



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF COASTAL AND LAND USE COMPLIANCE AND ENFORCEMENT

Toms River Office

1510 Hooper Avenue, Suite 140

Toms River, New Jersey 08753

Telephone: (732) 255-0787 Fax: (732) 255-0877

www.nj.gov/dep

June 6, 2020

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

CATHERINE R. McCABE

Commissioner

Via email & CERTIFIED MAIL/RRR
7019 2280 0001 6928 4759

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

RE: Notice of Violation
NJDEP File #: PEA200001 - 0507-03-0009.3
Block 291.01, Lot 1; Block 315.02, Lot 1;
Block 316.02, Lot 1; Block 317.02, Lots: 1 & 2;
Block 317.03, Lot 1
North Wildwood City, Cape May County, New Jersey

Dear Mayor Rosenello:

Enclosed for service upon you is a Notice of Violation issued by the Department.

If you have any questions concerning the enclosed Notice of Violation you may contact Danielle Campanella, Environmental Specialist, of my staff at Danielle.Campanella@dep.nj.gov, or at the address or telephone number above.

Sincerely,

(For)

Michele Kropilak, Region Supervisor
Bureau of Coastal and Land Use Compliance and Enforcement

Enclosure

c: Christopher Jones, NJDEP, DLUR
Judeth Yeany, NJDEP, Green Acres
Bill Dixon, NJDEP, Coastal Engineering



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NOTICE OF VIOLATION

Responsible Entity: City of North Wildwood
NJDEP File #: PEA200001 - 0507-03-0009.3
Site Location: Waterfront area, Surf Ave & 2nd Ave-22nd Ave
North Wildwood, New Jersey 08260
Block and Lots: Block 291.01, Lot 1; Block 315.02, Lot 1
Block 316.02, Lot 1; Block 317.02, Lots: 1 & 2;
Block 317.03, Lot 1

You are hereby notified that the City of North Wildwood (City) is currently in violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and the regulations (N.J.A.C. 7:7A-1 et seq.), the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.) and the regulations (N.J.A.C. 7:13-1.1 et seq.), and the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.) and the regulations (N.J.A.C. 7:7-1 et seq.), and the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the regulations (N.J.A.C. 7:15-1 et seq.).

During compliance evaluations at the above location on April 28, 2020 and May 26, 2020, the New Jersey Department of Environmental Protection (Department) observed egregious and potentially knowing violations of the above-referenced laws, which exist to ensure the protection of public safety and the environment. As outlined further below, the City's unauthorized and unpermitted destruction of more than eight (8) acres of mature, densely vegetated natural dunes, including destruction of critical wildlife habitat, freshwater wetlands, unpermitted construction of more than 2,234 linear feet of bulkhead, unpermitted installation and construction of structures and walkways, and continued failure to comply with permit conditions through continued beach grading without proper regulatory oversight is detrimental to the environment and may have created conditions that threaten public safety. If immediate corrective action in accordance with this Notice is not completed, the Department may be required to take further enforcement action.

1. **Requirement:** Pursuant to N.J.A.C. 7:7-2.2, no person shall engage in a regulated activity within a CAFRA area without a coastal permit.

Description of Noncompliance: The performance of unauthorized regulated activities within a CAFRA area. More specifically, the following activities have occurred without permit authorization from the Department's Division of Land Use Regulation:

- A. The construction of approximately 617 linear feet of steel bulkhead from 5th to 7th Avenue, within a prior beach and dune area.
- B. The removal of vegetation, filling and grading of the (now bulkheaded) beach and dune area (approx. 0.58 acres) from 5th to 7th Avenue, to create a park with playground, walkways and other amenities.
- C. The construction of approximately 1,617 linear feet of steel bulkhead from 7th Ave to 13th Avenue along the oceanfront, within prior dune and freshwater wetland areas.
- D. The placement of crushed clam fill material for the creation of a path through approx. 8,565 square feet of beach/dune/CAFRA area from Surf Ave to the Lou Booth Amphitheater.
- E. The placement of an approx. 96 square foot concrete landing/flagpole adjacent to the Lou Booth Amphitheater.
- F. The 1,084 square foot expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater.
- G. The placement of an approximately 165 square foot shed within a CAFRA Area at the beginning of the path on Surf Ave leading to the Lou Booth Amphitheater.
- H. The placement of a 470 square of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to amphitheater)
- I. The removal of vegetation, grading, and filling of a beach/dune/CAFRA area at the intersection of 1st & Surf: specifically, the placement of concrete & gravel for pathways and a bike rack area within a 4,234 square foot area.
- J. The clearing of vegetation and grading of a beach/dune at the intersection of 1st & Surf: Specifically, the placement of an approx. 230 square foot platform with benches.
- K. The construction of a 598 square foot gazebo at 1st & Surf.
- L. The construction of a 357 square foot roof covered gazebo structure at the intersection of 2nd and JFK Blvd.
- M. The construction of approx. 4,216 square feet of concrete walkway and composite walkway at the Beach Patrol building at 15th Avenue.
- N. The placement/construction of approx. 4,691 square feet of storage sheds at the Beach Patrol building at 15th Avenue.
- O. The placement/construction of an approx. 1,638' x 8' composite bike path between 15th & 21st along the oceanfront.
- P. The placement of approx. 44,981 square feet of crushed clam fill material for the creation of a walkway between 15th and 21st along the oceanfront.

Q. The construction of 24,264 square feet of composite walkways/ shower platforms/ bench platforms etc. along the oceanfront at multiple street end entrances to the beach. The showers have been constructed outside of the sewer service area. (Also in violation of N.J.S.A. 58:10A-1 et seq. & N.J.A.C. 7:14 et. seq.)

R. The construction of approx. 495 linear feet of vinyl bulkhead along the oceanfront from 3rd to 5th Avenues along, water ward of the existing timber bulkhead.

2. **Requirement:** Pursuant to N.J.A.C. 7:7A-2.2(a), the following activities are regulated when performed in a freshwater wetland and State open waters and require prior permit approval from the Department: the removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind; the drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or surface water, regardless of the duration of such alteration; the dumping, discharging, or filling with any material; the driving of pilings; the placing of obstructions, including depositing, constructing, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland; or the destruction of plant life which would alter the character of a freshwater wetlands, including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or the cutting of trees; and the placement of any portion of a residential development project as defined at N.J.A.C. 7:7A-1.4.

Description of Noncompliance: The performance of unauthorized regulated activities within a freshwater wetland area. More specifically, the following activities have occurred without authorization from the Department's Division of Land Use Regulation:

The vegetation removal, clearing, excavation, grading, removal of existing dunes, and stockpiling of sand has occurred within an approximately 6.7 acres area of prior beach/dune that also included areas of freshwater wetlands between 7th and 13th Avenue.

These dunes, freshwater wetlands, and freshwater wetlands transition area were previously identified and delineated under permit #:0507-03-0009.2 CAF140001 & FWW140001 & FWW140002, including Special condition #4, which stated, "Any additional unpermitted disturbance of freshwater wetlands, state open waters and/or transition areas besides that shown on the approved plans shall be considered a violation of the Freshwater Wetlands Protection Act Rules unless the activity is exempt or a permit is obtained from the Department prior to the start of the proposed disturbance.", and Special condition #6, which stated, "The construction activities shall not cause any change in pre-construction elevation of freshwater wetlands, transition areas, or state open waters." As stated above, these areas have been removed and filled, thus changing the elevation. All freshwater wetlands and transition areas have been disturbed/filled/removed.

3. **Requirement:** Pursuant to N.J.A.C. 7:7A-2.3(a), the removal, excavation or disturbance of the soil; dumping or filling with any material; erection of structures; placement of pavements; destruction of plant life which would alter the existing pattern of vegetation; and placement of any portion of a residential development project as defined at N.J.A.C. 7:7A-1.4 within a freshwater wetland transition area are regulated activities which require prior permit approval from the Department.

Description of Noncompliance: The performance of unauthorized regulated activities within a freshwater wetland transition area. More specifically, the following activities have occurred without authorization from the Department's Division of Land Use Regulation:

The vegetation removal, clearing, excavation, grading, removal of existing dunes, and stockpiling of sand has occurred within an approximately 6.7 acres area of prior beach/dune that also included freshwater wetland transition areas between 7th and 13th Avenue.

These dunes, freshwater wetlands, and freshwater wetlands transition area were previously identified and delineated under permit #:0507-03-0009.2 CAF140001 & FWW140001 & FWW140002, including Special condition #4, which stated, "Any additional unpermitted disturbance of freshwater wetlands, state open waters and/or transition areas besides that shown on the approved plans shall be considered a violation of the Freshwater Wetlands Protection Act Rules unless the activity is exempt or a permit is obtained from the Department prior to the start of the proposed disturbance.", and Special condition #6, which stated, "The construction activities shall not cause any change in pre-construction elevation of freshwater wetlands, transition areas, or state open waters." As stated above, these areas have been removed and filled, thus changing the elevation. All freshwater wetlands and transition areas have been disturbed/filled/removed.

4. **Requirement: Pursuant to N.J.A.C. 7:13- 2.1(a), no person shall engage in a regulated activity in a regulated area without a flood hazard area permit as required by this chapter, or a coastal permit as required by N.J.A.C. 7:7.**

Description of Noncompliance: The performance of unauthorized regulated activities within a regulated flood hazard area without the required permit authorization. More specifically, the following flood hazard regulated activities have occurred without authorization from the Department's Division of Land Use Regulation:

- A. The construction of 617 linear feet of steel bulkhead between 5th & 7th Ave to create a park with playground/walkways /other amenities.
 - B. The construction of 1,617 linear feet of steel bulkhead between 7th &13th Avenue.
 - C. The placement of approx. 4,691 square feet of storage sheds at the Beach Patrol building at 15th Avenue.
5. **Requirement: Pursuant to N.J.A.C. 7:7-27.2(c) 8, failure to comply with the conditions of a CAFRA permit is a violation of the Coastal Zone Management Rules and is grounds for enforcement action under N.J.A.C. 7:7-29.**

Description of Noncompliance: Failure to comply with the approved beach and dune maintenance permit and special conditions #'s 4, 10, and 13 of CAFRA Permit #: 0507-03-0009.3 CZM170001 (PERMIT 1).

Special condition #4 states, "The proposed activities must be conducted in accordance with Best Management Practices as defined by the Department in the Rules on Coastal Zone Management in Standards applicable to routine beach maintenance (N.J.A.C. 7:7-10.2), Standards applicable

to emergency post-storm beach restoration (N.J.A.C. 7:7-10.3) and Standards applicable to dune creation and maintenance (N.J.A.C. 7:7-10.4). Activities other than those outlined in these subchapters shall require additional authorization from the Program. Failure to receive such authorization prior to activities may warrant enforcement action by the Bureau of Coastal and Land Use Enforcement."

Special condition #10 states, "Bulldozing, excavation, grading, vegetation removal, or clearing and relocation of existing dunes, whether existing or constructed in conjunction with this permit are not authorized under this general permit."

Special condition #13 states, "Sand transfers to or from wetland areas that may exist on the beach are not authorized by this permit."

Per N.J.A.C. 7:7-10.2/10.3/10.4 -Standards for beach and dune activities: Bulldozing, excavation, grading, vegetation removal or clearing, and the relocation of the existing dunes is not authorized, and there shall be no disturbance to existing dunes.

The April 28, 2020 site inspection confirmed the following beach/dune activities are not in compliance with PERMIT 1 or the Coastal Zone Management rules:

- A. The removal of vegetation, grading and filling, of 0.58 acres of prior beach/dune area between 5th and 7th Avenue for the installation of a bulkhead and creation of a park.
- B. The vegetation removal, clearing, excavation, grading, removal of existing dunes, and stockpiling of sand has occurred within an approximately 6.7 acres area of prior beach/dune that also included areas of freshwater wetlands and freshwater wetland transition areas between 7th and 13th Avenue.
- C. The removal of vegetation, filling, and grading of an approx. 0.57 acres beach/dune area adjacent to Seaport Pier.

The disturbed dune areas were previously identified under permit #: 0507-03-0009.2 CAF140001 & FWW140001 & FWW140002, which contained Special condition #1, which states, "This permit does not authorize any disturbance to the adjacent dune." As stated above, the dunes have been graded, excavated, and vegetation has been removed.

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

Description of Noncompliance: Failure to comply with the approved sand harvesting/sand transfer/beach fill permit and standard condition #12 of Permit #: 0500-07-0006.3 CAF180001 & WFD180001 (PERMIT 2), which authorizes the harvesting of sand from Wildwood, and transferring the sand to North Wildwood to be deposited along the beaches and dunes between 26th Avenue and 2nd Avenue, as beach fill.

PERMIT 2 states that the project does not propose disturbance within freshwater wetlands, and Standard condition #12 states, "The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action under, as well as, in the appropriate case, suspension and/or termination of the permit."

On April 28, 2020, the following unauthorized activities were observed. These activities are not in compliance with the permit and approved plans, which do not authorize the disturbance of freshwater wetlands or existing dunes.

- A. Sand has been transported between 7th Avenue & 13th Avenue and placed within an approx. 290,971 square foot (6.68 acres) vegetated dune area. The dunes included areas of freshwater wetlands and freshwater wetlands transition areas, which were critical wildlife habitat. The freshwater wetlands and prior existing densely vegetated dunes are no longer visible on site and have been removed.
- B. Sand has been stockpiled within an approx. 24,971 square foot (0.57 acres) area of dune adjacent to Seaport Pier, which is outside of the approved areas depicted on the approved plans.

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

Description of Noncompliance: Failure to comply with the Bike Path, Sidewalk & Utility Reconstruction permit, approved plans, and pre-construction condition #2 of the CAFRA and Freshwater Wetlands Permit #:0507-03-0009.2 CAF140001& FWW140001 & FWW140002 (PERMIT4).

Pre-construction condition #2 states, "Prior to site preparation, the permittee shall complete a transition area and adjacent freshwater wetland area conservation restriction and file the completed restriction with the Office of the Cape May County Clerk."

This conservation restriction was required to preserve and document the location of freshwater wetlands and transition areas within the oceanfront existing dunes. Review of the Cape May County Clerk's Website found no record of the required freshwater wetland and transition area conservation restriction having been recorded.

ALL UNAUTHORIZED ACTIVITIES MUST CEASE IMMEDIATELY.

Corrective Actions:

- a. Do not conduct any further regulated activities, except in compliance with a valid land use permit and approved plan(s) or Department approved restoration plan.
- b. Within 10 days of receipt of this Notice of Violation, contact the Bureau with a proposal to address the above referenced violations and all information requested herein.

- c. The proposal must address all conditions outlined herein, including the submission of complete application(s) to the Department's Division of Land Use Regulation for the appropriate CAFRA, Freshwater Wetlands and/or Flood Hazard permit(s) to attempt to authorize all unpermitted construction, grading, filling, excavation, and dune and freshwater wetlands and transition area removal, and/or submission of a restoration plan to the Department for review and approval to remove all unauthorized construction and restore the waterfront areas from Surf Ave, and 2nd Ave – 23rd Avenues to their pre disturbance condition.
- d. Any activity and/or structure that does not receive permit approval must be removed and the area restored to its pre disturbance condition in accordance with the following:
 1. The restoration of 6.68 acres of critical wildlife habitat dune, including areas of freshwater wetlands and freshwater wetlands transition area, between 7th and 13th Avenue. Such restoration of the dune and freshwater wetlands/transition area shall be to its original topography and include planting with appropriate native vegetation.
 2. The restoration of an approximately 0.58 acres of beach and dune area from 5th to 7th Avenues through the removal of approximately 617 linear feet of steel bulkhead, playground equipment, walkways and other amenities and restoration of the beach/dune area to its original topography, as well as the planting of the dune with native vegetation.
 3. The removal of the approximately 1,617 linear feet of steel bulkhead from 7th Ave to 13th Avenue along the oceanfront, within prior dune and freshwater wetland/transition areas.
 4. The removal of the approximately 495 linear feet of vinyl bulkhead from 3rd to 5th Avenues, that has been constructed water ward of the existing timber bulkhead.
 5. The restoration of 0.57 acres of the beach/dune area adjacent to Seaport Pier through the restoration of the dune to its original topography and planting the restored area with native vegetation.
 6. The removal of crushed clam fill material from within the 8,565 square feet of beach/dune/CAFRA area from Surf Ave to the Lou Booth Amphitheater, and replant the area with native vegetation.
 7. The removal of the approx. 96 square foot concrete landing/flagpole adjacent to the Lou Booth Amphitheater.
 8. The removal of the 1,084 square foot expansion of concrete sidewalk at Surf Avenue leading to the path through the dune that leads to the Lou Booth Amphitheater.
 9. The removal of the approx. 165 square foot shed within a CAFRA Area at the beginning of the path on Surf Ave leading to the Lou Booth Amphitheater.

10. The removal of the 470 square feet of concrete path in a CAFRA area near the intersection of 2nd & Ocean. (adjacent to amphitheater)
11. The restoration of the approximately 4,234 square foot of a beach/dune/CAFRA area at the intersection of 1st & Surf through the removal of concrete, gravel, pathways, and bike rack area, and replant with native vegetation.
12. The restoration of the approx. 230 square foot beach/dune area at the intersection of 1st & Surf through the removal of the platform and benches and replant with native vegetation.
13. The removal of the 598 square foot gazebo at 1st & Surf Avenue.
14. The removal of the 357 square foot roof covered gazebo structure at the intersection of 2nd and JFK Blvd.
15. The removal of the approximately 4,216 square feet of concrete walkway and composite walkway at the Beach Patrol building at 15th Avenue.
16. The removal of the approx. 4,691 square feet of storage sheds at the Beach Patrol building at 15th Avenue.
17. The removal of the approximately 1,638' x 8' composite bike path between 15th & 21st along the oceanfront.
18. The removal of the approx. 44,981 square feet of crushed clam fill material for the creation of a walkway between 15th and 21st Avenues along the oceanfront and replant with native vegetation.
19. The removal of 24,264 Square feet of composite walkways/ shower platforms/ bench platforms etc. along the oceanfront at multiple street end entrances to the beach.

For more information and guidance on preparing a restoration plan go to: <http://www.nj.gov/dep/enforcement/clue-resources.html>.

- e. The pre-construction condition #2 of the CAFRA and Freshwater Wetlands Permit #: 0507-03-0009.2 CAF140001 & FWW140001 & FWW140002 cannot be satisfied at this time, as the freshwater wetlands and freshwater wetlands transition areas have been destroyed within the dunes. Upon restoration of the impacted freshwater wetlands and freshwater wetlands transition areas, a conservation restriction shall be submitted to the Department for review and approval, and upon approval, the conservation restriction shall be recorded with the Cape May County Clerk's Office. If the freshwater wetlands and transition areas are not restored within the dunes, mitigation shall be required to compensate for the loss. Any mitigation required for the loss of freshwater wetlands and freshwater wetlands transition area will require the City to file a conservation restriction for the mitigation area.

In addition, please provide the Bureau:

- 1) Copies of all site/work plans, as built surveys, planning board and other local/county/state and federal approvals, associated with all of the unauthorized construction and activity outlined above, and
- 2) A list of all contractors with contact information/address, copies of all contracts, and specifically which project(s) the contractor completed for the City, for all of the work outlined above.

This **Notice of Violation** serves as notice that the Department's Bureau of Coastal and Land Use Compliance and Enforcement has determined that a violation has occurred. It does not constitute final agency action and may not be appealed or contested. The issuance of this Notice or compliance therewith does not preclude the State of New Jersey or any of its agencies from initiating formal administrative and/or judicial enforcement action (including assessment of penalties), with respect to the violations listed above or for any other violations. You may appeal or contest such formal actions. Penalties may be assessed daily for each violation.



Issued by: _____ (For)

Michele Kropilak, Region Supervisor
Bureau of Coastal and Land Use Compliance and Enforcement

Date: June 6, 2020