

SUPERIOR COURT OF NEW JERSEY, CAPE MAY COUNTY
CHANCERY DIVISION
Docket No. C-55-22

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

CITY OF NORTH WILDWOOD, "XYZ
CORPORATIONS" 1-10; and "JOHN
AND/OR JANE DOES" 1-10,

Defendants.

Civil Action

REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Proper design of shore protection measures is necessary to ensure that both the New Jersey public and environment are protected. For this reason, the legislature unambiguously decreed in the Coastal Area Facility Review Act ("CAFRA") that the New Jersey Department of Environmental Protection ("DEP") must review and approve a permit application prior to development in the coastal area, and DEP promulgated rules requiring careful technical review prior to issuing a permit for coastal engineering measures. It is undisputed that the City of North Wildwood ("NWW" or "Defendants") has Emergency Authorization ("EA") to install jersey barriers for beach protection but no EA or permit to install a bulkhead. Thus, the Court should grant DEP's application for a preliminary injunction to stop NWW from installing a bulkhead unless and until it has DEP authorization to do so.

Defendants also failed to timely challenge DEP's partial denial of NWW's EA application and are now making the extraordinary request for the Court to stand in the shoes of the State Agency tasked with making EA determinations and allow NWW to install a bulkhead with no statutory or regulatory approval. Moreover, the Court does not have jurisdiction to find that DEP's EA decision was arbitrary and capricious because the EA decision is now a final agency action due to NWW's failure to timely challenge the decision.

Defendants have indicated to the Court that NWW would file a new EA application "for any future activities on the beach should a new emergent situation arise." Since DEP's filing of its Order to Show Cause, DEP has repeatedly reached out to NWW agreeing to assist with any future EA application. As such, NWW's failure reach out to DEP for assistance or to file a new EA is in direct contradiction to their contention that there has been an ongoing emergency warranting the construction of a bulkhead. This contradiction further renders NWW's arguments contesting DEP's decision on the October 5, 2022 EA application moot. Filing for a new EA, based upon the current conditions, is the correct regulatory process that should be followed, and DEP should be afforded the opportunity to review and make a decision on any new EA application.¹ If NWW disagrees with DEP's decision on a new EA application, it has the right to then challenge that decision, but not before this Court.

Thus, this case is simple. To protect the environment and integrity of the regulatory process, DEP is asking the Court for a preliminary injunction to halt NWW from installing a bulkhead

¹ DEP was notified by NWW's counsel on January 6, 2023 that NWW may be submitting a new EA application to DEP that requests installation of a bulkhead in the area in question near 15th and 16th Avenues and that this new request may also include the installation of bulkhead at additional locations along the oceanfront. See First Supplemental Certification of Kevin Terhune, Paragraph 11.

without an EA or permit approval.²

ARGUMENT

POINT I

**DEP HAS SATISFIED THE LEGAL STANDARD FOR A PRELIMINARY
INJUNCTION OF ONGOING ENVIRONMENTAL VIOLATIONS.**

A. NWW's repeated statutory violations satisfy DEP's
obligation to demonstrate irreparable harm prong.

Proof of repeated, ongoing environmental violations is grounds for an injunction without evidence of specific harm. Dep't. of Env'tl. Prot. v. Interstate Recycling, 267 N.J. Super. 574, 577-78 (App. Div. 1993) (affirming injunction of "repeated violations" of the Solid Waste Management Act without proof of "actual environmental damage"); Dep't of Env'tl. Prot. v. Lewis, 215 N.J. Super. 564, 571-72 (App. Div. 1987) (noting temporary injunction granted for DEP on proof of statutory violations without evidence of specific irreparable harm). DEP "seeks injunctive relief, not under the inherent equity power of the court, but by virtue of express statutory authority based on a showing of habitual violation" of the Coastal Zone Management Rules ("CZM Rules"), the CAFRA, and the Freshwater Wetlands Protection Act ("FWPA") so specific evidence of irreparable injury "need not be

² DEP is only addressing NWW's opposition to DEP's Order to Show Cause requesting a preliminary injunction in this brief. DEP will respond to NWW's motion for leave to file a counterclaim in subsequent briefing.

shown.”³ Hoffman v. Garden State Farms, Inc., 76 N.J. Super. 189, 201 (Ch. Div. 1962).

DEP has met its burden for issuance of a preliminary injunction because of NWW's noncompliance with CAFRA, N.J.S.A. 13:19-18(c)(1), the CZM Rules, N.J.A.C. 7:7-29.8(a)(1), the Flood Hazard Area Control Act (“FHCA”), N.J.S.A. 58:16A-63(c)(1), and the FWPA, N.J.S.A. 13:9B-21(c)(1). NWW needs an EA or permit approval to conduct regulated activities in a coastal zone, which includes the installation of a bulkhead. As documented in the Certification of Michele Kropilak, NWW violated the EA and CZM Rules by excavating, filling, grading, and reshaping the dune and will continue to be in violation of the CZM Rules if it installs a bulkhead without an EA or permit. NWW is well aware that pursuant to N.J.A.C. 7:7-2.2 it needs a permit for any regulated activity on a beach or dune. To date, NWW has no permit approval to install a bulkhead, and without a valid permit any installation of a bulkhead is a violation of the CZM Rules, CAFRA, FWPA, and the FHCA.

NWW alleges that the Court should use its equitable powers and stand in the shoes of the State Agency tasked with permitting regulated activity on beaches and dunes and allow NWW to install

³ Nonetheless, installation of a regulated shore protection measure, such as a bulkhead, will likely cause irreparable harm. A bulkhead is a permanent structure and cannot easily be removed without further destruction to the environment and DEP is concerned that a bulkhead could worsen erosion in this area. (DEP Br. 7, 22, 27-28).

a bulkhead. NWW also alleges that DEP has failed to assist NWW with protecting its oceanfront. This is simply not true because DEP has continually been committed to quickly reviewing any EA application submitted by NWW. This is highlighted by DEP's quick partial approval on October 7, 2022 of Jersey barriers that provide beach protection as part of the October 5, 2022 EA application, and DEP's letter to NWW on January 5, 2023. See First Supplemental Certification of Kevin Terhune. In the nearly three months that have elapsed since the EA application, NWW has failed to seek any additional authorization for shore protection from the Division of Land Resource Protection ("DLRP"). It is NWW's burden to submit an EA application or permit application under CAFRA to install shore protection measures. N.J.S.A. 13:19-5 and N.J.A.C. 7:7-21.2. DEP has also reminded NWW on numerous occasions to resubmit its deficient CAFRA permit application that includes the installation of a bulkhead in this same exact location, which remains administratively deficient since 2020.⁴

As shown, DEP has satisfied the irreparable harm prong and DEP also satisfies the equitable Crowe factors in support of a preliminary injunction.

B. DEP will prevail on the merits.

⁴ NWW's counsel has represented that these deficiencies are being addressed and a new application should be submitted to DEP. See First Supplemental Certification of Kevin Terhune, Paragraph 9. To date, an updated application has not been submitted to DEP so that technical review may commence.

DEP will prevail on the merits of its Verified Complaint to enforce DEP's final agency decision. Defendants do not dispute that NWW has no current EA authorization or permit approval to install a bulkhead. As explained in greater detail below, DEP's EA decision on NWW's October 5, 2022 EA application is enforceable under Rule 4:67-6, and NWW may not re-litigate this decision. (DEP Br. 14-16).

The record as noted above supports that NWW has violated the CZM Rules, CAFRA, FWPA, and the FHACA, and NWW will further increase the severity of its violations and resulting harms if it installs the bulkhead without an EA or a permit. These repeated violations support preliminary injunctive relief in favor of DEP.

C. The balance of equities and the public interest weigh in favor of a preliminary injunction.

The balance of equities and the public interest weigh in favor of the Court upholding a State Agency's final agency action and upholding the integrity of the regulatory system. NWW should not be allowed to circumvent the regulatory process by avoiding obtaining either an EA or a permit to install a bulkhead as required by CAFRA.

Designing coastal protections requires a special expertise in the field to minimize risks of erosion and other detrimental effects on surrounding portions of the beaches while still guarding the community. The legislature recognized that DEP has this

expertise coupled with its duty to protect public health and the environment. N.J.S.A. 13:19-2. To minimize risks of inappropriate or improperly designed coastal protection measures the legislature decreed that "No person shall construct or cause to construct a facility in the coastal area until he has applied for and received a permit issued by [DEP]." N.J.S.A. 13:19-5. DEP also must meet CAFRA's statutory requirement "before issuing any CAFRA permit," which includes an EA. See In re Protest of Coastal Permit Program Rules, 354 N.J. Super. 293, 331 (App. Div. 2002) (finding that "ever since CAFRA was first enacted, our courts have required that DEP, even in light of the CZM Rules and DEP's broad power to regulate the coastal zone, specifically meet the criteria in N.J.S.A. 13:19-10 before issuing any CAFRA permit.") The public interest demands upholding the integrity of the regulatory system. As a result, the Court should not replace its judgment for DEP's when the public interest weighs in DEP's favor. See Pinelands Pres. Alliance v. N.J. Dep't of Env'tl. Prot., 436 N.J. Super. 510, 524 (App. Div. 2014) (finding that Courts "extend substantial deference to an agency's interpretation and application of its own regulations, particularly on technical matters within the agency's special expertise."); see also In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 488-89 (2004).

NWW fails to consider that even if the Court were, *arguendo*, to find DEP acted arbitrarily and capriciously in denying the

bulkhead in the October 5, 2022 EA application, and were to now grant such relief to NWW, that NWW would still be required under N.J.A.C. 7:7-21.3(e) and CAFRA to apply for a permit from DEP for the bulkhead. Therefore, NWW would be right back in the same position it is today ... needing to comply with DEP's regulatory process. Installation and the potential removal of the bulkhead by NWW, both would likely cause irreparable harm to the environment.

On the other hand, NWW's planned installation of the bulkhead will require the likely irreparable removal of a portion of a delineated freshwater wetlands transition area and/or dune which would degrade the environment. This area is classified under CAFRA as critical wildlife habitat, and likely contains exceptional resource value wetlands under the FWPA Rules. The installation of a bulkhead inside and adjacent to such a classified area would likely have an irreparable impact. Immediately restraining NWW from installing the bulkhead is required to preserve the status quo and prevent likely, irreparable harm to these delineated freshwater wetlands and freshwater wetlands transition areas. (DEP Br. 31). DEP has moved before the Court for a preliminary injunction to stop NWW from installing the bulkhead and/or conducting any other regulated activities until DEP has either granted an EA or a permit authorizing the same. The balance of equities and the public interest both weigh in favor of granting

this preliminary injunction.

POINT II

THIS COURT LACKS JURISDICTION TO REVIEW A FINAL AGENCY ACTION.

It is improper for NWW to request the Court review DEP's determination on their October 5, 2022 EA application. The Court lacks jurisdiction to review the adequacy of DEP's October 12, 2022 EA decision, now a final agency action. NWW failed to timely seek administrative or appellate review of the October 5, 2022 EA decision. (DEP Br. 14-16). NWW had thirty days to file an administrative hearing request challenging the EA decision pursuant to N.J.A.C. 7:7-28.1(b), and could have attempted to seek review of the EA decision by the Appellate Division in the interests of justice pursuant to R. 2:2-3(a)(2) within 45-days. However, NWW failed to timely challenge the underlying EA decision and, as a result, the EA is now a final agency action, which precludes the Court from reviewing DEP's decision regarding NWW's October 5, 2022 EA application. New Jersey Dep't of Env'tl. Prot. v. Mazza & Sons, Inc., 209 N.J. Super. 13, 22-23 (App. Div. 2009). As a result, the Court should not consider NWW's arguments and supporting certifications regarding DEP's underlying decision-making of the October 5, 2022 EA application. NWW's request for the Court to hold an evidentiary hearing regarding DEP's decision on the October 5, 2022 EA application is not warranted.

The Court only has jurisdiction pursuant to Rule 4:67-6(c) (1) to enforce final agency actions, which is what DEP is asking in this matter. The merits of final agency decisions are not reviewable in enforcement actions in Superior Court. Rule 4:67-6(c) (3). This is a proceeding pursuant to Rule 4:67-6, and the trial court's powers are limited to enforcement of DEP's denial of NWW's October 5, 2022 EA request for an emergency bulkhead. See New Jersey Dep't of Env'tl. Prot. v. Mazza & Sons, Inc., 209 N.J. Super. 13, 22-23 (App. Div. 2009). Moreover, "Rule 4:67-6(c) (3) does not permit a trial court to inquire into the validity of an agency order. The Rule simply gives agency orders the force of law with all of the law's panoply of power to punish for contempt." State Farm Mut. Auto Ins. Co. v. State, 118 N.J. 336, 344 (1990). R. 4:67-6(c) (3) states in pertinent part that "the validity of an agency order shall not be justiciable in an enforcement proceeding." Rather, pursuant to R. 2:2-3(a), the Appellate Division has exclusive jurisdiction to review the merits of final state agency determinations. Matter of Valley Road Sewage Co., 295 N.J. Super. 278, 290-91 (App. Div. 1996), aff'd 154 N.J. 224 (1998) (holding that only the Appellate Division has jurisdiction to review the merits of a final State agency action and that such review by a trial court is precluded by R. 4:67-6(c) (3)); State Farm v. Dept. of Public Advocate, 227 N.J. Super. 99, 131 (App. Div. 1988), aff'd 118 N.J. 336, 344 (1990); Dept. of Community

Affairs v. Wertheimer, 177 N.J. Super. 595 (App. Div. 1980).

Defendant, however, failed to seek appellate review of the final agency decision. As such, NWW is not permitted to attempt to re-litigate DEP's decision on its October 5, 2022 EA application in an action to enforce a final agency decision. DEP has met its burden by showing that NWW has failed to comply with the EA decision by conducting dune reshaping and continues to threaten to install a bulkhead, which was denied in the EA and to which NWW has no current permit approval.

As described in detail in the certifications of Jennifer Moriarty, Colleen Keller, and Erick Doyle, DEP made its decision on NWW's October 5, 2022 EA application based on the information provided in NWW's October 5, 2022 EA application, an aerial photograph of the area from October 6, 2022 taken by DEP, photographs taken by DEP on October 4 and 6, 2022, and the likely coastal effects of the remnants of Hurricane Ian that might impact the area. See Certification of Jennifer Moriarty at ¶ 10.⁵ Based

⁵ While not noted in Defendants' opposition brief, Defendants attempt to assert in the Certification of James Verna that the Court should not consider the GPS data collected by DEP Inspector Michael Lutz. NWW provides no legal basis for this assertion in its briefing. However, this GPS data was collected after DEP made its determination on NWW's October 5, 2022 EA application and was, thus, not used by DEP in making its decision on NWW's October 5, 2022 EA application. Defendants also fail to provide Mr. Verna's qualifications in support of his opinions, fail to identify the alleged industry standard, and fail to identify any issues with how the data was collected and/or was used. This GPS data was collected and presented to the Court to give the Court a general idea of the length of the dune at that time. See ¶¶ 17-30 of the

on this information, DEP's Division of Land Resource Protection ("DLRP") in consultation with the Office of Coastal Engineering ("OCE") determined on October 12, 2022 that NWW failed to demonstrate that a threat to life, severe loss of property, or environmental degradation exists or is imminent, which could only be prevented/ameliorated through a regulated activity and is likely to occur-persist, or worsen before a permit could be issued by DLRP for the installation of an emergency bulkhead.⁶ See N.J.A.C. 7:7-21.1. Following that decision, NWW repeatedly threatened to install the bulkhead without EA authorization or permit approval.⁷ Since NWW continued threatening to install the bulkhead without approvals and even violated the EA by conducting sand backpassing and dune reshaping, DEP was forced to file this

Certification of Michael Lutz for a detailed analysis regarding DEP's use of GPS Units.

⁶ NWW argues that DEP "admitted" the existence of "a threat to severe loss of property" that requires an "emergent" response in Jennifer Moriarty's October 7, 2022 email authorizing the approval of the deployment of jersey barriers. As explained in detail in the First Supplemental Certification of Jennifer Moriarty, in order to grant the partial approval of the EA to allow for the deployment of jersey barriers, DEP made a finding that the standard of N.J.A.C. 7:7-21.1 in relation to the requested relief of jersey barriers only was satisfied. However, this does not mean that all the requested relief in an EA application will be granted. As such, after further review, DEP did not find that NWW satisfied N.J.A.C. 7:7-21.1 in relation to the installation of a bulkhead.

⁷ NWW has continued preparation to install the bulkhead. During a recent site inspection on January 6, 2023, DEP observed survey stakes in the ground planning out the location of the bulkhead, and equipment has been staged at the Beach Patrol Building at 15th and 16th Avenues, along with other materials. See Exhibit 1 to the Supplemental Certification of Jennifer Moriarty.

action pursuant to Rule 4:67-6, N.J.A.C. 7:7-21.3(k), and N.J.A.C. 7:7-29. A preliminary injunction should be issued halting NWW from installing a bulkhead until it has the appropriate regulatory approval either by EA authorization or permit approval.

It is the burden of NWW to either request an EA pursuant to N.J.A.C. 7:7-21.1 or submit an Individual Permit pursuant to the CAFRA and the FWPA to install a bulkhead.⁸ NWW indicated to this Court in its December 7, 2022 letter that NWW would file a new EA application if a new emergent situation arises. NWW's counsel has also repeatedly indicated to DEP since the filing of this Order to Show Cause that NWW is preparing a new EA application and would submit it when NWW believed emergency conditions warranted an EA application. See First Supplemental Certification of Kevin Terhune, Paragraphs 5, 7, 10 and 11. To date NWW has not filed a

⁸ If, *arguendo*, the Court finds it does have jurisdiction to rule on the adequacy of DEP's partial denial of NWW's October 5, 2022 EA application, NWW has improperly presented new facts in its opposition brief that were not presented in NWW's October 5, 2022 EA application submitted and reviewed by DEP. This information is not ripe for court review. NWW for the first-time alleges harm to NWW's storm drainage system that could cause catastrophic flooding and substantial damage to public and private infrastructure. (NWW Br. 28). NWW also alleges for the first-time, harm to NWW's sanitary sewer system that could cause the relocation of residents of affected properties. (NWW Br. 20-21). Neither of these alleged harms were included in NWW's October 5, 2022 EA application. Additionally, public safety concerns regarding people walking on the scarp of the dune were not included in the October 5, 2022 EA application. See Ex. A to the Certification of Jennifer Moriarty. DEP only considers the alleged harms outlined in the applicant's EA application. If NWW now believes that these potential harms warrant emergency shore protection measures pursuant to N.J.A.C. 7:7-21.1 then NWW should submit a new EA application including these harms to be considered by DEP so that DEP can develop the appropriate administrative record.

new EA with DEP. The December 7, 2022 letter from NWW and the representations by NWW's counsel, when coupled with the failure to file a new EA, contradict NWW's arguments in its opposition, and point to the fact that NWW does not currently believe that there is an ongoing emergency warranting the installation of a bulkhead. NWW concedes in its October 20, 2022 letter to the Commissioner that NWW is "well aware of the possibility" that installation of the bulkhead may exacerbate erosion in this area. See Ex. E to the Certification of Jennifer Moriarty.

DEP has repeatedly reminded NWW over the last few weeks that it is prepared to discuss a new EA application and quickly review such a request, however, no such request has been filed by NWW. See Supplemental Certification of Kevin Terhune. DEP has also continued to remind NWW that it should cure its administrative deficiencies in its 2020 permit for a similar bulkhead so that DEP can quickly start technical review of that application. To date, NWW has not submitted an updated permit application. As such, the Court should grant DEP's application for a preliminary injunction to stop NWW from installing a bulkhead until it has EA approval or a permit to do so.

CONCLUSION

For the foregoing reasons the Court should grant DEP's application for a preliminary injunction.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Dianna E. Shinn
Dianna E. Shinn
Deputy Attorney General

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

Dated: January 11, 2023

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ENVIRONMENTAL PROTECTION,
Plaintiff,

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CITY OF NORTH WILDWOOD, "XYZ
CONTRACTORS" 1-10, "JOHN
AND/OR JANE DOES" 1-10,
Defendants.

Civil Action

**FIRST SUPPLEMENTAL
CERTIFICATION OF
JENNIFER L. MORIARTY IN
SUPPORT OF PLAINTIFF NEW
JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION'S
ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION &
TEMPORARY RESTRAINTS**

I, JENNIFER L. MORIARTY, of full age, certify and say:

1. I am the Director of the Division of Land Resource Protection ("DLRP") at the Department of Environmental Protection ("DEP"). I provided a certification on December 6, 2022 in support of DEP's Order to Show Cause for temporary restraints and a preliminary injunction to stop North Wildwood ("NWW") from installing a bulkhead without permit or Emergency Authorization ("EA") approval.

2. I make this first supplemental certification in further support of the Department's Order to Show Cause requesting a preliminary injunction to stop NWW from installing a bulkhead as previously denied by the Department on October 12, 2022 and in violation of CAFRA, the CZM Rules, and the FWPA. This certification addresses my October 7, 2022 email that I sent as the Director of DLRP granting NWW's request in its October 5, 2022 EA application to deploy jersey barriers.

3. Generally, when an EA application is submitted to DEP, DLRP reviews each requested emergency authorization measure against the standard outlined in N.J.A.C. 7:7-21.1 that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and can only be prevented or ameliorated through a regulated activity and is likely to occur, persist, or worsen before a permit could be issued by DLRP. DEP must also make sure that any approved emergency authorization measure complies with the requirements outlined in N.J.A.C. 7:7-21.3, including the timeframes for completion of the emergency authorization measure.

4. Following NWW's October 5, 2022 EA application, DLRP quickly reviewed the application, including each requested emergency shore protection measure requested by NWW in its application, against the standards set forth in N.J.A.C. 7:7-21.1. DEP agreed with NWW that erosion, which historically existed at the 15-16th Avenue location, had been exacerbated by the remnants

of Hurricane Ian and could be worsened in the case of another severe storm. NWW's request to deploy jersey barriers would result in the least impact to the surrounding environment and is also a removable, temporary measure to provide protection from storm surge. For these reasons, in my October 7, 2022 email I state that there is a threat to severe loss of property and authorized immediate response of the temporary deployment of the jersey barriers while DEP continued to review NWW's EA request for its other requested emergency shore protection measures, including the bulkhead.

5. NWW fails to point out that in my email from October 7, 2022, I state that DEP is continuing to review NWW's request to reshape the dunes, install the bulkhead, and reconstruct access at 16th and 25th Avenues. In my October 7, 2022 email, it is stated in bold that "those activities are not authorized by this EA and the City is not authorized to conduct those activities at this time."

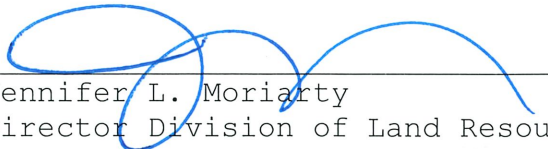
6. A finding that an emergency as outlined in N.J.A.C. 7:7-21.1 exists does not require DLRP to grant any requested relief sought by the applicant, especially where that relief could cause unintended negative consequences. Rather, DEP uses its expertise to determine under the circumstances what is appropriate according to N.J.A.C. 7:7-21.1, including what is likely to be permissible. Here, while DEP recognized the erosional threat, it also recognized that installation of a bulkhead would be a permanent structure,

cause environmental impacts, and could cause or exacerbate erosion to the surrounding beach areas. Because of the potential impacts and consequences of improper bulkhead location and construction, such measures are subject to thorough technical standards in the Coastal Zone Management Rules. In short, it would have been an abrogation of DLRP's responsibility to protect coastal resources and public safety to permit construction of an ocean bulkhead without close review.

7. On January 6, 2023, Environmental Specialist Michael Lutz inspected the beaches in North Wildwood, documenting his observations with several photographs. He emailed those photographs to me and others on January 9, 2023. Attached as **Exhibit 1** to this certification are some of those photographs to show the Court that equipment is staged at the Beach Patrol Building at 15th and 16th Avenues and stakes have been placed in the ground, including within the existing dunes, labeled "bulkhead".

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated: January 11, 2023



Jennifer L. Moriarty
Director Division of Land Resource
Protection

MORIARTY
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT 1

North Wildwood:
1/6/2023 Site photo
taken at 11:35am.



North of Sixteenth Avenue.

North Wildwood:
1/6/2023 Site photo
taken at 11:36am.



North of Sixteenth Avenue.

North Wildwood:
1/6/2023 Site photo
taken at 11:36am.



Waterward end of Sixteenth
Avenue. Recently placed survey
stakes marked w/ "bulkhead".

North Wildwood:
1/6/2023 Site photo
taken at 11:37am.



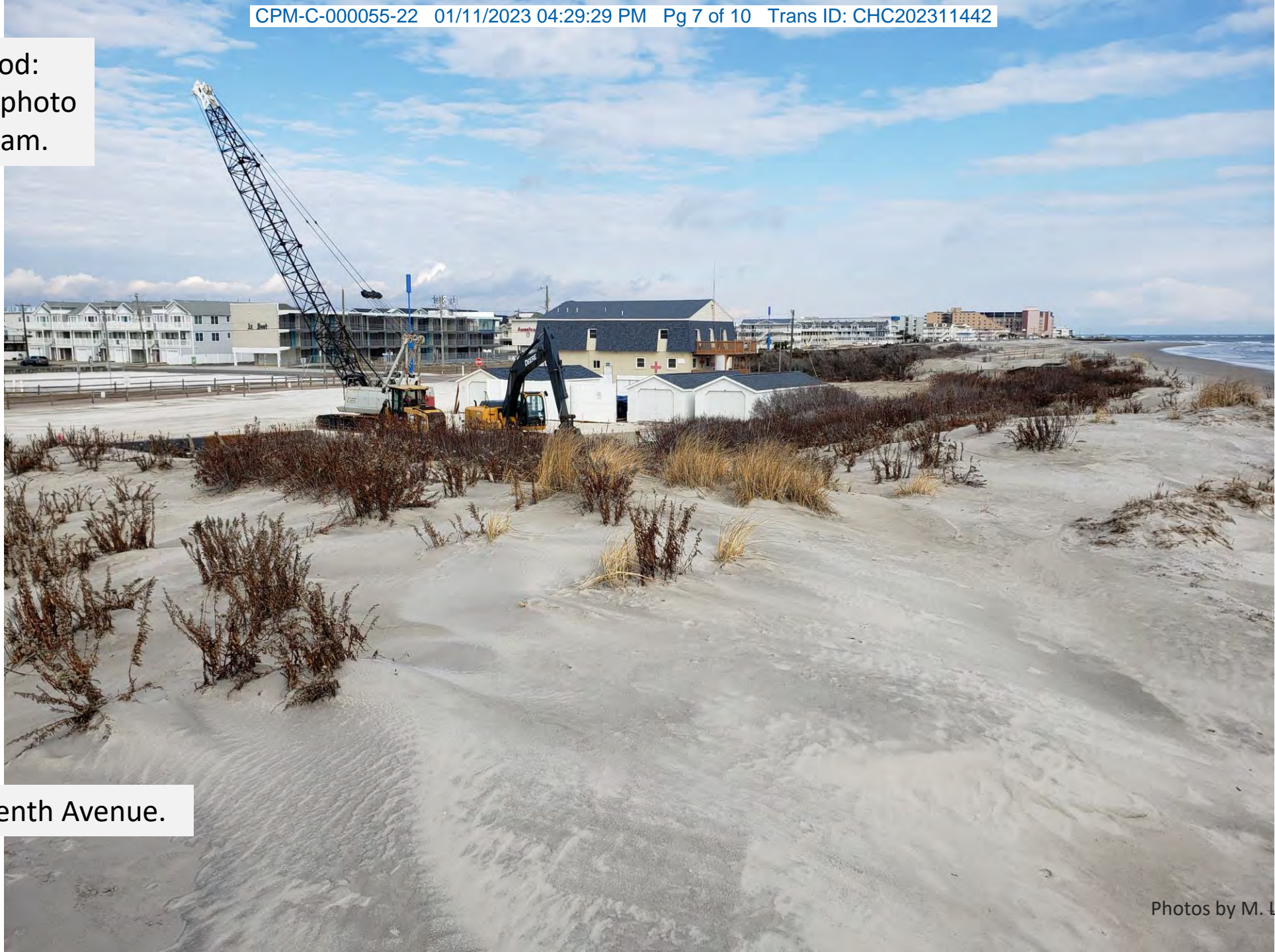
Waterward end of Sixteenth
Avenue. Recently placed survey
stake marked w/ "bulkhead".

North Wildwood:
1/6/2023 Site photo
taken at 11:37am.



Waterward end of Sixteenth
Avenue. Recently placed survey
stakes marked w/ "bulkhead".

North Wildwood:
1/6/2023 Site photo
taken at 11:38am.



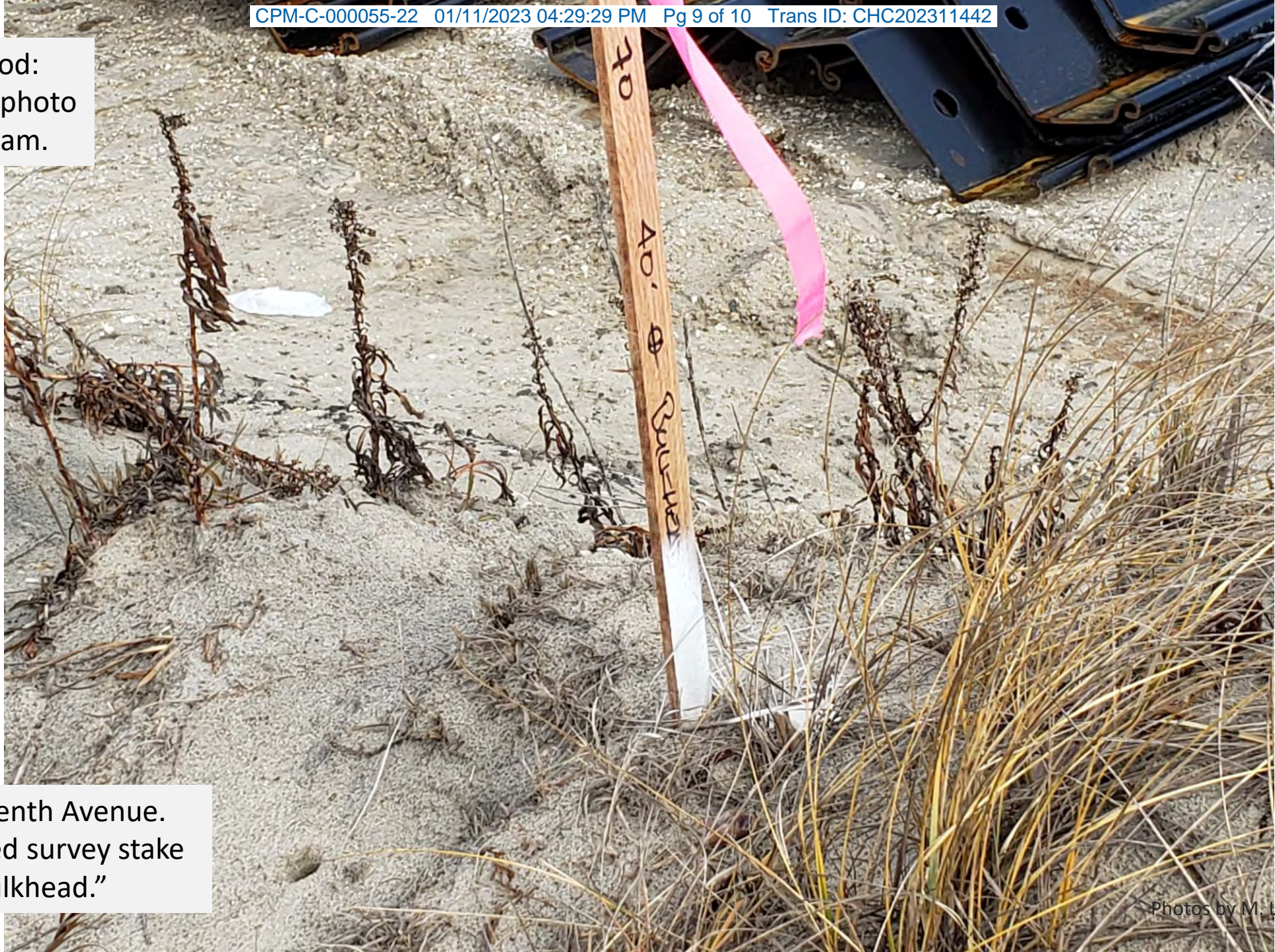
North of Sixteenth Avenue.

North Wildwood:
1/6/2023 Site photo
taken at 11:38am.



North of Sixteenth Avenue.
Recently placed survey stakes
marked as "bulkhead."

North Wildwood:
1/6/2023 Site photo
taken at 11:39am.



North of Sixteenth Avenue.
Recently placed survey stake
marked as "bulkhead."

North Wildwood:
1/6/2023 Site photo
taken at 11:42am.



North of Sixteenth Avenue.
Recently placed survey stakes
marked as "bulkhead."

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Civil Action

**FIRST SUPPLEMENTAL
CERTIFICATION OF
KEVIN A. TERHUNE IN SUPPORT OF
PLAINTIFF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S ORDER TO SHOW
CAUSE FOR PRELIMINARY
INJUNCTION & TEMPORARY
RESTRAINTS**

I, KEVIN A. TERHUNE, of full age, certify and say:

1. I am employed by the New Jersey Department of Law & Public Safety, Division of Law, as a deputy attorney general and have been assigned to represent plaintiff New Jersey Department of Environmental Protection ("DEP" or "Plaintiff").

2. I make this first supplemental certification in support of Plaintiff's Order to Show Cause for a preliminary injunction and temporary restraints. This supplemental certification outlines correspondence between NWW's counsel and the Division

of Law and NJDEP since Plaintiff's filing of the Order to Show Cause. It also includes a recent letter dated January 5, 2023 from Jennifer Moriarty, Director of the Division of Land Resource Protection to North Wildwood Mayor Patrick Rosenello reconfirming DEP's commitment to review any new Emergency Authorization ("EA") request.

3. On December 8, 2022, NWW's counsel, Neil Yoskin, sent me an email stating that NWW was formulating a contingency plan in the event of the possible nor'easter that weekend. He indicated this contingency plan would not involve bulkheading, but would involve reinforcing the dune with sand. Mr. Yoskin's email and my response to it is attached hereto as **Exhibit A**.

4. On the afternoon of December 8, 2022, Colleen Keller, Assistant Director of the DEP Wetlands and Coastal Resources Element, Division of Land Resource Protection, Watershed & Land Management responded to NWW's counsel's email, copying NWW's engineer and forwarding further information that DEP required for review of the proposed new Emergency Authorization. Mr. Yoskin responded that NWW's concern was "preliminary at this point." Jennifer Moriarty, Director of DEP's Division of Land Resource Protection, responded that if anything was needed over the weekend, she could be contacted by cell phone. The email string between Mr. Yoskin and Colleen Keller and Jennifer Moriarty is attached hereto as **Exhibit B**.

5. On December 9, 2022, I sent a follow-up email to NWW's counsel, requesting further details of NWW's proposed contingency plan. I also pointed out recent local news coverage wherein the NWW Mayor had made purported statements concerning NWW's plans, and requested that Mr. Yoskin confirm whether those purported statements were inaccurate and that NWW would not be performing any oceanfront construction without seeking Emergency Authorization. Mr. Yoskin responded that an EA request had not yet been submitted, and that no immediate steps to install a bulkhead would be taken. The December 9, 2022 email from me and Mr. Yoskin's response is attached hereto as **Exhibit C**.

6. On December 16, 2022, NWW's counsel sent me photographs taken that morning from 14th and 15th Avenues in NWW. We discussed conditions at those locations and I further inquired about NWW's intentions concerning submitting a new EA. The email string between Mr. Yoskin and myself from December 9, 2022 is attached hereto as **Exhibit D**.

7. On December 19, 2022, Jennifer Moriarty, Director of DEP's Division of Land Resource Protection contacted NWW's counsel and engineer, copying me, and assuring both that NJDEP was monitoring the conditions at the 15th and 16th Avenue beaches, and that if NWW filed a new EA, NJDEP would review it expeditiously. Mr. Yoskin responded that NWW was preparing an

EA in the event it was needed. The email string between Jennifer Moriarty and NWW's counsel from December 19, 2022 is attached hereto as **Exhibit E**.

8. Later in the afternoon of December 19, 2022, NWW's counsel sent a message to Jennifer Moriarty and others at NJDEP and DOL forwarding information regarding NWW's intention to deploy certain equipment to the beach patrol area of the site, and to file a new EA in the event it was needed. On December 20, 2022, Jennifer Moriarty responded to Mr. Yoskin's message and reminding him that any regulated activity without authorization would subject the City and its engineers to enforcement action. She further urged NWW to complete its 2020 bulkhead application. Mr. Yoskin responded to Ms. Moriarty's message later that day requesting information concerning an alternatives analysis. Ms. Moriarty further responded on December 21, 2022 with the information that should be included in the alternatives analysis, and Mr. Yoskin conveyed his understanding of those requirements. The email string between Mr. Yoskin and Ms. Moriarty from December 19 through 21, 2022 is attached hereto as **Exhibit F**.

9. Separately on December 20, 2022, Mr. Yoskin responded to Ms. Moriarty's questions with specific responses noted in all capital letters which included information that the City would be redesigning its 2020 permit application to address its

administrative deficiencies. Mr. Yoskin's email of December 20, 2020 is attached hereto as **Exhibit G**.

10. On December 30, 2022, I contacted NWW's counsel Neil Yoskin to check on the status of NWW's new EA request and the delivery of the bulkhead materials. Mr. Yoskin replied that the bulkhead materials delivery had been delayed and that he would check on the EA status. On January 3, 2023, I inquired further as to the bulkhead materials, and Mr. Yoskin responded that he expected the draft EA would be forwarded in the next day or two. The email string between Neil Yoskin and myself from December 30, 2022 to January 3, 2023 is attached hereto as **Exhibit H**.

11. On January 5, 2023 Jennifer Moriarty forwarded a letter to NWW Mayor Patrick Rosenello, NWW's counsel and others, reiterating the steps DEP had taken in an attempt to assist NWW with its filing of an emergency authorization and its deficient 2020 permit application. Ms. Moriarty also advised that DEP became aware that engineering stakes marked "Bulkhead" had been installed around the dunes in front of the lifeguard station, reminding NWW that it did not have approval from DEP for further construction activity, and that any such construction activity would result in enforcement action against NWW and its contractors. On January 6, 2023, NWW's counsel, Neil Yoskin responded to me that it was still NWW's intention to send DEP

a draft EA for informal pre-review and that this EA may include requests for installation of a bulkhead in the area in question near 15th and 16th Avenues and that this new request may also include the installation of bulkhead at additional locations along the oceanfront. Attached hereto as **Exhibit I** is Mr. Yoskin's January 6, 2023 email and Ms. Moriarty's January 5, 2023 email attaching her letter.

12. In spite of the repeated assurances that NWW would be submitting a new Emergency Authorization request, no such submission has been received by DEP.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated: January 11, 2023

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

**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT A**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]RE: North Wildwood
Date: Wednesday, January 11, 2023 9:12:49 AM

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 11:59 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Subject: Re: [EXTERNAL]RE: North Wildwood

I'll get them

Sent from my iPhone

> On Dec 8, 2022, at 11:50 AM, Kevin Terhune <Kevin.Terhune@law.njoag.gov> wrote:

>

> I will broach the subject with our client, but I would request some details of what is being proposed.

>

> Thanks.

>

> kevin

>

> -----Original Message-----

> From: Yoskin, Neil <nyoskin@cullenllp.com>
> Sent: Thursday, December 8, 2022 11:44 AM
> To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
> Subject: [EXTERNAL] North Wildwood

>

> Kevin: there is the possibility of a nor'easter this weekend. The city would like to have a contingency plan in place just in case. This would involve reinforcing the dune with sand, not bulkheading. Please discuss with your client and let me know.

>

> Sent from my iPhone

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**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT B**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]North Wildwood
Date: Wednesday, January 11, 2023 1:07:39 PM

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 3:06 PM
To: Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

Yes, thanks.

-----Original Message-----

From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Sent: Thursday, December 08, 2022 3:05 PM
To: Yoskin, Neil <nyoskin@cullenllp.com>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

Neil, if anything is needed over the weekend, you have my cell phone number.

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 2:18 PM
To: Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

The concern is preliminary at this point. I will let you know.

-----Original Message-----

From: Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>
Sent: Thursday, December 08, 2022 2:03 PM
To: Lomax, Peter <plomax@lomaxconsulting.com>; Yoskin, Neil <nyoskin@cullenllp.com>
Cc: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: [EXTERNAL]North Wildwood

Pete/Neil, as per the below email, it would appear that North Wildwood intends to submit an Emergency Authorization request for the below discussed work. Please confirm that this is the case. If so, I am reaching out directly to you both to provide the attached information/more details of what is proposed for our review and consideration for this request. Any questions, please let me know. Thanks.

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 11:44 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>

Subject: [EXTERNAL] North Wildwood

Kevin: there is the possibility of a nor'easter this weekend. The city would like to have a contingency plan in place just in case. This would involve reinforcing the dune with sand, not bulkheading. Please discuss with your client and let me know.

Sent from my iPhone

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**TERHUNE
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CERTIFICATION
EXHIBIT C**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]RE: North Wildwood
Date: Wednesday, January 11, 2023 9:11:07 AM

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Friday, December 9, 2022 10:55 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Cc: Kevin Fleming <Kevin.Fleming@law.njoag.gov>; Dianna Shinn <Dianna.Shinn@law.njoag.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>; Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>
Subject: RE: [EXTERNAL]RE: North Wildwood

Good morning:

You have not seen an EA request as none has been submitted yet, the City is just trying to think ahead. The beach in front of the 15th street dune lost 80' during the last major storm event, and there is now less than 80' of beach remaining, hence the concern. An inspection this morning suggests that the dune is not in immediate jeopardy, but if it were to occur this weekend, no immediate steps to install a bulkhead would be taken, as the materials haven't been delivered, so the only possible emergency action would be regrading of what is left of the dune so as to widen the area of resistance (the volume of sand will not change). The bulkhead materials, once delivered, will be stored near the site in the event the dune is breached at some point this winter.

Also, please keep in mind that as much as the Department does not like the bulkhead that the City constructed in 2020, that bulkhead has on several occasions prevented direct wave attack on the infrastructure and buildings immediately landward of the beach. This is due, of course, to the vulnerability caused by the absence of a state/federal beach replenishment project.

-----Original Message-----

From: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Sent: Friday, December 09, 2022 9:50 AM
To: Yoskin, Neil <nyoskin@cullenllp.com>; Bocchi, Anthony S. <abocchi@cullenllp.com>
Cc: Kevin Fleming <Kevin.Fleming@law.njoag.gov>; Dianna Shinn <Dianna.Shinn@law.njoag.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>; Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>
Subject: RE: [EXTERNAL]RE: North Wildwood

Good morning Neil.

Following up on your email of yesterday and any proposed details for any anticipated work needed for this weekend. I understand that Colleen Keller and Jennifer Moriarty have reached out to you and Peter Lomax in an effort to further assist NWW in its efforts. As of this morning, I have not seen the submission of any Emergency Authorization request from the City.

Also, in that regard, while I am remiss to put too much emphasis on news coverage, news coverage on News 12 New Jersey and CBS News in Philadelphia included statements from the Mayor that "there is no option where we do not protect our community." While the Mayor's statement did not specifically state that he was moving forward and installing a bulkhead in the absence of a breach, the news coverage did indicate that the City was moving forward with the placement of materials for a "temporary bulkhead" or other more permanent bulkhead if necessary. It is unclear what was meant by placing materials for a temporary bulkhead and whether the news reporting was inaccurate. Please confirm that this was indeed an inaccurate representation of the City's intentions.

Please further confirm that the City will not be performing ANY oceanfront construction without seeking Emergency Authorization from DEP as represented to the Court in response to DEP's OTSC filing, and that NWW is committed to keeping lines of communication open throughout the weekend.

Thank you.

Kevin

Kevin A. Terhune
Deputy Attorney General
Environmental Enforcement & Environmental Justice New Jersey Attorney General's Office R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625
Ph: (609) 376-2735
Mobile: (732) 272-7382
Fax: (609) 341-5031
Kevin.Terhune@law.njoag.gov

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 11:59 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Subject: Re: [EXTERNAL]RE: North Wildwood

I'll get them

Sent from my iPhone

> On Dec 8, 2022, at 11:50 AM, Kevin Terhune <Kevin.Terhune@law.njoag.gov> wrote:

>

> I will broach the subject with our client, but I would request some details of what is being proposed.

>

> Thanks.

>

> kevin

>

> -----Original Message-----

> From: Yoskin, Neil <nyoskin@cullenllp.com>
> Sent: Thursday, December 8, 2022 11:44 AM
> To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
> Subject: [EXTERNAL] North Wildwood

>

> Kevin: there is the possibility of a nor'easter this weekend. The city would like to have a contingency plan in place just in case. This would involve reinforcing the dune with sand, not bulkheading. Please discuss with your client and let me know.

>

> Sent from my iPhone

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**TERHUNE
FIRST
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EXHIBIT D**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]RE: NWW Strategy Moving Forward 46006-400-21, 44693-400-21
Date: Wednesday, January 11, 2023 9:09:47 AM

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Friday, December 16, 2022 1:02 PM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]RE: NWW Strategy Moving Forward 46006-400-21, 44693-400-21

No, but will check as to communication. As to an EA, yes, one is being prepared in case things go south quickly.

Neil Yoskin

Partner

Cullen and Dykman LLP

229 Nassau Street

Princeton, New Jersey 08542

T: 609.279.0900 | F: 609.497.2377

E: nyoskin@cullenllp.com

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From: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Sent: Friday, December 16, 2022 12:49 PM
To: Yoskin, Neil <nyoskin@cullenllp.com>
Subject: RE: [EXTERNAL]RE: NWW Strategy Moving Forward 46006-400-21, 44693-400-21

Understood. I understand that OCE has staff down at or near the site today. Are you aware whether the City's engineering team is in communication with them? Is the City intending to submit an EA?

Kevin

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Friday, December 16, 2022 12:28 PM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]RE: NWW Strategy Moving Forward 46006-400-21, 44693-400-21

Kevin: I confirmed with the City that backpassing is not under

consideration. Due to the loss of sand, there is no space seaward of the piers for trucks to safely pass to and from Wildwood, and given the condition of the beach and seasonality of storms, it wouldn't generate sufficient volume anyway. It would be a waste of the City's dollars.

Neil Yoskin

Partner

Cullen and Dykman LLP

229 Nassau Street

Princeton, New Jersey 08542

T: 609.279.0900 | F: 609.497.2377

E: nyoskin@cullenllp.com

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From: Kevin Terhune <Kevin.Terhune@law.njoag.gov>**Sent:** Friday, December 16, 2022 10:26 AM**To:** Yoskin, Neil <nyoskin@cullenllp.com>**Subject:** RE: [EXTERNAL]RE: NWW Strategy Moving Forward 46006-400-21, 44693-400-21

Yes we have reps down at the site. Have the City and their engineers made any proposals for backpassing, sand movement etc? I understand that the City has been talking to DEP's OCE, but I am not in the loop as to what is being discussed

From: Yoskin, Neil <nyoskin@cullenllp.com>**Sent:** Friday, December 16, 2022 10:20 AM**To:** Kevin Terhune <Kevin.Terhune@law.njoag.gov>**Subject:** FW: [EXTERNAL]RE: NWW Strategy Moving Forward 46006-400-21, 44693-400-21

Good morning Kevin:

See photos taken this morning and accompanying analysis. Are your folks also keeping an eye on these conditions? I believe that one or two DEP employees actually live in North Wildwood.

Neil Yoskin

Partner

Cullen and Dykman LLP

229 Nassau Street
Princeton, New Jersey 08542
T: 609.279.0900 | F: 609.497.2377
E: nyoskin@cullenllp.com

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From: _Verna, Jim <jyerna@vannoteharvey.com>

Sent: Friday, December 16, 2022 9:47 AM

A few pictures from this morning looking north and south near 15th Ave. Although the dune took a hit, we lost a lot of beach elevation yesterday and last night, which will ultimately do more harm. The beach elevation loss enables increased and more forceful tidal runup, as well as actual wave action, all which cause erosion.

- The first picture is from 14th Ave looking south;
- The second picture is from 15th Ave looking north;
- The third picture is from 15th Ave looking south.

essed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments.

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**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT E**

From: [Yoskin, Neil](#)
To: [Jennifer Moriarty \(DEP\)](#); [Colleen Keller \(DEP\)](#)
Cc: [Kevin Terhune](#)
Subject: RE: [EXTERNAL]North Wildwood
Date: Monday, December 19, 2022 9:51:20 AM

Good morning:

First of all, thanks for your message. The City is in fact preparing an EA application in the event that it is needed, and will likely send it to DEP for pre-review prior to the declaration of an emergency so that no time is lost.

As for the still pending application for the 2020 bulkhead construction, it is my understanding that two deficiencies were identified by DEP: the lack of a newspaper ad per the CAFRA regs and the lack of a signature from a property owner. In fact, a newspaper ad was published and proof of same is in the November, 2020 application package. As for the property owner's signature, the owner no longer lives in New Jersey and is apparently in a care facility somewhere. The City is trying to track him down. It would probably be better if the Department deems the application complete and processes it, but withholds issuing it until the signature is obtained.

-----Original Message-----

From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Sent: Monday, December 19, 2022 9:37 AM
To: Yoskin, Neil <nyoskin@cullenllp.com>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

Neil and Pete,

I am reaching out because DOL advised of the concerns raised by Neil this past Thursday regarding the 15-16th street dune/berm and the potential preparation of an Emergency Authorization (EA) request. DLRP and OCE have regularly had staff monitoring the conditions in that location. However, no further application for shore protection measures have been submitted to DLRP since the October 5th EA request, and the City has submitted no information toward completion of the deficient 2020 bulkhead application. Should the City determine to apply for an EA due to concerns raised by any forecasted storm events in the coming weeks/months, I want to reiterate that DLRP will review expeditiously, and that the request should include a full analysis of both back passing sand and trucking sand from an upland location. We again encourage the City to move forward with its deficient application so DLRP can fully evaluate the proposed bulkhead and so we can possibly find a solution that can be authorized.

Thank you,

Jennifer Moriarty (she/her), Director
Division of Land Resource Protection
NJ Department of Environmental Protection Mail Code 501-02A
501 East State Street
Trenton, NJ 08625-420
Email: jennifer.moriarty@dep.nj.gov
P: (609) 984-3444

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-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 3:06 PM
To: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

Yes, thanks.

-----Original Message-----

From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Sent: Thursday, December 08, 2022 3:05 PM
To: Yoskin, Neil <nyoskin@cullenllp.com>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

Neil, if anything is needed over the weekend, you have my cell phone number.

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 2:18 PM
To: Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Lomax, Peter <plomax@lomaxconsulting.com>
Cc: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: RE: [EXTERNAL]North Wildwood

The concern is preliminary at this point. I will let you know.

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From: Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>
Sent: Thursday, December 08, 2022 2:03 PM
To: Lomax, Peter <plomax@lomaxconsulting.com>; Yoskin, Neil <nyoskin@cullenllp.com>
Cc: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>
Subject: [EXTERNAL]North Wildwood

Pete/Neil, as per the below email, it would appear that North Wildwood intends to submit an Emergency Authorization request for the below discussed work. Please confirm that this is the case. If so, I am reaching out directly to you both to provide the attached information/more details of what is proposed for our review and consideration for this request. Any questions, please let me know. Thanks.

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Thursday, December 8, 2022 11:44 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Subject: [EXTERNAL] North Wildwood

Kevin: there is the possibility of a nor'easter this weekend. The city would like to have a contingency plan in place just in case. This would involve reinforcing the dune with sand, not bulkheading. Please discuss with your client and let me know.

Sent from my iPhone

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**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT F**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21
Date: Wednesday, January 11, 2023 9:08:01 AM

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Wednesday, December 21, 2022 11:01 AM
To: Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>
Cc: Kevin Fleming <Kevin.Fleming@law.njoag.gov>; Kevin Terhune <Kevin.Terhune@law.njoag.gov>; Dianna Shinn <Dianna.Shinn@law.njoag.gov>; Joslin Tamagno (DEP) <Joslin.Tamagno@dep.nj.gov>; Michele Kropilak (DEP) <Michele.Kropilak@dep.nj.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>; Janet Stewart (DEP) <Janet.Stewart@dep.nj.gov>
Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

Understood. I trust you are aware that there was a fairly detailed AA in the October EA request.

-----Original Message-----

From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Sent: Wednesday, December 21, 2022 10:44 AM
To: Yoskin, Neil <nyoskin@cullenllp.com>
Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS) <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP] <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP] <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>; Stewart, Janet [DEP] <Janet.Stewart@dep.nj.gov>
Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

Thank you Neil. The alts analysis should address current conditions, demonstrate that the alternatives have been explored and include details about their feasibility.

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Tuesday, December 20, 2022 3:46 PM
To: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS) <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP] <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP] <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>
Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

I was just provided with a copy of the alternatives analysis that accompanied the first EA. It appears to have addressed all of the alternatives listed in your email. If that is not the case, or if the analyses were not sufficient in the Department's view, please let us know.

-----Original Message-----

From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Sent: Tuesday, December 20, 2022 11:08 AM
To: Yoskin, Neil <nyoskin@cullenllp.com>
Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS) <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP] <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP] <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP]

<Colleen.Keller@dep.nj.gov>

Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

Neil,

I've attached our other correspondence to this message so I can respond comprehensively.

First, thank you for the information regarding the City's preparation of an EA application. We would welcome opportunity to pre-review the materials so we can provide feedback prior to submission. You have informally provided statements regarding claimed challenges to backpassing on behalf of the City, but the City's request should still include an analysis of alternatives short of a bulkhead such as backpassing, trucking from an upland location, geobags, etc. Any request for a bulkhead should analyze minimization of the extent of the bulkhead. We offer this guidance in the absence of any claimed current emergency in an effort to be prepared should one arise.

I understand the City's contractor may be staging equipment in preparation for the arrival of bulkhead materials. I want to reiterate that any regulated activity without authorization will subject the City and its contractors to enforcement action.

Again, the City should endeavor to complete the 2020 bulkhead application. We understand there is a property owner who has, since submission of the app, been potentially incapacitated and/or there are issues with obtaining signature. We have recommended in the past and continue to recommend that the parcel owned by that individual be removed from the application so the rest of the application can proceed to technical completeness review.

Thank you,

Jennifer Moriarty (she/her), Director
Division of Land Resource Protection
NJ Department of Environmental Protection Mail Code 501-02A
501 East State Street
Trenton, NJ 08625-420
Email: jennifer.moriarty@dep.nj.gov
P: (609) 984-3444

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-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>

Sent: Monday, December 19, 2022 3:02 PM

To: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Kane, Jason (LPS) <Jason.Kane@law.njoag.gov>;

Tamagno, Joslin [DEP] <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP] <Michele.Kropilak@dep.nj.gov>

Subject: FW: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

All:

Please see information below provided to me by the City Engineer regarding advance planning for possible bulkhead construction. This will reconfirm that it is the City's intention to file for an EA so as to have it in place in the event that it is needed.

the contractor is going to mobilize equipment to the beach patrol site this week. I am going to have him put his

equipment in the City's clamshell parking lot west of the beach bike path off of 15th Ave. The equipment is necessary to obviously construct the bulkhead, but we are only mobilizing at this time because the same equipment is required to unload the bulkhead materials from the trucks. I do not have a confirmed delivery date yet, but it is soon.

We assume that the Department is comfortable with this approach, but please let me know if you have any questions or concerns.

Neil

**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT G**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21
Date: Wednesday, January 11, 2023 2:41:58 PM

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Tuesday, December 20, 2022 1:11 PM
To: Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>
Cc: Kevin Fleming <Kevin.Fleming@law.njoag.gov>; Kevin Terhune <Kevin.Terhune@law.njoag.gov>; Dianna Shinn <Dianna.Shinn@law.njoag.gov>; Joslin Tamagno (DEP) <Joslin.Tamagno@dep.nj.gov>; Michele Kropilak (DEP) <Michele.Kropilak@dep.nj.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>
Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

Thanks for these questions and concerns. Please accept the responses below.

-----Original Message-----

From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
Sent: Tuesday, December 20, 2022 11:08 AM
To: Yoskin, Neil <nyoskin@cullenllp.com>
Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune, Kevin (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS) <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP] <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP] <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP] <Colleen.Keller@dep.nj.gov>
Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

Neil,

I've attached our other correspondence to this message so I can respond comprehensively.

First, thank you for the information regarding the City's preparation of an EA application. We would welcome opportunity to pre-review the materials so we can provide feedback prior to submission. You have informally provided statements regarding claimed challenges to backpassing on behalf of the City, but the City's request should still include an analysis of alternatives short of a bulkhead such as backpassing, trucking from an upland location, geobags, etc. Any request for a bulkhead should analyze minimization of the extent of the bulkhead. We offer this guidance in the absence of any claimed current emergency in an effort to be prepared should one arise.

RESPONSE: THE CITY'S EA APPLICATION WILL INCLUDE THE REQUESTED ALTERNATIVES ANALYSIS. THE BULKHEAD AT THIS POINT IS PLANNED TO BE LIMITED TO ONLY THE LENGTH NECESSARY. I WILL FORWARD A PRELIMINARY PLAN AS SOON AS I CAN.

I understand the City's contractor may be staging equipment in preparation for the arrival of bulkhead materials. I want to reiterate that any regulated activity without authorization will subject the City and its contractors to enforcement action.

RESPONSE: UNDERSTOOD

Again, the City should endeavor to complete the 2020 bulkhead application. We understand there is a property owner who has, since submission of the app, been potentially incapacitated and/or there are issues with obtaining signature. We have recommended in the past and continue to recommend that the parcel owned by that individual be removed from the application so the rest of the application can proceed to technical completeness review.

RESPONSE: THE PROPERTY IN QUESTION IS LOCATED BETWEEN 23RD AND 24TH AVENUES, BUT THE CITY IS MODIFYING THE PENDING DESIGN TO SHORTEN THE PROPOSED EXTENSION SO THAT IT ENDS AT 17TH AVENUE (THE CURRENT PROPOSAL HAS IT GOING TO 25TH AVENUE) , THUS ELIMINATING THE NEED FOR THE OWNER'A SIGNATURE. THE REVISED DESIGN WILL BE SUBMITTED SHORTLY.

Thank you,

Jennifer Moriarty (she/her), Director
Division of Land Resource Protection
NJ Department of Environmental Protection Mail Code 501-02A
501 East State Street
Trenton, NJ 08625-420
Email: jennifer.moriarty@dep.nj.gov
P: (609) 984-3444

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-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Monday, December 19, 2022 3:02 PM
To: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Kane, Jason (LPS) <Jason.Kane@law.njoag.gov>; Tamagno, Joslin [DEP] <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP] <Michele.Kropilak@dep.nj.gov>
Subject: FW: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

All:

Please see information below provided to me by the City Engineer regarding advance planning for possible bulkhead construction. This will reconfirm that it is the City's intention to file for an EA so as to have it in place in the event that it is needed.

the contractor is going to mobilize equipment to the beach patrol site this week. I am going to have him put his equipment in the City's clamshell parking lot west of the beach bike path off of 15th Ave. The equipment is necessary to obviously construct the bulkhead, but we are only mobilizing at this time because the same equipment is required to unload the bulkhead materials from the trucks. I do not have a confirmed delivery date yet, but it is soon.

We assume that the Department is comfortable with this approach, but please let me know if you have any questions or concerns.

Neil

**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT H**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21
Date: Wednesday, January 11, 2023 9:07:36 AM

-----Original Message-----

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Tuesday, January 3, 2023 8:32 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Cc: Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>; Kimberly Cahall (DEP) <Kimberly.Cahall@dep.nj.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>; Michele Kropilak (DEP) <Michele.Kropilak@dep.nj.gov>; Joslin Tamagno (DEP) <Joslin.Tamagno@dep.nj.gov>; Janet Stewart (DEP) <Janet.Stewart@dep.nj.gov>
Subject: Re: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

Correct. It's fabricated in Mississippi, and it was too cold to apply the coating. I anticipate getting you the plans and draft EA in the next day or two.

Neil Yoskin
Cullen and Dykman LLP
229 Nassau St.
Princeton, N.J. 08542
Nyoskin@Cullenllp.com

> On Jan 3, 2023, at 8:24 AM, Kevin Terhune <Kevin.Terhune@law.njoag.gov> wrote:

>

> Thanks Neil. We understand that pilings were delivered. I presume that the materials that are delayed is the sheathing?

>

> Kevin

>

> -----Original Message-----

> From: Yoskin, Neil <nyoskin@cullenllp.com>
> Sent: Friday, December 30, 2022 5:16 PM
> To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
> Cc: Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>; Kimberly Cahall (DEP) <Kimberly.Cahall@dep.nj.gov>; Colleen Keller (DEP) <Colleen.Keller@dep.nj.gov>; Michele Kropilak (DEP) <Michele.Kropilak@dep.nj.gov>; Joslin Tamagno (DEP) <Joslin.Tamagno@dep.nj.gov>; Janet Stewart (DEP) <Janet.Stewart@dep.nj.gov>
> Subject: Re: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

>

> Hi Kevin: delivery of the bulkhead materials has been further delayed by weather conditions where it is fabricated. I will check on the status of the EA.

>

> Neil Yoskin
> Cullen and Dykman LLP
> 229 Nassau St.
> Princeton, N.J. 08542
> Nyoskin@Cullenllp.com

>

>
>> On Dec 30, 2022, at 3:39 PM, Kevin Terhune <Kevin.Terhune@law.njoag.gov> wrote:
>>
>> Good afternoon Neil. Hope you have had a good holiday season.
>>
>> I wanted to follow up to see what the status of the City's EA request. I understood that same was being prepared for DEP's pre-review on December 21. To date we have not seen any submission.
>>
>> Also, please advise as to the status of the delivery of any bulkhead materials. Back on the 19th, you sent an email advising that the City was going to have a contractor mobilize equipment which would be used for the unloading of materials. Please advise.
>>
>> Thank you.
>>
>>
>> Kevin A. Terhune
>> Deputy Attorney General
>> Environmental Enforcement & Environmental Justice New Jersey Attorney
>> General's Office R.J. Hughes Justice Complex
>> 25 Market Street
>> P.O. Box 093
>> Trenton, New Jersey 08625
>> Ph: (609) 376-2735
>> Mobile: (732) 272-7382
>> Fax: (609) 341-5031
>> Kevin.Terhune@law.njoag.gov
>>
>>
>>
>> -----Original Message-----
>> From: Yoskin, Neil <nyoskin@cullenllp.com>
>> Sent: Wednesday, December 21, 2022 11:01 AM
>> To: Jennifer Moriarty (DEP) <Jennifer.Moriarty@dep.nj.gov>
>> Cc: Kevin Fleming <Kevin.Fleming@law.njoag.gov>; Kevin Terhune
>> <Kevin.Terhune@law.njoag.gov>; Dianna Shinn
>> <Dianna.Shinn@law.njoag.gov>; Joslin Tamagno (DEP)
>> <Joslin.Tamagno@dep.nj.gov>; Michele Kropilak (DEP)
>> <Michele.Kropilak@dep.nj.gov>; Colleen Keller (DEP)
>> <Colleen.Keller@dep.nj.gov>; Janet Stewart (DEP)
>> <Janet.Stewart@dep.nj.gov>
>> Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21
>>
>> Understood. I trust you are aware that there was a fairly detailed AA in the October EA request.
>>
>>
>> -----Original Message-----
>> From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>
>> Sent: Wednesday, December 21, 2022 10:44 AM
>> To: Yoskin, Neil <nyoskin@cullenllp.com>
>> Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune,
>> Kevin
>> (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS)
>> <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP]
>> <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP]
>> <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP]
>> <Colleen.Keller@dep.nj.gov>; Stewart, Janet [DEP]
>> <Janet.Stewart@dep.nj.gov>

>> Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

>>

>> Thank you Neil. The alts analysis should address current conditions, demonstrate that the alternatives have been explored and include details about their feasibility.

>>

>> -----Original Message-----

>> From: Yoskin, Neil <nyoskin@cullenllp.com>

>> Sent: Tuesday, December 20, 2022 3:46 PM

>> To: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>

>> Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune,

>> Kevin

>> (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS)

>> <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP]

>> <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP]

>> <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP]

>> <Colleen.Keller@dep.nj.gov>

>> Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

>>

>> I was just provided with a copy of the alternatives analysis that accompanied the first EA. It appears to have addressed all of the alternatives listed in your email. If that is not the case, or if the analyses were not sufficient in the Department's view, please let us know.

>>

>>

>> -----Original Message-----

>> From: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>

>> Sent: Tuesday, December 20, 2022 11:08 AM

>> To: Yoskin, Neil <nyoskin@cullenllp.com>

>> Cc: Fleming, Kevin (LPS) <Kevin.Fleming@law.njoag.gov>; Terhune,

>> Kevin

>> (LPS) <Kevin.Terhune@law.njoag.gov>; Shinn, Dianna (LPS)

>> <Dianna.Shinn@law.njoag.gov>; Tamagno, Joslin [DEP]

>> <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP]

>> <Michele.Kropilak@dep.nj.gov>; Keller, Colleen [DEP]

>> <Colleen.Keller@dep.nj.gov>

>> Subject: RE: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

>>

>> Neil,

>>

>> I've attached our other correspondence to this message so I can respond comprehensively.

>>

>> First, thank you for the information regarding the City's preparation of an EA application. We would welcome opportunity to pre-review the materials so we can provide feedback prior to submission. You have informally provided statements regarding claimed challenges to backpassing on behalf of the City, but the City's request should still include an analysis of alternatives short of a bulkhead such as backpassing, trucking from an upland location, geobags, etc. Any request for a bulkhead should analyze minimization of the extent of the bulkhead. We offer this guidance in the absence of any claimed current emergency in an effort to be prepared should one arise.

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>> I understand the City's contractor may be staging equipment in preparation for the arrival of bulkhead materials. I want to reiterate that any regulated activity without authorization will subject the City and its contractors to enforcement action.

>>

>> Again, the City should endeavor to complete the 2020 bulkhead application. We understand there is a property owner who has, since submission of the app, been potentially incapacitated and/or there are issues with obtaining signature. We have recommended in the past and continue to recommend that the parcel owned by that individual be removed from the application so the rest of the application can proceed to technical completeness review.

>>

>> Thank you,

>>

>> Jennifer Moriarty (she/her), Director Division of Land Resource
>> Protection NJ Department of Environmental Protection Mail Code
>> 501-02A
>> 501 East State Street
>> Trenton, NJ 08625-420
>> Email: jennifer.moriarty@dep.nj.gov
>> P: (609) 984-3444

>>

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>>

>>

>>

>>

>> -----Original Message-----

>> From: Yoskin, Neil <nyoskin@cullenllp.com>
>> Sent: Monday, December 19, 2022 3:02 PM
>> To: Moriarty, Jennifer [DEP] <Jennifer.Moriarty@dep.nj.gov>; Kane,
>> Jason (LPS) <Jason.Kane@law.njoag.gov>; Tamagno, Joslin [DEP]
>> <Joslin.Tamagno@dep.nj.gov>; Kropilak, Michele [DEP]
>> <Michele.Kropilak@dep.nj.gov>
>> Subject: FW: [EXTERNAL]North Wildwood 44693-400-21, 46006-400-21

>>

>> All:

>>

>> Please see information below provided to me by the City Engineer regarding advance planning for possible bulkhead construction. This will reconfirm that it is the City's intention to file for an EA so as to have it in place in the event that it is needed.

>>

>>

>> the contractor is going to mobilize equipment to the beach patrol site this week. I am going to have him put his equipment in the City's clamshell parking lot west of the beach bike path off of 15th Ave. The equipment is necessary to obviously construct the bulkhead, but we are only mobilizing at this time because the same equipment is required to unload the bulkhead materials from the trucks. I do not have a confirmed delivery date yet, but it is soon.

>>

>> We assume that the Department is comfortable with this approach, but please let me know if you have any questions or concerns.

>>

>> Neil

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**TERHUNE
FIRST
SUPPLEMENTAL
CERTIFICATION
EXHIBIT I**

From: [Kevin Terhune](#)
To: [Kathi Cooley](#)
Subject: FW: [EXTERNAL]City of NWW bulkhead materials
Date: Wednesday, January 11, 2023 9:06:47 AM
Attachments: [ltr to Mayor Rosenello and RA Walters 1.5.23.pdf](#)

From: Yoskin, Neil <nyoskin@cullenllp.com>
Sent: Friday, January 6, 2023 8:19 AM
To: Kevin Terhune <Kevin.Terhune@law.njoag.gov>
Cc: Bocchi, Anthony S. <abocchi@cullenllp.com>
Subject: Fwd: [EXTERNAL]City of NWW bulkhead materials

Good morning Kevin: consistent with our agreement, I am communicating only with you. It is still our intention to send a draft EA for informal pre-review, but I do not recall a prior request to evaluate construction of a stone revetment as an alternative. Could you ask when that was first floated, and to whom?

Neil Yoskin
Cullen and Dykman LLP
229 Nassau St.
Princeton, N.J. 08542
Nyoskin@Cullenllp.com

Begin forwarded message:

From: "Moriarty, Jennifer [DEP]" <Jennifer.Moriarty@dep.nj.gov>
Date: January 5, 2023 at 4:55:19 PM EST
To: Patrick Rosenello <PRosenello@northwildwood.com>, sperillo@npdlaw.com,
"Yoskin, Neil" <nyoskin@cullenllp.com>, "Bocchi, Anthony S."
<abocchi@cullenllp.com>, richardawalters@comcast.net
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<Michele.Kropilak@dep.nj.gov>, "Stewart, Janet [DEP]" <Janet.Stewart@dep.nj.gov>
Subject: [EXTERNAL]City of NWW bulkhead materials

Dear Mayor Rosenello and Mr. Walters:

Please see the attached correspondence.

Thank you,

Jennifer Moriarty (she/her), Director
Division of Land Resource Protection

NJ Department of Environmental Protection

Mail Code 501-02A

501 East State Street

Trenton, NJ 08625-420

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State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION WATERSHED AND LAND MANAGEMENT

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PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

SHAWN M. LATOURETTE

Commissioner

January 5, 2023

Honorable Patrick Rosenello
City of North Wildwood
901 Atlantic Ave
North Wildwood, NJ 08260

Shirley Walters
R.A. Walters & Sons, Inc.
18 Hoffman Drive
Cape May Courthouse, NJ 08210

RE: City of North Wildwood
Bulkhead Materials at 15th Avenue Lifeguard Station: construction not
authorized

Dear Mayor Rosenello and Ms. Walters:

As you are aware, the New Jersey Department of Environmental Protection (“DEP”) has filed an Order to Show Cause (“OTSC”) against the City of North Wildwood (“NWW”) in part seeking to block any unpermitted construction along its beach, including a bulkhead between 14th and 16th Avenues. The OTSC is scheduled for a hearing before the Honorable James H. Pickering on January 17, 2023. In response to the filing of the OTSC, Anthony Bocchi, Esq. filed a letter to the Court which indicated that NWW had no intention of engaging in any oceanfront construction activities and that the City would seek an emergency authorization from DEP’s Division of Land Resource Protection (DLRP) for any future construction activities.

Since the filing of the current action, DEP has made several attempts, both directly and through the New Jersey Attorney General’s Office, to work with NWW to address its concerns regarding the conditions on its oceanfront. These attempts have included offers from DLRP to pre-review any proposed emergency authorization applications for any regulated activities that NWW believes may become necessary, and outreach regarding completion of NWW’s permit application for a bulkhead in the above-referenced area which has been deficient since 2020. DLRP

also provided guidance that alternative shore protection measures, including back passing and placement of rock, should be thoroughly considered by NWW in any submission, especially considering the time that has elapsed since the October EA request was submitted. To date, NWW has not submitted any information regarding a request for authorization of shore protection measures and has not cured the deficiencies in its 2020 permit application.

A January 3, 2023 inspection by DEP indicates that survey work has been completed which included the placement of stakes marked "Bulkhead", in and around the waterward dune fronting NWW's 15th Avenue lifeguard station, and that materials and equipment to install a bulkhead have arrived on the site. NWW is reminded that the installation of bulkhead in the area has not been approved and that no construction work is permitted on its beachfront without an approved CAFRA permit or emergency authorization. While DEP remains willing to work with NWW to address its ongoing concerns, additional oceanfront construction performed without permits or emergency authorization will subject NWW and its contractors to enforcement action.

Thank you for your immediate attention in this regard.

Sincerely,



Jennifer Moriarty, Director
Division of Land Resource Protection

cc: Kevin A. Terhune, D.A.G.
Dianna S. Shinn, D.A.G.
Kimberly Cahall, DEP
Colleen Keller, DEP
Janet Stewart, DEP
Michele Kropilak, DEP
Neil Yoskin, Esq.
Anthony Bocchi, Esq.
Salvatore Perillo, Esq.

