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October 20, 2022

*Via e-mail (Shawn.LaTourette@dep.nj.gov)*

Shawn M. LaTourette, Commissioner  
New Jersey DEP  
Mail Code 401-07  
401 East State Street  
PO Box 402  
Trenton, NJ 08625-0420

RE: City of North Wildwood, Cape May County  
Shore Protection Emergency

Dear Commissioner LaTourette:

This office represents the City of North Wildwood. The purpose of this letter is to put the Department on notice that it intends to undertake certain immediate actions beginning today to alleviate a public emergency, the details of which are described below.

As you know from recent correspondence from North Wildwood Mayor Patrick Rosenello, the remnants of Hurricane Ian caused severe damage to critical ocean front shore protection structures in the City. This most recent coastal storm perpetuates long standing emergent conditions that have resulted from the failure of the State and Federal Governments to implement a beach replenishment project which was first committed to in 2013.

The matter of most immediate concern is a large cliff, or scarp, that exists on the dune face between 13<sup>th</sup> and 16<sup>th</sup> Avenues. This is without a doubt a public safety hazard. Even though the City has blocked off access from the street, people continue to intrude into the area, and numerous people have been observed scaling the scarp.

On October 5, 2022, the City submitted a request for an Emergency Authorization (EA) to the Department pursuant to N.J.A.C. 7:7-21.2, seeking approval to deploy Jersey barriers

extending from the 15<sup>th</sup> Avenue northern right-of-way limit to the 16<sup>th</sup> Avenue southern right-of-way limit, to remove and relocate an existing walkway in front of the Public Safety Building to facilitate deployment of the Jersey Barriers, to reshape and regrade the remnant dunes, to install 404 linear feet of bulkhead and to reconstruct access at 16<sup>th</sup> and 25<sup>th</sup> Avenues.

By e-mail dated October 7, the Department approved the deployment of the Jersey barriers and relocation of the walkway, while indicating that the request to reshape the remnant dunes and to install the protective bulkhead were still under consideration. Then, by e-mail dated October 12, 2022 the Department denied the request to regrade and reshape the dunes and to install the emergency bulkhead. The e-mail that communicated that decision indicated that the EA was being denied “because it has not been demonstrated that there is an imminent threat to the loss of life or property based on the existing condition.”

The City, needless to say, disagrees with this determination and to what appears to be the Department’s indifference to the reasonable requirements of protecting public safety, property and infrastructure. The Department’s basis for determining whether an “imminent threat” threat exists, which is the threshold measurement by which an EA is issued, seems to mean that a catastrophe must essentially be ready to occur. This standard seems to be acceptable to the Department. It is impossible, however, to predict the precise moment at which a threat ceases being imminent and becomes something more dire. So while reasonable minds may differ, common sense dictates that protective measures should be taken before additional damage or the potential loss of life or property occurs. It is for this reason that the City Council adopted a Resolution on October 18 declaring the matter a public emergency.

The Department’s October 12, 2022 e-mail, in denying the requested EA for the bulkhead construction, takes note of the fact that a bulkhead might increase the potential for erosion to the beach/dune system waterward of the structure, and to the north and south of the structure due to end-effect erosion, which could exacerbate rather than alleviate the problem faced by the City in



future storms. The City is well aware of this possibility, but in the absence of a meaningful beach replenishment program, it faces little choice. If and when the Federal government and the State government carry out their responsibility to restore the City's beach and dune system, then any short term impacts associated with a bulkhead will simply go away, as the bulkhead will be buried within the newly constructed beach/dune system. But until that occurs, the City must take the steps necessary to protect the lives and property of its residents.<sup>1</sup>

The City does not come to this decision lightly, but in light of the urgent and immediate threat posed by the conditions on the beach, this is to notify you that contracts have been let for the regrading and reshaping of the dunes and for construction of the bulkhead. That work will commence this morning and will continue until completed, regardless of whether or not the Department issues the requested Emergency Authorization. We will leave the State to its legal remedies in this regard.

Sincerely,  
CULLEN AND DYKMAN LLP

Neil Yoskin

NY/cl

cc (via e-mail):

Mayor and Council, City of North Wildwood  
Nick Long, City of North Wildwood  
Michael Donahue, Esq.  
James Verna, PE  
Peter Lomax  
Jennifer Moriarty, NJDEP  
Dennis Reinknecht, NJDEP

Neil.north.wildwood@scan.laourette.commissioner.dep 10-20-22 re NWW

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<sup>1</sup> It is worth pointing out that dunes are protected resources under the Coastal Zone Management Rules. Allowing the scarp to remain as is not only puts the public at risk, but also puts the remnants of the dune system in further jeopardy. The lack of stabilization risks further material losses, which lessens the protective capacity of this remaining sand volume, and additional dune vegetation losses, which translates into diminished root stabilization of the dune and loss of protection habitat.