



WETLANDS & SUBAQUEOUS
LANDS SECTION

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

TELEPHONE (302) 739-9943
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Subaqueous Lands Lease No.: SL-336/12
Date of Issuance: 6/18/2013
Construction Expiration Date: 6/18/2016
Amended Date:
Tax Parcel No: 3-34-23.61-1.00

**SUBAQUEOUS LANDS LEASE AND 401 WATER QUALITY
CERTIFICATION**

**GRANTED TO DEWEY BEACH ENTERPRISES
TO PERFORM THE FOLLOWING:**

- **CONSTRUCT A 16 FOOT WIDE BY 432 FOOT LONG BAY WALK TO INCLUDE A 16 FOOT BY 255 FOOT SECTION OF BAY WALK ADJACENT TO AND ON THE SOUTH AND SOUTHWEST SIDE OF THE EXISTING LIGHTHOUSE COVE RESTAURANT THAT CONNECTS TO A 16 FOOT BY 177 FOOT BAY WALK ADJACENT TO THE EXISTING DECK AND EXTENDING TO THE NORTH SIDE OF THE EXISTING LIGHTHOUSE COVE RESTAURANT.**
- **INSTALL A 50 FOOT EXTENSION ON AN EXISTING STORMWATER OUTFALL PIPE IN FRONT OF VAN DYKE STREET.**
- **CONSTRUCT A 6 FOOT WIDE BY 90 FOOT LONG STONE RIP-RAP GROIN UNDER THE 16 FOOT WIDE BY 177 FOOT BAY WALK ON THE SOUTH SIDE OF THE LIGHTHOUSE COVE RESTAURANT.**
- **PERFORM BEACH NOURISHMENT BY EXTENDING THE EXISTING 15 FOOT WIDE BY 195 FOOT LONG BEACH IN FRONT OF VAN DYKE STREET APPROXIMATELY 70 FEET CHANNELWARD BY ADDING APPROXIMATELY 1,800 CUBIC YARDS OF SAND INCREASING THE DIMENSIONS TO 85 FEET WIDE BY 195 FEET LONG.**
- **INSTALL 150 FEET OF VINYL SHEETING ON AN EXISTING WALL AT THE SOUTH END OF THE BEACH NOURISHMENT AREA ADJACENT TO THE REHOBOTH BAY MARINA.**

**IN THE REHOBOTH BAY AT 124 DICKINSON STREET,
DEWEY BEACH, SUSSEX COUNTY, DELAWARE**

Dewey Beach Enterprises
C/O E. Thomas Harvey III
P.O. Box 649
Rehoboth Beach, DE 19971

Delaware's good nature depends on you!

Pursuant to the provisions of 7 Del. C. §7205, and the Department's Regulations Governing the Use of Subaqueous Lands and Pursuant to the provisions of 7 Del. C., Section 6003, the Department's Regulations Governing the Control of Water Pollution and Section 401 of the Clean Water Act, permission is hereby granted on this 18th day of June A.D. 2013, to construct the above-referenced project in accordance with the revised approved plans for this Lease (6 Sheets) as approved on April 15, 2013, with revisions dated January 15, 2013 and April 1, 2013; and the application dated November 5, 2012, and received by this Division on November 8, 2012. A public hearing was held on February 8, 2013 and a final plan revision was received on May 8, 2013.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Rehoboth Bay; and

WHEREAS, Dewey Beach Enterprises, owner of certain lands adjoining the Rehoboth Bay has applied for permission to install a bay walk, pipe extension, stone rip-rap groin, vinyl sheeting and beach nourishment; and

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

This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

THIS Lease is issued subject to the following conditions:

SPECIAL CONDITIONS

1. This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County, and a copy of the recorded Lease is returned to, and has been received by, the Department.

2. The 16 foot wide by 432 foot long bay walk shall be open to the public 24 hours per day, 7 days per week, and 365 days per year unless the bay walk is determined to be unsafe for pedestrian access due to storm or other damage. No activity or event being undertaken by DBE shall limit public use of or access to the bay walk. No permanent or temporary structures or items such as tables, chairs, umbrellas, benches, signs etc. shall be placed on the bay walk by DBE or any other commercial enterprise or otherwise situated in a manner that restricts use of or access to the bay walk. In the event that the bay walk is determined to be unsafe for pedestrian access as the result of storm or other damage, DBE shall make all reasonable effort to expedite repairs and re-open the bay walk for public access.
3. The 70 foot wide by 195 foot long beach nourishment area shall be open to the public 24 hours per day, 7 days per week, and 365 days per year. No activity or event being undertaken by DBE or property owners adjoining the beach nourishment area shall limit public use of or access to the beach nourishment area. No permanent or temporary structures or items such as tables, chairs, benches, umbrellas, signs, kayaks or watercraft, etc. shall be placed on the beach by DBE or any other commercial enterprise or otherwise situated in a manner that restricts use of or access to the beach.
4. Signs stating that the bay walk and beach nourishment areas are open for public access shall be installed upon construction completion. The contractor shall notify the project scientist to conduct an inspection of the sign locations prior to installation. The project scientist shall have the ability to modify the location and number of signs to ensure public awareness of access to the bay walk and beach nourishment area.
5. The structures authorized by this Lease/Certification shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
6. No portion of the structures shall be constructed using creosote treated lumber.
7. No portion of the decking authorized by this Lease shall exceed the width dimension for that structure identified on page one of this Lease.
8. The Passive Conservation Easement contained in the Consent Order finalized on August 20th, 1998 shall remain in effect.
9. Only stone rip-rap shall be used to construct the groin, no concrete, rubble or other materials shall be used in the groin construction.

10. In order to protect spawning horseshoe crabs, no beach nourishment activities shall be conducted from April 15-August 30th of any year within the authorized construction window without an inspection by the project scientist or a member of the Division of Fish and Wildlife to evaluate the site for the presence of horseshoe crabs. The project scientist shall be notified at least 14 days before the anticipated start of beach nourishment activities so that a site inspection can be performed. If horseshoe crabs are using the area then no work shall be conducted during the spawning window or until such time that the horseshoe crabs have stopped using the area. If the inspection confirms the fact that no horseshoe crabs are using the area then nourishment activities can be conducted during the spawning window.
11. In order to protect nesting barn swallows, the existing structures shall be inspected for the presence of barn swallow nests or nest preparation. If active barn swallow nesting is taking place then no work shall be performed on or adjacent to the existing structures from April 15-August 1 of any year within the authorized construction window. Netting may be used to prevent the birds from entering the construction area. The netting shall be installed prior to or after active nesting and shall not be installed during active nesting periods. There is an exception to this condition if the following process is followed: A member of DNREC's Division of Fish and Wildlife Species Conservation and Research Program shall perform a pre-construction inspection of the area where the birds are nesting to determine the status of any existing nests. If the representative observes the fact that nestlings have fledged and no active nesting is taking place then construction may commence.
12. The authorized area of structure over public subaqueous lands is 6,912 square feet, represented by the 16 foot wide by 432 foot bay walk constructed channelward of the mean high water line.
13. **The beach nourishment area placed channelward of the mean high water line is located on public subaqueous lands, and as such, is subject to a fee of \$.10/sq. ft./year. During the twenty-year term of this Lease the lessee shall agree to pay the State of Delaware the sum of \$1,365.00 per annum for a total of \$27,300.00 for the 13,650 square feet of fill on public subaqueous lands utilized for the new beach nourishment area. The lessee shall be billed annually in September for this amount.**
14. In addition to the Lease fee described above, the Lease fee described in Special Condition number 10 contained in SL-075/08 issued to Dewey Beach Enterprises shall remain in effect. The condition states the following: The annual fee for the 1,250 square feet of existing floor space shall be \$12,000.00/year (\$9.60/square foot/year). The fee for the 968 feet of existing decking shall be \$3,388.00 (\$3.50/square foot/year). The combined total is \$15,388/year.
15. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.

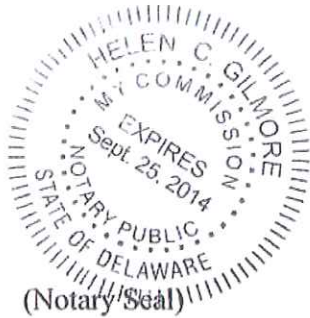
GENERAL CONDITIONS

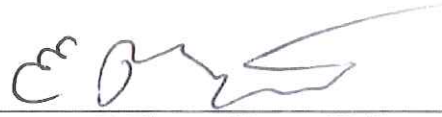
1. This Lease/Certification is granted for the purpose of providing public access and shoreline erosion protection as stated in the lease application. Any other use without prior approval shall constitute reason for this Lease being revoked.
2. The work authorized by this Lease/Certification is subject to the terms and conditions of the individual permit issued by the U.S. Army Corps of Engineers.
3. The lessee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
4. The activities authorized herein shall be undertaken in accordance with the Lease conditions, the final stamped and approved plans, and with the information provided in the lease application.
5. A copy of this Lease/Certification and the stamped approved plans shall be available on-site during all phases of construction activity.
6. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The lessee and contractor are responsible to ensure that the workers executing the activities authorized by this Lease have full knowledge of, and abide by, the terms and conditions of this Lease.
7. The lessee shall protect and save the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
8. The issuance of this Lease/Certification does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Lease/Certification does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.
10. This Lease/Certification authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Lease/Certification being revoked.
11. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.

12. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards, as amended June 11, 2011.
13. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
14. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited. Disturbance of subaqueous lands or wetlands in the path of construction activity shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
15. The lessee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the lessee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The lessee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
16. None of the activities authorized herein shall occur after the construction expiration date identified on Page 1 of this Lease. The lessee may file one construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
17. The lessee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Lease.
18. The lessee shall maintain all authorized structures and activities in a good and safe condition.
19. Application for renewal must be submitted prior to the expiration date of this Lease.
20. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the lessee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
21. This Lease/Certification is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the lessee shall obtain the written consent of the Department to transfer the Lease to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.


22. Failure to comply with any of the terms or conditions of this Lease may result in enforcement action which could include the revocation of this Lease and subsequent restoration of the site to preconstruction conditions.

IN WITNESS WHEREOF, I, E. Thomas Harvey III, the authorized representative of Dewey Beach Enterprises, have caused this instrument to be executed on this 17th day of June, 2013.






E. Thomas Harvey III (Lessee)
For Dewey Beach Enterprises



Notary

IN WITNESS WHEREOF, I, Collin P. O'Mara, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this 18 day of June, 2013.



Collin P. O'Mara, Secretary
Department of Natural Resources and
Environmental Control