

JEFF JACKSON
ATTORNEY GENERAL



REPLY TO:
SARAH G. ZAMBON
(919) 716-6955
SZAMBON@NCDOJ.GOV

Memorandum

To: North Carolina Coastal Resource Commission
Fr: Sarah Zambon
Re: Legal Update for November 2025 Meeting
Date: November 19, 2025

I. NORTH CAROLINA COURT OF APPEALS

CRC v. RRC (23 CV 031533) The record has been filed and the RRC has filed its brief. The CRC brief is due to the Court of Appeals by December 12, 2025.

Ready v. CRC (24 CVS 001000-105) The notice of appeal was filed August 29, 2025. The proposed record has been served on opposing counsel. Currently the record is set to be filed by November 13, 2025.

II. PETITIONS FOR JUDICIAL REVIEW (PJR)

Petitioner Lincoln Griswold (25 CVS 002176-240) There has been no update on this matter since your August 2025 meeting.

III. OFFICE OF ADMINISTRATIVE HEARINGS (OAH):

Pirates Cove LLC v. DCM (25 EHR 01051) Attorneys Reynolds and Young reached a settlement with the Petitioner and the Petitioner filed for a dismissal at the end of October.

Russell v. Town of Oak Island, DCM and Next Home Management, LLC (25 EHR 02847) A hearing on DCM's motion to dismiss and permittee's motion for judgement on the pleadings is scheduled for November 21.

IV. VARIANCES: The Commission heard one variance request at its November meeting. There are ten variances scheduled for hearing at your November meeting.

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

Following is a review of the outstanding requests:

Raymond Parker (CMT-2025-07) requested a hearing to challenge the issuance of CAMA General Permit No. 99631D authorizing construction of private pier at 325 Beach Road North in Figure Eight Island, New Hanover County, North Carolina. The Chair denied the

request in the Final Agency Decision issued October 3, 2025 because the request was submitted outside of 20-day timeframe established by N.C. Gen. Stat. §113A-121.1(b).

No MCB and Sierra Club (CMT-2025-09) requested a hearing to challenge the issuance of CAMA Major Permit No. 105-25 for Permittee North Carolina Department of Transportation authorizing construction of a 1.5-mile bridge over Maple Swamp, a 4.7-mile bridge over the Currituck Sound and road improvements to US 158 and NC 12 in Currituck and Dare Counties, North Carolina. The Chair granted the request in the Final Agency Decision issued November 7, 2025.

VI. PETITION FOR DECLARATORY RULING

None.

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

BEFORE THE CHAIR
COASTAL RESOURCES COMMISSION
CMT-2025-07

IN THE MATTER OF THE THIRD PARTY)
HEARING REQUESTS BY:)
RAYMOND CLIFTON PARKER)

DECISION

I. PROCEDURAL BACKGROUND

The North Carolina Division of Coastal Management (“DCM”) received a request from Petitioner Raymond Clifton Parker on September 8, 2025 seeking permission to file a petition in the North Carolina Office of Administrative Hearings (“OAH”) for a contested case hearing pursuant to N.C. Gen. Stat. § 113A-121.1(b) and 15A N.C. Admin. Code. 07J .0301(b). Petitioner seeks to challenge the August 12, 2025 issuance of Coastal Area Management Act (“CAMA”) General Permit No. #99631D (“Permit”) to John Gregg (“Permittee”). The Permit authorized the construction of a private pier at 325 Beach Road North on Figure Eight Island, New Hanover County, North Carolina (the “Site”).

In reviewing the Request, the undersigned considered the following documents provided by or on behalf of Petitioner, DCM, and Permittee which constitute the official record on which this decision was made:

1. Parker Third Party Hearing Request received September 8, 2025
2. General Warranty Deeds filed in New Hanover County Register of Deeds to Grantee Gregg book 4822, page 21 on 25 May 2005 and book 5234, page 2028 on 25 September 2007
3. Plats filed in the New Hanover County Register of Deeds on 2 August 1978 on book 18, page 86 and on 26 September 1973 on book 14, page 43
4. General Warranty Deeds filed in New Hanover County Register of Deeds to Grantee Parker book 953, page 897 on 6 November 1972 and book 6195, page 492 on 30 May 2018
5. General Warranty Deeds filed in New Hanover County Register of Deeds to Grantee Clamdigger LLC book 6767, page 2197 on 11 April 2025
6. Clamdigger LLC CAMA General Permit #52008 on 8 February 2008
7. Film Access Records to Parker by CAMA/DCM dated 13 March 2008 and 19 March 2008

8. Letter from DCM Everhart to John R. Barlow dated 8 February 2008
9. Letter from John Barlow to DCM dated 21 December 2007
10. Proposed pier drawing for Overbeck/Pippin Marine LLC
11. Professional Land Survey drawing received by 11 January 2008
12. Adjacent riparian property owner notification waiver form for permittee McFelwee signed by Mildred Harmon dated 20 December 2007
13. Certified mail receipts to Harmon, Gregg and Barlow
14. Letter to McElkes from Parker dated 27 November 2021
15. Documents received by DCM on 29 November 2021 from Parker (4 pages)
16. Documents received by DCM 22 November 2021 from Parker (5 pages)
17. DMF submerged land parcel line GIS image at Site
18. Fonville v. CRC Court of Appeals Opinion
19. Handwritten notes dated 27 March 2025 and 1 April 2025
20. Ten Site Photos from GIS/Google Earth
21. Letter to Tancred Miller from John Gregg dated September 11, 2025

II. STANDARD OF REVIEW

Pursuant to N.C. Gen. Stat. § 113A-121.1(b), the North Carolina Coastal Resources Commission (“Commission”) serves as a “gatekeeper” to determine whether it is appropriate for a third party, such as Petitioner, to challenge a CAMA permit issued to another. The statute lays out three criteria that a petitioner must satisfy before being given the right to file a contested case in OAH. These criteria are:

- (1) Petitioner must allege that the decision is contrary to a statute or rule.
- (2) Petitioner must show they are directly affected by the decision; and
- (3) Petitioner must allege facts or make legal arguments that demonstrate
that the request for a hearing is not frivolous.

N.C. Gen. Stat. § 113A-121.1(b) (emphasis added). “A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made.” *Id.*

The Commission has delegated to its Chair the authority to determine whether a third-party request for a hearing should be granted or denied. 15A N.C.A.C. 07J .0301(b). A third party whose hearing request is granted may file a petition for a contested case hearing

in OAH pursuant to N.C.G.S. §113A-121.1(b). A third party whose hearing request is denied may seek judicial review under the procedures set forth in the North Carolina Administrative Procedure Act at N.C.G.S. § 150B-45. A permit challenged under this section remains in effect. *See* N.C.G.S. § 113A-121.1(d).

III. FINDING OF FACTS

1. The Permittee, John N. Gregg and wife, Bessie H. Gregg, own the property at 325 Beach Road North on Figure Eight Island. They originally took title to the Site on May 25, 2005, through a deed recorded at Book 4822, Page 21 in the New Hanover County Registry. The Permittees changed ownership to tenants in common as denoted on a 2007 deed recorded at Book 5234, Page 2028 of the New Hanover County Register of Deeds.
2. The Site is also known as Lot 1, Block B, Section 18, Figure Eight Island, as shown on Map Book 18, Page 86, in the office of the Register of Deeds of New Hanover County. The Site is adjacent to Beach Road to the southeast; to the southwest is Petitioner's property, at 323 Beach Road North; to the northeast is Lot 2, Block B Section 18 owned by 9 Clamdigger Point, LLC; and to the northwest Nixon Channel's.
3. Petitioner owns property at 323 Beach Road North on Figure Eight Island adjacent to and southwest of the Site. Petitioner first purchased this property in 1972 through a deed recorded at Book 953, page 897 of the New Hanover County Register of Deeds. In 2018, Petitioner conveyed the property to himself and Anna Cheung Parker through a deed recorded at Book 6195, page 492 of the New Hanover County Register of Deed.
4. To the northeast of the property is Lot 2, Block B Section 18 at 9 Clamdigger Point ("Clamdigger"), the corner lot at 9 Clamdigger Point Road. It has been owned by 9

Clamdigger Point, LLC since April 2025 through a deed recorded at Book 6767, page 2197 of the New Hanover County Register of Deeds.

5. The upland of the Clamdigger property is currently undeveloped, but a pier extends from the middle of the property into the Nixon Channel. The Clamdigger pier was authorized by CAMA General Permit #52008 in 2008.
6. According to the Permit, the Site affects the coastal wetlands, estuarine waters and public trust areas. The Site is in the Estuarine and Ocean System category of Area of Environmental Concern (AEC) as determined by the Commission.
7. The Site and Petitioner's lots are shown on a plat map of this section of Figure Eight Island recorded at Map Book 18, Page 86. The map indicates that the waterward property boundary in the area of the Site and Petitioner's lot is located at mean high water.
8. A review of the Division of Marine Fisheries GIS layer of recognized submerged lands claims shows that there is a recognized claim approximately 250' west/waterward of the property corner shared by the Site and Petitioner's property. The DMF GIS layer indicates that the claimant was Champ McDowell Davis and was from a Board of Education deed. However, there is no recognized submerged lands claim in the area between the Davis claim and the Site. Area below mean high water is state-owned submerged lands.
9. The Site, Petitioner's lot, and Clamdigger are adjacent to Nixon Channel which is classified as SA-Outstanding Resource Waters (ORW) by the Environmental Management Commission. These waters are open to the harvest of shellfish, and the Marine Fisheries Commission has designated them as a Primary Nursery Area (PNA).

10. DCM District Manager Tara MacPherson and Minor Permits Manager Robb Mairs visited the Site on March 27, 2025 to take site measurements and stake and flag the edge of channel, coastal wetlands, and normal high water line (“NHWL”).
11. Between the March site visit and July, DCM Staff worked with the applicant’s surveyor and agent to ensure the riparian lines shown were reflective of DCM’s line determination. Staff flagged NHWL and the points where the upland property lines met NHWL were the points from which the riparian lines were pulled at a 90-degree angle to the channel of the dead-end creek. DCM Staff required that the 15-foot riparian setbacks were reflected on the survey. DCM also asked the surveyor to depict the Petitioner’s entire shoreline to demonstrate that Petitioner had room to construct a pier within his own riparian corridor.
12. As part of the General Permit process, the Applicant provided notice to both adjacent riparian owners, Petitioner and Clamdigger. On June 25, 2025, Mr. Louis Dworsky, on behalf of Clamdigger LLC, met with Ms. MacPherson at the DCM office to review the riparian corridor on the notice form he received. Ms. MacPherson described how the rules direct DCM to draw riparian lines. When Mr. Dworsky left, he indicated he would send the notice form back indicating no objections. On July 16, 2025, DCM received the notice form signed by Mr. Dworsky, a Member and Manager of Clamdigger. He did not object but did not waive the 15-foot riparian setback.
13. On July 29, 2025, DCM received a letter from Petitioner, dated July 28, 2025. In his letter, Petitioner stated his objections to the Site’s proposed pier, including negative impact to scenic value of Petitioner’s property and assertions that the proposed riparian access lines are inconsistent with rules regarding the establishment of those areas. Included with the letter was an adjacent riparian property owner waiver form

which Petitioner alleges was incorrectly marked to say he did not object. He clarified that he does object and does not wish to waive the 15-foot setback requirement.

14. On August 12, 2025, DCM issued CAMA General Permit #99631D.
15. On August 15, 2025, DCM mailed a notice to Petitioner that the Permit was issued over his objection.
16. On August 22, 2022, Ms. Anna Cheung Parker visited the DCM office. Ms. Parker showed Mr. Mairs the copy of the DCM notice letter she received. She requested and received copies of the appeal forms. On September 5, 2024, Petitioner emailed Ms. MacPherson asking why the Permit showed “riparian lines that are not surveyed” and compared them to the Bristow survey from the Clamdigger permit.
17. On September 8, 2025, DCM received Petitioner’s CAMA Third Party Hearing Request Petition.

IV. CONCLUSIONS OF LAW

1. Prior to determining whether a third-party petitioner has made the required showing to demonstrate that a contested case hearing is appropriate, the Commission must first determine whether the request is timely. To challenge a CAMA permit decision, a third-party petitioner must follow the procedures set forth in N.C. Gen. Stat. § 113A-121.1(b). *See Leeuwenburg v. Waterway Inv. Lt. Partnership*, 115 N.C. App. 541, 545, 445 S.E.2d 614, 617 (1994).

2. In relevant part, N.C. Gen. Stat. § 113A-121.1(b) provides: “[a] request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made.” N.C. Gen. Stat. § 113A-121.1(b) (emphasis added).

3. The timely filing of a third-party hearing request is a condition precedent to the exercise of the Commission’s subject matter jurisdiction and the Commission lacks jurisdiction over any request submitted more than 20 days after the date the disputed permit is issued. *Fonvielle v. North Carolina Coastal Resources Commission*, 288 N.C. Appl 284, 887 S.E.2d 93 (2023).

4. Missing the deadline by even one day deprives the Commission of jurisdiction to hear the request. *See, e.g., Gummels v. N.C. Dept. of Human Resources*, 98 N.C. App. 675, 392 S.E.2d 113 (1990) (upholding the dismissal of a petition for contested case hearing filed with the Office of Administrative Hearings because it was filed one day after the statutory deadline.); *Lewis v. N.C. Dept. of Human Resources*, 92 N.C. App. 737, 375 S.E.2d 712 (1989) (upholding the dismissal of a petition filed one day after statutory deadline).

5. Here, the Record demonstrates that the Permit was issued on August 12, 2025, and, therefore, any third-party hearing request was required to be submitted and received

by the Commission no later than Monday, September 1, 2025, which is 20 days after August 12. Notice of the permit issuance, though not required by law or rule, was provided to the Petitioner by mail sent on August 15, 2025, and the Petitioner obtained an appeal form (which is also available on the Commission's website) on August 22, 2005. The Petition at issue, however, was not received until September 8, 2025, which is beyond the statutorily established 20-day deadline for submitting such requests.

6. Because the Petition was received more than 20 days after the disputed Permit was issued, the request is untimely, and the Commission lacks subject matter jurisdiction to consider it. The request is, therefore, denied.

V. DECISION

For the foregoing reasons, Petitioner's request for a hearing in the Office of Administrative Hearings is DENIED.

This the 3rd day of October 2025.



M. Renee Cahoon, Chair
N.C. Coastal Resources Commission

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the Agency Decision on Petitioner and other interested persons by the means specified below:

Method of Service:

Raymond Parker
Petitioner

CERTIFIED MAIL, RETURN RECEIPT
REQUESTED:
323 Beach Rd North
Wilmington, NC 28411

Electronically:
Anna.cheung.parker@gmail.com

Clark Wright
Samantha Hamilton
Attorneys for the Permittee

Electronically:
clark.wright@dhwlegal.com
Samantha.hamilton@dhwlegal.com

Christine A. Goebel, Esq.
Assistant General Counsel
NC Dep't of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Electronically:
Christine.goebel@deq.nc.gov

Tancred Miller, DCM Director
Jonathan Howell, DCM Deputy Director
Angela Willis, DMC Director's Assistant
Courtney Milliron, DCM Field Representative
Division of Coastal Management
400 Commerce Ave. Field Rep
Morehead City, NC 28557

Electronically:
Tancred.Miller@deq.nc.gov
Jonathan.howell@deq.nc.gov
Angela.willis@deq.nc.gov
Courtney.milliron@deq.nc.gov

This the 3rd day of October, 2025.



Sarah Zambon
Assistant Attorney General
Counsel for the Coastal Resources Commission

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

BEFORE THE CHAIR
COASTAL RESOURCES
COMMISSION
CMT-2025-08

IN THE MATTER OF THE THIRD-)
PARTY HEARING REQUESTS BY:)
NO MCB-CONCERNED CITIZESN AND)
VISTORS OPPOSED TO THE MID-)
CURRITUCK BRIDGE)
And SIERRA CLUB)

DECISION

I. PROCEDURAL BACKGROUND

Petitioners No MCB- Concerned Citizens and Visitors Opposed to the Mid-Currituck Bridge (No MCB) and Sierra Club submitted a request to the North Carolina Division of Coastal Management (“DCM”) on October 8, 2025, seeking permission to file a petition in the North Carolina Office of Administrative Hearings (“OAH”) for a contested case hearing pursuant to N.C. Gen. Stat. § 113A-121.1(b) and 15A N.C. Admin. Code. 07J .0301(b). Petitioners seek to challenge the September 19, 2025, issuance of Coastal Area Management Act (“CAMA”) Major Permit No. 105-25 (“Permit”) to the North Carolina Department of Transportation (“NCDOT”), which includes the North Carolina Turnpike Authority (“Permittee”). The Permit authorized the construction of a 1.5-mile bridge over Maple Swamp, a 4.7-mile bridge over the Currituck Sound connecting mainland Currituck County to the Outer Banks and road improvements to US 158 and NC 12 in both Dare and Currituck Counties, North Carolina (the “Site”).

The following documents provided by or on behalf of Petitioner, DCM, and Permittee constitute the official record on which this decision was made:

1. Recommendation of the Division of Coastal Management – October 31, 2025 (21 pages)
2. Third party Hearing Request by Petitioners – October 8, 2025 (85 pages with attachments)
3. Order of Joint Motion for Partial Dismissal – April 17, 2014 (7 pages)
4. DMF presentation MCB - 2025-08-06 (5 pages)
5. Mid-Currituck Bridge Project Essential Fish Habitat Technical Report Addendum - April 2025(24 pages)
6. Final Revised SAV Mitigation Plan Version – 2025-8-15 (41 pages)
7. Interagency Meeting Agenda – August 6, 2025 (1 page)
8. Interagency Meeting Agenda – July 15, 2025 (1 page)
9. Interagency Meeting Agenda – July 24, 2025 (1 page)
10. NCDMF Feedback – Mid-Currituck SAV mitigation – January 10, 2024 (2 pages)
11. R-2576 IAM Summary Final -January 10, 2024 (6 pages)
12. R-2576 IAM Summary Final - May 14, 2025 (3 pages)
13. R-2576 IAM Summary Final – July 15, 2025 (5 pages)
14. R-2576 IAM Summary Final – July 24, 2025 (6 pages)
15. R-2576 IAM Summary Final – August 6, 2025 (5 pages)
16. R-2576 IAM Summary Final – December 11, 2024 (5 pages)
17. R-2576 NCDOT Response to DMF comments SAV Plan – March 25, 2024 (4 pages)
18. R-2576 2025 SAV Report 2024 Final – January 29, 2025 (22 pages)
19. Mid Currituck Application
 - a. Attachment 01- CAMA Major Permit Forms Rev – November 4, 2024 (13 pages)
 - b. Attachment 02 – Jurisdictional Impacts Permit Drawings compressed – (97 pages)
 - c. Attachment 03 – Right-of-Way Plans June 2024 (78 pages)
 - d. Attachment 04 – Construction Narrative – February 21, 2024 (4 pages)
 - e. Attachment 04 - Construction Narrative Clarification – (1 page)
 - f. Attachment 05 – Temporary Barge Mooring – June, 2021 (2 pages)
 - g. Attachment 06 - Cumulative Impact for Water Quality – May 2024 (216 pages)
 - h. Attachment 06A – ICE Technical Report – November 2011 (216 pages)
 - i. Attachment 06B – ICE Technical Report Addendum – October 2012 (43 pages)
 - j. Attachment 07 – Identification of LEDPA – July 2020 (49 pages)
 - k. Attachment 08 – Natural Resources Technical Update – June 2023 (45 pages)
 - l. Attachment 09 - Utility Impacts Permit Drawings (8 pages)
 - m. Attachment 10 - Utility Relocation Environmental Narrative – February 27, 2024 (8 pages)
 - n. Attachment 11- SAV Impact Drawings (14 pages)

- o. Attachment 12 – PCO Tricolor Bat – November 20, 2023 (40 pages)
- p. Attachment 13 – RCW Bald Eagle BA – January 31, 2023 (28 pages)
- q. Attachment 14 – Stormwater Management Plan July 4, 2023 (7pages)
- r. Attachment 15 - HEC-RAS Model Update for Maple Swamp – October 28, 2019 (7 pages)
- s. Attachment 16 – Sea Level Rise and groundwater Impact – February 4, 2020 (3 pages)
- t. Attachment 17 – NCDMS Mitigation Letter – November 6, 2023 (2 pages)
- u. Attachment 18 – Landlocked Parcels Wetland Investigation – November 6, 2019 (6 pages)
- v. Attachment 19 – Final Revised SAV Mitigation Plan Version – August 15, 2025 (42 pages)
- w. Attachment 20 – USGS Water Quality Report – April 17, 2020 (82 pages)
- x. Attachment 21 – Cumulative Effects for Coastal Resources – June 2021 (90 pages)
- y. Attachment 22 – Invasive Species Control Plan – October 21, 2021 (9 pages)
- z. Attachment 23 – Riparian Property Owner Listing Rev – September 12, 2025 (9 pages)
- 20. Cover Letter R-2576 CAMA Application – September 18, 2024 (17 pages)
- 21. Office of State Archaeology and NCDOT correspondence, cemeteries – August 12, 2025 (6 pages)
- 22. R-2576 CAMA Additional Information Response – November 12, 2024 (3 page)
- 23. R-2576 2024 SAV Monitoring Report – January 29, 2025 (22 pages)
- 24. Mid Currituck Environmental Documents
 - a. Final Environmental Impact Statement - January 2012 (294 pages)
 - b. Record of Decision – March 6, 2019 (37 pages)
 - c. Reevaluation of FEIS Study Report and Appendices – March 6, 2019 (659 pages)
 - d. Reevaluation of FEIS – March 7, 2019 (25 pages)
- 25. Mid-Currituck Agency Comments
 - a. R-2575 – ESC Comments – February 13, 2025 (1 page)
 - b. R-2576 - Currituck County comments – February 2, 2025 (1 page)
 - c. R-2576 – DAQ comments (NC) – February 13, 2025 (1 page)
 - d. R-2576 DEMLR Stormwater comment (NC) March 6, 2025 (5 pages)
 - e. R-2576 DMF Additional comments – August 26, 2025 (3 pages)
 - f. R-2576 DMF comments – March 18, 2025 (2 pages)
 - g. R-2576 DWR response – will not have comments until after the public comment period – March 12, 2025 (7 pages)
 - h. R-2576 LUP Con R.Love-Adrick R-2576 Request for comments – February 13, 2025 (1 page)

- i. R-2576 LUP MCB FEIS DCM Land Use Plan Consistency Review – July 22, 2025 (46 pages)
 - j. R-2576 NHP comments (NC) – March 12, 2025 (7 pages)
 - k. R-2576 PWSS comments – February 13, 2025 (2 pages)
 - l. R-2576 SHPO, Office of State Archaeology comments CH-94-0809 CAMA AvoidC – February 13, 2025 (4 pages)
 - m. R-2576 SHPO, Office of State Archaeology comments – August 12, 2025 (6 pages)
 - n. R-2576 Southern Shores comments – February 13, 2025 (1 page)
 - o. R-2576 SPO comments – February 13, 2025 (1 page)
 - p. R-2576 SSRWQ comments – February 13, 2025 (1 page)
 - q. R-2576 USACE comments (NC) – February 13, 2025 (1 page)
 - r. R-2576 WRC comments (NC) – February 13, 2025 (1 page)
26. Mid-Currituck Application Processing
- a. Affidavit of Publication – (1 page)
 - b. Application Processing and Transmittal Record – (1 page)
 - c. Corolla – NC-12 and north Harbor View (002) - (1 page)
 - d. DCM Field Investigation Report – (11 pages)
 - e. Distribute 2024 SAV Monitoring Report for agency comment – March 4, 2025 (4 pages)
 - f. Mid-Currituck Bridge Acknowledgement Letter pg. 1 – January 23, 2025 (1 page)
 - g. Mid-Currituck Bridge Acknowledgement Letter pg. 2 – January 23, 2025 (1 page)
 - h. Mid-Currituck Bridge Extension Letter – March 21, 2025 (1 page)
 - i. Mid-Currituck Bridge Public Notice – January 27, 2025 (2 pages)
 - j. Mid-Currituck Site Card – (1 page)
 - k. Narrow Shores Road (002) – (1 page)
 - l. NCDOT, NCTA Off Hold request – September 9, 2025 (1 page)
 - m. NCDOT, NCTA on Hold request – May 23, 2025 (1 page)
 - n. Placards – Location photos January 31, 2025 (2 pages)
 - o. R-2576 Request for comments – February 13, 2025 (1 page)
 - p. R-2576 Voluntary Off Hold DCM response – September 10, 2025 (1 Page)
 - q. R-2576 Voluntary on Hold DCM response – May 27, 2025 (1 Page)
 - r. Request agency comments emails, including reminders – March 12, 2025 (6 pages)
 - s. TIP R-2576 Distribute application for agency review email – February 13, 2025 (3 pages)
 - t. US158 at Aydlett Road – Northbound (002) (1 page)
 - u. US158 at Aydlett Road – Southbound (002) (1 page)
27. Mid-Currituck Bridge Permit 105-25
- a. Cover Letter, NCDOT, NCTA issued permit – September 19, 2025 (2 pages)

- b. R-2576 Mid-Currituck Bridge Permit, 105-25 (11 pages)
- 28. Public Comments & Public Hearings
 - a. April 16, 2025 Public Hearing Folder
 - i. [External] NCDEQ Division of Coastal Management to hold second public hearing – March 27, 2025 (3 pages)
 - ii. Audio of April 16, 2025 Public Meeting Mid-Currituck Bridge
 - iii. Currituck County Written comments MCB Public hearing (2 pages)
 - iv. Non-Speakers Sign-in sheet MCB Public hearing – April 16, 2025 (3 pages)
 - v. Speakers Sign-in sheet MCB Public hearing – April 16, 2025 (2 pages)
 - vi. Symonds written comments public hearing – April 16, 2025 (6 pages)
 - b. March 18, 2025 Public Hearing Folder
 - i. Audio of March 2025 Public Meeting Mid-Currituck Bridge
 - ii. MCB Public Hearing Sign-in sheet Non-Speakers – March 18, 2025 (6 pages)
 - iii. MCB Public Hearing Sign-in sheet Speakers – March 18, 2025 (2 pages)
 - iv. Sherlock, Paula MCB Public Hearing Written comments – March 18, 2025 (1 page)
 - v. Sullivan, Geri MCB Public Hearing Written comments – March 18, 2025 (2 pages)
 - vi. Town of Southern Shores, cliff Ogburn, MCB Public Hearing Written comments – March 18, 2025 (2 pages)
 - c. Written Public comments received and response folder
 - i. Currituck County, request for DCM to conduct a public hearing, DCM – March 19, 2025 (2 pages)
 - ii. Dulker, Acknowledgement letter – written comments through U.S. Mail – April 4, 2025 (1 page)
 - iii. Dulker, Cover Letter issued permit – September 19, 2025 (1 page)
 - iv. Lubelski, Stephen Lane email – September 5, 2025 (1 page)
 - v. N.C. Coastal Reserve Mid-Currituck Bridge DCM permit comment letter – April 17, 2025 (3 pages)
 - vi. NCDOT Cover Letter for their response to public comments – September 4, 2025 (1 page)
 - vii. Ogburn, Town of Southern Shores, issued permit notification – September 19, 2025 (2 pages)
 - viii. Sullivan, issued permit notification – September 19, 2025 (1 page)
 - ix. Wilkes, Acknowledgement letter – written comments through U.S. Mail – April 15, 2025 (1 page)

- x. Wilkes, Cover Letter issued permit – September 19, 2025 (1 page)
- xi. Winter, Acknowledgement letter – written comments through U.S. Mail – April 4, 2025 (1 page)
- xii. Winter, Cover Letter issued permit – September 19, 2025 (1 page)
- xiii. Written public comments – (100 pages)
- xiv. Written public comments – February 7, 2025 (21 pages)
- d. Written public comments received and response (SELC) Folder
 - i. SELC comments, 2016 comments letter and attachments
 - 1. Comment on Reevaluation – December 21, 2016 (61 pages + 230 exhibits)
 - ii. SELC comments, 2019 comment letter and attachments
 - 1. Comments on Mid-Currituck Bridge NEPA Review – March 18, 2019 (35 pages +69 exhibits)
 - iii. SELC comments, 2024 comment letter and attachments
 - 1. MCB 404 Comment Letter – December 20, 2024 (92 pages + 98 exhibits)
 - iv. SELC comments, 2025 CAMA permit application
 - 1. SELC comments on NCDOTs Application – February 21, 2025 (52 pages +72 exhibits)
 - 2. NCDOT letter to DCM responding to SELC comments – September 4, 2025 (13 pages)
 - 3. NCDOT, NCTA Response to SELC comments – September 4, 2025 (13 pages)
 - 4. SELC comment, DCM correspondence – February 21, 2025 (2 pages)
 - 5. SELC comment, DCM correspondence – March 7, 2025 (4 pages)
 - 6. SELC comment, DCM correspondence – March 10, 2025 (4 pages)
 - 7. SELC comment, DCM correspondence – March 31, 2025 (1 pages)
 - 8. SELC comment, DCM correspondence – March 27, 2025 (2 pages)
 - 9. SELC Mid-Currituck Bridge CAMA permit app comments – February 21, 2025 (2 pages)
- e. Mid-Currituck-Hearing Officers Speech (4 pages)
- f. NCDOT Excel Spreadsheet Matrix with responses to public and agency comments
- g. Public Hearing One Pager Final (2 pages)
- h. R-2576 Public Hearing Presentation – March 18, 2025 (15 page)

II. STANDARD OF REVIEW

Pursuant to N.C. Gen. Stat. § 113A-121.1(b), the North Carolina Coastal Resources Commission (“Commission”) serves as a “gatekeeper” to determine whether it is appropriate for a third party, such as the Petitioners, to challenge a CAMA permit issued to another. The statute lays out three criteria that a petitioner must satisfy before being given the right to file a contested case in OAH. These criteria are:

- (1) Petitioners must allege that the decision is contrary to a statute or rule.
- (2) Petitioners must show they are directly affected by the decision;
and
- (3) Petitioners must allege facts or make legal arguments that demonstrate that the request for a hearing is not frivolous.

N.C. Gen. Stat. § 113A-121.1(b). The Commission has delegated to its Chair the authority to determine whether a third-party request for a hearing should be granted or denied. 15A N.C.A.C. 07J .0301(b). A third party whose hearing request is granted may file a petition for a contested case hearing in OAH pursuant to N.C. Gen. Stat. § 113A-121.1(b). A third party whose hearing request is denied may seek judicial review under the procedures set forth in the North Carolina Administrative Procedure Act (NCAPA) at N.C. Gen. Stat. § 150B-45. A permit challenged under this section remains in effect. *See* N.C. Gen. Stat. § 113A-121.1(d).

III. FINDING OF FACTS

1. The Permittee is NCDOT, an agency of the State of North Carolina, within which the NCTA is situated.

2. The permitted development is located at the project site (“Site”) located in Currituck and Dare Counties described as beginning “at US 158 near Aydlett, crosses Maple Swamp and Currituck Sound, and terminates at NC 12 south of Corolla in Currituck County with additional smaller road improvement development in Dare County.”
3. The proposed development project (“Bridge Project”) includes a 1.5-mile bridge over Maple Swamp, a 4.7-mile bridge over Currituck Sound and roadway improvements to US 158 and NC 12.
4. The Site is located within the Estuarine Waters, Public Trust Areas, and Coastal Shorelines Areas of Environmental Concern (AECs) including the waters of Currituck Sound.
5. At the Site, the waters are classified as SC (Aquatic Life, Secondary Contact Recreation, Tidal Salt Water) waters by the Environmental Management Commission.
6. The waters at the Site are not classified as a Primary or Secondary Nursery Area and the waters at the Site are closed to the harvest of shellfish.
7. There are areas of submerged aquatic vegetation (“SAV”) present at the Site.
8. The Site is not within the Coastal Wetlands AEC nor is the Site in the Fragile or Historic AEC.
9. The Site includes areas of U.S. Army Corps of Engineers 404 wetlands, 401 wetlands and Isolated Wetlands impacted. The impacts to open water, 404 and

401 wetlands, SAV beds, and high ground are summarized in the Field Investigation Report.

10. Construction of the Bridge Project is a “development” as defined by CAMA and, therefore, a CAMA permit and Federal Consistency are required before the proposed development begin, pursuant to N.C. Gen. Stat. § 113A-118. The proposed filling also requires a Dredge and Fill permit pursuant to N. C. Gen. Stat. §§ 113-229 and -230.
11. Petitioner No MCB is a membership organization of concerned citizens and visitors who oppose the MCB and who believe “that there are more cost effective, and less environmentally damaging ways to address summertime traffic congestion that have been pushed aside in favor of this politically influenced project.” No MCB’s mission is to “protect the unique natural environment of the Currituck mainland and the northern Outer Banks”. The group first began in 2010. In 2015 No MCB became an unincorporated nonprofit association.
12. Petitioner Sierra Club is a non-profit public benefit corporation pursuant to 501(c)(4)¹. Petitioner’s national membership focuses on the environment. According to the Petition, the local Cypress Group of Sierra Club group has 1,710 members.
13. On January 7, 2025, DCM staff determined that NCDOT’s CAMA major permit application was complete.

¹ This is different than the Sierra Club Foundation, which is a 501(c)(3) public charity.

14. On February 2, 2025, notice of the permit application was published in the Coastland Times newspaper, requesting public comments be sent to DCM for consideration prior to the permit decision being made.
15. As part of the CAMA major permit review process, notice of the permit application was given to adjacent riparian property owners, the public through the newspaper advertisement, and by posting a copy of the notice at the Site. Two public hearings were held; the first on March 18, 2025 in Duck, and the second on April 16, 2025 in Barco. DCM received comments both in support of and objecting to the project.
16. Petitioners, through their counsel, the Southern Environmental Law Center (SELC), submitted comments through a February 21, 2025 letter to DCM. SELC also sent previous objection letters about the project in 2016, 2019, and 2024.
17. During the CAMA major permit review process, state and federal agencies submitted comments to DCM following a February 13, 2025 notice of the permit application. DCM considered the comments and responses received and determined that the concerns and comments submitted by the various agencies were adequately addressed through the final plans for the Bridge Project. No agency filed an objection to the project indicating the project would cause significant adverse impacts, although several submitted recommended permit conditions or provided comments.

18. Separate from its CAMA application, NCDOT applied for a Clean Water Act 401 Water Quality Certification from the Division of Water Resources (DWR). The 401 Certification was issued on September 19, 2025, and concluded that the project is in compliance with Section 401 of the Federal Clean Water Act and with DWR regulations in 15A NCAC 02H .0500 *et seq.*
19. CAMA Major Permit #105-25 was issued on September 19, 2025 by DCM.
20. Petitioners and other parties who objected to or commented on the permit application were notified of the issuance of the Permit and informed of their appeal rights as third parties.
21. After DCM's permit decision, the US Army Corps of Engineers issued its permit on October 28, 2025.
22. Petitioners timely filed a third-party hearing request seeking to challenge the Permit, and the request was received by DCM on October 8, 2025. to the Permit which was received by the DCM on October 8, 2025. The request seeks permission to file a petition for contested case hearing in the OAH challenging the issuance of CAMA Major Permit #105-25 related to the Bridge Project.
23. On October 27, 2025, NCDOT through Alan Shapiro, PE, Chief Engineer of the NCTA sent a letter to DCM indicating that it would not submit additional materials for the Chair's consideration, noting that NCDOT responded to SELC's public comments in a September 4, 2025 letter to DCM.
24. On October 31, 2025, DCM submitted its staff recommendations to the Commissions.

IV. CONCLUSIONS OF LAW

A. The Coastal Area Management Act (CAMA) was adopted, in significant part, to address “development,” as defined in N.C. Gen. Stat. § 113A-103(5a) in any area that the CRC may designate as an “Area of Environmental Concern,” (AEC) pursuant to N.C. Gen. Stat. § 113A-113.

B. The CRC has by rule designated the Estuarine Waters, Public Trust Areas, and Coastal Shorelines AECs. Because the Site is in these AECs, the proposed development requires a CAMA permit pursuant to N.C. Gen. Stat. § 113A-118.

C. CAMA requires that third parties who wish to challenge a decision to deny or grant a minor or major development permit file their hearing request “within 20 days after the disputed permit decision is made.” N.C. Gen. Stat. § 113A-121.1(b). In the present case, Petitioner’s petition was received by DCM on October 8, 2025 which was within 20-days of when the Permit was issued on September 19, 2025. Therefore, the Commission affirmatively finds that the Petition is timely and addresses the factors set forth in N.C. Gen. Stat. § 113A-121.1(b)(1)-(3) as follows:

1. Petitioners have alleged that DCM’s decision to issue the Permit is contrary to the CAMA and the Commission’s rules.

In considering whether a petitioner is entitled to a contested case hearing, the first factor to consider is whether a petitioner has alleged that the decision made by the DCM is contrary to the CAMA statute or one of the Commission’s rules.

In its request, the Petitioners have identified three categories of statutes they contend were violated: alleged the following statutes and rules have been violated including:

A. N.C. Gen. Stat. § 113A-120(a)(9)

B. N.C. Gen. Stat. § 113A-120(a)(1)-(6), (10)

C. N.C. Gen. Stat. § 150B-23(a)- North Carolina Administrative Procedures Act (APA)

In its Staff Recommendation, DCM acknowledges that the Petitioners have cited numerous statutes and rules Petitioners allege to have been violated related to the issuance of the Permit. Specifically, while DCM disagrees that the Permit was issued in violation of any of the provisions contained in N.C. Gen. Stat. § 113A-120 or any of the Commission's rules, it agrees that the Petitioners have met their burden of "alleg[ing] that the decision is contrary to statute or rule[.]" as required by N.C. Gen. Stat. § 113A-121.1(b)(1). Staff disagrees, however, that the Petitioners reference to the APA, specifically N.C. Gen. Stat. § 150B-23, is an appropriate basis upon which it can be alleged that the issuance of the permit amounted to a violation of law.

In considering this issue, the Commission does not determine whether DCM's permitting decision is inconsistent with the provisions of CAMA, the Dredge and Fill Law, or the Commission's rules, as identified by a petitioner. The sole purpose here is to determine whether a petitioner has met the burden of identifying a rule or statutory provision within the Commission's jurisdiction as a basis to challenge the permit decision.

North Carolina General Statute Subsection 150B-23(a) is contained in Article III of the APA and relates to the initiation of a contested case hearing in the Office of Administrative Hearings. N.C. Gen. Stat. § 150B-23(a). The general procedural rights established by the APA and, specifically, subsection 150B-23(a) pertain to the initiation of a contested case hearing in the OAH, and the five grounds upon which a petition must identify (whether individually or in combination) as being the basis for asserting that a petitioner was substantially prejudiced by an agency action. *See* N.C. Gen. Stat. §§ 150B-23(a)(1)-(5). It does not, however, have an independent application to the consideration of a permit application under CAMA. In other words, subsection 150B-23(a), by its plain language, applies to the initiation of a contested case in the OAH, but does not contain separate criteria applicable to the consideration of a CAMA permit application, its contents, or the process that must be followed in determining whether the permit must be granted or denied. Nor does it fall within the Commission’s jurisdiction. *See, e.g.*, N.C. Gen. Stat. §§ 113A-124 and 113-229.

Moreover, in the context of third-party hearing requests, subsection 150B-23(a) – and Article III of the APA as a whole – applies “only if the Commission determines that a hearing is appropriate.” N.C. Gen. Stat. § 113A-121.1(b). Because the Commission only has jurisdiction over third-party hearing requests submitted in writing within 20 *after* (i.e. not before) the permitting decision is made (N.C. Gen. Stat. § 113A-121.1(b)), and because subsection 150B-23(a) falls outside of the Commission’s authority and jurisdiction and contains no separately applicable requirements or criteria related to the consideration of a permit application

submitted under CAMA or the Dredge and Fill Law, the Commission concludes that an alleged violation of N.C. Gen. Stat. § 150B-23(a) is insufficient to satisfy the requirement contained in N.C. Gen. Stat. § 113A-121.1(b)(1).

The Commission, however, affirmatively concludes that the Petitioners have met their burden under N.C. Gen. Stat. § 113A-121.1(b)(1) by alleging that the Permit was issued in violation of N.C. Gen. Stat. §§ 113A-120(a)(1)-(6), (9) and (10).

Based on Petitioners' reference to the CAMA and the Commission's rules, the Commission affirmatively finds that Petitioners' Hearing Request meets the first requirement of N.C. Gen. Stat. § 113A-121.1(b). However, the Commission agrees with DCM that the APA, specifically N.C. Gen. Stat. § 150B-23(a) as cited by the Petitioners, is not a statute or rule the Commission can consider under N.C. Gen. Stat. § 113A-121.1(b)(1).

2. Petitioners have alleged they are directly affected by the decision to issue the Permit.

In determining whether a petitioner is entitled to a contested case hearing, the second factor the Commission considers is whether the petitioner is directly affected by the issuance of a permitting decision. has shown that he or she is directly affected by the issuance of the Permit.

In the request, Petitioners assert that No MCB is a Currituck County based membership organization of over 700 concerned citizens and visitors who oppose the Bridge Project. Their members include people who have lived in the area for generations, many in the communities of Aydlett, Coinjock, Corolla and Carova. The

members are business owners who fear the bridge will impact the natural resources of the Outer Banks and hurt tourism. Other members are property owners, homeowners, and residents who will be impacted by condemnation of land for the Bridge Project, the bridge construction and induced growth around the bridge. According to the Petitioners, the members of No MCB have “recreational, aesthetic, economic, and professional interests in the character of their communities, preservation of the area, and the benefits to ecosystem, fisheries, and tourism that the area supports” and they contend the Bridge Project, construction and related growth will harm those interests. Sierra Club is also a Petitioner on the third-party hearing request and the organization has 1710 local members in and around Currituck County. Their members enjoy “fishing, birding, wildlife-watching, paddling, boating, photographing, swimming, and enjoying the natural vistas of the project area”. Sierra Club members visit and live near the Site and their interests will be harmed by construction and increased growth caused by the bridge project.

In its Recommendation, DCM agrees that Petitioners have alleged they are directly affected by the permit decision.

For the limited purpose of this request, as both the Petitioners and DCM agree the Petitioners have alleged Petitioners are directly affected by the Permit decision, the Commission affirmatively finds that Petitioners have met the requirements of N.C. Gen. Stat. § 113A-121.1(b)(2). In reaching this conclusion, the Commission does not address whether Petitioners have satisfied their burden to establish any

requirements imposed by the NCAPA, including, but not limited to, issues related to substantial prejudice, as such issues are not before the Commission.

3. Petitioners have alleged facts or made legal arguments demonstrating that there is a nonfrivolous basis for a contested case hearing with respect to some issues but not others.

In determining whether a petitioner is entitled to a contested case hearing, the third and last factor to consider is whether a petitioner has shown that the Request for a hearing is not frivolous. In 1995, the North Carolina General Assembly changed the third criteria from requiring that a petitioner show “a substantial likelihood of prevailing on a contested case” to a frivolous standard. *See* N.C. Gen. Stat. § 113A-121.1(b) (1-3) (1994) and changes made in N.C. Sess. Law 1995-405. The frivolous standard relieves a petitioner of the burden of presenting sufficient evidence before discovery or a hearing to demonstrate a “substantial likelihood of prevailing.” Now, a petitioner must simply show, through some demonstration of alleged facts or argument, that a hearing would not be “frivolous.”

The Court of Appeals has explained,

A claim is frivolous if a proponent can present no rational argument based upon the evidence or law in support of [it]. In determining whether a complaint is frivolous, the standard is not the same as in a ruling on a motion under Rule 12(b)(6). Instead, we look with a far more forgiving eye in examining whether a claim rests on a meritless legal theory.

Griffith v. N.C. Dep't of Corr., 196 N.C. App. 173, 174, 675 S.E.2d 72, 73 (2009).

A claim may be barred as frivolous where a petitioner presents no rational argument based upon the evidence or law supporting their request for a contested case hearing in the OAH seeking to challenge a CAMA permit decision.

The Commission is charged with using its knowledge of the Coastal Management Program, a program for which the Commission is responsible, to determine whether a third-party hearing request is appropriate. N.C. Gen. Stat. § 113A-121.1(b). Application of the frivolous standard may bar a claim where a petitioner fails to carry her burden to allege facts or provide a legal basis sufficient to justify holding a contested case hearing in OAH to challenge the CAMA permit decision. By evaluating the proposed challenge to a CAMA permit decision before the petition is filed, the Commission, in its role as gatekeeper can preserve judicial resources and prevent cases that do not have a rational basis in fact or law from negatively impacting the docket at the OAH.

In their request, Petitioners make nine arguments in support of their claim that the Permit was issued contrary to CAMA and the Commission's rules. The Commission addresses each argument below.

a. Petitioners have demonstrated that their request for a contested case hearing on whether the Permit may be inconsistent with N.C. Gen. Stat. §113A-120(a)(9) is not frivolous.

Petitioners argue that the Permit decision is inconsistent with N.C. Gen. Stat. § 113A-120(a)(9) because a practicable alternative to the Bridge Project. The Petitioners maintain that the "Existing Roads Alternative" or "ER2" presents a practicable alternative that was not adequately evaluated under the permitting

process. Petitioners contend that ER2 would include widening existing roads and add interchanges and intersections to ease traffic congestion in the area without the environmental disturbance that may occur with the Bridge Project. Petitioners further allege that the Bridge Project is expensive, used primarily for summer travel and may be ineffective for emergency evacuation.

DCM Staff agrees with Petitioners that addressing whether ER2 is a practicable alternative under N.C. Gen. Stat. § 113A-120(a)(9) is not frivolous. However, DCM notes that there has been previous federal litigation that has been resolved regarding the National Environmental Policy Act (NEPA) implications of the Bridge Project and relitigating that issue in OAH would not only be frivolous but may result in res judicata and collateral estoppel concerns.

The statutory provision Petitioners cite states a permit applicant should be denied “[i]n any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.” N.C. Gen. Stat. § 113A-120(a)(9). Petitioners have suggested ER2 may be a practicable alternative to the Bridge Project. DCM does not disagree that Petitioners’ request for a contested case on whether DCM properly issued the Permit when there may have been a practicable alternative is not frivolous. The Commission, therefore, finds that Petitioners’ request for a contested case on the issue of whether DCM properly issued the Permit when ER2 may be a practicable alternative under N.C. Gen. Stat. § 113A-120(a)(9). While the Commission concludes that the Petitioners have met their burden as to this issue,

it notes that this decision does not address any issues related to Fourth Circuit's opinion in *No Mid-Currituck Bridge-Concerned Citizens v. N. Carolina Dep't of Transp.*, 60 F.4th 794, 799, 805 (4th Cir. 2023), or its impact on any claims, defenses, or arguments related to it in future proceedings.

b. Petitioners failed to demonstrate that their request for a contested hearing on whether the Permit should have been denied pursuant to N.C. Gen. Stat. § 113A-120(a)(1) is not frivolous.

For their second argument, Petitioners cite to N.C. Gen. Stat. § 113A-120(a)(1) which states that in coastal wetlands, a permit should be denied that the development would conflict with an order that “has been or could be issued” pursuant to the North Carolina Dredge and Fill Law (N.C. Gen. Stat. § 113A-230). Petitioners contend that the Bridge Project could harm coastal wetlands and contiguous areas, and that DCM could enter an order prohibiting dredging and filling in the area of the Bridge Project. In the February 21, 2025 SELC Comment Letter, counsel for the Petitioners cite the cumulative effects of the Bridge Project including new waterfront homes, docks, bulkheads, and other structures to serve the new homes that will adversely impact the coastal wetlands. Petitioners further argue that the Permit violates 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208 because it does not prioritize the conservation of coastal wetlands and by issuing the Permit that could be built elsewhere under the ER2 alternative.

DCM states that the Dredge and Fill law was passed in 1969 while CAMA was passed in 1974. Upon the passage of CAMA, the Commission designated a Coastal Wetlands AEC and the regulations for that AEC. DCM argues it would be problematic

if the Department of Environmental Quality (DEQ), of which DCM is a part, could enter an order related to coastal wetlands that interfere with the Commission's jurisdiction over the Coastal Wetlands AEC. DCM points out that the Permit states that "no coastal wetlands as defined by CAMA shall be impacted by the project". DCM further states that 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208 do not apply because the Site does not include any Coastal Wetlands AEC. DCM contends that Petitioners have failed to allege a non-frivolous basis for a contested case regarding N.C. Gen. Stat. § 113A-120(a)(1) because it ignores CAMA and the Commission's rules.

The Commission agrees Petitioners' request for a contested case hearing under N.C. Gen. Stat. § 113A-120(a)(1) is frivolous because the Site does not include any Coastal Wetlands AEC and the Permit is conditioned on no coastal wetlands being impacted. Furthermore, many of the arguments Petitioners make are related to conjecture and not facts in the record. Petitioners speculate that DEQ *could* enter an order regarding the Dredge and Fill law under N.C. Gen. Stat. § 113A-120(a)(1) but no order has been made and such an order would conflict with the authority of the Commission regarding the Coastal Wetlands AEC. Petitioners allege impacts on the coastal wetlands from increased development of waterfront homes in the area of the Site but none of that has happened yet and is beyond the scope of the Permit and the jurisdiction of the Commission. Petitioners request for a contested case on 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208 is frivolous because no part of the Site is in the Coastal Wetlands AEC and therefore those rules do not apply. Petitioners have

failed to provide any facts or make any legal arguments demonstrating that their request for a contested case on N.C. Gen. Stat. § 113A-120(a)(1), 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208 is not be frivolous because the Site does not include the Coastal Wetlands AEC, there is no order regarding Dredging and Filling at the Site and the Permit includes the condition that no coastal wetlands should be impacted.

c. Petitioners have demonstrated that their request for a contested case on whether the proposed development is inconsistent with N.C. Gen. Stat. § 113A-120(a)(2) is not frivolous.

Petitioners argue that the permit decision is inconsistent with N.C. Gen. Stat. § 113A-120(a)(2) regarding impact to estuarine waters because the Bridge Project is anticipated to cause significant adverse impacts to SAV, encourage additional development in the Currituck Sound and “generally harm estuarine waters in a way that should have led to denial of the Permit”. Relatedly, Petitioners allege that the Permit violates 15A NCAC 07H.0206(c) and 15A NCAC 07H.0208 because it does not prioritize conservation of estuarine waters to protect their social, aesthetic, biological, and economic values and allowing the Bridge Project to move forward in light of the alternative ER2. Specifically, Petitioners note the importance of SAV to North Carolina’s economy both in commercial and recreational fishing.

DCM agrees that there are impacts to SAV from the permitted development and that Petitioners have alleged facts or made legal arguments such that a contested case hearing on N.C. Gen. Stat. § 113A-120(a)(2) would not be frivolous. However, DCM argues that prior to issuing the Permit, they received input from the Division

of Marine Fisheries, Wildlife Resources Commission and others and determined that the impacts to SAV would not be considered “significant adverse effects”.

Under N.C. Gen. Stat. § 113A-120(a)(2), a permit can be denied in estuarine waters if under N.C. Gen. Stat. § 113A-229, a dredge and fill permit would be denied if there are significant adverse effects to any of the following: to the use of water by the public, to the enjoyment by riparian owners, to public health, safety and welfare, to the conservation of public and private water supplies, or to wildlife or fresh water, estuarine or marine fisheries. The Site is in part in the Estuarine Waters AEC and includes SAV. Petitioners have alleged facts or made legal arguments that a contested case the Permit is contrary to N.C. Gen. Stat. § 113A-120(a)(2) and therefore would not be frivolous. Likewise, to the extent 15A NCAC 07H.0206(c) and 15A NCAC 07H.0208 address SAV, a contested cases on whether these two rules were appropriately applied in issuing the Permit would not be frivolous.

d. Petitioners failed to demonstrate that their request for a contested case on whether the proposed development is inconsistent with N.C. Gen. Stat. § 113A-120(a)(3) is not frivolous.

Petitioners argue that the Permit is contrary to N.C. Gen. Stat. § 113A-120(a)(3) because the Bridge Project will harm SAV and water quality in the Currituck Sound thus harming habitat in the Sound. Petitioners contend that the Currituck Sound is vital to North Carolina’s recreational and commercial fishing industry as well as the seafood industry. Petitioners further argue that the Currituck Sound has already been identified as significantly degraded and in need of restoration and that the degradation of the waters have led to declines in SAV habitat.

DCM argues that Petitioners have failed to show facts or make legal arguments that N.C. Gen. Stat. § 113A-120(a)(3) applies because the Site is not in any of the subdivisions listed in the statute and therefore a contested case on the issue would be frivolous.

Under N.C. Gen. Stat. § 113A-120(a)(3), a permit should be denied if the site is in a renewable resources area and the project will result in the loss or significant reduction of long-term productivity and endanger one or more of the water, food or fiber requirements identified in subdivisions a through c of N.C. Gen. Stat. § 113A-113(b)(3). The Commission can designate a Renewable Resource AEC under N.C. Gen. Stat. § 113A-113(b)(3) if “uncontrolled or incompatible development” in one of the following three areas: a) watershed or aquifers that are a present source of public water supply; b) capacity use areas and areas where a generalized condition of water depletion or water or air pollution has been determined to exist; c) prime forestry land.

The Site is not in a Renewable Resource AEC, nor does the Site include a watershed or aquifer that is a present source of public water supply as identified by DEQ or the Environmental Management Commission (EMC), a capacity use area declared by the EMC, or area of water depletion or pollution as determined by the EMC, or prime forestry land as identified by DEQ and, therefore, N.C. Gen. Stat. § 113A-113(b)(3) does not apply. As N.C. Gen. Stat. § 113A-120(a)(3) relies on classification under N.C. Gen. Stat. § 113A-113(b)(3), a contested case on N.C. Gen. Stat. § 113A-120(a)(3) would be frivolous. Petitioners have failed to provide facts or

make legal arguments that the Permit is inconsistent with N.C. Gen. Stat. § 113A-120(a)(3).

- e. Petitioners failed to demonstrate that their request for a contested case hearing on whether the proposed development is inconsistent with N.C. Gen. Stat. §113A-120(a)(4) is not frivolous.**

Petitioners argue that the Permit is contrary to N.C. Gen. Stat. § 113A-120(a)(4) because the Bridge Project is expected to cause significant harm to preserve, wildlife refuge, and habitat areas for endangered, threatened and rare species. Petitioners admit that the area of the Site does not include the Fragile or Historic AEC but argues that DCM should have acted to work with other state and federal agencies to preserve the ecological resources and endangered and threatened species. Petitioners maintain the Bridge Project is in the vicinity of the Currituck National Wildlife Refuge, the Currituck Banks National Estuarine Research Reserve, the Donal C. O'Brien Sanctuary and the Audubon Center at Pine Island. Petitioners argue the Bridge Project will encourage residential development including in roadless areas where residents will then drive on beaches, some of which are the habitat for federally protected sea turtle nests. Petitioners contend other wildlife reserves will be impacted by impaired water quality of the Currituck Sound and increase demand to access protected areas. Finally, Petitioners allege that the Bridge Project “will cause irreparable harm to the scenic values” by constructing a bridge through an otherwise unobstructed waterway and through the possible placement of billboard advertising.

DCM argues that N.C. Gen. Stat. § 113A-120(a)(4) does not apply because no part of the Site has been designated as part of the Fragile or Historic AEC by the Commission. DCM maintains that Petitioners' request for a contested case on this issue is frivolous.

North Carolina General Statute § 113A-120(a)(4) requires a permit be denied if it results in major or irreparable harm to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified under the Fragile or Historic AEC under N.C. Gen. Stat. § 113A-113(b)(4). The provision only applies to areas designated as a Fragile or Historic AEC. The Site does not include any areas included in the Fragile or Historic AEC. DCM cannot require the Permittee to meet standards not applicable to the Site nor can the Commission review the Permit to ensure its consistency with AEC's the Site does not include. It would be frivolous to hold a contested case under N.C. Gen. Stat. § 113A-120(a)(4) because no part of the Site is designated in the Fragile or Historic AEC and determining if the Permit is consistent with N.C. Gen. Stat. § 113A-120(a)(4) would be frivolous because those standards do not apply to the Site. Petitioners have failed to make legal arguments or allege facts that a contested hearing under N.C. Gen. Stat. § 113A-120(a)(4) would not be frivolous.

f. Petitioners failed to demonstrate that their request for a contested case hearing on whether the proposed development is inconsistent with N.C. Gen. Stat. § 113A-120(a)(5) is not frivolous.

Petitioners question whether the Permit is consistent with N.C. Gen. Stat. § 113A-120(a)(5) because the Bridge Project will adversely impact public trust rights.

Specifically, Petitioners allege that the Permit violates 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208 (referenced above in subpart b) by violating use standards that in turn may increase shoreline erosion, cause degradation to shellfish waters, and potentially jeopardizes the public's ability to use the Currituck Sound for navigation, fishing, and other public trust rights. Petitioners allege that within the project area, the public trust area includes the Currituck Sound, Atlantic Ocean and public beaches. Petitioners maintain that the Bridge Project will degrade water quality in the Currituck Sound, induce more development around the Sound that will be vulnerable to sea level rise and erosion, and create barriers to navigation for commercial and recreational fishing.

DCM argues that the Permit includes conditions protecting the public trust rights to the Currituck Sound. Specifically, the bridge was permitted to be 16 feet above normal water level for most of the span and would be 22 feet above normal water level in the navigation area. This condition prevents any interference from the bridge to boat navigation in the Sound. The generally shallow depth of the Sound prevents the use of many sizes and drafts of vessels in the Sound regardless of the bridge. DCM contends that previous comments provided by DCM regarding the public trust rights involved in the project were made prior to specific site plans submitted by the Permittee. Finally, DCM argues that many of the Petitioner's arguments surrounding public trust rights are speculative about secondary or indirect impacts.

The statute cited by Petitioners, N.C. Gen. Stat. § 113A-120(a)(5), states a permit may be denied when in the location of a designated Public Trust AEC and the

project “jeopardizes the public rights or interests”. In the instant case, the Site includes the Public Trust AEC and therefore the Permit must be evaluated to ensure it does not jeopardize public rights or interests. To the extent Petitioners claim the bridge will ‘impede navigation,’ Petitioners offer no legal or factual basis to support this assertion, given that the bridge is required to be constructed 16 and 22 feet above the normal water level to accommodate navigation. Petitioners’ argument regarding potential residential growth and the impact of erosion and sea level rise on this potential residential growth is based on conjecture not on fact. Petitioners have provided no facts nor made any legal arguments to demonstrate that the Permit is contrary to the public trust rights under N.C. Gen. Stat. § 113A-120(a)(5). As the Site does not include the Coastal Wetlands AEC, Petitioners’ argument that 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208 apply and impact public trust rights is misplaced and as stated in subpart b above, it would be frivolous to have a contested hearing on 15A NCAC 07H .0205(d) and 15A NCAC 07H .0208. As Petitioners have provided no legal arguments nor factual basis that the Permit is inconsistent with N.C. Gen. Stat. § 113A-120(a)(5), a contested hearing based on the statute would be frivolous.

g. Petitioners failed to demonstrate that their request for a contested case hearing on whether the proposed development is inconsistent with N.C. Gen. Stat. § 113A-120(a)(6) is not frivolous.

Petitioners argue that the permit decision is inconsistent with N.C. Gen. Stat. § 113A-120(a)(6) because a permit should be denied if the project is in a natural hazard area and developed in such a way as to “unreasonably endanger life or

property.” Petitioners cite to DCM comments that adequate attention was not given to situating the project close to natural hazard areas. Petitioners argue the Bridge Project does not sufficiently address concerns about sea level rise for the lifespan of the bridge nor did the Permittee appropriately answer concerns regarding induced residential growth in the area surrounding the Bridge Project. Petitioners maintain that the Permit encourages residential growth in the flood and storm-prone Ocean Hazard AEC and increase adverse impacts with Ocean Hazard AEC, public trust beaches and other natural hazard AEC

DCM states that no part of the Site is located within an Ocean Hazard AEC, including a Natural Hazard AEC. The proposed Site is only situated within AECs designated as the Estuarine Waters, Public Trust Areas, and Coastal Shorelines. DCM contents that its comments referenced by Petitioners related to this issue did not pertain to the specific Site and, instead, only related to a study of the larger area as a whole.

Petitioners have failed to allege any facts or make any legal arguments that the Permit was issued contrary to N.C. Gen. Stat. § 113A-120(a)(6), as the Site is not located in a Natural Hazards AEC or an Ocean Hazard AEC. Furthermore, Petitioners have failed to allege any facts or made any legal argument asserting that the Bridge Project unreasonably endangers life or property. Petitioners have, therefore, failed to demonstrate that their request for a contested case hearing

- h. Petitioners failed to demonstrate that their request for a contested case hearing on whether the proposed development is inconsistent with N.C. Gen. Stat. § 113A-120(a)(10) is not frivolous.**

Petitioners argue that the permit decision is inconsistent with N.C. Gen. Stat. § 113A-120(a)(10) the cumulative impacts of the Bridge Project will be inconsistent with the sections 1 through 9 of the statute. Specifically, the Petitioner contends that the Bridge Project will encourage residential development, increase traffic, and create more cumulative impacts than ER2. Petitioners cite to a NCDOT report that acknowledges that cumulative effects include secondary and indirect impacts and where NCDOT notes that the Project will encourage growth and development in an already overburdened location. Petitioners argue that existing CAMA rules cannot be considered a backstop against cumulative impacts and each application must be evaluated for cumulative impacts. Petitioners maintain there will be cumulative impacts to surface water, wetlands, and groundwater.

DCM argues that while NCDOT takes an expansive view that cumulative impacts include secondary and indirect impacts, the definition of cumulative impacts under CAMA does not. Specifically, DCM maintains that the cumulative impacts under CAMA have to be projects similar to the permitted project, i.e. CAMA permits being requested for the construction of more bridges in the area and not just the potential increase of development activity in the area surrounding the Site. DCM further contends that many of the secondary and indirect impacts cited by Petitioners are speculative in nature.

Under N.C. Gen. Stat. § 113A-120(a)(10), cumulative effects are defined as “impacts attributable to the collective effects of a number of projects and include the

effects of additional projects similar to the requested permit in areas available for development in the vicinity.” N.C. Gen. Stat. § 113A-120(a)(10).

Petitioners have not alleged that the construction of the Bridge Project will lead the construction of more bridges, nor have they asserted that there are other bridges or development projects in the area that have been proposed or permitted for construction. Petitioners only speculate that possible growth and general development activity may occur in the future but fail to provide any facts or legal arguments demonstrating that such potential, future development is similar in nature to that of the Bridge Project or that a number of projects have been proposed or permitted for development in the vicinity. Petitioners, therefore, have failed to allege facts or make legal arguments demonstrating that their request for a contested case hearing on whether the Bridge Project is inconsistent with N.C. Gen. Stat. § 113A-120(a)(10) is not frivolous.

i. Petitioners failed to demonstrate that their request for a contested case hearing on whether the proposed development is inconsistent with N.C. Gen. Stat. § 150B-23(a) is not frivolous.

Petitioners argue that the Commission should apply N.C. Gen. Stat. § 150B-23(a) because DCM improperly issued the Permit when a more suitable alternative, ER2, exists and in doing so DCM exceeded its authority, acted erroneously, acted capriciously or arbitrarily and failed to act as required by law. Petitioners contend DCM failed to respond to Petitioners’ arguments that ER2 is a less environmentally damaging practicable alternative during the public comment period. Petitioners

maintain that DCM provided no analysis of ER2 nor a justification for why the proposed Bridge Project was superior to ER2.

DCM argues that they are under no obligation to respond to Petitioners arguments during the public comment period; DCM is required to provide public notice and receive comment but there is no statutory obligation to respond to comments received. DCM notes that Petitioners failed to cite a statute or rule requiring DCM to act otherwise and therefore having a contested case on this issue would be frivolous.

Petitioners' reliance on N.C. Gen. Stat. § 150B-23(a) as a basis to move forward for a contested case before OAH is misplaced. As noted in this Decision, above, N.C. Gen. Stat. § 150B-23(a) falls outside of the Commission's authority and jurisdiction and contains no independent criteria related to the consideration of a permit application under CAMA or the Dredge and Fill Law. Instead, subsection 150B-23(a) expressly pertains to the initiation of a contested case hearing in the OAH, which can only be done if the Commission determines that such a hearing is appropriate. N.C. Gen. Stat. § 113A-121.1(b).

By its plain language, subsection 150B-23(a) has no application to the consideration of a permit, which takes place before a final decision is made, nor does it contain any independently applicable procedural requirements related to the consideration of a permit application, including those applications governed by CAMA and the Dredge and Fill Law. Because N.C. Gen. Stat. § 150B-23(a) applies to – and the applicable requirements for – the initiation of a contested case proceeding,

but does not provide any independently applicable requirements related to the submission or consideration of a permit under CAMA or the Dredge and Fill Law, Petitioners have failed to demonstrate that their request for a contested case hearing as to whether the Permit was issued inconsistent with the provisions applicable to the initiation of a contested case proceeding in the OAH (as provided in N.C. Gen. Stat. § 150B-23(a)) is not frivolous.

* * * * *

For the reasons sets forth above, the Commission affirmatively finds and concludes that Petitioners have alleged facts and made legal arguments sufficient to demonstrate that an appeal of the permitting decision is inconsistent with N.C. Gen. Stat. §§ 113A-120(a)(9) and (a)(2) would not be frivolous, and therefore, the Petitioners have met their burden with respect to those two issues. As to the remaining grounds and bases offered by the Petitioners, the Commission affirmatively finds and concludes that they have failed to demonstrate that their request for a contested case hearing is not frivolous.

V. DECISION

For the reasons stated herein, Petitioners' request for a hearing in the Office of Administrative Hearings is **GRANTED**, in part, and **DENIED**, in part.

This the 7th day of November 2025.



M. Renee Cahoon, Chair
N.C. Coastal Resources Commission

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the Agency Decision on Petitioner and other interested persons by the means specified below:

Method of Service:

Julia F. Youngman
Southern Environmental Law Center
Counsel for Petitioners

Electronically:
jyoungman@selenc.org

Colin Justice
Special Deputy Attorney General
NC Department of Justice
Counsel for Permittee NCDOT

cjustice@ncdoj.gov

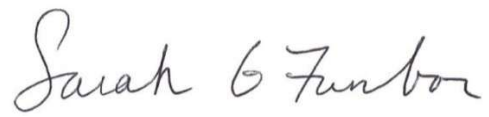
Christine A. Goebel, Esq.
Assistant General Counsel
NC Dep't of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Electronically:
Christine.goebel@deq.nc.gov

Tancred Miller, DCM Director
Jonathan Howell, DCM Deputy Director
Angela Willis, DMC Director's Assistant
Gregg Bodnar
Ronald Renaldi
Cathy Brittingham
Stephen Lane
Lee Canady
Division of Coastal Management
400 Commerce Ave. Field Rep
Morehead City, NC 28557

Electronically:
Tancred.Miller@deq.nc.gov
Jonathan.howell@deq.nc.gov
Angela.willis@deq.nc.gov
gregg.bodnar@deq.nc.gov
ronald.renaldi@deq.nc.gov
cathy.brittingham@deq.nc.gov
stephen.lane@deq.nc.gov
lee.cannady@deq.nc.gov

This the 7th day of November 2025

A handwritten signature in cursive script that reads "Sarah G Zambon".

Sarah Zambon
Assistant Attorney General
Counsel for the Coastal Resources
Commission