

MONMOUTH COUNTY PLANNING BOARD

ENVIRONMENTAL COUNCIL

EDWARD SAMPSON, PP, AICP
Director of Planning

MICHAEL FEDOSH
Council Chairman



Minutes of a Regular Meeting of the Monmouth County Environmental Council

Thursday, April 7, 2016, 5:00 p.m.

Monmouth County Planning Board Conference Room
Hall of Records Annex, 2nd Floor, One East Main Street
Freehold, New Jersey

1. CALL TO ORDER

Chairman Fedosh called the meeting to order at 5:03pm.

2. ROLL CALL – ATTENDANCE

Members present: Jennifer DiLorenzo (left at 6:30pm), Mike Fedosh, Barbara Horl, Nicholas Huszar, David Kostka, France Karras, Wilma Morrissey, and Scott Thompson, (left at 5:30pm)

Members absent: Ebru Altinsoy, John Vig, and Matthew Woolley

Staff present: Linda Brennen

3. REVIEW OF MINUTES: March 2016

Minutes from the March 3, 2016 meeting were reviewed. Ms. DiLorenzo moved to approve the minutes. The motion was seconded by Ms. Morrissey. The minutes were approved on voice vote, with Mr. Fedosh abstaining.

4. REPORTS FROM THE REGIONS - PART 1

The Chairman asked for the North Coast Regional report as both Ms. DiLorenzo and Mr. Thompson need to leave the meeting early.

- **North Coast:** Mr. Thompson reported that the beaches have seen dramatic shifting of sand with recent storm events. Ms. DiLorenzo reported that Sea Bright received Army Corps of Engineers funding for dunes and the sea wall.

5. OLD BUSINESS

A. **Sustainable Jersey Letter Update:** Mr. Fedosh reported on the issues that transpired between meetings with regard to the Sustainable Jersey letter discussed at the last meeting and the reformatting and modifications requested by Assistant Planning Director Barris. Discussion followed. The Council unanimously decided to change the date of the letter to April 7 and send it otherwise unchanged from the revised draft circulated prior to the meeting. In addition to mailing the letter, staff contact Ms. Drewes of Sustainable Jersey via phone and follow up with an email to encourage them to attend a future meeting to discuss the Council's recommendations for the Program.

B. **Spring Roundtable Event:** Ms. Brennen reported that the New York-New Jersey Harbor Estuary Program accepted the Council's proposal to host a meeting for the 5-Year update of the program's Action Plan. A second proposal in Monmouth County was favorably received. It was proposed jointly by the Baykeeper's Office and the Bayshore Watershed Council. They are planning to hold their meeting in Keyport. Discussion followed on potential dates, times and locations. Consensus was to plan a mid-week evening meeting in May. Ms. Karras offered to contact the Borough of Atlantic Highlands to determine if the meeting could be held at the Borough's bayfront Senior Center.

6. REGULAR REPORTS

- A. Chairman – no report
- B. Planning Board – no report.
- C. Staff – Ms. Brennen provided an update on the results of the NWS Earle water quality testing of 28 private wells in the vicinity of the Navy's Fire Fighting Training Center Route 33 in Howell. The Navy has prepared a website at www.cnrc.navy.mil/EarleInfo to disseminate public information. Questions can be directed to the Navy at 732-866-2171 or via email at colt.wpnstaeearlepao@navy.mil. Another public open house is being planned for Thursday, April 14, from 4- 8pm at the Howell Township Southard School Community Enrichment Center at 115 Kent Road, just off Route 9.
- D. Legislation – Mr. Woolley was unable to attend but sent his report via email (see attached).

7. NEW BUSINESS:

World Water Day Resolution: Ms. DiLorenzo spoke about the sample resolution sent out by ANJEC calling for the release by NJDEP of the Draft State Water Supply Master Plan. Discussion followed. The consensus of the membership was to have staff draft a resolution for the Council to review at the May meeting with a memo from staff to serve as a cover letter.

8. MASTER PLAN REVIEW

As a follow-up to hosting the 2014 Master Plan stakeholder committee meetings for environmentally oriented elements, Ms. Brennen provided PowerPoint presentations of the *Natural Resources* and *Open Space* chapters, of which she was a primary author. Links to the text for these chapters was sent out to the membership prior to the meeting. A question and answer period followed.

The Division of Planning has scheduled a public Open House meeting for Tuesday, May 10th at the County Ag Building from 6-8pm and has revised the comment deadline to May 31. Individual comments should be submitted through the Master Plan web page. Draft text of all chapters can be reviewed from the web page.

9. REPORTS FROM THE REGIONS - PART 2

- **South Coast:** Ms. Morrissey gave her report (see attached).
- **Mid-Coast:** Mr. Woolley provided his report via email (see attached).
- **Navesink Valley:** Mr. Kostka declined to report as he only recently arrived home.

- **Pine Barren:** Mr. Huszar reported that Howell is planning to pursue Sustainable Jersey for Schools certification and will need to form a separate group to that end. Howell is also looking into tennis ball recycling and the purchase of an enviroscape/watershed in a suitcase.
- **Bayshore:** Ms. Karras provided an update on the Bayshore trail meeting between Atlantic Highlands, the Monmouth County Park System and Sustainable Jersey. No final decisions were made on the potential grant. The ACOE researched a potential study on the Atlantic Highlands shoreline. The Borough is considering using open space funding for that purpose. USGS is preparing a study of the steep slopes in the area. Mr. Fedosh added that an osprey and a Chesapeake Bald Eagle were seen fishing in Keyport Harbor.
- **General Issues:** Ms. Horl spoke about the Wreck Pond culvert which has been retrofitted with a gate and to be day-lighted every 150'. They are already seeing more fish upstream. Fish sampling is planned for the end of April. Mr. Huszar noted that Bob Fisher of the Bayshore Outfall Authority in Middletown has a wastewater program available for schools.

9. PUBLIC COMMENT: No members of the public were present.

10. ADJOURNMENT: There being no further business, the meeting was adjourned at 7:08pm by Chairman Fedosh.

Adopted: May 5, 2016

April 7, 2016 MCEC Legislative Report

Assembly Bill 780 - Implements 2014 constitutional dedication of CBT revenues for certain environmental purposes; revises State's open space, farmland, and historic preservation programs.

Primary Sponsors: Andrzejczak, Bob ; McKeon, John F. ; Spencer, L. Grace ; Pintor Marin, Eliana ; Dancer, Ronald S. ; Vainieri Huttle, Valerie

Co-sponsors: Land, R. Bruce ; Pinkin, Nancy J. ; Zwicker, Andrew

Scheduled for a vote by the General Assembly April 7, 2016

Action taken previous session (2014-2015 Legislative Session):

Bill #: A4197/S2769

12/17/2015 - Passed by the Senate (35-0)

1/11/2016 - Substituted for A4197/4206 (AS)

1/11/2016 - Passed Assembly (Passed Both Houses) (53-21-0)

1/19/2016 - Pocket Veto - Bills not Acted on by Governor-end of Session

STATEMENT

This bill implements, for State fiscal year 2016 through State fiscal year 2019, the constitutional dedication of Corporation Business Tax (CBT) revenues for open space, farmland, and historic preservation.

Senate Concurrent Resolution No. 84 SCS of 2014, or "Ballot Question No. 2," presented to, and approved by, the voters of the State on November 4, 2014, amended the New Jersey Constitution to dedicate four percent of CBT revenues for open space, farmland, and historic preservation, water programs, public and private site remediation, and underground storage tank programs for fiscal years 2016 through 2019, and further increased the annual dedication for certain environmental programs from four percent to six percent commencing in fiscal year 2020 and thereafter.

With regard to open space, farmland, and historic preservation, for fiscal year 2016 through fiscal year 2019, of the four percent CBT dedication, the State Constitution dedicates annually 71 percent for: (1) providing funding, including loans or grants, for the preservation, including acquisition, development, and stewardship, of lands for recreation and conservation purposes, including lands that protect water supplies and lands that have incurred flood or storm damage or are likely to do so, or that may buffer or protect other properties from flood or storm damage (i.e., Green Acres and Blue Acres); (2) providing funding, including loans or grants, for the preservation and stewardship of land for agricultural or horticultural use and production (i.e., farmland preservation); (3) providing funding, including loans or grants, for historic preservation; and (4) paying administrative costs associated with each of those efforts. Commencing July 1, 2019, for State fiscal year 2020 and thereafter, of the six percent of the CBT revenue to be dedicated annually for certain environmental programs, 78 percent is dedicated for the four above-listed purposes.

The State Constitution also dedicates money received from leases and conveyances of State open-space lands. Under this bill, each State park, forest, or wildlife management area receives from that dedication an amount equal to the amount of revenue annually derived from leases or conveyances of lands at that State park, forest, or wildlife management area, as appropriate, to be used for recreation and conservation purposes at that State park, forest, or wildlife management area.

For fiscal year 2016 through fiscal year 2019, the bill allocates dedicated revenues as follows:

- (1) 64 percent for acquiring and developing lands for public recreation and conservation purposes, including lands that protect water supplies, under the Green Acres program;
- (2) 31 percent for farmland preservation purposes; and
- (3) 5 percent for historic preservation purposes.

The bill allows a maximum of 5 percent each year for administrative costs associated with implementing the Green Acres program.

Of the monies allocated for the Green Acres program and the farmland preservation program, the bill also allocates funding for “stewardship activity” as defined by the bill.

Of the 64 percent allocated each year for the Green Acres program: 55 percent is for State open space acquisition and development projects; 38 percent is for grants and loans to fund local government open space acquisition and development projects; and 7 percent is for grants to fund open space acquisition and development projects undertaken by qualifying tax exempt nonprofit organizations.

Of that funding for State open space acquisition and development projects: 50 percent is for acquisition projects and 50 percent is for development projects. Further, of the funding for State open space development projects, up to 22 percent may be for stewardship activities undertaken on lands administered by the Division of Fish and Wildlife and up to 22 percent may be for stewardship activities undertaken on lands administered by the Division of Parks and Forestry. Of the funding allocated for local open space acquisition and development projects, up to 2 percent may fund stewardship activities. Of the allocated funding for open space acquisition and development projects by qualifying tax exempt nonprofit organizations, 11 percent is for stewardship activities. In addition, for the Green Acres Program, up to 5 percent is available for organizational, administrative and other work and services, including salaries, equipment and materials.

“Blue Acres” is the term used to refer to properties that have been damaged by storms or storm-related flooding, that appear likely to incur such damage, or that may buffer or protect other lands from such damage. Structures on a purchased property are demolished, the debris is removed, and the land is preserved as open space. The Blue Acres program is administered by the DEP’s Green Acres program. Under the bill, funding under the Blue Acres program, when available, will be used for (1) acquisition by the State of Blue Acres properties, or (2) State grants to assist qualifying tax exempt nonprofits in the acquisition of Blue Acres properties. The bill prohibits the State from using eminent domain to acquire land for Blue Acres projects, except with the approval of the

Legislature by adoption of a concurrent resolution to that effect. However, if needed, the bill allows eminent domain proceedings by the State for the purpose only of establishing value.

This bill continues the State's existing open space, farmland, and historic preservation programs. It is based on the provisions of the "Garden State Preservation Trust Act" (GSPTA), as well as the "Green Acres, Water Supply and Floodplain Protection, and Farmland and Historic Preservation Bond Act of 2009" (P.L.2009, c.117) and the "Green Acres, Farmland, Blue Acres, and Historic Preservation Bond Act of 2007" (P.L.2007, c.119) and, generally, defines relevant terms in the same manner as the GSPTA and continues the respective priority systems, ranking criteria, and funding policies set forth in the GSPTA, except as otherwise specified by the bill.

For the Green Acres program, the bill provides that an urban aid municipality may receive a State grant for the acquisition or development of lands for recreation and conservation purposes for 75 percent of the cost of acquisition or development of the lands by the local government unit, and this amount may be increased by the DEP to up to 100 percent of the allowable funding cap upon a demonstration of special need or exceptional circumstances. Under current law, an urban aid municipality may receive a grant for 50 percent of the cost of the project, with the possibility of this amount being increased to a maximum of 75 percent (up to the allowable cap). In addition, the bill provides that a local government unit or a qualifying tax exempt nonprofit organization may use a grant or loan for recreation and conservation purposes for the construction of a community garden.

Of the 31 percent allocated each year for farmland preservation purposes, up to 3 percent is available for stewardship activities. The bill authorizes the Blue Acres program to receive funds, but does not provide a specific allocation for the program from the total annual constitutional dedication of monies for open space, farmland, and historic preservation.

The bill requires, under the Green Acres program, that the State make payments in lieu of taxes (PILOTs) to municipalities in accordance with the "Garden State Preservation Trust Act" for lands acquired and owned by the State or qualifying tax exempt nonprofit organizations for recreation and conservation purposes.

For the historic preservation program, the bill allows historic preservation funds to be used for emergency intervention and the acquisition of historic property easements. The bill defines "emergency intervention" as an immediate assessment or capital improvement necessary to protect or stabilize the structural integrity of a historic property.

The bill directs the DEP, the State Agriculture Development Committee, and the New Jersey Historic Trust each, at least once each two years, submit to the Garden State Preservation Trust projects recommended to receive funding under the bill. The Garden State Preservation Trust would then submit the list of projects to the Legislature for funding in the form of appropriation bills.

As reported, this bill is identical to Senate Bill No. 969, as also reported by the committee.

FISCAL IMPACT:

This bill implements the revised constitutional provisions that dedicate Corporation Business Tax (CBT) revenue, and certain revenues derived from leases or conveyances of land acquired or developed by the State for recreation and conservation purposes, to open space, farmland, and historic preservation, by establishing a General Fund account and specific funds to which that revenue is to be

credited and deposited annually for fiscal years 2016 through 2019, for subsequent appropriation by the Legislature. The bill therefore does not change the amount of either State revenues or expenditures.

By requiring revenues to be annually credited to certain accounts, the bill provides a system for allocating constitutionally dedicated revenues among allowable uses. While one of those uses is grants and loans to local governments, the bill cannot be said to alter the level of local revenue and expenditures, because no specific funding level for local government grants and loans is provided in current law. This is not to say that local governments, individually or in the aggregate, might not receive, pursuant to this bill and subsequent acts appropriating funds under the system it creates, more or less funding than was received by prior enactments (i.e., bond acts and acts that appropriated the proceeds of bonds) that have provided funding for open space, farmland, or historic preservation in fiscal years preceding those to which this bill pertains.

The tables below summarize the system the bill creates for allocating CBT revenue. The first table displays the allocation of CBT revenue among three accounts created by section 5 of the bill among three funds created by sections 6, 8, and 9 of the bill using, *for illustrative purposes only*, the amount of CBT revenue estimated as being constitutionally available in FY 2016 in the Governor’s Detailed Budget for that year. The second table displays the allocation, per section 6 of the bill, of revenues to be deposited in the Preserve New Jersey Green Acres Fund, *again for illustrative purposes only*. The total amount of estimated CBT revenue for allocation, 71 percent of 4 percent of CBT revenues, is \$80,122,000. Actual CBT revenues are likely to differ in each fiscal year to which the bill pertains from the revenues assumed in the two tables.

Estimated FY 2016 CBT Revenue Credited to Preserve New Jersey Fund Account

Fund	Percent	Amount
Preserve NJ Green Acres Fund	64%	\$51,278,080
<i>Available for Administrative Costs</i>	5%*	\$2,563,904
Preserve NJ Farmland Preservation Fund	31%	\$24,837,820
<i>Available for Stewardship Activities</i>	3%**	\$745,135
Preserve NJ Historic Preservation Fund	5%	\$4,006,100

*Percentage of total Preserve New Jersey Green Acres Fund

**Included in Preserve NJ Farmland Preservation Fund

Estimated FY 2016 Allocation of Preserve New Jersey Green Acres Fund

Purpose	Fund Percent	Preserve NJ	
		Fund Account Percent	Amount
State Acquisition and Development for Recreation and Conservation	55.0%	35.2%	\$28,202,944
State Acquisition*	27.5%	17.6%	\$14,101,472
State Development*	27.5%	17.6%	\$14,101,472
<i>Available for Stewardship Activities –</i>			\$3,102,324
<i>Division of Fish and Wildlife</i>	22%**		
<i>Available for Stewardship Activities –</i>			\$3,102,324
<i>Division of Parks and Forestry</i>	22%**		
Local Government Grants and Loans	38%	24.3%	\$19,485,670
<i>Available for Stewardship Activities</i>	2%***		\$389,713
Grants to Nonprofit Organizations	7%	4.5%	\$3,589,466
<i>Available for Stewardship Activities</i>	11%****		\$394,841

*50% of total State Acquisition and Development for Recreation and Conservation

**Percentage of total State Development

***Percentage of total Local Government Grants and Loans

****Percentage of total Grants to Nonprofit Organizations

---ANJEC SAMPLE---

Resolution in Support of Clean Water Supplies

Whereas water is a necessary and fundamental building block of all life;

Whereas clean drinking water is a fundamental right of New Jersey citizens;

Whereas all drinking water in New Jersey is supplied by underground aquifers, rivers, and/or reservoirs replenished by rain, snow melt, or fed by rivers and streams;

Whereas an ample supply of clean water is critical to agricultural production in the Garden State;

Whereas an ample supply of clean water is necessary for a healthy economy and a robust business climate for key industries in New Jersey, such as hospitality, tourism, manufacturing, healthcare and others;

Whereas New Jersey's ecosystems and wildlife rely on an adequate supply of clean water in creeks, streams, rivers, ponds, and wetlands

Whereas in 2015, 12 of the 21 counties in New Jersey entered into a state of drought watch and seven drought warnings, watches, and emergencies have been declared in New Jersey since the year 2000;

Whereas in 1981, the New Jersey Legislature adopted Chapter 262, known as the Water Supply Management Act;

Whereas the Water Supply Management Act requires the development of a Statewide Water Supply Plan;

Whereas the Water Supply Management Act requires the New Jersey Department of Environmental Protection to update the Statewide Water Supply Plan at least every 5 years;

Whereas the last completed and publicly available version of the Water Supply Plan occurred in 1996;

Whereas, for over a decade under an outdated Statewide Water Supply Plan, land use planning and development have been proceeding in New Jersey without publicly available updated scientific or policy guidance regarding the availability of adequate water supplies;

Whereas municipalities depend on the Governor of New Jersey and New Jersey Department of Environmental Protection to adopt policies and regulations allocating a safe, sustainable supply of New Jersey's water resources in accordance with the Water Supply Plan;

Therefore be it resolved that the municipality of (name of town) respectfully requests that the Governor of New Jersey and the New Jersey Department of Environmental Protection release an update to the New Jersey Statewide Water Supply Plan immediately for public review and comment and, following such comment, finalize, adopt and implement the Plan.

And be it further resolved that (name of town) will send a copy of this resolution to the Governor's office, the New Jersey Department of Environmental Protection and to our New Jersey Assembly and Senate members alerting them to our concerns about the lack of a current Water Supply Plan in New Jersey;

PASSED, APPROVED, AND EFFECTIVE on this ____ day of ____, 2015.

ATTEST:

Mayor

Council President

PLEASE SEND A COPY OF THIS SIGNED RESOLUTION TO:

- *Town's state representatives*
- *Town's congressional representative*
- *Governor Chris Christie, PO Box 001, Trenton, NJ 08625*
- *NJDEP Commissioner Bob Martin, 401 E. State St. 7th Floor, East Wing, PO Box 402, Trenton, NJ 08625*
- *ANJEC, PO Box 157, Mendham, NJ 07945*

April 7, 2016

South Coast Region Report
Wilma Morrissey

Wall Township: The Wall Township Environmental Advisory Committee received a **\$2,000 grant for the restoration of the Allenwood Native Garden.** Volunteers are needed for the project.

A bill introduced in the Senate would require public schools throughout New Jersey **to test their drinking water for the presence of lead** and share the results with the public. Wall Superintendent Cheryl Dwyer of the Wall School District has chosen not to wait for legislators to act but will do so beforehand as a proactive measure ensuring the safety and health of its students.

Funded by the DEP Forest Service **No Net Loss Grant Program,** Wall Township is in the process of **planting over 2,900 trees** between this year's spring and fall planting seasons through a \$888,600 grant from the state. This project is part of a larger state funded effort to make up for the loss of trees that were taken out during a previous Garden State Parkway widening project.

Lake Como: The Lake Como Environmental Commission is seeking donations and volunteers to assist with a **Butterfly Garden.** Volunteers have already prepped the garden and it is now ready for planting.

Academy Charter High School is planning an **Earth Day Clean-up of Lake Como** which is currently scheduled for Monday, April 25.

Lake Como was **awarded a NJDOT \$140,000 grant for the paving of the third phase of the Main Street Improvement Plan**

Sea Girt: The **Sea Girt Lighthouse is now open for guided tours** on Sundays, 2 – 4 p.m. through mid-November with the exception of holiday weekends. The Lighthouse is located on Ocean Avenue and Beacon Boulevard.

The outfall pipes and infrastructure project on Baltimore Blvd. Cofferdam has been rebuilt. Although other work needs to be completed, the borough officials are planning to **wrap up the town's most highly anticipated and essential projects by May 15.**

Brielle: The Bayberry Garden Club will host a community program on Thursday, April 12, at the Brielle Public Library on **Native Gardening** featuring speaker Joseph Kiefer who is a beekeeper and gardener with Triple Oaks Nursery in Franklinville.

The Brielle Shade Tree Commission is currently promoting their **annual tree giveaway**. It is available to residents to plant in the towns right away. This year's trees are October Glory Maples, River Birches, Weeping Cherries, Willow Oaks, Shade Master Honey Locusts, and Crape Myrtles.

Spring Lake: Construction of the Wreck Pond box culvert, which connects the pond to the ocean hinges on the arrival of the **endangered piping plover**. **Continuation of construction will be held until September to allow the birds to nest at the pond undisturbed.**

The Annual Trout Contest for Kids is being held Saturday at Spring Lake, April 9 from 8 a.m. to 2:30 p.m. which is sponsored by the Shark River Surf Anglers.

Shade Tree Presentation and Designer's Love Affair with Trees is being held at the Spring Lake Community Theater on Monday, April 13, at 7:30 p.m. – 8:30 p.m. The event will include a presentation by Bruce Crawford, the director of the Rutgers Garden and an adjunct professor of landscape architecture. Call 732 974-0822 for details.

Spring Lake Heights: The Council appropriated **\$40,000 for the Department of Public Works facility's yard for soil testing**. The facility is located at 555 Atlantic Ave. and is on DEP's list of active sites with confirmed contamination since fuel tank leak in 1986.

Bradley Beach: One hundred volunteers completed planting 15,000 beachgrass plants along sand dunes of Bradley Beach which took place on March 26 in an effort to stabilize and protect the dunes. The Surfrider Foundation, American Littoral Society and the Bradley Beach Environmental Commission all took part in this effort.

Freehold: The **Shade Tree Spring Forum** was held yesterday, Wednesday, April 6th at the Monmouth County Fire Academy. The topic included an **insect update** on Emerald Ash Borer, Gypsy Moth, and Southern Pine Beetle. In addition, First Energy presented information on "**Tree Safety around Electric Wires**."

West Long Branch: The **Fifth Annual Made in Monmouth Sale** takes place on Saturday, April 9, from 10 a.m. to 4 p.m., MAC at Monmouth University. Products will be on display for sale. This event is sponsored by the Monmouth County Freeholders in partnership with Monmouth University.

April 7, 2016
Regional report issues
Matt Woolley

Illegal dumping of dredge material in Deal

- Spoils currently located at end of Roosevelt Ave.
- Please see attached documents regarding NJDEP notice of violation and Clean Ocean Action correspondence to DEP regarding issue:

- 02.22.16 Deal Poplar Brook Notice of Violation
- 03.11.16 COA Counsel's letter to NJDEP
- 03.17.16 COA Letter to NJDEP re: Illegal Dumping in Deal

Bradley Beach dune grass planting

- On Saturday, March 26, I participated as a team lead planting dune grass with hundreds of other volunteers
- Event organized by Bradley Beach Environmental Commission, American Littoral Society and Surfrider Foundation



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 No. 732-255-0787

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

February 22, 2016

CERTIFIED MAIL/RRR
7014 2120 0000 7363 7195

James Johnson
Agate Construction LLC
P O Box 107
Ocean View, NJ 08230

RE: Notice of Violation
Block 14, Lot 10; Block 89, Lot 1;
Deal Boro, Monmouth County
EA ID #: PEA160001 - 1310-04-0001.3

Dear Mr. Johnson:

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 John Hanf of my staff at (732) 255-0787 or by letter at the address above.

Sincerely,

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

Enclosure
C: Jenifer Thaulhauser, NYACOE
Freehold Soil Conservation District
Deal Borough Clerk



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 No. 732-255-0787

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

CERTIFIED MAIL/RRR
7014 2120 0000 7363 7195

NOTICE OF VIOLATION

EA ID #: PEA160001 - 1310-04-0001.3

Name of violator: Agate Construction LLC
Location: Adelaide Ave Row,
Poplar Brook Stream Stabilization
Deal Boro, NJ 07723
Block and Lot: Block 14, Lot 10; Block 14, Lot 17; Block 89, Lot 1;
Identifying #: 1310-04-0001.3

You are hereby NOTIFIED that during a compliance evaluation at the above location on 02/22/2016, the following violation(s) of the Waterfront Development Act (N.J.S.A. 12:5-3 and 12:5-6 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.) was observed.

- 1. Requirement:** Pursuant to N.J.A.C. 7: 7- 2.2, any development as described therein which is within defined areas of the "coastal zone" shall require prior permit approval from the Department.

Description of Noncompliance: the performance of unauthorized development activities within the coastal zone. More specifically, the activities involve improper disposal of excavated material from Poplar Brook outfall area onto the beach.
- 2. Requirement:** Pursuant to N.J.A.C. 7: 7- 2.4, any development activity as described in N.J.A.C. 7:7-2.4 undertaken within the waterfront area at or below the mean high waterline will require a waterfront development permit.

Description of Noncompliance: the performance of unauthorized development activities within a regulated waterfront area. More specifically, the activities involve improper disposal of excavated material from Poplar Brook outfall area into the Atlantic Ocean.

ALL UNAUTHORIZED ACTIVITIES MUST CEASE IMMEDIATELY.

You must take the following corrective actions:

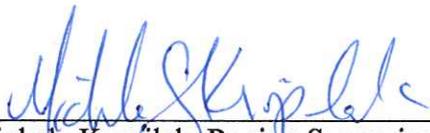
- a. Comply with requirement immediately upon receipt of this document remove the excavated material from the beach and dispose of the material at an approved solid waste disposal facility. Provide documentation of proper disposal to this Bureau.
- b. Comply with requirement within 30 days of receipt of this document remove the excavated material from the Atlantic Ocean and dispose of the material at an approved solid waste disposal facility. Provide documentation of proper disposal to this Bureau.

X *If land or vegetation has been disturbed please immediately contact the local Soil Conservation District and implement appropriate soil and sediment control measures to prevent degradation of water resources.*

Within 5 calendar days of receipt of this Notice of Violation, you shall submit in writing to the case manager, **John Hanf**, an explanation of the corrective measures you have taken or will take to achieve compliance.

This **Notice of Violation** serves as notice that the NJDEP, 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 on a daily basis.

Issued by:



Michele Kropilak, Region Supervisor

Date: February 22, 2016

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A LIMITED LIABILITY COMPANY

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March 11, 2016

Lawrence Baier, Manager
New Jersey Department of Environmental Protection
Bureau of Coastal and Land Use Compliance & Enforcement
401 East State Street, P.O. Box 420
Trenton, New Jersey 08625-0420

**Re: Ocean Dumping in Deal, NJ / Poplar Brook Dredged Materials
EA ID #: PEA160001-1310-04-0001.3**

Dear Mr. Baier:

We are writing on behalf of our client, Clean Ocean Action, to request the Department commence an enforcement action and penalty with respect to a recent ocean dumping incident in Deal, New Jersey. As you are aware, on Friday, February 19, 2016, Agate Construction, LLC was photographed dumping dredged spoils into the Atlantic Ocean from a dump truck operating in the tide. See attached photograph.

For over 30 years, Clean Ocean Action ("COA") has been a leading advocate for the improvement of New Jersey's degraded marine waters. COA's advocacy has played a pivotal role in the closure of all eight (8) ocean dumpsites off the coast of New Jersey. COA has remained vigilant in preserving such progress and will not stand idle in any instances of ocean dumping and unpermitted discharge.

We understand that the Department has issued a Notice of Violation under the Waterfront Development Act and the Coastal Area Facilities Review Act. While COA is encouraged by the Department's response, we believe that a clear violation of the Clean Water Act has also occurred and the Department should pursue enforcement thereunder as well.

The federal Clean Water Act prohibits any person from discharging any pollutant from a point source in navigable waters of the United States without a discharge or fill permit. In reviewing the CWA, this prohibition appears to have been clearly violated by Agate Construction.

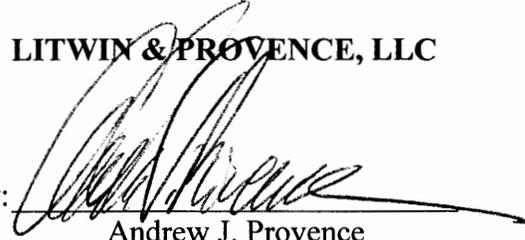
In closing, we note that COA has continuing concerns regarding this event, particularly in terms of the testing and removal of the subject material, which COA intends to address by separate letter.

Thank you for your consideration of this matter.

Very truly yours,

LITWIN & PROVENCE, LLC

By:

A handwritten signature in black ink, appearing to read "Andrew J. Provence", written over a horizontal line.

Andrew J. Provence

Enclosure

cc: Clean Ocean Action, Inc.



Photo by Bill Senck

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Atlantic Highlands Arts Council
Bayside Regional Watershed Council
Bayside Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Clean Water Action
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1075
Concerned Businesses of COA
Concerned Citizens of Bensenville
Concerned Citizens of COA
Concerned Citizens of Montauk
Eastern Monmouth Chamber of Commerce
Environment NJ
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Food and Water Watch, NJ
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Allenhurst
Garden Club of Bay Head and Mantoloking/Seaweeders
Garden Club of Brindle/Bayberry
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Sea Girt/Holly
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Terra Nova
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Partnership
Junior League of Monmouth County
Keypoint Environmental Commission
Kiwanis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Environmental Lobby
NJ Friends of Clearwater
NJ Marine Education Association
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsies
NY Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOut.org
Piscataway Saltwater Sportsmen Club
Rantan Riverkeeper
Religious on Water
Rotary Club of Point Pleasant
Rotary District #7540—Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Sunrise Rod & Gun Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
Surfrider Foundation, South Jersey Chapter
TACK I, MA
Unitarian Universalist Congregation/Monm. Cnty.
United Boatmen of NY/NJ
Viking Village
WATERSPIRIT
Women's Club of Brick Township
Women's Club of Keypoint
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Zen Society, NJ

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Clean Ocean Action

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Lawrence Baier, Manager
New Jersey Department of Environmental Protection
Bureau of Coastal and Land Use Compliance & Enforcement
401 East State Street, P.O. Box 420
Trenton, New Jersey 08625-0420

**Re: Ocean Dumping in Deal, NJ / Poplar Brook Dredged Material
EA ID #: PEA160001-1310-04-0001.3**

Dear Mr. Baier:

We are writing to follow-up on several important issues regarding the illegal dumping of dredged material by Agate Construction Co., Inc., into the ocean at the beach in Deal, New Jersey last month. This illegal dumping occurred in conjunction with the construction of a federal outfall project for Poplar Brook, which is a part of the ongoing Sea Bright to Manasquan Beach Erosion Control Project (specifically the Elberon to Loch Arbor reach of this massive project), along the coast of New Jersey.

First, Clean Ocean Action (COA) incorporates by reference the letter to NJDEP on March 11, 2016, sent by the firm of Litwin and Provence, on behalf of COA, which maintains that the illegal dumping activity on the beaches of Deal is a blatant violation of the Clean Water Act. COA therefore requests NJDEP to cite Agate Construction with a violation of the Clean Water Act and levy appropriate penalties once the amount and content of the dumped material is ascertained. NJDEP must use its full enforcement authority to ensure that New Jersey beaches remain as clean and safe as possible, and show that the State will not tolerate such actions.

Secondly, COA is concerned that the Department has not confirmed when the illegal dumping first commenced. COA has been contacted by eyewitnesses stating they saw illegal dumping activity as early as Wednesday, February 17, 2016, which would mean that Agate Construction had nearly 3 full days to illegally dump before being ordered to stop this activity on the afternoon of Friday, February 19.

Furthermore, COA remains concerned regarding the possibility that the dredged materials were contaminated. COA initially received assurances from the Department that the material was tested. However, we have since received conflicting reports as to whether the Department has undertaken sampling and analysis of either the material that was dumped into the ocean, the pile of

material left on the beach, or Poplar Brook itself, which is the apparent source of the material in question. COA requests that the Department (1) confirm whether sampling and analysis was in fact carried out, and if not, to undertake such testing immediately of Poplar Brook, (2) sample and test the material removed from the ocean, and (3) release the results of the testing as soon as possible.

COA is also disturbed that the Department has not properly inventoried the total volume of material excavated from Poplar Brook, including the volume of material illegally discharged into the ocean and, the volume recovered from the ocean, the volume of material relocated landward of the tideline, and the volume of material that will be properly disposed.

COA has learned that the material removed from Poplar Brook has been relocated from the beach and “stockpiled” at the Philips Avenue site at this time (along with other material removed from the project). Agate Construction has until March 22, 2016 to dispose of the material at an approved solid waste disposal facility, as required by the Notice of Violation (NOV) sent to Agate Construction on February 22, 2016.

The Department must determine what date the illegal dumping activities first commenced, quantify the volume of irrecoverable material dumped into the ocean, and determine whether the material dumped into the ocean was contaminated, and to what level, in order to protect human health and safety, assess the magnitude of environmental harm, and determine the proper enforcement actions and penalties, including Clean Water Act violations, to levy against Agate Construction.

Thank you for your attention to this troubling event and to the above requests. We look forward to receiving your reply.

Sincerely,



Cindy Zipf
Executive Director
Clean Ocean Action



Zachary Lees
Policy Attorney
Clean Ocean Action