



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

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July 6, 2023

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

Re: North Wildwood's Continued Non-Compliance

Dear Mayor Rosenello:

I write today perplexed by the City of North Wildwood's (City) recent actions, which again break state law, violate a court order, and contradict our many productive personal discussions over the last six months. As is plainly evident from our ongoing engagement, the Department of Environmental Protection (DEP) is deeply committed to building resilience and reducing erosion of Atlantic coast beaches. You know that DEP is actively advancing over \$16 million in state-funded shore protection projects that benefit the City. You also know that DEP has been willing to resolve millions in penalties owed by the City for its repeated illegal and environmentally destructive activities. Imagine then my surprise, especially after our cordial June 1, 2023 call about shore protection strategies, upon learning that the City again violated coastal zone management laws on June 5, 2023 by illegally reshaping dunes.

To be clear, DEP has repeatedly advised the City that illegal measures that you *believe* will combat erosion (e.g., destruction of dunes, construction of illegal bulkheads) may in fact make matters worse. DEP has provided the City access to coastal engineering experts, showed patient forbearance on the enforcement of egregious City conduct, and invested even more state funding in shore protection projects that will benefit the City. Meanwhile, the City—pointing to its northernmost beaches, a known erosional hotspot—has repeatedly engaged in destructive and illegal conduct in the name of tourism and, supposedly, public safety. This is wrongheaded and it must stop.

Given DEP's statewide experience confronting erosion and building shore protection, we understand the sense of urgency that coastal erosion evokes. While an important subject of active DEP intervention, the City's erosion concerns are not entirely unique along the New Jersey coast. The City's flagrant disregard for the law, however, stands apart. Once again, I ask that you, as Mayor, and all representatives of the City immediately cease and desist from this pattern and practice of violating the law. You are placing the public safety, environment, and the City's access to continued financial support for shore protection at risk.

The balance of this letter provides a summary of the relevant issues and offers the City a pathway to compliance. If your commitment to coastal resilience is as sincere as I believe it to be, I trust you will take seriously this last attempt to amicably resolve the City's noncompliance.

Background

As you know, with respect to erosion and coastal zone management in North Wildwood and throughout the Jersey Shore, DEP has two equally important roles: environmental infrastructure steward and regulator. As a steward of environmental infrastructure, DEP funds and deploys coastal resilience projects that help reduce the risk of erosion, sea-level rise, storm surge, and other adverse impacts of climate change. As a regulator, DEP is statutorily required to ensure the improvement and protection of natural resources, including beaches, dunes, and their ecosystems, which too serve critical functions in protecting our coastal residents and businesses from erosion and storms. Although DEP routinely invests in their resilience, it is municipalities like North Wildwood who own, operate, and are responsible for maintaining their beaches. In doing so, the municipalities are regulated by DEP and cannot undertake certain activities, including projects they believe will reduce erosion—without DEP review and approval.

Against this backdrop, DEP has worked hard to advance multi-million dollar engineered beach/dune and oceanfront seawall projects to help the City, while the City has repeatedly taken ill-advised and illegal measures that it *believes* will combat erosion, including the destruction of dunes, the unauthorized installation of bulkheads, and other regulated activities without required DEP review or permits—leaving DEP no choice but to enforce the laws the City has broken. DEP's concerns with the City's recalcitrant behavior are hardly a matter of process. At best, the City's regulated but unauthorized activities (such as dune reshaping without prior DEP review and approval), flout the coastal zone management laws that apply in equal force to every other coastal community. At worst, the City's activities (such as dune destruction and illegal bulkhead installation), disrupt ecosystem health and undermine shore protection goals by further exacerbating coastal erosion and creating unintended consequences for the City and its neighbors.

Shore Protection Projects

Earlier this year, DEP effectively brought an end to the six-year stalemate between the municipalities of Five Mile Island, whose previous refusal to accept a state and federally funded engineered beach and dune project has left North Wildwood, Wildwood, Wildwood Crest, and Lower Township vulnerable to continuing erosion, rising sea-levels, and increasing risks extreme weather and storm surge. DEP has committed nearly \$10 million to this project, which would consist of an engineered dune system and replenished beaches between Hereford Inlet and Cape May Inlet on the Atlantic oceanfront (~4.73 miles). The project was authorized following Superstorm Sandy, and its cost is funded by the federal (65%) and state (35%) governments.

There is no question that had the Five Mile Island communities come to agreement in years past, North Wildwood would be better protected from erosion today. Nonetheless, DEP is glad to have brokered a resolution. Pre-construction planning and design is currently underway, and construction is anticipated to commence by spring of 2025. At the same time, DEP is advancing



the state/local Oceanfront Seawall project from Third Avenue to Seventh Avenue in the City, to which DEP has committed another \$6.7 million in shore protection funding.

The DEP remains committed to advancing these projects with all deliberate speed, but notes that the City's consistent engagement with DEP, collaboration and cooperation with its neighboring municipalities, and compliance with environmental laws is critical to the success of these and any future shore protection projects.

Latest Illegal Actions by North Wildwood (June 2023)

In addition to previously existing but unresolved legal violations, the City conducted dune re-shaping and public accessway work without the required DEP review and approval in June 2023. The City's actions were in violation of both the State's environmental laws and the February 2023 Superior Court Order issued in the ongoing litigation between the DEP and the City.

On the morning of June 5, 2023, the City began re-shaping oceanfront dunes between 12th and 16th Avenues after a high tide event without DEP review or approval. Later that evening, with the regulated activities well underway, the City filed with DEP a deficient after-the-fact emergency authorization request. On June 8, 2023, the City confirmed that it had completed all work contemplated in the then-pending emergency authorization request without first obtaining DEP approval.

As you know, the City's emergency authorization request was ultimately denied, as outlined in the attached denial letter. The application failed to demonstrate the existence of an emergency requiring an immediate response. The City did not comply with the well-established, legally required process to submit information outlining the site conditions giving rise to the request and the proposed work for review. Despite repeated warnings, the City commenced and completed the regulated work without authorization.

DEP's paramount concern is to ensure the protection of public safety and the restoration and protection of all natural resources, including beaches and dunes. In May 2023, the DEP approved the City's prior emergency authorization request seeking, in part, to reshape the existing face of remnant dunes between 12th and 13th Avenues extending to 16th Avenue and to restore and reconstruct public access points located at 13th, 14th and 15th Avenues in advance of Memorial Day weekend. In that prior application, the City substantiated that there were public safety concerns requiring an immediate response and complied with the law by obtaining DEP approval before commencing work. DEP's May 2023 one-time emergency authorization was conditioned on the City's replacement of the sand volume removed from the dune crests to restore their elevation. The City was required to submit a draft mitigation plan to restore or replace the sand removed from the dune area by June 16, 2023. Thus far, the City has failed to do so.

Now, the City's June 2023 unauthorized regulated activities have needlessly disturbed the dunes' protective capacity by further decreasing the height and volume of the dunes. Oceanfront dunes are an irreplaceable feature of the natural environment possessing outstanding protective value. Dunes are a dynamic natural phenomenon that helps protect lives and property in adjacent landward areas, and provide a buffer from effects of storms, flooding, and erosion. The City's



continued modification and interruption of the natural processes along the beachfront reduces the dunes' protective capacity.

The DEP issued the attached Notice of Violation to the City for the unauthorized measures on June 14, 2023. NWW provided a written response on June 15, 2023, but gave no reassurance that it would cease further unauthorized activity.

Yet again, we caution the City against taking perceived 'self-help' measures, including the disturbance of dunes or other regulated coastal resources or other regulated activities without required DEP review or permits, is a violation of State law, which can carry substantial penalties. Critically, taking such unauthorized actions without proper engineering review by DEP may only further exacerbate coastal erosion, creating unintended consequences for the City, its residents, and neighbors.

Pathway to Compliance

To promote cooperation moving forward, and to avoid further enforcement action by DEP, the City must address the below outstanding items.

1. By **July 14, 2023**, submit for DEP review and approval a combined draft mitigation plan -- both as required under the May 2023 emergency authorization and to restore or replace the dunes disturbed during the unauthorized work on June 5 through 7, 2023. The May 2023 emergency authorization required submission of the mitigation plan by June 16, but the City has not done so.
2. By **September 30, 2023**, complete the required mitigation in accordance with a DEP-approved combined mitigation plan to ensure the dunes are enhanced prior to the winter nor'easter season.

DEP again reminds the City that its Individual Permit application that proposes installation of a bulkhead remains deficient. As outlined in correspondence from DEP's Division of Land Resource Protection on May 2, May 4, and May 26, 2023, the City must correct those deficiencies for the permit application to progress. To date, there has been no response from the City.

Warning of Serious Enforcement Action and Significant Penalties

The City should be advised that should its representatives engage in any further regulated but unauthorized actions contrary to state laws, that such actions are over the serious objection of DEP professionals who seek only to support the City in meeting its shore protection challenges. Should the City nonetheless proceed with further unauthorized activities, notwithstanding the pendency of any applications to DEP, whether termed 'emergent' by the City or not, DEP will have no choice but to pursue aggressive enforcement action. Such enforcement actions would necessarily carry significant penalties for the City given the seriousness of its knowingly illicit conduct, its repetition of such conduct, and DEP's repeated attempts to bring the City into compliance with state laws.



In the spirit of partnership, and in order to reach our shared goals of protecting public safety and our coastal resources, my DEP colleagues and I ask that you please show the leadership necessary to achieve lasting coastal resilience for North Wildwood, its residents, and visitors.

Sincerely,



Shawn M. LaTourette
Commissioner

Enclosures

- c: Nicholas Long, Business Administrator, North Wildwood
- Kimberly Cahall, Chief Enforcement Officer, DEP
- Katrina Angarone, Assistant Commissioner, Watershed & Land Management, DEP
- Jennifer Moriarty, Director, Division of Land Resource Protection, DEP

