

ENVIRONMENTAL CLAIMS PART
HON. GRETCHEN WALSH, J.S.C.

Contact Information:

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Justice Walsh's Staff:

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Principal Secretary: Toni Guida, Esq. (tguida@nycourts.gov)

ECP Clerk: Peter McIlmurray (pemcilmu@nycourts.gov)

Motion Day: Thursdays

Motions are on submission, unless the Court directs otherwise.

I. CRITERIA FOR SELECTION TO ENVIRONMENTAL CLAIMS PART

The Environmental Claims Part (“ECP”) may hear and determine disputes and controversies where the predominant claims involve the adjudication of potential impacts to the environment, including but not limited to, potential impacts to the land, air, water, traffic and transportation, minerals, natural resources, forest management, flora, fauna, noise, patterns of population concentrations, distribution or growth, existing community neighborhood character and human health.

A. Actions or proceedings suitable for the Environmental Claims Part:

1. determinations made under environmental laws, such as the State Environmental Quality Review Act, State Environmental Conservation Law, Urban Renewal Law, Eminent Domain and Procedure Law, New York State Historic Preservation Act, Coastal Erosion Law, and the relevant governing and implementing rules and licenses based on environmental criteria;

2. determinations made by a local legislative body, planning board, and wetland

board or commission, including the approval or denial of zoning, subdivision, wetland, site plan and excavation permits, regulatory interpretations, and other land disturbance and other permits and licenses based on environmental criteria;

3. determinations of local zoning boards of appeals;

4. regulatory taking and other constitutional claims challenging land use and other environmentally related laws, regulations, ordinances and determinations;

5. determinations made under the New York City Watershed Rules and Regulations, the New York City Water Supply and Sources, and the New York State Department of Health Regulations, pertaining to the protection of the water supply; or

6. actions involving the remediation, civil enforcement and/or cost allocation or recovery relating to the discharge, threatened discharge or regulation of those elements, wastes, materials, substances, or compounds identified or regulated as hazardous or toxic under local, state or federal law, pursuant to, without limitation, New York State common law, the New York State Navigation Law, Industrial Hazardous Waste Management Act, Inactive Hazardous Waste Disposal Site Program, Resource Conservation and Recovery Act, Comprehensive Environmental Response Compensation and Liability Act, Clean Water Act, Lead Based Paint Hazardous Reduction Act, National Emission Standards for Asbestos, New York State Department of Labor Industrial Code Rule 56, Insecticide, Fungicide and Rodenticide Act, and all other laws, regulations, legal requirements, and statutes, as may be amended or enacted from time to time, relating to the regulation of hazardous and toxic substances and the protection of the environment.

B. Actions or proceedings not suitable for the Environmental Claims Part:

1. challenges to the granting or denial of area variances involving single-family, two-family, or three-family residences;

2. challenges involving easement disputes by or among single-family, two-family, or three-family residences;

3. any of the core environmental cases referenced in I (A) involving disputes or controversies by or among single-family, two-family, or three-family residences, except as they relate to the discharge, threatened discharge, or regulation of those elements, wastes, materials, substances, or compounds identified or regulated as hazardous or toxic materials as set forth in I (A) (6); provided that the ECP Justice may accept such cases in the event that he or she determines in his or her discretion that the action involves exceptional or unique issues of environmental law or the resolution of the action could have a significant impact on the environment;

4. determination of compensation under Article 5 of the Eminent Domain and Procedure Law;
5. criminal enforcement and other criminal proceedings;
6. matters arising under the Occupational Safety and Health Act; or
7. all matters to be tried.

II. ENVIRONMENTAL CLAIMS PART ASSIGNMENT PROCEDURES

A. Application procedure for assignment to the ECP: Counsel in any action or proceeding raising environmental issues that fall within the criteria set forth in I (A) may seek to have the matter adjudicated in the ECP by submitting a filed copy of an RJI together with a one-page letter stating the reasons assignment to the ECP would be appropriate. The letter application shall be served upon all parties or counsel, and shall set forth the case name, index number, and a statement describing the nature of the action and the specific basis for adjudication in the ECP. The Chief Clerk shall refer the letter application and RJI to the Administrative Judge for review. Within five days of service of the RJI and letter application, opposing counsel or any unrepresented party may join in the application or oppose it by submitting to the Administrative Judge a one-page letter, including the criteria set forth in I (A) or (B), on notice to all adverse counsel and unrepresented parties. The determination of whether a case is to be assigned to the ECP or to an IAS Justice is an administrative matter. The determination of the Administrative Judge or his designee with respect to the granting or denial of admission to the ECP is final and subject to no further review or appeal. Nevertheless, the Administrative Judge or his designee may, where appropriate, subsequently transfer a case from the ECP back to an IAS Part.

B. Consent to change venue: If a matter arising out of a dispute involving property or proposed development in Westchester County is not accepted into the ECP, it shall remain with the IAS Justice previously assigned or be given a random assignment. Where an action arises out of a dispute involving property or proposed development in Rockland, Orange, Dutchess, or Putnam counties and is denied admission to the ECP, the letter application seeking admission to the ECP shall be deemed a motion to change venue and consent to transfer the matter to the county where the proposed development or disputed property is actually located.

C. Case tracking: Assignment to the ECP shall bypass the DCM Preliminary Conference Part and proceed on an expedited track.

III. GENERAL RULES

A. Appearances by counsel with knowledge and authority: All counsel who appear before the ECP must be familiar with the case and fully authorized to enter into agreements as to both substantive and procedural matters on behalf of their clients. Attorneys appearing of counsel to the attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

B. Settlements and discontinuances: If an action is settled, discontinued, or otherwise disposed in any manner by the parties, counsel and self-represented parties shall immediately inform the Court by letter, faxed or sent to the ECP Clerk, which includes a copy of the signed stipulation of discontinuance. The Court will not mark any matter settled unless it has received a copy of a stipulation of discontinuance, the original of which has been filed with the County Clerk.

C. Communications with the Court:

The preferred method to correspond with the Court is by email, cc'd to all counsel or unrepresented parties, to the Court's ECP Clerk at pencilmu@nycourts.gov or its Principal Court Attorney at lnousek@nycourts.gov. The Court does not accept papers of any kind by fax transmission without prior Court approval. Faxed communications are not to exceed 3 pages unless prior permission is obtained from the Court.

Ex parte communications: *Ex parte* communications are strictly prohibited except upon consent of all counsel and self-represented parties, or with respect to scheduling matters, the presentation of orders to show cause for signature, or where otherwise permissible

Communications with represented parties: Counsel are directed to inform their clients that under no circumstances shall any represented party engage in any conversation or exchange any communication with the Court's staff (*see* CPLR 321[a]). If a represented party communicates with any member of the Court's staff, all counsel shall be informed of the communication and, if it is in writing, shall be sent a copy of that writing.

D. Conduct of parties and counsel: It is expected that all parties and counsel shall conduct themselves appropriately in all in-court and out-of-court proceedings and in their communications with each other and to the Court. Personal attacks upon parties, counsel or the Court will not be tolerated and may result in the imposition of sanctions, as the Court determines to be warranted under the circumstances.

E. Scheduling: Counsel and any self-represented party should address questions about scheduling appearances or adjourning appearances to the ECP Clerk via email at

pencilmu@nycourts.gov.

F. Substitution/Discharge of Attorneys: Except in cases where an attorney is replaced by another attorney on consent, any change or withdrawal of counsel must be approved by the Court on a motion, brought by Order to Show Cause pursuant to CPLR § 321.

The Court does not recognize the purported withdrawal by counsel where such withdrawal would result in a party becoming self represented (except where the party is an attorney) by the filing of a “Consent to Change Attorney” form. The use of a “Consent to Change Attorney” to withdraw where a party becomes self represented is specifically prohibited.

G. E-Filing Rules and Protocols

All parties must familiarize themselves with the statewide E-Filing Rules of Uniform Trial Court Rules §§ 202.5 and 202.5-bb - available at www.nycourts.gov/efile and the Westchester County E-Filing Protocol. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov.

Electronic Filing

All documents in mandatory e-filed cases, except documents subject to the opt-out provision of § 202.5-bb of the Uniform Rules for the New York State Trial Courts, or documents subject to e-filing in which consent is being withheld, are to be filed through the New York State Courts E-Filing System (NYSCEF). All submissions to the Court, **except correspondence**, must be electronically filed.

Working Copies

Counsel and self-represented parties must provide working copies of all papers submitted electronically (Uniform Trial Court Rule § 202.5-b(d)(4)). Working copies may be delivered to the 9th Floor Calendar Office or mailed directly to Justice Walsh’s Chambers located at 111 Dr. Martin Luther King Jr., Blvd., White Plains, NY 10601. The working copy of the motion or petition must include all documents filed in support, including exhibits with external tabs, as required by Rule IV (B) below.

All working copies submitted to this Part must include a copy of the NYSCEF Confirmation Notice firmly fastened to the front page of the submission and comply with the other requirements set forth in the Westchester County E-Filing Protocols. Working copies without the Confirmation Notice will not be accepted. Working copies are to be submitted to Chambers within 48 hours of the electronic filing of the document in NYSCEF.

Hard Copy Submissions

This Part will reject any hard copy submissions in e-filed cases unless those submissions bear the “NOTICE OF HARD COPY SUBMISSION - E-FILED CASE” form required by Uniform Trial Court Rule § 202.5-v(d)(1). This form is available at www.nycourts.gov/efile.

IV. MOTION/PETITION PRACTICE

A. Motion/Petition Calendar: All motions made by notice of motion or proceedings commenced by notice of petition assigned to the ECP shall be made returnable before the Court on any Thursday the Court is in session at 9:30 a.m. Questions or issues concerning the ECP calendar should be addressed to the ECP Clerk.

The ECP Calendar is a submission calendar only. Appearances are not required unless the Court directs otherwise. *There is no oral argument unless the Court directs otherwise.*

B. Filing and form of papers: Except with the express permission of the Court, all motion/petition papers submitted to the ECP, including pleadings, opposition and reply papers, and orders to show cause, must be typewritten, double-spaced, on single, front-faced letter size pages, securely bound, and entirely legible, and all exhibits must be legible and labeled with external tab markings. The ECP may refuse to accept or consider any papers that do not conform to these rules. Motion/petition papers and all correspondence must indicate the index number assigned to the action and that the action has been assigned to the ECP.

C. Length of papers: Unless otherwise permitted by the Court for good cause shown, moving and opposing briefs shall not exceed 40 pages and reply briefs shall not exceed 20 pages. Affidavits and affirmations shall not exceed 25 pages each. Papers submitted to the Court in violation of this rule may not be considered by the Court without notice to the submitting party in advance of the decision on the motion/petition.

D. Applications, adjournments, submission of late papers for cases assigned to the ECP: To protect movants against any potential prejudice resulting from the submission of late opposition papers or cross-motions, the Court may *sua sponte* adjourn for one week cases in which appropriate time has not been given to opposing parties. Parties seeking an adjournment must follow the direction delineated below to adjourn a motion.

E. Adjournments by stipulation for cases assigned to the ECP: A party seeking an adjournment must contact all other parties in an effort to obtain consent and demonstrate such efforts to the Court. No more than three adjournments, for a total of no more than 60 days, are allowed except with the Court’s permission (*see* § 202.8 [e] [1] of the Uniform Rules for the New York State Trial Courts), which shall be given by means of a so-ordered stipulation.

F. Adjournments by affidavit/affirmation of consent for cases assigned to the ECP: If all parties consent to an adjournment as allowed by these rules, but a written stipulation cannot be obtained in time for submission, the applicant for the adjournment on consent may submit an affidavit or affirmation reciting that such consent was obtained. The affidavit/affirmation of consent must state the reason for the adjournment request, how consent was obtained from all parties, when it was obtained, and the name of each attorney or self-represented party who gave oral consent. The affidavit/affirmation must be received by the Court before the scheduled submission date or at the time of the submission calendar call.

G. Adjournments without consent for cases assigned to the ECP: If consent for an adjournment cannot be obtained from all parties prior to the return date, a party may: (1) make a letter application to chambers for an adjournment by email to pemcilmu@nycourts.gov, on notice to all other parties having appeared in the action or proceeding, or (2) appear on the return date of a motion at 9:30 a.m. and state on the record before the Court the reason for the requested adjournment and a description of the efforts made to obtain such consent, including the date when contact was initiated or attempted, the means used, and the person contacted (if consent was refused) or for whom a message was left (if no contact was made). Furthermore, an applicant must, by phone, fax, e-mail, or mail transmitted with adequate lead time, advise all parties who have not consented that an application will be made at the motion calendar call. No motion shall be considered adjourned unless the Chambers has conveyed the Court's approval of an adjournment.

H. Orders to show cause for cases assigned to the ECP: Orders to show cause submitted for signature shall be presented to the office of the Calendar Clerk, after payment of any required fee at the County Clerk's Office. If the order to show cause is signed by the Court, a copy of it shall be sent to counsel for the moving party or self-represented party. If appearances are required on the return date of the motion, the Court shall so indicate in the order to show cause. Otherwise, no appearances shall be required and no oral argument shall be heard on the return date of the motion.

I. Requests for temporary injunctive relief for cases assigned to the ECP: When an order to show cause is to be presented to the Court that seeks temporary injunctive relief, including but not limited to a stay or a temporary restraining order, counsel for the moving party or any self-represented party shall demonstrate compliance with §202.7 (f) of the Uniform Rules for the New York State Trial Courts, regarding notice to affected parties. Therefore, any application for such relief must include "an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by the giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application" (22 NYCRR 202.7[f]) (The Court usually requires 24 hours advance notice to the opposing party). Where the party against whom the temporary restraining order is sought is a public officer, board

or municipal corporation, the affirmation must also demonstrate that the applicant does not seek to restrain such party in the performance of its statutory duties in violation of CPLR 6313(a).

J. Communications regarding motions for cases assigned to the ECP: All communications regarding motions, including requests for adjournments and questions concerning the status of motions, shall be directed to the ECP Clerk, Peter McIlmurray (pemcilmu@nycourts.gov) or in his absence, to the Principal Secretary, or Principal Court Attorney.

K. Papers required on particular motions:

1. Dispositive motions: For any dispositive motion, the moving party shall include copies of all pleadings filed as of the date the motion is filed. The failure to comply with this requirement may result in the denial of the motion unless the pleadings are submitted to the Court by another party.

2. Motions for leave to renew or reargue: On any motion seeking leave to renew or reargue a prior motion, the moving party shall submit copies of all papers submitted on the prior motion. The failure to comply with this requirement may result in the denial of the motion unless the papers on the prior motion are submitted to the Court by another party.

3. Motions for leave to amend, supplement, or correct pleadings: On any motion for leave to amend, supplement, or correct a pleading, in addition to the proposed amended, supplemental, or corrected pleading, the moving party shall submit copies of all pleadings filed as of the date of the motion. The failure to comply with this requirement may result in the denial of the motion unless copies of the prior pleadings are submitted to the Court by another party.

4. Motions for injunctive relief: When an order to show cause is to be presented to the Court which seeks injunction relief, copies of the summons and complaint or petition commencing the underlying action must be provided to the Court by the moving party. The failure to comply with this requirement may result in the denial of the order to show cause. Where temporary injunctive relief is sought, counsel for the moving party or any self-represented party shall demonstrate compliance with §202.7 (f) of the Uniform Rules for the New York State Trial Courts regarding notice to affected parties (*see* IV [I] above).

5. Default motions: On any motion for a default judgment, proof must be presented that a military-status investigation of all defendants who are persons has been conducted after the time for each such defendant to appear or answer has transpired. In addition, to be sufficient, the military-status investigation must include, at a minimum, a search conducted through the Department of Defense, which may be

performed through that agency's internet site, www.dmdc.osd.mil/appj/scra.

L. Reply papers: Counsel and self-represented parties shall not set forth factual claims or legal arguments in reply papers that were not set forth in the papers initiating the motion or cross-motion. New factual claims and legal arguments not directly in response to factual claims or legal arguments offered in opposition to a motion or cross motion shall not be considered by the Court in its determination of a motion or cross motion.

M. Sur-reply and post-submission papers: Counsel and self-represented parties are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. Nor is motion practice by correspondence permitted. Absent express permission obtained in advance from the Court, such materials shall be filed with the County Clerk unread. Any opposing counsel or self-represented party who receives a copy of such materials submitted in violation of this rule shall not respond in kind.

N. Settled motions: In the event the parties settle a motion or part of a motion before the motion return date or a decision has been rendered, they shall immediately inform the Court in writing. Failure to do so may result in sanctions.

O. Motion decisions and orders: In most instances, a written decision and order will be issued by the Court following submission of the motion/petition. The Court will file the decision and order, with supporting papers, with the County Clerk, and send a copy of the decision and order to all parties by fax or mail.

V. EX PARTE

The ECP sits "ex parte" at all times for matters assigned to it. All ex parte matters are filed with the Civil Calendar Office. The Clerk of the Supreme Court will review an ex parte application on an expedited basis to determine whether it is an ECP matter. All ex parte applications will be forwarded to the ECP, unless the ECP Justice is not available. Under these circumstances, the regular IAS Duty Judge will act in her place. Following review and action, if any, by the regular IAS Duty Judge, the case will be returned to the ECP.

VI. CONFERENCES

While preliminary, compliance, and pre-trial conferences are not required nor anticipated under the ECP, the Court encourages, and is available to facilitate, the settlement of all matters. Accordingly, in any case assigned to the ECP, where all parties consent, they may contact the ECP Clerk (pemcilmu@nycourts.gov), or Chambers if the ECP Clerk is unavailable, to request a conference for the purpose of resolving any motion or petition pending before this Court, or settling the entire matter. If the parties agree to attend a Court conference, this shall not serve to delay the submission date of any motion, nor as a stay of the proceedings.