

JOSH STEIN
ATTORNEY GENERAL



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

Memorandum

To: North Carolina Coastal Resource Commission
Fr: Mary L Lucasse, Esq.
Re: Legal Update for Feb 2025 Meeting (CRC 25-14)
Date: February 4, 2025

I. WAKE COUNTY SUPERIOR COURT

CRC v. RRC, File No. 23CV031533. The CRC requested judgment against the RRC on issues relating to the RRC's decision not to approve thirty rules readopted and revised by the CRC during the periodic review of rules. The CRC and RRC filed dispositive motions on Sept 6, 2024. Coastal Federation filed a motion for leave to submit a memorandum in support of the CRC as an amicus curia (friend of the court). The hearing on the motions took place December 11, 2024 and were taken under advisement. Trial is March 10, 2025.

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 water in front of 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. Petitioners have been working to settle their dispute with the permittee. The mediation failed. Eight petitioners (Moody, Gordon, Clifton, and Mangum) have withdrawn from the PJR. Dale and Karen Gokel and David and Esther Jones have not dismissed their claims.

Petitioner Martin Purvis (24CV001929-060) – Beaufort County Superior Court. On October 4, 2024, Petitioner filed a petition for judicial review appealing the Commission's denial of a request for a hearing to challenge DCM's reissuance of CAMA Minor Permit No. 17-16 in Beaufort County authorizing drainage work in an easement. I filed the record, a response, and a motion to strike non-record documents. The hearing on the motion to strike set for March 10, 2025. Counsel are discussing a hearing date for the petition.

Petitioners Sherri and Kenneth Elliott (24 CVS 1915) Brunswick County Superior Court. On October 25, 2024, Petitioner filed a petition for judicial review appealing the Commission's denial of their request for a hearing to challenge CAMA Minor Permit No. OIB 33-24 issued to Permittee David Hill authorizing the development of a single-family residence in Ocean Isle Beach, North Carolina. The Chair denied the request as untimely. I filed a response, the certified record, and a motion to strike non-record documents. Counsel are discussing a schedule to bring these issues before the court.

Petitioner Jud Ready (24 CVS 1000) Carteret County Superior Court. On November 12, Petitioner filed a Petition for Judicial Review appealing the Chair's denial of a TPHR to challenge DMC's issuance of CAMA Permit 92857 and CAMA Permit 78413 to construct a bulkhead and extension to a bulkhead. I filed the certified record, a response, and a motion to strike affidavits and other documents. A hearing on the Motion to Strike is set for April 7, 2025. The hearing on the PJr is scheduled for May 7, 2025.

III. OFFICE OF ADMINISTRATIVE HEARINGS (OAH):

- **2024 Summary of contested case hearings:** In 2024, we did not receive any petitions for contested case hearings filed in OAH by permit applicants. This past year, three contested case hearing requests brought by third parties were granted by the Chair. Despite the grant, Petitioner Melton (CMT24-14) did not file a petition. Two of the third parties filed petitions for a contested case hearing in OAH as allowed by the Chair. However, Petitioner Golovska's case (CMT24-07; 24 EHR 91369) was dismissed by order of the Administrative Law Judge when he failed to file a prehearing statement or respond to court orders. Petitioners Stefanowicz, Adams, and Sininger (CMT 24-08 24 EHR 02666) voluntarily dismissed their petition before the hearing. (See below)
- **Matthew Stefanowicz, Wendy Adams, Melinda Sininger (24 EHR 02666)** filed a petition for a contested case hearing to challenge the issuance of Permit No. 04-24 to Jordan Teel in New Hanover County following the partial grant of their third-party hearing request. The Permit authorized the construction of a second-story deck. DCM/LPO was represented by NCDOJ attorneys Francisco Benzoni and Brenda Menard. Petitioners dismissed the contested case without prejudice on November 15, 2024. They may refile within a year.

IV. VARIANCES: Attached is a *summary* of the variance requests heard in 2024. The Commission heard five variance requests at its November meeting and the final agency decisions are attached. The Commission heard a variance request at the special meeting in December and the final agency decision on that request is attached. There are three variance requests scheduled for hearing at your February meeting.

V. REQUESTS BY THIRD PARTIES TO FILE CONTESTED CASES IN OAH:

Attached is a *summary* of the requests heard in 2024. Following is a review of the outstanding requests:

Stirling Melton (CMT 24-14) requested a hearing to challenge DCM/LPOs issuance of a minor modification to CAMA Major Permit 62-23 to expand a commercial docking facility. On October 24, 2024, the Chair granted the request in part and denied it in part. Petitioner must file a contested case hearing by November 13, 2024. Any appeal must be filed by November 22, 2024. Mr. Melton did not file anything in either OAH or superior court. I will close my file.

Joy and Roy Brownlow (CMT 24-15) requested a hearing to challenge DCM's issuance of CAMA General Permit 100480C for construction of a pier and bulkhead (riparian line). The Chair's denied the request. Petitioner did not file a petition for judicial review within the 30 day deadline. I will close my file.

Susan Hatcher (CMT 24-16) requested a hearing to challenge DMC's issuance of various permits authorizing construction of boat lifts, slips, and piers claiming lack of notice and inconsistency with CAMA and the Commission's rules. Before the deadline to issue the decision, the parties resolved their dispute and a modified permit was issued. I will close my file.

Kathleen Stafford (CMT25-01) requests a hearing to challenge DCM's issuance of CAMA Major Permit No. 108-24 in Currituck County based on lack of notice. The Chair's decision is due on February 21, 2025.

VI PETITION FOR RULEMAKING

Nelson Paul submitted a petition on December 6, 2024 requesting the CRC begin rulemaking to clarify the scope of 07H .0206(a). The Commission will consider whether to grant or deny the petition at its February meeting. The decision must be issued in 120 days (by April 6, 2024).

Attachments:

1. 2024 Summary of TPHR
2. 2024 Summary of Variance Requests
3. CRC-VR-24-07 Town of Ocean Island Final Agency Decision and cover letter
4. CRC-VR-24-08 Eggleston Final Agency Decision and cover letter
5. CRC-VR-24-09 McCoy ENC LLC Final Agency Decision and cover letter
6. CRC-VR-24-10 Branstrom Final Agency Decision and cover letter
7. CRC-VR-24-12 Town of Nags Head Final Agency Decision and cover letter
8. CRC-VR-24-13 NCDOT Final Agency Decision and cover letter
9. NC Citizens for Transparent Government v. The Village of Pinehurst issued December 4, 2024 by the NC Court of Appeals.