



## State of New Jersey

PHILIP D. MURPHY  
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Watershed & Land Management Program  
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SHAWN M. LATOURETTE  
Commissioner

TAHESHA L. WAY  
Lt. Governor

August 27, 2024

Yo-Leven, Inc.  
c/o Louis DiVentura  
106 South Benson Ave  
Margate, NJ 08402

RE: **CZM General Permit 22 Application - Denial**  
File and Activity No.: 0116-07-0006.4, LUP240001  
Applicant: Yo-Leven, Inc. ("Applicant")  
Project: Temporary seasonal beach bar  
Block(s) and Lot(s): [25, 4]  
Municipality: Margate City; County: Atlantic

Dear Mr. DiVentura:

The Department of Environmental Protection's Division of Land Resource Protection (the "Department"), acting under the provisions of the Coastal Zone Management (CZM) Rules at N.J.A.C. 7:7-1.1 et seq., has decided not to approve this CZM General Permit 22 application, File #0116-07-0006.4, LUP240001, for the reasons set forth as follows:

### **SITE AND PROJECT DESCRIPTION**

The project site is a 0.29-acre parcel owned by the City of Margate, designated as Block 25, Lot 4 in the City of Margate, Atlantic County (the "Site"). The Site is an oceanfront beach and Green Acres encumbered parkland with an upland developed parcel owned by Yo-Leven Inc. to the northwest of the Site with a dune to the southeast. The municipally owned Site is currently occupied with a beach bar that is operated by the Applicant, consisting of a 14' x 18' beach bar, wood decking with an awning and tables and chairs, a sand area with table and chairs, a drain, electrical lines, and a fence around the perimeter of the beach bar amenities. Additionally, the Site currently contains two beach patrol sheds to the southwest of the beach bar.

A review of aerial photography and Department records indicates that the beach bar has been present at the site since at least 2020 and has never been authorized by the Department under the CZM rules. On June 18, 2020, the Department's Bureau of Coastal and Land Use Compliance and Enforcement ("Enforcement") issued a Notice of Violation (NOV) (0116-07-0006.2, PEA200001) to the Applicant citing the installation of unauthorized regulated activities within a CAFRA area.

More specifically, the activities involve the unauthorized construction of an approximately 15' x 30' partially enclosed pole building (tiki bar) with a roof; the installation of approximately 3500 square feet of floating wooden decking placed on grade; and an associated fence enclosure, all within the

regulated CAFRA area. The Applicant was advised in the NOV to either remove the structures or to apply for a permit to legalize the structures.

On June 19, 2020, the Department received an email response to the NOV from Eric S. Goldstein (Nehmad, Perillo, Davis, & Goldstein, Counselors at Law), on behalf of the Applicant, indicating that a complete CAFRA permit application would be submitted to the Department within 30 days. The response further indicated an understanding by the Applicant that any regulated activities which did not receive permit approval would need to be removed and the area restored.

On August 19, 2020, the Department received an application for a CAFRA Individual Permit (0116-07-0006.4, LUP200001) to address the violations cited in the NOV. On August 25, 2020, and September 24, 2020, the permit application was repeatedly deemed administratively deficient, and the Applicant's consultant, Art Ponzio, was notified of the deficiencies. The Department received no further submissions; accordingly, on January 13, 2021, the Department administratively closed the permit application.

Available aerial imagery from February 24, 2021, shows that the unauthorized structures still remained on the Site. On July 8, 2021, an NJDEP representative conducted a site visit and determined that the unauthorized structures and improvements remained on the Site with no approval.

On July 21, 2021, Enforcement issued a second NOV (0116-07-0006.2, PEA200001) to both Margate City and Louis Ventura/Ventura's Greenhouse<sup>1</sup>. The second NOV reminded the Applicant that the initial permit application had never been completed and had been administratively closed. Further, Enforcement advised the Applicant that, "failure to conduct the required corrective actions by August 20, 2021, may result in further enforcement action including the issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment pursuant to CAFRA".

On July 21, 2021, the Department received an email response to the second NOV from Eric S. Goldstein, stating that the "respondents," "continue to understand that any regulated activities that do not obtain permit approval must be restored pursuant to N.J.A.C. 7:7-2" and "Mr. Ponzio's office and I will address the NOV as required by NJ law."

Available aerial imagery from February 21, 2022 shows that the structures still remained on the Site. On May 3, 2022, the Department conducted a follow-up site inspection and determined that the unauthorized structures and improvements still remained on the Site without the required Department permit authorization.

On July 14, 2022, Enforcement issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) (0116-07-0006.2, PEA200002) to the Applicant, reiterating that the Applicant was required to either remove the structures or to apply for a permit to legalize the structures.

On August 30, 2022, the Department issued a letter to Eric S. Goldstein acknowledging receipt of his request for an adjudicatory hearing (0116-07-0006.2, OLA220001) of the AONOCAPA. On February 8, 2023 the request for the hearing was granted by the Department via a letter. This action was subsequently closed by the Department on June 13, 2023.

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<sup>1</sup> The 2020 and 2021 NOV's were issued to Ventura's Greenhouse c/o Louis Ventura. The 2023 and 2024 permit applications reference the Applicant as Yo-Leven, Inc. c/o Louis DiVentura.

On June 12, 2023, Enforcement issued to the Applicant an Administrative Consent Order (ACO) (0116-07-0006.2, NEA230001) requiring that the Applicant submit a CAFRA application to the Division within 45 days or remove all unauthorized structures. The ACO also stated that if the Applicant did not meet the timeframes designated for legalization or removal, then penalties would be assessed.

On July 12, 2023, the Department received a CZM General Permit 22 (CAFRA) application (File No. 0116-07-0006.4 LUP230001) for the Site. During the course of the Department's review and in consultation with NJDEP Green Acres (now also known as Public Land Compliance (PLC)), the Department determined that there was no lease agreement between the Applicant and the City of Margate to use the parkland Site and that the expansion of the private business onto encumbered parkland violates Green Acres regulatory restrictions governing the property.

The Applicant was advised via a November 15, 2023 email from Green Acres that the City of Margate must demonstrate through a N.J.A.C. 7:36-25.13 compliant lease, which includes an open public bid, how the beach bar serves as a public recreational amenity. Alternately, it stated, "the City must provide documentation that the Applicant's beach bar is covered by a valid COVID Expansion Permit and that the City designated this portion of the beach for this use in order to avoid the public bid requirement in N.J.A.C. 7:36-25.13. If this documentation is provided, Green Acres could entertain a one-year lease agreement which takes the operation to the deadline in S-2364 (November 30, 2024). After that date, the City would need to publicly bid this use."

Thus, the Applicant was advised via a November 15, 2023 email from the Department to withdraw the pending GP-22 application and resubmit once it had, at a minimum, secured an interim lease agreement with the City of Margate. The Department's email explained, "[w]e will be unable to render a positive finding on the GP-22 application without the interim lease agreement."

On November 16, 2023, the Applicant withdrew its CAFRA application. Pursuant to paragraph 16 of the ACO, if a CAFRA permit application is withdrawn, the Applicant must submit a restoration plan to Enforcement for the full restoration and removal of all structures and all regulated activities not approved via a CAFRA permit. As the above mentioned CAFRA application was withdrawn on November 16, 2023, the Applicant was required to submit a restoration plan for the removal of all unauthorized structures onsite by January 1, 2024.

On February 20, 2024, the Applicant was issued an ACO Compliance Warning letter (0116-07-0006.2, NEA230001). The warning letter stated, "You are required to immediately comply with the terms of the ACO agreement which you entered with the Department" and "[f]ailure to comply with the ACO within 30 days, will result in further enforcement action by CLUE, including the assessment of stipulated penalties, termination of the ACO and issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment, and/or referral of this matter to the Office of the Attorney General for litigation."

On February 26, 2024, Eric S. Goldstein, responded to the ACO Compliance Warning Letter and stated that "[p]ursuant to your correspondence of February 20, 2024, my client will be resubmitting the CAFRA application to continue its attempt to legalize the structures on-site, and we will request NJDEP to issue a formal decision on the application."

On April 17, 2024, Enforcement conducted yet another inspection of the Site to evaluate compliance and found that the unauthorized structures cited in the ACO remained on the Site in anticipation of the 2024 tourist season, and no CAFRA application had been submitted to the Department.

On May 31, 2024, Enforcement issued to the Applicant a Demand for Stipulated Penalties and

Invoice (0116-07-0006.2, NEA230001), which assessed a penalty of \$28,100 for continued non-compliance.

On June 4, 2024, the Applicant submitted the current application for a CZM General Permit 22 application (0116-07-0006.4, LUP240001). The 90<sup>th</sup> day deadline under the 90 Day Construction Law is August 30, 2024.

On June 21, 2024, Eric S. Goldstein sent a letter to the Department objecting to the penalty assessed in the Demand for Stipulated Penalties and Invoice with an Administrative Hearing request.

On July 3, 2024, the Department issued a letter to Eric S. Goldstein acknowledging receipt of his request for an adjudicatory hearing (0116-07-0006.2, OLA240001).

On August 12, 2024, Green Acres (now PLC) issued to the City of Margate a “Notice of Noncompliance – Private Encroachment on Green Acres Unfunded Parkland.”

The site plan submitted with this application is a single plan sheet entitled, “PLAN TO ACCOMPANY NJDEP APPLICATION, BLOCK 25, LOT 4, MARGATE CITY, ATLANTIC COUNTY, NEW JERSEY,” dated June 28, 2023, unrevised, and prepared by Arthur Ponzio Co. (the “Plan”).

## ANALYSIS

The following analysis addresses only those sections of the Coastal Zone Management (CZM) Rules (N.J.A.C. 7:7-1.1 et seq.), as amended to October 5, 2021, with which the proposed project does not comply. For further clarification, the italicized writing indicates the regulation, and the bold writing indicates how the project does not meet the applicable regulation. The complete rule text may be found at N.J.A.C. 7:7-1.1 et seq.

*7:7-6.22 General permit 22 –construction of certain structures related to the tourism industry at hotels and motels, commercial developments, and multi-family residential developments over 75 units*

*(a) This general permit authorizes the construction of structures such as equipment storage containers and sheds, stage platforms, bleachers, portable restrooms, food concession stands, gazebos, lockers, canopied shelters, and wooden walkways related to the tourism industry, at hotels and motels, commercial developments, and multi-family residential developments over 75 units provided that:*

*1. Except as provided in (a)1i below, the structure remains in place only from May 1 through October 31;*

*i. Underground utilities, floor decking, open drink and food concession stand shells, and stage shells may remain in place on a year-round basis;*

*5. The structure shall have no adverse impact on special areas defined at N.J.A.C. 7:7-9;*

## Findings

**Based upon the Department’s review of aerial photography as described above in the “Site and Project Description” section, although presently unauthorized, it is important to note that the structures do not appear to have been removed by the annual November 1<sup>st</sup> deadline. While the compliance statement submitted with this application indicates that that the Applicant will comply with this standard, it does not appear that to-date the unauthorized structures have been removed as would have been required if a permit had been issued for these structures.**

The Applicant has also failed to demonstrate that the proposed structures would comply with the following special areas defined at N.J.A.C. 7:7-9; specifically, the Public Open Space rule at N.J.A.C. 7:7-9.38.

*7:7-9.38 Public open space*

*(a) Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public open space also includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP-owned and managed lands.*

*(c) Development that adversely affects existing public open space is discouraged.*

*(d) Development within existing public open space is conditionally acceptable, provided that the development is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.*

### **Findings**

The Site is a City-owned Green Acres encumbered parcel. Therefore, any regulated improvements or activities on the Site must comply with the Public Open Space rule above. As referenced in the timeline above, the Applicant was advised during the review of the previous CZM General Permit 22 (CAFRA) application (File No. 0116-07-0006.4 LUP230001) that there was no lease agreement between the Applicant and the City of Margate for use of the Site. Thus, the expansion of a private business onto encumbered parkland failed to comply with Green Acres-PLC restrictions on the property.

Further, the Applicant was advised that the City of Margate must demonstrate through a N.J.A.C. 7:36-25.13 compliant lease, which includes an open public bid, how the beach bar is a public recreational amenity. The Applicant was also advised the Department would be unable to render a positive finding on the GP-22 application without the interim lease agreement. The Applicant failed to obtain any lease agreement prior to its submission of the pending GP-22 application.

On June 21, 2024, Mr. Goldstein sent a letter to the Department objecting to the penalty assessed in the 'Demand for Stipulated Penalties and Invoice'. The letter stated that the Applicant had complied with the Department's instructions. However, the November 15, 2023 emails from both the Department and Green Acres-PLC clearly identified the steps that were and are required prior to submission of a permit application. The Applicant has not pursued the directives in those emails.

On August 12, 2024, Green Acres-PLC issued to the City of Margate a "Notice of Noncompliance – Private Encroachment on Green Acres Unfunded Parkland." This Notice letter reiterated the items previously conveyed to the Applicant in the November 15, 2023 email from Green Acres-PLC regarding the lack of a N.J.A.C. 7:36-25.13 compliant lease for the Site. The City was advised that it remained out of compliance with Green Acres-PLC restrictions on the property. The letter stated that the City needs to provide documentation that the beach bar is covered by a valid COVID Expansion permit and that the City has designated this portion of the beach for this use. The letter also explained that the City must demonstrate through a N.J.A.C. 7:36-25.13 compliant lease how this operation is a public recreational amenity (i.e. by providing details for the

operation of the beach bar, discussion of reasonable public access to the area, and an explanation for the rental payment if not established by a public bid). To date, the Department has not received a response to this letter.

**Therefore, the Applicant has failed to demonstrate compliance with N.J.A.C. 7:7-9.38.**

*N.J.A.C. 7:7-1.4 Standards for evaluating permit applications*

*(a) All applications for coastal permits shall be approved, conditionally approved, or denied pursuant to this chapter.*

*(b) The Department shall issue a permit pursuant to CAFRA only upon a finding as required by N.J.S.A. 13:19-10 that the development:*

*1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;*

### **Findings**

**The Site lies beyond the approved and mapped sewer service area. The site plan indicates a drain line extending from the beach bar to Block 25, Lot 14. The Applicant has failed to address whether this drain line requires a Treatment Works Approval (TWA) and subsequently whether the drain line is exempt from Water Quality Management Planning (WQMP) rule requirements. Therefore, the Applicant has failed to show compliance with N.J.A.C. 7:7-1.4(b)1.**

### **RECOMMENDATIONS AND CONCLUSION**

Based on the above analysis, the Applicant has failed to demonstrate that the structures on the Site comply with the Coastal Zone Management Rules at N.J.A.C. 7:7-1.1 et seq., last amended October 5, 2021. Accordingly, the CZM General Permit 22 application is hereby denied.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-28.

Any interested person who considers themselves aggrieved by this permit decision may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, 401 East State Street, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist. The Checklist is available through the Division's website at <http://www.nj.gov/dep/landuse/forms.html>. The DEP Bulletin is available through the Department's website at <http://www.nj.gov/dep/>.

A copy of the denial will be shared with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources.

If you have any questions concerning this letter, please do not hesitate to contact Becky Mazzei of my staff at [Becky.Mazzei@dep.nj.gov](mailto:Becky.Mazzei@dep.nj.gov). Please be sure to indicate the Department's file number in all correspondence.

Sincerely,

Janet Stewart, Manager  
Bureau of Coastal Permitting  
Division of Land Resource Protection

cc: Agent  
City of Margate Construction Official  
Nehmad Davis & Goldstein, PC c/o Eric S. Goldstein [goldstein@ndglegal.com](mailto:goldstein@ndglegal.com)  
NJDEP Bureau of Coastal and Land Use Enforcement, Toms River c/o  
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