



TO: The Coastal Resources Commission

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: August 15, 2024 (for the August 27-28, 2024 CRC Meeting)

RE: Report of the Third-Party Subcommittee

At the Commission's February 2024 meeting, the Chair formed the Third-Party Subcommittee and appointed its members, Commissioner Bob Emory, Commissioner Larry Baldwin, Commissioner Early Smith and Commissioner Sheila Holman. Assisting the Subcommittee were attorneys Christine Goebel and Mary Lucasse. Staffing the Subcommittee were DCM Staff Tancred Miller, Mike Lopazanski, Johathan Howell, Gregg Bodnar, Daniel Govoni and Angela Willis. Ms. Goebel and Ms. Lucasse delivered a background memorandum to the Subcommittee on March 22, 2024. The Subcommittee first met on April 4, 2024. On May 8, 2024, Ms. Lucasse provided revised third-party tallies at Commissioner Baldwin's request, as well as four examples of past CRC Final Agency Decisions. On May 30, 2024, Commissioner Baldwin provided a memorandum to the Subcommittee for their consideration. The Subcommittee met the second time on June 12, 2024.

The Subcommittee makes the following recommendations to the Commission:

1. Ask the Commission to approve the Third Party Hearing Request Form as edited
2. Through DEQ procedures, seek an update to the Dredge and Fill Law ending the former automatic stay of a permit during a third-party challenge which was not changed like CAMA was in 2014.

Commissioner Emory will present the Subcommittee's report at its August meeting and members of the Subcommittee, DCM Staff and Counsel will be happy to answer questions.

The following additional information is attached to this memorandum:

- March 22, 2024 Background Memorandum (redacted for privilege)
- Minutes from the April 4, 2024 Meeting
- May 8, 2024 revised third-party tallies from Ms. Lucasse
- May 30, 2024 Baldwin Memorandum
- Minutes from the June 12, 2024 Meeting
- Third-Party Hearing Request form as edited by the Subcommittee





MEMORANDUM

TO: Renee Cahoon, CRC Chair, via email
Bob Emory, Commissioner, via email
Larry Baldwin, Commissioner, via email
Earl Smith, Commissioner, via email
Sheila Holman, Commissioner, via email

CC: Tancred Miller, DCM Director & CRC Ex. Sec, via email
Mike Lopazanski, DCM Deputy Director, via email
Jonathan Howell, DCM Regulatory Section Chief, via email
Gregg Bodnar, DCM Major Permits Manager, via email
Daniel Govoni, DCM Policy Analyst & Fed. Con. Coord., via email
Angela Wills, DCM Director's Assistant, via email

FROM: Christine A. Goebel, DEQ Assistant General Counsel
Mary Lucasse, Special Deputy AG and CRC Counsel

DATE: March 22, 2024

RE: Background Memo about the CAMA Third-Party Hearing Request Process

In anticipation of the Coastal Resources Commission's ("CRC") Third-Party Subcommittee's ("Sub-Committee") first meeting to be held virtually on April 4, 2024 at 11am (or possibly at 2pm-more to follow), we are providing background information about the Coastal Area Management Act's and Dredge and Fill Law ("CAMA/D&F") Third-Party Hearing Request "gatekeeping" process. Hopefully an understanding of the history of the statute, rules, forms, related legal cases and procedures, as well as information about our experiences with this process since 2004 and 2011 respectively, will be helpful to the Sub-Committee. We look forward to discussing these issues with the members of the sub-committee when we meet.

1. Legal Authorities for Third-Party Hearing Requests

A. CAMA Statute and Dredge & Fill Law

The Third-Party Hearing Request provision is found within G.S. § 113A-121.1 Administrative review of Permit Decisions. Section (a) describes appeals for the permit applicant (challenging a



denial or challenging a condition placed on their permit) and appeals by the Secretary (challenging the decision by an LPO issuing a CAMA Minor Permit¹). Section (b) provides:

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. 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. A determination of the appropriateness of a contested case shall be made within 30 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. § 150B-23 and final decision on the permit pursuant to G.S. § 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

G.S. § 113A-121.1 (emphasis added). Section (c) applies to direct appeals by an applicant, and so is not relevant here. Section (d) provides:

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. § 150B-33 or by a reviewing court as set forth in G.S. § 150B-48.

This provision has been amended a handful of times since its original enactment in 1974. These changes include:

- S.L. 2021-158 (s. 3(a)) which changed the time for the Commission to make a decision from 15 days to 30 days.
- S.L. 2014-120 (s.23) which removed an automatic stay of a permit when a third-party petition was filed and added the new language in section (d) indicating the permit stays in effect unless a stay is ordered by an ALJ or by a reviewing court.

¹ This provision has been used no more than 5 times in the past 20 years of practice when an LPO has improperly issued a CAMA permit contrary to the CAMA or the CRC's rules.

- S.L. 2011-398 (s.37) which removed the word Commission from “final decision” to align with changes made to the APA where the Commission no longer reviewed decisions of an ALJ.
- 1995 c.409 which changed the third factor from “has a substantial likelihood of prevailing in a contested case” to the “frivolous” standard.
- 1987 c. 827 was made in connection with APA changes.
- 1983 c.400 ss.1,2 amended the law to add in a stay of the permit when an applicant appeals their own permit decision.
- 1981 c. 9913, s.3 (Unable to find history on this change)

G.S. § 113A-124(c) lays out “Additional powers and duties” for the Commission, including (c)(6) which authorized the Commission “(6) To delegate the power to determine whether a contested case is appropriate in accordance with G.S. § 113A-121.1(b).”

The Dredge and Fill Law at G.S. § 113-229 and 230 is also administered by the Division of Coastal Management² and regulates the dredging and filling in state-owned lakes and estuarine waters. G.S. § 113-229(c2) provides in relevant part “The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.” This law further provides:

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

This provision was not similarly updated when the 2014 amendments were made to G.S. § 113A-121.1 and so the automatic stay remains in place when the Division issues a Dredge and Fill Permit but not CAMA permits including minor permits. Also, the reference to G.S. § 113A-121.1(c) should now read (d) to align with the changes made in the 2014 amendments.

Under CAMA, the third-party review process states that the “Commission” will determine if a contested case is appropriate. There is no mention in G.S. § 113A-121.1(b) that the Commission’s decision can be delegated to the Chair. However, in G.S. § 113A-123(c)(6), the legislature provides that the CRC has the additional power to “delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).” The CRC adopted a rule specifically delegating to the Chair its authority to determine whether persons other than those entitled to a hearing shall be granted a hearing. 15A N.C. Admin. Code 07J .0301. This rule was first adopted in 1978, and it is our understanding that the Chair has always handled third-party

² From its passage in 1969 until the CAMA was passed, the Dredge & Fill law was administered by the Division of Marine Fisheries.



hearing requests. Given the short turnaround required for a decision on a request and the relatively lengthy time between CRC meetings, this provision was necessary to allow the CRC, through its Chair, to timely issue decisions.

Our understanding is that no other commissions had a comparable third-party review process, until 2019 when the General Assembly amended the state's shellfish leasing statutes at G.S. § 113-201.1 to incorporate a similar third-party hearing request provision for shellfish lease decision appeals by third parties. That process was different where it provided for review by a three-member subcommittee instead of the Chair, and therefore requires an open meeting to hear the matter. This process has been used once and the request was denied based on a 2-to-1 vote of the subcommittee. A petition for judicial review of that decision has been filed in superior court and that appeal is ongoing. In that appeal, there have been requests for documents and a transcript of the subcommittee hearing. Under CAMA, any discussions between counsel and the CRC Chair are protected by attorney-client privilege. In addition, the CAMA process does not result in a transcript or a split vote on the decision of whether to grant a request. We think the CRC's process is preferable.

B. Commission Rules

The Commission also has adopted rules which reference the appeal process, found at 15A NCAC 7J.0301, a rule which describes "Who is Entitled to a Contested Case Hearing." It simply talks about third parties having to get permission through the G.S. § 113A-121.1(b) process before filing a petition for a contested case in OAH.

C. Case Law

There are multiple decisions from the NC Appellate Courts relating to the third-party hearing process. The following is not intended to be an exhaustive list but includes some relevant decisions listed in date order.

Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994). Landowner brought action seeking declaratory judgment in superior court claiming that property owner adjacent to plaintiff's property had no right to construct pier across submerged lands belonging to plaintiff and that DCM had no right to issue a permit authorizing such construction. The Superior Court denied plaintiff's motion for preliminary injunction and granted defendants' motion to dismiss complaint for failure to exhaust administrative remedies holding that Plaintiffs may not collaterally attack the permit decision in superior court. Plaintiff appealed. The Court of Appeals held that plaintiff's failure to exhaust administrative remedy by filing petition with the CRC seeking contested case hearing as to appropriateness of permit precluded judicial review.

Flowers v. Blackbeard Sailing Club, Ltd. 115 N.C App 349 (1994). The location of riparian boundary was required for a permit and settled by the DCM as part of the permitting process. The Plaintiffs had received notice of the permit application and issuance of the permit. Plaintiffs did not request a third party hearing to challenge the location of the riparian boundary or permit decision. Instead, plaintiffs



collaterally attack the DCM's decision and requested the superior court realign the riparian boundary. The Appellate Court agreed with the superior court that it lacked jurisdiction to define a new riparian boundary line when plaintiffs did not exhaust their administrative remedies by submitting a third party hearing request as allowed by CAMA. Because plaintiffs failed to pursue administrative remedies, the superior court dismissed the complaint for lack of subject matter jurisdiction.

Pamlico Tar River Found., Inc. v. Coastal Res. Comm'n of State, 103 N.C. App. 24, 25–26, 404 S.E.2d 167, 169 (1991) (Decided under prior “substantial likelihood of prevailing standard.”) CRC Chair denied a request for a contested case hearing based in part on assessment that petitioner had failed to make any showing that the permit was in violation of any applicable statutes or agency rules. The court also held that Petitioner failed to provide “relevant evidence.” Under the “frivolous standard” this would require petitioner to allege facts to demonstrate that one of the CRC’s standards relevant to the permitted development has been violated, or that some other substantive requirement has been violated. This case provides support for the position that the rules or statutory provisions must be those within the CRC’s jurisdiction and not local ordinances, HOA covenants, or federal law.

Barris v. Town of Long Beach, 208 N.C. App. 718, 721, 704 S.E.2d 285, 288 (2010) In 2005, the Town filed a CAMA permit application to build certain structures within appellees' easement. The application included the Town's proposed site plan of development (“first site plan”) to be constructed within areas of appellees' easement. DCM denied the Town's application for a CAMA permit for its first site plan. The property owners filed a taking claim based on property claims in superior court which proceeded to a final judgment. In 2008, the Town again applied for a CAMA permit to construct a proposed site plan of development (“second site plan”). Plaintiffs immediately filed objections in superior court contending that the plan was a replica of the Town's first site plan, and in violation of the superior court’s orders. Plaintiffs also filed a motion to enforce prior orders of the court. The superior court granted appellees' motion and rejected the Town's second site plan and enjoined the Town from pursuing a CAMA permit to develop the second site plan. The Town appealed. The appellate court held that trial court erred in applying *res judicata*, collateral estoppel, judicial estoppel, and law of the case doctrine, because it does not possess the expertise in determining whether or not the issues presented by the Town's second site plan were identical to those the trial court previously had examined. The appellate court held that the administrative process established by statute specifically demonstrates a preference for administrative agencies that possess specific knowledge in their fields of expertise to initially address issues. In this case, plaintiffs did not follow the proper protocol in challenging the Town's second CAMA permit application and as a result, failed to exhaust their administrative remedies. For our perspective focusing on third-party hearing requests, the takeaway from *Barris* is that a petitioner must exhaust the third-party appeal process or show it would be futile to do so. A third-party cannot go straight to superior court to challenge a CAMA permit. But see the next case which distinguishes *Barris*.



Seidner v. Town of Oak Island, 217 N.C. App. 196, 719, S.E.2d 256 (2011) (unpublished). CRC denied Plaintiffs' request for a third party contested case hearing because approval of the Town's CAMA permit application was not a determination "of property rights." The CRC further stated that it lacked jurisdiction to render such decisions and cited the superior court as "the proper forum" for a determination of property claims. The Town acknowledged that the superior court "is the appropriate forum to determine whether the granting of this permit constitutes a taking." The appellate court held that Plaintiffs' complaint sought declaratory and injunctive relief and the CRC "has no authority with respect to these matters. Therefore, this Court holds that the superior court was the proper venue for adjudication of Plaintiffs' property rights." It also held that plaintiffs were not required to exhaust their administrative appeals of the CRC's denial of the third-party hearing request since there was no administrative remedy and exhausting the administrative process would have been futile. The big difference between *Barris* and *Seidner* is that although both involve property claims, in the latter case, the CAMA permit had been issued and Petitioner had gone through the process of submitting a third-party hearing request and being denied. Here, I think that a petitioner could have shown that the administrative remedy was futile.

Batson v. Coastal Resources Commission, 282 N.C. App. 1, 871 S.E.2d 120 (2022). After rejecting Commissioner's denial of a third party hearing request and remanding matter to OAH for contested case hearing, superior court granted landowners' request for attorneys' fees and costs against the Commission. On appeal, court held that PJR was a civil action for purposes of N.C. Gen. Stat. § 6-19.1 that permits an award of attorneys' fees to prevailing party and that the petitioners were prevailing parties in the PJR. The court also stated that any determination that the CRC's position lacked substantial justification required a finding that the CRC knowingly applied wrong legal standard to landowners' request for authorization to pursue contested case proceeding. Because there was no finding and the Commission's stated reasons—although wrong—on their face are ones that a reasonable person could find satisfactory or justifiable, the appellate court vacated the award of fees and remanded for further proceedings. After the NC Supreme Court issued a split decision (3 to 3), the Court of Appeals decision remained in place without precedential value. Thereafter the parties settled the case.

Fonvielle v. North Carolina Coastal Resources Commission, 288 N.C. App. 284, 887 S.E.2d 93 (2023). A neighbor appealed the CRC's denial of his petition for a third-party contested case hearing regarding landowner's construction of new oceanfront single-family residence. In this case, the third party hearing request was submitted almost 6 months after the permit was issued. CRC denied the request on the grounds that because the request was untimely, it lacked jurisdiction to consider the request. The superior court upheld the CRC's decision. The court first concluded that the CAMA minor permit application was complete after the landowner posted a placard on the site which satisfied LPO that a good faith effort has been made to provide the required notice to all adjacent riparian landowners. As a result, the permit was properly issued and petitioner had 20 days to submit a request. This deadline is a statutorily imposed condition precedent required before



the CRC may consider a request. The appellate court upheld the superior court's decision and held that if a petitioner fails to timely file the request, the CRC lacks subject matter jurisdiction to consider the request.

D. Commission By-Laws and Internal Operating Procedures

The Commission By-Laws and Internal Operating Procedures do not address the Third-Party process.

E. Commission-approved Form

From time to time, Staff update forms used for third-party hearing requests and variances. In the case of the Third-Party Hearing Request form, it was last updated February of 2011. Before that it was updated in June of 2005. Staff believe there are some improvements which could be made to the form and suggest this Sub-Committee and its recommendations to the Commission is a good vehicle for making changes to the form. A current copy of the form and a copy with proposed edits for discussion are attached as a starting point for discussion.

2. Number of Third-Party Hearing Requests Over Time

Attached is a spreadsheet providing a tally of the requests received under each Chair from 2000 through 2024 (Mid-March). The numbers of grants and denials do not always add up to the number of requests received because a request may have been granted in part. This chart does not reflect the number of permits being challenged each year. There have been occasions when the grant or denial of one permit would result in multiple petitioners requesting a contested case hearing. For example, in 2018 there were 10 petitioners in one subdivision who challenged a permit based on allegations that it did not conform to the HOA covenants. All were denied as the CRC does not have jurisdiction over that dispute. That same year, there were 7 petitioners in the Town of Southern Shores who challenged a permit alleging it was not consistent with the LUP. In that case, the Chair determined that 3 of the petitioners were directly affected by the permit decision and granted the request as to those petitioners but denied the remaining requests.

Finally, it is important to understand that just because a request is denied does not always result in a petition for judicial review being filed. Similarly, just because a request has been granted does not mean that the petitioner will proceed with filing a contested case petition in OAH. Often when the spotlight is shown on a permit decision through the third-party process, there is an opportunity for the petitioner to understand how the permit decision was made. In addition, this becomes an opportunity to redesign the scope of the development or for a permit holder to decide not to proceed with the development. It is also possible that a petitioner may not have the interest, time, or money to proceed with a hearing. If an attorney is involved in the initial request for a hearing, it has been our experience that a petitioner is more likely to submit a petition in OAH if the request is granted or file a petition for judicial review if it is not.



3. Benefits of the process and Areas for Change

A. Benefits of the process

The greatest benefit of having the third-party process is that it provides a thoughtful and thorough process to educate third parties about the CAMA/D&F permitting process and rules. While DCM Staff try to mediate neighbor disputes related to CAMA/D&F permitting before a permit decision is made, Staff are often stretched on time and unable to thoroughly explain the process to those who make objections to a proposed project. The Staff Recommendation is a vehicle to lay out the facts known to DCM, to have multiple DCM staff review petitioner's (usually) rule-based arguments³ and explain how Staff view a rule as applied to a particular situation. While a petitioner may not agree with a permitting decision, the basis for DCM's position is made clear. This process allows for DCM and the Chair to hear and acknowledge the petitioner's concerns, to let them know they are being heard, and to help diffuse a neighbor-dispute situation even if the petitioner disagrees with the result.

We find that in many cases the dispute does not relate to CAMA or the D&F Act. Instead, the dispute may be related to local ordinances, HOA declarations, property ownership, constitutional claims, or other non-CAMA/D&F issues. In such cases, the Staff Recommendation explains how the issue is not within the jurisdiction of DCM, the CRC or OAH and what court or entity may address petitioner's concerns more appropriately.

The gatekeeper role that the CRC plays in the third-party process, while somewhat time consuming on the front end, works well to weed out challenges to permits that are not in fact challenging the permit decision based on the CAMA/D&F and CRC's rules within Staff's jurisdiction. The gatekeeper process also weeds out petitioners who are not directly affected by a permit decision (but merely submitted a request because others in their community had submitted one). It also weeds out those petitioners who fail to articulate alleged facts to demonstrate there were issues of fact relating to CAMA/D&F or the Commission's rules that required a hearing in OAH to resolve. This process relieves OAH of the burden of dealing with cases that are not properly filed in OAH (whether because of lack of jurisdiction or some other issue). In CAMA, the legislature requires that the CRC (the administrative entity most concerned with a particular matter) be given the first chance to review each request and use its knowledge of the program to determine if a petitioner has demonstrated they are entitled to a contested case hearing. *See Ward v. New Hanover County*, 75 N.C. App. 671,674-75, 625 S.E.2d 598, 601, *disc. review denied*, 360 N.C. 582, 636 S.E.2d 200 (2006) ("untimely and premature intervention by the courts would completely destroy the efficiency, effectiveness, and purpose of administrative agencies" performing the initial review to "discover and rectify error.")

For those petitioners granted the right to file a contested case and who subsequently file in OAH, many are settled. The most common route for this is for DCM, the party "in the middle" of the two neighbors, to propose potential "permissible" re-designs that both the petitioner (usually the neighbor) and the permittee (or intervenor-respondent if they join as a party) can agree to. Staff believe that spelling out DCM's position on the issue clearly through the Staff Recommendation

³ While sometimes stated directly and sometimes not, concerns about view are almost always a part of a neighbor's objections to a project.



in the third-party process can help to prepare the parties/neighbors for the possibility of a settlement through re-design.

For those cases which are denied by the Chair, the petitioner has the option to appeal that decision to Superior Court in a Petition for Judicial Review appeal of the Chair's decision to deny the request. Some file an appeal. But many do not.

B. Areas for Discussion for change

Neither CRC Counsel nor DCM Staff believe the statutory language in CAMA providing the administrative process should be changed. However, as mentioned above, there is a need to seek an amendment to the Dredge & Fill law to bring this law in line with the CAMA provisions providing the Chair with 30 days to issue a decision and to delete the automatic stay provision which was removed from the CAMA in 2014.

We also recommend some changes to the form. As noted above, copies of the current 2011 form and a copy with proposed changes are attached for discussion.

Attachments:

- CAMA G.S. § 113A-121.1
- CAMA G.S. § 113A-124
- D&F G.S. § 113-229 and -230
- 15A NCAC 7J.0301
- Variations and Appeals page from DCM website
- Third-Party Form, last updated 2011 and new version for discussion
- Table of past Third-Party Hearing Requests



§ 113A-121.1. Administrative review of permit decisions.

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. 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. A determination of the appropriateness of a contested case shall be made within 30 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission makes a final decision in the contested case, and no action may be taken during that time that would be unlawful in the absence of a permit.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48. (1981, c. 913, s. 3; 1983, c. 400, ss. 1, 2; 1987, c. 827, s. 139; 1995, c. 409, s. 1; 2011-398, s. 37; 2014-120, s. 23; 2021-158, s. 3(a).)

§ 113A-124. Additional powers and duties.

(a) The Secretary shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) Repealed by Session Laws 2021-158, s. 2(b), effective July 1, 2021, and applicable to permit applications received on or after that date.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Environmental Quality may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.

(9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider all of the following:

- (1) The size of the development.
- (2) The impact of the development on areas of environmental concern.
- (3) How often the class of development is carried out.
- (4) The need for on-site oversight of the development.
- (5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(d) An applicant for a permit, other than an emergency permit, shall notify the owner of each tract of riparian property that adjoins that of the applicant. An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, publication in accordance with the rules of the Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after the owner is served with a copy of the application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that the applicant will be entirely liable and hold the State

harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a

petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) Except as provided in subsection (h2) of this section, all construction and maintenance dredgings of beach-quality sand may be placed on the affected downdrift ocean beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift ocean beaches.

(h2) Clean, beach quality material dredged from navigational channels within the active nearshore, beach or inlet shoal systems shall not be removed permanently from the active nearshore, beach or inlet shoal system. This dredged material shall be disposed of on the ocean beach or shallow active nearshore area where it is environmentally acceptable and compatible with other uses of the beach.

(i) Subject to subsections (h1) and (h2) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

(2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing

waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

- (3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c); 2000-172, ss. 3.1, 3.2; 2002-126, ss. 29.2(h)-(j); 2011-398, s. 36; 2013-413, s. 55.)

§ 113-230. Orders to control activities in coastal wetlands.

(a) The Secretary, with the approval of the Coastal Resources Commission, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term "coastal wetlands" shall mean any marsh as defined in G.S. 113-229(n)(3), as amended, and such contiguous land as the Secretary reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(b) The Secretary shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to interested State agencies and each owner or claimed owner of such wetlands by certified or registered mail at least 21 days prior thereto.

(c) Upon adoption of any such order or any order amending, modifying or repealing the same, the Secretary shall cause a copy thereof, together with a plan of the lands affected and a list of the owners or claimed owners of such lands, to be recorded in the register of deeds office in the county where the land is located, and shall mail a copy of such order and plan to each owner or claimed owner of such lands affected thereby.

(d) Any person, firm or corporation that violates any order issued under the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) The superior court shall have jurisdiction in equity to restrain violations of such orders.

(f) Any person having a recorded interest in or registered claim to land affected by any such order may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, and in case he is adjudged the owner of the subject land, whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding.

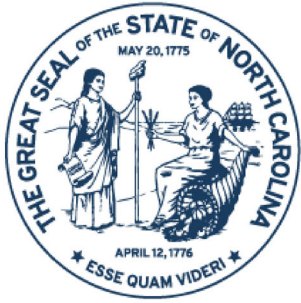
(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Coastal Resources Commission, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(h) This section shall not repeal the powers, duties and responsibilities of the Department under the provisions of G.S. 113-229. (1971, c. 1159, s. 7; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1979, c. 253, s. 4; 1989, c. 727, s. 108; 1993, c. 539, s. 845; 1994, Ex. Sess., c. 24, s. 14(c).)

SECTION .0300 - HEARING PROCEDURE**15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING**

Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision under Paragraph (a) of this Rule may file a request for such a hearing and with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City, NC 28557, and a copy shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The Commission hereby delegates to the Chair the authority to determine whether persons other than those entitled to a hearing shall be granted a hearing.

History Note: Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124;
Eff. March 15, 1978;
Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984;
RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;
Amended Eff. March 31, 1992;
RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;
Amended Eff. June 1, 2005; April 1, 1992;
Readopted Eff. October 1, 2022.



NORTH CAROLINA *Environmental Quality*



Variations & Appeals

If your application for a CAMA permit is denied, or if you find the conditions on a permit unacceptable, you may petition the Coastal Resources Commission (CRC) for a **variance**, or you may appeal the permit decision. If your neighbors or other parties find a permit or its conditions objectionable, they may request from the CRC chairman an opportunity to **appeal** the permit decision.

Variations

You may petition the CRC for a **variance** to undertake a project that is prohibited by the CRC's development standards. Applying for a variance means that you recognize the legal restrictions as valid, but request an exception to the restrictions because of hardships resulting from unusual conditions. You must have received a permit decision before you can seek a variance.

To apply for a variance, you must file a petition for a variance with the Division of Coastal Management (DCM) Director and the State Attorney General's Office on a standard form, which must be accompanied by additional information on the nature of the project and the reasons for requesting a variance. **The petition must be received six weeks before the next scheduled CRC meeting for it to be eligible to be heard at that meeting.**

To be granted a variance, you must show that (per 113A 120.1):

- Strict application of the CRC's development standards would result in unnecessary hardships.
- These hardships result from conditions peculiar to the property, such as its location, size or topography.
- The hardships did not result from actions taken by the petitioner.
- The requested variance is consistent with the spirit, purpose and intent of the CRC's development standards; will secure public safety and welfare; and will preserve substantial justice.

How variances are considered

There are two procedures for consideration of variances:

If the facts are undisputed, an attorney for DCM will work with you or your attorney in developing a set of stipulated facts. Your variance petition, the stipulated facts and a recommendation developed by DCM and DCM counsel stating the positions of each party and recommending grant or denial of the variance request are submitted directly to the CRC for a decision. An attorney for DCM represents the DCM staff before the CRC at the hearing. Petitioners may represent themselves or be represented by an attorney. Corporations and LLCs need to be represented by an attorney.

If the facts are disputed, the variance request goes to a contested case hearing before an administrative law judge in the Office of Administrative Hearings. The administrative law judge determines the facts in the case and transmits the official record to the CRC. This process normally takes approximately six months to one year. The CRC then holds a variance hearing, during which it reviews the record transmitted from the Office of Administrative Hearings and considers arguments made by the parties.

The CRC may deny a variance, grant the variance as requested, or grant the variance with a set of specific conditions. The decision will be set out in a formal order signed by the chairman, which will be sent to you by the CRC's counsel following the hearing. If the CRC grants a variance, you may present the order to DCM or the local permit officer, who will issue a permit. You must receive that permit before you can begin work on your project.

If the CRC denies the variance, you may appeal the decision to Superior Court within 30 days of receipt of the CRC's Order.

The Commission's rules regarding variance requests are located at [15A NCAC 7J .0700](https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/CAMA/t15a-07j.0700.pdf) ([https://files.nc.gov/ncdeq/Coastal Management/documents/PDF/CAMA/t15a-07j.0700.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/CAMA/t15a-07j.0700.pdf)) *et seq.* and can be found [on this web site under Current Rules](http://portal.ncdenr.org/web/cm/current-rules-governing-coastal-development) (<http://portal.ncdenr.org/web/cm/current-rules-governing-coastal-development>). You are encouraged to review the rules for a complete description of the variance process.

Note: The CRC is not allowed to discuss specific variances or other contested cases before it makes a decision. Do not attempt to contact CRC members to discuss your case.

Variance form

[Word format](#) (/documents/pdf/legal/final-2017-local-variance-memo-dcm-lpos/download) (right-click on the file to save it to your computer)

[PDF format](#) (/documents/pdf/legal/newvarianceform/download)(requires the free [Adobe Acrobat Reader](#) (<http://www.adobe.com/prodindex/acrobat/readstep.html>))

Appeals and Third-Party Hearing Requests

CAMA and the N.C. Dredge and Fill Act grant an automatic right of appeal to the permit applicant and to the Secretary of the Department of Environmental Quality. You must file a petition for a contested case in the [Office of Administrative Hearings](#) (<http://www.oah.state.nc.us/>) on their approved form within 20 days of the permit decision if you plan to appeal.

Other directly affected people, such as neighbors, may request a hearing on the permit decision. This petition for a third-party hearing request must be received by the director of DCM within 20 days of the permit decision. Within 15 days of receiving the request, the chairman of the CRC will decide if a petitioner is entitled to a third-party hearing. To get a hearing, a petitioner must [113A 121.1(b)]:

- Allege that the permit decision is contrary to a statute or rule.
- Show that the petitioner is directly affected by the permit decision.
- Demonstrate that the appeal is not frivolous.

If the CRC chairman grants a hearing, you may file a Petition for a Contested Case Hearing in the Office of Administrative Hearings. You must carefully follow detailed procedures and forms required by the state Administrative Procedure Act. Further information on filing appeals is available from the Office of Administrative Hearings. Parties to the hearing may be represented by attorneys, or may represent themselves. After the hearing, the judge issues a final decision.

You may appeal the Administrative Law Judge's final decision to Superior Court within 30 days of the decision.

Note: The CRC is not allowed to discuss specific appeals or other contested cases before it makes a decision. Do not attempt to contact CRC members to discuss your case.

Third-party hearing request

[Word format \(/documents/word/thirdparty/download\)](/documents/word/thirdparty/download) (right-click on the file to save it to your computer)

[PDF format \(https://files.nc.gov/ncdeq/Coastal Management/documents/PDF/thirdparty.pdf\)](https://files.nc.gov/ncdeq/CoastalManagement/documents/PDF/thirdparty.pdf) (requires the free [Adobe Acrobat Reader \(http://www.adobe.com/prodindex/acrobat/readstep.html\)](http://www.adobe.com/prodindex/acrobat/readstep.html))

**CAMA THIRD PARTY
HEARING REQUEST FORM**

**DCM FORM 5
DCM FILE No: _____**

PETITIONER'S NAME _____

COUNTY WHERE THE DEVELOPMENT IS PROPOSED _____

PLEASE TAKE NOTE that the undersigned, a person affected by the decision of (check one):

_____ a Local Permit Officer acting on a CAMA Minor Development Permit application; or

_____ the Division of Coastal Management acting on a CAMA Permit application

hereby requests permission from the Coastal Resources Commission (CRC) to file an appeal pursuant to N.C.G.S. § 113A-121.1(b) and 15A N.C.A.C. 07J .0301. *(Please attach a copy of the permit. If you cannot obtain a copy of the permit, please provide the name of the permittee, the project location, and the permit number.)* Requests are reviewed and determined by the chairman of the CRC to determine whether a hearing should be granted. 15A N.C.A.C. 07J .0301(b). Approval of a Third Party Hearing Request allows a petitioner to file a contested case petition with the Office of Administrative Hearings within twenty (20) days of receipt of the CRC's Order. N.C.G.S. § 113A-121.1(b). Denial of a Third Party Hearing Request is a final agency decision which may be appealed to Superior Court under N.C.G.S. § 113A-121.1(b) and Chapter 150B, Article 4.

For this application to be complete, the Petitioner must address each of the three factors listed below. The CRC's chairman's decision to grant a hearing will be based on whether the Petitioner:

- (1) **Has alleged that the decision is contrary to a statute or rule** [N.C.G.S. § 113A-121.1(b)(1)]; *(Please cite the statute or regulation allegedly violated by the permit decision.)*
- (2) **Is directly affected by the decision** [N.C.G.S. § 113A-121.1(b)(2)]; and *(Please describe how you are directly affected by the permit decision. Persons directly affected by a decision often include, but are not limited to, owners of real property in the vicinity of the proposed development who can show that it is likely to have a significant adverse effect on the value and enjoyment of their property, or persons who can demonstrate a history of substantial use of public resources in the area directly affected by the development.)*
- (3) **Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous** [N.C.G.S. § 113A-121.1(b)(3)]. *(Summarize the evidence and arguments you would present at a hearing in support of your appeal explaining why the permit was improperly issued.)*

Please answer these questions on a separate piece of paper and attach it to this form.

The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as this Third Party Hearing Request before the Commission. These opinions note that the practice of non-lawyer professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written argument may be considered the practice of law. Before you proceed with this hearing request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

DELIVERY OF THIS HEARING REQUEST

This request must be **received** by the Division of Coastal Management (DCM) within twenty (20) days of the date of the disputed permit decision. N.C.G.S. § 113A-121.1(b). Failure to do so constitutes waiver of the right to request a hearing. A copy of this request must also be sent to the Attorney General's Office, Environmental Division. 15A N.C.A.C. 07J .0301(b).

Contact Information for DCM:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Fax:

(252) 247-3330

By Email:

Check DCM website for the email address of the current DCM Director
www.nccoastalmanagement.net

Contact Information for Attorney General's Office:

By U.S. mail:

Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Fax:

(919) 716-6767

Based on the attached responses to the above factors, the undersigned hereby requests a third party hearing.

Signature of Petitioner or Attorney	Date
Printed Name of Petitioner or Attorney	Email address of Petitioner or Attorney
Mailing Address	(_____)_____
City	Telephone number of Petitioner or Attorney
State	(_____)_____
Zip	Fax number of Petitioner or Attorney

Updated: February 2011

**CAMA THIRD PARTY
HEARING REQUEST FORM**

**DCM FORM 5
DCM FILE No: _____**

PETITIONER'S NAME _____

COUNTY WHERE THE DEVELOPMENT IS PROPOSED _____

PLEASE TAKE NOTE that the undersigned, a person affected by the decision of (check one):

_____ a Local Permit Officer acting on a CAMA Minor Development Permit application; or

_____ the Division of Coastal Management acting on a CAMA Permit application

hereby requests permission from the Coastal Resources Commission (CRC) to file an appeal pursuant to N.C.G.S. § 113A-121.1(b) and 15A N.C.A.C. 07J .0301.

No later than 30 days after your request is received by the Division of Coastal Management (DCM), the Chair of the CRC will issue a decision as required by 15A N.C.A.C. 07J .0301.

- If the CRC Chair **grants** the request for a hearing in the Office of Administrative Hearings (OAH), you must file a contested case petition with the OAH within twenty (20) days of your receipt of the CRC's final agency decision. N.C.G.S. § 113A-121.1(b).
- If the CRC Chair **denies** the request for a hearing, in whole or in part, that decision is a final agency decision which you may appeal to Superior Court within thirty (30) days of receipt of the CRC's decision as allowed by N.C.G.S. § 113A-121.1(b) and Chapter 150B, Article 4.

I. WHAT MUST BE INCLUDED WITH THIS REQUEST:

For this request to be considered complete, the Petitioner must address all of the three factors listed below. The Chair's decision will be based on whether a third-party Petitioner has demonstrated all three requirements that are listed in N.C. Gen. Stat. § 113A-121.1(b).

(1) Petitioner must allege that the decision is contrary to a statute or rule.

Instruction: In order for your answer to this question to be considered complete, you must list a statute or rule that you think is violated by or inconsistent with the decision to issue the permit. It is not sufficient to refer to local ordinances, Homeowners Association covenants, or raise property ownership disputes or other non-CAMA issues. In order to meet this requirement, you must list a specific section from one or more of the following:

- a. the Coastal Area Management Act of 1974 (found in N.C. Gen. Stat., Chapter 113A, Article 7);
- b. the Dredge & Fill Law (found in N.C. Gen. Stat. § 113-229 and -230), or
- c. the CRC's rules implementing the coastal management program set forth in Title 15A, Chapter 7 of the N.C. Administrative Code.

(2) **Petitioner must demonstrate that they are directly affected by the decision**

Instruction: Please describe how you are directly affected by the permit decision. Persons directly affected by a decision often include, but are not limited to, owners of real property near the permitted development who can show that it is likely to have a significant adverse effect on the value and enjoyment of their property, or persons who can demonstrate a history of substantial use of public resources in the area directly affected by the development. Please note that the CRC's rules usually do not preclude issuance of a permit simply because the permitted development will have an some impact on the view from your property.

(3) **Petitioner must allege facts or made legal arguments that demonstrate that the request for a hearing is not frivolous**

Instruction: Please summarize the evidence you might present at a hearing in support of your appeal. Explain why any alleged facts support your argument that the permit is not consistent with one of the statutory provisions or commission rules that you listed in response to the first question. For example, if you allege the permit issued is not consistent with 15A N.C. Admin. Code 07H .0208(b)(6), you might allege that the permitted pier is wider than 6 feet and there is no public safety need for the dock to exceed 6 feet. Please provide facts in support of each legal argument you are making to demonstrate that there are disputes about issues of fact or legal arguments that should be resolved through a hearing at the OAH.

Please answer these three questions on separate piece(s) of paper. (Use as many as you need) and submit the answers with this form.)

Please attach a copy of the permit. (If you cannot obtain a copy of the permit, please provide the name of the permittee, the project location, and the permit number.)

II. DELIVERY OF THIS HEARING REQUEST

This request must be **received by** the Division of Coastal Management (DCM) within twenty (20) days of the date of the disputed permit decision. N.C.G.S. § 113A-121.1(b). Failure to do so constitutes waiver of the right to request a hearing. A copy of this request must also be sent to the Attorney General's Office, Environmental Division. 15A N.C.A.C. 07J .0301(b).

Contact Information for DCM:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Fax:
(252) 247-3330

Contact Information for Attorney General's Office:

By U.S. mail:

NC Department of Justice–Environmental Division
P.O. Box 629
Raleigh, NC 27602

By express mail:

NC Department of Justice–Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Email: (DO WE WANT TO PUT TANC'S OR SET UP A TPH-SPECIFIC EMAIL ADDRESS?)

Check DCM website for the email
address of the current DCM Director

www.nccoastalmanagement.net

Based on the attached responses to the above factors, the undersigned hereby requests a third party hearing.

_____			_____
Signature of Petitioner or Attorney ¹			Date
_____			_____
Printed Name of Petitioner or Attorney			Email address of Petitioner or Attorney
_____			(_____)_____
Mailing Address			Telephone number of Petitioner or Attorney
_____			(_____)_____
City	State	Zip	Fax number of Petitioner or Attorney

Updated: _____, 2024

¹ The NC State Bar has issued opinions indicating that non-attorneys may not represent others in quasi-judicial proceedings such as this Third Party Hearing Request before the Commission. These opinions note that the practice of non-lawyer professionals, such as engineers, surveyors, or contractors, representing others in quasi-judicial proceedings through written argument may be considered the unauthorized practice of law. Individuals may represent themselves before the CRC, however before proceeding with this hearing request, you may wish to seek the advice of an attorney.

3rd Party Appeals 2000-2023

(MLL revised March 2024 based on summaries in the file)

Note: sometimes numbers don't add up if petition was granted in part and denied in part

CHAIR	YEAR	SUBMITTED	GRANTED	DENIED	OTHER*	FILED IN OAH	PJR
TOMLINSON	2000	23	0	23	0	NA	1
TOMLINSON	2001	15	0	12	3	NA	0
TOMLINSON	2002	12	0	10	2	NA	1
TOMLINSON	2003	20	10	10	0	5	5
TOMLINSON	2004	28	12	13	3	6	2
TOMLINSON	2005	28	11	13	4		4
HACKNEY	2006	26	10	14	2	9	3
HACKNEY	2007	27	15	12	0	15	2
EMORY	2008	18	1	16	1	1	4
EMORY	2009	14	0	12	2	0	2
EMORY	2010	12	1	10	1	1	3
EMORY	2011	14	1	10	3	0	4
EMORY	2012	9	0	7	2	0	1
EMORY/GORHAM	2013	14	1	11	1	1	2
GORHAM	2014	8	1	7		1	0
GORHAM	2015	19	1	16	2	1	0
GORHAM	2016	5	2	3		2	0
GORHAM/CAHOON	2017	10	1	8	1	0	2
CAHOON	2018	22	3	19	1	3	0
CAHOON	2019	12	0	12		3 (consolidated)	5 (3 consolidated)
CAHOON	2020	6	3	3	0	3	1
CAHOON	2021	14	10	3	1	2	1
CAHOON	2022	18	14		4	0	0
CAHOON	2023	20	17	0	3	0	0
CAHOON	2024 (through March)	6	5	1			

*Late filings, withdrawn appeals, etc.

**Third Party Hearing CRC Subcommittee
April 4, 2024**

In attendance:

CRC members: Larry Baldwin, Bob Emory, Sheila Holman, Earl Smith
DCM Staff: Tancred Miller, Mike Lopazanski, Jonathan Howell, Daniel Govoni
Counsel: Mary Lucasse (CRC), Chrisy Goebel (DCM)

Mary Lucasse opened the meeting at 2:00 p.m.

Christy Goebel discussed the memo provided to the subcommittee and highlighted the legal authorities, the three mandatory factors required to be addressed in a third party hearing request, and actions available following the granting or denial of the third party hearing request. She discussed recent changes to the CAMA statute which extended the time to rule on a request from 15 days to 30 days, removal of the automatic stay of the permit which was being appealed, and changes to the third factor which must be met from a standard of the likelihood of a petitioner prevailing in a contested case to a frivolous standard. There is a legislative change needed to the NC Dredge and Fill Law to mirror the changes in the CAMA statute allowing for a 30-day timeline for a final decision. CRC rules in 15A NCAC 07J .0300 describe who can file a contested case and delegates the Chair as the decision maker on behalf of the full CRC. The Marine Fisheries Commission has a 3-member panel which hears its third party requests. This process has only been used once but is not as efficient as the current CRC process. Ms. Goebel reviewed relevant case law related to the third party process. This case law provides support for the Chair's position. Petitioners have 20-days from permit issuance to file a request for a third party hearing and must exhaust this administrative remedy prior to any action being filed in Superior Court. The biggest change needed from the subcommittee is the form that is required to file a third party. This form was last updated in 2011. Ms. Goebel reviewed the number of third party requests that have been received since 2000 and stated on average the Division receives between 12 and 20 requests per year and these numbers follow development trends.

Bob Emory, former CRC Chair, stated during his time as Chair and in review of all third party hearing requests he found that most did not meet the three criteria required and are not appropriate for an OAH hearing.

Sheila Holman asked of the third party requests received, how many are represented by attorneys and is there a higher standard for petitions filed by attorneys. Ms. Goebel stated a quarter to one third of petitions are filed by attorneys, and while the request may be more robust, the standard is the same for everyone.

Mary Lucasse stated the current Chair interprets the three factors. The first requires a petitioner to list a statute or CRC rule that is inconsistent with the permit at issue. The second factor is whether the petitioner is directly affected. The third factor is the frivolous standard, which is a low bar, but the petitioner must allege facts that show the inconsistency with the rule(s) listed in the first factor.

Bob Emory stated the examples that have been provided for the three criteria on the updated form are beneficial. Sheila Holman agreed that the examples are helpful.

Mary Lucasse stated this process is helpful in explaining to the public how permits are issued and how rules are applied. Staff recommendations provided to the Chair, Petitioner, and permittee explain DCM's interpretation on how the rule was applied to the development authorized under the permit. The Chair's decisions have resulted in very few Petitions for Judicial Review because of the explanations that are provided within them. Christy Goebel added that the staff recommendations are time consuming on the front-end of the process, but the work is worth it.

Larry Baldwin stated Ms. Goebel points out that the Chair only has 30 days to make a final decision, however a petitioner only has 20 days from a permit issuance to file a third party hearing request. The form is straight forward, and facts should be required as part of the request for a hearing, however if a Petitioner has met all three criteria then the request should be granted and be allowed to be heard in OAH. This is denying people their due process. Courts, judges, and juries should be deciding the issue based on facts. It should not be the same agency that issues the permit that determines whether an appeal should be granted or denied. The deck is stacked against anyone that wishes to file an appeal and the permit issuer should not be deciding as this is biased, prejudicial, and a closed process. Case law has already shown that these disputes cannot go to Superior Court until all administrative remedies have been exhausted.

Mary Lucasse stated this a gatekeeping provision within the statute that gives the agency an opportunity to resolve the issue.

Christy Goebel stated the rationale behind the legislature's 20-day filing deadline is so the permittee has assurance that within a reasonable time their permit won't be appealed, and work can begin.

Next Steps:

- A calendar request will be sent out to find the best date/time for the next subcommittee meeting.
- All subcommittee members should look at the form and provide suggested edits. Christy will provide the new proposed form to subcommittee members in Word for editing.
- Mary will provide the last two third party hearing requests that were requested and granted and the last two that were denied for the group to review.

The meeting adjourned at 3:10 p.m.

REVISED Summary 3rd Party Appeals 2000-2024 (April)

(MLL revised May 7, 2024 - Note: numbers don't always add up if a petition was granted in part and denied in part)

CHAIR	YEAR	SUBMITTED	GRANTED	DENIED	OTHER*	FILED IN OAH	PJR
TOMLINSON	2000**	23	0	23	0	NA	1
TOMLINSON	2001**	15	0	12	3	NA	0
TOMLINSON	2002**	12	0	10	2	NA	1
TOMLINSON	2003**	20	10	10	0	5	4
TOMLINSON	2004**	28	6	18	4	6	2
TOMLINSON	2005**	28	9	10	9	11	4
HACKNEY	2006**	26	10	14	2	4	2
HACKNEY	2007**	40	19	17	4	19	8
EMORY	2008**	18	1	16	1	1	4
EMORY	2009**	14	0	12	2	0	2
EMORY	2010**	12	1	10	1	1	3
EMORY	2011	14	1 (in part)	10	3	0	4
EMORY	2012	9	0	8	1	1	1
EMORY/GORHAM	2013	14	1 (in part)	14 (1 in part)		1	2
GORHAM	2014	8	1	7		1	0
GORHAM	2015	19	1	16	2	1	0
GORHAM	2016	5	2	3		2	0
GORHAM/CAHOON	2017	10	1	8	1	1	2
CAHOON	2018	22	3	19		3 (1 withdrawn)	0
CAHOON	2019	12	0	12		3 (consolidated)	5 (3 consolidated)
CAHOON	2020	6	3	3	0	3	1
CAHOON	2021	14	3	10	1	2	1
CAHOON	2022	18	0	14	4	0	1
CAHOON	2023	20	0	17	3	0	0
CAHOON	2024 (through May 7)	6	1	5		1	?

*Late filings, withdrawn appeals, etc.

** During the years 2000 through 2010, several different attorneys at NCDOJ handled the third party hearing requests. There is no single repository for these decisions. I have seen several different summaries of the outcomes each with slightly different numbers. I think the numbers for these 10 years are probably in the ballpark but I am not absolutely certain of their accuracy.

DATE: June 12, 2024
1:00 pm – 3:00 pm

SUBJECT: CRC-CAMA Third-Party Petitions and Review Process
2nd Meeting of the CRC Sub-Committee

The purpose of this CRC subcommittee is to review the current third-party petitioning and review process for possible modification and improvement. The first April 4, 2024 meeting basically covered the established laws, rules, and policies regarding the CRC-CAMA third-party petitioning process. Below is a brief narrative of the third-party petition process:

The third-party petition process is the **only** opportunity for a directly impacted property owner or person to formally voice concerns and objections of an issued CAMA permit. At this point, a potentially impacted party has limited information and no direct participation in the issuance of a CAMA permit. After the CAMA permit is issued the impacted party has only 20 days from date of permit issuance to review the final permit, consider potential direct / indirect impacts, and file a formal third-party petition to NCDEQ, CAMA, and CRC with their concerns and objections [See: NCGS 113A-121.1 (b) & (d)]. This administrative third-party petitioning process has to be timely followed and fully exhausted first, otherwise the impacted person loses all future judicial rights to object to the issuance of the CAMA permit.

Currently, a third-party petition is reviewed by CAMA the permitting agency and CRC legal counsel prior to being presented to the CRC for consideration. A third-party petition has to meet three basic requirements:

- (1)---Has alleged that the decision is contrary to a statute or rule;
- (2)---Is directly affected by the decision; and
- (3)---Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

Definition of “frivolous”

- 1 a: of little weight or importance
b: having no sound basis
- 2 a: lacking in seriousness
b: marked by unbecoming levity

CAMA and CRC act solely as a “gatekeeper” to check that a third-party petition has met all three of the basic above criteria. CAMA and CRC are not to consider the merits of a third-party petition, or question the validity of alleged facts. This is for the judicial system to consider and adjudicate. The CRC reviews the third-party petition request with comments from CAMA and CRC counsel within a 30 day time period from receipt date of the petition. The CRC either grants or denies the petitioner’s request for a judicial hearing to the Office of Administrative Hearings (OAH). Denial of a petitioner’s request by CRC for a judicial hearing is a Final Agency Decision, which in itself can be subject to a Superior Court judicial review [NCGS Article-4 150-B] by the petitioner, which can take months to a year if successful to simply gain access to OAH court for a hearing of their pleadings. The CAMA permit remains active during these proceedings, and the permit holder proceeds at their own peril. A CAMA Dredge & Fill permit is suspended during the administrative review process.

A review of the CRC “gatekeeping” history as to granting or denying third-party petitions is quite variable within and between the various CRC commissions and their respective chairperson. Please review the attached spreadsheet. Over 24 years the CRC grants ~18% of third-party petitions, and denies ~72% of them. Only ~16% of third-party petitions gain access to OAH.

Guidelines or bylaws are necessary for the CRC to properly review and consistently administer third-party petition submittals as to granting or denying them. The following are initial recommendations:

CRC Panel and Guidelines
To Review and Decide Third-Party Petitions
Against Issued CAMA Permits and/or Dredge & Fill Permits

1---CAMA presents summary of facts regarding the issued CAMA permit to CRC counsel. No opinion as to granting or denying the third-party petition.

2---CRC counsel provides a summary of facts regarding the issued CAMA permit to CRC for review and consideration. This should be brief (1 - 4 pages) with no opinion as to granting or denying the third-party petition.

3---A third-party petition review panel should be created that consists of the current CRC chairperson and two designated CRC commissioners from the executive committee. (Currently, only the chairperson reviews and decides third-party petitions due to 30 day time constraints.) This CRC panel will likely have to meet by teleconference due to time constraints. CRC counsel and CAMA staff should be present during this review panel meeting to answer questions, provide clarifications, and to properly record the meeting.

4---The CRC third-party petition panel reviews and discusses the alleged facts within the third-party petition and CRC counsel summary. The CRC panel only determines whether the third-party petitioner has met the three basis criteria within NCGS 113A-121.1 (b) and does not determine the merits or accuracy of alleged facts within the third-party petition.

- (1)---Has alleged that the decision is contrary to a statute or rule;
- (2)---Is directly affected by the decision; and
- (3)---Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If petitioner clearly meets criteria 1 & 2, then deference should be given to the petitioner as to criteria 3.

5---The CRC third-party petition panel votes to grant or deny a third-party petition to proceed to OAH. A majority vote from the three member CRC panel determines whether to grant or deny the third-party petition. CRC-CAMA counsels formally notify the third-party petitioner of the CRC decision and how to proceed.

The third-party petition form needs to be revised in order to be clear and concise as to what information is required or expected, and how to file. The initial draft is a good start.

As to possible revisions to the CAMA and Dredge & Fill laws, I think it is best to leave them as they are. A third-party petition against an issued CAMA permit (bulkhead, piers, etc) allows the permit holder to continue their project during an administrative review, but they proceed at their own peril. A third-party petition against an issued Dredge & Fill permit is suspended during an administrative review, which is likely good as these types of projects are difficult or impossible to reverse and remediate.

Looking forward to our next subcommittee meeting on Wednesday, June 12th 2024 at 1 – 3 pm.

Larry F. Baldwin
CRC Commissioner

**Third Party Hearing CRC Subcommittee
June 12, 2024**

In attendance:

CRC members: Larry Baldwin, Bob Emory, Sheila Holman, Earl Smith
DCM Staff: Tancred Miller, Mike Lopazanski, Jonathan Howell, Daniel Govoni
Counsel: Mary Lucasse (CRC), Chrisy Goebel (DCM)

Mary Lucasse opened the meeting at 1:00 p.m.

Christy Goebel reviewed the memo provided to the subcommittee by Larry Baldwin. The first issue for discussion would be to remain with the CRC Chair reviewing and determining whether to grant or deny a contested case hearing, or to create a subcommittee of three CRC members for this review and determination. Commissioner Baldwin felt that based on the statistics provided, a subcommittee could be a better process. The number of denials concerned him as this is denying due process for petitioners to have their concerns heard in court. Bob Emory stated when a third party hearing request is denied, petitioners still have the option to go to Superior Court. Sheila Holman asked Commissioner Emory about his past experience as Chair in making these determinations. He responded that it was a quicker turn around when he was Chair. There was a 15-day clock on making a determination as there was also an automatic stay on the permit at that time. Since then, a legislative change allows for a 30-day determination and there is not a stay on the permit, but the permittee proceeds at their own risk on any development approved by the permit. The ability to coordinate with Commission counsel is very helpful. Ms. Goebel stated any subcommittee of the Commission would need public notice and there are potential scheduling conflicts within the statutory timeframe to make the determination. Commissioner Baldwin stated that the three criteria required to be addressed on the third party hearing petition are simple and straightforward. If these criteria have been met, the petition should be granted. Commissioner Holman stated a subcommittee to review these requests could be logistically challenging. Earl Smith asked about any hybrid solutions that may be available.

The second issue to be addressed in Commissioner Baldwin's memo was the amount of information provided for review. The petitioner is simply answering the criteria and the determination of granted or denied should be on whether the petitioner has met their burden to address the criteria.

The next issue was the role of the attorneys in the process. Ms. Goebel stated a staff recommendation is provided for the review and is the same as with variance requests, petitions for rulemaking, and all quasi-judicial items before the full Commission. Mary Lucasse responded that a staff recommendation is prepared for the Chair to consider along with the petition. This creates a record for any legal action.

Lastly, the subcommittee reviewed the changes suggested to the form to submit a third party hearing request. The only additional changes recommended were to link the CAMA and Dredge

and Fill statutes to the form. Commission Baldwin also asked that the 20-day deadline from the date of permit issuance should be boldly placed at the top of the form.

Commissioner Baldwin would still prefer a review by a three person panel. By consensus, the subcommittee agreed the recommendations to the full Commission would be as follows: to approve the suggested changes to the updated form; request DEQ ask the General Assembly for a legislative change to remove the automatic stay on Dredge and Fill permits to mirror CAMA; and advise the Commission that although it isn't a perfect process, the current process works as a gatekeeping function and recommend the third party hearing request reviews remain with the Chair.

Next steps:

Christy Goebel will prepare a memo with the recommendations to the full Commission for discussion at the August meeting. As part of that memo, the minutes of the two subcommittee meetings will be included, as well as the background information, and memo and statistics provided by Commissioner Baldwin. Commissioner Emory will present the subcommittee's discussions and recommendations to the CRC at that meeting.

Commissioner Baldwin also requested a presentation to the full commission on the third party appeal process.

The meeting adjourned at 2:50 p.m.

PETITIONER'S NAME _____

COUNTY WHERE THE DEVELOPMENT IS PROPOSED _____

PLEASE TAKE NOTE that the undersigned, a person affected by the decision of (check one):

_____ a Local Permit Officer acting on a CAMA Minor Development Permit application; or

_____ the Division of Coastal Management acting on a CAMA Permit application

hereby requests permission from the Coastal Resources Commission (CRC) to file an appeal pursuant to N.C.G.S. § 113A-121.1(b) and 15A N.C.A.C. 07J .0301. N.C.G.S. § 113A-121.1(b) requires that

DCM receive your completed Third-Party Hearing Request Petition within 20 Days of the date of the permit decision.

No later than 30 days after your request is received by the Division of Coastal Management (DCM), the Chair of the CRC will issue a decision as required by 15A N.C.A.C. 07J .0301.

- If the CRC Chair **grants** the request for a hearing in the Office of Administrative Hearings (OAH), you must file a contested case petition with the OAH within twenty (20) days of your receipt of the CRC's final agency decision. N.C.G.S. § 113A-121.1(b).
- If the CRC Chair **denies** the request for a hearing, in whole or in part, that decision is a final agency decision which you may appeal to Superior Court within thirty (30) days of receipt of the CRC's decision as allowed by N.C.G.S. § 113A-121.1(b) and Chapter 150B, Article 4.

I. WHAT MUST BE INCLUDED WITH THIS REQUEST:

For this request to be considered complete, the Petitioner must address all of the three factors listed below. The Chair's decision will be based on whether a third-party Petitioner has demonstrated all three requirements that are listed in N.C. Gen. Stat. § 113A-121.1(b).

(1) Petitioner must allege that the decision is contrary to a statute or rule.

Instruction: In order for your answer to this question to be considered complete, you must list a statute or rule that you think is violated by or inconsistent with the decision to issue the permit. It is not sufficient to refer to local ordinances, Homeowners Association covenants, or raise property ownership disputes or other non-CAMA issues. In order to meet this requirement, you must list a specific section from one or more of the following:

- a. the Coastal Area Management Act of 1974 (found in N.C. Gen. Stat., Chapter 113A, Article 7);
- b. the Dredge & Fill Law (found in N.C. Gen. Stat. § 113-229 and -230), or
- c. the CRC's rules implementing the coastal management program set forth in Title 15A, Chapter 7 of the N.C. Administrative Code.

These can be found on the DCM Website: [NC DEQ: Coastal Management Rules & Regulations](#)

(2) **Petitioner must demonstrate that they are directly affected by the decision**

Instruction: Please describe how you are directly affected by the permit decision. Persons directly affected by a decision often include, but are not limited to, owners of real property near the permitted development who can show that it is likely to have a particular adverse effect on the value and enjoyment of their property, or persons who can demonstrate a history of substantial use of public resources in the area directly affected by the development. Please note that the CRC’s rules usually do not preclude issuance of a permit simply because the permitted development will have some impact on the view from your property.

(3) **Petitioner must allege facts or made legal arguments that demonstrate that the request for a hearing is not frivolous**

Instruction: Please summarize the evidence you might present at a hearing in support of your appeal. Explain why any alleged facts support your argument that the permit is not consistent with one of the statutory provisions or commission rules that you listed in response to the first question. For example, if you allege the permit issued is not consistent with 15A N.C. Admin. Code 07H .0208(b)(6), you might allege that the permitted pier is wider than 6 feet and there is no public safety need for the dock to exceed 6 feet. Please provide facts in support of each legal argument you are making to demonstrate that there are disputes about issues of fact or legal arguments that should be resolved through a hearing at the OAH.

Please answer these three questions on separate piece(s) of paper or Word document.

(Use as many as you need and submit the answers with this form.)

Please attach a copy of the permit. (If you cannot obtain a copy of the permit, please provide the name of the permittee, the project location, and the permit number.)

Based on the attached responses to the above factors, the undersigned hereby requests a third party hearing.

Signature of Petitioner or Attorney ¹	Date
Printed Name of Petitioner or Attorney	Email address of Petitioner or Attorney
Mailing Address	() Telephone number of Petitioner or Attorney
City	State Zip

¹ The NC State Bar has issued opinions indicating that non-attorneys may not represent others in quasi-judicial proceedings such as this Third Party Hearing Request before the Commission. These opinions note that the practice of non-lawyer professionals, such as engineers, surveyors, or contractors, representing others in quasi-judicial proceedings through written argument may be considered the unauthorized practice of law. Individuals may represent themselves before the CRC, however before proceeding with this hearing request, you may wish to seek the advice of an attorney.

II. DELIVERY OF THIS HEARING REQUEST

This request must be **received by** the Division of Coastal Management (DCM) within twenty (20) days of the date of the disputed permit decision. N.C.G.S. § 113A-121.1(b). Failure to do so constitutes waiver of the right to request a hearing. A copy of this request must also be sent to the Attorney General's Office, Environmental Division. 15A N.C.A.C. 07J .0301(b).

Contact Information for DCM:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Email:

Check DCM website for the email address
of the current DCM Director
www.nccoastalmanagment.net

Contact Information for Attorney General's Office:

By U.S. mail:

NC Department of Justice–Environmental Division
P.O. Box 629
Raleigh, NC 27602

By express mail:

NC Department of Justice–Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

Form revised _____, 2024