COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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(757) 518-2000 Fax (757) 518-2009
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L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION -- ORDER BY CONSENT
ISSUED TO
SHORE LANDVEST, INC. D/B/A SUNSET BEACH RESORT
Ground Water Withdrawal Permit No. GW0039200

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Shore Landvest, Inc., regarding the Sunset Beach Resort, for the purpose of resolving certain violations of the Virginia Ground Water Management Act of 1992 (Va. Code §§ 62.1-254 *et seq.*) and its supporting regulations (9 VAC 25-610-10 *et seq.*).

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Act" means the Ground Water Management Act of 1992, Va. Code §§ 62.1-254 *et seq.*

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.

5. "Facility" means the Sunset Beach Resort, a hotel/restaurant complex located at 32246 Lankford Highway, Cape Charles, Northampton County, Virginia.

6. "Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth of Virginia, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs. 9 VAC 25-610-10.

7. "Ground Water Management Area" means any area declared by the Board to have met any of the conditions in 9 VAC 25-610-70 and the Board determines that the public welfare, safety and health require that regulatory efforts be initiated.

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

9. "Order" means this document, also known as a "Consent Order" or an "Order by Consent," a type of Special Order under the State Water Control Law.

10. "Permit" means Ground Water Withdrawal Permit No. GW0039200, which was effective July 1, 1996, modified July 1, 1999, and expired June 30, 2006, and means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

11. "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country. 9 VAC 25-610-10.

12. "Regulations" means 9 VAC 25-610-10 *et seq.* - the Ground Water Withdrawal Regulations.

13. "Shore Landvest" means Shore Landvest, Inc., doing business as Sunset Beach Resort, a company certified to do business in Virginia, its affiliates, partners, subsidiaries, and parents.

14. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Shore Landvest, a person, owns and operates the Facility in Northampton County, Virginia. Northampton County is located in the Eastern Shore gound water management area as declared in 9 VAC 25-610-80. Shore Landvest was subject to the Permit, which authorized Shore Landvest to withdraw and use 7,650,000 gallons per year from the Columbia and Lower Yorktown-Eastover aquifers. The permitted withdrawal of ground water provided a public water supply for the Facility.

2. The Permit specified that Shore Landvest's withdrawal of ground water should not exceed a total of 1,420,000 gallons in a calendar month and should originate from three permitted wells. Water use from each well and the total well system was to be recorded monthly and reported to DEQ by the tenth day of each January, April, July and October for the previous calendar quarter.

3. 9 VAC 25-610-90(D) of the Regulations and Part I(9) of the Permit required Shore Landvest to submit a new permit application to DEQ at least 270 days before the expiration of the Permit. The permit application was due November 3, 2005. Shore Landvest submitted a timely permit application dated September 30, 2005. There was a series of discussions

between DEQ, Shore Landvest and Shore Landvest's technical consultant during the period August 2005 through November 2006 to develop permit conditions.

4. Discussions between DEQ and Shore Landvest were discontinued in December 2006 and resumed with a third party, which purportedly was going to purchase the Facility from Shore Landvest. DEQ's discussions with the third party and its technical consultant to develop permit conditions continued until July 2007.

5. On or about August 1, 2008, when inquiring about a matter unrelated to the permit application, DEQ staff ("staff") was informed by a representative of Shore Landvest that the sale of the Facility to the third party had not been consummated. Staff was requested to resume review of the permit application dated September 30, 2005.

6. DEQ advised Shore Landvest by letter dated August 7, 2008, of the information DEQ needed to complete its permit application review; DEQ requested a response by September 8, 2008. The August 7, 2008, DEQ letter was transmitted again by electronic mail on October 27, 2008. A representative of Shore Landvest responded by letter dated October 27, 2008, to the effect that, due to changes in personnel at the Facility, he was unable to locate the review comments provided by DEQ in response to the original permit application dated September 30, 2005, or the supporting material that had been prepared by Shore Landvest's technical consultant in support of that application. In a telephone conversation with DEQ staff on March 10, 2009, the representative of Shore Landvest stated that he would contact its consultant and submit to DEQ the information it had requested in its August 7, 2008, letter.

7. Shore Landvest has not submitted to DEQ the information requested in the August 7, 2008, letter required for the September 30, 2005, permit application to be considered complete.

8. Shore Landvest submitted ground water withdrawal reports for the period July 1, 2006, through March 31, 2009, which showed continual withdrawal activity during that period.

9. Va. Code § 62.1-258 and 9 VAC 25-610-40(A) of the Regulations prohibit the withdrawal of ground water within a ground water management area without a permit. Shore Landvest has been and continues to be in violation of the Act and the Regulations by withdrawing ground water within a ground water management area without a permit.

10. Va. Code § 62.1-266(C) provides that a ground water withdrawal permit shall expire at the end of its term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

11. 9 VAC 25-610-90(A)(9) of the Regulations provides that, a person who has an existing permit to withdraw ground water and who files a timely but incomplete permit application to continue withdrawing ground water, must provide to the Board information required to complete the application within 60 days of the Board's notice to the applicant of deficiencies in the application. A person who does not provide the required information to the Board within 60 days of the notice of deficiencies shall cease withdrawal until the person provides the additional information to the Board and the Board concurs that the application is complete. Shore Landvest violated the Act and the Regulations by not providing the information required by DEQ to complete review of Shore Landvest's permit application within 60 days of DEQ's August 7, 2008, notice of deficiencies.

12. 9 VAC 25-610-90(E) of the Regulations provides that, where the Board considers an application to withdraw ground water incomplete, it may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the Board considers the application complete.

13. On April 21, 2009, DEQ issued NOV No. W2009-04-T-104 advising Shore Landvest of the above referenced observations. Shore Landvest has not responded to the NOV.

14. In order for Shore Landvest to return to compliance, DEQ staff and representatives of Shore Landvest have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d) the Board orders Shore Landvest, and Shore Landvest agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $32,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Shore Landvest shall include its Federal Employer Identification Number (FEIN) ( ) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Shore Landvest, for good cause shown by Shore Landvest, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order only, Shore Landvest admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Shore Landvest consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Shore Landvest declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Shore Landvest to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Shore Landvest shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Shore Landvest shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shore Landvest shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Shore Landvest intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Shore Landvest. Nevertheless, Shore Landvest agrees to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. Shore Landvest petitions the Director or his designee to terminate the Order after it has completed all the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Shore Landvest.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shore Landvest from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules, or specifications attached hereto or submitted by Shore Landvest and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Shore Landvest certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Shore Landvest to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Shore Landvest.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Shore Landvest voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Francis L. Daniel, Regional Director
Department of Environmental Quality

----------(Remainder of Page Intentionally Blank)----------

Shore Landvest, Inc. voluntarily agrees to the issuance of this Order.

Date: 11-1-2009 By: _____, President
(Person) (Title)
Shore Landvest, Inc.

Commonwealth of Virginia
City/County of Northampton

The foregoing document was signed and acknowledged before me this 2nd day of November, 2009, by Robert C. Oliver Jr who is President of Shore Landvest, Inc., on behalf of the corporation.

Jane R Belote
Notary Public Jane R Belote

271618
Registration No.

My commission expires: Dec 31, 2010.

Notary seal:

APPENDIX A

Shore Landvest shall, in accordance with the provisions of the State Water Control Law, the Ground Water Management Act of 1992, and the Ground Water Withdrawal Regulations, comply with the following regarding the withdrawal of ground water at the Sunset Beach Resort:

1. Within 60 days of the effective date of this Order, Shore Landvest shall provide to DEQ the information requested in its letter dated August 7, 2008, attached hereto as Exhibit 1, in order to process Shore Landvest's ground water withdrawal permit application.

2. For 60 days following the effective date of this Order, Shore Landvest may continue to withdraw ground water. Should Shore Landvest provide the information required by Item 1 of this Appendix A within 60 days of the effective date of this Order, it may continue to withdraw ground water until such time as DEQ takes its final action to issue or deny Shore Landvest's permit application. Any withdrawal under this Item 2 shall be limited as follows:

   a. Shore Landvest shall withdraw no more than 7,650,000 gallons of ground water per year to provide a public water supply for the Sunset Beach Resort. Other beneficial uses are not authorized by this Order.

   b. The withdrawal of ground water shall originate from the following withdrawal points:

Owner Well Name	DEQ Well#	Depth	Aquifer
1	165-260	70'	Columbia
2	165-042	70'	Columbia
3	165-112	240'	Lower Yorktown-Eastover

   c. Total withdrawals from the wells referenced in paragraph 2 of this Appendix A shall not exceed 1,420,000 gallons in a calendar month.

   d. Water use from each well and total system water use shall be recorded monthly and reported on forms provided by DEQ to the Tidewater Regional Office by the tenth day of each January, April, July and October for the respective previous calendar quarter. Records of water use shall be maintained by Shore Landvest as required by the Ground Water Withdrawal Regulation.

   e. Each well referenced in subparagraph b above shall have in-line totalizing flow meters to read gallons, cubic feet, or cubic meters. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ground water withdrawal reports.

   f. Each well referenced in subparagraph b above shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of 0.5 inches and be sealed by a removable plug or cap. Shore Landvest shall provide a tap for taking raw water samples from each well.

g. Shore Landvest shall not place a pump or water intake device lower than the top of the uppermost confined aquifer that a well utilizes as a ground water source or lower than the bottom of an unconfined aquifer that a well utilizes as a ground water source when installing a replacement well for any of the wells referenced in subparagraph b above.

h. Shore Landvest shall notify DEQ in writing and gain staff approval of any change in the status, construction, or pump setting of any well referenced in subparagraph b above. A revised water well completion report must be submitted to DEQ within 30 days of any change in the event that the physical construction of a well is altered or the pump setting in the well is changed.

i. Shore Landvest shall notify DEQ five working days in advance of any scheduled well maintenance that results in the pump being pulled for wells with unknown screen locations. At the time of such notification, DEQ may take the opportunity to run geophysical logs to determine screen locations.

3. Should Shore Landvest not provide the information required by Item 1 of this Appendix A within 60 days of the effective date of this Order, DEQ will suspend review of Shore Landvest's permit application and Shore Landvest shall immediately cease withdrawing ground water. Any unpermitted withdrawals of ground water after that date will be a violation of this Order.

4. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462

COMMONWEALTH of VIRGINIA

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L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

August 7, 2008

Mr. Robert Oliver
Best Western Sunset Beach Resort
P.O. Box 472
Cape Charles, VA 23310

Re: Best Western Sunset Beach Resort – Ground Water Withdrawal Permit Application GW0050900

Dear Mr. Oliver:

As a follow up to our recent telephone conversation it is our understanding that Shore Landvest, Inc. wishes to continue processing their application for a new ground water withdrawal permit that was originally submitted on October 4, 2005. I have reviewed the status of that application and the January 9, 2006 responses to our December 8, 2005 administrative review letter. Based on the responses, the application is now administratively complete.

Before staff can begin a technical review of the application, Section 5 – Justification for the Amount of Withdrawal Requested should be updated. The data used in the application is based on withdrawals and demands from 2000 through a portion of 2005. Since there is now complete data available for 2005 as well as 2006 and 2007 these data should be considered in the analysis.

Additionally, the information requested in Section 17 – Additional Information Required by the Board should be addressed. Please submit an aquifer test plan and a schedule for completion of the camera surveys, pump intake determinations, etc. Please keep in mind that significant application processing time has been lost due to the potential sale of the Best Western Sunset Beach Resort property and that Shore Landvest's permit expired on June 30, 2006. It is imperative that Shore Landvest move expeditiously to complete its application for a new permit.

Please submit two copies of the required information, in a format suitable for substitution into your application, to this office no later than September 8, 2008. If necessary, staff will contact you to request additional information after review of your responses.

Exhibit 1

Applicants that do not address deficiencies within request time periods will have their application processing terminated and will lose their place in the review process.

This letter is intended to provide information on what information DEQ believes is needed in order to fully evaluate your perm it application and is not a final determination or case decision under the Administrative Process Act. If you would like to discuss the information contained in this letter, please contact me at (757) 518-2197. In the event that you disagree with the contents of this letter and discussions with staff do not lead to a satisfactory resolution, you may elect to participate in DEQ's Process for Early Dispute Resolution. For information on the Process for Early Dispute Resolution, please visit the "Laws & Regulations", then the "DEQ Regulations" portion of our website for: http://www.deq.virginia.gov/regulations/pdf/Process_for_Early_Dispute_Resolution_8260532.pdf

If you have any questions, please contact me at (757) 518-2197.

Sincerely,

Henry L. Ghittino
Ground Water Permits
Group Leader

cc: David E. Borton, Remediation Manager
Rebecca Tolliver, Culpeper Engineering