

SOUTHERN ENVIRONMENTAL LAW CENTER

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February 8, 2016

Via U.S. and Electronic Mail

Hal R. Pitts
Bridge Program Manager
Fifth Coast Guard District
431 Crawford Street
Portsmouth, VA 23704-500
Hal.R.Pitts@uscg.mil

Re: Public Notice 5-1359: Proposed Bridge Over Bull Creek

Dear Mr. Pitts:

Please accept these comments on Public Notice 5-1359 regarding Sunset Beach West, LLC's ("Applicant") proposed construction of a bridge over navigable waters on the west end of Sunset Beach, North Carolina. The Southern Environmental Law Center submits these comments on behalf of the North Carolina Coastal Federation and respectfully requests that the Commander deny the requested waiver of a bridge permit under 33 C.F.R. § 115.70. As described below, waiver of the bridge permitting requirement is not allowed under the circumstances.

Coast Guard regulations prohibit granting approval of bridges "when there is doubt of the right of the applicant to construct and utilize the bridge." 33 C.F.R. § 115.05. Here, there is significant doubt. As described in the attached letter, the Applicant does not own the property on either side of the proposed bridge. *See* Letter from G. Gisler, SELC, to H. Coats, NCDCCM, at 3-4 (Oct. 7, 2015) (Attachment 1). Despite being statutorily required to produce "a copy of the deed or other instrument under which the applicant claims title" as part of its permit application with the North Carolina Division of Coastal Management, N.C. Gen. Stat. § 113-229(b), the Applicant has not produced a deed or other instrument that asserts title to either the land at the western end of Main Street or the larger tract of undeveloped land.

Moreover, the Applicant certainly does not have a right to construct the bridge in state-owned waters. The Applicant can only construct the bridge in state-owned waters if it is granted an easement. *See* N.C. Gen. Stat. § 146-12. That easement is dependent on compliance with the Coastal Area Management Act. *Id.* §146-12(b)(2). As outlined in Attachment 1, the proposed project violates CAMA in numerous ways and is, therefore, ineligible for an easement and cannot be built. Attachment 1 at 4-8.

Even if the Applicant could demonstrate ownership necessary to build the bridge and had already received a CAMA permit, the Coast Guard must still deny the requested approval. Coast Guard regulations require that "[w]here State laws vest in State or county officers . . . the power

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to authorize the construction of bridges, [the applicant] must furnish with their application certified extracts from their proceedings showing their action authorizing the proposed structure.” 33 C.F.R. § 115.50(e)(1). Here, if the Applicant were to demonstrate ownership of the property, North Carolina statutes require Brunswick County to approve construction of the bridge. *See* N.C. Gen. Stat. § 153A-243. The statutes require the County to follow a specific process in approving such a proposal. *Id.* The Applicant has not applied for nor received approval from Brunswick County. Therefore, the requested waiver cannot be approved.

Finally, even if the issues described above did not preclude approval, the proposed bridge creates an impediment to use of navigable waters that make it ineligible for an exemption. To qualify for the exemption, the Applicant must demonstrate that the creek is “not actually navigated other than by logs, log rafts, rowboats, canoes and small motorboats.” 33 C.F.R. § 115.70(a). The application materials make no such demonstration. As explained in the attached comments prepared by a property owner near the creek, a wide variety of craft—including larger motorboats and sailboats—use the creek and would be impeded by the bridge. *See* Letter from K. Sekley re: Public Notice 5-1359 (Jan. 29, 2016) (Attachment 2). Therefore, the proposed bridge is ineligible for the requested approval. *See* 33 C.F.R. § 115.70(b).

For these reasons, we ask that the Coast Guard deny the Applicant’s proposed waiver. Further, I request to be notified of the Coast Guard’s final determination in this matter. Please do not hesitate to contact me at ggisler@selcnc.org or (919) 967-1450 if you have any questions regarding these comments.

Sincerely,



Geoffrey R. Gisler
Senior Attorney

GRG/rgd

Cc: Mike Giles, NCCF (via email)