

**JOSH STEIN**  
**ATTORNEY GENERAL**



REPLY TO:  
MARY L. LUCASSE  
(919) 716-6962  
[MLUCASSE@NCDOJ.GOV](mailto:MLUCASSE@NCDOJ.GOV)

## Memorandum

To: North Carolina Coastal Resource Commission  
Fr: Mary L Lucasse, Esq.  
Re: Legal Update for August Meeting (**CRC 24-12**)  
Date: August 12, 2024

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### I. WAKE COUNTY SUPERIOR COURT

**CRC v. RRC, File No. 23CV031533.** The CRC requested declaratory judgment against the RRC on issues relating to the RRC's decision not to approve thirty rules readopted and revised by the CRC during its periodic review of rules. The parties have agreed on a briefing schedule and asked the trial court to enter an order with the following schedule: dispositive motions filed August 23, response briefs filed September 26, and Reply Briefs submitted Oct. 15, 2024. The Court has not entered the requested order.

**Cedar Point v. CRC, File No. 24CV000121-910.** Plaintiff Cedar Point filed a complaint for declaratory judgment in Wake County Superior Court based on its allegation that the CRC abused the emergency rule process. On May 13, 2024, the Rules Review Commission's return of the temporary rules resulted in the expiration of related emergency rules. The Plaintiff voluntarily dismissed the complaint (see attached). I will close my file.

### II. PETITIONS FOR JUDICIAL REVIEW (PJR)

**Petitioners Clifton et. al. (22 CVS 1074) – Carteret Co. Superior Court.** The Commission denied the request of several lot owners in the Beaufort Waterfront RV Park to appeal the permit issued to Collette Properties LLC & Beaufort Waterway RV Park to construct a dock on the waterfront by their lots. The Chair held that the property and contract claims raised were not within DCM, CRC, or OAH's jurisdiction. Petitioners filed a PJR in superior court. An order to stay was filed December 21, 2022. Since then, Petitioners have been working to settle their dispute with the permittee.

### III. OFFICE OF ADMINISTRATIVE HEARINGS (OAH)

**Roman Golovka (24 EHR 01369)** filed a contested case petition challenging CAMA Minor Permit No. OB2023-111 issued by the Currituck County LPO for the development of a new swimming pool and associated decking and fence following the grant of his third-party hearing request. Petitioner alleged the Permit was issued contrary to 15A NCAC 7H .0308(b)(1). DCM/LPO were represented by NCDOJ attorneys Christine Ryan and Sarah Zambon. After Petitioner failed to file a prehearing statement, the Administrative Law Judge dismissed the contested case on July 16, 2024 (see order attached). We will close our file.

**Matthew Stefanowicz, Wendy Adams, Melinda Sininger** (24 EHR 02666) filed a petition for a contested case hearing to challenge issuance of Permit No. 04-24 by DCM to Jordan Teel in New Hanover County following the partial grant of their third-party hearing request. The Permit authorized construction of a second-story deck, as well as a set of stairs and a structural beach accessway extending to the Atlantic Ocean. Petitioners allege that the permit was issued contrary to § I13A-120, and 15A NCAC 07H .0306, 07H .0309, and 07J.0204. DCM/LPO are represented by NCDOJ attorney Christine Ryan.

**IV. VARIANCES:** The Commission granted a variance at its April meeting and that final agency decision is attached.

**V. REQUESTS BY THIRD PARTIES TO FILE CONTESTED CASES IN OAH:**  
Following is a review of the outstanding requests:

**Cox Family (CMT24-06)** requested a contested case hearing to challenge Minor Permit No. 23-027 authorizing construction of bathhouse in the setback. Petitioner claims the Permit is contrary to N.C. Admin. Code 15A NCAC 07H .0209(d)(10)(C). The FAD denied the request on the grounds that petitioner had failed to identify any statutory basis for the request. Petitioner did not appeal this decision and I will close my file.

**Renaissance Assets LLC (CMT24-07)** requested a contested case hearing to challenge the decision to issue a permit authorizing a pier on the grounds that the permit is inconsistent with 07H .01205(q) and .1204(d). The Chair denied the request on the grounds that petitioner had failed to identify any property interest in uplands near the permitted structure and therefore was not directly affected by the decision. In addition, petitioner had failed to demonstrate any factual basis or legal argument to support his claim that the request was not frivolous. Petitioner did not appeal the decision. I will close my file.

**Stefanowicz, Adams, Sininger (CMT24-08)** requested a contested case hearing to challenge reissuance of a permit authorizing construction of second floor deck. The Chair granted the request in part on the grounds that there were issues of fact regarding the size of the deck, whether it was structurally separate from the residence, and the LPO's interpretation of the setback rules. Petitioners filed their Petition in the Office of Administrative Hearings on July 12, 2024. Petitioners did not appeal the issues on which the CRC had denied the request based on lack of jurisdiction. I will close the file on the third-party hearing request.

**Matthew Ward (CMT24-09)** requested a hearing to challenge CAMA Minor Permit No. 9-24 authorizing the development of a house, covered deck, screen porch, and staircase in the buffer, an open deck and staircase on the landward side of the house, and a gravel driveway in the Town of Ocean Isle based on lack of notice and alleged inconsistency with 15A NCAC 07H .0209(d)(10)(I) (Small Structure Exception to the CAMA Buffer rule). Petitioner withdrew his request. I will close my file.

**Martin Purvis (CMT24-10)** requested a hearing to challenge DCM's reissuance of CAMA Minor Permit No. 17-16 in Beaufort County authorizing drainage work in an easement. The Chair's decision is due September 5, 2024.



## North Carolina Coastal Resources Commission

Via US Mail and Electronic Mail: [corbettd@ecu.edu](mailto:corbettd@ecu.edu)

David Reide Corbett  
Dean, Integrated Coastal Programs  
East Carolina University  
850 NC 345  
Wanchese, NC 27981

### Re: Science Panel of the Coastal Resources Commission

Dear Dr. Corbett:

Following discussion with the North Carolina Coastal Resources Commission ("Commission") at our April 24-25, 2024 meeting, I am pleased to appoint you to a four-year term on the Commission's Science Panel on Coastal Hazards ("Science Panel"). The Commission appreciates your willingness to serve and expects to benefit from your experience and demonstrated commitment to coastal issues.

For your information, the Commission's staff at the North Carolina Division of Coastal Management ("DCM") provides support for the Science Panel. Please feel free to contact Mike Lopazanski, at 252-515-5431 if you have any questions. Attached is a copy of the Science Panel Bylaws. More information is here: <https://www.deq.nc.gov/about/divisions/coastal-management/coastal-resources-commission/crc-science-panel>. Thank you again for your service

Sincerely,

Renee Cahoon  
Chair Coastal Resources Commission

cc w/o attachment:

Laura Moore, Chair of the Science Panel  
Tancred Miller, DCM Director  
Mike Lopazanski, DCM Deputy Director  
Angela Willis, Asst. to the Director

ROY COOPER  
GOVERNOR

M. RENEE CAHOON  
CHAIR

NEAL ANDREW  
1<sup>ST</sup> VICE CHAIR

SHEILA HOLMAN  
2<sup>ND</sup> VICE CHAIR

LARRY BALDWIN

D.R. BRYAN, JR.

BOB EMORY

JORDAN HENNESSY

ROBERT HIGH

STEVE KING

LAUREN SALTER

STEVE SHUTTLEWORTH

W. EARL SMITH

JAMES (ROBBIE) YATES

TANCRED MILLER  
EXECUTIVE SECRETARY



Division of Coastal Management  
Department of Environmental Quality  
400 Commerce Ave.  
Morehead City, North Carolina 28557



**JOSH STEIN**  
**ATTORNEY GENERAL**

**STATE OF NORTH CAROLINA**  
DEPARTMENT OF JUSTICE

REPLY TO:  
MARY L. LUCASSE  
ENVIRONMENTAL DIVISION  
(919)716-6962  
MLUCASSE@NCDOJ.GOV

April 29, 2024

Paul Andrus  
4140 Thick Ridge Road  
Kitty Hawk, NC 27949

*Electronically: prandrus@charter.net*

**Re: Paul Andrus Variance Request CRC-VR-24-01**

Dear Mr. Andrus:

At its April 25, 2024 meeting, the North Carolina Coastal Resources Commission granted your variance request. Attached is the Final Agency Decision signed by the Chair of the Coastal Resources Commission. Prior to undertaking the development for which a variance was sought, you must first obtain a CAMA permit from the local permitting authority or the Division of Coastal Management.

If for some reason you do not agree to the variance as issued, you have the right to appeal the Coastal Resources Commission's decision by filing a petition for judicial review in the superior court as provided in N.C.G.S. § 150B-45 within thirty days after receiving the final agency decision. A copy of the judicial review petition must be served on the Coastal Resources Commission's agent for service of process at the following address:

William F. Lane, General Counsel  
Dept. of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601

If you choose to file a petition for judicial review, I request that you also serve a copy of the petition for judicial review on me at the email address listed in the letterhead.

Mr. Paul Andrus

April 29, 2024

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If you have any questions, please feel free to contact me.

Sincerely,



Mary L. Lucasse  
Special Deputy Attorney General and  
Counsel for the Coastal Resources Commission

cc electronically:

M. Renee Cahoon, CRC Chair  
Christine A Goebel, Esq. DEQ Assistant General Counsel  
Tancred Miller, DCM Director  
Mike Lopazanski, DCM Deputy Director  
Angela Willis, DCM Assistant to the Director  
Ron Renaldi, DCM District Manager  
Yvonne Carver, DCM Field Representative  
Rob Testerman, CAMA LPO, Town of Kitty Hawk

STATE OF NORTH CAROLINA	)	BEFORE THE NORTH CAROLINA
	)	COASTAL RESOURCES
COUNTY OF DARE	)	COMMISSION
	)	<b>CRC-VR-24-01</b>
	)	
	)	
IN THE MATTER OF:	)	
PETITION FOR VARIANCE	)	<b>FINAL AGENCY DECISION</b>
BY PAUL ANDRUS	)	

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On January 12, 2024, Petitioner Paul Andrus submitted a request for a variance from the North Carolina Coastal Resources Commission’s (“Commission”) rule set forth at 15A N.C. Admin. Code 07H.0208(b)(6)(G) and 15A N.C.A.C. 07H .0208(a)(2)(G) to install a proposed boat lift and to add a second platform to the existing access pier and platform. The new platform would be located on the landward side of the existing platform and the proposed lift would be located on the south side of the existing platform at the property located at 4140 Thick Ridge Road in Kitty Hawk, Dare County (the “Site”).

This matter was heard pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A N.C. Admin. Code 07J .0700, *et seq.*, at the regularly scheduled meeting of the Commission held on April 25, 2024 at the Dare County Government Center, North Carolina. Assistant General Counsel Christine A. Goebel, Esq. appeared for Respondent Department of Environmental Quality, Division of Coastal Management (“DCM”). Paul Andrus appeared on his own behalf.

When reviewing a petition for a variance, the Commission acts in a quasi-judicial capacity. *Riggings Homeowners, Inc. v. Coastal Resources Com’n*, 228 N.C. App. 630, 652, 747 S.E.2d 301, 314 (2013) (Commission has “judicial authority to rule on variance requests . . . ‘reasonably necessary’ to accomplish the Commission’s statutory purpose.”); *see also Application of Rea Const. Co.*, 272 N.C. 715, 718, 158 S.E.2d 887, 890 (1968) (discussing the Board of Adjustment’s quasi-judicial role in allowing variances for permits not otherwise allowed by ordinance). In its

role as judge, the Commission “balance[es] competing policy concerns under CAMA’s statutory framework.” *Riggings*, 228 N.C. App. at 649 n.6, 747 S.E.2d at 312.

Petitioner and Respondent DCM are the parties appearing before the Commission. The parties stipulated to facts and presented stipulated documents to the Commission for its consideration. *See*, N.C. Admin. Code 15A 07J .0702(a). If the parties had been unable to reach agreement on the facts considered necessary to address the variance request, the matter would have been forwarded to the North Carolina Office of Administrative Hearings (“OAH”) for a full evidentiary hearing to determine the relevant facts before coming to the Commission. *Id.* 07J .0702(d). As in any court, the parties before the decision-maker are responsible for developing and presenting evidence on which a decision is made. If DCM and Petitioner had entered into other stipulated facts, it is possible that the Commission would have reached a different decision. In this case, the record on which the Commission’s final agency decision was made includes the parties’ stipulations of facts, the stipulated documents provided to the Commission, and the arguments of the parties.

#### **FACTS STIPULATED TO BY PETITIONER AND DCM**

1. Petitioner Paul Andrus owns property with his wife Mary Andrus located at 4140 Thick Ridge Road in Kitty Hawk, Dare County. Petitioner and his wife took title to the Property on April 17, 1984 through a deed recorded in the Dare County Registry at Book 367, Page 76, a copy of which was provided to the Commission. The Property is also Lot 9, Section 6 of the Kitty Hawk Landing Subdivision, shown on a plat recorded at Plat B, Slide 64 of the Dare County Registry, a copy of which was provided to the Commission.

2. The Property is shown in aerial and ground level photos contained in a PowerPoint

presentation, provided as a stipulated exhibit. The property is 0.46 acres and is adjacent to Lot 8 to the north, by a dredged canal to the west, by Thick Ridge Road to the east, and by part of the Kitty Hawk Woods Coastal Reserve, DCM Coastal Reserve to the south. Also to the south is an embayment and creek which feeds into the dredged canal.

3. The Property is developed with an existing pier and platform totaling 82-feet long. The pier/platform structure has a fixed pier and a fixed platform measuring 8' x 6.6' then widening to 8.3' x 16' developed in 1984. DCM was not able to locate a copy of an old CAMA permit searching the address and the name Andrus.

4. The upland is developed with a 3,104 square foot two-story house with associated decks, porches and driveway. A copy of the 2023 tax card was provided as a stipulated exhibit.

5. The Property is also developed with a garage and a shed which are located both on the Property and on the land south of the Property. A copy of a 2020 survey performed for DCM by Quible & Associates was provided to the Commission showing the location of structures on Reserve property at that time. Also provided was a letter from Petitioner's attorney to DCM discussing the issue dated March 22, 2021 which was in response to DCM Northern Sites Manager speaking with Petitioner about encroachments.

6. At this location the waters of the adjacent man-made canal which connects to the Albemarle Sound are classified as SB Waters by the Environmental Management Commission. These waters are closed to the harvest of shellfish by the Marine Fisheries Commission.

7. The waters of the canal and Albemarle at the Property are Public Trust Areas and Estuarine Waters Areas of Environmental Concern ("AECs").

8. As noted in the DCM Field Report, attached, a review of aerial imagery shows that



“at the time of construction, wetlands were present between the shoreline and platform and the structure met the total length limitation of that time” which the Commission’s pier length rule at the time limited piers to one-third of the waterbody width. An aerial photograph from 1984 was provided to the Commission and shows a pier at the Site and the extent of Coastal Wetlands at of 1984.

9. Pursuant to N.C.G.S. § 113A-118, any “development” within an AEC must be authorized by the issuance of a CAMA permit.

10. In the area of the Property, the canal is now approximately 133 feet wide. Petitioner’s existing pier/platform structure is 82 feet and spans 62 percent of the waterbody width. The quarter-width of the waterbody at the Property is approximately 33 feet and the one-third width of the waterbody at the Property is approximately 44 feet.

11. Petitioner first discussed seeking a permit for a boat lift and dock addition as part of an onsite meeting with former DCM Field Representative Sarah Loeffler on Site on October 13, 2022. The meeting was set to address a violation caused by the Petitioner placing a shed within the 30-foot buffer on the Site in violation of the Commission’s buffer rules and without a CAMA permit, and a violation caused when Petitioner added a cantilevered section to the existing platform without a CAMA permit. During this site visit, Petitioner also discussed applying for a major permit, and staff explained that a permit denial would be required if work was proposed to be located more than the quarter-width distance. On November 29, 2022, DCM issued an NOV directing the removal of the unpermitted shed from the 30-foot buffer. This restoration was complete and verified on February 22, 2023. A civil penalty assessment letter was sent March 15, 2023 and payment was received on March 29, 2023 and closed April 3, 2023.

12. On February 25, 2023, Petitioner sent notice to DCM describing his proposed development of a boat lift and second platform and requesting a pre-application meeting with DCM and DWR staff. A copy of this project narrative letter was provided to the Commission.

13. Following two incomplete application letters from DCM (December 15, 2022 and June 7, 2023 following the resolution of the NOV), on June 12, 2023, the Petitioner, who owns Andrus Construction Co, LLC, submitted a revised CAMA Major Permit application to DCM for a proposed boat lift and second platform addition to the existing access pier and platform, consisting of the installation of a 12' x 12' boatlift and a fixed 16' x 5'6" platform. Petitioner's permit drawings dated 10-28-22 were provided to the Commission with one showing water depths and the other showing the details of the proposed development. The new platform would be located on the landward side of the existing platform and the proposed lift would be located on the south side of the existing platform and new platform. A copy of the application was provided to the Commission as a stipulated exhibit. The application as accepted as complete by DCM on June 26, 2023.

14. Based on the site plan drawings which are part of the application, the water body width is 133 feet wide. The depth in the proposed area of the lift is approximately -3.0 feet and the depth in the area of the second platform range from -3.0 to -2.5 feet. The water depth at the one-quarter width (at 33 feet across) is approximately -2 feet and the depth at the one-third width (44 feet) is approximately -2.5 feet.

15. Petitioner and Staff agree that this is a wind-driven system and sustained winds can impact water depths. The Commission reviewed two photos from Petitioner showing the waterbody at the Site during wind events.

16. Petitioner has supplied a sworn affidavit, a copy of which was provided as a stipulated exhibit. DCM acknowledged that the statements in that affidavit are Petitioner's sworn statements but does not necessarily agree with them.

17. As required, Petitioner provided notice of the application to the adjacent riparian owners. In this case, Petitioner gave notice to the Vaughnts through a form dated June 12, 2023 and signed by Mr. Vaught on June 13, 2023, a copy of which was provided. Mr. Vaught indicated he had no objection to the proposed lift and new platform. Petitioner also sent notice dated June 12, 2023 to Mike Moser at the State Property Office and a copy of the notice form signed by Mr. Moser on June 13, 2023 was provided indicating no objections.

18. As required, Petitioner posted notice of the permit application on the site Notice of the application was also published in the Coastland Times Newspaper on July 16, 2023. DCM did not receive any comments about this project from the public.

19. As part of the CAMA Major Permit Process, DCM Field Representative Sarah Loeffler completed a Field Investigation Report dated July 10, 2023, a copy of which was provided as a stipulated exhibit. This report was sent with the application materials to the other permit reviewing agencies.

20. On January 3, 2024, DWR issued a 401 Water Quality Certification, a copy of which was provided.

21. None of the other review agencies had any objection to the proposed development.

22. On August 31, 2023, DCM Major Permits Manager Gregg Bodnar phoned Petitioner and asked to discuss his proposed development and its non-conformity with the quarter-width rule. Petitioner indicated that he wished to receive a final denial decision on the project as

proposed as he did not wish to place the lift in the shallower waters at the quarter-width location. On October 30, 2023, Mr. Bodnar emailed Petitioner notifying him that the review was complete and a denial was coming.

23. On October 31, 2023, DCM denied Petitioner's permit application as being inconsistent with 15A N.C.A.C. 07H.0208(b)(6)(G), where the proposed lift and new platform extend more than one-fourth the width of the waterbody and 15A N.C.A.C. 07H .0208(a)(2)(G) which states "Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters." A copy of the denial letter was provided to the Commission.

24. On November 20, 2023, Mr. Bodnar emailed a copy of the denial letter to Petitioner after the certified mail delivery was returned to DCM as undeliverable on November 8, 2023.

25. On January 12, 2024, DCM received Petitioner's initial variance petition and notified him that it was missing copies of notice of the variance request sent to the adjacent riparian owners as well as an initial set of proposed facts, but Petitioner subsequently provided these.

26. Google Earth photographs of the area around the Property were provided to the Commission as stipulated exhibits showing the relative location of piers in the area of the Property.

27. Pursuant to 15A N.C.A.C. 07J.0701(a), Petitioners would have been required to furnish to the Commission proof that a variance was sought from the local government; however, the requirement is inapplicable, since it appears that the local 100' dock limit for the Sound Water District (Sec. 42-360) does not apply to this canal/creek lot, it does not appear that there are applicable Town of Kitty Hawk requirements restricting the Dock Expansion at the Site.

28. Pursuant to 15A NCAC 7J. 0701(c)(6), Petitioner stipulates that the proposed

project is inconsistent with the rules from which the Petitioner seeks a variance.

29. Pursuant to 15A NCAC 7J .0701(c)(7), Petitioners sent notice of this variance petition to the adjacent riparian owners. Copies of the notice and delivery information were provided to the Commission. The notice to the State Property Office for the Kitty Hawk Woods Reserve property to the south was sent to Mike Moser, the Director of the State Property Office. Mr. Mosher signed the form on January 29, 2024. The Vaughnts signed the Notice on February 27, 2024. Both notices were provided to the Commission. No comments were provided to the Commission prior to its April meeting.

30. Without a variance, Petitioner could keep the existing non-conforming pier as-is, could re-locate the proposed lift and new platform at the one-quarter width where it would be in approximately -2.25 feet of water at the quarter-width mark, or Petitioner could propose dredging as the waters at this location are not classified as Primary Nursery Areas.

**EXHIBITS PROVIDED TO THE COMMISSION BY PETITIONER AND DCM**

- A. Andrus Deed 367/76
- B. Plat B-64 Kitty Hawk Landing Subdivision
- C. 2023 Tax Card for the Property
- D. 2020 Quible Encroachment Survey
- E. 3/22/21 letter from P's attorney to DCM re: encroachment
- F. 1984 aerial
- G. Petitioner's two photos showing Site during wind events
- H. 2/25/23 P's pre-application meeting request and project narrative
- I. CAMA Major Permit application materials including two site plans
- J. Petitioner's sworn affidavit
- K. Notice of permit application to adjacent riparian owners, signed by each
- L. 7/10/23 DCM Field Investigation Report

- M. DWR 1-3-22 401 Certification
- N. October 31, 2023 Denial Letter
- O. Notice of Variance Request to adjacent riparian owners, signed by each
- P. Aerial and ground level photos of the Site

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter.
2. All notices for the proceeding were adequate and proper.
3. As set forth in detail below, Petitioner has met the requirements in N.C. Gen. Stat. § 113A-120.1(a) and 15 N.C. Admin. Code 07J .0703(f) which must be found before a variance can be granted.

**a. Strict application of the rule will cause unnecessary hardships.**

The Commission affirmatively finds that strict application of the Commission's quarter-width rule would result in unnecessary hardships for the Petitioner because the existing docking facility cannot be extended and still comply with the rule. The now-non-conforming pier was made non-conforming due to the landward movement of the water line on the property and disappearance of coastal wetlands over the decades since the original pier was constructed. Based on aerial photography, when the pier was constructed, it was likely conforming. In the past, the waterbody was narrower and would have been measured between the waterward extents of the coastal wetlands. In addition, when the existing pier was constructed, the Commission had a one-third-width rule instead of the quarter-width rule. Denial of the permit application was required because the Petitioner was seeking to expand the pier structure with a new platform and new lift waterward of the current quarter-width measurement.

As the Petitioner points out in his request, strict application of the quarter-width rule caused

hardship because without a variance, the Petitioner would not be able to have a boat lift as there is no possibility of moving closer to the new shore line because it is too shallow. Because of the frequency and intensity of strong coastal storms, the Petitioner wants to install a lift to safely secure his boat.

For these reasons, the Commission affirmatively finds that Petitioner has met the first factor without which a variance cannot be granted.

**b. The hardship results from conditions peculiar to Petitioner's property.**

The Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the property. Specifically, the original property line as shown on the Dare County Tax maps shows the line up to the existing dock. The existing dock was built 40 years ago with a walkway built over the shallow marsh to get to the existing canal and 2-3 feet of water depth to dock a sailboat. Over the 40 years erosion has occurred and the reeds have disappeared from the shallow water. The canal remains in the same location. The water is too shallow for any usable dock closer to the shore.

In its Staff Recommendation, DCM agrees that the tax map shows lines into the water to the existing dock. Petitioner's deed conveyed Lot 9, and the attached plat at note 5 indicates "it is the intent of the developer concerning all waterfront lots shown on this plat to convey to the waters edge." This language indicates that where the boundary follows the location of mean high water, Petitioner is a riparian property owner. Staff agree that the lines on the tax map reflect a prior location of the shoreline and that the shoreline has moved landward over time. This is supported by the old aerial photograph which was provided to the Commission which shows the coastal wetland which had been present in the area of the dock and are no longer present and an old survey

showing a normal high water line which is similar to the tax map line. As waterbody widths are measured from the waterward extent of the coastal wetlands per 7H.0208 (b)(6)(G)(iii), the existing pier may have met the Commission's pier length limits at the time (which were a one-third limit in the 1980's) and the non-conformity with this rule happened as the water line moved landward and the coastal wetlands disappeared.

Accordingly, the Commission affirmatively finds that Petitioner has demonstrated that this hardship results from conditions peculiar to the property and has met the second factor required for the grant of its request for a variance.

**c. Petitioner has demonstrated that the hardship does not result from actions taken by Petitioner.**

The Commission affirmatively holds that Petitioner has demonstrated that the hardship does not result from his actions. Specifically, Petitioner claims that the hardship results given charges at the Site and the increasing incidents of extreme weather which during strong winds blows the water out of the canal leaving Petitioner's boat sits on the bottom. Petitioner requests the variance because without a boat lift, he cannot safely secure the boat. Petitioner points out that because the weather has changed, he now feel it is necessary to install a boat lift. Nothing Petitioner has done lead to the changes in the weather or the site.

In it Staff Recommendation, DCM agrees that the hardships did not result from Petitioner's actions requesting a new boat lift placed waterward of the quarter-width on the existing pier structure. The Commission does not agree with DCM that Petitioner's caused the hardship by his design choices because the scope of the design appears narrowly chosen to address the changes in site and weather conditions. For these reasons, the Commission affirmatively finds that Petitioner has demonstrated that it has met the third factor required for a variance.



- d. Petitioner has demonstrated that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, will secure public safety and welfare, and will preserve substantial justice.**

The Petitioner has demonstrated (a) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, (b) that it will secure public safety and welfare, and (c) that it will preserve substantial justice. The principal purpose of the Commission's rule from which a variance is sought is to limit pier length across water bodies and thereby protect public trust rights to navigation.

In his request, Petitioner asserts that the existing boat dock which has been in place for 40 years does not hinder any canal traffic or the kayak access to the shallow bay. By installing the boat lift on the side of the existing dock, Petitioner claims there is more room for navigation of the canal. Moreover, without the variance, the Petitioner will not be able to install a usable boat lift on my property. Petitioner has a 40-year investment in his property. However, without the boat life, the Petitioner asserts he will not be able to safely secure my boat.

In its Staff Recommendation, DCM agrees in part and states that the requested variance for the boat lift on the existing pier is consistent with the spirit, purpose and intent of the quarter-width rule where the lift is being added to an existing pier which appears to have been conforming to the pier length rules in place when it was constructed and where the water line has moved landward over the last 40 years and the coastal wetlands have disappeared.

The Commission affirmatively finds that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, will secure public safety and welfare, and that it will preserve substantial justice because the additional platform waterward of the quarter-width is needed to provide the depth required for access. Granting this variance and allowing the proposed

lift at the proposed location as well as the proposed additional platform provides a reasonable balance between Petitioner's right to pier out, the public's right to navigate, and the protection of public trust resources.

\* \* \* \* \*

For these reasons, the Commission affirmatively finds that Petitioner has met the fourth factor required by N.C.G.S. § 113A-120.1(a) as conditioned by the variance.

**ORDER**

THEREFORE, the requested variance from 15A N.C. Admin. Code 07H.0208(b)(6)(G) and 15A N.C.A.C. 07H .0208(a)(2)(G) is GRANTED.

The granting of this variance does not relieve Petitioner of the responsibility for obtaining any other required permits from the proper permitting authority. This variance is based upon the Stipulated Facts set forth above. The Commission reserves the right to reconsider the granting of this variance and to take any appropriate action should it be shown that any of the above Stipulated Facts are not accurate or correct.

This the 29<sup>th</sup> day of April 2023.



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M. Renee Cahoon Chair  
Coastal Resources Commission

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the foregoing FINAL AGENCY DECISION upon the parties by the methods indicated below:

**Method of Service**

Paul Andrus  
4140 Thick Ridge Road  
Kitty Hawk, NC 27949

Electronically: [prandrus@charter.net](mailto:prandrus@charter.net)

Christine A. Goebel  
Assistant General Counsel  
NC Department of Environmental Quality  
217 West Jones Street  
Raleigh, NC 27603

Electronically: [Christine.Goebel@deq.nc.gov](mailto:Christine.Goebel@deq.nc.gov)

Tancred Miller, DCM Director  
Mike Lopazanski, DCM Deputy Director  
Angela Willis, DCM Director's Assistant  
Division of Coastal Management  
400 Commerce Ave.  
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[Signature on next page]

This the April 29<sup>th</sup> day of April, 2024.



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Mary L. Lucasse  
Special Deputy Attorney General and Commission Counsel  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, N. C. 27602

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24-CV-000121-910

CEDAR POINT DEVELOPERS, LLC,

Plaintiff,

v.

COASTAL RESOURCES COMMISSION,

Defendant.

NOTICE OF VOLUNTARY DISMISSAL  
WITHOUT PREJUDICE

Pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure, Plaintiff Cedar Point Developers, LLC hereby gives notice that this action is voluntarily dismissed without prejudice. Each party shall bear their own costs.

This the 3<sup>rd</sup> day of June, 2024.

/s William M. Butler

Mary Katherine H. Stukes

N.C. Bar No. 36787

William M. Butler

N.C. Bar No. 49116

Laura Boorman Truesdale

N.C. Bar No. 51720

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing document was served upon the parties by email to counsel of record as follows:

Mary L. Lucasse  
PO Box 629  
Raleigh, NC 27602  
MLucasse@ncdoj.gov

*Counsel for Defendant*

This the 3<sup>rd</sup> day of June, 2024.

/s/ William M. Butler \_\_\_\_\_  
William M. Butler

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 EHR 01369

<p>Roman Golovka Petitioner,</p> <p>v.</p> <p>Currituck Cama LPO and DCM and Division of Coastal Management Anna Cherry and Ron Ronaldi Respondent.</p>	<p><b>FINAL DECISION</b></p>
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**THIS MATTER** is before the Undersigned, *sua sponte*, upon review of the filings of record, having provided Petitioner with multiple opportunities to file a Prehearing Statement through Orders for Prehearing Statements, and without receiving a response from Petitioner, the Undersigned hereby **DISMISSES** this contested case pursuant to N.C. Gen. Stat. §§ 1A-1, Rule 41(b), 150B-33(b)(3a) and (10), and 26 NCAC 03 .0105(8) and .0114(a)(2).

**APPEARANCES**

Petitioner: Failed to respond

Respondent: Christine Ryan  
Assistant Attorney General  
PO Box 629  
Raleigh, NC 27602

**ISSUE**

Whether this case is subject to dismissal for failure to follow interlocutory orders of the Tribunal and for failure to prosecute?

**FINDINGS OF FACT**

1. Petitioner Roman Golovka (“Petitioner”) filed this contested case in the Office of Administrative Hearings (“OAH”) on April 12, 2024.

2. On April 19, 2024, the Tribunal issued a Notice of Contested Case and Assignment and an order to file Prehearing Statements under 26 N.C.A.C. 3 .0104. Petitioner was provided a form for filing the Prehearing Statement.
3. Respondent Currituck Cama LPO and DCM and Dvisiion of Coastal Management, Anna Cherry and Ron Ronaldi (“Respondents”) filed a Prehearing Statement on May 17, 2024.
4. By June 18, 2024, Petitioner had not filed a Prehearing Statement. The Tribunal issued a Second Order for Prehearing Statements instructing Petitioner that “a Prehearing Statement must be filed with the Office of Administrative Hearings and served on the other party by **July 2, 2024**” (emphasis in original). This order also stated that the consequences for failing to file a Prehearing Statement “may include the dismissal of the Petition.”
5. As of today, Petitioner has failed to file a Prehearing Statement.
6. In addition, Respondent filed a Motion to Dismiss on May 15, 2024. The Undersigned issued a Request for Response ordering Petitioner to file a response on or before May 30, 2024.
7. As of the date of this Decision, Petitioner has failed to file a Prehearing Statement, has failed to file a response to the motion to dismiss and has failed to request additional time to respond to either order.
8. Petitioner has thus failed, without stated reason or justification, to comply with two interlocutory orders of the Tribunal.

### **CONCLUSIONS OF LAW**

1. Under N.C.G.S. 150B-33 and 26 N.C.A.C. 3.105, the Tribunal has authority to “(5) Make preliminary, interlocutory, or other orders as deemed appropriate, and (6) Grant dismissal when the case or any part thereof has become moot **or for other reasons**” (emphasis supplied). Further, the rules regarding sanctions that may be imposed by OAH state, “if a party fails to appear at a hearing **or fails to comply with an interlocutory order of an administrative law judge**, the administrative law judge may dismiss or grant the motion or petition.” 26 NCAC 03 .0114 (a) (emphasis supplied). This is in addition to the authority of the Tribunal under N.C.G.S. 1A-1, Rule 41(b).
2. Dismissal under N.C.G.S. 1A-1, Rule 41(b) for failure to prosecute a case presents three factors that the Tribunal must address before dismissing for failure to prosecute under Rule 41(b). They are: (1) whether the plaintiff acted in a manner which deliberately or unreasonably delayed the matter; (2) the amount of prejudice, if any, to the defendant; and (3) the reason, if one exists, that sanctions short of dismissal would not suffice. Wilder v. Wilder, 146 N.C. App. 574, 578, 553 S.E.2d 425, 428 (2001); Foy v. Hunter, 106 N.C. App. 614, 418 S.E.2d 299 (1992). Dismissal is not the only sanction available under such



circumstances and should be imposed only when the Tribunal has determined that less drastic sanctions are insufficient.

3. With respect to factor (1) Petitioner has failed to comply with two interlocutory orders of the Tribunal with regard to a relatively simple (but critical) filing, for which Petitioner was provided a form. This is conduct which either deliberately or unreasonably delays the progress of this case.
4. With respect to factor (2), due to Petitioner's repeated failure to file a Prehearing Statement, months after the filing of this action neither the Tribunal nor Respondent know any more about Petitioner's contentions in this contested case than on the day Petitioner filed his petition. The Tribunal concludes that Respondent is prejudiced by this conduct.
5. With respect to factor (3), before dismissing an action with prejudice, the Tribunal must make findings and conclusions, which indicate that it has considered less drastic sanctions and that sanctions short of dismissal will not suffice. Miller v. Ferree, 351 S.E.2d 845, 847 (1987). The Tribunal is not required to list and specifically reject each possible lesser sanction prior to determining that dismissal is appropriate. Ray v. Greer, 212 N.C. App. 358, 363 (2011) (internal citations and quotations omitted).
6. The Tribunal has considered all the matters above and determines that dismissal is the only appropriate sanction. Petitioner has failed to take any additional action to progress this case since filing the petition. Petitioner has failed to respond to multiple orders of the Tribunal and has failed to request additional time to take any required action. Respondent has been prejudiced by Petitioner's actions.
7. The Undersigned has considered lesser sanctions against Petitioner, including those authorized in 26 NCAC 03 .0114. Sanctions short of dismissal would not suffice or be effective in this contested case as Petitioner has demonstrated a pattern of unresponsiveness by failing to comply with two interlocutory orders.
8. For the foregoing reasons, the Undersigned hereby dismisses this contested case with prejudice.

### **FINAL DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned **DISMISSES** this contested case with prejudice.

### **NOTICE OF APPEAL**

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of N.C. Gen Stat. § 150B-45, any party wishing to appeal this Final Decision must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved

resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed.

The appealing party must file the Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision. This Final Decision was served on the parties as indicated by the attached Certificate of Service pursuant to 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. Gen. Stat § 1A-1, Article 2.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review and requires service of that Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the Official Record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. The appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings at the time the appeal is filed.

### **STAY OF FINAL DECISION**

This Final Decision remains in effect until the person aggrieved moves the reviewing Court for a Stay of the Final Decision and the reviewing Court grants the Stay pursuant to N.C. Gen. Stat. § 150B-48.

**IT IS SO ORDERED.**

This the 15th day of July, 2024.

A handwritten signature in blue ink that reads "John C. Evans". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

John C Evans  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

Roman Golovka  
Strategic Estates Corp  
[rgolovko@gmail.com](mailto:rgolovko@gmail.com)  
Petitioner

Sarah Grace Zambon  
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Attorney For Respondent

Christine Ryan  
NC Department of Justice  
[cryan@ncdoj.gov](mailto:cryan@ncdoj.gov)  
Attorney For Respondent

This the 15th day of July, 2024.



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Lisa J Garner  
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