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March 2, 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 Response to NWW's Request for Case Management  
Conference Regarding the February 24, 2023 EA Denial

Dear Judge Blee:

This office represents the Department of Environmental Protection ("Department") in the above-referenced matter. Please accept this letter in preparation for the case management conference Your Honor scheduled for March 7, 2023. The Department is open to having a discussion with the Court and NWW about how best to move forward after the denial of NWW's latest Emergency Authorization ("EA") application. However, the Department does not agree with NWW's contention that the Court has jurisdiction over the merits of the new EA that NWW submitted to the Department on February 10, 2023 and the Department denied on February 24, 2023 per the Coastal Zone Management Rules ("CZM" Rules).



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As the Department previously represented to the Court regarding NWW's October 5, 2022 EA application and denial, this Court does not have jurisdiction over the merits of a permitting decision, such as an EA denial. Permit applicants and authorization applicants have a right to an adjudicatory administrative hearing under the CZM Rules to contest any Department decision to issue or deny a permit pursuant to the act. N.J.A.C. 7:7-28.1. See also N.J.S.A. 52:14B-3.1(b). NWW correctly states in its letter that it has the right to request an administrative hearing to contest the EA denial dated February 24, 2023 in the Office of Administrative Law. If NWW does not want to seek administrative review of the denial, it can attempt to seek Appellate Review of DEP's decision in the interest of justice. R. 2:2-3(a)(2). But, the merits of a permitting decision are not within this Court's jurisdiction. Therefore, it is improper for NWW to request that this Court toll the time period to file a hearing request. See New Jersey Dep't of Env'tl. Prot. v. Mazza & Sons, Inc., 209 N.J. Super. 13, 26 (App. Div. 2009) (finding that the statutory time limit for requesting an administrative hearing is "mandatory and jurisdictional.")

The Department notes that Your Honor's February 1, 2023, order directed NWW to seek approval to install a bulkhead at 15<sup>th</sup>/16<sup>th</sup> Avenues. However, NWW in its February 10, 2023 EA application instead sought to install a bulkhead from 12<sup>th</sup>/ 13<sup>th</sup> Avenues through 16<sup>th</sup> Avenue. As described above, this Court lacks jurisdiction to review the denial of the February 10, 2023 EA application.

The Department is amenable to discuss at the case management conference how NWW may proceed to seek EA approval for additional shore protection other than a bulkhead. Specifically, NWW can seek approval to truck sand from an upland source and place it on the landward side of the dune at 15<sup>th</sup> Avenue to bolster the dune protection at this location and to also seek EA approval to install rock near the end of the unauthorized bulkhead at 12<sup>th</sup> Avenue, which would help break up the wave action at this location thereby ameliorating erosion. In fact, in its EA denial dated February 24, 2023, DEP recommended that NWW submit a new EA application seeking this specific relief. Because DEP may only authorize an emergency measure that was specifically requested by the applicant (N.J.A.C. 7:7-21.2(a)(6-10)), the Department could not approve such work under NWW's February 10, 2023 EA application. But it can discuss the option now if NWW is open to filing a new EA to seek authorization for this work.

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Finally, the Department reiterates its commitment to expediting review of NWW's pending CAFRA permit that seeks authorization to install a bulkhead in this same location.

Thank you for the Court's attention to this matter. The Department remains committed to working with NWW to resolve this matter amicably.

Sincerely yours,

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

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

Encls.

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