

Prepared by:



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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

ADMINISTRATIVE ORDER NO. 2015-09

**AUTHORIZING CONTINUED OPERATION OVER AND, WITH A VALID PERMIT,
MAINTENANCE OF STATE-OWNED RIPARIAN LAND BY A PROPERTY OWNER
RESULTING FROM THE LOSS OF SUCH ABILITY WHERE FEDERAL SHORE
PROTECTION PROJECTS WERE CONSTRUCTED IN THE WAKE OF
SUPERSTORM SANDY**

WHEREAS, beginning on October 28, 2012, and continuing through October 30, 2012, Superstorm Sandy struck the State of New Jersey (the "State"), 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, 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

WHEREAS, the New Jersey Department of Environmental Protection (the "Department") is empowered to construct coastal protection projects in order to prevent damage caused by erosion and storms pursuant to N.J.S.A. 12:6A-1; and

WHEREAS, the Department is authorized to prioritize shore protection projects and dedicate funds thereto pursuant to N.J.S.A. 13:19-16.1 and -16.2; and

WHEREAS, in response to the devastation from Superstorm Sandy, the United States Congress appropriated funds for the creation, improvement, and reconstruction of flood hazard risk reduction measures across New Jersey's coastline; and

WHEREAS, as a result of the Congressionally appropriated funds, the State has partnered with the United States Army Corps of Engineers (the "USACE") to construct authorized flood hazard risk reduction projects consisting of an engineered dunes and beach berms;

WHEREAS, said engineered dune and beach berm projects for which the State and USACE have partnered include: Brigantine Inlet to Cape May Inlet, Absecon Island; Great Egg Harbor Inlet to Townsend Inlet; Barnegat Inlet to Little Egg Inlet, Long Beach Island; Sandy Hook to Barnegat Inlet; and Manasquan Inlet to Barnegat Inlet New Jersey Hurricane and Storm Damage Reduction Projects (collectively, the "Projects"); and

WHEREAS, in order to construct the Projects, perpetual easements and/or other real property interests must be acquired across certain oceanfront properties; and

WHEREAS, certain property owners, such as beach associations and clubs, currently operate and provide beach amenities (e.g. - trash removal and lifeguard services), as well as maintain the oceanfront beach area to the mean high water ("MHW") line; and

WHEREAS, the oceanfront beach area upon which the owner operates is subject to accretion and erosion, which may increase or decrease the land area based on the natural movement of the MHW line; and

WHEREAS, the Projects will constitute avulsive events, resulting in the sudden creation of a new oceanfront beach area seaward of the MHW line; and

WHEREAS, because the new beach area will be filled through a sudden avulsive event, as a matter of law the beach area created by filling will remain property of the State unless the upland property owner holds a riparian grant; and

WHEREAS, unless the property owner holds a riparian grant for the fill area, the owner's property will no longer extend to the MHW line; and

WHEREAS, without possession of a riparian grant, the Projects will impact beach associations' and clubs' ability to operate and provide beach amenities, as well as maintain the beach area to the MHW line; and

WHEREAS, the Department has authority to regulate land use within coastal areas pursuant to the Coastal Area Facility Review Act ("CAFRA"), N.J.S.A. 13:19-1 et seq.; and

WHEREAS, the Department has promulgated regulations related to the use of land within coastal areas pursuant to its authority; and

WHEREAS, said regulations include the enforcement of operation and maintenance activity over coastal areas; and

WHEREAS, the Commissioner of the Department is charged with the implementation of

the duties, responsibilities, and authority of the Department pursuant to N.J.S.A. 13:1B-3.

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. A property owner may continue to operate over, provide beach amenities on, and use the beach area to the MHW line, including the property owner's ability to charge fees for daily and seasonal beach badges and/or passes in accordance N.J.A.C. 7:7E-8.11(t), (u), (v), (w) and (y) over State-owned riparian lands, if a property owner otherwise would lose its ability to operate to the MHW line as a direct result of the construction of the Projects; and
2. If the property owner holds a Department-issued permit to maintain its current beach area, or applies for such a permit in the future, the rights and obligations of said permit will be interpreted to extend over the State-owned riparian area to the MHW line; and
3. The rights conveyed under this Order shall not be construed as conveying any property interests in any State-owned riparian lands, including the right to apply for a CAFRA permit; and
4. The property owner must adhere to all applicable Federal, State, or local laws regulating the use of any State-owned coastal or riparian lands; and
5. The property owner's use of, or operation over, the newly created riparian area shall be deemed as acceptance of any and all liability related to the property owner's use of, or operation over, the riparian area.

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.

Dated:

9/3/2015

By:

Bob Martin, Commissioner

STATE OF NEW JERSEY
COUNTY OF Mercer SS.:

I CERTIFY that on Sept 3, 2015,

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.

Vannessa C. Quant
NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

VANNESSA CRYSTELL QUANT
ID #2297199
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires Feb. 28, 2018