
AGENCY: Office of the Attorney General

SUBJECT: Legal Settlement of Litigation Related to Captain Sams Spit

In 2009, Kiawah Development Partners II, the predecessor in interest of KDP II, LLC (KDP), brought a civil action against the State of South Carolina and the South Carolina Department of Health and Environmental Control (n/k/a Department of Environmental Services (DES)) in Charleston County (civil action number 2009-CP-10-02847). The litigation includes claims for unconstitutional regulatory and physical taking of property without just compensation based on the denial of a requested permit to construct an erosion control structure along the banks of the Kiawah River designed to facilitate development of land popularly known as Captain Sams Spit.

The litigation was stayed until September 2021, after rulings by the Supreme Court of South Carolina that at different times reversed three separate Administrative Law Court decisions authorizing various erosion control structures. In March 2022, the State of South Carolina and DES filed Motions to Dismiss, which were subsequently denied in October 2022. Without the erosion control structure, the continued erosion of the bank of the Kiawah River over the 12 years of litigation before the stay was lifted (and nearly 17 years after the litigation commenced) caused the jurisdictional line on the beachfront to intersect with the critical area line on the river, thereby eliminating the original access corridor that KDP claims is necessary to facility development of Captain Sams Spit.

KDP is seeking damages in excess of \$200,000,000. In lieu of further protracted litigation and likely appeals, the parties to the litigation are desirous to settle all claims and avoid ongoing litigation expenses and mitigate the risk of an adverse judgment. The Department of Natural Resources is not a party to the litigation but is an active necessary participant in the settlement agreement. The State's contribution for settlement of the litigation is \$32,000,000 if appropriated by the General Assembly during the current legislative session.

The proposed settlement has been approved by the Office of the Attorney General, South Carolina Department of Environmental Services, and South Carolina Department of Natural Resources.

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AUTHORITY ACTION REQUESTED:

As requested by the Attorney General, and pursuant to Section 11-1-45, authorize settlement of Civil Action 2009-CP-10-02847 for not more than \$32,000,000 by the Attorney General (acting for the State of South Carolina), the South Carolina Department of Environmental Services, and the Department of Natural Resources, and authorize the payment for the settlement by any agency to which applicable funds are appropriated, if appropriated by the General Assembly.

ATTACHMENTS: