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Ryan P. Duffy, Esq. (Bar No. 379452022)

**CULLEN AND DYKMAN LLP**

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*Attorneys for Defendant/Counterclaimant City of North Wildwood*

**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**

**DEFENDANT, CITY OF NORTH  
WILDWOOD’S NOTICE OF MOTION  
ON SHORT NOTICE SEEKING  
DETERMINATION OF JURISDICTION**

**Oral argument requested**

To: Matthew J. Platkin  
Attorney General of New Jersey  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093  
By: Dianna E. Shinn  
Debra A. Allen  
Deputy Attorneys General  
Attorneys for Plaintiff, New Jersey  
Department of Environmental Protection

**COUNSELORS:**

**PLEASE TAKE NOTICE** that on March 27, 2023, the undersigned attorneys for Defendant City of North Wildwood (hereafter, “North Wildwood”), will move before the Superior

Court of New Jersey, Chancery Division, Cape May County, at the Courthouse, 9 North Main Street, Cape May, New Jersey (or, in the alternative, via teleconference) on short notice and pursuant to the Court's Order dated March 9, 2023, for an entry of an Order relative to the court's jurisdiction over NJDEP's denial of North Wildwood's February 10, 2023 Emergency Authorization application and matters that may occur subsequent thereto.

In connection with its motion, North Wildwood will rely on the following documents: (1) Certification of James Verna III with exhibits, (2) Certification of Anthony S. Bocchi with exhibits, (3) Brief, and (4) proposed form of Order.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to R. 1:6-2(d), North Wildwood hereby requests oral argument.

**CULLEN AND DYKMAN LLP**  
Attorneys for Defendant  
City of North Wildwood

By: 

Anthony S. Bocchi, Esq.

Date: March 13, 2023

**CERTIFICATION OF SERVICE**

I hereby certify that on January 4, 2023 a true copy of North Wildwood's: (1) Notice of Motion; Certification of Anthony S. Bocchi, Esq; and proposed Order were served on the following recipients via JEDS and by e-mail:

Matthew J. Platkin  
Attorney General of New Jersey  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093  
By: Dianna E. Shinn  
Debra A. Allen  
Deputy Attorneys General  
Attorneys for Plaintiff, New Jersey  
Department of Environmental Protection

I further certify that all of 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.

**CULLEN AND DYKMAN LLP**  
Attorneys for Defendant  
City of North Wildwood

By:   
Anthony S. Bocchi, Esq.

Dated: March 13, 2023

Anthony S. Bocchi, Esq. (Bar No. 005602006)  
Neil Yoskin, Esq. (Bar No. 002091982)  
Steven Siegel, Esq. (Bar No. 034141992)  
Thomas R. Lahey, Esq. (Bar No. 334452021)  
Ryan P. Duffy, Esq. (Bar No. 379452022)

**CULLEN AND DYKMAN LLP**

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*Attorneys for Defendant/Counterclaimant City of North Wildwood*

**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**

**CERTIFICATION OF ANTHONY S.  
BOCCHI, ESQ. IN SUPPORT OF  
DEFENDANT CITY OF NORTH  
WILDWOOD’S MOTION SEEKING  
DETERMINATION OF JURISDICTION**

ANTHONY S. BOCCHI, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a partner with the law firm of Cullen and Dykman LLP, attorneys for Defendant, City of North Wildwood (hereafter “North Wildwood”), in the within matter.

2. I make this Certification in support of North Wildwood’s Notice of Motion on Short Notice Seeking Determination of Jurisdiction.

3. Annexed hereto as **Exhibit A** is a true and correct copy of the Court’s February 1, 2023 Order granting North Wildwood’s Motion for Leave to File a Counterclaim.



4. Annexed hereto as **Exhibit B** is a true and correct copy of North Wildwood's Amended Answer, Affirmative Defenses and Counterclaim filed February 17, 2023.

5. Annexed hereto as **Exhibit C** is a true and correct copy of the Transcript of the Case Management Conference held on March 7, 2023.

6. Annexed hereto as **Exhibit D** is a true and correct copy of the DEP's EA Denial Letter dated February 24, 2023.

7. Annexed hereto as **Exhibit E** is a true and correct copy of the Certification of James W. Verna III dated January 4, 2023.

8. Annexed hereto as **Exhibit F** is a true and correct copy of the Certification of Peter Lomax dated January 4, 2023.

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.



---

Anthony S. Bocchi

Date: March 13, 2023

Anthony S. Bocchi, Esq. (Bar No. 005602006)  
Neil Yoskin, Esq. (Bar No. 002091982)  
Steven Siegel, Esq. (Bar No. 034141992)  
Ryan P. Duffy, Esq. (Bar No. 379452022)

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*Attorneys for Defendant/Counterclaimant City of North Wildwood*

**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**

**ORDER EXERCISING JURISDICTION  
OVER NJDEP’S DENIAL OF NORTH  
WILDWOOD’S FEBRUARY 10, 2023  
EMERGENCY AUTHORIZATION  
APPLICATION AND ANY MATTERS  
THAT MAY OCCUR SUBSEQUENT  
THERETO**

**THIS MATTER** having been opened to the Court by Cullen and Dykman LLP, attorneys for Defendant, City of North Wildwood (hereafter, “North Wildwood”), Anthony S. Bocchi, Esq. appearing, by way of motion seeking the entry of an Order exercising jurisdiction over NJDEP’s denial of North Wildwood’s February 10, 2023 Emergency Authorization application and any matters that may occur subsequent thereto granting North Wildwood leave to file a Counterclaim pursuant to R. 4:67-4, on notice to Matthew J. Platkin, Esq., Attorney General of the State of New Jersey (Dianna E. Shinn, Deputy Attorney General and Debra A. Allen, Deputy Attorney General, appearing), counsel for Plaintiff, New Jersey Department of Environmental Protection; and the Court

having considered the papers submitted in support of and in opposition to the requested relief; and the arguments of counsel; and good cause having been shown

**IT IS** on this \_\_\_\_\_ day of March 2023:

**ORDERED** that the Court has jurisdiction over the NJDEP's denial of North Wildwood's February 10, 2023 Emergency Authorization application and any matters that may occur subsequent thereto.

**ORDERED** that Defendant shall serve a copy of this Order upon all interested parties within one (1) day of the entry of this Order.

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**HON. MICHAEL J. BLEE, A.J.S.C.**

**CERTIFICATION OF SERVICE**

I hereby certify that on January 4, 2023 a true copy of North Wildwood's: (1) Notice of Motion; Certification of Anthony S. Bocchi, Esq; and proposed Order were served on the following recipients via JEDS and by e-mail:

Matthew J. Platkin  
Attorney General of New Jersey  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093  
By: Dianna E. Shinn  
Debra A. Allen  
Deputy Attorneys General  
Attorneys for Plaintiff, New Jersey  
Department of Environmental Protection

I further certify that all of 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.

**CULLEN AND DYKMAN LLP**  
Attorneys for Defendant  
City of North Wildwood

By: \_\_\_\_\_

  
Anthony S. Bocchi, Esq.

Dated: March 13, 2023

# **EXHIBIT A**

## Prepared by the Court

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CAPE MAY COUNTY  
CHANCERY DIVISION

DOCKET NO: CPM-C-5522

Civil Action

**ORDER**

**FILED**

FEB - 1 2023

CIVIL DIVISION  
SUPERIOR COURT - CAPE MAY CO.

**THIS MATTER**, having been brought before the Court by way of an Order to Show Cause, Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief, and Defendants' Motion for leave to file a Counterclaim; and Kevin A. Terhune, Esq., and Dianna E. Shinn, Esq., of the Deputy Attorney General Office, having appeared on behalf of Plaintiff; and Anthony S. Bocchi, Esq., of the firm Cullen and Dykman LLP, having appeared on behalf of Defendants; and the Court having reviewed the papers submitted and having heard oral argument; and for the reasons more fully set forth on the record; and for good cause shown;

**IT IS on this 1<sup>st</sup> day of FEBRUARY 2023; ORDERED and ADJUDGED as follows:**

1. Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief is GRANTED and Defendants are hereby enjoined from:
  - a. Installing a bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues until it has received a permit authorizing the installation of same from the NJDEP;
  - b. Engaging in any further excavation, placement or regrading of sand between 14<sup>th</sup> and 16<sup>th</sup> Avenues until it has received a permit authorizing the installation of same from the NJDEP;
  - c. Engaging in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16<sup>th</sup> and 25<sup>th</sup> Avenues until it has received a permit authorizing the installation of same from the NJDEP.
2. Defendants' Motion for leave to file a Counterclaim is hereby GRANTED.

**Prepared by the Court**

3. Defendants must file an Emergency Authorization application with the NJDEP WITHIN TEN (10) DAYS of this Order, seeking to:
  - a. Allow Defendants to install a bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues;
  - b. Allow Defendants to engage in further excavation, placement, or regrading of sand between 14<sup>th</sup> and 16<sup>th</sup> Avenues
  - c. Allow Defendants to engage in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16<sup>th</sup> and 25<sup>th</sup> Avenues.
4. This Order and Final Judgment shall be electronically filed via e-courts thereby ensuring prompt service upon all counsel of record.

  
MICHAEL J. BLEE, A.J.S.C.

## **EXHIBIT B**



Anthony S. Bocchi, Esq. (Bar No. 005602006)

Neil Yoskin, Esq. (Bar No. 2091982)

Steven Siegel, Esq. (Bar No. 034141992)

Ryan P. Duffy, Esq. (Bar No. 379452022)

**CULLEN AND DYKMAN LLP**

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*Attorneys for Defendant/Counterclaimant City of North Wildwood*

**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**

**AMENDED ANSWER, AFFIRMATIVE  
DEFENSES, AND COUNTERCLAIM OF  
THE CITY OF NORTH WILDWOOD**

Defendant, the City of North Wildwood (“North Wildwood”), by way of answer to the Verified Complaint by Plaintiff, New Jersey Department of Environmental Protection (“NJDEP”), hereby states the following:

**STATEMENT OF THE CASE**

1. Denied.
2. Admitted.
3. North Wildwood admits only that in response to North Wildwood’s EA request, NJDEP “determined there was neither an imminent nor ongoing threat to the loss of life or severe loss of property ...”

4. North Wildwood admits only that as a direct consequence of NJDEP's incredulous denial of its Emergency Authorization Application, North Wildwood was compelled, in the interest of the public safety of its residents, to excavate sand located at the 11<sup>th</sup> Avenue beach berm and graded the sand into the 14<sup>th</sup> and 16<sup>th</sup> Avenues. The "multiple written communications" referred to in Paragraph 4 of the Verified Complaint otherwise speak for themselves. North Wildwood denies all other allegations. The various legal conclusions set forth in Paragraph 4 of the Verified Complaint do not require a response.

5. Denied.

6. The allegations set forth in Paragraph 6 of the Verified Complaint state legal conclusions to which no response is required. To the extent that a response is required, said allegations are denied.

#### **PARTIES**

7. N.J.S.A. 13:1D-9 speaks for itself.

8. Admitted.

9. The allegations set forth in Paragraph 9 of the Verified Complaint are not directed at North Wildwood and, therefore, North Wildwood neither pleads nor responds thereto.

10. The allegations set forth in Paragraph 10 of the Verified Complaint are not directed at North Wildwood and, therefore, North Wildwood neither pleads nor responds thereto.

#### **JURISDICTION AND VENUE**

(The allegations moving forward in the Verified Complaint were improperly numbered by the NJDEP from this point on. For clarity purposes, North Wildwood will refer to the paragraph numbers using the misnumbered NJDEP version.)

7. North Wildwood admits that the Superior Court has jurisdiction over this matter. N.J.A.C. 7:7-21 and N.J.A.C. 7:7A-15 speak for themselves.

8. Rules 4:52-1, 4:67-6, and 4:67-1(b) speak for themselves. North Wildwood denies that this matter involves a “final agency order.”

9. North Wildwood admits only that venue is appropriate in Cape May County and denies all other allegations set forth in the improperly numbered paragraph 9 of the Verified Complaint.

### **FACTUAL ALLEGATIONS**

#### **North Wildwood’s 2020 Beach Front Bulkhead Project Application**

10. North Wildwood admits only that it submitted a coastal permit application dated November 20, 2020, the provisions of which speak for itself.

11. The terms of the November 20, 2020 permit application speak for itself. All other characterizations by the NJDEP with regard to same are otherwise denied.

12. The terms of the November 20, 2020 permit application and the October 5, 2022 Emergency Authorization Application speak for themselves. All other characterizations by the NJDEP with regard to same are otherwise denied.

13. Denied.

14. The allegations set forth herein are legal conclusions to which no response is required.

#### **Exceptional Resource Value Wetlands**

15. North Wildwood is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in the improperly numbered paragraph 15 of the Verified Complaint and, therefore, North Wildwood neither pleads nor respond thereto.

16. N.J.A.C. 7:7A-3.2(b)(3) speaks for itself.

17. The allegations set forth in improperly numbered paragraph 17 of the Verified Complaint are not directed at North Wildwood and, therefore, North Wildwood neither pleads nor respond thereto.

18. The allegations set forth in improperly numbered paragraph 18 of the Verified Complaint are not directed at North Wildwood and, therefore, North Wildwood neither pleads nor respond thereto.

19. The allegations set forth in improperly numbered paragraph 19 of the Verified Complaint are not directed at North Wildwood and, therefore, North Wildwood neither pleads nor respond thereto. Further, North Wildwood is without knowledge and information sufficient to form a belief as to the truth of the allegations regarding any determination by the NJDEP alleged therein.

20. N.J.A.C. 7:7A-3.2(b)(c) speaks for itself. Further, North Wildwood is without knowledge and information sufficient to form a belief as to the truth of the allegations regarding any determination by the NJDEP alleged therein.

**2022 Emergency Authorization Application**

21. North Wildwood admits that on October 5, 2022 Peter Lomax, of the Lomax Consulting Group, submitted on behalf of North Wildwood an Emergency Authorization Application, the terms of both of which speak for themselves, including the fact that Mr. Lomax's e-mail references that the Emergency Authorization Application "specifically addresses the considerations [the NJDEP] highlighted in [its] email yesterday."

22. Admitted.

23. Admitted.

24. North Wildwood admits that the NJDEP emailed Mr. Lomax on October 4, 2022 regarding the Emergency Authorization Application. The terms of said email speak for itself. Further, the terms of N.J.A.C. 7:7-10.3(b) speaks for itself.

25. The allegations set forth in improperly numbered paragraph 25 of the Verified Complaint set forth legal conclusions to which no response is required. Further, N.J.A.C. 7:7-21.1 speaks for itself.

26. Admitted.

27. The terms of the October 5, 2022 Emergency Authorization Application speak for themselves.

28. The terms of both the Emergency Authorization Application and the 2020 permit application speak for itself.

29. North Wildwood admits only that the NJDEP incredulously and improperly determined that “North Wildwood did not meet any of the requirements for an emergency authorization for installing a bulkhead.” North Wildwood specifically denies the allegation that its EA request did not meet any of the requirements for installing a bulkhead.

30. North Wildwood admits only that the NJDEP incredulously and improperly denied North Wildwood’s Emergency Authorization Application. North Wildwood further avers that the NJDEP’s determinations set forth in improperly numbered paragraph 30 of the Verified Complaint will result in immediate and irreparable harm to North Wildwood and its citizens.

31. North Wildwood denies the false characterization set forth in improperly numbered paragraph 31 of the Verified Complaint that “no emergency situation exists.” Otherwise, the terms of N.J.A.C. 7:7-21.1, N.J.A.C. 7:7-1.1, and N.J.A.C. 7:7-15.11 speak for themselves.

32. North Wildwood admits only that the terms of Ms. Moriarty's October 12, 2022 e-mails sent to Peter Lomax at 3:47 p.m. speak for itself. However, North Wildwood vehemently denies, amongst other things, the improper conclusions set forth in said e-mail, particularly that "it has not been demonstrated that there is an imminent threat to the loss of life or property based on existing conditions."

33. The October 20, 2022, e-mail from the NJDEP to North Wildwood's counsel and the Mayor of North Wildwood referred to in improperly numbered paragraph 33 of the Verified Complaint speak for itself.

34. North Wildwood admits only that as a consequence of the NJDEP's incredulous and improper denial of its Emergency Authorization Application, and in order to secure the safety of its residents and property, which is of paramount concern to North Wildwood, North Wildwood could under no circumstances comply with the NJDEP's October 20, 2022 communication.

35. North Wildwood admits only that on October 20, 2022, the NJDEP issued a Notice of Violation ("NOV").

36. North Wildwood admits that Neil Yoskin, Esq. sent a response to the NJDEP regarding the NOV, as is set forth in improperly numbered paragraph 36 of the Verified Complaint. Mr. Yoskin's letter speaks for itself.

37. North Wildwood denies that the NJDEP has "continued its efforts to work with NWW to address its shoreline protection concerns."

**Stevens Institute of Technology Report Regarding Erosion**  
**Analysis of the Dune System at 15<sup>th</sup> Avenue in NWW**

38. North Wildwood is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in improperly numbered paragraph 38 of the Verified Complaint.

39. North Wildwood is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in improperly numbered paragraph 39 of the Verified Complaint.

40. North Wildwood denies the adequacy of any and all “opinions” formed by Mr. Miller referenced in improperly numbered paragraph 40 of the Verified Complaint, specifically but not limited to the opinion that “the dune system in this area is adequate to protect upland infrastructure” and the incredulous and unsustainable “opinion” that “the need for a continuous bulkhead is not apparent.”

**COUNT I**

**Violation of the Coastal Zone Management Rules, Freshwater Wetland Rules  
and the Coastal Area Facilities Review Act (All Defendants)**

41. North Wildwood repeats its responses to the foregoing paragraphs of the Verified Complaint as if set forth herein at length.

42. North Wildwood admits that on October 5, 2022, it submitted an Emergency Authorization Application, the terms of which speak for itself.

43. North Wildwood admits that on October 7, 2022, the NJDEP authorized, amongst other things, the use of certain temporary jersey barriers, the terms of which the October 7, 2022, authorization speak for itself.

44. North Wildwood admits that on October 12, 2022, the NJDEP denied North Wildwood's remaining portions of its Emergency Authorization Application to install a bulkhead, conduct scarp reshaping of the oceanside of the dune, and make repairs to the 25<sup>th</sup> Avenue vehicular access.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The NJDEP's Verified Complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Moriarty e-mail dated October 12, 2022, pertaining to the Emergency Authorization Application is not a final agency determination of the NJDEP and North Wildwood has not waived any right to appeal the denial of the Emergency Authorization Application to the Appellate Division.

#### **THIRD AFFIRMATIVE DEFENSE**

The NJDEP's denial of the Emergency Authorization Application was without any justifiable basis because North Wildwood demonstrated that there existed an imminent threat to the loss of life or severe loss of property following Hurricane Ian, or an ongoing threat to the loss of life or property, as required by the Coastal Zone Management Rules.



**FOURTH AFFIRMATIVE DEFENSE**

At the time of the submission of the Emergency Authorization Application there was not a substantial dune and beach berm which remained that could have provided sufficient shore protection, and since that time the condition of the dune and berm has only deteriorated even more significantly.

**FIFTH AFFIRMATIVE DEFENSE**

The NJDEP materially breached its obligations under certain State Aid Agreements with North Wildwood and said material breaches have proximately caused significant damage to North Wildwood.

**SIXTH AFFIRMATIVE DEFENSE**

North Wildwood historically sought to employ various methodologies short of installing a bulkhead all of which have proven to be ineffective while North Wildwood's installation of bulkheads historically has, in fact, proven to be highly effective in providing significant shore protection.

**SEVENTH AFFIRMATIVE DEFENSE**

The trial court is required to conduct an evidentiary hearing to resolve factual disputes where there are contested issues of fact, as is the case here, regarding North Wildwood's ability to comply or compliance with the NJDEP's order.

**EIGHTH AFFIRMATIVE DEFENSE**

The court is empowered to invoke its equitable relief to declare and adjudge that North Wildwood should be permitted to install the emergency bulkhead in question.

**NINTH AFFIRMATIVE DEFENSE**

There exists little, if any, risk of immediate irreparable harm to the environment if North Wildwood installs the subject bulkhead. Indeed, the installation of the subject bulkhead will only serve to best protect what little dune environment is left specifically because the proposed bulkhead will be installed well behind the subject dune system.

**TENTH AFFIRMATIVE DEFENSE**

The proposed bulkhead complies N.J.A.C. 7:7 with N.J.A.C. 7:7-15.11.

**ELEVENTH AFFIRMATIVE DEFENSE**

At all times relevant to this matter, the NJDEP failed to act reasonably in assisting North Wildwood to implement adequate shore protection and beach erosion measures to the point that North Wildwood was, by every objective measure, treated different than all other surrounding coastal municipalities.

**TWELFTH AFFIRMATIVE DEFENSE**

The NJDEP's claims are barred by the doctrine of laches, unclean hands, and/or waiver.

**THIRTEENTH AFFIRMATIVE DEFENSE**

At all times relevant to this matter, North Wildwood acted reasonably and in good faith in furtherance of its obligation to protect the safety and welfare of its residents and their property.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The proposed area in question is an erosion hazard area as defined by N.J.A.C. 7:7-9.19, and the proposed bulkhead project satisfies N.J.A.C. 7:7-19.9(b)(2).

**FIFTEENTH AFFIRMATIVE DEFENSE**

The NJDEP was authorized pursuant to N.J.A.C. 7:7-21.3(f) to establish a timeframe greater than 30 days for the installation of the proposed bulkhead and as such there was no basis

to deny the Emergency Authorization Application simply because it could not be completed in 30 days.

**SIXTEENTH AFFIRMATIVE DEFENSE**

North Wildwood reserves its right to add, alter and/or amend their defenses and affirmative defenses as the course of discovery so requires.

**WHEREFORE,** Defendant City of North Wildwood demands judgment in its favor and against Plaintiff, New Jersey Department of Environmental Protection:

(a) dismissing the NJDEP's Verified Complaint with prejudice;

(b) Awarding North Wildwood all taxable costs;

(c) Awarding North Wildwood their attorneys' fees and litigation costs; and

(d) Granting North Wildwood any further or other relief as the Court finds just and proper, together with costs of suit, reasonable attorneys' fees, and any further relief that this court may deem just and proper.

**DEMAND FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 4:18-2, North Wildwood demands that NJDEP produce all documents referenced in its Verified Complaint within five (5) days of the date hereof.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Anthony S. Bocchi, Esq. has been designated as trial counsel on behalf of North Wildwood.

### **COUNTERCLAIM**

Defendant-Counterclaimant the City of North Wildwood (hereafter, "North Wildwood"), by way of Counterclaim against Plaintiff, the New Jersey Department of Environmental Protection (hereafter, the "NJDEP"), hereby states as follows:

### **SUMMARY OF ACTION**

1. By this action, North Wildwood respectfully seeks that the Court declare and adjudge that it may take appropriate measures to, among other things, install approximately 1,147 linear feet of steel bulkhead beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue. This measure is unquestionably needed to protect not only the health and safety of North Wildwood's residents, but also its utility and public safety infrastructure. Without the Court's immediate intervention, North Wildwood will suffer immediate and irreparable harm because a breach condition is imminent where there has been a loss of greater than 75% of the protective dune system in the subject area and the loss of a defined beach berm.

2. The record will reflect that the NJDEP has, for reasons which remain unjustifiable, stifled North Wildwood's ability to adequately protect itself and ameliorate the devastating effects of beach erosion which has decimated North Wildwood, including most recently with Hurricane Ian.

3. North Wildwood, like the rest of the world, is faced with unprecedented weather systems caused, in part, by climate change. Our sea levels are rising at alarming rates never seen before, and at the same time our communities are compelled to prepare for and defend against destructive weather systems that can wreak irreparable havoc on communities within a matter of minutes.

4. North Wildwood has, without any justifiable basis, been thwarted by the NJDEP through its incredulous determinations, most recently its denial of North Wildwood's Emergency Authorization Application submitted in October 2022 (hereafter, the "2022 Emergency Authorization Application"), which sought, among other things, the installation of 404 linear feet of steel bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues.

5. Since the inception of this case, however, North Wildwood's beach conditions have only worsened. For a number of reasons, including the continued erosion of North Wildwood's beach, North Wildwood submitted a second Emergency Authorization Application on February 10, 2023 (hereafter, the "2023 Emergency Authorization Application").

6. The 2023 Emergency Authorization Application seeks, among other things, the installation of approximately 1,147 linear feet of steel bulkhead beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue.

7. Indeed, in its submission to the court, the NJDEP characterizes North Wildwood as acting "in defiance to the DEP" while at the same time advocating "there is no emergency situation." Both of these contentions will be easily demonstrated as patently false.

8. The narrative of a "rogue" community acting in defiance of a state agency is belied by a record that makes clear that North Wildwood has continually sought the NJDEP's blessing on measures sought to protect the residents of North Wildwood.

9. For whatever reason, the NJDEP has used the underlying regulatory scheme as a sword against North Wildwood, literally preventing North Wildwood from taking necessary measures to protect its shores and its citizens in the face of a situation that literally gets worse as each day passes.

10. Indeed, as described further herein, the NJDEP's actions as applied to North Wildwood have quite literally been in breach of certain State Aid Contracts which have caused North Wildwood to expend more than \$21,000,000 in budgetary funds because of the NJDEP's refusal to assist North Wildwood through these perilous times.

11. Immediate court intervention in the form of injunctive relief is required granting North Wildwood the immediate right to build the subject bulkhead as proposed in the 2023 Emergency Authorization Application as a barrier to protect what little remains of the beach – a mere thirty (30) feet of sand dunes between buildings and pounding waves.

12. In addition, the NJDEP should be compelled to reimburse North Wildwood the \$21,000,000 in funds it has been forced to expend due to the NJDEP's failure to abide by the various State Aid Contracts it entered into with North Wildwood, the most recent of which was signed by North Wildwood in 2021, that should have provided North Wildwood with significant financial assistance in addressing the serious shore protection measures required of North Wildwood to stave off beach erosion and flooding.

13. In sum, the installation of a bulkhead is an absolutely necessary emergency shore protection measure and North Wildwood's application to the NJDEP for an Emergency Authorization Application for permission to install the proposed bulkhead should not have been denied. This Court – exercising its equitable jurisdiction – should allow North Wildwood to undertake this essential emergency measure. Additionally, the court should compel the NJDEP to reimburse North Wildwood for the in excess of \$21,000,000 North Wildwood has had to bear because of the NJDEP's material breaches of the State Aid Agreements and other wrongful actions as it pertains to North Wildwood's beach renourishment and shore protection efforts.

### **THE PARTIES**

14. North Wildwood is a municipal corporation organized under the laws of the State of New Jersey, with a principal place of business at 901 Atlantic Avenue, North Wildwood, New Jersey 08260.

15. The NJDEP is a branch of the Executive Department of the State of New Jersey with its principal offices at 401 East State Street, Trenton, New Jersey.

### **JURISDICTION AND VENUE**

16. The Superior Court has jurisdiction over suits arising under the Coastal Zone Management Rules (N.J.A.C. 7:7-21) and the Freshwater Wetlands Regulations (N.J.A.C. 7:7A-14).

17. This matter is appropriate for the Court's discretion under Rule 4:67-1(b).

### **FACTS COMMON TO ALL COUNTS**

#### **North Wildwood's 2022 Emergency Authorization Application**

18. On October 5, 2022, North Wildwood submitted its 2022 Emergency Authorization Application, which sought to install a bulkhead in the area of 15<sup>th</sup> and 16<sup>th</sup> Avenues.

19. At the time, the 2022 Emergency Authorization Application was filed in part due to the effects of Hurricane Ian which had stalled off the mid-Atlantic coast causing a sustained multiday period of significant coastal flooding throughout the region and more specifically catastrophic beach and dune erosion to North Wildwood's oceanfront.

20. The 2022 Emergency Authorization Application sought permission for the following five critical activities as a means of addressing the residual impacts of Hurricane Ian:

1) Immediate deployment of Jersey barriers (20' segments) in a 400 LF alignment extending from the 15th Avenue northern right-of-way limit line along the landward edge of dune to the 16th Avenue southern right-of-way limit line



- 2) Remove/relocate existing composite/timber decking walkway from in front of the building to facilitate Jersey barrier deployment
- 3) Reshape dune remnants, protecting existing dune vegetation to the maximum extent possible, to establish stabilized slopes secured landward by the Jersey barrier wall
- 4) Installation of 404 LF cantilevered steel bulkhead (coated) with timber cap
- 5) Reconstruct/stabilize vehicular/pedestrian access from 16th Avenue right-of-way to the beach

21. As set forth in the 2022 Emergency Authorization Application, Hurricane Ian had caused a sustained three-day period of significant coastal flooding throughout the New Jersey Shore with the most severe impacts affecting North Wildwood.

22. As further set forth in the 2022 Emergency Authorization Application, the subject area between 15<sup>th</sup> and 16<sup>th</sup> Avenues was severely compromised because of the loss of more than 75% of the protective dune system and no beach berm which resulted in an imminent breach condition. That is, as of the time the 2022 Emergency Authorization Application was submitted, there was no reliable shore protection in front of North Wildwood's Beach Patrol Building, which serves as a critical oceanfront safety facility with public access amenities.

23. The 2022 Emergency Authorization Application specifically notes that North Wildwood's then \$3.7 million investment in the 2022 beach renourishment via the NJDEP and USACE-approved sand backpassing project were completely depleted and that a dune breach was imminent.

24. As noted in the 2022 Emergency Authorization Application:

The final tally of sand moved from Wildwood beaches to the beaches of North Wildwood was provided by the Municipal Engineer at 361,221 cubic yards making this season's transfer the largest thus far in this "in-house" effort to restore a recreational and storm protection shoreline during this period of extensive oceanfront beach erosion manifesting itself in North Wildwood since the late 1990's.



25. The 2022 Emergency Authorization Application makes specific reference to North Wildwood acting in its capacity as a “steward of the municipal transportation, utility and public safety infrastructure.”

26. By letter dated October 12, 2022, the NJDEP notified North Wildwood that it was not authorizing the then remaining relief sought by the 2022 Emergency Authorization Application. The final agency determination in this regard was confirmed in writing by the NJDEP Commissioner La Tourette on December 1, 2022.

27. North Wildwood’s 2022 Emergency Authorization Application should not have been denied.

28. The denial of the 2022 Emergency Authorization Application was without any justifiable basis.

29. The NJDEP’s conclusion that North Wildwood failed to demonstrate an imminent threat to the loss of life or severe loss of property because “a substantial dune and beach berm remains in place offering sufficient shore protection” is, by every objective measure, wrong.

30. Today, there is effectively no dune and beach berm protection left in place between 15<sup>th</sup> and 16<sup>th</sup> Avenues.

31. At the time the 2022 Emergency Authorization Application was submitted in October, 2022, North Wildwood made clear that there was an absence of a defined beach berm and a loss of more than 75% of the protective dune system in front of North Wildwood’s Beach Patrol Building/Oceanfront Safety Facility. In view of this, it was determined that a breach condition was imminent.

32. Since that time, the situation has only worsened.

33. North Wildwood is now at the point where one moderate storm or even a few

smaller storms will almost certainly result in a breach.

34. Notably, there is only a few feet left of dune protection between the ocean and North Wildwood's critical infrastructure. Simply put, what little beach and dune system that remains between 15<sup>th</sup> and 16<sup>th</sup> Avenues will be unable to withstand the upcoming Nor'easter and winter storm seasons.

35. Consequently, North Wildwood requires the court's intervention to protect the citizens of North Wildwood from storm systems which can easily decimate its infrastructure and cause irreparable damage to North Wildwood.

**North Wildwood's 2023 Emergency Authorization Application**

36. In response to worsening beach conditions, and pursuant to Judge Blee's Order entered on February 1, 2023, North Wildwood filed its 2023 Emergency Authorization Application on February 10, 2023.

37. Since the inception of this litigation in December 2022, the existing conditions of North Wildwood's beach have only worsened.

38. At this point, it now appears that a dune breach between 13<sup>th</sup> and 14<sup>th</sup> Avenues has an equal if not greater likelihood than a breach at 15<sup>th</sup> Avenue.

39. Therefore, the risk of an imminent breach is no longer isolated to the 15th Avenue location in front of the Beach Patrol facility.

40. This is because the rate of erosion between 13th and 14th Avenues has exceeded expectations.

41. The proximity of JFK Boulevard and existing infrastructure within this right-of-way are at significant risk should a breach occur at 13th Avenue.

42. As noted in the 2023 Emergency Authorization Application, the cross-section area

losses in the dune located between 13<sup>th</sup> and 14<sup>th</sup> Avenue are now even more pronounced than at 15<sup>th</sup> Avenue.

43. In view of the foregoing, the 2023 Emergency Authorization Application seeks permission for the following six critical activities to address North Wildwood's beachfront erosion:

Project Area: midblock between 12<sup>th</sup> and 13<sup>th</sup> Avenues – 16<sup>th</sup> Avenue

- 1) Installation of ±1,147 linear feet cantilevered steel bulkhead (coated) with timber cap;
- 2) Excavation, placement, and regrading of residual sand within the project area;
- 3) Reshaping of remnant dune in locations of scarps and or breach(s);
- 4) Reconstruction of beach access points over new bulkhead at 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> Avenues;
- 5) Removal and reinstallation of split rail fencing as necessary; and
- 6) Removal of the 15<sup>th</sup> Avenue ADA dune crossover beach access (if at risk of failure).

44. The expansion of the proposed emergency bulkhead is absolutely necessary to address the worsening conditions of North Wildwood's beach.

45. The severe erosion impacting North Wildwood will persist and is anticipated to continue.

46. As addressed in the 2023 Emergency Authorization Application, the nature and the cause of the threat to North Wildwood is recurrent storm damage, including during the October offshore passage of Hurricane Ian at which time the dune at 15th Avenue lost a majority of its mass, as well as subsequent unnamed coastal storm events prior to and following the October event which have continued to erode beach/dune sand reserves.

47. There has been significant loss of sand from both the beach berm and remnant dune

system which leaves 13<sup>th</sup> to 16<sup>th</sup> Avenues at peril and without an effective barrier to mitigate storm surges and associated wave action.

48. As set forth in the 2023 Emergency Authorization Application, the depletion of sand from North Wildwood's overall beach/dune system has reduced the elevation of the beach such that sections of the remnant dune mass are now located at the edge of normal wave runup at a normal high tide.

49. Any storm surge or spring tide with moderate to strong waves continues to erode into the dune toe.

50. The rate of loss and area of impact has accelerated and expanded, respectively.

51. The 2023 Emergency Authorization Application references the NJDEP's previous (and improper) denial of the 2022 Emergency Authorization Application. If the NJDEP had granted the 2022 Emergency Authorization Application, North Wildwood would be in a much better position to withstand the effects of increasing rates of erosion.

52. The installation of a protective bulkhead beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue is critical to the protection of North Wildwood.

53. The installation of the bulkhead beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue is an absolutely necessary response to an imminent threat to life and property.

54. North Wildwood cannot afford to do nothing in the midst of storm season and thereby face unprotected the next major storm – and thereby suffer a catastrophic loss of life or property as a result of the lack of an absolutely necessary shore protection measure.

55. It is well known that North Wildwood's beaches have suffered from a long history of beach erosion and that its shoreline has retreated since at least 1987.

56. North Wildwood's beachfront commenced retreat in 1987, and continued through 2005 during which a substantial portion of the beach was eroded and lost.

57. In the early 1990's, modifications to the City's stormwater collection system were constructed, which presently exist today, directing stormwater discharge to two outfall locations, one at 3rd Avenue and the other at 21st Avenue.

58. Shoreline retreat resulted in the need to modify these existing oceanfront stormwater outfalls due to the exposure of the supporting timber cribbing to unmitigated wave action and prevailing longshore currents.

59. Due to the beach width and beach berm elevation losses, several hundred linear feet has been removed from these outfalls at both 3rd Avenue and 21st Avenue.

60. Notwithstanding beach nourishment activity during 2009 and 2010, via hydraulic pumping of sand, and a series of sand harvesting operations from 2016 to present, multiple named storms, including Irene, Sandy, Jonas, and Ian, plus many other more moderate northeast coastal storm events, have significantly eroded the beach and dunes to a point whereby there is an imminent threat to a dune breach.

61. During the last decade, North Wildwood has tried to remediate the significant beach erosion issues North Wildwood has faced using various methods preferred by the NJDEP other than installation of bulkheads.

62. As demonstrated below, these efforts have cost North Wildwood excessive amounts of money all of which has effectively been squandered with no results that North Wildwood can point to. That is, all the methods we have employed short of installing a bulkhead have, unfortunately, been grossly ineffective.

63. By way of example, North Wildwood has repeatedly employed beach

renourishment efforts that have resulted in the placement of more than two million cubic yards of sand over the last decade at a cost in the amount \$18,380,815.

64. None of that sand remains on North Wildwood's beaches.

65. Additionally, North Wildwood has employed "backpassing" and hydraulic beach fill and, on occasion, have imported materials from quarries. These methods, while preferred by the NJDEP, have all proved futile in providing any coastal protection to North Wildwood.

66. By way of example, during the period of 2012 through 2019, North Wildwood completed a series of emergency beach fill projects harvesting sand from Wildwood Crest, Wildwood and Hereford Inlet. The sand volumes placed are as follows (CY = cubic yards):

- 2012 – 96,000 CY – Spring 2012
- 2013 – 150,530 CY – June 2012 Hydraulic Dredging
- 2014 – 2016 - 60,000 CY/Year
- 2016 – 15,000 CY – January 2016
- 2016 – 128,000 CY – Spring 2016
- 2016 – 30,000 CY – Fall 2016
- 2017 – 206,370 CY – Spring 2017
- 2018 – 155,000 CY – Spring 2018
- 2019 – 169,062 CY – Spring 2019

67. The above volumes total 1,129,962 CY of material, all of which have been lost due to persistent erosion. Notably, all of these methods were employed by North Wildwood with regulatory approvals from the United States Army Corp of Engineers, the NJDEP, and the U.S. Fish and Wildlife Service.

68. In further effort to combat the dire conditions, in the Spring of 2020 North Wildwood proceeded with another emergency sand back-pass project, followed by similar emergency sand back pass projects in Spring 2021 and Spring 2022. Sand volumes placed are as follows:

- 2020 – 210,000 CY – Spring 2020
- 2021 – 356,556 CY – Spring 2021
- 2022 – 361,221 CY – Spring 2022

69. The above volumes total 928,077 CY.

70. Combining the 2012 through 2019 renourishments, North Wildwood has harvested and placed 2,058,039 CY of same, none which on the beach as of this date.

71. The total amount of sand placed on the beach since 2010 is over 3.2 million cubic yards of material at a total cost of in excess of \$28.3 million.

72. This is effectively money lost to North Wildwood because these measures proved futile.

73. What has proven effective in North Wildwood's case, though, has been the installation of bulkheads from 3<sup>rd</sup> Avenue up to and including 13<sup>th</sup> Avenue.

74. Since 2012, North Wildwood has been compelled to install bulkheads which have been effective in protecting our residents from the devastating effects of coastal systems.

75. In 2012, North Wildwood installed steel bulkheads from 3<sup>rd</sup> Avenue to 4<sup>th</sup> Avenue. This installation of the bulkhead here immediately proved effective in providing significant coastal protection.

76. Thereafter, in 2018, after six years of employing the aforementioned methodologies, all of which were proven to be ineffective, North Wildwood expanded the

bulkhead from 5<sup>th</sup> Avenue to 7<sup>th</sup> Avenue. This immediately proved to be successful.

77. One year later, in 2019, because nothing else worked, North Wildwood once again was compelled to expand the bulkhead to from 7<sup>th</sup> Avenue to the midblock of 12<sup>th</sup> and 13<sup>th</sup> Avenues. Once again, this measure proved highly effective in providing coastal protection to the residents of North Wildwood.

78. It is important to recognize in almost every instance above, North Wildwood installed bulkheads behind the already existing manmade dune systems. That is, North Wildwood did not remove any dunes in any of the aforementioned bulkhead projects, but instead left whatever was left of them. This critical point is continuously ignored by the NJDEP.

79. It was against this backdrop that North Wildwood applied for the coastal permit application in 2020 referred to in the NJDEP's submission to the court. It was through this application that North Wildwood sought to legalize the bulkhead construction and to demonstrate to the NJDEP that North Wildwood's efforts were not only required, but effective.

80. For a variety of reasons, the 2020 permit application dragged on to the point where in October 2022, with the threat of the impending Nor'easter season upon us, North Wildwood felt compelled to seek the Emergency Authorization Application because there was little protection left between 15<sup>th</sup> and 16<sup>th</sup> Avenues.

81. As in the previous bulkhead projects, the proposed alignment of the steel bulkhead between beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue has been strategically designed to facilitate construction/installation with the least amount of disturbance as possible to freshwater wetlands transition areas.

82. As noted in the 2023 Emergency Authorization Application, a freshwater wetlands transition area, as defined in the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), serves



as “an ecological transition zone providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects.”

83. A Letter of Interpretation Line Verification (hereafter, the “LOI”) was issued by NJDEP on July 10, 2019, which verified the limits and resource value of the interdunal wetland area between 14th and 15th Avenues (NJDEP File No. 0507-03-0009.2 FWW180001).

84. Pursuant to the LOI, the NJDEP determined the aforementioned wetland area to be of intermediate resource value with an associated 50-foot transition area.

85. While not verified by an LOI, the immediately adjacent interdunal freshwater wetland between 13th to 14th Avenues exhibits similar characteristics as the verified wetland area between 14th to 15th Avenues.

86. As set forth in the 2023 Emergency Authorization Application, the freshwater wetlands transition areas between 13<sup>th</sup> and 15<sup>th</sup> Avenues do not function as such. No ecological benefit is achieved in changing the assigned transition area from 50 to 150 feet, especially given that established footprints of disturbance already exist within close proximity to these wetlands. Existing disturbances within a 50-foot transition area include a paved City street, concrete sidewalk, pre-existing timber bulkhead, concrete bike path, the Beach Patrol Headquarters building, and several beach access pathways, all of which limits the ecological function of the transition area.

87. Moreover, recurrent site investigations performed by The Lomax Consulting Group throughout this past growing season revealed no observations of listed or rare species within these features.

88. Thus, as set forth in the 2023 Emergency Authorization Application, the proposed bulkhead, designed to avoid/minimize disturbance to the maximum extent practicable, is not anticipated to adversely impact listed species habitat to the extent that the continued survival of such species or the essential corridors necessary for the movement of such species results.

89. It is noted in the 2023 Emergency Authorization Application that the bulkhead installation and location were specifically designed and selected to avoid, where possible, and minimize, where practical, disturbance to these isolated NJDEP-designated wetland features.

90. The 2023 Emergency Authorization establishes the presence of an imminent threat based on the progressive erosion of the beach and dune and further demonstrates that the activity will greatly benefit the public interest.

91. The protective bulkhead as proposed in the 2023 Emergency Authorization Application is the only practicable and feasible alternative which will provide expedited shore protection for the preservation of public and private property and infrastructure as demonstrated herein.

92. Installing the bulkhead further westward would create an impediment to reconstruct the beach access due to the required height of the bulkhead (elevation 12') versus the ground elevation of approximately 6'. It is noted the only other vehicular access to the beach is via 7<sup>th</sup> Avenue, but that access is frequently out of service due to persistent erosion and tidal conditions.

93. At the present time the dune protecting the lifeguard headquarters is susceptible to breach. Depending on the severity of the next storm event, the lifeguard headquarters could be undermined and damage well beyond the lifeguard facility would be probable.

94. For example, since the offshore passage of Hurricane Ian in early October 2022 and from subsequent less intense coastal storm events, the ADA dune walkover at 15th Avenue has

sustained significant damage due to ongoing erosion generated by the lack of beach berm.

95. Incrementally, the beach path at this location has eroded to the extent that the timber dune walkover structure terminates just short of the dune scarp.

96. Reconstruction of pre-existing beach accessways at 13th through 16th Avenues, as noted in the 2023 Emergency Authorization Application, is necessary for both public and emergency access, critical to oceanfront activity, public safety, 1st responders, and the DPW.

97. The primary drainage system for the east side of North Wildwood between Surf Avenue and the beach between 2<sup>nd</sup> and 16<sup>th</sup> Avenues is located along the beach front between 15<sup>th</sup> and 3<sup>rd</sup> Avenues with a major collection system on Ocean Avenue. Ocean Avenue is a localized low point.

98. A breach in the dune system could cause the drainage system to become inundated, resulting with capacity exceedance.

99. In addition, it would be likely for sand from the beach to wash into the drainage system, thereby rendering the system nonfunctional and resulting in widespread and potentially catastrophic flooding. This would result in significant damage to public and private infrastructure and extremely costly repairs.

100. If North Wildwood's drainage system became clogged with sand it would have to be replaced at a staggering cost exceeding approximately \$25 million. In addition, there could be the same or similar damage to North Wildwood's sanitary sewer system coming with similar or even higher replacement costs. Moreover, all properties would have to be vacated without a functioning sanitary sewer system.

101. As previously noted, North Wildwood's previous bulkhead projects since 2012 have proved to be the most prudent and effective measure employed in providing coastal

protection. Indeed, without the emergency bulkhead installation, North Wildwood's infrastructure and potentially extensive private infrastructure between 3<sup>rd</sup> Avenue and 13<sup>th</sup> Avenue would have been destroyed.

102. With the storm season upon us, North Wildwood cannot be restrained from constructing the emergency bulkhead beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue. North Wildwood must be afforded the authority to be proactive in order to protect its infrastructure as was done in the past.

103. As made clear to the NJDEP in the 2022 and 2023 Emergency Authorization Applications, installing an emergency bulkhead would allow for the quickest and strongest level of protection to human life and property. Simply put, it is the most common-sense approach to the current situation that North Wildwood faces. That is, the installation of an emergency bulkhead under the beach's current conditions presents the fastest, least expensive, and longest serving solution to the problem of a potential dune breach.

104. An additional action is the failure complained of by North Wildwood are the failure of Defendant to carry out its statutory obligation to provide financial assistance for shore protection to North Wildwood and to carry out other acts in furtherance of a congressionally authorized joint state-federal shore protection project so that North Wildwood may fulfill its obligations to the citizens and residents of North Wildwood to maintain and replenish its beaches in the face of climate change, sea level rise, storms and related phenomena, and to provide public access in accordance with the statutes and common law of this state.

105. North Wildwood is an oceanfront community located on Five Mile Island, a barrier island in Cape May County. The entirety of North Wildwood's eastern shoreline is comprised of a beach which, being subject to the natural processes of a shoreline, is subject to erosion. The

erosional process has, for a multitude of reasons, accelerated over the past decade or more, as a consequence of which North Wildwood's beaches, in many locations, no longer exist or are dangerously narrow.

106. New Jersey's oceanfront beaches extend 127 miles from Cape May to Sandy Hook, spanning four counties and nearly 100 municipalities. North Wildwood's beach, as is the case with all oceanfront beaches, requires periodic restoration and nourishment.

107. As explained below, both the Federal Government and the State Government have long-standing programs for funding and conducting beach restoration and maintenance. The existence of these funding programs notwithstanding, North Wildwood has been forced to expend in excess of \$15 million over the past five years in an effort restore and renourish its beaches, without any federal or state financial aid, with the exception of a single \$133,000 emergency grant in 2016. To the best of North Wildwood's knowledge, it is the only oceanfront community in New Jersey to not receive state or federal aid for shore protection.

#### **The New Jersey Shore Protection Program**

108. N.J.S.A. 12:6A-1, entitled "Beach Protection; powers", authorizes and empowers the NJDEP to:

...[R]epair, reconstruct, or construct bulkheads , seawalls, breakwaters , groins, jetties, beach fills, dunes and any or all appurtenant structures and work, on any and every shorefront along the Atlantic Ocean , in the state of New Jersey or any shorefront along the Delaware Bay and Raritan River, Raritan Bay, Barnegat Bay, Sandy Hook Bay , Shrewsbury River, including Nevesink River, Shark River , and the coastal inland waterways extending southerly from Manasquan inlet to Cape May Harbor, or any inlet, estuary or tributary waterway or any inland waterways adjacent to any inlet, estuary or tributary waterway along the shores of the state of New Jersey, **to prevent or repair damage caused by erosion and storm, or to prevent erosion of the shores and to stabilize the inlets or estuaries and to undertake any and all actions and work essential to the execution of this authorization and the powers granted hereby.**  
[emphasis added]

109. N.J.S.A. 13:19-16.1, entitled “Shore protection fund; funding; use”, creates in the Department of Treasury a special non-lapsing fund to be known as the “Shore Protection Fund.” The statute requires that the monies in the fund be dedicated to projects for the protection, stabilization, restoration or maintenance of the State’s beaches and shorelines, and may be applied to the non-federal share of any State-Federal project. N.J.S.A. 13:19-16.1(b) also provides, in relevant part, that:

The requirements of subsection c. of Section 1 of P.L. 1997, c. 384 N.J.S.A. (13:19-16.2) notwithstanding, the Commissioner of Environmental Protection may, pursuant to appropriations made by law, allocate monies deposited in the fund for shore protection projects of an emergency nature, in the event of storm, stress of weather or similar act of God.

#### **The Federal Shore Protection Program for New Jersey**

110. The Federal Water Resources Development Act of 1986, Public Law 99-662, as amended by the Water Resources Development Act of 1999, Public Law 106-53, authorizes the Federal Government, through the U.S. Army Corps of Engineers, to undertake, in cooperation with the State of New Jersey, “the Hereford Inlet to Cape May Inlet, New Jersey Hurricane and Storm Damage Reduction Project, Project Number 6040-NW-1” (hereinafter “the Project”), a 50 year program for the reconstruction and periodic renourishment of beaches extending from Townsends Inlet in Northern Cape May County South to Cape May Inlet. The Legislation provides that the Federal Government will contribute 65% of the Federal Project cost, with the non-federal (i.e. state) sponsor responsible for 35%. The scope of the Federal Project includes the City of North Wildwood.

111. On February 1, 2016, The Assistant Secretary of the Army determined that the Project, including reconstruction and maintenance of approximately 4.5 miles of beaches and

dunes extended from Hereford Inlet in North Wildwood to Cape May Inlet in the south, was technically feasible, economically justified and environmentally acceptable.

112. Congress subsequently approved and authorized the estimated \$21,600,000 initial Project construction cost. Ordinarily, a municipality receiving aid for shore protection is required to pay 25% of the Department's 35% share of costs. However, in this case, the Project was authorized in part under the Federal Disaster Relief of Appropriations Act of 2013, as a consequence of which none of the municipalities were required to share the cost of the initial construction of the Project. The applicable federal statutes did, however, require that municipalities receiving aid to provide public access with regard to parking, restroom facilities, public access points and cross-overs to the beach.

113. On January 17, 2017, the Army Corps of Engineers and the Defendant, as the non-federal sponsor, entered into a Project Partnership Agreement for the purpose of undertaking the initial construction of the Project. The Agreement required, among other things, that the NJDEP obtain any easements required to implement the Project.

114. Typically, shore protection is accomplished using hydraulic pumping of sand from offshore borrow areas. It was decided however that, in the case of North Wildwood, a method called "backpassing" would be used instead. With backpassing, sand would be taken from locations in the City of Wildwood, where there was a surplus of sand, and placed in an area just offshore, where it would be hydraulically pumped to North Wildwood and distributed on the beaches there.

115. The hydraulic backpassing plan, for a variety of reasons, failed. It was decided that instead of pumping the sand, it would be trucked from Wildwood to North Wildwood. But because the NJDEP failed to obtain the easements necessary to implement the project (much of the beach



in Wildwood from which the sand was to be taken is privately owned), and because of other reasons having to do with the manner in which Corps projects get authorized, neither the State nor the Corps was willing to fund the work.

116. North Wildwood was instead left to its own devices. Between 2017 and 2021, the City's pleas for assistance from the NJDEP and the Corps went unheeded. Instead, it was forced to spend upwards of \$21 Million to truck sand from Wildwood in a largely unsuccessful effort to protect its beaches and dunes.

#### **Hurricane Ian's Impacts on North Wildwood**

117. North Wildwood's back passing operations became infeasible after Hurricane Ian caused catastrophic damage to the beach berm and dune system in October of 2022.

118. Hurricane Ian was a tropical storm event that had stalled off the mid-Atlantic coast causing a sustained multi-day period of significant coastal flooding throughout the region and, more specifically, potentially catastrophic beach and dune erosion to the North Wildwood oceanfront.

119. North Wildwood immediately sought to address the impacts of Hurricane Ian by filing an Emergency Authorization Application to the NJDEP for various forms of relief including, but not limited to, installing an emergency steel bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues. North Wildwood determined that installation of the emergency steel bulkhead was necessary to protect against the imminent threat of loss to human life and severe threat to the loss of property posed by having a severely compromised beach and dune system.

120. By way of this action, the NJDEP seeks to restrain North Wildwood from taking the foregoing actions. However, the NJDEP's proposed restraints will prevent North Wildwood from taking appropriate actions to protect its residents and its infrastructure.



**The immediate installation of the protective bulkhead is a necessary interim measure until the USACE/NJDEP project provides a long-term remedy to the longstanding problem of the severe erosion of North Wildwood's beaches and dunes**

121. It is expected that within the next few years the USACE and NJDEP will be expending in excess of \$20 million on a comprehensive remedy to the longstanding problem of the severe erosion of beaches and dunes of North Wildwood and adjoining municipalities.

122. The USACE/NJDEP project will use a combination of various coastal protection measures, including beach nourishment, bulkhead installation and dune creation. Moreover, the project will entail not just construction but long-term maintenance – backed by federal and state dollars. This is the long-term remedy to beach erosion that North Wildwood so desperately needs.

123. In the meantime, the immediate installation of the protective bulkhead is a necessary interim measure until the USACE/NJDEP project provides a long-term remedy to the longstanding problem of the severe erosion of North Wildwood's beaches and dunes.

124. As of the present date, North Wildwood has received 100% of the protective bulkhead materials in connection with the bulkhead as proposed in the 2022 Emergency Authorization Application. In this regard, North Wildwood is ready and able to commence installation of the bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues immediately.

125. In short, the installation of a protective bulkhead under the beach's current conditions presents the fastest, least expensive, and most effective interim solution to the immediate problem of severely eroded dunes and the irreparable harm to lives and property that would result in the event of a dune breach caused by even a moderate storm.

**Since North Wildwood's Filing of its Motion for Leave to File a Counterclaim on January 4, 2023, the NJDEP has retaliated against North Wildwood by issuing North Wildwood three Administrative Orders and Notices of Civil Administrative Penalty Assessments (hereafter, "AONOCAPA") in the amount of \$12,818,182.00**

126. On January 4, 2023, North Wildwood filed a Motion for Leave to File a Counterclaim Pursuant to R. 4:67-4 (hereafter, the "Motion").

127. The Counterclaim as proposed in the Motion sought, *inter alia*, \$21,000,000 in damages against the NJDEP.

128. Since North Wildwood filed its Motion, the NJDEP has issued three AONOCAPA's against North Wildwood.

129. 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.

130. 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.

131. 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.

132. The AONOCAPA's total a sum of \$12,818,182.00 in fines assessed against North Wildwood.

133. The issuance of the AONOCAPA's against North Wildwood for alleged violations that occurred in 2020 is a retaliatory measure in response to North Wildwood's filing of its Motion.

134. Rather than allowing North Wildwood to install its emergency bulkhead to protect itself again severe erosion, the NJDEP has maliciously retaliated against North Wildwood by assessing millions of dollars in fines.

135. The NJDEP could have issued the AONOCAPA's in a timely manner when the alleged violations occurred in 2020. Yet, the NJDEP decided to wait more than two years to assess its fines, and did so only after North Wildwood filed its Motion.

136. The NJDEP's actions support the inference that it would not have issued the AONOCAPA's but for North Wildwood's filing of its Motion.

137. The NJDEP's actions further support the inference that its AONOCAPA's are meant to intimidate North Wildwood.

138. It is improper to issue AONOCAPA's to retaliate against or intimidate a New Jersey municipality.

139. If North Wildwood must turn square corners when dealing with the NJDEP, then it is also true, particularly when so much public interest is at stake, that the NJDEP must turn square corners when dealing with North Wildwood.

**COUNT ONE**  
**(Injunctive Relief)**

140. North Wildwood incorporates by reference the allegations set forth above if as set forth here at length.

141. The NJDEP's refusal to allow North Wildwood's installation of a bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues constitutes an immediate and irreparable threat to North Wildwood's residents and infrastructure.

142. In the event that a storm breaches North Wildwood's decimated dune system, North Wildwood will experience catastrophic damage to its critical infrastructure. Moreover, private

properties located immediately adjacent to John F. Kennedy Beach Drive are at risk of facing deadly amounts of flooding.

143. If the foregoing occurs, which is imminent without the proposed steel bulkhead, North Wildwood could not be remedied by monetary damages alone.

144. North Wildwood must take action to secure its beaches and ensure its residents and infrastructure are well-protected throughout the incoming winter storm cycle.

**WHEREFORE,** North Wildwood demands that judgment be entered as follows:

- A. Allowing North Wildwood to install a bulkhead beginning between 12<sup>th</sup> and 13<sup>th</sup> Avenues and extending to 16<sup>th</sup> Avenue;
- B. Allowing North Wildwood to engage in further excavation, placement or regarding of sand between 14<sup>th</sup> and 16<sup>th</sup> Avenues;
- C. Allowing North Wildwood to engage in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16<sup>th</sup> and 25<sup>th</sup> Avenue; and
- D. Such other relief that the Court deems just and equitable.

**COUNT TWO**  
**(Breach of Contract)**

145. North Wildwood incorporates by reference the allegations set forth above if as set forth at length.

146. The State Aid Agreement between the DEP and North Wildwood, executed on November 16, 2021, provides that the NJDEP, in cooperation with North Wildwood, shall acquire perpetual easements for private properties necessary for construction, renourishment activities, and maintenance of the Hurricane and Storm Damage Reduction Project.

147. The NJDEP has breached their obligations under the State Aid agreement by failing to acquire required easements in connection with the Hurricane Storm Damage Reduction Project.

148. As a result of the NJDEP's failure to acquire the necessary easements under the State Aid Agreement, North Wildwood has been forced to spend over \$21,000,000.

149. As a result of the NJDEP's breach of the State Aid Agreement, the NJDEP has suffered and will continue to suffer damages.

**WHEREFORE**, North Wildwood demands that judgment be entered as follows:

- A. Reimbursement of all of the costs borne by North Wildwood in connection with funding the entirety of its beach restoration projects; and
- B. Such other relief that the Court deems just and equitable.

**COUNT THREE**  
**(Violation of the Public Trust Doctrine)**

150. North Wildwood incorporates by reference the allegations set forth above if as set forth here at length.

151. P.L.2019, c. 81 provides in relevant part that "Pursuant to the Public Trust Doctrine, the State of New Jersey has a duty to promote, protect and safeguard the public's rights and ensure reasonable and meaningful public access to title waters and adjacent shorelines."

152. North Wildwood and the NJDEP have a mutual obligation to provide public beachfront access to the residents of North Wildwood and the citizens of New Jersey pursuant to the Public Trust Doctrine, both at common law and as codified at P.L. 2019, c. 81.

153. The NJDEP's failure to provide or to seek funding for the replenishment of North Wildwood's beaches, which has resulted in and will continue to result in all or a portion of North Wildwood's beaches being periodically closed to the public, constitutes a violation of the Public Trust Doctrine.

**WHEREFORE**, North Wildwood seeks declaratory judgment that:

- A. The failure of the NJDEP to satisfy its public access obligations are in violation of P.L. 2019, c. 81 and the Common Law of this State;
- B. That the NJDEP has an affirmative, ministerial, and nondiscretionary obligation to take any and all actions required to provide financial aid to North Wildwood; and
- C. Such other relief as the Court deems just and equitable.

**COUNT FOUR**  
**(Declaratory Judgment)**

154. North Wildwood incorporates by reference the allegations set forth above if as set forth here at length.

155. The NJDEP's failure to provide financial assistance to North Wildwood by including such aid in the shore protection project priority ranking system pursuant to N.J.S.A. 13:19-6.2, its failure to provide emergency funding pursuant to N.J.S.A. 13:19-16.1(b) and its failure to obtain the easements required to implement the backpassing project were a breach of its affirmative, ministerial and non-discretionary statutory obligation to assist all New Jersey municipalities in circumstances presented here.

156. Additionally, the NJDEP's issuance of AONOCAPA's after North Wildwood filed its Motion constitutes retaliation and intimidation.

**WHEREFORE**, North Wildwood demands that judgment be entered as follows:

- A. The NJDEP has an affirmative duty under N.J.S.A. 12:6A-1 and N.J.S.A. 13:19-16.1(b) to take any and all steps necessary to provide financial assistance for shore protection North Wildwood;

- B. North Wildwood has no duty to pay any of the assessed fines referenced the AONOCAPA's that were issued after North Wildwood filed its Motion; and
- C. Such other relief that the Court deems just and equitable.

**COUNT FIVE**  
**(Nuisance)**

157. North Wildwood incorporates by reference the allegations set forth above if as set forth here at length.

158. The State of New Jersey not only claims an interest in public trust lands, but exercises dominion over them through a statutory and regulatory scheme supported by jurisprudence.

159. The NJDEP's failure and refusal to invest the funds necessary to assist North Wildwood in maintaining its beaches in the manner contemplated by law in order to preserve public trust areas, and to instead allow them to erode and endanger both public and private property, constitutes a nuisance at common law.

160. North Wildwood, as a direct and proximate cause of the NJDEP's neglect of its lawful obligations and its maintenance of a continuing nuisance on public trust land, has suffered damages in the amount of approximately \$15 million, less any percentage of funds that it would have been required to pay as part of a cost sharing arrangement.

**WHEREFORE**, North Wildwood demands that judgment be entered as follows:

- A. That this Court determine that the NJDEP's actions constitute both a public and private nuisance for which it has liability as enumerated above;
- B. Preliminary and permanent injunction;
- C. Compensatory and consequential damages;
- D. Costs North Wildwood has expended in its attempts to abate the NJDEP's public



and private nuisances;

- E. Costs of suit;
- F. An award of reasonable attorneys' fees; and
- G. Such other relief as the Court may deem just and equitable.

**COUNT SIX**  
**(Violation of the Administrative Procedure Act)**

161. North Wildwood incorporates by reference the allegations set forth above if as set forth here at length.

162. The Administrative Procedure Act ("APA", N.J.S.A. 52:14B-1 et seq.) sets forth the exclusive procedure by which state agencies may propose and adopt regulations; procedures which includes the publication of a Notice of Adoption in the New Jersey Register, accompanied by an explanatory comments and response document.

163. The failure of the NJDEP to propose and adopt as regulations the limitation on the use of state aid for shore protection projects as described on its website, except as the non-federal share of a federally undertaken project pursuant to the Administrative Procedure Act, is a violation of the APA.

164. The NJDEP's use of AONOCAPA's to retaliate against a New Jersey municipality is inconsistent with the purpose of the Administrative Procedure Act.

**WHEREFORE** North Wildwood seeks a declaratory judgment that:

- A. The NJDEP's adoption of the aforesaid limitation violates the Administrative Procedure Act, the provisions of N.J.S.A. 13:19-16.1 and 16.2 notwithstanding;
- B. North Wildwood has no duty to pay any of the assessed fines referenced in the AONOCAPA's that were issued after North Wildwood filed its Motion; and



C. Such other relief that the Court deems just and equitable.

**CULLEN & DYKMAN LLP**  
*Attorneys for Defendant-Counterclaimant City of  
North Wildwood*

*/s/ Anthony S. Bocchi*  
By: \_\_\_\_\_  
ANTHONY S. BOCCHI

Dated: February 17, 2023

**CERTIFICATION**

I hereby certify in accordance with New Jersey Civil Practice Rule 4:5-1 that to the best of my knowledge, information and belief the instant matter in controversy is not the subject of any other action pending in any court or of a pending arbitration, and that no other parties should be joined in this action.

**CULLEN & DYKMAN LLP**

*Attorneys for Defendant-Counterclaimant City of  
North Wildwood*

*/s/Anthony S. Bocchi*

By: \_\_\_\_\_

ANTHONY S. BOCCHI

Dated: February 17, 2023

## **EXHIBIT C**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAPE MAY COUNTY  
DOCKET NO. CPM-C-55-22  
APPELLATE DKT. NO. \_\_\_\_\_

NEW JERSEY DEPARTMENT OF )  
ENVIRONMENTAL PROTECTION, )

Plaintiff, )

vs. )

CITY OF NORTH WILDWOOD, )

Defendant. )

TRANSCRIPT

OF

CASE MANAGEMENT

CONFERENCE

Place: Cape May Courthouse  
9 North Main Street  
2nd Floor

Cape May, NJ 08210

Date: March 7, 2023

BEFORE:

HON. MICHAEL J. BLEE, J.S.C.

TRANSCRIPT ORDERED BY:

ANTHONY S. BOCCI  
(Cullen and Dykman LLP)

APPEARANCES:

MS. DIANNA SHINN, ESQ.  
(New Jersey Department of Environmental Protection)  
DEBRA ALLEN, ESQ.  
(State of New Jersey, Department of Law & Public  
Safety)  
JENNIFER MORIARTY, ESQ.  
COLLEEN KELLER, ESQ.  
(NJDEP Division of Land Resource Protection)  
Attorneys for the Plaintiff

ANTHONY BOCCI, ESQ.  
NEIL YOSKIN, ESQ.  
(Cullen and Dykman LLP)  
Attorneys for the Defendant

ALSO PRESENT:

MAYOR PATRICK T. ROSENELLO, Mayor of North Wildwood  
SALVATORE T. ZAMPIRRI, SR., Council President, City  
of North Wildwood  
PETER LOMAX, Consultant to the City of North Wildwood  
JIM VERNA, City Engineer, City of North Wildwood  
NICK LONG, City Administrator, City of North Wildwood  
KYLE RUTHERFORD, City of North Wildwood Resident

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I N D E X

THE COURT

City of North Wildwood's request to  
file a motion is granted 13



1 THE COURT: Once again, formally, good  
2 morning. My name is Michael Blee. I'm the Assignment  
3 Judge of Vicinage 1. The date is March 7th. The time  
4 is 10:02 a.m. I am in Courtroom 3-A, Atlantic City,  
5 New Jersey, in the event that anyone needs to order a  
6 transcript.

7 We're here in the matter of the New Jersey  
8 Department of Environmental Protection v. the City of  
9 North Wildwood under docket number CPM-C-55-22.

10 Counsel, please enter your appearances,  
11 starting with the plaintiff.

12 MS. SHINN: Dianna Shinn, Your Honor, for  
13 DEP.

14 THE COURT: Good morning.

15 MR. BOCCI: Good morning, Your Honor.  
16 Anthony Bocci, law firm of Cullen and Dykman LLP, on  
17 behalf of defendant City of North Wildwood.

18 THE COURT: Thank you. Good morning. And  
19 would you be kind enough, Ms. Shinn, just to introduce  
20 those folks that are on the Zoom screen and their role  
21 in the case? Thank you.

22 MS. SHINN: Yes, Your Honor. I also have  
23 Deputy Attorney General Debra Allen from the Division  
24 of Law, and I have Jennifer Moriarty and Colleen Keller  
25 from the Division of Land Resource Protection from the



1 Department.

2 THE COURT: Thank you and welcome.

3 North Wildwood?

4 MR. BOCCI: Your Honor, with us today is Neil  
5 Yoskin of Cullen and Dykman. We also have Nick Long,  
6 Kyle Rutherford, and Council President Sal Zampirri,  
7 Mayor Rosenello, Peter Lomax, consultant for the City  
8 of North Wildwood, and Jim Verna, City engineer for the  
9 City of North Wildwood.

10 THE COURT: Very well. Okay.

11 Thank you all. The purpose of today's  
12 conference was a request by Mr. Bocci to conduct this  
13 conference. Since you were before the Court I entered  
14 an order of February 1. I indicated that North  
15 Wildwood was to file an emergent application within ten  
16 days, and they completed that task.

17 At the time of our last conference, we were  
18 not sure of the outcome of that emergent application.  
19 We now know the outcome.

20 I have reviewed correspondence of February  
21 24th from the DEP, specifically Ms. Moriarty, to Mr.  
22 Long, the City administrator. It's approximately six  
23 pages in length.

24 Ad it appears, Mr. Bocci, the request is  
25 whether or not this Court would retain jurisdiction





1 over the new application. And what I've read, there  
2 could be an additional application, or at least a  
3 supplemental application, and whether the Court would  
4 permit a motion seeking that type of relief.

5 The Court is well aware of the  
6 administrative -- of the Jersey Administrative Code in  
7 terms of denials. In fact, in part of my findings on  
8 the preliminary injunction on the initial application,  
9 I noted that.

10 And I'll hear from you, Mr. Bocci.

11 MR. BOCCI: Thank you, Your Honor. Your  
12 Honor, we're here today because a public safety  
13 emergency currently exists in the City of North  
14 Wildwood. And you know, we're at the point where I'm  
15 at wit's end as a lawyer in terms of what more I can do  
16 to try to protect the City of North Wildwood from a  
17 public safety emergency that exists today. And I am  
18 continually facing battles from the DEP with respect to  
19 seeking to limit the Court's jurisdiction as much as  
20 possible. And as I've indicated to the Court before, I  
21 do not believe that this matter can be adjudicated in  
22 that way, because we do not have that luxury.

23 As it exists today, there are ten-foot high  
24 dune scarps. I have an 11-year-old boy. Believe it or  
25 not, even though I'm in Hackensack, you know, we have a



1 place in Ocean City, and I'm in Ocean City throughout  
2 the year. And behind this -- in this public safety  
3 building -- beach patrol building, excuse me -- any kid  
4 can just go up onto this dune, and there is nothing  
5 there to stop that child from falling ten feet.

6 And you know, Your Honor, with respect to the  
7 EA denial, in addition, you know, this case is about  
8 the bulkhead, at the end of the day. We need the  
9 Court, at this point, to step in and authorize us to  
10 build this bulkhead.

11 And what we're ultimately asking for, Your  
12 Honor, is I'd like to be able to present to you  
13 formally in a plenary hearing. You have all the  
14 records that have been submitted to the Court. We're  
15 happy to present this to you in a plenary hearing, so  
16 that there is a proper record with respect to what  
17 exists today, what has taken place, so that the City  
18 can finally get relief. And what I mean by that is in  
19 the recent EA, it wasn't just about the bulkhead. We  
20 also sought authorization to regrade these dunes  
21 because of this ten-foot-high dune scarps that exist.  
22 And the DEP even denied that.

23 And why is that important? Because just  
24 recently they provided that very release to Stone  
25 Harbor. They just provided Stone Harbor with that



1 relief. Yet they're denying that relief here, in the  
2 most erosional site, in the State of New Jersey. It  
3 doesn't make sense. And I'm at my wit's end in terms  
4 of what more do we need to do?

5 Your Honor entered an order directing us to  
6 submit the EA. We complied with that order. In  
7 response to the EA, the DEP sought significant  
8 supplemental materials from the City. We provided that  
9 information as quickly as we could, and we were still  
10 denied. And not only were we denied, if you review  
11 that February 24th denial, it states, we're happy to  
12 consider anything else other than a bulkhead. They've  
13 put in writing, they refuse to provide us with the  
14 ability to build this bulkhead, other than we have this  
15 other, you know, IP (phonetic) that sits out there, and  
16 we can consider it there.

17 But again, we can't look at this in a vacuum  
18 because of the public safety emergency that exists. So  
19 what we are ultimately asking from the Court is, Your  
20 Honor, you invoke -- first, they invoked your  
21 jurisdiction. They filed this lawsuit. They sought  
22 Your Honor's review of this matter.

23 In response, we said to the Court, this is a  
24 unique case. You need to consider everything. And  
25 Your Honor granted us the authority to file the



1 counterclaim, which we did, and which we amended to  
2 show exactly what exists today.

3 On February 24th Your Honor directed DEP,  
4 said, you want to file a motion with respect to the  
5 amended counterclaim, whether or not that should be in  
6 the case, file a motion. It's now March 7th. They  
7 haven't filed a motion. I assume, by not filing the  
8 motion, they've waived their position with respect to  
9 that, but I won't speak for them.

10 But at the end of the day, we need the  
11 Court's help. I can't say it in any other way. We  
12 need the Court's help, because if Your Honor retain  
13 jurisdiction in directing a party to seek an EA, I  
14 would assume that it logically follows from that that  
15 the Court also has the authority to review the matter  
16 in which it directed a party to act. And that's -- and  
17 we're okay with that.

18 We would love for Your Honor to consider  
19 everything, and you make a determination as to DEP, in  
20 light of everything, acted in an arbitrary and  
21 capricious manner. We think we will be able to  
22 definitively show that at a plenary hearing, which all  
23 of the materials are already before, Your Honor. But  
24 we're happy to put that together. Whether Your Honor  
25 feels that it's appropriate to do it with live

1 testimony, whether Your Honor feels that it's  
2 appropriate for us to submit a formal written  
3 application that can be decided on the papers, we will  
4 do it however Your Honor thinks is the best course of  
5 action, because why we're here is, I'm seeking the  
6 Court's guidance, because I'm trying to do what I can  
7 ethically to help the residents of North Wildwood.  
8 They need our help, and we're not getting it from the  
9 State of New Jersey. And they've made it abundantly  
10 clear we're not going to get this. So that's where  
11 we're coming from, Your Honor.

12 You know, I have a lot more to say, but you  
13 know, I respect the Court's time, and -- but at the end  
14 of the day, that's, sort of, where we're coming from.

15 THE COURT: Understood. Thank you, Mr.  
16 Bocci.

17 Ms. Shinn?

18 MS. SHINN: Yes, Your Honor. I just would  
19 like to first start off and say that we filed this  
20 action to seek this Court's jurisdiction to enforce a  
21 final agency action in a summary manner, and that does  
22 not allow this Court to relitigate the merits of the  
23 underlying final agency action. So as this Court has  
24 already held permit applications and authorizations,  
25 and those decisions are not appropriate to be heard,



1 the merits of those, in this court.

2 North Wildwood, as it states in its most  
3 recent letter, has the right to file an adjudicatory  
4 hearing request under the Coastal Zone Management rules  
5 with the Department, or it also could try to seek the  
6 appellate division review of that, in the interests of  
7 justice, under the Court rules. So North Wildwood has  
8 two available avenues to challenge the most recent EA  
9 denial.

10 We also would just like to continue to  
11 recommend to North Wildwood to reach out to the  
12 Department and to continue to discuss this matter, and  
13 if they think that the conditions have changed -- I  
14 believe that they submitted new photographs on Friday.  
15 If conditions have changed since the February 10th EA,  
16 right -- we're dealing with nature here, the conditions  
17 are constantly changing -- they have the right to  
18 submit another EA application with the Department.

19 The Department sought alternatives from North  
20 Wildwood, and because they didn't specifically seek  
21 that relief themselves in the EA, the Department  
22 couldn't grant that. If, you know, the -- I think the  
23 best thing is for the parties to discuss here some  
24 alternatives apart from, you know, maybe if they still  
25 believe a bulkhead is necessary, they can try again, in

1 another EA application, based off of current  
2 conditions.

3 However, the Department would also recommend  
4 taking a hard look at some of the alternatives that the  
5 Department has represented to North Wildwood as  
6 potentially being a good alternative, while their CAFRA  
7 permit for a bulkhead in the same exact location is  
8 currently under technical review.

9 So we kind of have two parallel permitting  
10 decisions ongoing right now. We have these EAs that  
11 are being filed with the Department, but the Department  
12 is also spending resources and time, and has continued  
13 to represent to North Wildwood that it's going to  
14 expedite its review of that CAFRA permit for, again, a  
15 bulkhead in the same exact location.

16 So again, if the conditions have changed, and  
17 if North Wildwood continues to believe that they should  
18 seek a bulkhead or also, you know, look at some of the  
19 alternatives the Department has represented to them,  
20 they can submit another EA, if they find that to be  
21 appropriate. But again, the Department is committed to  
22 expediting review of that underlying CAFRA permit for a  
23 bulkhead in the same exact location.

24 THE COURT: So thank you, Ms. Shinn.

25 All right. I'm going to address, really, at



1 this point -- I'm not going to get into the merits, but  
2 discuss the procedural aspect.

3 Mr. Bocci, I'm going to grant your request to  
4 file a motion, but the motion really needs to be  
5 whether this Court has jurisdiction over the most  
6 recent emergency application and anything that may  
7 occur subsequently. And obviously the State has a  
8 right to oppose that, and I'll make that decision. But  
9 I also know that the clock is ticking with respect to  
10 exhausting your administrative remedies, so I'm going  
11 to ask that that motion practice be done on an  
12 expedited basis, because in the event, Mr. Bocci, the  
13 Court determines that it does not have jurisdiction  
14 over the most recent emergency authorization or any  
15 subsequent application, you're going to have to avail  
16 yourself of the administrative remedies.

17 I did make a determination that, at the time  
18 that the case got to me, with respect to the October  
19 EA, that the time period had expired, and I do not  
20 believe that this Court has jurisdiction over that.

21 This one is an interesting issue, and I can't  
22 make that determination without having briefs in front  
23 of me and having oral argument.

24 Mr. Bocci, I'm going to ask you, you know,  
25 how quickly you can get that done. If you want to take





1 a look at the calendar with respect to, you know, we  
2 want to get this done before you would possibly lose  
3 your opportunity under the Administrative Code for, you  
4 know, going -- going through the administrative  
5 process.

6 MR. BOCCI: Your Honor, I'm -- I -- thank you  
7 for granting our request. I -- we will file this as  
8 quickly as possible, believe me. What I would  
9 respectfully suggest is, if we're going to follow this  
10 motion on an expedited basis, I would put in our notice  
11 a motion that we would request that the motion be heard  
12 on short notice.

13 THE COURT: Yes.

14 MR. BOCCI: That it not be in a regular --

15 THE COURT: No. Let's talk. I'd like to  
16 just discuss time frames now, Mr. Bocci, because --

17 MR. BOCCI: Okay.

18 THE COURT: I want to give you --

19 MR. BOCCI: Right.

20 THE COURT: -- a reasonable time to get  
21 something submitted. We'll do a briefing schedule.  
22 I'm going to ask you to prepare an order. And you  
23 know, again, if you want to take time to look at -- in  
24 the event I rule against North Wildwood, I don't want  
25 you to lose your opportunity to pursue it through the



1 administrative process.

2 MR. YOSKIN: Your Honor, this is -- this is  
3 Mr. Yoskin.

4 THE COURT: Yes.

5 MR. YOSKIN: Would it be inappropriate to  
6 simply file an administrative hearing request as a  
7 placeholder while all of this is going on, so that none  
8 of us have to deal with that -- that issue of the  
9 Damocles sword hanging--

10 THE COURT: Yeah. I can't answer that  
11 because --

12 MR. BOCCI: Yeah.

13 THE COURT: You know, the State may say --

14 MR. BOCCI: All right.

15 THE COURT: -- that shows --

16 MR. BOCCI: Yeah. I would rather not do that  
17 right now.

18 THE COURT: If you guys want to -- you want  
19 to go out in a breakout room and discuss it?

20 MR. BOCCI: No, Your Honor. We're ready to  
21 set forth a briefing schedule and move forward with  
22 this matter.

23 THE COURT: Okay. All right. Mr. Bocci,  
24 when would you like to file your brief?

25 MR. BOCCI: Could we file the -- can we file



1 this by Monday the 13th?

2 THE COURT: The 13th?

3 MR. BOCCI: Yeah. I technically have a trial  
4 starting tomorrow. God willing, it's not going to go  
5 out, but I will make it happen for the 13th.

6 THE COURT: All right. And State, could you  
7 have a response within seven days, the 20th?

8 MS. SHINN: Yes, Your Honor.

9 THE COURT: Okay. Reply, Mr. Bocci?

10 MR. BOCCI: We can have a reply by the -- we  
11 can do a reply by that -- the Thursday or Friday. If I  
12 have a few days --

13 THE COURT: Would that be the 23rd or 24th,  
14 Mr. Bocci?

15 MR. BOCCI: Yeah. I would say the 24th.

16 THE COURT: Okay. And then my law clerk is  
17 listening.

18 And while we're doing that, Mr. Yoskin or Mr.  
19 Bocci, just check your deadlines for the Administrative  
20 Code. I hope, you know, I hope it's something I can  
21 call from the bench.

22 Mr. Tuohy, could you give me a date for oral  
23 argument?

24 MR. BOCCI: If I may, Your Honor?

25 THE COURT: Yes.



1 MR. BOCCI: I'm sorry. Before Mr. Tuohy says  
2 that, I'm going to be away in -- at a conference in  
3 Tampa Bay starting -- I don't know when -- it starts  
4 March 29th. I may be leaving the 28th.

5 THE COURT: Okay.

6 MR. BOCCI: So it's not leaving you a lot of  
7 time. So the 29th, I will be in Tampa Bay for sure.

8 THE COURT: Okay.

9 MR. BOCCI: And I cannot cancel that. I'm  
10 sorry. So I can do it -- I'm happy -- I prefer to do  
11 it in person.

12 THE COURT: Yes.

13 MR. BOCCI: But you know --

14 THE COURT: Well, we can, you know, we'll  
15 work -- let's just --

16 Mr. Tuohy, a date, please?

17 THE CLERK: Friday the 31st you're free, but  
18 Mr. Bocci is in a conference that day. So I can -- I  
19 can look, or --

20 THE COURT: So we can -- this is going to be  
21 a priority, Dennis. We'll move anything.

22 THE CLERK: Got it.

23 THE COURT: Okay. So --

24 Mr. Bocci, the 31st? You're in your  
25 conference. Do you know when you're returning?



1 MR. BOCCI: I'm actually, from Tampa Bay I'm  
2 flying to Houston from Tampa Bay. It's a little bit of  
3 a hectic --

4 THE COURT: Okay.

5 MR. BOCCI: -- time for me. But if you want  
6 to truncate my briefing schedule, I'm happy to truncate  
7 my response time, if we -- if I can try to get it in,  
8 you know, either the 27th, 28th. I don't know if that  
9 works. That probably doesn't work for the Court.

10 THE COURT: 27 or 28th would work for you,  
11 Counsel?

12 THE CLERK: Judge, the afternoon of the 27th  
13 we have -- the 28th, you have a Judicial Council labor  
14 relations meeting. I don't know if you can move that.

15 THE COURT: I'm going to get off the bench  
16 and look at my calendar. I had trouble there, so just  
17 bear with me, guys, okay?

18 MR. BOCCI: Thank you.

19 (Recess)

20 THE COURT: Counsel, it looks -- the best  
21 date for the Court to try to accommodate Mr. Bocci  
22 would be March 27th at 1:30.

23 MR. BOCCI: That works for us, Your Honor.

24 THE COURT: And that would be --

25 MR. BOCCI: Thank you so much.



1 THE COURT: -- Cape May Courthouse.

2 Ms. Shinn, does that work for you?

3 MS. SHINN: Yes, Your Honor.

4 THE COURT: All right. I appreciate, and  
5 thank you for accommodating.

6 And that will work out, Mr. Yoskin, in  
7 terms -- in the event the Court determines it should go  
8 administratively, you're not going to lose that time.

9 MR. YOSKIN: Yes. Sure.

10 THE COURT: Okay.

11 MR. YOSKIN: Yes, Your Honor. While you were  
12 away from the bench, we asked the State to check the  
13 date on which the denial will be published, and the DEP  
14 people are looking, because that triggers the appeals  
15 period.

16 THE COURT: Very well. So Mr. Bocci, the  
17 order is going to read, your request for leave to ask  
18 the Court to exercise jurisdiction will be filed by  
19 March 13th. The State will respond by March 20th and  
20 reapply on March 24th. Oral argument, March 27th at  
21 1:30 in person in Cape May Courthouse.

22 Does that work for all? Okay.

23 MR. YOSKIN: Your Honor.

24 THE COURT: Just -- it'll -- we're --

25 MR. YOSKIN: Thank you so much.



1 THE COURT: Yes. You're welcome.

2 MR. YOSKIN: I appreciate it.

3 THE COURT: And I just want to address the  
4 parties again. I appreciate Ms. Shinn encouraging  
5 continued discussion. And you know, we have excellent  
6 counsel on both sides, but sometimes when you hear it  
7 from the judge, you know, it might make a difference.

8 This is a very critical situation in terms of  
9 my decision on jurisdiction. So if I decide that the  
10 Court has jurisdiction, what is being created is what  
11 we call an issue for appeal. The State may say we  
12 disagree with you, Judge, respectfully, and take what's  
13 called an emergent interlocutory appeal. Appellate  
14 division may take it, may not. They may choose not to  
15 do that.

16 I may say I want to have a plenary hearing  
17 and make a ruling, and then someone from above, three  
18 judges and above, the appellate division may say you  
19 did it wrong.

20 So this -- these are critical issues.  
21 There's risks on both sides. I understand the issue,  
22 but it's not -- it's -- it's complicated in terms of  
23 whether this Court does have jurisdiction or not.

24 So I just want both sides to know the risks  
25 involved. And generally, when there's a risk, that's a



1 good time to try to work out an amicable resolution.

2 Okay?

3 All right. Thank you all very much. And  
4 I'll wait for the order. Have a good afternoon. Any  
5 questions by anyone?

6 MR. BOCCI: Thank you, Your Honor.

7 MR. YOSKIN: Oh. Yes, Your Honor.

8 MR. BOCCI: Thank you.

9 MR. YOSKIN: One more thing.

10 THE COURT: Sure.

11 MR. YOSKIN: One more thing, Your Honor, if I  
12 may? And I know it may be a bit inappropriate, but I'm  
13 going to ask. Can -- Your Honor, we'd like the  
14 authority to at least regrade the dunes so that this  
15 ten-foot cliff doesn't exist. Is that, I mean, is that  
16 something that the Court would be --

17 THE COURT: Not at this point. I think only  
18 with the consent of Ms. Shinn and her folks.

19 Ms. Shinn?

20 MS. SHINN: Your Honor, I think, again, I  
21 would recommend that Lomax or the Town reach out to  
22 Colleen or Jennifer and -- and discuss that, if they  
23 think that that's an emergency that needs to be dealt  
24 with at this time. I can't speak on behalf of the  
25 Department at this time, because that involves the





1 Coastal Zone Management rules and permitting  
2 procedures, so if that's something that you think needs  
3 to be done, I would, again, encourage you to reach out  
4 to the Department to discuss that.

5 THE COURT: And would that be taking the fill  
6 from offshore and bringing it on? I'm just reading a  
7 report. No. Okay. Something different. Okay.

8 All right. Any other questions, Counsel?  
9 All right.

10 MR. BOCCI: No, Your Honor. Thank you.

11 THE COURT: Thank you all very much for your  
12 time.

13 MR. YOSKIN: No, Your Honor.

14 THE COURT: Have a good afternoon. That  
15 concludes the proceedings.

16 (Proceedings concluded at 10:27 a.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATION

2 I, Dena Farbman Page, the assigned transcriber, do  
3 hereby certify the foregoing transcript of proceedings  
4 in the Cape May Superior Court, on March 7, 2023, from  
5 10:02 a.m. to 10:27 a.m., is prepared in full  
6 compliance with the current Transcript Format for  
7 Judicial Proceedings and is a true and accurate non-  
8 compressed transcript of the proceedings as recorded.

9 

10 DENA FARBMAN PAGE

AAERT CET-629

11 ESCRIBERS, LLC

12 Date: March 8, 2023



## **EXHIBIT D**



## State of New Jersey

PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Watershed & Land Management  
Mail Code 501-02A  
P.O. Box 420  
Trenton, New Jersey 08625-0420  
[www.nj.gov/dcp/landuse](http://www.nj.gov/dcp/landuse)

SHAWN M. LATOURETTE  
Commissioner

February 24, 2023

***VIA EMAIL***

Nicholas Long, City Administrator  
City of North Wildwood  
901 Atlantic Avenue  
North Wildwood, New Jersey 08260

**Re: City of North Wildwood Emergency Authorization Request  
Division of Land Resource Protection Determination (Denial)  
DLRP File No. 0507-03-0009.6 (CAF 230001)**

Dear Mr. Long:

The following is the Division of Land Resource Protection's (DLRP) determination on the City of North Wildwood's (NWW) request for an Emergency Authorization (EA). For the reasons that follow, DLRP hereby **denies** the current EA request, but notes that progress has been made toward analysis of alternative shore protection measures that could be approved if NWW submits another EA request. DLRP also looks forward to engaging with NWW as it reviews NWW's Individual Permit application (DLRP File No. 0507-03-0009.6), which was deemed administratively complete on 2/6/23, and which, in part, proposes shore protection measures in the locations at issue in the subject EA request.

**North Wildwood's February 10, 2023 Emergency Authorization Request**

NWW submitted to DLRP a request for an EA on February 10, 2023 with a proposal for bulkhead installation from the area between 12th and 13th Avenues, extending south to 16th Avenue. NWW stated that the proposed emergency work is necessary to address chronic erosional conditions along the oceanfront.

Within the EA request, NWW represented that, in the area between 15th and 16th Avenues, less than 50% of the dune mass remained at the end of December 2022, and erosion has continued. NWW states that "without the mass of the pre-existing dune, a moderate storm, akin to the October event, will rapidly erode through the balance of the dune and breach into the Beach Patrol facility

(Block 317.03, Lot 1).” NWW states that in the event of a dune breach, it is concerned that the Beach Patrol facility would be damaged, as well as other City infrastructure.

In addition to NWW's stated concerns for the area between 15th and 16th Avenues, NWW also requested authorization for work extending to the north, from 15th Avenue to the area between 12th and 13th Avenues. NWW represented that "it now appears that a dune breach between 13th and 14th Avenues has an equal if not greater likelihood than a breach at 15th Avenue. The proximity of JFK Boulevard and existing City infrastructure within this right-of-way are at significant risk should a breach occur at 13th Avenue. The imminent threat continues to persist that a dune breach will occur before this year's storm season concludes."

As stated above, the EA requests emergency work between the midblock of 12th and 13th Avenues to 16th Avenue (Block 317.03, Lot 1 (P/O); Block 317.02, Lot 2 (P/O)), specifically the following activities:

- 1) Installation of  $\pm 1,147$  linear feet cantilevered steel bulkhead (coated) with timber cap
- 2) Excavation, placement, and regrading of residual sand within the project area
- 3) Reshaping of remnant dune in locations of scarps and or breach(s)
- 4) Reconstruction of beach access points over new bulkhead at 13th, 14th, 15th, and 16th Avenues
- 5) Removal and reinstallation of split rail fencing as necessary
- 6) Removal of the 15th Avenue ADA dune crossover beach access (if at risk of failure)

#### **Standards applicable to Emergency Authorization Requests**

For DLRP to issue an EA, the applicant must demonstrate that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and can only be prevented or ameliorated through undertaking a regulated activity and is likely to occur, persist, or be exacerbated before the Department can issue authorization under a general permit or an individual permit for the preventative or ameliorative activity. N.J.A.C. 7:7-21.1.

Under N.J.A.C. 7:7-21.3 (e), if DLRP approves an emergency authorization request, the person to whom the emergency authorization is provided shall submit a complete application for an individual or general permit to authorize the activities, and under N.J.A.C. 7:7-21.3(h) and (i) the applicant must demonstrate compliance with the requirements of the CZM rules, or an explanation as to why full compliance could not be achieved, and the Department shall require design changes or restoration as necessary to ensure the requirements of the CZM rules are met to the maximum extent practicable. Thus, where, as here, the proposed emergency measure includes the installation of a permanent structure, it would not be appropriate for DLRP to authorize the activity where the applicant has failed to demonstrate the proposed activity would otherwise meet the requirements of the underlying rules.

Most relevant to this EA determination, installation of a bulkhead must comply with the Coastal Engineering Rule at N.J.A.C. 7:7-15.11. This rule requires DLRP to consider an alternatives analysis which allows structural shore protection measures, such as a bulkhead, to be authorized only upon a demonstration that non-structural and hybrid shore protection measures are not feasible or practicable. Non-structural and hybrid measures are required where feasible because

structural shore protection measures have greater environmental impact and can cause wave reflection, thus worsening erosion to the adjacent beach and dune system. This alternatives analysis is complex and technical.

### **DLRP's Review of the EA Request**

***Existence or Imminent Threat to Life, Severe Loss of Property, or Environmental Degradation***  
Upon receipt of the EA request, DLRP immediately reviewed the submitted information, existing condition information including aeriels of the area in question, and consulted with the Department's Office of Coastal Engineering, which has experience in the design and location of shore protection measures.

With regard to the area extending from 15th Avenue north to the area between 12th and 13th Avenue, an established, vegetated dune and small beach berm are still in place within the majority of this area and would offer shore protection during a storm. Thus, DLRP determined there is no threat to life, severe loss of property, or environmental degradation. However, there is a bulkhead (that was installed without prior DLRP approval) in this location, terminating at the midpoint of 12<sup>th</sup> and 13<sup>th</sup> Avenues, and the immediate area of the terminus of this bulkhead is experiencing a higher level of erosion, exacerbated by end effect wave reflection from the currently existing, unauthorized bulkhead. Thus, DLRP finds that this isolated point at the terminus of the unauthorized bulkhead is at risk of imminent breach. However, as described in further detail below, the EA request proposing shore protection measures for the larger area is denied, and DLRP would consider a new EA request addressing alternatives for this specific location.

With regard to the area between 15<sup>th</sup> and 16<sup>th</sup> Avenues, DLRP has determined that severe erosion exists, and, due to the construction of the Beach Patrol building in a waterward location, the remaining dune may not provide protection in future storm events, making the building and nearby infrastructure vulnerable to damage. Thus, DLRP agrees with NWW that this area of the dune is at risk of imminent breach and would authorize shore protection under an EA in this location as necessary to abate the risk until DLRP can issue a decision on the pending Individual Permit application.

As indicated in N.J.A.C. 7:7-21.1 and 7:7-21.3(i), even if it determines an emergency exists, DLRP must also determine the emergency can only be ameliorated by the proposed regulated activity before it can issue an EA.

Based upon these standards, DLRP has endeavored to expediently obtain additional information for the alternatives analysis about non-structural measures that may be feasible at the subject location in NWW for the areas that require immediate shore protection, as set forth below.

### **Alternatives Analysis and Supplemental Information Exchange** **DLRP February 14, 2023 Request**

In its EA request, NWW analyzed the alternative of placement of sand to enhance the dune. Based on the initially submitted alternatives information, NWW represented that, for the area between 13<sup>th</sup> and 16<sup>th</sup> Avenues, "due to an exceedingly high daily erosion rate, as experienced over the past



several years without sand stockpiling, approximately 522,000 cubic yards (CY) of sand would be required to meet the ACOE design template”.

In an effort to fully explore the potential for alternatives that would have less impact on the adjacent beach and dune system than the installation of a bulkhead, DLRP requested additional information from NWW on February 14, 2023.

In its request, DLRP explained that meeting the ACOE design template is not necessary for purposes of the EA request. A dune with similar dimensions to what was constructed during the 2009 State/Local beachfill in this area previously by the NJDEP Office of Coastal Engineering (OCE) would afford immediate storm protection in this area in OCE's opinion. Therefore, DLRP requested that NWW address the alternative using calculations that reflect the minimum amount of sand necessary to abate the City's stated emergency until such time as a decision can be made on the City's CAFRA Individual Permit application.

To offer assistance, DLRP requested that NWW provide sand volume calculations for the potential addition of sand to the existing dune to create a design profile of an approximately 20-foot wide dune at elevation +14.75 NAVD 88' with 3:1 side slopes for the area from the northeastern portion of the beach safety patrol building extending to 300 linear feet to the vehicular accessway near 16th Avenue.

#### NWW February 16, 2023 Response

NWW responded on February 16, 2023 as follows:

"Given the present condition of the severely eroded beach berm and lack of a reliable trucking route for sand backpassing from either Wildwood or Wildwood Crest borrow areas, sand for the temporary beachfill would need to be imported from an extraction facility on the mainland. The estimated construction cost for this interim measure is \$339,690, which represents mobilization, required bonds and insurance, sand material and hauling, as well as grading and shaping of the temporary dune. Additional project fees and a modest construction contingency of 5%, result in a total project cost of \$471,597. As previously explained in the pending EA alternatives analysis, this type of beachfill project requires duplicate handling of the fill material, which increases the construction timeline and associated costs. The contractor must complete an intermediate sand transfer from street-legal tri-axle dump trucks importing the sand from the sand mine to the heavy duty off-highway articulated dump trucks necessary to transit oceanfront conditions to the fill site. Pursuing this temporary option would require in excess of 240 tri-axle truck loads and generate a cost of nearly a half million dollars. The City is concerned that this interim measure is not workable because of circumstances that the Department may not have taken into consideration, which is the significant change in the elevation of the beach."

#### DLRP February 22, 2023 Request

DLRP reviewed the information in NWW's February 16, 2023 response and provided clarification to the original request on February 22. Rather than proposing the placement of sand waterward of the dune on the existing beach berm, DLRP was requesting the assessment of possible placement of material landward of the beach berm to enhance the existing dune within the stated area of concern between 15<sup>th</sup> and 16<sup>th</sup> Avenues. The goal would be to augment the existing dune by

providing a minimum of 20 feet of additional dune crest at elevation +14.75 NAVD88 with some measure of seaward slope to tie into the existing dune along with a 3:1 backslope down to the existing parking area. Placing the material in a stable location would enhance the existing dune system from the landward side and eliminate the need for costly rehandling of material and mobilization of off-road dump trucks. Based on OCE's experience, it seems the necessary material to achieve this enhancement could be delivered from an upland quarry and would be cost effective.

NWW representatives asked for additional clarification regarding the placement location, and DLRP responded with additional guidance. DLRP stated that its design volume recommendations were based on a previously authorized project that was built in this area. However, DLRP clarified that NWW's proposal could propose additional material to increase the height and width of the dune if feasible.

#### NWW February 23, 2023 Response

NWW responded stating that based on the erosion rates experienced at this location over the past six months, the placement of  $\pm 1,194$  CY of supplemental sand will not sustain the dune as an effective shore protection measure. Moreover, the existing beach conditions and NJDEP recommended fill project do not follow the federal template and therefore would be inconsistent with an engineered beach, as referenced in the Coastal Zone Management Rules.

In addition to the above, NWW has stated that the expansion of the dune footprint within the discussed area would impact access to the Beach Safety Patrol building and safety operations that occur in the adjacent area, specifically in the area of three storage buildings to the south. DLRP requested a description of the operations that occur in this area, but did not receive a response from NWW. However, the discussed dune enhancement would be approximately 37 feet away from the building, and NWW has not demonstrated that this would prevent access. We also note that to the extent NWW is concerned the storage buildings located south of the beach safety patrol buildings would interfere with the dune enhancement, these buildings were installed without DLRP authorization and it seems they could be relocated.

#### DLRP Determination

After reviewing the information submitted and the condition of the area between 15th and 16th Avenue, DLRP has determined NWW has not demonstrated dune enhancement is not feasible or practicable for the limited purpose of abating the immediate threat while DLRP reviews NWW's pending Individual Permit application, and thus, DLRP must deny the EA request. Dune enhancement is a non-structural alternative that would have less potential impact to the adjacent beach/dune system. Again, DLRP has an obligation to closely examine bulkhead proposals because a bulkhead in this location could increase erosion to the beach/dune system waterward of the structure (sand transport/volume), and to the north and south of the structure due to end-effect erosion, which could exacerbate, rather than alleviate, the problems faced by NWW in future storms.

Based on the foregoing, NWW's request for an EA to construct a bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues is **denied**. However, should NWW apply for a new EA proposing dune nourishment, DLRP could likely approve such an application. DLRP is more than willing to participate in a



pre-application meeting with NWW to discuss this alternative. DLRP continues to monitor conditions in this location.

With regard to the proposed bulkhead extending from 15th Avenue north to the area between 12th and 13th Avenue, the dune in this area offers sufficient shore protection pending determination on NWW's Individual Permit application. Thus, the EA request to install a bulkhead in this area is **denied**.

We again note that with regard to the immediate area of the terminus of the unauthorized bulkhead between 12<sup>th</sup> and 13<sup>th</sup> Avenues, there appears to be a specific area of erosion, likely exacerbated by end effect wave reflection from the currently existing, unauthorized bulkhead. However, this isolated area of concern does not justify installation of a bulkhead extending to 16<sup>th</sup> Avenue as requested in the current EA request. NWW could submit another EA request proposing shore protection in this area, with an alternatives analysis, for DLRP's review.

We understand materials have been delivered to the subject location in preparation for bulkhead installation. We reiterate our previous message that should the City proceed with any unauthorized work, it may be subject to enforcement action.

Should you have any questions, or if you would like to meet to further discuss options, please do not hesitate to contact me.

Sincerely,



---

Jennifer Moriarty  
Director, Division of Land Resource Protection

C: Katrina Angarone, Assistant Commissioner, Watershed and Land Management, NJDEP  
Kimberly Cahall, Chief Enforcement Officer, NJDEP  
Dennis Reinknecht, Director, Resilience, Engineering, & Construction, NJDEP  
Colleen Keller, Assistant Director, Division of Land Resource Protection, NJDEP  
Janet Stewart, Bureau Chief, Bureau of Coastal Permitting, NJDEP  
Michele Kropilak, Bureau Chief, Bureau of Coastal and Land Use Enforcement, NJDEP  
Mayor Patrick Rosenello, City of North Wildwood  
Jim Verna, III, PE, Van Note-Harvey Associates, Inc.  
Neil Yoskin, Esq.  
Anthony Bocci, Esq.  
Kristina Miles, DAG  
Jason Kane, DAG  
Kevin Fleming, DAG  
Dianna Shinn, DAG

## **EXHIBIT E**

Anthony S. Bocchi, Esq. (Bar No. 005602006)  
Neil Yoskin, Esq. (Bar No. 2091982)  
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*Attorneys for Defendant City of North Wildwood*

**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**

**CERTIFICATION OF JAMES W. VERNA  
III: (1) IN OPPOSITION TO NJDEP'S  
APPLICATION FOR PRELIMINARY  
INJUNCTIVE RELIEF; AND (2) IN  
SUPPORT OF NORTH WILDWOOD'S  
APPLICATION FOR PRELIMINARY  
INJUNCTIVE RELIEF**

I, JAMES W. VERNA III, of full age, certify and say:

1. I serve as the Project Engineer for Defendant, City of North Wildwood ("North Wildwood") and have served in this capacity continuously since 2001. I submit this Certification in opposition to Plaintiff, New Jersey Department of Environmental Protection's ("NJDEP") application for preliminary injunctive relief and in support of North Wildwood's application for preliminary injunctive relief. I have personal knowledge of the facts set forth herein.

2. The installation of the bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues is critical to the protection of North Wildwood. As delineated below, if denied the ability to install the proposed

bulkhead, North Wildwood will suffer irreparable harm.

3. I understand NJDEP argues that there is no imminent threat to North Wildwood because, as NJDEP alleges, there remains a substantial dune and berm that provides sufficient shoreline protection. However, this photograph submitted in connection with the October 5, 2022 Emergency Authorization clearly demonstrates otherwise:



(Exhibit A, View of severe dune scarping located directly in front of the City of North Wildwood Beach Patrol Building between 15<sup>th</sup> and 16<sup>th</sup> Avenues.)

4. The installation of the bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues is an absolutely necessary response to the imminent threat to life and property. We are now in the middle of the storm season. North Wildwood cannot afford to do nothing and thereby face unprotected the next major storm -- and thereby suffer a catastrophic loss of life or property as a result of the lack of an absolutely necessary shore protection measure. The threats to life and property are simply too

severe.

5. For example, without the emergency bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues, North Wildwood's storm drainage system stands at risk to complete inundation. Furthermore, the storm drainage system would be exposed to large deposits of sand – which could itself render the drainage system nonfunctional and lead to widespread and potentially catastrophic flooding. The result would be substantial damage to public and private infrastructure and extremely costly repairs.

6. In this Certification I explain why the installation of a bulkhead is an absolutely necessary emergency shore protection measure. My opinion is based on my twenty years' experience in working for North Wildwood on shore protection measures. As described herein, North Wildwood's application to NJDEP for an Emergency Authorization for permission to install the proposed protective bulkhead should not have been denied as North Wildwood clearly met all of the requirements under N.J.A.C. 7:7-10.3. Instead, this Court – exercising its equitable jurisdiction – should allow the City to undertake this essential emergency measure.

7. The NJDEP's conclusion that North Wildwood failed to demonstrate an imminent threat to the loss of life or severe loss of property because “a substantial dune and beach berm remains in place offering sufficient shore protection” is, by every objective measure, wrong.

8. As of the time of this Certification, there is zero feet of beach berm between 11<sup>th</sup> and 16<sup>th</sup> Avenues, and there has been a loss of 12,382 cubic yards of the protective dune located between 15<sup>th</sup> and 16<sup>th</sup> Avenues. As a technical matter, North Wildwood's beach berm is defined as the beach at or above elevation 7' in front of the dune and/or bulkhead. Thus, under this definition, the NJDEP's suggestion that there is “sufficient shore protection” does not comport with reality.

9. I was intimately involved with the preparation of the subject Emergency Authorization. At the time the Emergency Authorization application was submitted in October 2022, North Wildwood made clear that there was an absence of a defined beach berm and a loss of more than 75% of the protective dune system in front of North Wildwood's Beach Patrol Building/Oceanfront Safety Facility. In view of this, we determined that a breach condition was imminent.

10. Since that time, the situation has only worsened. We are now at the point where one moderate storm or even a few low intensity storms will result in a breach. Notably, there is only a few feet left of dune protection between the ocean and North Wildwood's critical infrastructure. Simply put, what little beach and dune system that remains between 15<sup>th</sup> and 16<sup>th</sup> Avenues will be unable to withstand the impending Nor'easter and winter storm seasons.

11. Consequently, we require the court's intervention to protect the citizens of North Wildwood from storm systems which can easily decimate our infrastructure and cause irreparable damage to the City.

**A. North Wildwood's numerous unsuccessful efforts to stall beach erosion**

12. It is well known that North Wildwood's beaches have suffered from a long history of beach erosion and that our shoreline has retreated since at least 1987. In this regard, over the last twenty years I have personally been involved in advising North Wildwood with respect to its efforts in staving off the effects of the significant beach erosion we have faced.

13. During the last decade, North Wildwood has tried to remediate the significant beach erosion issues we have faced using various methods preferred by the NJDEP other than installation of bulkheads.

14. As demonstrated below, these efforts have cost North Wildwood excessive



amounts of money all of which has effectively been squandered with no results that we can point to. That is, all the methods we have employed short of installing a bulkhead have, unfortunately, been grossly ineffective.

15. By way of example, North Wildwood has repeatedly employed beach renourishment efforts that have resulted in the placement of more than two million cubic yards of sand over the last decade at a cost in excess of \$20,000,000.

16. None of that sand remains on North Wildwood's beaches.

17. Additionally, North Wildwood has employed "backpassing" and hydraulic beach fill and, on occasion, have imported materials from quarries. These methods, while preferred by NJDEP, have all proved futile in providing any coastal protection to North Wildwood.

18. By way of example, during the period of 2012 through 2019, North Wildwood completed a series of emergency beach fill projects harvesting sand from Wildwood Crest, Wildwood and Hereford Inlet. The sand volumes placed are as follows (CY = cubic yards):

- 2012 – 96,000 CY – Spring 2012
- 2013 – 150,530 CY – June 2012 Hydraulic Dredging
- 2014 – 2016 - 60,000 CY/Year
- 2016 – 15,000 CY – January 2016
- 2016 – 128,000 CY – Spring 2016
- 2016 – 30,000 CY – Fall 2016
- 2017 – 206,370 CY – Spring 2017
- 2018 – 155,000 CY – Spring 2018
- 2019 – 169,062 CY – Spring 2019

19. The above volumes total 1,129,962 CY of material, all of which have been lost due to persistent erosion. Notably, all of these methods were employed by North Wildwood with regulatory approvals from the United States Army Corps of Engineers, the NJDEP, and with U.S. and NJ Fish and Wildlife.

20. In further effort to combat the dire conditions, in the Spring of 2020 North Wildwood proceeded with another emergency sand back-pass project, followed by similar emergency sand back pass projects in Spring 2021 and Spring 2022. Sand volumes placed are as follows:

- 2020 – 210,000 CY – Spring 2020
- 2021 – 356,856 CY – Spring 2021
- 2022 – 361,221 CY – Spring 2022

21. The above volumes total 928,077 CY.

22. Combining the 2012 through 2022 renourishments, North Wildwood has harvested and placed 2,058,039 CY of same, none which remains on the beach as of this date.

23. The total amount of sand placed on the beach since 2010 is over 3.2 million cubic yards of material at a total cost of in excess of \$28.3 million.

24. This is effectively money lost to North Wildwood because these measures proved futile.



**B. Bulkheads and their proven effectiveness**

25. What has proven effective in North Wildwood's case, though, has been the installation of bulkheads from 3<sup>rd</sup> Avenue up to and including mid-block between 12<sup>th</sup> and 13<sup>th</sup> Avenues:



(Exhibit B, 2020 Photograph showing the emergency bulkheads from 3<sup>rd</sup> to 13<sup>th</sup> Avenues in action defending North Wildwood against a storm.) The dune to the lefthand side of the photo did not survive the storm, but the bulkhead behind it did.

26. Since 2012, North Wildwood has been compelled to install bulkheads which have been effective in protecting our residents from the devastating effects of coastal systems.

27. In 2012, North Wildwood installed vinyl bulkheads from 3<sup>rd</sup> Avenue to 4<sup>th</sup> Avenue. This installation of the bulkhead here immediately proved effective in providing significant coastal protection.

28. Thereafter, in 2018, after six years of employing the aforementioned

methodologies, all of which were proven to be ineffective, North Wildwood expanded the bulkhead from 4<sup>th</sup> Avenue to 7<sup>th</sup> Avenue. This immediately proved to be successful.

29. One year later, in 2019, because nothing else worked, North Wildwood once again was compelled to expand the bulkhead from 7<sup>th</sup> Avenue to the midblock of 12<sup>th</sup> and 13<sup>th</sup> Avenues. Once again, this measure proved highly effective in providing coastal protection to the residents of North Wildwood.

30. It is important to recognize in every instance above, North Wildwood installed bulkheads behind the already existing manmade dune systems. That is, North Wildwood did not remove any dunes in any of the aforementioned bulkhead projects, but instead left whatever was left of them. This critical point is continuously ignored by NJDEP.

**C. North Wildwood's 2020 CAFRA permit application to install protective bulkheads**

31. In 2020, North Wildwood sought NJDEP permission to install bulkheads by way of a formal CAFRA permit application. (See annexed at Exhibit C, 2020 CAFRA Permit Application, dated November 20, 2020) That application remains pending. In October 2022, North Wildwood sought NJDEP's permission to install bulkheads by way of a separate application for an Emergency Authorization, On October 12, the NJDEP denied the EA. **Only the latter disposition is properly before this Court on this application.**

32. Nevertheless, for the sake of completeness (and because NJDEP references the status of the 2020 CAFRA permit application in its submission to this Court), we provide some necessary background to the 2020 CAFRA permit application.

33. For a variety of reasons, the 2020 CAFRA permit application dragged on to the point where in October 2022, with the threat of the impending Nor'easter season upon us, North Wildwood felt compelled to seek the EA because there was little protection left between 15<sup>th</sup> and

16<sup>th</sup> Avenues.

34. What NJDEP fails to mention in its submission to the Court is that while the 2020 CAFRA permit application was pending, it engaged in extensive discussions with North Wildwood about incorporating the existing bulkheads from 3<sup>rd</sup> Avenue to 13<sup>th</sup> Avenue into another pending seawall project and the USACE/NJDEP Island-Wide Beach and Dune Project. North Wildwood and NJDEP even agreed on a partial realignment of the bulkhead between 5<sup>th</sup> and 7<sup>th</sup> Avenues subject to construction of the seawall, and the USACE's latest design for the Island-Wide Beach and Dune project incorporates the bulkhead, as indicated in a summary of the USACE plans which were provided to me via email by NJDEP. (See annexed at Exhibit D, Summary of Island-Wide Beach and Dune Project PowerPoint Presentation, dated February 23, 2022) The plans call for the use of bulkheads because of how effective they are.

**D. Additional benefits regarding the design and construction of the protective bulkhead**

35. As in the previous bulkhead projects, the proposed alignment of the protective bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues has been strategically designed to facilitate construction/installation with the least amount of disturbance as possible. Moreover, the installation of the protective bulkhead is a necessary emergency measure that gives North Wildwood enough shore protection pending the release of funds from the NJDEP under its 2021 State Aid Agreement. If and when North Wildwood finally receives funds for more permanent shore protection measures, the protective bulkhead will be buried by sand and provide stability to the overall dune system. But, until then, the protective bulkhead is absolutely necessary to serve as a final backstop of protection that will guard against catastrophic damage in the event of a dune breach.

36. The entire proposed bulkhead is located behind the dune system, as has consistently been the case with prior emergency bulkhead installations. To illustrate:



(Exhibit E, 2020 Photograph showing installation of a bulkhead.) The bulkhead (center) does not disturb the dune located on the righthand side.

37. The emergency bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues' strategic location behind the dune system avoids disturbance of the already weakened dune system. The bulkhead's proposed position is optimal because it cannot be constructed any further west toward the beach patrol building without causing significant damage to the facility during installation.

38. The proposed emergency bulkhead also does not disturb freshwater wetlands nor freshwater wetlands transition areas. Specifically, it is acknowledged there are wetlands, albeit of minimal resource value, located to the north of the beach patrol building. North Wildwood proposed to start/end the bulkhead at the mapped (NJDEP approved) limit of freshwater wetlands transition area, which is effectively a buffer from the actual wetlands.

39. In addition, the south end of the proposed bulkhead is intentionally designed to be

constructed within the vehicle/pedestrian dune crossover behind the actual dune to enable continued safe access to the beach, particularly safe emergency and public safety access. The beach access would immediately be reconstructed as soon as the bulkhead was installed to minimize the interruption in access.

40. Installing the bulkhead further westward would create an impediment to reconstruct the beach access due to the required height of the bulkhead (elevation 12') versus the ground elevation of approximately 6'. It is noted the only other accesses to the beach are via 7<sup>th</sup> Avenue and 22<sup>nd</sup> Avenue, but these accesses are frequently out of service due to persistent erosion and tidal conditions.

41. At the present time the dune protecting the lifeguard headquarters is susceptible to breach. Depending on the severity of the next storm event, the lifeguard headquarters could be undermined and damage well beyond the lifeguard facility would be probable.

42. The primary drainage system for the east side of the City between Surf Avenue and the beach between 2<sup>nd</sup> and 16<sup>th</sup> Avenues is located along the beach front between 15<sup>th</sup> and 3<sup>rd</sup> Avenues with a major collection system on Ocean Avenue. Ocean Avenue is a localized low point.

43. A breach in the dune system could cause the drainage system to become inundated with capacity exceedance.

44. In addition, it would be likely for sand from the beach to wash into the drainage system rendering nonfunctional and resulting in widespread and potentially catastrophic flooding. This would result in significant damage to public and private infrastructure and extremely costly repairs.

45. If North Wildwood's drainage system became clogged with sand it would have to be replaced at a staggering cost exceeding approximately \$25 million. In addition, there could be



the same or similar damage to the City's sanitary sewer system coming with similar or even higher replacement costs. Moreover, all properties would have to be vacated without a functioning sanitary sewer system.

46. As previously noted, North Wildwood's previous bulkhead projects since 2012 have proved to be the most prudent and effective measure employed in providing coastal protection. Indeed, without the emergency bulkhead installation, North Wildwood's infrastructure and potentially extensive private infrastructure between 3<sup>rd</sup> Avenue and 13<sup>th</sup> Avenue would have been destroyed.

47. With the storm season upon us, North Wildwood cannot be restrained from constructing the emergency bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues. North Wildwood must be afforded the authority to be proactive in order to protect its infrastructure as was done in the past.

48. As made clear to the NJDEP in the EA, installing the emergency bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues would allow for the quickest and strongest level of protection to human life and property.

**E. North Wildwood is presently in possession of the materials necessary to begin the installation of the protective bulkhead**

49. One of the stated reasons that NJDEP denied the EA for the bulkhead is that – as of the October 5 date of the City's EA application – the City “had not yet ordered the required materials.” NJDEP Br., at 6. This is untrue. On Tuesday, October 4, 2022, I received a proposal for installation of the protective bulkhead from R. A. Walters & Son, Inc. (See annexed at Exhibit F, October 4, 2022 R. A. Walters & Son, Inc., Proposal).

50. On the same day, I accepted the proposal and ordered the bulkhead materials via email to R.A. Walters & Son, Inc. (See annexed at Exhibit G, October 4, 2022 E-mail). Thus,

North Wildwood ordered the materials for the protective bulkhead before it filed the October 5, 2022 Emergency Authorization.

51. Thus, one of NJDEP's stated reasons for denial of the EA is factually incorrect.

52. In any event, as of the date of this Certification, North Wildwood has received approximately 25% of the protective bulkhead materials, which is sufficient to commence the proposed bulkhead installation project immediately.

53. We expect to receive the balance of the sheet pile materials for the bulkhead within two to three weeks. The installation of the bulkhead can begin immediately and likely can seamlessly continue through to substantial completion within 30 days.

54. Parenthetically, there was a delay in the supplier's fulfillment of the order for the materials. This delay was the result of supply chain issues affecting the manufacturer. Of course, this delay was entirely beyond North Wildwood's control. From an equitable standpoint, North Wildwood's application for an EA should not have been denied by reason of a delay that was entirely beyond North Wildwood's control.

55. In any event, from the standpoint of North Wildwood's present application for preliminary injunctive relief submitted to the Court, NJDEP's purported ground for denying North Wildwood's EA (*i.e.*, that the installation of the bulkhead cannot begin expeditiously) is now moot. The installation of the bulkhead can begin immediately.

**F. The immediate installation of the protective bulkhead is a necessary interim measure until the USACE/NJDEP project provides a long-term remedy to the longstanding problem of the severe erosion of North Wildwood's beaches and dunes**

56. As previously noted, it is expected that within the next few years the U.S. Army Corps of Engineers (USACE) and NJDEP will be expending in excess of \$20 million on a comprehensive remedy to the longstanding problem of the severe erosion of beaches and dunes of North

Wildwood and adjoining municipalities. See Exhibit D (Summary of Island-Wide Beach and Dune Project PowerPoint Presentation, dated February 23, 2022).

57. The USACE/NJDEP project will use a combination of various coastal protection measures, including beach nourishment, bulkhead installation and dune creation. Moreover, the project will entail not just construction but long-term maintenance – backed by federal and state dollars.

58. This is the long-term remedy to beach erosion that North Wildwood so desperately needs.

59. In the meantime, the immediate installation of the protective bulkhead is a necessary interim measure until the USACE/NJDEP project provides a long-term remedy to the longstanding problem of the severe erosion of North Wildwood's beaches and dunes.

**G. Response to Certification of Michael J. Lutz**

60. I have reviewed the Certification of Michael J. Lutz (the "Lutz Certification") and the exhibits attached to it.

61. I understand New Jersey law requires that land surveys be conducted by licensed professionals so that we can ensure correct determinations and descriptions are made.

62. I understand that Mr. Lutz is not a licensed land surveyor.

63. For this reason alone, the data upon which he relies is not reliable.

64. Additionally, I understand that Mr. Lutz collected his data by using a handheld GPS device with postprocessing correction.

65. The use of handheld GPS devices is not the industry norm, because it is well known that these devices, for a variety of reasons, do not provide accurate readings and data for land surveying purposes.



66. On the other hand, Dr. Farrell, Van-Note Harvey Associates, Inc. and other industry professionals utilize sophisticated subscription-based services that are tied to live satellite imagery to obtain the most accurate data. The data utilizing these services is simply more reliable than any data derived from a handheld GPS device.

#### **H. Response to the Keller Certification, Exhibit F**

67. Annexed at Exhibit F to the Keller Certification is the report of Jon Miller (the “Miller Report”). I have reviewed the Miller Report, and I offer the following response thereto.

68. The Miller Report asserts that the current dune system and beach located between 13<sup>th</sup> Avenue to 25<sup>th</sup> Avenue – and thus containing the subject 15<sup>th</sup> Avenue location – are adequate to protect North Wildwood’s infrastructure and the need for a bulkhead is not apparent. “The only exceptions are in the vicinity of the beach patrol headquarters (15<sup>th</sup> Avenue). . . .” By its terms, the Miller Report finds that the vicinity at 15<sup>th</sup> Avenue presents the need for a bulkhead. The Miller Report supports this claim with photographs of the severely damaged dune near 15<sup>th</sup> Avenue after the effects of Hurricane Ian. This is exactly North Wildwood’s position.

69. The Miller Report relies on the unjustifiable claim that North Wildwood’s beach exhibits stability. That is not accurate. Figure 7 of the Miller Report purports to show a stable dune position by connecting a line between the remains of the dune north of 15<sup>th</sup> Avenue with the remains of the dune north of 15<sup>th</sup> Avenue with the remains of the dune north of 15<sup>th</sup> Avenue. The photo in Figure 7 appears to be from 2021, however at 14<sup>th</sup> Avenue, North Wildwood lost approximately 136 feet of shoreline from 2019 to 2021. Thus, it is inaccurate to say that the dune system is stable when the shoreline has receded 136 feet in three-year period from 2019 to 2021. In short, Exhibit 7 is a snapshot in time that does not provide the necessary context of North Wildwood’s severely eroding beach.

70. The Miller report inaccurately states that “[t]he beach patrol headquarters is constructed on the crest of the existing dune. To protect the structure, the dune line has been pushed seaward which compromises the beach in front of the building.” This statement is not accurate. The beach patrol headquarters was actually constructed in the mid 1970’s when North Wildwood’s beach was robust and did not need a dune system. Thus, whatever dunes that exist today were established long after the construction of the beach patrol headquarters.

71. In truth, the shoreline is eroding from a south of east direction. North Wildwood projects farther east at the north end than at the south end; therefore, the erosion will affect the north end before the south end. As the erosion continues in the south of east direction, North Wildwood’s infrastructure will continue to be vulnerable from coastal storm from the north to the south.

72. The Miller Report fails to mention that North Wildwood’s shoreline has eroded to the point that North Wildwood’s critical infrastructure is at a severe risk of being undermined.

73. In short, the installation of a protective bulkhead under the beach’s current conditions presents the fastest, least expensive, and most effective interim solution to the immediate problem of severely eroded dunes and the irreparable harm to lives and property that would result in the event of a dune breach caused by even a moderate storm.

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.



JAMES W. VERNA III

Date: January 4, 2023

# **EXHIBIT A**



(Exhibit A, View of severe dune scarping located directly in front of the City of North Wildwood Beach Patrol Building between 15<sup>th</sup> and 16<sup>th</sup> Avenues.)

# **EXHIBIT B**



(Exhibit B, 2020 Photograph showing the emergency bulkheads from 3<sup>rd</sup> to 13<sup>th</sup> Avenues in action defending North Wildwood against a storm.) The dune to the lefthand side of the photo did not survive the storm, but the bulkhead behind it did.

# **EXHIBIT C**



**van note - harvey**

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November 20, 2020

New Jersey Department of Environmental Protection  
 Division of Land Resource Protection  
 501 East State Street, 2nd Floor  
 Trenton, New Jersey 08625  
 Attn: Application Support

**RE: New Jersey Department of Environmental Protection (NJDEP)  
 Coastal Area Facilities Review Act (CAFRA) Individual Permit (IP) and Freshwater  
 Wetlands (FWW) General Permits 6 (GP6) and 6A (GP6A)  
 Project: Beach Front Bulkhead  
 Applicant: City of North Wildwood  
 c/o Mr. Ronald Simone, City Administrator  
 901 Atlantic Avenue  
 North Wildwood, New Jersey 08260  
 Property Owner: Same  
 Portions of Block 289.03, Lot 1; Block 290.01, Lot 1; Block 291.01, Lot 1, Block  
 315.02, Lot 1; Block 316.02, Lot 1; Block 317.02, Lots 1 and 2; and Block 317.03, Lot 1  
 City of North Wildwood, Cape May County, New Jersey  
 VNHA #44693-400-21**

Dear Application Support:

On behalf of the City of North Wildwood, Van Note-Harvey Associates (VNHA) hereby submits a combined application for a CAFRA IP, and FWW GP6 and GP6A for the above referenced project. This submission will also address some of the comments made in the Notice of Violation letters dated June 6, 2020 and September 17, 2020.

In support of the application and in accordance with the Coastal Zone Management Rules (N.J.A.C. 7:7) and Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), please find enclosed for your review (1) copy of a document, entitled "Combined CAFRA Individual Permit, and Freshwater Wetlands General Permits 6 and 6A Application," containing the following:

1. One (1) copy each of the NJDEP application checklists;
2. A completed Property Owner Certification form (Note minimal work is proposed on the Sportland Investments parcel on Block 290.01, Lot 1. A portion of the project is subject to a notice of violation. The form has been provided to Sportland Investments for endorsement, however it has not been returned. Due to the urgency of submitting this application to address the notice of violation, the application form is being submitted with only the City of North Wildwood's signature. We will provide a copy of the fully executed form when received from Sportland Investment.);



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3. Verification of Public Notice, which includes the following:
  - One (1) completed Public Notice Form;
  - One (1) copy of the Clerk Notice Letter;
  - One (1) copy of a General Notice Letter;
  - One (1) copy of a certified list of property owners, including easements, within 200 feet of any proposed above ground structure that is part of the proposed development;
  - As the newspaper notice is being published on November 20, 2020, proof of publication will be provided under separate cover;
  - One (1) copy of the certified mail receipts as proof that the following individuals and/or government officials have been notified of this submission: City of North Wildwood Clerk, City of North Wildwood Environmental Commission, City of North Wildwood Construction Official, City of North Wildwood Planning Board, Cape May County Planning Board, Cape Atlantic Soil Conservation District, and all property owners, including easements, within 200 feet within 200 feet of proposed above ground structures;
4. One (1) copy of the City of North Wildwood tax maps, sheets numbered 17, 23, 61, 62, and 63 showing the approximate project location;
5. One (1) copy of portions of the United States Geological Survey (USGS) 2019 Quad Maps of Wildwood and Stone Harbor, New Jersey, showing the approximate project site and State Plane Coordinates;
6. One (1) copy of a Site Location Street Map, showing the approximate project site;
7. One (1) copy of each of the FEMA Flood Insurance Rate Maps (Map Nos. 34009C0306F, Effective 34009C0243F, both with the Effective Date of October 5, 2017) showing the approximate project site;
8. One (1) copy of a set of photographs and associated photo key maps of the project site;
9. One (1) copy of a NJDEP Office of Natural Lands Management Natural Heritage Database submission and subsequent correspondence (once the report is received it will be submitted to you);
10. One (1) copy of construction drawings showing existing conditions at the time of bulkhead construction for the portion of the project seeking after-the-fact approval;
11. One (1) copy of a report entitled: "City of North Wildwood Beach Management Plan for the Protection of Federally and State-Listed Species," dated December 2018;
12. One (1) copy of each of the NJDEP Notice of Violation letters dated June 6, 2020 and September 17, 2020.

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November 20, 2020

13. One (1) copy of a NJDEP Letter of Interpretation for a portion of the Site.
14. One (1) copy of a combined Environmental Impact Statement and CAFRA/FWW Compliance Statement);
15. One (1) set of the plans prepared by VNHA, entitled:
  - "Plan of Proposed and Existing Beach Front Bulkhead," dated November 17, 2020, Sheet Nos. 1 through 3
  - "N.J.A.C. 7:7 and N.J.A.C. 7:7A Permit Plan of Beach Front Bulkhead," dated November 17, 2020, Sheet Nos. 4 and 5
16. One (1) copy of a Property Detail Report for each parcel showing property ownership; and
17. Qualifications of those who prepared this application.

Enclosed with the above-referenced documents, please find a Municipal Voucher in the amount of **\$32,000.00** calculated as follows:

- CAFRA IP Review Fee: \$3,000.00 x >110 acres = \$30,000.00 (maximum fee for CAFRA IP)
- FWW GP 6 and 6A: \$1,000.00 x 2 = \$2,000.00

Please note that although the project is a major development as it will result in greater than 1 acre of land disturbance, we are requesting a waiver of stormwater review fees because the project is exempt from groundwater recharge, runoff quantity and water quality as the project is within an Urban Redevelopment area, located in a tidal flood hazard area and will result in less than ¼ acre of impervious surface, respectively.

Please return the completed Municipal Voucher to:

Van Note-Harvey Associates  
Attn: Jim Verna, III  
211 Bayberry Drive, Suite 2E  
Cape May Court House, New Jersey 08210

This application was prepared by Erin Conversano and Sarah Wueschinski of VNHA in accordance with N.J.A.C. 7:7 and N.J.A.C. 7:7A.

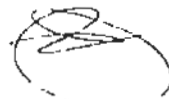
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Should you have any questions/comments or require additional information, please do not hesitate to contact this office.

Very truly yours,



John C. Rydler, P.E., P.W.S.  
Vice President

EMC/tes

Y:\VNH\DATA\PROJECTS\4469\PERMITS\NJDEP\CA\RA\_W\B\SUBMISSION DRAFT\NJDEP COVER LETTER.DOC

Enclosures

ec w/encl: Ron Simone, City Administrator, City of North Wildwood  
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JV / SLW / EMC



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**STATEMENT**  
**PURSUANT TO N.J.A.C. 7:7 AND 7:7A**

**Beach Front Bulkhead Project**  
**City of North Wildwood**  
**Cape May County, New Jersey**

*Prepared For:*  
**City of North Wildwood**  
**901 Atlantic Avenue**  
**North Wildwood 08260**

**VNHA #44693-400-21**  
**November 17, 2020**

**103 COLLEGE ROAD EAST, 3<sup>rd</sup> Floor, Princeton, NJ 08540**  
**(609) 987-2323 • Fax (609) 987-0005**  
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## INTRODUCTION

This Environmental Impact Statement was prepared by Van Note-Harvey Associates (VNHA), on behalf of the City of North Wildwood (the City), in accordance with the requirements of N.J.A.C. 7:7, Coastal Zone Management (the CZM) Rules, N.J.A.C. 7:13, Flood Hazard Area (FHA) Control Act Rules, and N.J.A.C. 7:7A, Freshwater Wetlands (FWW) Protection Act Rules. Contained herein is a detailed discussion of compliance with CZM, FHA and FWW rules that pertain to the proposed activities. The intent of this application is to obtain approval from the New Jersey Department of Environmental Protection (NJDEP) for the project known as the Beach Front Bulkhead Project (the Project).

The purpose of the Project is to legalize a previously constructed vinyl bulkhead adjacent to JFK Boulevard Beach Drive between 3rd and 5th Avenues and steel bulkhead between 5th and 13th Avenues; and, obtain approvals for a proposed steel bulkhead adjacent to the boardwalk between 13th and 25th Avenues.

Stormwater management addressing groundwater recharge, runoff quantity and water quality is not required per:

- N.J.A.C. 7:8-5.4 (a)2ii groundwater recharge requirement does not apply to projects within the "urban redevelopment area." The Project is located within a designated regional center per NJ GeoWeb and the Policy Map of the State Development and Redevelopment Plan.
- N.J.A.C. 7:8-5.4(a)3iv stormwater runoff quantity in tidal flood hazard areas, is not required as the increased volume of stormwater runoff will not increase flood damages below the point of discharge.
- N.J.A.C. 7:8-5.5 stormwater management measures will not be required for water quality control since the Project will not result in an additional one-quarter acre of impervious surface.

All project components will occur landward of the mean high water line.

The format of this report was prepared in accordance with the NJDEP Coastal Zone Management Rules at N.J.A.C. 7:7. The order of information provided herein is as required by N.J.A.C. 7:7. The below narrative addresses the requirements of a Coastal Area Facility Review Act (CAFRA) Individual Permit (IP). As impact to Flood Hazard Areas (FHA), Riparian Zone, Wetlands and Wetland buffers is required to be addressed under Subchapter 9 – Special Areas, compliance to N.J.A.C 7:13 and N.J.A.C. 7:7A is addressed below under Sections III.Q, R, and S, respectively. The project will also result in disturbance to wetlands and wetland transition areas, therefore a compliance statement addressing the requirements of Freshwater Wetland General Permit 6 and 6A is included below.

## I. SITE SUMMARY

### A. Project Location / Site Description

The location of the project is depicted on the USGS Site Location Map, Street Map and Tax Maps provided under Attachment 4.

The Project spans across the following parcels (the Site), of which a portion of has already been constructed, and a portion proposed:

Previously constructed bulkhead seeking after-the-fact approval from 3rd Avenue to 13th Avenue

- Block 317.03, Lot 1



**Proposed bulkhead from 13th Avenue to 25th Avenue**

- Block 289.03, Lot 1
- Block 290.01, Lot 1
- Block 291.01, Lot 1
- Block 315.02, Lot 1
- Block 316.02, Lot 1
- Block 317.02, Lot 1
- Block 317.02, Lot 2
- Block 317.03, Lot 1

The project is located adjacent to JFK Boulevard Beach Drive or the boardwalk and generally runs in the northeast/southwest direction. The Atlantic Ocean and beaches are located east and south of the Site. JFK Boulevard Beach Drive and the boardwalk is located west and north of the Site, followed by hotels, motels, commercial development and residential properties.

According to N.J.A.C. 7:7-1.5 the project is considered a "Linear development" and per N.J.A.C 7:8-1.2 the project is located within an "Urban Redevelopment Area" as the project area is identified as a Designated Center and a portion of it is within an Urban Enterprise Zone as depicted on NJ-GeoWeb and the Policy Map of the State Development and Redevelopment Plan dated August 8, 2019.

Site photographs and a photo key map for the Project are provided under Attachment 5.

**B. Vegetation**

The vegetation that exists within the project area consists of vegetated wetlands comprised of scrub/shrub and herbaceous species, and vegetated dunes. The location of the existing bulkheads and the location of the proposed bulkhead was/is proposed to minimize disturbance to vegetation to the greatest extent practicable, while also minimizing the disturbance to other environmentally sensitive areas. The majority of the Project is proposed adjacent to actively disturbed areas including the boardwalk and JFK Boulevard Beach Drive.

Any temporary disturbance to vegetation for proposed bulkhead will be restored upon the completion of the Project. The Project will also be restoring dunes and freshwater wetlands with plantings that were disturbed under the after-the-fact permitting.

**C. Wildlife**

The surrounding scrub/shrub and herbaceous vegetation, freshwater wetland communities, beach and Atlantic Ocean are areas that provide habitat and foraging opportunities for waterfowl, migrating birds, mammals and crustaceans. Additionally, these communities may serve as nesting, feeding, and/or resting locations for resident



birds. For further discussion of threatened and endangered species, see below Section III.U.

Construction of the Project is located adjacent to JFK Boulevard Beach Drive, the boardwalk and the beach which at times are heavily used by the local and visiting community. For this reason, the permanent or temporary impacts of the construction activities are unlikely to negatively impact wildlife and/or their associated habitat. Although the adjacent freshwater wetlands, beach and dunes may provide habitat for wildlife, any species that may use these habitats will temporarily relocate to surrounding habitat and will return upon completion of the project.

**D. Soils**

According to the U.S. Department of Agriculture and Natural Resources Conservation Service, Custom Soil Research Report for Cape May County, approximately 81% of the Project is underlain by Hooksan Sand, beaches, 2 to 15 percent slopes, very frequently flooded (HorDr). The remaining 19% of the Project is underlain by Urban land-Psamments, wet substratum complex, 0 to 2 percent slopes, rarely flooded (USPSBR); and Beaches, 0 to 15 percent slopes, very frequently flooded (BEADV).

The Custom Soil Resource Report for the Project area is provided under Attachment 6 of this application.

**E. Hydrology**

The Site is relatively flat and ultimately drains to the Atlantic Ocean. Project improvements will help maintain current conditions in the long term by preventing erosion of the beach and infrastructure of the City.

**F. Geology**

Per the NJDEP online resource NJ-GeoWeb, the Site is underlain by the Unnamed Formation at Cape May (Tc) consisting of interbedded gravel, sand and clay, located within the Coastal Plain Physiographic Province. The bedrock aquifer of the Site is the Holly Beach water-bearing zone.

**G. Water Quality**

Water quality related to the project area can be described as consistent with that of a developed, mature coastal resort town. Per our knowledge of the project area and information listed on NJ-GeoWeb/NJDEP DataMiner, the Site and any properties immediately adjacent to the Site are not identified as containing historic fill and are not within the NJDEP Site Remediation Program.

**H. Aquatic Species**

Portions of the project area exist as freshwater wetlands and may contain aquatic species. The project is designed to minimize disturbance to freshwater wetlands and reduce the impact to aquatic species to the greatest extent possible. The project will ultimately prevent further erosion and destruction of the existing wetlands and beach.

**I. Size, Nature, and Location of Proposed Development**

The City proposes the construction of 496 linear feet of vinyl bulkhead and 6,902 linear feet of steel bulkhead generally between 3rd and 25th Avenues (the Project).

Construction of the bulkheads is required to protect City infrastructure and private properties, and aid in preventing the destruction of recreational land including wetlands, dunes and the beach from continued erosion.

The Project will result in approximately 189,563 square feet (4.352 acres) of land disturbance and 749 square feet (0.0172 acres) of impervious surface. Specific details of the Project are shown on the drawings contained in Attachment 13 and discussed in further detail below in Section II.A.

**J. Additional Approvals Required/Received**

Construction of the Project will require approvals from various State and County agencies. The list below outlines the anticipated land development approvals required:

- NJDEP CAFRA Individual Permit;
- FWW General Permits 6 and 6A;
- NJDEP Stormwater General Permits; and
- Cape-Atlantic Soil Conservation District Soil Erosion and Sediment Control Plan Certification.

**II. PROJECT DESCRIPTION****A. Description of Development**

The Project as described in Section I.I above involves the construction of 496 linear feet of vinyl bulkhead and 6,902 linear feet of steel bulkhead. A portion of the Project has already been constructed and seeks after-the-fact approval for the existing bulkhead, and the rest will be for proposed work for a future bulkhead. A detailed description of the Project components is discussed below:

**1. Previous Constructed Bulkhead Seeking After-the-Fact Approval****a) Vinyl bulkhead from 3rd to 4th Avenues**

- The approximate 229 linear foot vinyl bulkhead between 3rd and 4th Avenues was installed in 2012, waterward of the existing timber bulkhead.
- The vinyl bulkhead was constructed upland of the mean high water line (MHWL) at elevation 1.99 feet.
- The bulkhead was constructed as a linear expansion to the existing timber bulkhead located from 2nd to 3rd Avenue.
- The bulkhead was topped with 2" x 6" timber decking laid boardwalk style.

- The vinyl sheet piles are 16' long.
- A 8" x 8" greenheart wale was installed to the waterward side of bulkhead.
- The elevation of the vinyl bulkhead is +11.7 feet at the top of the timber decking.
- Additional improvements include the construction of an approximate, the removal of the existing ramp and steps, and filling of void between this bulkhead and existing bulkhead with concrete.

**b) Vinyl bulkhead from 4th to 5th Avenues**

- The approximate 267 linear foot vinyl bulkhead between 4th and 5th Avenues was installed in 2017-2018, waterward of the existing timber bulkhead.
- The vinyl bulkhead is located upland of the MHWL.
- The bulkhead was capped with 2" x 6" copper azole timber decking.
- The vinyl sheet piles are 20' long.
- A 8" x 8" greenheart wale was installed to waterward side of bulkhead.
- The bulkhead was connected to the existing vinyl bulkhead from 3rd to 4th Avenue.
- An 8" x 8" greenheart wale was constructed from 3rd to 5th Avenue, and is discussed above
- The elevation of this bulkhead is +12 feet at the top of the timber decking.
- Beach was restored to existing conditions after construction.

**c) Steel bulkhead from 5th to 7th Avenues**

- The approximate 630 linear foot steel bulkhead 5th and 7th Avenues was installed in 2017-2018 upland of the MHWL.
- The bulkhead was capped with 2" x 6" copper azole timber decking.
- The steel sheet piles are 35' long.
- The bulkhead was installed within two prior dune areas, one at 5th Avenue and one at 7th Avenue. Dune was restored to existing conditions.

- The elevation of this bulkhead is +12' at the top of the timber decking.

**d) Steel bulkhead from 7th to 13th Avenues**

- The approximate 1,614 linear foot steel bulkhead between 7th and 13th Avenues was installed in late 2019 to March 2020, along the oceanfront within areas of beach, dune, freshwater wetlands and wetland buffer areas.
- All work associated with installation of the steel bulkhead was done upland of the MHWL.
- Work completed near 7th Avenue was done in the dune area.
- The bulkhead between 8th and 10th Avenues was constructed within wetland buffers to minimize disturbance to wetlands.
- The bulkhead between 10th to 13th Avenues was generally constructed within wetlands with the exception of wetland buffer at the beach access points.
- Beach was restored to existing conditions following construction of bulkheads.
- Bulkhead was constructed of coated steel and consisted of 35' long sheets piles.
- Bulkhead was capped with 2" x 6" copper azole timber decking laid boardwalk style.
- The elevation of this bulkhead is +12 feet at the top of the timber decking.

A copy of the construction drawing showing existing conditions at the time of construction are provided under Attachment 8.

**2. Proposed Bulkhead Construction**

**a) Steel bulkhead from 13th to 25th Avenues**

- An approximate 4,658 linear foot steel bulkhead from 13th Avenue to 25th Avenue through/adjacent to the dunes is proposed upland of the MHWL.
- An 8 foot wide timber/composite walkway is proposed parallel to the boardwalk on the landward side of the bulkhead between 22nd and 23rd Avenue, connecting existing composite decks with foot showers.
- Improvements include removal and replacement of ADA compliant beach access walkways at 23rd and 24th Avenues.

- The proposed bulkhead at 13th Avenue will connect to an existing bulkhead and will result in disturbance to wetlands between 13th to 15th Avenues, with the exception of wetland buffer at the beach access points.

The purpose of the Project is to protect the infrastructure of the City, including the roads, walkways, utilities and private property, in addition to preventing further destruction of the beaches, dune system and wetlands from the severe erosion. The Project could be considered necessary to protect public health and safety. An eroding beach is a hazard for walking and can cause people to trip and sustain injuries. Further, if unmitigated erosion continues over a period of time, the street could be impacted. Exposed pipes and jagged concrete would be a health and safety concern, as they could cause injury and exposed pipes could cause damage to infrastructure.

Permanent disturbance is very minimal for installation of the bulkhead while other disturbances are temporary in nature and only during construction of the bulkhead.

Per N.J.A.C. 7:8-5.4 and 5.5 stormwater management is not required since the Project is within an urban redevelopment area, tidal flood hazard area that will not increase flood damages below the point of discharge and proposes less than ¼ acre of impervious surface.

The previously constructed and proposed bulkheads are designed close to JFK Boulevard Beach Drive and the boardwalk to minimize disturbance to environmentally sensitive areas to the greatest extent practicable. There are no prudent or feasible alternatives to the existing bulkheads that would have caused any less disturbance, nor are there any prudent or feasible alternatives to the proposed bulkhead that would cause any less disturbance. An alternative analysis is discussed below under Section II.B. The Project does not propose disturbance to any unique or irreplaceable areas.

The location of the bulkhead at and around 5th Avenue was selected to protect the existing bike path and storm drain infrastructure from the severe vibration and subsequent adverse effects from driving the sheet piling, and also to keep the bulkhead far enough away from the impacts of wave splash over. Waves splashing over the bulkhead cause severe scouring and washout. Such conditions would destroy the bike path and could damage the storm drainage system if the scouring and washout occurs adjacent thereto.

The alignment of the bulkhead at 5th Avenue also took into consideration a proposed extension of the seawall from 3rd to 5th Avenues. The proposed extended seawall will provide coastal protection including but not limited to de-energizing waves.

These same factors were also taken into consideration for the balance of the bulkhead. The bulkhead was constructed as close to the bike path and storm drainage system as possible, without destroying the same during construction, and while providing adequate space and separation should waves come in direct contact with the bulkhead.

Project disturbance to freshwater wetlands, wetland transition area and CAFRA is summarized in the below table and is depicted on the permit plans provided under Attachment 13:

TABLE OF PROPOSED NJDEP REGULATED DISTURBANCES	PROPOSED BULKHEAD	PREVIOUSLY CONSTRUCTED/ EXISTING BULKHEAD	TOTAL
DISTURBANCE TO FRESHWATER WETLANDS UNDER DP 5	0.533 SQ. FT. (0.012 ACRES)	8,498 SQ. FT. (0.195 ACRES)	18,651 SQ. FT. (0.414 ACRES)
DISTURBANCE TO FRESHWATER WETLANDS TRANSITION AREAS UNDER DP 5A	847 SQ. FT. (0.019 ACRES)	19,639 SQ. FT. (0.451 ACRES)	20,486 SQ. FT. (0.470 ACRES)
DISTURBANCE TO FRESHWATER WETLAND TRANSITION AREA PROPOSED UNDER AN ACCESS WAIVER	38,843 SQ. FT. (0.880 ACRES)	18,189 SQ. FT. (0.415 ACRES)	55,042 SQ. FT. (1.254 ACRES)
DISTURBANCE TO CATTIA AREA UNDER INDIVIDUAL PERMIT	111,679 SQ. FT. (2.574 ACRES)	77,884 SQ. FT. (1.78 ACRES)	189,563 SQ. FT. (4.352 ACRES)

## B. Discussion of Project Alternatives

The following discussion addresses possible alternatives to the Project and addresses their feasibility.

Following is a discussion of alternatives for the Project.

Alternatives include:

### 1. Placing the bulkhead in a different location

The Project is designed to mainly run adjacent to JFK Boulevard Beach Drive and the boardwalk, only excluding areas where that is impossible due to existing structures, in which case the Project wraps around these structures. It is not possible to construct the Project landward of its proposed location without negatively impacting existing roads, paths, sidewalks, utilities, and private property. If the Project was constructed waterward of the proposed location, it would cause a significant amount of disturbance to the beach, dune and wetland habitats. The current location of the Project is designed to avoid disturbance to these environmentally sensitive areas to the greatest practicable extent. Therefore, construction of the bulkhead at a different location is not a feasible alternative.

### 2. Constructing bulkhead with fewer linear feet

Creating a shorter bulkhead is not feasible because it would not properly protect the City's infrastructure and private properties, and prevent further destruction of the beach, dunes and/or wetlands from erosion. Therefore, construction of a shorter bulkhead is not a feasible alternative.

### 3. No build alternative

If the bulkheads were not constructed, the City infrastructure and upland private properties would be left vulnerable to the effects of erosion that has been ongoing for years. The severe erosion has left hazardous conditions behind, creating unsafe conditions to the local and visiting community. For this reason, some of the bulkhead has already been constructed on an emergency need.

The no-build alternative is considered appropriate only when severe environmental impacts will result from a project. The only significant



environmental impact that will result from the project is the disturbance to 0.414 acres of freshwater wetlands under FWW GP6, 0.470 acres of wetland transition area under FWW GP6A and 1.264 acres of wetland transition area under an access waiver. All disturbance is located immediately adjacent to JFK Boulevard Beach Drive and the boardwalk in a heavily used area of the City. Disturbance to freshwater wetlands will be mitigated for. Therefore, the no-build alternative preventing construction of the remaining section of the bulkhead is not a feasible alternative.

### III. DISCUSSION OF SPECIAL AREAS

The following discussion addresses the Special Areas that are applicable to the Project.

#### A. N.J.A.C. 7:7-9.2 – Shellfish Habitat

According to Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway, Longport to Cape May map, dated January 1963, the Project area is mapped as hard clam high value commercial. According to NJDEP NJ-GeoWeb, waters located southeast of the Project area are classified as “Prohibited” (shellfish harvesting not allowed). These waters are identified as having water quality that is impaired due to various non-point sources of pollutants and are not considered ideal shellfish habitat. No in-water work is proposed under other than during storm conditions, as the Project is located landward of the spring high water line (SHWL) and MHWL. The Project was designed to be adjacent to the boardwalk to the greatest extent practicable. For these reasons, the Project is unlikely to have a negative impact on shellfish habitat.

#### B. N.J.A.C. 7:7-9.3 – Surf Clam Areas

According to NJDEP NJ-GeoWeb, the Project is not located within a coastal water. According to N.J.A.C. 7:7-9.3, surf clam areas are coastal waters which can be demonstrated to support significant commercially harvestable quantities of surf clams (*Spisula solidissima*), or areas important for recruitment of surf clam stocks, including areas where fishing is prohibited for research sanctuary or conservation purposes. Thus, the Project will not have a negative impact on any surf clam areas.

#### C. N.J.A.C. 7:7-9.4 – Prime Fishing Areas

According to NJDEP Specific Sport Ocean Fishing Grounds Map, the Project is not within a prime fishing area. Therefore, the Project activities will not negatively impact recreational or commercial fishing.

Furthermore, the alignment of the previously constructed bulkhead at and around 5th Avenue was selected in order to protect the existing bicycle path and storm drainage infrastructure, and took into consideration the proposed extension of the seawall south to 5th Avenue. As a byproduct of constructing at this location, another public water front activity, fishing, is created during high tide conditions. Refer to Photo #6 provided under Attachment 5 showing the local community fishing at this location,

#### D. N.J.A.C. 7:7-9.5 – Finfish Migratory Pathways

According the New Jersey Anadromous Fish Inventory, dated January 6, 1977, Mill Creek at the Magnolia dam is a confirmed alewife (*Alosa pseudoharengus*) spawning run which is approximately 14 miles northeast of the Project site at its closest point. According to the Estimated Range of Atlantic Sturgeon (*Acipenser oxyrinchus*) map

provided on the NOAA Fisheries Greater Atlantic Region website, the project area is identified as being an accessible waterway for the Atlantic Sturgeon. As the Project is located above the MHWL, no impact to finfish migratory pathways is anticipated.

**E. N.J.A.C. 7:7-9.6 – Submerged Vegetation Habitat**

Per The New Jersey Submerged Aquatic Vegetation Distribution Atlas Final Report, dated December 15, 1979, from Cape May north to Great Bay, where marshes generally extend all the way to the barrier islands, only the algal species, almost exclusively, *Ullva lactuca*, are found in the shallows of the myriad of bays, sounds, and channels. However, the extensive protected shallows behind the barrier beaches provide an ideal environment for vast Submerged Aquatic Vegetation (SAV) beds. New Jersey SAV is characterized by less diversity of vascular species than that found in the less saline Maryland regions of the Chesapeake Bay.

According to the New Jersey Submersed Aquatic Vegetation Distribution – 1979 map for Wildwood published by the NJDEP, no SAV beds are located in the area of the proposed Project and therefore no adverse impact to SAVs is proposed.

**F. N.J.A.C. 7:7-9.7 – Navigation Channels**

The Site is located on the Atlantic side of North Wildwood. The Project does not propose any work that would affect a navigation channel and will have no adverse effects to navigation channels.

**G. N.J.A.C. 7:7-9.8 – Canals**

The Project does not propose any activities within a canal.

**H. N.J.A.C. 7:7-9.9 – Inlets**

Hereford Inlet is located approximately 0.25 miles northeast of the Site at its closest point. Therefore, the Project does not propose any disturbance to Hereford Inlet.

**I. N.J.A.C. 7:7-9.12 – Submerged Infrastructure Routes**

There is no proposed disturbance to any submerged infrastructure routes for the proposed bulkhead construction, although there may be some modification to utilities during construction of the Project. Specifically, at the Sportland Pier (Block 290.01, Lot 1), the existing utilities will need to be cut off going into the pier, the bulkhead installed, core the bulkhead at select locations and reinstall the utilities.

**J. N.J.A.C. 7:7-9.15 – Intertidal and Subtidal Shallows**

The intertidal and subtidal shallows zone is the area from the spring high water line to a depth of 4 feet below the mean low water line. The spring high water and mean low water at the Site are approximately 2.43 feet above sea level and -2.86 feet below sea level, respectively. As the Project is upland of elevation 2.43, the Project will not be within the intertidal and subtidal shallows zone.

**K. N.J.A.C. 7:7-9.16 – Dunes**

The previously constructed steel bulkhead from 5th to 7th Avenue was installed within a prior beach and dune area, and the previously constructed steel bulkhead from 7th to 13th Avenue was installed within a prior dune and freshwater wetlands area. Per N.J.A.C. 7:7-



9.16, an acceptable activity includes shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7-15.11. The Project is designed to be in compliance with N.J.A.C. 7:7-15.11, which is discussed in Section VIII.B below. Furthermore, the Project is designed to reduce its impact on dunes, as well as other environmentally sensitive areas. As discussed above in Section II.B, there is no feasible alternative that would result in less disturbance to beach, dune and/or freshwater wetland habitat. The current location of the Project is designed to avoid disturbance to the greatest practicable extent.

**L. N.J.A.C. 7:7-9.17 - Overwash Areas**

An overwash area is an area subject to accumulation of sediment that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm or dune. As the City's Atlantic coastline has been experiencing severe erosion since at least 1991 to present day, the overwash areas have been encroaching closer to the City's roads and recreational amenities generally from 3rd to 13th Avenues.

The location of the previously constructed bulkhead at 5th Avenue was selected in order to project the existing bicycle path and storm drainage infrastructure from the severe vibration and subsequent adverse effects from driving the sheet piling during construction and also to keep the bulkhead far enough away from the infrastructure that it is protected during storm events from wave splash over. Waves splashing over the bulkhead cause severe scouring and washout. Such conditions would destroy the bike path and could damage the storm drainage system if the scouring and washout occurs adjacent thereto. The alignment of the bulkhead also took into consideration the proposed extension of the seawall south to 5th Ave. Seawalls are intended to provide coastal protection including but not limited to de-energizing waves (knocking the waves down before they crash into a vertical wall resulting in splash over and severe scouring and washout). Since the seawall was proposed to 5th Avenue, adequate space between the bulkhead and the critical infrastructure is required since it was extremely probable waves would be crashing directly into the new bulkhead.

Portions of the Project exist within overwash areas. As discussed under Section II.B above there is no feasible alternative to the Project in an area other than the overwash area at 5th Avenue while taking into account the location of existing dunes, wetlands and/or the proposed seawall, and the severe erosion the City's coastline was experiencing. Although the location of the bulkhead will disturb the beach and dune systems, it is minimized to the greatest extent practicable. The City will be restoring the beach/dune systems under a separate project, therefore significant adverse long-term impacts on the natural functioning of the beach and dune system is not anticipated.

Since the Project is a shore protection structure, it is an acceptable activity as long as the coastal engineering rule at N.J.A.C. 7:7-15.11(g) is met. See Section VIII.B below for compliance to Coastal Engineering.

**M. N.J.A.C. 7:7-9.18 - Coastal High Hazard Areas**

Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on the FEMA FIRM Flood Insurance Rate Map numbers 34009C0243F and 34009C0306F, effective date October 5, 2017. The Project is located in the following zones:

- From 3rd to 5th Avenues, the Project is located within flood zone AE, elevation 10 with the exception of a small area at 3rd Avenue which is within flood zone VE, elevation 11.
- From 5th to 7th Avenues, the Project is located within flood zone VE, elevation 11.
- From 7th to 13th Avenues, the Project is located within flood zone AE, elevation 10.
- From 13th to 15th Avenues, the Project is located within flood zone AE, elevation 11.
- From 15th to 25th Avenue, the Project is located within zone VE, elevation 12.

The majority of the Project is located within FEMA flood zone VE, elevations 11 and 12 feet. The limit of moderate wave action generally runs along JFK Boulevard Beach Drive from 3rd to 15th Avenues and then west of the boardwalk from 16th Avenue to the Project terminus.

As the area directly waterward of the boardwalk from 15th to 25th Avenues, and the area directly waterward of the current elevated beach area from 5th to 7th Avenues, are within flood zone VE, the proposed Project had/has to be constructed within a coastal high hazard area otherwise it will not serve the purpose of protecting the upland improvements include the boardwalk, commercial and private properties, utilities, etc. The Project is not a residential development or commercial development but rather public development since the activities are located on a beach or dune. The Project is located within a highly developed portion of the City, and the purpose of the Project is to protect the beach and city infrastructure from erosion, thus protecting people and property from the negative impacts of flooding and coastal storms.

A FEMA FIRM map for the Project area is provided under Attachment 4 and is depicted on the plans provided under Attachment 13.

**N. N.J.A.C. 7:7-9.19 – Erosion Hazard Areas**

Erosion hazard areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms. The Atlantic coastline of the City has been experiencing severe erosion since at least 1991, therefore, the Project is located within an Erosion hazard area. The City is experiencing lack of beaches, lack of beaches at high tide, narrow beaches, foreshore extended under the boardwalk, low dunes or no dunes, escarped foredunes, exposed bulkheads and high long-term erosion rates. The purpose of the Project is to protect the City's infrastructure and the surrounding commercial and private properties from the impacts of the continued erosion. As the Project complies with the location on linear development rule and coastal engineering rule for shore protection structures, it is an acceptable activity. See Sections VII.A and VIII.B below for compliance to location of linear development and coastal engineering, respectively.

**O. N.J.A.C. 7:7-9.20 - Barrier Island Corridor**

All Project components are located on the oceanfront barrier island corridor. All work is related to the construction of the bulkheads to protect the barrier island corridor from further erosion and destruction. All work is proposed adjacent to JFK Boulevard Beach Drive and the boardwalk to the greatest extent possible. As the Project complies with the requirements for impervious cover and vegetative cover, it is an acceptable activity. See Section VI below.

**P. N.J.A.C. 7:7-9.22 - Beaches**

The previously constructed bulkhead from 3rd to 7th Avenues was constructed within a prior beach and/or dune area, the previously constructed bulkhead from 7th to 13th Avenue was constructed within a prior freshwater wetland/wetland buffer and/or beach areas and the proposed bulkhead will be constructed within beaches, wetland buffers and/or adjacent to dunes. As the Project has no prudent or feasible alternative in an area other than a beach, will not cause significant adverse long term impacts to the natural functioning of the beach and dune system, is a shore protection structure and is a linear development, it is an acceptable activity. See Section II.B above for an analysis of project alternatives, and Sections VII.A and VIII.B below for compliance to location of linear development and coastal engineering, respectively.

The alignment of the bulkhead was chosen to minimize disturbance to the beach to the greatest extent practicable.

**Q. N.J.A.C. 7:7-9.25 - Flood Hazard Areas**

The FEMA Flood Insurance Rate Map (FIRM) mapping identifies the Site predominated within FEMA flood zone AE, elevations 10 and 11 feet, with the exception of the stretch of proposed bulkhead from 15th to 25th Avenues, which is located within the FEMA flood zone VE, elevation 12 feet.

The Project will not prevent or restrict potential water-dependent use in the FHA within 100 feet from the Hereford Inlet as the Project is located 0.25 miles away from the inlet, and is therefore allowed under N.J.A.C. 7:7-9.25(e).

N.J.A.C. 7:7-9.25(f) requires that development in flood hazard areas shall conform with the applicable design and construction standards of The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., implementing rules at N.J.A.C. 7:13, except in lands regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., pursuant to N.J.S.A. 58:16A-60; the Uniform Construction Code, N.J.A.C. 5:23; and the Federal flood reduction standards, 44 C.F.R. Part 60.

N.J.A.C. 7:7-9.25(h), compliance with endangered or threatened wildlife or plant species habitats requirements is addressed below in Section III.U below.

The overall Project will result in an increase in site impervious coverage of approximately 0.0172 acres and site disturbance of approximately 4.352 acres.

No activities are proposed in a channel, in the riparian zone, or in a floodway.

**1. Project Design and Construction Techniques**

**a) Design Techniques**

See Section II.A above for a description of existing and proposed design techniques for the Project.

**b) Construction Techniques**

Construction techniques for the existing and proposed construction are governed by a Soil Erosion and Sediment Control (SESC) Plan developed in accordance with “Standards for Soil Erosion and Sediment Control in New Jersey” and approved by the Cape Atlantic Conservation District. SESC measures will include:

- Removal of vegetation will be the minimum practicable to achieve the approved project design.
- Proper land grading techniques will be conducted to protect against soil loss from erosion, enhance establishment of permanent vegetative cover and help properly manage stormwater runoff, all of which will reduce site discharge of pollutants.
- A stabilized construction access point will be established.
- For proposed construction at both piers at 22nd Avenue and 23rd to 24th Avenues, a section of the pier will be removed, then all utilities to the piers will be cut. Bulkhead will then be cored to reinstall/reconnect the utilities, then section of the pier removed adjacent to the boardwalk will be replaced/reconstructed.
- For proposed construction at both piers, crane will be situated on the beach on each side of the pier to drive the sheet piling. This is the reason the LOD for the Project is larger near the piers.
- For installation of the existing bulkhead between 3rd and 5th Avenues, the crane operated from the street.

**2. Riparian Zone Disturbance and Compliance with N.J.A.C. 7:13-11.2 (Reference FHA IP Checklist, Item 8iii)**

The Project is not located within a riparian zone, see Section III.R below. No riparian zone disturbance is proposed for the Project.

**3. Analysis of Potential Temporary and/or Permanent Adverse Environmental Impacts (Onsite or Offsite) on Regulated Waters, Channels, Riparian Zones, Fishery Resources, and Threatened & Endangered Species and their Habitat**

- a) **A justification for the proposed regulated activity or project, including an explanation of why any proposed regulated activity or project and its location is the most appropriate for the site, and how the proposed location and design minimizes adverse environmental impact(s) to the resources.**

See Section II.A above providing a description of development.

- b) **An analysis of alternatives to the proposed regulated activity or project, including a no-build alternative.**

See Section II.B above for a discussion of project alternatives.

- c) **A description of all measures to be taken to reduce any potential adverse environmental impact(s) to the resources.**

See Sections II.A and B. above justifying the Project location and how it minimized impact to environmentally sensitive areas.

- d) **A plan to mitigate the effects of all adverse environmental impacts.**

A restoration/mitigation plan will be provided under separate cover for disturbance to wetlands, dunes and/or beach as required.

- e) **Any monitoring or reporting methods that will be used.**

Monitoring or reporting methods for any restoration/mitigation will be provided under separate cover. However, no mitigation is anticipated for disturbance to FHA.

#### **4. Mitigation**

Per N.J.A.C. 7:13-13, FHA mitigation compensates for the loss or disturbance of riparian zones. The Project does not propose loss or disturbance of riparian zones. Therefore, mitigation is not required for FHA compliance.

#### **5. Area Specific Requirement for Individual Permits, Requirements for a Regulated Activity in a Channel at N.J.A.C. 7:13-11.1**

The Project is not located within a channel.

#### **6. Area Specific Requirement for Individual Permits, Requirements for a Regulated Activity in a Riparian Zone at N.J.A.C. 7:13-11.2**

The Project is not located in a Riparian Zone.

#### **7. Area Specific Requirement for Individual Permits, Requirements for a Regulated Activity in a Floodway at N.J.A.C. 7:13-11.3**

Per N.J.A.C. 7:13-2.3, the Atlantic Ocean and other non-linear tidal waters such as bays and inlets do not have a floodway. Thus, the Project is not located in a floodway.

#### **8. Area Specific Requirement for Individual Permits, Requirements for a Regulated Activity in a Flood Fringe at N.J.A.C. 7:13-11.4**

Per N.J.A.C. 7:13-2.3, the Atlantic Ocean and other non-linear tidal waters such as bays and inlets do not have a floodway. Therefore, the entire flood hazard area along these tidal waters is considered to be a flood fringe.

As the Project is located in a tidal FHA, the Project is not subject to the flood storage volume displacement limits of N.J.A.C. 7:13-11.4.

**9. Area Specific Requirement for Individual Permits, Requirements for a Regulated Activity in or Along a Regulated Water with Fishery Resources at N.J.A.C. 7:13-11.5**

The Project is not located within a channel and/or riparian zone of a regulated water containing fishery resources, and the Project does not propose construction of a bridge or culvert in or along waters with fishery resources. Therefore, requirements for a regulated activity in or along a regulated water with fishery resources do not apply. See Section IX.A below for a discussion on impact to marine fish and fisheries.

**10. Area Specific Requirement for Individual Permits, Requirements for a Regulated Activity in or Affecting a present or Documented Habitat for Threatened or Endangered Species at N.J.A.C. 7:13-11.6**

The Project will not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species, and will not jeopardize the continued existence of any local population of a threatened or endangered species. See Sections III.U and V below for a discussion of Endangered or Threatened Wildlife or Plant Species Habitats and Critical Wildlife Habitats.

**11. Area Specific Requirement for Individual Permits, Requirements for Stormwater Management at N.J.A.C. 7:13-12.2**

Stormwater management addressing groundwater recharge, runoff quantity and water quality is not required per:

- N.J.A.C. 7:8-5.4 (a)2ii groundwater recharge requirement does not apply to projects within the "urban redevelopment area." The Project is located within a designated regional center per the Policy Map of the State Development and Redevelopment Plan.
- N.J.A.C. 7:8-5.4(a)3iv stormwater runoff quantity in tidal flood hazard areas, is not required as the increased volume of stormwater runoff will not increase flood damages below the point of discharge.
- N.J.A.C. 7:8-5.5 stormwater management measures will not be required for water quality control since the Project will not result in an additional one-quarter acre of impervious surface.

All Project components will occur landward of the mean high water line. Therefore, the applicant is not required to address stormwater management and the requirements at N.J.A.C. 7:8 are satisfied.



**12. Area Specific Requirement for Individual Permits, Requirements for Excavation, Fill and Grading Activities at N.J.A.C. 7:13-12.3**

Excavation, fill and grading will be required to construct the Project. The Project complies with requirements of N.J.A.C. 7:13-12.3 as follows:

- The overland flow of stormwater will not be impeded and floodwaters can freely enter and exit the disturbance area.
- There are no slopes greater than 50%.
- The excavation, fill and/or grading will not endanger the integrity of any existing structure.
- All excavated material will be lawfully disposed of.

**13. Area Specific Requirement for Individual Permits, Requirements for a Structure at N.J.A.C. 7:13-12.4**

The Project proposes the construction of a bulkhead within the FHA. The Project complies with requirements of N.J.A.C. 7:13-12.4 as follows:

- The structures will resist impact from water and debris during the flood hazard area design flood.
- The structures will resist uplift, floatation, collapse and displacement due to hydrostatic and hydrodynamic forces resulting from the flood hazard area design flood.
- The structures will resist overturning and sliding pressure, as well as pressure from the freeze/thaw cycle of the soil; and,
- The structures are not located adjacent to a channel.

The Project is located primarily within the Zone AE and partially within the VE flood plain. The existing and proposed bulkheads are located primarily below ground; however, a portion does extend above ground as discussed in more detail in Section IX.F below. Also, see Section III.M above for a discussion of coastal high hazard areas.

**14. Area Specific Requirement for Individual Permits, Requirements for Retaining Walls and Bulkheads at N.J.A.C. 7:13-12.13**

The bulkhead will extend above ground as discussed in Section IX.F below and as depicted on Sheet 3 of the plans.

- The bulkhead consists of vinyl or steel sheeting, and is anchored with greenheart wales as depicted on the plans.
- The bulkhead is designed to withstand displacement, overturning, and failure due to undermining and/or pressure from soil, water, and frost.

- The Project is not located within a regulated water or within 25 feet of any top of bank. Furthermore, the retaining bulkhead is designed to be resistant to erosion as well as the possibility of a shifting bed and/or bank over time.

Refer to the permit plans provided under Attachment 13 providing an engineering certification the above requirements are satisfied.

**R. N.J.A.C. 7:7-9.26 - Riparian Zones**

The Project runs parallel to the Atlantic Ocean and the next closest body of water is Hereford Inlet, which is located 0.25 miles away from the Project at its closest point. Per N.J.A.C. 7:7-9.26(b)1, there is no riparian zone along the Atlantic Ocean. Therefore, the Project will have no impact on riparian zones.

**S. N.J.A.C. 7:7-9.27 - Wetlands and N.J.A.C. 7:7-9.28 - Wetlands Buffers**

The previously constructed steel bulkhead from 8th to 13th Avenues was installed along the oceanfront within a prior freshwater wetlands and wetland transition areas. The proposed bulkhead from 13th to 15th, from 20th to 22nd, and at 25th Avenues will disturb wetlands and wetland transition area.

Per NJ GeoWeb 1970 Black and White Imagery, the Project is not within coastal wetlands. Note the portion between 3rd and 21st Avenue there is no 1970 black and white imagery map. Based on this and prior conversations with NJDEP, any wetlands not located within a 1970 black and white imagery map are to be identified as FWW.

Installation of the bulkheads is in compliance with N.J.A.C. 7:7-9.27 because of the following:

- The use of the bulkhead is water dependent;
- The Project has no prudent or feasible alternative on a non-wetland site, see Section II.B above for discussion of possible alternatives;
- The Project will result in minimum feasible alteration or impairment of natural tidal circulation; and
- The Project will result in minimum feasible alteration or impairment of natural contour or natural vegetation of the wetlands.

**Freshwater Wetland Compliance Statement Pursuant to 7:7A**

This statement addresses compliance with the permitting requirements outlined in the applicable Freshwater Wetlands General Permit (FWWGP) checklists and follows the requirements set forth in the Freshwater Wetland Protection Act Rules (N.J.A.C. 7:7A).

An intermediate resource value, isolated freshwater wetland exists on a portion of the Site adjacent to the Beach Patrol Building at 15th Avenue verified under NJDEP File No. 0507-03-0009.2 FWW 180001. Additionally, the wetland at the Lou Booth Amphitheatre site was also verified as intermediate resource value and isolated. Upon review of NJ-GeoWeb Landscape Project Version 3.3, the T&E species identified within the wetlands



subject of this application are similar to those at the location of the Beach Patrol Building and Lou Booth Amphitheatre.

Also, based on the T&E species and their associated habitats identified in the "City of North Wildwood Beach Management Plan For the Protection of Federally and State-Listed Species" discussed above under Section III.U below, it is our opinion these T&E species are not wetland dependent species.

Therefore, for the above reasons, we believe the wetlands between 8th and 25th Avenues as depicted on the plans provided under Attachment 13 are of intermediate resource value.

A copy of the NJDEP Letter of Interpretation for the Beach Patrol Building and Lou Booth Amphitheatre are provided under Attachment 11.

Please also note that the wetlands generally between 8th and 13th Avenues no longer exist under current conditions due to the severe erosion occurring along the coastline.

**1. A Description of The Characteristics of The Site and The Location of All Proposed Regulated Activities, Potential Impacts from The Construction Process, And, As Applicable, Any Monitoring or Reporting Methods That Will Be Used**

**a) Site and Project Description**

See Introduction above for Site and Project introduction.

**b) Potential Impacts from the Construction Process**

See Section III.Q.1.b above for construction techniques.

**c) Monitoring and Reporting Methods**

Monitoring and/or reporting methods for any restoration/mitigation required for disturbance to freshwater wetlands will be provided under separate cover.

**2. The Total Area, In Acres, Of Wetlands and State Open Waters on The Site Before the Regulated Activity Is Performed, And the Total Area, In Acres, Of Wetlands and State Open Waters (Sow), On the Site That Will Remain After the Regulated Activity Is Performed**

As freshwater wetlands on the Site have only been partially delineated, this is not possible.

However, the Project will result in a total disturbance of approximately 0.414 acres to FWW under GP6. Refer to the Permit Plans provided under Attachment 13 for a breakdown of disturbance to freshwater wetlands for the installation of the previously constructed and proposed bulkhead. The Project will not disturb SOW.

**3. Statement of Compliance with General Permit 6 (Non-Tributary Wetlands) At N.J.A.C. 7:7A-7.6**

- a) **General Permit No. 6 authorizes regulated activities in freshwater wetlands and/or State open waters, if the freshwater wetlands and/or State open waters are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met.**

The regulated activities are proposed in freshwater wetlands that are not part of a surface water tributary system discharging into an inland lake, pond or river/stream. Note that the wetlands adjacent to the Beach Patrol Building at 15th Avenue have already been verified as non-tributary.

Note that any disturbance to the wetland transition area for disturbance to wetlands subject of GP6 is allowed under an access transition area waiver, and is therefore not included under GP6A.

- b) **The activities shall disturb no more than one acre of a freshwater wetland and/ or State open water, which is not a water of the United States.**

The Project will result in approximately 0.414 acres of freshwater wetland disturbance that is not a water of the U.S. and no disturbance to SOW is proposed.

- c) **The activities shall disturb no more than one-half acre of a freshwater wetland and/ or State open water that is a water of the United States. Mitigation shall be performed for all permanent loss and/or disturbance to wetlands and/or State open water that are waters of the United States.**

The Project will result in approximately 0.414 acres of freshwater wetlands disturbance that is not a water of the U.S. No disturbance to SOW is proposed.

- d) **Activities under General Permit No. 6 will not take place in the following:**

i. **Exceptional Resource Value wetlands:**

As stated above, based on available information, we believe the wetlands subject of this application are of intermediate resource value. Therefore, the proposed activities will not take place in exceptional resource value wetlands.

ii. **State open water that is a special aquatic site;**

The Project does not propose any activities within SOW.

iii. **USEPA priority wetlands; or**

Per Priority Wetlands List for the State of New Jersey dated May 1989, no activities are proposed within USEPA priority wetlands.

**iv. A State open water that is larger than one acre.**

The Project does not propose any activities within SOW.

- e) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters that are also waters of the United States. Mitigation shall be performed for permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters that are also waters of the United States unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands.**

Mitigation will be required as the Project will disturb wetlands in excess of 0.1 acres. A proposal for restoration/mitigation will be provided under separate cover.

**4. Statement of Compliance with General Permit (GP) No. 6a (Transition Areas Adjacent To Non-Tributary Wetlands) At N.J.A.C. 7:7A-7.6a**

- a) General permit 6A authorizes regulated activities in transition areas adjacent to freshwater wetlands, if the freshwater wetlands are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met.**

The regulated activities are proposed in freshwater wetlands that are not part of a surface water tributary system discharging into an inland lake, pond or river/stream.

- b) The activities disturb no more than one-half acre of a transition area. If the activity authorized under general permit 6 eliminates a wetland in its entirety, authorization under general permit 6A is not required for activities in the associated transition area.**

The total amount of wetland transition area disturbed by the Project is 0.470 acres. The Project does not propose eliminating a wetland in its entirety under GP6.

- c) Activities do not take place in a transition area adjacent to the following.**

- i. An exceptional resource value wetland, as described at N.J.A.C. 7:7A-3.2.**

Based on available information, it is our opinion the wetlands of the subject application are of intermediate resource value.

Therefore, no activities are proposed within a transition area adjacent to an exception resource value wetland.

ii. **USEPA priority wetlands.**

Per Priority Wetlands List for the State of New Jersey dated May 1989, no activities are proposed within a wetland transition area adjacent to a USEPA priority wetland.

5. **Listing of And Statement of Compliance with Conditions That Apply to All General Permits at N.J.A.C. 7:7A-5.7**

a) **The activities proposed under GPs comply with the following:**

i. **The conditions set forth in General Permit No. 6 and 6A.**

See Sections S.3 and 4 above for compliance to the conditions set forth in GP6 and GP6A respectively.

ii. **The standard conditions set forth for all general permits.**

See Section S.5.b below for compliance to the conditions for all general permits.

iii. **The conditions for all general permits at N.J.A.C. 7:7A-20.2.**

The Applicant understands the standard conditions for all general permits.

iv. **The limits pursuant to the use of multiple general permits in N.J.A.C. 7:7A-5.4.**

The Project complies with the limits on the use of multiple general permits.

v. **If required under a particular general permit, mitigation pursuant to N.J.A.C. 7:7A-11.**

Mitigation will be required and will be addressed under separate cover.

vi. **Any additional conditions imposed under N.J.A.C. 7:7A-5.7(f).**

It is understood that the Department may establish additional conditions on a case-by-case basis.

b) **Explanation of how the Proposed Activities Comply with the Conditions that Apply to all General Permits:**

Activities under a general permit shall be associated with a proposed project. The Department shall not authorize activities under a general permit for eliminating a natural resource in order to avoid regulation.

- i. **The proposed activities are not for the purpose of eliminating a natural resource in order to avoid regulation.**

The regulated activity shall not occur in the proximity of a public water supply intake.

- ii. **According to NJ-GeoWeb well head protection areas (community) layer, the nearest public water supply is located approximately 5.7 miles southwest of the Project at its closest location.**

The activities shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

See Section III.U above for a discussion on Project impact to T&E species and/or habitat. The Project will not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species.

- iii. **The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a “study river” for possible inclusion in either system while in the river is in an official study status; except that the activity may occur in these waters if approved by the National Park service in accordance with 40 CFR 233.**

The Site is not within a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a “study river.”

- iv. **The activity shall not adversely affect properties which are listed or are eligible for listing on the New Jersey or National Register of Historic Places.**

See Section III.T above for a discussion on Project impact to historic and archaeological resources. The Project will not adversely affect properties which are listed or are eligible for listing on the New Jersey or National Register of Historic Places. If any are encountered, the NJDEP shall be immediately notified.

- v. **Any discharge of dredged or fill material shall consist of clean, suitable material free from toxic pollutants (see 40 CFR 401) in toxic amounts, and shall comply with all applicable Department rules regarding use of dredged or fill material.**

Discharge of dredged material is not proposed for the Project. Fill material will consist of clean, suitable material free from toxic pollutants in toxic amounts, and will comply with all applicable Department rules regarding use of fill material.

- vi. Any structure or fill authorized shall be maintained as specified in the construction plans.**

The proposed structures and fill will be maintained as specified in the plans accompanying this application.

- vii. The activity will not result in a violation of the FHA Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13.**

Compliance to the FHA is addressed above under Section III.Q. Accordingly, the Project will not result in a violation of the FHA Control Act Rules.

- viii. If activities under the general permit meet the definition of "major development" at N.J.A.C. 7:8-1.2, then the project of which the activities are a part shall comply in its entirety with the Stormwater Management Rules at N.J.A.C. 7:8.**

Compliance to Stormwater Management is addressed below under Section IX.C. The Project has been designed in accordance with the requirements of N.J.A.C. 7:8.

- ix. If activities under the general permit involve excavation or dredging, the applicant shall use an acceptable disposal site for the excavated or dredged material. No material shall be deposited or dewatered in freshwater wetlands, transition areas, State open waters or other environmentally sensitive areas.**

Dredging is not proposed. Any excess excavated material will be disposed of in accordance with applicable regulations. No material will be deposited or dewatered in wetlands, transition areas, SOW, or other environmentally sensitive areas.

- x. The amount of rip-rap or other energy dissipating material shall not exceed the minimum necessary to prevent erosion, as calculated under the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.**

Rip-rap or other energy dissipating materials are not proposed under this Project.

- xi. Best Management Practices, as defined at N.J.A.C. 7:7A-1.3, shall be followed whenever applicable.**

Where applicable, Best Management Practices shall be implemented and followed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," the Cape Atlantic Soil Conservation District, Freshwater Wetland Protection Act Rules and the Flood Hazard Area Control Act Rules.

- xii. **If the general permit activities are subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15, the activities shall be consistent with those rules and with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1, et seq.**

The Project is not subject to the Department's Water Quality Management Planning Rules.

- xiii. **The timing requirements at C below shall be met.**

The timing requirements are not applicable as no disturbance within a stream channel is proposed.

- xiv. **With the exception of activities associated with general permits 1, 6, 6A, and 16, activities authorized under a general permit shall not take place in a vernal habitat, as defined at N.J.A.C. 7:7A-1.3, or in a transition area adjacent to a vernal habitat.**

The Project does not propose activities within vernal habitat.

- xv. **In order to protect the fishery resources and/or the spawning of the fish population, any activity which may introduce sediment into a stream or cause a stream to become turbid shall not be performed during the time periods listed in Table 5.7.**

The Project does not propose any work in a stream.

- xvi. **The Department may reduce, extend, or otherwise modify the timing requirements listed if one or more requirements at N.J.A.C. 7:7A-5.7(d) are satisfied.**

The applicant does not wish to reduce, extend or otherwise modify the time requirements for fishery resources should they apply to the Project.

- xvii. **If any activity will take place in a non-delegable water, as defined at N.J.A.C. 7:7A-1.3, and the activity requires approval from the USACE under the Federal 404 program, the activities authorized under the general permit shall not begin until the permittee obtains the required Federal 404 program approval.**



No activities are proposed in non-delegable waters.

- xviii. In addition to the conditions that apply to every authorization pursuant to a general permit, the Department shall establish additional conditions in a specific authorization pursuant to a general permit, on a case by case basis in accordance with N.J.A.C. 7:7A-20.3.

It is understood that the Department may establish additional conditions on a case-by-case basis.

**6. Statement Regarding Contaminated or Toxic Substances on The Site**

To the best of the applicant's knowledge, the location of regulated activities is not contaminated with toxic substances.

**7. Documentation of The Creation of The Property**

To the best of our knowledge no part of the Site is not part of a subdivision.

**8. Ownership History of The Property from June 30, 1988 (Provided without the benefit of a Title Search):**

To the best of our knowledge the City of North Wildwood has owned its properties since 1988 and Sportland Investments has owned Block 290.01, Lot 1 since September 24, 1984. Refer to Attachment 14 for property detail report showing property ownership information.

**9. Listing of Contiguous Lots in Common Ownership with The Site and Ownership History of Said Lots from June 30, 1988 (Provided without the benefit of a Title Search)**

The lots associated with this application, excluding Block 290.01, Lot 1 are owned by The City of North Wildwood, the Applicant. Contiguous lots adjacent to the Project that are owned by the Applicant include Block 288.02, Lot 1. Sportland Investments owns Block 290.01, Lot 1. Sportland Investments does not own any contiguous lots. Refer to Attachment 14 for property detail report showing property ownership information.

**10. Statement Regarding Existence of Swamp Pink in The Municipality Which the Site Is Located**

The City of North Wildwood is not a known location for Swamp Pink.

**11. Statement Regarding Existence of The Bog Turtle in The Municipality Which the Site Is Located**

The City of North Wildwood is not listed as a known location for Bog Turtles.

**12. Statement Regarding Wild and Scenic River Designation**

The Site is not within an area designated a Wild and Scenic River; nor in a river officially designated by Congress or the State Legislature as a "study river."

**T. N.J.A.C. 7:7-9.34 - Historic and Archeological Resources**

The boardwalk adjacent to the Project from 16th Avenue to 25th Avenue is identified as a historic property per NJ-GeoWeb. Buccaneer Motel, designated as an Eligible Individual historic property, is located approximately 150 feet west of the Project at its closest point. An archaeological site grid, designated as Identified, is located approximately 0.43 miles southwest of the Project at its closest point. The Project's location is not identified as a historic property, within a historic district or within an archeological site grid per NJ-GeoWeb or the New Jersey Department of Environmental Protection Historic Preservation Office, New Jersey and National Register of Historic Places, last updated September 30, 2020. Based on this information, the Project will not negatively impact historical resources but rather protect the historic boardwalk. If any historical resources are encountered, the NJDEP will be immediately notified.

**U. N.J.A.C. 7:7-9.36 - Endangered or Threatened Wildlife or Plant Species Habitats**

To determine the presence of threatened and endangered (T&E) wildlife species located on or adjacent to the Site, VNHA reviewed NJDEP NJ-GeoWeb online mapping application, containing Landscape Project Version 3.3 data, which identifies species based on habitat patches connected to rare wildlife throughout the State of New Jersey. In addition, VNHA requested a NJDEP Natural Heritage Program (NHP) Report for the Project area, see Attachment 7. The NJDEP Landscape Project and the NJDEP Natural Heritage Program identified Rank 3, 4 or 5 species in the immediate vicinity, or within one (1) mile of the Project Area, as shown below on Table 1.

VNHA also reviewed the NJDEP NJ-GeoWeb online mapping application, containing the Natural Heritage Grid Map, which provides a general portrayal of the geographic location of rare plant species and rare ecological communities throughout New Jersey. Two species were identified in the Natural Heritage Grid ID 6,811.00 within the portion of the Project between 3rd and 5th Avenues for both known location within 1.5 miles and at a precise location, as shown below on Table 2. No natural heritage priority sites, vernal pools or vernal pool habitat were identified as being on the Project Site, in the immediate vicinity or within one (1) mile of the Project Site.

<b>Table 1</b>			
<b>Species Identified Onsite or within the Immediate Vicinity</b>			
<b>Species</b>	<b>Scientific Name</b>	<b>Rank</b>	<b>Feature Type</b>
Black Skimmer	<i>Rynchops niger</i>	4	Foraging
Least Tern	<i>Sternula antillarum</i>	4	Foraging
Least Tern	<i>Sternula antillarum</i>	4	Nesting Colony
Migratory Raptor Concentration Site	--	4	Concentration Site
Piping Plover	<i>Charadrius melodus</i>	5	Nesting Area
Red Knot	<i>Calidris canutus</i>	4	Non-breeding Sighting
<b>Species Identified within One (1) Mile</b>			
Black Skimmer	<i>Rynchops niger</i>	4	Foraging
Black-crowned Night-heron	<i>Nycticorax nycticorax</i>	3	Foraging
Cattle Egret	<i>Bubulcus ibis</i>	3	Foraging
Least Tern	<i>Sternula antillarum</i>	4	Foraging
Least Tern	<i>Sternula antillarum</i>	4	Nesting Colony
Migratory Raptor Concentration Site	--	4	Concentration Site
Osprey	<i>Pandion haliaetus</i>	3	Foraging
Osprey	<i>Pandion haliaetus</i>	3	Nest
Piping Plover	<i>Charadrius melodus</i>	5	Nesting Area
Piping Plover	<i>Charadrius melodus</i>	5	Non-breeding Sighting
Red Knot	<i>Calidris canutus</i>	4	Non-breeding Sighting
Yellow-crowned Night-heron	<i>Nyctanassa violacea</i>	3	Foraging
Yellow-crowned Night-heron	<i>Nyctanassa violacea</i>	3	Nesting Colony
Atlantic Sturgeon	<i>Acipenser oxyrinchus</i>	5	Migration Corridor – Adult Sighting

The portion of the Project between 3<sup>rd</sup> and 5<sup>th</sup> Avenues is within the natural heritage grid map for species within 1.5 miles and location known precisely.

<b>Table 2</b>		
<b>Rare Plant Species and Rare Ecological Communities within the Immediate Vicinity</b>		
<b>Species</b>	<b>Scientific Name</b>	<b>Status</b>
Spurred Butterfly-pea	<i>Centrosema virginianum</i>	State Endangered
Sea-beach Evening-primrose	<i>Oenothera humifusa</i>	State Endangered

Based on NJ-GeoWeb, potential threatened and endangered species/habitats, rare plant species and rare ecological communities were identified within the Project area and immediate vicinity. As noted in the “City of North Wildwood Beach Management Plan”, dated December 2018 piping plover, least tern, black skimmer, American oystercatcher and the red knot are known species to occur on the City’s beaches. Seabeach amaranth, Seabeach knotweed, Seabeach sandwort, Seabeach evening primrose and Seabeach purslane are species that may occur on the City’s beaches. A copy of the plan is provided under Attachment 9.

Piping plovers are small, territorial shorebirds present on the New Jersey shore between March and August. Nests consist of a shallow scrape in the sand located above the high tide line. Historically, from 1988-1996 between one (1) and five (5) pairs of piping plovers nested on the City’s oceanfront beach. Nesting began on the City’s Inlet Beach in 2002, with an average of one (1) to four (4) pairs per season. Plovers last nested on the Inlet Beach in 2015.

Least terns are small, colonial beach-nesting sea birds, present on the New Jersey shore between April and September. Nests consist of a shallow scrape in the sand located above the high tide line. Historically, from 1988-1995 least terns nested on the City’s oceanfront beach, ranging from 60 to 200 individuals. Since 2002, terns have nested on the City’s Inlet Beach, with a high of 490 individuals. Least terns last nested in the City in 2015.

Black skimmers are colonial beach-nesting sea birds that may potentially nest on the City’s beaches. Historically, “Champagne Island”, within the Hereford Inlet System, and northwest of the City’s “Protected Zone” hosted a significant colony of nesting skimmers until 2008. The City’s beaches have also been used as an important staging area for black skimmers during fall migration (September through October).

American oystercatchers are territorial shorebirds, nesting on New Jersey beaches from April through August. They make their nests on beaches by scraping a shallow depression in the sand just above the high tide line, but also nest on back-bay islands. Since 2002, one (1) to three (3) pairs of oystercatchers have regularly nested on the City’s Inlet Beach. One pair last nested in 2017.

Red knots are long distance migrants that breed in the Arctic and winter as far south as Tierra del Fuego at the southern tip of South America. While small numbers of red knots may be present in New Jersey year-round, most are seasonal visitors to New Jersey beaches, stopping during spring (mid-May through early June) and fall (late-July through November) migration periods to rest and refuel. Currently, the City is identified as an important migratory staging area for the red knot for feeding and roosting activities.

Seabeach Amaranth is an annual plant, visible on New Jersey’s Atlantic coastal beaches between May and November. Seabeach amaranth is usually found growing in nearly pure sand. The species requires sparsely vegetated upper beach habitat that is not flooded during the growing season.

Seabeach Knotweed is an annual plant of sandy beaches.

Seabeach Sandwort is a perennial plant of beach and salt marsh habitats.

Seabeach Evening Primrose is a perennial plant of beach and dune habitats.

Seabeach Purslane is an annual plant of beach habitats.

The Project consists of a linear bulkhead that did not and will not result in a significant increase in impervious surfaces or permanent land disturbance. Any disturbance for construction of the bulkheads will be temporary in nature, minimized to the greatest extent practicable and conditions will be restored upon Project completion.

Construction of the Project is mainly located adjacent to JFK Boulevard Beach Drive, the boardwalk and the beach which at times are heavily used by the local and visiting community. Based on the desired habitat of the T&E species, and the Project location permanent and/or temporary impacts of the construction activities are unlikely to negatively impact the T&E species listed above and/or their associated habitat. In addition, any species using such habitat are likely to be temporary relocated to surrounding habitat and will return upon completion of the Project. However, any timing restrictions set forth by the reviewing agencies to protect T&E species will be followed, as required.

**V. N.J.A.C. 7:7-9.37 - Critical Wildlife Habitats**

Critical wildlife habitats are special areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding and migrating. A portion of the Project area is identified as a migratory raptor concentration site. According to NJ-GeoWeb Landscape Project Version 3.3 the migratory raptor concentration site is associated with land use identified as recreational land and herbaceous wetlands. This land area generally runs adjacent to JFK Boulevard Beach Drive from 3rd to 15th Avenues and generally within the dune and wetland complexes from 15th to 23rd Avenues. Project activities will result in minimal permanent disturbance for the bulkhead itself and may result in temporary disturbance during construction to potential habitat from 3rd to 21st Avenues and will occur only during the raptor migration period. If during raptor migration, it is likely the species will relocate to nearby areas. No disturbance to the seawall is proposed for the Project.

Although the Project may have some impact, it is unlikely that it will result in permanent adverse impacts to migrating raptors.

**W. N.J.A.C. 9:7-9.38 – Public Open Space**

Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. As the Project is proposed mostly on lands owned by the City and exists as beach, dunes, wetlands or wetland buffer, public open space will be impacted for construction of the bulkhead. The only permanent impact to the public open space is for the actual bulkhead itself which is approximately 0.0172 acres. During construction beach access and the beach will be temporarily closed generally within 200 feet of the active work area each day. As portions of the Project are completed, the area will reopen to the public.



Public open space is not anticipated to be adversely impacted by the Project. Construction of the Project will benefit the public's safety, health and welfare as it will alleviate erosion of the beach and protect flora and fauna species and their habitat. The Project will also facilitate continuous use or access of these lands.

**X. N.J.A.C. 7:7-9.39 – Special Hazard Areas**

As discussed above under Section II.A there are no known actual or potential hazards to public health and welfare, or to public or private property.

**Y. N.J.A.C. 7:7-9.48 – Lands and Waters Subject to Public Trust Rights**

According to NJ-GeoWeb Tidelands region Atlantic South map number 056-1962, the Project area is not within lands and waters subject to public trust rights as the Project is not within an area now or formerly below the mean high water line. Thus, the Project does not impact lands and waters subject to public trust rights.

**IV. DISCUSSION OF STANDARDS FOR BEACH AND DUNE ACTIVITIES AT N.J.A.C. 7:7-10**

As the Project does not propose routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and/or construction of a boardwalk, these standards do not apply.

If required, the dunes will be restored per the standards at N.J.A.C. 7:7-10.4.

**V. DISCUSSION OF GENERAL WATER AREAS AT N.J.A.C. 7:7-12**

General Water Areas are not applicable to the Project, as it is located entirely above the spring high water line.

**VI. DISCUSSION OF REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS AT N.J.A.C. 7:7-13**

Per N.J.A.C. 7:7-13.1(d), the impervious cover and vegetative cover rules do not apply to a linear development, which is a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission line. As the Project meets the definition of a linear development, the Project is not subject to the impervious cover and vegetative cover limits.

**VII. DISCUSSION OF GENERAL LOCATION RULES AT N.J.A.C. 7:7-14**

The following discussion addresses the General Location Rules that are applicable to the Project.

**A. N.J.A.C. 7:7-14.1 – Rule on Location of Linear Development**

The Project proposes the construction of a bulkhead generally adjacent to JFK Boulevard Beach Drive and the boardwalk.

The Project complies with Requirements for the location of linear development as follows:

- There is no prudent or feasible alternative alignment/location for the Project components which would have less impact on sensitive areas and marine fish or fisheries. The Project is designed to be outside of environmentally sensitive

areas to the greatest extent practicable. The Project is not anticipated to negatively impact marine fish or fisheries.

- The Project is not within a unique or irreplaceable area, therefore, the Project will not result in permanent or long-term loss to these areas.
- The Project was designed to minimize adverse environmental impacts to the maximum extent practicable by avoiding disturbance to dunes, wetlands, wetland buffers and the beach to the greatest extent practicable. Permanent disturbance to wetlands, dunes and/or beaches will be restored/mitigated for as required. See Section X below for a discussion on mitigation. All temporary disturbances to dunes, wetlands, wetland buffers and the beach will be restored upon the Project's completion. Beach and dune areas as well as vegetation were destroyed by erosion. Any naturally destroyed areas will not be restored, as these areas are impossible to exist due to natural conditions. Any restoration could be limited to the landward side of the bulkhead. The purpose of the Project is to protect further damage and destruction due to erosion.
- The Project was designed to generally run adjacent to JFK Boulevard and Beach Drive and the boardwalk with the exception of segments that went around existing structures such as piers. Thus, the alignment is located on or in existing transportation corridors and alignments, to the maximum extent practicable.

**B. N.J.A.C. 7:7-14.2 - Basic Location Rule**

The Project complies with requirements for the basic location rule as follows:

- The City's Atlantic coastline has been undergoing severe erosion since at least 1991 creating unsafe conditions on the beach. An eroding beach is a hazard for walking and can cause people to trip and sustain injuries. Further, if unmitigated erosion continues over a period of time, the street could be impacted. Exposed pipes and jagged concrete would be a health and safety concern, as they could cause injury and exposed pipes could cause damage to infrastructure. Since the purpose of the Project is to prevent erosion damage, the Project could be considered necessary to protect public health and infrastructure. The Project will promote the public health, safety, and welfare to the community.
- The Project will result in conditions that will protect both public and private property, wildlife and marine fisheries.
- The Project has been designed to preserve, protect and enhance the natural environment to the extent practicable.

**C. N.J.A.C. 7:7-14.3 Secondary Impacts**

No negative secondary impacts are anticipated from construction of the Project. The purpose of the Project is to protect the City's infrastructure, commercial and private properties and prevent further erosion of the beach, dunes and/or wetlands. With this Project the City will be providing and maintaining safe conditions for both the local and visiting community.



## **VIII. DISCUSSION OF USE RULES AT N.J.A.C. 7:7-15**

The following discussion addresses the Use Rules that are applicable to the Project.

### **A. N.J.A.C. 7:7-15.3 Resort/Recreational Use**

As the Project area is located adjacent to the beach, boardwalk, sidewalks and/or paths and traverse natural habitats, it may provide recreational opportunities to its users. As discussed above under Section II.A the Project resulted or will result in permanent disturbance for construction of the bulkhead. Any restriction of public access is temporary. Construction of the bulkhead only restricted or will restrict public access to these potential recreational areas within a 200 foot radius of construction each day. Limits of closure change by day as construction of the bulkhead progressed or progresses. Therefore, there will be no long-term impacts on the recreational use of the area. The proposed improvements will improve recreational access and uses in the City by preventing continued erosion of the beach and protecting city infrastructure including the boardwalk, paths and sidewalks.

### **B. N.J.A.C. 7:7-15.11 Coastal Engineering**

Coastal engineering measures include structural shore protection and storm damage reduction measures to manage water areas and protect the shoreline from the effects of erosion, storms, and sediment and sand movement, which is the Project. The purpose of the Project is to protect the City's infrastructure and prevent the beach and shoreline from the effects of further erosion. As a portion of the bulkhead was constructed based on emergency needs, non-structural shore protection and/or storm reduction measures were not sufficient and are not sufficient for protection the City's coastline from the continued erosion.

A portion of the bulkhead is located in a V zone and thus is subject to wave runup forces. Both the previously constructed and proposed portions of the bulkhead were/are designed and certified by a professional engineer to withstand the forces of wave runup as depicted on the plans provided under Attachment 13.

## **IX. DISCUSSION OF RESOURCE RULES AT N.J.A.C. 7:7-16**

The following discussion addresses the Resource Rules that are applicable to the Project.

### **A. N.J.A.C. 7:7-16.2 – Marine Fish and Fisheries**

As the Project is proposed upland of the MHWL no impact to marine fish and fisheries is anticipated. See Section III.D above for additional discussion on impacts to alewife and Atlantic sturgeon migratory pathways.

### **B. N.J.A.C. 7:7-16.3 – Water Quality**

Per N.J.A.C. 7:8-5.5 stormwater management measures will not be required for water quality control since the Project will not result in an additional one-quarter acre of impervious surface. Additionally, per N.J.A.C. 7:8-5.2, linear development projects are exempt from stormwater runoff quality requirements. Therefore, the applicant is not required to address water quality for the construction of the Project.

**C. N.J.A.C. 7:7-16.6 – Stormwater Management**

Although the Project meets the definition of a “major development” at N.J.A.C. 7:8, stormwater management is not required for the Project per:

- N.J.A.C. 7:8-5.4 (a)2ii groundwater recharge requirement does not apply to projects within the “urban redevelopment area.” The Project is located within a designated regional center per the Policy Map of the State Development and Redevelopment Plan.
- N.J.A.C. 7:8-5.4(a)3iv stormwater runoff quantity in tidal flood hazard areas, is not required as the increased volume of stormwater runoff will not increase flood damages below the point of discharge.
- N.J.A.C. 7:8-5.5 stormwater management measures will not be required for water quality control since the Project will not result in an additional one-quarter acre of impervious surface.

**D. N.J.A.C. 7:7-16.7 Vegetation**

As discussed above under Sections I and II.A a portion of the Project area exists as vegetated wetlands and dunes. The location of the Project was selected adjacent to JFK Boulevard Beach Drive and the boardwalk to preserve this vegetation to the maximum extent possible. Any areas of temporary disturbance will be restored upon the Project’s completion with native coastal species.

**E. N.J.A.C. 7:7-16.9 – Public Access**

As discussed above under Section III.W Public Open Space and VIII.A Resort/Recreational Use the Project is located mainly adjacent to JFK Boulevard Beach Drive and the boardwalk on land owned by the City. Any restriction to public access will occur within 200 feet of active construction and is temporary. Limits of closure change by day as construction of the bulkhead progresses. As the Project does not propose any change to the existing public access points to the beach there will be no long-term impacts to public access.

In fact, the Project will promote unhindered access to the waterfront and other public areas by protecting the existing roads, boardwalks and path that provide access to/from the beach. The Project will also aid in preventing further erosion and destruction of the beach, dunes and/or wetlands which ultimately enhances the public’s health, safety, and welfare.

**F. N.J.A.C. 7:7-16.10 Scenic Resources and Design**

The elevation of the timber decking of the bulkhead from 3rd to 4th Avenues is 11.7± feet, from 4th to 5th Avenues is 12± feet and from 5th to 25th Avenues is 12.0± feet. The bulkhead extends approximately 2 to 6 feet above ground surface throughout the Project length which is below the allowed 15 feet maximum. Note the dune system generally from 12th to 25th Avenues exceeds the height of the bulkhead. The color of the timber decking was chosen to help make the bulkhead visually compatible with its surroundings. Therefore, the bulkhead will not drastically change the scenic view of the surrounding area. The existence of the bulkhead will actually increase the scenic value of the

surrounding area, as the Project will protect further erosion and destruction of the beach, dunes and/or wetlands.

**X. DISCUSSION OF MITIGATION AT N.J.A.C. 7:7-17**

Construction of the Project will result in 0.394 acres of disturbance to freshwater wetlands. No disturbance to coastal wetlands, shellfish habitat, submerged vegetation habitat, intertidal and subtidal shallows and tidal waters, or riparian zone is proposed, therefore mitigation for these areas is not required. A mitigation proposal for disturbance to freshwater wetlands will be provided under separate cover.

**XI. COMPLIANCE WITH CAFRA RULES AT N.J.S.A. 13:19-10**

The Project has been reviewed and found to be in compliance with Section 10 of CAFRA as follows:

**A. N.J.S.A. 13:19-10a**

*Conforms to all applicable air, water, and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.*

The Project will conform to all applicable air, water and radiation standards. The impacts to air and water will be minimized, during construction activities, by using properly maintained and operated equipment. These impacts will also be maintained through implementation of an approved Soil Erosion and Sediment Control plan. At the completion of the Project, no unusual or significant impacts to air quality or water quality are anticipated over that which currently exists. Impacts to air quality are in keeping with the impacts expected for activities approved under the City Zoning Ordinance.

**B. N.J.S.A. 13:19-10b**

*Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.*

As discussed above, the Project will prevent air emission and water effluents in excess of the existing dilution, assimilative and recovery capacities at and in the vicinity of the Site.

**C. N.J.S.A. 13:19-10c**

*Provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.*

Any collection and disposal of litter, recyclable material and solid waste encountered during construction will be handled in a manner as such to minimize adverse environmental effects. The Project will help to reduce negative environmental impacts, and will aid in the protection of public health, safety, and welfare.

**D. N.J.S.A. 13:19-10d**

*Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.*

The Project does not propose the use of or impact to water aquifers, and does not demand the use of ground/surface water supplies.

**E. N.J.S.A. 13:19-10e**

*Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.*

The Project site is mainly adjacent to an intensely developed portion of the City to the greatest extent practicable. The majority of the disturbance will be temporary in nature and will be restored upon completion of the Project.

The purpose of the Project is to protect the City's infrastructure and protect the dunes, beach and freshwater wetlands from further erosion and destruction, thus protecting the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.

Therefore, the Project has been designed to minimize any interference with the natural function of plant, animal, fish and human life processes at the site and within the surrounding region to the greatest extent practicable.

Refer to Section III.U and V for a discussion of Threatened and Endangered Species and Critical Wildlife Habitat, respectively.

**F. N.J.S.A. 13:19-10f**

*Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.*

The Project is located adjacent to existing structures and within a busy area of the City consisting of private properties and commercial development. The Project is proposed to improve the quality of public health, safety, and welfare through the protection of City infrastructure and private properties and will prevent further erosion of the beach, dunes and wetlands. Construction activities will be conducted in accordance with all governing requirements, such as Cape Atlantic Soil Conservation District and the NJDEP.

**G. N.J.S.A. 13:19-10g**

*Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region.*

The Project is not proposed within an area containing unique or irreplaceable land types or any known historical or archeological areas, and will not impact the existing public scenic attributes. A majority of the Project is located adjacent to the JFK Boulevard Beach Drive and the boardwalk. See Section IX.F above for a discussion on the impact to Scenic Resources. Overall, the Project is not anticipated to adversely impact any unique, historic, or scenic attributes.

## **XII. CONCLUSION**

Salient points to consider when reviewing this application:

- Proposed is a linear project to protect City infrastructure and prevent the further erosion of the beach, dunes and wetlands by reconstructing and extending the bulkhead from 3rd to 25th Avenues.
- Extensive erosion over time can lead to exposed utilities and jagged asphalt/concrete, resulting in unsafe and hazardous conditions to the community. The Project will prevent the creation of such conditions, thus improving the health and welfare of the general public.
- Project improvements will result in minimal adverse impacts to sensitive environmental resources. Restoration/mitigation will be provided for these disturbances as required.
- The Project has been designed to comply with the requirements of N.J.A.C. 7:7, N.J.A.C. 7A, N.J.A.C. 7:8, and N.J.A.C. 7:13 to the greatest extent practicable.
- The Project has been designed to minimize the amount of new impervious surfaces to the greatest extent practicable. Of the 4.352 acres of land disturbance required to complete the Project, only approximately 749 square feet of new impervious will result.
- Alternatives to the Project are not feasible or reasonable as the purpose of the Project.

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KITAWADAOB

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DCS

AVENUE

SURF

OCEAN AVENUE

18TH AVENUE

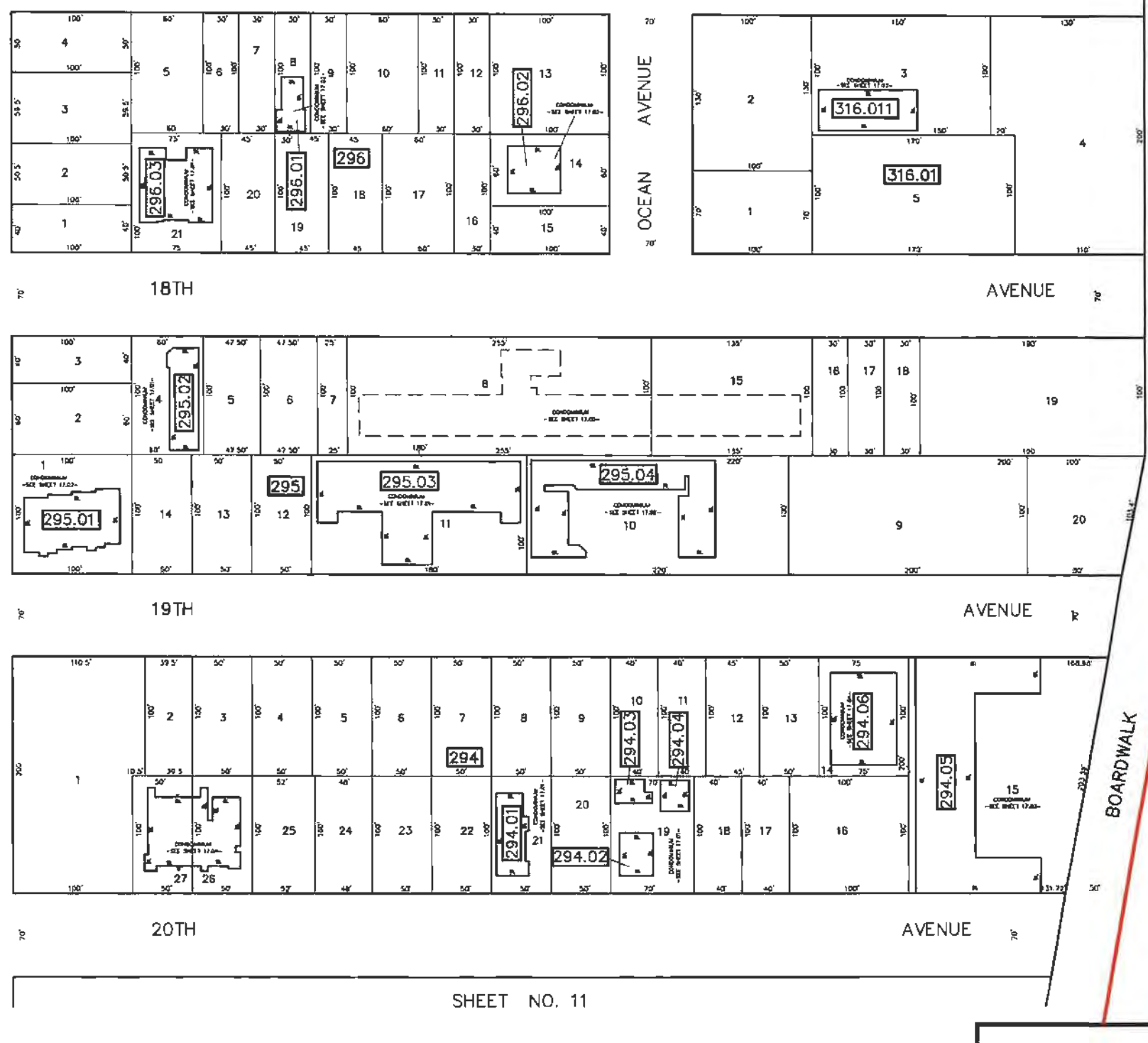
19TH AVENUE

20TH AVENUE

BOARDWALK

SHEET NO. 16

SHEET NO. 11

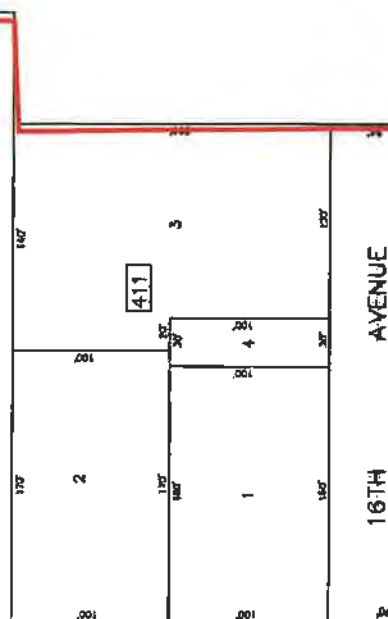
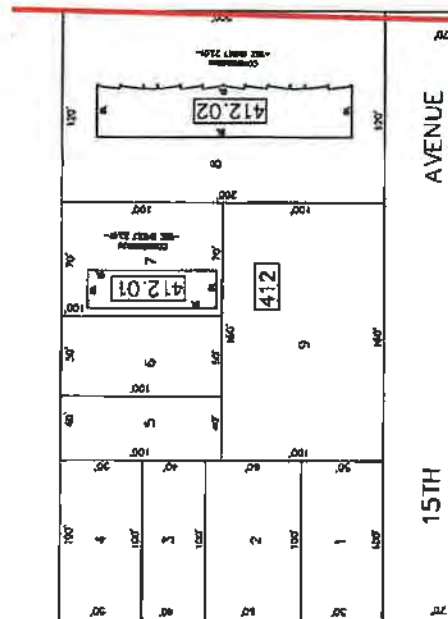


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CITY OF  
CALIFORNIA  
SCALE

SHEET NO. 62

SHEET NO. 61

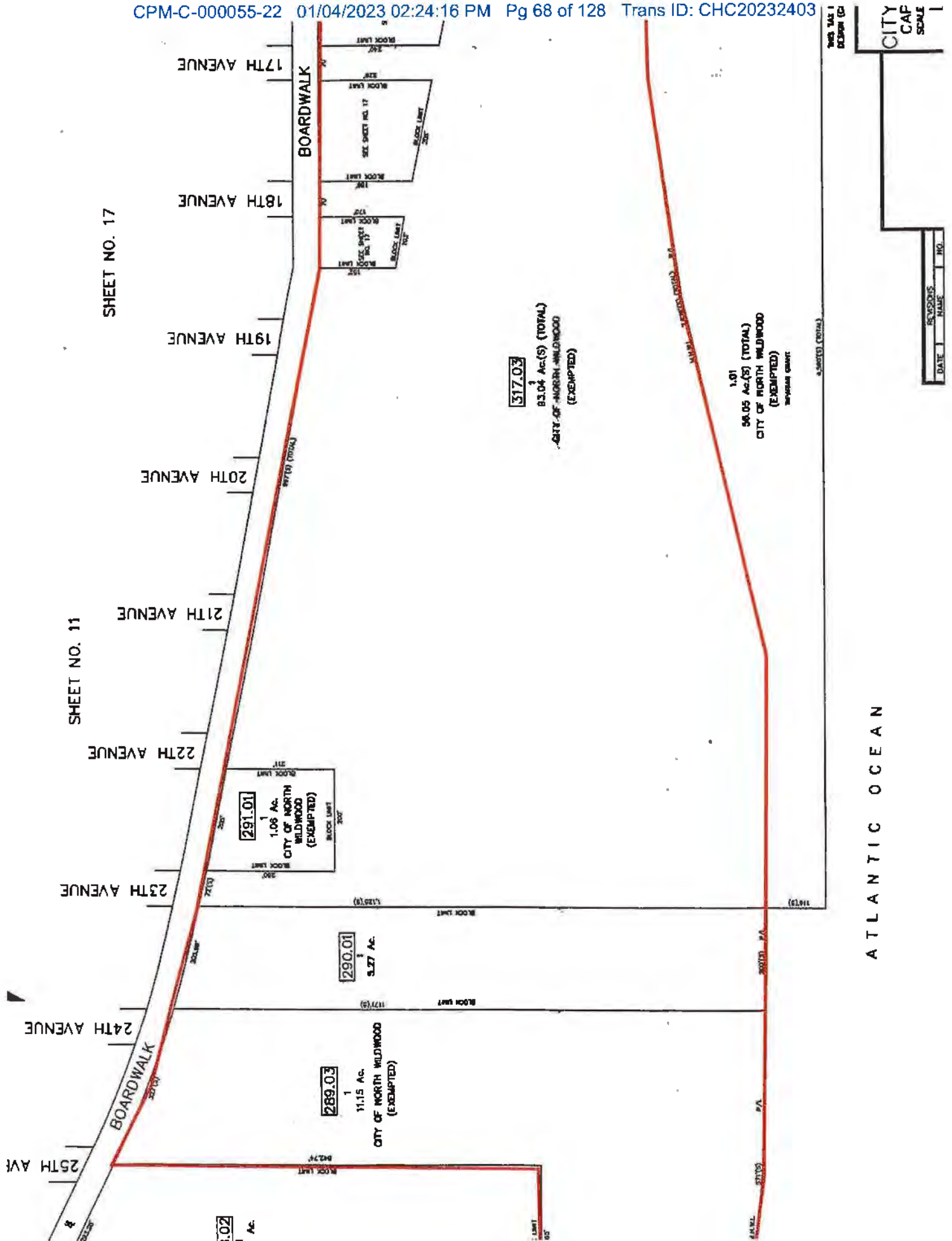


SHEET NO. 22

OCEAN

SHEET NO.17





SHEET NO. 39

SHEET NO. 35

SHEET NO. 29

14TH AVENUE  
13TH AVENUE  
12TH AVENUE  
11TH AVENUE  
10TH AVENUE  
9TH AVENUE  
8TH AVENUE  
7TH AVENUE  
6TH AVENUE

JOHN F. KENNEDY - BEACH DRIVE

317.03  
93.04 AC(S) (TOTAL)  
CITY OF NORTH WILLOWOOD  
(EXEMPTED)

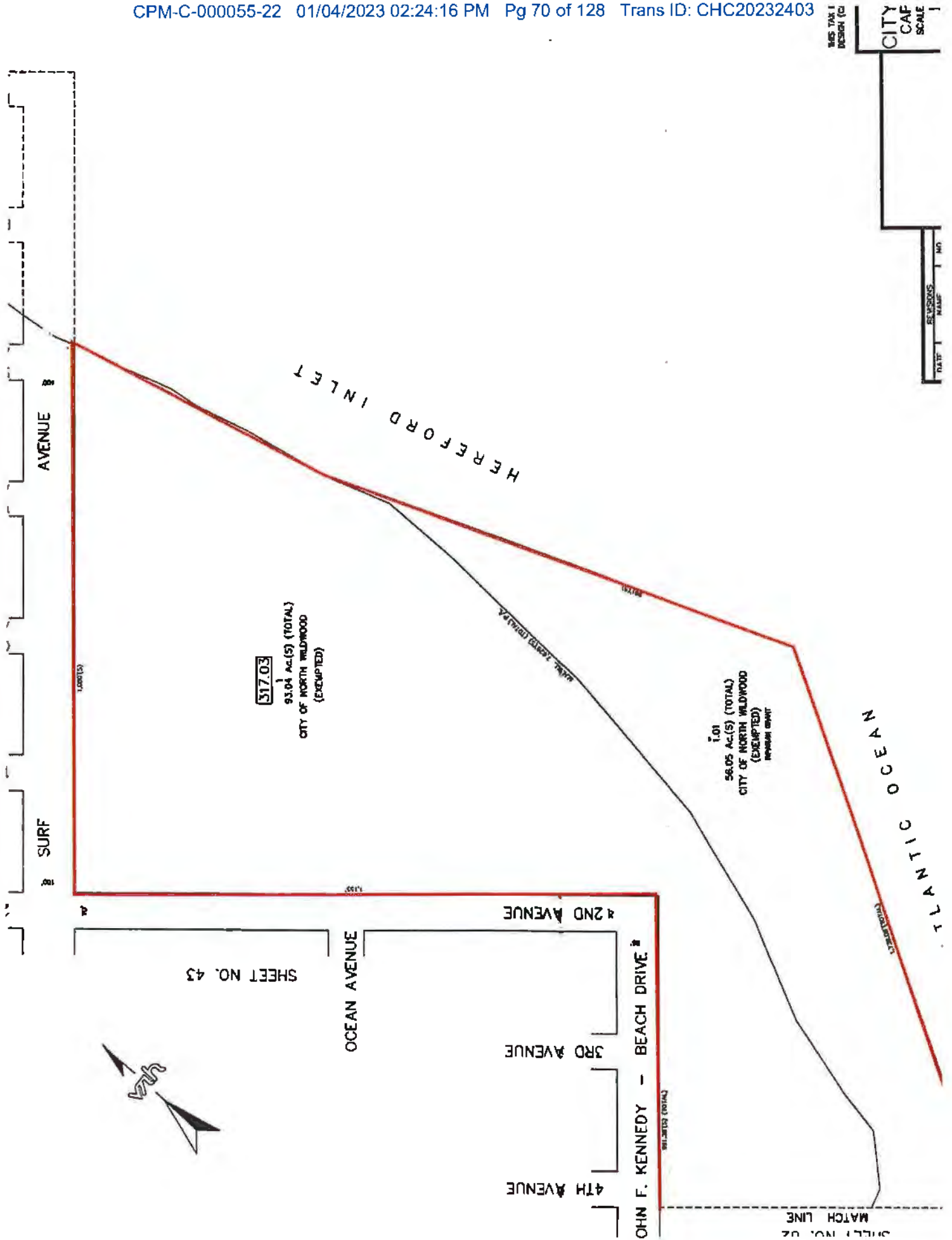
1.01  
58.05 AC(S) (TOTAL)  
CITY OF NORTH WILLOWOOD  
(EXEMPTED)  
REVENUE GENT

ATLANTIC OCEAN

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DESIGNED FOR

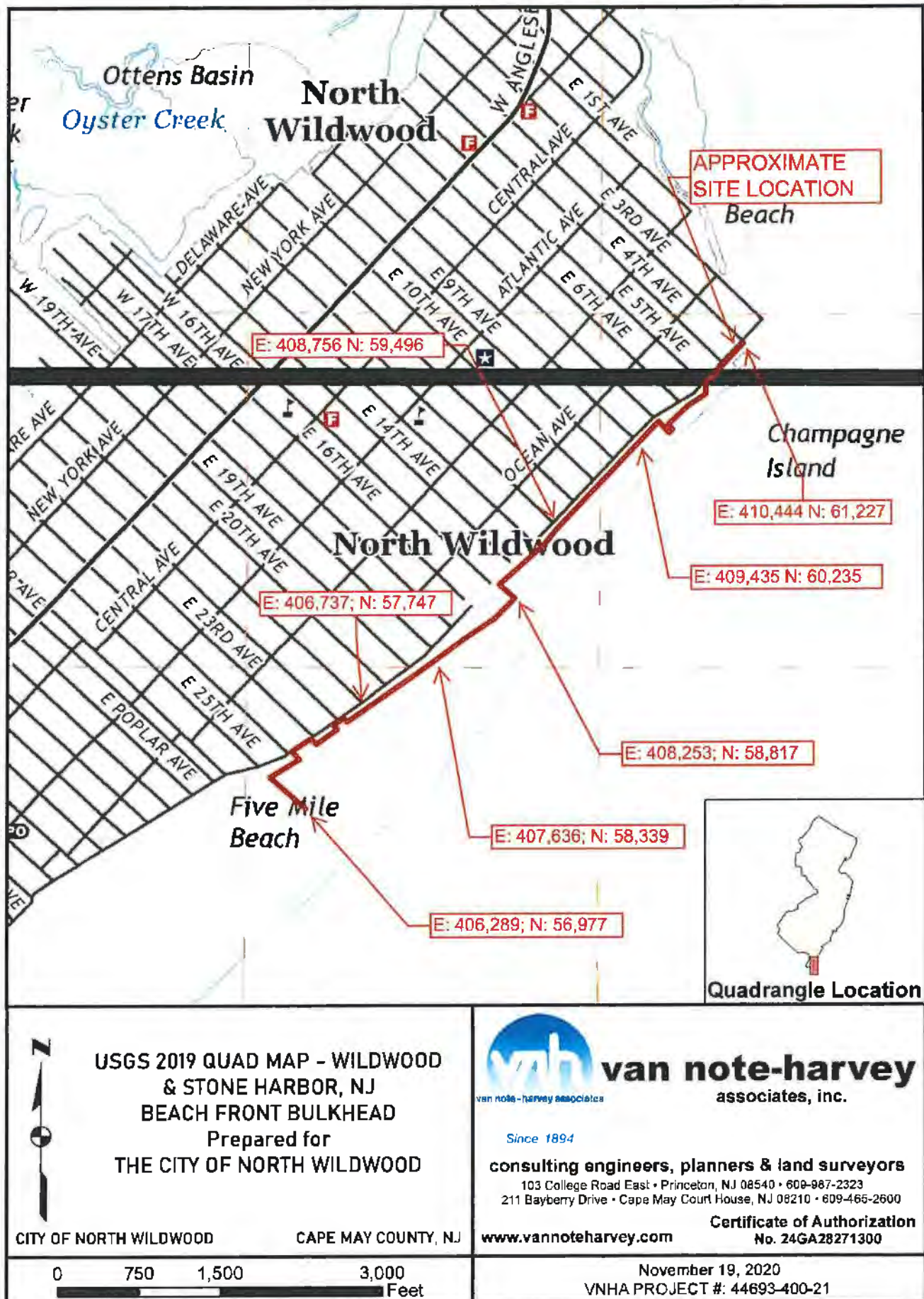
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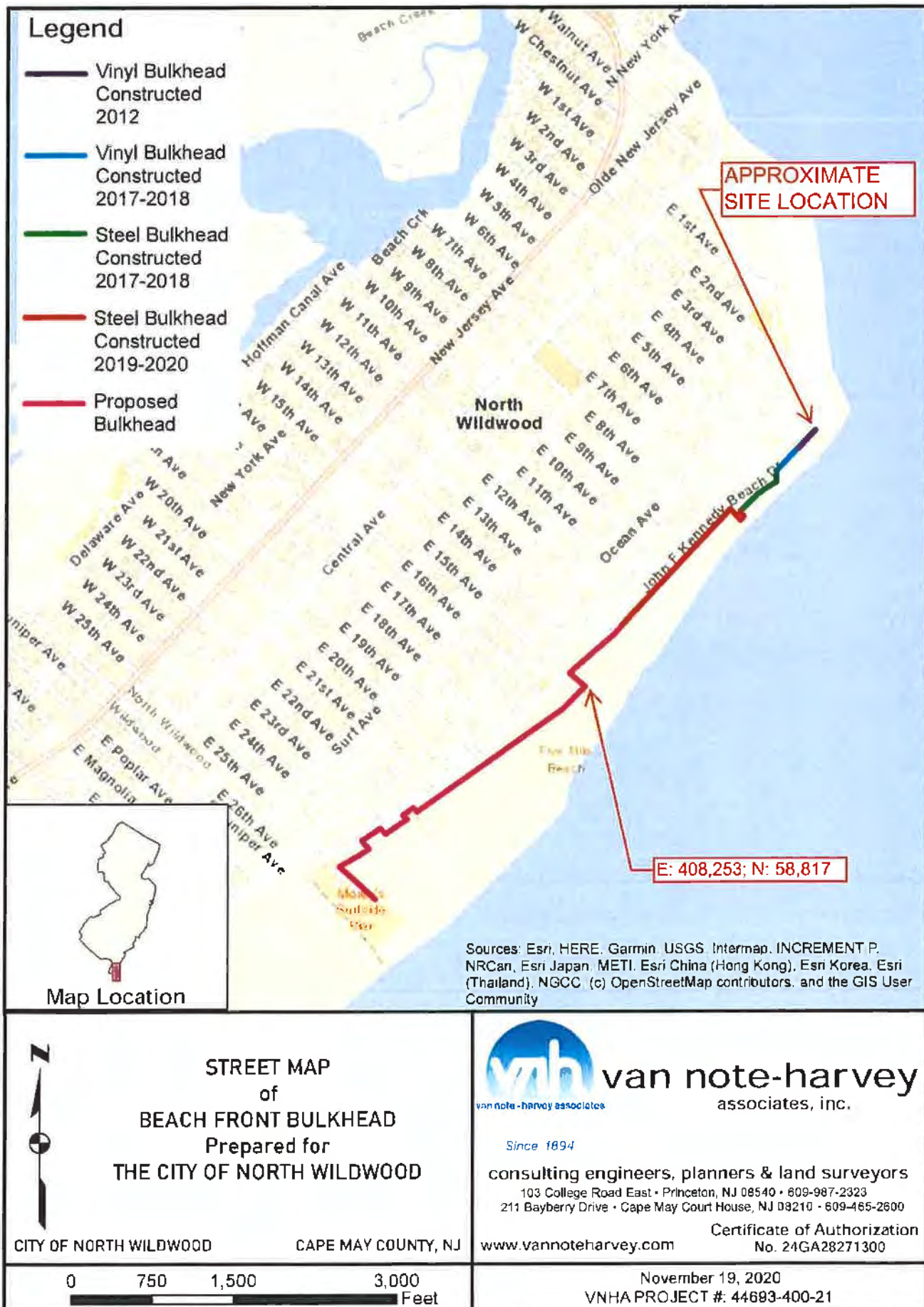
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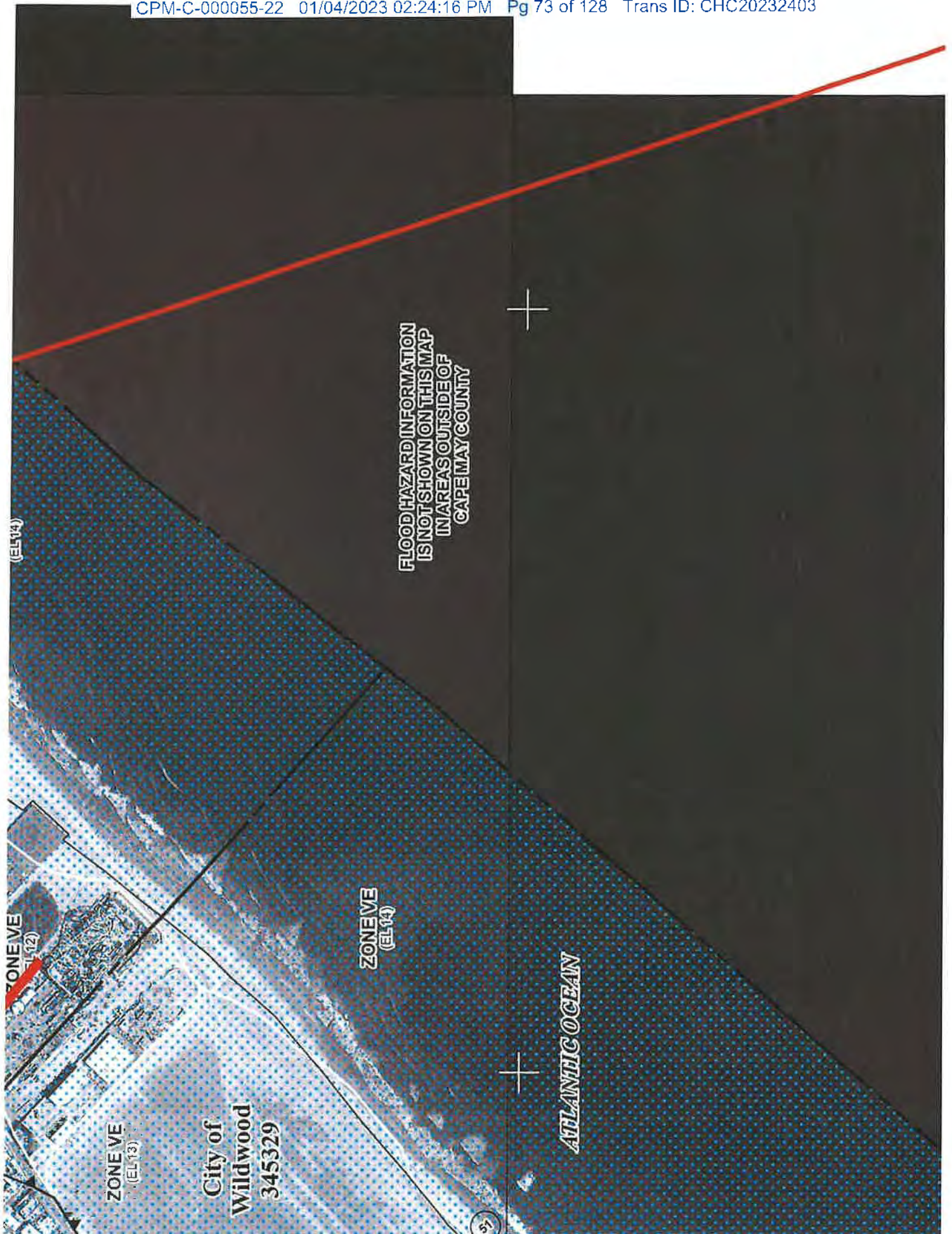


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NearMap aerial imagery dated March 2020.



PHOTOGRAPH KEY MAP 1  
of  
BEACH FRONT BULKHEAD  
Prepared for  
THE CITY OF NORTH WILDWOOD

CITY OF NORTH WILDWOOD

CAPE MAY COUNTY, NJ

0 187.5 375 750  
Feet



**van note-harvey**  
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211 Bayberry Drive • Cape May Court House, NJ 08210 • 609-465-2600

[www.vannoteharvey.com](http://www.vannoteharvey.com)

Certificate of Authorization  
No. 24GA28271300

November 19, 2020  
VNHA PROJECT #: 44693-400-21





NearMap aerial imagery dated March 2020.



**PHOTOGRAPH KEY MAP 2  
of  
BEACH FRONT BULKHEAD  
Prepared for  
THE CITY OF NORTH WILDWOOD**

CITY OF NORTH WILDWOOD

CAPE MAY COUNTY, NJ

0 187.5 375 750  
Feet



**van note-harvey**  
associates, inc.

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VNHA PROJECT #: 44693-400-21

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**PHOTOGRAPH KEY MAP 3  
of  
BEACH FRONT BULKHEAD  
Prepared for  
THE CITY OF NORTH WILDWOOD**

CITY OF NORTH WILDWOOD

CAPE MAY COUNTY, NJ

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Feet



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Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #1 – View of landward side of vinyl bulkhead at 3<sup>rd</sup> Avenue looking southwest.



Photo # 2 – View of waterward side of vinyl bulkhead at 3<sup>rd</sup> Avenue looking northeast.

Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #3 – View of waterward side of vinyl bulkhead at 3<sup>rd</sup> Avenue looking southwest.



Photo #4 – View of waterward side of vinyl bulkhead and steel bulkhead, and former dune area at 4<sup>th</sup> Avenue looking southwest.



Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #5 – View of beach access at the 5<sup>th</sup> Avenue.



Photo #6 – View of the local community fishing at the steel bulkhead at 5th Avenue at the location of the former beach.



Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo # 7 – View of timber cap and steel bulkhead at 6<sup>th</sup> Avenue looking southwest.



Photo #8 - View of steel bulkhead at 7th Avenue looking northeast showing erosion and flooding on landward side of the bulkhead.

Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #9 – View of timber cap and steel bulkhead looking southwest toward 7<sup>th</sup> Avenue.



Photo #10 – View of timber cap and steel bulkhead at 7<sup>th</sup> Avenue looking southwest.



Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #11 – View of waterward side of steel bulkhead at 7<sup>th</sup> Avenue looking northeast.



Photo #12 – View of steel bulkhead at 8<sup>th</sup> Avenue looking northeast.

Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #13 – View of timber cap and steel bulkhead at 9<sup>th</sup> Avenue looking northeast showing location of former wetlands/dune.



Photo #14 – View of typical beach access over steel bulkhead at 10<sup>th</sup> Avenue looking southwest.



Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #15 – View of timber cap and steel bulkhead at 12<sup>th</sup> Avenue looking southwest.



Photo #16 – View of steel bulkhead and location of former wetland at 13<sup>th</sup> Avenue looking northeast.

**Beach Front Bulkhead Project**  
**City of North Wildwood, Cape May County, New Jersey**



Photo #17 – View of proposed location for steel bulkhead at 15<sup>th</sup> Avenue looking southwest near the Beach Patrol Building.



Photo #18 – View of typical beach and dune erosion at 15<sup>th</sup> Avenue looking southwest.



Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #19 – View of proposed bulkhead location at 16<sup>th</sup> Avenue looking northeast at the Beach Patrol Building.



Photo #20 – View proposed bulkhead location at 19<sup>th</sup> Avenue looking southwest towards the Seaport Pier.

Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #21 – View of typical beach and dunes at 19<sup>th</sup> Avenue looking northeast.



Photo #22 – View of proposed bulkhead location at 24<sup>th</sup> Avenue looking southeast.



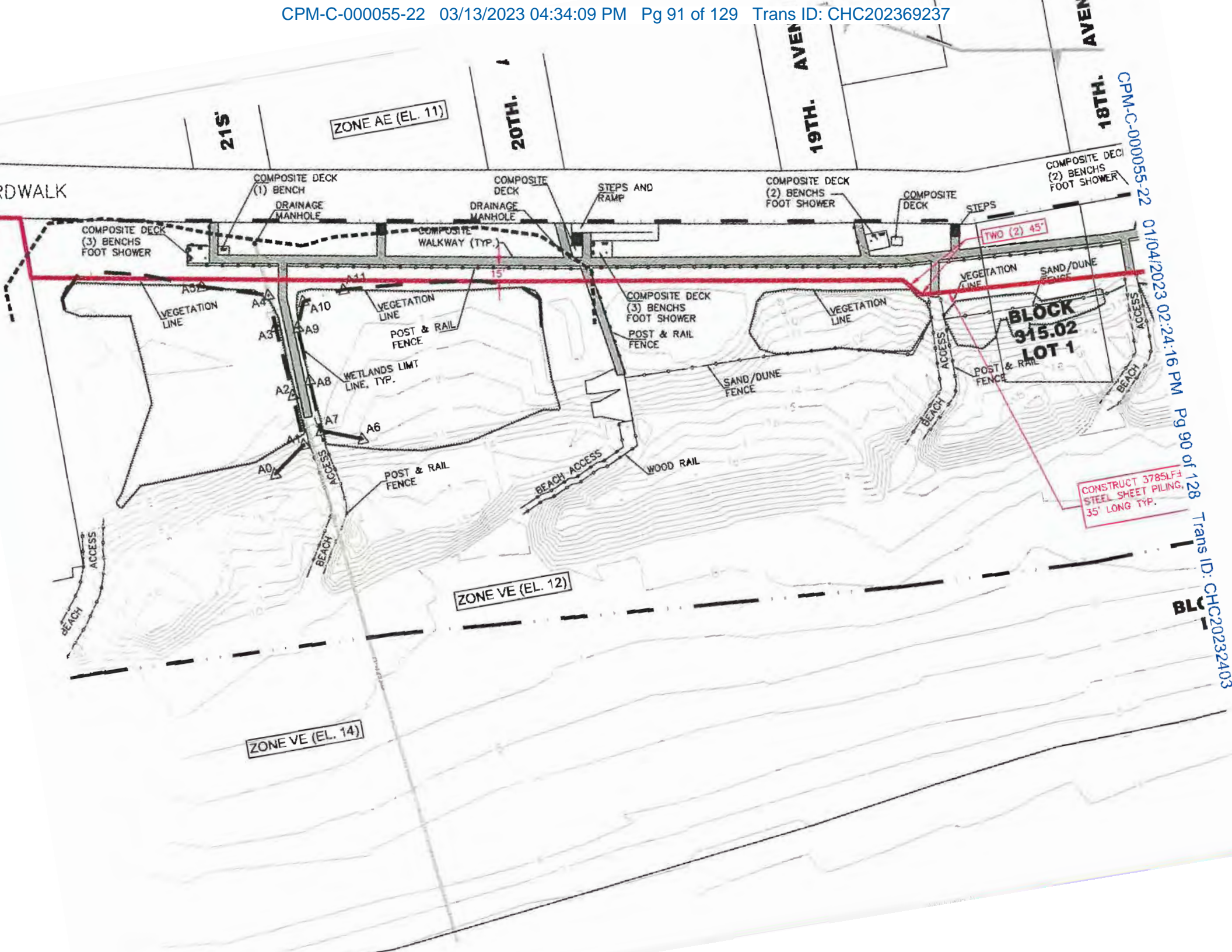
Beach Front Bulkhead Project  
City of North Wildwood, Cape May County, New Jersey



Photo #23 – View of proposed steel bulkhead location at 24<sup>th</sup> Avenue looking southwest.



Photo #24 – View of proposed steel bulkhead location at 25<sup>th</sup> Avenue looking southeast.

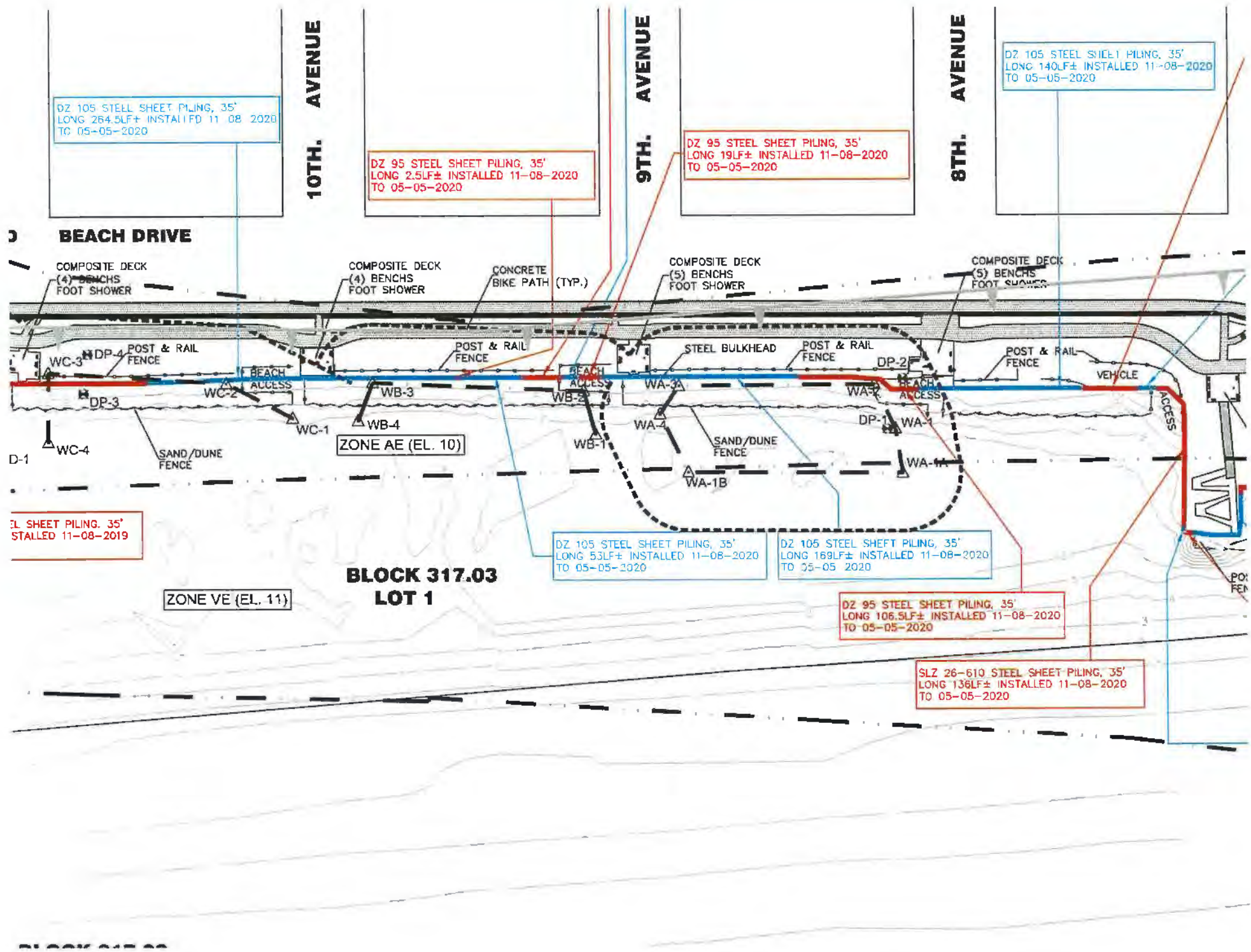


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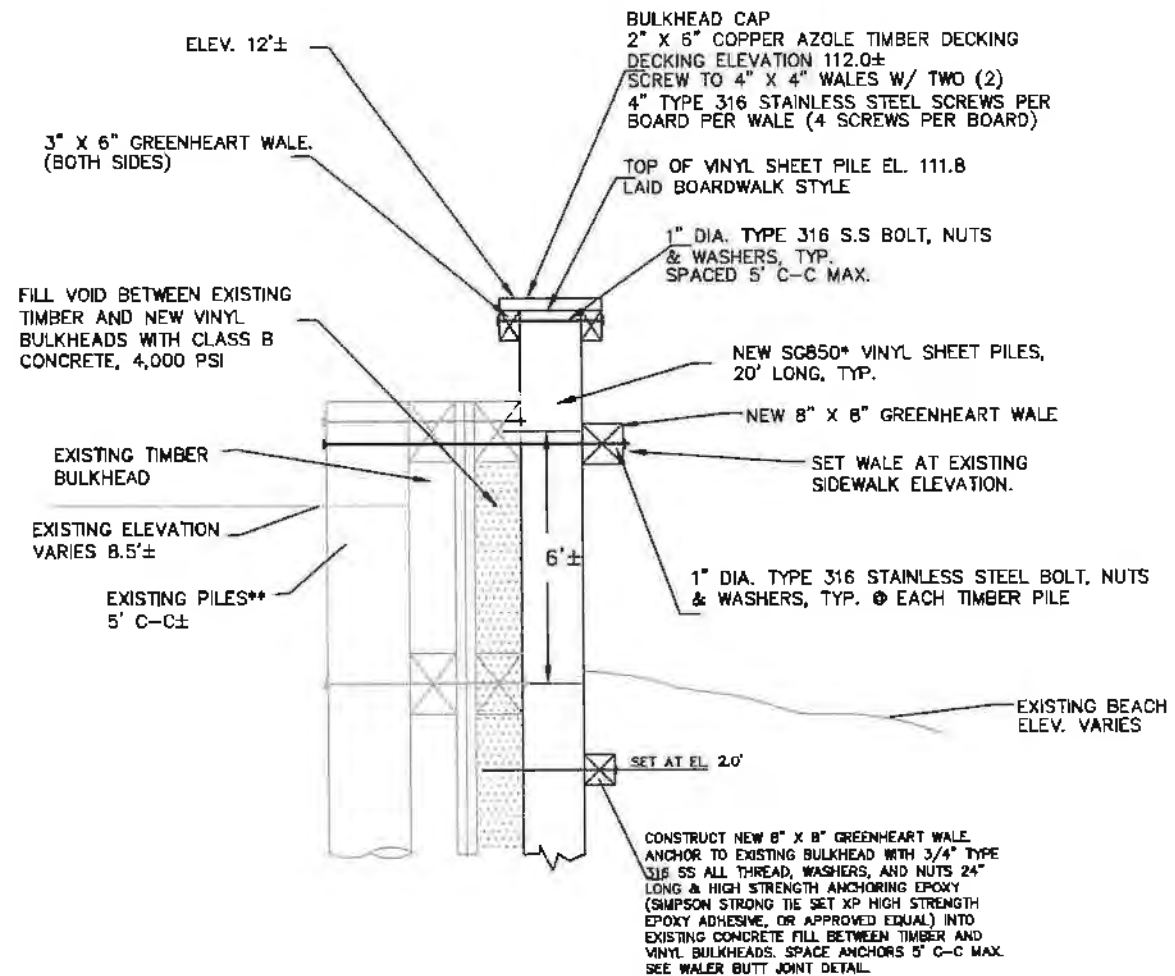
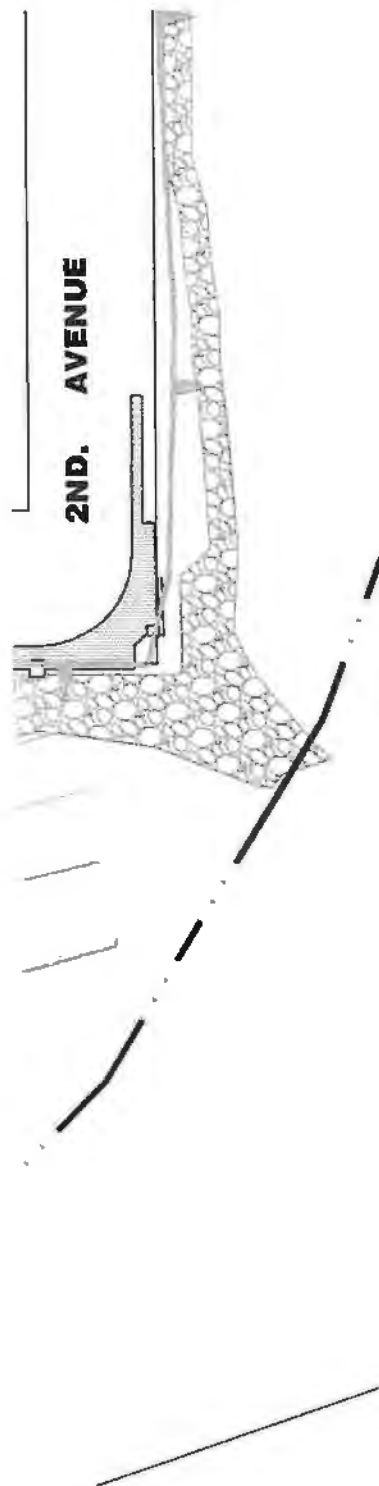
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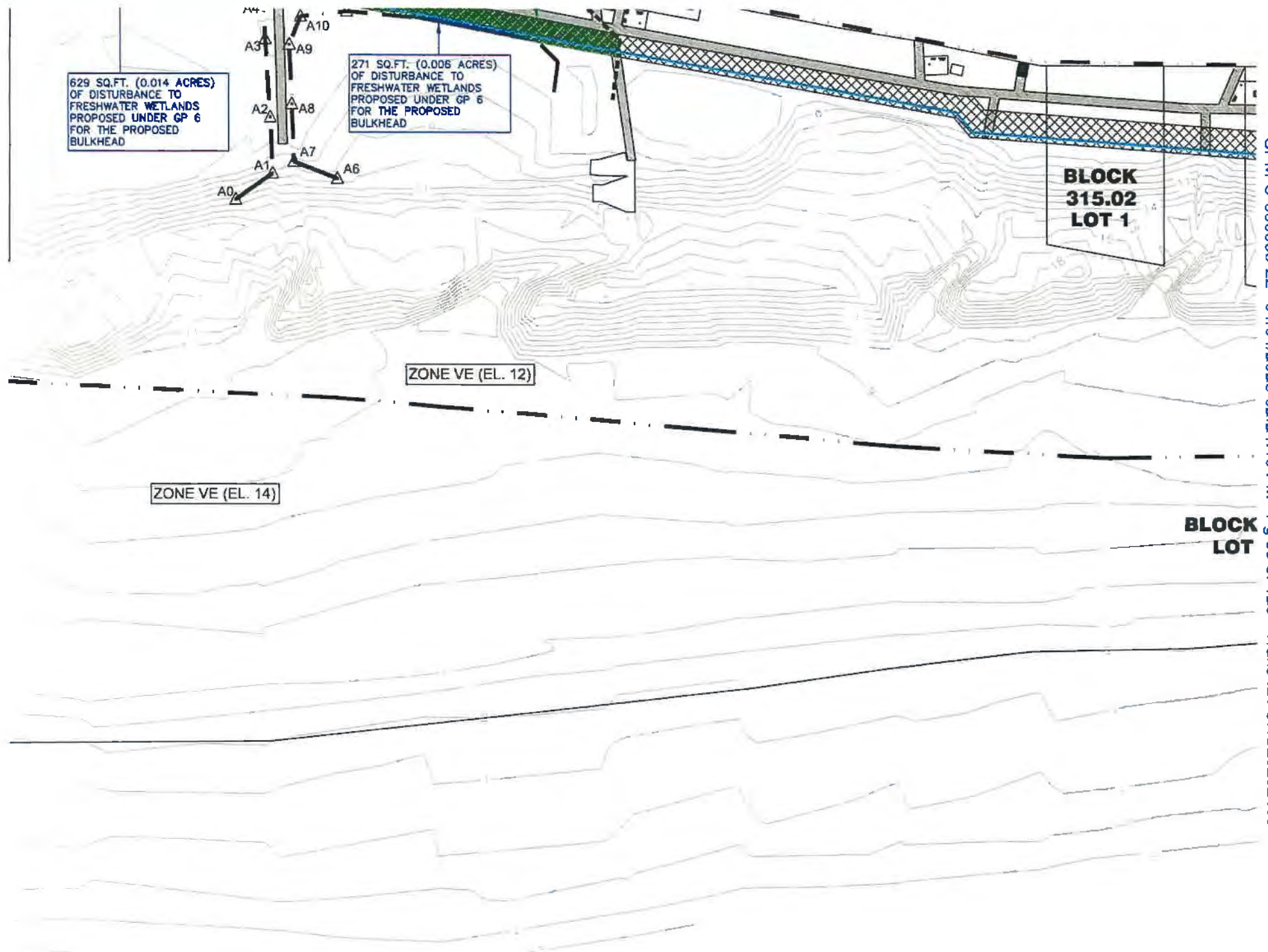


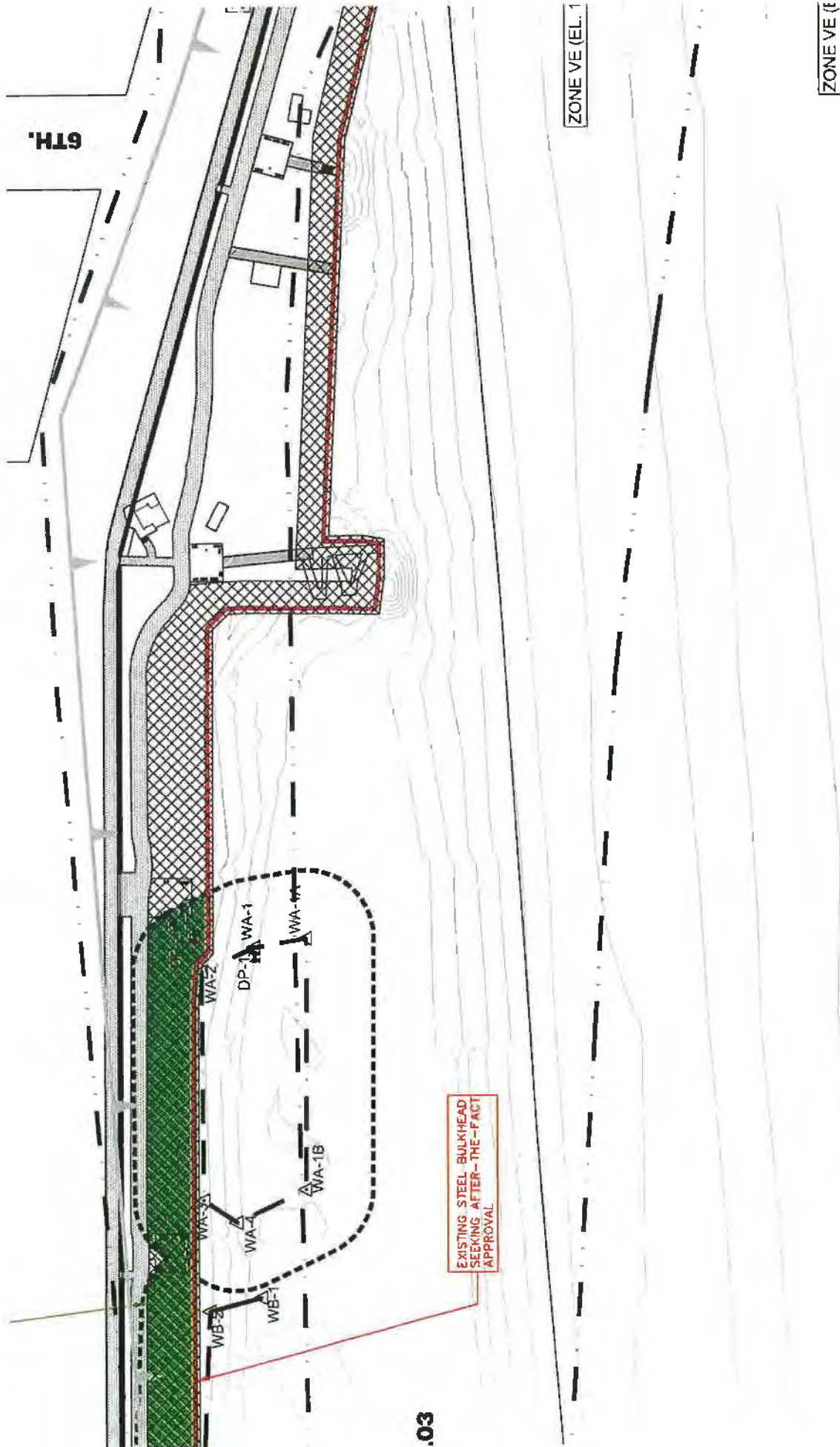






NOTES:





# **EXHIBIT D**



# Hereford Inlet to Cape May Inlet, New Jersey

Coastal Storm Risk Management Project

Wildwoods Beachfill

(Diamond Beach - Lower Township)

William Dixon  
Asst. Director - NJDEP  
Office of Coastal Engineering  
William.Dixon@dep.nj.gov

Erik Rourke  
Project Manager - USACE  
Philadelphia District  
Erik.J.Rourke@usace.army.mil

Chris Constantino  
Environmental Specialist 3/Project Manager  
Office of Coastal Engineering  
Christopher.Constantino@dep.nj.gov

Stephen Rochette  
Public Affairs Officer – USACE  
Philadelphia District  
Stephen.Rochette@usace.army.mil

Presentation Updated: February 23, 2022

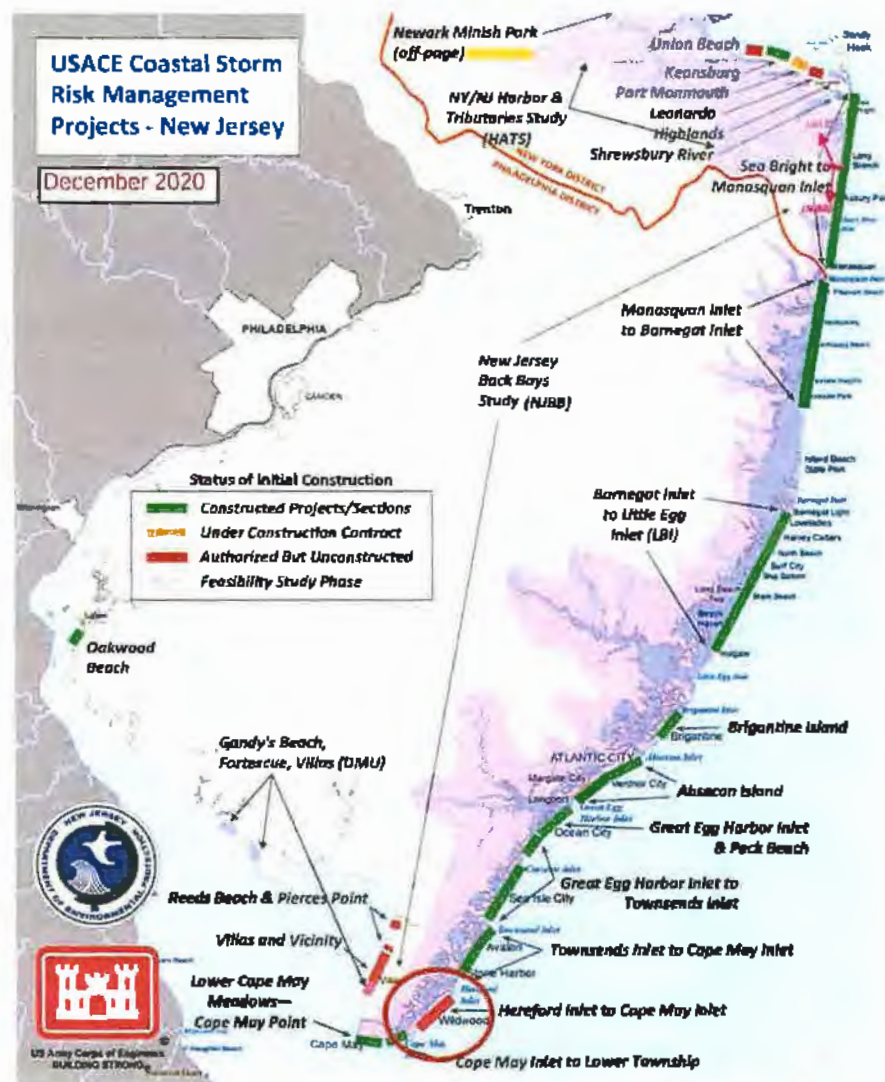


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# Shore Protection

- New Jersey's beaches not only provide recreation for beachgoers and fishermen and support a multi-billion-dollar tourism industry but play a much more critical role when faced with a coastal storm. Healthy beach and dune systems provide mitigation from these natural disasters by acting as a buffer between the pounding surf and the homes, businesses and infrastructure along the coast.

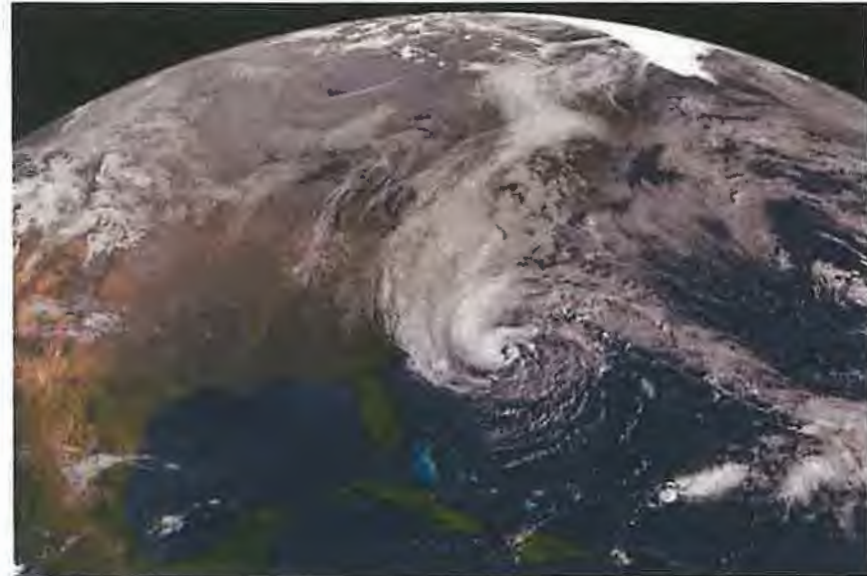


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# Project Purpose

To provide for hurricane and storm damage reduction for coastal communities located between Hereford Inlet and Cape May Inlet, Cape May County, New Jersey

- *Feasibility Study:* “an examination of the specific water resource and shore protection needs for North Wildwood, Wildwood, Wildwood Crest and Lower Township, NJ with a goal to reduce storm damage, maintain existing coastal recreation and provide information to planners, engineers, and scientists



*Hurricane Sandy Approaches the East Coast 2012*



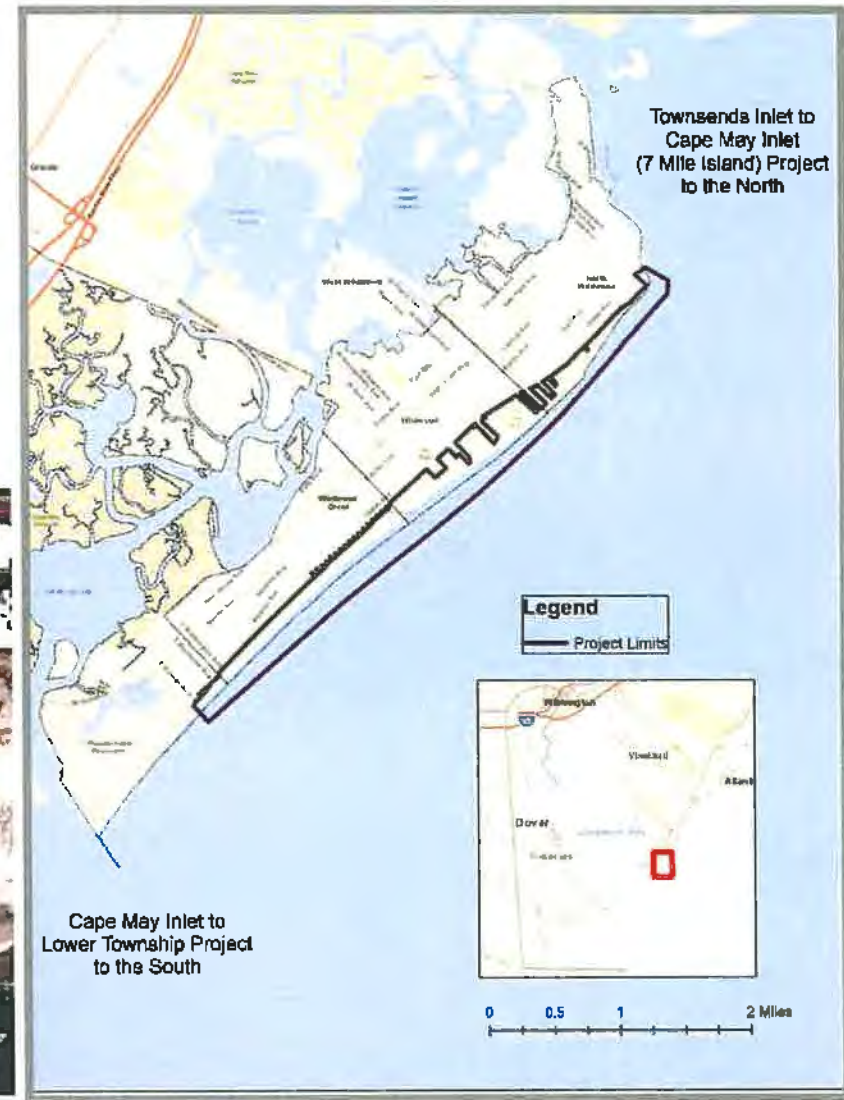
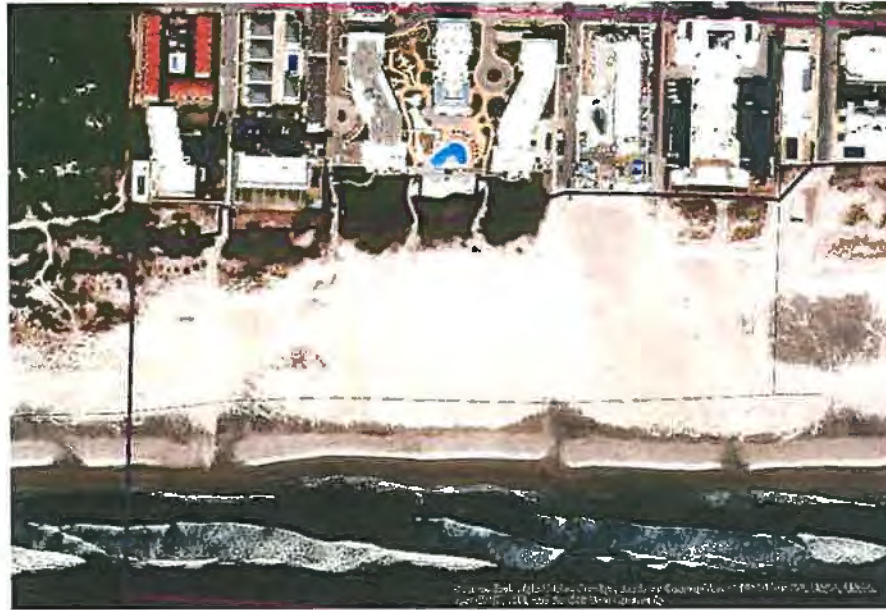
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# Project Area

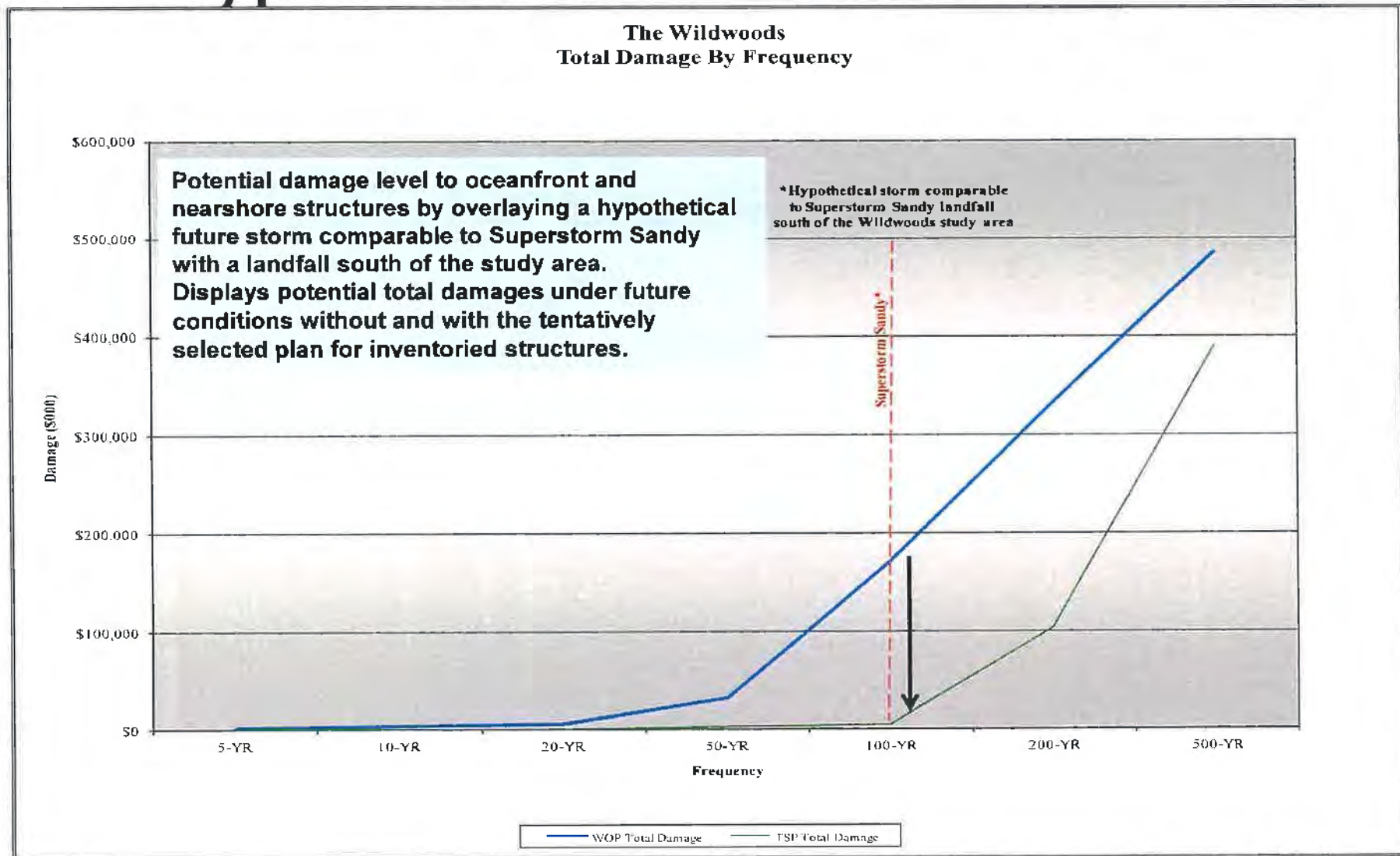
Atlantic Ocean coastline along:

North Wildwood  
Wildwood  
Wildwood Crest  
Lower Township



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# Risk Reduction for a Hypothetical 100 Year Storm



# Project Milestones

- DRAA 2013 – Jan. 23, 2013
- Amended Feasibility Cost Share Agreement – Oct. 28, 2013
- Civil Works Review Board – Aug. 21, 2014
- Chief's Report – Jan. 23, 2015
- 30% Plan Review – Nov. 30, 2016
  - ▶ Comments from Township March 15, 2017
- Project Partnership Agreement (PPA) – Jan. 17, 2017
- PPA Amendment – Jan, 16, 2018
- 60% Plan Review – July 12, 2018
  - ▶ Comments from Borough Oct. 23, 2018



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# Project Milestones

- Notice to Proceed w/ Real Estate – Jan. 8, 2019
- DCE/USACE/Borough Stakeholder Meeting – Feb. 14, 2019
- State Aid Agreement
  - ▶ Drafts – Feb. 3, 2022, Oct. 19, 2021, Sept. 23, 2021 & Oct. 16, 2020
  - ▶ Final - awaiting Township's confirmation that last draft is ready for execution
- Anticipated Construction – Fall 2023
- \$4,725,966 spent to date
  - ▶ \$3,682,310 – Feasibility
  - ▶ \$1,043,656 – PED



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# Project Implementation

- Execution of State Aid Agreements
- Real Estate Acquisition
- Finalize Plans and Specifications
- Contract Award
- Initial Construction
- Operations & Maintenance
- Periodic Nourishment (4-year cycle)



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# State Aid Agreement

- Agreements between NJDEP and the local community
  - ▶ USACE is not part of the agreement
- Outline responsibilities for participation in the project including:
  - ▶ Financial obligations –
    - No cost to municipality for initial construction
  - ▶ Real Estate requirements –
    - NJDEP will working with property owners to obtain proper right of entry
  - ▶ Beach Management Plans (if applicable and in compliance with applicable Endangered Species requirements)
  - ▶ Operations & Maintenance after initial construction and between nourishment cycles
    - In accordance w/ New Jersey CZM rules and applicable Beach and Dune Maintenance Permits from the NJDEP's Division of Land Resource Protection
    - Can be delegated to property owners by the Township
  - ▶ Municipality is not required to independently perform Project renourishment

**New agreements are executed prior to each Periodic Nourishment**



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# New Jersey Shore Protection Fund

- “To protect existing development and infrastructure from storm surges, sea-level rise and shoreline migration through dune creation and maintenance, beach nourishment projects, and construction and repair of shore protection structures.”
  - \$25 million dedicated annually
  - *Realty Transfer Tax (N.J.S.A. C.13:19-16.1)*

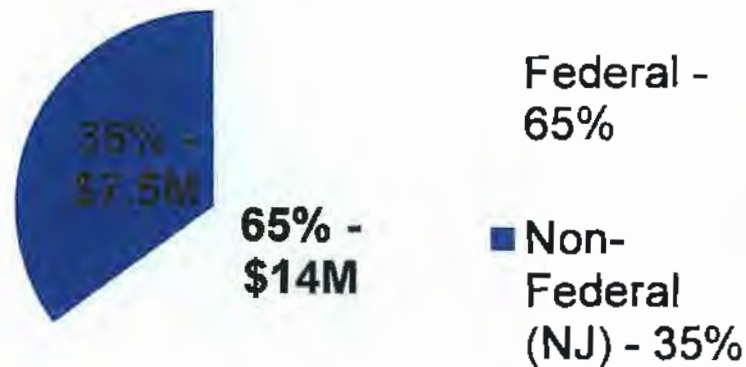


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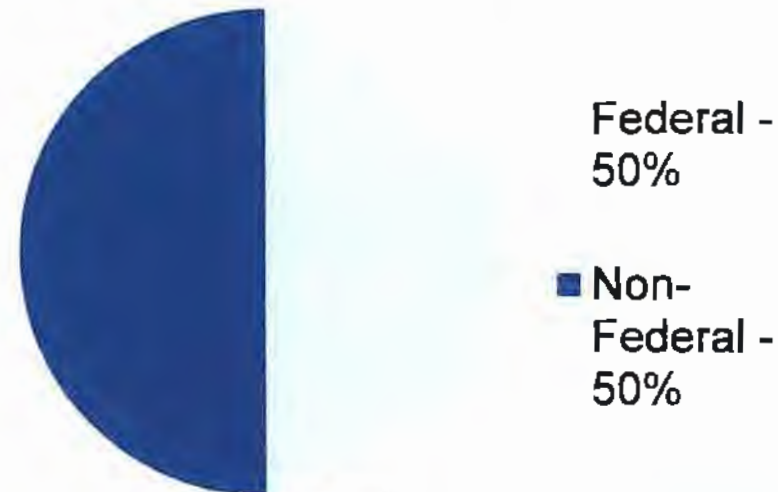
# Cost Sharing Responsibilities

Initial Construction Split between USACE and NJDEP only

**Total Initial  
Construction Cost -  
\$21,605,000**



**Periodic Nourishment  
Costs - \$82,428,000**  
(total over remaining life project – 12  
cycles)



The 35% Non-Federal match for initial construction is covered 100% by the State for this project.

The 50% Non-Federal requirement for periodic nourishment is anticipated to be split 75% State and 25% local municipality (see next slide).



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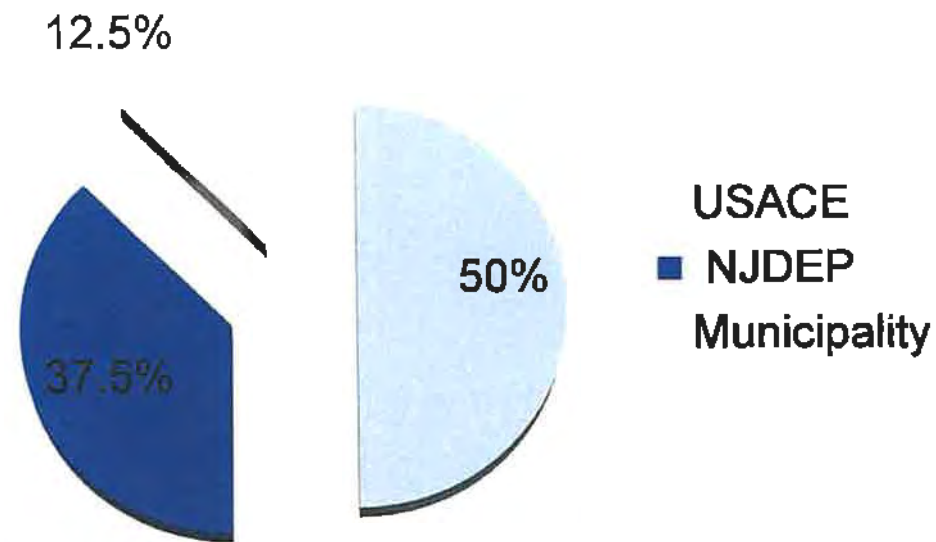
# Cost Sharing Responsibilities

## Periodic Nourishment

### Financing

USACE pays 50% of periodic nourishment project costs. The NJDEP and Municipality anticipate to cost share the remaining 50% cost share at 75% NJDEP and 25% Municipality.

This equates to less than 13 cents on a dollar for the municipality.



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# Cost Sharing Responsibilities

## Damages from Extraordinary Coastal Storms

### Financing

**PL 84-99**: USACE can potentially pay 100% of the costs to repairs damages related to eligible extraordinary coastal storms through the FCCE program (Flood Control and Coastal Emergency).



USACE  
■ NJDEP  
Municipality



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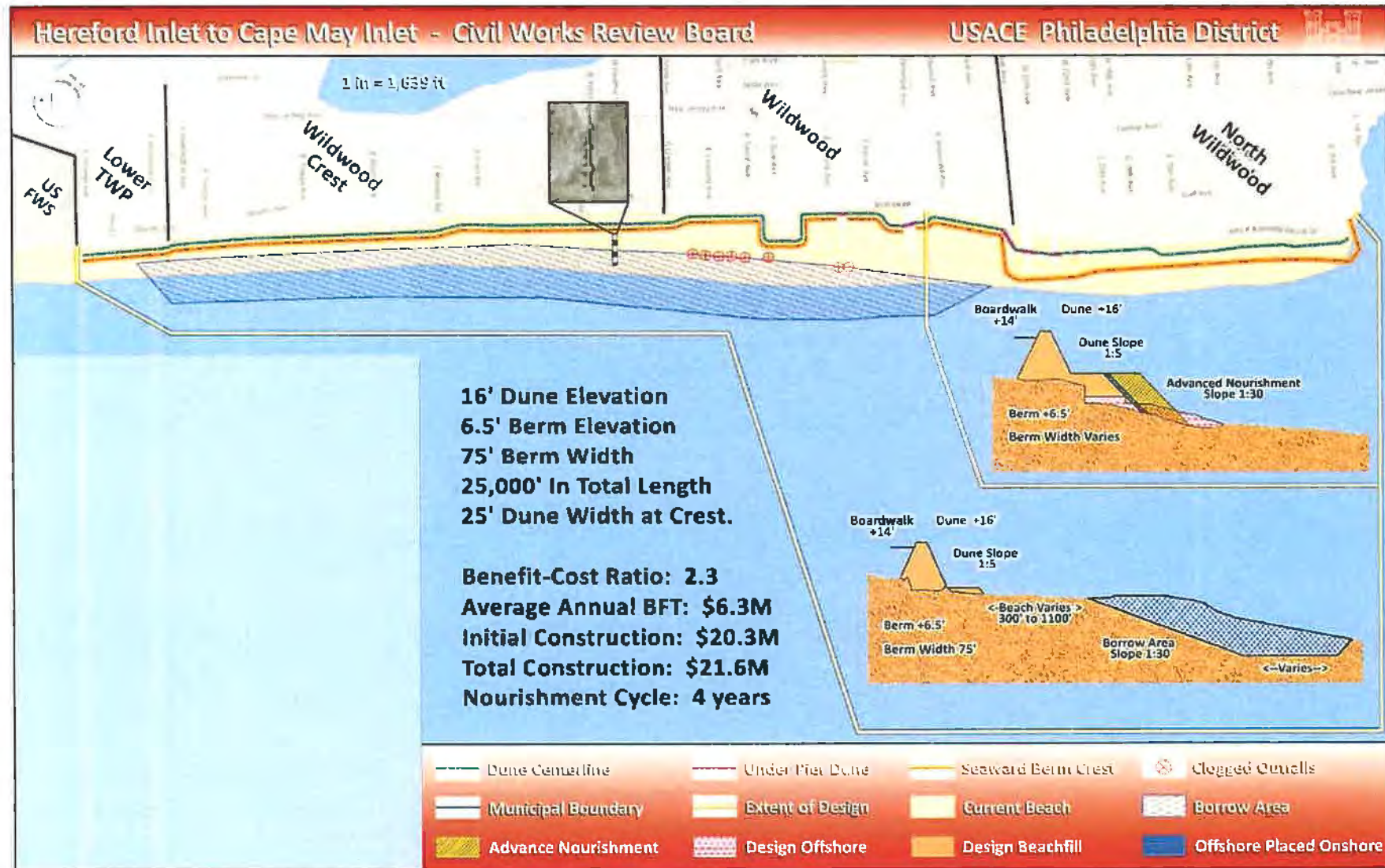
# Project Basics

- Construction of berm and dune from Hereford Inlet to Cape May Inlet, via Hydraulic Back-Passing System
  - ▶ Berm Description
    - Elevation - +6.5 NAVD 88
    - Width – 75 feet
    - Slope 1V:30H
  - ▶ Dune Description
    - Elevation - +16 NAVD 88
    - Width at Crest – 25 feet
    - Slope 1V:5H



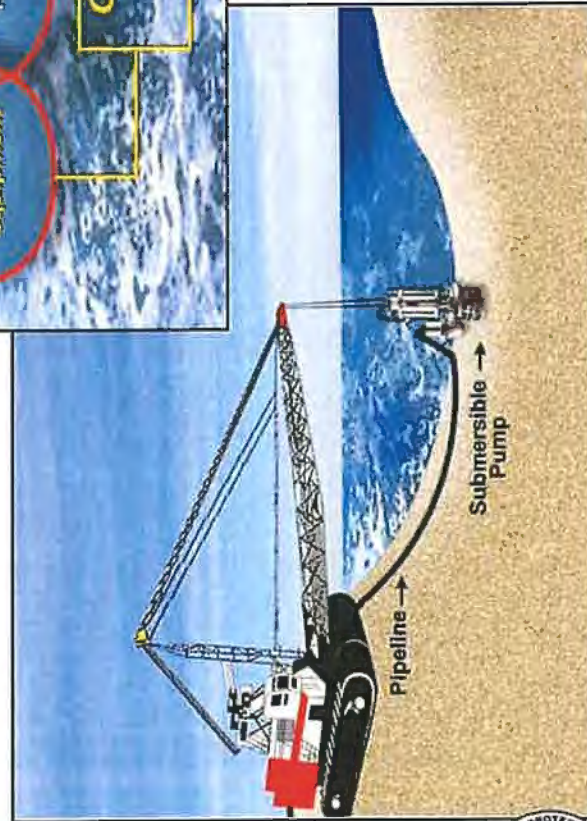
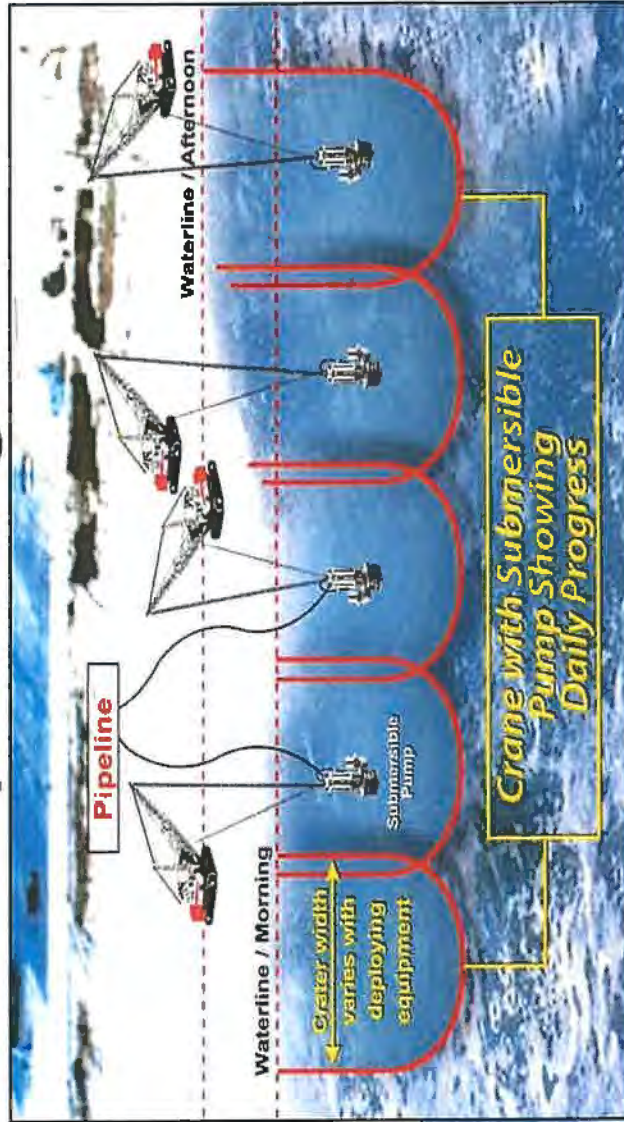
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# Project Basics





# Sand Backpassing



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# Sand Backpassing



\* = Forms of mechanical sand backpassing may also be utilized



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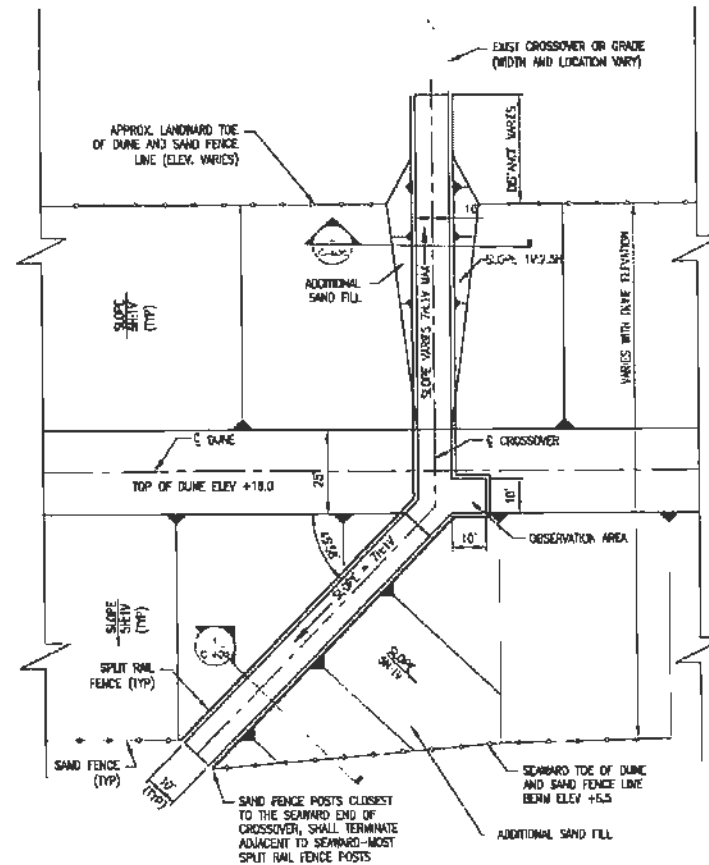
# Additional Project Features

- The project includes the installation of:
  - ▶ Dune grass
  - ▶ Sand fence
  - ▶ Pedestrian crossovers
  - ▶ ADA compliant crossovers
  - ▶ Vehicular crossovers



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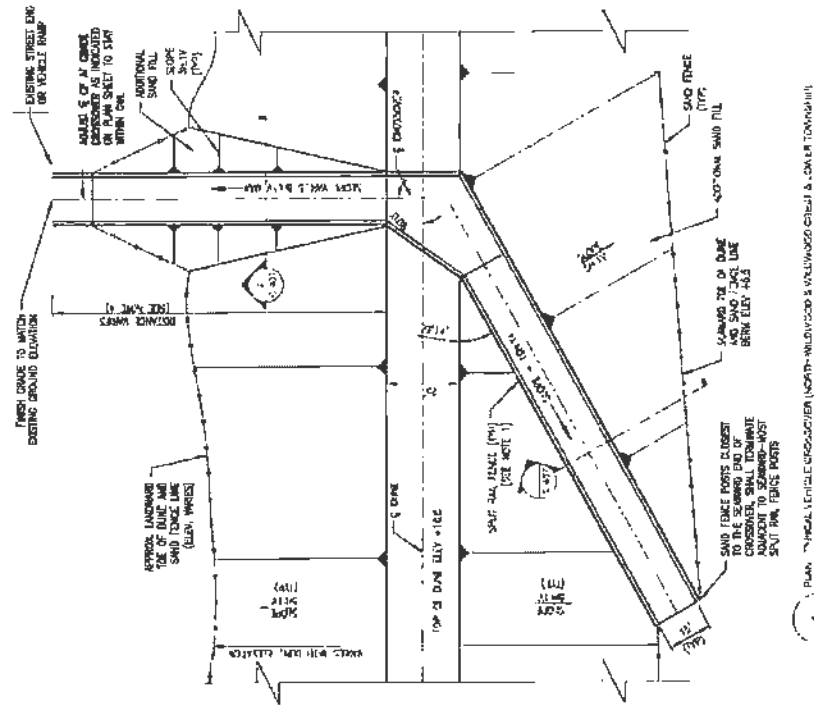
# Examples of Public Accessways (Pedestrian)



1 PLAN - PEDESTRIAN CROSSOVER (NORTH WILLYWOOD & WILDWOOD CREST & LOWER TOWNSHIP)  
SCALE AS SHOWN



# Examples of Public Accessways (Vehicular)



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[illegible]

3 PLAN - ADA CROSSOVER (WILLOWOOD CITY & WILLOWOOD CREST & LOWER 15th ST.)  
SCALE AS SHOWN



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# Environmental Assessment

- Short term impacts to water quality from increased turbidity
- Minimal impacts to terrestrial habitats
- Short term impacts to amphipods and worms
- Buffer zones & construction windows around nesting endangered species (Plover/Red Knot) and other plant and bird species
- No fisheries impacts anticipated to: Atlantic Sturgeon, Right Whales or Turtles due to the location of the borrow area
- Compliance with EO 12989 – Environmental Justice in Minority/Low Income Populations
- Clean Air Act compliant



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# What to Expect When Construction Commences

- Beachfill construction: 24 hours/day and 7 days/week including Holidays. Weather delays and equipment issues are unpredictable.
  - ▶ Intent is construction between Labor Day and Memorial Day
  
- Beach Closures: Typically, do not to exceed 1,000 feet for each active work area.
  - ▶ Possible for multiple work areas at once to expedite project



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# What to Expect When Construction Commences

- **Equipment:** Pipelines, heavy “Yellow” equipment, cranes, pumps, etc.
  - ▶ Pipe on the beach during construction from borrow area to fill point
  - ▶ Ramps over the pipeline at all open street ends and crossover access points to allow public access at open beaches
- **Safety Equipment:** Back-up alarms and work lights at night
- **Communication:** Weekly progress meetings during construction and monthly partnering meetings for senior community officials



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# Working with the Township and Property Owners

- Crossover type/location
  - Working to ensure at the best locations
- Engineered Dune Alignment
  - Considering existing dune alignment and local beach use & maintenance activities as best as possible
- Advanced meetings and correspondences with several property owners
- Acquisition of Easements
  - Only obtain easements for portions of parcel needed to construct and maintain the project design parameters



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# Questions

William Dixon  
Asst. Director  
Office of Coastal Engineering  
NJDEP  
William.Dixon@dep.nj.gov

Erik Rourke  
Project Manager  
Philadelphia District  
USACE  
Erik.J.Rourke@usace.army.mil

Christopher Constantino  
Environmental Specialist 3/Project Manager  
Office of Coastal Engineering  
NJDEP  
Christopher.Constantino@dep.nj.gov

Stephen Rochette  
Public Affairs Officer  
Philadelphia District  
USACE  
Stephen.Rochette@usace.army.mil



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# **EXHIBIT E**



(Exhibit E, 2020 Photograph showing installation of a bulkhead.) The bulkhead (center) does not disturb the dune located on the righthand side.

# **EXHIBIT F**

**R. A. Walters & Son, Inc.**

18 Hoffman Drive  
 Cape May Court House, NJ 08210  
 Phone (609) 861-5955  
 Fax (609) 861-5839

**PROPOSAL**

DATE: OCTOBER 4, 2022

**TO: JIM VERNA****FOR: LIFEGUARD STATION BULKHEAD**

ITEM #	DESCRIPTION	UNIT PRICE	QUANTITY	AMOUNT
1	Mobilization	\$25,000.00	LS	\$25,000.00
2	Bonds	\$10,000.00	LS	\$10,000.00
3	Insurance	\$10,000.00	LS	\$10,000.00
4	Color Video	\$2,000.00	LS	\$2,000.00
5	Steel Bulkhead Complete 35' Long (M5Z16-375)	\$1,425.00/ Foot	404'	\$575,700.00
6	Site Clearing & Restoration of Vehicle Ramp	\$28,000.00	LS	\$28,000.00
			<b>Total</b>	<b>\$650,700.00</b>



# **EXHIBIT G**

Rich,  
Please order the steel sheets, 45's and the 22-1/2.

Regards,  
**Jim Verna III** | Senior Vice President, Branch Manager  
jverna@vannoteharvey.com | O: 609-465-2600 Ext. 325

**Van Note-Harvey Associates, Inc.**  
211 Bayberry Drive #2E, Cape May Court House, NJ 08210  
NJ Authorization #24GA28271300

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**From:** richard walters <rawalters123@outlook.com>  
**Sent:** Tuesday, October 4, 2022 2:56 PM  
**To:** \_Verna, Jim <jverna@vannoteharvey.com>  
**Subject:** proposals

Jim,

See attached proposals

Thank You,  
Kelsey Walters  
R. A. Walters & Son, Inc.

Sent from Mail for Windows

## **EXHIBIT F**

Anthony S. Bocchi, Esq. (Bar No. 005602006)  
 Neil Yoskin, Esq. (Bar No. 2091982)  
 Steven Siegel, Esq. (Bar No. 034141992)  
 Ryan P. Duffy, Esq. (Bar No. 379452022)  
**CULLEN AND DYKMAN LLP**  
 Continental Plaza, 12<sup>th</sup> Floor  
 433 Hackensack Avenue  
 Hackensack, New Jersey 07601  
 (201) 488-1300  
 abocchi@cullenllp.com  
*Attorneys for Defendant City of North Wildwood*

**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**

**CERTIFICATION OF PETER LOMAX: (1)  
IN OPPOSITION TO NJDEP’S  
APPLICATION FOR PRELIMINARY  
INJUNCTIVE RELIEF; AND (2) IN  
SUPPORT OF NORTH WILDWOOD’S  
APPLICATION FOR PRELIMINARY  
INJUNCTIVE RELIEF**

I, PETER L. LOMAX, of full age, certify and say:

1. I am the Managing Principal of The Lomax Consulting Group, LLC, which was retained by Defendant the City of North Wildwood (“North Wildwood”) as an environmental consultant. Since our engagement by North Wildwood in April 2022, my office has regularly monitored the status of North Wildwood’s beach at 15<sup>th</sup> and 16<sup>th</sup> Avenue and ultimately prepared and submitted the subject October 5, 2022, Emergency Authorization (the “Emergency Authorization”): I submit this Certification in opposition to Plaintiff, New Jersey Department of Environmental Protection’s (“NJDEP”) application for preliminary injunctive relief and in

support of North Wildwood's application for preliminary injunctive relief. I have personal knowledge of the facts set forth herein.

2. For thirty years, I have specialized in handling complex and sophisticated permit approval applications in connection with thousands of projects in New Jersey. Over the years, I have been called on to employ my expertise in a variety of environmental/technical disciplines involving regulatory issues. My technical specialties include ecology, arboriculture, threatened/endangered species studies, wetland science, planning and land use environmental regulatory programs, including the Coastal Zone Management Rules.

3. Over the last twenty years, I have submitted several emergency authorization requests for my clients. Consequently, I am acutely familiar with the standard for the issuance of an emergency authorization set forth in N.J.A.C. 7:7-21.1.

4. I have never had an Emergency Authorization denied before. In fact, I have never seen or heard of any emergency authorization being denied when such dire site conditions exist.

5. I will address in this Certification the following (a) facts concerning the Emergency Authorization submission and its clear satisfaction of the standard set forth in N.J.A.C. 7:7-21.1; (b) a response to the DEP's suggestion that a substantial dune and beach berm remains in place sufficient to provide shore protection, which is obviously not the case, because today there is even less dune and berm remaining than there was on October 5; (c) an analysis and response to the environmental concerns raised by NJDEP with respect to certain wetlands impacted by the proposed bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues; and (4) the feasibility of alternative options to the proposed bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues.

6. Before addressing these subjects, the court should understand the factual context in which the Emergency Authorization was submitted because my suspicion is the NJDEP was



driven by its past dealings with North Wildwood and not the merits of the Emergency Authorization. It appears clear that the Emergency Authorization was improperly colored and decided based on the DEP's past issuance of multiple NOV's to North Wildwood in connection with the City's previous installation of bulkheads to provide what cannot be disputed as severely needed coastal protection. I am aware that North Wildwood sought to cure these issues by filing a permit application in 2020.

7. My experience tells me that had that history not existed, the Emergency Authorization in question would have been granted, because it obviously meets the requirements set forth in N.J.A.C. 7:7-21.1.

8. Notably, NJDEP acknowledged there was an emergency after our Emergency Authorization was submitted. Jennifer Moriarty wrote to City Administrator Nicholas Long on October 7, 2022, after our submission, and stated "[g]iven the threat to severe loss of property and the emergent nature of the work at the Beach Patrol Building, the Division is authorizing specific shore protection measures...." (See annexed at Exhibit A, email from Jennifer Moriarty dated October 7, 2022).

9. It seems counterintuitive that the NJDEP can acknowledge a severe loss of property exists necessitating some measures North Wildwood requested while at the same time failing to authorize the very relief which would undoubtedly provide the best coastal protection for North Wildwood and its residents.

10. For the reasons set forth herein, it is respectfully submitted that there is no basis for the drastic relief sought by NJDEP in enjoining North Wildwood's efforts to construct the proposed bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues, as such relief would cause immediate and irreparable harm to North Wildwood. Further, the court should intervene and authorize North

Wildwood to construct the proposed bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues because of the severe imminent threat that exists today.

**A. The Emergency Authorization satisfies N.J.A.C. 7:7-21.1**

11. On October 5, 2022, I filed the Emergency Authorization on behalf of North Wildwood. (See annexed at Exhibit B, October 5, 2022, Emergency Authorization)

12. The Emergency Authorization was filed in part due to Hurricane Ian, which had stalled off the mid-Atlantic coast and caused a sustained multiday period of significant coastal flooding throughout the region and, more specifically, catastrophic beach and dune erosion to North Wildwood's oceanfront.

13. Given the imminent threat that exists, the Emergency Authorization sought the following:

- 1) the immediate deployment of Jersey barriers (20' segments) in a 400 linear foot alignment extending from the 15th Avenue northern right-of-way limit line along the landward edge of dune to the 16th Avenue southern right-of-way limit line;
- 2) the removal and relocation of existing composite/timber decking walkway from in front of the building to facilitate the Jersey barrier deployment;
- 3) the critical ability to reshape dune remnants, protecting existing dune vegetation to the maximum extent possible, to establish stabilized slopes secured landward by the Jersey barrier wall;
- 4) the critical installation of 404 linear feet of a cantilevered steel bulkhead with timber cap; and
- 5) the reconstructions and stabilization of the vehicular/pedestrian access from 16th Avenue right-of-way to the beach.

14. As set forth in the Emergency Authorization, Hurricane Ian had caused a sustained three-day period of significant coastal flooding throughout the New Jersey Shore with the most severe impacts affecting North Wildwood.

15. At the time of the submission, the subject area between 15<sup>th</sup> and 16<sup>th</sup> Avenues was severely compromised because of the loss of more than 75% of the protective dune system and a defined beach berm. **This resulted in an imminent breach condition.**

16. Stated otherwise, as of the time of the submission, there was no reliable shore protection in front of North Wildwood's Beach Patrol Building, which serves as a critical oceanfront safety facility with public access amenities.

17. The Emergency Authorization specifically noted that the City's then \$3.7 million investment in the 2022 beach renourishment via the NJDEP and USACE-approved sand back-passing project were substantially depleted and that a dune breach was imminent.

18. As noted in the Emergency Authorization:

The final tally of sand moved from Wildwood beaches to the beaches of North Wildwood was provided by the Municipal Engineer at 361,221 cubic yards making this season's transfer the largest thus far in this "in-house" effort to restore a recreational and storm protection shoreline during this period of extensive oceanfront beach erosion manifesting itself in North Wildwood since the late 1990's.

19. The Emergency Authorization makes specific reference to North Wildwood acting in its capacity as a "steward of the municipal transportation, utility and public safety infrastructure."

20. N.J.A.C. 7:7-21.1 provides, in part, that the NJDEP shall issue an emergency authorization if there is, among other things, a threat to severe loss of property that can only be prevented or ameliorated through undertaking a regulated activity, or be exacerbated before the NJDEP can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity.

21. As mentioned before, the NJDEP acknowledged this standard was satisfied on October 7, 2022 via email to City Administrator Nicholas Long.

22. By its own terms, the NJDEP recognized that the standard set forth in N.J.A.C. 7:7-21.1 was, in fact, satisfied.

23. For this reason alone, the Emergency Authorization should have been granted in full.

24. Instead, the NJDEP ultimately chose to somehow retract its finding that an imminent threat existed and ultimately denied the installation of the protective bulkhead. As illustrated below, there was simply no basis in fact or under the applicable code regulations for such a determination.

**B. There did not exist on October 5 a dune and beach berm in place to provide sufficient shore protection; and now the conditions have only worsened**

25. I understand that in its submission to the Court, the NJDEP argues that the Emergency Authorization failed to meet the subject Coastal Zone Management Rules standard because “a substantial dune and beach berm remains in place offering sufficient shore protection.” This statement is, by every objective measure, simply wrong. Due to DEP’s denial, the conditions at 15<sup>th</sup> Avenue have worsened and are even more dire.

26. As of the time of the Emergency Authorization, we submitted that residual sand reserves had been so depleted that little remained to withstand a single coastal storm event. Since the denial of the Emergency Authorization, the conditions have only worsened.

27. N.J.A.C. 7:7-9.16 (“Dune Rule”) provides the standards under which the NJDEP considers a dune to be an effective barrier to withstand base flood storm surges and wave action.

28. That standard requires that a primary frontal dune have a cross sectional area of 1,100 square feet above the 100 year still water flood elevation and the crest of the dune.

29. Notably, North Wildwood has lost more than 1,100 square feet of its dune system between June 2022 and October 2022. In other words, North Wildwood has lost the equivalent

cross-sectional area of a primary frontal dune since the conclusion of the sand backpassing beach fill project in June 2022. The loss of an equivalent volume of sand that would otherwise represent a primary frontal dune as an “effective barrier” is abnormal and alarming.

30. As it stands today, the threat remains imminent in that even less dune cross-sectional area exists than the time of the submission in October. By their actions, NJDEP has effectively taken a situation whereby they acknowledged a severe threat to the loss of property and still handcuffed North Wildwood from taking the necessary actions to address those threats.

**C. Environmental concerns raised by NJDEP with respect to certain wetlands impacted by the proposed bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues**

31. I understand NJDEP argues that based on the submission we made in October it is unclear whether the protective bulkhead sought will impact a freshwater wetland transition area. Further, I understand NJDEP determined that certain mapped freshwater wetlands between 15<sup>th</sup> and 8<sup>th</sup> Avenues “to be of exceptional resource value.”

32. By a Letter of Interpretation dated July 10, 2019, NJDEP determined that the subject interdunal wetlands were of intermediate resource value. (See annexed at Exhibit C, July 10, 2019 Letter of Interpretation)

33. Critically, without beach nourishment, a dune breach would result in an overwash that will significantly impact the designated wetlands and associated freshwater wetland transition area.

34. In fact, if and when there is an implementation of the state and federally funded and long overdue beach renourishment project, the protective emergency bulkhead will only assist in ultimately providing a functional dune field. This resulting robust beach and dune system would be of much more ecological value to whatever may be disturbed.



35. The NJDEP ignores the fact that our submission noted that we specifically designed the project to avoid previously delineated interdunal freshwater wetlands in the back dune north of the project area limit as well as its associated transition area.

36. Lastly, the environmental concerns raised by the NJDEP fail to consider the alternative environmental degradation that could arise if the emergency bulkhead is not installed and a breach occurs.

37. Without the proposed protective bulkhead, it is far more likely that the dune system would breach, thereby causing catastrophic damage to critical infrastructure and utility services such as gas, water, stormwater, and sewage. The adverse impact on the coastal ecosystem that would ensue from this – freshwater wetlands notwithstanding – is far more destructive than what would occur by way of the installation of the proposed protective bulkhead.

38. Against this backdrop, the protective bulkhead will provide more protection to the environment as a whole than without it.

**D. The infeasibility of alternative options to the proposed bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues**

39. I understand NJDEP argues North Wildwood failed to explore and implement reasonable alternative measures prior to seeking the installation of the proposed bulkhead.

40. Before I discuss the infeasibility of alternative coastline protection measures, I must stress that installation of the protective bulkhead is the only appropriate measure to help North Wildwood deal with its severe erosional issues under the present circumstances. Installation of the protective bulkhead will safeguard North Wildwood's critical infrastructure while North Wildwood and the NJDEP continue to rebuild North Wildwood's beach and berm. If and when the beach and berm are rebuilt through the federal Beach Restoration Project with

the USACE, the protective bulkhead will actually be buried underneath the newly reconstructed dune system, thereby lending stability to the dune system as a whole.

41. I refer the court to pages 3-4 of the Emergency Authorization, which specifically presents an extensive alternative measure assessment, prepared by the Engineering Project Manager for North Wildwood, to the protective bulkhead.

42. Specifically, the Emergency Authorization comprehensively addressed (1) sand back-passing; (2) hydraulic beach fill; (3) longshore transfer of sand; (4) placement of rock; and (5) the placement of geotextile tubes.

43. Back-passing is not a viable option to solve North Wildwood's severe and imminent threats at 15<sup>th</sup> Avenue.

44. While back-passing sand from local quarries is possible in theory, the sand composition is different from the composition of sand on North Wildwood's beach, which makes it not an optimal measure. Further, this extremely expensive measure would take far too long to complete.

45. In addition, the utilization of sand back-passing as a viable alternative is further negated by the fact that the construction industry continues to experience a trucking shortage rendering sand back-passing as an unreliable solution.

46. Sand back-passing also presents severe practical limitations and impediments. The constant trucking of sand for back-passing purposes is overly burdensome to North Wildwood's property owners as the trucks would need be operating at most hours of the day and would cause damage to upland infrastructure. The trucks would then have to deposit sand at the end of 15<sup>th</sup> Avenue and then the sand would have to be further transported into off-road trucks

and then deposited again. This would significantly escalate costs and would, in my opinion, ultimately prove ineffective in providing any coastal shore protection to North Wildwood.

47. None of the above even takes into account that North Wildwood had already implemented an extensive back-passing program prior to the Emergency Authorization which proved highly ineffective.

48. The prior season, 357,000 cubic yards of sand was back passed by North Wildwood for renourishment.

49. In total, approximately 1,631,509 cubic yards of sand has been back passed to renourish North Wildwood's eroding beaches since 2016.

50. However, due to prevailing coastal processes, these reserves have been lost in quantity from the beach-dune complex annually and have now settled into offshore deposits.

51. In addition to sand back-passing, the Emergency Authorization delineates the deposition of clean fill material as a possible alternative method. However, this method proved to be problematic in terms of sourcing, logistics, and secondary impacts. North Wildwood's oceanfront conditions and profile had severed the route for on-beach access to sand reserves further south of the project area limits.

52. I found that beach berm erosion had extended significant portion of the tide cycle to the waterward extent of both the 24<sup>th</sup> and 26th Avenue piers which precluded effective transport of sand which could be harvested from Wildwood beaches.

53. Moreover, the existing conditions of the profile at Poplar Avenue in Wildwood had exposed Wildwood's oceanfront stormwater outfall location also precluding a southerly truck route.

54. Because these locations are inundated daily by the tidal cycle, the deposition of sand in these areas to re-establish a trucking route for alongshore transfer of sand is infeasible, at least until the beach profile re-forms through accretion.

55. As of the time of the submission, the beach profile has not reformed thoroughly enough to provide adequate protection against future storm events.

56. The Emergency Authorization noted that the lack of sand reserves in the lower beach profile also made it impossible to bulldoze sand to the upper beach profile as an alternative means of re-establishing shore protection. Transport of material from sand and gravel mines was assessed, and it was determined that there are several impediments to pursuing this option. The sand composition available from the proximate mines, as compared to that of the *in situ* beach material, was found to be inconsistent. Additionally, the logistics of pursuing this option were not feasible due to existing trucking shortages as compared to the volume of sand required to address this recurrent erosion.

57. Hydraulic fill was also an alternative measure considered by North Wildwood. Hydraulic fill is a method in which fill materials are deposited by a flowing stream of water. Hydraulic beach fill will not adequately address catastrophic erosion of North Wildwood's beaches, because North Wildwood would have no control over the timeline to secure an approved borrow zone as this timeline would be established by the USACE instead of North Wildwood. Moreover, North Wildwood does not have funds for a hydraulic beach fill project at this time.

58. North Wildwood also considered the placement of rock, which is a method to address beach erosion by way of constructing artificial walls of rock near the dune system to serve as a backstop in the event of a dune breach.

59. Moreover, the placement of rock is a very slow process, and would not address the imminent threat of a dune breach. The placement of rocks also requires the use of the trucking industry, which is unreliable in view of labor shortages within the trucking industry. Rock placement would also impede access to the beach because North Wildwood cannot break through the rocks to construct safe permanent access. Without proper access to the beach, the City's ability to maintain its beach patrol operations would be compromised.

60 Finally, North Wildwood considered geotextile tubes ("geotubes"), which are large bags made of permeable woven geotextiles. Geotubes are used in many civil engineering and erosion control projects like embankments, retaining walls, reservoirs, bank protection and stabilization, as well as coastal erosion control.

61. Geotubes are very expensive and their installation comes at a very slow process. Geotubes also prevent North Wildwood from driving piles for permanent access to the beach, thereby compromising North Wildwood's beach patrol operations. Geotubes also have a shorter useful life because it is unlikely that the North Wildwood would be able to keep the tubes covered with sand. The geotubes, then, would be exposed to the elements and would erode away over time. This is simply not a viable option given the imminent threat that exists.

62. In view of the above, the only viable option for North Wildwood in the face of the clear imminent threat that exists is the installation of the proposed bulkhead.

**E. Response to Certification of Michael J. Lutz**

63. I have reviewed the Certification of Michael J. Lutz (the "Lutz Certification") and the exhibits annexed thereto in preparing this Certification. I offer the following response thereto.



64. On page 4 of the Lutz Certification, Mr. Lutz characterizes Hurricane Ian as having “caused some erosion of the beach berm.” This characterization is factually inaccurate because Hurricane Ian caused significant erosion.

65. Mr. Lutz further states that “there was a beach berm and dune remaining both to the North and South of 15<sup>th</sup> Avenue as illustrated....” No description of the dune condition is provided despite there being a pronounced scarp of the dune face. Furthermore, there is no acknowledgement of the tide stage illustrated in the photographs which intend to depict the presence of a beach. If the photographs were not taken at high tide, then they do not accurately represent the existing conditions and level of threat.

66. Mr. Lutz further states that “the beach berm looked substantially similar to the conditions of the beach berm from my inspection on October 6, 2022.” However, it is unclear: (1) how this comparison was made other than perhaps by visual observation; (2) how the substantial similarity was exactly quantified; (3) and whether the comparative observation was made at the same tide stage and predicted tidal elevation.

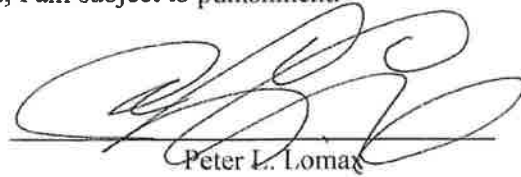
67. Mr. Lutz’s Certification further intimates that the “excavation, grading, and movement of sand represented an authorized activity for which the City did not have authorization.” However, earlier in the year, when sand accretion blocked the stormwater discharge from the 3<sup>rd</sup> Avenue outfall, requiring excavation and removal of the outfall area sand to other locations along the beach/dune complex, the NJDEP acknowledged via letter on August 9, 2022 that this activity was within the sand back passing project area and was considered to be consistent with the existing permit authorization without the need for additional permitting or even an Emergency Authorization. (See annexed at Exhibit D, Letter from Janet Stewart of NJDEP dated August 9, 2022)

68. The Lutz Certification further states that he was “directed to collect measurements of the dune between 14<sup>th</sup> and 16<sup>th</sup> Avenues...attempted to collect this information on October 28, 2022. However, the conditions that day did not make it safe for me to collect this information as there was a Nor-Easter occurring that day.” If there was no imminent threat posed by the conditions of the beach and dune in this location, then how could it have been unsafe to collect data?

69. Paragraphs 26-28 of the Lutz Certification describe the manner in which the beach berm/dune limits were mapped by Mr. Lutz. However, Mr. Lutz failed to provide any information establishing the defining characteristics of these limits, nor is the tide stage/tidal elevation noted. It appears Mr. Lutz simply walked the perimeter of the beach berm/dune complex to map out its limits using a handheld GPS with post processing correction. However, the Lutz Certification fails to stipulate an elevation or specific features used as points of delineation for the berm. By extension, he then uses this mapping to determine the width of the beach berm extending waterward of the dune limits. Simply put, these methodologies are unreliable and cannot serve as a justifiable basis for the denial of North Wildwood’s Emergency Authorization.

70. Lastly, I reject Mr. Lutz’s assertion that “a healthy dune system still remains in front of the Beach Patrol Building.” This system has suffered from significant evidence of sand loss, the presence of vertical scarps, the exposure of dune vegetation roots, and instability of the feature exist. None of this comports with objective data.

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.



Peter L. Lomax

Dated: January 4, 2023

# **EXHIBIT A**

**From:** Moriarty, Jennifer [DEP]  
**Sent:** Friday, October 7, 2022 11:38 AM  
**To:** nlong@northwildwood.com; 'Peter Lomax'; Patrick Rosenello  
**Cc:** Cahall, Kimberly [DEP]; Kropilak, Michele [DEP]; Keller, Colleen [DEP]; Stewart, Janet [DEP]; Reinknecht, Dennis [DEP]; Mazzei, Vincent [DEP]; Cobb, Jessica [DEP]  
**Subject:** NWW Emergency Authorization  
**Attachments:** DEP WLM response to 10-03-2022 Mayor Rosenello NWW letter.pdf

Dear Mr. Long:

The Division has reviewed your request to conduct emergency shore protection measures as outlined in your agent Mr. Peter Lomax's letter of October 5, 2022. Given the threat to severe loss of property and the emergent nature of the work at the Beach Patrol Building, the Division is authorizing specific shore protection measures in this Emergency Authorization ("EA") while continuing to review your request to reshape the dune remnants, install 404LF of bulkhead, and reconstruct access at 16<sup>th</sup> Avenue and 25<sup>th</sup> Avenue. **Those activities are not authorized by this EA and the City is not authorized to conduct those activities at this time.** The Division anticipates responding to those requests next week and has been in touch with Mr. Lomax about additional information required for our evaluation. As stated in the attached letter issued by WLM earlier today, the Division is concerned that installation of a bulkhead, as opposed to measures that absorb wave energy, will increase erosion. The Division will continue to work with Mr. Lomax to further evaluate.

For the activities specified below, this is your Emergency Authorization; no other documentation will follow. Michele Kropilak, the Division's Enforcement Bureau Chief, and Kimberly Cahall, the Department's Chief Enforcement Officer, are copied on this e-mail. I've also attached a copy of the letter issued by WLM earlier today for ease of reference.

This authorization allows the following activities:

1. 15<sup>th</sup> – 16<sup>th</sup> Avenues waterward of the Beach Patrol Building (Block 317.03, portion of Lot 1)
  - Immediate deployment of Jersey barriers (20' segments) in a 400 linear foot alignment extending from the 15<sup>th</sup> Avenue northern right-of-way limit line along the landward edge of dune to the 16<sup>th</sup> Avenue southern right-of-way limit line
  - Remove/relocate existing composite/timber decking walkway from in front of the building to facilitate Jersey barrier deployment

This emergency authorization is granted in accordance with the provisions of the Coastal Zone Management Rules (N.J.A.C. 7:7-21) and the Freshwater Wetlands Regulations (N.J.A.C. 7:7A-14), and is further subject to the following conditions:

1. The Permittee shall commence the approved emergency activities within 30 calendar days after this authorization of the emergency permit, unless specifically extended by this office. If the emergency activities are not commenced within 30 calendar days of this authorization, this emergency permit is void.
2. No disturbance to dunes is authorized by this emergency authorization.



3. Once commenced, all regulated activities authorized under this emergency permit shall be completed, and this emergency permit shall expire, within 60 calendar days of the Department's approval, unless extended by the Department. If the regulated activities authorized under this emergency permit are not completed by the expiration date, these regulated activities shall cease until the appropriate individual permits or another emergency permit is obtained from the Department for the regulated activities.
3. This Authorization does not alleviate your responsibility to obtain any other local, State, or other Federal authorizations required by law.
4. The permittee is responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of this authorization is at the project site throughout the period the work is underway and available for review by any person.
5. The Permittee shall submit to the Department a complete application for a CAFRA Individual Permit and a Freshwater Wetlands Permit for the completed activities within 90 calendar days of the Department's authorization of the emergency permit. The application shall include the following:
  - a. A demonstration that the regulated activities comply with the Coastal Zone Management Rules at N.J.A.C. 7:7 and the Freshwater Wetlands Regulations at N.J.A.C. 7:7A; and
  - b. "As-built" drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, showing the regulated activities that were conducted under the emergency permit.

Should you have any questions, please do not hesitate to contact me.

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

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# **EXHIBIT B**



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609-465-9857 (P)  
609-465-2449 (F)  
WWW.LOMAXCONSULTING.COM

Peter L. Lomax, Managing Principal  
(609) 465-6700 ext. 13  
plomax@lomaxconsulting.com

October 5, 2022  
*Via email*

New Jersey Department of Environmental Protection  
Division of Land Resource Protection  
501 East State Street, Second Floor  
Trenton, NJ 08625  
ATTN: Ms. Colleen Keller and Ms. Janet Stewart

RE: Coastal Program Emergency Authorization – Shore Protection Measures  
25<sup>th</sup> Avenue Beach Access and Beach Patrol Building/Oceanfront Safety Facility  
Block 289.03, Lot 1 (portion thereof) and Block 317.03, Lot 1 (portion thereof)  
City of North Wildwood, Cape May County, NJ  
TLCG File No.: 22-1093.2

Dear Ms. Keller and Ms. Stewart,

On behalf of the City of North Wildwood (hereafter "City" or "Applicant"), please accept this request for an Emergency Authorization pursuant to the Coastal Zone Management Rules (CZMR) (*N.J.A.C. 7:7 et seq.*) under the authority of the NJ Department of Environmental Protection (NJDEP). This request follows our previous email exchanges in this regard over the past few days during which the low pressure system remnants of Hurricane Ian stalled off the mid-Atlantic coast causing a sustained multi-day period of significant coastal flooding throughout the region and, more specifically, potentially catastrophic beach and dune erosion to the City of North Wildwood oceanfront. Given the absence of a defined beach berm and loss of greater than 75% of the protective dune system in front of the Beach Patrol Building/Oceanfront Safety Facility, Block 317.03, Lot 1 (portion thereof), the City Engineer has determined that a breach condition is imminent requiring that emergency measures be implemented to re-establish reliable shore protection at this location. Additionally, the 25<sup>th</sup> Avenue beach access, Block 289.03, Lot 1 (portion thereof), continues to sustain significant erosion which has undermined this vehicular beach access and exposed adjoining shore protection structure to further scour and scarping. These emergent conditions were first observed during the weekend (October 1, 2022) and exacerbated through the following days (*see attached photo pages*).

Please note that, consistent with previous collaborative discussions with the NJDEP and direction to keep all parties informed, this submission will be transmitted to the Bureau of Coastal and Land Use Compliance and Enforcement staff to ensure that they too are properly informed of the imminent threat and the Applicant's intent to implement emergency shore protections measures in the wake of this most recent coastal storm.

Applicant:  
City of North Wildwood  
901 Atlantic Avenue  
North Wildwood, NJ 08260  
Attn: Nicholas Long, City Administrator  
609-522-6464  
[nlong@northwildwood.com](mailto:nlong@northwildwood.com)



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It should be noted that, despite the City's \$3.7 million investment in 2022 beach renourishment in advance of the summer season via the NJDEP and USACE-approved sand backpassing project, residual sand reserves were sufficiently depleted by the end of the season that little remained to withstand a single coastal storm event. Sand volume placed as part of the backpassing project was shaped into a dune ridge and dry beach area along the oceanfront consistent with the approved design template. *"The final tally of sand moved from Wildwood beaches to the beaches of North Wildwood was provided by the municipal engineer at 361,221 cubic yards making this season's transfer the largest thus far in this "in house" effort to restore a recreational and storm protection shoreline during this period of extensive oceanfront beach erosion manifesting itself in North Wildwood since the late 1990's."* (2022 Spring Report to the City of North Wildwood on the Condition of City Beaches, Stockton University Coastal Research Center, July 25, 2022). The prior season, 357,000 cubic yards of sand was backpassed by the City for renourishment, also at exceptional expense borne by the City. In total, approximately 1,611,372 cubic yards of sand has been backpassed to renourish the City's eroding beaches since 2016. However, due to prevailing coastal processes, these reserves have been lost in quantity from the beach-dune complex annually and have now settled into offshore deposits.

As a result of this most recent coastal storm event and in light of the depleted sand reserves whereby a dune breach is imminent, the City, as owner of the subject properties and steward of the municipal transportation, utility and public safety infrastructure, has given its permission to pursue the prescribed emergency measures below and is hereby seeking an Emergency Authorization for the following activities:

15<sup>th</sup> – 16<sup>th</sup> Avenues waterward of the Beach Patrol Building (Block 317.03, Lot 1 (portion thereof))

- 1) Immediate deployment of Jersey barriers (20' segments) in a 400LF alignment extending from the 15<sup>th</sup> Avenue northern right-of-way limit line along the landward edge of dune to the 16<sup>th</sup> Avenue southern right-of-way limit line
- 2) Remove/relocate existing composite/timber decking walkway from in front of the building to facilitate Jersey barrier deployment
- 3) Reshape dune remnants, protecting existing dune vegetation to the maximum extent possible, to establish stabilized slopes secured landward by the Jersey barrier wall
- 4) Installation of 404LF cantilevered steel bulkhead (coated) with timber cap
- 5) Reconstruct/stabilize vehicular/pedestrian access from 16<sup>th</sup> Avenue right-of-way to the beach

The above activities are depicted on a hand sketch prepared by Jim Verna III, P.E. of Van Note-Harvey Associates Inc., dated October 4, 2022, as well as separate hand-annotated detail sheets, each dated October 4, 2022, and a cut sheet for Meever USA sheet piles (*attached*). A line drawing of these proposed measures is in progress and will be transmitted under separate cover for reference, once completed. Please note that the topographic contours on the hand sketch are vestigial to conditions in 2020 and the aerial image is from February 2022; hence, these do not reflect existing conditions. The proposed activities are designed to avoid previously delineated interdunal freshwater wetlands in the back dune north of the project area limit, as well as its associated transition area. Items 1-3 will commence immediately and are expected to be completed over a one-day period. Items 4 and 5 will commence upon receipt of the bulkhead materials delivery and mobilization and are expected to require several weeks to complete this installation and



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associated restorative actions. The project area limits for this activity are depicted on Figure 1 (*attached*) at the terminus of 15<sup>th</sup> and 16<sup>th</sup> Avenues, area delineated by a red boundary.

Before specifying the above emergency mitigative actions, an assessment of alternative measures was completed by the City Engineer. Specifically, the standards applicable to emergency post-storm beach restoration under *N.J.A.C. 7:7-10.3* were evaluated, including NJDEP-preferred options under (*b*), for feasibility. The following is a summary of that alternatives analysis.

Deposition of clean fill material consistent with grain size compatible with that of the existing beach material proved to be problematic in terms of sourcing, logistics, and secondary impacts. The current oceanfront conditions and profile have, at least for now, severed the route for on-beach access to sand reserves further south of the project area limits. Beach berm erosion has extended a significant portion of the tide cycle to the waterward extent of both the 24<sup>th</sup> and 26<sup>th</sup> Avenue piers precluding effective transport of sand which could be harvested from Wildwood beaches (*see attached photo pages*). Moreover, the existing conditions of the profile at Poplar Avenue have exposed the City of Wildwood's stormwater outfall at this location also precluding a southerly truck route. Because these locations are inundated daily by the tidal cycle, the deposition of sand in these areas to re-establish a trucking route for alongshore transfer of sand is infeasible, at least until the beach profile re-forms through accretion (*see attached photo pages*). The lack of sand reserves in the lower beach profile also makes it impossible to bulldoze sand to the upper beach profile as an alternative means of re-establishing shore protection. Transport of material from sand and gravel mines was assessed, and it was determined that there are several impediments to pursuing this option. The sand composition available from the proximate mines, as compared to that of the *in situ* beach material, was found to be inconsistent. Additionally, the logistics of pursuing this option were not feasible due to existing trucking shortages as compared to the volume of sand required to address this recurrent erosion. Further, offshore sources will require the City's contractor to complete an intermediate sand transfer from street-legal tri-axle dump trucks to the heavy duty off-highway articulated dump trucks necessary to transit the existing oceanfront conditions. Pursuing this option would require duplicative handling of the fill material, if even suitable material could eventually be sourced within a reasonable proximity. Given the emergent nature of this matter, there is insufficient time to pursue an option that is, at best, inefficient, slow and expensive, but also risks secondary damage to municipal infrastructure, including City streets that were not designed for the volume and frequency of heavy transport that would be required for this option.

While hydraulic beach fill/renourishment could access sand reserves in nearshore or offshore waters, where prior backpassed sand has settled and which are unattainable via typical trucking/backpassing, these dredging projects require scheduling years in advance, and the City does not have ready access to or control the availability a dredge for this purpose. The timeline for such a process does not reconcile with the current situation faced by the City, nor does the City have the funds to pursue such a project without significant State and/or Federal participation.

The placement of rock, rubble or concrete is a very slow process, which again relies upon a trucking industry facing existing labor shortages, as well as the challenges of sourcing these materials locally and the secondary impacts to municipal infrastructure, including City streets that were not designed for the volume and frequency of heavy transport that would be required for this option. Additional design concerns were expressed upon evaluating this option in that the placement of these materials restricts future engineering options, including facilitation of public access. The inability to drive piles for future timber walkover/ADA ramp structures would create challenges to efficient and effective public and Beach Patrol staff access to/from the beach. In addition to ready access of the Beach Patrol building by its staff, this oceanfront safety facility also provides





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beachgoers with public restrooms, a first aid station, showers/footwash amenities, and shelter via the existing dune walkover/ramp structure at the 15<sup>th</sup> Avenue right-of-way alignment (*see attached photo pages*). A breach will destroy this access and the placement of rock, rubble or concrete will complicate or even preclude the replacement of such a facility.

The placement of sand-filled geotextile tubes requires a source for beach sand material, which is not available from the existing beach conditions and is challenging to acquire from offshore sources as was previously described in detail above. To fill these tubes *in situ* would further deplete the City's oceanfront of sand resources, especially given that the prevailing coastal processes trend is one of erosion in this location. While geotextile tubes could serve as a protective measure and means to rebuild the dune features, these applications are only effective when combined with a robust, large-scale hydraulic beach fill project whereby the tube would remain covered for an extended period of time. At present, the State and Federal authorities have not advanced a beach nourishment program of this type in partnership with the City, and it remains unclear if/when the State/Federal Island-wide Dune Construction Project may be implemented from Hereford Inlet south to Cape May Inlet to serve as hurricane and storm damage reduction, including its associated planned cyclical renourishments.

In contrast, a bulkhead, when deployed under certain oceanfront conditions where beach renourishment proves to be unreliable and challenging, has proven to be the more efficient and effective means of sustainable shore protection measures. These installations can be implemented rapidly and have longer useful life options where the cost-benefit ratio can be justified and effective shore protection realized. Additionally, the footprint of disturbance for these installations can be minimized to reduce secondary impacts and avoid sensitive areas where sloped angles of repose would otherwise encroach. This option minimizes the number of truck trips required to implement shore protection thereby reducing secondary impacts to the municipal infrastructure. Further, given the minimal footprint, future site improvements, including public accessways and dune construction, can be effectuated over top of and/or on either side of the bulkhead.

#### 25<sup>th</sup> Avenue Beach Access (Block 289.03, Lot 1 (portion thereof))

- 1) Immediately reconstruct the beach access via profile grading and deposition of stabilizing material within the residual upper beach berm and back beach limits; relatively minimal volumes of fill material are required to accomplish the necessary grading and restoration
- 2) Reconstruct the sloped ramps and landings within the access to restore the vehicular and pedestrian use, including pedestrian public access from the boardwalk and the adjoining 26<sup>th</sup> Avenue pier

The above activities are depicted on a line drawing titled, "25<sup>th</sup> Ave and the Beach Adjacent to Amusement Pier, North Wildwood Beach, City of North Wildwood, Cape May County, NJ", prepared by Van Note-Harvey Associates Inc., dated October 5, 2022 (*attached*). Please note that these proposed activities are designed to avoid previously delineated interdunal freshwater wetlands in the back dune north of the project area limit. While the activities are located within the associated transition area, these restorative measures do not extend beyond the pre-existing footprint of disturbance and therefore will not result in adverse impacts to regulated areas (*see attached photo pages*). Items 1 and 2 will commence immediately upon receipt of Emergency Authorization from NJDEP and are expected to be completed over a one to two-day period. The project area limits for this activity are depicted on Figure 1 (*attached*) at the terminus of 25<sup>th</sup> Avenue, area delineated by a red boundary.



OCTOBER 5, 2022

ATTN: MS. COLLEEN KELLER AND MS. JANET STEWART

PAGE 5 OF 5

Enclosed for review and reference please find the following: 1) a site location map ("*Figure 1 Site Location on Aerial Photographs Depicting the Project Area Limits*," prepared by The Lomax Consulting Group, dated October 4, 2022); 2) existing conditions photographs depicting post-storm damage and impacted areas; 3) hand sketch prepared by Jim Verna III, P.E. of Van Note-Harvey Associates Inc., dated October 4, 2022, as well as separate hand-annotated detail sheets, each dated October 4, 2022, and a cut sheet for Meever USA sheet piles; and 4) a line drawing titled, "*25<sup>th</sup> Ave and the Beach Adjacent to Amusement Pier, North Wildwood Beach, City of North Wildwood, Cape May County, NJ*", prepared by Van Note-Harvey Associates Inc., dated October 5, 2022.

If you have any questions or require additional information, please do not hesitate to contact me. Thank you for your prompt attention to this matter.

Sincerely,  
THE LOMAX CONSULTING GROUP, LLC

Peter L. Lomax  
Managing Principal

Enclosures

ec: Jennifer Moriarty, Director NJDEP DLRP (w/enclosures)  
Becky Mazzei, NJDEP DLRP (w/enclosures)  
Kimberly Cahall, Chief Enforcement Officer NJDEP CLUE (w/enclosures)  
Michelle Kropilak, Manager NJDEP CLUE (w/enclosures)  
Michael Lutz, NJDEP CLUE (w/enclosures)  
Mayor Patrick Rosenello, City of North Wildwood (w/enclosures)  
Nicholas Long, City Administrator, City of North Wildwood (w/enclosures)  
Jim Verna III, PE, Van Note-Harvey Associates, Inc. (w/enclosures)  
Neil Yoskin, Esq., Cullen & Dykman LLP (w/enclosures)



BLOCK 289.03, LOT 1 (P/O); BLOCK 317.03, LOT 1 (P/O)  
CITY OF NORTH WILDWOOD, CAPE MAY COUNTY, NEW JERSEY

22-1093.2



FIGURE 1: SITE LOCATION ON AERIAL PHOTOGRAPHS  
DEPICTING THE PROJECT AREAS LIMITS

SOURCE: GIS DATA PROVIDED BY THE NJDEP, BING  
NEARMAP AND THE COUNTY PLANNING  
DEPARTMENT



DATE:  
2022-10-04

DRAWN BY:  
EJM

SCALE: AS NOTED



IPN/Acl/22-1093.2/Si Map/Rs Map/Aerial - Emergency Authorization

THE LOMAX CONSULTING GROUP  
ENVIRONMENTAL CONSULTING EXCELLENCE SINCE 1975



## SITE PHOTOGRAPHS



**PHOTOGRAPH 1.** View north of the dune scarp (right) eroded to a point landward of the pre-existing dune crest between 15<sup>th</sup> and 16<sup>th</sup> Avenues in front of the City of North Wildwood Beach Patrol headquarters (left) and upper landing of dune walkover railing (background)

**PHOTOGRAPH 2.** View west of the eroded and scoured public accessway at the 25<sup>th</sup> Avenue beach access terminus.







PHOTOGRAPH 3. View north of the 24<sup>th</sup> Avenue pier terminus and absence of beach berm waterward of the pier end, which precludes the sand backpassing truck route.

PHOTOGRAPH 4. View south of the City of Wildwood exposed stormwater outfall at the Poplar Avenue right-of-way alignment, which precludes the sand backpassing route.







**PHOTOGRAPH 5.** View of the City of North Wildwood Beach Patrol headquarters which serves as a critical oceanfront safety facility with public access amenities. Note: eroded dune scarp is located at the right edge behind the dune fencing.

**PHOTOGRAPH 6.** View of the dune walkover and ADA access ramp in front of the City of North Wildwood Beach Patrol headquarters. Note: eroded dune scarp is located immediately behind the upper staircase landing.

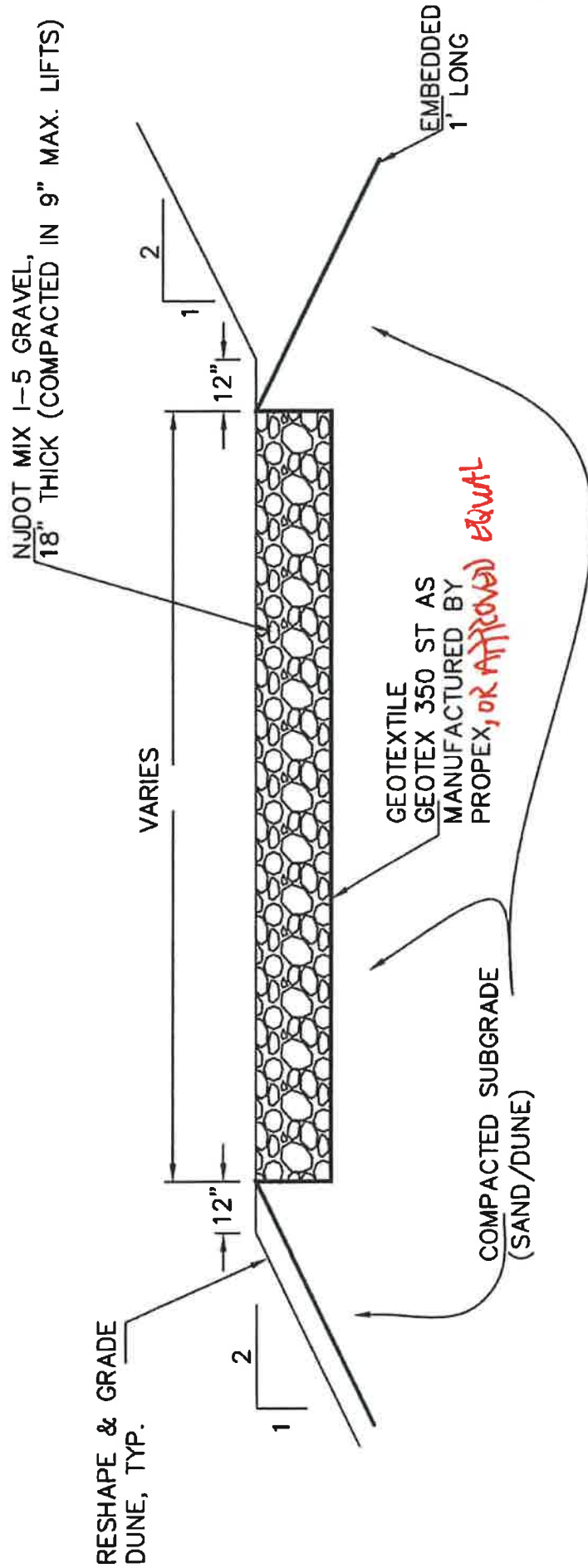












NOTE:  
1. GEOTEXTILE SECTIONS MUST OVERLAP  
MINIMUM OF 5', TYP.

2. Slope: 1V:12H MAX.

**PROPOSED VEHICLE ACCESS DETAIL** FOR 16TH AVE.

NOT TO SCALE

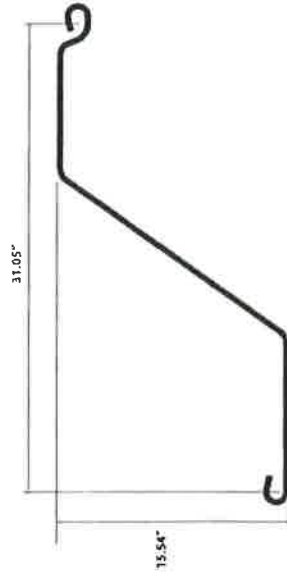
JVB  
12/7/22



# MEEVER USA

T +1 (866) 313-8770 | E info@meeverus | www.meeverus

## MSZ 16-375 (Cold rolled sheet piles)



Section description	Product group	Shape	Section Modulus	Moment of Inertia	Width	Height	Thickness flange	Thickness web	Weight single	Weight	Coating 2 sides	Coating area
MSZ 16-375	Cold rolled sheet piles	Z	34.0	267.9	51.05	15.54	0.375	0.375	59.7	29.05	7.54	1.43

Production acc. ASTM standards in A572 GR50 or A328  
available from inventory and production  
Origin: USA

✓ PILING PRODUCTS

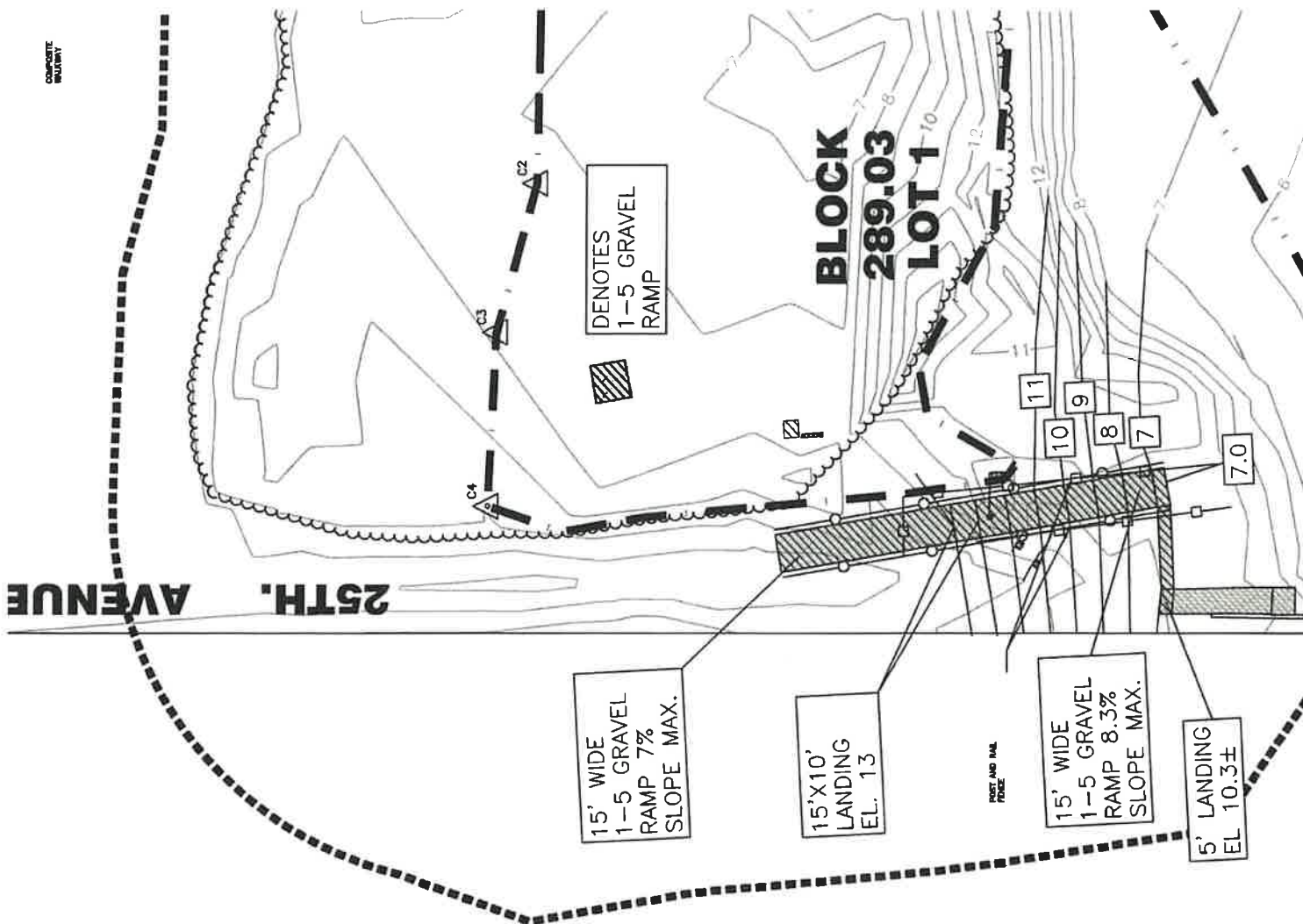
✓ SHEET PILES

✓ PIPES

✓ H-BEAMS



CK  
.02  
.1



NOTES:

1. TOPOGRAPHY TAKEN FROM DECEMBER 2022
2. IAN STORM HAS SEVERELY EROD AREA DAMAGING DUNE, BERM, A ACCESS

RELEASE

van note-harvey a  
consulting engineers, plann  
103 College Road East • Princeton, NJ  
211 Bayberry Drive • Cape May Court H  
www.vannoteharvey.com

SKETCH SHOWING

25TH AVE A  
ADJACENT TO  
NORTH WIL  
CITY OF NOF

# **EXHIBIT C**



# State of New Jersey

# RECEIVED

## JUL 15 2019

PHILIP D. MURPHY  
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION

VAN NOTE-HARVEY

ASSOCIATES

CAROLINE R. McCABE  
Commissioner

SHEILA Y. OLIVER  
Lt. Governor

Division of Land Use Regulation  
Mail Code 501-02A  
P.O. Box 420  
Trenton, New Jersey 08625-0420  
[www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)

July 10, 2019

City of North Wildwood  
c/o Mr. Ronald Simone, City Administrator  
901 Atlantic Avenue  
North Wildwood, NJ 08260

RE: Freshwater Wetlands Letter of Interpretation: Line Verification – Portion of a Property  
LUR File No.: 0507-03-0009.2  
Activity Number: FWW 180001  
Applicant: City of North Wildwood  
Portion of Block and Lot: 317.03, 1  
City of North Wildwood, Cape May County

Dear Mr. Simone:

This letter is in response to your request for a Letter of Interpretation to have Division of Land Use Regulation (Division) staff verify the boundary of the freshwater wetlands and/or State open waters on a portion of the referenced property.

In accordance with agreements between the State of New Jersey Department of Environmental Protection (NJDEP), the U.S. Army Corps of Engineers (USACE) Philadelphia and New York Districts, and the U.S. Environmental Protection Agency (USEPA), the NJDEP is the lead agency for establishing the extent of State and Federally regulated wetlands and waters. The USEPA and/or USACE retain the right to reevaluate and modify the jurisdictional determination at any time should the information prove to be incomplete or inaccurate.

Based upon the information submitted, and upon a site inspection conducted by Division staff on February 27, 2019 and March 11, 2019, the Division has determined that the wetlands and waters boundary line(s) as shown on two (2) sheets entitled: "PLAN SHOWING FRESHWATER WETLANDS AND/OR STATE OPEN WATER, PORTION OF BLOCK 317.03 LOT 1, CITY OF NORTH WILDWOOD, CAPE MAY COUNTY, N.J." dated October 2, 2018 and prepared by Van Note-Harvey Associates.

1. "NORTH WILDWOOD LIFEGUARD STATION" (Sheet 1 of 1), unrevised; and
2. "LOU BOOTH AMPHITHEATRE AT HEREFORD INLET PARK" (Sheet 1), last revised on May 31, 2019.

The freshwater wetlands and waters boundary line(s), as determined in this letter, must be shown on any future site development plans. The line(s) should be labeled with the above file number and the following note: "Freshwater Wetlands/Waters Boundary Line as verified by NJDEP"

LUR File No.: 0507-03-0009.2; FWW 180001  
Applicant: City of N. Wildwood  
Page 2 of 3

#### Wetlands Resource Value Classification ("RVC")

The Division has determined that the resource value and the standard transition area or buffer required adjacent to the delineated wetlands are as follows:

Intermediate: WH-1 thru MH-13 and WG-1 thru WG-4C. [50 foot wetland buffer]

The Department has determined that the wetlands labeled as WH-1 thru MH-13 on the provided plan are isolated. RVC may affect requirements for wetland and/or transition area permitting. This classification may affect the requirements for an Individual Wetlands Permit (see N.J.A.C. 7:7A-9 and 10), the types of Statewide General Permits available for the property (see N.J.A.C. 7:7A-5 and 7) and any modification available through a transition area waiver (see N.J.A.C. 7:7A-8). Please refer to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and implementing rules for additional information.

Wetlands resource value classification is based on the best information available to the Division. The classification is subject to reevaluation at any time if additional or updated information is made available, including, but not limited to, information supplied by the applicant.

#### General Information

Pursuant to the Freshwater Wetlands Protection Act Rules, you are entitled to rely upon this jurisdictional determination for a period of five years from the date of this letter unless it is determined that the letter is based on inaccurate or incomplete information. Should additional information be disclosed or discovered, the Division reserves the right to void the original letter of interpretation and issue a revised letter of interpretation.

Regulated activities proposed within a wetland, wetland transition area or water area, as defined by N.J.A.C. 7:7A-2.2 and 2.3 of the Freshwater Wetlands Protection Act rules, require a permit from this office unless specifically exempted at N.J.A.C. 7:7A-2.4. The approved plan and supporting jurisdictional limit information are now part of the Division's public records.

Please be advised that any surface water features on the site or adjacent to the site may possess flood hazard areas and/or riparian zones and development within these areas may be subject to the Flood Hazard Area Control Act rules at N.J.A.C. 7:13. The Division can verify the extent of flood hazard areas and/or riparian zones through a flood hazard area verification under the application procedures set forth at N.J.A.C. 7:13-5.1.

This letter in no way legalizes any fill which may have been placed, or other regulated activities which may have occurred on-site. This determination of jurisdiction extent or presence does not make a finding that wetlands or water areas are "isolated" or part of a surface water tributary system unless specifically called out in this letter as such. Furthermore, obtaining this determination does not affect your responsibility to obtain any local, State, or Federal permits which may be required.

#### Recording

Within 90 calendar days of the date of this letter, the applicant shall submit the following information to the clerk of each county in which the site is located, and shall send proof to the Division that this information is recorded on the deed of each lot referenced in the letter of interpretation:

1. The Department file number for the letter of interpretation;

LUR File No.: 0507-03-0009.2; FW/W 180001  
Applicant: City of N. Wildwood  
Page 3 of 3

2. The approval and expiration date of the letter of interpretation;
3. A metes and bounds description of the wetland boundary approved under the letter of interpretation;
4. The width and location of any transition area approved under the letter of interpretation; and
5. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a freshwater wetland and/or transition area. Certain activities in wetlands and transition areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a freshwater wetland permit. Contact the Division of Land Use Regulation at (609) 292-0060 or <http://www.nj.gov/dep/landuse> for more information prior to any construction onsite."

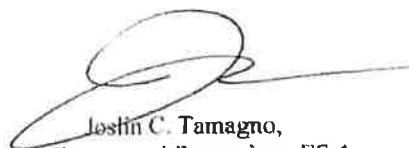
Failure to have this information recorded in the deed of each lot and/or to submit proof of recording to the Division constitutes a violation of the Freshwater Wetlands Protection Act rules and may result in suspension or termination of the letter of interpretation and/or subject the applicant to enforcement action pursuant to N.J.A.C. 7:7A-22.

#### Appeal Process

In accordance with N.J.A.C. 7:7A-21, any person who is aggrieved by this decision may request a hearing within 30 days of the date the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Mail Code 401-04L, P.O. Box 402, 401 East State Street, 7<sup>th</sup> Floor, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist found at [www.state.nj.us/dep/landuse/forms](http://www.state.nj.us/dep/landuse/forms). Hearing requests received after 30 days of publication notice may be denied. The DEP Bulletin is available on the Department's website at [www.state.nj.us/dep/bulletin](http://www.state.nj.us/dep/bulletin). In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see the website [www.nj.gov/dep/odr](http://www.nj.gov/dep/odr) for more information on this process.

Please contact Natalie Young of our staff by e-mail at [Natalie.Young@dep.nj.gov](mailto:Natalie.Young@dep.nj.gov) or by phone at (609) 777-0454 should you have any questions regarding this letter. Be sure to indicate the Department's file number in all communication.

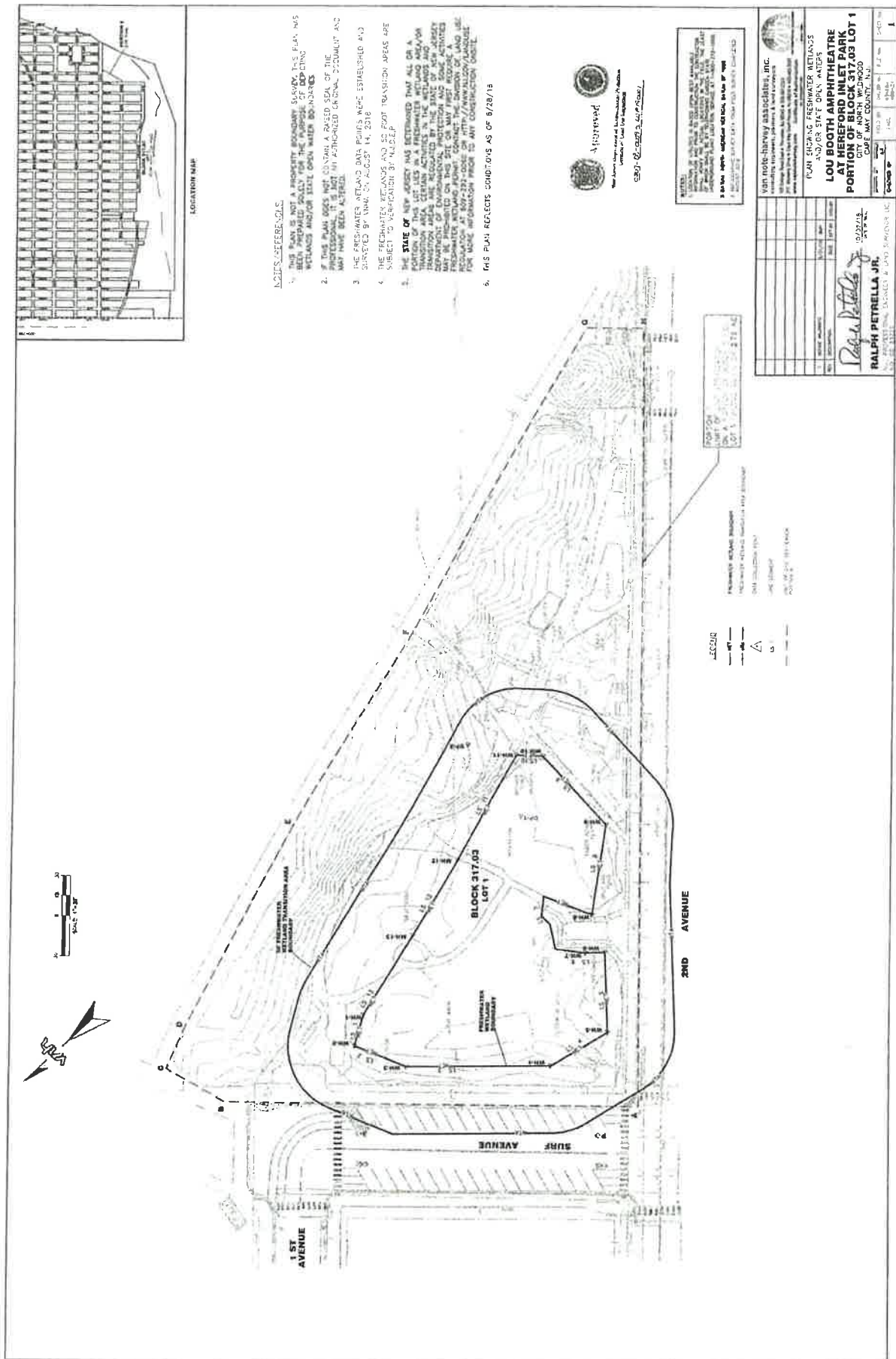
Sincerely,

  
Joslin C. Tamagno,  
Environmental Supervisor, ES 4  
Bureau of Urban Growth and Redevelopment  
Division of Land Use Regulation

c: City of North Wildwood Construction Official  
Mr. Ralph Petrella, Jr., Van Note-Harvey Associates, Agent (original)







# **EXHIBIT D**



## State of New Jersey

PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Watershed & Land Management  
Mail Code 501-02A  
P.O. Box 420  
Trenton, New Jersey 08625-0420  
[www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)

SHAWN M. LATOURETTE  
Commissioner

August 9, 2022

City of North Wildwood  
c/o Ronald Simone, Administrator  
901 Atlantic Avenue  
North Wildwood, NJ 08260

RE: **CAFRA and WFD Individual Permit – Condition Compliance**

DLRP Permit No.: 0500-07-0006.4, LUP210001

Applicant: City of North Wildwood

Project: Beach Nourishment and Outfall Maintenance

Blocks: 140/180/267/268/280      Lots: 1.02/1.02 & 2.02/1, 1.02 & 1.03/1.02/1  
City of Wildwood, Cape May

Blocks: 289.03/290.01/316.02/317.02/317.03      Lots: 1/1/1/2/1 & 1.01  
City of North Wildwood, Cape May

Dear Mr. Simone:

The Division of Land Resource Protection (Division) issued the above-referenced CAFRA and WFD Individual Permit on August 12, 2021, which authorized beach backpassing/nourishment related activities authorized by the Division in the December 8, 2020, April 1, 2020, and May 19, 2021 Emergency Authorizations (EA). The authorized activities included 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 way, jersey barrier, dune creation, and outfalls repair and abandonment between 2<sup>nd</sup> and 26<sup>th</sup> Avenue in the City of North Wildwood. The authorization stipulated that the permittee shall request and obtain written approval from the Division prior to conducting any work referenced in the permit for the duration of the permit.

The Division has received your request to conduct the following activities under this permit:

- The restoration of the sections of beach between 17<sup>th</sup> and 23<sup>rd</sup> Avenues and between 12<sup>th</sup> and 15<sup>th</sup> Avenues in North Wildwood, which are being utilized as a stockpile area. The beach will be transitioned to existing beach grade from elevation 7' at a 25:1 slope, which will result in a cut on the beach in some locations since the existing slope varies. In addition, the buffer will be restored

DLRP Permit No.: 0500-07-0006.4, LUP210001  
City of North Wildwood  
Page 2 of 3

between the stockpile and the dune system once the stockpile is moved to the fill zone. No disturbance to the dune system is proposed.

This work is shown on 23 plan sheets, prepared by Van-Note Harvey Associates, Inc., signed January 27, 2022, and entitled:

“N.J.A.C. 7:7 PERMIT PLAN MODIFICATION OF SAND HARVEST AREA, CITY OF WILDWOOD, CAPE MAY COUNTY, N.J.” Sheets 2 thru 17,

“N.J.A.C. 7:7 PERMIT MODIFICATION PLAN OF EMERGENCY BEACHFILL, NORTH WILDWOOD BEACH, CITY OF NORTH WILDWOOD, CAPE MAY COUNTY, N.J.” Sheets 18 & 19 and 21 thru 25.

- The maintenance of a stormwater outfall located at 3<sup>rd</sup> Avenue on the beach in the City of North Wildwood, which will include the removal of excess sand that has accreted and is blocking the discharge point of the outfall.

This work is shown on 1 plan sheet, prepared by Van-Note Harvey Associates, Inc., signed January 27, 2022, and entitled:

“N.J.A.C. 7:7 MODIFIED PERMIT PLAN OF EMERGENCY BEACHFILL, NORTH WILDWOOD BEACH, CITY OF NORTH WILDWOOD, CAPE MAY COUNTY, N.J.” Sheet 20.

The Division, in coordination with the NJDEP Office of Coastal Engineering (OCE), the NJDEP Endangered and Nongame Species Program (ENSP), and the U.S. Fish and Wildlife Service (USFWS), hereby determines that these proposed activities are in compliance with the above-referenced CAFRA and WFD Individual Permit. This determination is made subject to the following conditions:

1. Any dry beach area (above MHW) that will be disturbed for the project during the growing season (5/15 to 11/30) shall be surveyed for seabeach amaranth prior to any construction activities.
  - a. The survey shall be conducted no more than 1 week before the start of the project activities and shall include the entire area of disturbance, not just transects. Please note that seedlings can be quite small (<2cm). Surveys may be conducted by any natural resource professional or other qualified person familiar with this species. A copy of their qualifications and the survey results shall be sent to the USFWS.
  - b. If disturbance shall occur between August 1 and November 30, the permittee may contact USFWS to inquire if plant locations are available from routine survey efforts carried out by natural resource agencies.
  - c. If any plants are found within the footprint of the proposed activities, they shall be afforded a 10-foot buffer delineated with string-and-post fencing. Sand/snow fencing must not be used for this purpose. There should be no entry into the fenced area(s), and no stockpiling of sand adjacent to the fencing. Compliance documentation shall be provided to USFWS at regular intervals for the duration of the project activities.
2. Unfledged oystercatcher chicks are present in the protected area as defined by the BMP, specifically the beach from 1<sup>st</sup>/Surf to its terminus in a NW direction. No vehicle transit or sand spreading of materials scraped from the outfall pipe shall occur in this area.



DLRP Permit No.: 0500-07-0006.4, LUP210001  
City of North Wildwood  
Page 3 of 3

Please keep a copy of this determination with the permit. Please note that this letter does not change the expiration date of the permit, and all conditions of that permit remain in effect. Please contact Becky Mazzei at [Becky.Mazzei@dep.nj.gov](mailto:Becky.Mazzei@dep.nj.gov) or (609) 984-0437 if you have any questions concerning this letter.

Sincerely,



Digitally signed  
by Janet Stewart  
Date: 2022.08.09  
16:57:25 -04'00'

Janet Stewart, Manager  
Bureau of Coastal Permitting  
Division of Land Resource Protection

cc. City of North Wildwood Clerk  
City of North Wildwood Construction Official  
NJDEP OCE c/o Chris Constantino

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL  
PROTECTION,**

**Plaintiff,**

**vs.**

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

**Defendants.**

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

**Docket No. C-55-22**

**Civil Action**

---

**BRIEF OF DEFENDANT CITY OF NORTH WILDWOOD  
IN SUPPORT OF ITS MOTION FOR A DETERMINATION AS TO WHETHER THIS  
COURT HAS JURISDICTION OVER NJDEP’S DENIAL OF NORTH WILDWOOD’S  
FEBRUARY 10, 2023 EMERGENCY AUTHORIZATION APPLICATION AND  
MATTERS THAT MAY OCCUR SUBSEQUENT THERETO**

---

**CULLEN AND DYKMAN, LLP  
433 Hackensack Avenue  
Hackensack, New Jersey 07601  
(201) 488-1300  
Attorneys for Defendant  
City of North Wildwood**

**Anthony S. Bocchi, Esq. (Bar No. 005602006)  
abocchi@cullenllp.com  
Of Counsel and on the Brief**

**Neil Yoskin, Esq. (Bar No. 2091982)  
Steven Siegel, Esq. (Bar No. 034141992)  
On the Brief**

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**THIS COURT ALREADY HAS RULED THAT: (1) IT HAS SUBJECT MATTER JURISDICTION OVER THIS DISPUTE BETWEEN NORTH WILDWOOD AND NJDEP; AND (2) THE ENTIRE CONTROVERSY DOCTRINE STRONGLY MILITATES IN FAVOR OF EXERCISING THAT JURISDICTION. THAT BEING SO, THIS COURT SHOULD CONTINUE TO EXERCISE JURISDICTION OVER THE ENTIRE DISPUTE IN THE INTEREST OF JUDICIAL ECONOMY AND CONSISTENT WITH THE PRINCIPLES OF THE ENTIRE CONTROVERSY DOCTRINE.**

POINT II .....	8
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**THE DOCTRINE OF THE EXHAUSTION OF ADMINISTRATIVE REMEDIES IS INAPPLICABLE BECAUSE: (1) THE CONTROVERSY BETWEEN NORTH WILDWOOD AND NJDEP IS ALREADY BEFORE THIS COURT; AND (2) WHEN THE SUPERIOR COURT HAS JURISDICTION OVER A MATTER BETWEEN AN ADMINISTRATIVE AGENCY AND AN AGGRIEVED PARTY, THE AGENCY IS DIVESTED OF JURISDICTION**

POINT III .....	9
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**IN THE ALTERNATIVE, THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES IS INAPPLICABLE BECAUSE EXHAUSTION IS NOT REQUIRED “WHERE ADMINISTRATIVE REVIEW WILL BE FUTILE, WHERE THERE IS A NEED FOR PROMPT DECISION IN THE PUBLIC INTEREST... AND WHERE IRREPARABLE HARM WILL OTHERWISE RESULT FROM DENIAL OF IMMEDIATE JUDICIAL RELIEF.” BRUNETTI V. BOROUGH OF NEW MILFORD, 68 N.J. 576, 588 (1975). HERE, ALL THREE EXCEPTIONS ARE APPLICABLE.**

**POINT IV .....14**

**IN THE ALTERNATIVE, AN ADMINISTRATIVE APPEAL OF NJDEP’S SECOND DENIAL OF NORTH WILDWOOD’S EA SHOULD BE REJECTED BY THIS COURT BECAUSE THE RELIEF HERE SOUGHT DOES NOT CONSTITUTE REVIEW OF NJDEP’S FEBRUARY 24 DENIAL OF THE EA. RATHER, THE REQUESTED RELIEF SEEKS AN EQUITABLE REMEDY *FOR THE CIRCUMSTANCES THAT EXIST TODAY.***

**CONCLUSION ..... 15**

## TABLE OF AUTHORITIES

### Cases

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### **PRELIMINARY STATEMENT**

This Court has requested the parties to address the following issue: whether this Court has jurisdiction over NJDEP’S February 24 denial of North Wildwood’s second Emergency Authorization (EA) application “and matters that may occur subsequent thereto.” For many reasons, this question is answered in the affirmative.

*First*, this Court already has ruled that: (1) it has subject matter jurisdiction over this dispute between North Wildwood and NJDEP; and (2) the Entire Controversy Doctrine strongly militates in favor of exercising that jurisdiction. That being so, this Court should continue to exercise jurisdiction over the entire dispute in the interest of judicial economy and consistent with the principles of the Entire Controversy Doctrine. See Point I, infra.

*Second*, the doctrine of the exhaustion of administrative remedies is inapplicable because: (1) the controversy between North Wildwood and NJDEP is already before this Court; and (2) when the Superior Court has jurisdiction over a matter between an administrative agency and an aggrieved party, the agency is divested of jurisdiction. See Point II, infra.

*Third*, the doctrine of exhaustion of administrative remedies is inapplicable because exhaustion is not required “where administrative review will be futile, where there is a need for prompt decision in the public interest... and where irreparable harm will otherwise result from denial of immediate judicial relief.” Brunetti v. Borough of New Milford, 68 N.J. 576, 588 (1975). Here, all three Brunetti exceptions are applicable. See Point III, infra.

*Fourth*, an administrative appeal of NJDEP’s second denial of North Wildwood’s EA should be rejected by this Court because the relief here sought does **not** constitute review of NJDEP’s February 24 denial of the EA. Rather, the requested relief seeks an equitable remedy for *the circumstances that exist today*. This is a significant distinction because the subject matter of

this dispute – the condition of the beach and dunes – is materially different as of the current date as compared with the condition that existed as of the date of the NJDEP’s denial of the EA. Only this Court has *present jurisdiction* over the beach and dune conditions that exist today See Point IV, infra.

For all of the foregoing reasons – any one of which is dispositive – (1) this Court has the requisite jurisdiction over NJDEP’s February 24 denial of North Wildwood’s second Emergency Authorization (EA) application “and matters that may occur subsequent thereto; and (2) this Court properly should exercise its jurisdiction over the entire dispute in the interest of judicial economy and consistent with the principles of the Entire Controversy Doctrine and in order to prevent irreparable harm.

## LEGAL ARGUMENT

### POINT I

**THIS COURT ALREADY HAS RULED THAT: (1) IT HAS SUBJECT MATTER JURISDICTION OVER THIS DISPUTE BETWEEN NORTH WILDWOOD AND NJDEP: AND (2) THE ENTIRE CONTROVERSY DOCTRINE STRONGLY MILITATES IN FAVOR OF EXERCISING THAT JURISDICTION. THAT BEING SO, THIS COURT SHOULD CONTINUE TO EXERCISE JURISDICTION OVER THE ENTIRE DISPUTE IN THE INTEREST OF JUDICIAL ECONOMY AND CONSISTENT WITH THE PRINCIPLES OF THE ENTIRE CONTROVERSY DOCTRINE.**

By its February 1, 2023 ruling, this Court granted leave to North Wildwood to file a Counterclaim against NJDEP. Bocchi Cert., Exhibit “A” (Order). The Counterclaim includes a count seeking injunctive relief that would authorize North Wildwood to install a protective bulkhead on the landward side of the beach and remaining dune in the vicinity of 15<sup>th</sup> and 16<sup>th</sup> Avenues. Bocchi Cert., Exhibit “B” (North Wildwood’s Amended Counterclaim, Count One). The purpose of the protective bulkhead would be to prevent irreparable harm to persons and property that would otherwise result from a moderate storm. Id.

In granting leave for North Wildwood to file its Counterclaim, this Court stated:

When an Order to Show Cause is issued *ex parte*, no counterclaim shall be asserted without leave of Court Rule 4:67-4... Defendants, in summary actions, are not precluded from requesting Leave of Court to File a Counterclaim. **Rather, the Court, in its discretion may grant or deny such a request based on equitable considerations and unique facts of each case.**

Chief of these equitable considerations that are principles laid out in the Entire Controversy Doctrine, which requires litigants to consolidate claims arising from a single controversy or else run the risk of forfeiting such claim. The polestar for the application of this doctrine is judicial fairness. Here the equities are in favor of allowing the defendants leave of court to file a counterclaim. **The counterclaims conceivably arise out of the same transactions and occurrence.**

There is -- appears to be, on its face, a common nucleus of operative fact. ... **The counterclaim does not petition the Court to grant relief outside its equitable authority.** So the Court grants that application.

[Bocchi Cert., Exhibit “C” (2/1/23 Tr., 56:18 to 57:19 (citations omitted) (emphasis added))]

As discussed below, the Court’s findings are manifestly correct and should continue to govern this litigation now that NJDEP has denied North Wildwood’s second Emergency Authorization application. Consistent with these rulings, the Court should continue to exercise jurisdiction over the entire dispute in the interest of judicial economy and consistent with the principles of the entire controversy doctrine.

**A. This Court’s determination that the claims contained in North Wildwood’s Counterclaim are squarely within Chancery’s equitable jurisdiction**

This Court determined that “[t]he counterclaim does not petition the Court to grant relief outside its equitable authority.”. *Id.* (2/1/23 Tr., 57:16 to 57:18). The Court’s determination is grounded in well-settled principles defining the broad scope of the Chancery Court’s equitable jurisdiction.

Our Supreme Court has repeatedly reaffirmed this cardinal principal defining the breadth and flexibility of Chancery’s equitable powers:

Equitable remedies “are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.”

[*Sears, Roebuck & Co. v. Camp*, 124 N.J.Eq. 403, 411–12 (E. & A.1938)]

See also *US Bank Nat. Ass’n v. Guillaume*, 209 N.J. 449, 476 (2012) [quoting *Sears, Roebuck*]; *Brenner v. Berkowitz*, 134 N.J. 488, 514 (1993) (quoting *Sears, Roebuck*); *Salorio v. Glaser*, 93 N.J. 447, 469 (1983) (quoting *Sears Roebuck* and noting, “[w]e are not unmindful of our broad discretionary power in the balancing of all hardships and equities in shaping an equitable decree”); *Vasquez v. Glassboro Serv. Ass’n, Inc.*, 83 N.J. 86, 108 (1980) (citing *Sears Roebuck*).



Here, as fully set forth in prior briefs and certifications to this Court, the relief sought in Count One of the Counterclaim is necessary to prevent irreparable harm. See North Wildwood’s January 4 Br., at 17-33. More particularly, the installation of a protective bulkhead constitutes an absolutely necessary response to an imminent threat to life and property – in light of the extremely compromised condition of the beach and in light of the fact that the storm season is presently upon us. Verna 1/4/23 Cert., ¶¶4-8; Lomax 1/4/23 Cert., ¶¶12, 14-16.<sup>1</sup> This proposed equitable remedy recognizes that North Wildwood – in the event of even a moderate storm -- might suffer a catastrophic loss of life or property as a result of the lack of an absolutely necessary shore protection measure in the form of a temporary emergency steel bulkhead. Ibid. The record reflects that a failure to order this remedy poses a grave risk to residents, businesses and real property in the event of even a moderate storm that could strike at any time. Verna Cert., ¶¶4-5, 43-45.

Thus, the relief sought in the Counterclaim is unquestionably within the jurisdiction of Chancery. See, e.g., Crowe v. De Gioia, 90 N.J. 126, 132 (1982) (holding that Chancery’s grant of injunctive relief is based, most importantly, on the prevention of irreparable harm); US Bank Nat. Ass’n v. Guillaume, supra, 209 N.J. at 476 (stating that “the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.”) Cooper v. Nutley Sun Printing Co., 36 N.J. 189, 199 (1961) (noting a “court has the broadest equitable power to grant the appropriate relief”); Thieme v. Aucoin-Thieme, 227 N.J. 269, 287 (2016) (stating that “[a court [of equity] **must exercise its inherent equitable jurisdiction** and decide the case based upon equitable considerations.”).

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<sup>1</sup> For the convenience of the Court, the January 4 Verna and Lomax Certifications are annexed as, respectively, Exhibit “E” and “F” of the Certification of Anthony S. Bocchi.

Applying these principles, this Court's found that that the claims contained in North Wildwood's Counterclaim are squarely within Chancery's equitable jurisdiction. Bocchi Cert., Exhibit "C" (2/1/23 Tr., 57:16 to 57:18).

**B. This Court's determination that the Entire Controversy Doctrine strongly militated in favor of hearing together NJDEP's Complaint and North Wildwood's Counterclaim**

This Court also found that the Entire Controversy Doctrine – and its underlying equitable principles of fairness and judicial economy – strongly militated in favor of granting North Wildwood's motion for leave to file its Counterclaim. The court's ruling is well-grounded in the law of this State.

The Entire Controversy Doctrine is grounded in a court's inherent equitable power to “whenever possible ... consolidate ... claims arising from a single controversy.”). Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 98 (2019). The application of the Doctrine “is left to judicial discretion based on the factual circumstances of individual cases.” Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009). As such, “the polestar for the application” of the doctrine is “judicial fairness,” Dimitrakopoulos, supra, 237 N.J. at 114, and “a court must apply the doctrine in accordance with equitable principles, with careful attention to the facts of a given case.” Ibid.

Applying these principles, this Court found that the “counterclaims conceivably arise out of the same transactions and occurrence,” and, as such, are properly joined with NJDEP's enforcement action. Id. (2/1/23 Tr., 57:13 to 57:14).

**C. In light of this Court's prior rulings, the Court should continue to exercise jurisdiction over the entire dispute in the interest of judicial economy and consistent with the principles of the entire controversy doctrine.**

By its February 1 ruling, the Court observed that “the State seems to suggest -- not making any guarantees. -- that they would grant a new emergent authorization, but they certainly would

have an obligation to review it and hopefully work together to reach a solution.” Bocchi Cert., Exhibit “C” ([21/23 Tr., 60:7 to 60:11 (emphasis added).

Unfortunately, NJDEP did not grant North Wildwood’s second emergency application (EA). Instead, NJDEP denied the application. The question presented is whether this Court should retain jurisdiction over the entire matter in light of the NJDEP’s disposition of the second EA

There are many reasons that this question should be answered in the affirmative, including the reasons set forth in Points II, III and IV, infra. However, first and foremost, this Court should retain jurisdiction over the entire matter for the very reasons the Court identified in its February 1 ruling. Those reasons are: (1) the claims contained in North Wildwood’s Counterclaim are squarely within Chancery’s equitable jurisdiction; and (2) the Entire Controversy Doctrine – and its underlying equitable principles of fairness and judicial economy – strongly militate in favor of the Court retaining jurisdiction over the entire matter.

The Court’s findings were manifestly correct when the Court issued them on February 1. The Court’s findings are no less applicable to this litigation as of the current date. Indeed, for reasons set forth in Points II, III and IV, infra, the Court’s findings apply to this litigation with even greater force as of the current date.

## POINT II

**THE DOCTRINE OF THE EXHAUSTION OF ADMINISTRATIVE REMEDIES IS INAPPLICABLE BECAUSE: (1) THE CONTROVERSY BETWEEN NORTH WILDWOOD AND NJDEP IS ALREADY BEFORE THIS COURT; AND (2) WHEN THE SUPERIOR COURT HAS JURISDICTION OVER A MATTER BETWEEN AN ADMINISTRATIVE AGENCY AND AN AGGRIEVED PARTY, THE AGENCY IS DIVESTED OF JURISDICTION**

It is black-letter law that once a party aggrieved by a decision of an agency turns to the Superior Court for relief, the agency is generally divested of jurisdiction over its own decision. Instead, the Superior Court exercises plenary jurisdiction over the matter during the pendency of the appeal. *See, e.g., Appl. of Plainfield–Union Water Co.*, 14 N.J. 296, 302 (1954); *Kramer v. Bd. of Adjustment*, 80 N.J. Super. 454, 463 (Law Div.1963); *Cicchine v. Twp. of Woodbridge*, 413 N.J. Super. 393, 401 (Law. Div. 2010).

Here, Count One of North Wildwood’s Counterclaim seeks injunctive relief authorizing North Wildwood to install a protective bulkhead on the landward side of the beach and remaining dune in the vicinity of 15<sup>th</sup> and 16<sup>th</sup> Avenues. Bocchi Cert., Exhibit “B” (North Wildwood’s Counterclaim, Count One). The purpose of the protective bulkhead would be to prevent irreparable harm to persons and property that would otherwise result from a moderate storm. *Id.* As this Court has held, this matter is within the court’s jurisdiction. Bocchi Cert., Exhibit “C” (2/1/23 Tr., 57:16 to 57:18).

Because this Court has subject matter jurisdiction over the matter, the agency lacks subject matter jurisdiction for so long as the matter is pending before the Court. *Appl. of Plainfield–Union Water Co.*, *supra*, 14 N.J. at 302; *Kramer v. Bd. of Adjustment*, *supra*, 80 N.J. Super. 454; *Cicchine v. Twp. of Woodbridge*, *supra*, 413 N.J. Super. at 401. For this reason alone, the ordinary rule of exhaustion of administrative remedies is inapplicable.

### **POINT III**

**IN THE ALTERNATIVE, THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES IS INAPPLICABLE BECAUSE EXHAUSTION IS NOT REQUIRED “WHERE ADMINISTRATIVE REVIEW WILL BE FUTILE, WHERE THERE IS A NEED FOR PROMPT DECISION IN THE PUBLIC INTEREST... AND WHERE IRREPARABLE HARM WILL OTHERWISE RESULT FROM DENIAL OF IMMEDIATE JUDICIAL RELIEF.” BRUNETTI V. BOROUGH OF NEW MILFORD, 68 N.J. 576, 588 (1975). HERE, ALL THREE EXCEPTIONS ARE APPLICABLE.**

The general rule is that a party aggrieved by an administrative decision should exhaust its administrative remedies before seeking judicial review. See R. 4:69-5. However, the rule is not jurisdictional. See Brunetti v. Borough of New Milford, 68 N.J. 576, 588 (1975). The exhaustion requirement “will be waived where the interest of justice so requires.” Id. at 588. For example, “exhaustion of remedies will not be required where administrative review will be futile, where there is a need for prompt decision in the public interest... and where irreparable harm will otherwise result from denial of immediate judicial relief.” Ibid. See also Gripenburg v. Twp. of Ocean, 220 N.J. 239, 261 (2015); N.J. Civil Serv. Ass'n v. State, 88 N.J. 605, 613 (1982); Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 561 (1979)).

Here, all three Brunetti exceptions are applicable.

**A. The exhaustion rule is inapplicable because “there is a need for prompt decision in the public interest... and ...irreparable harm will otherwise result from denial of immediate judicial relief.”**

As fully set forth in prior briefs and certifications to this Court, the relief sought in Count One of the Counterclaim is necessary to prevent irreparable harm. See North Wildwood’s January 4 Br., at 17-33. More particularly, the installation of a protective bulkhead constitutes an absolutely necessary response to an imminent threat to life and property – in light of the extremely compromised condition of the beach and in light of the fact that the storm season is presently upon us. Verna 1/4/23 Cert., ¶¶4-8; Lomax 1/4/23 Cert., ¶¶12, 14-16. Indeed, NJDEP itself has



acknowledged that, as of October 7, the condition of the North Wildwood beach in the vicinity of 15th Avenue poses “a threat to severe loss of property” and requires an “emergent” response. See NJDEP submission, Moriarty Cert., Exhibit “B” (October 7 email of Jennifer Moriarty, Director of NJDEP Land Resource Protection).

Furthermore, NJDEP – by its February 24 2023 decision denying North Wildwood’s second EA application, -- re-stated its conclusion that “[w]ith regard to the area between 15<sup>th</sup> and 16<sup>th</sup> Avenues... [NJDEP] agrees with {North Wildwood} that this area of the dune is in risk of imminent breach.” Bocchi Cert., Exhibit “D: (NJDEP 2/24/23 decision, at 3).

Thus, the existence of a “severe” and “imminent” threat in the past few months is undisputed on this record. Moreover, the record discloses that the existence of a “severe” and “imminent” threat continues to this day and the condition of the beach and dune has continued to deteriorate since NJDEP’s February 24 decision. See Verna 3/13/23 Cert., ¶¶3-8.

For this reason alone, the exhaustion rule is inapplicable because “there is a need for prompt decision in the public interest... and ...irreparable harm will otherwise result from denial of immediate judicial relief.”<sup>2</sup> Brunetti v. Borough of New Milford, *supra*, 68 N.J. at 588.

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<sup>2</sup> Moreover, the conclusion that the exhaustion requirement should be waived by operation of the Brunetti rule (i.e., when “there is a need for prompt decision in the public interest... and ...irreparable harm will otherwise result from denial of immediate judicial relief”) is further buttressed by reference to the practicalities of the lengthy administrative appeals process that generally applies in the Office of Administrative Law (OAL) in connection with contested cases.

Under the rules governing the OAL, a hearing request is initially addressed to the agency, which generally should be transmitted to the OAL within 30 days. See NJAC 1:1-4.1. (However, NJDEP often takes far longer than 30 days to transmit a contested case to the OAL.) A hearing is then held before an Administrative Law Judge (ALJ). Following the hearing the ALJ renders an initial decision. See N.J.A.C. 1:1-18.1 At that point, any party may file exceptions to the initial decision. See N.J.A.C. 1:1-18.4. Thereafter, the NJDEP Commissioner has 45 days to adopt, modify or reject the ALJ’s initial decision. See N.J.A.C. 1:1-18.6. However, the OAL rules provide for extensions to the 45-day period – and these extensions are often invoked. See N.J.A.C. 1:1-18.8. (continued...)

**B. In light of the record in this litigation and in the underlying dispute between North Wildwood and NJDEP, any administrative appeal of NJDEP’s second denial of North Wildwood’s EA Application would be futile. Therefore, the exhaustion rule is inapplicable for this reason alone.**

On October 12, NJDEP denied North Wildwood’s first EA application for the installation of an emergency bulkhead because it determined that North Wildwood “*had not demonstrated that there is an imminent threat to the loss of life or severe loss of property based on existing condition.*” NJDEP. Br., at 6. Remarkably, on October 7 -- just five days prior -- NJDEP acknowledged in writing that the condition of the North Wildwood beach in the vicinity of 15<sup>th</sup> Avenue poses “a threat to severe loss of property” and requires an “emergent” response. NJDEP submission, Moriarty Cert., Exhibit “B”. The record reflects that nothing changed in the intervening five days. Instead, NJDEP simply changed its mind – for reasons left unexplained. Then, by its February 24 decision on North Wildwood’s second EA application, NJDEP concluded that at least a portion of the North Wildwood dune “is in risk of imminent breach.” Bocchi Cert., Exhibit “D: (NJDEP 2/24/23 decision, at 3).

Notwithstanding the foregoing, NJDEP again declined to approve North Wildwood’s proposal to install a protective bulkhead. Thus, NJDEP has decided not once, but twice, that a bulkhead is not an acceptable alternative. It has also gone beyond that by saying it would welcome another EA request for any proposal *other than* a bulkhead.

The record before the Court conclusively establishes that the installation of a protective bulkhead is the only effective measure that will effectively against an imminent dune breach. In brief, the record includes the following substantial evidence:

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Suffice it to say that the administrative appeal process is usually quite lengthy, and is ill-suited for the ongoing emergent nature of the beach and dune system that is continuing to deteriorate and is vulnerable to complete failure in the event of a moderate storm. See Verna 3/13/23 Cert., ¶¶3-8.

- North Wildwood's beaches have suffered from a long history of beach erosion. Farrell 1/4/23 Cert., ¶¶17-20. During the last decade, North Wildwood has tried to remediate the significant beach erosion issues using various methods preferred by the NJDEP other than installation of bulkheads. Verna 1/4/23 Cert., ¶13. However, as described below, all of the methods employed by North Wildwood (other than installing a bulkhead) have been ineffective.

- For example, North Wildwood employed beach renourishment efforts that have resulted in the placement of more than two million cubic yards of sand over the last decade at a cost in excess of \$20,000,000. Verna 1/4/23 Cert., ¶15. However, none of that sand remains on North Wildwood's beaches. *Id.*, ¶16. Additionally, North Wildwood has employed "backpassing" and hydraulic beach fill and, on occasion, have imported materials from quarries. These methods, while preferred by NJDEP, have all proved futile in providing any coastal protection to North Wildwood. *Id.*, ¶17.

- The record on this application includes the following data that supports the foregoing conclusion. During the period of 2012 through 2019, North Wildwood completed a series of emergency beach fill projects harvesting sand from Wildwood Crest, Wildwood and Hereford Inlet. These projects were approved by the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the NJDEP. The sand volumes placed on the beach during this eight-year period totaled 1,129,963 cubic yards. Unfortunately, all of this sand has been lost due to persistent erosion. Verna 1/4/23 Cert., ¶¶18-19.

- In a further effort to combat the dire conditions, in 2020 through 2022 North Wildwood proceeded with additional emergency sand back-pass projects. Again, these projects were approved by all Federal and State agencies having jurisdiction. The sand volumes placed on the beach during this three-year period totaled 928,077 cubic yards. Once again, none of this sand remains on the beach as of this date. Verna 1/4/23 Cert., ¶¶20-22.

- The total amount of sand placed on the beach since 2010 is over 3.2 million cubic yards of material at a total cost of in excess of \$28.3 million. This is effectively money lost to North Wildwood because these measures proved futile. Verna 1/4/23 Cert., ¶¶22-24.

- North Wildwood's positive experience with the installation of bulkheads on its beaches (as a coastal protection measure) stands in stark contrast with its negative experience with the depositing of sand on its beaches.

- Since 2012, North Wildwood has been compelled to install bulkheads which have been effective in protecting its residents from the devastating effects of coastal systems. In 2012, North Wildwood installed vinyl bulkheads from 3rd Avenue to 4th Avenue. This installation of the bulkhead here immediately

proved effective in providing significant coastal protection. Verna 1/4/23 Cert., ¶¶26-27.

- In 2018, North Wildwood expanded the bulkhead from 4th Avenue to 7th Avenue. Here too, the bulkhead proved to be successful. This success followed six years of constant beach erosion notwithstanding North Wildwood's efforts using traditional beach nourishment practices. Verna 1/4/23 Cert., ¶28.

- In 2019, because nothing else worked, North Wildwood once again was compelled to expand the bulkhead from 7th Avenue to the midblock of 12th and 13th Avenues. Once again, this measure proved highly effective in providing coastal protection to the residents of North Wildwood. Verna 1/4/23 Cert., ¶29.

Thus, in light of nearly ten years of North Wildwood's direct empirical evidence, the evidence is overwhelming that: (1) the depositing of sand on North Wildwood beaches is an ineffective coastal protection measure; and (2) the installation of a bulkhead on North Wildwood beaches is a very effective coastal protection measure.

Against this backdrop, NJDEP has twice declined to approve North Wildwood's proposal to install a protective bulkhead. On this record the conclusion is inescapable that any further resort to NJDEP administrative process in connection with North Wildwood's EA application for a bulkhead will prove futile.

For this reason alone, the exhaustion rule is inapplicable because "exhaustion of remedies will not be required where administrative review will be futile." Brunetti v. Borough of New Milford, *supra*, 68 N.J. at 588.

#### **POINT IV**

**IN THE ALTERNATIVE, AN ADMINISTRATIVE APPEAL OF NJDEP’S SECOND DENIAL OF NORTH WILDWOOD’S EA SHOULD BE REJECTED BY THIS COURT BECAUSE THE RELIEF HERE SOUGHT DOES *NOT* CONSTITUTE REVIEW OF NJDEP’S FEBRUARY 24 DENIAL OF THE EA. RATHER, THE REQUESTED RELIEF SEEKS AN EQUITABLE REMEDY *FOR THE CIRCUMSTANCES THAT EXIST TODAY*.**

In the alternative, an administrative appeal of NJDEP’s second denial of North Wildwood’s EA should be rejected by this Court because the relief here sought does *not* constitute review of NJDEP’s February 24 denial of the EA. Rather, the requested relief seeks an equitable remedy *for the circumstances that exist today*. This is a significant distinction because the subject matter of this dispute – the condition of the beach and dunes – is materially different as of the current date as compared with the condition that existed as of the date of the NJDEP’s denial of the EA.

For example, the North Wildwood Project Engineer, James Verna, stated in his 1/4/23 certification:

We are now at the point where one moderate storm or even just a couple smaller storms will result in a breach [of the dune in the vicinity of 15th Avenue]. **Notably, there is only a few feet left of dune protection between the ocean and North Wildwood’s critical infrastructure.** Simply put, what little beach and dune system that remains between 15th and 16th Avenues will be unable to withstand the impending Nor’easter and winter storm seasons. [Verna 1/4/23 Cert., ¶10]

Mr. Verna has submitted an updated certification that is annexed to this motion. See Verna 2/13/23 Certification. By his updated certification, Mr. Verna indicates that the trend of dune erosion continues unabated. See id., ¶¶3-8.

In short, what is before the Court on this record is not the same as what was before NJDEP on North Wildwood’s application for an EA back in October or North Wildwood’s second EA in February 24. The affected North Wildwood beach and dunes continue to deteriorate -- and thereby further endangering the lives and property of the residents of North Wildwood. Only this Court



has present jurisdiction over the beach and dune conditions that exist today For this reason alone, this Court should continue to assert its broad and flexible equitable jurisdiction in light of the present condition of the beach and dunes -- which even NJDEP concedes constitutes a “severe” and “imminent” threat to the City. See Bocchi Cert., Exhibit “D” (NJDEP 2/24/23 decision, at 3). (stating that a portion of the North Wildwood dune “is in risk of imminent breach.”).

### **CONCLUSION**

For the reasons set forth above: (1) this Court has the requisite jurisdiction over NJDEP’S February 24 denial of North Wildwood’s second Emergency Authorization (EA) application “and matters that may occur subsequent thereto; and (2) this Court properly should exercise its jurisdiction over the entire dispute in the interest of judicial economy and consistent with the principles of the Entire Controversy Doctrine and in order to prevent irreparable harm .

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By: 

Anthony S. Bocchi, Esq.

Dated: March 13, 2023

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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**

**CERTIFICATION OF JAMES W. VERNA  
III IN SUPPORT OF THE MOTION ON  
SHORT NOTICE AS TO JURISDICTION**

I, JAMES W. VERNA III, of full age, certify and say:

1. I serve as the Project Engineer for Defendant, City of North Wildwood (“North Wildwood” or “City”) and have served in this capacity continuously since 2001. In that capacity I am familiar with the facts set forth herein.

2. I submit this Certification in support of North Wildwood’s request that this Court take jurisdiction over and adjudicate the legality of NJDEP’s February 24, 2023 denial of its most recent Emergency Authorization (“EA”) request. This certification supplements my previous Certification in this matter. Its purpose is to: (1) document not only the continued loss of sand from the City’s beaches and dunes since that certification, but to also document the paucity of what

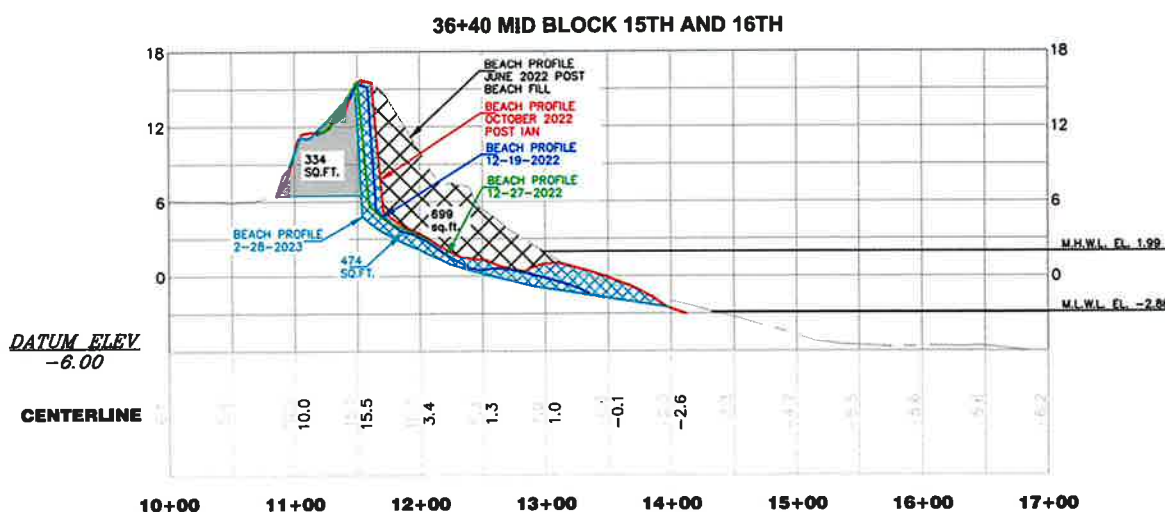
remains, and (2) to address certain incorrect conclusions reached by NJDEP in its February 24, 2023 EA denial.

#### A. The Current Conditions That Exist Today

3. At the time that North Wildwood submitted its first EA request in October 2022, it was documented that more than 75% of the protective dune system immediately in front of North Wildwood's Beach Patrol Building/Oceanfront Safety Facility had been lost since the remnants of Hurricane Ian struck earlier that month, and that during the same event, over 50,000 cubic yards of material was lost between 11th and 16th Avenues. An additional 24,563 cubic yards was lost since Hurricane Ian.

4. As of February 28, 2023, there is currently approximately 20,000 cubic yards of material remaining in the dune system between 11<sup>th</sup> and 16<sup>th</sup> Avenues at or above an elevation of 6.5 feet Mean Sea Level.

5. All of the foregoing information is documented in a series of beach profiles entitled "Post-Ian Beach Loss (10/2022) Compared to Post Beach Fill As Built (6/2022) Between 16<sup>th</sup> and 11<sup>th</sup> Avenue, North Wildwood Beach, City of North Wildwood" prepared by Van Note-Harvey Associates dated March 10, 2023, annexed hereto at **Exhibit A**. Each of these beach profiles show the deterioration of conditions at each respective site from June 2022 through the beginning of March 2023. Below is the beach profile for 15<sup>th</sup> and 16<sup>th</sup> Avenue, which speaks for itself.



6. Taken together, this data confirms that the approximately 20,000 cubic yards of sand that remains in the dune system from 11<sup>th</sup> to 16<sup>th</sup> Avenues is woefully insufficient to survive storm events that are well within the range of what could occur in North Wildwood.

7. As further evidence of this, attached is a photograph taken this morning, March 13, 2023, that illustrates the increasingly severe dune erosion at 15<sup>th</sup> Avenue.



**(Exhibit B,** View of severe dune erosion at 15<sup>th</sup> Avenue as of March 13, 2023.)

8. As it clear from the foregoing photograph, North Wildwood's beach has broken down so severely that the beach constitutes a public safety emergency. It is my opinion that installation of a protective steel bulkhead is the only feasible method of addressing the severe threat to the loss of life and property that exists today.

**B. The Infeasibility of Using Smaller Amounts of Sand**

9. NJDEP, in the course of reviewing North Wildwood's February 10, 2023 EA request, twice asked that North Wildwood examine the feasibility of using smaller amounts of sand to try and forestall the breaching of the dune system between 12<sup>th</sup> and 16<sup>th</sup> Avenues for an indeterminate period of time.

10. Those analyses were conducted and were provided to NJDEP, but given the continued rate of erosion being experienced on the City's beaches, and the failure of prior beach fills using greater amounts of sand, it remains the City's conclusion that these alternatives were not feasible.

11. In view of the foregoing, I trust this Certification sufficiently provides the Court with the state of conditions that exist between 12<sup>th</sup> and 16<sup>th</sup> Avenues today.

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.

  
JAMES W. VERNA III

Date: March 13, 2023



# **EXHIBIT A**

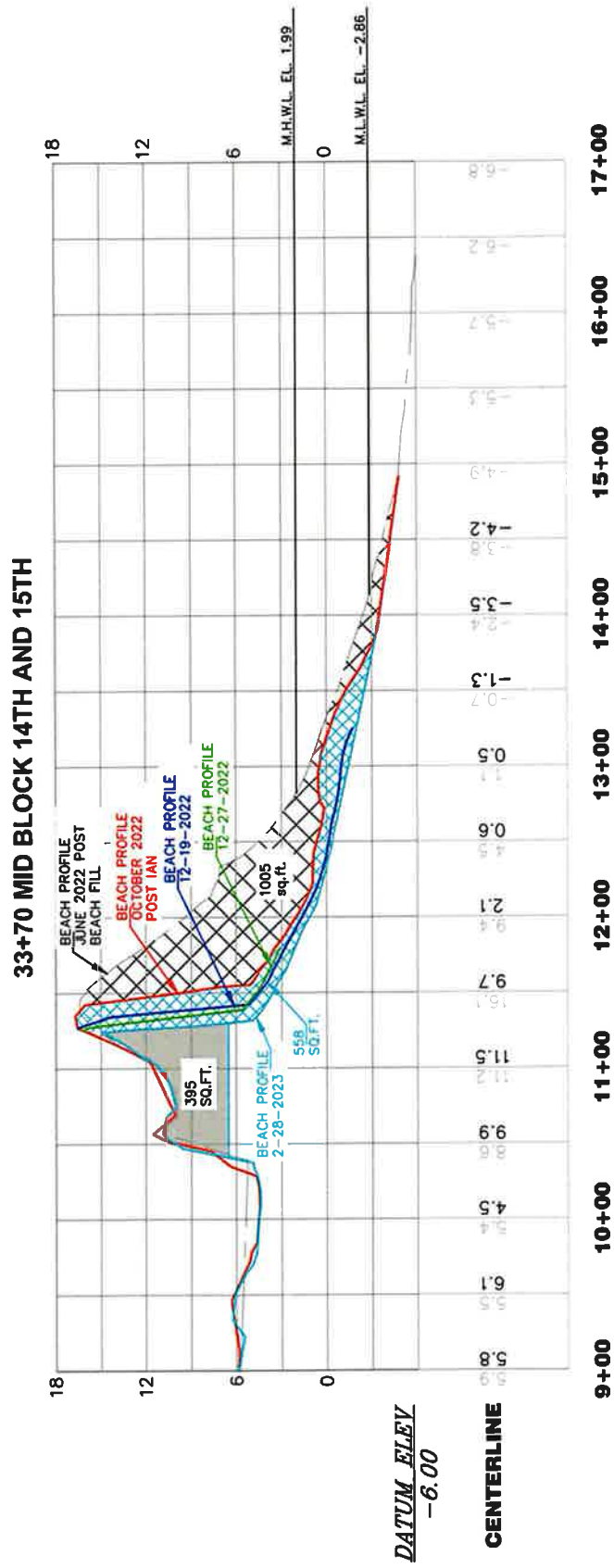
[illegible]

Beach Loss Post Beach Fill (6/2022 to Post Ian 10/2022)					Beach Loss (Post Ian 10/2022 to 2-28-2023)					Remain Dune Volume (to Elev. 6.5) 16th Ave to 12th Ave.				
Station	Area	Dist	Volume (CU.FT.)	(CY)	Station	Area	Dist	Volume (CU.FT.)	(CY)	Station	Area	Dist	Volume (CU.FT.)	(CY)
24+25	1118	135	150323	5568	24+25	357	135	52245	1935	26+95	756	135	110228	4083
25+60	1109	135	149513	5538	25+60	417	135	58793	2178	28+30	877	135	79785	2955
26+95	1106	135	154710	5730	26+95	454	135	65948	2443	29+65	305	135	42593	1578
28+30	1186	135	163888	6063	28+30	523	135	74183	2748	31+00	326	135	53865	1995
29+65	1239	135	166793	6178	29+65	576	135	77828	2883	32+35	472	135	58523	2168
31+00	1232	135	146543	5428	31+00	577	135	71888	2663	33+70	395	135	52920	1960
32+35	939	135	131220	4860	32+35	488	135	70605	2615	35+05	389	135	49478	1833
33+70	1005	135	119138	4413	33+70	558	135	71685	2655	36+40	344	135	101588	3763
35+05	760	135	98483	3648	35+05	504	135	66015	2445	37+75	1161	135	548978	20333
36+40	699	135	98213	3638	36+40	474	135	56430	2090	TOTAL VOLUME (CY)			20533	
37+75	756	135	1378620	51060	37+75	362	135	665618	24653					
TOTAL LOSS (CY)			51060		TOTAL LOSS (CY)			24653						

9+25 10+00 11+00 12+00 13+00 14+00

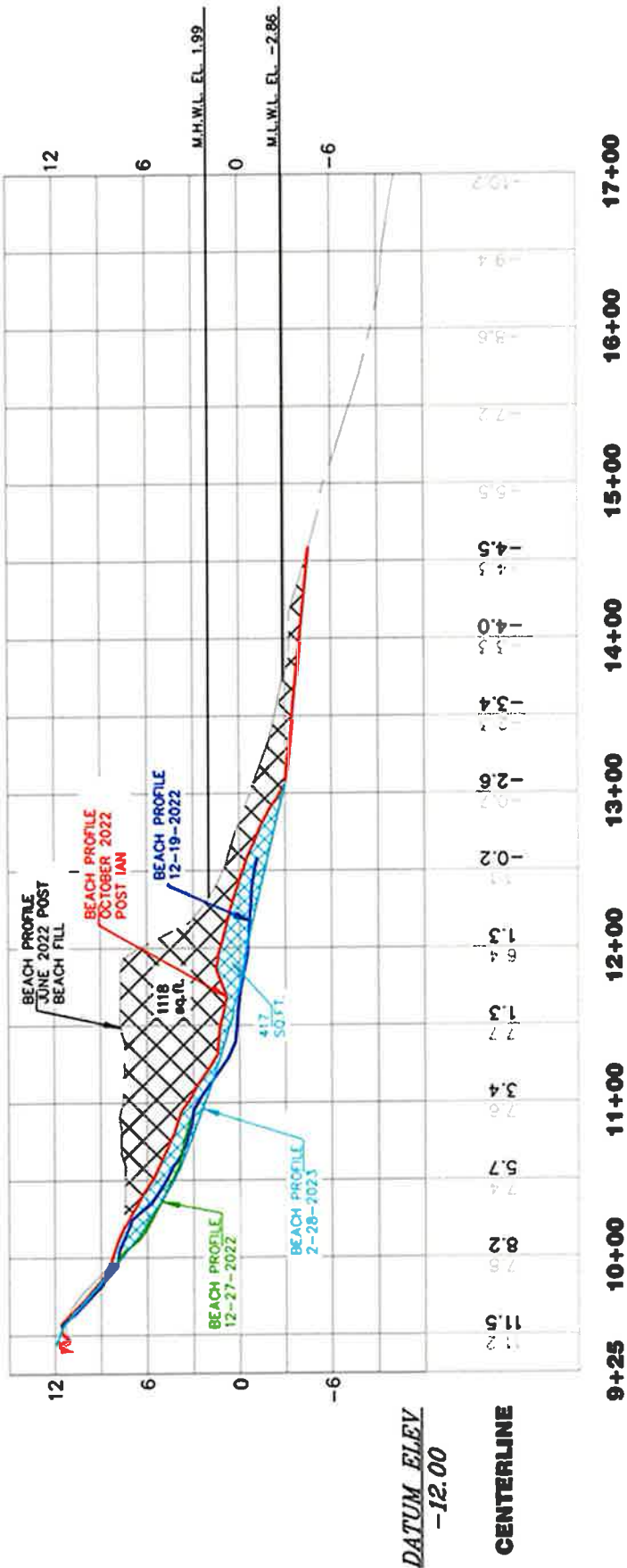
NOTES

- 1. LOCATIONS AND ELEVATIONS SHOWN HEREON WERE TAKEN FROM GPS OBSERVATIONS PERFORMED JUNE 2022 AND OCTOBER 2022 REFERENCING NATIONAL GEODETIC SURVEY CONTINUOUSLY OPERATING REFERENCE STATION (NGSCORS) CORS ID NJCM PID DI3828. VERTICAL DATUM IS NATIONAL GEODETIC VERTICAL DATUM OF 1988 (NAVD88) (GEOID12B)
- 2. MEAN HIGH WATER ELEVATION= 1.99'
- 3. MEAN LOW WATER ELEVATION= -2.86'
- 4. SPRING HIGH WATER ELEVATION= 3.06'
- 5. RED PROFILE LINE REPRESENT POST "IAN" STORM PROFILE
- 6. BEACH LOSS AFTER STORM "IAN" BETWEEN STA. 37+75 (CL. 16TH AVE.) AND 24+25 (CL. 11TH AVE.) = 51,060CY +/-
- 7. BLUE LINE REPRESENTS LOCATIONS PERFORMED 12-19-20228.
- 8. GREEN LINE REPRESENTS LOCATIONS PERFORMED 12-27-2022
- 9. CYAN LINE REPRESENTS LOCATION PERFORMED 02-28-2023

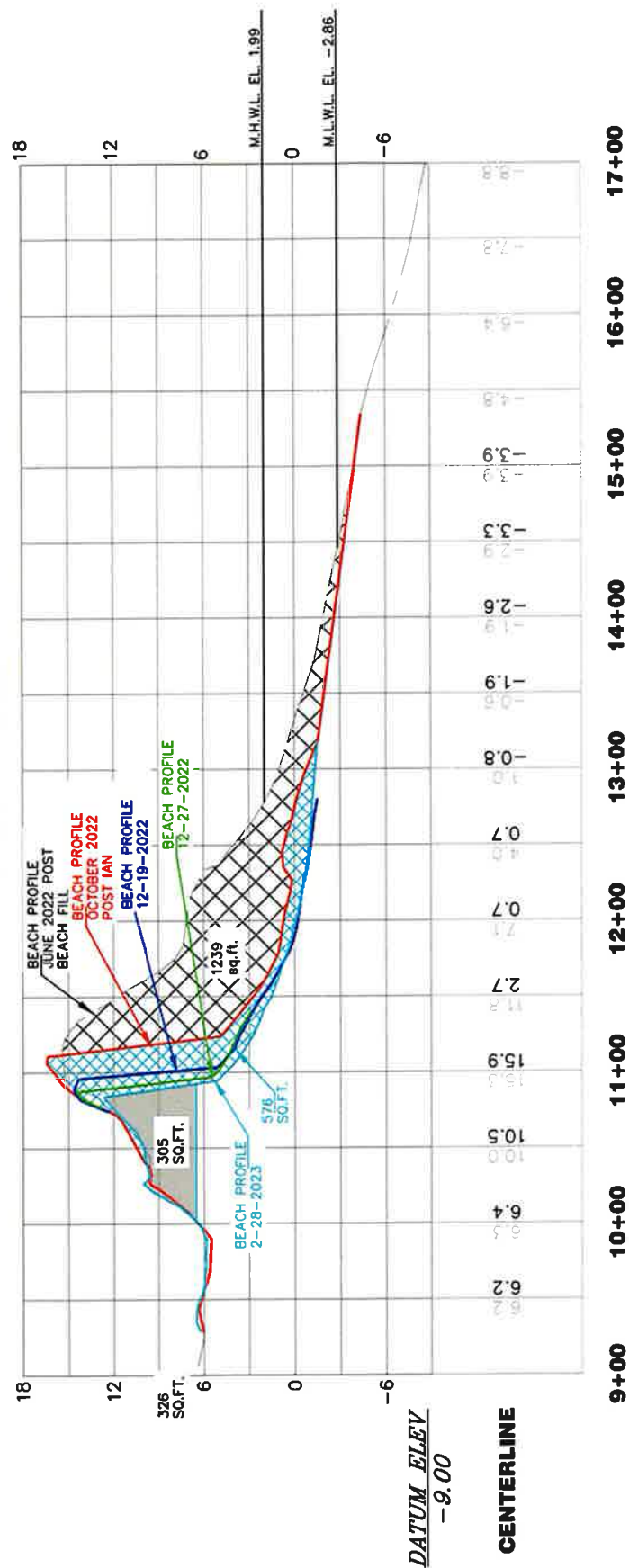


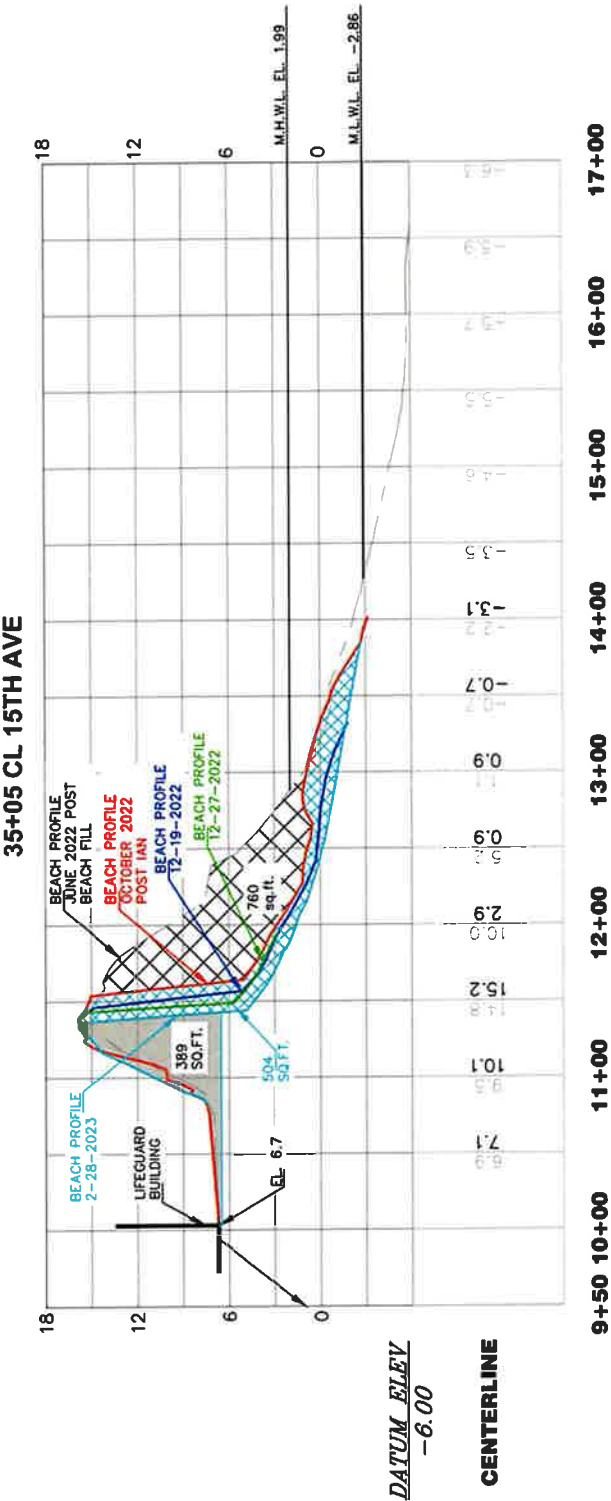


24+25 CL 11TH AVE

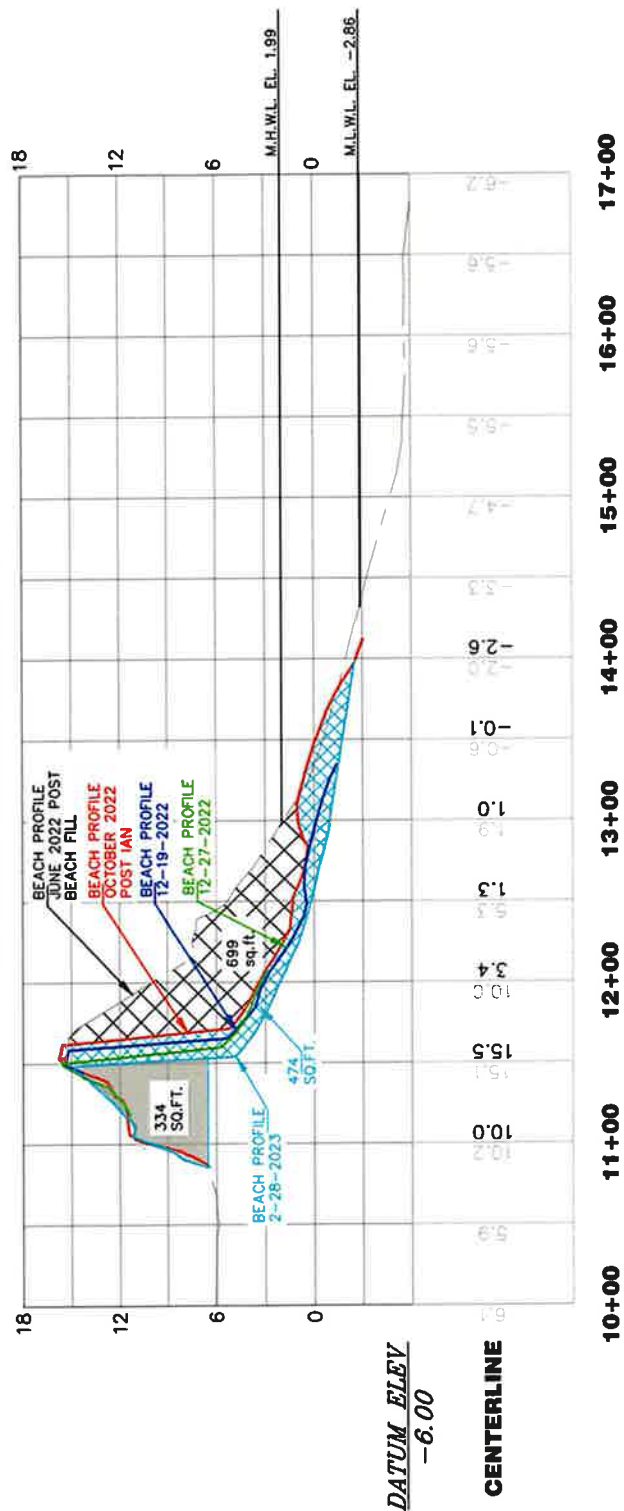


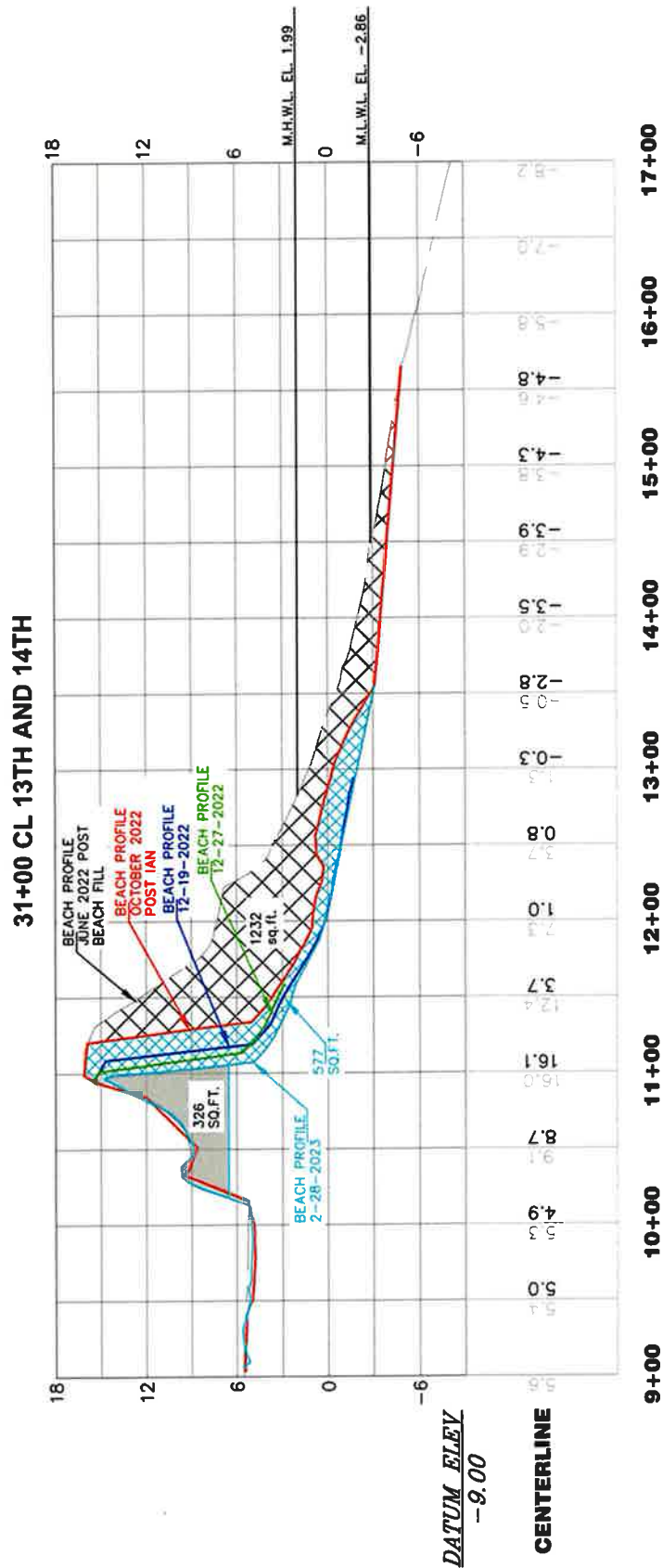
29+65 CL 13TH AVE





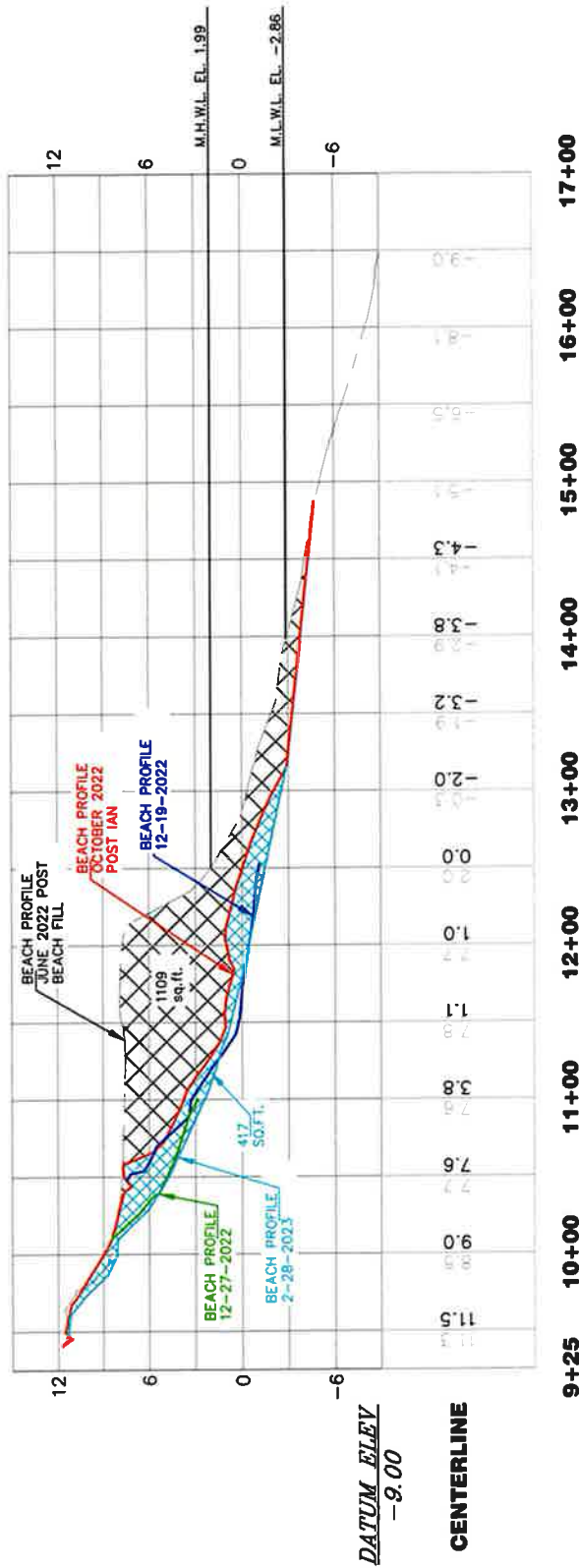
36+40 MID BLOCK 15TH AND 16TH

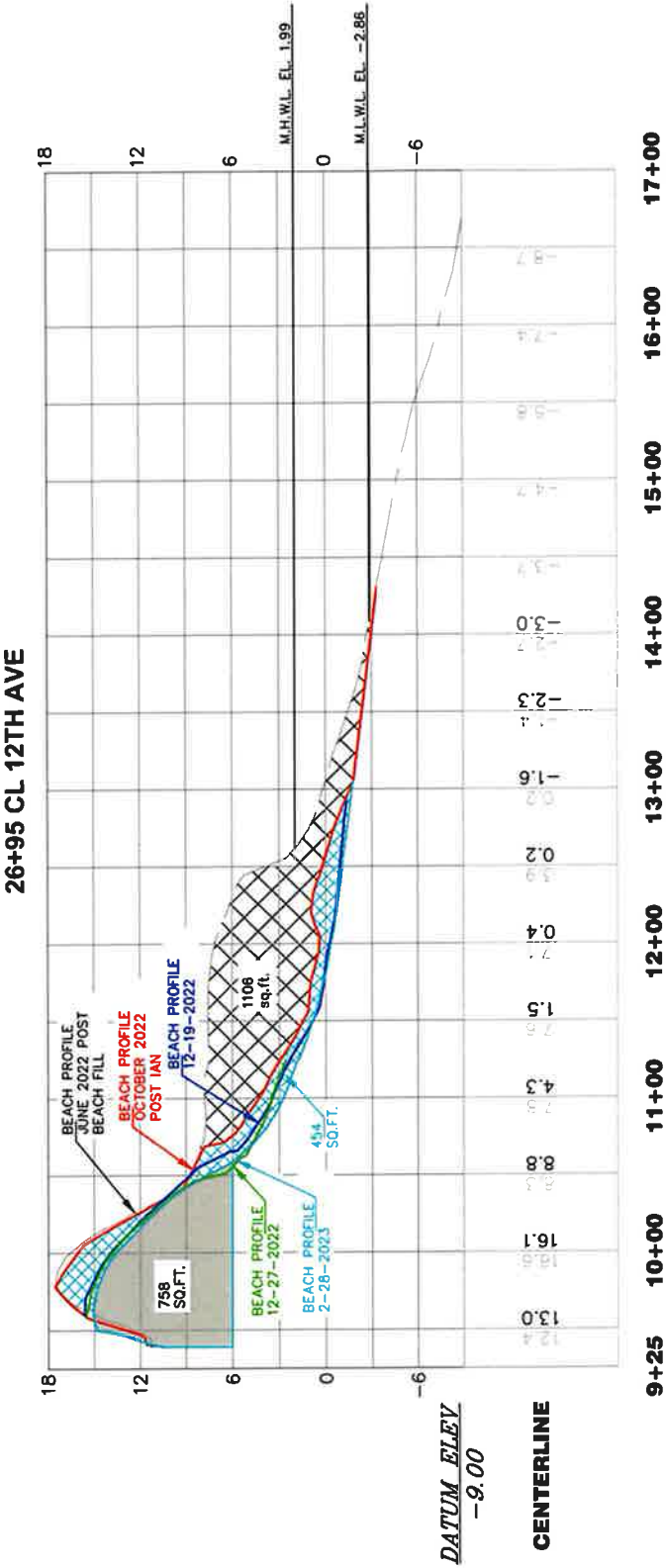


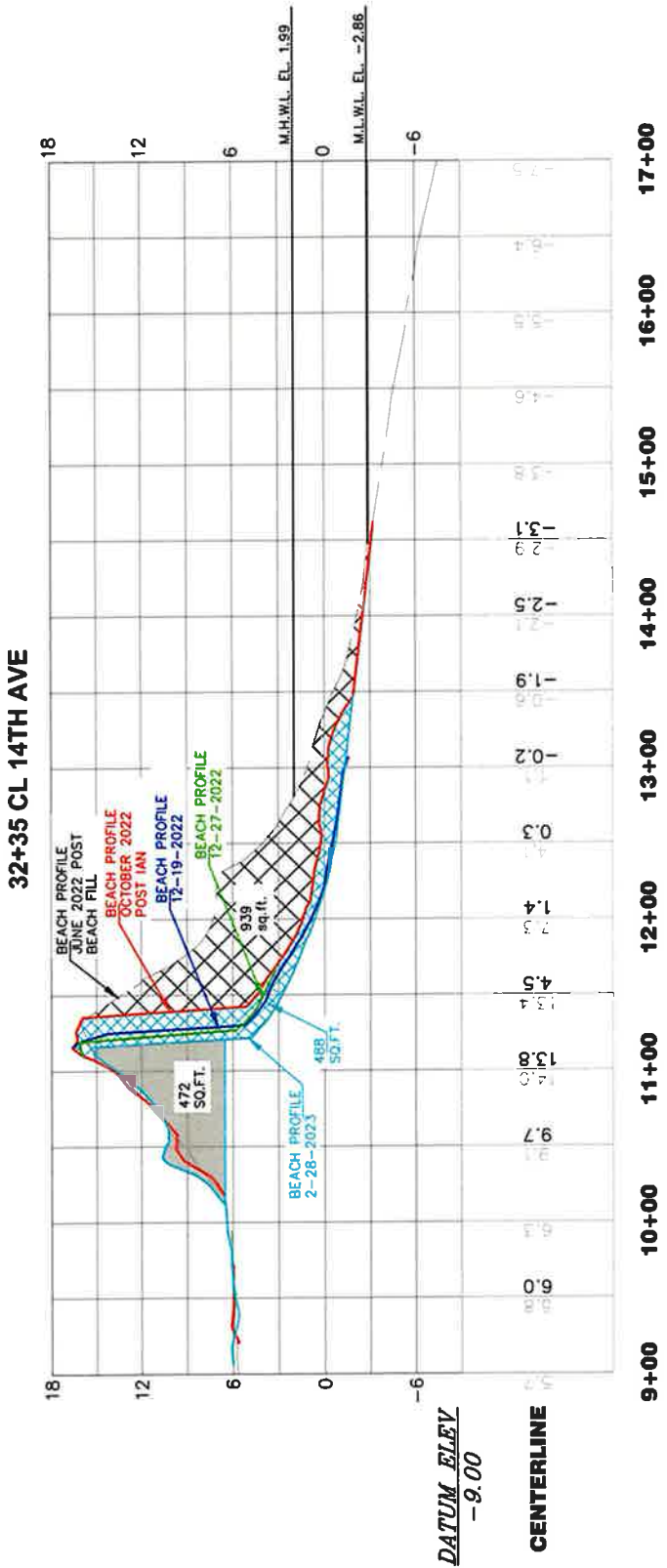


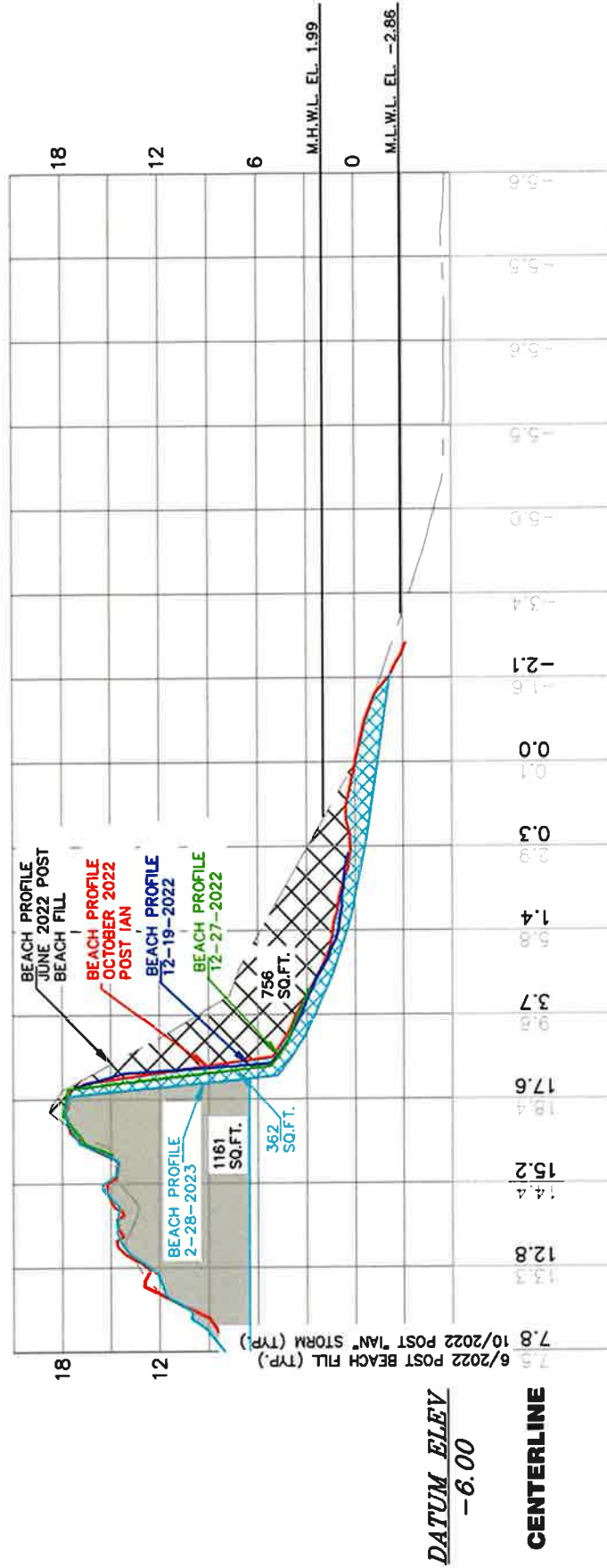


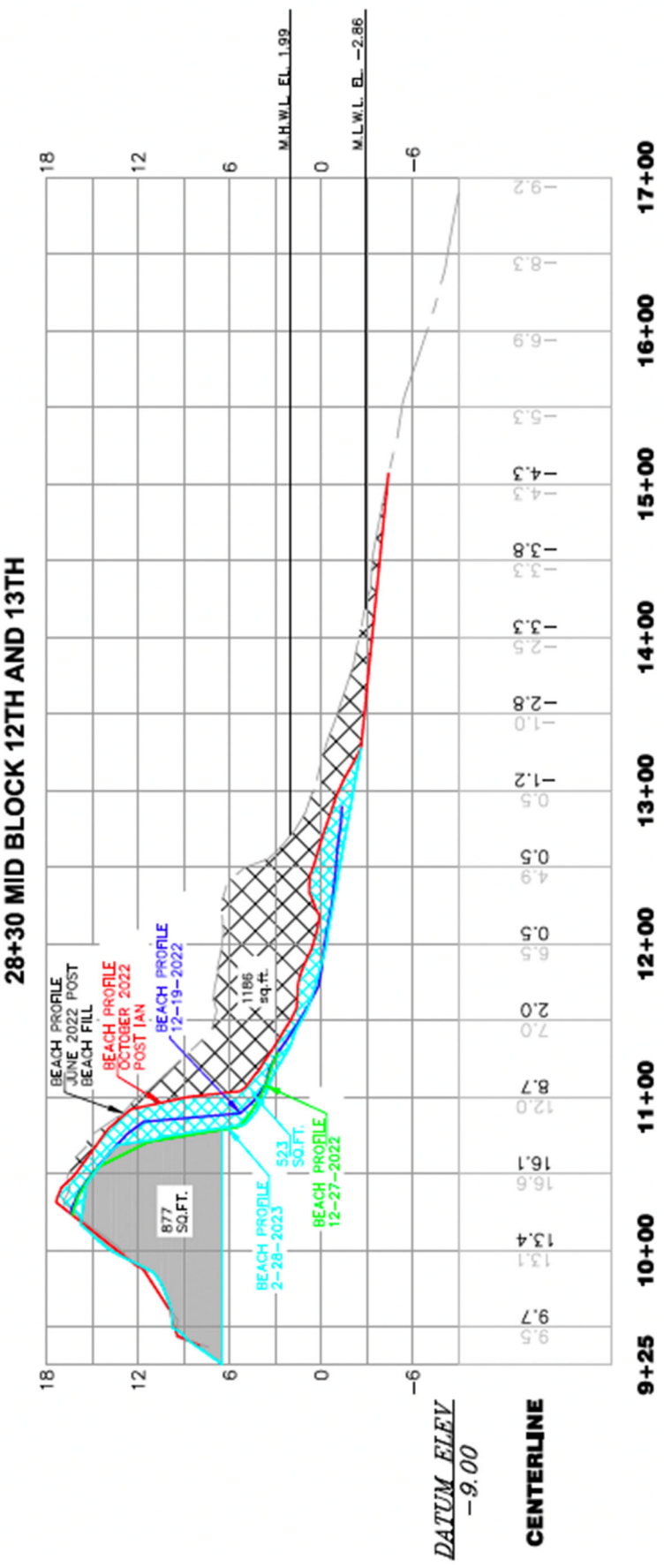
25+60 MID BLOCK 11TH AND 12TH













## **EXHIBIT B**



**(Exhibit B, View of severe dune erosion at 15<sup>th</sup> Avenue as of March 13, 2023.)**



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March 13, 2023

**Via JEDS**

Clerk, Chancery Division  
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. CPM-C-000055-22**

Dear Sir/Madam:

Our office represents Defendant, City of North Wildwood, in connection with the above-referenced matter. Enclosed herewith for filing please find the following documents:

1. Notice of Motion On Short Notice Seeking Determination of Jurisdiction, with Certification of Service;
2. Certification of James Verna III with exhibits;
3. Certification of Anthony S. Bocchi, Esq. with exhibits;
4. Brief; and
5. Proposed form of Order.

Please charge the appropriate filing fee to our firm's Collateral Account No. 145431.

Thank you for your attention to this matter.

Very truly yours,

**CULLEN AND DYKMAN LLP**

  
ANTHONY S. BOCCHI

ASB/rc  
Encls.

cc: Hon. Michael J. Blee, A.J.S.C. (Courtesy Copy, via Regular Mail)  
Dianna E. Shinn, D.A.G. (via JEDS and E-mail)