

Delivered: _____

Mailed: 3/1/23

**ASSIGNMENT OF MANAGEMENT RIGHTS
FROM THE STATE OF NEW JERSEY, TIDELANDS RESOURCE COUNCIL
TO ASSIGNEE:**

**The State of New Jersey, Department of Environmental
Protection,
Fish and Wildlife**

(1) WHEREAS, the parties agree that the following terms are defined as follows:

(1) (a) "The Assignor": The State of New Jersey, by and through the Tidelands Resource Council, with the approval of the Commissioner of the Department of Environmental Protection, and the concurrence of the Attorney General, with offices in care of the Bureau of Tidelands Management, P. O. Box 420 Mail Code 501-02B, 501 East State Street, Trenton, New Jersey, 08625-0439 ("the Bureau"), acting pursuant to N.J.S.A. 12:3-1 et seq. and N.J.S.A. 13:1B-13.

(1) (b) "The Assignee": The State of New Jersey, Department of Environmental Protection, Fish and Wildlife (hereinafter "NJDEP Fish and Wildlife"), as the lead agency, with offices at Mail Code 501-03, PO Box 420, Trenton, New Jersey 08625-0420. The NJDEP Fish and Wildlife will manage and control the site as the lead and single point of contact for any matters pertaining to this Agreement.

(1) (c) "The Tidelands": Those lands within and surrounding the Property, located above and below the current mean high water line (MHWL), title to which is claimed by the State as lands now or formerly flowed by the mean high tide of the Atlantic Ocean (within State waters), and south of Little Egg Inlet as shown on the State's Tidelands Claims Map Number 231-2100, filed in the office of the County clerk, and on file with Assignor.

(1) (d) "The Property": The lands known and designated as Horseshoe Island that naturally accreted and formed in the Atlantic Ocean offshore of the Refuge's Little Beach Island (Little Beach Island is part of the Refuge's land designated as Lot 1, Block 1301, on the Tax Map of Galloway Township, Atlantic County) and to the south of Little Egg inlet. These lands consist entirely of State-owned Tidelands and includes the immediately surrounding water, shoals, and sand bars making up Horseshoe Island, portions of which extend above the current MHWL. In 2022, Horseshoe Island was located approximately 1,200 feet offshore of the adjacent shoreline and

is roughly 100 acres in size, however, the sand bar island is not fixed in place and is constantly shifting and changing shape. The habitat provided by Horseshoe Island and the surrounding intertidal area have become one of the most critically important habitat areas for nesting and migratory shorebirds in the State, including threatened and endangered species. The habitat and birds are important public trust resources.

(1) (e) "The Plan": The administration of the Property in accordance with a plan entitled "Proposed Management Plan - Horseshoe Island, New Jersey" prepared by NJDEP Fish and Wildlife and the US Fish and Wildlife Service (hereinafter "USFWS"). A copy of the plan is attached and is on file with the Assignor. The administration of the plan is also subject to the terms and conditions of this agreement. Any discrepancies between the Plan, which is recognized as a living document, and this Agreement, the terms of this Agreement shall prevail (specifically for the dates of closure to restrict public access to the general public). The general purpose of the plan is for the NJDEP Fish and Wildlife to manage and control the area for the protection of bird species by providing undisturbed habitat. This includes nesting, roosting, and foraging habitat for shorebirds to support nesting, wintering, and migratory periods, primarily through the restriction of public access to the Property, and adjacent to the Property, by the recreating public during the timing restrictions for closure approved by the Tidelands Resource Council (see terms and conditions below). The restriction of such access by the NJDEP Fish and Wildlife is consistent with its authority to restrict public use of any specific land or water area under its control. This restriction will be accomplished by educating the public, installing signs or fencing as needed, patrolling by NJDEP Fish and Wildlife and/or its contractors to enforce the closure consistent with regulations allowing for such closure on lands controlled by NJ DEP Fish and Wildlife and other applicable laws to protect wildlife and habitat under the authority and jurisdiction of the Assignee. The Plan also authorizes scientific monitoring activities conducted by NJDEP Fish and Wildlife and USFWS staff.

(2) WHEREAS, ALL of the Property, as described herein, is claimed to have been currently or formerly below the MHWL of the Atlantic Ocean, and therefore fee simple ownership title to these tidal lands is claimed to be in the Assignor; and

(3) WHEREAS, the Assignee agrees to defend for the duration of this agreement the Property and the Tidelands against the claims and demands of all other persons or entities whatsoever; and

(4) WHEREAS, the Assignor and the Assignee recognize that ownership of the Tidelands is impressed with a public trust, and the importance of public access under the public trust. However, as stewards of the Tidelands, the Assignor also must consider the environmental impact and the importance of public trust resources, such as critical habitats and species to the State. It is also recognized that the NJDEP may restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat area from injury or injurious uses; and

(5) WHEREAS, on February 2, 2022 the Assignee appeared before the Tidelands Resource Council with the request for a Tidelands Management Rights Agreement for Horseshoe Island and received approval for an Assignment of Management Rights Agreement to manage and control the Property in accordance with the approved Plan, subject to the following conditions:

(5) (a) The Assignee concedes that the owner of the Tidelands is the State of New Jersey, acting by and through the Tidelands Resource Council; and

(5) (b) The Assignee will restore the Tidelands by removing any signs or fencing installed by Assignee if the control and management of the Tidelands reverts to the Assignor; and

(5) (c) The Assignee will manage and control the Property for the protection of bird species and habitat (recognized as important public trust resources) in accordance with this Agreement and pursuant to the Plan which is attached and made a part of this Agreement; and

(5) (d) The Assignee is authorized to close the Property to restrict access by the general public to the Property as found necessary by Assignee for the protection of birds and habitat. The closure period will run from March 1 through September 30 of each year the Agreement is in effect. This specifically includes closure of the habitat by restricting access and use of the Property by the general public (including recreational use of the Property by people and pets), boats, jet skis, kayaks, and/or other watercraft; and

(5) (e) The closure restrictions will be enforced by conducting public outreach, installing signage and fencing, conducting patrols and/or

enforcement by NJDEP Fish and Wildlife and/or its contractors in accordance with the Plan and applicable laws; and

(5) (f) The above restrictions to access only apply to the general public and does not apply to State or Federal agencies for the purpose of navigation, shore protection, biological monitoring, or other needs of State or Federal agencies, subject to those agencies obtaining the necessary regulatory approvals; and

(5) (g) The Assignee will submit an annual report to the Assignor describing the condition of the Property, including its size and location, and shall generally characterize the management and control activities performed by Assignee. The annual report shall also characterize the annual condition of wildlife habitats and document shorebird and/or other wildlife usage of the Property. The report shall serve as NJDEP Fish and Wildlife's finding to the Assignor that prevailing conditions warrant continued restrictions on the use of the specific land and water areas, management and control over which has been assigned to the Assignee herein. The report will be due by December 31 of each year the Agreement is in effect. The first report is due December 31, 2022; and

(5) (h) The Assignee assumes all responsibility for the management and control of the Property in accordance with this Agreement and Plan; and

(5) (i) The Agreement will be in effect for five (5) years. If, in the interim, the Property changes to such an extent that the Property no longer exists or should other such factors warrant NJDEP Fish and Wildlife to change its finding regarding the need for restrictions on the use of the land and water areas herein assigned to its management and control, then upon report of such a condition by the Assignee to the Assignor, the Agreement will be terminated.

NOW THEREFORE, in consideration of one dollar (\$1.00) paid in hand and in accordance with the terms and conditions herein, the Assignor acting in accordance with N.J.S.A. 12:3-37.1, the Assignor and Assignee agree as follows:

(6) The Assignor assigns to the Assignee the management and control rights for a period of five (5) years, commencing on March 9, 2022; and the Assignee accepts this assignment of said control in accordance with the terms set forth in this Agreement.

(7) The Assignee agrees to carry out the Plan, implementing said management and control activities or actions consistent with its delegated authorities. The Assignor acknowledges that the Plan is a living document

and may be modified by the Assignee. All significant modifications of the Plan shall be subject to approval by the Tidelands Resource Council of the Department of Environmental Protection and its successors or assigns.

(8) (a) In the event that the Assignor believes that the Assignee is not carrying out the terms of the Plan, the Assignor shall so notify the Assignee in accordance with the provisions of Paragraph 10. The notice shall specify in detail the terms or term of the Plan that the Assignor believes the Assignee has not carried out. If the Assignee objects, it shall do so in writing, citing this Assignment and its date, file number, and this paragraph. The Assignor shall conduct such further investigation as it feels necessary. The Assignee shall at all times cooperate in the investigation. Upon completion of any such investigation, the Assignor may schedule the matter for appropriate action at a regular meeting of the Tidelands Resource Council. The Assignor shall provide notice of the meeting in accordance with the provisions of Paragraph 10.

(8) (b) The Assignor and the Assignee shall present the matter to the Tidelands Resource Council in accordance with its usual way of proceeding at that time. However, all interested persons shall have a reasonable opportunity to be heard and to present witnesses and information.

(8) (c) The Council shall thereupon decide whether the Assignee is properly carrying out the terms of the Plan. If it decides that the Assignee is not, this decision shall be subject to the review of the Commissioner of the Department of Environmental Protection (N.J.S.A. 13-1B-13).

(8) (d) Upon a decision of the Council that the Assignee is not properly carrying out the Plan, and upon the Commissioner's approval of this decision, the Council shall establish a reasonable period of time to correct the violation, upon notice and an opportunity to be heard by the Assignee. Should the Assignee fail to correct the violation within the time proscribed, the Council shall establish a remedy.

(9) The Assignor may terminate this Agreement if any part of the Property ceases to be used as designated in the Plan at any time. Notice of termination and the reasons for termination shall be given in accord with Paragraph 10.

(10) All notices to the Assignee shall be in writing, and shall be delivered personally, or by email, or by regular mail, to the following office and staff or their successors:

John H. Heilferty, Chief
NJDEP Fish and Wildlife
Endangered and Nongame Species Program
Mail Code 501-03, P.O. Box 420
Trenton, NJ 08625-0420

All notices to the Assignor shall be in writing and shall be delivered personally or by mail, to the following:

Randy D. Bearce, Manager
Bureau of Tidelands Management
501 East State Street
P.O. Box 420 Code 501-02B
Trenton, NJ 08625-0420

With copies to the following:

Division of Law
Department of Law and Public Safety
P. O. Box 093
Trenton, NJ 08625-0093
Attn: Section Chief,
Environmental Permitting and Counseling Section

All notices to the Assignor or to the Assignee shall refer to this Assignment and note the date of this Assignment and the Bureau of Tidelands Management file number, which is number 0111-06-0001.1 TMA190001, and the filing information in the Bureau's Liber records when available. The address to which any notice may be sent may be changed by either party upon written notice in accordance with this paragraph.

(11) All officials and offices named in this Assignment include any successors duly established by law.

(12) This Assignment may not be assigned without the consent of the other party. This consent may not be unreasonably withheld. In the event an assignment is permitted, all the terms of this Assignment shall nevertheless remain in full force and effect.

(13) No Commissioner, Officer, Agent or Employee of the Assignee and/or Assignor shall be held personally liable under any provisions of this agreement or because of its execution or attempted execution, or because of any breach or alleged breach thereof.

(14) The Assignee may make an application to the Tidelands Resource Council or its successor in office for renewal of this agreement at the expiration of this term. The State of New Jersey does not covenant nor is it bound to make such renewal. If any such renewal is approved, it shall be at the terms and conditions as may be fixed by the Tidelands Resource Council or its successor, at that time.

(15) Paragraphs (1) through (5) are incorporated in this Agreement by reference.

(16) The assignment is made pursuant to N.J.S.A. 12:3-37.1, and that in accordance with N.J.S.A. 12:3-37.1, the Property which is hereby assigned shall be managed and controlled subject to the terms of this agreement. If the Property is not managed and controlled in accordance with the provisions of N.J.S.A. 12:3-37.1, this agreement shall be of no further force and effect.

(22) By signing this agreement, the NJDEP Fish and Wildlife agrees to the terms and conditions contained herein.

Assignee:

NJDEP Fish and Wildlife:

**David M.
Golden**

Digitally signed by David
M. Golden
Date: 2022.09.01 14:47:13
-04'00'

DATE: _____

David M. Golden, Assistant Commissioner
NJDEP Fish and Wildlife

PREPARED BY: _____

Randy D. Bearce

DATE: 9/6/2022

Randy D. Bearce
Manager
Bureau of Tidelands Management
N.J.S.A. 46:26A-3

APPROVED BY: _____

W. CONOR KENNEDY

DATE: 1/17/2023

Nicolas G. Seminoff *W. CONOR KENNEDY*
Deputy Attorney General



IN WITNESS WHEREOF, the State of New Jersey has caused these presents to be signed by the Commissioner of Environmental Protection and the Chairperson of the Tidelands Resource Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be concurred in by the Attorney General and attested to by the Secretary of State this 22nd day of February, 2023.

This is the 7th page of the riparian File 0111-06-0001.1 TMA190001.


Katrina Angarone

Vincent J. Mazzei

Vincent J. Mazzei, Jr. Assistant Commissioner
Watershed and Land Management
Department of Environmental Protection

12/13/22

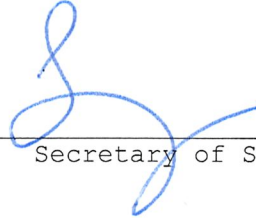
Date


Mary Pat Robbie, Acting Chairperson of the
Tidelands Resource Council

12/5/22
Date

ATTEST:

Tahesha Way


Secretary of State

2/22/23
Date

CONCUR:

Matthew J. Platkin

By David C. Apy

Assistant Attorney General

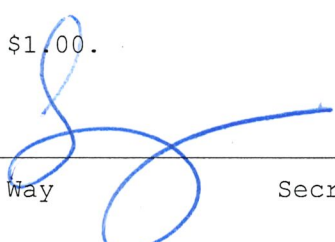
Attorney General

2/16/23
Date

This is the 8th page of the riparian File 0111-06-0001.1 TMA190001.

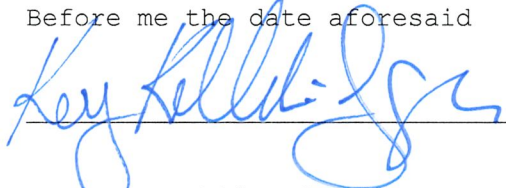
STATE OF NEW JERSEY)
) SS:
COUNTY OF Atlantic)

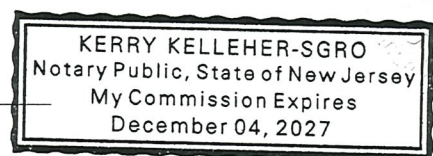
BE IT REMEMBERED that on this 22nd day of Feb, 20 23, before me,
a Notary Public of the State of New Jersey, personally appeared Tahesha Way,
who being by me duly sworn on her oath, says that she is the Secretary of
State of the State of New Jersey, the Grantor named in this instrument; that
she knows the Great Seal of the State of New Jersey; that the Seal affixed to
this instrument is that seal and was affixed by her as the act and deed of the
Grantor; that on the date each signatory executed this instrument each held
the office attributed to them, i.e., Matthew J. Platkin was the Attorney
General, and that authority to review and sign this grant was delegated to
David C. Apy, Assistant Attorney General, and in AAG Apy's absence, Assistant
Attorney General Jean Reilly, in a document entitled "Tidelands Delegation,"
dated January 24, 2018, filed with the Secretary of State, with a copy filed
in the records of the Tidelands Resource Council in Liber X-13 page 75, Mary
Pat Robbie was the Acting Chairperson of the Tidelands Resource Council, and
Shawn M. LaTourette was the Commissioner of the Department of Environmental
Protection, and that he delegated his authority to review, approve and sign
this Agreement to Vincent J. Mazzei, Jr., P.E., in Administrative Order No.
2021-16 dated July 16, 2021, and that she knows their signatures and that they
signed this instrument as the act and deed of the State of New Jersey; and
that this Management Rights Agreement was concurred in by the Attorney General
and that the consideration to be paid for this Management Rights Agreement
will be \$1.00.



Tahesha Way Secretary of State 2/22/23
Date

Sworn to and Subscribed
Before me the date aforesaid





A Notary Public of the State of New Jersey

(This instrument was reviewed and approved by the Attorney
General's Office of the State of New Jersey.)

This is the 9th page of the riparian File 0111-06-0001.1 TMA190001.

**STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Recorded in Liber X-14 Pg 118

**THE STATE OF NEW JERSEY
Fish and Wildlife**

Assignment of Management Rights

Date 02/22/2023

This Assignment of Management Rights should be recorded in the deed record at the Clerk's Office (or Recorder of Deeds) in the County in which the lands are situate.