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REPLY TO:
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Memorandum

To: North Carolina Coastal Resource Commission
Fr: Mary L Lucasse, Esq.
Re: Legal Update to the Coastal Resources Commission (**CRC 23-20**)
Date: May 25, 2023

I. NORTH CAROLINA SUPREME COURT

Batson, Baldwin, and Batson/Baldwin Owners' Association v. CRC (Carteret Co.) Docket No. 94A22. The Commission appealed the Court of Appeal's decision based on Judge Tyson's dissent that would have held that no fees should have been awarded because the Commission's decision denying the Petitioners' request for a hearing was substantially justified. The matter is fully briefed, and we are waiting to hear the date for the oral argument.

II. NORTH CAROLINA COURT OF APPEALS

Henry Fonvielle v. CRC (New Hanover Co.) Docket No. COA 22-742. Petitioner Henry Fonvielle appealed the superior court's order affirming the Commission's final agency decision denying his untimely request for a contested case hearing. The Court of Appeals issued its unanimous published Opinion on April 18, 2023 upholding the Commission's decision to deny the third-party hearing request based on the untimely filing of the request and the resulting lack of subject matter jurisdiction. Petitioner has informed us that he will **not** file a petition to the North Carolina Supreme Court asking for discretionary review and the time to do so has passed. I will close my file.

III. 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 at Petitioner's request to allow time to explore settlement with the permit holder.

IV. OFFICE OF ADMINISTRATIVE HEARINGS (OAH)

V. VARIANCES—There were no variances heard at your April meeting. The Wetmore petition is scheduled for hearing at this June meeting.

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

Following is a review of the outstanding requests:

P.L. Saunders (CMT 23-02) submitted a request for a contested case hearing to challenge a CAMA permit authorizing construction of a new pool and pool fence at 9629C E. Spencer in the Town of Nags Head, Dare County. The Chair denied the request on April 6, 2023 based on Petitioner's failure to meet any of the factors required by statute. No appeal was received by the May 6, 2023 deadline to file a petition for judicial review. I will close my file.

Pecan Grove Yacht Club (CMT23-03) submitted a request for a contested case hearing to challenge a CAMA General Permit authorizing maintenance dredging at an existing pier in Shop Gut, Pamlico County, North Carolina. The Chair's decision was served April 25, 2023 denying the request for failure to meet the 2nd and 3rd factor. No appeal of this decision was received by May 25, 2023. I will close my file.

Paul Mills (CMT23-04) submitted a request for a contested case hearing to challenge GP 88221 authorizing a pier and slips at his neighbor's property based on a claim that it would interfere with his navigation. The Chair denied the request on May 17, 2023 based on Petitioner's failure to allege facts or make legal arguments to support his request. Any appeal of the decision must be filed in superior court by June 16, 2023.