

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

FILED

JUN -3 2025

NC OSH Review Commission

**COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA**

Complainant,

v.

**KUDU RESIDENTIAL INVESTMENTS, LLC
DBA EASTWOOD CONSTRUCTION
PARTNERS, LLC
and its successors**

Respondent.

**DOCKET NO: 2024-6662
INSPECTION NO: 318284437
CSHO ID: E1150**

**DOCKET NO: 2024-6663
INSPECTION NO: 318284445
CSHO ID: E1150**

DECISION AND ORDER

THESE MATTERS were duly noticed and came on for hearing and were heard by the undersigned R. Joyce Garrett via the Lifesize video platform on May 14 and 15, 2025. Prior to this Hearing Respondent moved, without objection, to consolidate Docket No. 2024-6662 and Docket No. 2024-6663 for pre-hearing and hearing related matters. An order for consolidation dated May 1, 2025 was entered.

Jonathan D. Jones, Assistant Attorney General, North Carolina Department of Justice, appeared on behalf of the Commissioner of Labor of the State of North Carolina ("Complainant"). Jessica Thaller-Moran and Greg Gaught, attorneys with Brooks Pierce McLendon Humphrey & Leonard, LLP, Raleigh, North Carolina appeared on behalf of Kudu Residential Investments, LLC dba Eastwood Construction Partners, LLC ("Respondent").

At the time of the Hearing Complainant and Respondent agreed upon and entered into certain stipulations which were entered into the record as Court Exhibit 1 (Attachment 1 to this Order).

At the Hearing Complainant called to testify Compliance Safety and Health Officer Arthur Richards ("CSHO Richards") who conducted the inspection at the construction sites, and Respondent called Ryan Sims who was Respondent's 'builder' present in the development near the construction sites at the time of the inspection.

Complainant introduced into the record as exhibits the following: C1 (Inspection file for OSHANC 2024-6662), C2 (Inspection file for OSHANC 2024-6663); and C3 through C19 inclusive (photographs taken by CSHO Richards in connection with the two inspections). Respondent introduced into the record as exhibits the following: R1 consisting of 16 subparts; R2 consisting of 10 subparts; R4 though R11; R13; R19; R20; R22; R23; and R29 through R35.

Summary Background

On April 4, 2024 CSHO Richards, from a public way, observed on a residential construction development site what he considered to be serious violations of the Occupational Safety and Health Act including but not limited to fall hazard. The development site was the Harbor Crossing development in Greensboro, Guilford County, North Carolina. CSHO Richards obtained a directive to commence an inspection, took photographs and at about 10:00 a.m. he made entry to conduct inspections. Respondent was the general contractor for the Harbor Crossing development.

File number OSHANC 2024-6662 arose from an inspection of 5006 Moonlight Ridge Drive. Respondent's first tier subcontractor [Black Stone NC Construction, Inc. ("Black Stone")] had subcontracted with a second tier subcontractor [A & L Royal Construction Inc. ("A&L")] who was performing framing operations in connection with the construction of a two-story residential home on Lot 24 (the "Moonlight Ridge Site"). In this matter Complainant issued a 4-item citation alleging serious violations, abatement dates and proposed penalties as follows:

Citation 01 – Type of Violation Serious

Item Number	Standard	Abatement Date	Penalty	General Nature of Violation
001	29 CFR 1926.100(a)	Corrected During Inspection	\$2,400.00	Injury from objects falling from above worker's head
002	29 CFR 1926.102(a)(1)	Immediately Upon Receipt	\$8,000.00	Eye protection not worn when using pneumatic nail gun
003	29 CFR 1926.501(b)(13)	Corrected During Inspection	\$14,062.50	Lack of fall protection
004	29 CFR 1926.1053(b)(1)	Corrected During Inspection	\$14,062.50	Ladders not used properly
		Total	\$38,525.00	

All exposed workers were employees of the second tier subcontractor A&L.

File number OSHANC 2024-6663 arose from an inspection of 1201 Harbor Crossing Way. Respondent's first tier subcontractor [Alpha Omega Construction Group of Raleigh, Inc. ("Alpha Omega")] had subcontracted with a second tier subcontractor [NC "Triad Construction Services, Inc. ("NC Triad")] who was performing roofing operations in connection with the construction of a residential home on Lot 86 (the "Harbor Crossing Site"). In this matter Complainant issued a 2-item citation alleging serious violations, abatement dates and proposed penalties as follows:

Citation 01 – Type of Violation Serious

Item Number	Standard	Abatement Date	Penalty	General Nature of Violation
001	29 CFR 1926.501(b)(13)	Corrected During Inspection	\$14,062.50	Lack of fall protection
002	29 CFR 1926.1053(b)(1)	Corrected During Inspection	\$14,062.50	Improper ladder use
		Total	\$28,125.00	

The exposed worker was an employee of the second tier subcontractor NC Triad.

Both the Moonlight Ridge Site and the Harbor Crossing Site were within the Harbor Crossing development. CSHO Richards' inspection of both of these sites is herein referred to collectively as the "Inspection". CSHO Richards made his determination that each worksite was a multi-employer work site with the Respondent being the controlling employer.

Based upon consideration in each matter of Complainant's Complaint, Respondent's Answer, the stipulations by the parties in Court Exhibit 1, the sworn testimony of the witnesses presented at the Hearing, the exhibits received and admitted into evidence, judicially noticed information pursuant to N.C. Gen. Stat. §8C-1-20, the entire record in this proceeding, and applicable law, the Undersigned makes the following Findings of Fact and Conclusions of Law. In making the Findings of Fact the Undersigned as weighed all the evidence and assessed the credibility of the witnesses. Factors taken into account for judging credibility included, but were not limited to, the demeanor of the witness, and any interests, biases, or prejudice the witness may have. Further, the Undersigned considered the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. A judge is not required to enumerate all the facts shown by the evidence, but only sufficient material facts to support the Court's decision. *Green v. Green*, 284 S.E.2d 171, 174, 54 N.C. App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844, 847, 10 N.C. App. 545, 549(1971). Specific findings are not required on each piece of evidence presented. *See Flanders*

v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993)(stating that the tribunal “need only find those facts which are material to the resolution of the dispute.”)

FINDINGS OF FACT

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter “the Act”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.
2. Pursuant to N.C.G.S. §95-135 the Review Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent is a North Carolina limited liability company organized and existing under the laws of the state of North Carolina. It is active and current and maintains a place of business at 2857 Westport Road, Charlotte, Mecklenburg County, North Carolina. Respondent is in the business of being a general contractor supervising and constructing residential developments. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).
4. On April 4, 2024, Compliance Safety Officer (CSHO) Arthur Richards, employed by the North Carolina Department of Labor (NC DOL), initiated an inspection of the worksite at 5006 Moonlight Ridge Drive (“5006 Moonlight Ridge Site” or “Moonlight Ridge Site”) and at 1201 Harbor Crossing Way (“1201 Harbor Crossing Site” or “Harbor Crossing Site”).
5. Both the Moonlight Ridge Site and the Harbor Crossing Site (collectively, the “Worksites”) are located within the Harbor Crossing townhome community in Greensboro, Guilford County, North Carolina, referred to herein as the “Harbor Crossing Development” or “Development”. The Harbor Crossing Development itself was not classified as a work site subject to the Inspection – the worksites subject to the Inspection were only the Moonlight Ridge Site and the Harbor Crossing Site which were parts of the Harbor Crossing Development.
6. CSHO Richards testified that while driving on a public road he observed a worker on the 1st story porch roof of a two-story residential property performing framing operations to a home under construction. CSHO Richards believed the worker lacked any form of fall protective system and safety glasses. Since Guilford County was subject to the Special Emphasis Program for Construction Activities he took the necessary steps to initiate an inspection.
7. As a result of the Inspection:

On June 12, 2024, NC DOL issued a Citation and Notification of Penalty to Respondent for the Moonlight Ridge Site, alleging Serious violation of four standards (the "Moonlight Ridge Citation"); and

On June 20, 2024, NC DOL issued a Citation and Notification of Penalty to Respondent for the Harbor Crossing Site, alleging Serious violations of two standards (the "Harbor Crossing Citation").

8. On July 25, 2024 Respondent submitted a timely Notice of Contest to the Moonlight Ridge Citation and to the Harbor Crossing Citation.
9. On or about August 22, 2024, NC DOL received Respondent's "Employer's/Respondent's Statement of Position" for the Moonlight Ridge Citation and for the Harbor Crossing Citation; each requested that formal pleadings be served.
10. On September 11, 2024, NC DOL filed a Complaint regarding the Moonlight Ridge Citation (the "Moonlight Ridge Complaint") and a Complaint regarding the Harbor Crossing Citation (the "Harbor Crossing Complaint").
11. On October 1, 2024, Respondent timely filed an Answer to the Moonlight Ridge Complaint and an Answer to the Harbor Crossing Complaint.
12. Respondent denies the allegations contained in the Moonlight Ridge Citation and in the Harbor Crossing Citation, and objects to the proposed penalties and abatement dates.
13. On May 1, 2025, an order was entered consolidating the Moonlight Ridge Citation and the Harbor Crossing Citation for all pre-hearing and hearing-related matters.
14. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
15. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing.

Regarding the Inspection in General

16. After observing from a public right-of-way a worker on a roof without fall protection, a little after 9 a.m. CSHO Richards parked his vehicle on Moonlight Ridge Drive which was located within the Development. CSHO Richards testified that for approximately 30 to 45 minutes, while in his parked vehicle, he took pictures of activity on the Worksites as well as of other activity in the Development.
17. Using a Canon digital camera with zoom capability, CSHO Richards took a 'plethora' of pictures (113) during his investigation. Some, but not all, pictures were introduced into evidence by Complainant. Upon request, all pictures were provided to Respondent. Some of the pictures were introduced into evidence by Respondent in Exhibit R-1.
18. CSHO Richards testified that at approximately 10 a.m. he made entry onto the Worksites.

19. After CSHO Richards entered onto the Moonlight Ridge Site he spoke with workers who identified Mr. Sims as the general contractor representative and told him where to locate Mr. Sims in his truck which was also parked on Moonlight Ridge Drive.

20. CSHO Richards went to Mr. Sims truck, met Mr. Sims and an opening conference was held. A walk-around was conducted and a closing conference was held on-site at the location of Mr. Sims' truck parked on Moonlight Ridge Drive.

21. No employees directly hired by Respondent were performing any construction work at the Worksites at the time of the Inspection. There is no evidence that any employees who were directly hired by Respondent were present in the Development at the time of the Inspection other than Mr. Sims (Respondent's Builder) and Mr. Espinoza (Respondent's Assistant Builder).

22. Homes in the residential Development were in various stages of construction, for example some were completed, some were nearly completed, and some were in the framing stages. The homes on lots 19-23 were completed; those on lots 24-27 were in framing; those on lots 102-106 were in rough inspection (i.e. electrical, heat and air, and plumbing trades were installing); and those on Lot 86-88 were in trim-out.

23. Respondent was the general contractor for the construction work being performed at the Worksites.

24. Respondent subcontracted framing work to Black Stone and roofing work to Alpha Omega.

25. Respondent took efforts to assess its subcontractors' histories with respect to safety.

26. Although subcontractors were responsible for their own safety program, Mr. Sims, as the Builder for Respondent, conducted some training/instruction sessions with the employees of the subcontractors, and he conducted periodic inspections of the work being performed by subcontractors. If he saw an unsafe condition he had the authority to stop the employee from working and require that the condition be corrected; he had exercised that authority in the past.

27. The Evaluation of Safety and Health Program contained in Complainant's Inspection File for the Moonlight Ridge Site and for the Harbor Crossing Site (Complainant's Exhibit C-1 and C-2) show that Respondent had safety committees, jobsite audits/inspections, and disciplinary action program; it also showed that Respondent had fall protection and ladder training programs, and that PPE assessment was conducted.

28. On the day of the Inspection, Mr. Sims arrived at the Development at approximately 8 a.m. and parked on Maple Blossom Trail in the vicinity of Lot 60 and 59 located on the western side of the Development. Mr. Sims worked in his truck for a period of time. He had an appointment with a customer at 9:00 a.m., so shortly before 9:00 a.m. he drove from his location on Maple Blossom Trail and turned left onto Summerhouse Way which intersected with

Moonlight Ridge Drive. At the intersection he did not see any construction activity taking place on the Moonlight Ridge Site. He turned left and parked on the left side of the road in front of Mr. Espinoza's truck which was parked alongside the Harbor Crossing Site. Mr. Sims saw no construction actively taking place in the Development before he commenced his 9 a.m. appointment.

29. Mr. Sims did not have an 'office' at the Development and therefore used his truck for conducting his administrative business (such as scheduling, ordering, communicating with vendors/customers/other, completing paper work, sending/receiving e-mails/texts, etc.).

30. At 9:00 a.m. Mr. Sims met with a customer/new owner inside of the home on Lot 23 to conduct a customer courtesy visit (discussing areas of concern of the customer including warranties and items which needed additional follow-up work/repair, etc.). When the meeting was completed Mr. Sims put on his shoes, gathered his materials such as ladder, filter, touch-up kit, clipboard and customer service sheet and returned to this parked truck.

31. Some pictures taken by CSHO Richards showed that Mr. Sims had parked his jeep truck on Moonlight Ridge Drive. The location where he parked was approximately 380 feet North of the Moonlight Ridge Site, and was in close proximity to the back of the Harbor Crossing Site. Mr. Sims' truck was facing North such that, while sitting in the driver's seat, the Moonlight Ridge Site was behind him and the Harbor Crossing Site was to his left.

32. Mr. Sims' jeep truck was parked in front of Mr. Espinoza's truck – Mr. Espinoza's truck was facing South (i.e. the front bumper of Mr. Sims' truck was adjacent to the front bumper of Mr. Espinoza's truck).

33. CSHO Richards parked his vehicle on Moonlight Ridge Drive a short distance to the North of the back of Mr. Espinoza's truck, and had a view of the windshield of Mr. Sims' truck and of the back of the bed of Mr. Espinoza's truck.

34. Of the pictures taken by CSHO Richards several showed Mr. Espinoza standing beside Mr. Sims' jeep truck, apparently having a conversation with Mr. Sims who was in the truck. No pictures showed Mr. Sims outside of his truck.

35. A summary analysis of the time and occurrence of numerous events in connection with the Inspection, determined based on the preponderance of the evidence, is presented in Attachment 2 to this Order and is incorporated herein by reference.

Specifics Regarding the Moonlight Ridge Citation

36. The Moonlight Ridge Site was a portion of the Harbor Crossing Development. It was a multiemployer worksite with Respondent being the general contractor.

37. Respondent entered into a contract with Black Stone NC Construction, Inc. ("Black Stone") for Black Stone to provide labor and materials for framing operations (the "Black Stone Contract") at the Moonlight Ridge Site (the "Black Stone Contract").

38. Under the terms of the Black Stone Contract, Black Stone was obligated to comply with all law bearing on the work including the Occupational Safety and Health Act of 1970, and to, at all time, furnish its employees a safe place of employment. Further Black Stone was responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.(See Exhibit R-11, paragraphs 7 and 8)

39. Black Stone subcontracted with A&L Royal Construction Inc. ("A&L") to perform the framing operations at the Moonlight Ridge Site. No employee of Black Stone was at the Moonlight Ridge Site at the time of the Inspection.

40. There were five employees of A&L performing construction work at the Moonlight Ridge Site at the time of the Inspection. CSHO Richards testified that the employees had been working from the beginning of the day and were working when he departed the Worksites. There was testimony that at the time of the Inspection A&L had a competent person at the Moonlight Ridge Site who was supervising its employees.

41. CSHO Richards recommended that a citation be issued to Respondent and a citation was issued on June 12, 2024.

Relative to the Moonlight Ridge Citation Issued to Respondent

42. Relative to Citation 01 Item 001, the alleged violation of 29 CFR 1926.100(a):

(i) the standard alleged violation elements ("SAVE") paragraph stated "Employees working in areas where there was a possible danger of head injury from impact, or falling or flying objects, or from electrical shock and burns, were not protected by protective helmets:"

(ii) the alleged violation description ("AVD") paragraph stated: "a) worksite – where an employee was working on the ground level performing framing duties while an employee above him on the porch roof was performing framing operations directly above the ground level employee, the employee on the ground was not equipped with a hard hat to protect from falling objects."

(iii) a preponderance of evidence was presented that the cited standard applies, that an employee of A&L not wearing a hard hat was working on the ground level directly below another A&L employee who was working on the porch roof; that the employee on the ground level was exposed to the hazard of objects, such as a hammer, falling from the worker on the roof; that it was possible that an object could fall and that serious physical harm could result from such a fall; a Gravity Based Penalty of \$3,000.00 (based on low severity and lesser probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$2,400: 0% credit for size; 10% credit for good faith, and 10% credit for history (total 20% credit).

43. Relative to Citation 01 Item 002, the alleged violation of 29 CFR 1926.102(a)(1):

(i) the SAVE paragraph stated "The employer did not ensure that each affected employee used appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation."

(ii) the AVD paragraph stated: "a) jobsite – where eye protection was not worn by employees exposed to flying objects/debris while using a pneumatic nail gun."

(iii) a preponderance of evidence was presented that the cited standard applies, that employees of A&L were not wearing eye protection when using a pneumatic nail gun while working on the porch roof and roof; that such employees were exposed to potential eye injuries from flying nails/debris during the use of the pneumatic nail guns; that the eye injuries could be serious; a Gravity Based Penalty of \$10,000.00 (based on medium severity and greater probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$8,000: 0% credit for size; 10% credit for good faith, and 10% credit for history (total 20% credit).

44. Relative to Citation 01 Item 003, the alleged violation of 29 CFR 1926.501(b)(13):

(i) the SAVE paragraph stated "Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501(b)."

(ii) the AVD paragraph stated: "a) jobsite – Three employees of AYL Royal Construction Inc. were observed performing framing activities on the roof and 1st story porch roof of a 2 story residential building under construction. The employees were observed not wearing any form of fall protection or partial or improperly fastened harnesses while working approximately 10 – 25 feet above the hard ground below."

(iii) a preponderance of evidence was presented that the cited standard applies, that an employee of A&L whose safety harness was not tied off to an anchor point was working more than 6 feet above a lower level; that such employee was exposed to the hazard of falling and hitting the hard ground; that serious harm could result from such a fall; a Gravity Based Penalty of \$15,625.00 (based on higher severity and greater probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$14,062.50: 0% credit for size; 0% credit for good faith, and 10% credit for history (total 10% credit).

45. Relative to Citation 01 Item 004, the alleged violation of 29 CFR 1926.1053(b)(1):

(i) the SAVE paragraph stated "When portable ladders were used for access to an upper landing surface and the ladder's length allows, the ladder side rails did not extend at least 3 feet (.9 m) above the upper landing surface being accessed."

(ii) the AVD paragraph stated: "a) jobsite – where a portable 24' extension ladder used to access the 1st story porch roof and did not extend three feet above the 1st floor's porch roof's edge and/or was not secured to prevent displacement, exposing the employees to a fall hazard of approximately 10 feet to the hard compacted earth below."

(iii) a preponderance of evidence was presented that the cited standard applies, that an employee of A&L used a ladder that was not correctly secured; that such employee was exposed to a fall hazard of approximately 10 feet and hitting the hard ground; that serious harm could result from such a fall; a Gravity Based Penalty of \$15,625.00 (based on higher severity and greater probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$14,062.50: 0% credit for size; 0% credit for good faith, and 10% credit for history (total 10% credit).

46. Respondent's Knowledge of Violative Conditions:

46.1. CSHO Richards testified, without specific details, that from where Mr. Espinoza was standing next to Mr. Sims' jeep truck the alleged violative conditions on the Moonlight Ridge Site were in plain view of Mr. Espinoza. Respondent objected to this conclusory testimony.

46.2. According to the Investigation File (Exhibit C-1) CSHO Richards was of the opinion that Mr. Sims either saw or should have seen the violative conditions at the Moonlight Ridge Site from where he was located in his parked truck or at such time that he got out of his truck. The Moonlight Ridge Site was approximately 380 feet from the location of Mr. Sims' truck on Moonlight Ridge Drive.

46.3. Many of the pictures introduced into evidence to establish the violative conditions were taken by CSHO Richards using the 'zoom' feature on his camera. Further, when the pictures were introduced into evidence to show the violative conditions frequently counsel for Complainant had to 'zoom in' on the photo in order for the violative condition to be seen by the undersigned and by Respondent's counsel. Even with the magnified 'zoom in' approach, some of the pictures did not appear to clearly establish the violative condition (for example the failure to wear eye protection). However, CSHO Richards testified that he saw, using his camera, that the violative conditions alleged did in fact exist. CSHO Richards did not testify that he could see such violative conditions with his unaided eye (i.e. without the aid of magnification of the camera) from either his own vehicle or from the location where Mr. Sims' jeep truck was parked.

46.4. As shown by the time analysis of events in Attachment 2, the violative conditions on which Item 001, Item 002, Item 003 and Item 004 were based occurred between 9:10 a.m. and 9:48 a.m.. During this time period Mr. Sims was inside the house on Lot 23 performing a homeowner's courtesy visit. He was not on the Moonlight Ridge Site and was not in the line of sight of the Moonlight Ridge Site. There is no evidence of the location of Mr. Espinoza during this time or that Mr. Espinoza saw, or could have seen, the alleged violations occurring on the Moonlight Ridge Site during this period of time.

46.5. Item 003 and Item 004 were also based on observations of CSHO Richards at 10:14 a.m. At that time Mr. Sims was in his truck working; he was facing away from the Moonlight Ridge Site. There is no evidence of what Mr. Sims would have been able to see about 380 feet behind him had he looked in his rear view mirror; however there was evidence that such view would have been blocked partially by a railing on his truck bed. There is no evidence of the location of Mr. Espinoza at this time or that Mr. Espinoza saw, or could have seen, the alleged violations occurring on the Moonlight Ridge Site.

Specifics Regarding the Harbor Crossing Citation

47. The Harbor Crossing Site was a portion of the Harbor Crossing Development. It was a multiemployer worksite with Respondent being the general contractor.
48. Respondent entered into a contract with Alpha Omega Construction Group of Raleigh, Inc. ("Alpha Omega") for Alpha Omega to provide labor and materials for roofing operations at the Harbor Crossing Site (the "Alpha Omega Contract").
49. Under the terms of the Alpha Omega Contract, Alpha Omega was obligated to comply with all law bearing on the work including the Occupational Safety and Health Act of 1970, and to, at all time, furnish its employees a safe place of employment. Further Alpha Omega was responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. (See Exhibit R-10, paragraphs 7 and 8)
50. Alpha Omega subcontracted with NC Triad Construction Services ("NC Triad") to perform the roofing operations at the Harbor Crossing Site.
51. There were one employee of NC Triad performing construction work at the Harbor Crossing Site at the time of the Inspection. The employee was performing a job which required only a short period of time; he left the site prior to the end of CSHO Richards' Inspection.
52. CSHO Richards recommended that a citation be issued to Respondent and a citation was issued on June 20, 2024.

Relative to the Harbor Crossing Citation Issued to Respondent

53. Relative to Citation 01 Item 001, the alleged violation of 29 CFR 1926.501(b)(13):
- (i) the SAVE paragraph stated "Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net system, or personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501(b):"
 - (ii) the AVD paragraph stated: "a) jobsite – An employees was observed performing framing activities on the 1st story porch roof of a 2.5 story residential building under construction. The employee was observed not wearing any form of fall protection while working approximately 10 feet above the hard ground below."
 - (iii) a preponderance of evidence was presented that the cited standard applies, that an employee of NC Triad was not wearing any form of fall protection while working approximately 10 feet above hard ground; that such employee was exposed to the hazard of falling and hitting the hard ground; that serious harm could result from such a fall; a Gravity Based Penalty of \$15,625.00 (based on higher severity and greater probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$14,062.50: 0% credit for size; 0% credit for good faith, and 10% credit for history (total 10% credit).

54. Relative to Citation 01 Item 002, the alleged violation of 29 CFR 1926.1053(b)(1):

(i) the SAVE paragraph stated “When portable ladders were used for access to an upper landing surface and the ladder’s length allows, the ladder side rails did not extend at least 3 feet (.9 m) above the upper landing surface being accessed:”

(ii) the AVD paragraph stated: “a) jobsite – where a portable 20” portable extension ladder used to access the 1st story porch roof and did not extend three feet above the 1st floor’s porch roof’s edge and/or was not secured to prevent displacement, exposing the employees to a fall hazard of approximately 10 feet to the hard compacted earth below.”

(iii) a preponderance of evidence was presented that the cited standard applies, that an employee of NC Triad used a ladder that was not correctly secured; that such employee was exposed to a fall hazard of approximately 10 feet and hitting the hard ground; that serious harm could result from such a fall; a Gravity Based Penalty of \$15,625.00 (based on higher severity and greater probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$14,062.50: 0% credit for size; 0% credit for good faith, and 10% credit for history (total 10% credit).

55. Respondent’s Knowledge of Violative Conditions:

55.1. The view of the Harbor Ridge Site from where Mr. Sims’ truck was parked on Moonlight Ridge Drive would be of the back and side of the almost finished house on Lot 86. To view the construction work which was the basis of the alleged violation someone would need to be at the front of the house looking in a southerly direction.

55.2. As shown by the time analysis of events in Attachment 2, the violative conditions on which Item 001 and Item 002 were based occurred between 9:06 a.m. and 9:11 a.m. During this time period Mr. Sims was inside the house on Lot 23 performing a homeowner’s courtesy visit. He was not on the Harbor Ridge Site and was not in the line of sight of any on-going construction activity on the Harbor Ridge Site. There is no evidence of the location of Mr. Espinoza during this time or that Mr. Espinoza saw, or could have seen, the alleged violations occurring on the Harbor Ridge Site during this period of time.

DISCUSSION

To establish a violation of a specific OSHA standard, Complainant must establish the following elements: (1) the standard applies; (2) the terms of the standard were violated; (3) employees were exposed to the hazard covered by the standard; and (4) the employer had actual or constructive knowledge of the violation. To establish that the violation was serious the Complainant must also establish that the hazard created the possibility of an accident and that the substantially probable result of an accident could be death or serious bodily injury. See *Commissioner of Labor v Liggett Group, Inc.*, OSHANC 94-3175 (1996); *Commissioner of Labor v Yates Construction Company, Inc.*, OSHANC 93-2967 (1995); *JPC Grp., Inc.*, 22 BNA

OSHC 1859, 1861 (No. 05-1907, 2009); *Commissioner of Labor v. Young Construction Co.*, OSHANC 02-4130 (2004); *New River Elec. Corp. v OSHRC*, 25 F.4th 213 (4th Cir. 2022).

A construction site where employees of multiple employers are working such as the Moonlight Ridge Site and the Harbor Crossing Site is frequently referred to as a 'multi-employer' work site. In a multi-employer work site the Complainant must establish an additional element to the elements listed above. The Complainant also has the burden of establishing that the cited employer has an obligation to provide safe working conditions to the employee(s) exposed to the alleged violative conditions. To determine the employer's obligation, at the time of the Inspection in April 2023, OSHA inspectors relied on guidance set forth in a Compliance Directive issued by the Occupational Safety and Health Administration.

Complainant has the burden of establishing each element by a preponderance of the evidence. *Commission Rule .0514(a)*; *See Hartford Roofing Co.*, 17 BNA OSCH 1361 (No. 92-3855, 1995). A preponderance of the evidence is "that quantum of evidence which is sufficient to convince the trier of fact that the facts asserted by a proponent are more probably true than false." *Astra Pharma. Prods.*, 9 BNA OSHC 2126, 2131, n. 17 (No. 78-6247, 1981) *aff'd in relevant part*, 681 F.2d 69 (1st Cir. 1982).

If Complainant fails to meet its burden of proof on any one of the required elements, then the violation cannot be sustained. An employer who has been issued a citation can present evidence which negates or reduces the validity or strength of Complainant's evidence offered to support an element; however, the employer does not have the burden to prove that it is not liable for an alleged violation. The burden of proof of the alleged violation rests entirely on the Complainant.

The Occupational Safety and Health Act

Congress enacted the Occupational Safety and Health Act of 1970 in response to decades of dangerous working conditions. The legislative text is relatively brief. It creates enforcement bodies, provides for penalties and remedies, and states overall policy goals for creating safer workplaces; however it does not state specific safety measures. Specific rulemaking was left to the Department of Labor which has promulgated hundreds of workplace regulations and policies. One such policy was the Multi-Employer Citation Policy.

The Multi-Employer Citation Policy

OSHA's 1994 Field Inspection Reference Manual first addressed "rules" for dealing with violations/violators at multi-employer worksites. The policy was clarified in December 1999

when OSHA issued Compliance Directive Number CPL 02-00-124 which was referred to as the Multi-Employer Citation Policy (herein sometimes referred to as the "Policy").¹

The Policy provided that on multi-employer worksites, inspectors may cite more than one employer for a single violation of an OSHA safety standard.

The Policy implemented a two-step process for determining which employer(s) could be cited. The first step is to classify an employer as either a creating, exposing, correcting or controlling employer; guidelines for making such classification are set forth in the Policy. If an employer comes within one of these classifications, the second step is to determine the extent of the employer's obligations to the employees. Generally such obligation is that of 'reasonable care'. The extent to which safety measures must be taken varies by the employer's classification. For example, the actions which must be taken by a controlling employer is less than the actions required by a creating employer.

Under the terms of the Policy, a controlling employer is the employer who has general supervisory authority over the worksite including the power to correct, or require others to correct, safety violations.

The Multi-Employer Citation Policy was adopted by North Carolina in its state approved plan.

The multi-employer worksite doctrine was first applied by the North Carolina Review Commission in *Commissioner of Labor v. Romeo Guest Associates, Inc.*, OSHANC 96-3513, Slip Op., (RB 1998) and was later confirmed in *Commissioner of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, 28 (2005) (review denied 359 N.C. 629 (2005)). It states that a general contractor's duty under N.C.G.S. 95-129(2) to comply with "occupational safety and health standards or regulations" extends to employees of subcontractors while they are on the jobsite. However, this is a reasonable duty and not one of strict liability. "...the general contractor is only liable for those 'violations it could reasonably have been expected to prevent or abate by reason of its supervisory capacity.' ... In addition, the general contractor cannot 'anticipate all the hazards which others may create as the work progresses, or to constantly inspect the entire jobsite to detect violations created by others.' ... It is only responsible for those hazards that it could reasonable have detected because of its supervisory capacity. The general contractor is required to make reasonable efforts to anticipate hazards to subcontractor's employees and reasonable efforts to inspect the jobsite to detect violations that its subcontractors may create." *Commissioner of Labor v. Romeo Guest Associates, Inc.*, OSHANC 96-3513, Slip Op., (RB 1998) (internal citations omitted).

¹ An analysis of the bases for the multi-employer citation doctrine was articulated by the Federal Review Commission in *Secretary of Labor v Access Equipment Systems, Inc.*, 18 BNA OSHC 1718 (No. 95-1449, 1999).

The purpose of the Policy was to give guidance on OSHA's position regarding an employer's responsibility to employees working in a common worksite (i.e. when a citation should be issued and to which employer(s) it should be issued). In North Carolina OSHA inspectors gave deference to this Policy when determining whether employers at a multi-employer work site should be issued a citation. In fact, CSHO Richards deferred to the Policy when making the decision to issue the Moonlight Ridge Citation and the Harbor Crossing Citation.

Deference To OSHA Policy

The US Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) set forth what was to become referred to as a 'deference doctrine' to determine the lawfulness of an agency's rules and decisions. The doctrine stated that, when a law was ambiguous, an agency administering that law would be entitled to deference for any permissible interpretation of the ambiguity. Thus, under the *Chevron* deference doctrine, if a statute was deemed vague or ambiguous, the reviewing court would defer to the agency's interpretation of the statute so long as such interpretation was "based on a permissible construction of the statute."

For nearly four decades, *Chevron* controlled how courts analyzed both administrative agencies' interpretation of statutes and the actions resulting from such interpretations. Under *Chevron*, an agency had to follow a statute's clear and explicit language, but in the event there was any ambiguity in the language the courts had to give binding deference to an agency's interpretation as long as such interpretation was reasonable.

Deference Doctrine Overruled

On June 28, 2024 in two consolidated cases --- *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*, 603 U.S. 369 (2024) --- the Supreme Court overruled the *Chevron* doctrine, holding that courts must "exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright*, 603 U.S. at 394. In *Loper Bright* Chief Justice Roberts focused the majority opinion on wording in the Administrative Procedure Act which states that courts should "hold unlawful and set aside agency action, findings, and conclusions" when they are not in accordance with the law.

Under *Loper Bright* the courts are to make an independent analysis to determine the meaning of an ambiguous statute – such determination is to be made even though the agency's interpretation is permissible or reasonable. Courts may consider an agency's interpretation of an ambiguous statute since an agency's interpretations "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Id* at 394 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Under *Loper Bright* prior cases decided under *Chevron* are "still subject to statutory stare decisis" *Id* {*Loper*} at 412

(citing *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014) (quoting *Dickerson v. United States*, 530 U.S. 428, 443 (2000))).

Respondent's Argument

Respondent has asserted that the North Carolina Occupational Safety and Health Act is ambiguous regarding which employees on a multi-employer work site are owed a duty of safety by the general contractor.

Respondent asserted in its Pre-Hearing Brief (i) that "the Multi-Employer Worksite Policy/Doctrine ("MEP") is invalid because it lacks statutory support" and (ii) that "Alternatively, to the extent the MEP has any basis in law, it extends only to those employees of the companies with whom the alleged "controlling employer" has directly contracted or subcontracted (i.e., first-tier subcontractors such as Black Stone or Alpha Omega here) and not to employees who work for employers with whom the alleged controlling employer did not contract or specifically cause to be involved in the subject work (i.e., second- or subsequent-tier subcontractors like A&L Royal or NC Triad here)."

Independent Analysis

Respondent's Responsibility To Employees On The Worksites

To determine whether Respondent as general contractor has a responsibility to the employees of a first or subsequent-tier subcontractor at the Worksites and can be issued a Citation the following are relevant:

- Article 16 of the North Carolina General Statutes is the Occupational Safety and Health Act of North Carolina. NCGS§ 95-126(a) states "This Article shall be known as the "Occupational Safety and Health Act of North Carolina" and also may be referred to by abbreviations as "OSHANC."
- N.C.G.S. 95-129(1) specifically provides "Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees".
- NCGS 95-129(2) mandates that "Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this Article".
- NCGS 95-127(11) defines 'employer' to be "A person engaged in a business who has employees, including any state or political subdivision of a state, but does not include the employment of domestic workers employed in the place of residence of his or her employer."

- NCGS 95-127 (10) defines ‘employee’ to be “An employee of an employer who is employed in a business or other capacity of his or her employer, including any and all business units and agencies owned and/or controlled by the employer.”
- Appellate courts uphold the position that Congress intended that employers subject to the Occupational Safety and Health Act are responsible for safety of the employer’s own employees as well as for other employees working at the employer’s worksite. *Acosta v. Hensel Phelps Constr. Co.*, 909 F.3d 723, 737 (5th Cir. 2018); *Comm’r of Labor v. Weekley Homes LP*, 169 N.C. App. 17, 24, 609 S.E.2d 407, 413 (2005); see also *Anning-Johnson Co.*, 4 BNA OSHC 1193, 1975-76 CCH OSHD para. 20,690 (Nos. 3694 & 4409, 1976) and *Grossman Steel & Aluminum Corp.*, 4 BNA OSHC 1185, 1975-76 CCH OSHD para. 20,691 (No. 12775, 1976).
- In *Comm’r of Labor v. Weekley Homes LP*, 169 N.C. App. 17, 23, 609 S.E.2d 407, 412 (2005) the North Carolina Court of Appeals concluded that N.C. G.S. §95-129(2) “which imposes a specific or special duty on an employer to comply with OSHA standards, does not limit the duty of the employer only to his own employees”.
- An employer cannot delegate to a third party such as a subcontractor the duty which has been established by OSHANC to protect the safety of workers. *Brooks v BCF Piping, Inc.*, 109 N.C. App. 26, 34, 426 S.E. 2d 282, 287 (1992); see also *Lebanon Lumber Co.*, 1971-1973 OSHD CCH para. 15,111, *aff’d*, 1971-1973 OSHD CCH para. 15,530 (1973), *Brooks v Rebarco, Inc.*, 91 N.C. App. 459 469, 372 S.E.2d 342, 347 (1988)
- Per the holding in *Secretary of Labor v. Sparrow Constr.*, 16 O.S.H. Cas. (BNA) 1529, 1993 O.S.H. Dec. (CCH) ¶ 30202 (O.S.H.R.C.A.L.J. Sept 2, 1993, when a general contractor can reasonably be expected to detect and to abate hazards by reason of its supervisory capacity, the general contractor is responsible for violations by its subcontractor even when the general contractor’s own employees are not exposed.
- Employer knowledge of a violative condition “is established by a showing of employer awareness of the physical conditions constituting the violation.” *Phoenix Roofing, Inc.*, 1995 WL 82313,*3. To prove employer knowledge the Complainant “must show that the employer either actually knew of the noncomplying condition, or constructively knew of it – that is, the employer could have known with the exercise of reasonable diligence.” *Par Elec. Contractors, Inc.*, No. 99-1520, 2004 WL 33448, at *3 (OSHRC, Feb 19, 2004). The knowledge of a supervisory employee may be imputed to his or her employer. *Id.*
- Case law has established that where the cited conditions are in plain view and supervisory personnel are present, this constitutes constructive knowledge of the violative conditions. See *Kokosing Constr. Co.*, 17 BNA OSHC 1869, 1871-72 (No. 92-2596, 1996); *American Airlines, Inc.*, 17 BNA OSHC 1552, 1555 (No. 93-1817 and 93-1965, 1996).

- When the record in a case lacks sufficient evidence on a disputed issue, normally that issue is resolved against the party having the burden of proof. See *Caterpillar Tractor Co.*, No. 80-4061, 1986 WL 53446 (OSHRC, Apr. 16, 1986)
- In determining whether a controlling employer has exercised its duty of reasonable care it is improper to rely “on exposing employer precedent as the benchmark for how reasonable diligence or care is assessed for a controlling employer whose own employees are not exposed.” *Suncor Energy (U.S.A.) Inc.*, No. 13-0900, 2019 WL 654129, at *6 (OSHRC Feb. 1, 2019) Factors used in evaluating reasonable care generally require periodic inspections of the worksite, implementation of an effective system for correcting hazards and effective enforcement of a safety and health compliance program, although the standard is lower than what is required of an employer protecting its own employees. Controlling employers are not required to inspect for hazards as frequently as is required of its subcontractors.
- Respondent exercised control of the Worksites as evidenced by the authority of, and the exercise of that authority by, Mr. Sims to stop work of subcontractors and to require that safety measures be implemented. Control of a worksite is evidenced by the exercise of control in practice. *Comm’r of Labor v Weekley Homes LP*, 169 N.C. App 17, 23-24, 609 S.E.2d 407, 413 (2005)
- Having determined that Respondent had control of the Worksites and that Respondent had a duty of responsibility for safety of employees hired by subcontractors establishes that it was proper for Complainant to issue a citation to Respondent.

CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact contain Conclusions of Law, or that these Conclusions of Law are findings of fact, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011); *Warren v. Dep’t of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, disc. Rev. den., 366 N.C. 408, 735 S.E.2d 175 (2012). The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. Respondent is an “employer” within the meaning of N.C.G.S. §95-127(11); the employees referred to in the Moonlight Ridge Citation and the Harbor Crossing Citation are “employees” within the meaning of N.C.G.S. §95-127(10).

3. The Safety and Health Review Commission of North Carolina has jurisdiction over the parties and the subject matter of this Hearing, and Respondent is subject to the provisions of OSHANC.
4. Complainant has carried its burden to prove by the preponderance of evidence that the OSHA standards that are the basis for the Moonlight Ridge Citation and for the Harbor Crossing Citation apply to the cited conditions or conduct.
5. Relative to the Moonlight Ridge Citation Item 001, Item 002, Item 003 and Item 004: Complainant carried its burden of proof by a preponderance of evidence that (1) each cited standard applies to the cited conditions or conduct; (2) the terms of each cited standard were violated; and (3) employees were exposed to the hazard covered by each cited standard. However, Complainant did not carry its burden of proof that Respondent had actual or constructive knowledge of the violations.
6. Relative to the Harbor Crossing Citation Item 001 and Item 002: Complainant carried its burden of proof by a preponderance of evidence that (1) each cited standard applies to the cited conditions or conduct; (2) the terms of each cited standard were violated; and (3) an employee was exposed to the hazard covered by each cited standard. However, Complainant did not carry its burden of proof that Respondent had actual or constructive knowledge of the violations.

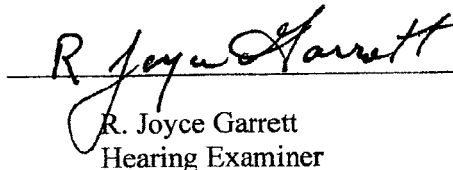
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is Ordered that:

1. Citation 01, Items 001, 002, 003 and 004 of the Moonlight Ridge Citation are VACATED.
2. Citation 01, Items 001 and 002 of the Harbor Crossing Citation are VACATED.

SO ORDERED.

Effective the 31st day of May, 2025.


R. Joyce Garrett
Hearing Examiner

Attachment 1

Court Exhibit 1

Kudu Residential Investments, LLC dba Eastwood Construction Partners, LLC

OSHANC 2024-6662 and OSHANC 2024-6663

As used herein "Act" refers to the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina.

Number	Stipulation
1	The Hearing in this matter shall be conducted via the video conferencing platform known as "Lifesize".
2	The presence of a court reporter during the Hearing is waived.
3	The Hearing's audio and video will be recorded through Lifesize (the "Recording").
4	The Recording will be the official record of the Hearing.
5	The Recording will be made available to all counsel after the Hearing concludes (the Host will send a link to the Recording as soon as is practicable after the Hearing concludes.
6	The Hearing Examiner shall control when the Hearing is on and off the record and will notify counsel of when the Hearing is on and off the record.
7	The Hearing will be deemed to have taken place in Raleigh, North Carolin.
8	Neither party objects to R. Joyce Garrett, Hearing Examiner, conducting the Hearing.
9	Pursuant to N.C.G.S. §95-135, the Review Commission has jurisdiction over the parties and subject matter of this action.
10	Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act, including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. § 95-133 <u>et seq.</u>
11	Respondent is an "employer" within the meaning of N.C.G.S. § 95-127(11).

Number	Stipulation
12	Respondent is a North Carolina limited liability company duly organized and existing under the laws of the State of North Carolina. It is active and current and maintains a place of business at 2857 Westport Road, Charlotte, Mecklenburg County, North Carolina.
13	On or about April 4, 2024, Compliance Safety Officer (CSHO) Arthur Richards, employed by the North Carolina Department of Labor (NC DOL), initiated an inspection of the worksite at 5006 Moonlight Ridge Drive ("5006 Moonlight Ridge Site").
14	On or about April 4, 2024, CSHO Richards, employed by the NC DOL, initiated an inspection of the worksite at 1201 Harbor Crossing Way ("1201 Harbor Crossing Site").
15	Both 5006 Moonlight Ridge Site and 1201 Harbor Crossing Site (collectively, the "Worksites") are located within the Harbor Crossing townhome community in Greensboro, North Carolina.
16	No employees directly hired by Respondent were doing any construction work at the Worksites at the time of the inspection by the CSHO.
17	Respondent entered into a contract with Black Stone NC Construction, Inc. ("Black Stone") for Black Stone to provide labor and materials for framing operations at the 5006 Moonlight Ridge Site and the 1201 Harbor Crossing Site.
18	Black Stone subcontracted with A&L Royal Construction Inc. ("A&L Royal") to perform the framing operations at the 5006 Moonlight Ridge Site and the 1201 Harbor Crossing Site.
19	Respondent entered into a contract with Alpha Omega Construction Group of Raleigh, Inc. ("Alpha Omega") for Alpha Omega to provide labor and materials for roofing operations at the 5006 Moonlight Ridge Site and 1201 Harbor Crossing Site.
20	Alpha Omega subcontracted with NC Triad Construction Services ("NC Triad") to perform the roofing operations at the 5006 Moonlight Ridge Site and the 1201 Harbor Crossing Site.
21	Respondent was the general contractor for the construction work being performed at the Worksites.

Number	Stipulation
22	Ryan Sims ("Sims") was Respondent's builder.
23	Sims did not object to CSHO Richards conducting the inspections of the 5006 Moonlight Ridge Site or the 1201 Harbor Crossing Site.
24	During the inspection of the 5006 Moonlight Ridge Site, A&L Royal was observed to be the creating and exposing employer.
25	During the inspection of the 5006 Moonlight Ridge Site, an employee of A&L Royal was observed to be onsite working and supervising in direct line of sight of the A&L Royal employees.
26	On June 12, 2024, NC DOL issued a Citation and Notification of Penalty to Respondent for the 5006 Moonlight Ridge Site, alleging Serious violation of four standards (the "Moonlight Ridge Citation").
27	On June 20, 2024, NC DOL issued a Citation and Notification of Penalty to Respondent for the 1201 Harbor Crossing Site, alleging Serious violations of two standards (the "Harbor Crossing Citation").
28	Respondent denies that it had employees who were either exposed to, or in any way created or were responsible for, any of the purported hazards referenced in the Moonlight Ridge Citation issued to Respondent.
29	Respondent denies that it had employees who were either exposed to, or in any way created or were responsible for, any of the purported hazards referenced in the Harbor Crossing Citation issued to Respondent.
30	Respondent submitted a timely Notice of Contest for the Moonlight Ridge Citation on July 25, 2024.
31	Respondent submitted a timely Notice of Contest for the Harbor Crossing Citation on July 25, 2024.
32	On or about August 22, 2024, NC DOL received Respondent's "Employer's/Respondent's Statement of Position" for the Moonlight Ridge Citation, dated August 22, 2024, which requested formal pleadings be served.
33	On or about August 22, 2024, NC DOL received Respondent's "Employer's/Respondent's Statement of Position" for the Harbor Crossing Citation,

Number	Stipulation
	dated August 22, 2024, which requested formal pleadings be served.
34	On September 11, 2024, NC DOL filed a Complaint regarding the Moonlight Ridge Citation (the "Moonlight Ridge Complaint").
35	On September 11, 2024, NC DOL filed a Complaint regarding the Harbor Crossing Citation (the "Harbor Crossing Complaint").
36	Respondent submitted a timely Notice of Contest for the Moonlight Ridge Citation on July 25, 2024.
37	Respondent submitted a timely Notice of Contest for the Harbor Crossing Citation on July 25, 2024.
38	On or about August 22, 2024, NC DOL received Respondent's "Employer's/Respondent's Statement of Position" for the Moonlight Ridge Citation, dated August 22, 2024, which requested formal pleadings be served.
39	On or about August 22, 2024, NC DOL received Respondent's "Employer's/Respondent's Statement of Position" for the Harbor Crossing Citation, dated August 22, 2024, which requested formal pleadings be served.
40	On September 11, 2024, NC DOL filed a Complaint regarding the Moonlight Ridge Citation (the "Moonlight Ridge Complaint").
41	On September 11, 2024, NC DOL filed a Complaint regarding the Harbor Crossing Citation (the "Harbor Crossing Complaint").
42	On October 1, 2024, Respondent timely filed an Answer to the Moonlight Ridge Complaint.
43	On October 1, 2024, Respondent timely filed an Answer to the Harbor Crossing Complaint.
44	Respondent denies the allegations contained in the Moonlight Ridge Citation and objects to the proposed penalty and abatement dates.
45	Respondent denies the allegations contained in the Harbor Crossing Citation and objects to the proposed penalty and abatement dates.

Number	Stipulation
46	On May 1, 2025, the Hearing Examiner assigned to these matters entered an Order consolidating the Moonlight Ridge Citation and the Harbor Crossing Citation for all pre-hearing and hearing-related matters.

Attachment 2

Table Of Events On Day of Inspection, April 4, 2024,
Determined Based On The Preponderance Of Evidence

Time a.m.	Exhibit	Citation Supported		Comment	Established Location of Sims and/or Espinoza
		6662 Item	6663 Item		
8:00				Sims testimony that he arrives in Development; parks his truck on Maple Blossom Trail	Sims in his truck on Maple Blossom Trail
8:26	R-20			Sims sent email	Sims in his truck
Shortly before 9:00				Sims testimony that he moved his truck and parked on Moonlight Ridge Drive	Sims in his truck on Moonlight Ridge Drive
9:00				Sims testimony he met with homeowners inside house on Lot 23	Sims inside Lot 23 house – homeowner's courtesy visit
9:06	C-17		001	Taken by CHOS Richards from his vehicle in public right-of-way	Sims inside Lot 23 house – homeowner's courtesy visit
	C-18		001 002		Sims inside Lot 23 house – homeowner's courtesy visit
9:10	C-3	001 003			Sims inside Lot 23 house – homeowner's courtesy visit
	C-4	001			Sims inside Lot 23 house – homeowner's courtesy visit
9:11	C-19		002		Sims inside Lot 23 house – homeowner's courtesy visit
9:14	C-5	002			Sims inside Lot 23 house – homeowner's courtesy visit
	C-6	002			Sims inside Lot 23 house – homeowner's courtesy visit
	C-7	003 004			Sims inside Lot 23 house – homeowner's courtesy visit

Time a.m.	Exhibit	Citation Supported		Comment	Established Location of Sims and/or Espinoza
		6662 Item	6663 Item		
9:17	C-8	003			Sims inside Lot 23 house – homeowner's courtesy visit
9:18	C-9	003			Sims inside Lot 23 house – homeowner's courtesy visit
9:20	R-30			Photo of hand rail in Lost 23 house taken by Sims	Sims inside Lot 23 house – homeowner's courtesy visit
9:43	C-12	004		Taken from public right-of-way	Sims inside Lot 23 house – homeowner's courtesy visit
9:48	C-10	003			Sims inside Lot 23 house – homeowner's courtesy visit
9:51	R2-1				Sims in truck on Moonlight Ridge Drive
9:52	C-15			'zoomed-in' picture of windshield of Sims truck taken by CSHO Richards	Sims in truck parked on Moonlight Ridge Drive
10:00				CSHO Richards testimony of time he made entry onto worksites	Sims in truck on Moonlight Ridge Drive
10:01	C-14			Picture of Espinoza standing beside truck;	Sims in truck on Moonlight Ridge Drive; Espinoza standing at driver side door facing truck
	R1-78			Espinoza standing beside truck;	Sims in truck on Moonlight Ridge Drive; Espinoza standing at driver side door facing truck
	R1-79			Espinoza standing beside truck;	Sims in truck on Moonlight Ridge Drive; Espinoza standing at driver side door facing truck
10:02	R2-10				Sims in truck on Moonlight Ridge Drive
10:03	R-22			Email pertaining to Lot 23 sent by Sims per Sims testimony	Sims in truck on Moonlight Ridge Drive

Time a.m.	Exhibit	Citation Supported		Comment	Established Location of Sims and/or Espinoza
		6662 Item	6663 Item		
10:05	C-16			photo of back of Sims truck taken by CSHO Richards when outside of his own vehicle	Sims in truck on Moonlight Ridge Drive
10:11	R-23			Email by Sims regarding Lot 73	Sims in truck on Moonlight Ridge Drive
10:14	R-20			Email by Sims	Sims in truck on Moonlight Ridge Drive
	C-11	003 004		Picture taken after CSHO Richards started inspection; testimony by CSHO that Items 003 and 004 violations continue at this time	Sims in truck on Moonlight Ridge Drive
Soon after 10:14				Testimony of Sims	Sims saw CSHO Richards in rear view mirror of truck and got out to speak to CSHO Richards
Approximately 10:23	R-29				Sims sent text message to Jeff Creighton, VP of Construction for Respondent that OSHA was present; met with CSHO Richards and had 'walk-around' inspection
11:10	C-13			Taken by CSHO Richards on exiting job site, from front of street; evidence of abatement re fall protection	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

JESSI THALLER-MORAN
GREG GAUGHT
BROOKS PIERCE
1700 WELLS FARGO CAPITOL CENTER
150 FAYETTEVILLE ST.
RALEIGH, NC 27601

By depositing a copy of the same in the United States Mail, by certified mail, return receipt requested, postage prepaid at Raleigh, North Carolina, and upon:

JONATHAN D. JONES
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602

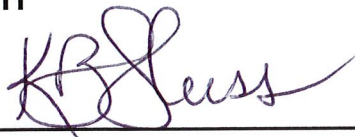
By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

via email.

THIS THE 6 DAY OF June 2025.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
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