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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

CITY OF NORTH WILDWOOD, “XYZ CONTRACTORS” 1-10, “JOHN AND/OR JANE DOES” 1-10,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
CAPE MAY COUNTY**

DOCKET NO. C-55-22

CIVIL ACTION

**SUPPLEMENTAL CERTIFICATION OF
MAYOR PATRICK T. ROSENELLO**

I, PATRICK T. ROSENELLO, of full age, certify and say:

1. I am the Mayor of the City of North Wildwood, Cape May County, New Jersey, (“North Wildwood”). I submit this Supplemental Certification in further support of North Wildwood’s opposition to Plaintiff New Jersey Department of Environmental Protection’s (“NJDEP”) application for preliminary injunctive relief, in support of North Wildwood’s application for preliminary injunctive relief, and in support of North Wildwood’s Motion for Leave to File a Counterclaim Pursuant to R. 4:67-4. I have personal knowledge of the facts set forth herein.

2. On January 4, 2023, North Wildwood filed a Motion for Leave to File a Counterclaim Pursuant to R. 4:67-4 (hereafter, the “Motion”). North Wildwood’s proposed Counterclaim seeks, among other things, \$21,000,000.00 in damages caused by NJDEP’s failure to abide by the State Aid Agreement to undertake critical beach restoration measures in North Wildwood.

3. Since North Wildwood filed its Motion, the NJDEP has issued three Administrative Order and Notice of Civil Administrative Penalty Assessments (hereafter, “AONOCAPA”) against North Wildwood.

4. On January 11, 2023 – seven (7) days after North Wildwood filed its Motion – the NJDEP issued an AONOCAPA in the amount of \$8,661,000.00 for alleged CAFRA violations, Flood Hazard Area Control Act violations, and Freshwater Wetland Protection Act violations dating back to 2020. Annexed hereto at **Exhibit A** is the January 11, 2023 AONOCAPA.

5. On January 24, 2023 – twenty (20) days after North Wildwood filed its Motion – the NJDEP issued a second AONOCAPA in the amount of \$2,941,000.00 for alleged CAFRA violations and Flood Hazard Area Control Act violations dating back to 2020. Annexed hereto at **Exhibit B** is the January 24, 2023 AONOCAPA.

6. On January 27, 2023 – twenty three (23) days after North Wildwood filed its Motion – the NJDEP issued a third AONOCAPA in the amount of \$1,216,182.00 for alleged construction and operation of a treatment works without a permit in 2020. Annexed hereto at **Exhibit C** is the January 27, 2023 AONOCAPA.

7.. Since North Wildwood filed its Motion, the NJDEP has issued a total of \$12,818,182.00 in fines against North Wildwood.

8. I respectfully submit that these retaliatory measures taken by the NJDEP should be considered by the Court in this matter.

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



Patrick T. Rosenello

Dated: January 27, 2023

EXHIBIT A



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Watershed & Land Management

Division of Land Resource Protection

501 East State St, PO Box 420, 501-2A

Trenton, New Jersey 08625

Tel. (609) 984-3444

PHILIP D. MURPHY

Governor

SHELLA Y. OLIVER

Lt. Governor

SHAWN M. LATOURETTE

Commissioner

January 11, 2023

CERTIFIED MAIL/RRR & Via email
7017 2620 0000 1758 0251

Honorable Patrick Rosenello, Mayor
City of North Wildwood
901 Atlantic Avenue
North Wildwood, New Jersey 08260

RE: Administrative Order and Notice of Civil Administrative Penalty Assessment
Block 291.01 Lot 1; Block 315.02, Lot 1; Block 316.02, Lot 1;
Block 317.02, Lots 1 & 2; Block 317.03, Lot 1; Block 289.03, Lot 1
North Wildwood City, Cape May County
PEA230001-0507-03-0009.3

Dear Mayor Rosenello:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department.

Contained within the enclosed document is a notice and instructions for requesting an Administrative Hearing. Failure to request a hearing within 35 days as per instructions will result in the loss of your right to a hearing.

If you have any questions concerning the Administrative Order and Notice of Civil Administrative Penalty Assessment, please contact Michele Kropilak of my staff at michele.kropilak@dep.nj.gov or by letter at the address above.

Sincerely,

Jennifer Moriarty, Director
Division of Land Resource Protection

c: Kimberly Cahall, NJDEP, OEP
Dennis Reinknecht, NJDEP, DREC
Kevin Terhune, NJOAG, DOL-EEEEJ
Neil Yoskin, Esq., Cullen & Dykman LLP



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
 BUREAU OF COASTAL AND LAND USE COMPLIANCE &
 ENFORCEMENT
 Toms River Office
 1510 Hooper Avenue, Suite 140
 Toms River, New Jersey 08753
 Tel. (732) 255-0787 • Fax. (732) 255-0877

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SHAWN M. LATOURETTE
Commissioner

January 11, 2023

CERTIFIED MAIL/RRR & Via email
7017 2620 0000 1758 0251

IN THE MATTER OF	:	
	:	
	:	
City of North Wildwood	:	ADMINISTRATIVE ORDER
901 Atlantic Avenue	:	AND
North Wildwood, New Jersey 08260	:	NOTICE OF CIVIL ADMINISTRATIVE
	:	PENALTY ASSESSMENT
	:	

ID # PEA230001-0507-03-0009.3

This Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter, NJDEP or the Department) by N.J.S.A. 13:1D-1, et seq., and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., (“FHA”) and the rules promulgated at N.J.A.C. 7:13-1 et seq., the Coastal Area Facility Review Act N.J.S.A. 13:19-1 et seq. (“CAFRA”) and rules promulgated at N.J.A.C. 7:7-1 et seq., and the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et. seq.) and the rules promulgated at N.J.A.C. 7:7A-1, et. seq., and duly delegated to the Assistant Commissioner, Watershed and Land Management and her assignees pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The City of North Wildwood, hereinafter “Respondent,” owns the oceanfront beach and dune property located at Block 291.01, Lot 1; Block 315.02, Lot 1; Block 316.02, Lot 1; Block 317.02, Lots 1 & 2; Block 317.03, Lot 1, Block 289.03, Lot 1, North Wildwood City, Cape May County, hereinafter the “site”.
2. On December 1, 2014, the Department’s Division of Land Resource Protection (DLRP) issued a CAFRA and Freshwater Wetland Permit (File # 0507-03-0009.2 CAF140001, FWW140001 & FWW140002) to the Respondent, which authorized street and utility reconstruction, beachfront storm sewer/outfall reconstruction, construction of a multi-use path from 5th to 15th Avenues and widening of sidewalks between 1st and 2nd Avenues in North Wildwood. The freshwater wetlands buffer for the wetlands was identified as exceptional resource value and designated as 150 feet wide. Pre-construction condition #2 of this permit required that prior to site preparation, the permittee shall complete a transition area and adjacent freshwater wetland conservation restriction and file the completed restriction with the Cape May County Clerk’s Office preserving the freshwater wetlands and transition areas located within the existing dunes. A copy of the recorded restriction was also required to be submitted to the Department prior to construction. The freshwater wetlands

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conservation restriction was not filed as required by the Freshwater Wetland Permit and construction has been completed. The Respondent's counsel admitted in an August 17, 2020 letter to DEP that a conservation restriction was drafted at the time but the Respondent has failed to file the conservation restriction with the Cape May County Clerk's Office to date.

3. On June 9, 2017, the DLRP issued a CAFRA and Waterfront Development permit to the Respondent, File #0507-03-0009.3 (CZM170001) for routine beach and dune maintenance and on June 29, 2018, DLRP issued a CAFRA and Waterfront Development Permit File #0500-07-0006.3 (CAF180001, WFD180001) for sand back passing which included the harvesting of sand from the City of Wildwood and the deposition of that sand in specifically designated areas only on the beach waterward toe of the dunes in North Wildwood between 2nd and 26th Avenues in accordance with NJDEP approved location plans. These permits do not authorize any disturbance to existing dunes, wetlands or stockpiling of sand and are valid for 5 years.
4. On December 19, 2017, the Respondent submitted a jurisdictional determination request to DLRP to determine if proposed concrete and composite decking surrounding the beach patrol building at 15th Ave at the oceanfront required an NJDEP coastal permit. The DLRP issued a Coastal Jurisdictional Determination letter, File #0507-03-0009.2 (APD170001) on August 14, 2019, that a CAFRA permit would be required for the decking. As seen on Nearmap aerial imagery from March 6, 2017, the Respondent had already constructed approximately 4, 216 square feet of concrete and composite decking at the beach patrol building without obtaining the required CAFRA permit.
5. On July 10, 2019, DLRP issued a Freshwater Wetlands Letter of Interpretation File #0507-03-0009.2 FWW180001 to the Respondent for a portion of the site that identified freshwater wetlands and transition areas near the Lou Booth Amphitheatre and within and surrounding the dunes to the north of the beach patrol building at 15th Avenue.
6. On April 3, 2020, the Respondent submitted a CAFRA and Freshwater Wetlands permit application, File #0507-03-0009.4 (LUP200001), to DLRP to construct ADA and other improvements at the 22nd Avenue beach, the Lou Booth Amphitheatre and Hereford Inlet.
7. The DLRP advised the Respondent that the application was deficient on May 6, 2020. There were numerous deficiencies, including, but not limited to, inaccurate plan submittals that did not depict all existing structures or freshwater wetlands and transition area disturbances. The Respondent was advised that bike, concrete and other pathways, foot showers and stairs were constructed without prior CAFRA authorization and may need to be removed and/or be legalized if the Respondent can demonstrate compliance with the Coastal Zone Management Rules at N.J.A.C. 7:7 and Stormwater Rule, N.J.A.C. 7:8. On March 31, 2022, the Respondent submitted information to address some of the deficiencies. As a result, the DLRP issued another deficiency letter on April 7, 2022. As of this date, the application remains deficient and is awaiting additional information from the Respondent.
8. On April 28 and May 26, 2020, in response to calls to the Department's Communication Center of alleged unauthorized dune disturbance at the site, the Department's Bureau of Coastal & Land Use Compliance & Enforcement (CLUE) conducted site investigations and determined that approximately 8 acres of vegetated dunes, including approximately 6.7 acres of critical wildlife habitat and approximately 1.1 acres of freshwater wetlands, throughout the North Wildwood oceanfront had been destroyed and numerous structures had been constructed on the site without NJDEP authorization. These unauthorized structures included a vinyl and steel oceanfront bulkhead from approximately 3rd Avenue to almost 13th Avenue, gazebos, sheds, shower platforms, bike paths, walkways, concrete landing with flagpole and other improvements along the oceanfront, including dune disturbance/removal in and around the Lou Booth Amphitheatre and Surf Avenue area.
9. CLUE documented that the Respondent had graded and removed approximately 0.57 acres of the dune adjacent to and waterward of Seaport Pier just prior to the opening of Seaport Pier in spring of 2018 and was now stockpiling back passed sand within this area, had altered or removed vegetated dunes during the unauthorized

construction of the various bulkhead segments from 2012 to 2020, including the removal of approximately 0.58 acres of prior dune/beach area to install an irregularly shaped bulkhead and create a park area on the oceanfront between 5th and 7th Avenues, and also placed some of the harvested sand from Wildwood in large stockpiles on top of approximately 6.7 acres of existing vegetated dunes from 7th Avenue south towards 13th Avenue in 2020. Placement of the stockpiled sand on top of the vegetated dunes and in other locations on the beach and dunes throughout the site were not authorized by any NJDEP permit or in compliance with any approved permit or plan. In late spring of 2020, these large stockpiles of harvested sand were graded waterward of the unauthorized steel bulkhead destroying the mature, densely vegetated dunes between 7th Avenues and 13th Avenues. Additional unauthorized large stockpiles of sand remained throughout the site at this time.

10. Based on the violations described in paragraphs above, the Department issued a June 6, 2020 CAFRA, Freshwater Wetlands and Flood Hazard Area Notice of Violation ("NOV") to the Respondent. In the NOV, the Department advised that all unauthorized activities must cease immediately, and that Respondent was not to conduct any regulated activities except in compliance with valid NJDEP land use permits in accordance with approved plans. The June 6, 2020 NOV requested a response within 10 days and copies of all work/site plans, as built surveys, planning board and local/county/federal/state approvals for the unauthorized work as well as a list of all contractors, their contracts, and identify the specific projects completed for the Respondent related to the NOV.
11. On June 8, 2020, CLUE visited the site to assess site conditions. Sand grading of the stockpiles within the area of vegetated dunes near 11th and 12th Avenues was still underway. The same day, the Department again advised the Respondent via e-mail that the work in progress was not authorized by any permit and must stop immediately or additional enforcement action would be taken. CLUE proceeded to City Hall and met with the City Administrator and via telephone with the City's attorney. Both were advised that the work underway was not in compliance with the sand back passing permit and that all work must cease and a restoration plan should be submitted within 10 days as required by the June 6, 2020 NOV. Subsequent to this meeting, the City's attorney emailed NJDEP and admitted that the City's position is that due to storm erosion, by the time the sand was harvested from Wildwood to be brought to North Wildwood there was no room to place it other than on what remained of the vegetated dunes. The City felt the remaining sand stockpiles were unstable and proposed to stop working at the 12th Avenue site, but be allowed to complete work from 17th -23rd Avenues, and suggested a site meeting be scheduled immediately to discuss further. The Department did not agree to any continuation of site work. The Respondent's attorney requested a thirty-day extension to respond to the NOV and a meeting to further discuss the NOV and path forward. No thirty-day extension was granted by the Department at this time.
12. On June 9, 2020, the Respondent and Department staff met on site to view current the public safety hazardous conditions created by the Respondent's unauthorized movement and stockpiling of sand. The Respondent was concerned about the remaining large stockpiles of sand that had not yet been distributed and graded, which might be susceptible to erosion and collapse, and presented a public safety hazard. The Department advised the Respondent to close off or fence the areas of safety concern and stop work, prepare and/or provide surveys documenting the location of the dunes prior to the commencement of this year's back passing, and stake the area 25 feet waterward of the remaining dunes so that they would not be impacted/excavated. The Department advised that the stockpiled sand should remain in place and eventually be utilized to begin restoration of the 6.7 acres of dunes that were destroyed by the Respondent. It was also recommended that the Respondent submit an emergency authorization request to address the alleged public safety hazard, and once submitted, DLRP agreed to expedite review of same. Later that day, the Department received an email from the Respondent that they planned to continue to move sand but would apply for an emergency authorization.
13. On June 10, 2020, the Respondent requested an emergency authorization for public safety to complete the distribution of the remaining sand stockpiled along the oceanfront and to grade that sand between 2nd and 26th Avenues. The Respondent proposed to establish a flagged buffer line located 25 feet waterward of the visible limit of remaining vegetated dunes and utilize the stockpiled sand for continued beach placement and grading, and also planned to retain 75,000 cubic yards of sand for future erosion events. The Respondent expected the

work to be completed by June 14, 2020 and did not submit a site/work plan. The Department did not authorize any continuation of the sand movement or grading at that time. The Respondent acknowledged that their NJDEP approved plans delineated areas to place the sand waterward of all existing dunes, however in late 2019 and 2020, the Respondent instead placed the harvested sand landward of the authorized sand locations within dunes, wetlands and critical wildlife habitat areas because the delineated approved locations were either subject to erosion or currently underwater. The Respondent agreed to coordinate on the submittal of a restoration and/or mitigation plan for the areas impacted. DLRP continued to request a plan depicting the proposed limits of sand removal/transfer from the stockpiled areas.

14. On June 12, 2020, CLUE staff conducted a site inspection and determined that the Respondent was continuing to conduct unauthorized regulated activities despite being advised by the Department on multiple occasions to stop working. Specifically, the Respondent had continued to move sand from the large stockpiles near 21st and 22nd Avenues, grading those areas level, and placing and grading the harvested sand at the oceanfront between 2nd and 7th Avenues. None of the work was in compliance with any permits/approved plans and no emergency authorization had been issued for this activity to date.
15. On June 15, 2020, through counsel, Respondent requested a status update on the emergency authorization request. CLUE staff responded and once again asked that the Respondent provide a plan depicting the proposed limits of sand removal from the stockpiles and limits of the area to be transferred to. The Respondent was again reminded that the ongoing work was not in compliance and subject to enforcement action.
16. On June 17, 2020, the Respondent's attorney provided a plan depicting a 25-foot offset to the dunes. This plan did not address where the sand was to be placed or to what elevation/slope the sand would be graded to. Sand transfers and grading were still ongoing. DLRP staff advised once again that the ongoing work should cease, and only a one-time grading of the waterward slope of the stockpiles to address safety concerns would be authorized, and the remaining sand stockpiles should not be moved or graded any further so that the sand could be utilized to address all violations.
17. On June 22, 2020, through its counsel, DEP issued a reminder letter to the Respondent's attorney of the now past due requirement to submit all supplemental information related to the June 6, 2020 NOV. This information had been due within 10 days of the NOV (on June 16, 2020). The letter also reiterated that no extension had been provided to respond to the NOV.
18. On June 24, 2020, the DLRP issued an Emergency Authorization (File # 0500-07-0006.3 CAF200001) for a one-time slope adjustment to the sand stockpiles between 12th and 14th Avenues and 16th and 22nd Avenues to address the public safety concerns. The Emergency Authorization included specific limitations to the sand movement/grading and sand stockpile slopes and specifically directed that no grading or sand removal/movement shall occur beyond what was necessary to create a 5:1 slope to the sand stockpiles and 7:1 slope at the beach accessways for public safety. The Emergency Authorization allowed the Respondent to place limited excess sand within 75 feet of the steel bulkhead between 8th and 12th Avenues only. The elevation of the beach area was required to be no lower than 7 feet NAVD88, North American Vertical Datum of 1988, which is the standard used by surveyors to measure elevation. The Emergency Authorization specifically prohibited the continued removal, relocation, filling and grading of all stockpiled sand, or the continued movement of stockpiled sand beyond the limits above related to public safety and had to be completed within 60 days. The Respondent was required to submit a CAFRA and Waterfront Development permit application to the Department within 90 days. The Respondent was advised that the work authorized under the Emergency Authorization did not satisfy any of June 6, 2020 NOV compliance requirements to correct the violations.
19. On June 24, 2020, CLUE conducted a site inspection and observed sand being transported to, placed and graded between 3rd and 14th Avenues, without a valid NJDEP permit and in violation of the June 24, 2020 Emergency Authorization.

20. On June 29, 2020, CLUE conducted a site inspection and observed sand grading was ongoing at 12th Avenue not in compliance with any NJDEP approvals. This site inspection also confirmed that unauthorized transport, placement, filling and grading of sand had now occurred within a combined total area of approximately 12 acres of beach and prior dune areas throughout the North Wildwood oceanfront. The previously stockpiled sand had now been graded throughout the City's beach and prior dune area, beyond the approved areas listed within the June 24, 2020 Emergency Authorization. Substantial grading and removal of the stockpiled sand between 13th and 15th Avenues had occurred beyond the grading and sand movement authorized under the June 24, 2020 Emergency Authorization.
21. On July 14, 2020, the Respondent provided an initial response to the June 6, 2020 NOV and admitted work was completed without the required permits, but did not explain how the violations would be resolved, either via a timeframe for permit application submittal or restoration as needed. No other responsive documents were submitted at this time. Legal counsel for the Department advised the Respondent via email later that day that the response by the Respondent was incomplete and requested all responsive documents to address the NOV.
22. On September 17, 2020, the Department issued a second NOV (File# 0507-03-0009.3 PEA200002) to the Respondent for continuing and new violations at the site since June 6, 2020, including non-compliance with the June 24, 2020 Emergency Authorization (File# 0500-07-0006.3 CAF200001). The second NOV advised the Respondent to cease unauthorized grading and sand movement activities, and either submit a permit application to attempt to legalize the unauthorized work or submit a restoration plan to remove all unauthorized structures and restore the site. In addition, the Department reminded the Respondent that a CAFRA and Waterfront Development permit application was required no later September 24, 2020 in accordance with the June 24, 2020 Emergency Authorization.
23. On September 23, 2020, the Respondent's attorney advised the Department that the site had been experiencing erosion, the bulkhead between 2nd and 12th Avenues was subject to both direct wave attack and water was up to the bulkhead in these locations, and that jersey barriers had been placed south of 12th Avenue on the beach to provide protection to the dune system south of this location adjacent to the unauthorized bulkhead.
24. On September 24, 2020, CLUE conducted a site inspection and observed the unauthorized placement of concrete jersey barriers on the beach between 12th and 13th Avenues within a CAFRA regulated area.
25. On October 5, 2020, the Department issued a third NOV (File# 0507-03-0009.3 PEA20001) to the Respondent for placement of concrete "jersey" barriers on the beach between 12th and 13th Avenues without CAFRA permit approval in violation of N.J.A.C. 7:7-2.2. The NOV required either the removal of the jersey barriers or obtaining a CAFRA permit for them.
26. On October 9, 2020, the Respondent's attorney provided a response to the third NOV issued October 5, 2020, arguing that a CAFRA permit and/or emergency authorization should not be required, and that the Respondent intends to keep the jersey barriers in place for the remainder of the hurricane season. The Respondent did not submit a permit application, but the jersey barriers were removed from the beach by February 2021.
27. On October 16, 2020, the Respondent's attorney provided a response to the second NOV issued September 17, 2020 and admitted that the Respondent took actions that were outside the scope of the permit(s) and acknowledged disturbing the dunes, wetlands and wetland transition areas. Through counsel, the Respondent further conceded that the terms and conditions of the June 24, 2020 Emergency Authorization were not complied with because it felt they were outdated and obsolete upon issuance.
28. On October 21, 2020, the Department met with the Respondent to provide additional compliance assistance. The Respondent advised that it planned to submit an after the fact permit application for the existing unauthorized bulkhead together with a request to extend the bulkhead south the entire length of the City's oceanfront. and intended to add and address many of the other unauthorized structures within the pending deficient permit application File #0507-03-0009.4 (LUP200001), noted in paragraph 6. The Respondent

City of North Wildwood, PEA230001-0507-03-0009.3
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planned to apply for another permit or emergency authorization within 60 days for the upcoming round of back passing, thereby curing any alleged violations by way of that application. The Department requested the Respondent address, a holistic approach, including long and short-term resolution of all the violations by October 30, 2020, and advised that the permit applications must address the disturbance of dunes, wetlands, wetland transition areas, and critical wildlife habitat. Dune removal near Seaport Pier was discussed, and CLUE agreed to provide documentation of the removal to the Respondent, which was provided on October 29, 2020. On November 9, 2020, Respondent's attorney sent a letter to NJDEP that acknowledged the approximately 0.57 acre dune adjacent to Seaport Pier had been graded, removed and relocated landward by the Respondent without DEP permit approval.

29. On November 20, 2020, the Respondent submitted a CAFRA and Freshwater Wetlands permit application (File #0507-03-0009.6 LUP20001) to attempt to legalize a previously constructed vinyl bulkhead between 3rd and 5th Avenues and steel bulkhead between 5th and 13th Avenues; and to obtain approvals for a proposed steel bulkhead adjacent to the boardwalk between 13th and 25th Avenues. The permit application and submitted plans included information related to the dates of unauthorized installation for each segment of bulkhead as well as the lengths and materials installed. Specifically, 229 linear feet of vinyl bulkhead was installed from 3rd to 4th Avenues between 11/27/2012-12/09/2012, 267 linear feet of vinyl bulkhead was installed from 4th to 5th Avenues between 11/27/2017-05/06/2018, 630 linear feet of steel bulkhead was installed from 5th to 7th Avenues between 11/27/2017-05/06/2018, and 1,614 linear feet of steel bulkhead was installed from 7th to 13th Avenues between 11/08/2019 – 5/5/2020. The Respondent was notified that this application was determined to be deficient on December 3, 2020. As of this date, the application requires additional information from the Respondent prior to review.
30. On December 8, 2020, DLRP approved an Emergency Authorization, File #0500-07-0006.4 CAF200001, to conduct a sand back passing project in response to a request submitted by the Respondent to harvest sand from Wildwood, temporarily stockpile the material in Wildwood, place temporary jersey barriers waterward of existing piers from 23rd Ave to 26th Avenues to protect truck access, stockpile the sand on the beach between 17th and 23rd Avenues and 7th and 13th Avenues not closer than 15 feet to the existing seaward dune toe and then deposit and grade the sand on the beach between 5th Avenues and 17th Avenues in North Wildwood. In addition, the Respondent was required to reestablish a dune from 16th Avenue north to 12th Avenue with an elevation of 14.75 feet NAVD88, and a 25-foot wide dune crest. The Respondent was required to provide before and after surveys to the Department and comply with all other conditions, including submission of a complete CAFRA and Waterfront Development permit application within 90 days. Multiple modifications and approvals were provided to the Respondent for the December 8, 2020 Emergency Authorization into 2021.
31. On August 12, 2021, DLRP issued a CAFRA/Waterfront Development Individual Permit, 0500-07-0006.4 LUP210001, which legalized the beach back passing and beach nourishment activities authorized by DLRP in the December 8, 2020, April 1, 2020 and May 19, 2021 Emergency Authorizations. The authorized activities include beach sand harvesting, temporary stockpiles, and maintenance of six (6) outfall structures between Leaming Avenue and Juniper Avenue in the City of Wildwood, and deposition and grading of beach sand, temporary stockpiles, construction access ways, jersey barriers, dune creation, and outfalls repair and abandonment between 2nd and 26th Avenue in the City of North Wildwood. The August 12, 2021 permit stipulates that the Respondent shall request and obtain written approval from the DLRP prior to conducting any work referenced in the permit for the duration of the permit. The permit specifically does not legalize any of the unauthorized activities cited within the June 6 and September 17, 2020 NOVs. On June 22, 2022, representatives from the Department met with NWW City representatives (including Mayor Rosenello) and their consultants to discuss the requested, required additional information for the pending CAFRA IP and FWW GP6A (DLRP File No. 0507-03-0009.4 LUP 200001) which has been deficient since 5/6/20.
32. On July 27, 2022, CLUE issued a CAFRA NOV File# 0507-03-0009.3 PEA220001 to the Respondent as the City's beach and dune maintenance permit, 0507-03-0009.3 CZM170001, had expired on June 8, 2022. The Respondent was advised that all beach and dune maintenance activities should cease immediately. The City's consultant responded and advised a CAFRA permit application was being prepared. A beach and dune

maintenance permit application File#0507-20-0001.2 LUP220001 was submitted on December 16, 2022 and is under DEP review at this time.

33. On October 3, 2022, the Respondent's consultant advised DLRP via email that the site, and specifically the area near the beach patrol building at 15th Avenue, was sustaining dune losses and storm damage due to Hurricane Ian and indicated that he and may apply for an emergency authorization. DLRP replied that day to advise that the DLRP was available for any questions, would review any submissions quickly and provided guidance on what information was required to be submitted to apply for an emergency authorization. Later that day, the Respondent's consultant advised that an emergency authorization would likely be needed because there was a concern for a breach of dune at the beach patrol building.
34. On October 4, 2022, DLRP responded to the Respondent's consultant and again advised that DLRP would expedite review of any submitted emergency authorization request and provided both day and evening contact phone numbers. DLRP advised that no work should be completed unless and until DLRP reviewed and provided either written or verbal authorization. The consultant was provided specific guidance from N.J.A.C. 7:7-10.3(b) regarding acceptable emergency beach restoration activities including placement of fill material, alongshore transfer of sand on the beach, placement of rock and/or sand filled geotextile tubes and advised that these activities should be considered prior to placement of a bulkhead which could increase erosion to adjacent areas.
35. On the evening of October 5, 2022, the Respondent requested an emergency authorization to conduct multiple emergency shore protection measures in response to Hurricane Ian storm damage. The request included placement of 400 linear feet of concrete jersey barriers at the inland toe of the dune from 15th to 16th Avenues at the beach patrol building, removal of timber decking walkway to allow for jersey barrier installment, installation of 404 linear feet of bulkhead in this location, reshaping the dune scarp and landward side of the dune to provide an angle of repose to the bulkhead in this location, and reconstruction of the vehicular beach accessway at 25th Avenue. The request stated that the deployment of the jersey barriers, relocation of the decking and the reshaping of the dune to stabilize the slope would commence immediately and be completed within one day and the installation of bulkhead and reconstruction of the accessways would commence upon receipt of materials and would require several weeks.
36. On October 6, 2022, the DLRP requested clarification via email on what "reshaping the dune scarp" entailed. The Respondent's consultant responded that that grading of the waterside side of the dune scarp would establish a stable slope so that continued collapse would not occur, and this may be needed on the landward side as well where the dune will meet the proposed bulkhead. The consultant opined that the grading may be covered by the August 12, 2021, back passing permit. The permit, however, specifically requires DLRP review and approval prior to conducting any work. The Respondent did not have any Department permit or approval to reshape the dune.
37. On October 7, 2022, DLRP issued an Emergency Authorization, File# 0507-03-0009.7 CAF220001 FWW220001, to remove the walkway and install the jersey barriers only, ensuring no dune disturbance. The other requests by the Respondent were under review, required additional information from the Respondent's consultant and not authorized at the time. The Respondent had already completed the installation of the jersey barriers prior to receipt of this Emergency Authorization. The October 7, 2022 Emergency Authorization requires a complete CAFRA and Freshwater Wetland permit application be submitted within 90 days (no later than January 7, 2023). To date, no CAFRA and Freshwater Wetland application has been submitted as required.
38. The Department's Division of Resilience Engineering & Construction (DREC) also issued a letter to the Respondent on October 7, 2022, reiterating that an emergency authorization from the DLRP is required prior to conducting regulated activities and the Respondent is not authorized to proceed until Department approval is provided. DREC has provided both technical and administrative assistance to the Respondent for several back passing permits. This letter also explained that emergency authorizations as outlined in N.J.A.C. 7:7-10.3(b) authorize certain emergency post storm measures designed to return the beach to pre-storm conditions,

such as placement of fill material, alongshore transfer of sand, placement of rock and/or geotextile tubes. The provision does not include placement of a bulkhead, which is likely to increase erosion to adjacent areas, and the Department can only approve such measures where the Respondent has demonstrated the alternatives are not feasible.

39. On October 12, 2022, the DLRP sent an email to the Respondent. DLRP determined that upon full review of all of information provided by the Respondent for the October 5, 2022 emergency authorization application, the installation of 404 linear feet of bulkhead at the beach patrol building, reshaping the dune scarp and dune to provide an angle of repose to the bulkhead in this location, and reconstruction of vehicular beach access at 25th Avenue were not eligible for an emergency authorization. Specifically, the 25th Avenue vehicular access was constructed without permit approval between 2013 and 2014 and was not able to be legalized via an emergency authorization, and other vehicle accessways are available adjacent to this area. The bulkhead and dune reshaping were also not eligible for an emergency authorization because it has not been demonstrated that there was an imminent threat to loss of life or property at the time and the Respondent advised the proposed bulkhead was not going to be installed immediately, but only after ordering materials. Emergency authorizations are intended for immediate action within 30 days, and the standards under N.J.A.C. 7:7-21.1(a) have not been demonstrated. As there was a pending deficient permit application (see paragraph 32) for the proposed bulkhead, the DLRP recommended the Respondent cure the deficiencies, and DLRP committed to expediting the technical review once the deficiencies were addressed. , the installation of a bulkhead would in fact worsen the erosion on site, which counsel for the Respondent acknowledged was a possibility in their October 20, 2022 letter to the Department. Alternative shore protection measures, including back passing for which the City holds a valid permit, must be conducted to determine the necessity of the proposed bulkhead and to determine which solution would have the least coastal impact on the adjacent beach and dune system as required by the Coastal Zone Management rules. To date, and more than two years later, the Respondent has not addressed all of the pending bulkhead permit application deficiencies. The Respondent was again advised that any regulated activity conducted without NJDEP approval would be subject to enforcement action including civil administrative penalties. To date, the Respondent has taken no formal action to object to or appeal this emergency authorization decision of ineligibility for the bulkhead, reshaping the dune and reconstruction of the vehicular access. for the bulkhead, reshaping the dune and reconstruction of the vehicular access.
40. On October 20, 2022, CLUE conducted a site inspection and observed the Respondent excavate sand from the beach berm near 11th Avenue, transport and place the excavated sand on the beach waterward of the dune between 14th and 16th Avenues. The sand was then graded into the dune scarp to reshape the dune in this location. The Respondent did not seek prior approval for this CAFRA regulated activity, and specifically advised the Department in their October 5, 2022 emergency authorization request that there was no available sand source. The Respondent was also specifically advised on October 7, 2022, that dune disturbance was not authorized. CLUE issued a CAFRA NOV to the Respondent, File# 0507-03-0009.3 PEA220002, for the unauthorized excavation, grading and reshaping of the dune without permit approval. The October 20, 2022 NOV advised the Respondent to cease the activity and attempt to obtain after the fact NJDEP permit approval. To date, no permit application has been submitted for this unauthorized CAFRA regulated activity.
41. On October 21, 2022, the Respondent's attorney advised the Department that the Respondent had completed the regrading of the dune and that because of supply chain issues the bulkhead materials were not yet available but should be within 30 days therefore the matter could be further discussed. The Respondent also disagreed that the bulkhead permit application remained deficient but provided no further information.
42. On October 27, 2022, the Department sent an email to the Respondent's attorney requesting a meeting to discuss the deficiencies in its 2020 pending bulkhead application. The email specifically identified the deficiencies cited on December 3, 2020 that have not been resolved. To date, the Respondent has not accepted the Department's offer to meet and discuss the bulkhead permit application deficiencies.
43. The following are violations the Department has identified to date:

CAFRA Violations

Violations of N.J.A.C. 7:7-2.1 and 2.2- engaging in a regulated activity within a CAFRA area without a coastal permit. Initiation of a regulated activity without a coastal permit is considered a violation of this chapter and shall subject the person or persons responsible for the regulated activity to enforcement action in accordance with N.J.A.C. 7:7-29

The following regulated activity occurred without NJDEP permit authorization:

- A. Vinyl bulkhead construction (approximately 496 linear feet x 2 ft wide) from 3rd to 5th Avenues
- B. Steel bulkhead construction (approximately 2244 linear feet x 2 ft wide) from 7th- 13th Avenues within a dune
- C. Removal of vegetation, filling and grading of the (now bulkheaded) beach and dune area (approximately 0.58 acres) from 5th to 7th Avenues, to create a park with playground, walkways and other amenities
- D. Construction and placement of crushed clam fill material (approximately 8,565 square feet) for the creation of path through the dune/CAFRA area from Surf Avenue to the Lou Booth Amphitheatre
- E. Construction and placement of a concrete landing and flagpole (approximately 96 square feet) within a dune adjacent to the Lou Booth Amphitheatre (LBA)
- F. Concrete sidewalk expansion at Surf Ave (approximately 1,084 square feet) connected to D.
- G. Concrete path construction (approximately 470 square feet) near intersection of 2nd Avenue & Ocean/LBA
- H. Removal of vegetation, grading and filling of the CAFRA area of Surf Ave and the construction of concrete & gravel for pathways, bike rack area (approximately 4234 square feet)
- I. Removal of vegetation, grading and filling of the CAFRA area for the construction and placement of a platform with benches (approximately 230 square feet)
- J. Construction of a gazebo at 1st Ave & Surf (approximately 598 square feet)
- K. Construction of a gazebo at 2nd Ave & JFK Blvd (approximately 357 square feet)
- L. Placement/construction of storage sheds/fenced storage area at the Beach Patrol building at 15th Avenue (approximately 4691 square feet)
- M. Construction of a composite 8' wide bike path adjacent to the boardwalk between 15th – 26th Avenues (approximately 13,104 square feet)
- N. Construction and placement of crushed clam fill material for the creation of a walkway between 15th -21st along the oceanfront (approximately 44, 981 square feet)
- O. Construction of composite walkways/foot showers and bench platforms along the oceanfront at multiple street end entrances to the beach (approximately 24, 264 square feet)
- P. Placement of concrete jersey barrier structures on the beach at 12th Avenue (approximately 300 square feet)
- Q. Construction of a vehicular accessway/filling and fencing on the beach at 25th Avenue (approximately 3,789 square feet)
- R. Excavation of sand from the beach berm at 11th Ave, transporting and filling the beach area between 14th and 16th Avenues, and then grading the sand landward into the dune scarp (approximately 3,969 square feet)

Violations of N.J.A.C 7:7-27.2 (c) 8 -failure to comply with the conditions of a CAFRA permit is a violation of the Coastal Zone Management Rules and is grounds for enforcement action under N.J.A.C. 7:7-29

- A. Failure to comply with CAFRA permit File #0507-03-0009.3 CZM170001 for beach and dune maintenance -including permit special conditions 4, 10 -- special condition #4 requires all activities be conducted in accordance with best management practices as defined by the Department in N.J.A.C.7:7-10.2 for routine beach maintenance, at N.J.A.C.7:7-10.3 for emergency post storm beach restoration and N.J.A.C.7:7-10.4 for dune creation and

maintenance. Activities other than those outlined in these subchapters shall require additional authorization from the DLRP. Failure to receive such authorization prior to activities may warrant enforcement action. Special condition #10 states "bulldozing, excavation, grading, vegetation removal or clearing and relocation of existing dunes, whether existing or constructed in conjunction with this permit are not authorized under this general permit. Violations of these conditions and the permit include:

1. The stockpiling of sand on top of existing vegetated dunes and the subsequent vegetation removal, clearing, excavation, grading and removal of these dunes (approximately 6.7 acres) between 7th and 13th Avenues not in compliance with or authorized by the permit or plans.
 2. The removal of vegetation, filling, grading, removal and relocation of a dune area waterward of and adjacent to Seaport Pier (approximately 0.57 acres) not in compliance with or authorized by the permit or plan
- B. Failure to comply with CAFRA permit File #0507-03-0009.3 CZM170001 for beach and dune maintenance -including special condition #13 which states, "sand transfers to and from wetland areas that may exist on the beach are not authorized by this permit"- The Respondent first stockpiled sand on top of the existing vegetated dunes with wetland areas and then subsequently removed vegetation, cleared, excavated, graded and removed these dunes that contained freshwater wetland areas (approximately 1.1 acres) between 7th and 13th Avenues in violation of this permit condition.
- C. Failure to comply with the CAFRA sand back passing permit File#0500-07-0006.3 CAF180001 WFD180001 and standard condition #12 which states that the project does not propose disturbance within freshwater wetlands and standard condition #12 states "The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action"- Violations of this permit include:
1. Harvested sand from Wildwood was transferred to and stockpiled within multiple beach and dune locations in North Wildwood not authorized by the permit or approved plans. The permit did not authorize stockpiling at all. The sand was to be placed in specifically designated beach berm areas as depicted on the approved plans and graded in the location where the sand was deposited. Instead, and in violation of the approved permit and plans, sand was stockpiled on top of existing vegetated dunes that included freshwater wetlands and were critical wildlife habitat between 7th and 13th Avenues (approximately 6.7 acres). This was not authorized by the permit or approved plans. The permit and approved plans for this permit do not depict stockpiling of sand on top of existing dunes or in wetlands. In addition, 1.7 acres of sand stockpiling occurred between 17th and 20th Avenues in a location not depicted or approved on the permit plans, and 1.3 acres of stockpiled sand was placed on the beach and dune between 13th and 15th Avenues in a location not depicted or approved by the permit or plans.
 2. Harvested sand from Wildwood was stockpiled within a 0.57 acre prior dune area adjacent to Seaport Pier, which is not in compliance with the approved permit and plans – this sand stockpile is outside of the approved areas depicted on the approved permit plans.
- D. Failure to comply with the June 24, 2020 Emergency Authorization File# 0500-07-0006.3 CAF200001 for a one-time slope adjustment to the sand stockpiles between 12th and 14th

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Avenues and 16th and 22nd Avenues to address the public safety concerns. The Emergency Authorization included specific limitations to sand movement/grading and the sand stockpile slopes and specifically directed that no grading or sand removal/movement shall occur beyond what was necessary to create a 5:1 to the sand stockpiles and 7:1 slope at the beach accessways in this sand stockpile area for public safety. The sand stockpiles were to remain as stockpiles with limited slope grading for public safety. Any limited excess sand could be placed within 75 feet of the steel bulkhead between 8th and 12th Avenues only. The elevation of the beach area was required to be no lower than 7 feet NAVD88. The Emergency Authorization specifically did not allow the continued removal, relocation, filling and grading of all stockpiled sand, or the continued movement of stockpiled sand beyond the limits above related to public safety and had to be completed within 60 days. A complete CAFRA and Waterfront Development permit application was required to be submitted within 90 days, no later than September 24, 2020. No permit application was ever submitted for this Emergency Authorization. The Respondent continued to transport the sand stockpiles, place and grade the sand between 3rd and 14th Avenues, not in compliance with any of the NJDEP permits or the June 24, 2020 Emergency Authorization.

- E. Failure to comply with the Emergency Authorization, File# 0507-03-0009.7 CAF220001 FWW220001. The October 7, 2022 Emergency Authorization requires a complete CAFRA and Freshwater Wetland permit application be submitted within 90 days (no later than January 7, 2023). To date, no CAFRA and Freshwater Wetland application has been submitted as required.

Flood Hazard Area Violations

Violations of N.J.A.C. 7:13-2.1(a)- no person shall engage in a regulated activity in a regulated area without a flood hazard area permit or a coastal permit as required by N.J.A.C 7:7- following was constructed without permit authorization:

- A. Vinyl bulkhead construction (approximately 496 linear feet x 2 ft wide) from 3rd to 5th Avenues
- B. Steel bulkhead construction (approximately 2244 linear feet x 2 ft wide) from 7th- 13th Avenues
- C. Placement/construction of storage sheds/fenced storage area at the Beach Patrol building at 15th Avenue (approximately 4691 square feet)

Freshwater Wetland Violations

Violations of N.J.A.C. 7:7A-2.2(a)-the following activities are regulated when performed in a freshwater wetland and require prior permit approval for the Department: the removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind; the drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or surface water, regardless of the duration or such alteration; the dumping, discharging or filling with any material; the driving of pilings; the placing of obstructions, including depositing, constructing, installing or otherwise situating an obstacle which will affect the values or functions of a freshwater wetland; or the destruction of plant life which would alter the character of the freshwater wetlands; including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or cutting of trees:

The following are unauthorized regulated activities in freshwater wetlands:

- A. The destruction of vegetation, filling of freshwater wetlands, excavation and grading within the dunes between 7th and 13th Avenues that contained freshwater wetlands (approximately 47, 792 square feet/1.1 acres) and also associated with the installation of the steel bulkhead based upon georeferenced freshwater wetlands delineated on DEP approved plans from permit File# 0500-

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07-0006.1 CAF070001 WFD070001.

Violations of N.J.A.C. 7:7A- 2.3 (a)-the removal, excavation or disturbance of the soil; dumping or filling with any material; erection of structures; placement of pavements; destruction of plant life which would alter the existing pattern of vegetation within a freshwater wetland transition area are regulated activities which require prior permit approval from the Department.

The following are unauthorized regulated activities in freshwater wetland transition areas:

- A. The destruction of vegetation, filling of freshwater wetlands transition areas, construction of a bulkhead and composite bike paths, excavation and grading within the dunes containing transition areas and landward of the dunes and bulkhead and between 7th and 13th Avenues that contained exceptional resource value freshwater wetlands transition areas (approximately 6.7 acres) based upon site plans submitted with CAFRA and Freshwater Wetlands permit application (File #0507-03-0009.6 LUP20001)

Violations of N.J.A.C. 7:7A-20.2 (c) 8- any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action under N.J.A.C. 7:7A-22-

The following are permit violations:

- A. Violation of pre-construction condition #2 of CAFRA and Freshwater Wetland Permit File# 0507-03-0009.2 CAF140001, FWW140001 & FWW140002 which required that prior to site preparation, the Respondent shall complete a transition area and adjacent freshwater wetland conservation restriction and file the completed restriction with the Cape May County Clerk's Office preserving the freshwater wetlands and exceptional resource value transition areas located within the existing dunes and a copy of the recorded restriction shall be submitted to the Department. The freshwater wetlands conservation restriction was not filed.

44. Based on the facts set forth in these FINDINGS, the Department has determined that the Respondent has violated the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:7 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., ("FHA") and the rules promulgated at N.J.A.C. 7:13-1 et seq. and the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et. seq.) and the rules promulgated at N.J.A.C. 7:7A-1 et. seq.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

45. The Respondent shall comply with the following:

- a. Immediately cease any and all NJDEP unauthorized regulated activities at the site.
- b. Do not conduct any additional unauthorized regulated activities on site. Ensure NJDEP permit authorization is obtained prior to conducting any NJDEP regulated activity and comply with all NJDEP issued permits and approved plans.
- c. Within 30 days of receipt of this document, submit a proposal to CLUE for review and approval for full restoration of the site. The proposal must include complete details as to how the Respondent will restore the CAFRA, flood hazard areas, dunes, beaches, freshwater wetlands, transition areas and critical wildlife habitat to their pre-disturbance condition and remove and restore all violations/unauthorized structures identified in paragraph 49. The restoration plan must include the following:

- Removal of all unauthorized fill material and structures, and restoration of all disturbed areas to pre-disturbance grades;
- A description of how the disturbed area will be re-graded to re-establish pre-disturbance topography and hydrology;
- A stabilization plan prepared in accordance with the “Standards for Soil Erosion and Sediment Control in New Jersey”;
- A planting plan that includes a list of all indigenous plant species (use of non-native and invasive species is prohibited) intended to recreate the pre-existing vegetation type including the pattern and spacing of these plantings;
- A preventative maintenance plan to ensure success of the restoration project;
- A time schedule for implementation and completion of all aspects of the restoration work;
- The restoration proposal must insure 85% survival and 85% vegetative coverage of the plantings after 3 complete growing seasons. Monitoring reports shall be provided yearly, for 3 years, to CLUE documenting the success of the restoration. Should the approved restoration plan, as implemented, fail to achieve this requirement, the Respondent will be required to implement corrective actions at CLUE’s direction to achieve 85% survival and vegetative cover.
- Should CLUE determine that the restoration proposal is inadequate or incomplete, CLUE shall provide comments to the Respondent. Within 10 calendar days of receipt of CLUE’s comments, the Respondent shall submit a revised restoration proposal that conforms to the CLUE’s comments. The determination as to whether or not the restoration proposal as resubmitted conforms to CLUE’s comments shall be made solely by CLUE.
- The restoration proposal must be approved by CLUE prior to implementation. Upon CLUE approval, the Respondent(s) shall implement the approved restoration plan in accordance with the approved time schedule.
- Upon successful completion of restoration of all freshwater wetland and transition areas as determined by the Department, a conservation restriction shall be filed with the Cape May County Clerk’s Office using the Department approved template.

OR

Submit complete application(s) for the appropriate CAFRA, Freshwater Wetlands and/or Flood Hazard permit(s) and/or cure all deficiencies to any pending permit application(s) to the Department’s Division of Land Resource Protection to attempt to legalize all of the violations identified in paragraph 49. Permit review may result in approval, partial approval, withdrawal or denial. Within 45 days of issuance of the permit decision or withdrawal of the permit application, any activity or structure that does not attain complete permit approval must be either 1) removed from the site and the area restored to its authorized condition as required by the Department; or 2) altered to comply with the conditions and requirements of the NJDEP permit approval.

46. This Order shall be effective upon receipt by the Respondent or someone on the Respondent’s behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT AND
NOTICE OF RIGHT TO A HEARING

47. Pursuant to N.J.S.A. 13:19-18, N.J.A.C. 7:7-29.1 et seq., N.J.S.A. 13:9B-1 et. seq., N.J.A.C. 7:7A-1 et seq., N.J. S.A. 58:16A-50 et seq and N.J.A.C. 7:13-1 et seq. and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against the Respondent in the amount of **\$8,661,000.00**. The Department's rationale for the civil administrative penalty is set forth in the attachment and incorporated herein.
48. Pursuant to N.J.S.A 13:19-18, N.J.S.A 13:9B-1 et seq., and N.J.S.A. 58:16A-50 et seq., the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the economic benefit (in dollars) which a Respondent has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act.
49. Pursuant to N.J.S.A. 52:14B-1 et seq., N.J.A.C. 7:7-29.2, N.J.S.A 13:9B-1 et seq., and N.J.S.A. 58:16A-50 et seq., Respondent is entitled to request a hearing. The Respondent shall, in its request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.
50. If no request for a hearing is received within 35 calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the 36th calendar day following its receipt, and the penalty shall be due and payable.
51. If a timely request for a hearing is received, payment of the penalty is due when the Respondent receives a notice of the denial of the request, or, if the hearing request is granted, when the Respondent withdraws the request or abandons the hearing, or, if the hearing is conducted, when the Respondent receives a final decision from the Commissioner in this matter.
52. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

GENERAL PROVISIONS

53. This AONOCAPA is binding on the Respondent, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
54. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare, and the environment.
55. This AONOCAPA is issued only for the violations identified in the FINDINGS herein above and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
56. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve the Respondent of the

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obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.

- 57. The Respondent is not entitled to approval of any permit application(s) submitted pursuant to requirements contained herein. In the event the Department determines that regulated activities do not meet the requirements for permit approval, full restoration of the unauthorized disturbance will be required.
- 58. Pursuant to N.J.S.A. 13:19-18(e), N.J.S.A 13:9B-1 et seq., and N.J.S.A. 58:16A-50 et seq, any person who violates the provisions of the Act, or any code, rule regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be subject, upon order of the court, to a civil penalty not to exceed \$25,000 for each violation. Each day during which the violation continues constitutes an additional, separate, and distinct offense.
- 59. Pursuant to N.J.S.A.13:9B-21, N.J.S.A 58:16A-63and N.J.S.A. 13:19-18 any person who willingly or negligently violates the provisions of the FWPA, CAFRA, FHACA, or any code, rule, regulation, administrative order or court order, promulgated or issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree.

DATE: _____

**Katrina
Angarone**

Digitally signed by
Katrina Angarone
Date: 2023.01.11
15:50:51 -05'00'

Katrina Angarone, Assistant Commissioner
Watershed and Land Management

City of North Wildwood

Watershed & Land Management
File# PEA230001-0507-03-0009.3

CAFRA PENALTY RATIONALE
FOR FAILURE TO OBTAIN A PERMIT PRIOR TO CONDUCTING REGULATED ACTIVITIES

Pursuant to N.J.A.C. 7:7-29.5, the Department has determined that the base, or daily, penalty shall be determined by totaling the points assigned as follows: (1) **Type-** conducting a regulated activity without a permit or violation of a permit condition (2) **Conduct**; (3) **Seriousness**; and (4) **Duration**.

Pursuant to N.J.A.C. 7:7-29.5(b), each violation of N.J.A.C. 7:7-2.1/2.2 shall constitute an additional, separate and distinct violation.

1. Type of Violation: Conducting a regulated activity without a permit.

The Department has categorized the unpermitted unauthorized activities that have occurred:

1. The construction of bulkhead "A":

- i. The construction 630 linear feet x 2ft wide of steel bulkhead between 5th to 7th Avenue, within a prior dune area. (approx..1260 sq ft) The described length of this bulkhead is based on information contained in the "Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates.

2. The construction of bulkhead "B":

- i. The construction of approximately 1,614 linear feet x 2ft wide of steel bulkhead from 7th to 13th Avenue within a prior dune area.(approx.. 3228 sq ft) The described length of this bulkhead is based on information contained in the "Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates.

3. The construction of bulkhead "C":

- i. The construction of approximately 229 linear feet x 2ft wide of vinyl bulkhead along the oceanfront from 3rd to 4th avenues, waterward of the existing bulkhead on a beach. (approx. 458 sq ft) The described length of this bulkhead is based on information contained in the "Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates.

4. The construction of bulkhead "D":

- i. The construction of approximately 267 linear feet x 2ft wide of vinyl bulkhead along the oceanfront from 4th to 5th avenues, waterward of the existing bulkhead on a beach (approx. 534 sq ft) The described length of this bulkhead is based on information contained in the "Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates

5. The destruction/removal/disturbance of dune with or without construction throughout North Wildwood:

- i. The removal of vegetation, filling and grading of the (now bulkheaded) beach and dune area (approx. 0.58 acres) from 5th to 7th Avenue, to create a park with playground, walkways and other amenities.
- ii. The placement of crushed clam fill material for the creation of a path through approx. 8,565 sqft of dune/CAFRA area from Surf Ave to the Lou Booth Amphitheater.
- iii. The excavation of beach berm at 11th Avenue and the transport and placement of the excavated sand between 14th-16th Avenues, including grading the sand landward into the dune scarp impacting approx. 3,969 sqft of beach/dune in a CAFRA area.

6. For the construction and placement of miscellaneous unauthorized structures:

- i. The placement of an approx. 96 sqft concrete landing/flagpole adjacent to the Lou Booth Amphitheater.
- ii. The 1,084 sqft expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater.
- iii. The construction of a 470 square of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to amphitheater)
- iv. The construction of a 357 sqft roof covered gazebo structure at the intersection of 2nd and JFK Blvd.
- v. The construction of approx. 4,216 sqft of concrete walkway and composite walkway at the Beach Patrol building at 15th Avenue.
- vi. The placement/construction of approx. 4,691 sqft of storage sheds and fenced storage area at the Beach Patrol building at 15th Avenue.
- vii. The placement/construction of an approx. 8' wide composite bike path between 15th & 21st along the oceanfront. (approx. 13,104 sqft)
- viii. The placement of approx. 44,981 sqft of crushed clam fill material for the creation of a walkway between 15th and 21st along the oceanfront.
- ix. The removal of vegetation, grading, and filling of a CAFRA area at the intersection of 1st & Surf: specifically, the placement of concrete & gravel for pathways and a bike rack area within a 4,234 sqft area.
- x. The clearing of vegetation and grading of a CAFRA area at the intersection of 1st & Surf: Specifically, the placement of an approx. 230 sqft platform with benches.
- xi. Construction of a 598 sqft roofed gazebo at 1st & Surf
- xii. The construction of 24,264 sqft of composite walkways/ shower platforms/ bench platforms etc. along the oceanfront at multiple street end entrances to the beach.

2. Conduct:

- Minor: any conduct not identified as major or moderate point = 1 point
- Moderate: any unintentional but foreseeable act or omission = 2 points
- Major: any intentional, deliberate, purposeful, knowing or willful act or omission = 5 points

The conduct for the above-mentioned activities have been determined as the following:

- | | | |
|---|---|-------------------|
| 1. For the construction of bulkhead "A" | The conduct of the Respondent is considered to be Moderate | = 2 points |
| 2. For the construction of bulkhead "B" | The conduct of the Respondent is considered to be Moderate | = 2 points |
| 3. For the construction of bulkhead "C" | The conduct of the Respondent is considered to be Moderate | = 2 points |
| 4. For the construction of bulkhead "D" | The conduct of the Respondent is considered to be Moderate | = 2 points |
| 5. For the destruction/disturbance of dune with or without construction | The conduct of the Respondent is considered to be Moderate | = 2 points |
| 6. For the construction and placement of miscellaneous unauthorized structures: | The conduct of the Respondent is considered to be Moderate | = 2 points |

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3. **Seriousness:**

The seriousness factor of the violation is assigned points as provided below and shall be based on the a) size of violation and b) whether the activity was conducted in a Special Area or resource.

a. **Size:**

- | | | |
|-------|--|-------------|
| i. | a violation impacting >200,000 sqft | = 13 points |
| ii. | a violation impacting >150,000 sqft up to and including 200,000 sqft | = 12 points |
| iii. | a violation impacting >100,000 sqft up to and including 150,000 sqft | = 11 points |
| iv. | a violation impacting >70,000 sqft up to and including 100,000 sqft | = 10 points |
| v. | a violation impacting >40,000 sqft up to and including 70,000 sqft | = 9 points |
| vi. | a violation impacting >20,000 sqft up to and including 40,000 sqft | = 8 points |
| vii. | a violation impacting >10,000 sqft up to and including 20,000 sqft | = 7 points |
| viii. | a violation impacting > 5,000 sqft up to and including 10,000 sqft | = 6 points |
| ix. | a violation impacting >2,000 sqft up to and including 5,000 sqft | = 5 points |
| x. | a violation impacting > 750 sqft up to and including 2,000 sqft | = 4 points |
| xi. | a violation impacting >500 sqft up to and including 750 sqft | = 3 points |
| xii. | a violation impacting >50 sqft up to and including 500 sqft | = 2 points |
| xiii. | a violation impacting up to and including 50 sqft | = 1 point |

The size of the following violations are determined as follows:

1. **For the construction of bulkhead "A" =**
630 linear feet x 2ft wide of steel bulkhead from 5th to 7th Avenue (1260 sq ft) = 4 points
2. **For the construction of bulkhead "B"**
1,614 linear feet x 2ft wide of steel bulkhead from 7th to 13th Avenue (3228 sq ft) = 5 points
3. **For the construction of bulkhead "C"**
229 linear feet x 2 ft wide of vinyl bulkhead from 3rd to 4th Avenue (428 sq ft) = 2 points
4. **For the construction of bulkhead "D"**
267 linear feet x 2 feet wide of vinyl bulkhead from 4th to 5th Avenue (534 sq ft) =3 points
5. **For the destruction/grading of dune/construction**
 - i. The removal of vegetation, filling and grading of the (now bulkheaded) beach/ dune area (approx. 0.58 acres) from 5th to 7th Avenue, to create a park with playground, walkways and other amenities. = 8 points
 - ii. The placement of crushed clam fill material for the creation of a path through approx. 8,565 sqft of dune and CAFRA area from Surf Ave to the Lou Booth Amphitheater. = 6 points
 - iii. The excavation of beach at 11th Ave and the placement of the excavated sand between 12th-16th Ave and grading the sand landward into the dune scarp impacting approx. 3,969 sqft of beach/dune in a CAFRA area. = 5 points
6. **For the construction and placement of miscellaneous unauthorized structures:**
 - i. The placement of an approx. 96 sq ft concrete landing/flagpole adjacent to the Lou Booth Amphitheater. = 2 points
 - ii. The 1,084 sq ft expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater. = 4 points
 - iii. The placement of a 470 sq ft of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to amphitheater) = 2 points
 - iv. The construction of a 357 sq ft roof covered gazebo structure at the intersection of 2nd and JFK Blvd. = 2 points
 - v. The construction of approx. 4,216 sq ft of concrete walkway and composite walkway at = 5 points

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the Beach Patrol building at 15th Avenue.

- vi. The placement/construction of approx. 4,691 sq ft of storage sheds/fenced storage area at the Beach Patrol building at 15th Avenue. = 5 points
- vii. The placement/construction of an approx. 8' composite bike path between 15th & 21st along the oceanfront. (approx. 13,104 sq ft) = 7 points
- viii. The placement of approx. 44,981 sq ft of crushed calm shell fill material for the creation of a walkway between 15th and 21st along the oceanfront = 9 points
= 5 points
- ix. The removal of vegetation, grading and filling of a CAFRA area at the intersection of 1st & Surf. Specifically, the placement of concrete and gravel for pathways and a bike rack area within an approx. 4,234 sqft area = 2 points
- x. The removal of vegetation, grading and filling of a CAFRA area at the intersection of 1st & Surf. Specifically, the construction and placement of an approx.. 230 sqft platform with benches
- xi. Construction of a 598 sq ft gazebo at 1st and Surf = 3 points
- xii. The construction of 24,264 sq ft of composite walkways/ shower platforms/ bench platforms etc. along the oceanfront at multiple street end entrances to the beach. = 8 points

c. Special Areas(s)

In addition to the points assessed above, violations conducted in a special area or resource included in N.J.A.C. 7:7-9 shall be assessed an additional one point per special area or resource. The following Special Areas were impacted:

N.J.A.C.	Bulkhead "A"	Bulkhead "B"	Bulkhead "C"	Bulkhead "D"	Dune Disturbance	Miscellaneous Structures
<u>7:7-9.16 Dunes</u>	X	X			X	
<u>7:7-9.22 Beaches</u>	X		X	X	X	
<u>7:7- 9.25 Flood Hazard Areas</u>	X	X	X	X	X	X
<u>7:7 9.27 Wetlands</u>						
<u>7:7- 9.28 Wetland Buffers</u>		X				
Total Point(s)	3	3	2	2	3	1

Each special area impacted is 1 point

TOTAL POINTS-SERIOUSNESS:

**Seriousness Total
(Special Area + Size Total)**

- 1. For the construction of bulkhead "A" = 7 points
- 2. For the construction of bulkhead "B" = 8 Points

- 3. For the construction of bulkhead "C"** = 4 Points
- 4. For the construction of bulkhead "D"** = 5 Points
- 5. For the destruction/grading of dune and other special areas**
- i. The removal of vegetation, filling and grading of the (now bulkheaded) beach and dune area (approx. 0.58 acres) from 5th to 7th Avenue, to create a park with playground, walkways and other amenities. (3 special areas-dune, beach, flood hazard area) = 11 Points
 - ii. The placement of crushed clam fill material for the creation of a path through approx. 8,565 sqft of dune and CAFRA/FHA area from Surf Ave to the Lou Booth Amphitheater. (2 special areas-dune, flood hazard area) = 8 Points
 - iii. The excavation of beach at 11th Ave and the placement of the excavated sand between 12th-16th Ave and grading the sand landward into the dune scarp impacting approx. 3,969 sqft of beach/dune in a CAFRA area. (3 special areas-dune, beach, flood hazard area) = 8 Points
- 6. For the construction and placement of miscellaneous unauthorized structures:**
- i. The placement of an approx. 96 sqft concrete landing/flagpole adjacent to the Lou Booth Amphitheater. = 3 Points
 - ii. The 1,084 sqft expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater. = 5 Points
 - iii. The placement of a 470 square of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to Lou Booth Amphitheatre) = 3 Points
 - iv. The construction of a 357 sqft roof covered gazebo structure at the intersection of 2nd and JFK Blvd. = 3 Points
 - v. The construction of approx. 4,216 sqft of concrete walkway and composite walkway at the Beach Patrol building at 15th Avenue. = 6 Points
 - vi. The placement/construction of approx. 4,691 sqft of storage sheds at the Beach Patrol building at 15th Avenue. = 6 Points
 - vii. The placement/construction of an approx. 8' wide composite bike path between 15th & 25th along the oceanfront. (approx. 13,104 sqft) = 8 Points
 - viii. The placement of approx. 44,981 sqft of crushed clam fill material for the creation of a walkway between 15th and 21st along the oceanfront. = 10 Points
 - ix. The removal of vegetation, grading and filling of a CAFRA area at 1st & Surf: Specifically, the placement of concrete and gravel for pathways and a bike rack area within an approx.. 4,234 sqft area = 6 Points
 - x. The removal of vegetation and grading of a CAFRA area at 1st & Surf: Specifically, the construction and placement of an approx. 230 sqft platform with benches. = 3 points
 - xi. Construction of a approx.598 sqft gazebo at 1st & Surf = 4 points

- xii. Construction of approx. 24,264 sqft of composite walkways/shower/bench platforms along the oceanfront at multiple street end entrances to the beach. = 9 points

The total number of points calculated for Type, Conduct and Seriousness of the violations and the amount of daily penalty utilizing the Coastal Zone Management Penalty Assessment Table below is as follows:

**COASTAL ZONE MGMT
PENALTY ASSESSMENT TABLE**

<u>Total Points</u>	<u>Penalty Amount</u>
1 - 3	\$500
4 - 6	\$1,000
7 - 8	\$2,000
9 - 10	\$3,000
11 - 12	\$6,000
13 - 14	\$8,000
15 - 16	\$10,000
17 - 19	\$15,000
20 - 22	\$20,000
23 or more	\$25,000

	TOTAL POINTS (CONDUCT + SERIOUSNESS)	PENALTY AMOUNT PER DAY
1. For the construction of bulkhead "A" The construction 630 linear feet x 2 ft wide of steel bulkhead between 5 th to 7 th Avenue, within a prior beach and dune area.	= 9 points	\$3,000.00
2. For the construction of bulkhead "B" The construction of approximately 1,614 linear feet x 2 ft wide of steel bulkhead from 7 th to 13 th Avenue.	= 10 Points	\$3,000.00
3. For the construction of bulkhead "C" The construction of approximately 229 linear feet x 2 ft wide of vinyl bulkhead along the oceanfront from 3 rd to 4 th avenues along, waterward of the existing bulkhead	= 6 Points	\$1,000.00
4. For the construction of bulkhead "D" The construction of approximately 267 linear feet x 2 ft wide of vinyl bulkhead along the oceanfront from 4 th to 5 th avenues, waterward of the existing bulkhead.	= 7 Points	\$2,000.00
5. For the destruction of dunes		
i. The removal of vegetation, filling and grading of the (now bulkheaded) beach and dune area (approx. 0.58 acres) from 5th to 7th Avenue, to create a park with playground, walkways and other amenities.	= 13 Points	\$8,000.00
ii. The placement of crushed clam fill material for the creation of a path through approx. 8,565 sqft of beach, dune, and CAFRA area from Surf Ave to the Lou Booth Amphitheater.	= 10 Points	\$3,000.00

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iii. The excavation of beach at 11th Ave and the transport/placement of the excavated sand between 14th-16th Ave, including grading the sand landward into the dune scarp impacting approx. 3,969 sqft of beach/dune in a CAFRA area. = 10 Points \$3,000.00

6. For the construction and placement of miscellaneous unauthorized structures:

- i. The placement of an approx. 96 sqft concrete landing/flagpole adjacent to the Lou Booth Amphitheater. = 5 Points \$1,000.00
- ii. The 1,084 sqft expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater. = 7 Points \$2,000.00
- iii. The placement of a 470 square of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to amphitheater) = 5 Points \$1,000.00
- iv. The construction of a 357 sqft roof covered gazebo structure at the intersection of 2nd and JFK Blvd. = 5 Points \$1,000.00
- v. The construction of approx. 4,216 sqft of concrete walkway and composite walkway at the Beach Patrol building at 15th Avenue = 8 Points \$2,000.00
- vi. The placement/construction of approx. 4,691 sqft of storage sheds at the Beach Patrol building at 15th Avenue. = 8 Points \$2,000.00
- vii. The placement/construction of an approx. 8' wide composite bike path between 15th & 21st along the oceanfront.(approx. 13,104 sqft) = 10 Points \$3,000.00
- viii. The placement of approx. 44,981 sqft of crushed clam fill material for the creation of a walkway between 15th and 21st along the oceanfront. = 12 Points \$6,000.00
- ix. The removal of vegetation, grading and filling of a CAFRA area at 1st & Surf: Specifically, the placement of concrete & gravel for pathways and a bike rack area within 4,234 sqft = 8 Points \$2,000.00
- x. The clearing of vegetation and grading of a CAFRA area at 1st & Surf: Specifically, the placement of approx. 230 platform with benches = 5 Points \$1,000.00
- xi. Construction of an approx. 598 sqft gazebo at 1st & Surf = 6 Points \$1,000.00
- xii. The construction of 24,264 sqft of composite walkways/ shower platforms/ bench platforms etc. along the oceanfront at multiple street end entrances to the beach. = 11 Points \$6,000.00

4. Duration:

Pursuant to N.J.A.C. 7:7-29.5(c), the Department is authorized to assess a daily penalty, as each day during which the violations continue or remain in place without the required permit shall constitute an additional, separate and distinct offense.

The Department hereby exercises its discretion to assess a penalty for 1 day per month per violation.

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Therefore, the Civil Administrative Penalty for unpermitted activities is as follows:

	Date Since Non-Compliance to Present	1 day/Per Month	Total Penalty
1. For the construction of bulkhead "A"	May 6, 2018	3K x 61 Months	\$183,000.00
2. For the construction of bulkhead "B"	May 5, 2020	3K x 35 Months	\$105,000.00
3. For the construction of bulkhead "C"	December 12, 2012	1K x 131 Months	\$131,000.00
4. For the construction of bulkhead "D"	May 6, 2018	2K x 61 Months	\$122,000.00
5. For the destruction of dunes			
i. The removal of vegetation, filling and grading of the (now bulkheaded) beach and dune area (approx. 0.58 acres) from 5th to 7th Avenue, to create a park with playground, walkways and other amenities.	March 10, 2018	8K x 63 Months	\$504,000.00
ii. The placement of crushed clam fill material for the creation of a path through approx. 8,565 sqft of beach, dune, and CAFRA area from Surf Ave to the Lou Booth Amphitheater.	March 22, 2016	3K x 88 Months	\$264,000.00
iii. The excavation of beach at 11 th Ave and the placement of the excavated sand between 12 th -16 th Ave, and grading the sand landward into the dune scarp impacting approx. 3,969 sqft of beach/dune in a CAFRA area.	October 20, 2022	3K x 2 Months	\$6,000.00
6. For the construction and placement of miscellaneous unauthorized structures:			
i. The placement of an approx. 96 sqft concrete landing/flagpole adjacent to the Lou Booth Amphitheater.	March 8, 2020	1K x 37 Months	\$37,000.00
ii. The 1,084 sqft expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater.	March 10, 2018	2K x 63 Months	\$126,000.00
iii. The placement of a 470 square of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to amphitheater)	March 10, 2018	1K x 63 Months	\$63,000.00
iv. The construction of a 357 sqft roof covered gazebo structure at the intersection of 2nd and JFK Blvd.	March 6, 2017	1K x 76 Months	\$76,000.00
v. The construction of approx. 4,216 sqft of concrete/composite walkway at the Beach Patrol building at 15th Ave	March 22, 2016	2K x 88 Months	\$176,000.00
vi. The placement/construction of approx. 4,691 sqft of storage sheds/fenced storage area at the Beach Patrol building at 15th Avenue.	March 29, 2016	2K x 88 Months	\$176,000.00

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vii. The placement/construction of an approx. 8' wide composite bike path between 15th & 25th along the oceanfront. (approx. 13,104 sqft)	December 31, 2001	3K x 274 Months	\$822,000.00
viii. The placement of approx. 44,981 sqft of crushed clam fill material for the creation of a walkway between 15th and 21st along the oceanfront.	March 12, 2019	6K x 50 Months	\$300,000.00
ix. The removal of vegetation, grading, filling of a CAFRA area at 1 st & Surf: Specifically the placement of concrete and gravel for pathways and a bike rack within approx.. 4,234 sqft	March 12, 2019	2K x 50 Months	\$100,000.00
x. The clearing of vegetation and grading of a CAFRA area at 1 st & Surf: Specifically, the placement of a approx.. 230 sqft platform with benches	March 12, 2019	1K x 50 Months	\$50,000.00
xi. Construction of an approx.. 598 sqft gazebo at 1 st & Surf	March 6, 2017	1K x 76 Months	\$76,000.00
xii. The construction of 24,264 sqft of composite walkways/ shower platforms/ bench platforms etc. along the oceanfront at multiple street end entrances to the beach. The showers have been constructed outside of the sewer service area. (Also in violation of N.J.S.A. 58:10A-1 et seq. & N.J.A.C. 7:14 et. seq.)	March 10, 2018	6K x 63 Months	\$378,000.00

The Department at its discretion, may continue to assess daily penalties until the current violations are resolved to the Department's satisfaction.

**** In general, start dates for determining this penalty rationale have been based upon aerial photography and/or other documentation provided by the City or determined based upon site inspections. ****

**UNAUTHORIZED ACTIVITIES WITHOUT A CAFRA PERMIT –
TOTAL PENALTY ASSESSMENT:
\$3,619,000.00**

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**CAFRA PENALTY RATIONALE FOR
EMERGENCY AUTHORIZATION & PERMIT/CONDITION VIOLATIONS**

The Department has determined that the base, or daily, penalty shall be determined as follows:

(1) **Type-** violation of permit conditions (2) **Conduct**; (3) **Seriousness**; and (4) **Duration**.

1. **Type of Violation**: There are 4 violations of permits/permit conditions:

Violation 1

The following is combined as one violation for penalty assessment purposes:

Noncompliance with the Beach & Dune Maintenance Permit File# 0507-03-0009.3 CZM170001 and with its Special conditions 4 & 10. Special condition #4 states, "The proposed activities must be conducted in accordance with Best Management Practices as defined by the Department in the Rules on Coastal Zone Management in Standards applicable to routine beach maintenance (N.J.A.C. 7:7-10.2), Standards applicable to emergency post-storm beach restoration (N.J.A.C. 7:7-10.3) and Standards applicable to dune creation and maintenance (N.J.A.C. 7:7-10.4). Activities other than those outlined in these subchapters shall require additional authorization from the Program. Failure to receive such authorization prior to activities may warrant enforcement action by the Bureau of Coastal and Land Use Enforcement."

Per N.J.A.C. 7:7-10.2/10.3/10.4 -Standards for beach and dune activities: Bulldozing, excavation, grading, vegetation removal or clearing, and the relocation of the existing dunes is not authorized, and there shall be no disturbance to existing dunes. Special condition #10 states, "Bulldozing, excavation, grading, vegetation removal, or clearing and relocation of existing dunes, whether existing or constructed in conjunction with this permit are not authorized under this general permit." Dunes were destroyed, removed, relocated, cleared and graded throughout North Wildwood. Beach and dune areas were cleared, graded and activities conducted not in compliance with the permit or best management practices at N.J.A.C. 10.2-4

And noncompliance with the Sand Back Passing Permit File#0500-07-0006.3 CAF180001 WFD180001 Failure to comply with Standard condition #12 which requires the permittee to comply with all conditions, site plans, and supporting documents approved by the permit.

Stockpiles of sand were placed on top of approx. 6.7 acres of dunes between 7th & 13th Avenues and in stockpiled locations throughout the City that were not authorized by either the beach and dune maintenance permit or the sand back passing permit/approved plans. The stockpiled sand was then graded over the 6.7 acres of dune area, thus removing the existing dunes that also included critical wildlife habitat not in compliance with either permit or approved plans. See FINDINGS.

Violation 2

The vegetation removal, filling, relocation and grading of an approx. 0.57 acres dune adjacent to Seaport Pier occurred prior to issuance of the Sand back passing permit File#0500-07-0006.3 CAF180001 WFD180001 and is a violation of the Beach and Dune Maintenance CAFRA Permit File# 0507-03-0009.3 CZM170001 & special conditions 4 & 10

Violation 3

The following is combined as one violation for penalty assessment purposes:

Failure to comply with Special condition #13 of Beach and Dune Maintenance CAFRA permit 0507-03-0009.3 CZM170001. Special condition #13 states, "Sand transfers to or from wetland areas that may exist on the beach are not authorized by this permit." Sand was stockpiled on top of the vegetated dunes/wetlands and the wetlands were completely removed / destroyed between 7th and 13th Avenues (approx. 1.1 acres of freshwater wetlands)

Failure to comply with special condition #4 of Sand Harvesting/Sand Transfer Permit #: 0500-07-0006.3 CAF180001 & WFD180001. The permit states that the project does not propose disturbance within freshwater wetlands. Approx. 1.1 acres of freshwater wetlands were destroyed.

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Violation 4

Failure to comply with condition 5 of Emergency Authorization 0507-03-0009.7 CAF22001. A complete application for a CAFRA Individual Permit and a Freshwater Wetlands Permit was not submitted within 90 calendar days of the Department's authorization of the emergency permit.

2. **Conduct**: Conduct shall be classified as major, moderate or minor as follows:

- Major: any intentional, deliberate, purposeful, knowing or willful act or omission by the violator. The Department presumes all violations of Department permits or authorizations to be knowing violations.
- Moderate: any unintentional but foreseeable act or omission
- Minor: any conduct not identified as major or moderate point

Conduct for all permit violations is **MAJOR** as the Department presumes all violations of Department permits or authorizations to be knowing violations.

3. **Seriousness**: Seriousness shall be classified as major, moderate or minor as follows:

- Major: any violation which has caused or has the potential to cause serious harm to human health, safety, the Coastal regulatory program or the environment; or seriously deviates from the applicable law and/or condition. "Serious" deviations include but are not limited to those violations which are in complete contravention of the law, requirement and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement or condition. Violations of "major" seriousness include but are not limited to any unauthorized activity occurring within or impacting a Special Area, as defined in N.J.A.C. 7:7-9.
- Moderate: any violation which has caused or has the potential to cause substantial harm to human health, safety, the Coastal regulatory program or the environment; or substantially deviates from the applicable law and/or condition. "Substantial deviation" shall include, but not be limited to violations which are in substantial contravention of the law, requirement and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement and/or condition. The Department will consider a violation to be of moderate seriousness if limited solely to upland areas that are not designated as a wetland, or other Special Area, as defined in N.J.A.C. 7:7-9.
- Minor: any violation not described above as Major or Moderate.

The City has failed to comply with various Land Use permits / multiple permit conditions and the conditions of the issued Emergency Authorizations. The violations included unauthorized activities and impacts within multiple Special Areas as defined in N.J.A.C. 7:7-9, including dunes, beaches, wetlands, critical wildlife habitat and flood hazard areas and were in contravention of the approved permits.

The Seriousness of all permit violations is **MAJOR**.

The Department shall determine the applicable daily penalty amount from the Base Daily Penalty Matrix below:

		SERIOUSNESS		
		MAJOR	MODERATE	MINOR
CONDUCT	MAJOR	\$25,000	\$15,000	\$10,000
	MODERATE	\$15,000	\$7,500	\$5,000
	MINOR	\$10,000	\$5,000	\$1,000

**All permit violations are Major Conduct and Major Seriousness =
Daily Base Penalty \$25,000.00**

4. Duration:

Pursuant to N.J.A.C. 7:7-29.6(g), the Department is authorized to assess a daily penalty for the total number of calendar days during which each violation continued or remained in place without the required permit.

The Department is using its discretion to assess a daily base penalty of \$25,000.00 per month for violations 1-3.

The Department is using its discretion to assess a daily base penalty of \$25,000.00 for one day of penalty for violation 4.

EACH violation of any permit, permit condition, or requirement issued pursuant to N.J.S.A. 13:19-1 et seq. and/or N.J.S.A. 12:5-3 et seq. or N.J.S.A. 13:9A-1 et. seq. or any permit, condition or requirement issued by the Department pursuant thereto, shall constitute an additional, separate and distinct violation. Where any requirement of these statutes or any regulation, rule, permit condition, or order adopted pursuant thereto, may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

The Department is using its discretion to combine/collectively issue a violation/penalty assessment for similar violations of both the Beach and Dune Maintenance Permit CAFRA permit # 0507-03-0009.3 CZM170001, and Sand Back Passing Permit CAFRA/WFD Permit #: 0500-07-0006.3 CAF180001 & WFD180001 rather than each violation of each permit as noted below.

Date Since Non- Compliance	1 Day/Month to Present	TOTAL PENALTY AMOUNT
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Violation 1

Combined Noncompliance with the Beach & Dune Maintenance Permit File# 0507-03-0009.3 CZM170001 and with its Special conditions 4 & 10 of & noncompliance with the Sand Back Passing Permit File#0500-07-0006.3 CAF180001 WFD180001 Failure to comply with Standard condition #12 which requires the permittee shall comply with all conditions, site plans, and supporting documents approved by the permit.

Stockpiles of sand were placed on top of approx. 6.7 acres of dunes between 7th & 13th Avenues and in stockpiled locations throughout the City that were not authorized by either the beach and dune maintenance permit or the sand back passing permit/plans.

April 16, 2020	25K x 35 Months	\$875,000.00
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The stockpiled sand was then graded over the 6.7 acres of dune area, thus removing the existing dunes that also included critical wildlife habitat not in compliance with either permit or approved plans.

Violation 2

The vegetation removal, filling, relocation and grading of an approx. 0.57 acres dune adjacent to Seaport Pier occurred prior to issuance of the Sand Back passing permit and is a violation of the Beach and Dune Maintenance Permit & special conditions 4 & 10

June 19, 2018 25K x 59 Months **\$1,475,000.00**

Violation 3 Combined Noncompliance with Special condition 13 of the Beach & Dune Maintenance Permit that states sand transfers to and from wetland areas that may exist on the beach are not authorized and noncompliance with the Sand Back Passing Permit and plans which states that the project does not propose to disturb freshwater wetlands. The approved plans do not authorize placement of sand in wetland areas. Sand was transferred on top of 1.1 acres of wetlands from 7th – 13th Avenues destroying the wetlands.

April 16, 2020 25K x 35 Months **\$875,000.00**

Violation 4 – Failure to comply with condition 5 of Emergency Authorization 0507-03-0009.7 CAF22001. A complete application for a CAFRA Individual Permit and a Freshwater Wetlands Permit was not submitted within 90 calendar days of the Department's authorization of the emergency permit.

January 5, 2023 25K x 1 Days **\$25,000.00**

TOTAL CAFRA Civil Administrative Penalty violations of Emergency Authorization/ CAFRA Permits/permit conditions = \$3,250,000,000.00

TOTAL CAFRA PENALTY ASSESSMENT

**UNAUTHORIZED ACTIVITIES WITHOUT A CAFRA PERMIT
PENALTY ASSESSMENT: \$3,619,000.00**

**VIOLATION OF CAFRA PERMIT & EMERGENCY AUTHORIZATION
PENALTY ASSESSMENT: \$3,250,000,000.00**

TOTAL CAFRA PENALTY ASSESSMENT: \$6,869,000.00

**FLOOD HAZARD AREA CONTROL ACT (FHACA) PENALTY RATIONALE
FOR FAILURE TO OBTAIN A PERMIT PRIOR TO CONDUCTING REGULATED ACTIVITIES**

Pursuant to N.J.A.C. 7:13-24.5, the Department has determined that the base, or daily, FHACA penalty shall be determined by totaling the points assigned as follows: (1) **Type**- conducting a regulated activity without a permit or violation of a permit condition (2) **Conduct**; (3) **Seriousness** – a. Floodway Impacts; b. Flood Fringe Impacts; c. Area of Riparian Disturbance; d. Severity of Riparian Disturbance; and e. Impacts to Other Special Resources of Concern; (4) **Duration**.

Pursuant to N.J.A.C. 7:13-24.5(b), each violation of N.J.A.C. 7:13-2.1 shall constitute an additional, separate and distinct violation.

1. **Type**: Conducting a regulated activity without a permit

The Department has categorized the unpermitted unauthorized activities that have occurred:

1. The construction of bulkhead “A”:

- i. The construction 630 linear feet x 2 feet wide of steel bulkhead between 5th to 7th Avenue, within a prior dune area. The described length of this bulkhead is based on updated information contained in the “Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates. (approx. 1260 sq ft)

2. The construction of bulkhead “B”:

- i. The construction of approximately 1,614 linear feet x 2 feet wide of steel bulkhead from 7th to 13th Avenue within a prior dune area. The described length of this bulkhead is based on updated information contained in the “Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates. (approx.. 3,228 sq ft)

3. The construction of bulkhead “C”:

- i. The construction of approximately 229 linear feet x 2 feet wide of vinyl bulkhead along the oceanfront from 3rd to 4th avenues, waterward of the existing bulkhead on a beach. The described length of this bulkhead is based on updated information contained in the “Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates. (approx. 458 sq ft)

4. The construction of bulkhead “D”:

- i. The construction of approximately 267 linear feet x 2 ft wide of vinyl bulkhead along the oceanfront from 4th to 5th avenues, waterward of the existing bulkhead on a beach. The described length of this bulkhead is based on updated information contained in the “Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by van note-harvey associates. (approx 534 sq ft)

5. The constructions of sheds at 15th Avenue.

- i. The placement/construction of approx. 4,691 sqft of storage sheds at the Beach Patrol building at 15th Avenue.

2. Conduct of the Respondent:

Major:	any intentional, deliberate, purposeful, knowing, or willful act or omission	= 5 points
Moderate:	any unintentional but foreseeable act or omission	= 2 points
Minor:	any conduct not identified as Major or Moderate	= 1 point

1. **The construction of bulkhead "A"**
 The conduct of the Respondent(s) is considered to be **Moderate** = 2 Points
2. **The construction of bulkhead "B"**
 The conduct of the Respondent(s) is considered to be **Moderate** = 2 Points
3. **The construction of bulkhead "C"**
 The conduct of the Respondent(s) is considered to be **Moderate** = 2 Points
4. **The construction of bulkhead "D"**
 The conduct of the Respondent(s) is considered to be **Moderate** = 2 Points
5. **The construction of sheds at 15th Avenue**
 The conduct of the Respondent(s) is considered to be **Moderate** = 2 Points

3. Seriousness:

- a. **Channel Impacts:** The Department shall assign points as follows for channel impacts:
- i. Up to and including 75 linear feet of channel impacts = 1 point
 - ii. Greater than 75 linear feet and up to and including 300 linear feet of channel impact = 3 points
 - iii. Greater than 300 linear feet of channel impacts = 5 points

Channel impacts were not identified for the referenced violations. 0 points.

- b. **Floodway Impacts:** The Department shall assign points as follows for floodway impacts:
- i. Up to and including 25 cubic yards of fill or obstruction = 1 point
 - ii. Greater than 25 cubic yards and up to and including 100 cubic yards of fill or obstruction = 3 points
 - iii. Greater than 100 cubic yards of fill or obstruction = 5 points
- AND iv. Construction of a habitable building or addition within the floodway = 5 points
- AND v. Construction of any other structure having a footprint greater than 150 sq. ft. = 3 points

Floodway impacts were not identified for the referenced violations. 0 points.

- c. **Flood Fringe Impacts:** The Department shall assign points as follows for impacts within the flood fringe:
- i. Greater than 5 cubic yards up to and including 50 cubic yards of fill or obstruction = 1 point
 - ii. Greater than 50 cubic yards up to and including 200 cubic yards of fill or obstruction = 3 points
 - iii. Greater than 200 cubic yards of fill or obstruction = 5 points
- AND iv. Construction of a structure constructed with 1st floor at or above flood hazard elevation = 2 points
- v. Construction of a habitable structure constructed with 1st floor below flood hazard elevation = 5 points

- AND
- vi. Construction of any other structure constructed without a permit that does not comply with N.J.A.C. 7:13
 = 3 points
 - vii. Construction of any other structure constructed without a permit that does comply with N.J.A.C. 7:13
 = 1 point

Pursuant to the Findings, the flood fringe impacts are:

1. **The construction of bulkhead "A"**
 The construction of the bulkhead was completed without a coastal permit in violation of N.J.A.C. 7:13
 = 3 Points
2. **The construction of bulkhead "B"**
 The construction of the bulkhead was completed without a coastal permit in violation of N.J.A.C. 7:13
 = 3 Points
3. **The construction of bulkhead "C"**
 The construction of the bulkhead was completed without a coastal permit in violation of N.J.A.C. 7:13
 = 3 Points
4. **The construction of bulkhead "D"**
 The construction of the bulkhead was completed without a coastal permit in violation of N.J.A.C. 7:13
 = 3 Points
5. **The construction of sheds at 15th Avenue**
 The obstruction caused by the construction of the sheds and associated fencing is estimated to be in excess of 200 cubic yards AND the construction of the sheds was completed without a coastal permit in violation of N.J.A.C. 7:13
 = 8 Points

d. Area of Riparian Disturbance: The Department shall assign points as follows for an impact to a riparian zone, such as the clearing cutting, and/or removal of vegetation, the construction, reconstruction, relocation, or enlargement of the footprint of any structure, and all site preparation such as excavation, filling, and grading of any kind within the riparian zone.

- i. Greater than 400 sqft up to and including 7,000 sqft
 = 1 point
- ii. Greater than 7,000 sqft up to and including 15,000 sqft
 = 2 points
- iii. Greater than 15,000 sqft and greater
 = 3 points

Riparian zone impacts were not identified for the referenced violations. 0 points.

e. Severity of Riparian Disturbance: The Department shall assign points as follows based on the area disturbed and the type of vegetation disturbed.

- i. The existing shrub layer within the riparian zone has been removed and the herbaceous layer remains
 = 1 point

- ii. The riparian zone has been clear-cut of existing woody vegetation (trees and shrubs) with stumps remaining = 2 points
- iii. The riparian zone has been clear-cut of existing woody vegetation and stumped with the removal of the root, or vegetation otherwise destroyed by being buried under fill = 3 points

Riparian zone impacts were not identified for the referenced violations. 0 points.

- f. Violations located in State Owned Tidelands: The Department shall assign 1 point for violations located within State-owned Tidelands area for which a current tidelands instrument has not been obtained or for which payment is in arrears.

Tidelands impacts were not identified for the referenced violations. 0 points.

- g. Impacts to Resources of Concern: The Department shall assign one (1) point for each of the following special areas or resources in which the unauthorized activity occurred, or which was adversely impacted by the unauthorized activity:

- i. A regulated water identified as Trout Production or Trout Maintenance, or which contains other fishery resources;
- ii. A regulated waters designated as Category One;
- iii. A regulated water within the Central Passaic Basin, as defined at N.J.A.C. 7:13-1.2;
- iv. A regulated water that is a present or documented habitat for threatened or endangered species;
- vi. A channel or floodway;
- vii. The portion of the riparian zone within 25 feet of the top of bank of a regulated water.

Impacts to Resources of Concern were not identified for the referenced violations. 0 points.

The total number of points calculated for Type, Conduct and Seriousness of the violations and the amount of daily penalty utilizing the Flood Hazard Area Control Act Penalty Assessment Table below is as follows:

FHACA PENALTY ASSESSMENT TABLE

<u>Total Points</u>	<u>Penalty Amount</u>
1-3	\$ 500
4-6	\$ 1,000
7-8	\$ 2,000
9-10	\$ 3,000
11-12	\$ 6,000
13-14	\$ 8,000
15-16	\$10,000
17-19	\$15,000
20-22	\$20,000
23 or more	\$25,000

	TOTAL POINTS (CONDUCT + SERIOUSNESS)	PENALTY AMOUNT PER DAY
1. For the construction of bulkhead "A" The construction 630 linear feet of steel bulkhead between 5 th to 7 th Avenue, within a flood hazard area.	= 5 points	\$1,000.00

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- 2. **For the construction of bulkhead "B"**
The construction of approximately 1,614 linear feet of steel bulkhead from 7th to 13th Avenue within a flood hazard area. = **5 Points** **\$1,000.00**
- 3. **For the construction of bulkhead "C"**
The construction of approximately 229 linear feet of vinyl bulkhead along the oceanfront from 3rd to 4th avenues along, waterward of the existing bulkhead, within a flood hazard area. = **5 Points** **\$1,000.00**
- 4. **For the construction of bulkhead "D"**
The construction of approximately 267 linear feet of vinyl bulkhead along the oceanfront from 4th to 5th avenues, waterward of the existing bulkhead, within a flood hazard area. = **5 Points** **\$1,000.00**
- 5. **For the construction of sheds at 15th Avenue**
The placement/construction of approx. 4,691 sqft of storage sheds at the Beach Patrol building at 15th Avenue. = **10 Points** **\$3,000.00**

4. **Duration of the violation:**

Pursuant to N.J.A.C. 7:13-24.5(c), the Department is authorized to assess a daily penalty, as each day during which the violation continues or remains in place without the required permit shall constitute an additional, separate and distinct offense.

The Department hereby exercises its discretion to assess a penalty for 1 day per month per violation.

Therefore, the Civil Administrative Penalty for unpermitted activities is as follows:

	Date Since Non-Compliance to Present	1 day/Per Month	Total Penalty
1. For the construction of bulkhead "A"	May 6, 2018	1K x 61 Months	\$61,000.00
2. For the construction of bulkhead "B"	May 5, 2020	1K x 35 Months	\$35,000.00
3. For the construction of bulkhead "C"	December 12, 2012	1K x 131 Months	\$131,000.0
4. For the construction of bulkhead "D"	May 6, 2018	1K x 61 Months	\$61,000.00
5. For the construction of sheds/fenced storage area at 15th Avenue	March 29, 2016	3K x 88 Months	\$264,000.00

The Department at its discretion, may continue to assess daily penalties until the current violations are resolved to the Department's satisfaction.

**** In general, start dates for determining this penalty rationale have been based upon aerial photography and/or other documentation provided by the City or determined based upon site inspections. ****

**UNAUTHORIZED ACTIVITIES WITHOUT A FHACA PERMIT –
TOTAL PENALTY ASSESSMENT:
\$552,000.00**

**FRESHWATER WETLANDS PROTECTION ACT (FWPA) PENALTY RATIONALE
 FOR FAILURE TO OBTAIN A PERMIT PRIOR TO CONDUCTING REGULATED ACTIVITIES**

Pursuant to N.J.A.C. 7:7A-22.7, the Department has determined that the base, or daily, FWPA penalty shall be determined by totaling the points assigned as follows: (1) **Type**- conducting a regulated activity without a permit or violation of a permit condition (2) **Conduct**; (3) **Seriousness** – a. acreage of wetlands and/or transition area impacted and b. resource value classification; (4) **Duration**.

Pursuant to N.J.A.C. 7:13-22.7(b), each violation of N.J.A.C. 7:7A-2.1 shall constitute an additional, separate and distinct violation.

1. **Type**: Conducting a regulated activity without a permit

The Department has categorized the unpermitted unauthorized activities that have occurred – no Freshwater Wetland Permit was obtained to remove/disturb/fill and construct a bulkhead within these freshwater wetlands and/or transition areas:

1. **The destruction of Freshwater Wetlands associated with the construction of bulkhead “B”, sand backpassing & beach and dune maintenance activities:**
 - i. The removal of vegetation, filling, and grading of approximately 1.1 acres of regulated freshwater wetlands in the dune area for the construction of approximately 1,614 linear feet of steel bulkhead from 7th to 13th Avenue, sand back passing and beach and dune maintenance within this area. The described length of this bulkhead is based on information contained in the “Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by Van Note-Harvey Associates.
2. **The destruction of Freshwater Wetlands Transition Area associated with the construction of bulkhead “B”, sand back passing and beach and dune maintenance activities:**
 - i. The removal of vegetation, filling, and grading of approximately 6.7 acres of regulated freshwater wetland transition areas in a beach and dune area for the construction of approximately 1,614 linear feet of steel bulkhead from 7th to 13th Avenue within a prior dune area. The described length of this bulkhead is based on information contained in the “Combined Environmental Impact Statement and Compliance Statement Pursuant to N.J.A.C. 7:7 and 7:7A dated 11/17/2020, prepared by Van Note-harvey Associates.

2. **Conduct:**

Minor: any conduct not identified as major or moderate point	= 1 point
Moderate: any unintentional but foreseeable act or omission	= 2 points
Major: any intentional, deliberate, purposeful, knowing or willful act or omission	= 5 points

The conduct for the above-mentioned activities have been determined as the following:

- | | | |
|--|---|-------------------|
| 1. For destruction of Freshwater Wetlands | The conduct of the Respondent is considered to be Moderate | = 2 points |
| 2. For destruction of Transition Areas | The conduct of the Respondent is considered to be Moderate | = 2 points |

3. **Seriousness:**

The seriousness factor of the violation is assigned points as provided below and shall be based on the type, size, and location of the violation and the acreage of wetlands and/or transition areas impacted and the resource value of the freshwater wetland.

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a. Acreage of wetlands and/or transition areas impacted:

- i. a violation impacting > 7 acres = 7 points
- ii. a violation impacting > 4 acres feet up to and including 7 acres = 6 points
- iii. a violation impacting > 2 acres up to and including 4 acres = 5 points
- iv. a violation impacting > 1 acres up to and including 2 acres = 4 points
- v. a violation impacting > 0.5 acres up to and including 1 acre = 3 points
- vi. a violation impacting > 0.25 acre up to and including 0.5 acre = 2 points
- vii. a violation impacting up to and including 0.25 acre = 1 point

- 1. **For destruction of Freshwater Wetlands** Per the freshwater wetlands area depicted on the plans for NJDEP permit approval #0500-07-0006.1 CAF070001 and WFD 070001, the estimated impact is approximately 1.1 acres = 4 points
- 2. **For destruction of Transition Areas** Based on the presence of freshwater wetlands in each disturbed vegetated dune area, transition area is estimated to be approximately 6.7 acres = 6 points

b. Resource value classification:

- i. a violation impacting exceptional resource value wetlands = 7 points
- ii. a violation impacting intermediate resource value wetlands = 6 points
- iii. a violation impacting ordinary resource value wetlands = 5 points
- iv. a violation impacting exceptional resource value transition areas = 4 points
- v. a violation impacting intermediate resource value transition areas = 3 points

- 1. **For destruction of Freshwater Wetlands** Pursuant to NJDEP Permit# 0507-03-0009.2 CAF140001 & FWW140001, which established a 150ft transition area, the resource value is determined to be **Exceptional** = 7 points
- 2. **For destruction of Transition Areas** Pursuant to NJDEP Permit# 0507-03-0009.2 CAF140001 & FWW140001, which established a 150ft transition area, the resource value is determined to be **Exceptional** = 4 points

TOTAL POINTS-SERIOUSNESS:

**Seriousness Total
 (Acreage + Resource Value)**

- 1. **For the destruction of Freshwater Wetlands** = 11 points
- 2. **For the destruction of Transition Areas** = 10 Points

The total number of points calculated for Type, Conduct and Seriousness of the violations and the amount of daily penalty utilizing the Freshwater Wetlands Protection Act Penalty Assessment Table below is as follows:

FRESHWATER WETLANDS PROTECTION ACT

Penalty Assessment Table

<u>Total Points</u>	<u>Penalty Amount</u>
17	\$25,000.00
16	\$23,000.00
15	\$21,000.00
14	\$19,000.00
13	\$17,000.00

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12	\$15,000.00
11	\$13,000.00
10	\$11,000.00
9	\$10,000.00
8	\$9,000.00
7	\$8,000.00
6	\$6,000.00
5	\$5,000.00
4	\$4,000.00
3	\$3,000.00

**TOTAL POINTS
 (CONDUCT +
 SERIOUSNESS) PENALTY
 AMOUNT
 PER DAY**

- 1. **For the destruction of Freshwater Wetlands**
 The destruction of approximately 1.1 acres of freshwater wetlands. = **13 points** **\$17,000.00**
- 2. **For the destruction of Transition Areas**
 The destruction of approximately 6.7 acres of transition areas. = **12 Points** **\$15,000.00**

4. Duration of the violation:

Pursuant to N.J.A.C. 7:7A-22.7(c), the Department is authorized to assess a daily penalty, as each day during which the violation continues or remains in place without the required permit shall constitute an additional, separate and distinct offense.

The Department hereby exercise its discretion to assess a penalty for 1 day per month per violation. Therefore, the Civil Administrative Penalty for unpermitted activities is as follows:

	Date Since Non- Compliance to Present	1 day/Per Month	Total Penalty
1. For the destruction of Freshwater Wetlands	May 5, 2020	17K x 35 Months	\$595,000.00
2. For the destruction of Transition Areas for the construction of bulkhead "B"	May 5, 2020	15K x 35 Months	\$525,000.00

The Department at its discretion, may continue to assess daily penalties until the current violations are resolved to the Department's satisfaction.

**** In general, start dates for determining this penalty rationale have been based upon aerial photography and/or other documentation provided by the City or determined based upon site inspections. ****

**UNAUTHORIZED ACTIVITIES WITHOUT A FRESHWATER WETLANDS PERMIT –
 \$1,120,000.00**

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**FRESHWATER WETLANDS PROTECTION ACT PENALTY RATIONALE FOR
PERMIT CONDITION VIOLATIONS**

The Department has determined that the base, or daily, penalty shall be determined as follows:

(1) **Type**- violation of permit conditions (2) **Conduct**; (3) **Seriousness**; and (4) **Duration**.

1. **Type of Violation**: There is 1 violation of a Freshwater Wetland permit and its permit conditions:

Violation

Failure to comply with Freshwater Wetland Permit Condition #10 of Bike Path, Sidewalk and Utility Reconstruction Permit #: 0507-03-0009.2 CAF140001 & FWW140001 & FWW140002. Permit Condition #10 states, "Prior to site preparation, the permittee shall complete a transition area and adjacent freshwater wetland area conservation restriction and file the completed restriction with the Office of the Cape May County Clerk." This conservation restriction was required to preserve and document the location of freshwater wetlands and transition areas within the oceanfront existing dunes in North Wildwood. The conservation restriction was not filed with the Office of the Cape May County Clerk.

2. **Conduct**: Conduct shall be classified as major, moderate or minor as follows:

- Major: any intentional, deliberate, purposeful, knowing or willful act or omission by the violator. The Department presumes all violations of Department permits or authorizations to be knowing violations.
- Moderate: any unintentional but foreseeable act or omission
- Minor: any conduct not identified as major or moderate point

Conduct for all permit violations is **MAJOR** as the Department presumes all violations of Department permits or authorizations to be knowing violations.

3. **Seriousness**: Seriousness shall be classified as major, moderate or minor as follows:

- Major: any violation which has caused or has the potential to cause serious harm to human health, safety, property, the Freshwater Wetlands Protection Act regulatory program or the environment; or seriously deviates from the applicable law and/or condition. "Serious" deviations include but are not limited to those violations which are in complete contravention of the law, requirement and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement or condition. Violations of "major" seriousness include but are not limited to:
- i. Any activity that negatively affects water quality;
 - ii. Clearing, grading, or filling of freshwater wetlands;
 - iii. Clearing, grading, or filling of transition areas when done in conjunction with such activities in freshwater wetlands;
 - iv. Clearing, grading, filling, or disturbance of freshwater wetlands and/or transition areas in excess of that authorized by a permit or plan;
 - v. Failure to timely record a conservation restriction or easement, and the property has been sold or transferred;
 - vi. Failure to report the presence of a historic resource during construction and/or the destruction of a historic resource without Department approval;

- vii. Failure to comply with a historic resource of mitigation requirement; and
 - viii. Failure of an applicant or permittee to provide information upon request to determine compliance with any applicable law and/or condition
- Moderate: any violation which has caused or has the potential to cause substantial harm to human health, safety, the Freshwater Wetlands Protection Act regulatory program or the environment; or substantially deviates from the applicable law and/or condition. "Substantial deviation" shall include, but not be limited to violations which are in substantial contravention of the law, requirement and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement and/or condition, and/or that substantially impair or undermine the protection, operation, or intent of N.J.S.A. 13:9B-1 et seq., or 58:10A-1 et seq., or any regulation, rule, or permit condition issued by the Department pursuant thereto. The Department shall consider a violation that is limited solely to the transition area but is not associated with a permit to be of moderate seriousness. Violations of moderate seriousness include, but are not limited to:
- i. Failure to notify the Department of commencement of construction;
 - ii. Failure to transfer a permit in accordance with this chapter; and
 - iii. Failure to timely record a conservation restriction or easement, and the property has not been sold or transferred.
- Minor: seriousness shall apply to any violation not described above as Major or Moderate.

The City has failed to comply with Freshwater Wetland Permit Condition #10 of Bike Path, Sidewalk and Utility Reconstruction Permit #: 0507-03-0009.2 CAF140001 & FWW140001 & FWW140002. Permit Condition #10 states, "Prior to site preparation, the permittee shall complete a transition area and adjacent freshwater wetland area conservation restriction and file the completed restriction with the Office of the Cape May County Clerk." This conservation restriction was required to preserve and document the location of freshwater wetlands and transition areas within the oceanfront existing dunes. The conservation restriction was not filed as required by the permit. The Seriousness of this permit violations is **MODERATE**.

The Department shall determine the applicable daily penalty amount from the Base Daily Penalty Matrix below:

		SERIOUSNESS		
		MAJOR	MODERATE	MINOR
CONDUCT	MAJOR	\$25,000	\$15,000	\$10,000
	MODERATE	\$15,000	\$7,500	\$5,000
	MINOR	\$10,000	\$5,000	\$1,000

**Major Conduct and Moderate Seriousness =
 Daily Base Penalty \$15,000.00**

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4. Duration:

Pursuant to N.J.A.C. 7:7A-22.8(g), the Department is authorized to assess a daily penalty for the total number of calendar days during which each violation continued or remained in place without the required permit.

The Department is using its discretion to assess a daily base penalty of \$15,000.00 per year of violation.

Failure to comply with Freshwater Wetland Permit Condition #10 of Bike Path, Sidewalk and Utility Reconstruction Permit #: 0507-03-0009.2 CAF140001 & FWW140001 & FWW140002. Permit Condition #10 states, "Prior to site preparation, the permittee shall complete a transition area and adjacent freshwater wetland area conservation restriction and file the completed restriction with the Office of the Cape May County Clerk." This conservation restriction was required to preserve and document the location of freshwater wetlands and transition areas within the oceanfront existing dunes. The conservation restriction was not recorded.	December 1, 2014	15K x 8 Years	\$120,000.00
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TOTAL Civil Administrative Penalty for violations of Freshwater Wetland Permit conditions = \$120,000.00

TOTAL FRESHWATER WETLAND PENALTY ASSESSMENT

UNAUTHORIZED ACTIVITIES WITHOUT A FRESHWATER WETLANDS PERMIT PENALTY ASSESSMENT: \$1,120,000.00

VIOLATION OF FRESHWATER WETLAND PERMIT CONDITION PENALTY ASSESSMENT: \$120,000.00

TOTAL FRESHWATER WETLAND PENALTY ASSESSMENT: \$1,240,000.00

AONOCAPA TOTAL CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

TOTAL CAFRA PENALTY ASSESSMENT: \$6,869,000.00

TOTAL FLOOD HAZARD AREA/ FHACA PENALTY ASSESSMENT: \$552,000.00

TOTAL FRESHWATER WETLAND/FWPA PENALTY ASSESSMENT: \$1,240,000.00

CAFRA + FHACA + FWPA = \$8,661,000.00

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Administrative Request Checklist and Tracking Form

I. Document Being Appealed: EA ID # PEA.230001-0507-03-0009.3

Date Document Issued

II. Person Requesting Hearing (Each Respondent named in the Enforcement Document, who wants to contest the Enforcement Document must individually file a hearing request):

_____ Name/Company	_____ Name of Attorney (if applicable)
_____	_____
_____ Address	_____ Address
_____	_____
_____ Telephone #	_____ Telephone #

Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document.
- B. A copy of the Enforcement Document and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
 Office of Legal Affairs
 Attention: Adjudicatory Hearing Requests
 401 E. State Street, P.O. Box 402
 Trenton, New Jersey 08625
- 2. Michele Kropilak, Manager
 Bureau of Coastal and Land Use Compliance and Enforcement
 1510 Hooper Avenue, Suite 140
 Toms River, New Jersey 08753
- 3. Colleen Keller, Assistant Director
 Division of Land Resource Protection
 501 East State Street
 Mail Code 501-02A, PO Box 420
 Trenton, New Jersey 08625-0420

IV. Signature: _____

Date: _____

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT-FRESHWATER WETLANDS

INVOICE NO.
230042560

Program Interest
NORTH WILDWOOD CITY
OCEANFRONT BEACH
North Wildwood, NJ. 08260
0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 1,240,000.00

Billing Date
01/10/23

Due Date
02/20/23

NJEMS Bill ID
000000251065500

Summary	
Total Amount Assessed	1,240,000.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	1,240,000.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	1,240,000.00

REMINDER:

YOU CAN PAY THIS BILL ONLINE WITH A CREDIT CARD OR E-CHECK.
 GO TO [HTTP://WWW.NJ.GOV/DEP/ONLINE](http://www.nj.gov/dep/online) AND CLICK PAY A PAPER INVOICE.
 THE SYSTEM WILL ASK FOR THE INVOICE NUMBER THAT IS FOUND AT THE TOP-RIGHT CORNER OF THIS BILL.
 THERE IS NO FEE FOR PAYING VIA E-CHECK; FOR CREDIT CARD USE, 2.0% OF THE TOTAL + \$.50 IS CHARGED.
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 WRITE INVOICE NUMBER AND PROGRAM INTEREST NUMBER ON CHECK.
 RETURN CHECK WITH BOTTOM PORTION OF THIS INVOICE TO THE NJ DEPARTMENT OF TREASURY.
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See Back Of Page for Billing Inquiries

INVOICE NO.
230042560

D9901F (R 07/14/02)

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT-FRESHWATER WETLANDS

INVOICE NO.
230042560

NJEMS Bill ID
000000251065500

Program Interest ID
0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/10/23

Due Date
02/20/23

Amount Due
\$ 1,240,000.00

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C4

901 ATLANTIC AVE
 North Wildwood NJ 08260-5778

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 NJ DEPARTMENT OF TREASURY
 DIVISION OF REVENUE
 PO BOX 417
 TRENTON, NJ 08646-0417

EP10000500071000031000000009100311111124000000000092300425602C42



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 _____ ENFORCEMENT-FRESHWATER WETLANDS

INVOICE NO.
230042560

Program Interest
NORTH WILDWOOD CITY OCEANFRONT BEACH North Wildwood, NJ. 08260 0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 1,240,000.00

Billing Date
01/10/23

Due Date
02/20/23

NJEMS Bill ID
000000251065500

AONOCAPA
Prescribed Enforcement Action

ASSESSMENTS

Start-End Date: 01/10/2023-01/10/2023 Activity: PEA230001
 Assessment Type: PENALTY(Freshwater Wetlands) Status: Open (Pending Payment) Amount: \$ 1240000.00
 Regulatory Basis:
 Total Amount Assessed: \$ 1,240,000.00

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 _____ ENFORCEMENT-STREAM ENCROACHMENT

INVOICE NO.
 230042550

Program Interest
NORTH WILDWOOD CITY OCEANFRONT BEACH North Wildwood, NJ. 08260 0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 552,000.00

Billing Date
01/10/23

Due Date
02/20/23

NJEMS Bill ID
000000251065600

ADNDCAPA
 Prescribed Enforcement Action

ASSESSMENTS

Start-End Date: 01/10/2023-01/10/2023 Activity: PEA230001
 Assessment Type: PENALTY(Flood Hazard) Status: Open (Pending Payment) Amount: \$ 552000.00
 Regulatory Basis: Total Amount Assessed: \$ 552,000.00

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 _____ ENFORCEMENT-STREAM ENCROACHMENT

INVOICE NO.
230042550

Program Interest
NORTH WILDWOOD CITY
OCEANFRONT BEACH
North Wildwood, NJ. 08260
0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 552,000.00

Billing Date
01/10/23

Due Date
02/20/23

NJEMS Bill ID
000000251065600

Summary	
Total Amount Assessed	552,000.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	552,000.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	552,000.00

REMINDER:

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See Back Of Page for Billing Inquiries

INVOICE NO.
230042550

D9901F (R 3/14/02)

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 _____ ENFORCEMENT-STREAM ENCROACHMENT

INVOICE NO.
230042550

NJEMS Bill ID
000000251065600

Program Interest ID
0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/10/23

Due Date
02/20/23

Amount Due
\$ 552,000.00

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 DIVISION OF REVENUE
 PO BOX 417
 TRENTON, NJ 08646-0417



NORTH WILDWOOD CITY
 901 ATLANTIC AVE
 North Wildwood NJ 08260-5778

C1

EP100005000710000310000000091003111110552000000000082300425505C18

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 _____ ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO
 230042520

Program Interest
NORTH WILDWOOD CITY
OCEANFRONT BEACH
North Wildwood, NJ. 08260
0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 6,869,000.00

Billing Date
01/10/23

Due Date
02/20/23

NJEMS Bill ID
000000251065400

Summary	
Total Amount Assessed	6,869,000.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	6,869,000.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	6,869,000.00

REMINDER:
 MAKE CHECKS PAYABLE TO: TREASURER - STATE OF NEW JERSEY
 WRITE PROGRAM INTEREST ID ON YOUR CHECK (SEE BOTTOM STUB)
 RETURN THE BOTTOM STUB WITH YOUR PAYMENT
 MAIL PAYMENT AND STUB TO NJ DEPARTMENT OF TREASURY (SEE BOTTOM STUB)

See Back Of Page for Billing Inquiries

INVOICE NO.
 230042520

D9901F (R 3/14/02)

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 _____ ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO.
 230042520

NJEMS Bill ID
000000251065400

Program Interest ID
0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/10/23

Due Date
02/20/23

Amount Due
\$ 6,869,000.00

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\$

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 and mail to:
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 DIVISION OF REVENUE
 PO BOX 417
 TRENTON, NJ 08646-0417



NORTH WILDWOOD CITY

C0

901 ATLANTIC AVE
 North Wildwood NJ 08260-5778

EP1000050007100003100000000910031111116869000000000052300425203C02

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO.
 230042520

Program Interest
NORTH WILDWOOD CITY OCEANFRONT BEACH North Wildwood, NJ. 08260 0507-03-0009.3

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 6,869,000.00

Billing Date
01/10/23

Due Date
02/20/23

NJEMS Bill ID
000000251065400

AONOCAPA
 Prescribed Enforcement Action

ASSESSMENTS

Start-End Date: 01/10/2023-01/10/2023 Activity: PEA230001
 Assessment Type: PENALTY(CAFRA-CCMRE FUND) Status: Open (Pending Payment) Amount: \$ 6869000.00
 Regulatory Basis:
 Total Amount Assessed: \$ 6,869,000.00

EXHIBIT B



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Watershed & Land Management

Division of Land Resource Protection

501 East State St, PO Box 420, 501-2A

Trenton, New Jersey 08625

Tel. (609) 984-3444

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

SHAWN M. LATOURETTE

Commissioner

January 24, 2023

CERTIFIED MAIL/RRR & via email

7017 2620 0000 1758 0275

Honorable Patrick Rosenello, Mayor

City of North Wildwood

901 Atlantic Avenue

North Wildwood, New Jersey 08260

RE: Administrative Order and Notice of Civil Administrative Penalty Assessment

Seaport Pier

Block 291.01 Lot 1; Block 317.03, Lot 1

North Wildwood City, Cape May County

PEA230001-0507-03-0009.4

Dear Mayor Rosenello:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department.

Contained within the enclosed document is a notice and instructions for requesting an Administrative Hearing. Failure to request a hearing within 35 days as per instructions will result in the loss of your right to a hearing.

If you have any questions concerning the Administrative Order and Notice of Civil Administrative Penalty Assessment, please contact Michele Kropilak of my staff at michele.kropilak@dep.nj.gov or by letter at the address above.

Sincerely,

Jennifer Moriarty, Director
Division of Land Resource Protection

c: Kimberly Cahall, NJDEP, OEP
Kevin Terhune, NJOAG, DOL-EBEJ
Robert Guzek, NJDEP, OTPLA
Carlton Dudley, NJDEP, WRM
Neil Yoskin, Esq., Cullen & Dykman LLP
Lyndsy Newcomb, Esq, Monzo, Catanese & Hillegass



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF COASTAL AND LAND USE COMPLIANCE & ENFORCEMENT
Toms River Office
1510 Hooper Avenue, Suite 140
Toms River, New Jersey 08753
Tel. (732) 255-0787 • Fax. (732) 255-0877

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SHAWN M. LATOURETTE
Commissioner

January 24, 2023

CERTIFIED MAIL/RRR & Via email

7017 2620 0000 1758 0275

IN THE MATTER OF
City of North Wildwood
901 Atlantic Avenue
North Wildwood, New Jersey 08260

ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT

PEA230001-0507-03-0009.4

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter AONOCAPA) is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department" or "DEP") by N.J.S.A. 13:1D-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and the rules promulgated at N.J.A.C. 7:13-1 et seq. ("FHA"), the Coastal Area Facility Review Act N.J.S.A. 13:19-1 et seq. and rules promulgated at N.J.A.C. 7:7-1 et seq. ("CAFRA") and duly delegated to the Assistant Commissioner and her assignees pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1. The City of North Wildwood, hereinafter "NWW", owns Seaport Pier (hereinafter "SP") and the oceanfront beach and dune property located at East 22nd Avenue, specifically at Block 291.01, Lot 1 and Block 317.03, Lot 1, North Wildwood City, Cape May County, hereinafter the "site." BG Capital LLC (hereinafter "BG") leases a portion of the site from NWW. Joseph Byrne and Daniel Govberg are partners of BG.
2. The site is included on the NWW Recreation and Open Space Inventory (ROSI) and therefore subject to DEP Green Acres Program restrictions under N.J.A.C. 7:36-1, et seq.
3. SP was originally constructed in the 1920's as a private fishing pier that was acquired by NWW in May 1955 through tax foreclosure pursuant to the Final Judgment within Deed Book 862, pages 467-483. Upon its acquisition, it was added to the public beach owned by NWW and became available for use by the public for fishing and other recreational purposes. It was rebuilt and widened in the 1980's, operated at one point as 'Seaport Shopper's Village', and closed in 2005 as the buildings were deemed unsafe. All buildings were removed from SP between 2007-2009. In 2010, the Department of Community Affairs authorized NWW to designate SP an area in need of redevelopment. SP remained vacant until late 2017. In 2017, BG submitted a redevelopment proposal to NWW for new pier construction to the south of SP on the public beach (Block

- 291.01, Lot 1) for a public swimming pool, hereinafter the pool pier ("PP"), as well as a proposal for a restaurant building/concert venue on SP.
4. On September 5, 2017, BG and NWW entered into a lease agreement for the development and operation of a restaurant, bar, swimming pool/club, concert venue and entertainment center with retail shops, offices and related amenities on the site. The lease contained an option for BG to purchase the site from NWW. This lease agreement was not reviewed or approved by the Green Acres Program at the time of execution.
 5. While SP is located within a sewer service area, the newly constructed PP is located within a non-sewer service area.
 6. In October 2017, JB Richards Construction LLC ("JB"), of which Joseph Byrne is a managing member, submitted to the Department's Division of Land Resource Protection (DLRP) a CAFRA general permit application for the PP expansion. As NWW is the site owner, the permit application included NWW's signature as co-permittee.
 7. JB began construction on SP in late 2017 and PP in early 2018.
 8. On January 3, 2018, DLRP issued a CAFRA general permit, File #0507-03-0009.4 (CZM170001), to JB, for the pier expansion to the south of SP in accordance with an approved plan that depicts a pool and covered storage area on PP and no structures (except for a police substation trailer) on SP. Standard Condition #3 states "the permittee shall obtain all applicable Federal, State and local approvals prior to commencement of regulated activities authorized under a permit". Special condition #1 of the permit specifically states that there shall be no construction of any sewer generating structures such as bathrooms or showers within the expanded pier on Block 291.01, Lot 1. Special condition #2 requires that prior to all swimming pool discharge, the permittee shall request authorization to be covered under a DEP swimming pool discharge general permit and special condition #11 states "the permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit. Any noncompliance with a permit constitutes a violation of this chapter and is ground for enforcement action".
 9. On February 6, 2019, JB requested a CAFRA permit modification File# 0507-03-0009.4 (CZM190001) for the permit issued in paragraph 8 to further expand the PP. On April 4, 2019, DLRP granted the modification to allow for a 2,850 square foot expansion on the southern end of the PP for pool seating. No additional structures were depicted on the approved plan for the modification on either SP or PP. The modification stated that all conditions of the original permit are to remain in effect.
 10. On April 28, May 26, and June 2, 2020, DEP Bureau of Coastal & Land Use Compliance & Enforcement staff (CLUE) conducted site investigations and determined that multiple structures/utility connections have been constructed on both SP and PP either without DEP authorization or not in compliance with DEP permit/modification Files#0507-03-0009.4 (CZM170001/CZM190001). The following structures were built on SP without DEP permit approval: an approximately 23,136 sq ft restaurant and bar building with restrooms, a collapsible concert stage, a tiki bar (approximately 1052 square feet) storage rooms (approximately 235 square feet) and additions to SP decking, including decking an approximately 141.12 square feet area on the south side and 310.62 sq ft on the north side (now under the restaurant) and an addition of a new access ramp to the beach at the waterward end of SP by the tiki bar of approximately 775 square feet. The entirety of PP is restricted as a member only swim club and the storage area depicted on the DEP approved plan has been converted into an approximately 1,404 square foot swim up bar/restaurant with bathrooms and showers. In addition, another pool equipment building/storage building (approx. 202 square feet) and a food trailer (approx. 180 square feet) has been constructed on the southern end of PP without DEP approval. Structures on both piers are connected to water/sewer utilities without DEP authorization and partially within a non-sewer service area.

11. On June 6, 2020, the Department issued a Coastal & Land Use Notice of Violation (CLUENOV), File# PEA20001-0507-03-0009.4, to NWW and BG for violations of the CAFRA and FHA as noted above. The CLUENOV advised that all unauthorized activities were to cease immediately, and that no further regulated activities were to be conducted except in compliance with a valid land use permit from the Department in accordance with approved plans. The CLUENOV further advised NWW and BG to respond in writing with a proposal to address the violations either through removal and restoration or via permit application(s), and that any work that is not permitted will be required to be removed/restored in compliance with a restoration plan approved by CLUE.
12. On June 11, 2020, BG's counsel submitted an initial response to the CLUENOV, advising that BG has retained an environmental consultant to assist in addressing the matter, and intended to submit for a jurisdictional determination. The letter stated that no further construction will take place without either a DEP permit or verification of an exemption.
13. On June 19, 2020, BG submitted a jurisdictional determination request to DLRP for SP. On July 21, 2020, DLRP issued a Jurisdictional Determination letter, File#0507-03-0009.3 APD200001, that determined the construction on SP requires a CAFRA individual permit. On August 20, 2020, BG submitted a timely hearing request of the jurisdictional determination, and this request is pending.
14. On July 17, 2020, BG's counsel sent another letter to DEP responding to the CLUENOV. BG advised it would promptly address all matters. At the time, a jurisdictional determination had already been submitted to DLRP as described above. To date, no permit applications have been submitted to DEP and no structures have been removed to address the violations as required by the CLUENOV.
15. On April 28, 2022, NWW issued a construction permit #22-0258 to JB for a new steel framed stage with a roof and plywood walls (approximately 912 square feet). No DEP permits have been obtained for this stage structure to date.
16. On May 18, 2022, CLUE conducted a compliance inspection of the site and determined that the violations cited in the CLUENOV remained uncorrected, and additional violations were documented. Specifically, an approximately 1,075 square foot roof overhang canopy structure had been constructed and attached to the main Seaport Pier restaurant building. This canopy was not present during the April and May 2020 CLUE inspections. February 24, 2021 Nearmap aerial imagery depicts the presence of the canopy at the site. A new steel framed concert stage was under construction near the area of the prior collapsible, open sided stage with curtains (approximately 912 square feet).
17. The following are violations the Department has identified to date:

CAFRA Violations

Violations of N.J.A.C. 7:7-2.1 and 2.2- engaging in a regulated activity within a CAFRA area without a coastal permit. Initiation of a regulated activity without a coastal permit is considered a violation of this chapter and shall subject the person or persons responsible for the regulated activity to enforcement action in accordance with N.J.A.C 7:7-29

The following regulated activity occurred on Seaport Pier (SP) without NJDEP permit authorization:

- A. Construction of a multi-story restaurant / bar building (approximately 23,136 square feet)
- B. Construction of a tiki bar (approximately 1052 square feet)
- C. Construction of storage rooms adjacent to tiki bar/stage (approximately 235 square feet)
- D. Construction of canopy overhang attached to the restaurant/bar (approximately 1075 square feet)
- E. Construction of a concert stage – first a collapsible stage, then in 2022, a permanent steel framed stage (approximately 912 square feet)

- F. Construction of additional decking on the south side of SP (approximately 141.12 square feet), on the north side of SP under the restaurant (approximately 310.62 square feet), and a beach access ramp on the waterward end of SP near the tiki bar (approximately 775 square feet). Total combined additional decking and beach access ramp on SP is approximately 1226.74 square feet.

Violations of N.J.A.C 7:7-27.2 (c) 8 -failure to comply with the conditions of a CAFRA permit is a violation of the Coastal Zone Management Rules and is grounds for enforcement action under N.J.A.C. 7:7-29

Failure to comply with CAFRA permit and modification File#0507-03-0009.4 (CZM170001/CZM190001) for PP. Specifically:

- A. Failure to comply with Special condition #1 of the permit which states that there shall be no construction of any sewer generating structures such as bathrooms or showers within the expanded pier on Block 291.01, Lot 1.

The approved storage building on PP was converted into a swim up bar/restaurant with sinks, bathrooms and showers in violation of the permit and permit condition.

- B. Failure to comply with Special condition #2 which requires that prior to all swimming pool discharge, the permittee shall request authorization to be covered under a DEP swimming pool discharge general permit.

The swimming pool has been operational since 2018 and the pool discharge has not received DEP permit approval to date.

- C. Failure to comply with special condition #11 which states” the permittee(s) and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action”.

Additional structures have been placed/constructed on PP that are not shown on the approved site plans or permit, including the pool equipment storage building and the food trailer at the southern end of the pool pier.

- D. Failure to comply with Standard condition #3 which states,” the permittee shall obtain all applicable Federal, State and local approvals prior to commencement of regulated activities authorized under a permit”.

All required Federal, State and local approvals were not obtained prior to commencement of regulated activities, including, but not limited to, NJDEP Treatment Works Approval, USEPA/Cape May County Water Quality Management Plan approval/amendment as needed, and NJDEP CAFRA approval for additional structures on PP.

Flood Hazard Area Violations

Violations of N.J.A.C. 7:13-2.1(a)- no person(s) shall engage in a regulated activity in a regulated area without a flood hazard area permit or a coastal permit as required by N.J.A.C 7:7

The following was constructed without permit authorization:

- A. Construction of a multi-story restaurant / bar building (approximately 23,136 square feet)
B. Construction of a tiki bar (approximately 1052 square feet)
C. Construction of storage rooms adjacent to tiki bar/stage (approximately 235 square feet)

- D. Construction of canopy overhang attached to the restaurant/bar (approximately 1075 square feet)
- E. Construction of a concert stage – first a collapsible stage, then later a permanent steel framed stage (approximately 912 square feet)

18. Based on the facts set forth in these FINDINGS, the Department has determined that NWW as co-permittee and owner of the site has violated the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:7 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., (“FHA”) and the rules promulgated at N.J.A.C. 7:13-1 et seq.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

19. NWW shall comply with the following:

- a. Immediately cease all NJDEP unauthorized regulated activities at the site. Do not conduct any additional unauthorized regulated activities on site unless and until NJDEP authorization is provided.
- b. Within 30 days of receipt of this document, submit a proposal to CLUE for review and approval for full restoration of the site. The proposal must include complete details as to how NWW and BG will restore all CAFRA and flood hazard areas to their pre-disturbance condition and remove all violations/unauthorized structures identified in paragraph 17.
- c. Should CLUE determine that the restoration proposal is inadequate or incomplete, CLUE shall provide comments to NWW and BG. Within 10 calendar days of receipt of CLUE’s comments, NWW & BG shall submit a revised restoration proposal that conforms to the CLUE’s comments. The determination as to whether the restoration proposal as resubmitted conforms to CLUE’s comments shall be made solely by CLUE. The restoration proposal must be approved by CLUE prior to implementation. Upon CLUE approval, NWW & BG shall implement the approved restoration plan in accordance with the approved time schedule.

OR

- d. NWW and BG shall submit a complete CAFRA individual permit application to the Department’s Division of Land Resource Protection to attempt to legalize all the violations identified above. Permit review may result in approval, partial approval, withdrawal, or denial. Within 45 days of issuance of the permit decision or withdrawal of the permit application, any activity or structure that does not attain complete permit approval must be either; 1) removed from the site and the area restored to its authorized condition as directed/required by the Department; or 2) altered to comply with the conditions and requirements of the NJDEP permit approval.

20. This Order shall be effective upon receipt by NWW or someone on NWW’s behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT AND
NOTICE OF RIGHT TO A HEARING

- 21. Pursuant to N.J.S.A. 13:19-18, N.J.A.C. 7:7-29.1 et seq., N.J. S.A. 58:16A-50 et seq and N.J.A.C. 7:13-1 et seq. and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against NWW in the amount of **\$2,941,000.00**. The Department’s rationale for the civil administrative penalty is set forth in the attachment and incorporated herein.
- 22. Pursuant to N.J.S.A 13:19-18, N.J.S.A 13:9B-1 et seq., and N.J.S.A. 58:16A-50 et seq., the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the

economic benefit (in dollars) which NWW has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act.

23. Pursuant to N.J.S.A. 52:14B-1 et seq., N.J.A.C. 7:7-29.2, N.J.S.A. 13:9B-1 et seq., and N.J.S.A. 58:16A-50 et seq., NWW is entitled to request a hearing. NWW shall, in its request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM individually along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.
24. If no request for a hearing is received within 35 calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the 36th calendar day following its receipt, and the penalty shall be due and payable.
25. If a timely request for a hearing is received, payment of the penalty is due when NWW receives a notice of the denial of the request, or, if the hearing request is granted, when NWW withdraws its request(s) or abandons the hearing, or, if the hearing is conducted, when NWW receives a final decision from the Commissioner in this matter.
26. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

GENERAL PROVISIONS

27. This AONOCAPA is binding on NWW, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
28. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare, and the environment.
29. This AONOCAPA is issued only for the violations identified in the FINDINGS herein above and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
30. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve NWW of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
31. NWW and BG are not entitled to approval of any permit application(s) submitted pursuant to requirements contained herein. In the event the Department determines that regulated activities do not meet the requirements for permit approval, full restoration of the unauthorized disturbance will be required.
32. Pursuant to N.J.S.A. 13:19-18(e), N.J.S.A. 13:9B-1 et seq., and N.J.S.A. 58:16A-50 et seq., any person who violates the provisions of the Act, or any code, rule regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be subject, upon order of the court, to a civil penalty not to exceed \$25,000 for each violation. Each day during which the violation continues constitutes an additional, separate, and distinct offense.

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33. Pursuant to N.J.S.A.13:9B-21, N.J.S.A 58:16A-63and N.J.S.A. 13:19-18 any person who willingly or negligently violates the provisions of the FWPA, CAFRA, FHACA, or any code, rule, regulation, administrative order or court order, promulgated or issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree.

DATE: 1/23/2023

Katrina
Angarone
Digitally signed by
Katrina Angarone
Date: 2023.01.23
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Katrina Angarone, Assistant Commissioner
Watershed & Land Management

City of North Wildwood

CAFRA PENALTY RATIONALE
FOR FAILURE TO OBTAIN A PERMIT PRIOR TO CONDUCTING REGULATED ACTIVITIES

Pursuant to N.J.A.C. 7:7-29.5, the Department has determined that the base, or daily, penalty shall be determined by totaling the points assigned as follows: (1) **Type**- conducting a regulated activity without a permit or violation of a permit condition (2) **Conduct**; (3) **Seriousness**; and (4) **Duration**.

Pursuant to N.J.A.C. 7:7-29.5(b), each violation of N.J.A.C. 7:7-2.2 shall constitute an additional, separate and distinct violation.

1. **Type of Violation**: Conducting a regulated activity without a permit.

The Department has categorized the unpermitted unauthorized activities that have occurred:
 Conducting a regulated activity without a CAFRA permit.

1. **Construction of a multi-story restaurant / bar building (approx 23,136 sqft)**
2. **Construction of a tiki bar (approx 1052 sqft)**
3. **Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)**
4. **Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)**
5. **Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)**
6. **Construction of additional decking on north and south side of SP and beach ramp on SP (approx 1226.74 sqft)**

2. **Conduct**:

Minor: any conduct not identified as major or moderate point	= 1 point
Moderate: any unintentional but foreseeable act or omission	= 2 points
Major: any intentional, deliberate, purposeful, knowing or willful act or omission	= 5 points

The conduct for the above-mentioned activities have been determined as the following:

- | | | |
|--|--|-------------------|
| 1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft) | The conduct of the Respondent is Moderate | = 2 points |
| 2. Construction of a tiki bar (approx 1052 sqft) | The conduct of the Respondent is Moderate | = 2 points |
| 3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft) | The conduct of the Respondent is Moderate | = 2 points |
| 4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft) | The conduct of the Respondent is Moderate | = 2 points |
| 5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft) | The conduct of the Respondent is Moderate | = 2 points |
| 6. Construction of additional decking on north and south side of SP and beach ramp on SP (approx 1226.74 sqft) | The conduct of the Respondent is Moderate | = 2 points |

3. **Seriousness**:

The seriousness factor of the violation is assigned points as provided below and shall be based on the a) size of violation and b) whether the activity was conducted in a Special Area or resource.

a. **Size**:

- i. a violation impacting >200,000 sqft = 13 points

- ii. a violation impacting >150,000 sqft up to and including 200,000 sqft = 12 points
- iii. a violation impacting >100,000 sqft up to and including 150,000 sqft = 11 points
- iv. a violation impacting >70,000 sqft up to and including 100,000 sqft = 10 points
- v. a violation impacting >40,000 sqft up to and including 70,000 sqft = 9 points
- vi. a violation impacting >20,000 sqft up to and including 40,000 sqft = 8 points
- vii. a violation impacting >10,000 sqft up to and including 20,000 sqft = 7 points
- viii. a violation impacting > 5,000 sqft up to and including 10,000 sqft = 6 points
- ix. a violation impacting >2,000 sqft up to and including 5,000 sqft = 5 points
- x. a violation impacting > 750 sqft up to and including 2,000 sqft = 4 points
- xi. a violation impacting >500 sqft up to and including 750 sqft = 3 points
- xii. a violation impacting >50 sqft up to and including 500 sqft = 2 points
- xiii. a violation impacting up to and including 50 sqft = 1 point

The size of the following violations is determined as follows:

- 1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft) = 8 points
- 2. Construction of a tiki bar (approx 1052 sqft) = 4 points
- 3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft) = 2 points
- 4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft) = 4 points
- 5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft) = 4 points
- 6. Construction of additional decking on north and south side of SP and beach ramp on SP (approx 1226.74 sqft) = 4 points

c. Special Areas(s)

In addition to the points assessed above, violations conducted in a special area or resource included in N.J.A.C. 7:7-9 shall be assessed an additional one point per special area or resource. The following Special Areas were impacted for each of the six identified violations:

<u>7:7-9.18 Coastal High Hazard Areas & 7:7-9.25 Flood Hazard Areas</u>	FEMA V zone
<u>7:7-9.22 Beaches</u>	located on a beach
<u>7:7 -9.38 Public Open Space</u>	Site owned by City of North Wildwood and encumbered by Green Acres
Total Point(s)	3

Each special area impacted is 1 point.

TOTAL POINTS-SERIOUSNESS:

**Seriousness Total
(Special Area + Size Total)**

- 1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft) = 11 points
- 2. Construction of a tiki bar (approx 1052 sqft)

- 3. **Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)** = 7 points
- 4. **Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)** = 5 points
- 5. **Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)** = 7 points
- 6. **Construction of additional decking on north and south side of SP and beach ramp on SP (approx 1226.74 sqft)** = 7 points

The total number of points calculated for Type, Conduct and Seriousness of the violations and the amount of daily penalty utilizing the Coastal Zone Management Penalty Assessment Table below is as follows:

**COASTAL ZONE MGMT
PENALTY ASSESSMENT TABLE**

<u>Total Points</u>	<u>Penalty Amount</u>
1 - 3	\$500
4 – 6	\$1,000
7 - 8	\$2,000
9 - 10	\$3,000
11 - 12	\$6,000
13 - 14	\$8,000
15 - 16	\$10,000
17 - 19	\$15,000
20 - 22	\$20,000
23 or more	\$25,000

	TOTAL POINTS (CONDUCT + SERIOUSNESS)	PENALTY AMOUNT PER DAY
1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft)	= 13 points	\$8,000.00
2. Construction of a tiki bar (approx 1052 sqft)	= 9 points	\$3,000.00
3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)	= 7 points	\$2,000.00
4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)	= 9 points	\$3,000.00
5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)	= 9 points	\$3,000.00
6. Construction of additional decking on north and south side of SP and beach ramp on SP (approx 1226.74 sqft)	= 9 points	\$3,000.00

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4. Duration:

Pursuant to N.J.A.C. 7:7-29.5(c), the Department is authorized to assess daily penalties, as each day during which the violations continue or remain in place without the required permit shall constitute an additional, separate and distinct offense.

The Department hereby exercises its discretion to assess a penalty for 1 day per month per violation. The Department is using July 5, 2018, as the start date for most structures – the Grand Opening date for Seaport Pier.

Therefore, the Civil Administrative Penalty for unpermitted activities is as follows:

	Date Since Non-Compliance to Present	1 day/Per Month	Total Penalty
1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft)	July 5, 2018	8K x 59 Months	\$472,000.00
2. Construction of a tiki bar (approx 1052 sqft)	June 6, 2020 cited in NOV	3K x 31 Months	\$93,000.00
3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)	July 5, 2018	2K x 59 Months	\$118,000.00
4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)	February 24, 2021 Nearmap Aerial image	3K x 11 Months	\$33,000.00
5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)	July 5, 2018	3K x 59 Months	\$177,000.00
6. Construction of additional decking on north and south side of SP and beach ramp on SP (approx 1226.74 sqft)	July 5, 2018	3K x 59 Months	\$177,000.00

ECONOMIC BENEFIT

In addition, pursuant to N.J.S.A 13:19 et seq. and N.J.A.C. 7:7-29.5i, N.J.S.A. 58:16A-50 et seq and N.J.A.C. 7:13-24.5(j), N.J.S.A. 13:9B and N.J.A.C. 7:7A-22.12(a), the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the economic benefit (in dollars) which NWW has realized as a result of not complying with, or by delaying compliance with the requirements of the Act.

The Department at its discretion, may continue to assess daily penalties until the current violations are resolved to the Department's satisfaction.

**** In general, start dates for determining this penalty rationale have been based upon aerial photography and/or other documentation provided by the City, BG or determined based upon site inspections. *****

**UNAUTHORIZED ACTIVITIES WITHOUT A CAFRA PERMIT –
TOTAL PENALTY ASSESSMENT:
\$1,070,000.00**

CAFRA PENALTY RATIONALE FOR PERMIT/CONDITION VIOLATIONS

The Department has determined that the base, or daily, penalty shall be determined as follows:

(1) **Type-** violation of permit conditions (2) **Conduct**; (3) **Seriousness**; and (4) **Duration**.

1. **Type of Violation:**

Failure to comply with permit, special conditions #'s 1, 2 & 11, and standard condition #3 of Permit #: 0507-03-0009.4 CZM170001 and CZM190001:

1. Failure to comply with **Special condition #1** of the permit which states that there shall be no construction of any sewer generating structures such as bathrooms or showers within the expanded pier on Block 291.01, Lot 1.

The approved storage building on PP was converted into a swim up bar/restaurant with sinks, bathrooms and showers in violation of the permit and permit condition.

2. Failure to comply with **Special condition #2** which requires that prior to all swimming pool discharge, the permittee shall request authorization to be covered under a DEP swimming pool discharge general permit.

The swimming pool has been operational since 2018 and the pool discharge has not received DEP permit approval to date.

3. Failure to comply with **Special condition #11** which states" the permittee(s) and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action".

Additional structures have been placed/constructed on PP that are not shown on the approved site plans or permit, including the pool equipment storage building and the food trailer at the southern end of the pool pier.

4. Failure to comply with Standard condition #3 which states" the permittee shall obtain all applicable Federal, State and local approvals prior to commencement of regulated activities authorized under a permit".

All required Federal, State and local approvals were not obtained prior to commencement of regulated activities (and still have not been obtained to date), including, but not limited to, NJDEP Treatment Works Approval, USEPA and Cape May County Water Quality Management plan approval, and NJDEP CAFRA approvals for additional structures on PP.

2. **Conduct:** Conduct shall be classified as major, moderate or minor as follows:

Major:	any intentional, deliberate, purposeful, knowing or willful act or omission by the violator. The Department presumes all violations of Department permits or authorizations to be knowing violations.
Moderate:	any unintentional but foreseeable act or omission
Minor:	any conduct not identified as major or moderate point

Conduct for all permit violations is **MAJOR** as the Department presumes all violations of Department permits or authorizations to be knowing violations in complete contravention of the permit and its conditions and these unauthorized activities have impacted special areas including beaches, coastal high hazard areas, flood hazard areas, and public open space.

3. **Seriousness:** Seriousness shall be classified as major, moderate or minor as follows:

- Major: any violation which has caused or has the potential to cause serious harm to human health, safety, the Coastal regulatory program or the environment; or seriously deviates from the applicable law and/or condition. "Serious" deviations include but are not limited to those violations which are in complete contravention of the law, requirement and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement or condition. Violations of "major" seriousness include but are not limited to any unauthorized activity occurring within or impacting a Special Area, as defined in N.J.A.C. 7:7-9.
- Moderate: seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, safety, the Coastal regulatory program or the environment; or substantially deviates from the applicable law and/or condition. "Substantial deviation" shall include, but not be limited to violations which are in substantial contravention of the law, requirement and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement and/or condition. The Department will consider a violation to be of moderate seriousness if limited solely to upland areas that are not designated as a wetland, or other Special Area, as defined in N.J.A.C. 7:7-9.
- Minor: seriousness shall apply to any violation not described above as Major or Moderate.

As outlined above, the Respondent has failed to comply with permit special conditions #'s 1, 2 & 11 and standard condition #3 of Permit #: 0507-03-0009.4 CZM170001 and modification #0507-03-0009.4 CZM190001. Violations include the construction of a members only swim club with swim up bar/restaurant, including bathrooms and sinks, and food trailer outside of the sewer service area. This building was authorized as a storage building only, with no utilities. The unauthorized construction of pool equipment/storage building adjacent to the pool also occurred. The violations include unauthorized activities and impacts within Special Areas as defined in N.J.A.C. 7:7-9, including a coastal high hazard area, beach, public open space, and flood hazard area and are in contravention of the approved permit and modification. In addition, the violations include activities that required approvals prior to construction including a DEP Treatment Works Approval, USEPA and Cape May County Water Quality Management plan amendment approval and occurred outside of a Sewer Service Area.

Therefore, the Seriousness of all permit violations is **MAJOR**.

The Department shall determine the applicable daily penalty amount from the Base Daily Penalty Matrix below:

		SERIOUSNESS		
		MAJOR	MODERATE	MINOR
CONDUCT	MAJOR	\$25,000	\$15,000	\$10,000
	MODERATE	\$15,000	\$7,500	\$5,000
	MINOR	\$10,000	\$5,000	\$1,000

**All permit violations are Major Conduct and Major Seriousness =
 Daily Base Penalty \$25,000.00**

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4. Duration:

Pursuant to N.J.A.C. 7:7-29.5(c), the Department is authorized to assess daily penalties, as each calendar day during which the violation(s) continue or remain in place without the required permit shall constitute an additional, separate and distinct offense.

The Department is using its discretion to assess a daily base penalty of \$25,000.00 per month for each violation.

EACH violation of any permit, permit condition, or requirement issued pursuant to N.J.S.A. 13:19-1 et seq. and/or N.J.S.A. 12:5-3 et seq. or N.J.S.A. 13:9A-1 et. seq. or any permit, condition or requirement issued by the Department pursuant thereto, shall constitute an additional, separate and distinct violation. Where any requirement of these statutes or any regulation, rule, permit condition, or order adopted pursuant thereto, may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

The Department is using its discretion to assess penalties for the permit and violation of the 4 permit conditions as one combined penalty assessment.

	Date Since Permit Non- Compliance	1 Day/Month to Present	TOTAL PENALTY AMOUNT
1. Permit #0507-03-0009.4 CZM170001 & modification #0507-03-0009.4 CZM190001 and Special Conditions 1, 2 & 11, Standard Condition #3 noncompliance	July 5, 2018	\$25k x 59 Months	\$1,475,000.00

TOTAL CAFRA Civil Administrative Penalty violations of CAFRA Permit conditions = \$1,475,000.00

TOTAL CAFRA PENALTY ASSESSMENT

**UNAUTHORIZED ACTIVITIES WITHOUT A CAFRA PERMIT
 PENALTY ASSESSMENT: \$1,070,000.00**

**VIOLATION OF CAFRA PERMIT
 PENALTY ASSESSMENT: \$1,475,000.00**

TOTAL CAFRA PENALTY ASSESSMENT: \$2,545,000.00

**FLOOD HAZARD AREA CONTROL ACT (FHACA) PENALTY RATIONALE
 FOR FAILURE TO OBTAIN A PERMIT PRIOR TO CONDUCTING REGULATED ACTIVITIES**

Pursuant to N.J.A.C. 7:13-24.5, the Department has determined that the base, or daily, FHACA penalty shall be determined by totaling the points assigned as follows: (1) **Type-** conducting a regulated activity without a permit or violation of a permit condition (2) **Conduct**; (3) **Seriousness** – a. Floodway Impacts; b. Flood Fringe Impacts; c. Area of Riparian Disturbance; d. Severity of Riparian Disturbance; and e. Impacts to Other Special Resources of Concern; (4) **Duration**.

Pursuant to N.J.A.C. 7:13-24.5(b), each violation of N.J.A.C. 7:13-2.1 shall constitute an additional, separate and distinct violation.

1. **Type:** Conducting a regulated activity without a permit

The Department has categorized the unpermitted unauthorized activities that have occurred:

Conducting a regulated activity without a coastal flood hazard area without a CAFRA permit.

1. **Construction of a multi-story restaurant / bar building (approx 23,136 sqft)**
2. **Construction of a tiki bar (approx 1052 sqft)**
3. **Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)**
4. **Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)**
5. **Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)**

2. **Conduct of the Respondent:**

- Major: any intentional, deliberate, purposeful, knowing, or willful act or omission = 5 points
- Moderate: any unintentional but foreseeable act or omission = 2 points
- Minor: any conduct not identified as Major or Moderate = 1 point

1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft)	The conduct of the Respondent is Moderate	= 2 points
2. Construction of a tiki bar (approx 1052 sqft)	The conduct of the Respondent is Moderate	= 2 points
3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)	The conduct of the Respondent is Moderate	= 2 points
4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)	The conduct of the Respondent is Moderate	= 2 points
5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)	The conduct of the Respondent is Moderate	= 2 points

3. **Seriousness:**

a. **Channel Impacts:** The Department shall assign points as follows for channel impacts:

- i. Up to and including 75 linear feet of channel impacts = 1 point
- ii. Greater than 75 linear feet and up to and including 300 linear feet of channel impact = 3 points
- iii. Greater than 300 linear feet of channel impacts = 5 points

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Channel impacts were not identified for the referenced violations. 0 points.

- b. Floodway Impacts: The Department shall assign points as follows for floodway impacts:
- i. Up to and including 25 cubic yards of fill or obstruction = 1 point
 - ii. Greater than 25 cubic yards and up to and including 100 cubic yards of fill or obstruction = 3 points
 - iii. Greater than 100 cubic yards of fill or obstruction = 5 points
 - AND iv. Construction of a habitable building or addition within the floodway = 5 points
 - AND v. Construction of any other structure having a footprint greater than 150 sq. ft. = 3 points

Floodway impacts were not identified for the referenced violations. 0 points.

- c. Flood Fringe Impacts: The Department shall assign points as follows for impacts within the flood fringe:
- i. Greater than 5 cubic yards up to and including 50 cubic yards of fill or obstruction = 1 point
 - ii. Greater than 50 cubic yards up to and including 200 cubic yards of fill or obstruction = 3 points
 - iii. Greater than 200 cubic yards of fill or obstruction = 5 points
 - AND iv. Construction of a habitable structure constructed with 1st floor at or above flood hazard elevation = 2 points
 - v. Construction of a habitable structure constructed with 1st floor below flood hazard elevation = 5 points
 - AND vi. Construction of any other structure constructed without a permit that does not comply with N.J.A.C. 7:13 = 3 points
 - vii. Construction of any other structure constructed without a permit that does comply with N.J.A.C. 7:13 = 1 point

Pursuant to the Findings, the flood fringe impacts are:

1. **Construction of a multi-story restaurant / bar building (approx 23,136 sqft)**
Obstruction estimated to be greater than 200 cubic yards AND construction of a habitable structure at or above flood hazard elevation. = 7 points
2. **Construction of a tiki bar (approx 1052 sqft)**
Construction of a structure that does not comply with N.J.A.C. 7:13 for failure to obtain a coastal permit in a coastal flood hazard area. = 3 points
3. **Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)**
Obstruction estimated to be between 50 and 200 cubic yards AND construction of a structure that does not comply with N.J.A.C. 7:13 for failure to obtain a coastal permit in a coastal flood hazard area. = 6 points
4. **Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)**
Construction of a structure that does not comply with N.J.A.C. 7:13 for failure to obtain a coastal permit in a coastal flood hazard area. = 3 points

5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)

Construction of a structure that does not comply with N.J.A.C. 7:13 for failure to obtain a coastal permit in a coastal flood hazard area. = 3 points

d. Area of Riparian Disturbance: The Department shall assign points as follows for an impact to a riparian zone, such as the clearing cutting, and/or removal of vegetation, the construction, reconstruction, relocation, or enlargement of the footprint of any structure, and all site preparation such as excavation, filling, and grading of any kind within the riparian zone.

- i. Greater than 400 sqft up to and including 7,000 sqft = 1 point
- ii. Greater than 7,000 sqft up to and including 15,000 sqft = 2 points
- iii. Greater than 15,000 sqft and greater = 3 points

Riparian zone impacts were not identified for the referenced violations. 0 points.

e. Severity of Riparian Disturbance: The Department shall assign points as follows based on the area disturbed and the type of vegetation disturbed.

- i. The existing shrub layer within the riparian zone has been removed and the herbaceous layer remains = 1 point
- ii. The riparian zone has been clear-cut of existing woody vegetation (trees and shrubs) with stumps remaining = 2 points
- iii. The riparian zone has been clear-cut of existing woody vegetation and stumped with the removal of the root, or vegetation otherwise destroyed by being buried under fill = 3 points

Riparian zone impacts were not identified for the referenced violations. 0 points.

f. Violations located in State Owned Tidelands: The Department shall assign 1 point for violations located within State-owned Tidelands area for which a current tidelands instrument has not been obtained or for which payment is in arrears.

Tidelands impacts were not identified for the referenced violations. 0 points.

g. Impacts to Resources of Concern: The Department shall assign one (1) point for each of the following special areas or resources in which the unauthorized activity occurred, or which was adversely impacted by the unauthorized activity:

- i. A regulated water identified as Trout Production or Trout Maintenance, or which contains other fishery resources;
- ii. A regulated waters designated as Category One;
- iii. A regulated water within the Central Passaic Basin, as defined at N.J.A.C. 7:13-1.2;

- iv. A regulated water that is a present or documented habitat for threatened or endangered species;
- vi. A channel or floodway;
- vii. The portion of the riparian zone within 25 feet of the top of bank of a regulated water.

**Impacts to Resources of Concern were not identified for the referenced violations.
 0 points.**

The total number of points calculated for Type, Conduct and Seriousness of the violations and the amount of daily penalty utilizing the Flood Hazard Area Control Act Penalty Assessment Table below is as follows:

FHACA PENALTY ASSESSMENT TABLE

<u>Total Points</u>	<u>Penalty Amount</u>
1-3	\$ 500
4-6	\$ 1,000
7-8	\$ 2,000
9-10	\$ 3,000
11-12	\$ 6,000
13-14	\$ 8,000
15-16	\$10,000
17-19	\$15,000
20-22	\$20,000
23 or more	\$25,000

	TOTAL POINTS (CONDUCT + SERIOUSNESS)	PENALTY AMOUNT PER DAY
1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft)	= 9 points	\$3,000.00
2. Construction of a tiki bar (approx 1052 sqft)	= 5 points	\$1,000.00
3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)	= 8 points	\$2,000.00
4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)	= 5 points	\$1,000.00
5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)	= 5 points	\$1,000.00

4. Duration of the violation:

Pursuant to N.J.A.C. 7:13-24.7, the Department is authorized to assess a daily penalty, as each day during which the violation continues or remains in place without the required permit shall constitute an additional, separate and distinct offense.

The Department hereby exercise its discretion to assess a penalty for 1 day per month per violation.

Therefore, the Civil Administrative Penalty for unpermitted activities is as follows:

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	Date Since Non-Compliance to Present	1 day/Per Month	Total Penalty
1. Construction of a multi-story restaurant / bar building (approx 23,136 sqft)	July 5, 2018	3K x 59 Months	\$177,000.00
2. Construction of a tiki bar (approx 1052 sqft)	June 6, 2020 cited in NOV	1K x 31 Months	\$31,000.00
3. Construction of storage rooms adjacent to tiki bar/stage (approx 235 sqft)	July 5, 2018	2K x 59 Months	\$118,000.00
4. Construction of canopy overhang attached to the restaurant/bar (approx 1075 sqft)	February 24, 2021 Nearmap aerial	1K x 11 Months	\$11,000.00
5. Construction of a concert stage – first a collapsible stage, then a permanent steel framed stage (approx 912 sqft)	July 5, 2018	1K x 59 Months	\$59,000.00

ECONOMIC BENEFIT

In addition, pursuant to N.J.S.A. 13:19 et seq. and N.J.A.C. 7:7-29.5i, N.J.S.A. 58:16A-50 et seq and N.J.A.C. 7:13-24.5(j), N.J.S.A. 13:9B and N.J.A.C. 7:7A-22.12(a), the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the economic benefit (in dollars) which the Respondent has realized as a result of not complying with, or by delaying compliance with the requirements of the Act.

The Department at its discretion, may continue to assess daily penalties until the current violations are resolved to the Department's satisfaction.

**** In general, start dates for determining this penalty rationale have been based upon aerial photography and/or other documentation provided by NWW or determined based upon site inspections. *****

**UNAUTHORIZED ACTIVITIES WITHOUT A FHACA PERMIT –
TOTAL PENALTY ASSESSMENT:
\$396,000.00**

TOTAL CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

TOTAL CAFRA PENALTY ASSESSMENT: \$2,545,000.00

TOTAL FHACA PENALTY ASSESSMENT: \$396,000.00

CAFRA + FHACA = \$2,941,000.00

City of North Wildwood PEA230001-0507-03-0009.4
Page 20 of 19

Administrative Request Checklist and Tracking Form

I. Document Being Appealed: EA ID # PEA230001-0507-03-0009.4

Date Document Issued

II. Person Requesting Hearing (Each Respondent named in the Enforcement Document, who wants to contest the Enforcement Document must individually file a hearing request):

Name/Company

Name of Attorney (if applicable)

Address

Address

Telephone #

Telephone #

III. Please include the following information as part of your request:

- A. The date the alleged violator received the Enforcement Document.
- B. A copy of the Enforcement Document and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge.
- D. The defenses to each of the findings of fact in the enforcement document.
- E. Information supporting the request.
- F. An estimate of the time required for the hearing.
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons.
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed, and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 402
Trenton, New Jersey 08625
- 2. Michele Kropilak, Manager
Bureau of Coastal and Land Use Compliance and Enforcement
1510 Hooper Avenue, Suite 140
Toms River, New Jersey 08753
- 3. Colleen Keller, Assistant Director
Division of Land Resource Protection
501 East State Street
Mail Code 501-02A, PO Box 420
Trenton, New Jersey 08625-0420

IV. Signature: _____

Date: _____



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT-STREAM ENCROACHMENT

INVOICE NO.
230157660

Program Interest
NORTH WILDWOOD CITY 22ND AVE ST North Wildwood City, NJ. 08260 0507-03-0009.4

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 396,000.00

Billing Date
01/24/23

Due Date
03/06/23

NJEMS Bill ID
000000251408200

Summary	
Total Amount Assessed	396,000.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	396,000.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	396,000.00

REMINDER:
 YOU CAN PAY THIS BILL ONLINE WITH A CREDIT CARD OR E-CHECK.
 GO TO HTTP://WWW.NJ.GOV/DEP/ONLINE AND CLICK PAY A PAPER INVOICE.
 THE SYSTEM WILL ASK FOR THE INVOICE NUMBER THAT IS FOUND AT THE TOP-RIGHT CORNER OF THIS BILL.
 THERE IS NO FEE FOR PAYING VIA E-CHECK; FOR CREDIT CARD USE, 2.0% OF THE TOTAL + \$.50 IS CHARGED.
 TO PAY BILL BY MAIL SEND A CHECK PAYABLE TO TREASURER-STATE OF NEW JERSEY.
 WRITE INVOICE NUMBER AND PROGRAM INTEREST NUMBER ON CHECK.
 RETURN CHECK WITH BOTTOM PORTION OF THIS INVOICE TO THE NJ DEPARTMENT OF TREASURY.
 IF YOU HAVE QUESTIONS SEE BACK OF INVOICE FOR CONTACT INFORMATION.

See Back Of Page for Billing Inquiries

INVOICE NO.
230157660

D9901F (R 3/14/02)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT-STREAM ENCROACHMENT

INVOICE NO.
230157660

NJEMS Bill ID
000000251408200

Program Interest ID
0507-03-0009.4

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/24/23

Due Date
03/06/23

Amount Due
\$ 396,000.00

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment →

\$

RETURN THIS PORTION with your check made payable to:

|||||
NORTH WILDWOOD CITY

C1

901 ATLANTIC AVE
North Wildwood NJ 08260-5778

TREASURER - STATE OF NEW JERSEY
and mail to:

NJ DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 417
TRENTON, NJ 08648-0417

EP1000050007100003100000000910041111110396000000000102301576603C10

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

INVOICE NO.

230157660

ENFORCEMENT-STREAM ENCROACHMENT

Program Interest
NORTH WILDWOOD CITY 22ND AVE ST North Wildwood City, NJ. 08260 0507-03-0009.4

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 396,000.00

Billing Date
01/24/23

Due Date
03/06/23

NJEMS Bill ID
000000251408200

AONOCAPA
Prescribed Enforcement Action

ASSESSMENTS

Start-End Date: 01/24/2023-01/24/2023 Activity: PEA230001
 Assessment Type: PENALTY(Flood Hazard) Status: Open (Pending Payment)
 Regulatory Basis: Amount: \$ 396000.00

Total Amount Assessed: \$ 396,000.00



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO.
 230157630

Program Interest
NORTH WILDWOOD CITY
22ND AVE ST
North Wildwood City, NJ. 08260
0507-03-0009.4

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 2,545,000.00

Billing Date
01/24/23

Due Date
03/06/23

NJEMS Bill ID
000000251408000

Summary	
Total Amount Assessed	2,545,000.00
Amount Received Before Creating Instalment Plan (if instalment plans is allowed)	0.00
Amount Transferred To Instalment Plan	2,545,000.00
Instalment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	2,545,000.00

REMINDER:
 MAKE CHECKS PAYABLE TO: TREASURER - STATE OF NEW JERSEY
 WRITE PROGRAM INTEREST ID ON YOUR CHECK (SEE BOTTOM STUB)
 RETURN THE BOTTOM STUB WITH YOUR PAYMENT
 MAIL PAYMENT AND STUB TO NJ DEPARTMENT OF TREASURY (SEE BOTTOM STUB)

See Back Of Page for Billing Inquiries

INVOICE NO.
 230157630

D9901F (R 3/14/02)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO.
 230157630

NJEMS Bill ID
000000251408000

Program Interest ID
0507-03-0009.4

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/24/23

Due Date
03/06/23

Amount Due
\$ 2,545,000.00

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment →

\$

RETURN THIS PORTION

with your check made payable to:



C0

NORTH WILDWOOD CITY
 901 ATLANTIC AVE
 North Wildwood NJ 08260-5778

TREASURER - STATE OF NEW JERSEY
 and mail to:

NJ DEPARTMENT OF TREASURY
 DIVISION OF REVENUE
 PO BOX 417
 TRENTON, NJ 08646-0417

EP100005000710000310000000091004111111254500000000072301576302C07

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

INVOICE NO.

ENFORCEMENT - CAFRA CCMRE FUND

230157630

Program Interest
NORTH WILDWOOD CITY 22ND AVE ST North Wildwood City, NJ. 08260 0507-03-0009.4

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 2,545,000.00

Billing Date
01/24/23

Due Date
03/06/23

NJEMS Bill ID
000000251400000

<p>AONOCAPA Prescribed Enforcement Action</p> <p>ASSESSMENTS Start-End Date: 01/24/2023-01/24/2023 Activity: PEA230001 Assessment Type: PENALTY(CAFRA-CCMRE FUND) Status: Open (Pending Payment) Regulatory Basis: Amount: \$ 2545000.00</p> <p style="text-align: right;">Total Amount Assessed: \$ 2,545,000.00</p>

EXHIBIT C



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Water Resource Management

Division of Water Enforcement

401 East State Street

PO Box 420, Mail Code 401-03B

Trenton, New Jersey 08625-0420

Tel: (609) 292-4543 Fax: (609) 633-6798

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

SHAWN M. LATOURETTE

Commissioner

CERTIFIED MAIL/RRR

7019 0160 000 6502 4469

January 27, 2023

Honorable Patrick Rosenello
City of North Wildwood
901 Atlantic Avenue
North Wildwood, New Jersey 08260

Re: Administrative Order and Notice of Civil Administrative Penalty Assessment
PEA 230001 – PI 93926
Block 291.01 Lot 1; Block 317.03, Lot 1
North Wildwood City, Cape May County

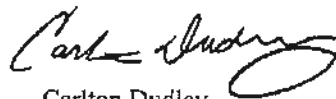
Dear Mayor Rosenello

Enclosed for service upon each of you is an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued by the Department. Contained within the enclosed document is a notice and instructions for requesting an Administrative Hearing. **Failure to request a hearing within 20 days as per the instructions, will result in loss of your right to a hearing.**

If multiple respondents are named, each respondent interested in contesting the AONOCAPA must individually file an Administrative Hearing Request Checklist and Tracking Form. The Administrative Hearing Request Checklist and Tracking Form is enclosed with this letter.

If you have any questions concerning the enclosed AONOCAPA you may contact Kimberly Cahall via email at Kimberly.Cahall@dep.nj.gov.

Sincerely,



Carlton Dudley
Director
Division of Water Enforcement

Enclosure

C: Sean Moriarty, Deputy Commissioner
Kimberly Cahall, Chief Enforcement Officer, NJDEP
Elizabeth Dragon, Asst Commissioner, Community Investment & Economic Revitalization, NJDEP
Katrina Angarone, Asst Commissioner, Watershed & Land Management, NJDEP
Craig Dorsett, Asst Commissioner, State Parks, Forest & Historic Resources, NJDEP
Patricia Gardner, Asst Commissioner, Water Resource Management, NJDEP
Thomas LaRocco, Chief Engineer, Cape May MUA (TomLaRocco@cmcmua.com)
Mark Austin, Team Leader, Strategic Programs, USEPA (austin.mark@epa.gov)
Joseph Byrne & Daniel Govberg BG Capital LLC
Neil Yoskin, Esq., Cullen & Dykman LLP
Lyndsy Newcomb, Esq., Monzo, Catanese & Hillegass



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Water Resource Management
Office of the Assistant Commissioner
401 East State Street
PO Box 420, Mail Code 401-02A
Trenton, New Jersey 08625
Tel: (609) 292-4543 Website www.dep.nj.gov

SHAWN M. LATOURETTE
Commissioner

CERTIFIED MAIL/RRR
7019 0160 000 6502 4469

IN THE MATTER OF:

City of North Wildwood
901 Atlantic Avenue
North Wildwood, New Jersey 08260

**ADMINISTRATIVE ORDER AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT**

EA ID # PEA230001 – PI 93926 NW

This Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”) is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (“NJDEP” or the “Department”) by N.J.S.A. 13:1D-1 et seq., and the New Jersey Water Pollution Control Act (“WPCA or “Act”), N.J.S.A. 58:10A-1 et seq. and the New Jersey Pollutant Discharge Elimination System regulations the Treatment Works Approval (“TWA”), Sewer Bans and Sewer Ban Exemptions Regulations N.J.A.C. 7:14A-22 et seq., the New Jersey Water Quality Planning Act N.J.S.A. 58:11A-1 et seq. and the Water Quality Management Planning regulations N.J.A.C. 7:15-1 et seq., and duly delegated to the Assistant Commissioner of Water Resource Management and assignees, pursuant to N.J.S.A.13:1B-4.

NWW Seaport Pier
PEA230001 – PI93926 NWW
Page 2 of 7

FINDINGS

1. The City of North Wildwood (“NWW”) owns Seaport Pier (“SP”) and the oceanfront beach and dune property located at East 22nd Avenue, specifically at Block 291.01, Lot 1 and Block 317.03, Lot 1, North Wildwood City, Cape May County (“site”). BG Capital LLC (“BG”) leases a portion of the site from NWW. Joseph Byrne and Daniel Govberg are partners of BG.
2. SP was originally constructed as a private fishing pier and was acquired by NWW in May 1955 through tax foreclosure. Upon its acquisition, it was added to the public beach owned by NWW and became available for use by the public for fishing and other recreational purposes. It was rebuilt and widened in the 1980’s, operated at one point as “Seaport Shopper’s Village,” and closed in 2005 as the buildings were deemed unsafe. All buildings were removed from SP between 2007 and 2009. In 2010, the New Jersey Department of Community Affairs authorized NWW to designate SP an area in need of redevelopment. SP remained vacant until late 2017. In 2017, BG submitted a redevelopment proposal to NWW for new pier construction to the south of SP on the public beach (Block 291.01, Lot 1) for a swimming pool, hereinafter the pool pier (“PP”), also known as the Starboard Swim Club pool extension project, as well as a proposal for a restaurant building/concert venue on SP.
3. On September 5, 2017, BG and NWW entered into a lease agreement for the development and operation of a restaurant, bar, swimming pool and club, concert venue, and entertainment center with retail shops, offices, and related amenities on the site. The lease contained an option for BG to purchase the site from NWW and included the requirement that all necessary permits would be obtained by BG.
4. While SP is located within a sewer service area, the newly constructed PP is located within a non-sewer service area.
5. In October 2017, JB Richards Construction LLC (“JB”), of which Joseph Byrne is a managing member, submitted to the Department’s Division of Land Resource Protection (“DLRP”) a Coastal Area Facility Review Act (“CAFRA”) general permit application for the PP expansion. CAFRA is authorized under N.J.S.A. 13:19-1 et seq. and implemented by the rules at N.J.A.C. 7:7-1 et seq.
6. JB began construction on SP in late 2017 and PP in early 2018.
7. On January 3, 2018, DLRP issued the CAFRA permit, File #0507-03-0009.4 (CZM170001), to JB, for the pier expansion to the south of SP in accordance with an approved plan that depicts a pool and covered storage area on PP and no structures (except for a police substation trailer) on SP. Special Condition #1 of the permit specifically states that there shall be no construction of any sewer generating structures, such as bathrooms or showers within the expanded pier on Block 291.01, Lot 1. Special Condition #2 requires that prior to all swimming pool discharge, the permittee shall request authorization to be covered under a NJDEP swimming pool discharge general permit.

NWW Seaport Pier
PEA230001 – PI93926 NWW
Page 3 of 7

8. In March 2019, JB requested a CAFRA permit modification for the permit issued in paragraph 4 to further expand the PP. On April 4, 2019, DLRP granted the modification to allow for a 2,850 square foot expansion on the southern end of the PP for pool seating.
9. On April 28, May 26, and June 2, 2020, staff from the Department's Bureau of Coastal & Land Use Compliance & Enforcement staff (CLUE) and Water Compliance & Enforcement (WCE) conducted site investigations and determined multiple structures/utility connection treatment works have been constructed and operating on both SP and PP without an authorization from the Department. The following structures are built on SP without the necessary permit approval: a 23,136 square foot restaurant and bar building with restrooms, a concert stage, a tiki bar, and storage rooms. The entirety of PP is restricted as a member only swim club and the storage area depicted on the approved plan has been converted into a swim up bar and restaurant with bathrooms and showers. In addition, another constructed pool equipment building/storage building and food trailer have been operating on PP without treatment works approvals. These structures on both piers are connected to water/sewer utilities without authorization under a treatment works permit. The construction and operations of the treatment works on the pool pier is partially within a non-sewer service area.
10. On July 14, 2020, NJDEP WCE issued Notice of Violations ("WCENOVs") to BG and NWW for violations of the WPCA, TWA, Sewer Bans, and Sewer Ban Exemptions regulations, the New Jersey Water Quality Planning Act, and the Water Quality Management Planning regulations for the violations noted in Paragraph 13. Specifically, for the unauthorized construction under N.J.A.C. 7:14A-22(a)2 and the unauthorized operations under N.J.A.C. 7:14A-22(a)3 of all sewer structures on both SP, within a sewer service area and PP, outside of a sewer service area. The unauthorized treatment works include sewer service to restaurants, bars, bathrooms, showers, and pool filter backwash/drain. The construction and operation within a non-sewer service area is also inconsistent with the adopted Water Quality Management Plan, as cited under N.J.A.C. 7:15-3.2(a). The WCENOVs advised both BG and NWW to cease operations until NWW obtains all required Treatment Works and other necessary approval(s) or amendment(s) as needed. The Department's WCENOVs directed BG and NWW to submit an explanation in writing of corrective measures to be taken to achieve compliance. Current operations of the unpermitted Treatment Works within the sewer service area (SP), and operations of the unpermitted and inconsistent treatment works outside the sewer service area (PP) continue unabated and unpermitted as of this date.
11. On July 17, 2020, BG responded to the WCENOV. BG advised the Department that it would promptly address all matters. BG was working with a surveyor to overlay the sewer service area on the as built plan of the SP and PP piers, and BG advised that it would reconfigure facilities if needed.

NWW Seaport Pier
PEA230001 – PI93926 NWW
Page 4 of 7

12. Based on the facts set forth in these FINDINGS, the Department has determined that NWW has violated the New Jersey Water Pollution Control Act (“WPCA” or “Act”), N.J.S.A. 58:10A-1 et seq. and the New Jersey Pollutant Discharge Elimination System regulations and specifically the Treatment Works Approval (“TWA”), Sewer Bans and Sewer Ban Exemptions Regulations N.J.A.C. 7:14A-22 et seq., the New Jersey Water Quality Planning Act N.J.S.A. 58:11A-1 et seq. and the Water Quality Management Planning regulations N.J.A.C. 7:15-1 et seq.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

13. NWW shall immediately cease the operations of all unauthorized Treatment Works at the Seaport Pier (SP) and the Starboard Swim Club pool extension project (PP) until NWW obtains a Treatment Works Approval for all treatment works at SP and PP, as required under N.J.A.C. 7:14A-22 and N.J.A.C. 7:14A-23, and all other rules, regulations, and laws.
- a.* This Order shall be effective upon receipt by NWW or someone on the violator’s behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT
AND
NOTICE OF RIGHT TO A HEARING

14. Pursuant to N.J.S.A. 58:10A-10.d and N.J.A.C. 7:14-8.8 et seq., and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against NWW in the amount of \$1,216,182.00. The Department’s rationale for the civil administrative penalty is set forth in the attachment, and incorporated herein.
15. Pursuant to N.J.S.A. 58:10A-10.d(2) and N.J.A.C. 7:14-8.4 et seq., NWW is entitled to request a hearing. NWW shall, in its request for a hearing, complete and submit the herein ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.
16. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
17. If a timely request for a hearing is received, payment of the penalty is due when NWW receives a notice of the denial of the request, or, if the hearing request is granted, when NWW withdraws the request or abandons the hearing, or, if the hearing is conducted, when NWW receives a final decision from the Commissioner in this matter.

NWW Seaport Pier
PEA230001 – PI93926 NWW
Page 5 of 7

18. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

19. Notice is given that pursuant to N.J.S.A. 58:10A-10.d, and N.J.A.C. 7:14-8.13, that the Department may, in addition to any civil administrative penalty assessed, amend such penalty assessment to include a civil administrative penalty for economic benefit (in dollars) which a violator has realized as a result of not complying, or by delaying compliance with the Act.

GENERAL PROVISIONS

20. This AONOCAPA is binding on NWW their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
21. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.
22. This AONOCAPA is issued only for the violation(s) identified in the FINDINGS hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
23. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve NWW of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
24. Pursuant to N.J.S.A. 58:10A-10.d, NJDEP is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which the violation continues shall constitute an additional, separate and distinct offense.

NWW Seaport Pier
PEA230001 – PI93926 NWW
Page 6 of 7

- 25. Pursuant to N.J.S.A. 58:10A-10.e, any person who violates the provisions of N.J.S.A. 58:10A-1 et seq., or any code, rule, or regulation promulgated pursuant thereto shall be liable to a penalty of not more than \$50,000 per day to be collected in a civil action, and any person who violates an administrative order issued pursuant to N.J.S.A. 58:10A-10.b, including this Administrative Order, or a court order issued pursuant to N.J.S.A. 58:10A-10.c, or who fails to pay a civil administrative penalty assessed pursuant to N.J.S.A. 58:10A-10.d in full after it is due is subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violations. Each day during which the violation continues constitutes an additional, separate and distinct offense.
- 26. Pursuant to N.J.S.A. 58:10A-10.f, any person who purposely, knowingly, or recklessly violates this act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor more than \$250,000 per day of violation, or by imprisonment, or by both.

DATE: _____

Patricia L. Gardner Digitally signed by Patricia L. Gardner
Date: 2023.01.26 17:09:05 -0500

 Patricia Gardner, Assistant Commissioner
 Water Resource Management

NWW Seaport Pier
PEA230001 - PI93926 NWW
Page 7 of 7

**Administrative Hearing Request Checklist
and Tracking Form**

Document Being Appealed: EA ID # PEA230001 - PI 93926 NWW

Date Document Issued

I. Person Requesting Hearing (Each Respondent named in the Enforcement Document, who wants to Contest the Enforcement Document must individually file a hearing request):

_____ Name/Company	_____ Name of Attorney (if applicable)
_____ Address	_____ Address
_____ Telephone #	_____ Telephone #

II. Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document.
- B. A copy of the Enforcement Document and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
Office of Administrative Hearing and Dispute Resolution
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 401-07, PO Box 402
Trenton, New Jersey 08625
- 2. Bryan C. Barrett, Chief
Southern Bureau of
Water Compliance & Enforcement
One Port Center, 2 Riverside Drive, Suite 201
Camden, NJ 08103
- 3. All co-permittees (w/attachments)

IV. Signature: _____ Date: _____

Appendix Penalty Rationale

7:14-8.8 Civil Administrative Penalty for Conducting Unapproved Activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who approves, endorses, allows construction or operation to commence or proceed, builds, modifies, installs, replaces, expands or operates a facility or treatment works, as defined by N.J.A.C. 7:14A, without the proper authorization or in violation of any rule, administrative order, sewer connection ban, or permit issued or imposed pursuant to the Water Pollution Control Act.

(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and conduct of the violator based on the following:

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, modify, install, replace, expand or operate a facility or treatment works, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) indicated in the permit application for that facility or project, or if there is no permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For building, installation, modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful;
or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department, either:

i. Twice the total penalty for the illegal building, installation, modification, replacement or expansion of a facility of treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation:

civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful;

or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

(c) A violation under this section is non-minor and, therefore, not subject to a grace period.

FLOW CALCULATIONS

Per the N.J.A.C. 7:14A-23.3(a) table for projected flow criteria. However, in pertinent part, pursuant to N.J.A.C. 7:14A-23.3(c), the Department recognizes that the table in N.J.A.C. 7:14A-23.3(a) may not cover the flows for all establishments and facilities. As a result, the Department has utilized a flow equivalent or calculation.

A. Restaurant:

534 restaurant seat X 35 gal = 18,690 gallons

B. Bar

210 bar seat x 20 gal = 4,200 gallons

C. Pool Membership with both house showers and Bar

545 pool membership X 25 gal = 13,525 gallons

D. Concert Area

7000 sq ft

Using the grid method of 4.5 sq ft per person

1,556 persons per concert X 3 gal = 4,668 gallons

E. The Pool

Size drainage volume (not counting backwash for the year)

70 ft X 40 ft x 4.5 ft = 102,333 gallons

F. Pool Backwash (per year)

250 gallons per weekly backwash event; Once a Week for each seasonal year:

2 for May, 4 for June, 4 for July, 4 for August, 2 for September.

For seasonal year 2018 , 2019, 2020, 2021, and 2022

16 back wash events per seasonal year = 4000 gallons per year

Projected Flow in Gallons

Subtotal A + Subtotal B + Subtotal C + Subtotal D + Subtotal E + Subtotal F

Gallons 18,690 + 4,200 + 13,525 + 4,668 + 102,333 + 4,000 Backwash = 147,416 gallons

TWA PENALTY CALCULATIONS**Construction of a Treatment Works Without a Permit**

Pursuant to NJAC 7:14-8.8(b)2, for building, installation, modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows:

$$\text{civil administrative penalty} = (\text{seriousness}) \times (\text{conduct}) \times (\$ 1.00)$$

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

ii. The conduct factor is either:

- (1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or
- (2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

Since a completed Treatment Works permit was not obtained for the construction of the treatment works, the Department has calculated the projected flow at the Seaport Pier and the Pool Pier to be 147,416 gallons. The Department has utilized its discretion to not assess the construction penalty for each day pursuant to 7:14-8.8(b)2iii above. The Department determined the seriousness of construction under N.J.A.C. 7:14-8.8(b)2i based upon one day on the projected flow. The conduct for constructing the treatment works was determined to be other than intentional, deliberate, purposeful, knowing and willful, pursuant to N.J.A.C. 7:14-8.8(b)2ii above.

Conduct Factor of 1.00 determined pursuant to N.J.A.C. 7:14-8.8(b)2ii(2) for construction

Seriousness X conduct X (\$1.00) = Civil Administrative Penalty for Construction

147,416 Gallons X 0.75 X \$1.00 = \$110,562.00 for Construction

Construction considered only a one time occurrence.

Operations of a Treatment Works Without a Permit

Pursuant to NJAC 7:14-8.8(b)3, for the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department,

i. Twice the total penalty for the illegal building, installation, modification, replacement or expansion of a facility of treatment works calculated pursuant to N.J.A.C. 7:14-8.8(b)2 above; or

ii. Equal to the product of the following equation:

$$\text{civil administrative penalty} = (\text{seriousness}) \times (\text{conduct}) \times (\$ 1.00)$$

(1) The seriousness factor shall be equal to the total design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

(2) The conduct factor shall be either:

- (A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or
- (B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

Since a completed Treatment Works permit was not obtained for the operations of the treatment works, the Department has calculated the projected flow at the Seaport Pier and the Pool Pier to be 147,416 gallons. The Department has utilized its discretion to not assess the operations penalty for each day pursuant to 7:14-8.8(b)3ii(3) above. The Department determined the seriousness of operations under N.J.A.C. 7:14-8.8(b)2i based upon flow for one day of operations per year. As a result, pursuant to N.J.A.C. 7:14-8.8(b)3i operating the treatment works without a permit was determined to be twice the construction penalty determined by N.J.A.C. 7:14-8.8(b)2.

Pursuant to N.J.A.C. 7:14-8.8(b)3i operations of the treatment works is twice the penalty for construction

$$2 \times \$110,562.00 = \$221,124.00 \text{ for operations per year.}$$

The Department has determined the operations of the treatment works to have occurred for 5 years.

$$\$221,124.00 \times 5 \text{ years (2018, 2019, 2020, 2021, and 2022)} = \$1,105,620.00 \text{ for 5 years of operation}$$

Total Civil Administrative Penalty for construction and operations of Treatment Works without a permit

$$\text{Liability } \$110,562.00 + \$1,105,620.00 = \$1,216,182.00$$

7:14-8.13 Civil Administrative Penalty for Economic Benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Economic benefit shall include:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
2. The return earned or that may be earned on the amount of the avoided costs;
3. Any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
4. Any other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time non-depreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and
7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$ 50,000 per violation

Economic Benefit

Per paragraph 19 of the AONOCAPA, notice is given that pursuant to N.J.S.A. 58:10A-10.d, and N.J.A.C. 7:14--8.13, that the Department may, in addition to any civil administrative penalty assessed, amend such penalty assessment to include a civil administrative penalty for economic benefit (in dollars) which a violator has realized as a result of not complying, or by delaying compliance with the Act. At this time the Department has not assessed an Economic Benefit for the violations noted in the AONOCAPA.

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
 230170620

Program Interest
NORTH WILDWOOD WASTEWATER COLLECTION SYS CITY OF NORTH WILDWOOD North Wildwood City, NJ. 08260 93926

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 1,216,182.00

Billing Date
01/26/23

Due Date
05/01/23

NJEMS Bill ID
000000251476900

Summary	
Total Amount Assessed	1,216,182.00
Amount Received Before Creating Installment Plan (if installment plans is allowed)	0.00
Amount Transferred To Installment Plan	1,216,182.00
Installment Amount	0.00
Total Amount Credited	0.00
Total Amount Debited (Other Than Amounts Assessed)	0.00
Total Amount Due	1,216,182.00

REMINDER:
 YOU CAN PAY THIS BILL ONLINE WITH A CREDIT CARD OR E-CHECK.
 GO TO [HTTP://WWW.NJ.GOV/DEP/ONLINE](http://www.nj.gov/dep/online) AND CLICK PAY A PAPER INVOICE.
 THE SYSTEM WILL ASK FOR THE INVOICE NUMBER THAT IS FOUND AT THE TOP-RIGHT CORNER OF THIS BILL.
 THERE IS NO FEE FOR PAYING VIA E-CHECK; FOR CREDIT CARD USE, 2.0% OF THE TOTAL + \$.50 IS CHARGED.
 TO PAY BILL BY MAIL SEND A CHECK PAYABLE TO TREASURER-STATE OF NEW JERSEY.
 WRITE INVOICE NUMBER AND PROGRAM INTEREST NUMBER ON CHECK.
 RETURN CHECK WITH BOTTOM PORTION OF THIS INVOICE TO THE NJ DEPARTMENT OF TREASURY.
 IF YOU HAVE QUESTIONS SEE BACK OF INVOICE FOR CONTACT INFORMATION.

See Back Of Page for Billing Inquiries

INVOICE NO.
 230170620

D9901F (R 3/14/02)

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
 230170620

NJEMS Bill ID
000000251476900

Program Interest ID
93926

Type of Notice
ORIGINAL (NON-INITIAL)

Billing Date
01/26/23

Due Date
05/01/23

Amount Due
\$ 1,216,182.00

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment →

\$

RETURN THIS PORTION with your check made payable to:

95
 NORTH WILDWOOD CITY
 901 ATLANTIC AVE
 North Wildwood NJ 08260-5778

TREASURER - STATE OF NEW JERSEY
 and mail to:
 NJ DEPARTMENT OF TREASURY
 DIVISION OF REVENUE
 PO BOX 417
 TRENTON, NJ 08646-0417

EP10101010101010101010100903090206111111216182000003012301706201959

BUREAU OF UST COMPLIANCE &
ENFORCEMENT
MAIL CODE 09-03
PO BOX 420
TRENTON, NJ 08625-0420
(609) 633-1205
ENTIRE STATE

D9901B (Rev. 03-14-02)

REQUESTED CHANGES TO INFORMATION FOR PRIMARY BILLING PARTY

Contact Organization: _____

Contact Person: _____ Phone No.: _____

Street Address: _____

Postal City: _____ State: _____ Zip: _____

D9901B



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
230170620

Program Interest
NORTH WILDWOOD WASTEWATER COLLECTION SYS CITY OF NORTH WILDWOOD North Wildwood City, NJ. 08260 93926

Type of Notice
ORIGINAL (NON-INITIAL)

Amount Due
\$ 1,216,182.00

Billing Date
01/26/23

Due Date
05/01/23


NJEMS Bill ID
000000251476900

AONOCAPA
 Prescribed Enforcement Action
 This bill was created by the Assessments Trigger.

ASSESSMENTS
 Start-End Date: 01/26/2023-01/26/2023 Activity: PEA230001
 Assessment Type: PENALTY Status: Open (Pending Payment) Amount: \$ 1216182.00
 Regulatory Basis: Total Amount Assessed: \$ 1,216,182.00

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL



7019 0160 0000 6502 4469
7019 0160 0000 6502 4469


U.S. Postal Service™
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$ _____	PI 93926 PER 23-1 Here
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$ _____	
<input type="checkbox"/> Return Receipt (electronic) \$ _____	
<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
Total Postage and Fees \$ _____	
Sent to Honorable Patrick Casorello Street and Apt. No., or PO/Box No. 901 Atlantic Ave. City, State, ZIP+4® N Wildwood NJ 08260	

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to:</p> <p>Honorable Patrick Casorello City of North Wildwood 901 Atlantic Avenue N. Wildwood, NJ 08260</p> <div style="text-align: center;">  <p>9590 9402 7044 1225 9847 87</p> </div> <p>2. Article Number (Transfer from service label) 7019 0160 0000 6502 4469</p>	<p>A. Signature</p> <p>X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table> <p>Registered Mail Restricted Delivery over \$500</p>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®												
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™												
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<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™												
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery												
<input type="checkbox"/> Collect on Delivery Restricted Delivery													
PS Form 3811, July 2020 PSN 7530-02-000-9063	Domestic Return Receipt												



Cullen and Dykman LLP
Continental Plaza
433 Hackensack Avenue
Hackensack, NJ 07601
T: 201.488.1300
F: 201.488.6541

ANTHONY S. BOCCHI
PARTNER
abocchi@cullenllp.com

January 27, 2023

Via JEDS and FedEx

Hon. Michael J. Blee, A.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. C-000055-22

Dear Judge Blee:

This office represents Defendant City of North Wildwood (hereafter, "North Wildwood"). Enclosed for filing please find a Supplemental Certification of Mayor Patrick T. Rosenello.

As always, we appreciate the Court's attention to this matter.

Respectfully submitted,

CULLEN AND DYKMAN LLP


ANTHONY S. BOCCHI

ASB/rc
Encl.

cc: Kevin H. Terhune, D.A.G. (via JEDS and Email)
Dianna Shinn, D.A.G. (via JEDS and Email)

