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December 7, 2022

**Via JEDS**

Hon. James H. Pickering, Jr. J.S.C.  
Superior Court of New Jersey  
Cape May County Courthouse  
9 North Main Street  
Cape May, New Jersey 08210

**Re: New Jersey Department of Environmental Protection v. City of North Wildwood, et al**  
**Docket No. CPM-C-000055-22**

Dear Judge Pickering:

This office represents Defendant City of North Wildwood (“City”) in the above-captioned litigation. Yesterday, at approximately 3:00 PM, we received Plaintiff New Jersey Department of Environmental Protection’s (NJDEP) Verified Complaint and Order to Show Cause seeking temporary and preliminary injunctive relief against the City.

Among other things, the proposed Order to Show Cause seeks the imposition of immediate temporary restraints against the City with respect to the following actions:

installing a bulkhead between 15th and 16th Avenues until it has received a permit authorizing the installation of same from the NJDEP;

engaging in any further excavation, placement or regrading of sand between 14th and 16th Avenues until it has received a permit authorizing the installation of same from the NJDEP;

engaging in any other oceanfront construction, reshaping or dunes, and/or reconstruction of the access point at 16th and 25th Avenues until it has received a permit authorizing the installation of same from the NJDEP;...



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There is an extensive history behind the State's request, but please be advised that the City has no present intention of engaging in any of these activities as, thanks to the City's efforts to date and favorable weather, the area in question appears to have stabilized. Additionally, the City intends to first seek an emergency authorization from NJDEP for any future activities on the beach should a new emergent situation arise. What the City might do in a hypothetical situation in the future where an emergency authorization is denied would be purely speculative and cannot possibly form the basis for the extraordinary relief requested by the State. That being so, there is no present basis for the imposition of temporary restraints.

Furthermore, we are constrained to point out that NJDEP's asserted basis for the imposition of temporary restraints – *i.e.*, alleged damage to the beach caused by the construction of an emergency bulkhead – will not result in any irreparable harm. This is so because of the obvious fact that there is very little beach left to be damaged and the bulkhead, if built, can always be removed. We intend to fully develop and present the factual basis for the foregoing position of the City in our forthcoming opposition to NJDEP's application for preliminary injunctive relief, including the fact that an expert's report referenced in plaintiff's papers (the report of Dr. Jon Miller) concedes that "beaches are inherently dynamic, and storms are intrinsically unpredictable and it is possible that outcomes could differ from those expected." Indeed, the City will present evidence that the dune system is clearly compromised and waiting for complete failure prior to implementing coastal protective measures is not only more expensive, but also irresponsible in terms of the City's responsibility to provide for public safety and to abate dangerous conditions and hazards. Simply stated, the City cannot wait for a breach, as there is damage at that point and an unnecessary public safety hazard, which is what the City is looking to avoid.



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In the alternative, if the Court were to elect to impose temporary restraints pending the return date of the Order to Show Cause, the City reserves the right to return to Court (on two days' notice) and seek dissolution of the temporary restraints in the event that a major storm is threatening and/or the referenced dunes are physically breached or substantially reshaped as a consequence of action by inclement weather, wind or water. In this regard, please be advised that just this October the remnants of Hurricane Ian left 10-foot drop offs on the face of the dune and cross overs. These drop offs prevent emergency responders from accessing the beach. They also create an absolute immediate public health emergency because people can, do and have tried to traverse the dune even though there is a huge drop off. We note in this regard that NJDEP recently denied the Borough of Stone Harbor's request for emergency beach measures, only to reverse itself less than 24 hours later when beach conditions impeded a water rescue. . Therefore, *at the very least*, if this Court grants temporary restraints, it should afford the City the right to return to Court and seek dissolution of the temporary restraints on an emergent basis if needed.

Thank you for your attention in this matter.

Respectfully submitted,

**CULLEN AND DYKMAN LLP**

A handwritten signature in blue ink, appearing to read 'A. Bocchi', written over the printed name.

Anthony S. Bocchi, Esq.

ASB/rc  
cc: Kevin A. Terhune, D.A.G. (via JEDS)