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February 21, 2023

By electronic filing & Overnight Mail

Honorable Michael J. Blee, A.J.S.C.
Chancery Division
Cape May County Superior Court
9 North Main Street,
Cape May, New Jersey 08210

Re: Department of Environmental Protection v. City of North
Wildwood; "XYZ Corporations" 1-10; and "John and/or Jane
Does" 1-10

NJDEP Request for Case Management Conference

Dear Judge Blee:

This office represents the Department of Environmental Protection ("DEP") in the above referenced matter. Following the Court's rulings on February 1, 2023, both North Wildwood ("NWW") and DEP submitted proposed Amended Orders to the Court seeking to clarify the Court's rulings of February 1 2023. In its February 9, 2023 letter, DEP further requested that the Court revise the discovery schedule discussed on February 1, 2023 to require that written discovery be propounded 30 days after the DEP answers NWW's counterclaims or the Court renders a decision on any motion to dismiss. The parties both offered our availability to discuss these issues further at a case management conference with the Court. While no additional Orders have yet been issued by the Court and the Court has yet to respond to the post hearing submissions, NWW's most recent filing of February 17, 2023 requires that DEP once again request a case management conference to discuss these pending issues and NWW's latest filing.



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February 21, 2023

Page 2

On February 14, 2023, North Wildwood ("NWW") filed an Answer and Counterclaim in the above matter. NWW's February 14, 2023 Answer and Counterclaim was consistent with the proposed Answer with Counterclaims attached to its motion for leave to file a Counterclaim that was granted by the Court on February 1, 2023. On February 17, 2023, however, NWW filed an Amended Answer with Counterclaim without leave of this Court, adding three additional Counts which were not included in the proposed Answer with Counterclaims considered by the Court on February 1, 2023.

In analyzing a motion for leave to file a Counterclaim in a summary proceeding, the Court must not only consider whether the proposed counterclaims should be considered by the Court pursuant to the entire controversy, but the Court must also consider whether the Counterclaims presented can be disposed of by the Court in a summary manner. R. 4:67-4. Not only has NWW filed its Amended Answer with Counterclaims without leave of the Court, but the additional counts presented in its amended pleading are neither related to DEP's original summary proceeding, nor can they be disposed of in a summary manner.

As such, DEP respectfully requests that Your Honor schedule a case management conference so DEP may receive guidance from the Court as to whether NWW's amended pleadings are permitted by Your Honor's rulings on February 1, 2023, and if so, whether the current discovery schedule originally discussed on February 1, 2023, can be amended to address the issues raised by DEP in its correspondence of February 9, 2023.

Thank you for the Court's attention to this matter.

Sincerely yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Kevin A. Terhune
Kevin A. Terhune
Deputy Attorney General

Encls.

cc: Anthony S. Bocchi, Esq. (by e-courts)