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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

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

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
CAPE MAY COUNTY**

DOCKET NO. L-272-23

CIVIL ACTION

CERTIFICATION OF MAYOR PATRICK T. ROSENELLO IN OPPOSITION TO DEP'S MOTIONS FOR A PROTECTIVE ORDER AND TO QUASH, AND IN SUPPORT OF THE CITY'S CROSS-MOTION TO COMPEL

I, PATRICK T. ROSENELLO, of full age, certify and say:

1. I am the Mayor of the City of North Wildwood ("North Wildwood" or the "City"). I submit this Certification in opposition to Plaintiff New Jersey Department of Environmental Protection's ("DEP") Motion for a Protective Order and to Quash, and in support of the City's Cross-Motion to Compel. I have personal knowledge of the facts set forth herein.
2. By this Certification, I aim to provide the basis for the City's discovery requests and inquiries regarding the communications concerning the June 6, 2020 Notice of Violation (the "June 2020 NOV"). As set forth in greater detail below, the City is well within its rights to seek this information given the link between these matters and the breach of the subject contracts at issue.

3. For over seven years, the DEP has repeatedly missed deadlines and breached their contractual obligations to construct the Hereford Inlet to Cape May Inlet Shore Protection Project (the "USACE Project"), as mandated and funded at the Federal and State levels pursuant to the 2017 Projection Partnership Agreement (the "2017 PPA") and the 2021 State Aid Agreement (the "2021 SAA"). The USACE Project at issue in this litigation is specific to North Wildwood, in that other oceanfront towns have their own USACE projects, but all the others have been completed.

4. For the City's USACE Project to be completed, the DEP is contractually obligated to acquire certain easements as set forth in the 2017 PPA and referenced in the 2021 SAA. Annexed hereto at **Exhibit A** is the 2017 PPA, and annexed hereto at **Exhibit B** is the 2021 SAA.

5. It has been seven years since the 2017 PPA was executed and the DEP has still not acquired the necessary easements, which has completely stalled the completion of the City's USACE Project.

6. The DEP's failure to obtain these easements is also a breach of the 2021 SAA because that contract obligates DEP to obtain these easements as well.

7. Without the completion of the USACE Project – which the City has been deprived of due to the DEP's breach of its obligation to obtain the necessary easements – the City has suffered from the destruction of a mature dune and marine forest environment along the inlet and beachfront of North Wildwood. This dire situation has also placed human life and public and private property in grave danger and cost the City millions of dollars for emergency protective work that it has had to undertake in response to DEP's breach of contract.

8. The DEP's failure to abide by its contractual obligations stems from my criticism of the State of New Jersey in or about June 2020. At that time, I publicly criticized the administration over its handling of the State's economy throughout the COVID-19 pandemic.

Then, within a week later, on June 6, 2020, DEP issued a Notice of Violation (the "June 2020 NOV"). Annexed hereto at Exhibit C is the June 2020 NOV. The June 2020 NOV alleges violations against the City for emergency actions, some dating back as far as 2012, that the City took to protect its beaches in response to DEP's blatant failure to do so, which is a breach of the 2017 PPA and 2021 SAA.

9. As documented in the City's response to the June 2020 NOV, North Wildwood had repeatedly asked DEP for years to take emergency action to address the alarming destruction of natural and manmade resources on the oceanfront of the City. Annexed hereto as Exhibit D is the City's response to the June 2020 NOV.

10. These repeated requests were completely ignored by then-Commissioner Catherine R. McCabe and then-Chief of Staff Shawn M. LaTourette. Not one of the nearly dozen correspondences were ever replied to.

11. It is amazing, then, that on June 6, 2020, a Saturday during one of the most challenging summers in the history of the Jersey Shore due to the COVID-19 pandemic, former Commissioner McCabe herself issued a press release, and called me on my personal cell phone on a Saturday morning, regarding the June 2020 NOV. Annexed hereto as Exhibit E is Commissioner McCabe's June 6, 2020 press release.

12. Within a week of my public criticism regarding the State's COVID response, DEP marshals the full resources of the Commissioner's Office to issue notices of violations for things as trivial as the installation of an American Flagpole some 30 years ago.

13. Thereafter, I had direct communications with several DEP employees in the DEP's Office of Coastal Engineering who advised me that the June 2020 NOV was issued under pressure from the State.

14. I respectfully submit there appears to be a direct link between my criticism of the State in or about June 2020 and the breach of the contracts by DEP in failing to abide by its obligations under the 2017 PPA and 2021 SAA.

15. This disparate treatment is best illustrated by the fact that there are 127 miles of oceanfront in New Jersey and only four of them, including North Wildwood, have not been improved with a USACE project. Indeed, DEP's own presentation entitled "Division of Resilience Engineering & Construction: Post-Sandy Efforts in New Jersey" (the "DEP Presentation") dated October 6, 2022, shows the City's USACE Project is the only post-Sandy USACE project along the 127 miles of New Jersey oceanfront to have not yet been constructed. Annexed hereto at Exhibit F is the DEP Presentation.

16. The reason for this is because the DEP has failed to obtain the necessary easements as it is obligated to do.

17. The City's USACE Project is the only project within the Philly District that is still in the "design" stage. Every other project in the Philly District has been completed.

18. Since my opinions on the State's policies, the record demonstrates that the DEP has failed to abide by its obligations to obtain the necessary easements as required under the contracts at issue in this litigation.

19. As further evidence of DEP's disparate treatment of North Wildwood, during a meeting at North Wildwood's beach in the winter of 2023, Commissioner LaTourette verbally stated to me that DEP would "never" approve an Emergent Authorization Request to build a bulkhead submitted by the City. While DEP has approved an Emergent Authorization Request submitted by the City since that time, the Commissioner's statement was wholly improper and unusual for a high-ranking official to make.

20. Against this backdrop, the City requested discovery seeking communications among the Governor's Office and state agency officials because we believe there is a direct link between my outspoken opinions and the DEP's unfair treatment of North Wildwood, which has resulted in North Wildwood being the only oceanfront community in the entire State whose USACE project has not yet completed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Patrick T. Rosenello

Dated: February 22, 2024