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## **Memorandum**

To: North Carolina Coastal Resource Commission  
Fr: Mary L Lucasse, Esq.  
Re: Legal Update for August Meeting (**CRC 24-25**)  
Date: October 30, 2024

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### **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 parties filed Responses to the cross-motions on Oct 11, 2024 and Reply Briefs on Oct. 29, 2024. The parties have requested the hearing be scheduled during the week of December 9, 2024. Trial is set for 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. Since then, Petitioners have been working to settle their dispute with the permittee.

**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. The request was denied based on lack of jurisdiction. I will be filing the record on which the decision was made with the superior court by November 4, 2024.

**Petitioners Sherri and Kenneth Elliott (24 CVS - \_\_\_) Brunswick County Superior Court.** Approximately 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, pool and pool decking at 467 E. Fourth Street, Ocean Isle Beach, North Carolina. The request was denied because it was untimely. I will be filing the record on which the decision was made in approximately 30 days.

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

**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 are represented by NCDOJ attorneys Francisco Benzoni and Brenda Menard. Mediation is scheduled for October 30 and a hearing for the contested case is scheduled in Raleigh, NC beginning the week of December 16, 2024.

**IV. VARIANCES:** The Commission heard four variance requests at its August meeting and the final agency decisions are attached. The Commission is hearing additional variance requests at the November meeting.

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

Following is a review of the outstanding requests:

**Lisa and Stephen McCracken (CMT 24-11)** requested a contested case hearing to challenge DCM's issuance of CAMA Major and Dredge & Fill Permit 90-24 in Craven County authorizing shoreline stabilization, bulkhead, and riprap. The Chair denied the decision on the grounds that petitioners had failed to allege facts or make legal arguments demonstrating a nonfrivolous basis for a hearing. Any appeal must be filed by October 29, 2024.

**Kenneth Elliott (CMT 24-12)** requested a hearing to challenge DCM's issuance of CAMA Major permit 90-24 in Brunswick County based on 07H .0205, .0206(c), .0208, and 07B .702. On September 17, 2024, the Chair denied the request because it was untimely. A petition for judicial review was submitted to the superior court on October 25, 2024.

**Jud Ready (CMT 24-13)** (represented by Jim Connor, Esq.) requested a hearing to challenge DCM's issuance of GP 92857 authorizing a bulkhead extension based on 07H .0208(b)(7). On October 11, 2024, the Chair denied the request to challenge development authorized by a 2019 permit as untimely and denied the request to challenge the 2024 minor modification of the 2019 permit on the grounds that petitioner has failed to allege facts or make legal arguments demonstrating a nonfrivolous basis for a hearing. Any appeal must be filed by November 10, 2024.

**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.

**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 decision is due by November 15, 2024.

Attachments:

1. CRC v. RRC 23-CV031533-910
  - a. Plaintiffs Motion for Declaratory Judgment and Summary Judgment and Injunctive Relief filed September 6, 2024
  - b. Defendant RRC's Motion for Summary Judgment filed Sept. 6, 2024
  - c. Coastal Federation's Motion for Leave to file Amicus Brief filed September 6, 2024
  - d. Codifier's Memo of Law in Response to Plaintiffs' MSJ filed Sept. 29, 2024
  - e. Plaintiffs' Response in Opposition to RRC's Motion for Summary Judgment filed October 11, 2024
  - f. Defendant RRC's Response in Opposition to CRC's Motion for Summary Judgment filed Oct 11, 2024
  - g. Plaintiffs Reply to the Codifier's Memo of Law filed October 29, 2024
  - h. Plaintiffs' Reply to Defendant RRC's Response in Opposition to Motion for Summary Judgment, and
  - i. Defendant RRC's Reply to CRC's Response filed October 29, 2024
2. Final Agency Decision in **CRC-VR-24-06** (Dare Co.) filed September 12, 2024
3. Final Agency Decision in **CRC-VR-24-04** (Westerholm) filed September 15, 2024
4. Final Agency Decision in **CRC-VR-24-02** (S. Water St.) filed September 16, 2024
5. Final Agency Decision in **CRC-VR-24-05** (Dorazio) filed September 17, 2024
6. Martin Purvis **Petition for Judicial Review** filed Oct. 4, 2024 in 24CV001929-060
7. Sherri and Kenneth Elliott's **Petition for Judicial Review** submitted Oct 25, 2024 in Brunswick Co. Superior Court.