



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

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www.nj.gov/dep

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CATHERINE R. McCABE
Commissioner

June 6, 2020

Via email & CERTIFIED MAIL/RRR
7019 2280 0001 6928 4766

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

CERTIFIED MAIL/RRR
7019 2280 0001 6928 4473

Joseph Byrne & Daniel Govberg
BG Capital LLC
9310 Keystone Street
Philadelphia, Pennsylvania 19114

RE: Seaport Pier Notice of Violation
NJDEP File #: PEA200001 - 0507-03-0009.4
Block 291.01, Lot 1; Block 317.03, Lot 1
North Wildwood City, Cape May County, New Jersey

Dear Mayor Rosenello, Messrs. Byrne and Govberg:

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



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CERTIFIED MAIL/RRR
7019 2280 0001 6928 4766

CERTIFIED MAIL/RRR
7019 2280 0001 6928 4773

NOTICE OF VIOLATION

Responsible Entities: City of North Wildwood & BG Capital LLC
NJDEP File #: PEA200001 - 0507-03-0009.4
Site Location: Seaport Pier at East 22nd Ave.
North Wildwood, New Jersey 08260
Block and Lots: Block 291.01, Lot 1; Block 317.03, Lot 1

You are hereby notified that the City of Wildwood and BG Capital LLC are in violation of 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.), 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 protection of public safety, public access and the environment. As outlined further below, BG Capital's and the City's unauthorized and unpermitted construction on Seaport Pier, including all the structures located on the main pier, and the unauthorized construction at the members only Starboard Swim Club, including a restaurant/bar/bathrooms/food trailer outside of a sewer service area and pool storage building, is detrimental to the environment and may have created conditions that threaten the public safety and reduce public access. 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:

The construction of a 23,136 square foot restaurant and bar building w/ bathrooms, a concert stage, additional storage building, and a tiki bar on the main Seaport Pier.

2. **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:

The construction of a 23,136 square foot restaurant and bar building, stage, tiki bar, and storage building on Seaport Pier and a pool equipment storage building & food trailer connected to the sewer on the Seaport Pier extension.

3. **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 Seaport Pier expansion permit, permit modification and special conditions #'s 1 & 11 of permit #: 0507-03-0009.4 CZM170001.

Special condition #1 states, "There shall be no construction of any sewage generating structures such as bathrooms and/or showers within the expanded pier on the beach within Block 291.01 Lot 1."

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

The site inspection conducted on April 28, 2020 determined the following unauthorized activities/noncompliance have occurred within the Seaport Pier expansion:

- A. The construction of a 1,404 square foot, members only swim club with swim up bar/restaurant, including bathrooms & sinks, and food trailer has been constructed outside of the sewer service area. This building was authorized as a storage building only, with no utilities. (This is also in violation of N.J.S.A. 58:10A-1 et seq. & N.J.A.C. 7:15 et. seq.)
- B. The construction of a 202 square foot pool equipment/storage building adjacent to the pool.

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 and Flood Hazard permit(s) to attempt to authorize all unpermitted construction, and/or submission of a restoration plan to the Department for review and approval to remove all unauthorized construction and restore the pier to its 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 removal of the 1,404 square foot, members only swim club building with swim up bar/restaurant with bathrooms & sinks, and food truck located outside of the sewer service area. This building was authorized as a storage building only with no utilities.
 2. The removal of the 202 square foot pool equipment storage building adjacent to the pool on the Seaport Pier expansion.
 3. The removal of all structures on the main Seaport Pier, including the approximately 23,136 square foot restaurant and bar building w/ bathrooms, a concert stage, a tiki bar, and additional storage building.

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

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 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 BG Capital LLC & the City, for all of the work outlined above.

This **Notice of Violation** serves as notice that the NJDEP'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