assigns.

BACKGROUND

A. The Owner owns the property known as Lot 1 and 2 in Block 210.02 on the tax maps of the Borough, which property contains a beach adjoining the Atlantic Ocean (the "Property").

B. The Owner has entered into an easement agreement between Owner as grantor and the Borough and New Jersey Department of Environmental Protection ("DEP") as the grantees entitled Deed of Dedication and Perpetual Storm Reduction Easement ("Beach Restoration Easement"), which easement has been executed by the Owner simultaneously with this Agreement.

C. The purpose of the Beach Restoration Easement is to allow and facilitate the construction of an engineered "Dune System" as said term is defined in the Beach Restoration Easement. The Beach Restoration Easement also provides further rights to governmental authorities referred to in the Beach Restoration Easement to allow them to undertake additional beach restoration actions in the future that may include the replenishment of the beach on Owner's property and construction of enhanced dunes to mitigate future damage from storm events.

D. The Owner and the Borough wish to memorialize certain agreements concerning the rights and obligations of the parties to this Agreement all of which shall serve to supplement the Beach Restoration Easement, but which do not modify the rights or obligations of other parties to the Beach Restoration Easement, other than the rights and obligations of the Borough.

Now, Therefore, Be it Agreed, in consideration of the Owner's execution of the Beach

Restoration Easement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Borough and Owner agree as follows:

- a) Future Storm Damage: Claim by Borough. In the event of future storm damage or other casualty, when such storm or other casualty affects beaches situate within Point Pleasant Beach Borough and for which the Borough makes application to the state or federal government or any agency thereof ("Governmental Agency"), to the extent that the Owner's beach has suffered damage from such storm, the Owner may request that the Borough include the damage to the Property in such application. If any Governmental Agency provides relief to the Borough that includes financial payment related to the claim concerning the Property, whether paid directly to the Borough or to any other Governmental Agency for use by the Borough, the Borough staff shall use such financial payment in connection with restoration work on the Borough-owned beaches and those privately-owned beaches where the owner of same has granted the Borough a Beach Restoration Easement. Where the monetary relief provided by a Governmental Agency does not set forth the amount to be allocated to each property for which relief has been claimed, the Borough shall equitably apportion the use of such monies without regard to the private or public status of the property, at its sole discretion. This paragraph shall not apply in those instances where the law or regulations of the relevant governmental agency permit private property owners to seek direct reimbursement for restoration of property damage caused by future storm damage or other casualty.
- b) Maintenance of the Beach. Notwithstanding any term of this Agreement or the Beach Restoration Easement to the contrary, and in consideration of the terms and conditions of this Agreement, the Borough of Point Pleasant Beach shall not maintain, preserve or care for the property or any beach area abutting Owner's lands.
- c) Nature of Improvements. Other than contemplated Dune Restoration Work and notwithstanding any term of the Beach Restoration Easement to the contrary, the Borough shall not construct or otherwise require that any improvements on the Property, including without limiting the generality of the foregoing, bathrooms, showers, food concessions, or boardwalks, unless Owner provides written consent therefore, which consent Owner may withhold for any reason in its unfettered discretion.
- d) Beach Access Fee. Notwithstanding any term of this Agreement or the Beach Restoration Easement to the contrary, the Owner shall be entitled to charge members of the public an access or badge fee that is consistent with the access fee provisions of any existing CAFRA Permit addressing Beach access. If, for any reason whatsoever, a CAFRA Permit addressing Beach access is no longer applicable, the Owner may charge the equivalent of the access or badge fee that the Owner charges to its own members ("Members"); provided, however, the Owner shall only be required to make daily badges available to members of the public who are not Members of the Owner, whether or not Owner makes badges, of a longer duration available to its Members or renters of Members, and the Borough shall not make or join in any claim that asserts any right of the public to more favorable treatment with respect to fees related to access or badge fees.

- e) More Favored Terms. The Owner had entered into this Agreement in reliance on the understanding that any other similarly situated property owner that seeks the Borough to restore its dunes will receive terms in connection with such restoration that are not more favorable the Owner than the terms contained herein. In the event the Borough agrees to terms more favorable to an owner of beach front property in connection with the restoration of dunes on such owner's property, this Agreement will be deemed amended to incorporate such more favorable terms.
- f) Binding Effect: Governing Law. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and shall be deemed to be covenants running with the land and survive any termination of this Agreement by virtue of non-performance by the Borough, or otherwise. Additionally, Owner shall continue to have the right to adopt its owns rules and regulations without interference from the Borough with respect to the use of the Property as well as the fees it charges for beach badges. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
- g) Owner's Continuing Right to Restore Dunes and Beach Area. Notwithstanding anything to the contrary provided herein, the Owner reserves the right to perform work upon the beach area and/or dunes on the Property at any time including, but not limited to, dune maintenance/restoration activities thereon at any time, including those activities that may be duplicative of the Borough's proposed work on the Property, limited to the existing conditions as outlined in an approved CAFRA dune and beach maintenance permit.
- h) Headings. The headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
- i) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement with respect to the subject matter hereof. The parties do not rely upon any statement, promise or representation not expressed in this Agreement, and this Agreement once executed and delivered may not be modified or altered in any respect except by a writing executed and delivered by the parties hereto or their successors or assigns.

IN WITNESS WHERE OF, the parties have executed and delivered this Agreement as of the date first written above.

Attest:

BOROUGH OF POINT PLEASANT BEACH
a municipal corporation of the State of New Jersey

Maryann Ellsworth, Township Clerk

By: _____
Vincent Barrella, Mayor

a New Jersey Nonprofit Corporation,

By: _____
Name:
Title:

By: _____
Name:
Title:

21-2 Regulation, Preservation and Protection of Beaches and Dunes.

21-2.1 Findings, Declaration and Purpose.

a. Although there may be no long term defense for fixed oceanfront structures against a constantly rising ocean level, effective protection of the oceanfront and adjacent coastal areas in the intermediate term against high tides and flooding and against damage by the ocean under storm conditions requires sufficient elevation and breadth in the beach and dune areas, hereinafter defined, to dissipate the force of the waves. The dunes should provide an uninterrupted barrier and a source of sand to mitigate the effect of storm waves for the benefit of the entire borough - interior lands as well as oceanfront premises - and a beach for the recreational purposes of all. Accordingly, the borough has a vital interest in the continued maintenance and protection of the beach and dune areas and in the right to cause their restoration in the event of damage or destruction.

b. Dune areas are vulnerable to erosion by wind, water, the absence of good husbandry by those responsible for their maintenance and preservation, and by indiscriminate trespass, construction or other acts which might destroy or damage them.

A proven and available means of protecting dune areas against erosion is by preventing indiscriminate trespassing, construction or other acts which might destroy or damage them, and through the aggressive use of native plantings supplemented, when necessary, by sand fencing and other protective devices, or combinations thereof, designed to prevent the erosion of dune areas and to promote the root accumulations, normal contours and other features found in natural dune systems.

c. The beach area and dune area are dynamic and are not capable of rigid definition or delineation, or of completely firm stabilization. They can and do migrate, so that particular sites, at one time free of dunes may, as the result of natural forces, become a part of the dune area declared to be in the interest of the borough to protect. Persons owning, using or purchasing such property do so subject to the public interest therein.

d. It is a purpose of this section to define the areas so affected and to establish regulations to assure their continued effectiveness.

e. This section does not attempt to define and regulate all parameters of dune delineation, function or management and the borough council declares its intent to review and update this section periodically to reflect appropriately new and beneficial knowledge treating of such things as, but not limited to, upper driftline, elevated walkways and buildings setback requirements.

f. This section is declared to be an exercise of the police power in the interest of safety and welfare for the protection of persons and property.

21-2.2 Definitions.

For the purposes of this section, the following words shall have the meaning given herein.

a. *Beach area* shall mean that area between the mean high water line of the Atlantic Ocean, in reference to the 1929 Sea Level Datum as established by the U.S. Coast and Geodetic Survey and the seaward edge of the dune as hereinafter defined.

b. *Seaward edge of dune* shall be the line as identified on the adopted Dune Reference Map of the borough. The line shall also be the easterly edge of the dune area as indicated on the adopted map.

c. *Upper driftline* shall mean that line produced by the winter spring tides (highest tides of the year) which contains oceanic debris (flotsam such as seaweed, etc.) and the seeds, rhizomes, or detached plants which can germinate and/or grow to produce a zone of new dune vegetation.

d. *Landward edge of dune* shall be the line as identified on the adopted Dune Reference Map of the borough. The line shall also be the westerly edge of the dune area as indicated on the adopted map. The landward edge of dune shall also be the adopted 'Dune Reference Line'.

e. *Vegetation line* shall mean that line connecting the most seaward naturally occurring perennial plants with other such plants.

f. *Dune area* shall mean that area between the seaward edge of the dune and the landward edge of the dune.

g. *Beach area* shall be all areas located easterly of the dune area as shown on the adopted Dune Reference Map.

h. *Setback line* shall mean that line parallel to the dune reference line and located westwardly therefrom by the setback distances variously specified by borough ordinance or maps or any subsequent modification thereof.

i. *Natural vegetation* shall mean and include the terms "native vegetation" or "indigenous vegetation." Specifically, it shall include such plants as beachgrass (*Ammophila breviligulata*), dusty miller (*Artemisia stelleriana*), sea rocket (*Cakile edentula*), seaside goldenrod (*Solidago sempervirens*), bayberry (*Myrica pensylvanica*), beach pea (*Lathyrus japonicus*), salt spray rose

relocated by the owner upon the lot shall be moved eastwardly. Sand deposited upon any improved street ends shall be restored into the beach and dune area.

g. One of the purposes of this section is to achieve the maintenance of sand dunes at the highest practical height. To this end, no dune shall be directly or indirectly lowered or reduced in height by the action or inaction of any owner or his agent. However, if any dune shall be or become lower than the elevation deemed materially significant by the dune consultant, applying recognized criteria, with due regard to the intent of this section and reasonable use of the premises, the owner thereof shall be obliged to install such sand fence and plantings as may be prescribed by the dune consultant. The owner shall have an obligation to maintain and replace, if necessary, these fences and plantings but shall not be obligated to take any other affirmative action, except as may be specified elsewhere in this section. If the dune is lowered or caused to be lowered by the direct or indirect action of any owner, then the dune shall, upon due notice to the owner, be restored its immediately pre-existing elevation by the owner or at his expense. The restored dune shall be planted and sand fenced in accordance with specifications promulgated under this section.

h. In order to provide for effective protection and/or restoration of the dune area, each owner shall plant or cause to be planted in the dune area adjoining his property suitable vegetation and erect, or cause to be erected, suitable sand fencing all in accordance with such standards as may be recommended by the dune consultant and adopted by resolution of the borough council.

i. The borough dune inspector, and in his absence, the dune consultant and in all events the borough council shall enforce the affirmative duty of each oceanfront owner, as set forth in this section, by service of a written notice, certified mail return receipt requested, upon the record owner at his last known address as set forth in the borough tax rolls, requesting specific compliance with these obligations concerning dune protection and/or restoration. The notice shall also advise that unless the owner shall take appropriate corrective action and complete the same within 30 days from the day of mailing said notice, the borough may perform such acts of protection and/or restoration at the expense of the owner. Such expenditures by the borough, if any, shall be due and payable upon demand. In the event that any such owner shall fail to pay, then the sum together with interest at the highest legal rate thereon shall become a lien upon the property and be collected in the same manner as delinquent real property taxes.

In addition to the action described above, the owner may, at the election of the enforcement officials or the borough council, be prosecuted for violation of this section in accordance with subsection 21-2.4.

21-2.4 Penalties.

a. For any and every violation of this section, the owner of lands abutting the beach or dune area where such violation has been committed, or the trespasser if the violation is of subsection 21-2.3 paragraph c., or any violator, shall for each and every violation be subject to a fine of not more than five hundred (\$500.00) dollars or 90 days in detention at the discretion of the court. Each and every day that such violation continues shall be considered a separate violation of this section.



In South Jersey

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

Mail Code 401-07

P.O. Box 402

Trenton, NJ 08625-0402

TEL (609) 292-2885

FAX (609) 292-7695

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

May 13, 2013

Dear Resident:

I write to request your assistance to help protect New Jersey lives and property by allowing the U.S. Army Corps of Engineers ("Army Corps") to engineer beaches and build dunes or other critical protective barriers along the shoreline of your community. By granting easements, oceanfront property owners will allow the Army Corps to expeditiously construct these vital shore projects that will protect New Jersey residents and property.

We are still rebuilding from the catastrophic damage that resulted from Superstorm Sandy. The storm uprooted families and destroyed a substantial number of homes and businesses. The State is committed to making resources available to assist New Jersey residents so that they may recover and rebuild. We are developing programs as quickly as possible to help meet the long-term recovery needs of your community.

In the months after the storm, we have been surveying and studying our coastline. One lesson we have learned is that those communities with a strong dune system and engineered beaches suffered much less damage than those communities without these protective barriers. It is critical that we reinforce our coastline as soon as possible to ensure that we are better prepared for the next storm.

The Army Corps, which is the federal agency tasked with managing dune replenishment and other coastal protection programs, is set to begin work in New Jersey in the near term. In advance of commencing work, the Army Corps requires that municipalities seek easements from oceanfront property owners so that they can construct the dunes necessary for the protection of everyone. An easement is a right of use to allow the Army Corps to build, to the extent necessary, approved beach replenishment and dune construction projects on private oceanfront property.

Many oceanfront property owners already have voluntarily provided easements that will allow government officials to build these invaluable storm protections. I commend these property owners who, in light of Sandy's devastation, have acted to protect their families and their communities.

Unfortunately, some property owners have not yet provided an easement. I implore these property owners to immediately deliver a signed easement to their local officials, so that we can continue to rebuild a more resilient Jersey Shore for everyone without further delay.

With such an important issue at the forefront of our State's efforts to recover and rebuild, I also write to clarify a common misconception about the State's plans with respect to engineered dune and beach reconstruction. The easements being sought by local officials have been limited and will not allow construction beyond the clearly defined scope of the Army Corps approved beach replenishment and dune construction project. It will not allow public boardwalks or bathroom facilities to be built on private property. Property owners who convey easements still retain the right to use and enjoy the beach. The public will also be permitted use of the replenished beach.

Permitting the State and the Army Corps to engineer beaches and erect dunes is intended to do one thing and one thing only: protect our Shore, our Shore residents, and our Shore towns.

Admittedly, the reconstruction of engineered dunes and beaches may, in some cases, alter the view of some of our oceanfront property owners. That, however, must be secondary to protecting the lives and property of all of our Shore residents and business owners. Many concerned oceanfront property owners have made the same calculation and put their families, property, and neighbors first by granting easements. I am hopeful that more property owners will take the responsible action and voluntarily grant easements to help our collective efforts to rebuild the Shore.

I will continue to work with local officials and the Army Corps, and I will remain focused on this issue until the safety and welfare of all New Jerseyans are protected by a comprehensive and cohesive engineered dune and beach protection system.

If you have any questions, please contact the DEP at (609) 341-2875 or visit <http://www.nj.gov/dep/special/hurricane-sandy/docs/beach-easements-faqs.pdf> for more information.

Sincerely,



Bob Martin
Commissioner

EXHIBIT 9

EXHIBIT 10



Watson Stevens Rutter & Roy^{LLP}

Michael K. Rutter
MRutter@watsonstevens.com

Mark Stevens
MStevens@watsonstevens.com

Christine A. Roy
CRoy@watsonstevens.com

Russell E. Watson (1909-1970)
A. Dudley Watson (1917-1990)
Edward L. Webster, Jr. (1950-1987)
Joseph Stevens (1986-2003)

Edward R. McGlynn, Esq.
Stone Mandia, LLC
685 Neptune Boulevard; P.O. Box 846
Neptune, New Jersey 07754

March 17, 2014

BY FACILMILE (732) 531-4305 AND REGULAR MAIL

Re: United States Army Corp of Engineers – New Jersey Dunes Project
Jenkinson's Boardwalk, Point Pleasant Beach, New Jersey

Dear Mr. McGlynn:

As you may be aware, this office has been retained by the New Jersey Department of Environmental Protection, Office of Flood Hazard Risk Reduction Measure to facilitate the implementation of an infrastructure project designed to protect several beach communities from severe weather as witnessed from Superstorm Sandy in 2013 (the "Project"). The Office of Flood Hazard Risk Reduction Measures will be working in concert with municipalities and the United States Army Corp of Engineers ("USACE") to initiate efforts in securing property rights to construct sand dunes, berms, and other flood mitigation projects.

One of the named beach communities in the project is Point Pleasant Beach, and it is our understanding that you are counsel for Jenkinson's Boardwalk, a private land owner whose property is included by the USACE for this Project. We would like to set a meeting with you to discuss the Project, and intend to have representatives from the NJDEP present to explain the Project in greater detail. Kindly advise if you are available for such a meeting on March 24th, 25th or 26th. We are available to meet at your office, at NJDEP's Toms River office, or at our office in Freehold. Please let me know which location is most convenient to you and your client.

We look forward to hearing from you and thank you in advance.

Very truly yours,

CHRISTINE A. ROY

cc: David C. Apy, Assistant Attorney General
Sean D. Gertner, Esq.

Monica N. Stahl

MStahl@watsonstevens.com
Member NJ and NY Bars

Heather N. Oehlmann
HOehlmann@watsonstevens.com

Richard G. Scott
RScott@watsonstevens.com
Member NJ and PA Bars

Of Counsel

Stephen J. Resnick
rsnck@verizon.net
Member NJ and NY Bars

Richard B. Tucker, Jr.
RTucker@watsonstevens.com
Member NJ and FL Bars

EXHIBIT 11

Prepared by:

DEED OF DEDICATION AND PERPETUAL STORM
DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION EASEMENT is made this _____ day of _____ 2014 BY AND

BETWEEN _____, whose address is _____, referred to herein as Grantor,

AND

THE BOROUGH OF POINT PLEASANT BEACH, a Municipal Corporation of the State of New Jersey whose post office address is 416 New Jersey Avenue, Point Pleasant Beach, New Jersey, AND **THE STATE OF NEW JERSEY**, referred to herein collectively as the Grantees,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of land, located in the Borough of Point Pleasant Beach, County of Monmouth, State of New Jersey, and identified as Block _____, Lot _____, on the official tax map of the Borough of Point Pleasant Beach, hereinafter the "Property," and Grantor holds the requisite interest to grant this Deed of Easement; and,

WHEREAS, Grantor's Property currently includes a pier structure commonly known as _____ (the "Pier"); and,

WHEREAS, the Grantees recognize that the beach at Point Pleasant Beach, New Jersey is subject to constant erosion and degradation, thereby destroying a valuable natural resource and threatening the safety and property of the Grantor and of all of the citizens of the State; and,

WHEREAS, the Grantees desire to participate with each other and the United States Army Corps of Engineers to construct the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project, as defined in the July 18, 2014 Project Partnership Agreement between the Department of the Army and the State of New Jersey, hereinafter the "Project"; and,

WHEREAS, construction of the Project includes periodic renourishment, which may be performed solely by the Grantees or in conjunction with the United States Army Corps of Engineers; and,

WHEREAS, in order to accomplish part of the Project, Grantees need a Perpetual Storm Damage Reduction Easement on portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers will not participate in the Project unless the Grantees acquire the real property interest herein described in all real property needed for the Project; and,

WHEREAS, the Borough of Point Pleasant Beach shall consider this Deed of Easement in establishing the full assessed value of any lands subject to such restrictions; and,

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, with respect to the Pier, it is the intent of the Grantor to grant an easement for the beach area below the Pier and only to an area above the surface of the beach necessary for Grantees to undertake the actions authorized by this Deed of Easement and it is not the intent of Grantor to grant any easement or other rights on, over or above the Pier (the "Pier Easement Area"); and,

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and dune are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune;

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

RECITALS: The recitals set forth above are incorporated herein as if fully set forth at length.

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project in, on, over and across that portion of land of the Property, known as Block __, Lot(s) __ on the Borough of Point Pleasant Beach official tax map, described on the attached metes and bounds description with plot plan attached hereto as Exhibit A (the "Easement Area"), for use by the State of New Jersey, the Borough of Point Pleasant Beach, and the United States Army Corps of Engineers and its contractors, and each of their representatives, agents, contractors and assigns to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;
- b. Move, temporarily store and remove equipment and supplies;
- c. Erect and remove temporary structures;
- d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and

Storm Damage Reduction Project together with the right of public use and access;

- e. Post signs, plant vegetation on said beach and berms;
- f. Erect, maintain, and remove silt screens and snow fences; and
- g. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement (except the Pier as more particularly described in the blueprints and documents attached as Exhibit B hereto)];

subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets.

Grantor reserves the right to operate, maintain, and utilize the Pier for all land uses including, but not limited to recreation, entertainment and/or commercial uses in accordance with any applicable Federal, State, or local laws or regulations (collectively "Governmental Requirements"). Grantor also reserves the right to alter, repair, reconstruct, enlarge or replace the Pier in accordance with Governmental Requirements and without interfering with or abridging the rights and easements conveyed to the Grantees. However, Grantor expressly agrees not to grade or excavate within the Easement Area or place therein any additional permanent structure or material without prior approval of the plans and specifications for said activities in accordance with Governmental Requirements. Grantor agrees to provide to Grantees thirty (30) days written notice of intent to grade or excavate within the Easement Area or to place any additional permanent structure or material. Grantees acknowledge and agree that (i) alteration, relocation, replacement, repair or the addition of new structural support pilings or columns for the Pier, (ii) expansion of the Pier at or below beach level, and (iii) removal, relocation or reconstruction of dunes solely for the purposes of the foregoing provisions (i) and/or (ii) shall not be deemed to be interference with Grantees easement rights provided under this Deed and shall be permitted, provided Grantor obtains approval for such activities in accordance with Governmental Requirements. Grantees agree that their rights under this Deed do not include the right to interfere in any way with Grantor's use of the Pier, including but not limited to electrical, water, mechanical and other fixtures or systems on, attached to, or beneath the Pier.

The Grantor further reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantees.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Point Pleasant Beach or the State of New Jersey shall become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

Municipality to Maintain Beach: The Borough of Point Pleasant Beach agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey, Department of Environmental Protection or the United States Army Corps of Engineers to maintain the beach area.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as private property; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

By the acceptance of this Deed of Easement, the Borough of Point Pleasant Beach agrees, to the extent allowed by applicable law, that the Lands burdened by the easement herein described shall not be excluded from the calculation of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantees and any forbearance by Grantees to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent violation or of any of Grantee's rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.

2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.

3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

6. Permanent structures not part of the Project or permitted under this Deed are not authorized.

7. Consistent with New Jersey law, during the summer season from _____ to _____ when lifeguard and other beach amenity services (e.g., beach maintenance, trash removal) are provided by the Grantor to the public,

Grantor may charge fees for daily and seasonal beach badges and/or passes, provided Grantor allows audit of its records, and access and use of the beach, in accordance N.J.A.C. 7:7E-8.11(t), (u), (v), (w) and (y) in effect as of the date hereof and whether or not subsequently repealed or modified.

8. Grantor represents and warrants that he/she/it holds the requisite ownership interest and authority to execute this Deed of Easement; and has made this Deed of Easement for the full and actual consideration as set forth herein.

9. This Deed may be executed in counterparts by the respective Parties, which together will constitute the original Deed.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the
Property Owner, GRANTOR

Witnessed by:

GRANTOR

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

STATE OF NEW JERSEY)
) SS.:
COUNTY OF)

I CERTIFY that on 12/15/2014, 2014,

personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

1) is named in and personally signed this Deed of Easement;

2) signed, sealed and delivered this Deed of Easement as his or her act and deed;

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Accepted by the
Borough of Point Pleasant Beach, GRANTEE

Witnessed by:

BY: _____
(Name of Official)

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

Accepted by the
State of New Jersey, GRANTEE

Witnessed by:

BY: _____
(Name of Official)

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

EXHIBIT 12



State of New Jersey

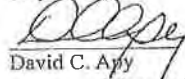
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATURAL & HISTORIC RESOURCES
Office of Engineering & Construction

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

Prepared by:


David C. Apy
Assistant Attorney General

ADMINISTRATIVE ORDER NO. 2014-13

WHEREAS, beginning on October 28, 2012, and continuing through October 30, 2012, Superstorm Sandy struck the State of New Jersey, causing unprecedented damage and destruction; and

WHEREAS, oceanfront and other flood-prone communities lacking the benefits of flood hazard risk reduction measures experienced significantly more catastrophic damage than did surrounding communities that had such protective measures; and

WHEREAS, by Executive Order No. 104, dated October 27, 2012, Governor Christie declared and proclaimed that a State of Emergency exists in the State of New Jersey; and

WHEREAS, Executive Order No. 104 remains in effect; and

WHEREAS, by Executive Order No. 140, dated September 25, 2013, Governor Christie declared that the continued absence of flood hazard risk reduction measures in coastal communities creates an imminent threat to life, property, and the health, safety, and welfare of those communities; and

WHEREAS, N.J.S.A. 12:3-64 empowers the New Jersey Department of Environmental Protection to enter upon and take property in advance of making compensation therefor where for any reason it cannot acquire the property by agreement with the owner; and

WHEREAS, in Executive Order No. 140 Governor Christie declared that the New Jersey Department of Environmental Protection should rely on the statutory powers of N.J.S.A. 12:3-64 whenever it deems it appropriate to ensure the construction of flood hazard risk reduction measures; and

WHEREAS, in Executive Order No. 140 Governor Christie ordered and directed the New Jersey Department of Environmental Protection, through its Office of Flood Hazard Risk Reduction Measures, to lead and coordinate the acquisition of the necessary interests in real property to undertake flood hazard risk reduction measures; and

ATLANTIC COUNTY, N.J. EDWARD P. MCGILLIARD, COUNTY CLERK
VOL 13808 RECORDED 10/02/2014 11:04:59 AM
REC FEES \$680.00 RCPT# 1120263
INST# 201405702
REC'D BY: Cathy

WHEREAS, in Executive Order No. 140 Governor Christie ordered and directed that no municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with any of the provisions of that Order, or which will in any way interfere with or impede its achievement; and

WHEREAS, Executive Order No. 140 remains in effect; and

WHEREAS, the State and the United States Army Corps of Engineers signed a Project Partnership Agreement (PPA) on June 23, 2014 for the Brigantine Inlet to Great Egg Harbor Inlet – Absecon Island, New Jersey Hurricane and Storm Damage Reduction Project (the Project) for the construction, operation, and maintenance of the Project; and

WHEREAS, the State is the Non-Federal Sponsor for the Project pursuant to the PPA and is responsible for obtaining necessary real estate interests; and

WHEREAS, on June 27, 2014, the United States Army Corps of Engineers formally issued a Notice to Proceed with acquisition of all necessary real estate for the project; and

WHEREAS, the United States Army Corps of Engineers, in coordination with the State of New Jersey, is scheduled to begin construction of the Project in the City of Margate and the Borough of Longport in or about December, 2014; and

WHEREAS, prior to construction, the United States Army Corps of Engineers requires that the State provide the easements and/or other real property interests that are necessary to construct and maintain the Project; and

WHEREAS, if the State does not obtain all required easements and/or other real property interests in the City of Margate, the United States Army Corps of Engineers cannot construct the flood hazard reduction measures in both the City of Margate and the Borough of Longport; and

WHEREAS, to date, the City of Margate has not transferred to the State the real property interests owned or controlled by the City of Margate listed and attached hereto as *Exhibit A* necessary for the construction of the Project, thereby jeopardizing construction of the Project in not only the City of Margate but also the Borough of Longport, and threatening the public health, safety, and welfare of both communities; and

WHEREAS, such real estate property interests owned or controlled by the City of Margate that are required for the Project include both municipal property and public right-of-ways, which extend from existing streets or streets depicted only on maps into the proposed Project area, as depicted on the attached survey shown in *Exhibit B*; and

WHEREAS, public officials of the City of Margate, in defiance of Executive Order No. 140, have refused to cooperate with the New Jersey Department of Environmental Protection Office of Flood Hazard Risk Reduction Measures in its efforts to obtain the necessary real property interests; and

WHEREAS, there is an immediate need for flood hazard risk reduction measures and the State has not been able to obtain the necessary municipal real property interests or the public right of ways from the City of Margate; and

WHEREAS, the immediate acquisition of the real property interests described in *Exhibit A* is necessary to commence construction of the Project in the City of Margate and the Borough of Longport, as well as to the continued protection of the public health, safety, and welfare of both communities; and

NOW THEREFORE, I, Bob Martin, Commissioner of the New Jersey Department of Environmental Protection, by virtue of the powers vested in me by the Constitution and statutes of this State, as well as the authority conferred on me by Executive Order No. 140, do hereby declare and order as follows:

1. The New Jersey Department of Environmental Protection Office of Flood Hazard Risk Reduction Measures hereby immediately enters upon and takes real property interest(s) in those parcels set forth in *Exhibit A*; and
2. An actual metes and bounds survey depicting the municipal real property interest(s) taken pursuant to this Administrative Order is attached hereto as *Exhibit B*; and
3. The nature of the real property interest(s) taken pursuant to this Administrative Order shall conform with those interest(s) described in the form Deed of Easement attached hereto as *Exhibit C* for the municipal property, as *Exhibit D* for the public right-of-ways, and as *Exhibit E* for temporary construction easements over municipal property, and
4. Appraisals and good faith negotiations for any compensation due to the City of Margate for such parcels for the interest(s) taken shall be undertaken in a manner not inconsistent with the procedures set out in the New Jersey Eminent Domain Act, N.J.S.A. 20:3-1 et seq. and applicable case law within a reasonable amount of time.

THIS ORDER shall take effect immediately. All other Administrative Orders or portions thereof that are inconsistent herewith are hereby superseded or repealed to the extent of the inconsistency. A copy of this Order shall be delivered by certified and regular mail to the City of Margate.

Dated: 10/1/2014

By: 

Bob Martin, Commissioner

STATE OF NEW JERSEY
COUNTY OF Mercer SS.:

I CERTIFY that on October 1, 2014,

Bob Martin, Commissioner of the New Jersey Department of Environmental Protection, personally came before me and this person acknowledged under oath, to my satisfaction that this person:

- 1) is named in and personally signed this Administrative Order; and
- 2) signed, sealed and delivered this Administrative Order as his act and deed.


NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

PARASKEVI VIVI GOGO
Notary Public
State of New Jersey
My Commission Expires 11/01/2014

EXHIBIT C

Prepared by:
State of New Jersey
Office of the Attorney General
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625

DEED OF DEDICATION AND PERPETUAL STORM

DAMAGE REDUCTION EASEMENT

THIS DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION
EASEMENT is made this _____ day of _____ 2014 BY AND
BETWEEN

whose address is

referred to herein as Grantor,

AND

THE STATE OF NEW JERSEY referred to herein collectively as the
Grantee,

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of
land, located in the City of Margate, County of Atlantic, State
of New Jersey, and identified as those Blocks and Lots listed in
Appendix A, on the official tax map of the City of Margate,
hereinafter the "Property," and Grantor holds the requisite
interest to grant this Deed of Easement; and

WHEREAS, the Grantee recognizes that the beach at the City
of Margate, New Jersey is subject to constant erosion and
degradation, thereby destroying a valuable natural resource and
threatening the safety and property of the Grantor and of all of
the citizens of the State; and,

WHEREAS, the Grantee desires to participate with the United
States Army Corps of Engineers to construct Brigantine Inlet to
Great Egg Harbor Inlet - Absecon Island, New Jersey, Hurricane
and Storm Damage Reduction Project, as defined in the June 23,
2014 Project Partnership Agreement between the Department of the
Army and the State of New Jersey, hereinafter "Project"; and,

WHEREAS, construction of the Project includes periodic
renourishment, which may be performed solely by the Grantee or
in conjunction with the United States Army Corps of Engineers;
and,

WHEREAS, in order to accomplish part of the Project,
Grantee needs a Perpetual Storm Damage Reduction Easement on
portions of said Property herein described; and,

WHEREAS, the United States Army Corps of Engineers will not participate in the Project unless the Grantee acquires the real property interest herein described in all real property needed for the Project; and,

WHEREAS, the Grantee shall instruct the City of Margate to consider this Deed of Easement in establishing the full assessed value of any lands subject to such restriction; and

WHEREAS, the Grantor desires to cooperate in allowing the Project to take place on a portion of said Property; and,

WHEREAS, the Grantor acknowledges that it will benefit from the successful implementation of the Project; and,

WHEREAS, the Grantor acknowledges that after successful implementation of the Project the beach and dune are still subject to the forces of nature which can result in both erosion and accretion of the beach and dune; and,

NOW, THEREFORE, in consideration for the benefits to be received by the Grantor from the successful implementation of the Project, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way for the Brigantine Inlet to Great Egg Harbor Inlet - Absecon Island, New Jersey, Hurricane and Storm Damage Reduction Project, in, on, over and across that land of the municipal Property described as Block(s) ____, Lot(s) ____ listed in Appendix A and depicted on the map entitled "Perpetual Easement Parcel Map In the City of Margate" dated July 22, 2014 as prepared by Consulting Engineering Services which is attached as Appendix B for use by the State of New Jersey and its representatives, agents, contractors and assigns to:

a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach, dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand, to accomplish any alterations of the contours on said land, to construct berms and dunes, and to nourish and re-nourish periodically;

b. Move, temporarily store and remove equipment and supplies;

c. Erect and remove temporary structures;

d. Perform any other work necessary and incident to the construction, periodic renourishment, and maintenance of the Brigantine Inlet to Great Egg Harbor Inlet - Absecon Island Initial Construction Project together with the right of public use and access;

e. Post signs and plant vegetation on said dunes and berms;

f. Erect, maintain, and remove silt screens and snow fences;

g. Facilitate preservation of dune and vegetation through the limitation of public access to dune areas;

h. Trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles within the limits of the easement;

The easement reserves to the Grantor, the Grantor's heirs, successors and assigns the right to construct a private dune overwalk structure in accordance with any applicable Federal, State, or local laws or regulations, provided that such structure shall not violate the integrity of the dune in shape, dimension, or function. Prior approval of the plans and specifications for such structures must be obtained from the City of Margate and the State of New Jersey. Such structures are to be considered subordinate to the construction, operation, maintenance, repair, rehabilitation, and replacement of the project. The easement reserves to the Grantor, the Grantor's heirs, successors, and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantee, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets. Grantor hereby expressly agrees not to grade or excavate within the easement area or to place therein any structure or material other than a dune walkover as referenced above without prior approval of the plans and specifications for said activities from the City of Margate, the State of New Jersey and/or any applicable Federal agency, as required.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the State of New Jersey shall become merged with any other geo-political entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the land.

Grantee or its Assign(s) to Maintain Beach: The Grantee agrees, consistent with all Federal, State and local statutes and regulations, that at all times it or one of its assigns shall use its best, good-faith efforts to cause the beach area abutting Grantor's lands to be maintained, consistent with any applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the United States Army Corps of Engineers to maintain the beach area.

Character of Property: Notwithstanding the foregoing, nothing herein is intended or shall be deemed to change the overall character of the Property as municipal property; nothing herein shall be deemed to grant to the Grantee or otherwise permit the Grantee or any other person to cross over or use any part of the Property which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights under this Easement in the event of any

violation by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.

2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.

3. If any provision of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocating party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

6. Structures not preexisting or part of the project are not authorized.

7. Grantor represents and warrants he/she/it holds the requisite ownership interest and authority to execute this Deed of Easement; and has made this Deed of Easement for the full and actual consideration as set forth herein.

8. This Deed may be executed in counterparts by the respective Parties, which together will constitute the original Deed.

IN WITNESS WHEREOF, with the parties understanding and agreeing to the above, they do hereby place their signatures on the date at the top of the first page.

Accepted by the
CITY OF MARGATE, GRANTOR

Witnessed by:

MICHAEL BECKER, MAYOR,
GRANTOR

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

STATE OF NEW JERSEY

COUNTY OF _____ SS.:

I CERTIFY that on _____ 2013,

[INSERT GRANTOR(S) NAME(S)]

personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

- 1) is named in and personally signed this Deed of Easement; and
- 2) signed, sealed and delivered this Deed of Easement as his or her act and deed.

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Accepted by the
STATE OF NEW JERSEY, GRANTEE

Witnessed by:

BY: _____
Dave Rosenblatt
Administrator
Office of Flood Risk Reduction Measures

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

Date _____

EXHIBIT 13

12/3/2014

Ordinance 2013-42.htm

ORDINANCE 2013-42 Condemnation for Dune Project

Adopted: December 17, 2013

ORDINANCE NO. 2013-42

ORDINANCE OF THE BOROUGH OF POINT PLEASANT BEACH,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
AUTHORIZING THE ACQUISITION OF CERTAIN INTERESTS IN REAL PROPERTIES BY
NEGOTIATION, PURCHASE, CONDEMNATION OR EMINENT DOMAIN, SAID PROPERTIES
BEING IDENTIFIED ON THE ANNEXED SCHEDULE AND PARCEL MAPS

WHEREAS, Superstorm Sandy caused significant and widespread damages to public and private property along the oceanfront and has greatly diminished pre-existing flood hazard risk reduction measures, making the Borough of Point Pleasant Beach ("Municipality") extremely vulnerable to future storms; and

WHEREAS, on October 27, 2012 the Governor issued Executive Order No. 104, wherein he declared a state of emergency because of Superstorm Sandy; and

WHEREAS, on September 25, 2013 the Governor issued Executive Order No. 140, wherein he declared that the construction of flood hazard risk reduction measures along New Jersey's coastline, including in the Municipality, is necessary to protect the public health, safety, and welfare from future natural disasters, and that reliance on certain statutory authority for the acquisition of property, including but not limited to N.J.S.A. 20:3-1, et seq. and N.J.S.A. App. A:9-51.5, is necessary for such efforts; and

WHEREAS, the State of New Jersey recognizes and supports public acquisition of certain interests in storm-damaged and storm-prone property as a priority hazard mitigation strategy to promote the public health, safety, and welfare; and

WHEREAS, the Mayor and Governing Body of the Municipality have concluded that it is necessary, desirable, and appropriate for the Municipality to undertake project for flood hazard risk reduction measures; and

WHEREAS, there is currently private ownership of certain portions of the lands where said flood hazard risk reduction measures shall be undertaken; and

WHEREAS, by adoption of this Ordinance the Municipality authorizes the taking of perpetual easements in a portion of each identified privately owned property by condemnation/ eminent domain so that the Municipality and other entities or agents acting on behalf of the Municipality shall have access onto, over, and through said privately owned real property for the purpose of taking any and all actions necessary for completing said flood hazard risk reduction measures; and

WHEREAS, the Mayor and Governing Body of the Municipality further find that a public use and purpose would be served for the benefit of Municipality and surrounding communities by acquiring certain property

12/3/2014

Ordinance 2013-42.htm

interests in the aforesaid property, including, but not limited to, the promotion, protection, and preservation of the public health, safety, and welfare of the Municipality and its inhabitants by the acquisition of certain interests in said real property for storm damage and flood area mitigation through conducting the said flood hazard risk reduction measures, to protect public infrastructure located with the Municipality, to mitigate future storm damage and associated public recovery expenditures, and for the protection, preservation, and conservation of precious natural resources; and

WHEREAS, the Mayor and Governing Body of the Municipality are authorized by the New Jersey State Constitution, N.J.S.A. 40A:12-5(a), N.J.S.A. 20:3-1 et seq., and/or any other provision of applicable law to proceed with acquiring certain property interests by condemnation/eminent domain as long as just compensation is paid for the same;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Governing Body of The Borough of Point Pleasant Beach in the County of Ocean and State of New Jersey as follows:

1. RECITALS INCORPORATED: The above recitals are incorporated into this section of the Ordinance as if specifically set forth at length herein.
2. SPECIFIC FINDINGS: The Mayor and Governing Body of the Municipality find that the flood hazard risk reduction measures will promote and protect the health, safety, and welfare of residents of the Municipality, and will prevent property damage and loss due to flooding, and further find that any purchase or taking by eminent domain of any and all property interests necessary for the same are all in the furtherance of a public use and purpose.
3. AUTHORIZE CONDEMNATION: The Mayor and Governing Body of the Municipality specially authorize any and all necessary and appropriate actions by Municipality officials including the Mayor, Municipal Clerk, Municipal Attorney, and/or Special Condemnation Attorney, in conjunction with the Office of Flood Hazard Risk Reduction Measures within the New Jersey Department of Environmental Protection and/or any other appropriate State or Federal entity, for the taking and obtaining of certain property interests in the properties as set forth herein through negotiation, purchase, or condemnation/eminent domain, including, but not limited to, the hiring of any experts, engaging the services of land surveyors, title insurance companies, appraisers, and any other professional whose services are necessary or appropriate to implement the purposes of this Ordinance, the making of any offer by the Municipality to the property owner(s) in the full amount of the appraised value of the property interest that the Municipality seeks to acquire in said property, and to negotiate in good faith with the record owner(s) of the property for its voluntary acquisition in accordance with N.J.S.A. 20:3-6, and in the event that the negotiations for the voluntary acquisition of the property interest are unsuccessful for any reason to commence a condemnation action by the filing of a Verified Complaint and Declaration of Taking, depositing the estimated just compensation with the Clerk of the Superior Court, filing a Lis Pendens, and taking any and all other actions of any administrative or other nature necessary to complete the process contemplated by this Ordinance.
4. IDENTIFICATION OF PROPERTY: The properties for which a taking of property interests is authorized by negotiation, purchase, or condemnation/eminent domain pursuant to this Ordinance are located in the Municipality and listed on the Municipality tax map, the legal descriptions of which are attached as Exhibit A to this Ordinance and specifically incorporated into this Ordinance by reference. The property interests to be

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acquired are irrevocable, perpetual, permanent easements in the properties identified herein.

5. OFFICIALS AUTHORIZED: All appropriate officials of the Municipality, including, but not limited, to the Mayor, Municipal Clerk, Municipal Attorney, Special Condemnation Attorney, and any and all experts or others acting on behalf of the Municipality are authorized by this Ordinance to sign any and all documentation and take any and all action necessary to effectuate the purposes and intention of this Ordinance.

6. PURCHASE OF PROPERTY: If a determination is made by a majority vote of the Governing Body of the Municipality that the purchase of an easement is more appropriate than the obtaining said property interest through condemnation/eminent domain, then all appropriate officials of the Municipality, including, but not limited to, the Mayor, Municipal Clerk, Municipal Attorney, and Special Condemnation Attorney are authorized by this Ordinance to sign any and all documentation to effectuate the purchase of the property interests by the Municipality.

7. REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

8. SEVERABILITY: If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

9. EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed on first reading at the regular meeting of the Borough Council of the Borough of Point Pleasant Beach, in the County of Ocean, held on the 12th day of November, 2013 and will be considered for second reading and final passage at the regular meeting of said governing body to be held on the 17th day of December 2013 at 7:30 p.m. in the Council Chambers, Borough Hall, 416 New Jersey Avenue, Point Pleasant Beach, New Jersey

Maryann Ellsworth, RMC
Municipal Clerk

EXHIBIT A

Owner Name Block Lot

Pt. Pleasant Beach Surf Club 28.02 2
29.02 1

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Elizabeth-Carter Association 13.07 6

Courtney M. Alesso Trust 13.07 5

Elizabeth Carter Association 13.07 1

13.07 2

13.07 3

Jenkinson's Pavilion 212 1.02

Harborhead Condo Assoc. 180 2

Van Kralingen Residence Trust, II 17.02 1.01

John and Josephine Ely 179.03 1

Farina Family 2011 Trust 179.03 1.01

Marie Wenczel Family LP, etal 28.02 1

OCHS, Jeffrey W. Mongello 17.02 7

Charles and Patricia Sarnasi 17.02 2.04

John Jay Boylan and 9 1

Constantine, Belle 10 13

Girgis, IHAB and Lisa G. 179.03 5.04

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Robert Grillo 9 2

Bay Head Point Homeowners 179.03 9

Nathan and Cindy A. Kaufman 179.03 5.05

Janet E M Clark Family Trust 17.02 8

Point Beach House, LLC 17.02 4

Stephen and Deborah Korzeniowski 1.02 1.01

Stephen and Deborah Korzeniowski 1.01 2

Gina Addeo 179.03 5.02

Stephanie Gurgo 13.07 4

Beach Condo Association 46.02 2

Sergio and Daniel Dragone 179.03 5.01

Dennis J. Sullivan Jr. Trust 17.02 9

Bradshaw Beach Homeowners Assoc. 17.02 13

Risden's Beach Corp. 46.02 1

46.02 3

83.02 1

Steven Fisher 179.03 5.03

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Plaza Construction Corp.

Anita Dietrick 1.01 1

Bay Pointe Dunes Homeowners Assoc. 179.03 5.06

179.03 5.08

179.04 2

179.04 3

179.04 4

Marie S. Doherty 17.02 1.04

Denis and Catherine Laplante 17.02 1.03

Jeanne M. Hamilton 17.02 1.02

Robert Rogers 17.02 2.05

Kenneth Poray 17.02 2.03

Howard Levine and John Mullen 17.02 2.02

The Ippolito Corporation 17.02 2.01

17.02 2.02

17.02 3

Mary and Robert Rinaolo 17.02 5

Mahasagar Properties, LLC 17.02 6

Adam and Natalie and Levy 17.02 11

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Lee and Carolyn Angioletto 17.02 12

Jenkinson's South Inc. 83.02 2

83.02 3

210.02 1

210.02 2

Jenkinsons Pavilion 212 1.03

212 2

Palermo Beach Corp. 210.02 3

Cameryn and Dalton, LLC 212 1.01

Craig B and Cheryl E. Brod 179.03 5.07

Andrew S. Labowsky, Jr. 179.03 5.09

No Records Exist 179.03 5

Borough of Point Pleasant Beach 9 3.01

10 11

Phillip E. and Denise H. Jakeway 8 4

William Kane, et al. 8 3

Children's Trust, et al. 8 1

Stephen G. Grillo 10 12

Lot near Lake Louise 136 1.03

12/3/2014

Ordinance 2013-42.htm

Published December05, 2013 | New Ordinances | 1727

Page printed from:

<http://www.pointpleasantbeach.org/news.php?action=fullnews&id=1727>

EXHIBIT 14

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Y--Beachfill - Initial Construction, Manasquan Inlet to Barnegat Inlet, Ocean County, New Jersey

Solicitation Number: W912BU-14-B-0013

Agency: Department of the Army

Office: U.S. Army Corps of Engineers

Location: USACE District, Philadelphia

[Notice Details](#)[Packages](#)[Interested Vendors List](#)[Print](#)[Link](#)

Note: There have been modifications to this notice. You are currently viewing the original synopsis. To view the most recent modification/amendment, [click here](#)

[Complete View](#)**Original Synopsis**

Oct 07, 2014

12:57 pm

[Changed](#)

Oct 07, 2014

1:12 pm

[Changed](#)

Oct 07, 2014

1:58 pm

[Return To Opportunities List](#)[Watch This Opportunity](#)[Add Me To Interested Vendors](#)**Solicitation Number:**

W912BU-14-B-0013

Notice Type:

Presolicitation

Synopsis:

Added: Oct 07, 2014 12:57 pm

The contract work for this project consists of placement of approximately 10,000,000 cubic yards of sand to repair the dune and berm system along the Atlantic Ocean coastline between Manasquan Inlet and Barnegat Inlet, Ocean County, New Jersey. The project area extends approximately 13.7 miles from Manasquan Inlet south to the northernmost portion of Island Beach State Park, and encompasses the municipalities of Point Pleasant Beach, Bay Head, Mantoloking, Brick Township, Toms River Township, Lavallette, Seaside Heights, Seaside Park, and Berkeley Township. The contract work may also consist of the following 40 separate options for additional quantities of beachfill construction in locations (which will be broken out into Stations) within the Base bid area: Station 0+00 to Station 95+50 - Option 1 additional 25,000 CY of Beachfill, Option 2 additional 50,000 CY of Beachfill, Option 3 additional 75,000 CY of Beachfill, Option 4 additional 110,000 CY of Beachfill; Station 95+50 to Station 162+36 - Option 5 additional 25,000 CY of Beachfill, Option 6 additional 50,000 CY of Beachfill, Option 7 additional 75,000 CY of Beachfill, Option 8 additional 150,000 CY of Beachfill; Station 162+36 to Station 277+58 - Option 9 additional 25,000 CY of Beachfill, Option 10 additional 50,000 CY of Beachfill, Option 11 additional 75,000 CY of Beachfill, Option 12 additional 250,000 CY of Beachfill; Station 277+58 to Station 371+64 - Option 13 additional 25,000 CY of Beachfill, Option 14 additional 50,000 CY of Beachfill, Option 15 additional 75,000 CY of Beachfill, Option 16 additional 250,000 CY of Beachfill; Station 371+64 to Station 449+81 - Option 17 additional 25,000 CY of Beachfill, Option 18 additional 50,000 CY of Beachfill, Option 19 additional 75,000 CY of Beachfill, Option 20 additional 150,000 CY of Beachfill; Station 449+81 to Station 526+37 - Option 21 additional 25,000 CY of Beachfill, Option 22 additional 50,000 CY of

GENERAL INFORMATION**Notice Type:**

Presolicitation

Posted Date:

October 7, 2014

Response Date:

November 25, 2014

Archiving Policy:

Automatic, on specified date

Archive Date:

December 25, 2014

Original Set Aside:

N/A

Set Aside:

N/A

Classification Code:

Y -- Construction of structures and facilities

NAICS Code:

237 -- Heavy and Civil Engineering Construction/237990 -- Other Heavy and Civil Engineering Construction

Beachfill, Option 23 additional 75,000 CY of Beachfill, Option 24 additional 150,000 CY of Beachfill; Station 526+37 to Station 567+09 - Option 25 additional 25,000 CY of Beachfill, Option 26 additional 50,000 CY of Beachfill, Option 27 additional 75,000 CY of Beachfill, Option 28 additional 150,000 CY of Beachfill; Station 567+09 to Station 608+70 - Option 29 additional 25,000 CY of Beachfill, Option 30 additional 40,000 CY of Beachfill, Option 31 additional 75,000 CY of Beachfill, Option 32 additional 110,000 CY of Beachfill; Station 608+70 to Station 698+01 - Option 33 additional 25,000 CY of Beachfill, Option 34 additional 40,000 CY of Beachfill, Option 35 additional 75,000 CY of Beachfill, Option 36 additional 110,000 CY of Beachfill; Station 698+01 to Station 735+40 - Option 37 additional 25,000 CY of Beachfill, Option 38 additional 40,000 CY of Beachfill, Option 39 additional 65,000 CY of Beachfill, Option 40 additional 85,000 CY of Beachfill.

The beachfill material for this contract must come from the three (3) authorized borrow areas located approximately 1.5 - 3 miles offshore of the project shoreline in the Atlantic Ocean. In addition, the project work for the Base Bid and Options, if awarded, may also include, in addition to beachfill: the construction or repair of pedestrian, vehicle, and handicap dune crossovers; planting dune grass; providing sand fencing; the repair or extension of existing storm water outfalls and drainage structures; and the relocation or removal of various existing structures to accommodate the beachfill and dunes.

Solicitation Number W912BU-14-B-0013 will be issued on or about 22 October 2014 with a bid opening date of 25 November 2014. The magnitude of construction is between \$100,000,000.00 and \$250,000,000.00. The NAICS Code for this project is 237990 with a size standard of \$27.5 million. Solicitation documents, plans and specifications will only be available via the Federal Business Opportunities (FBO) homepage located at <https://www.fbo.gov/>. Plans and specifications should be downloaded via FBO Internet homepage and hard copies will not be available. No written or fax requests will be accepted. It is the contractor's responsibility to monitor FBO for any amendments. Also, contractors who receive a federal contract of \$100,000.00 are required by legislation (FAR 22.1310(b)) to submit an annual VETS-100 Report on your employment of targeted veterans. Information on submitting your report may be obtained by calling 1-703-461-2460 or by accessing the following Internet website: <http://www.dol.gov/vets/vets-100.html>. All contractors must be registered in the DODs System for Award Management (SAM) database at

www.sam.gov as required by DFARS 204.1103. Davis Bacon rates will be applicable to the construction and bonding is required. Please review all bonds and accompanying documents required to be submitted. Affirmative action to insure equal employment opportunity is applicable to the resulting contract. Liquidated damages will be specified. Award will be made as a whole to one bidder. This procurement is advertised as unrestricted.

Contracting Office Address:

USACE District, Philadelphia, 100 Penn Square East, Wanamaker Bldg (RM 643), Philadelphia, PA 19107-3390

Place of Performance:

USACE District, Philadelphia 100 Penn Square East, Wanamaker Bldg (RM 643) Philadelphia PA 19107-3390
US

Point of Contact(s):

Emily M Acedo-Malaney, 215-656-6912

USACE District, Philadelphia

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Beachfill - Initial Construction

Bid Date & Time: 12/09/14 11:00 AM

Owner Solic Number: W912BU-14-B-0013 **Status:** bidding **Report:** 5910327

Country: United States **State:** NJ **County:** Philadelphia

Location: Manasquan Inlet to Barnegat Inlet, Ocean County, New Jersey

Est. Low Value: \$100,000,000 **Est. High Value:** \$250,000,000

Scope: The contract work for this project consists of placement of approximately 10,000,000 CY of sand to repair the dune and berm system . The beachfill material for this contract must come from the three (3) authorized borrow areas located approximately 1.5 - 3 miles offshore of the project shoreline the construction or repair of pedestrian, vehicle, and handicap dune crossovers; planting dune grass; providing sand fencing; the repair or extension of existing storm water outfalls and drainage structures; and the relocation or removal of various existing structures to accommodate the beachfill and dunes.

Notes: THIS IS A PRESOLICITATION. IT IS POSSIBLE THAT THIS PROJECT WILL NOT BID. PLEASE CHECK THE OUTSIDE LINK FOR FURTHER UPDATES ON THIS SOLICITATION.

Plans: From Owner. See linked file.

Outside Link:

<https://www.fbo.gov/spg/USA/COE/DACA61/W912BU-14-B-0013/listing.html>
(<https://www.fbo.gov/spg/USA/COE/DACA61/W912BU-14-B-0013/listing.html>)

Owner Type: Public

Buyer: US Army Corps of Engineers, Philadelphia District

Address: 100 Penn Sq E Wanamaker Building

City: Philadelphia **State:** PA **Zip/Postal Code:** 19107-3390

TEL: 215-656-6516 **FAX:** 215-656-6820

Website: <http://www.nap.usace.army.mil> (<http://www.nap.usace.army.mil>)

Contact: Emily M. Acedo-Malaney

TEL: 215-656-6912

Bid Pkg Source: US Army Corps of Engineers, Philadelphia District

Address: 100 Penn Sq E Wanamaker Building

City: Philadelphia **State:** PA **Zip/Postal Code:** 19107-3390

TEL: 215-656-6516 **FAX:** 215-656-6820

Website: <http://www.nap.usace.army.mil> (<http://www.nap.usace.army.mil>)

Contact: Emily M. Acedo-Malaney

TEL: 215-656-6912

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(http://www.newjerseybids.com/classifieds/37610-Caldwell_Tanks_is_Soliciting_Local_Minority_Contractors.html)

Junk, Scrap and Donation Removal (http://www.newjerseybids.com/classifieds/37102-Junk_Scrap_and_Donation_Removal.html)

Commercial Roofing Salesman (http://www.newjerseybids.com/classifieds/37103-Commercial_Roofing_Salesman.html)

Project Manager (http://www.newjerseybids.com/classifieds/36514-Project_Manager.html)

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Business News

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JENKINSONS PAVILLION, a corporation of
the State of New Jersey and JENKINSONS
SOUTH, INC., a corporation of the State of
New Jersey

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS, NEW JERSEY;
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and agency of the State of
New Jersey; BOROUGH OF POINT
PLEASANT BEACH, a municipal corporation
of the State of New Jersey

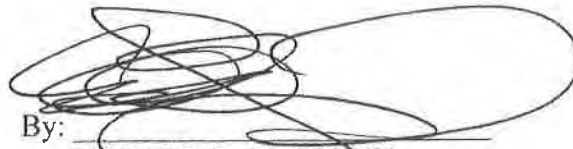
Defendants.

Civil Action No. _____

**CORPORATE DISCLOSURE
STATEMENT PURSUANT TO
FED. R. CIV. PROC. 7.1**

Plaintiffs JENKINSONS PAVILLION, a corporation of the State of New Jersey and JENKINSONS SOUTH, INC., a corporation of the State of New Jersey, by their general counsel, Edward R. McGlynn, in accordance with Federal Rule of Civil Procedure 7.1(a) state as follows:

With respect to each plaintiff listed in the above caption, there is no parent corporation and there is no publicly traded corporation that owns ten percent or more of such plaintiff's stock.


By: _____
EDWARD R. McGLYNN

Dated: December 15, 2014