PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1797

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE; CHARLESTON WATERKEEPER; SOUTH CAROLINA WILDLIFE FEDERATION,

Plaintiffs - Appellants,

v.

UNITED STATES ARMY CORPS OF ENGINEERS, Charleston District; LIEUTENANT GENERAL WILLIAM H. GRAHAM, JR., in his official capacity as Chief of Engineers; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; LEE M. ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency; UNITED STATES FISH AND WILDLIFE SERVICE; LIEUTENANT COLONEL TODD MAINWARING, in his official capacity as Commander of the Charleston District; DANIEL P. DRISCOLL, in his official capacity as Secretary of the U.S. Army; DOUG BURGUM, in his official capacity as Secretary of the United States Department of the Interior,

Defendants - Appellees,

and

TRACT 1 TIMBER, LLC; SEVEN STICKS, LLC; TRACT 7, LLC; CAINHOY LAND AND TIMBER, LLC,

Intervenors/Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:22-cv-02727-RMG)

Argued: September 10, 2026 Decided: October 23, 2026

Before AGEE, THACKER, and BERNER, Circuit Judges.

Affirmed by published opinion. Judge Thacker wrote the opinion in which Judge Agee and Judge Berner joined.

ARGUED: Catherine Moore Wannamaker, SOUTHERN ENVIRONMENTAL LAW CENTER, Charleston, South Carolina, for Appellants. Jacob David Ecker, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Michael Rhett DeHart, ADAMS & REESE LLP, Charleston, South Carolina, for Appellees. **ON BRIEF:** Christopher, K. DeScherer, Emily C. Wyche, SOUTHERN ENVIRONMENTAL LAW CENTER, Charleston, South Carolina, for Appellants. Adam R.F. Gustafson, Principal Deputy Assistant Attorney General, Rebecca Jaffe, Kristen Sarna, Environment and Natural Resources Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Federal Appellees.

THACKER, Circuit Judge:

The United States Army Corps of Engineers (the "Corps") issued a permit pursuant to Section 404 of the Clean Water Act ("CWA") for the development of the Cainhoy Plantation ("Cainhoy"), a residential and commercial development in Charleston, South Carolina, after determining the proposed project was the least environmentally damaging practicable alternative ("LEDPA"). South Carolina Coastal Conservation League, Charleston Waterkeeper, and South Carolina Wildlife Federation (collectively, "Appellants") allege the Corps' LEDPA determination was arbitrary and capricious because the Corps did not consider on-site alternatives affecting less than the proposed 181.5 acres of wetlands impact. The district court granted summary judgment in favor of the Corps.

Because we conclude the Corps conducted a thorough and reasoned analysis and did not act in an arbitrary or capricious manner, we affirm the district court.

I.

Tract 1 Timber, LLC, Seven Sticks, LLC, Tract 7, LLC, and Cainhoy Land and Timber, LLC (collectively, "Intervenors") own approximately 16,000 acres of private land in Berkeley County, South Carolina. Cainhoy, the property at issue in this appeal, comprises 9,076 acres of the total acreage. Intervenors have used Cainhoy as a pine tree timber farm for the last 90 years. In 1996, the city of Charleston, South Carolina annexed Cainhoy into the city limits and sought to have Intervenors develop Cainhoy to allow for growth in the city.

Today, Cainhoy's surrounding areas have substantially transformed into residential and industrial development. Cainhoy is currently zoned as a Planned Unit Development ("PUD"), defined as consisting of "a tract or tracts of land under unified control, planned and developed as a whole in a single development stage or phased series of development stages according to an approved PUD Master Plan." J.A. 1024–25.[1]

Though Cainhoy totals over 9,000 acres, including over 2,500 acres of wetlands, the proposed Cainhoy development will develop only 3,906 acres, including 181.5 acres of wetlands. The remaining acres are to be placed in conservation easements and/or restrictive covenants to permanently protect the property. Cainhoy is planned to be a mixed use commercial and residential development, eventually containing residences, schools, medical and assisted living facilities, and other community services.

In order to accomplish the goal of developing Cainhoy, Intervenors began applying for the required permits in 2012, including a CWA Section 404 permit. A Section 404 permit was required because the development would affect wetlands on the property. An early design of the project called for 1,820.1 acres of wetlands impact. But, "[t]hrough the avoidance and minimization process, [Intervenors] expressed [a] desire for a conservation minded, environmentally sensitive" development. J.A. 919. To accomplish this, the Corps and Intervenors focused on only affecting wetlands necessary for road crossings, feasible lot development, and essential storm water ponds. As a result, the wetlands impact was

[1] Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

reduced to 187.9 acres. And, in 2022, Intervenors and the Corps further decreased the wetlands impact to 181.5 acres.

In March 2018, pursuant to Section 404 of the CWA, the Corps provided initial notice to the public and invited comments regarding the proposed project. The Corps received a significant number of comments and addressed each one, spanning 84 pages, in an Environment Assessment (the "EA"). After considering all of the public comments, the Corps detailed its decision and findings in the EA, which it issued in 2022.

The Corps conducted an extensive EA, which included a review of the proposed plan, 14 alternative plans, and a no action option. The no action option entailed denying Intervenors' permit and leaving Cainhoy open for future, independent development. To help guide its analysis of the alternatives, the Corps first determined the project's overall purpose. The Corps described the project's purpose as a development plan "to construct a mixed use development to include residential, commercial, educational, office and government facilities with access to major traffic arteries that has the demographic support, zoning, infrastructure and access to schools and hospitals to help meet the needs of the growing Charleston, South Carolina metropolitan area." J.A. 931.

The Corps' nine off-site alternative plans were located in the Charleston area. Consistent with the purpose of the project, the Corps considered whether each alterative satisfied certain criteria in determining whether an off-site alternative was practicable. In particular, the Corps evaluated whether the off-site alternatives

- were located within 50 miles of Charleston, South Carolina;
- had a commute time of 45 minutes or less;

- contained a minimum of 7,500 acres with 5,000 acres developable uplands[2];
- were within a ten mile radius of an interstate or four lane major highway;
- were able to be developed and not currently part of a planned development;
- had access to utilities infrastructure (available and practicable);
- were appropriately zoned for mixed-use development.

Each of the nine off-site alternatives was determined to be impracticable by the Corps because none satisfied the required criteria.

The Corps also considered four on-site alternatives but determined each would have a greater impact on wetlands than the proposed plan. Finally, the Corps considered a plan proposed by Appellants -- the "Dover plan."[3] The Dover plan included four versions, ranging from no wetlands impact to 13.2 acres of wetlands impact. But no version of the Dover plan accounted for the entire Cainhoy property -- roughly 8,000 acres would be left undeveloped under each iteration. The Corps concluded this would likely contribute significantly to future wetlands impacts because of the possibility of future development of the remaining acreage, and because no version contained preservation or conservation efforts for the undeveloped land. Moreover, the Corps determined that the Dover plan was a "distinctly different project" and therefore did not comply with the project's overall purpose. J.A. 1052.

[2] Uplands are areas of "high land especially at some distance from the sea." *Upland*, Merriam-Webster, https://www.merriam-webster.com/dictionary/upland [https://perma.cc/7VWP-5CP7] (last visited Oct. 6, 2026).

[3] Appellants' proposed plan was referred to as the Dover plan because it was prepared by Dover, Kohl, and Partners, an urban planning firm.

Lastly, the Corps considered a no action plan. Under a no action plan, Intervenors' permit would be denied, leaving Cainhoy open to smaller parcel development plans. The Corps concluded that the no action plan would potentially impact more wetlands, and prevent the property from receiving the benefit of Intervenors' "comprehensive approach to a compensatory mitigation plan that protects the most ecologically valuable on-site wetlands." J.A. 1051.

After a full analysis, the Corps determined that Intervenors' proposed project was the LEDPA and issued a Section 404 permit for it in May 2022. Appellants challenged the 2022 permit, naming the Corps, the Fish and Wildlife Service, and the Environmental Protection Agency (the "EPA") as defendants. Appellants argued that the Corps acted arbitrarily and capriciously in issuing the permit, and raised their challenges pursuant to the CWA citizen suit provision and the Administrative Procedure Act (the "APA").

The Corps moved to dismiss the CWA citizen suit provision claim, arguing the court's jurisdiction arose pursuant to the APA instead. But the district court denied the motion and held that its subject matter jurisdiction derived from the citizen suit provision of the CWA. Therefore, the court dismissed the APA claim. In so holding, the district court relied on *National Wildlife Federation v. Hanson*, 859 F.2d 313 (4th Cir. 1988).

Subsequently, the parties filed cross motions for summary judgment, and the district court granted summary judgment in favor of the Corps and Intervenors, dismissing the case with prejudice. The district court reaffirmed its conclusion that jurisdiction lay pursuant to the CWA, not the APA. And on the merits, the district court held that the Corps' actions

were neither arbitrary nor capricious because it conducted an extensive analysis of numerous alternatives in arriving at its LEDPA determination.

Appellants timely appealed, arguing that the district court erred in concluding that the Corps' LEDPA determination was not arbitrary or capricious.

II.

"We review the district court's legal conclusions regarding its own subject matter jurisdiction de novo." *Flame S.A. v. Freight Bulk Pte. Ltd.*, 762 F.3d 352, 356 (4th Cir. 2014) (internal citation omitted). "Our review of a district court's grant of summary judgment is de novo." *Deque Sys. Inc. v. Browserstack, Inc.*, 177 F.4th 585, 598 (4th Cir. 2026). "Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Sigley v. ND Fairmont LLC*, 129 F.4th 256, 260 (4th Cir. 2025) (quoting Fed. R. Civ. P. 56(a)). While we take the facts in the light most favorable to the nonmoving party, "it is ultimately the nonmovant's burden to persuade us that there is indeed a dispute of material fact. It must provide more than a scintilla of evidence -- and not merely conclusory allegations or speculation -- upon which a jury could properly find in its favor." *Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 192 (4th Cir. 2022) (quoting *CoreTel Va., LLC v. Verizon Va., LLC*, 752 F.3d 364, 370 (4th Cir. 2014)).

III.

A.

First, we consider whether federal jurisdiction over this permit challenge arises pursuant to the CWA citizen suit provision or the APA.

The CWA citizen suit provision provides that any citizen is permitted to bring a civil action "against the [EPA] Administrator to perform any act or duty under this Act which is not discretionary with the Administrator." 33 U.S.C. § 1365(a)(2). Nondiscretionary acts are ones that the agency "is required to take." *Sanitary Bd. of City of Charleston v. Wheeler*, 918 F.3d 324, 331 (4th Cir. 2019) (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004)). In other words, a citizen suit is a mechanism to challenge agency inaction.

Alternatively, per the APA, "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review." 5 U.S.C. § 702. But this right is limited to "final agency action for which there is no other adequate remedy in court." 5 U.S.C. § 704. Consequently, if the CWA citizen suit provision is applicable, the APA is not.

We have uniformly held that Section 404 permit challenges arise pursuant to the APA. *See Ohio Valley Env't Coal., Inc. v. United States Army Corps of Eng'rs*, 828 F.3d 316 (4th Cir. 2016) (applying the APA when reviewing a challenge to a Section 404 permit issued by the Corps); *see also Nat'l Audubon Soc'y v. United States Army Corps of Eng'rs*, 991 F.3d 577 (4th Cir. 2021) (same). But Appellants argued below -- and the district court held -- that this Section 404 permit challenge was properly rooted in the CWA citizen suit provision. That determination was incorrect.

Appellants and the district court rely on *National Wildlife Federation v. Hanson*, 859 F.2d 313 (4th Cir. 1988) to justify federal jurisdiction under the CWA citizen suit provision. But in *Bennett v. Spear*, 520 U.S. 154, 174 (1997), the Supreme Court held that

a citizen suit provision with nearly identical language did not provide jurisdiction for "any violation" of the statute because doing so would abrogate the APA's "final agency action" requirement. *Id.* And, as noted, our precedent routinely makes clear that these types of challenges to final agency action fall under the APA. *E.g.*, *Ohio Valley*, 828 F.3d at 321; *Nat'l Audubon Soc'y*, 991 F.3d at 583.

In *Hanson*, there was no dispute that the citizen suit provision was applicable to a challenge to an erroneous wetlands decision by the EPA. *Hanson*, 859 F.2d at 316. The question there was simply whether the Corps could be joined as a party in such a suit. *Id.* We answered that question in the affirmative. We explained that citizens can "sue the Administrator and join the Corps when the Corps abdicates its [nondiscretionary] responsibility to make reasoned wetlands determinations and the Administrator fails to exercise the duty of oversight." *Id.*

But *Hanson* has no applicability in this case, where Appellants are not challenging a *failure* to carry out a nondiscretionary duty. Instead, Appellants challenge the Corps' Section 404 permit issuance -- a final agency action. Because Supreme Court and Fourth Circuit case law clearly establishes that federal jurisdiction over challenges to final agency actions arises pursuant to the APA, the district court erred in finding jurisdiction based on the CWA citizen suit provision. Thus, we hold that jurisdiction for this challenge arises under the APA. Nonetheless, because both the CWA citizen suit provision and the APA apply the same arbitrary and capricious standard, the error was harmless and not dispositive to this appeal.

B.

We next consider whether the Corps' LEDPA determination was arbitrary and capricious.

The Secretary of the Army, through the Corps, is authorized to issue permits "for the discharge of dredged or fill material into the navigable waters" of the United States. 33 U.S.C. § 1344(a), (d). Permit issuance must comply with specific guidelines established by the Corps, 33 C.F.R. § 320, and guidelines established jointly by the EPA and the Corps, 33 U.S.C. § 1344; 40 C.F.R. § 230.

When evaluating permit applications, the Corps must review the project's wetlands impact. 33 C.F.R. § 320.4. The Corps must also provide factual determinations regarding the effects of excavating material from wetlands and depositing material into wetlands "on the physical, chemical, and biological components of the aquatic environment." 40 C.F.R. § 230.11. The Corps may not issue a permit "if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 C.F.R. § 230.10(a). "An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose." *Id.* at (a)(2).

The regulations differentiate between "water dependent" and "non-water dependent" projects. *See* 40 C.F.R. § 230.10(a)(3). The Cainhoy project is a non-water dependent project, meaning that it is one that "does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose." *Id.* Per the

regulations, in instances of non-water dependent projects, two rebuttable presumptions exist: (1) "practicable alternatives that do not involve special aquatic sites are . . . available;" and (2) non-special aquatic sites "have less adverse impact on the aquatic ecosystem." *Id.* To rebut these presumptions, the applicant must "clearly demonstrate" the proposed project is the LEDPA. *Id.* If the presumptions are not rebutted, the proposed plan is not the LEDPA.

Pursuant to the APA, a court shall "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "In determining whether agency action was arbitrary or capricious, the court must consider whether the agency considered the relevant factors and whether a clear error of judgment was made." *S.C. Coastal Conservation League v. United States Army Corps of Eng'rs*, 127 F.4th 457, 471 (4th Cir. 2025) (quoting *Ohio Valley Env't Coal. v. Aracoma Coal. Co.*, 556 F.3d 177, 192 (4th Cir. 2009)). "Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." *Id.* "Deference is due where the agency has examined the relevant data and provided an explanation of its decision that includes a rational connection between the facts found and the choice made." *Id*.

Here, Appellants argue that the Corps' determination that the proposed project was the LEDPA was arbitrary and capricious because the determination was not based on detailed, clear, and convincing information proving there was no practicable alternative, and because the Corps allegedly ignored obvious alternatives that would have fewer

wetlands impacts. Specifically, Appellants argue that the Corps only considered off-site alternatives that were destined to be rejected and failed to consider less impactful on-site alternatives. These arguments fail. The Corps' determination that the alternatives were impracticable was supported by relevant data and based on a rational connection between the facts found and the determination made.

First, when selecting off-site alternatives, the Corps broadened Intervenors' initial project criteria by extending the commute time from 25.9 minutes to 45 minutes, and considered the other criteria described above. Yet, none of the nine off-site alternatives satisfied the initial or expanded search criteria. The Corps explained that it had difficulty locating off-site alternatives because much of the greater Charleston area is already highly developed, so finding tracts of land that fit the size and location needs of the proposed project was difficult. As a result, many of the off-site alternatives the Corps considered were either under other development contracts; owned by the government; were protected by conservation easements; or did not meet distance, commute time, or utility access criteria. Appellants conceded that no plausible off-site alternative existed.

Second, the Corps considered four on-site alternatives and determined that each alternative would actually impact more acres of wetlands than the proposed plan. The wetlands impact in each of the on-site alternatives ranged from 381 acres to 1,820 acres, as opposed to the 181.5 acres to be impacted by the proposed plan. Despite this, Appellants are not satisfied and assert that the Corps should have considered an on-site alternative with less impact. But, the Corps provided a reasonable explanation as to why on-site alternatives with less than 181.5 acres of wetlands impact were unachievable. Specifically,

the Corps explained that Cainhoy has an "extremely irregular shape" of wetlands and adjacent uplands making it necessary to impact wetlands in order to develop an "effectively designed community." J.A. 920.

Next, the Corps analyzed the Dover plan. As explained above, there were four versions of the Dover plan, with each impacting between zero and 13.2 acres of wetlands. Though these versions impacted less wetlands than the proposed plan, the Corps determined all versions of the Dover plan were impracticable because it was a "distinctly different project" that did not align with the overall purpose of the proposed development. J.A. 1052. The Corps explained that the Dover plan was "distinctly different" because it "focused on optimizing the number of housing units, as well as commercial and workplace uses and therefore, very little greenspace [was] incorporated." *Id.* at 1049 (internal quotation marks omitted). The Corps further concluded the Dover plan was distinctly different because it focused on multi-family residential housing as opposed to single family housing in the proposed plan. Moreover, the Dover plan called for development of only 1,000 of the 9,000 available acres, thereby leaving the remaining 8,000 acres open to independent development. And, critically, the Dover plan did not include conservation efforts for the remaining acreage. Therefore, the Corps logically concluded that leaving 8,000 acres open for future independent development may lead to increased wetlands impact.

Finally, the Corps analyzed a no action plan, in which Intervenors' permit would be denied and Cainhoy would be left available for future smaller, independent development. The Corps reasonably concluded that this alternative would not only potentially impact

more wetlands but would not benefit from Intervenors' "comprehensive approach to a compensatory mitigation plan that protects the most ecologically valuable on-site wetlands." J.A. 1051. The Corps explained that, under the no action plan, Cainhoy would likely be subdivided and developed in smaller parcels, which would increase permit requests for wetlands impacts. In turn, the wetlands would be impacted to a greater degree than they would under the proposed plan because Cainhoy would not benefit from the collaboration of Intervenors and their conservation efforts.

The Corps' conclusions regarding off-site alternatives, on-site alternatives, the Dover plan, and a no action scenario were thoroughly explained in the EA based on all relevant facts. The Corps listed each alternative and explained why that alternative either did not comply with the overall project purpose or would impact more wetlands than the proposed plan. In other words, it satisfied its obligation to explain its decision by providing a rational connection between the facts found and the choice made.[4] *S.C. Coastal*, 127 F.4th at 471.

We therefore hold that the Corps' LEDPA determination was not arbitrary or capricious.[5]

---

[4] It is also noteworthy that the initial Cainhoy development proposal called for 1,820.1 acres of wetlands impact. But, through the concerted effort of the Corps and Intervenors that number decreased to 181.5 acres of impact -- an approximately 90 percent decrease.

[5] Appellants also argue that the district court improperly shifted the burden of proving practicable alternatives from Intervenors to Appellants. This argument is without merit. Appellants fail to cite any burden shifting language in the summary judgment order or elsewhere and we discern none. In the portion of the order with which Appellants take (Continued)

IV.

The judgment of the district court is

AFFIRMED.

---

issue, the district court merely discussed the Dover plan and why the Corps determined it to be impracticable.