

STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

COUNTY OF (1) Wake County

(2) Defenders of Wildlife and National Wildlife Refuge Association,)

(your name) PETITIONERS,)

v.)

(3) North Carolina Department of Environment and Natural Resources, Division of Coastal Management,)

RESPONDENT.)

(The State agency or board about which you are complaining))

PETITION FOR A CONTESTED CASE HEARING

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

issued Coastal Area Management Act Major Permit No. 106-12 (the "Permit") to the N.C. Department of Transportation for Phase I (a new bridge over Oregon Inlet) of its STIP Project No. B-2500, which authorizes development in various areas of environmental concern ("AECs") protected by CAMA, including coastal wetlands, estuarine waters, coastal shorelines, public trust waters, ocean hazard AECs, a national park, a national wildlife refuge, lands that sustain remnant species, and designated historic places, that violates state statutes and regulations. The Permit and the project it authorizes violate state laws protecting coastal resources and AECs, including without limitation the following statutes: N.C. Gen. Stat. §§ 113-229, 113A-118, 113A-120(a)(2), 113A-120(a)(4), 113A-120(a)(5), 113A-120(a)(6), 113A-120(a)(8), 113A-120(a)(9), 113A-120(a)(10), and the following regulations and guidelines: 15A N.C. Admin. Code 07H .0205, .0206, .0207, .0208, .0209, .0306, .0308, .0309, among others. See attached page for more detail.

(4) Amount in controversy \$ N/A (if applicable)

(If more space is needed, attach additional pages.)

(5) Because of these facts, the State agency or board has: (check at least one from each column)

- deprived me of property;
- ordered me to pay a fine or civil penalty; or
- otherwise substantially prejudiced my rights;

AND

- exceeded its authority or jurisdiction;
- acted erroneously;
- failed to use proper procedure;
- acted arbitrarily or capriciously; or
- failed to act as required by law or rule.

(6) Date: August 1, 2013

(7) Your phone number: (919) 967-1450

(8) Print your full address: Southern Environmental Law Center, 601 West Rosemary Street, Suite 220, Chapel Hill, NC 27516

(street address/p.o. box)

(city) (state) (zip)

(9) Print your name: Julia Furr Youngman

(10) Your signature: Julia F. Youngman

You must mail or deliver a COPY of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

(11) Lacy Presnell (name of person served) (12) General Counsel for NCDENR (State agency or board listed on line 3)
(13) 1601 Mail Service Center, Raleigh, NC 27699-1601
(street address/p.o. box) (city) (state) (zip code)

(11) Braxton Davis (name of person served) (12) Director of NCDENR-DCM (State agency or board listed on line 3)
(13) DCM, 400 Commerce Avenue, Morehead City, NC 28557
(street address/p.o. box) (city) (state) (zip code)

cc: Christine Goebel Counsel for NCDENR-DCM
(name of person served)
NC DOJ, Environmental Division, P.O. Box 629, Raleigh, NC 27602
(street address/p.o. box) (city) (state) (zip code)

cc: Thomas Henry Counsel for NCDOT (Permit applicant)
(name of person served)
NC DOJ, Transportation Section, 1505 Mail Service Center, Raleigh, NC 27699-1505
(street address/p.o. box) (city) (state) (zip code)

(14) This the _____ day of August, 2013.

(15) Julia F. Youngman
(your signature)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This box for OAH use only.

<p>Amount Paid \$ _____</p> <p>Cash – receipt number _____</p> <p>Money Order Certified Check Attorney Trust Account</p> <p>Check number _____</p>	<p>Indigent (must complete form HOI)</p> <p>Mandated federal cause of action</p> <p>Received by: _____</p>
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INSTRUCTIONS FOR FORM H-06

On September 19, 2012, the Division of Coastal Management (“DCM”) issued Coastal Area Management Act (“CAMA”) Major Permit No. 106-12 (the “Permit”) to the N.C. Department of Transportation for Phase I (a bridge over Oregon Inlet) of its STIP Project No. B-2500, authorizing development in various areas of environmental concern (“AECs”) protected by CAMA, including coastal wetlands, estuarine waters, coastal shorelines, public trust waters, ocean hazard AECs, a national park, a national wildlife refuge, lands that sustain remnant species, and historic places. The Permit and the project it authorizes would violate state laws protecting coastal resources and AECs, including without limitation the following statutes: N.C. Gen. Stat. §§ 113-229, 113A-118, 113A-120(a)(2), 113A-120(a)(4), 113A-120(a)(5), 113A-120(a)(6), 113A-120(a)(8), 113A-120(a)(9), 113A-120(a)(10), and the following regulations and guidelines: 15A N.C. Admin. Code 07H .0205, .0206, .0207, .0208, .0209, .0306, .0308, .0309, among others, because they will cause major or irreparable harm to the AECs listed above without satisfying any exception described in the regulations, even though there is a practicable alternative that will accomplish the project purpose with less adverse impact on public resources. The Permit will fail to preserve coastal wetland, estuarine water, public trust water, and coastal shoreline AECs in the project area for their highest-priority uses, and will instead allow unacceptable land uses that could function elsewhere, could have been constructed elsewhere, and will unnecessarily jeopardize recreation, navigation, and AECs. For instance, they will allow a new Phase I bridge in a new alignment with new approach routes, new sections of highway, additional new bridges, etc. in AECs, including coastal wetland, estuarine water, public trust water, and coastal shoreline AECs, despite the fact that other bridge alignment alternatives would harm fewer acres of these AECs and cause less disruption to navigation and recreation. The Permit will allow development within mandatory setbacks for ocean hazard AECs in the project area (including ocean erodible areas, high hazard flood areas, inlet hazard areas, and unvegetated beach areas), but without ensuring that erosion measures will comply with 15A N.C. Admin. Code 07H .0308, and without satisfying the criteria for other exceptions described in 15A N.C. Admin. Code 07H .0309, .0310, and .0311. The Permit and bridge also violate DCM’s obligation to protect coastal resources under CAMA by failing to consider the project as a whole, without segmenting it into small component parts and ignoring the detrimental effects of other “phases” of the project and the foreseeable cumulative effects of the project and thereby avoiding reviewing the totality of its environmental effects on AECs.

Petitioners Defenders of Wildlife and National Wildlife Refuge Association are both non-profit, public-interest organizations whose missions are to conserve, preserve, and protect rare, endangered, and threatened species, the habitat on which they depend, and national wildlife refuges specifically. They

have members who live, work, study, and recreate in and around the project area, and will be aggrieved and harmed by the decision to issue the Permit for the proposed bridge in violation of the laws and regulations listed above and by the bridge's direct, indirect, and cumulative effects on coastal resources, wildlife, and Pea Island National Wildlife Refuge.

This Petition is timely filed pursuant to the order of the Wake County Superior Court dated July 29, 2013, in which the Court concluded that the Coastal Resources Commission ("CRC") erred in determining that a contested case would not be appropriate and in which the Court found that the CRC erred as a matter of law when it determined that Defenders of Wildlife and National Wildlife Refuge Association failed to allege facts or make legal arguments demonstrating that their third-party hearing request was not frivolous. By that order, the Court remanded the matter for a contested case hearing under N.C. Gen. Stat. § 150B-23 and a final decision on the Permit pursuant to N.C. Gen. Stat. § 113A-122.