

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:

SCOTT T. SLUSSER
SPECIAL DEPUTY ATTORNEY GENERAL
TRANSPORTATION DIVISION
1505 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699
919-707-4480

March 25, 2019

Via E-Mail

Ms. Renee Cahoon, Chairman, North Carolina Coastal Resources Commission
c/o Mary Lucasse, Esq.
Special Deputy Attorney General
North Carolina Department of Justice
E-Mail: mlucasse@ncdoj.gov

Re: Request for Expedited Variance Hearing

Dear Ms. Cahoon:

Pursuant to 15A N.C.A.C. 7J.0701, we respectfully request on behalf of our client, the N.C. State Ports Authority ("NCSPA" or "Ports"), that the Coastal Resources Commission ("CRC") grant NCSPA an expedited hearing in connection with a variance petition. We would request that this matter be heard at the April 17-18, 2019 CRC meeting. The reason for the expedited request is because the Ports hope to start construction on July 1, (prior to the next available CRC meeting) to avoid spring fish migratory patterns. There is a short construction window (July 1 – Jan 31) available and any delay after July 1 will have a significant impact on construction and for reasons discussed below the Ports are at risk for losing significant business if construction is not timely.

The variance petition concerns the CAMA major permit application for a modification to the existing 47-87 permit (dated October 29, 2018) for the installation of a vertical submerged toe wall, removal of the wooden Chevron Pier, and dredging in the Cape Fear River to widen the

existing ship turning basin. The petition will seek a variance from CRC rules pertaining to the expansion of the existing ship turning into estuarine, wetlands and primary nursery areas.

The current turning basin is approximately 1,400 feet wide. The Ports' CAMA major modification permit application seeks to widen the turning basin an additional 124 feet to 1,524 feet and to a final project depth of -42' (+2' +1' to clear any rock or debris) MLLW by mechanical dredging. Maintenance dredging would be at -42' +2'. Expansion of the turning basin is needed to accommodate larger shipping vessels that are scheduled to call on the Port of Wilmington at the beginning of 2020. The opening of the new Panama Canal, over two years ago, resulted in an unprecedented advancement in the container shipping industry. Vessels transiting the canal have tripled in size due to its increased dimensions. For instance, the POW was prepared to accommodate ships of 8,500-12,000 TEU (i.e., able to carry 8,500 to 12,000 shipping containers, or 8,500 -12,000 "twenty foot equivalent" units). Now, POW customers intend to use 14,000 TEU ships for the U.S. east coast. As ships become larger, both their length and beam increase in size. Accordingly, the turning basin is in need to be expanded to accommodate these 14,000 TEU ships.

Container shipping is a major source of revenue and business for the POW with most major customers sailing to/from Asia through the Panama Canal. The Ports' current infrastructure (i.e., berths, cranes, storage, trucking, etc.) can accommodate a 14,000 TEU ship, but the existing turning basin cannot. Once the turning expansion is complete, the Port of Wilmington will be able to accommodate a 14,000 TEU ship.

The Port's largest container shipping customers have informed the Ports that if the Port of Wilmington cannot accommodate the new vessels, the shipping companies will rely on other ports, such as Savannah and Norfolk for their business needs. The loss of this business will have a severe

impact on the Ports and on the many North Carolina businesses and consumers that rely on the Port of Wilmington to ship and receive goods to/from Asia and around the world.

The goal of the NCSPA is to widen the turning basin as soon as possible so that it can accommodate these larger ships so as not to lose this vital part of the North Carolina economy. In an attempt to expedite the necessary permits and to further convey the urgent need for this development, the NCSPA has committed to extensive mitigation for this development, including delaying construction until July 1, 2019 to minimize potential adverse effects on fish during their annual migration for spawning, enhancement of 6.75 acres of Phragmites dominated wetland to brackish tidal marsh habitat on the Brunswick River/Eagle Island Property, onsite enhancement of 1.75 acres of phragmites dominated habitat to coastal tidal marsh, conveyance of a conservation easement on 30.2 acres of Port property on the Brunswick River, and payment of \$800,000.00 for the construction and monitoring of Lock and Dam # 1 Rock Ramp Fish Passage Modification on the Cape Fear River, which will greatly expand migratory fish habitat.

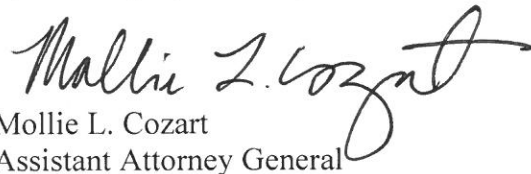
NCSPA businesses and consumers at large are facing generally unexpected circumstances that require immediate consideration by the CRC. The pressures of a competitive shipping industry, and the potential loss of important customers at the Port of Wilmington present a set of extenuating circumstances that warrant expeditious consideration of NCSPA's variance request. The variance will allow NCSPA to continue to serve container vessels for the benefit of businesses and consumers in North Carolina. Delay in the consideration of NCSPA's variance petition will affect its ability to accommodate these larger ships and will likely result in the loss of NCSPA's major customers and thereby have a direct impact on the Port's sustainability and its ability to serve the citizens and businesses of North Carolina.

It is our understanding that the CRC's next meeting is on April 17-18, 2019 and we respectfully ask that the CRC to hear the variance petition at that time. Please contact us with any questions or concerns. We appreciate your consideration.

Respectfully submitted,



Scott T. Slusser
Special Deputy Attorney General



Mollie L. Cozart
Assistant Attorney General

cc: **(via e-mail)**
Christine Goebel, Esq., NCDEQ
Mr. Brian Clark, NCSPA



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

March 26, 2019

By email to mlucasse@ncdoj.gov
Renee Cahoon, Chair of the CRC
c/o Mary Lucasse, CRC Counsel

RE: Request by NC Ports for expedited variance of CRC-VR-19-04

The following is DCM Staff's ("Staff") response to the March 25, 2019 request by the NC Ports ("Petitioner") to have an expedited hearing on its variance petition seeking authorization for further expansion of the turning basin at the Port of Wilmington facility. Staff does not oppose the request for an expedited hearing if it is pursuant to the schedule and conditions set forth below.

Staff's primary concern is ensuring that the schedule affords sufficient time for the variance process to be adequately completed (i.e. for the parties to agree on stipulated facts, to complete Staff's recommendation, and to compile all appropriate materials for the Commission's review). Staff understands the Chair's latest deadline for the delivery of this variance packet is Friday, April 12, 2019. With this in mind, if the Chair grants the request for an expedited hearing based on the Petitioner's assertions, Staff believes it can adequately prepare for the matter to be heard at the April CRC meeting and deliver a complete variance packet by Friday, April 12, 2019, provided that Staff and Petitioner have reached agreement on stipulated facts by Thursday, April 4, 2019.

Thank you for your consideration and please contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine A. Goebel".

Christine A. Goebel
Assistant Attorney General

cc: Mollie Cozart, Asst. AG and Petitioner's Co-counsel, via email
Scott Slusser, Special Deputy AG and Petitioner's Co-counsel, via email
Braxton C. Davis, DCM Director, via email
Angela Willis, DCM Director's Assistant, via email
Debra Wilson, DCM WiRO DM, via email
Doug Huggett, DCM Major Permits Manager, via email





North Carolina Coastal Resources Commission

March 28, 2019

Via e-mail

Scott T. Slusser, Special Deputy AG
Mollie Cozart, Assistant AG
NCDOJ - Transportation Division
1505 Mail Service Center
Raleigh, NC 27699-1505

Re: GRANT of Request for Expedited Hearing

Dear Mr. Slusser and Ms. Cozart:

I have reviewed the March 25, 2019 letter and attachments submitted on behalf of the NC Ports in support of its request for an expedited hearing on the Variance Request submitted the same date. Based on the information submitted and taking that information at face value, I note that the NC Ports have indicated that there is a need to start construction on July 1, 2019 (before the next regularly scheduled CRC meeting) to avoid spring fish migratory patterns. In addition, there is a short construction window (July 1- Jan 310 and any delay after July 1 will have a significant impact on construction and would place the NC Ports at risk of losing significant business if construction is not completed in a timely fashion. Given the information provided, I am granting the NC Ports' request to be placed on the agenda for the Commission's regularly schedule April 17-18, 2019 meeting even though NC Ports request for a variance was not received by the date required for it to be considered at that meeting.

This decision is limited to the finding that an expedited timeframe for placing the variance request on the agenda is justified and should not be read by anyone as an indication of how the Coastal Resources Commission will ultimately decide the NC Ports' request for a variance. The grant of the request is subject to the following schedule and conditions:

- DCM and Petitioner NC Ports shall reach agreement on stipulated facts by Thursday, April 4, 2019
- The variance packet shall be provided to the CRC by Friday, April 12, 2019

If you have any questions regarding this schedule or my decision, please direct them to Commission Counsel, Mary L. Lucasse at (919) 716-6069 or mlcuasse@ncdoj.gov.

Sincerely,

M. Renee Cahoon, Chair

cc: Christine A. Goebel, Counsel for DCM
Braxton C. Davis, DCM Director, via email
Angela Willis, DCM Director's Assistant, via email

ROY COOPER
GOVERNOR

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CHAIR

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RUSSELL RHODES, JR.

LAUREN SALTER

JAMIN SIMMONS

Braxton C. Davis
Executive Secretary



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