

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

CITY OF NORTH WILDWOOD,

Appellant,

vs.

**NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL
PROTECTION,**

Respondent.

Appellate Division

Docket No. A-001677-23T4

**On Appeal from a Decision of the
New Jersey Department of the
Environmental Protection,
January 31, 2024**

**Date of Submission:
February 9, 2024**

**PETITIONER CITY OF NORTH WILDWOOD'S
BRIEF IN SUPPORT OF ITS MOTION FOR
TEMPORARY EMERGENCY RELIEF
PURSUANT TO R. 2:9-8**

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PRELIMINARY STATEMENT

This case calls upon this Court to exercise its equitable powers and its powers under R. 2:9-8 in order to prevent immediate irreparable harm and to protect the public interest. We are mindful that this is no ordinary request. We would not seek this relief unless it was absolutely necessary. We strongly believe that the requested relief is absolutely necessary.

It is often said that a picture is worth a thousand words. That is most certainly the case here. The following is a photograph of the North Wildwood beach taken on January 16, 2024 showing the substantially degraded dune system, including the recent appearance of a serious breach in the protective dune system in the area situated between 12 and 13th Avenues:



This is the situation that exists today. Therefore, by this motion, North Wildwood seeks temporary relief in the form of the installation of a temporary

emergency oceanfront bulkhead in the beachfront adjacent to 12th through 15th Avenues – the area that has experienced rapid and substantial degradation of the beachfront dune system.

By way of background, this appeal arises from North Wildwood’s application for permission to install the temporary emergency bulkhead by means of an Emergency Authorization (EA) application filed with the New Jersey Department of Environmental Protection. (DEP). By decision dated January 31, 2024, DEP denied North Wildwood’s Emergency Authorization application. See Yoskin Cert., Exhibit “A”. In denying the EA application, DEP found that “there is no threat to life, severe loss of property, or environmental degradation, and thus the threshold standard for issuance of an EA has not been met.” Id. at 5. However, as fully discussed herein, DEP’s determination is manifestly mistaken, and is undercut by DEP’s own contradictory past assertions that portions of the North Wildwood beach had degraded to the point in which the threat to lives and property was “imminent” within the meaning of N.J.A.C. 7:7-21.1(a).

Moreover, the record on this motion includes a certification from the North Wildwood Project Engineer, James Verna. Mr. Verna states:

At the time the EA application was submitted on January 19, 2024 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. On or about January 16, 2024, water from the Atlantic Ocean breached the remaining dune system and flowed through and beyond those dunes.

We are now at the point where one moderate storm or even a few low intensity storms will result in further and likely more serious breaches of the remaining dune system. There remains only a few feet left of dune protection between the ocean and North Wildwood's critical infrastructure, and what little beach and dune system that remains will be unable to withstand even a moderate storm. Consequently, the court's intervention is required to protect the citizens of North Wildwood from storm systems which can easily decimate its infrastructure and cause irreparable damage to the City [Verna Cert., ¶10]

The record also includes a certification of Stewart Farrell, PhD., former director of Stockton University's Coastal Research Center. Dr. Farrell opines: "[B]ased on my more than 50 years of experience in the field... it is my opinion that DEP's failure to understand and recognize the immediate and imminent threat to North Wildwood's infrastructure is in utter disregard of the immediate threat posed by the condition of the beaches coupled with the effects of global warming, sea level rise [and] land subsidence." Farrell Cert., ¶13.

A moderate coastal storm could come at any time. A moderate coastal storm could cause irreparable harm to the residents and property of North Wildwood. Verna Cert., ¶11. With regard to the magnitude of the threat of harm, Mr. Verna states in his certification that if a storm caused a significant breach of the dune, one result could be the inundation of North Wildwood's storm drainage system. Moreover, a dune breach likely would result in the introduction of sand from the beach into North Wildwood's storm drainage system -- 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. *Verna Cert.*, ¶¶4-8.

Suffice it to say that the risk of harm is severe (if North Wildwood's request for relief were not granted) if even a moderate storm were to hit South Jersey and cause further degradation of the dunes and flooding of the immediate area. Stated plainly, this risk of irreparable harm that should not be countenanced by this Court.

For these and other reasons fully set forth herein, it is respectfully submitted that North Wildwood's motion for temporary emergent relief should be granted. Pursuant to R. 2:9-8, this Court should authorize North Wildwood to install a temporary emergency bulkhead between 12th and 15th Avenues. This remedy constitutes an absolutely necessary response to an imminent threat to life and property.

PROCEDURAL HISTORY

On January 19, 2024, the City of North Wildwood filed an application for an Emergency Authorization (“EA”) with the New Jersey Department of Environmental Protection (DEP). See Yoskin Cert., Exhibit “B” (EA Request). The EA application sought permission to install a temporary emergency bulkhead on the oceanfront beach in the vicinity of 12th through 15th Avenues. The bulkhead is an essential protective measure by reason of the severe degradation of the oceanfront dune system in that area, including an actual breach of the dune system (at midblock between 13th and 14th Avenues) caused by ocean waves. The bulkhead is designed to prevent irreparable harm and to provide emergency protection to the residents and property of the City because of the immediate danger posed in the event of even a moderate storm. See id.

North Wildwood’s EA application is governed by N.J.A.C. 7:7-21.1, which provides:

Standard for issuance of an emergency authorization

(a) The Department shall issue an emergency authorization only if the person seeking such authorization demonstrates that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and the threat, severe loss, or degradation:

1. Can only be prevented or ameliorated through undertaking a regulated activity; and

2. Is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity.

By decision dated January 31, 2024, DEP denied North Wildwood's Emergency Authorization application. See Yoskin Cert., Exhibit "A" (DEP letter of denial). DEP found that "there is no threat to life, severe loss of property, or environmental degradation, and thus the threshold standard for issuance of an EA has not been met." Id. (Exhibit "A", at 5). However, as fully discussed herein, that determination is manifestly mistaken, and is undercut by DEP's own contradictory past assertions that portions of the North Wildwood beach had degraded to the point in which the threat to lives and property was "imminent" within the meaning of N.J.A.C. 7:7-21.1(a). See Yoskin Cert., Exhibit "C" and "D".

Significantly, none of DEP's prior findings of "imminent threat" on the North Wildwood beaches involved an actual breach of the dune system by wave action. Here, as demonstrated by the photos appearing in this brief and in the annexed certification of James Verna, the present severely degraded dunes at (at midblock between 13th and 14th Avenues) are *already breached*. In light of this breach, the conditions at the subject locations are even more dire than they were when DEP itself found the existence of an imminent threat by reason of severely degraded dune systems.

Consequently, on February 2 (two days after DEP's letter of denial) North

Wildwood applied to this Court for permission to file an emergent motion. See Yoskin Cert., Exhibit “E”. On February 5, this Court granted emergent status to this motion. See Yoskin Cert., Exhibit “F”.

On February 7, North Wildwood filed its Notice of Appeal and Civil Case Information Statement. See Yoskin Cert., Exhibit “G” and “H”. On the same day, this Court issued a Notice of Docketing. See id., Exhibit “I”.

STATEMENT OF FACTS

North Wildwood seeks temporary emergency relief that would authorize North Wildwood to install a protective bulkhead in the vicinity of 12th through 15th Avenues. This emergency measure is necessary to address severe beach erosion and the impairment of the dune system that previously provided vital protection in the event of a storm. See Yoskin Cert., Exhibit “B” (EA Application); see also Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14.

By its decision below, DEP determined that there is no imminent threat to North Wildwood. This is so, according to DEP, because there remains a substantial dune that provides sufficient shoreline protection. See Yoskin Cert., Exhibit “A” (DEP letter of denial). However, this photograph appearing on page 1 of this brief (as well as the photographs contained in the annexed certification of James Verna) plainly show otherwise.

The current condition of the dune is unsustainable. In light of this emergency condition, the installation of a protective bulkhead between 12th and 15th Avenues is a necessary response to the imminent threat to life and property. See Verna Cert., ¶¶4-9; Lomax Cert., ¶¶9-13; Farrell Cert., ¶13.

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. Without this necessary protection, 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. Verna Cert., ¶¶4-6.

A. DEP’s reasons for denying North Wildwood’s application for an Emergency Authorization (for the installation of the protective bulkhead) are demonstrably incorrect – based on the actual condition of the beach and dune system that exists today.

In denying North Wildwood’s application for EA (for the installation of the protective bulkhead), DEP determined that that North Wildwood had failed to demonstrate an “threat to the loss of life or severe loss of property or environmental degradation.” See Yoskin Cert., Exhibit “A” (DEP letter of denial, at 5). However, DEP’s finding is manifestly mistaken.

The record contains overwhelming evidence of the severely depleted

condition of North Wildwood's beach and dune system in the vicinity of 12th and 15th Avenues. By its January 19, 2024 EA application submitted to DEP, North Wildwood stated that:

The nature and cause of the threat is recurrent storm damage that has continued to deplete sand volumes from the North Wildwood dunes and beaches. Most recently, several coastal storm events between January 9th and 14th of 2024 have resulted in a significant loss of sand from both the beach berm and remnant dune system leaving a multi-block section of the City at peril and without an effective barrier to mitigate storm surges and associated wave action. The depletion of sand from the City'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. These conditions ultimately resulted in a breach in the dune at midblock between 13th and 14th Avenues causing significant damage to the dune and vegetated areas behind the dune, as well as resulting in several locations of overwash areas into delineated wetlands. In the absence of effective shore protection, the City's infrastructure is at significant risk and erosion is expected to be accelerated by the most recent breach in the dune.

[Yoskin Cert., Exhibit "B" (North Wildwood 1/19/24 EA Application, at 1)]

Thus, recent coastal storm events between January 9th and 14th of 2024 have depleted the existing dune system such that a multi-block section of the City lacks an effective barrier to mitigate storm surges and associated wave action. Ibid.

In an annexed certification, James Verna, North Wildwood's Project Engineer, further describes the current conditions on North Wildwood's oceanfront between 12th and 15th Avenues. Mr. Verna states that "[a]t the time the EA application was submitted on January 19, 2024 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." Verna Cert., ¶11.

A few days prior, "water from the Atlantic Ocean breached the remaining dune system and flowed through and beyond those dunes." Verna Cert., ¶11. Consequently, "[w]e are now at the point where one moderate storm or even a few low intensity storms will result in further and likely more serious breaches of the remaining dune system." Ibid. In Mr. Verna's opinion, "There remains only a few feet left of dune protection between the ocean and North Wildwood's critical infrastructure, and what little beach and dune system that remains will be unable to withstand even a moderate storm." Ibid.

As further explained by North Wildwood's environmental consultant, Peter Lomax, "The Emergency Authorization request was filed because of the ongoing and intensifying beach erosion that is occurring in North Wildwood." Lomax Cert., ¶12. Mr. Lomax noted that "on January 16, 2024, waters from the Atlantic Ocean breached what is left of the remnant dune feature located mid-block between 13th and 14th Avenues." Ibid. See photo appearing on page 1 of this brief. The scope and scale of the beach erosion "underscores the imminent threat that exists to the municipal infrastructure and private property immediately landward of the beach." Lomax Cert., ¶12.

The record also includes a certification of Stewart Farrell, PhD., who is the former director of Stockton University's Coastal Research Center. Dr. Farrell opines: "[B]ased on my more than 50 years of experience in the field... it is my opinion that DEP's failure to understand and recognize the immediate and imminent threat to North Wildwood's infrastructure is in utter disregard of the immediate threat posed by the condition of the beaches coupled with the effects of global warming, sea level rise [and] land subsidence." Farrell Cert., ¶13.

B. Factual Background: North Wildwood's efforts at beach nourishment (involving the deposit of sand) have proven ineffective over the course of nearly ten years in which North Wildwood has engaged in this practice.

North Wildwood's beaches have suffered from a long history of beach erosion. Farrell Cert., ¶4. During the last decade, North Wildwood has tried to remediate the significant beach erosion issues by using various methods that are generally preferred by the DEP over the installation of bulkheads. Verna Cert., ¶16. However, as described below, all of the methods employed by North Wildwood (other than installing a bulkhead) have proven ineffective under the particular environmental conditions that affect North Wildwood's beaches.

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 million. Verna Cert., ¶¶16-21. However, none of that sand remains on North Wildwood's beaches. Ibid. Additionally, North

Wildwood has employed “backpassing” and hydraulic beach fill and, on occasion, have imported materials from quarries. These methods, while preferred by DEP, have all proven futile in providing any effective coastal protection to North Wildwood. Farrell Cert., ¶¶14.

As described in the annexed certification of James Verna, in the period from 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 and the DEP. 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 Cert., ¶¶16-17.

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 Cert., ¶¶18-22.

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 Cert.,

¶¶20-22.

C. North Wildwood's experience with the installation of bulkheads on its beaches has shown that this coastal protection measure is extraordinarily effective in this particular coastal setting.

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 protective bulkheads. Actual experience has shown that these bulkheads have been effective in protecting its residents from the devastating effects of coastal systems. For example, in 2012 North Wildwood installed vinyl bulkheads from 3rd Avenue to 4th Avenue. These bulkheads proved effective in providing significant coastal protection. Verna Cert., ¶¶23-25.

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 Cert., ¶26.

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 Cert., ¶27.

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.

D. DEP's prior grants of DEP's EAs that involved the installation of emergency bulkheads for essential protection against storms

North Wildwood's most recent EA request follows a prior EA request that was granted by DEP on September 26, 2023. The 2023 EA request authorized the installation of a cantilevered steel bulkhead (coated) with timber cap extending along the southwest and southeast sides of the beach patrol building at 15th Avenue. Per direction of the DEP, the bulkhead design was localized to the beach patrol building to protect this structure from the rapidly eroding beaches. Yoskin Cert., Exhibit "D"

DEP also authorized another EA back in 2022. As explained by North Wildwood's environmental consultant, Peter Lomax:

Notably, it is important to note that NJDEP has acknowledged that there was an emergency after receiving North Wildwood's initial Emergency Authorization application for the construction of an emergency bulkhead and other measures was submitted on October 5, 2022. In response to that submission, NJDEP Division Director Jennifer Moriarty sent an e-mail to North Wildwood City Administrator Nick Long on October 7, 2022, on which I was carbon copied, stating that "[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 [...]." [Lomax Cert., ¶8; Yoskin Cert., Exhibit "C" (Moriarty email dated

October 7, 2022)]

Stated plainly, DEP has determined on several prior occasions that the “threat” (in adjacent oceanfront locations) is “imminent.” Yet in denying North Wildwood’s most recent EA, DEP determined that the threat is not imminent. Yoskin Cert., Exhibit “A” (DEP 1/31/24 letter, at 5). How can that be, given that when DEP opined that the threat was imminent, there was no dune breach? Now there is a dune breach -- yet there is no imminent threat.¹ Lomax Cert., ¶¶8-9.

E. Additional benefits regarding the design and construction of the protective bulkhead

As in the previous bulkhead projects, the proposed alignment of the protective bulkhead between 12th and 15th Avenues has been strategically designed to facilitate construction/installation with the least amount of disturbance as possible.

¹ DEP attempts to defend its inconsistent positions (with respect to DEP’s prior grants of North Wildwood’s EA requests in 2022 and 2023 for protective bulkheads as contrasted to its present denial of North Wildwood’s 1/19/24 EA request for a protective bulkhead) by stating that the prior EA grants were premised on the presence of a beach patrol building at 15th Avenue that is situated on the beach. See Yoskin Cert., Exhibit “A”, at 5. But DEP’s purported distinction flies in the face of the abundant evidence in the record that the threat posed by even a moderate coastal storm – especially in light of the continuing dune deterioration – is substantial and severe as applied to the improved property and infrastructure that are landward of the beach at 12th through 15th Avenues. See Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14. As stated by Dr. Farrell, “[B]ased on my more than 50 years of experience in the field... it is my opinion that DEP’s failure to understand and recognize the immediate and imminent threat to North Wildwood’s infrastructure is in utter disregard of the immediate threat posed by the condition of the beaches coupled with the effects of global warming, sea level rise [and] land subsidence.” Farrell Cert., ¶13.

Moreover, the installation of the protective bulkhead is only a temporary emergency measure that gives North Wildwood enough shore protection pending the release of funds from the DEP under its 2021 State Aid Agreement. 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. *Verna Cert.*, ¶31.

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



The proposed bulkhead's strategic location behind the dune system avoids almost all disturbance of the already weakened dune system. The bulkhead's

proposed position is optimal because it cannot be constructed any further west toward without causing significant damage to the multi-use path and stormwater drainage system. Verna Cert., ¶33.

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 3rd Avenue and 13th Avenue would have been destroyed. Verna Cert., ¶34.

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

It is expected that within the next few years the U.S. Army Corps of Engineers (USACE) and DEP 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. Verna Cert., ¶35.

The USACE/DEP 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. Verna Cert., ¶36. This is the long-term remedy to beach erosion that North Wildwood so desperately needs. *Id.*, ¶37.

In the meantime, the immediate installation of the protective bulkhead is a necessary interim measure until the USACE/DEP project provides a long-term remedy to the longstanding problem of the severe erosion of North Wildwood's beaches and dunes. *Verna Cert.*, ¶38.

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. *Verna Cert.*, ¶60.

LEGAL ARGUMENT

POINT I

THIS COURT – EXERCISING ITS EQUITABLE JURISDICTION AND ITS POWERS PURSUANT TO R. 2:9-8 – SHOULD AUTHORIZE NORTH WILDWOOD TO INSTALL A PROTECTIVE BULKHEAD AS AN ESSENTIAL EMERGENCY MEASURE.

Rule 2:9-8 provides:

When necessary, temporary relief, stays, and emergency orders may be granted, with or without notice, by ... a single judge of the Appellate Division, to remain in effect until the court acts on the application.

As Pressler & Verniero have noted, “[t]he appellate courts ... have had a tradition of accessibility and flexibility in the handling of [emergent] matters.” Pressler & Verniero, Current N.J. Court Rules, Comment 4 to R. 2:8-1 (2024).

As a general proposition, the Superior Court (including this court) is vested with broad equitable powers. 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”). Because “equity will not suffer a wrong without a remedy,” Crane v. Bielski, 15 N.J. 342, 349 (1954), “a court's equitable jurisdiction provides as much flexibility as is warranted by the circumstances[.]” Matejek v. Watson, 449 N.J. Super. 179, 183 (App. Div. 2017). Consequently,

[e]quitable 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 in 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.**

[Id. at 183 (quoting Sears Roebuck & Co. v. Camp, 124 N.J. Eq. 403, 411-12 (1938) (emphasis added)]

In short, a “court [of equity] can and should mold the relief to fit the circumstances.” Cooper, supra, 36 N.J. at 199. See also 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.”) (emphasis added).

Here, in brief, the facts and circumstances that are before the Court on this application call for an immediate equitable remedy that would authorize North Wildwood to install – as a temporary emergency measure – a protective bulkhead

between 12th and 15th Avenues. See Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14. This remedy 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. See id.

This proposed equitable remedy recognizes that North Wildwood – in the event of 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. Verna Cert., ¶¶4-9. More particularly, 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. Ibid. In light of the record before this Court, equity demands immediate relief (*i.e.*, the installation of a temporary emergency protective bulkhead) that will provide vital protection of life and property in North Wildwood in the event of a moderate storm -- and pending the implementation of a more permanent shore protection measure. Ibid.

The foregoing is a brief summary of the equities that are at stake in this litigation. We address these equities at greater length in Point II, infra, wherein we apply, at length, the Crowe factors to the relief sought, respectively, by DEP and North Wildwood. As fully set forth in Point II, application of the Crowe factors

requires that this Court grant North Wildwood's requested temporary emergent relief that would authorize North Wildwood to install – as a temporary emergency measure – a protective bulkhead between 12th and 15th Avenues.

POINT II

APPLICATION OF THE CROWE FACTORS REQUIRES THAT THIS COURT GRANT NORTH WILDWOOD'S REQUESTED RELIEF THAT WOULD AUTHORIZE NORTH WILDWOOD TO INSTALL – AS A TEMPORARY EMERGENCY MEASURE – A PROTECTIVE BULKHEAD BETWEEN 12TH AND 15TH AVENUES.

New Jersey courts have long recognized the need for granting preliminary injunctive relief in order to prevent irreparable harm and in order to preserve the rights of the plaintiff pending the court's adjudication of the plaintiff's claims on the merits. See, e.g., Crowe v. De Gioia, 90 N.J. 126, 132 (1982); Outdoor Sports Corp. v. American Fed. of Labor Local 23132, 6 N.J. 217, 230 (1951); Ferraiuolo v. Manno, 1 N.J. 105, 108-09 (1948); Scherman v. Stern, 93 N.J. Eq. 626, 631 (E. & A. 1922); Hodge v. Giese, 43 N.J. Eq. 342, 350 (Ch. 1887). This power “must be administered with sound discretion and always upon considerations of justice, equity, and morality in a given case.” Zoning Bd. of Adjustment of Sparta Twp. v. Service Elec. Cable Television of N.J., Inc., 198 N.J. Super. 370, 379 (App. Div. 1985).

The four-part test governing a court’s determination of a party’s entitlement to preliminary injunctive relief is set forth in the seminal case of Crowe v. De Gioia, supra, 90 N.J. at 132-35. The Crowe test is as follows:

(1) a reasonable probability of success on the merits based on well settled law. Crowe, supra, 90 N.J. at 133.

(2) that the balance of hardships favors the party seeking relief. Crowe, supra, 90 N.J. at 134.

(3) that the party seeking relief would suffer irreparable harm in the absence of an injunction (irreparable harm is generally defined as a harm where money is inadequate to compensate for the harm. Crowe 90 N.J. at 133; and

(4) that the public interest will not be harmed by the granting of the injunction. Waste Mgmt. of New Jersey v. Union Cnty Util. Auth., 399 N.J. Super. 508, 519-20 (App. Div. 2008) (citing Crowe v. De Gioia, supra, 90 N.J. at 132-134).

Here, it is respectfully submitted that application of the Crowe factors requires that this Court grant North Wildwood’s requested relief that would authorize North Wildwood to install – as a temporary emergency measure – a protective bulkhead between 12th and 15th Avenues.²

² We briefly address the applicable standard of review – i.e., the so-called “arbitrary and capricious” standard. Although the “arbitrary and capricious” standard often requires that the reviewing court defer to the factual findings of an administrative agency below, our Supreme Court also has underscored that appellate review “calls for careful and principled consideration of the agency record and findings” and is

A. The prevention of irreparable harm: The installation of a protective bulkhead at 12th and 15th Avenues is a necessary emergent response to the severe threat to life and property posed by the degraded dune system and will prevent irreparable harm to life and property in the event of a moderate storm – which could strike North Wildwood at any time.

Temporary emergent relief should issue where it is necessary to prevent some imminent irreparable harm. Crowe, 90 N.J. at 126. Harm is considered "irreparable" if it is both material and incapable of being redressed adequately by monetary

not a “rubber stamp[ing]” exercise. In re Taylor, 158 N.J. at 657. See also In re North Haledon School Dist., 181 N.J. 161, 176 (2004) (“courts are obliged to undertake a careful and principled consideration of the agency record and findings”).

Importantly, “[w]hen an agency's decision is manifestly mistaken . . . the interests of justice authorize a reviewing court to shed its traditional deference to agency decisions.” L.M. v. State Div. of Med. Assistance and Health Servs., 140 N.J. 480, 490 (1995). Thus, **“the appellate court need not defer to an agency decision that is manifestly mistaken, wide of the mark or not based on adequate evidence in the record.”** Pressler & Verniero, Current N.J. Court Rules, comment 7.3 to R. 2:10-2 (2024)) (citing US Masters v. DEP, 239 N.J. 145, 160-161 (2019); P.F. v. New Jersey Div. of Disab., 139 N.J. 522, 530 (1995)). More specifically, a reviewing court “need not defer to an administrative decision based on skewed and unbalanced consideration of the evidence and findings that ignore all evidence contrary to its conclusion.” Id. (citing Costantino v. NJ Merit System Bd., 313 N.J. Super. 212, 225 (App. Div. 1998); Seigel v. DEP, 395 NJ Super. 604, 22-23 (App. Div. 2007)).

As discussed below, these principles inform the record on this motion for emergent relief – and compel the conclusion that DEP’s decision to deny North Wildwood’s Emergency Authorization (EA) application was “manifestly mistaken [and] not based on adequate evidence in the record.” L.M. v. State Div. of Med. Assistance and Health Servs., *supra*, 40 N.J. at 490. Hence, DEP’s order of denial is properly reversed and North Wildwood’s application for temporary emergent relief (to protect against irreparable harm from a dangerously depleted dune system) is properly granted.

damages. Id. at 132-33.

New Jersey courts have long recognized the existence of irreparable harm when “a loss of real property cannot be redressed by monetary damages.” Cleef v. P. Serelis Corp., 2005 WL 975682, at *4 (Ch. Div. 2005) (citing Pruitt v. Granziano, 215 N.J. Super. 330, 331 (App.Div.1987)). Our courts also have recognized the existence of irreparable harm in circumstances involving the threatened destruction of a business. See Scherman v. Stern, 93 N.J. Eq. 626, 631 (E & A 1922) (stating that an “[a]ct[] destroying a [] business ... do[es] an irreparable injury and authorize[s] the issuance of a preliminary injunction.”); Ferraiuolo v. Manno, 1 N.J. 105, 108 (1948) (“the total destruction of ...[a] business” constitutes irreparable harm).

1. The existence of “a threat to severe loss of property” that requires an “emergent” response was admitted by DEP in the context of North Wildwood’s prior EA applications. Indeed, the existence of a “severe” threat continues to this day and has actually worsened in recent months.

Here, the risk of irreparable harm is real, substantial and immediate if the temporary emergent relief sought by North Wildwood were not granted. The record on this motion includes a certification from the North Wildwood Project Engineer, James Verna. Mr. Verna states:

At the time the EA application was submitted on January 19, 2024 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. On or about January 16, 2024, water from the Atlantic Ocean breached the

remaining dune system and flowed through and beyond those dunes. We are now at the point where one moderate storm or even a few low intensity storms will result in further and likely more serious breaches of the remaining dune system. There remains only a few feet left of dune protection between the ocean and North Wildwood's critical infrastructure, and what little beach and dune system that remains will be unable to withstand even a moderate storm. Consequently, the court's intervention is required to protect the citizens of North Wildwood from storm systems which can easily decimate its infrastructure and cause irreparable damage to the City [Verna Cert., ¶10]

The record also includes a certification of Stewart Farrell, PhD., former director of Stockton University's Coastal Research Center. Dr. Farrell opines: "[B]ased on my more than 50 years of experience in the field... it is my opinion that DEP's failure to understand and recognize the immediate and imminent threat to North Wildwood's infrastructure is in utter disregard of the immediate threat posed by the condition of the beaches coupled with the effects of global warming, sea level rise [and] land subsidence." Farrell Cert., ¶13.

A moderate coastal storm could come at any time. A moderate coastal storm could cause irreparable harm to the residents and property of North Wildwood. Verna Cert., ¶11. With regard to the magnitude of the threat of harm, Mr. Verna states in his certification that if a storm caused a significant breach of the dune, one result could be the inundation of North Wildwood's storm drainage system. Moreover, a dune breach likely would result in the introduction of sand from the beach into North Wildwood's storm drainage system -- 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. Verna Cert., ¶¶4-8.

2. The installation of a protective bulkhead between 12th and 15th Avenues is an absolutely necessary response to the immediate threat to life and property.

The installation of the bulkhead between 12th and 15th Avenues is necessary to prevent irreparable harm to life and property in the event of a moderate storm – which could strike North Wildwood at any time. Stated otherwise, the installation of the bulkhead is the necessary emergent response to the “severe” threat to life and property posed by the degraded dune system. Verna Cert., ¶11.

As more fully set forth in the annexed Certification of James Verna, the Project Engineer of North Wildwood, the installation of the bulkhead is critical to the protection of the North Wildwood community, including its residents, businesses and public infrastructure. Verna Cert., ¶¶8-11. To date, North Wildwood’s inability to install the bulkhead (because of DEP’s incorrect denial of North Wildwood’s application for an Emergency Authorization) poses a grave risk to residents, businesses and real property in the event of even a moderate storm that could strike at any time. Ibid.

a. North Wildwood’s efforts at beach nourishment (involving the deposit of sand) have proven ineffective over the course of nearly ten years in which North Wildwood has engaged in this practice

North Wildwood’s beaches have suffered from a long history of beach

erosion. During the last decade, North Wildwood has tried to remediate the significant beach erosion issues using various methods preferred by the DEP other than installation of bulkheads. However, as described below, all of the methods employed by North Wildwood (other than installing a bulkhead) have been ineffective. Verna Cert., ¶13.

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. However, none of that sand remains on North Wildwood's beaches. Additionally, North Wildwood has employed "backpassing" and hydraulic beach fill and, on occasion, have imported materials from quarries. These methods, while preferred by DEP, have all proved futile in providing any coastal protection to North Wildwood. Verna Cert., ¶¶14-15.

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 and the DEP. 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 Cert., ¶¶16-17.

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 Cert., ¶¶18-19.

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 Cert., ¶¶21-22.

b. In stark contrast with North Wildwood's negative experience with the depositing of sand on its beaches, North Wildwood's experience with the installation of bulkheads on its beaches has shown that this coastal protection measure is extraordinarily effective in this particular coastal setting

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. As fully set forth in the annexed certification of Jim Verna, North Wildwood's Project Engineer, the installation of bulkheads along portions of the North Wildwood beaches has proven to be an effective coastal protection measure.

As Mr. Verna states:

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

24. 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.

25. 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.

26. 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 4th Avenue to 7th Avenue. This immediately proved to be successful.

27. One year later, 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.

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.

[Verna Cert., ¶¶23-27, 30]

Thus, in light of 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.

To sum up: North Wildwood’s requested relief is necessary to prevent immediate irreparable harm. This is so because: (a) the mere deposit of sand on North Wildwood beaches has proven ineffective as a coastal protection measure over the course of nearly ten years in which North Wildwood has engaged in this practice; and (b) the installation of bulkheads on North Wildwood beaches has proven to be a very effective coastal protection measure over the course of nearly ten years in which North Wildwood has engaged in this practice. See Verna Cert., ¶¶12-30.

By the same token, if this Court were to deny the relief sought by North Wildwood, the risk of harm to the North Wildwood community would be immediate and irreparable. See Scherman v. Stern, supra, 93 N.J. Eq. at 631 (stating that an “[a]ct[] destroying a [] business ... do[es] an irreparable injury and authorize[s] the issuance of a preliminary injunction”); Cleef v. P. Serelis Corp., supra, 2005 WL 975682, at *4 (holding that a loss of real property constitutes irreparable harm). Indeed, it is difficult to conceive of a risk of harm more severe than the risk of harm at stake in this litigation.³

³ Against this backdrop, DEP somehow argues that North Wildwood’s “planned installation of the bulkhead will require the likely irreparable removal of a portion of a delineated freshwater wetlands transition area and/or dune which would degrade the environment.” DEP’s argument elevates form over substance. Stated plainly, “without the proposed bulkhead, soon there will literally be no freshwater wetland transition area to protect.” Lomax Cert., ¶28.

The very purpose of the bulkhead is to protect and preserve the dune area. It follows that “the implementation of the proposed bulkhead coupled with a robust beach

B. On the merits: The record on this application strongly favors the implementation of the temporary emergency measures sought by North Wildwood as a means to address the immediate threat caused by the current emergency conditions of the North Wildwood beach.

The second element of the Crowe analysis is a showing by the plaintiff of “a reasonable probability of ultimate success on the merits.” Crowe v. De Gioia, supra, 90 N.J. at 133.

At issue here is DEP’s denial of North Wildwood’s application for an Emergency Authorization (“EA”) for an emergency bulkhead in order to remedy the severe impairment of the protective dune system in the area of 12th and 15th Avenues. North Wildwood’s EA application is governed by N.J.A.C. 7:7-21.1, which provides:

Standard for issuance of an emergency authorization

(a) The Department shall issue an emergency authorization only if the person seeking such authorization demonstrates that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and the threat, severe loss, or degradation:

1. Can only be prevented or ameliorated through undertaking a regulated activity; and

nourishment project with a functional dune field would ... prove [to be of] far more ecological value” than the fragile and depleted dune that – in any event – may not survive the next storm in the absence of the protective measures sought by North Wildwood. Ibid.

In short, the relief sought by North Wildwood --- the installation of a bulkhead to forestall further degradation of the essential dune system -- is necessary to prevent immediate and irreparable harm.

2. Is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity.

In denying the EA application, DEP found that “there is no threat to life, severe loss of property, or environmental degradation, and thus the threshold standard for issuance of an EA has not been met.” Yoskin Cert., Exhibit “B,” at 5. However, this photograph appearing on page 1 of this brief (as well as other photographs contained in the Certification of James Verna) plainly show otherwise.

The arbitrariness of DEP’s decision-making is made manifest by its own prior decisions that granted EAs for the installation of protective bulkheads on North Wildwood’s beaches. For example, North Wildwood’s most recent EA request follows a prior emergency authorization granted by DEP on September 26, 2023, which authorized the installation of a cantilevered steel bulkhead (coated) with timber cap extending along the southwest and southeast sides of the beach patrol building at 15th Avenue. Per direction of the DEP, the bulkhead design was localized to the beach patrol building to protect this structure from the rapidly eroding beaches. Yoskin Cert., Exhibit “D”

DEP also authorized another EA back in 2022. As explained by North Wildwood’s environmental consultant, Peter Lomax:

Notably, it is important to note that NJDEP has acknowledged that there was an emergency after receiving North Wildwood’s initial Emergency Authorization application for the construction of an

emergency bulkhead and other measures was submitted on October 5, 2022. In response to that submission, NJDEP Division Director Jennifer Moriarty sent an e-mail to North Wildwood City Administrator Nick Long on October 7, 2022, on which I was carbon copied, stating that “[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 [...]” [Lomax Cert., ¶8; Yoskin Cert., Exhibit “C” (Moriarty email dated October 7, 2022)]

Thus, the record reflects that DEP has determined on several prior occasions that the “threat” (in adjacent oceanfront locations) is “imminent.” Yet in denying North Wildwood’s most recent EA, DEP determined that the threat is not imminent. Yoskin Cert., Exhibit “A” (DEP 1/31/24 letter, at 5). How can that be, given that when DEP opined that the threat was imminent, there was no dune breach? Now there is a dune breach -- yet there is no imminent threat.⁴ Lomax Cert., ¶¶8-9.

As previously stated, the record is overwhelming that the current condition of the dune is unsustainable. See Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14. In light of this emergency condition, the installation of a protective bulkhead between 12th and 15th Avenues is a necessary response to the imminent

⁴ DEP attempts to defend its inconsistent positions (with respect to DEP’s prior grants of North Wildwood’s EA requests in 2022 and 2023 for protective bulkheads as contrasted to its present denial of North Wildwood’s 1/19/24 EA request for a protective bulkhead) by stating that the prior EA grants were premised on the presence of a beach patrol building at 15th Avenue that is situated on the beach. See Yoskin Cert., Exhibit “A”, at 5. For reasons further discussed in note 1 on page 15, DEP’s purported distinction does not withstand scrutiny.

threat to life and property.⁵ See id.

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. Without this necessary protection, North Wildwood’s storm drainage system stands at risk to complete inundation. *Verna Cert.*, ¶¶4-6. 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. See id. The result would be substantial damage to public and private infrastructure and extremely costly repairs.

In short, there is abundant evidence in the record that there is an imminent threat to the loss of life or severe loss of property based on existing conditions; and that installation of a protective bulkhead – as a temporary emergency measure – is a necessary and appropriate response to the imminent threat. Hence, (1) DEP should not have denied North Wildwood’s application for an EA to construct an emergency bulkhead; and (2) this Court – exercising its broad emergency powers pursuant to R.

⁵ It should not be forgotten that a municipality is vested with “police powers granted it by the Legislature” and that such police powers include “the protection of the health, safety and welfare of its inhabitants, and the preservation of good order within its limits.” *Kirsch Holding Co. v. Manasquan*, 24 N.J. Super. 91, 101 (App. Div. 1952). Here, it is difficult to conceive of a more appropriate and critical use of the municipal police power than North Wildwood’s efforts to protect lives and property through the installation of a temporary emergency bulkhead on a small portion of its ocean beaches.

2:9-8 – should authorize the installation of the emergency bulkhead.

C. The balance of equities strongly weighs in North Wildwood’s favor.

The Crowe test of preliminary injunctive relief requires the chancery court to consider the relative hardship to the parties in granting or denying the requested relief. Crowe, supra, 90 N.J. at 134.

Here, application of this equitable doctrine of relative hardships strongly favors the grant of preliminary injunctive relief sought by North Wildwood, *i.e.*, the installation of a protective bulkhead in order to forestall further degradation of the essential dune system. That essential coastal protection measure is necessary to prevent immediate and irreparable harm. See Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14.

By contrast, the remedy proposed by DEP – the mere preservation of the *status quo* severely compromised dune – does absolutely nothing to prevent irreparable harm. Indeed, DEP’s “remedy” would expose North Wildwood, its residents and its business to an unacceptable risk of harm in the event that North Wildwood were struck by even a moderate storm. Verna Cert., ¶¶4-9

In truth, on this record there is no actual “balancing” of hardships. The hardships are entirely one-sided. If this Court were to deny North Wildwood’s motion for emergent relief, the hardships would be severe in the event of even a moderate storm (which could occur at any time) and would be widely experienced

by the people and businesses of North Wildwood. Conversely, if this Court were to grant North Wildwood's motion, there would be cognizable hardships *whatsoever*. In that event, the people and businesses of North Wildwood would materially benefit from an effective storm protection measure that would provide substantial protection to lives and property.

D. The temporary emergency relief sought by North Wildwood is in the public interest.

The final factor to be considered (when a court addresses an application for preliminary injunctive relief) is the public interest. See Waste Management of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508, 521 (App. Div. 2008). In certain cases consideration of the public interest may be of critical importance in the court's overall weighing of the factors that are pertinent to the grant or denial of preliminary injunctive relief. Thus, for example, in Waste Management the Appellate Division determined that even when the plaintiff has not demonstrated a reasonable probability of success on the merits of its claim, the plaintiff *nevertheless* may be entitled to preliminary injunctive relief if the court's consideration of the public interest favors that result. Id. at 521.

Here, the relief sought by North Wildwood is unquestionably in the public interest. As previously noted, the facts and circumstances that are before the Court on this motion call for an immediate equitable remedy that would authorize North Wildwood to install – as a temporary emergency measure – a protective bulkhead

between 12th and 15th Avenues. This remedy 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. See Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14. This proposed equitable remedy recognizes that North Wildwood – in the event of 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 protective bulkhead. Id. More particularly, 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., ¶¶4-9.

The record on this application is clear: The compelling public interest in the preservation of life and property would be well served by the essential coastal protection measure that would be authorized by this Court by the granting of North Wildwood's motion for temporary emergent relief.

POINT III

THE EXHAUSTION OF ADMINISTRATIVE REMEDIES DOCTRINE IS INAPPLICABLE

The general rule is that a party aggrieved by an administrative decision should exhaust its administrative remedies before seeking judicial review. 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)).

As fully set forth in Points I and II, supra, the relief sought by this motion is necessary to prevent irreparable harm. 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. See Verna Cert., ¶¶4-11; Lomax Cert., ¶¶9-13; Farrell Cert., ¶¶9-14.

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.” Brunetti v. Borough of New Milford, supra, 68 N.J. at 588.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that North Wildwood's motion for temporary emergent relief should be granted. Pursuant to R. 2:9-8, this Court should authorize North Wildwood to install a temporary emergency bulkhead between 12th and 15th Avenues. This remedy 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. This proposed equitable remedy properly recognizes that North Wildwood -- in the event of a moderate storm -- might suffer a catastrophic loss of life or property in the absence of a temporary emergency protective bulkhead.

Respectfully submitted,

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