

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF CURRITUCK

25CV000675-260

NO MCB – CONCERNED CITIZENS)
AND VISITORS OPPOSED TO THE)
MID-CURRITUCK BRIDGE,)

Petitioner,)

v.)

NORTH CAROLINA COASTAL)
RESOURCES COMMISSION and)
NORTH CAROLINA DEPARTMENT)
OF ENVIRONMENTAL QUALITY,)
DIVISION OF COASTAL MANAGEMENT,)

Respondents.)

PETITION FOR JUDICIAL REVIEW

Pursuant to N.C. Gen. Stat. §§ 150B-43, -45, and -46, and 113A-121.1(b), Petitioner No MCB-Concerned Citizens and Visitors Opposed to the Mid-Currituck Bridge (“No MCB”) respectfully submits this petition for judicial review of and exceptions to the final agency decision (“Final Decision”) issued by Respondent North Carolina Coastal Resources Commission (“CRC”) on November 7, 2025, in its docket CMT-2025-08, which granted in part and denied in part a third-party hearing request to challenge a permit issued by Respondent North Carolina Department of Environmental Quality, Division of Coastal Management (“DCM”) under the Coastal Area Management Act of 1974, N.C. Gen. Stat. § 113A-100 *et seq.* (“CAMA”).

In support of this petition, No MCB shows the Court as follows:

NATURE OF THE CASE

1. This petition relates to CAMA major development permit 105-25 (the “Permit”) issued by Respondent DCM to the North Carolina Turnpike Authority, an agency located within and supervised by the North Carolina Department of Transportation (together, “NCDOT”) for the Mid-Currituck Bridge Project, an unnecessary, environmentally damaging, billion-dollar transportation project. The project alternative that was permitted is referred to here as the “Bridge Alternative.”

2. DCM’s decision to issue the Permit violated N.C. Gen. Stat. § 113A-120 and related sections of the North Carolina Administrative Code.

3. As required by CAMA, No MCB and the Sierra Club (together, the “Conservation Groups”) timely filed a Third-Party Hearing Request that the CRC determine that a contested case challenging DCM’s issuance of the Permit would be appropriate pursuant to N.C. Gen. Stat. § 113A-121.1(b).

4. CAMA authorizes the CRC only to determine whether a contested case challenging a permit is appropriate; it does not authorize the CRC to consider the merits of individual legal claims. Yet the CRC exceeded its authority and acted arbitrarily, capriciously, and erroneously in its Final Decision by purporting to grant the request “in part” and deny it “in part” by authorizing a contested case hearing on only two of the several legal grounds the Conservation Groups presented and denying the request as to the remaining grounds. Exhibit 1 at 33. No MCB now seeks review of that erroneous determination. The CRC’s Final Decision is attached as Exhibit 1. The Permit is attached as Exhibit 2. The Conservation Groups’ Third-Party Hearing Request for determination is attached as Exhibit 3.

5. The CRC's Final Decision leaves No MCB in a murky procedural position. CAMA only contemplates the CRC granting or denying a request to challenge a permit as a whole and does not authorize the CRC to assume the role of the judiciary in determining which individual claims have merit, so, unsurprisingly, the statute governing such requests does not explain a protocol for appealing a partial denial of a request. A challenger whose request is deemed appropriate must proceed by filing a petition for contested case in the Office of Administrative Hearings ("OAH"), while a "determination that a person may not commence a contested case" must be challenged as a final agency action in Superior Court under the North Carolina Administrative Procedure Act ("APA"). N.C. Gen. Stat. § 113A-121.1(b).

6. Having received approval from CRC to file a petition for contested case in OAH challenging the Permit, the Conservation Groups did so, and were assigned case number 25-EHR-04383. Because the CRC approved a contested case hearing and because it lacks the authority to rule on individual claims, the Conservation Groups are proceeding with all of their claims in their OAH action.

7. As a precautionary measure and in order to preserve its rights, No MCB additionally petitions this Court for an order determining that: (1) the CRC erred in purporting to dictate which legal grounds the Conservation Groups may assert in their contested case and which legal arguments the Administrative Law Judge ("ALJ") assigned to the contested case may consider, (2) the CRC erred in its conclusion that a contested case on legal arguments related to N.C. Gen. Stat. § 113A-120(a)(5), (6), and (10) would be frivolous, and (3) that the ALJ assigned to contested case 25-EHR-04383 may hear all claims included in the already-filed petition for contested case.

PARTIES

8. Petitioner No MCB is a Currituck County-based membership organization of concerned citizens and visitors who oppose the Mid-Currituck Bridge Alternative, some of whom have lived in the Project area for generations. Its mission is to protect the unique natural environment of the Currituck mainland and the northern Outer Banks by advocating against the destructive effects the Bridge would bring to the nearby environment and community. No MCB has over 700 members and supporters, many of whom live either on the mainland, in communities such as Barco, Aydlett, and Coinjock, or on the Outer Banks, in and around the village of Corolla. Some members of No MCB are small business owners who are concerned that the Bridge will degrade the very natural resources that make the Outer Banks so highly prized by beach-loving tourists, residents, commercial and recreational fishers, and others. Others are real property owners, homeowners, and residents of communities who will be directly adversely impacted by the condemnation and degradation of the land where they live, work, and play, the construction of the routes to each end of the Bridge, and the induced growth around those routes. These members have recreational, aesthetic, economic, professional, and/or spiritual interests in the character of their communities, the preservation of the area, and the benefits to the ecosystem, fisheries, and tourism that the area supports—interests that will be harmed by the construction of the Bridge Alternative and the resulting induced growth and environmental destruction.

9. No MCB is a person aggrieved under the APA, N.C. Gen. Stat. §§ 150B-23(a), -43, whose rights have been substantially prejudiced by DCM's issuance of the Permit and by the CRC's Final Decision. No MCB is entitled to judicial review of the Final Decision pursuant to

CAMA, N.C. Gen. Stat. §§ 113A-121.1(b), and the APA, Article 4 of Chapter 150B of the General Statutes.

10. Respondent DCM is a Division within the North Carolina Department of Environmental Quality. DCM has the authority to grant or deny applications for CAMA permits under N.C. Gen. Stat. § 113A-100 *et seq.*

11. Respondent CRC was established by the North Carolina General Assembly to develop and administer a coastal area management system designed to preserve and protect the physical, aesthetic, cultural, and recreational qualities of North Carolina's coastal areas to the maximum extent possible; to manage water resources in order to preserve and enhance water quality and ecological values; and to guide growth and development to minimize damage to the natural environment. *See* N.C. Gen. Stat. §§ 113A-102, -104. It has the authority to designate Areas of Environmental Concern, issue or deny CAMA permits (which it has delegated to DCM in 15A N.C. Admin. Code 07J .0209), and make determinations on the appropriateness of third-party requests to challenge permit decisions, among other things. N.C. Gen. Stat. §§ 113A-104, -113, -118, -121.1(b).

JURISDICTION AND VENUE

12. The CRC's Final Decision was a final agency decision, and this Court has jurisdiction over this petition for judicial review of that Decision pursuant to N.C. Gen. Stat. §§ 113A-121.1(b) and Article 4 of Chapter 150B of the General Statutes. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 6(a), and 26 N.C. Admin. Code 03 .0116, this petition for judicial review was timely filed within 30 days of November 7, 2025, the date of the Final Decision.

13. "A petition for review of any . . . final decision [other than a contested tax case] under this Article must be filed in the superior court of the county where the person aggrieved by

the administrative decision resides[.]” N.C. Gen. Stat. § 150B-45(b)(2). Petitioner No MCB is based in Currituck County and many of its members reside in Currituck County, so this Court is the proper venue for this petition for judicial review.

FACTUAL BACKGROUND

14. Nearly half a century ago, NCDOT began plans for the Mid-Currituck Bridge project: a proposed toll bridge across the pristine Currituck Sound to a fragile barrier island in the northern Outer Banks of North Carolina. From the project’s early days, its local proponents made clear that its purpose was to spur development, and that the Bridge would “change what the landscape of Currituck looks like in the not-too-distant future” and “transform” the area. *See* Reggie Ponder, *Feds OK Mid-Currituck Bridge*, Daily Advance (Mar. 8, 2019), <https://perma.cc/G5S9-PU94d>. For example, Currituck County’s 2006 Land Use Plan (pp. 5–6) stated that the Bridge would “have a huge influence on development patterns throughout much of Currituck County” and that “pressure for additional development in Corolla and especially Carova will increase dramatically with improved access to these two areas.”

15. DCM and many others raised concerns about the effects the Bridge Alternative would induce, with DCM urging that “[b]ecause of the wealth of natural resources in Currituck Sound and the secondary impacts of increasing development pressures in the area, the bridge option should be the last alternative considered.” Letter from Pete Colwell, DCM, to Steve Benton (May 27, 1994). Concerns about induced development are well-founded: project documents project approximately 2,500 additional residential units will be constructed—and 830 additional acres developed—along the Outer Banks due to the Bridge Alternative, and real estate brokers have already begun buying up huge swaths of land in Corolla, touting the Bridge as a major selling point for a new mixed-use development. Collectively, this development resulting

from the bridge will increase on- and off-road traffic, strain already-overburdened septic and wastewater infrastructure, harm wildlife and their habitats, and otherwise degrade coastal resources.

16. The current version of the Project includes construction of approximately 6.5 miles of bridging, including a 4.7-mile-long two-lane toll bridge across Currituck Sound (“the Sound”) between the communities of Coinjock and Aydlett on the mainland and Corolla on the Outer Banks, an interchange between US 158 and the mainland approach road to the bridge, a 1.7-mile bridge across Maple Swamp as a part of the mainland approach road. The price tag has skyrocketed over the years to approximately one billion dollars, and NCDOT has no concrete plans for funding its construction, as detailed in Exhibit 3.

17. The stated purposes of the project are alleviating summertime traffic congestion on the Outer Banks and improving hurricane evacuation times. There is a practicable project alternative that would accomplish these purposes at least as well as a bridge over the Sound while causing less adverse impacts to public resources, including environmental resources. That alternative, referred to in agency documents as the Existing Roads 2 or “ER2” alternative, would relieve traffic congestion and improve hurricane evacuation without the high cost of bridging by focusing on widening roads, reconfiguring intersections and interchanges, and otherwise improving existing roads.

18. NCDOT decided to pursue the Bridge Alternative, however, and applied to DCM for a CAMA permit to do so on September 18, 2024. DCM determined that the application was complete on January 7, 2025.

19. DCM published notice of the application, accepted written public comments, and held public hearings to accept additional comments. The Conservation Groups, through the

undersigned attorneys, submitted an extensive set of written comments, which are attached to Exhibit 3. Many of No MCB's members also submitted individual written comments, signed a petition, and spoke at public hearings, expressing their concerns about the adverse impacts the Bridge Alternative would have on their lives, their communities, and the environment.

20. DCM issued the Permit on September 19, 2025, and on October 8, 2025, the Conservation Groups submitted a third-party request seeking permission to challenge the Permit via a petition for contested case at OAH.

21. The Chair of the CRC, under authority delegated by the CRC, issued the Final Decision described above, purporting to grant the request in part and deny it in part.

22. The Conservation Groups timely filed a petition for contested case at OAH (assigned case number 25-EHR-04383) on November 26, 2025, and No MCB has now filed the instant petition for judicial review out of an abundance of caution, seeking a determination that those portions of the CRC's Final Decision that purported to prevent OAH from considering all grounds presented by the Conservation Groups were in excess of statutory authority, made upon unlawful procedure, legally erroneous, unsupported by substantial evidence, and arbitrary, capricious, and an abuse of discretion.

LEGAL BACKGROUND

23. When the General Assembly enacted CAMA, it described its purpose as follows:

[A]mong North Carolina's most valuable resources are its coastal lands and waters. . . . North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

. . . [A]n immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of

the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

N.C. Gen. Stat. § 113A-102(a).

24. The statute goes on to list goals for the coastal area management system, including among others: “preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches,” insuring “that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations,” and insuring “the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation.” *Id.* § 113A-102(b).

25. Under CAMA, a third party may challenge a decision to grant a major development permit only after securing a determination from the CRC that a hearing on a petition for contested case is appropriate. N.C. Gen. Stat. § 113A-121.1(b). Under that statute, the CRC must base its determination “on whether the person seeking to commence a contested case” has done the following:

- (1) Has alleged that the decision [to issue the CAMA permit] 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.

Id.

26. Under the APA, a court reviewing a final agency decision “may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if

the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are” any of the following:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150G-30, or 150B-31 in view of the entire record as submitted, or
- (6) Arbitrary, capricious, or an abuse of discretion.

N.C. Gen. Stat. § 150B-51.

EXCEPTIONS TO THE FINAL AGENCY DECISION

Pursuant to N.C. Gen. Stat. §§ 150B-43 through -46, No MCB submits the following exceptions to the CRC’s Final Decision:

I. The CRC Exceeded Its Authority by Ruling on Individual Legal Issues.

27. The CRC exceeded its statutory authority and committed legal error by purporting to deny the Conservation Groups’ request as to certain legal issues but not others. In doing so, it usurped the role of the ALJ and any higher courts that may hear appeals.

28. The plain text of CAMA makes clear that the CRC is empowered to determine only whether “a *contested case* is appropriate” and “the request for *the hearing* is not frivolous.” N.C. Gen. Stat. § 113A-121.1(b) (emphases added). The CRC determines whether a hearing may be commenced—that is, whether the requestor has alleged any non-frivolous legal or factual grounds that could support a challenge, or whether the entire request is completely baseless—but

it is not empowered to judge the merits of individual legal arguments and act as the gatekeeper for which arguments the ALJ and higher courts may consider.

29. Here, the Conservation Groups timely filed their Third-Party Hearing Request, made the showing required by the statute, and received notice on November 7, 2025 that the Chair of the CRC, exercising authority delegated by the CRC, concluded that the Conservation Groups satisfied all three prongs of the standard outlined in N.C. Gen. Stat. § 113A-121.1(b), namely that the Conservation Groups had identified laws that they alleged the Permit violated, that they were directly affected by issuance of the Permit, and they had alleged facts and/or legal arguments demonstrating that a contested case hearing would not be frivolous. *See generally* Exhibit 1 at 12, 15, 18. Accordingly, the CRC determined that a contested case was appropriate. It should have stopped there.

30. However, the Chair erroneously went on to evaluate each of the Conservation Groups' individual legal arguments and purported to determine that some were frivolous and could not be included in the contested case. In so doing, the CRC, acting through the CRC Chair, exceeded its authority and acted upon improper procedure.

31. CAMA does not authorize the CRC or the CRC Chair—who is not a judge—to consider the merits of individual legal grounds in a permit challenge. Instead, it authorizes the CRC simply to consider whether a contested case is appropriate or frivolous. *See* N.C. Gen. Stat. § 113A-121.1(b). To satisfy the third prong, a contested case is appropriate if the requestor has alleged *any* facts or made *any* legal arguments “that demonstrate that the request for the hearing is not frivolous.” *Id.* § 113A-121.1(b)(3).

32. In other words, the CRC's role is solely to “screen requests from third parties” for a hearing “and deny requests that the Commission determines to be frivolous,” not parse their

individual claims or constrain the potential arguments a challenger may make in the contested case, thereby preventing the assigned ALJ and later courts from performing their proper role in adjudicating disputes. *Batson v. Coastal Res. Comm'n*, 282 N.C. App. 1, 2 (2022), *aff'd by an equally divided Court*, 385 N.C. 328 (2023).

33. CAMA and the APA make clear that the authority to consider the *merits* of any and all individual specific legal issues is reserved for the ALJ assigned to preside over the contested case. *See, e.g.*, N.C. Gen. Stat. § 150B-34(a) (granting the ALJ the authority to “make a final decision or order that contains . . . conclusions of law” and requiring the ALJ to give “due regard” to the agency only “with respect to facts and inferences”); *see also Savage v. N.C. Dep’t of Transp.*, 388 N.C. 196, 202 (2025) (agencies’ interpretations of state law are not binding on courts).

34. Accordingly, the CRC’s attempt to dispose of certain of the Conservation Groups’ issues as frivolous—even though it already determined that a contested case hearing is appropriate—exceeded its statutory authority, was arbitrary and capricious and unsupported by substantial evidence, and was based on improper procedure and legal error. In doing so, the CRC substituted its own judgment for that of the ALJ and future courts, effectively granting a dispositive motion in its own favor that purports to eliminate certain legal arguments the Conservation Groups can make in support of their case.

35. OAH’s rules confirm that “dismissal [of] . . . any part” of the case is among the “Duties of the Administrative Law Judge”—not the CRC. 26 N.C. Admin. Code 03 .0105(6). The CRC improperly usurped that role in its Final Decision.

36. Former Chief ALJ Julian Mann explained the limits of the CRC's gatekeeping authority in denying a motion for partial dismissal of a petition for contested case hearing that raised additional issues beyond the one that the CRC had deemed non-frivolous:

The [CAMA] statute neither directs nor empowers the [CRC] to decide the challenge on the merits. The [CRC] is only to determine whether the Petitioner is directly affected, has *alleged* that the decision is contrary to a statute or rule, and has *alleged* facts or made legal arguments that show that the request for hearing is not frivolous. In other words, the Commission is simply to determine, as gatekeeper, that the Petitioner is someone who has a right to challenge the particular permit, and that the Petitioner's challenge is not frivolous. If these contingencies are met, then the third party challenge to the permit goes to the Office of Administrative Hearings for a contested case hearing on the merits. This statutory process at the CRC is analogous to a probable cause determination hearing in District Court.

...

The statute does not either expressly or by implication empower the [CRC] to parse individual issues. The contested case is either appropriate or not.

Nowhere in the statute is there any mention of such a procedure or power. The statute speaks exclusively of the [CRC] determining the whole appeal. The statute does not state that the [CRC] or its Chairman has the authority to decide what issues a person may bring as a contested case or does the statute state that the CRC may limit the issues a person aggrieved may bring in a contested case. In fact, the statute simply speaks of a "determination of the appropriateness of a contested case hearing." N.C. Gen. Stat. §113A-121.1(b). . . . Again, the statutory language speaks of the overall "appropriateness of the contested case," and does not authorize or empower the limitation of issues that may be included in the contested case. In short, neither the statute nor any rules promulgated thereunder expressly grant the CRC the authority to do anything other than determine whether a contested case may or may not proceed.

Order Den. Mots. for Partial Dismissal at 4-5, *Cowell v. DCM*, N.C. Off. of Admin. Hearings, 06-EHR-1185 (Jan. 30, 2007) (final emphasis added) (attached hereto as Exhibit 4).

37. As Chief ALJ Mann explained, the CRC simply determines whether the three criteria for a contested case have been met; it cannot pick and choose which issues the Petitioner may raise before the ALJ and later before the courts on any appeal. Because the CRC, acting through the Chair, has determined that the Conservation Groups met all three requirements,

including that a contested case would not be frivolous, the Conservation Groups are entitled to challenge the Permit on any and all grounds that provide a basis for judgment in their favor.

38. The approach taken by the CRC here, which prompted this petition for judicial review, illustrates the confusion and inefficiency that result when the CRC purports to make a determination on individual legal claims. The Conservation Groups had 20 days following the Final Decision to initiate their contested case in OAH, while they had 30 days to appeal the Final Decision's denial of their request as to their other claims. Bifurcating this permit challenge, as the CRC has purported to do here, means the two parts of the litigation challenging the propriety of the single Permit will likely proceed on different tracks and potentially could reach inconsistent results, wasting judicial resources and harming litigants.

39. As Chief ALJ Mann explained, the "proposed statutory interpretation that would allow the [CRC] to parse the issues" would "create[] an otherwise strained and irrational appeal process of the [CRC's] gatekeeping function" and would be "wasteful, confusing, and burdensome with the added potential of producing inconsistent results." *Id.* at 7. He explained,

First, requiring a person to simultaneously pursue two distinct avenues of resolution in two different forums in order to preserve a single third party challenge is wasteful, confusing, and burdensome with the added potential of producing inconsistent results. Second, . . . the evidentiary hearing in the Office of Administrative Hearings [may] proceed before the completion of the appeal on the issues denied. . . . There would be great potential for inconsistent administrative decisions and inconsistent appellate review arising from one challenge. It is more logical . . . to allow the hearing process in the Office of Administrative Hearings to proceed on all issues raised in the petition, allowing the administrative law judge to consider dismissal, pursuant to a properly filed and noticed motion

Id. at 7-8.

40. For these reasons, the CRC erred by cherry-picking which of the Conservation Groups' arguments the ALJ and later courts may consider and attempting to prevent them from considering others. In so doing, it exceeded its authority, acted arbitrarily and capriciously and

without support of substantial evidence, followed improper procedure, and committed legal error.

II. The CRC's Decision Made Erroneous Findings of Fact and Conclusions of Law in Deeming Certain Legal Issues to Be Frivolous.

41. In addition to exceeding its authority, the CRC also erred by claiming to determine that certain issues were unsupported by any facts or legal arguments and were therefore frivolous while actually evaluating the Conservation Groups' arguments on the merits.

42. The "frivolous" standard is a very low threshold; a request for a contested case hearing, like other claims, is only frivolous "if a proponent can present no rational argument based upon the evidence or law in support of [it]." *See, e.g., Griffith v. N.C. Dep't of Corr.*, 196 N.C. App. 173, 174 (2009) (quoting *Gray v. Bryant*, 189 N.C. App. 527, 529 (2008)); *see also Batson*, 282 N.C. App. 9-10. "In determining whether a complaint is frivolous, the standard is not the same as in a ruling on a motion under Rule 12(b)(6);" instead, courts "look with a far more forgiving eye in examining whether a claim rests on a meritless legal theory." *Griffith*, 196 N.C. App. at 174 (quoting *Gray*, 189 N.C. App. at 529).

43. The frivolous standard does not allow the CRC to weigh in on the merits of the requested contested case at this stage of the proceeding, before even allowing a petition for contested case to be filed, let alone before the parties have had an opportunity to conduct discovery, produce evidence, or brief the issues. Nor does it allow the CRC to consider whether the petitioners have a "substantial likelihood of prevailing" in their case, as the statute required before the General Assembly amended it to require only a showing that a request is "not frivolous." *See* 1995 N.C. Laws Ch. 409, S.B. No. 990. Rather, "not frivolous" is a much lower threshold that should be applied liberally to allow cases to be decided on their merits by OAH

and the courts. *See, e.g., Batson*, 282 N.C. App. at 9-10 (“Importantly, frivolous does not mean unlikely to succeed or meritless.”).

44. Despite claiming it was evaluating the Conservation Groups’ claims for frivolity, the CRC in its Final Decision repeatedly interrogates the merits of each argument in the Conservation Groups’ request and their factual underpinnings, reciting its beliefs about the “speculative” nature of the Conservation Groups’ claims and the appropriate interpretation of relevant statutes. *See, e.g., Exhibit 1 at 27-28, 30.*

45. By looking to whether the Conservation Groups will ultimately *succeed* on their claims, the CRC has exceeded its authority, acted arbitrarily and capriciously and without support by substantial evidence, followed improper procedure, and otherwise committed errors of law that render its decision to partially deny their request for a contested case erroneous, as set out below. These errors substantially prejudiced the Conservation Groups to the extent they had the effect of limiting the legal arguments available in their contested case.

A. The CRC erred by concluding that the Conservation Groups “failed to demonstrate that their request for a contested case hearing on whether the Permit should have been denied pursuant to N.C. Gen. Stat. § 113A-120(a)(10) is not frivolous.”

46. Perhaps the most glaring example of the CRC’s improper merits analysis is the CRC’s rejection of the Conservation Groups’ cumulative effects argument as “frivolous” simply because the CRC wishes to impose an unduly narrow interpretation of what constitutes “cumulative effects” or “cumulative impacts” and because the CRC imposed an improper standard that the effects the Conservation Groups are concerned about must be absolutely certain to occur. *Exhibit 1 at 29-31.*

47. Section 113A-120(a)(10) of the General Statutes mandates denial of a CAMA permit when, “[i]n any case . . . the proposed development would contribute to cumulative

effects that would be inconsistent with the written guidelines set forth in subdivisions (1) through (9) of this subsection.” It goes on to explain that “[c]umulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.” *Id.*

48. The CRC’s Final Decision states that the Conservation Groups had met the requirements to allege that the Permit was contrary to a statute and to show that they are directly affected, but erroneously concludes that it had not met the requirement to allege facts and legal arguments to demonstrate that a cumulative effects claim would not be frivolous.

49. In casting the Conservation Groups’ § 113A-120(a)(10) argument regarding cumulative effects as frivolous, the CRC Chair explained that its own interpretation of “cumulative impacts” is not as expansive as NCDOT’s, which includes “secondary and indirect impacts” of a project or action when assessing cumulative impacts. Instead, the CRC and DCM interpret the term to be limited to effects caused “by projects similar to the permitted project,” which in the present case would be limited to effects caused by “CAMA permits being requested for the construction of more bridges in the area and not just the potential increase of development activity in the area surrounding the Site.” Exhibit 1 at 30. The statutory text, however, does not limit the definition of “cumulative impacts” so restrictively—that is, to the effects of other long bridges transecting the Sound—and the CRC’s narrow reading of this provision is neither supported by case law nor owed any deference. *See Savage*, 388 N.C. at 197 (renouncing deference to agency interpretation of statutes).

50. In fact, subsection (10) states that “[c]umulative effects are impacts attributable to the collective effects of a number of projects *and include* the effects of additional projects similar to the requested permit in areas available for development in the vicinity.” N.C. Gen. Stat. §

113A-120(a)(10) (emphasis added). This provision is best read to mean that cumulative effects are the collective effects of a number of projects, which may include but are not limited to similar projects, and certainly are not limited to virtually identical projects (“the construction of more bridges in the area”), as the CRC asserted here. Exhibit 1 at 30; *see, e.g., N.C. Turnpike Auth. v. Pine Island, Inc.*, 265 N.C. 109, 120 (1965) (“The term ‘includes’ is ordinarily a word of enlargement and not of limitation. The statutory definition of a thing as ‘including’ certain things does not necessarily place thereon a meaning limited to the inclusions.”) (citations omitted).

51. The impacts of the Bridge Alternative, therefore, must be considered collectively with the effects of other developments, including future development projects induced by the Bridge Alternative, in the vicinity of the Project.

52. In any event, the Parties’ disagreement about the meaning of “cumulative effects” concerns the merits of the Conservation Groups’ claims, not the appropriateness or frivolity of a contested case hearing, and it should be left to the ALJ and future courts—and not the CRC itself—to determine the propriety of the CRC’s interpretation of the law.

53. Further, the Conservation Groups’ claim under § 113A-120(a)(10) is supported by much more than “no rational argument” as required by the “frivolous” standard. *Griffith*, 196 N.C. App. at 174. Ample evidence in the Project documents, including NCDOT’s own Cumulative Impacts Report and Final Environmental Impact Statement, supports the conclusion that the Bridge Alternative would contribute to extensive cumulative adverse environmental effects with other existing structures and additional development that will be induced in the future in the vicinity of the Project and that would be inconsistent with the guidelines set forth in §113A-120.

54. As explained on pages 10-11 of the Conservation Groups' Third-Party Hearing Request (Exhibit 3), which incorporated pages 21-28 and 44-51 of their comments on the Permit application (those comments are attached to Exhibit 3) and in various Project studies, the Bridge Alternative is expected to increase the amount of visitors and residents to the area significantly, which will in turn induce significantly more development—including construction of houses, hotels, and commercial buildings in and near the estuarine waters and shorelines of the Sound in the vicinity of the termini/footings and approach roads for the Bridge Alternative. This increase in population and development will increase traffic in the area; escalate the need for wastewater services; increase construction and use of piers, docks, and marinas; encourage marine vessel and boat use; lead to a rise in the use of bulkheads and other harmful shoreline stabilization techniques; and prompt dredging and disruption of ecologically sensitive areas. Because of this induced development, the Bridge Alternative is expected to cause more indirect and cumulative effects than other alternatives, including the ER2 alternative that would expand existing roads and no-action alternatives. These phenomena will physically and chemically damage ecologically critical wetlands (including but not limited to coastal wetlands, SAV, and estuarine areas), reduce resilience and increase risks of flooding, erosion, and susceptibility to sea level rise, further deplete the area's wetlands and other natural buffers, and degrade groundwater reserves. This induced development would be inconsistent with the written guidelines set forth in § 113A-120(a)(1) through (9) and harm the Conservation Groups' interests. The CRC erred by deeming the facts and legal arguments presented by the Conservation Groups on this issue to be frivolous.

B. The CRC erred by concluding that “Petitioners failed to demonstrate that their request for a contested case hearing on whether the Permit should have been denied pursuant to N.C. Gen. Stat. § 113A-120(a)(5)” was “not frivolous.”

55. Similarly, the CRC’s attempt to dismiss the Conservation Groups’ public trust effects argument improperly blurs the line between frivolity and the merits, repeating DCM’s “argu[ment] that the Permit includes conditions protecting the public trust rights to the Currituck Sound” and pointing to “speculative” arguments about public trust rights. *See* Exhibit 1 at 27.

56. Section 113A-120(a)(5) mandates denial of a permit when, “[i]n the case of areas covered by G.S. 113A-113(b)(5), . . . the development will jeopardize the public rights or interests specified in said subdivision.” Section 113A-113(b)(5) defines those areas to include “waterways and lands under or flowed by tidal waters or navigable waters, . . . to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution.” This translates into the “public trust areas,” defined in the CAMA regulations as:

all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means.

15A N.C. Admin. Code 07H .0207.

57. Within the Project area, the public trust areas include Currituck Sound, the Atlantic Ocean, Maple Swamp, public breaches, and the shorelines of the Sound, among others.

58. Page 10 of the Conservation Groups' Third-Party Hearing Request incorporated pages 40-42 of the Conservation Groups' comments on the Permit application; it alleged that, among other harms, construction of the Bridge Alternative will impede navigation in the Sound by commercial and recreational boaters and fishers, by creating an obstacle where there was none. Construction of the Bridge Alternative will also degrade water quality in the Sound and degrade fisheries and spawning areas. As described above, it will induce greater development along the Sound's shorelines and thereby restrict the public's access to those shores to a greater degree than other alternatives, including ER2. Accordingly, the issuance of the Permit for the construction of the Bridge Alternative will allow violation of use standards for public trust areas found in 15A N.C. Admin. Code 07H .0207(d) and .0208, by allowing a use that has the potential to increase shoreline erosion, cause degradation of shellfish waters, and jeopardize the public's ability to use Currituck Sound for navigation, fishing, and other public trust rights.

59. The Conservation Groups also alleged that issuance of the Permit will allow violation of the CAMA rules that prescribe use standards for coastal shorelines, which includes estuarine and public trust shorelines; these rules state, "Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly *or indirectly* impair water quality, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV)," among other things. 15A N.C. Admin. Code 07H .0209(d)(4) (emphasis added). The Conservation Groups also pointed out that DCM's own comments on the environmental review documents for the Project express concern for its adverse effects on public trust rights. *See* Exhibit 3 (at page 41 of the Conservation Groups' comments). The harm to public trust rights that would be caused by the Bridge Alternative harms the Conservation Groups' rights and should have led to denial of the Permit.

The CRC erred by deeming the facts and legal arguments presented by the Conservation Groups on this issue to be frivolous. In so doing, it exceeded its authority, acted arbitrarily and capriciously and without support by substantial evidence, followed improper procedure, and committed legal error.

C. The CRC erred by concluding that “Petitioners failed to demonstrate that their request for a contested case hearing on whether the Permit should have been denied pursuant to N.C. Gen. Stat. § 113A-120(a)(6)” was “not frivolous.”

60. Section 113A-120(a)(6) mandates denial of a permit when, “[i]n the case of natural hazard areas . . . the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.” Section 113A-113(b)(6), in turn, identifies “natural hazard areas” as “areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water,” including, for instance, “[s]and dunes along the Outer Banks,” “[o]cean and estuarine beaches and the shoreline of estuarine and public trust waters,” and “[f]loodways and floodplains.” N.C. Gen. Stat. § 113A-113(b)(6).

61. As the Conservation Groups explained on page 10 of their Third-Party Hearing Request (Exhibit 3), which incorporated pages 42-44 of their comments on the Permit application, DCM’s own comments on the environmental review documents for the Project expressed concern that NCDOT had not adequately taken into account the risks associated with placing the Project in close proximity to these types of natural hazard areas. DCM staff explained that concern in an internal memorandum as follows:

There are numerous NCDOT projects in the planning phase that are located within project study areas that may be impacted by increased flooding due to climate change during the design year. Examples include . . . [the] Mid Currituck

Bridge . . . The problems with beach erosion and flooding on NC Highway 12 and the Outer Banks are well known, but here are some examples of other questions that have been raised:

How to factor possible future inundation areas into projections of future traffic and population growth to determine transportation needs. In other words, projections assume continued population growth and density in areas that are subject to increasing sea level rise.

In some cases, NCDOT has designed bridges to be at a height that will not be subject to flooding in the design year, however the approach roads will be subject to flooding in the design year.

Road improvements and new road segments are being planned in areas that have been subject to flooding in past storms.

How to incorporate sea level rise into stormwater management plans due to rising water table.

Email from Cathy Brittingham, Transp. Project Coordinator, DCM, to Jonathan Howell, Major Permits Coordinator, DCM (June 28, 2022).

62. As the Conservation Groups alleged in their Third-Party Hearing Request, NCDOT did not change the Project design in response to these very real issues, and the Bridge Alternative continues to suffer from the flaws alluded to in DCM's internal memo. NCDOT did not adequately account for sea level rise; it did not use updated sea level rise projections, and it only projected 20 years into the future rather than the full lifespan of the Project; it failed to use up-to-date sea level rise data in stormwater management plans. The Permit allows the agencies to place the termini and approach routes for the Bridge Alternative in areas that will be subject to flooding within the lifespan of the Bridge, rendering it potentially useless for evacuation during the very storms it is supposed to address.

63. Moreover, as discussed above, the Permit will induce additional development in an area that is subject to increasing sea level rise. A situation such as this—where the Project would induce thousands of additional residential units to be built in flood- and storm-prone

natural hazard areas and expose countless additional visitors and residents to the worsening effects of sea level rise and shoreline erosion—is precisely the kind of danger to life and property that this provision of CAMA was intended to prevent.

64. DCM should not have granted a Permit in light of those unaddressed concerns and the resulting danger to life and property, and the CRC erred by deeming the facts and legal arguments presented by the Conservation Groups on this issue to be frivolous. In so doing, it exceeded its authority, acted arbitrarily and capriciously and without support by substantial evidence, followed improper procedure, and committed legal error.

PRAYER FOR RELIEF

For the foregoing reasons, No MCB respectfully requests that this Court:

1. Rule that the CRC erred by purporting to partially grant and partially deny the Conservation Groups' request for a determination of appropriateness of a third-party hearing;
2. Rule that the CRC erred in determining that the Conservation Groups' bases for challenging the Permit under N.C. Gen. Stat. §§ 113A-120(a)(5), (6), and (10) were frivolous;
3. Reverse or modify the CRC's Final Decision as provided by N.C. Gen. Stat. § 150B-51(b) to state that a contested case hearing is appropriate and remove any purported restrictions on which legal issues may be considered by the ALJ assigned to contested case number 25-EHR-04383;
4. Remand the matter for a contested case hearing under Article 3 of Chapter 150B of the General Statutes, as provided by N.C. Gen. Stat. § 113A-121.1(b);
5. Award No MCB its costs and attorneys' fees to the extent allowed by law; and

6. Issue such other and further relief as the Court deems proper.

Respectfully submitted, this 5th day of December, 2025.

SOUTHERN ENVIRONMENTAL LAW CENTER

/s/ Nicholas S. Torrey

Julia Furr Youngman

N.C. State Bar No. 21320

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Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that, on the dates shown below, the foregoing Petition for Judicial Review has been served on the State agencies named below by depositing a copy of the same with the United States Postal Service via certified mail, return receipt requested, with sufficient postage affixed and by sending a courtesy copy by email, addressed as follows:

Dan Hirschman General Counsel
North Carolina Department of Environmental Quality
1601 Mail Service Center
Raleigh, N. C. 27699-1601
dan.hirschman@deq.nc.gov

Brittnei Boyd
North Carolina Department of Transportation
Transportation Building
1 S. Wilmington Street
1501 Mail Service Center
Raleigh, NC 27699-01
bjboyd@ncdot.gov

Sarah G. Zambon
Assistant Attorney General
Counsel for the Coastal Resources Commission
P.O. Box 629
Raleigh, NC 27602-0629
szambon@ncdoj.gov

This the 5th day of December, 2025.

SOUTHERN ENVIRONMENTAL LAW CENTER

/s/ Nicholas S. Torrey
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Chapel Hill, NC 27514
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ntorrey@selc.org

Exhibit 1

Coastal Resources Commission's Cover Letter and Final
Decision Granting in Part and Denying in Part Third Party
Hearing Request CMT-2025-08



JEFF JACKSON
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

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

November 7, 2025

Julie F. Youngman
Southern Environmental Law Center
Counsel for Petitioners

Electronically: jyoungman@sencnc.org

Re: Final Decision GRANTING in part and DENYING in part Third Party Hearing Request CMT-2025-08

Dear Ms. Youngman:

The Chair of the Coastal Resources Commission granted in part and denied in part your request for a third-party hearing to challenge the decision to issue Major Permit No. 105-25 ("Permit") for Major Development pursuant to the Coastal Area Management Act of 1974 ("CAMA"). The Permit was issued on September 19, 2025 to the North Carolina Department of Transportation ("NCDOT") for the construction of a 1.5-mile bridge over Maple Swamp, a 4.7-mile bridge over the Currituck Sound connecting mainland Currituck County to the Outer Banks and road improvements to US 158 and NC 12 in both Dare and Currituck Counties, North Carolina (the "Site")

- I. Your Request was granted in part.** Please note this involves a different procedure then outlined in Section II of this letter.

The Commission **GRANTED** your request to challenge the decision to issue a Major Permit Decision on the following grounds:

1. N.C. Gen. Stat. §§ 113A-120(a)(9)
2. N.C. Gen. Stat. §§ 113A-120(a)(2)

Attached is a copy of the Final Decision. Pursuant to N.C. Gen. Stat. § 113A-121.1(b), the Commission has granted your request to file a petition for a contested case hearing. To avail yourself of this right, you must file a petition conforming to the requirements of N.C. Gen. Stat. § 150B-23 **within twenty days from today**. The Office of Administrative Hearings has specific requirements for filing contested case proceedings. These requirements can be found at <http://www.oah.state.nc.us/hearings>. Your petition and the appropriate fee must be filed electronically or at the following address:

No MCB and Sierra Club TPHR Order

November 7, 2025

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Office of Administrative Hearings
67 14 Mail Service Center
Raleigh, North Carolina 27699-6714

If you file a petition for contested case with the Office of Administrative Hearings, you must serve a filed copy of the petition on:

Dan Hirschman General Counsel
Dept. Of Environmental Quality
1601 Mail Service Center
Raleigh, N. C. 27699-1601

You must also serve a copy of the petition on the Permittee involved in the permit decision you are challenging pursuant to N.C. Gen. Stat. §150B-23(a):

Brittnei Boyd
Transportation Building
1 S. Wilmington Street
1501 Mail Service Center
Raleigh, NC 27699-01

Please send me a courtesy copy of the filed petition (email is fine) at the address included in the letterhead so that I may forward it to the attorney who will be representing the Division of Coastal Management in the contested case proceeding.

II. Your Request was denied in part. Note: This is a different procedure than was provided in Section I of this letter.

The Commission **DENIED** your request for a third-party hearing to contest the Permit on the following grounds:

1. N.C. Gen. Stat. §§ 113A-120(a)(1)
2. N.C. Gen. Stat. §§ 113A-120(a)(3)
3. N.C. Gen. Stat. §§ 113A-120(a)(4)
4. N.C. Gen. Stat. §§ 113A-120(a)(5)
5. N.C. Gen. Stat. §§ 113A-120(a)(6)
6. N.C. Gen. Stat. §§ 113A-120(a)(10)
7. N.C. Gen. Stat. § 150B-23(a)

You may appeal the denial in part of your request (as outlined above) by filing a petition for judicial review in the superior court as provided in N.C.G.S. § 150B-45 within **thirty days** after receiving this Decision. If you chose to file a petition for judicial review, please provide me with a courtesy copy at the address included above.

If you appeal the Commission's decision to deny your request in part on these issues, a copy of any judicial review petition must be served on the Coastal Resources

No MCB and Sierra Club TPHR Order

November 7, 2025

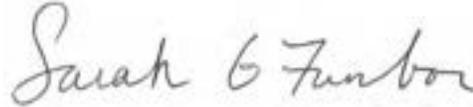
Page 3

Commission's agent for service of process at the following address:

Dan Hirschman, General Counsel
Dept. Of Environmental Quality
1601 Mail Service Center
Raleigh, N. C. 27699-1601

Let me know if you have any questions.

Very truly yours,



Sarah Zambon
Assistant Attorney General
Counsel for the Coastal Resources Commission

Enclosures: as noted

cc electronically:

M. Renee Cahoon, Chair
Christine A. Goebel, Assistant General Counsel, DEQ
Tancred Miller, DCM Director
Jonathan Howell, DCM Deputy Director
Gregg Bodnar, DCM Major permits Manager
Ronald Renaldi
Cathy Brittingham
Stephen Lane
Lee Canady
Angela Willis, Director's Assistant
Colin Justice, Counsel for Permittee NCDOT

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

BEFORE THE CHAIR
COASTAL RESOURCES
COMMISSION
CMT-2025-08

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

DECISION

I. PROCEDURAL BACKGROUND

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

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

1. Recommendation of the Division of Coastal Management – October 31, 2025 (21 pages)
2. Third party Hearing Request by Petitioners – October 8, 2025 (85 pages with attachments)
3. Order of Joint Motion for Partial Dismissal – April 17, 2014 (7 pages)
4. DMF presentation MCB - 2025-08-06 (5 pages)
5. Mid-Currituck Bridge Project Essential Fish Habitat Technical Report Addendum - April 2025(24 pages)
6. Final Revised SAV Mitigation Plan Version – 2025-8-15 (41 pages)
7. Interagency Meeting Agenda – August 6, 2025 (1 page)
8. Interagency Meeting Agenda – July 15, 2025 (1 page)
9. Interagency Meeting Agenda – July 24, 2025 (1 page)
10. NCDMF Feedback – Mid-Currituck SAV mitigation – January 10, 2024 (2 pages)
11. R-2576 IAM Summary Final -January 10, 2024 (6 pages)
12. R-2576 IAM Summary Final - May 14, 2025 (3 pages)
13. R-2576 IAM Summary Final – July 15, 2025 (5 pages)
14. R-2576 IAM Summary Final – July 24, 2025 (6 pages)
15. R-2576 IAM Summary Final – August 6, 2025 (5 pages)
16. R-2576 IAM Summary Final – December 11, 2024 (5 pages)
17. R-2576 NCDOT Response to DMF comments SAV Plan – March 25, 2024 (4 pages)
18. R-2576 2025 SAV Report 2024 Final – January 29, 2025 (22 pages)
19. Mid Currituck Application
 - a. Attachment 01- CAMA Major Permit Forms Rev – November 4, 2024 (13 pages)
 - b. Attachment 02 – Jurisdictional Impacts Permit Drawings compressed – (97 pages)
 - c. Attachment 03 – Right-of-Way Plans June 2024 (78 pages)
 - d. Attachment 04 – Construction Narrative – February 21, 2024 (4 pages)
 - e. Attachment 04 - Construction Narrative Clarification – (1 page)
 - f. Attachment 05 – Temporary Barge Mooring – June, 2021 (2 pages)
 - g. Attachment 06 - Cumulative Impact for Water Quality – May 2024 (216 pages)
 - h. Attachment 06A – ICE Technical Report – November 2011 (216 pages)
 - i. Attachment 06B – ICE Technical Report Addendum – October 1012 (43 pages)
 - j. Attachment 07 – Identification of LEDPA – July 2020 (49 pages)
 - k. Attachment 08 – Natural Resources Technical Update – June 2023 (45 pages)
 - l. Attachment 09 - Utility Impacts Permit Drawings (8 pages)
 - m. Attachment 10 - Utility Relocation Environmental Narrative – February 27, 2024 (8 pages)
 - n. Attachment 11- SAV Impact Drawings (14 pages)

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

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

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

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

II. STANDARD OF REVIEW

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

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

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

III. FINDING OF FACTS

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

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

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

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

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

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

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

IV. CONCLUSIONS OF LAW

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

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

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

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

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

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

A. N.C. Gen. Stat. § 113A-120(a)(9)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Court of Appeals has explained,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

V. DECISION

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

This the 7th day of November 2025.



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

CERTIFICATE OF SERVICE

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

Method of Service:

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This the 7th day of November 2025

Sarah G Zambon

Sarah Zambon
Assistant Attorney General
Counsel for the Coastal Resources
Commission

Exhibit 2

Mid-Currituck Bridge
CAMA Major Development Permit
105-25

Permit Class
NEW

Permit Number
105-25

STATE OF NORTH CAROLINA
Department of Environmental Quality
and
Coastal Resources Commission

Permit

for

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to NCDOT/NC Turnpike Authority, 1599 Mail Service Center, Raleigh, NC 27699-1599

Authorizing development in Currituck/Dare County at Currituck Sound and unnamed tributary to Jean Guite Creek, US 158 & NC 12, as requested in the permittee's application dated 9/18/24, 11/9/24 (MP forms), and 11/12/24
(additional information), including the attached drawings (193), as referenced in Condition No. 1 of this permit.

This permit, issued on September 19, 2025, is subject to compliance with the application (where consistent with the permit), all applicable regulations and special conditions set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

TIP No. R-2576, Mid-Currituck Bridge Project

- 1) Unless specifically altered herein, all work authorized by this permit shall be carried out in accordance with the following attached workplan drawings (193). [07J .0202(c)]:

Wetland and Surface Water Impact Drawings (96 sheets): 50 dated 4/23/24; 2 dated 4/24/24; 7 dated 6/13/24; 4 dated 11/4/24; 2 dated 11/1/24; 2 dated 6/24/24; 24 dated as received 9/18/24; and 4 dated 4/30/24; and Impacts Summary Table dated as received 7/31/25.

Utility Drawings (7 sheets): 7 dated 2/5/24.

Right-of-Way Plans (77 sheets): 1 dated as received 9/18/24; and 76 dated 6/17/24.

SAV Impact Drawings (13 sheets): 1 dated 6/7/24; and 12 dated as received 9/18/24.

(See attached sheets for Additional Notes and Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date.

Signed by the authority of the Secretary of DEQ and the Chair of the Coastal Resources Commission.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

No expiration date, pursuant to GS 136-44.7B



for Tancred Miller, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL NOTES AND CONDITIONS

NOTE: The complete project includes construction of a controlled-access two-lane toll road that extends from US 158 near Coinjock/Aydlett to NC 12 near Corolla, including a bridge approximately 1.5-miles long over Maple Swamp; a bridge approximately 4.66-miles long over Currituck Sound; a two-lane highway for approximately 1,717 linear feet between the Maple Swamp Bridge and the Currituck Sound Bridge; an interchange where the new road connects with US 158, including the associated toll plaza and related facilities/improvements; improvements to US 158, Aydlett Road, and Waterlily Road on the mainland; improvements to US 158 east of the Wright Memorial Bridge in Southern Shores; improvements to NC 12, Albacore Street, Aydlett Street, North/South Harbor View Street and Ocean Forest Court on the Outer Banks; approximately 342 linear feet of shoreline stabilization; and reversal of the US 158 center turn lane for hurricane evacuation for approximately 5 miles between the US 158/Mid-Currituck Bridge interchange and NC 168 at Barco.

- 2) If additional permanent and/or temporary impacts, or any changes in the authorized project, are proposed that are not shown on the attached workplan drawings or described in the authorized permit application, contact a representative of the N.C. Division of Coastal Management (DCM) prior to commencement of any such activity to determine if additional authorization from DCM is required. [07J .0201; 07J .0405(a)].
- 3) Unless specifically altered herein, any mitigative measures or environmental commitments specifically made by the permittee in the CAMA permit application, the Reevaluation of Final Environmental Impact Statement (FEIS) dated 3/7/19, and the Record of Decision (ROD) dated 3/6/19, shall be implemented, regardless of whether or not such commitments are addressed by individual conditions of this permit. In accordance with Section 6.0 of the ROD (page 20-21), any changes to measures to minimize harm shall be completed in conjunction and coordination with the appropriate state and federal environmental resource and regulatory agencies. [07J .0209; 07H .0208(a)(3); 07J .0202(c)].

Currituck Sound and Jean Guite Creek

- 4) There shall be no permanent or temporary impacts to Coastal Wetlands CAMA AECs without permit modification. [07J .0201; 07H .0208(a)(2)(A); 07H .0205; 07J .0405(a)].
- 5) No excavation, including dredging, shall occur within the Estuarine and Public Trust Areas CAMA AECs, either by conventional methods or by prop wash “kicking” with boat propellers. This condition does not apply to the authorized shoreline stabilization footprint. [07H .0208(b)(1); 07J .0201; 07J .0202(c)].
- 6) No filling shall take place at any time in any Estuarine Waters and Public Trust Areas CAMA AECs outside of the alignment of the areas indicated on the attached workplan drawings, without permit modification. [G.S 113A-120(b); 07J .0209(a); 07J .0405(a)].
- 7) All fill material shall be clean and free of any pollutants except in trace quantities. [07H .0208(a)(2)(A); 07H .0209(d)(3)].
- 8) The temporary placement and/or double handling of any excavated or fill material within Estuarine and Public Trust Areas CAMA AECs is not authorized, with the exception of the temporary work trestle pilings. [07J .0201; 07J .0202(c); 07H .0208(b)(1)(B); 07H .0208(b)(1)(C)].

ADDITIONAL NOTES AND CONDITIONS

- 9) All construction access for the bridge over Currituck Sound shall be through use of the partially constructed new bridge, temporary work trestles, barges, and/or existing high ground areas. [07J .0202(c)].

NOTE: The authorized project includes the use of temporary work trestles during construction of the Currituck Sound Bridge, including open (i.e. beams only to support a crane) trestles on the east side of Currituck Sound to minimize potential SAV shading impacts, and closed deck trestles on the west side of Currituck Sound. Barges shall be used in the middle sections (approximately 2.6 miles) where the water is deeper than approximately 5-7 feet.

- 10) The installation and removal of the piles and temporary work trestles shall be accomplished by pile driving, vibratory hammer and/or static pull. Should the permittee and/or their contractor propose to utilize another type of installation or removal, such as jetting or drilled shaft construction, additional authorization from DCM shall be required. [07J .0202(c); 07J .0405(a)].
- 11) All reasonable efforts shall be made to contain all debris and excess materials associated with the authorized activities, with the intent that materials/debris do not enter Estuarine Waters and Public Trust Areas CAMA AECs, even temporarily. [07H .0208(a)(2)(A); 07J .0209].
- 12) Uncured concrete or water that has been in contact with uncured concrete shall not be allowed to contact Estuarine Waters and Public Trust Areas CAMA AECs, or water that will enter Estuarine Waters and Public Trust Areas CAMA AECs. [07H .0208(a)(2)(B); 07J .0209].
- 13) Construction staging areas shall be located only in upland areas, not in the Coastal Wetlands, Estuarine Waters and Public Trust Areas CAMA AECs, and shall be located no less than 30 feet from the normal water level. This condition does not apply to the authorized temporary work trestles. [07H .0209(d)(10); 07J .0201].

NOTE: Any waste materials or debris generated in the construction of the new bridge and roadway, and/or construction and removal of the temporary work trestles, shall be disposed of at an approved upland site or shall be recycled in an environmentally appropriate manner provided appropriate authorizations are obtained from any relevant state, federal, or local authorities.

- 14) The permittee and/or their contractor shall provide for proper storage and handling of all oils, chemicals, etc., necessary to carry out the project. [G.S. 113A-120(b); 07H .0208(a)(2)(A); 07H .0208(a)(2)(B)].
- 15) All mechanized equipment shall be regularly inspected and maintained to prevent contamination of Estuarine Waters and Public Trust Areas CAMA AECs from fuels, lubricants, hydraulic fluids, or other toxic materials. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the National Response Center at (800) 424-8802 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act shall be followed. [07H .0208(a)(2)(A); 07H .0208(a)(2)(B); G.S. 113A-120(b); 07J .0209(a)].
- 16) Barges shall be utilized only in areas of sufficient depth such that the barges avoid contact with the bottom and do not rest on the bottom during periods of low water. [07J .0201].

ADDITIONAL NOTES AND CONDITIONS

- 17) In accordance with commitments made by the permittee in the Attachment 04 Construction Narrative Clarification dated as received on 6/2/25, no barge activity shall be associated with the 560-foot long open construction trestle on the north side and east end of the Currituck Sound bridge due to the shallow water depths and SAV habitat near this trestle. [07J .0202(c)].
- 18) In accordance with commitments made by the permittee in the Record of Decision (page 24), marine industry standard pans shall be placed under construction equipment operating on the open trestles to capture any accidental spills of oil and lubricants. [07J .0202(c)].
- 19) The temporary work trestles, including piles, shall be removed in their entirety. In the event that a piling breaks during removal and cannot be removed in its entirety, it may be cut off no higher than the bed of the water body, and DCM shall be notified of each occurrence within one working day. The pilings shall be removed as soon as practicable after they are no longer needed and disposed of at an approved high ground site. However, if this timeframe occurs while the moratorium required by this permit is in effect, then the permittee shall consult with DCM and the appropriate resource agencies to determine if in-water work to remove these structures may occur. [07J .0209; 07H .0208(a)(2)].
- 20) The permittee shall submit final plans to DCM for review and approval of any new mooring points and/or breasting lines prior to their installation. Adjacent riparian property owner notification may be required. [07J .0201; 07J .0405(a); 07H .0208(b)(10)(F)].

Shoreline Stabilization

NOTE: A total of approximately 342 linear feet of shoreline stabilization will occur in two locations (230 linear feet near the western end of the Currituck Sound bridge, and 112 linear feet adjacent to NC Highway 12 near Sunburst Court and Ocean Forest Court).

- 21) The placement of riprap shall be limited to the areas as indicated on the attached workplan drawings. It shall be of a size sufficient to prevent its movement from the authorized alignment by wave or current action. If the riprap becomes dislodged from the approved alignment at any point in the future, the permittee shall immediately contact DCM to determine the appropriate course of action. The riprap material shall consist of clean rock or masonry materials such as but not limited to granite, marl, or broken concrete without exposed rebar, or other suitable materials approved by DCM. [07J .0202(c)].
- 22) The authorized alignment of the proposed riprap shall be staked by a representative of DCM within a maximum of 30 days prior to the start of constructing the shoreline stabilization. Failure to initiate construction within 30 days of the alignment being marked, or erosion of the shoreline by adverse weather conditions, shall require the alignment to be restaked by DCM within a maximum of 30 days prior to the new expected start of construction. [07J .0209; G.S. 113A-120(b); G.S. 113-229(e)].
- 23) In accordance with commitments made by the permittee, geotextile fabric shall be in place prior to the placement of any riprap and/or backfill. [07J .0202(c)].
- 24) All backfill material shall be obtained from a high ground source. No unconfined backfill shall be discharged into Estuarine Waters and Public Trust Areas CAMA AECs. The backfill material shall be clean and free of any pollutants except in trace quantities. [07J .0201; 07H .0208(a)(2)(A); 07H .0209(d)(3)].

ADDITIONAL NOTES AND CONDITIONS**Impacts to the Estuarine Waters and Public Trust Areas CAMA AECs, including Submerged Aquatic Vegetation (SAV), and Compensatory Mitigation**

- NOTE:** This project will permanently impact approximately 0.187 acres of Estuarine Waters and Public Trust Areas CAMA AECs due to fill and will temporarily impact approximately 0.04 acres of Estuarine Waters and Public Trust Areas CAMA AECs due to fill. The SAV Beds within the project area are located within the Estuarine Waters and Public Trust Areas CAMA AECs.
- NOTE:** Based upon the 2023 results of NCDOT/NCTA's SAV monitoring program, it is estimated that the project would have approximately 0.064 acres of permanent SAV impacts due to the footprint of the new bridge pilings; and approximately 0.112 acres of temporary SAV impacts due to the footprint of the temporary work trestle pilings.
- NOTE:** Based upon the 2023 results of NCDOT/NCTA's SAV monitoring program, it is estimated that there are approximately 8.876 acres of existing SAV beds (not including the piling footprints) within the alignment of the permanent bridge, and approximately 0.777 acres of existing SAV beds (not including the piling footprints) within the alignment-of the closed temporary work trestles.
- NOTE:** The final determination of permanent shading impacts will be made during the post-construction monitoring period, as described within the document titled "Mid-Currituck Bridge Submerged Aquatic Vegetation Monitoring Plan to Determine Mitigation" dated 8/15/25.
- NOTE:** In accordance with commitments made by the permittee (Page B-38 of the FEIS Reevaluation Study Report), the permittee shall resume the water quality monitoring program that was paused in 2020. The information gathered will be used in the future to determine the impacts of bridge construction and bridge deck stormwater runoff on water quality in Currituck Sound, as well as any additional mitigation needs.
- 25) In accordance with commitments made by the permittee during the Section 6002 Coordination Process to avoid and minimize SAV impacts and construction related fisheries impacts in the Currituck Sound, no in-water work within SAV habitat (including existing beds) shall be conducted during a moratorium period from February 15 to September 30. In-water work consists of bottom disturbing activities like temporary trestle pile placement and removal and driving of permanent piles. This commitment is documented on page 24 of the Record of Decision. The in-water work moratorium shall remain in effect every year unless relief is obtained from DCM, in consultation with the appropriate resource agencies. [07H .0208(a)(2); 07J .0202(c)].
- 26) Any voids in shallow bottom and SAV Beds caused by removal of the temporary work trestles shall be restored to the elevation of the pre-existing conditions with suitable material. To facilitate compliance with this requirement, bottom substrate that is displaced by the hollow temporary work trestle pilings in Currituck Sound shall remain in place to the maximum extent practicable or shall be stored in an approved high ground area, a minimum of 30 feet landward of normal water level, to be used to restore temporary impacts to shallow bottom and SAV Beds. The permittee shall notify DCM's Transportation Field Representative to provide DCM with an opportunity to inspect the material for suitability prior to backfilling. [07H .0208(a)(3)].

ADDITIONAL NOTES AND CONDITIONS

- 27) Unless specifically altered herein, monitoring and mitigation of SAV impacts shall be carried out as described in the document titled "Mid-Currituck Bridge Submerged Aquatic Vegetation Monitoring Plan to Determine Mitigation" dated 8/15/25. [07H .0208(a)(3); 07J .0202(c); 07H .0208(a)(2)(A)].
- 28) Additional authorization for construction of the SAV mitigation site(s) shall be required. The ability to permit potential mitigation options has not been determined and will depend on factors such as potential impacts of the mitigation to existing SAV, and other coastal resources such as public trust usage and shallow bottom habitat. Notification of adjacent riparian property owners may be required. [07J .0201].

Utility Impacts within CAMA AECs

NOTE: Construction of the new bridge will require relocation of electric, telecommunications, gas, water and sewer utilities.

- 29) Any utility work associated with this project that is not specifically depicted on the attached workplan drawings, or described within the attached permit application, shall require approval from DCM, either under the authority of this permit, or by the utility company obtaining separate authorization. [07J .0202(c); 07J .0201; 07J .0405(a)].
- 30) In accordance with the NCDOT/NCTA letter dated 11/12/24, NCDOT/NCTA shall ensure the buried electrical utility line in Currituck Sound that is crossed by the authorized project is avoided either by ensuring it is crossed between piers, or if that is not possible, utilizing straddle bents. [07J .0202(c)].

Sedimentation and Erosion Control within CAMA AECs

- 31) In accordance with commitments made by the permittee (Record of Decision page 25), turbidity curtains shall be used during pile installation (permanent and temporary work trestles) and pile removal (temporary work trestles). Turbidity curtains shall also be used during installation of the authorized shoreline stabilization. The turbidity curtains shall be sufficient to prevent a visible increase in the amount of suspended sediments in adjacent waters. The turbidity curtains shall be properly maintained and retained in the water until such a time as the areas have returned to ambient conditions. [07H .0208(a)(2); 07H .0209(d)(4); 07J .0202(c)].
- 32) In accordance with commitments made by the permittee in the permit application (MP-2), standard sedimentation and erosion control measures, as outlined in the NCDOT Erosion and Sedimentation Control Design and Construction Manual shall be followed. [07J .0202(c); 07H .0208(a)(2)].
- 33) In order to protect water quality, runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters. [07H .0209(d)(4); G.S. 113A-120(b); 07H .0208(a)(2)].

NOTE: This project shall conform to all requirements of the N.C. Sedimentation Pollution Control Act and the N.C. Department of Transportation's (NCDOT's) Memorandum of Agreement with the N.C. Division of Energy, Mineral and Land Resources.

ADDITIONAL NOTES AND CONDITIONS

Stormwater Management within CAMA AECs

- 34) In accordance with commitments made by the permittee, and in order to avoid and minimize impacts to SAV, deck drains/scupper outlets were eliminated from the east end of the Currituck Sound bridge for approximately 670 feet, in-between the bridge terminus and STA 358+00 (Lt and Rt). Bridge deck drains/scupper outlets shall not be located over the waters of Currituck Sound where the deck drain/scupper outlet is less than 12 feet above normal water level. [07J .0202(c); 07H .0208(a)(2)(A)].
- 35) In accordance with commitments made by the permittee in the permit application (cover letter, page 13), NCDOT/NCTA shall implement an adaptive management approach in the context of the planned stormwater management. This approach involves making changes to stormwater strategies and facilities as needed as sea level rise gradually occurs over the project area over the next 20 years. [07J .0202(c)].

NOTE: In accordance with commitments made by the permittee (page B-21 of the FEIS Reevaluation Study Report), NCDOT/NCTA will continue developing the stormwater management plan in coordination with, and ultimately for the approval of DWR. Other resource and regulatory agencies will continue to have input as the stormwater management plan is finalized. The updated stormwater management plan shall include previous commitments as noted in the document “Approach for Stormwater Management” dated June 20, 2019, including but not limited to, a specific plan for bridge sweeping.

NOTE: The permittee shall adhere to the provisions of the NCDOT’s National Pollutant Discharge Elimination (NPDES) Stormwater Permit NCS000250, including the application requirements of the NCG01000.

Cumulative Effects to Coastal Resources

NOTE: In accordance with G.S. 113A-120(a)(10), “Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity”.

NOTE: The project’s numerous environmental documents assess the potential for the proposed project to have cumulative effects. In addition, there are at least three stand-alone reports: the Cumulative Effects Report for Water Quality dated May 2024; the Cumulative Effects Report for Coastal Resources dated June 2021; and the Indirect and Cumulative Effects Technical Report dated November 2011, including an Addendum dated October 2012. Each report concludes that the proposed project would not result in significant adverse cumulative effects.

ADDITIONAL NOTES AND CONDITIONS**Historical, Cultural and Archaeological Resource Protection within CAMA AECs**

NOTE: There are four cemeteries within the Area of Potential Effect (APE) for the authorized project, all of which were assessed and found not to be eligible for the National Register of Historic Places. The Saunders Cemetery (31CK229) is located within the Estuarine Shoreline CAMA AEC. The Walker-Newbern-Morrisette Cemetery (31CK145); the Dempsey Burton Cemetery (31CK146); and the Rykewald Cemetery (31CK174) are located outside of CAMA AECs.

- 36) In accordance with commitments made by the permittee in a memorandum dated 7/1/25, and in an email dated 8/11/25, NCDOT/NCTA, in coordination with NCDOT Archaeology and the State Historic Preservation Office (SHPO)/Office of State Archaeology (OSA), shall conduct additional geophysical investigations within a 30-meter (100-ft) buffer around the known graves associated with the Saunders Cemetery (31CK229). The results shall be utilized as described in the NCDOT/NCTA memorandum dated 7/1/25. The permittee anticipates that the geophysical investigations will be completed by the Summer of 2026. The permittee shall notify DCM if additional time is required. [G.S. 113A-120(b); 07H .0208(a)(2)(C)].
- 37) If the permittee discovers any previously unknown historic or archaeological resources while accomplishing the authorized work, they shall immediately stop work and notify DCM to initiate the required coordination procedures. [G.S. 113A-120(b); 07H .0208(a)(2)(C)].

Federal Consistency

NOTE: The areas of the project that are not within CAMA AECs were reviewed by DCM under the federal consistency regulations (15 CFR Part 930) for the federal Coastal Zone Management Act. The regulations establish procedures to ensure that federal actions, including a federal permit and/or federal funding, are consistent with state coastal management programs.

- 38) DCM reviewed the information submitted by NCDOT/NCTA, as well as comments received from state agencies and public comments. Pursuant to the management objectives and enforceable policies of the N.C. Coastal Management Program, DCM finds that the proposed project is consistent, to the maximum extent practicable, with North Carolina's approved coastal management program, with the following conditions.
- 39) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Natural and Cultural Resources.
- 40) Should the proposed action be modified, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency certification pursuant to 15 CFR 930.46, or a new consistency certification pursuant to 15 CFR 930.36. Likewise, if further project assessments reveal environmental effects not previously considered by the proposed development, a supplemental consistency certification may be required.

NOTE: If NCDOT/NCTA discovers any previously unknown historic or archaeological resources while accomplishing the authorized work, they shall immediately stop work and notify DCM to initiate the required coordination procedures.

ADDITIONAL NOTES AND CONDITIONS

NOTE: In accordance with the N.C. Division of Mitigation Services (DMS) letter dated 11/6/23, compensatory mitigation for permanent impacts of 1.07 acres of non-riparian wetlands associated with the authorized project will be provided by DMS in accordance with the DMS In-Lieu Fee Instrument dated 7/28/10.

NOTE: Outside of CAMA AEC's, this project will permanently impact approximately 1.21 acres of non-riparian wetlands (1.18 acres due to fill and 0.03 acres due to mechanized clearing), and it will temporarily impact approximately 17.08 acres of non-riparian wetlands (4.72 acres due to fill and 12.36 acres due to hand clearing). In addition, utility relocations related to the project will temporarily impact approximately 0.075 acres of non-riparian wetlands (0.062 acres due to temporary fill and 0.013 acres due to hand clearing).

NOTE: In accordance with commitments made by NCDOT/NCTA (Attachment 22), the authorized project shall adhere to the "Non-Native Invasive Species Control Plan" dated 10/21/21.

NOTE: In accordance with commitments made by NCDOT/NCTA (Attachment 18 and page 14 of the cover letter), NCDOT/NCTA will contact landowners of landlocked parcels whose property, or a portion of their property, will be landlocked as a result of the project. If NCDOT/NCTA acquires any of the landlocked parcels, and if the sites contain wetlands, NCDOT/NCTA will preserve those wetlands as an additional measure that will not be proposed as a credit for compensatory mitigation.

NOTE: This project shall conform to all requirements of the N.C. Sedimentation Pollution Control Act and the N.C. Department of Transportation's (NCDOT's) Memorandum of Agreement with the N.C. Division of Energy, Mineral and Land Resources.

NOTE: The NCDOT/NCTA shall adhere to the provisions of the NCDOT's National Pollutant Discharge Elimination (NPDES) Stormwater Permit NCS000250, including the application requirements of the NCG01000.

NOTE: Unless specifically altered herein, any mitigative measures or environmental commitments specifically made by NCDOT/NCTA shall be implemented, regardless of whether or not such commitments are addressed by individual conditions of this consistency concurrence. In accordance with Section 6.0 of the ROD (page 20-21), any changes to measures to minimize harm shall be completed in conjunction and coordination with the appropriate state and federal environmental resource and regulatory agencies.

General

NOTE: A CAMA/Dredge and Fill Permit is a determination that the proposed development meets the CAMA/Dredge and Fill laws and CRC's rules for coastal development. It is not a determination of private property ownership or an authorization to trespass onto property owned by someone other than the Permittee.

ADDITIONAL NOTES AND CONDITIONS

NOTE: This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. Any development authorized under this permit that occurs prior to the expiration of the twenty (20) day appeal period or completion of an appeal process, shall be done at the permittee's risk.

NOTE: The permittee is strongly advised to review and understand all additional permits, approvals or authorizations that may be required, including but not limited to any permits, approvals or authorizations provided by the N.C Division of Water Resources, U.S. Army Corps of Engineers, the U.S. Coast Guard, and other state and local regulatory agencies.

- 41) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters. [07H .0208(a)(2)(G)].
- 42) In accordance with the attached workplan drawings, all of the proposed work trestles within Currituck Sound shall provide no less than approximately 11 feet of vertical clearance above normal water level and approximately 38 feet of horizontal clearance, and they shall not extend into the federal navigational channel. [07J .0202(c); 07H .0208(a)(2)(G)].
- 43) In accordance with the attached workplan drawings, the permanent bridge across Currituck Sound shall provide approximately 16' of vertical clearance above normal water level under the majority of its length, however, it shall rise in the vicinity of the federal navigation channel to allow 22' of vertical clearance above normal water level. [07J .0202(c); 07H .0208(a)(2)(G)].
- 44) The permittee shall install and maintain at their expense any signal lights or signals prescribed by the U.S. Coast Guard and/or the N.C. Wildlife Resources Commission, through regulation or otherwise, on the authorized facilities. For further information, the permittee should contact the U.S. Coast Guard Marine Safety Office. At a minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather. [07H .0208(a)(2)(G)].

NOTE: It is strongly recommended that the permittee exercise all available precautions in the construction, operation and maintenance of the authorized project to prevent waste from entering Estuarine Waters and Public Trust Areas CAMA AECs. Such discharge, either directly or indirectly, to adjacent waters could contravene state water quality standards, thereby violating state law.

NOTE: Development authorized by this permit shall only be conducted on lands owned by NCDOT/NCTA, appropriate utility entities, and/or their Right-of-Ways and/or easements.

NOTE: If a court of competent jurisdiction determines that a party other than the permittee has legal title to any part of the area approved for development under this permit, this permit shall be null and void as to the area the court determines is not owned by the permittee. This condition shall take effect on the date such court judgment becomes final. In such event, the permittee shall consult DCM prior to initiating or continuing any further development under this permit.

- 45) The permittee and/or their contractor shall contact the DCM Transportation Project Field Representative for NCDOT projects in Division One to request a preconstruction conference prior to project initiation. [G.S 113A-120(b); 07J .0209(a)].

ADDITIONAL NOTES AND CONDITIONS

NOTE: The N.C. Division of Water Resources (DWR) authorized the proposed project on 9/18/25 (DWR Project No. 20241262) under Water Quality Certification No. WQC008093. This certification expires at the same time as the USACE permit.

NOTE: The U.S. Army Corps of Engineers has assigned the proposed project COE Action ID No. SAW-1995-02242.

NOTE: This permit does not eliminate the need to obtain any additional permits, approvals or authorizations that may be required. This includes approval, if required, from the U.S. Army Corps of Engineers (USACE) and/or the U.S. Coast Guard.

NOTE: An application processing fee of \$475 was received by DCM for this project. This fee also satisfied the Section 401 application processing fee requirements of DWR.

Exhibit 3

Third Party Hearing Request
No MCB-Concerned Citizens and Visitors Opposed to the Mid-
Currituck Bridge, and the Sierra Club
(October 8, 2025)

October 8, 2025

VIA Electronic Mail and Express Mail

Tancred Miller
Director, Division of Coastal Management
Department of Environmental Quality (DEQ)
400 Commerce Avenue
Morehead City, NC 28557
tancred.miller@deq.nc.gov

Sarah Zambon
NC Department of Justice – Environmental Division
114 W. Edenton Street
Raleigh, NC 27603
szambon@ncdoj.gov

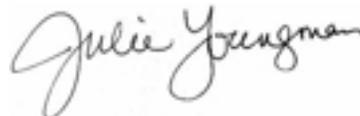
**Re: Request for Determination of the Appropriateness of a Contested Case
Hearing Regarding CAMA Major Development Permit No. 105-25**

Dear Director Miller and Ms. Zambon,

Please find enclosed a Third Party Hearing Request, which we are submitting on behalf of our clients, No MCB-Concerned Citizens and Visitors Opposed to the Mid-Currituck Bridge and Sierra Club, regarding the CAMA Major Development Permit No. 105-25 issued for the Mid-Currituck Bridge Project.

Please do not hesitate to contact me with any questions or concerns. Thank you for considering this request.

Sincerely,



Enclosure

cc (via electronic mail):

Dan Hirschman, General Counsel, NC Department of Environmental Quality
Christy Goebel, Assistant General Counsel, NC Department of Environmental Quality
Cathy Brittingham, Transportation Project Coordinator, NC Division of Coastal Management
Stephen Lane, Field Officer/Transportation Projects, Division of Coastal Management

Tancred Miller
Sarah Zambon
October 8, 2025
Page 2

Colin Justice, Special Deputy Attorney General, NC Department of Justice
Gregg Bodnar, Major Permit Coordinator, Division of Coastal Management
Barb Marzetti, Co-Founder, No MCB
Jen Symonds, Co-Founder, No MCB
Aaron Isherwood, Philip S. Berry Managing Attorney, Sierra Club
Erin Carey, Deputy Director, Sierra Club North Carolina Chapter

CAMA THIRD PARTY HEARING REQUEST FORM

DCM FILE No: _____

No MCB-Concerned Citizens and Visitors Opposed to the Mid-Currituck

PETITIONER'S NAME Bridge and the Sierra Club

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Currituck County

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

X 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.) **See Attachment A (Responses to 3 Questions); Attachment C (Original Comments February 21, 2025).**

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.) **See Attachment B**

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



October 8, 2025

Signature of Petitioner or Attorney¹

Date

Julia Youngman; Kym Meyer; Zoe Mehta

jyoungman@selc.org; kmeyer@selc.org;

Printed Name of Petitioner or Attorney

zmehta@selc.org

Email address of Petitioner or Attorney

136 East Rosemary Street, Suite 500

(919) 967-1450

Mailing Address

Telephone number of Petitioner or Attorney

Chapel Hill,

North Carolina

27514

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 by CRC August, 2024

CERTIFICATE OF SERVICE

I certify that this Third Party Hearing Request has been served on the state agencies named below by depositing copies of it with an express overnight delivery service (Federal Express) and by email to the addressees listed below, addressed as follows:

Tancred Miller
Director, Division of Coastal Management
Department of Environmental Quality (DEQ)
400 Commerce Avenue
Morehead City, NC 28557
tancred.miller@deq.nc.gov

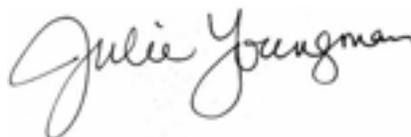
Sarah Zambon
NC Department of Justice – Environmental Division
114 W. Edenton Street
Raleigh, NC 27603
szambon@ncdoj.gov

And courtesy copies sent by email to:

Dan Hirschman
General Counsel, North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603
dan.hirschman@deq.nc.gov

Colin Justice
Special Deputy Attorney General, Transportation Division
1505 Mail Service Center
Raleigh, NC 27699-1505
cjustice@ncdoj.gov

This the 8th day of October, 2025.



Julia Furr Youngman
Counsel for Petitioners

Attachment A:

Third Party Hearing Request of No MCB And Sierra Club
On Permit Approval for CAMA Major Permit No. 105-25
(TIP No. R-2576 Mid-Currituck Bridge Project)

Responses to Three Questions

**Third Party Hearing Request of No MCB And Sierra Club
On Permit Approval for CAMA Major Permit No. 105-25
(TIP No. R-2576 Mid-Currituck Bridge Project)**

No MCB-Concerned Citizens and Visitors Opposed to the Mid-Currituck Bridge (“No MCB”) and Sierra Club (together, the “Petitioners”) request a third-party hearing to challenge the decision by the Division of Coastal Management (“DCM”) to issue Coastal Area Management Act (“CAMA”) major development permit 105-25 (the “Permit”) to the North Carolina Turnpike Authority (an agency located within and supervised by the North Carolina Department of Transportation) (“NCTA”) for the Mid-Currituck Bridge Project. Pursuant to N.C. Gen. Stat. § 113A-121.1(b)(1) and 15A N.C. Admin. Code 07J .0301, a third party must secure a determination that a hearing on a petition for contested case is appropriate by showing that the third party:

- (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.

As shown in more detail below, Petitioners have satisfied these requirements and respectfully request that the Coastal Resources Commission grant this request and issue a determination that a contested case hearing is appropriate.

BACKGROUND

As proposed in NCTA’s application for the Permit, the Mid-Currituck Bridge would span seven miles across Currituck Sound and Maple Swamp, from a point on NC158 between the towns of Coinjock and Aydlett on the mainland to the northern end of the Outer Banks near the village of Corolla, via the “MCB4/A/C1” alternative design (“Selected Alternative Bridge”) described in its Final Environmental Impact Statement.¹

¹ According to the CAMA Permit, “The complete project includes construction of a controlled-access two-lane toll road that extends from US 158 near Coinjock/Aydlett to NC 12 near Corolla, including a bridge approximately 1.5-miles long over Maple Swamp; a bridge approximately 4.66-miles long over Currituck Sound; a two-lane highway for approximately 1,717 linear feet between the Maple Swamp Bridge and the Currituck Sound Bridge; an interchange where the new road connects with US 158, including the associated toll plaza and related facilities/improvements; improvements to US 158, Aydlett Road, and Waterlily Road on the mainland; improvements to US 158 east of the Wright Memorial Bridge in Southern Shores; improvements to NC 12, Albacore Street, Aydlett Street, North/South Harbor View Street and Ocean Forest Court on the Outer Banks; approximately 342 linear feet of shoreline stabilization; and reversal of the US 158 center turn lane for hurricane evacuation for approximately 5 miles between the US 158/Mid-Currituck Bridge interchange and NC 168 at Barco.”

If built, the Selected Alternative Bridge would plow through valuable coastal resources, including environmentally sensitive waters, in a manner that will cause significant adverse effects to CAMA Areas of Environmental Concern. The bridge would contribute to the rampant development pressures already facing the Outer Banks and further degrade the precious natural resources that make North Carolina’s coast so special and unique. As explained in more detail in Petitioners’ attached comments and below, the environmentally destructive and unwise Selected Alternative Bridge cannot be permitted because there is at least one less environmentally damaging practicable alternative (“LEDPA”²): the Existing Roads alternative (“ER2”).

ER2 would accomplish the overall project purposes of improving congestion, reducing travel time, and ensuring adequate hurricane clearance, while causing less environmental harm and less adverse impact to public resources. ER2 would widen existing roads along both sides of Currituck Sound and add helpful interchanges and intersection improvements to facilitate traffic flow. ER2 is not only practicable from both an engineering and a financial standpoint, it is *more* practicable and feasible than the Selected Alternative Bridge, for which there is no funding and no realistic path forward.

REQUIRED SHOWING

I. DCM’s decision is contrary to several statutes and rules.

DCM’s issuance of the Permit is contrary to CAMA and is unlawful agency action under the NC Administrative Procedure Act (“APA”). More specifically, DCM’s issuance of the Permit violates N.C. Gen. Stat. § 113A-120(a), which requires DCM to deny a CAMA permit application when “there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources” or when any of nine other conditions listed in that statute exist. Because multiple of the listed conditions exist, issuance of the Permit was improper and violated CAMA. Moreover, issuance of the Permit constitutes an action that was contrary to law, in excess of DCM’s authority, erroneous, arbitrary, and capricious, and it therefore warrants a contested case, pursuant to the North Carolina Administrative Procedure Act.

A. Violation of CAMA: N.C. Gen. Stat. § 113A-120(a)(9)

The Permit violates CAMA’s prohibition against granting a permit when a practicable alternative exists that would accomplish the overall project purposes with less

Dep’t of Env’t Quality & Coastal Res. Comm’n, *Major Development Permit No. 105-25* at 2 (Sept. 19, 2025) (attached) (hereinafter “the Permit”).

² Throughout this request, Petitioners use “less environmentally damaging practicable alternative” or “LEDPA” to refer to a “practicable alternative” that, “considering engineering requirements and all economic costs . . . would accomplish the overall project purposes with less adverse impact on the public resources,” as outlined in N.C. Gen. Stat. § 113A-120(a)(9). This is merely intended as shorthand, rather than to suggest that an alternative must independently qualify as a less environmentally damaging practicable alternative under any parallel provisions in state or federal law in order to meet the standard outlined in § 113A-120(a)(9).

adverse impact on the public resources.³ As discussed in Petitioners' comments on NCTA's application for the Permit (attached hereto) and throughout the project's environmental review documents, there is at least one practicable alternative that accomplishes the overall project purposes⁴ and is less environmentally damaging: the "Existing Roads" or "ER2" alternative. Accordingly, the Permit for the Selected Alternative Bridge should not have been issued.

The North Carolina Environmental Policy Act declares it is "the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance."⁵ And CAMA explains that "among North Carolina's most valuable resources are its coastal land and waters," which have "an extremely high recreational and esthetic value which should be preserved and enhanced."⁶ To that end, one of CAMA's goals is

To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations; and . . . insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation.⁷

DCM was obliged to use the utmost care in its permitting decision in order to embody these principles.

More specifically, DCM is required to determine whether "considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources."⁸ Thus, DCM should have carefully considered whether such an alternative exists and made a finding to that effect. It made no such finding in the Permit. Further, DCM should have identified ER2 as a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources and accordingly declined to issue a permit for the Selected Alternative Bridge. Again, it did not.

³ See N.C. Gen. Stat. § 113A-120(a)(9).

⁴ See USDOT & NCDOT, *Administrative Action Final Environmental Impact Statement* at 2-44 (Jan. 2012) (hereinafter "FEIS") ("All of the detailed study alternatives," which included ER2, "would meet the project purpose and need").

⁵ N.C. Gen. Stat. § 113A-3.

⁶ Coastal Area Management Act, N.C. Gen. Stat. § 113A-102.

⁷ *Id.* § 113A-102(b).

⁸ See *id.* § 113A-120(a)(9).

Had DCM adequately considered NCTA’s permit application and Petitioners’ comments, it would have realized that the reasons NCDOT gave for selecting and permitting the Selected Alternative Bridge over ER2 cannot withstand scrutiny. NCTA originally claimed that—despite being significantly less expensive—ER2 would be more difficult to fund because toll revenue could not be used to pay for it, and thus it would be impossible to construct with the funding models in place at the time.⁹ That distinction is a red herring, as there is no financial plan in place to fully construct either the Bridge or ER2.

Between the two, however, ER2 is much *more* practicable than the Selected Alternative because it is significantly less expensive and has a smaller funding gap than the Bridge, which is now forecast to cost close to one billion dollars. In fact, ER2 is now the only practicable alternative from a funding standpoint. Currently there is a shortfall of several hundreds of millions of dollars necessary to pay for the much more expensive Selected Alternative Bridge. This is true even assuming that tolls could be set at a level low enough for people to be willing to pay them but high enough to help pay for the bridge during its useful life before the approach routes to each end of the bridge are submerged by sea level rise and storm surge.¹⁰ Moreover, ER2 can be implemented in stages as realistic amounts of funding become available for discrete parts, such as widening one section of road or reconfiguring one intersection at a time, with the most needed sections being set in place immediately. In contrast, a single seven-mile bridge cannot be divided into components and built in increments. Thus, the construction of the Selected Alternative Bridge depends on a windfall that is unlikely to ever arise.

In sum, ER2 is both significantly less expensive than the Bridge and it can be implemented in stages. Meanwhile the Bridge cannot be built with available funding sources, will have greater adverse impact on the public resources (both natural and financial), and will be less effective at meeting the Project’s purpose and need than ER2. DCM’s failure to identify ER2 as the LEDPA and to deny the permit application for the Selected Alternative Bridge violated CAMA.

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

⁹ See, e.g., NCDOT, *Mid-Currituck Bridge Study Reevaluation of Final Environmental Impact Statement Study Report* at 1-17 (Mar. 6, 2019), <https://perma.cc/6V3J-QFMQ> (hereinafter “FEIS Reevaluation”) (concluding that for the Selected Bridge Alternative, “[i]f one or more of the funding sources is not available in the amount assumed, then the additional funding will come from a combination of the remaining funding sources or other reasonably foreseeable funding sources,” but that for ER2, “there would be a funding gap of between \$86.3 million and \$96.3 million between the estimated cost and the available funding. Therefore, available funding would not be adequate to construct ER2.”); see also N.C. Gen. Stat. § 136-89.187 (prohibiting the Turnpike Authority from converting existing, non-toll roads into toll roads (with one exception not relevant here)).

¹⁰ Moreover, if the Selected Alternative Bridge becomes the only route between the Currituck mainland and Outer Banks due to sea level rise inundating other routes, NCDOT will no longer be able to recoup its costs by collecting tolls, because N.C. Gen. Stat. § 136-89.187 requires NCDOT to “maintain an existing, alternate, comparable nontoll route corresponding to each Turnpike Project constructed pursuant to this Article.”

As described in more detail in the attached comments, in issuing the Permit, DCM also violated subsections 1, 2, 3, 4, 5, 6, and 10 of North Carolina General Statute section 113A-120(a), as follows:

Subsection (1) mandates denial of a permit when, “[i]n the case of coastal wetlands . . . the development would contravene an order that . . . *could* be issued pursuant to G.S. 113-230.”¹¹ As explained in the attached comments,¹² DEQ could enter an order pursuant to section 113-230 to prohibit the dredging, filling, and altering of coastal wetlands to facilitate the Selected Alternative Bridge for the protection of marine fisheries and other wildlife and the promotion of public health safety and welfare. The environmental review documents for the project demonstrate that the Selected Alternative Bridge could harm coastal wetlands and contiguous areas, and could therefore violate such an order. The issuance of the Permit thus also violates use standards for coastal wetlands found in 15A N.C. Admin. Code 07H .0205(d) and .0208, by failing to prioritize the conservation of existing coastal wetlands and permitting a development that could be built elsewhere with improvements to existing roads and intersections like ER2.

Subsection (2) mandates denial of a permit when, “[i]n the case of estuarine waters . . . a permit for the development would be denied pursuant to G.S. 113-229(e).”¹³ As explained in the attached comments,¹⁴ the Selected Alternative Bridge is expected to cause significant adverse impacts to submerged aquatic vegetation, induce extra development in the estuarine waters of the Sound, and generally harm estuarine waters in ways that should have led to denial of the Permit. The issuance of the Permit thus also violates use standards for estuarine waters founds in 15A N.C. Admin. Code 07H .0206(c) and (d) and .0208 by failing to prioritize the conservation of estuarine waters and their vital components so as to safeguard and perpetuate their biological, social, aesthetic, and economic values, and by permitting a development that could be built elsewhere with improvements to existing roads and intersections like ER2.

Subsection (3) mandates denial of a permit when, “[i]n the case of a renewable resource area . . . the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).”¹⁵ As explained in the attached comments,¹⁶ the expected harm to submerged aquatic vegetation and water quality in the Sound will, in turn, harm habitat in the already-degraded Currituck Sound,

¹¹ N.C. Gen. Stat. § 113A-120(a)(1) (emphasis added).

¹² See Letter from Julie Youngman et al., S. Env’t L. Ctr., to Tancred Miller, Dir., Div. Coastal Mgmt. at 20-21 (Feb. 21, 2025) (“Comments”).

¹³ N.C. Gen. Stat. § 113A-120(a)(2).

¹⁴ See *id.* at 20, 28-31.

¹⁵ N.C. Gen. Stat. § 113A-120(a)(3).

¹⁶ See *id.* at 32.

which is vitally important to North Carolina’s commercial and recreational fisheries and its seafood industry.

Subsection (4) mandates denial of a permit when, “[i]n the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance . . . the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).”¹⁷ As explained in the attached comments,¹⁸ the Selected Alternative Bridge is expected to cause significant harm both to wildlife refuges, preserves, and management areas as well as to areas that provide important habitat for endangered, threatened, and rare species.

Subsection (5) mandates denial of a permit when, “[i]n the case of areas covered by G.S. 113A-113(b)(5) . . . the development will jeopardize the public rights or interests specified in said subdivision.”¹⁹ As explained in the attached comments,²⁰ DCM’s own comments on the environmental review documents for the project express concern for its adverse effects on public trust rights. The issuance of the Permit also violates use standards for coastal wetlands found in 15A N.C. Admin. Code 07H .0207(d) and .0208, by allowing a use that has the potential to increase shoreline erosion, cause degradation of shellfish waters, and jeopardize the public’s ability to use Currituck Sound for navigation, fishing, and other public trust rights.

Subsection (6) mandates denial of a permit when, “[i]n the case of natural hazard areas . . . the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.”²¹ As explained in the attached comments,²² DCM’s own comments on the environmental review documents for the project expressed concern that NCTA had not adequately taken into account the risks associated with placing the project in close proximity to natural hazard areas, and DCM has not adequately explained its apparent change in position.

Subsection (10) mandates denial of a permit when, “[i]n any case . . . the proposed development would contribute to cumulative effects that would be inconsistent with the written guidelines set forth in subdivisions (1) through (9) of this subsection.”²³ It goes on to explain that “[c]umulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for

¹⁷ N.C. Gen. Stat. § 113A-120(a)(4).

¹⁸ *See id.* at 33-40.

¹⁹ N.C. Gen. Stat. § 113A-120(a)(5).

²⁰ *See id.* at 40-42.

²¹ N.C. Gen. Stat. § 113A-120(a)(6).

²² *See id.* at 42-44.

²³ N.C. Gen. Stat. § 113A-120(a)(10).

development in the vicinity.” As explained in the attached comments,²⁴ the Selected Alternative Bridge is expected to induce more development, encourage more traffic, and cause more cumulative impacts than other alternatives, including the ER2 and no-action alternatives.

C. North Carolina Administrative Procedure Act

Under the North Carolina Administrative Procedure Act, a party challenging an agency action initiates a contested case by filing a petition that:

. . . state[s] facts tending to establish that the agency . . . has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner’s rights and that the agency did any of the following:

- (1) Exceeded its authority or jurisdiction.
- (2) Acted erroneously.
- (3) Failed to use proper procedure.
- (4) Acted arbitrarily or capriciously.
- (5) Failed to act as required by law or rule.²⁵

By issuing the Permit, DCM has substantially prejudiced the Petitioners’ rights and otherwise harmed Petitioners as described in section II below. By issuing the Permit, DCM has, among other things, failed to act as required by law or rule by violating N.C. Gen. Stat. § 113A-120 and CAMA rules as described above in sections I.A and I.B. It has also exceeded its authority by granting a permit under circumstances that mandated denial. And it has acted erroneously, arbitrarily, and capriciously, both by failing to make a finding that no LEDPA exists to the Selected Alternative Bridge, or at least failing to state and explain that finding in the Permit, and by failing to deny the Permit based on the existence of ER2 as a LEDPA despite the weight of evidence necessitating such a decision, and through its other violations of N.C. Gen. Stat. § 113A-120 and CAMA rules described above. An administrative law judge in a contested case may therefore find that DCM’s actions in issuing the Permit were unlawful, improper erroneous, arbitrary, and capricious.²⁶

II. Petitioners are directly affected by DCM’s decision to grant the Permit.

²⁴ See *id.* at 21-28, 44-51.

²⁵ See N.C. Gen. Stat. § 150B-23.

²⁶ See generally N.C. Gen. Stat. §§ 150B-23 (facts required to be shown in a petition for a contested case), 150B-25.1 (petitioner has burden of proving facts alleged in petition by preponderance of the evidence), 150B-34 (administrative law judge shall decide the case based upon the preponderance of the evidence).

Pursuant to N.C. Gen. Stat. § 113A-121.1(b), the Petitioners must demonstrate that they are directly affected by DCM's decision to issue the CAMA Permit. Here, the Petitioners each have significant direct interests in the preservation of Currituck Sound and the nearby natural areas, the wildlife that use them for habitat, and the other natural resources that will be harmed by the Selected Alternative Bridge. Those interests will be injured by construction of the Selected Alternative Bridge pursuant to the Permit.

The Permit will allow the disruption of communities and the destruction of natural resources in the project area. Construction of the Bridge would induce dramatic increases in traffic and beachfront development on both the mainland and Outer Banks, thereby straining already-overburdened coastal wastewater and drinking water infrastructure, permanently harming wetlands and surface waters, and degrading coastal wildlife refuges. The continued degradation of the area's natural resources will preclude the Petitioners and their members and staff from enjoying the wild character of Corolla, Currituck Sound, and other areas along the Outer Banks and on the mainland that make the region so special.

No MCB is a Currituck County-based membership organization group of concerned citizens and visitors who oppose the Mid-Currituck Selected Alternative Bridge, some of whom have lived in the project area for generations. Its mission is to protect the unique natural environment of the Currituck mainland and the northern Outer Banks by advocating against the destructive effects the Bridge would bring to the nearby environment and community. No MCB has over 700 members and supporters, many of whom live either in communities on the mainland such as Aydlett and Coinjock or on the Outer Banks in communities like Corolla and Carova. Some members of No MCB are small business owners who are concerned that the Bridge will degrade the very natural resources that make the Outer Banks so highly prized by so many—beach-loving tourists, residents, commercial and recreational fishers, and others. Others are property owners, homeowners, and residents of communities who will be directly adversely impacted by the condemnation of the land where they live, work, and play, the construction of the routes to each end of the Bridge, and the induced growth around those routes. These members have recreational, aesthetic, economic, and professional interests in the character of their communities, the preservation of the area, and the benefits to ecosystem, fisheries, and tourism that the area supports, interests that will be harmed by the construction of the Selected Alternative Bridge and the induced growth and environmental destruction that the construction will cause.

Sierra Club is a national nonprofit organization dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club advocates for a clean, healthy environment throughout the nation generally and North Carolina in particular, including by supporting sustainable, smart transportation decisions and protecting natural resources along the state's coast. Sierra Club has

approximately 604,479 members nationwide, 13,987 in the North Carolina Chapter, and 1,710 in the local Cypress Group whose geographic coverage includes Currituck County. Sierra Club members and staff have long had a history of appreciation for and substantial use of public resources in the area directly affected by the development, such as the banks of Currituck Sound, its waters, and its fisheries. Members enjoy activities such as fishing, birding, wildlife-watching, paddling, boating, photographing, swimming, and enjoying the natural vistas of the project area—all activities which will be directly negatively affected by the Bridge’s construction and operation. Sierra Club members visit and live near the area where the Bridge is planned, and many derive recreational, scientific, aesthetic, and spiritual benefits from the serenity and wildness of the area and the wildlife that depend on it for habitat. Their interests will be adversely affected by construction and operation of the Selected Alternative Bridge and the induced growth and environmental destruction that the Selected Alternative Bridge will cause.

In sum, the Petitioners and their members and staff have interests that are directly, adversely, and irreparably injured by the Permit. They reasonably believe that, if the Project proceeds as currently planned and as approved by the CAMA Permit, it will harm their scientific, aesthetic, recreational, economic, professional, and spiritual interests in Currituck Sound and other areas in the vicinity of the Selected Alternative Bridge, and their ability to enjoy the Sound and its abundant wildlife. Other practicable Project alternatives, including ER2, would cause far less environmental damage, induce less growth, and result in less harm to their interests.

III. The following facts and legal arguments demonstrate that this request for hearing is not frivolous.

Pursuant to N.C. Gen. Stat. § 113A-121.1(b), Petitioners must demonstrate that their request for a contested case hearing is not frivolous. A request for a contested case hearing, like other types of claims, is frivolous only “if a proponent can present no rational argument based upon the evidence or law in support of [it].”²⁷ Indeed, the North Carolina Court of Appeals has explained, “In determining whether a complaint is frivolous, the standard is not the same as in a ruling on a motion under Rule 12(b)(6). Instead, we look with a far more forgiving eye in examining whether a claim rests on a meritless legal theory.”²⁸ And third parties have even secured attorney fee awards under N.C. Gen. Stat. § 6-19.1(a) when their requests for a third party hearing to challenge a CAMA permit were improperly deemed frivolous and denied in light of the foregoing standards.²⁹

²⁷ *Griffith v. N.C. Dep’t of Corr.*, 196 N.C. App. 173, 174 (2009) (citing *Gray v. Bryant*, 189 N.C. App. 527, 529 (2008)); see also *Batson v. Coastal Res. Comm’n*, 282 N.C. App. 1, 9-10 (2022) (citing *Philips v. Pitt Cnty. Mem’l Hosp., Inc.*, 242 N.C. App. 456, 458 (2015) (applying same standard of “frivolous” in the context of a third-party request for a contested case hearing) (*aff’d by an equally divided Supreme Court*)).

²⁸ *Griffith*, 196 N.C. App. at 174 (citing *Gray*, 189 N.C. App. at 529); see also *Batson*, 282 N.C. App. at 9-10 (2022) (“Importantly, frivolous does not mean unlikely to succeed or meritless.”) (citing *Philips*, 242 N.C. App. at 458).

²⁹ *Batson*, 282 N.C. App. at 2-4, 9 (holding that trial court has authority to award attorney fees to third party when Coastal Resources Commission denies their request to pursue a contested case challenging a CAMA permit after

As set forth herein and in Petitioners' attached comments, there is ample factual evidence and legal authority to support their argument that DCM's granting of the Permit was unlawful.

A. *CAMA prohibits granting a permit when a LEDPA exists, and here ER2 is a LEDPA.*

The statute governing the grant or denial of CAMA permits provides as follows: "The responsible official or body *shall deny* an application for a permit upon finding: . . . (9) In any case, that considering engineering requirements and all economic costs there is a *practicable alternative* that would accomplish the overall project purposes with *less adverse impact* on the public resources."³⁰ As the environmental review documents confirm—and as Petitioners explained at length throughout the permitting process through oral and written comments—there is a practicable, less environmentally damaging practicable alternative available: ER2.³¹ The CAMA Permit should have been denied on the basis that this LEDPA exists. Moreover, as discussed above, ER2 is more feasible from an economic perspective and more efficacious at accomplishing the Project's purpose.

Yet NCTA did not adequately refute—and DCM does not seem to have considered, let alone made a finding regarding—the fact that ER2 is a LEDPA. This failure to find that a LEDPA exists was erroneous, and granting the Permit under these circumstances is thus arbitrary and capricious.

The Selected Alternative Bridge would have significant adverse impacts on public resources, including without limitation destruction of submerged aquatic vegetation, harm to water quality, and degradation of wildlife habitat, as detailed in permit application documents and Petitioners' comments.³² The ER2 alternative, which was analyzed extensively during the National Environmental Policy Act process, would not include a bridge over the Sound but would instead simply widen existing roads on both the mainland and Currituck Island and add helpful interchanges and intersection improvements to facilitate traffic flow.³³ According to NCTA's own documents and analysis, ER2 would adequately address traffic needs and provide the best evacuation and traffic congestion improvements and the lowest price tag, with far fewer

wrongfully determining the request to be frivolous); *see also Seidner v. Town of Oak Island*, 217 N.C. App. 196 (2011) (attorney fee award in favor of third party challenging town's CAMA permit).

³⁰ N.C. Gen. Stat. § 113A-120(a)(9) (emphasis added).

³¹ *See* FEIS, *supra* note 4, at 2-44 ("All of the detailed study alternatives," which included ER2, "would meet the project purpose and need").

³² *See generally* NCDOT, *Mid-Currituck Bridge CAMA Major Development Permit Application* at 2, 5-10 <https://xfer.services.ncdot.gov/pdea/PermApps/R-2576/CAMA/0%20R-2576%20CAMA%20Application%202024-09-18.pdf>; Comments, *supra* note 12.

³³ FEIS, *supra* note 44, at 2-1, 2-5, Fig. 2-1.

environmental impacts.³⁴ Petitioners detail the reasons ER2 is a LEDPA at length in comments on the CAMA permit application, which are incorporated herein.³⁵

In contrast, the prohibitively expensive Bridge is hardly “practicable.” Given accelerating sea level rise, the approaches to each end of the Bridge are soon likely to be underwater especially during storms and flood events when most needed for emergency evacuation. Accordingly, even if a financial plan emerged to fund the construction of the Selected Alternative Bridge, it will likely become obsolete before it can generate sufficient toll revenue to cover its cost. NCTA’s own analysis demonstrated that by the year 2040, ER2 would outperform the Selected Alternative in achieving hurricane clearance times.³⁶ Moreover, by providing a backup alternative route that would be used primarily only during summer months and only by commuters willing to pay steep tolls, it would unnecessarily waste scarce transportation funds that are needed for more pressing projects elsewhere in the region and the state. The term “public resources” includes financial as well as environmental resources, and ER2 would better steward the state’s transportation funding than the Selected Alternative Bridge.

For these reasons, considering engineering requirements and all economic costs, ER2 is clearly a practicable alternative that would accomplish the overall project purposes with less adverse impact on public resources.

B. CAMA prohibits granting a permit when any of the conditions listed in N.C. Gen. Stat. § 113A-120 exist.

As explained above in section I.B and in Petitioners’ comments on NCTA’s CAMA permit application, there are ample factual and legal grounds to support a conclusion that DCM’s issuance of the Permit also violated subsections 1, 2, 3, 4, 5, 6, and 10 of North Carolina General Statute section 113A-120(a), insofar as NCTA’s own records show that the Selected Alternative Bridge will harm wetlands, estuarine waters, fisheries, wildlife refuges and preserves, protected species habitat, public trust areas, and natural hazard areas, and that it will cause unacceptably high levels of induced growth and cumulative impacts.

C. Granting the Permit in light of the existence of a LEDPA and the many other conditions listed in N.C. Gen. Stat. § 113A-120 violates the NC APA.

DCM did not respond to Petitioners’ factual and legal arguments about the existence of a LEDPA or provide any justification for its failure to make a finding that a LEDPA exists. Given the overwhelming evidence that ER2 is practicable, accomplishes overall project objectives, and would have less adverse impact on the public resources, DCM should have found that a LEDPA

³⁴ See *id.* at tbl. S-1, 2-45, 2-47; FEIS Reevaluation, *supra* note 9 **Error! Bookmark not defined.**, at 1-13–1-15; 3-14 tbl. 3-6; 3-18 tbl. 3-7; 3-30–3-32.

³⁵ See generally Comments, *supra* note 1212, at 7-20.

³⁶ FEIS Reevaluation, *supra* note 9, at 3-13, tbl. 3-5; 3-14 tbl. 3-6; 3-30–3-32.

exists. Its failure to do so was erroneous, and granting the CAMA Permit notwithstanding its apparent failure to consider ER2 as it was legally required to do was arbitrary and capricious. Petitioners are substantially prejudiced by this agency action and are persons aggrieved under the NC APA.

In its CAMA Permit application, NCTA summarily and repeatedly claimed that constructing the Bridge is the “least environmentally damaging practicable alternative” or “LEDPA,” basing this conclusion on a flawed July 2020 report (the “LEDPA White Paper”). The LEDPA White Paper failed to include any robust explanation for this conclusion, instead pointing to a series of outdated analyses and brushing over, misstating, or outright ignoring facts that do not support its conclusion.³⁷ Yet DCM does not seem to have questioned this conclusion at all, even when Petitioners provided the agency with ample evidence that ER2 qualifies as a LEDPA.

Moreover, in the “Complete File” of documents associated with the CAMA Permit,³⁸ there are numerous records submitted by Petitioners during the comment period that discuss the existence of a LEDPA besides the Selected Alternative. But notably absent is *any* analysis by DCM of whether a LEDPA exists, or evidence that DCM even considered Petitioners’ comments regarding whether ER2 is a LEDPA.

Indeed, the only semblance of a response to these comments is the NCTA’s opinions in a memorandum to DCM about why NCTA—the permit *applicant*—disagrees with Petitioners about the existence of a LEDPA.³⁹ DCM must independently evaluate the practicability of ER2 considering the issues discussed above. To Petitioners’ knowledge, DCM has neither interrogated nor attempted to corroborate NCTA’s assertion that the Selected Alternative Bridge is the LEDPA. If it had done so, it would have arrived at the inescapable conclusion that ER2 (1) is practicable, (2) would accomplish the overall project purposes, (3) would have less adverse impact on the public resources, and (4) is in fact a LEDPA. Such a finding would have necessitated denial of the permit under N.C. Gen. Stat. § 113A-120(a). As discussed *supra* in Section I.C, DCM’s decision to grant the Permit under these circumstances exceeded its authority, ignored its legal obligations, and was erroneous, arbitrary, and capricious.

If a contested case hearing is deemed appropriate, Petitioners would present a petition to the Office of Administrative Hearings pursuant to N.C. Gen. Stat. § 150B-23(a) with facts

³⁷ See generally NCDOT, *Identification of the Least Environmentally Damaging Practicable Alternative* (July 2020), <https://perma.cc/8WVG9-8L5G>.

³⁸ Christy Simmons, *Mid-Currituck Bridge Project Complete File*, DCM, <https://northcarolinadeptofenvandnat.sharefile.com/share/view/sc18352ff9bbb43e7ab5e25a43498d305/fo58abab-91cb-431a-ab0e-e0c962a86be2>.

³⁹ See generally Memorandum from Alan W. Shapiro, Chief Eng’r, N.C. Turnpike Auth., to Cathy Brittingham, Transp. Proj. Coordinator, DCM (Sept. 4, 2025), <https://northcarolinadeptofenvandnat.sharefile.com/share/view/sc18352ff9bbb43e7ab5e25a43498d305/foaa3c5d-5baa-4f55-813b-0f8c63161a73>.

tending to establish that they have been substantially prejudiced and the agency (1) exceeded its authority, (2) acted erroneously, (3) acted arbitrarily or capriciously, and (4) failed to act as required by law. Petitioners would present evidence supporting the facts required by § 150B-23(a) and would meet their burden of proving those facts by a preponderance of the evidence, as required by §§ 150B-25.1(a) and 150B-29.

CONCLUSION

For the reasons stated above and in Petitioners' attached comments on the CAMA Permit application, a contested case hearing is appropriate here. Should this request be denied, Petitioners reserve the right to appeal that final decision under CAMA and the NC APA and seek attorney fees and any other relief a reviewing court deems appropriate to award.

Attachment B:

CAMA Major Development Permit 105-25

Permit Class
NEW

Permit Number
105-25

STATE OF NORTH CAROLINA
Department of Environmental Quality
and
Coastal Resources Commission

Permit

for

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to **NCDOT/NC Turnpike Authority, 1599 Mail Service Center, Raleigh, NC 27699-1599**

Authorizing development in Currituck/Dare County at Currituck Sound and unnamed tributary to Jean Guite Creek, US 158 & NC 12, as requested in the permittee's application dated 9/18/24, 11/9/24 (MP forms), and 11/12/24
(additional information), including the attached drawings (193), as referenced in Condition No. 1 of this permit.

This permit, issued on **September 19, 2025**, is subject to compliance with the application (where consistent with the permit), all applicable regulations and special conditions set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

TIP No. R-2576, Mid-Currituck Bridge Project

- 1) Unless specifically altered herein, all work authorized by this permit shall be carried out in accordance with the following attached workplan drawings (193). [07J .0202(c)]:

Wetland and Surface Water Impact Drawings (96 sheets): 50 dated 4/23/24; 2 dated 4/24/24; 7 dated 6/13/24; 4 dated 11/4/24; 2 dated 11/1/24; 2 dated 6/24/24; 24 dated as received 9/18/24; and 4 dated 4/30/24; and Impacts Summary Table dated as received 7/31/25.

Utility Drawings (7 sheets): 7 dated 2/5/24.

Right-of-Way Plans (77 sheets): 1 dated as received 9/18/24; and 76 dated 6/17/24.

SAV Impact Drawings (13 sheets): 1 dated 6/7/24; and 12 dated as received 9/18/24.

(See attached sheets for Additional Notes and Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date.

Signed by the authority of the Secretary of DEQ and the Chair of the Coastal Resources Commission.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

No expiration date, pursuant to GS 136-44.7B



for Tancred Miller, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL NOTES AND CONDITIONS

NOTE: The complete project includes construction of a controlled-access two-lane toll road that extends from US 158 near Coinjock/Aydlett to NC 12 near Corolla, including a bridge approximately 1.5-miles long over Maple Swamp; a bridge approximately 4.66-miles long over Currituck Sound; a two-lane highway for approximately 1,717 linear feet between the Maple Swamp Bridge and the Currituck Sound Bridge; an interchange where the new road connects with US 158, including the associated toll plaza and related facilities/improvements; improvements to US 158, Aydlett Road, and Waterlily Road on the mainland; improvements to US 158 east of the Wright Memorial Bridge in Southern Shores; improvements to NC 12, Albacore Street, Aydlett Street, North/South Harbor View Street and Ocean Forest Court on the Outer Banks; approximately 342 linear feet of shoreline stabilization; and reversal of the US 158 center turn lane for hurricane evacuation for approximately 5 miles between the US 158/Mid-Currituck Bridge interchange and NC 168 at Barco.

- 2) If additional permanent and/or temporary impacts, or any changes in the authorized project, are proposed that are not shown on the attached workplan drawings or described in the authorized permit application, contact a representative of the N.C. Division of Coastal Management (DCM) prior to commencement of any such activity to determine if additional authorization from DCM is required. [07J .0201; 07J .0405(a)].
- 3) Unless specifically altered herein, any mitigative measures or environmental commitments specifically made by the permittee in the CAMA permit application, the Reevaluation of Final Environmental Impact Statement (FEIS) dated 3/7/19, and the Record of Decision (ROD) dated 3/6/19, shall be implemented, regardless of whether or not such commitments are addressed by individual conditions of this permit. In accordance with Section 6.0 of the ROD (page 20-21), any changes to measures to minimize harm shall be completed in conjunction and coordination with the appropriate state and federal environmental resource and regulatory agencies. [07J .0209; 07H .0208(a)(3); 07J .0202(c)].

Currituck Sound and Jean Guite Creek

- 4) There shall be no permanent or temporary impacts to Coastal Wetlands CAMA AECs without permit modification. [07J .0201; 07H .0208(a)(2)(A); 07H .0205; 07J .0405(a)].
- 5) No excavation, including dredging, shall occur within the Estuarine and Public Trust Areas CAMA AECs, either by conventional methods or by prop wash “kicking” with boat propellers. This condition does not apply to the authorized shoreline stabilization footprint. [07H .0208(b)(1); 07J .0201; 07J .0202(c)].
- 6) No filling shall take place at any time in any Estuarine Waters and Public Trust Areas CAMA AECs outside of the alignment of the areas indicated on the attached workplan drawings, without permit modification. [G.S 113A-120(b); 07J .0209(a); 07J .0405(a)].
- 7) All fill material shall be clean and free of any pollutants except in trace quantities. [07H .0208(a)(2)(A); 07H .0209(d)(3)].
- 8) The temporary placement and/or double handling of any excavated or fill material within Estuarine and Public Trust Areas CAMA AECs is not authorized, with the exception of the temporary work trestle pilings. [07J .0201; 07J .0202(c); 07H .0208(b)(1)(B); 07H .0208(b)(1)(C)].

ADDITIONAL NOTES AND CONDITIONS

- 9) All construction access for the bridge over Currituck Sound shall be through use of the partially constructed new bridge, temporary work trestles, barges, and/or existing high ground areas. [07J .0202(c)].

NOTE: The authorized project includes the use of temporary work trestles during construction of the Currituck Sound Bridge, including open (i.e. beams only to support a crane) trestles on the east side of Currituck Sound to minimize potential SAV shading impacts, and closed deck trestles on the west side of Currituck Sound. Barges shall be used in the middle sections (approximately 2.6 miles) where the water is deeper than approximately 5-7 feet.

- 10) The installation and removal of the piles and temporary work trestles shall be accomplished by pile driving, vibratory hammer and/or static pull. Should the permittee and/or their contractor propose to utilize another type of installation or removal, such as jetting or drilled shaft construction, additional authorization from DCM shall be required. [07J .0202(c); 07J .0405(a)].
- 11) All reasonable efforts shall be made to contain all debris and excess materials associated with the authorized activities, with the intent that materials/debris do not enter Estuarine Waters and Public Trust Areas CAMA AECs, even temporarily. [07H .0208(a)(2)(A); 07J .0209].
- 12) Uncured concrete or water that has been in contact with uncured concrete shall not be allowed to contact Estuarine Waters and Public Trust Areas CAMA AECs, or water that will enter Estuarine Waters and Public Trust Areas CAMA AECs. [07H .0208(a)(2)(B); 07J .0209].
- 13) Construction staging areas shall be located only in upland areas, not in the Coastal Wetlands, Estuarine Waters and Public Trust Areas CAMA AECs, and shall be located no less than 30 feet from the normal water level. This condition does not apply to the authorized temporary work trestles. [07H .0209(d)(10); 07J .0201].

NOTE: Any waste materials or debris generated in the construction of the new bridge and roadway, and/or construction and removal of the temporary work trestles, shall be disposed of at an approved upland site or shall be recycled in an environmentally appropriate manner provided appropriate authorizations are obtained from any relevant state, federal, or local authorities.

- 14) The permittee and/or their contractor shall provide for proper storage and handling of all oils, chemicals, etc., necessary to carry out the project. [G.S. 113A-120(b); 07H .0208(a)(2)(A); 07H .0208(a)(2)(B)].
- 15) All mechanized equipment shall be regularly inspected and maintained to prevent contamination of Estuarine Waters and Public Trust Areas CAMA AECs from fuels, lubricants, hydraulic fluids, or other toxic materials. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the National Response Center at (800) 424-8802 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act shall be followed. [07H .0208(a)(2)(A); 07H .0208(a)(2)(B); G.S. 113A-120(b); 07J .0209(a)].
- 16) Barges shall be utilized only in areas of sufficient depth such that the barges avoid contact with the bottom and do not rest on the bottom during periods of low water. [07J .0201].

ADDITIONAL NOTES AND CONDITIONS

- 17) In accordance with commitments made by the permittee in the Attachment 04 Construction Narrative Clarification dated as received on 6/2/25, no barge activity shall be associated with the 560-foot long open construction trestle on the north side and east end of the Currituck Sound bridge due to the shallow water depths and SAV habitat near this trestle. [07J .0202(c)].
- 18) In accordance with commitments made by the permittee in the Record of Decision (page 24), marine industry standard pans shall be placed under construction equipment operating on the open trestles to capture any accidental spills of oil and lubricants. [07J .0202(c)].
- 19) The temporary work trestles, including piles, shall be removed in their entirety. In the event that a piling breaks during removal and cannot be removed in its entirety, it may be cut off no higher than the bed of the water body, and DCM shall be notified of each occurrence within one working day. The pilings shall be removed as soon as practicable after they are no longer needed and disposed of at an approved high ground site. However, if this timeframe occurs while the moratorium required by this permit is in effect, then the permittee shall consult with DCM and the appropriate resource agencies to determine if in-water work to remove these structures may occur. [07J .0209; 07H .0208(a)(2)].
- 20) The permittee shall submit final plans to DCM for review and approval of any new mooring points and/or breasting lines prior to their installation. Adjacent riparian property owner notification may be required. [07J .0201; 07J .0405(a); 07H .0208(b)(10)(F)].

Shoreline Stabilization

NOTE: A total of approximately 342 linear feet of shoreline stabilization will occur in two locations (230 linear feet near the western end of the Currituck Sound bridge, and 112 linear feet adjacent to NC Highway 12 near Sunburst Court and Ocean Forest Court).

- 21) The placement of riprap shall be limited to the areas as indicated on the attached workplan drawings. It shall be of a size sufficient to prevent its movement from the authorized alignment by wave or current action. If the riprap becomes dislodged from the approved alignment at any point in the future, the permittee shall immediately contact DCM to determine the appropriate course of action. The riprap material shall consist of clean rock or masonry materials such as but not limited to granite, marl, or broken concrete without exposed rebar, or other suitable materials approved by DCM. [07J .0202(c)].
- 22) The authorized alignment of the proposed riprap shall be staked by a representative of DCM within a maximum of 30 days prior to the start of constructing the shoreline stabilization. Failure to initiate construction within 30 days of the alignment being marked, or erosion of the shoreline by adverse weather conditions, shall require the alignment to be restaked by DCM within a maximum of 30 days prior to the new expected start of construction. [07J .0209; G.S. 113A-120(b); G.S. 113-229(e)].
- 23) In accordance with commitments made by the permittee, geotextile fabric shall be in place prior to the placement of any riprap and/or backfill. [07J .0202(c)].
- 24) All backfill material shall be obtained from a high ground source. No unconfined backfill shall be discharged into Estuarine Waters and Public Trust Areas CAMA AECs. The backfill material shall be clean and free of any pollutants except in trace quantities. [07J .0201; 07H .0208(a)(2)(A); 07H .0209(d)(3)].

ADDITIONAL NOTES AND CONDITIONS**Impacts to the Estuarine Waters and Public Trust Areas CAMA AECs, including Submerged Aquatic Vegetation (SAV), and Compensatory Mitigation**

- NOTE:** This project will permanently impact approximately 0.187 acres of Estuarine Waters and Public Trust Areas CAMA AECs due to fill and will temporarily impact approximately 0.04 acres of Estuarine Waters and Public Trust Areas CAMA AECs due to fill. The SAV Beds within the project area are located within the Estuarine Waters and Public Trust Areas CAMA AECs.
- NOTE:** Based upon the 2023 results of NCDOT/NCTA's SAV monitoring program, it is estimated that the project would have approximately 0.064 acres of permanent SAV impacts due to the footprint of the new bridge pilings; and approximately 0.112 acres of temporary SAV impacts due to the footprint of the temporary work trestle pilings.
- NOTE:** Based upon the 2023 results of NCDOT/NCTA's SAV monitoring program, it is estimated that there are approximately 8.876 acres of existing SAV beds (not including the piling footprints) within the alignment of the permanent bridge, and approximately 0.777 acres of existing SAV beds (not including the piling footprints) within the alignment-of the closed temporary work trestles.
- NOTE:** The final determination of permanent shading impacts will be made during the post-construction monitoring period, as described within the document titled "Mid-Currituck Bridge Submerged Aquatic Vegetation Monitoring Plan to Determine Mitigation" dated 8/15/25.
- NOTE:** In accordance with commitments made by the permittee (Page B-38 of the FEIS Reevaluation Study Report), the permittee shall resume the water quality monitoring program that was paused in 2020. The information gathered will be used in the future to determine the impacts of bridge construction and bridge deck stormwater runoff on water quality in Currituck Sound, as well as any additional mitigation needs.
- 25) In accordance with commitments made by the permittee during the Section 6002 Coordination Process to avoid and minimize SAV impacts and construction related fisheries impacts in the Currituck Sound, no in-water work within SAV habitat (including existing beds) shall be conducted during a moratorium period from February 15 to September 30. In-water work consists of bottom disturbing activities like temporary trestle pile placement and removal and driving of permanent piles. This commitment is documented on page 24 of the Record of Decision. The in-water work moratorium shall remain in effect every year unless relief is obtained from DCM, in consultation with the appropriate resource agencies. [07H .0208(a)(2); 07J .0202(c)].
- 26) Any voids in shallow bottom and SAV Beds caused by removal of the temporary work trestles shall be restored to the elevation of the pre-existing conditions with suitable material. To facilitate compliance with this requirement, bottom substrate that is displaced by the hollow temporary work trestle pilings in Currituck Sound shall remain in place to the maximum extent practicable or shall be stored in an approved high ground area, a minimum of 30 feet landward of normal water level, to be used to restore temporary impacts to shallow bottom and SAV Beds. The permittee shall notify DCM's Transportation Field Representative to provide DCM with an opportunity to inspect the material for suitability prior to backfilling. [07H .0208(a)(3)].

ADDITIONAL NOTES AND CONDITIONS

- 27) Unless specifically altered herein, monitoring and mitigation of SAV impacts shall be carried out as described in the document titled "Mid-Currituck Bridge Submerged Aquatic Vegetation Monitoring Plan to Determine Mitigation" dated 8/15/25. [07H .0208(a)(3); 07J .0202(c); 07H .0208(a)(2)(A)].
- 28) Additional authorization for construction of the SAV mitigation site(s) shall be required. The ability to permit potential mitigation options has not been determined and will depend on factors such as potential impacts of the mitigation to existing SAV, and other coastal resources such as public trust usage and shallow bottom habitat. Notification of adjacent riparian property owners may be required. [07J .0201].

Utility Impacts within CAMA AECs

NOTE: Construction of the new bridge will require relocation of electric, telecommunications, gas, water and sewer utilities.

- 29) Any utility work associated with this project that is not specifically depicted on the attached workplan drawings, or described within the attached permit application, shall require approval from DCM, either under the authority of this permit, or by the utility company obtaining separate authorization. [07J .0202(c); 07J .0201; 07J .0405(a)].
- 30) In accordance with the NCDOT/NCTA letter dated 11/12/24, NCDOT/NCTA shall ensure the buried electrical utility line in Currituck Sound that is crossed by the authorized project is avoided either by ensuring it is crossed between piers, or if that is not possible, utilizing straddle bents. [07J .0202(c)].

Sedimentation and Erosion Control within CAMA AECs

- 31) In accordance with commitments made by the permittee (Record of Decision page 25), turbidity curtains shall be used during pile installation (permanent and temporary work trestles) and pile removal (temporary work trestles). Turbidity curtains shall also be used during installation of the authorized shoreline stabilization. The turbidity curtains shall be sufficient to prevent a visible increase in the amount of suspended sediments in adjacent waters. The turbidity curtains shall be properly maintained and retained in the water until such a time as the areas have returned to ambient conditions. [07H .0208(a)(2); 07H .0209(d)(4); 07J .0202(c)].
- 32) In accordance with commitments made by the permittee in the permit application (MP-2), standard sedimentation and erosion control measures, as outlined in the NCDOT Erosion and Sedimentation Control Design and Construction Manual shall be followed. [07J .0202(c); 07H .0208(a)(2)].
- 33) In order to protect water quality, runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters. [07H .0209(d)(4); G.S. 113A-120(b); 07H .0208(a)(2)].

NOTE: This project shall conform to all requirements of the N.C. Sedimentation Pollution Control Act and the N.C. Department of Transportation's (NCDOT's) Memorandum of Agreement with the N.C. Division of Energy, Mineral and Land Resources.

ADDITIONAL NOTES AND CONDITIONS

Stormwater Management within CAMA AECs

- 34) In accordance with commitments made by the permittee, and in order to avoid and minimize impacts to SAV, deck drains/scupper outlets were eliminated from the east end of the Currituck Sound bridge for approximately 670 feet, in-between the bridge terminus and STA 358+00 (Lt and Rt). Bridge deck drains/scupper outlets shall not be located over the waters of Currituck Sound where the deck drain/scupper outlet is less than 12 feet above normal water level. [07J .0202(c); 07H .0208(a)(2)(A)].
- 35) In accordance with commitments made by the permittee in the permit application (cover letter, page 13), NCDOT/NCTA shall implement an adaptive management approach in the context of the planned stormwater management. This approach involves making changes to stormwater strategies and facilities as needed as sea level rise gradually occurs over the project area over the next 20 years. [07J .0202(c)].

NOTE: In accordance with commitments made by the permittee (page B-21 of the FEIS Reevaluation Study Report), NCDOT/NCTA will continue developing the stormwater management plan in coordination with, and ultimately for the approval of DWR. Other resource and regulatory agencies will continue to have input as the stormwater management plan is finalized. The updated stormwater management plan shall include previous commitments as noted in the document “Approach for Stormwater Management” dated June 20, 2019, including but not limited to, a specific plan for bridge sweeping.

NOTE: The permittee shall adhere to the provisions of the NCDOT’s National Pollutant Discharge Elimination (NPDES) Stormwater Permit NCS000250, including the application requirements of the NCG01000.

Cumulative Effects to Coastal Resources

NOTE: In accordance with G.S. 113A-120(a)(10), “Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity”.

NOTE: The project’s numerous environmental documents assess the potential for the proposed project to have cumulative effects. In addition, there are at least three stand-alone reports: the Cumulative Effects Report for Water Quality dated May 2024; the Cumulative Effects Report for Coastal Resources dated June 2021; and the Indirect and Cumulative Effects Technical Report dated November 2011, including an Addendum dated October 2012. Each report concludes that the proposed project would not result in significant adverse cumulative effects.

ADDITIONAL NOTES AND CONDITIONS**Historical, Cultural and Archaeological Resource Protection within CAMA AECs**

NOTE: There are four cemeteries within the Area of Potential Effect (APE) for the authorized project, all of which were assessed and found not to be eligible for the National Register of Historic Places. The Saunders Cemetery (31CK229) is located within the Estuarine Shoreline CAMA AEC. The Walker-Newbern-Morrisette Cemetery (31CK145); the Dempsey Burton Cemetery (31CK146); and the Rykewald Cemetery (31CK174) are located outside of CAMA AECs.

- 36) In accordance with commitments made by the permittee in a memorandum dated 7/1/25, and in an email dated 8/11/25, NCDOT/NCTA, in coordination with NCDOT Archaeology and the State Historic Preservation Office (SHPO)/Office of State Archaeology (OSA), shall conduct additional geophysical investigations within a 30-meter (100-ft) buffer around the known graves associated with the Saunders Cemetery (31CK229). The results shall be utilized as described in the NCDOT/NCTA memorandum dated 7/1/25. The permittee anticipates that the geophysical investigations will be completed by the Summer of 2026. The permittee shall notify DCM if additional time is required. [G.S. 113A-120(b); 07H .0208(a)(2)(C)].
- 37) If the permittee discovers any previously unknown historic or archaeological resources while accomplishing the authorized work, they shall immediately stop work and notify DCM to initiate the required coordination procedures. [G.S. 113A-120(b); 07H .0208(a)(2)(C)].

Federal Consistency

NOTE: The areas of the project that are not within CAMA AECs were reviewed by DCM under the federal consistency regulations (15 CFR Part 930) for the federal Coastal Zone Management Act. The regulations establish procedures to ensure that federal actions, including a federal permit and/or federal funding, are consistent with state coastal management programs.

- 38) DCM reviewed the information submitted by NCDOT/NCTA, as well as comments received from state agencies and public comments. Pursuant to the management objectives and enforceable policies of the N.C. Coastal Management Program, DCM finds that the proposed project is consistent, to the maximum extent practicable, with North Carolina's approved coastal management program, with the following conditions.
- 39) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Natural and Cultural Resources.
- 40) Should the proposed action be modified, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency certification pursuant to 15 CFR 930.46, or a new consistency certification pursuant to 15 CFR 930.36. Likewise, if further project assessments reveal environmental effects not previously considered by the proposed development, a supplemental consistency certification may be required.

NOTE: If NCDOT/NCTA discovers any previously unknown historic or archaeological resources while accomplishing the authorized work, they shall immediately stop work and notify DCM to initiate the required coordination procedures.

ADDITIONAL NOTES AND CONDITIONS

NOTE: In accordance with the N.C. Division of Mitigation Services (DMS) letter dated 11/6/23, compensatory mitigation for permanent impacts of 1.07 acres of non-riparian wetlands associated with the authorized project will be provided by DMS in accordance with the DMS In-Lieu Fee Instrument dated 7/28/10.

NOTE: Outside of CAMA AEC's, this project will permanently impact approximately 1.21 acres of non-riparian wetlands (1.18 acres due to fill and 0.03 acres due to mechanized clearing), and it will temporarily impact approximately 17.08 acres of non-riparian wetlands (4.72 acres due to fill and 12.36 acres due to hand clearing). In addition, utility relocations related to the project will temporarily impact approximately 0.075 acres of non-riparian wetlands (0.062 acres due to temporary fill and 0.013 acres due to hand clearing).

NOTE: In accordance with commitments made by NCDOT/NCTA (Attachment 22), the authorized project shall adhere to the "Non-Native Invasive Species Control Plan" dated 10/21/21.

NOTE: In accordance with commitments made by NCDOT/NCTA (Attachment 18 and page 14 of the cover letter), NCDOT/NCTA will contact landowners of landlocked parcels whose property, or a portion of their property, will be landlocked as a result of the project. If NCDOT/NCTA acquires any of the landlocked parcels, and if the sites contain wetlands, NCDOT/NCTA will preserve those wetlands as an additional measure that will not be proposed as a credit for compensatory mitigation.

NOTE: This project shall conform to all requirements of the N.C. Sedimentation Pollution Control Act and the N.C. Department of Transportation's (NCDOT's) Memorandum of Agreement with the N.C. Division of Energy, Mineral and Land Resources.

NOTE: The NCDOT/NCTA shall adhere to the provisions of the NCDOT's National Pollutant Discharge Elimination (NPDES) Stormwater Permit NCS000250, including the application requirements of the NCG01000.

NOTE: Unless specifically altered herein, any mitigative measures or environmental commitments specifically made by NCDOT/NCTA shall be implemented, regardless of whether or not such commitments are addressed by individual conditions of this consistency concurrence. In accordance with Section 6.0 of the ROD (page 20-21), any changes to measures to minimize harm shall be completed in conjunction and coordination with the appropriate state and federal environmental resource and regulatory agencies.

General

NOTE: A CAMA/Dredge and Fill Permit is a determination that the proposed development meets the CAMA/Dredge and Fill laws and CRC's rules for coastal development. It is not a determination of private property ownership or an authorization to trespass onto property owned by someone other than the Permittee.

ADDITIONAL NOTES AND CONDITIONS

NOTE: This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. Any development authorized under this permit that occurs prior to the expiration of the twenty (20) day appeal period or completion of an appeal process, shall be done at the permittee's risk.

NOTE: The permittee is strongly advised to review and understand all additional permits, approvals or authorizations that may be required, including but not limited to any permits, approvals or authorizations provided by the N.C Division of Water Resources, U.S. Army Corps of Engineers, the U.S. Coast Guard, and other state and local regulatory agencies.

- 41) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters. [07H .0208(a)(2)(G)].
- 42) In accordance with the attached workplan drawings, all of the proposed work trestles within Currituck Sound shall provide no less than approximately 11 feet of vertical clearance above normal water level and approximately 38 feet of horizontal clearance, and they shall not extend into the federal navigational channel. [07J .0202(c); 07H .0208(a)(2)(G)].
- 43) In accordance with the attached workplan drawings, the permanent bridge across Currituck Sound shall provide approximately 16' of vertical clearance above normal water level under the majority of its length, however, it shall rise in the vicinity of the federal navigation channel to allow 22' of vertical clearance above normal water level. [07J .0202(c); 07H .0208(a)(2)(G)].
- 44) The permittee shall install and maintain at their expense any signal lights or signals prescribed by the U.S. Coast Guard and/or the N.C. Wildlife Resources Commission, through regulation or otherwise, on the authorized facilities. For further information, the permittee should contact the U.S. Coast Guard Marine Safety Office. At a minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather. [07H .0208(a)(2)(G)].

NOTE: It is strongly recommended that the permittee exercise all available precautions in the construction, operation and maintenance of the authorized project to prevent waste from entering Estuarine Waters and Public Trust Areas CAMA AECs. Such discharge, either directly or indirectly, to adjacent waters could contravene state water quality standards, thereby violating state law.

NOTE: Development authorized by this permit shall only be conducted on lands owned by NCDOT/NCTA, appropriate utility entities, and/or their Right-of-Ways and/or easements.

NOTE: If a court of competent jurisdiction determines that a party other than the permittee has legal title to any part of the area approved for development under this permit, this permit shall be null and void as to the area the court determines is not owned by the permittee. This condition shall take effect on the date such court judgment becomes final. In such event, the permittee shall consult DCM prior to initiating or continuing any further development under this permit.

- 45) The permittee and/or their contractor shall contact the DCM Transportation Project Field Representative for NCDOT projects in Division One to request a preconstruction conference prior to project initiation. [G.S 113A-120(b); 07J .0209(a)].

ADDITIONAL NOTES AND CONDITIONS

NOTE: The N.C. Division of Water Resources (DWR) authorized the proposed project on 9/18/25 (DWR Project No. 20241262) under Water Quality Certification No. WQC008093. This certification expires at the same time as the USACE permit.

NOTE: The U.S. Army Corps of Engineers has assigned the proposed project COE Action ID No. SAW-1995-02242.

NOTE: This permit does not eliminate the need to obtain any additional permits, approvals or authorizations that may be required. This includes approval, if required, from the U.S. Army Corps of Engineers (USACE) and/or the U.S. Coast Guard.

NOTE: An application processing fee of \$475 was received by DCM for this project. This fee also satisfied the Section 401 application processing fee requirements of DWR.

Attachment C:

Comments

on NCDOT's Application for CAMA Major Development Permit
for Mid-Currituck Bridge Project (NC STIP Project R-2576)
(February 21, 2025)

February 21, 2025

Via Electronic Mail

NC DEQ, Division of Coastal Management
Tancred Miller, Director
400 Commerce Ave.
Morehead City, NC 28557
DCMcomments@deq.nc.gov

**Re: Comments on NCDOT's Application for CAMA Major Development Permit
for Mid-Currituck Bridge Project (NC STIP Project R-2576)**

Dear Mr. Miller:

The Southern Environmental Law Center ("SELC"), on behalf of the North Carolina Sierra Club, Carolina Wetlands Association, and No Mid-Currituck Bridge respectfully submits the following comments on the application submitted by the North Carolina Department of Transportation ("NCDOT") to the Division of Coastal Management ("DCM") for a Coastal Area Management Act ("CAMA") permit for the Mid-Currituck Bridge Project ("Project"). We urge DCM to deny the CAMA Permit, and we request a public hearing.

The permit should be denied on the grounds that NCDOT plans to construct the preferred alternative for the Project—a seven-mile bridge through valuable coastal resources including environmentally sensitive waters—in a manner that will cause significant adverse effects to Areas of Environmental Concern ("AECs"), despite the existence of a practicable alternative that would cost far less, cause far less damage to coastal resources, and do a better job at meeting project purposes. The permit should also be denied on the grounds that building the economically wasteful bridge alternative will cause unacceptable levels of direct, indirect, and cumulative impacts on coastal resources.

The groups submitting these comments all have a longstanding interest in advocating for protecting North Carolina's natural resources generally, and especially its waters, wetlands, wildlife habitat, wildlife refuges, fisheries, and the wellbeing of coastal communities. The North Carolina chapter of the Sierra Club advocates for a clean, healthy environment throughout the state, including by supporting sustainable, smart transportation decisions and protecting natural resources along the Coast. Carolina Wetlands Association is a conservation nonprofit that advocates for greater protection and preservation of wetlands across the state using outreach, advocacy, science, and sustainability. No-Mid Currituck Bridge is a Currituck County-based membership organization group of concerned citizens and visitors who oppose the Mid-Currituck Bridge. Its mission is to protect the unique natural environment of the Currituck mainland and

the northern Outer Banks by advocating against the destructive effects the Bridge would bring their environment and community. Together, these organizations represent the interests of many thousands of North Carolinians in opposing the environmentally destructive and economically wasteful Mid-Currituck Bridge.

For the many reasons discussed in these comments, as well as in comments submitted in the past regarding the same Project,¹ we respectfully request that DCM deny NCDOT's application for a CAMA permit. In addition, because there is significant public interest in this flawed Project, we request that DCM hold a public hearing before making its permitting decision to give members of the public an opportunity to learn more about the Bridge and respond with their concerns.

INTRODUCTION AND SUMMARY OF CONCERNS

In its application, NCDOT proposes to build its preferred Project alternative: a \$1 billion-dollar, seven-mile bridge across Currituck Sound (hereinafter the "Bridge" or "Bridge Alternative"). The Bridge would contribute to the rampant development pressures already facing the Outer Banks and further degrade the precious natural resources that make North Carolina's coast so special, despite the existence of a practicable alternative that would cause less environmental damage. As discussed in more detail below, the proposed Bridge does not comply with the requirements of CAMA for numerous reasons.

First and foremost, NCDOT's application for a CAMA permit cannot be considered complete or granted because NCDOT still has not provided sufficient details regarding the design for and impacts of the Bridge.

Second, NCDOT has failed to demonstrate that the Bridge is the least environmentally damaging practicable alternative. At least one alternative exists that is more feasible, less environmentally damaging, and would not include a bridge over Currituck Sound but would instead simply widen existing roads and add interchanges at key locations, justifying denial of the permit application under section 113A-120(a)(9) of the North Carolina General Statutes.

Third, the Bridge will degrade the very natural resources that caused the North Carolina General Assembly to declare the state's "coastal lands and waters" among its "most valuable resources"² and make the Outer Banks so highly prized by so many—beach-loving tourists, residents, commercial and recreational fishers, and others. It will cause significant adverse effects to numerous categories of AECs including wetlands, coastal wetlands, estuarine waters,

¹ See SELC, *Comments on NCDOT's Application for Clean Water Act Section 401 Water Quality Certification and Section 404 Permit* (Dec. 20, 2024) (hereinafter "2024 Comments"); SELC, *Comments On Mid-Currituck Bridge NEPA Review* (Dec. 21, 2016) (hereinafter "2016 Comments"); SELC, *Comments on Mid-Currituck Bridge NEPA Review* (Mar. 18, 2019) (hereinafter "2019 Comments"). These comments are incorporated in full. These comments, as well as all the exhibits attached to those comments are available at the same Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

² N.C. Gen. Stat. § 113A-102(a).

submerged aquatic vegetation (“SAV”), significant fisheries, wildlife refuges, wildlife preserves, and areas that sustain remnant species. Construction of the Bridge would induce dramatic increases in traffic and beachfront development, likely more so than other project alternatives, thereby straining already-overburdened coastal wastewater and drinking water infrastructure, permanently harming wetlands and surface waters, and degrading coastal wildlife refuges. Each of these impacts justify denial of the CAMA permit application under section 113A-120(a)(1)-(6) of the North Carolina General Statutes.

Fourth, the Bridge will contribute to unacceptable levels of cumulative impacts from induced growth on both Currituck Island and the mainland, independently justifying denial of the permit application under section 113A-120(a)(10) of the North Carolina General Statutes.

Accordingly, for all these reasons, DCM should deny the CAMA permit application. In addition, because the CAMA permit must be denied if the 401 certification is denied, DCM should delay its decision on the CAMA application until after a 401 certification has been issued or, at a minimum, condition any CAMA permit on the issuance of a 401 certification and full compliance with any conditions of that certification.

LACK OF FINAL PROJECT DESIGN

The lack of final design details for the seven-mile Bridge Alternative is fatal to NCDOT’s application for a CAMA permit. The CAMA statutes and regulations require an applicant for a major permit to include as part of its application accurate and complete work plats and other information regarding project design, placement, and impacts, with sufficient detail for DCM staff to be able to assess the effects of the entire development on AECs,³ and the assessment should include *all* effects—direct, indirect, and cumulative. Such details might include information about specific construction methodologies, right-of-way plans, borrow areas, utility impacts, etc.—details that NCDOT has not yet provided here. As one DCM staff member explained in 2020,

DCM [has] always required final design prior to issuing permits for NCDOT projects. . . . [T]he CAMA permit is different from the 401 Water Quality Certification and the Section 404 permit because the CAMA permit applies to the *full project* under the total development concept, including more than just impacts to wetlands and waters. We authorize the total development.⁴

³ See generally N.C. Gen. Stat. §§ 113-229, 113A-119; 15A N.C. Admin. Code 07J.0203, .0204 (although these two administrative code sections had been removed from the Code as of the date these comments were submitted, a Wake County Superior Court judge has ordered them restored to the Code in an order dated February 13, 2025, in *NC Dept. of Env’tl. Quality, DCM v. NC Rules Review Commission*, civil action number 23CVS031533-910).

⁴ Email from Cathy Brittingham, Transp. Project Coordinator, DCM, to Garcy Ward, Env’t Specialist, Div. of Water Res., et al, (Aug. 24, 2020) (attached hereto as Exhibit 001) (emphasis added).

At that time, DCM staff concluded that the lack of a final design for all parts of the project would be “an issue for the CAMA permit process” and could prevent DCM from issuing a permit for the total development of the Bridge project.⁵ As recently as 2024, DCM staff opined, “The CAMA permit decision will be based upon final design. If there are aspects of the project that are not known at the time of a permit decision, then they cannot be authorized by any CAMA permit, if issued.”⁶

Despite the passage of five years since DCM expressed these concerns, NCDOT has yet to provide the kind of full detail on the final design for the entire project that DCM needs to make a permitting decision. Indeed, NCDOT still has not provided sufficient additional detail on the design in the thirteen years since publishing the Final Environmental Impact Statement (“FEIS”) in 2012. As late as 2024, agencies were still asking—seemingly in vain—for NCDOT to provide complete information about project design and construction methodologies, means, methods, and impacts.⁷ To the extent that NCDOT has not yet resolved all of those requests to DCM’s satisfaction, its failure to provide complete information should doom its CAMA permit application.

VIOLATIONS OF USE STANDARDS FOR AREAS OF ENVIRONMENTAL CONCERN

The General Assembly mandated that a CAMA permit application must be denied if DCM finds any of the following to be true:

- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
- (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
- (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
- (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or

⁵ *Id.*

⁶ NCDOT & NCTA, *Interagency Project Meeting Summary* at 4 (Jan. 10, 2024) (attached hereto as Exhibit 002)

⁷ *Id.* at 2-4 (Jan. 10, 2024); NCDOT & NCTA, *Interagency Project Meeting Summary* at 2-7 (Dec. 14, 2023) (attached hereto as Exhibit 003); NCDOT & NCTA, *Interagency Project Meeting Summary* at 3 (Sept. 7, 2022) (attached hereto as Exhibit 004).

natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).

- (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
- (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
- ...
- (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
- (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the written guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.⁸

Many of these grounds are present here and mandate denial of NCDOT's CAMA permit application for the Project. For each category, the proposed Bridge Alternative for the Project violates the articulated standards, constituting an independent adequate basis for denial. These comments will address each category that justifies denying the permit, starting with the last, the existence of a less environmentally damaging alternative, and then turning to the others in the order they are listed in the statute.

I. Existence of a less environmentally damaging practicable alternative.

The CAMA permit must be denied based on the existence of a less environmentally damaging practicable alternative that also happens to be more feasible from an economic perspective and more efficacious at accomplishing the Project's purpose. CAMA provides that a CAMA permit shall be denied on the basis "that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources."⁹

As DCM acknowledged, the CAMA statute requires DCM to consider and balance a project's use of "public resources" which could include tax dollars used to construct the bridge"

⁸ N.C. Gen. Stat. § 113A-120(a).

⁹ *Id.* § 113A-120(a)(9).

in deciding whether to issue a CAMA permit.¹⁰ DCM must decline to issue a permit for the Bridge Alternative as it is prohibitively expensive, a waste of public transportation funding resources that would be better used to fund more pressing transportation needs elsewhere in the state, more environmentally damaging, and less effective at meeting the Project's purpose and need than another less expensive Project alternative.

The Bridge Alternative would route seven miles of new roadway across Currituck Sound and Maple Swamp from a point on U.S. 158 between the towns of Coinjock and Aydlett on the mainland to the northern edge of the Outer Banks via the "MCB4/A/C1" alternative design described in its Final Environmental Impact Statement, and NCDOT intends for the billion-dollar price tag to be paid in part by toll revenue.¹¹ An alternative approach analyzed during the National Environmental Policy Act ("NEPA") process, called ER2 for "Existing Roads alternative 2," would not include a bridge over the Sound but would instead simply widen existing roads on both the mainland and Currituck Island and add helpful interchanges and intersection improvements to facilitate traffic flow.¹² According to NCDOT's own documents and analysis, ER2 would adequately address traffic needs and provide the best evacuation and traffic congestion improvements and the lowest price tag, with far fewer environmental impacts.¹³

In contrast, the prohibitively expensive Bridge is hardly "practicable." Given accelerating sea level rise, it will likely become obsolete before it can generate sufficient toll revenue to cover its cost, and it would unnecessarily waste scarce transportation funds that are needed for more pressing projects elsewhere in the region and the state. Where, as here, a large-scale proposed project would plow through a highly productive area full of valuable coastal resources that includes estuaries, wetlands, SAV, fisheries, and wildlife habitat, and would potentially adversely affect wildlife refuges, beaches, water supplies, and other coastal treasures, DCM should not issue a CAMA permit unless the applicant can prove there is no practicable alternative that would cause less adverse impacts.¹⁴ This is especially true where, as here, the purpose of a proposed project could be achieved without being sited through AECs.

¹⁰ DCM, *Weekly Update* at 7 (Dec. 15, 2022), (attached hereto as Exhibit 005).

¹¹ See NCDOT, *Mid-Currituck Bridge CAMA Major Development Permit Application* at 2, <https://xfer.services.ncdot.gov/pdea/PermApps/R-2576/CAMA/0%20R-2576%20CAMA%20Application%202024-09-18.pdf> (hereinafter "CAMA Application"); NCDOT, *Project Highlights* (May 10, 2024), <https://perma.cc/L72H-U2J3>; NCDOT, *Mid-Currituck Bridge Study Reevaluation of Final Environmental Impact Statement Study Report* at 1-9, (Mar. 6, 2019), <https://perma.cc/6V3J-QFMQ> (hereinafter "FEIS Reevaluation").

¹² USDOT & NCDOT, *Administrative Action Final Environmental Impact Statement* at 2-1, 2-5, Fig. 2-1 (Jan. 2012) (hereinafter "FEIS").

¹³ NCDOT, *Mid-Currituck Bridge Traffic and Revenue Discussion* at 3-13 tbl. 3-6, 3-14 tbl. 3-7; 3-30 – 3-32 (May 10, 2024) (attached hereto as Exhibit 006); FEIS at 2-47; see also FEIS Reevaluation at 1-13 – 1-15, <https://perma.cc/6V3J-QFMQ>.

¹⁴ An analogous regulation for 404 permitting affirmatively places the burden on the permit applicant. See 40 C.F.R. § 230.3(m); *Utahns for Better Transp. v. USDOT*, 305 F.3d 1152, 1187 (10th Cir. 2002); see also *All. for Legal Action v. U.S. Army Corps of Eng'rs*, 314 F. Supp. 2d 534, 543 (M.D.N.C. 2004) ("[T]he burden to clearly

NCDOT has not met that burden in the present situation. Here, the basic purpose of the project could be achieved by building the ER2 alternative and not constructing the Bridge through the Currituck Sound, Maple Swamp, and their estuaries, SAV, fisheries, and other habitat. The ER2 alternative is available and practicable, would be significantly less impactful on these special sites, and would cause demonstrably fewer adverse environmental impacts. NCDOT summarily and repeatedly claims throughout its application materials that constructing the Bridge is the “least environmentally damaging practicable alternative” or “LEDPA,” basing this conclusion on a flawed July 2020 report (the “LEDPA White Paper”). The LEDPA White Paper fails to include any robust explanation for this conclusion, instead pointing to a series of outdated analyses and brushing over, misstating, or outright ignoring facts that do not support its conclusion.¹⁵ Moreover, the ER2 alternative would be practicable; the LEDPA White Paper acknowledges that it would also be significantly less expensive and have fewer impacts on wetlands, aquatic resources, and the environment. Nonetheless, NCDOT arbitrarily and capriciously casts aside ER2 and, in so doing, violates CAMA.

A. Funding and Financing

NCDOT’s primary justification for why ER2 is not practicable and thus does not qualify as the LEDPA is its cost. This is nonsensical. There is currently no financial plan to pay for either the Bridge or an ER2 alternative, and, in any event, the Bridge is vastly more expensive. The unavailability of financing cannot be used to eliminate one alternative, but not the other. It is particularly disingenuous for NCDOT to use cost to eliminate the *far less expensive* alternative (ER2) but not the more expensive Bridge Alternative. Current estimates place the cost of the Bridge Alternative at more than \$1 billion,¹⁶ while the most recent estimates of the cost of the ER2 alternative were approximately one-quarter of that amount, \$277.9 to \$288.1 million.¹⁷

The LEDPA White Paper states that “the current plan of finance for the Selected Alternative includes a combination of toll revenue bonds, a TIFIA loan, GARVEE bonds, and State Matching funds.”¹⁸ But this “plan” is largely illusory. State matching funds are limited to \$173 million in the Statewide Transportation Improvement Program. A decade ago, NCDOT anticipated spending just over \$400 million on the Bridge, but costs have since ballooned and are

demonstrate a lack of practicable alternatives lies with the project applicant.”); 40 C.F.R. § 230.1(c) (explaining it is “[f]undamental . . . that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.”).

¹⁵ See generally NCDOT, *Identification of the Least Environmentally Damaging Practicable Alternative* (July 2020), <https://perma.cc/8WG9-8L5G> (Attachment 2 to NCDOT’s *Application for Section 404 and Section 10 Individual Permit and Section 401 Individual Water Quality Certification*) (hereinafter “LEDPA White Paper”); see also FEIS Reevaluation, <https://perma.cc/6V3J-QFMQ>.

¹⁶ See NCDOT, *Project Highlights* (May 10, 2024), <https://perma.cc/L72H-U2J3>.

¹⁷ FEIS Reevaluation at 1-15, <https://perma.cc/6V3J-QFMQ>.

¹⁸ LEDPA White Paper at 38, <https://perma.cc/8WG9-8L5G>.

now projected to total at least \$1 billion¹⁹ and will continue to climb over time as the project timeline is pushed further out pending receipt of funding.²⁰ The project received an abysmal score under NCDOT's latest project prioritization process, meaning there is very little state money available to it. Recent statements from NCDOT make clear that "a final decision on financing has not been determined."²¹

While numerous efforts have been made to secure federal funding for the Bridge, each has failed.²² To date, the Bridge has failed to qualify for a TIFIA loan, INFRA grant, MEGA grant, or indeed any other federal financing. The most recent financial plans we have been able to obtain through public records requests further demonstrate the utter lack of a secure path to fund and finance the Bridge. A plan of finance from May 2024 relies heavily on a \$425 million INFRA grant,²³ and yet NCDOT has consistently failed to secure such a grant, perhaps because the Bridge project has repeatedly not scored well enough to receive funding.²⁴ 2025-26 INFRA

¹⁹ See NCDOT, *Project Highlights* (May 10, 2024), <https://perma.cc/L72H-U2J3>; see also, e.g., NCDOT, *Mid-Currituck Bridge Quarterly Cash Flow - Anticipated Expenditures Throughout Construction* (Apr. 15, 2024), (attached hereto as Exhibit 007); N.C. Turnpike Auth., *Mid-Currituck Bridge 2024 Plan of Finance* (May 2, 2024) (attached hereto as Exhibit 008) (hereinafter "Plan of Finance"); Kipp Tabb, *Construction of Mid Currituck Bridge Could Start in 2026*, *The Outer Banks Voice* (July 25, 2024), <https://perma.cc/ASX4-GGFM>.

²⁰ See generally NCDOT, *MCB Operations and Maintenance and Repair and Replacement Costs* (Apr. 17, 2024) (showing costs over time) (attached hereto as Exhibit 009); see also Clemmon W. Bridgers, *Mid-Currituck Bridge Update 20*, NCDOT (Aug. 21, 2024) ("Based on current inflationary expectations, the Project would likely increase in cost by \$4 to \$5 million per month.") (attached hereto as Exhibit 010).

²¹ Kipp Tabb, *Construction of Mid Currituck Bridge Could Start in 2026*, *The Outer Banks Voice* (July 25, 2024), <https://perma.cc/ASX4-GGFM>; see also Email from Clemmon Bridgers, NCDOT, to Anna Cameron, NCDOT et al. (Jan. 2, 2024) (listing the Bridge as an "unfunded" Division 1 project) (attached hereto as Exhibit 011).

²² See, e.g., Email from Jennifer Harris, NCDOT, to Michael Kneis, NCDOT (Feb. 23, 2012) (attached hereto as Exhibit 012); NCTA, *NSFHP/INFRA Grant Application for Mid-Currituck Bridge Project* (2021) (attached hereto as Exhibit 013); USDOT, *INFRA FY22 Applications* (Mar. 23, 2023), <https://perma.cc/Y697-R7JL> (applied for \$95 million in FY22 cycle but did not receive funding); USDOT, *INFRA FY21 Applications* (June 16, 2020), <https://perma.cc/U99W-FCYB> (applied for \$99 million in INFRA funding in FY21 cycle); USDOT, *2021 INFRA Grant Awards Data File* (July 8, 2021), <https://perma.cc/RGN2-J6MQ> (did not receive INFRA funding in FY21 cycle); USDOT, *INFRA FY20 Project Applications* (June 16, 2020), <https://perma.cc/7DWP-798U> (applied for \$95 million in INFRA funding); USDOT, *2020 INFRA Grant Awards Data File* (June 18, 2020), <https://perma.cc/KJ57-LTGX> (did not receive INFRA funding in FY20 cycle); USDOT, *FY 2019 INFRA Project Applications* (July 25, 2019), <https://perma.cc/WX3F-65Y2> (applied for \$115 million in INFRA funding); USDOT, *2019 INFRA Grant Awards Data File* (Sept. 13, 2019), <https://perma.cc/E863-TTBC> (did not receive INFRA funding in FY19 cycle); USDOT, *FY 2017-2018 INFRA Project Applications*, <https://perma.cc/6QZW-J7CB> (last visited Nov. 18, 2024) (applied for \$171,578,707 in INFRA funding); USDOT, *INFRA Awards 2018 Data File* (Sept. 13, 2019), <https://perma.cc/4TKZ-5DKJ> (did not receive INFRA funding in FY18 cycle).

²³ Plan of Finance at 2 (attached as Exhibit 008).

²⁴ See, e.g., NCTA, *2022 Multimodal Project Discretionary Grant Application for Mid-Currituck Bridge* (2022) (attached hereto as Exhibit 014); NCTA, *NSFHP/INFRA Grant Application for Mid-Currituck Bridge Project* (2021) (attached hereto as Exhibit 013); Email from Jennifer Harris, NCDOT, to Michael Kneis, NCDOT (Feb. 23, 2021) (explaining why the Bridge's 2020 INFRA application scored poorly and was not selected for funding) (attached hereto as Exhibit 012).

grants were awarded on October 20, 2024, and the Bridge was not among the list of selected projects. Congress has not allocated funding for INFRA grants in future years. NCDOT cannot base its selection of the Bridge over ER2 on the basis of a grant that it has thus far failed to obtain and cannot reasonably expect to receive in the future.

Further, NCDOT has failed to explain why it could not seek the same kinds of federal grant funding for the improvements included in the ER2 alternative. NCDOT recently secured federal funding for needed improvements at the Alligator River Bridge in eastern North Carolina.²⁵ NCDOT has offered no explanation as to why it could not seek similar grants for alternative ER2 improvements. To the extent that federal funding is uncertain under the current administration, it is equally uncertain for both the Bridge and ER2.

Even if NCDOT is one day successful in securing federal grant funding for the Bridge, the financial plan still fails to ensure a secure funding pathway for the project. The May 2024 plan of finance relies on the increasing collection of toll revenue until at least 2070.²⁶ The plan assumes that in 2070 the Bridge will generate \$66 million in toll revenue in a single year. That averages \$5.5 million in revenue per month, or \$183,000 in revenue *each day*, all year long, summer *and* winter. NCDOT has not offered any forecast of future traffic to back up such a projection, nor has it explained how the existing road system would even handle the high volume of traffic that would be required to generate so much revenue. NCDOT also has yet to determine what the toll price will be, which is problematic because there is a tension inherent in the pricing decision—the more expensive the toll, the more it might deter travelers from using the Bridge, thereby reducing revenue rather than increasing it.²⁷ The most recent traffic and revenue study also failed to do any traffic counts during the off-peak period and yet relies on significant toll revenue from off-peak months.²⁸

The lack of funding available for the \$1 billion Bridge option also demonstrates how the public interest is better served by ER2. A Bridge option is all or nothing. It cannot move forward until all the funding and financing is in place. And even once funding is in place, construction will take four to five years to complete.²⁹ By contrast, the smaller-scale solutions that comprise ER2 could be implemented over time, as money becomes available. This would mean the community would receive traffic and hurricane evacuation assistance much sooner.

²⁵ Off. of Gov. Roy Cooper, *Alligator River Bridge Replacement Receives Federal Grant* (Jan. 3, 2023), <https://perma.cc/J9MM-YQNC>.

²⁶ Plan of Finance at 8 (attached as Exhibit 008).

²⁷ NCDOT, *Southern Shores Boat Club Questions and Answers 2* (May 9, 2024) (attached hereto as Exhibit 015); *see also* Email from Adam Mangano Drenkard, Stantec, to Jennifer Harris, NCDOT and Fleur Hartmann, Stantec (June 13, 2024) (attached hereto as Exhibit 016).

²⁸ NCDOT, *Mid-Currituck Bridge Traffic and Revenue Discussion* (May 10, 2024) (attached hereto as Exhibit 006); *see also* NCDOT, *Base Case MCB Annual Transactions and Revenues by Year* (Apr. 17, 2024) (attached hereto as Exhibit 017); NCDOT, *High Case MCB Annual Transactions and Revenues by Year* (Apr. 17, 2024) (attached hereto as Exhibit 018).

²⁹ *See, e.g.*, Email from Roy Bruce, HW Lochner, to Missy Pair, NCDOT (Feb. 14, 2024) (attached hereto as Exhibit 019).

Moreover, accelerating sea level rise and more frequent storm surge predicted for the period after 2050 mean that it is very likely that, by then, a Bridge over the Sound will be unusable during portions of the year, if not entirely, further reducing opportunities for toll revenue. The latest Traffic and Revenue study for the project fails to consider *at all* the impacts that climate change will have on toll revenue in the future.³⁰ Analysis of the Bridge should be revisited to determine whether it is practicable in light of this new information about sea level rise and its implications for financing.

NCDOT argues that ER2 is not practicable or in the public interest because it is not included in local land use plans or local government preferences. But NCDOT has only ever attempted to find a path to fund and finance the Bridge, and has consistently, and falsely, pushed the narrative that no other option could be funded, so of course local governments have accounted for it in the planning. NCDOT (and DCM) must abandon the fiction that there is a financial path forward for a \$1 billion Bridge and instead revisit discussions and plans for more viable solutions.

Moreover, the state's scarce transportation funds would better benefit the public if used elsewhere to address, for instance, the overwhelming transportation infrastructure needs that have arisen in Western North Carolina in the aftermath of Hurricane Helene, rather than on building a bridge whose main purpose is to alleviate travel time for tourists on vacation for a few months of the year. Even within the coastal region there are significant transportation needs along other coastal roads like highway N.C. 12, which serves as the sole route to and from other islands in the Outer Banks—needs that are more urgent to the lives of the people who live in coastal North Carolina.³¹ Many roads in the NCDOT Division 1 area are in desperate need of repair, while the already-limited funds that could go towards those projects are being earmarked for the Bridge instead. Indeed, as one NCDOT employee noted in an internal communication, “[t]he ramifications of the funding for [the Bridge] are of such a potentially adverse impact to the Division’s funding levels that I do have serious concerns as does my Board Member.”³² In contrast, the ER2 alternative is less expensive overall and has the added benefit that it could be implemented in stages. Accordingly, if alternative ER2 were the selected alternative, Outer Banks residents and visitors would not have to wait for other critical roads to be repaired until after funding for an entire \$1 billion bridge was identified and five years of construction completed. Until there is a financial path to move forward with this Project, state and federal agencies should not waste precious time and resources on this permitting process.

In light of the foregoing, it would be arbitrary and capricious for DCM to accept NCDOT's elimination of ER2 for funding reasons, when there is no current financial path forward for the \$1 billion Bridge. DCM should not accept NCDOT's inconsistency in picking a LEDPA based on one alternative's supposed superior ability to secure funding when all the evidence points to the selected alternative (the Bridge) being impossible to fund and the rejected alternative (ER2) being possible to fund.

³⁰ NCDOT, *Mid-Currituck Bridge Traffic and Revenue Discussion* (May 10, 2024) (attached hereto as Exhibit 006).

³¹ See generally Dare Cty., *Subcommittee Report* (Nov. 10, 2022), <https://perma.cc/U768-ES7A>.

³² Email from Sterling Baker, NCDOT, to Jennifer Harris, NCDOT (Oct. 11, 2021) (attached hereto as Exhibit 020).

B. Hurricane Evacuation

Another egregious shortcoming of the LEDPA White Paper is its failure to acknowledge that ER2 would actually be more effective at meeting the project’s purpose of improving hurricane evacuation than the Bridge. This fact came to light in NCDOT’s reevaluation of its FEIS.³³ While the hurricane clearance modeling in the FEIS was based on an 18-hour goal set by the North Carolina General Assembly, the FEIS reevaluation considered a 30-hour goal (36 hours minus 6 hours of pre-hazard time) as well as the 18-hour goal.³⁴ The FEIS projected that in 2035 both the Bridge and ER2 would achieve hurricane clearance within 27 hours with a U.S. 158 reversed center turn lane and 22 hours if a third outbound lane was added to U.S. 158. The Reevaluation Study Report goes on to project that in 2040, *ER2 would outperform the Bridge in achieving hurricane clearance times.*³⁵ The table in Figure 1 below illustrates the new findings regarding hurricane clearance times in hours for each alternative:

Project Alternative	2040 Forecast with constrained development (VA border open)	2040 Forecast with unconstrained development (VA border open)	2040 Forecast with constrained development (VA border closed)	2040 Forecast with unconstrained development (VA border closed)
No-Build Alternative	34.4	37.2	40.3	43.2
ER2	30.7	32.3	41.1	43.2
Selected Alternative (Bridge)	32.3	32.3	43.2	43.2

*Fig. 1: Comparison of Hurricane Clearance Estimates and Reevaluation Hurricane Clearance Estimates*³⁶

In its FEIS reevaluation, NCDOT obfuscated the fact that ER2 outperforms the Bridge, stating simply that “either ER2 or the Selected Alternative would substantially improve clearance times.”³⁷ A draft version of the FEIS Reevaluation Study Report was more candid, stating that

³³ See generally FEIS Reevaluation, <https://perma.cc/6V3J-QFMO>.

³⁴ *Id.* at 3-8.

³⁵ *Id.* at 3-13, tbl.3-5; 3-14 tbl.3-6; 3-30 – 3-32.

³⁶ *Id.*

³⁷ *Id.* at 3-32. The Reevaluation Study Report also concludes that by reversing the center turn lane of U.S. 158 further reductions in clearance time could be achieved for both the Selected Alternative and ER2 (29.1 hours for the Selected Alternative and 28.9 hours or 29.9 hours for ER2 respectively), but goes on to state that reversing the center turn lane is only practical for the Selected Alternative based on the number of miles of center turn lane that would need to be reversed. NCDOT does not explain why reversing the center turn lane for 5 miles is practical, but 27 miles is not. *Id.* at 3-31.

“ER2 would result in lower clearance time than the Preferred Alternative.”³⁸ This statement is not present in the final version of the Report. The LEDPA White Paper inexplicably remains focused on the 18-hour number and does not include any acknowledgement that ER2 outperforms the Bridge on this key aspect of the purpose and need.³⁹

C. Congestion Relief

The LEDPA White Paper also misleads where it suggests that ER2 will not sufficiently meet the project’s purpose and need for congestion relief. Forecasts of future traffic have changed dramatically in the fifteen years since the project was studied in 2010 and the Bridge was first selected as the LEDPA. The original screening of alternatives was based on forecasts for 2035.⁴⁰ More recent forecasts, however, show that there will be substantially less congestion in future years than was previously expected. This change has significant implications for the viability of ER2.⁴¹

The LEDPA White Paper also demonstrates that NCDOT is attempting to “game” the LEDPA selection by reconfiguring the ER2 alternative to appear less effective. The LEDPA White Paper states that “because lower future traffic volumes mean fewer improvements would be needed to achieve the purposes of the project, [North Carolina Turnpike Authority or ‘NCTA’] reconfigured the ER2 and Preferred Alternative.”⁴² For ER2 this meant fewer improvements to N.C. 12 and that the original interchange redesign at U.S. 158 and N.C. 12 was downgraded to an improved intersection.⁴³ And yet, later on, NCDOT declares that ER2 is not the LEDPA, in part because it provides for less congestion relief. *NCDOT cannot redesign the alternative to be less effective and then reject it as less effective.* Nevertheless, the fact remains that ER2’s improvements can be implemented in stages and could potentially be supplemented as necessary to add back the features NCDOT eliminated in the LEDPA White Paper to create the illusion of the Bridge Alternative as the LEDPA.

D. Sea Level Rise

In light of accelerating sea level rise in the Project area, the Bridge will likely become obsolete before it can generate sufficient toll revenue to cover its cost, and therefore it cannot be considered a “practicable alternative” for purposes of N.C. Gen. Stat. § 113A-120(a)(9). Among NCDOT’s CAMA application’s greatest infirmities is its lack of up-to-date information about sea level rise and the effect it will have on the viability of the Bridge, especially during storm and flood events. NCDOT fails to provide DCM with meaningful information about the extent to

³⁸ NCDOT, *Draft Mid-Currituck Bridge Study Reevaluation of Final Environmental Impact Statement Study Report* at 3-40 (Jan. 29, 2018) (attached hereto as Exhibit 021).

³⁹ See, e.g., LEDPA White Paper at 10, <https://perma.cc/8WG9-8L5G> (“Hurricane clearance times would also be reduced, but neither alternative would provide enough reduction to achieve the 18-hour clearance standard.”).

⁴⁰ See generally 2016 Comments; 2019 Comments.

⁴¹ See generally *id.*

⁴² LEDPA White Paper at 25-26, <https://perma.cc/8WG9-8L5G>.

⁴³ *Id.* at 39.

which surface and groundwater levels and other components in the Sound and surrounding areas will change as sea levels increase.

NCDOT's sea level rise projections are woefully outdated and almost surely underestimate how quickly sea level rise will render the Bridge obsolete and unusable for emergency evacuations during hurricanes, as well as how dramatically the induced residential and commercial development on both the barrier island and the mainland will be adversely impacted by rising seas and associated heightened water tables. NCDOT relies on several old studies in its analysis of the effects of sea level rise on the Bridge project area that almost surely underestimate the rise, each dating from 2013 to 2019. These studies use even older data and do not make projections for the full 75-year lifespan of the Bridge.⁴⁴ For example, one 2015 study relied on historic data from 1986-2005 that predicted sea levels would rise in the project area by between 6.7 and 7.5 inches by the year 2040; another 2015 study projected that sea levels at Duck, NC, would rise between 4.7 and 13.0 inches from 2000 to 2030. A third report was even less useful for purposes of evaluating the impacts of the Bridge: issued in 2020 and itself based on a 2019 report, it predicted *global* sea level rise from 1900 to 2100, rather than focusing locally or making projections dating from the present.⁴⁵

Relying on these outdated reports—which themselves rely on outdated data—NCDOT reached the unsupportable conclusion that “[b]ased on this analysis, little to no observable effects of sea level rise were predicted for the three Probable Development Areas in the 20-year time frame of this study,”⁴⁶ and that only “a small fraction (if any) of the” septic systems expected to be built as a result of induced growth “would be at risk over the next 20 years.”⁴⁷ NCDOT is hiding the ball by addressing only the first 20 years of the Bridge's 75-year lifespan, when it clearly intends it to be in use for much longer as evidenced by its plan to collect tolls until 2070 to pay for the Bridge. It is also asking DCM to ignore newer, more realistic projections about accelerating sea level rise. NCDOT also fails to spend meaningful time addressing the effects of sea level rise on the ability of the Bridge Alternative to meet the project purpose and need of providing reliable transportation to and from Currituck Island for the full 75-year lifespan of the Bridge; when the approach routes to, or the termini of, the Bridge are under water, the Bridge will no longer be a viable route to and from the barrier island.

New data about sea level rise has made it painfully clear that, regardless of how much greenhouse gas emissions can be curtailed in the years to come, sea level in the Southeast will increase at least one foot above 2000 levels by the year 2050, and high tide flooding will increase in both frequency and severity. The North Carolina Coastal Resources Commission's (“CRC”) Science Panel just released a new report in October that provides guidance on sea level rise to

⁴⁴ NCDOT, *Mid-Currituck Bridge Cumulative Impact Report for Water Quality, Final May 2021 Revised May 2024* at 73-74 (May 2024) (hereinafter “Cumulative Impact Report for Water Quality”) attached as Attachment 6 to NCDOT's CAMA Application, <https://perma.cc/728F-8SND>.

⁴⁵ *Id.* at 73.

⁴⁶ CAMA Application at 13, <https://perma.cc/F4L6-XBG5>.

⁴⁷ Cumulative Impact Report for Water Quality at 75, attached as Attachment 6 to NCDOT's CAMA Application, <https://perma.cc/728F-8SND>.

help inform permitting decision-making within the state; the report relies on the most authoritative studies and best available science.⁴⁸ The report concluded that earlier projections understated sea level rise and that the Southeastern United States would see sea levels rise at least one foot by 2050; the report also modeled sea level rise at specific locations within the state. The report provided projections “based on ‘medium confidence’ scenarios meaning that actual sea level rise may be higher but is not likely to be lower.”⁴⁹ Projections vary, but the most likely scenario in the studied area closest to the Bridge—the town of Duck—will almost certainly see half a meter (19 inches) of sea level rise by 2050, and will likely reach 1.25 meters (48 inches) of rise by 2100.⁵⁰ The report also evaluated the expected frequency of high tide flooding at an elevation of 1.75 feet (21 inches) above mean higher high water, that is, the average of all high water (or high tide) levels over a period of nineteen years. It concluded that such flooding will increase substantially, too, with the project area experiencing approximately 100 days per year of flooding in 2050, and over 300 days—and potentially all the time—by 2100.⁵¹

SELC geospatial information specialists used up-to-date data from the National Oceanic and Atmospheric Administration (“NOAA”) to create maps illustrating likely sea level rise scenarios for the years 2050, 2070, 2080, and 2100. This represents a period much closer to (but still shy of) the full 75-year lifespan of the Bridge.⁵² The data from which the maps were created are taken from NOAA’s updated 2022 Sea Level Rise Viewer⁵³ and the definitive 2022 NOAA Technical Report NOS01,⁵⁴ and applied to forecast updated sea level rise scenarios for the Bridge project area. They confirm the CRC’s Science Panel projections for NOAA’s Intermediate-Low and Intermediate scenarios (where sea level rise may be higher but is not likely to be lower). The maps are attached hereto as Exhibit 22; we have also included maps showing NOAA’s Intermediate-High Scenario (where sea level rise may occur, but with less certainty). These maps show that, during *average* high tides in all three scenarios, portions of highways U.S. 158 and N.C. 168 that will form the evacuation approach routes to the Bridge

⁴⁸ N.C. Coastal Res. Comm’n Sci. Panel, *2024 Sea Level Rise Science Update*, NCDEQ & NCDCM (Oct. 2024) <https://perma.cc/L6JZ-6YGD> (hereinafter “Sea Level Rise Science Update”) (relying on William V. Sweet et al., *Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines*, NOAA Technical Report NOS 01 (Feb. 2022), <https://perma.cc/J37U-YGQ8>). See also Dave Dewitt, *The Changing Carolina Coast: Managing the Threat of Rising Water*, WUNC 91.5 (Jun 1, 2015) <https://perma.cc/US6B-GE7C> (describing projections in Science Panel’s report); Sarah Kaplan, *Saltwater Intrusion: Rising Seas Are Poisoning North Carolina’s Farmland*, Wash. Post (Mar. 1, 2019) (describing effects of sea level rise already being observed in coastal North Carolina), <https://perma.cc/LC3N-VB2R>.

⁴⁹ Sea Level Rise Science Update at 8, <https://perma.cc/L6JZ-6YGD>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² These maps are attached hereto as Exhibit 022.

⁵³ NOAA, *Sea Level Rise Viewer* (last modified Dec. 4, 2024), <https://coast.noaa.gov/slr/#>, <https://perma.cc/JT3P-WUZS>.

⁵⁴ William V. Sweet et al., *Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines*, NOAA Technical Report NOS 01 (Feb. 2022), <https://perma.cc/J37U-YGQ8>.

terminus on the mainland *may* be underwater by 2050, and *likely will be* by later years (even given that the projections become less certain for longer time horizons). And, of course, water levels will be higher than average high tides during storm events. The maps also show that the Bridge terminus on both the mainland and the barrier island *will* be underwater in later years of the Bridge's lifespan. One only needs to look further south to the bridge terminus recently built in Rodanthe, North Carolina, to see the grim future of the Mid-Currituck Bridge; although the Rodanthe bridge was opened to traffic just over two years ago in 2022, its terminus and approach roads are already often underwater, covered in ocean overwash.

As sea levels rise, high tide lines move landward. DCM has developed an interactive map showing coastal erosion rates along the Outer Banks; it shows that the coastline in the project area on the Currituck Island is currently eroding at a rate of *two to nine feet per year*, depending on the exact location.⁵⁵ With current rates of erosion, projected sea level rise, and the low elevations in Corolla and Currituck Island, it is entirely possible and even likely that the barrier island terminus of the Bridge and the roads approaching it will be regularly underwater within a few decades of it opening to traffic, as in Rodanthe. NCDOT must provide modeling with current data to show how much of the land will be inundated and overtaken by the ocean as sea levels hit certain elevations. Without that information, DCM cannot adequately gauge the likely useful life of the Bridge before its terminus is underwater as well, and cannot, therefore, judge whether the Bridge is even practicable or feasible.

Groundwater level rise is also a potential problem in light of the water quality issues associated with groundwater pumping and stormwater management that are already being experienced, as described above. NCDOT acknowledges “[i]t is certainly possible to model the future interaction of the rising sea level and the associated rise in groundwater levels but to do so accurately would require a great deal of site-specific information to calibrate the model.”⁵⁶ Instead of taking the time and resources to perform this modeling, NCDOT instead used outdated protocols and projections found in the 2015 version of the state's Stormwater BMP Inspection & Maintenance Program Manual, which has now been superseded by a 2022 version; relying on the outdated tool, NCDOT then assumed that “there is not a one-to-one correlation between sea level rise and the associated groundwater rise (in other words, if sea level rises one foot, then the groundwater rise will likely be less than one foot),”⁵⁷ without substantiating this claim. NCDOT staff raised this issue internally, yet NCDOT did not address it in the application.⁵⁸ With no

⁵⁵ DCM, *North Carolina Interactive Map Viewer* (last updated Aug. 20, 2021), <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=f5e463a929ed430095e0a17ff803e156> (select “Erosion Rates 2020” layer) (printouts of Corolla/Carova area attached hereto as Exhibit 023).

⁵⁶ NCDOT, *Sea Level Rise and Groundwater Impact on Hydraulic Design of Stormwater Management Measures for the Mid-Currituck Bridge 1-2* (Feb. 4, 2020), <https://perma.cc/VPH7-9BK9> (attached to CAMA Application as Attachment 16).

⁵⁷ *Id.* (linking to the NCDOT Stormwater Control Measure Inspection and Maintenance Program Manual).

⁵⁸ Email from Colin Mellor, NCDOT, to Tracy Roberts and Chris Rivenbark, NCDOT (Oct. 13, 2021) (attached as Exhibit 024) (“[T]hey say the rate of groundwater rise is less than sea level rise but I believe its [sic] possible that the rate is similar, it just lags behind. Semantics...but possibly relevant.”).

information to support the assumption, it appears to be based more on wishful thinking than on the best available science.

Perhaps most concerningly, NCDOT has reason to know—and indeed, has apparently been having internal conversations about—the potentially disastrous effects of sea level rise for this Project. Internal communications show NCDOT staff are at least asking questions about what will happen to the Bridge “in 2050, or when the island inevitably is gone?” and whether “the Bridge [is] designed to handle shifting of the island?”⁵⁹ The application does not answer these questions. Instead, the CAMA Application states simply that, the Bridge “accounts for predicted sea level rise” and “little to no observable effects of sea level rise were predicted . . . in the 20-year time frame.”⁶⁰

DCM has already raised concerns about whether projects like the Mid-Currituck Bridge Project “that may be impacted by increased flooding due to climate change during the design year”⁶¹ implicate state Executive Order 80, which requires cabinet agencies such as NCDOT to “evaluate the impacts of climate change on their programs and operations” and “integrate climate adaptation and resiliency planning into their policies, programs, and operations.”⁶² Indeed, as one employee noted, “I haven’t really known whether I should be saying anything at all, and if so, how much is expected of NCDOT when it comes to incorporating the concepts of Executive Order 80 into their Project Development and Environmental Analysis . . . I don’t know if it is appropriate to remain silent on the topic.”⁶³

The CAMA Application’s failure to answer the serious questions raised by NCDOT and DCM staff and to comprehensively consider the realities of sea level rise and erosion rates doom its CAMA application. Those failures makes its conclusion that the Bridge “would reduce the impact of accelerated sea level rise by providing an alternative route to and from the Outer Banks, should elevated sea levels result in a breach of N.C. 12 in the narrow portion of the Outer Banks near the Dare / Currituck County line” especially inexplicable.⁶⁴ This claim must be substantiated before the Bridge can be deemed practicable.

In sum, NCDOT must provide actual, updated analysis of how climate change and sea level rise may affect the viability of the Bridge and increase risks for both current residents and those induced to develop in the Project area in the future, using updated sea level rise and ocean erosion projections, so that the DCM can base its permitting decisions on realistic data and the best available science.

⁵⁹ Email from Emma Babocsi to Jennifer Harris (June 30, 2023) (attached hereto as Exhibit 025).

⁶⁰ CAMA Application at 13.

⁶¹ Email from Cathy Brittingham, Transp. Project Coordinator, Div. Coastal Mgmt., to Tancred Miller, Div. Coastal Mgmt. (Nov. 27, 2019) (attached hereto as Exhibit 026).

⁶² Exec. Order No. 80 (Oct. 29, 2018).

⁶³ Email from Cathy Brittingham, Transp. Project Coordinator, Div. Coastal Mgmt., to Tancred Miller, Div. Coastal Mgmt. (Nov. 27, 2019) (attached hereto as Exhibit 026).

⁶⁴ LEDPA White Paper at 31-32, <https://perma.cc/8WG9-8L5G>.

E. Environmental Impacts

ER2 also would cause significantly less adverse environmental impact than the Bridge, and, had NCDOT not improperly cast it aside as financially impracticable, it would be the LEDPA. The LEDPA White Paper acknowledges that, among practicable alternatives, “the one that would have the least adverse impact on the aquatic environment must be deemed the LEDPA.”⁶⁵ In addition to the White Paper’s arbitrary and erroneous conclusion that ER2 is not a financially practicable alternative discussed above, it also attempts to wriggle out of this clear requirement first by overstating the impacts of the ER2 alternative and understating the impacts of the Bridge, and second by claiming ER2 is not the LEDPA because it “would not result in *substantially* lower impacts to aquatic resources than the Selected Alternative.”⁶⁶

The LEDPA White Paper presents a partial look at the two alternatives’ effects on aquatic resources in a table on page 41, measuring the number of acres of wetlands and submerged aquatic vegetation (“SAV”) that would be impacted by each alternative.⁶⁷ To the extent this comparison insinuates that the total acreage of wetlands and SAV affected by ER2 and the Bridge are similar, this presentation is comparing apples to oranges because impacts to an acre of wetland and an acre of SAV are not necessarily equivalent. While wetlands are undoubtedly important, SAV provide additional benefits such as adult and spawning fish habitat and water filtration, and adverse impacts to SAV are arguably more relevant to DCM’s CAMA permit analysis than harm to non-coastal wetlands.

But even if they were comparable, no comparison can readily be made because the application is internally inconsistent in the figures it presents showing impacts to wetlands and SAV. For example, the CAMA Application states the Bridge Alternative will cause 1.18 acres of permanent and 4.72 acres of temporary wetland impacts in Maple Swamp during construction, plus 12.36 acres of hand clearing in Maple Swamp.⁶⁸ It also projects additional SAV impacts from bridge supports, temporary open trestle piles, and the temporary bridge deck totaling 1.065 acres, plus 8.941 acres of shading to SAV from the Bridge itself.⁶⁹ This contrasts with the LEDPA White Paper’s analysis, which includes a table presenting different acreage numbers (discussed below), and the SAV mitigation plan, which states the impact from the Bridge’s shading could impact as many as 22.45 acres of potential SAV. NCDOT must clarify which of these figures—if any—are correct before DCM can rely on them to make a permitting decision.

⁶⁵ *Id.* at 35.

⁶⁶ *Id.* at 41 (emphasis added). Moreover, NCDOT has tried to pass off this reasoning in the 404 context, too; yet, like CAMA, the 404 Guidelines do not require that ER2 result in “substantially lower impacts” than the Bridge. Rather, the burden is on NCDOT to prove that ER2—a practicable alternative located somewhere other than in a special aquatic site—has *the same amount of adverse impact or more* than the proposed alternative. See Fort Worth Dist. Reg. Div., *Checklist for Preparing an Alternatives Analysis Under Section 404 of the Clean Water Act*, U.S. Army Corps of Eng’rs (Nov. 2014), <https://perma.cc/LW2M-E9QX>.

⁶⁷ LEDPA White Paper at 41, <https://perma.cc/8WG9-8L5G>.

⁶⁸ CAMA Application at 6, <https://perma.cc/7ZMZ-SXX>.

⁶⁹ *Id.* at 9.

The LEDPA White Paper’s table is also misleading because it compares outdated designs for the alternatives that have since been superseded by revised designs that are less environmentally impactful. The Bridge and ER2 were reworked during the NEPA process to reduce environmental impacts.⁷⁰ The revised design for ER2 would have only 8.5 acres of wetlands impacts (down from 12.6 in the original design) and would have *zero* SAV impacts. The LEDPA White Paper table also understates the harm the revised version of the Bridge would cause. The revised version of the Bridge design had an *increase* in the acreage of potentially shaded SAV from 4.8 to 5.1 acres, which is not reflected in the LEDPA White Paper table.⁷¹ Furthermore, as of 2022 and 2023, SAV was discovered at depths as great as 7.3 feet, whereas the Reevaluation of the FEIS assumed areas deeper than six feet were unsuitable for SAV.⁷² Thus, even the 2019 FEIS figures for the acreage for the revised designs—which did not account for these deeper areas—are likely underestimates.

Also missing from this calculus is an additional 32.9 acres of wetlands that would need to be cleared because of the Maple Swamp portion of the Bridge. The LEDPA White Paper’s 4.2-acre wetlands impacts figure⁷³ counts only wetlands that would need to be *filled*, but impacts from clearing activities can also degrade wetland ecosystems.⁷⁴ Given that Maple Swamp’s wetlands have been described as having “a low degree of degradation and high functional value” and “support some of the most diverse ecosystems found in the coastal plain of North Carolina,” degradation in this area is of particularly great concern.⁷⁵

⁷⁰ See generally WSP, *Draft Meeting Summary from Mid-Currituck Bridge Project Reevaluation Meeting on January 12, 2017* (Jan. 25, 2017) (explaining changes to ER2 and Preferred Alternative in revised designs) (attached hereto as Exhibit 027); NCDOT, *Discussion of Revised Design Concepts* (May 8, 2017) (explaining how revised designs differ from original designs) (attached hereto as Exhibit 028); WSP, *Memorandum on Summary of August 17, 2017 Meeting with USACE on Wetland Impacts for Mid-Currituck Bridge Alternatives ER2 and the Preferred Alternative* (Sept. 5, 2017) (attached hereto as Exhibit 029) (demonstrating how changes in revised designs for alternatives led to changes in wetland impacts); NCDOT, *Mid-Currituck Bridge Project Agency Coordination Meeting* (Mar. 14, 2018) (attached hereto as Exhibit 030) (explaining revised designs and impacts to wetlands).

⁷¹ LEDPA White Paper at 26, <https://perma.cc/8WG9-8L5G>.

⁷² FEIS Reevaluation at 4-33, 4-18, <https://perma.cc/6V3J-QFMQ>.

⁷³ LEDPA White Paper at 31, <https://perma.cc/8WG9-8L5G>.

⁷⁴ See, e.g., Econ. Rsch. Serv., *Wetlands and Agriculture: Private Interests and Public Benefits*, USDA (last visited Dec. 9, 2024), <https://perma.cc/5JVW-KD5Z>; Md. Dep’t of Env’t, *Wetland Disturbance and Impact* (last visited Dec. 9, 2024), <https://perma.cc/ZL9W-LMJX>.

⁷⁵ Exhibit 029 to 2016 Comments (urging NCDOT to “produce an absolute minimal impact on Maple Swamp” due to its ecological importance).

A more accurate acreage analysis than that presented in the LEDPA White Paper would look something like Figure 2 below, revealing the significantly greater harms of the Bridge, especially to important aquatic resources like SAV, relative to ER2:

	ER2	Selected Alternative (Bridge)
Wetlands	8.5 acres of wetland fill	4.2 acres of wetland fill + 32.9 acres cleared in Maple Swamp
Submerged Aquatic Vegetation (actual)	0 acres	3.5 acres
Submerged Aquatic Vegetation (potential)	0 acres	5.1 acres Additional acreage for SAV in water depths > 6 feet

Figure 2: Corrected Comparison of Wetland and SAV Impacts.

ER2 outperforms the Bridge in several other ways as well. The former would have just 33.7 acres of increased impervious surface compared to the Bridge’s 64.3 acres. ER2 would better serve aquatic wildlife habitat: ER2 would have only “[m]inor impacts to aquatic habitat,” while the Bridge would create “[a]ltered light levels and the introduction of piles as a hard substrate in Currituck Sound; localized noise, turbidity, and siltation during construction.”⁷⁶ And perhaps most concerningly, 27.8 acres of essential fish habitat would be affected by shading from the Bridge, compared to fewer than 2 acres of impacted essential fish habitat for ER2.⁷⁷

In addition to this mathematical misdirection, NCDOT qualitatively understates how environmentally damaging the selected alternative will be. Many of the “temporary” impacts that NCDOT acknowledges will be caused by the Bridge construction are in fact likely to be long-term or permanent. For example, while shading from open trestle piles or the bridge deck during construction might be temporary, even short-term light deprivation could wipe out swaths of SAV and, in turn, destroy important fish habitats that could take years to revegetate if they do so at all. Analysis of the impacts that will occur during this four-to-five-year construction period is essential to understanding the difference between the alternatives.

Among the greatest flaws of NCDOT’s CAMA Application is that it ignores the central requirement of N.C. Gen. Stat. § 113A-120(a)(9): it *never actually determines* which alternative—ER2 or the Bridge—is less environmentally damaging to coastal resources, or even directly acknowledges the requirement at all. The analysis in the LEDPA White Paper states that “the impact on aquatic resources would be low with either alternative, and *those associated with ER2 would not be substantially lower* that (sic) those with the Selected Alternative.”⁷⁸ Describing

⁷⁶ FEIS Reevaluation at 4-18, H-18, <https://perma.cc/6V3J-QFMQ>; see also, e.g., NCDOT, Email Thread: R-2576 “What If” Boring Request (Dec. 2023) (discussing scheduling of boring in Currituck Sound) (attached hereto as Exhibit 031).

⁷⁷ FEIS Reevaluation at 4-19, <https://perma.cc/6V3J-QFMQ>.

⁷⁸ LEDPA White Paper at 41, <https://perma.cc/8WG9-8L5G> (emphasis added).

both alternatives' impacts as "low" without comparing them to each other hides the ball on which is actually the LEDPA.

But even if the analysis *had* acknowledged that ER2 would have less adverse effect on the aquatic ecosystem than the Bridge, the magnitude of this difference would be irrelevant, because CAMA has no substantiality component. Indeed, CAMA states explicitly that a CAMA permit application *must be denied* if DCM finds "that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with *less*," not substantially less, "adverse impact on the public resources."⁷⁹ NCDOT has ignored this requirement and failed to address the fact that ER2 will cause less adverse impact than the Bridge Alternative on public resources, including both on the state's limited economic resources in the form of transportation funding and on its invaluable coastal resources and other natural resources. Granting a CAMA permit despite a total failure to meaningfully compare the alternatives' impacts would be classically arbitrary and capricious.

In sum, the fact that the ER2 alternative is a less environmentally damaging practicable alternative to the Bridge is fatal to NCDOT's CAMA permit application and mandates denial of the CAMA permit application under N.C. Gen. Stat. § 113A-120(a)(9).

II. Coastal Wetlands.

The CAMA permit must also be denied based on the potential for harm to coastal wetlands. CAMA provides that a CAMA permit shall be denied on the basis that proposed development within coastal wetlands (and "contiguous areas necessary to protect those wetlands"⁸⁰) "would contravene an order that has been or could be issued pursuant to G.S. 113-230."⁸¹ Section 113-230 of the General Statutes, in turn, provides that the Secretary of Environment may issue "orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands" "for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries."⁸² While we are not aware of any such order currently in effect, entry of such an order prohibiting the dredging, filling, and altering of coastal wetlands to facilitate destructive construction projects certainly could be issued and would be appropriate for the protection of marine fisheries and other wildlife and the promotion of public health safety and welfare. Moreover, it is not clear that coastal wetlands will not be dredged, filled, or otherwise altered or harmed by the Bridge.

"Coastal Wetlands" are defined as "any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides," and

⁷⁹ N.C. Gen. Stat. § 113A-120(a)(9) (emphasis added).

⁸⁰ *Id.* § 113A-113(b)(1).

⁸¹ *Id.* § 113A-120(a)(1).

⁸² *Id.* § 113-230(a).

may be identified by the presence of certain marsh plant species.⁸³ CAMA requires protection not only of wetlands that meet this definition but also “contiguous areas necessary to protect those wetlands.”⁸⁴

The Bridge has the potential to harm coastal wetlands and contiguous areas. While NCDOT’s CAMA application for the Bridge states that “no coastal wetlands as defined by CAMA will be impacted by the project,”⁸⁵ the application does not make any representation regarding whether the Bridge will adversely affect contiguous areas necessary to protect those wetlands. Moreover, and in contrast, the Cumulative Effects Report for Coastal Resources for the Bridge emphasizes the “substantial amounts of coastal wetlands” located in Currituck Sound and the western side of the barrier island, and “vast areas of coastal wetlands” in areas expected to be developed as a result of the Bridge.⁸⁶ At a minimum, DCM should not issue a permit unless and until NCDOT reconciles this discrepancy and explains its seemingly unfounded conclusion that a project which would plow through an area with “substantial” coastal wetlands and induce development in areas with “vast” coastal wetlands would not impact those wetlands.

The *Cumulative Effects Report for Coastal Resources* states, “Potential threats to coastal wetlands in the area include climate change/sea level rise, shoreline erosion, loss of habitat due to dredging projects, impacts to coastal wetlands due to construction and use of piers, docks, and marina facilities, shoreline stabilization measures, loss of riparian buffers, and declining water quality.”⁸⁷ The Report goes on to state that “the number of existing and new docking facilities within the project area should be considered” when “examining the potential for cumulative effects to coastal wetlands from docks, piers, marinas, and related boat and marine vessel use resulting from the” Bridge.⁸⁸ It describes the hundreds of “undeveloped but potentially developable waterfront (non-oceanfront) parcels” on Currituck Island in the area of the project that can be anticipated to build docks.⁸⁹

These threats—including the construction of new waterfront homes, docks, bulkheads, and other structures to serve those homes—will be increased with the additional development that will be induced by construction of the Bridge. The new homes, docks, and marinas will harm coastal wetlands and wetlands in several ways, including shading, piling placement, fill, installation of bulkheads, and other shoreline stabilization methods. The Cumulative Effects Report downplays the cumulative potential harm to coastal wetlands that will be caused by

⁸³ 15A N.C. Admin. Code 07H .0205(a) (incorporating language from N.C. Gen. Stat. § 113-229(n)(3) at the direction of N.C. Gen. Stat. § 113A-113(b)(1)).

⁸⁴ N.C. Gen. Stat. § 113A-113(b)(1).

⁸⁵ CAMA Application at 6, <https://perma.cc/7ZMZ-SXXC>.

⁸⁶ *Mid-Currituck Bridge Cumulative Effects Report for Coastal Resources*, at 13 (June 2021), attached as Attachment 21 to CAMA Application (hereinafter, “Coastal Resources Cumulative Effects Report”), <https://perma.cc/V4KX-LRBZ>.

⁸⁷ *Id.* at 14.

⁸⁸ *Id.*

⁸⁹ *Id.*

construction of these new waterfront homes and docks, saying simply “[t]hese impacts have typically been considered acceptable” and “it is anticipated that cumulative effects from these development types to coastal wetlands will be minimal.”⁹⁰ The report fails to acknowledge that the construction of the Bridge is predicted to cause more induced growth than widening existing roads with ER2.

Moreover, the Cumulative Effects Report and CAMA Application both fail to explain the full scope of the impacts that the induced development will cause to coastal and non-coastal wetlands. An appendix to NCDOT’s CAMA Application for the Bridge includes maps showing the great number and location of developable parcels of land on Currituck Island, and it shows the extraordinary percentage of that land that is more than 40% wetlands.⁹¹ An example is shown in Figure 3 below, with the blue outlines showing parcels that are more than 40% wetlands.

⁹⁰ *Id.* at 15.

⁹¹ *Appendix 2: Developable Parcels in the Three PDAs to Cumulative Impact Report for Water Quality*, attached as Attachment 6 to NCDOT’s CAMA Application, <https://perma.cc/728F-8SND>.



Figure 3: Excerpt of “Developable Parcels in the Three PDAs”

Yet NCDOT fails to address several important considerations related to these parcels. First, as sea levels rise, additional portions of these parcels will be inundated and eventually meet the definition of either coastal and/or non-coastal wetlands, increasing the sheer amount of acreage of wetlands that will ultimately be adversely affected by the development induced by the Bridge. Moreover, as people develop these parcels, surely many of them will seek to build bulkheads to stabilize the shore and protect their newly built homes from that inundation. CAMA regulations allow property owners to build 500-foot-long bulkheads under a general permit.⁹² As more and more people build bulkheads along the western edge of parcels like those depicted in

⁹² 15A N.C. Admin. Code 07H.1105(m).

Figure 3 (and the many other parcels deemed developable in the Project area), the wetlands to the west of the line of bulkheads will be eroded and replaced with deeper, non-wetland waters, with the bulkheads preventing new wetland formation to the east, resulting in a net loss of wetlands and the valuable services they provide.

It is well-settled that new roads induce increased vehicle travel and induce development, and this Bridge will also induce development along the Outer Banks, causing further destruction of wetlands, increases in impervious surfaces, and additional pollution.⁹³ The Final EIS and subsequent Reevaluation (internally updating the numbers used in the Final EIS) acknowledged that approximately *2,500 additional residential units would be constructed* on the Outer Banks due to the Bridge compared with the No-Build alternative.⁹⁴ This is far more than double the total amount of development predicted with the No-Build alternative in the same document.⁹⁵ NCDOT's updated figures in the Reevaluation state that *830 additional acres would be developed* on the Outer Banks as a result of the Bridge compared with the No-Build alternative.⁹⁶ And much of this new development would occur in the roadless (or sand road) area of the northern Outer Banks.⁹⁷ Moreover, the Bridge will induce unacceptable levels of growth in wetlands-rich areas of mainland as well, where there is insufficient infrastructure and services to support it.

⁹³ See, e.g., Susan Handy, *Increasing Highway Capacity Unlikely to Relieve Traffic Congestion* 1, Nat'l Ctr. for Sustainable Transp. (Oct. 2015), <https://perma.cc/9BJY-RYMK>; Fed. Highway Admin., *Interim Guidance on the Application of Travel and Land Use Forecasting in NEPA § 2.4.6.3* (Mar. 2010), <https://perma.cc/J2AN-V7A3> (“[I]t is important for transportation analyses to consider the significance of induced demand.”); Jamey Volker & Susan Handy, *Policy Brief: Increasing Highway Capacity Induces More Auto Travel*, Nat'l Center for Sustainable Transp. (Jan. 2023), <https://perma.cc/6YH7-NHG5>; Gilles Duranton & Matthew A. Turner, *The Fundamental Law of Road Congestion: Evidence from US Cities*, 101 Am. Econ. Rev. 2616 (2011), <https://perma.cc/594V-UWX8>.

⁹⁴ FEIS Reevaluation at 4-43, <https://perma.cc/6V3J-QFMQ>. The Final EIS phrases this in terms of the “reduction” attributable to the No-Build Alternative, when in reality, the development under the Bridge scenario represents an *increase* above the No-Build Alternative baseline. *Id.* The current Cumulative Impact Report updates these estimates but states that the “scale of the revised estimates is comparable.” Cumulative Impact Report for Water Quality at 109, attached as Attachment 6 to NCDOT's CAMA Application, <https://perma.cc/728F-8SND>.

⁹⁵ FEIS Reevaluation at 4-43, <https://perma.cc/6V3J-QFMQ>.

⁹⁶ *Id.* at 4-59.

⁹⁷ This information is contained in the Agencies' statement that the “reduction” in development with the No-Build Alternative would mostly occur in the non-road area. See FEIS at 3-110. In other words, analyzed correctly, most of the *increase* in development caused by the Bridge would occur in this non-road area.

Such a major development project is already teed up. In September of this year, a global commercial real estate brokerage announced it had acquired parcels totaling over 177 acres that are approved for “1,250 hotel rooms, as many as 782 single-family-homes and nearly 428,000 square feet of commercial development” with “the highest building height permitted in the Outer Banks,” and including a marina/boat launch on Currituck Sound. As shown in Figure 4 below, the parcels are located directly south of the proposed Bridge, and the announcement touts the easy access the Bridge would provide as a major selling point for the project.⁹⁸



Figure 4: Illustration of land parcels listed for sale for high-end residential and commercial development.

These effects are no surprise—support for the Bridge has always been based on spurring development.⁹⁹ For example, in 2019, State Representative Bobby Hanig, who represents Currituck County, stated that the Bridge would “change what the landscape of Currituck looks

⁹⁸ Street Insider, *NAI Global Lists Rare Outer Banks Land Acquisition* (Sept. 16, 2024), <https://perma.cc/3F9J-XZWT>.

⁹⁹ See, e.g., NCTA, *INFRA Grant 2021 Application, Mid-Currituck Bridge* (2021) (attached as Exhibit 006) (“The construction of the Mid-Currituck Bridge anticipates serving 5,000,000 tourists every year to the Outer Banks as well as workers and local businesses by creating a new route from Currituck County mainland to its Outer Banks . . . Increased economic output and earnings from construction investment . . . Improves potential local and regional economic growth opportunities . . . Population, employment, and the number of rental bedrooms and units in the northern Outer Banks are all expected to grow significantly . . . Improved access and traffic conditions for residents will benefit businesses such as major retail centers near the Wright Memorial Bridge . . . Mid-Currituck Bridge will be critical in supporting economic growth in Currituck County and the northeastern region of North Carolina . . . will increase vacation travel trips and tourism expenditure, encouraging substantial seasonal economic growth in the project area. . . . The Mid-Currituck Bridge will support planned growth opportunities in the region as well . . . land use development will be benefited by the transportation system improvement and will help to expand the local and regional economic base and improve economic opportunities.”).

like in the not-too-distant future.”¹⁰⁰ Other elected officials echoed these comments.¹⁰¹ The North Carolina State Travel and Tourism Board called the Bridge “one of the highest priority Tourism-development infrastructure projects within the State of North Carolina.”¹⁰² Members of these groups and other entities urged the General Assembly to provide funding for the Bridge to spur economic development in the area.¹⁰³ Resolutions and letters from pro-development civic leaders show that support for the Bridge is based on prompting increased development.¹⁰⁴

¹⁰⁰ Reggie Ponder, *Feds OK Mid-Currituck Bridge*, Daily Advance (Mar. 8, 2019), <https://perma.cc/G5S9-PU94>.

¹⁰¹ See, e.g., Will Michaels, *New Outer Banks Toll Bridge Has Federal Approval; Hurdles Remain*, WUNC (Mar. 12, 2019), <https://perma.cc/GCZ2-RYAG>.

¹⁰² NC Travel & Tourism Bd., *Resolution Supporting Continued Funding for the Mid-Currituck Bridge* (May 14, 2013) (attached as Exhibit 032); see also Email from Dorothy Hester, Pub. Info. Dir., Dare Cty., to Malcolm Fearing, 108 Budleigh (June 26, 2013) (attached as Exhibit 033).

¹⁰³ Letter from Warren Judge, Chairman, Dare Cty. Bd. of Comm’rs, to Joint Leg. Transp. Oversight Comm. (Oct. 2, 2012) (attached as Exhibit 034) (“Long term the bridge will provide opportunities for further development on the mainland of Currituck County creating economic growth for the county.”); Letter from Lloyd E. Griffin III, Chair, Albemarle Rural Planning Org. Transp. Advisory Comm., to Kerry Morrow, Statewide Plan Eng’r, NCDOT (Nov. 17, 2014) (attached as Exhibit 035) (calling the Bridge “vital for economic development in Northeastern North Carolina”); Letter from Warren C. Judge, Chairman, Dare Cty. Bd. of Comm’rs, to Hon. Phil Berger, President Pro Tempore, N.C. Senate (June 13, 2012) (attached as Exhibit 036) (“The Currituck Mid-County Bridge is essential for . . . sustaining the tourism economy. . .”); Letter from John D. Rorer, Chairman, Currituck Cty. Bd. of Comm’rs, to Hon. Phil Berger, President Pro Tempore, N.C. Senate (June 12, 2012) (attached as Exhibit 037) (stating “the Mid-Currituck Bridge is vital to the economic growth . . . of Currituck County and Northeastern North Carolina” and including a resolution which refers to the Bridge as a “critical . . . economic development infrastructure project”); Letter from Christopher Layton, Mgr., Town of Duck, to Hon. Julie Howard, Rep., N.C. Gen. Assembly (May 1, 2013) (attached as Exhibit 038) (stating the Bridge “would make significant, positive impacts to the economy of the Outer Banks, lead to economic development in Currituck County” and explaining that the Bridge would address the area’s “competitive disadvantage” relative to other vacation destinations of congestion and traffic); Letter from Mayor, Town of Southern Shores, to Hon. Kathy Harrington, Co-Chairperson, Appropriations Comm. on Dep’t of Transp. (attached as Exhibit 039) (“[C]onstruction of the bridge will create jobs immediately, and convenient access from the beach to Currituck mainland will spur economic development.”); Letter from Dave Wessel, Mayor, Town of Duck, N.C., to Hon. Jeff Barnhart, Appropriations Chair, N.C. House of Reps. (Mar. 28, 2011) (attached as Exhibit 040) (explaining that the Bridge would further establishment of a “commercial center”); Letter from Dave Wessel, Mayor, Town of Duck, N.C., to Chris Militscher, EPA (Jan. 10, 2011) (attached as Exhibit 041) (arguing that, relative to other alternatives, the Bridge “would have an exponentially greater impact on the local economy of Currituck County, as well as the greater region”); Warren Judge, Chairman, Dare Cty. Bd. of Comm’rs, Presentation to NCDOT (Oct. 4, 2012) (attached as Exhibit 042) (calling the Bridge “[i]mportant to the economic development of northeastern North Carolina”); Email from Denise Walsh, Town of Duck, to Dorothy Killingsworth, Dare Cty. (May 1, 2013) (attached as Exhibit 043) (“The addition of the bridge would lead to significant economic development in Currituck Bridge. Without the Mid-Currituck Bridge, there could be significant negative impact on the tourism industry in the Outer Banks.”); Email from Denise Walsh, Town of Duck, to Jeff Smith, UNC-TV (May 14, 2013) (attached as Exhibit 044) (same); *Proposed Letter to be Used by Those Writing Legislators or for Editorials* (June 2013) (document obtained from NCDOT) (attached as Exhibit 045) (listing “economic benefits of this bridge to Currituck County”).

¹⁰⁴ See generally NCTA, *Mid-Currituck Bridge Letters of Support* (2023) (attached as Exhibit 046); accord at 5 (Letter from Christian A. Lockamy, Dir. of Econ. Dev., Elizabeth City, to Hon. Elaine Cho, USDOT (Feb. 14, 2019) (“The Mid-Currituck Bridge is needed . . . to help drive economic development and tourism along the Outer Banks

State agencies have also acknowledged the proposed Bridge’s potential effects on development. In the 1998 Draft Environmental Impact Statement (“DEIS”), NCDOT acknowledged that the Bridge would cause a significant increase in development along the Currituck Outer Banks and the rest of the project area. It estimated that “the bridge would allow an estimated 2,743 additional homes along the Currituck Outer Banks.”¹⁰⁵ DCM noted that the Bridge seemed intended to promote resort development, and would make issues like hurricane evacuation worse, not better.¹⁰⁶ In 1997, when the majority of state and federal agencies refused to sign off on the stated purpose and need for the project, the N.C. Division of Water Resources stated, “We believe that this new bridge is . . . being constructed primarily with future development in mind In other words, we do not believe that a public need has been demonstrated for this bridge.”¹⁰⁷

And the same is true for federal agencies. EPA, in refusing to concur with the DEIS’ Purpose and Need Statement, stated that “[t]he basic issue that must be addressed is whether it is appropriate for NCDOT/FHWA to consider any alternative that would support levels of Outer Banks development incompatible with long-term environmental quality.”¹⁰⁸ With regard to the Bridge’s effect on induced growth, EPA stated the Bridge would “promote greater development in a high hazard, storm-prone barrier island area,” and that this “voids the otherwise justified project purpose.”¹⁰⁹

NCDOT avoids addressing these truths throughout its *Cumulative Effects Report for Coastal Resources* (“Coastal Resources Cumulative Effects Report”). This report relies on unjustified assumptions and lacks key information regarding the effects of induced growth on coastal wetlands and other resources. NCDOT should revise the report to include, among other things, a meaningful analysis of:

- A longer time horizon to consider impacts beyond twenty years and how additional development that occurs past that time will affect resources—at a minimum, the

of North Carolina.”); *id.* at 6 (Letter from David Goss, Economic Development Consultant, Perquimans County, to Hon. Elaine Cho, USDOT (Feb. 14, 2019) (“benefits of the Project include . . . stimulating tourism in Northeast North Carolina”)); *id.* at 18 (Resolution of the Town Council of the Town of Duck, Res. #17-02 (effects of building the Bridge include “promoting and enhancing economic development”)); *id.* at 19 (Letter from Elizabeth City Chamber of Commerce to Jerry Jennings, Highway Div. 1 (Mar. 24, 2017) (“The Chamber believes that this project is essential to the future growth of the Elizabeth City area as well as the Northeastern Region of North Carolina.”)); *id.* at 20 (Resolution of the Town of Southern Shores, Res. #2017-03-01 (effects of building the Bridge include “promoting and enhancing economic development, while bolstering the tourism industry”)).

¹⁰⁵ NCDOT, *Administrative Action DEIS* at 4-48 – 4-49 (1998) (excerpt attached as Exhibit 047).

¹⁰⁶ Letter from Pete Colwell, N.C. Dep’t of Env’t, Health & Nat. Res., to Steve Benton (May 27, 1994) (attached as Exhibit 048).

¹⁰⁷ Letter from Cyndi Bell, N.C. Dep’t of Water Quality, to Mike Bell, U.S. Army Corps of Eng’rs (Oct. 29, 1997) (Exhibit 24 to 2016 Comments).

¹⁰⁸ Letter from Heinz Mueller, Chief, Off. of Env’t Assessment, EPA, to Richard Davis, Mgr., Planning and Env’t Branch, N.C. Div. of Highways (Apr. 30, 1998) (Exhibit 28 to 2016 Comments).

¹⁰⁹ *Id.*

application must disclose the effects of the Bridge throughout its full 75-year anticipated lifespan;

- An analysis of wetland migration as sea levels rise in the area;
- A direct comparison of the approximately 2,500 housing “units” documented in the FEIS and 2019 Reevaluation, as well as the acreage calculated to be developed in those studies, to the number of “parcels” that the permit reports calculate will be developed on the Currituck Outer Banks if the Bridge is constructed (which should be calculated based on a longer time horizon as set out above);¹¹⁰
- The report cannot rely on assumptions about future events that are beyond NCDOT’s control, including, for instance, assumptions that property owners will choose to use living shorelines and vegetation rather than bulkheads to stabilize their shorelines, that dredging will not be required to give future docks access to deeper water, or that Currituck County will revise its land use plan in any particular way. The report’s conclusions about minimal impacts improperly rely on these assumptions about actions that have not occurred and that the applicant cannot ensure, and thus, these analyses must be re-done to take into account actual conditions;
- The extent to which the degradation and destruction of wetlands as a direct result of the Bridge’s construction could decrease the efficacy of those wetlands to mitigate indirect impacts of stormwater from increased development.¹¹¹

This additional information will likely confirm that the Bridge will cause significant adverse impacts to coastal and non-coastal wetlands to a greater degree than NCDOT’s application currently acknowledges, and to a far greater degree than would the ER2 or no-action alternatives. DCM cannot make an informed decision on whether to grant the CAMA permit without it. In the meantime, the likely adverse effects on wetlands mandate denial of the CAMA permit.

III. Estuarine waters.

The CAMA permit must be denied based on the potential for harm to estuarine waters. “Estuarine waters” are defined as “all the water 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.”¹¹² The CAMA statute provides that a CAMA permit shall be denied for a proposed development within estuarine

¹¹⁰ See Cumulative Impact Report for Water Quality at 15, attached as Attachment 6 to NCDOT’s CAMA Application, <https://perma.cc/728F-8SND>.

¹¹¹ See, e.g., *id.* at 132 (“It is likely that these large extensive wetlands would provide additional stormwater treatment before entering surface waters.”).

¹¹² N.C. Gen. Stat. § 113A-113(b)(2).

waters on the basis “that a permit for the development would be denied pursuant to G.S. 113-229(e).”¹¹³

Section 113-229 of the General Statutes governs “[p]ermits to dredge or fill in or about estuarine waters,” and it specifically provides:

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.¹¹⁴

Moreover, the use standards for the Estuarine and Ocean Systems AEC (which includes estuarine waters, coastal wetlands, and public trust areas) state that development “shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, . . . submerged aquatic vegetation, . . . and spawning and nursery areas.”¹¹⁵ The CAMA permit must be denied because the selected alternative, the Bridge, will cause significant adverse impacts in most of those categories of harm.

Perhaps most significant among these harms are the significant adverse impacts that the Bridge will cause to SAV and other essential fish habitat used by fish and other marine wildlife in the Currituck Sound. SAV is considered an estuarine resource under CAMA,¹¹⁶ and as discussed in detail above, the Bridge will cause far more damage to SAV in Currituck Sound than any other alternative for the project, including both a no-action alternative and ER2. The revised design in the 2019 FEIS for ER2 would not impact SAV at all, while the revised version of the Bridge design would shade 5.1 acres of SAV and impact an additional 3.5 acres of SAV.¹¹⁷ And as of 2023, SAV was discovered at depths as great as 7.3 feet, whereas the Reevaluation of the FEIS assumed areas deeper than six feet were unsuitable for SAV.¹¹⁸ Thus, even the 2019 FEIS figures for the acreage for the revised designs—which did not account for these deeper areas—are likely underestimates and the disparity between ER2 and the Bridge is likely even greater.

¹¹³ *Id.* § 113A-120(a)(2).

¹¹⁴ *Id.* § 113-229(e).

¹¹⁵ 15A N.C. Admin. Code 07H .0208(a)(2)(A).

¹¹⁶ 15A N.C. Admin. Code 07H.0208(a)(6).

¹¹⁷ LEDPA White Paper at 26, <https://perma.cc/8WG9-8L5G>; *see generally* Section I above, entitled, “Existence of a less environmentally damaging practicable alternative.”

¹¹⁸ FEIS Reevaluation at 4-33, 4-18, <https://perma.cc/6V3J-QFMQ>.

And NCDOT's Cumulative Effects Report for Coastal Resources admits that the Bridge will impact at least 12.6 acres of essential fish habitat, which includes SAV.¹¹⁹

This loss of SAV and other essential fish habitat will degrade commercial and recreational fisheries in Currituck Sound. According to NOAA, SAV "is one of the most productive fish habitats on earth,"¹²⁰ and constitutes "essential fish habitat" protected by the Magnuson-Stevens Fishery Conservation and Management Act.¹²¹ Indeed,

SAV is highly valuable habitat since it provides numerous important ecological functions that are difficult to replace; yet it is especially vulnerable to coastal development and water quality degradation. Animals are drawn to SAV for shelter and food and to reproduce. Animal abundance in grassbeds is 10-100 times more than over nearby sandy seafloor. Almost 40,000 fish and one thousand times as many small invertebrates are supported by a single acre of seagrass.¹²²

SAV also provides spawning and/or nursery habitat for fish like red drum, grouper, and for a variety of shellfish and crustaceans.

All of these services provided by SAV are important for North Carolina's economically important commercial and recreational fishing industries. North Carolina's wild-caught seafood industry alone contributes approximately \$300 million and 5,500 jobs to North Carolina's annual economy.¹²³ Currituck Sound contributes significantly to those numbers; it is part of the Albemarle-Pamlico estuarine system, which is the second largest estuary system in the United States.¹²⁴ Estuaries provide habitat for 75 percent of the nation's commercial fish catch and as much as 90 percent of the nation's recreational fishing catch.¹²⁵ Recreational fishing is similarly important to the state and local economy; Currituck County ranked 14th out of 100 counties for total tourism spending, at over \$573 million for 2023, and visitors are attracted to the county for activities associated with the Coast, including its "pristine beaches" and related "family friendly

¹¹⁹ Coastal Resources Cumulative Effects Report at 27 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹²⁰ NOAA, *Submerged Aquatic Vegetation: A Habitat Worth SAV-ing*, <https://perma.cc/NTW2-5L8Q> (July 27, 2020).

¹²¹ NOAA, *Why is Submerged Aquatic Vegetation Designated as Essential Fish Habitat?*, <https://perma.cc/R2K4-UUBF> (last visited Feb. 19, 2025).

¹²² *Id.*

¹²³ SeaGrant N.C., *Demand for N.C. Seafood and the Commercial Industry's Economic Impact on the State*, <https://perma.cc/3ET4-5YDP> (last visited Feb. 19, 2025).

¹²⁴ Albemarle-Pamlico Nat'l Estuary P'ship, *Our Estuary*, <https://perma.cc/KP44-5Y5K> (last visited Feb. 19, 2025).

¹²⁵ *Id.*; see also N.C. Gen. Stat. § 113A-102(a) (noting that "[c]oastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States.").

attractions” and activities.¹²⁶ Tourism activities in Currituck County includes boating, fishing, hunting, and wildlife viewing in the Sound and on Currituck Island. A recent report showed that, in 2021, recreational anglers contributed \$2.4 billion and 19,280 jobs to North Carolina’s economy statewide and \$166.9 million and 1,350 jobs in the congressional district that included Currituck County.¹²⁷ In recognition of these indicia, the General Assembly found that “North Carolina’s coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.”¹²⁸

SAV degradation will also harm other wildlife habitat. SAV provides foraging habitat for a number of federally protected species, including the threatened loggerhead sea turtle, and the threatened green sea turtle.

Given the importance of SAV to wildlife and the state economy, alongside an obviously less environmentally damaging practicable alternative, namely ER2 that would impact *zero* acres of this critical resource, there is no reason to permit a Bridge that would destroy any amount of SAV in Currituck Sound.

The Bridge will also cause significant adverse impacts to public health, safety, and welfare through diminished quality in groundwater supplies due to the increased septic and sewer discharges caused by induced development, as discussed in more detail in our comments on NCDOT’s 404/401 Application.

Finally, NCDOT’s analyses of the Bridge fail to discuss adequately the increase in secondary environmental impacts that will arise due to the growth induced by the Bridge, with the Bridge causing more induced growth than ER2. The unnecessary, additional induced growth will harm property owners, on both the mainland and barrier island in the vicinity of the Bridge termini and approaches to the Bridge, through significant adverse effects to the value and enjoyment of their property. Those adverse effects include, among other things, increased traffic, groundwater and surface water pollution, possible condemnation of their land, alteration of community character, and stresses on services and resources in their communities. That impact alone is sufficient to demonstrate that ER2 will have significantly less environmental impact and doom NCDOT’s application for a CAMA permit for the Bridge.

In sum, the fact that the ER2 alternative will cause less damage to estuarine waters, and fewer impacts in the categories listed in N.C. Gen. Stat. § 113-229, than the Bridge Alternative is fatal to NCDOT’s CAMA application, and DCM must decline to issue a CAMA permit on that basis.

¹²⁶ Currituck County, *2023 Tourism Has Substantial Impact in Currituck County* (Aug. 14, 2024), <https://perma.cc/SM45-2YFF> (Aug. 14, 2024); Econ. Dev. P’ship of NC, *Visit NC Economic Impact Studies*, <https://perma.cc/LJQ2-MCE9> (last visited Feb. 19, 2025).

¹²⁷ Am. Sportfishing Ass’n, *Economic Impacts of Recreational Fishing: North Carolina*, <https://perma.cc/3X3N-CTNB> (last visited Feb. 19, 2025); Am. Sportfishing Ass’n, *Economic Impacts of Recreational Fishing: North Carolina Congressional District 3*, <https://perma.cc/X62R-HSJY> (last visited Feb. 19, 2025).

¹²⁸ N.C. Gen. Stat. § 113A-102(a).

IV. Renewable resource areas.

The CAMA permit must be denied based on the potential for harm to renewable resource areas. CAMA provides that a CAMA permit shall be denied on the basis that proposed development affecting “renewable resource areas” “will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).”¹²⁹ Section 113-113(b)(3) applies to:

Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern...¹³⁰

As explained above in the immediately prior section, Currituck Sound and the SAV growing there are vitally important to North Carolina’s commercial and recreational fisheries, which provide seafood to people throughout the state and beyond.

The SAV in Currituck Sound has already been identified as significantly degraded and in need of restoration, and was even the subject of a congressional resolution instructing the Army Corps of Engineers to investigate whether action needed to be taken “in the interest of water quality, environmental restoration and protection, and related purposes in Currituck Sound.”¹³¹ A study commissioned by NCDOT resulted in a 2020 report that explained:

Currituck Sound, the northernmost estuary in North Carolina, was once known for extensive SAV beds serving as a refuge and food source to an abundance of fish and waterfowl that attracted anglers and hunters from all over the country. However, declines in water quality have led to massive declines in SAV habitat that have been devastating to the local ecology.¹³²

Given the importance of Currituck Sound’s SAV to the seafood industry and food supplies—and the congressionally recognized need to restore, not further degrade, vitally important SAV habitat within the Sound—the Bridge would certainly “result[] in the loss or reduction of continued long-range productivity” that “could jeopardize future . . . food . . . requirements of more than local concern.” This provides an additional basis for denying the CAMA permit.

¹²⁹ N.C. Gen. Stat. § 113A-120(a)(3).

¹³⁰ *Id.* §113A-113(b)(3).

¹³¹ Resolution of the House Committee on Transportation and Infrastructure (March 11, 1998), quoted in Intent to Prepare a Draft Environmental Impact Statement for the Currituck Sound Ecosystem Restoration Feasibility Study, 76 Fed. Reg. 38,122 (June 29, 2011).

¹³² D. Reide Corbett et al., *SAVE Currituck Sound: Submerged Aquatic Vegetation Evaluation in Currituck Sound, NC*, at 6 (Executive Summary) (June 2020), <https://perma.cc/2RB6-6CAP> (last visited Feb. 19, 2025).

V. Fragile or historic areas, and areas that sustain remnant species.

The CAMA permit must also be denied based on the potential for harm to fragile or historic areas. CAMA provides that a permit shall be denied on the basis that proposed development—here, the Bridge—affecting “a fragile or historic area, or other area containing environmental or natural resources of more than local significance, . . . will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).”¹³³ Section 113A-113(b)(4) applies to, among other categories, wildlife refuges, wildlife preserves, wildlife management areas, and areas that sustain remnant species.¹³⁴ Although resources within these categories in the Project area have yet to be formally designated as AECs pursuant to 15A N.C. Admin. Code 07H .0503, DCM should nonetheless consult with the appropriate state and federal resource agencies and otherwise act to protect the ecologically valuable resources and endangered and threatened species that the Project threatens to harm.

A. Wildlife Refuges, Preserves, and Management Areas

The permit should not be approved without further consideration of the impacts of the Bridge on wildlife refuges, preserves, and management areas. As the Cumulative Effects Report for Coastal Resources acknowledges, the Bridge, will occur in the vicinity of several protected areas: the Currituck National Wildlife Refuge, the Currituck Banks National Estuarine Research Reserve, and the Donal C. O’Brien Sanctuary and Audubon Center at Pine Island.¹³⁵ However, the Cumulative Effects Report fails to analyze any of the impacts of the Bridge on the values these areas are designed to protect.¹³⁶

For example, the Currituck National Wildlife Refuge’s primary purposes are “to preserve, protect, and maintain healthy and viable populations of migratory birds, wildlife, fish, and plants, including federal and state endangered species.”¹³⁷ The Refuge “restores, enhances, and maintains the natural processes and diversity” of various habitats, including the beach.¹³⁸ Here, construction of the Bridge will induce development of approximately 2,500 additional residential units, many of which will be constructed in the roadless area north of Corolla.¹³⁹ Occupants will have no choice but to drive on the beach to reach the homes, including on the beaches of Currituck National Wildlife Refuge, where multiple species of federally protected sea turtles

¹³³ N.C. Gen. Stat. §113A-120(a)(4).

¹³⁴ *Id.* §113A-113(b)(4).

¹³⁵ Coastal Resources Cumulative Effects Report at 33–34 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹³⁶ *See id.* at 36.

¹³⁷ *Id.* at 33.

¹³⁸ *Id.* at 33.

¹³⁹ *Appendix 2: Developable Parcels in the Three PDAs to Cumulative Impact Report for Water Quality*, attached as Attachment 6 to NCDOT’s CAMA Application, <https://perma.cc/728F-8SND>.

nest.¹⁴⁰ As discussed further below, such driving poses a variety of harms to sea turtles, including the risk of killing or injuring adult sea turtles or their hatchlings through vehicle collisions, deterring female sea turtles from nesting, degrading the nesting habitat, crushing nests, and creating deep ruts where hatchlings may be trapped trying to reach the ocean.¹⁴¹ Nesting and roosting shorebirds and the area's iconic wild horses may also be harmed by the increased traffic on the beaches of the refuge. Increased installation in the roadless area of so many additional wells and septic systems serving very large houses on small lots, in low-lying coastal parcels where the groundwater and tides may inundate the septic fields on a regular basis, will also degrade the habitat within the Refuge, depleting and/or contaminating water supplies used by wildlife. By impairing this habitat, the Bridge will adversely impact the values that the Currituck National Wildlife Refuge was designed to protect.

Similarly, the Donal C. O'Brien Sanctuary and Audubon Center at Pine Island is designed to "provide high quality habitats for diverse populations of birds and other wildlife" and "[m]aintain high quality water that supports healthy submerged aquatic vegetation, fisheries, birds, [and] other wildlife."¹⁴² The Bridge threatens to impair these values by degrading the water quality of the Currituck Sound, as described on pages 46-49 below and in our comments on NCDOT's 404/401 Application,¹⁴³ and thereby degrading the high quality habitat the Sanctuary aims to provide. Moreover, the Bridge could result in increased demand for access to this protected area,¹⁴⁴ and the associated increase in human disturbance could adversely affect some of the more sensitive bird species that currently reside there, disrupting the high-quality habitat that the Sanctuary is designed to provide.¹⁴⁵

¹⁴⁰ See Coastal Resources Cumulative Effects Report at 71; see also SeaTurtle.org, *Sea Turtle Nest Monitoring System: North Carolina WRC Sea Turtle Project*, http://www.seaturtle.org/nestdb/index.shtml?view_beach=1&year=2024 (featuring sea turtle nesting data from 2009 to 2024 for the Northern Outer Banks and referencing the North Carolina Wildlife Resources Commission as among the agencies involved in collecting such data).

¹⁴¹ See NOAA, *Loggerhead Turtle*, <https://perma.cc/4CVJ-6F4F>; NOAA, *Green Turtle*, <https://perma.cc/KXE4-LQJ6>; NOAA, *Kemp's Ridley Turtle*, <https://perma.cc/5TSC-4DLS>; Michelle Pumphrey, *Nesting loggerhead turtle fatally injured in Carova: Urgent call for driver vigilance on 4x4 beaches*, ABC4 News (July 11, 2023), <https://perma.cc/A3K8-MV33>.

¹⁴² Coastal Resources Cumulative Effects Report at 34 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>; see also Audubon, *Pine Island Audubon Sanctuary: Pristine Sanctuary for Birds*, <https://perma.cc/32ZQ-A4FB>.

¹⁴³ 2024 Comments at 26-34, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁴⁴ See Coastal Resources Cumulative Effects Report at 36 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹⁴⁵ See 2024 Comments at 56-57, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552> (discussing potential impacts of the proposed development to the highly sensitive, threatened eastern black rail, which has previously been documented at Pine Island).

The Currituck Banks National Estuarine Research Reserve “aims to preserve coastal ecosystems.”¹⁴⁶ Similar to the protected areas discussed above, the Reserve could be adversely affected by the Bridge’s impacts to water quality in the Sound and the increased development and human activity along the Outer Banks, as discussed on pages 21-28 above and pages 46-49 below and in our comments on NCDOT’s 404/401 Application.¹⁴⁷ Such impacts risk degrading the coastal ecosystems that the Currituck Banks National Estuarine Research Reserve protects.

Finally, the visual impact of the Bridge will cause irreparable harm to scenic values not only in these precious areas but for miles along both sides of the Currituck Sound, in contravention of the goals of CAMA to preserve esthetic values and balance the desire for development with protection of these values.¹⁴⁸ NCDOT has recognized the Bridge will “involve the creation of a visual barrier in Aydlett” and “interfere with neighborhood cohesion along N.C. 12.”¹⁴⁹ These understatements fail to capture the gravity of this change—the shift in the character of the entire area—that will be caused by erecting a several-mile-long bridge through an otherwise serene and wild waterway. Moreover, additional development could fundamentally alter the scenic values of the area, as formerly pristine areas give way to billboards advertising new commercial developments induced by the arrival of the Bridge.

As the above discussion details, the Bridge threatens to harm multiple protected areas in ways that undermine the very values these areas are designed to protect. The Cumulative Effects Report for Coastal Resources entirely fails to consider how the Bridge will impact the extraordinary natural resources at the heart of these protected areas.¹⁵⁰ Therefore, the permit should not be approved without further consideration of the harm the Bridge will cause to existing wildlife refuges, preserves or management areas.¹⁵¹

B. Areas that Sustain Remnant Species

No CAMA permit should be issued without further consideration of the damage that the Bridge is likely to cause to an ecologically valuable area that supports many federally protected

¹⁴⁶ Coastal Resources Cumulative Effects Report at 33 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹⁴⁷ 2024 Comments at 26-34, 77-86, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁴⁸ See N.C. Gen. Stat. § 113A-102(a) (“In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. . . . [T]he public's opportunity to enjoy the . . . esthetic . . . qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible.”).

¹⁴⁹ FEIS at 2-55.

¹⁵⁰ See Coastal Resources Cumulative Effects Report at 36 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ> (considering only how access to these protected areas would change, without evaluating impacts on the natural resources these areas protect).

¹⁵¹ See N.C. Gen. Stat. §§ 113A-120(a)(4); 113A-113(b)(4)(d).

species, such as the Atlantic sturgeon, northern long-eared bats, tricolored bats, and multiple species of sea turtles.¹⁵²

Experts have long raised concerns about the harms the Bridge may cause wildlife. When the project's impacts were first considered, the United States Fish and Wildlife Service ("USFWS") listed secondary impacts in the form of increased rate and level of development in the Currituck Outer Banks as a "major area of concern." In particular, USFWS noted that "additional human presence on the Currituck Outer Banks poses serious concerns about the quantity and quality of the freshwater supply."¹⁵³ USFWS concluded by expressing concern about secondary effects on federally protected species from increased human presence on the Currituck Outer Banks, including the loggerhead sea turtle, the piping plover, the leatherback sea turtle, and the seabeach amaranth.¹⁵⁴

Among its impacts, the Bridge will degrade the nesting habitat of federally protected sea turtles by causing increased beach driving.¹⁵⁵ Beach driving causes a variety of harms to nesting sea turtles and their young, including "directly strik[ing] hatchlings and nesting turtles, damag[ing] incubating nests," "deter[r]ing females from nesting," and "creat[ing] ruts that prevent hatchlings from reaching the sea."¹⁵⁶ These are not just theoretical concerns; in the summer of 2023, a vehicle driving in or near the refuge at night struck and killed an endangered nesting loggerhead sea turtle, and another driver nearly damaged a sea turtle nest in a separate incident the same month.¹⁵⁷ As more development is induced by construction of the Bridge, especially in the roadless area north of Corolla, increasing numbers of people will make increasing number of trips over the wildlife refuge beach to reach the houses built there.

¹⁵² See NCDOT, *R-2576 – Natural Resources Technical Report Update* at 1–2 (June 2023), attached as Attachment 08 to CAMA Application (listing the endangered and threatened species potentially within the Project area), <https://perma.cc/58NX-UKEF>.

¹⁵³ Letter from Willie R. Taylor, Dir., Off. of Env't Pol'y and Compliance, Dep't of Interior, to Nicholas L. Graf, P.E., Div. Adm'r, Fed. Highway Admin. at 4 (May 28, 1998) (Exhibit 29 to 2016 Comments); see also Memorandum from Supervisor, Fish & Wildlife Serv., Raleigh, to Assistant Reg'l Dir., Fish & Wildlife Serv., Atlanta (Mar. 31, 1998) (Exhibit 30 to 2016 Comments).

¹⁵⁴ Letter from Willie R. Taylor, Dir., Off. of Env't Pol'y and Compliance, Dep't of Interior, to Nicholas L. Graf, P.E., Div. Adm'r, Federal Highway Administration, at 6 (May 28, 1998) (Exhibit 29 to 2016 Comments).

¹⁵⁵ See Coastal Resources Cumulative Effects Report at 71 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>; see also *Sea Turtle Nest Monitoring System: North Carolina WRC Sea Turtle Project*, SeaTurtle.org <https://perma.cc/TP3Q-E9GB> (featuring sea turtle nesting data from 2009 to 2024 for the Northern Outer Banks and referencing the North Carolina Wildlife Resources Commission as among the agencies involved in collecting such data).

¹⁵⁶ NOAA, *Loggerhead Turtle*, <https://perma.cc/4CVJ-6F4F>; see NOAA, *Green Turtle*, <https://perma.cc/Y85G-E4PW>; NOAA, *Kemp's Ridley Turtle*, <https://perma.cc/3DJG-5NK6>.

¹⁵⁷ Mark Price, *Endangered sea turtle run over by vehicle while nesting on Outer Banks, rescuers say*, News & Observer (July 11, 2023), <https://perma.cc/K9BR-NXBQ>; Michelle Pumphrey, *Nesting loggerhead turtle fatally injured in Carova: Urgent call for driver vigilance on 4x4 beaches*, ABC4 News (July 11, 2023), <https://perma.cc/A3K8-MV33>.

The Bridge will also damage aquatic habitat in Currituck Sound. As discussed above on pages 17-20, the Bridge will harm multiple acres of SAV, which provides potential foraging habitat for a number of federally protected species, including the threatened loggerhead sea turtle, the threatened green sea turtle, and the endangered Kemp's ridley sea turtle.¹⁵⁸ Additionally, the Bridge will cause permanent harm to water quality, due to increased quantities of contaminated bridge and highway runoff as well as the increased discharges from septic systems and sewage treatment facilities, as described on pages 46-49 below and in our comments on NCDOT's 404/401 Application.¹⁵⁹ Such pollution degrades the habitat that a variety of aquatic species rely on,¹⁶⁰ and habitat degradation due to poor water quality is among the major threats to the threatened Atlantic sturgeon.¹⁶¹

Furthermore, the Bridge threatens to harm important coastal populations of two bat species, the federally endangered northern long-eared bat and the proposed endangered tricolored bat, as discussed in further detail in our comments on NCDOT's 404/401 Application.¹⁶² Coastal populations of these two species occur within mere miles of the proposed development area.¹⁶³ The Bridge poses a variety of significant consequences for these bats, including: multiple acres of tree clearing, which can result in "direct injury or mortality" among tricolored and northern long-eared bats as well as "loss of suitable roosting or foraging habitat, longer flights between suitable roosting and foraging due to habitat fragmentation of remaining forest patches, [and]

¹⁵⁸ See NCDOT, *R-2576 – Natural Resources Technical Report Update*, 5–6 (June 2023), attached as Attachment 08 to CAMA Application (acknowledging that SAV in Currituck Sound may provide foraging habitat for green sea turtles, Kemp's ridley sea turtles, and loggerhead turtles but failing to evaluate the impacts of SAV loss due to the proposed development), <https://perma.cc/58NX-UKEF>.

¹⁵⁹ 2024 Comments at 26-34, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁶⁰ See Coastal Resources Cumulative Effects Report at 71 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ> (acknowledging that "impacts due to degradation of water quality are a concern" for wildlife but failing to adequately analyze the impacts).

¹⁶¹ See Nat'l Marine Fisheries Servs., *Carolina Distinct Population Segment of Atlantic Sturgeon (Acipenser oxyrinchus oxyrinchus) 5-Year Review: Summary and Evaluation*, 18–20 (2023), (attached hereto as Exhibit 049).

¹⁶² 2024 Comments at 36–50, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁶³ See SELC Bat Map, (attached hereto as Exhibit 050); Jesse L. De La Cruz et al., *Occupancy and Roost Ecology of the Northern Long-eared and Indiana Bat on the Coastal Plain of the North Carolina, U.S. Geological Survey Science Support Program Project G17AC00288 to Virginia Tech* at 39 (Jan. 13, 2020), (attached hereto as Exhibit 051); VHB Eng'g NC, P.C., *Protected Bat Species Survey Report: Northern Long-eared Bat Research Project, Eastern North Carolina, Spring and Summer 2019* at 10 (Dec. 2019), (attached hereto as Exhibit 052); U.S. FWS, *Species Status Assessment (SSA) Report for the Tricolored Bat (Perimyotis subflavus) Version 1.1*, 20 (2021), <https://perma.cc/4BGY-K55Q> (noting that tricolored bats have been documented to travel as many as 15.2 miles from roost areas to foraging habitats); U.S. FWS, *Species Status Assessment Report for the Northern Long-eared Bat (Myotis septentrionalis), Version 1.2*, 19 (Aug. 2022), <https://perma.cc/JD8J-CMX3> (documenting migratory movements of northern long-eared bats of 35 to 55 miles).

fragmentation of maternity colonies due to removal of travel corridors;”¹⁶⁴ the development of 68 acres near the bridge,¹⁶⁵ risking additional loss and fragmentation of bat habitat; and greater traffic, resulting in increased disturbance to bats in the area as well as heightened risk of mortality from vehicle collisions.¹⁶⁶ Furthermore, due to their unique coastal habitat, these coastal populations of northern long-eared and tricolored bats have developed unusual behavioral patterns that likely make them resistant to white-nose syndrome, a disease that has decimated their species and remains a primary threat.¹⁶⁷ As a result, USFWS recognizes these coastal bat populations as “particularly important for [species] recovery as refugia from white-nose syndrome.”¹⁶⁸ DCM should not approve the permit without further consideration of the Bridge’s likely harm to an area that sustains federally-protected coastal bat populations, a valuable natural resource of more than local significance.¹⁶⁹

Instead of analyzing these harms to endangered and threatened species, the Cumulative Effects Report for Coastal Resources improperly dismisses them. Among its flaws, the Cumulative Effects Report relies on the future actions of other entities to protect vulnerable

¹⁶⁴ U.S. FWS, *Species Status Assessment (SSA) Report for the Tricolored Bat* (*Perimyotis subflavus*) *Version 1.1*, 139–40 (2021), <https://perma.cc/4BGY-K55Q>; U.S. FWS, *Species Status Assessment Report for the Northern Long-eared Bat* (*Myotis septentrionalis*), *Version 1.2*, 151, 153–54 (Aug. 2022), <https://perma.cc/JD8J-CMX3>; see also Donald F. McAlpine et al., *A Maternity Roost of Silver-haired Bats* (*Lasionycteris noctivagans*) *in New Brunswick: First Evidence of Parturition in Atlantic Canada*, 28 *Notes of the Northeastern Naturalist* N1, N2 (Jan. 28, 2021) (documenting the deaths of five bats, four juveniles and 1 adult, from the cutting of a single tree), (attached hereto as Exhibit 053).

¹⁶⁵ See Coastal Resources Cumulative Effects Report at 5 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹⁶⁶ See Andrea Schaub et al., *Foraging Bats Avoid Noise*, 211 *J. of Experimental Biology* 3174, 3174 (2008), <https://perma.cc/89KY-676S> (finding that “foraging areas very close to highways and presumably also to other sources of intense, broadband noise are degraded in their suitability as foraging areas”); Daniel J. Smith, *Cost Effective Wildlife Crossing Structures which Minimize the Highway Barrier Effects on Wildlife and Improve Highway Safety along US 64, Tyrrell County, NC* at 18, (attached hereto as Exhibit 054) (documenting deaths of multiple bats as a result of vehicle collisions); Victoria J. Bennett & Arthur A. Zurcher, *When Corridors Collide: Road-Related Disturbance in Commuting Bats*, 77 *J. of Wildlife Mgmt.* 93, 93 (2012), (attached hereto as Exhibit 055) (noting that “roads act as barriers or filters to movement, restricting bats from accessing critical resources”).

¹⁶⁷ See Gary W. Jordan, *Status of an Anomalous Population of Northern Long-Eared Bats in Coastal North Carolina*, 11 *J. of Fish & Wildlife Mgmt.* 665, 672 (Dec. 2020), (attached hereto as Exhibit 056) (finding that, instead of hibernating in caves or mines, northern long-eared bats remain active for much of the winter in coastal North Carolina); John F. Grider et al., *Winter activity of coastal plain populations of bat species affected by white-nose syndrome and wind energy facilities*, *PLOS One*, Nov. 2016, at 1–2, <https://perma.cc/8C3M-6TPH> (finding that tricolored bats display greater winter activity in coastal North Carolina); see also U.S. FWS, *Species Status Assessment (SSA) Report for the Tricolored Bat* (*Perimyotis subflavus*) *Version 1.1*, 26 (2021), <https://perma.cc/4BGY-K55Q>; U.S. FWS, *Species Status Assessment Report for the Northern Long-eared Bat* (*Myotis septentrionalis*), *Version 1.2*, 22, 28 (Aug. 2022), <https://perma.cc/JD8J-CMX3>.

¹⁶⁸ U.S. FWS, *Final NLEB and TCB Tools and Guidance Frequently Asked Questions*, Oct. 23, 2024, <https://perma.cc/ZGZ3-5MZD>; see also Gary W. Jordan, *Status of an Anomalous Population of Northern Long-Eared Bats in Coastal North Carolina*, Vol. 11 *J. of Fish & Wildlife Mgmt.* 665, 665 (Dec. 2020), (attached hereto as Exhibit 056).

¹⁶⁹ See N.C. Gen. Stat. § 113A-120(a)(4).

species from development despite the fact that these actions are not within NCDOT's control.¹⁷⁰ Indeed, the Cumulative Effects Report emphasizes that the work of N.E.S.T., the Corolla Wild Horse Fund, and "other similar volunteer programs" will be critical to protecting sea turtles and wild horses as beach driving increases, but never addresses what would happen if these purely voluntary activities cease.¹⁷¹ Similarly, the Report asserts that the Section 401 Water Quality Certification and Section 404 permit regulatory programs will help minimize the project's impacts to wildlife habitat,¹⁷² but such programs do not absolve DCM of its duty to ensure that the Project will not cause irreversible damage to rare and endangered species, particularly where the associated environmental reviews are still underway and the extent of protection they will provide remains undetermined.¹⁷³ The Report also cites several "Rules That Protect Wildlife and Wildlife Habitat" but ignores the fact that these rules fail to address a number of the impacts of the Bridge on federally protected species, such as induced development and associated increased beach driving, and increased habitat fragmentation.¹⁷⁴

Finally, instead of analyzing the habitat impacts of the Bridge, the Cumulative Effects Report for Coastal Resources states only that "additional habitat loss and/or fragmentation will occur"¹⁷⁵ before asserting that because wildlife areas such as the Currituck National Wildlife Refuge will remain protected, they will mitigate the impacts by serving as "habitat islands" that "allow for wildlife species to exist and flourish in natural habitats."¹⁷⁶ In other words, because not all species habitat will be destroyed, the impacts of the habitat that is destroyed can be ignored. This approach is unacceptable; it ignores the broader impacts of the Bridge as well as the reality that these protected areas themselves are not wholly protected from the Bridge's harms, such as increased beach driving and water quality degradation. The habitat loss caused by the Bridge and its effects on species must be quantified and evaluated.

NCDOT's Natural Resources Technical Report likewise fails to adequately analyze the harms of the Bridge to endangered and threatened species, as discussed in further detail in our comments on NCDOT's 404/401 Application. Among its flaws, the Natural Resources Technical Report improperly attempts to rely on flawed Programmatic Opinions to satisfy Endangered Species Act consultation requirements for the northern long-eared and tricolored bats, despite the fact that such broad-scale analyses fail to analyze project specific-impacts and rely on

¹⁷⁰ See Coastal Resources Cumulative Effects Report at 70–71 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹⁷¹ See *id.* at 71.

¹⁷² See *id.* at 70.

¹⁷³ See generally 2024 Comments, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁷⁴ See Coastal Resources Cumulative Effects Report at 72 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

¹⁷⁵ *Id.* at 70.

¹⁷⁶ *Id.* at 72.

assumptions that run counter to the circumstances of this project.¹⁷⁷ Additionally, the Natural Resources Technical Report improperly narrows the scope of its analysis and thereby ignores relevant impacts to protected species, such as the impacts of increased beach driving and the impacts of the additional development that the Bridge will cause.¹⁷⁸ Due to these flaws, DCM cannot rely on NCDOT's Natural Resources Technical Report and must further consider the harm that the Bridge will likely cause to an area that sustains endangered and threatened species.

Based on the above, DCM must deny the CAMA permit application because of the irreversible harms that the Bridge will cause to an area that sustains rare and endangered species.¹⁷⁹

VI. Public trust areas.

The CAMA permit must be denied based on the potential for harm to public trust areas. CAMA provides that a CAMA permit shall be denied on the basis that proposed development affecting "areas covered by G.S. 113A-113(b)(5) . . . will jeopardize the public rights or interests specified in said subdivision."¹⁸⁰ Section 113A-113(b)(5) of the General Statutes applies to "Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution."¹⁸¹ This translates into the public trust areas, defined in the CAMA regulations as:

all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means.¹⁸²

¹⁷⁷ See 2024 Comments at 40–43, available at Sharefile URL:

<https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁷⁸ See *id.* at 35–36.

¹⁷⁹ See N.C. Gen. Stat. § 113A-120(a)(4); N.C. Gen. Stat. § 113A-113(b)(4)(f).

¹⁸⁰ *Id.* § 113A-120(a)(5).

¹⁸¹ *Id.* § 113A-113(b)(5).

¹⁸² 15A N.C. Admin. Code 07H.0207.

Within the Project area, this includes Currituck Sound, the Atlantic Ocean, and the public beaches, among others. The use standards for coastal shorelines AEC state, “Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impact include development that would directly or indirectly impair water quality, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV),” among other things.¹⁸³

As DCM’s comments on the FEIS stated, the Bridge will adversely impact the public trust AEC.¹⁸⁴ Construction of the Bridge would degrade public trust resources that the North Carolina General Assembly mandated be protected; the CAMA statute declares, “the public’s opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible,”¹⁸⁵ building the Bridge will accomplish the opposite.

In addition to the many harms to Currituck Sound described elsewhere in these comments, the Bridge Alternative will impede navigation in the Sound by commercial and recreational boaters and fishers, by creating an obstacle where there was none. Construction of the Bridge Alternative will also degrade water quality in the Sound, as described on pages 46-49 below and in our comments on NCDOT’s 404/401 Application.¹⁸⁶

In addition, as discussed previously, construction of the Bridge Alternative will induce growth—more than either a no-action alternative or the ER2 alternative would induce. Much of the development will be on oceanfront lots and lots fronting on Currituck Sound, both of which are susceptible to the accelerating sea level rise, erosion, and inundation described above. In what is becoming all too common and predictable of an occurrence along the Outer Banks, the high-water line that divides private property from public trust beach will begin to migrate westward on Currituck Island, threatening the first line of structures. Property owners will likely call for beach nourishment, seek permits to install large sandbags, and take other steps to protect those structures. Eventually, the structures may end up on the wet sand beach and may eventually collapse and strew debris over miles of beaches, as has been happening recently at the village of Rodanthe on Hatteras Island.¹⁸⁷ In the last five years, eleven oceanfront houses in Rodanthe have collapsed into the sea—six in 2024 alone—and many more sit in the intertidal zone, with the ocean flowing underneath on a daily basis. Each collapsing house has left a miles-long debris field in its wake, littering the public trust beaches of Cape Hatteras National Seashore and

¹⁸³ 15A N.C. Admin. Code 07H .0209(d)(4).

¹⁸⁴ FEIS Reevaluation, Appendix C at C-13, *Comments by the N.C. Division of Coastal Management on the Final Environmental Impact Statement for the Mid-Currituck Bridge Study dated January 2012*, <https://perma.cc/6V3J-QFMQ>.

¹⁸⁵ N.C. Gen. Stat. § 113A-102(a).

¹⁸⁶ 2024 Comments at 26-34, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

¹⁸⁷ Nat’l Park Serv., *Cape Hatteras National Seashore: Threatened Oceanfront Structures*, <https://perma.cc/4L8B-ZBES> (listing dates and addresses of each collapse); *Another Outer Banks Home Falls Into the Ocean. More Are Still at Risk*, Wash. Post, (Nov. 15, 2024), <https://perma.cc/3G4X-SHAY>.

neighboring properties with dangerous nails, boards, and an array of hazardous materials, including insulation foam, drywall, asphalt shingles, household chemicals, fiberglass shards, and items potentially containing lead and asbestos. Even before a house collapses, often the septic system fails or is uncovered by the tide, allowing raw sewage to flow onto and pollute the public trust beach, causing related human health hazards.¹⁸⁸ More generally, barrier island processes of overwash and island migration are disrupted when measures are taken to hold them in place to support construction: the eastern side of the island continues to erode, while the western sound side is deprived of replenishing overwash, resulting in a narrowing of the island and steepening of the shores.¹⁸⁹

While this may seem a dire prediction of an extreme scenario, it is foreseeable within the 75-year lifespan of the Bridge forecast by NCDOT, especially if development setbacks required by CAMA regulations are not updated to account for accelerating sea level rise and erosion rates. And while the erosion and sea level rise will happen whether or not the Bridge is built, the adverse effects they cause will be exacerbated unnecessarily if the Bridge is built and causes the anticipated induced development.

Because of these foreseeable harms to public trust resources, DCM must deny the CAMA permit.

VII. Natural hazard areas.

The CAMA permit must be denied based on the potential for harm to natural hazard areas. CAMA provides that a permit shall be denied on the basis that proposed development within or affecting “natural hazard areas . . . would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.”¹⁹⁰ Section 113A-113(b)(6) of the General Statutes applies to “areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water,” including, for instance, “[s]and dunes along the Outer Banks,” “[o]cean and estuarine beaches and the shoreline of estuarine and public trust waters,” and “[f]loodways and floodplains.”¹⁹¹

¹⁸⁸ Orrin H. Pilkey et al., *The World's Beaches: A Global Guide to the Science of the Shoreline*, 241-43 (2011).

¹⁸⁹ *Id.* at 40, 112, 227-31 (2011) (explaining barrier island geography and migration and the effects of efforts to hold barrier islands in place, and explaining, “All over the world, we have crowded buildings up against the shoreline, right next to beaches that are widely recognized to be retreating (migrating westward). But instead of moving landward with the rising sea level as they naturally would, these beaches are forced to stay in place in order to protect the buildings. . . . “[L]arge buildings will precipitate heroic attempts (that will inevitably fail) to hold the shoreline in place, and meanwhile the beach will be history”).

¹⁹⁰ N.C. Gen. Stat. § 113A-120(a)(6).

¹⁹¹ *Id.* § 113A-113(b)(6).

As DCM's comments on the FEIS stated, the Bridge will impact estuarine waters and coastal shorelines, which fall within the natural hazard AEC.¹⁹² DCM staff expounded on that concern in an undated internal memorandum as follows:

There are numerous NCDOT projects in the planning phase that are located within project study areas that may be impacted by increased flooding due to climate change during the design year. Examples include . . . [the] Mid Currituck Bridge

The problems with beach erosion and flooding on NC Highway 12 and the Outer Banks are well known, but here are some examples of other questions that have been raised:

How to factor possible future inundation areas into projections of future traffic and population growth to determine transportation needs. In other words, projections assume continued population growth and density in areas that are subject to increasing sea level rise.

In some cases, NCDOT has designed bridges to be at a height that will not be subject to flooding in the design year, however the approach roads will be subject to flooding in the design year.

Road improvements and new road segments are being planned in areas that have been subject to flooding in past storms.

How to incorporate sea level rise into stormwater management plans due to rising water table.¹⁹³

NCDOT's CAMA Application does not address these very real concerns. As discussed previously in these comments, the Bridge Alternative suffers from the flaws alluded to in the internal memo. It does not adequately assess sea level rise; it does not use updated sea level rise projections, and it only projects 20 years into the future rather than the full lifespan of the Project. It places the termini and approach routes for the Bridge in areas that will be subject to flooding within the lifespan of the Bridge, rendering it useless for evacuation. It fails to use up-to-date sea level rise data in stormwater management plans.

¹⁹² FEIS Reevaluation, Appendix C at C-13, *Comments by the N.C. Division of Coastal Management on the Final Environmental Impact Statement for the Mid-Currituck Bridge Study dated January 2012*, <https://perma.cc/6V3J-QFMQ>.

¹⁹³ Email from Cathy Brittingham, Transp. Project Coordinator, DCM, to Jonathan Howell, Major Permits Coordinator, DCM (June 28, 2022) (attachment to email entitled "Weekly Update EO 80") (attached hereto as Exhibit 057).

Perhaps most glaringly, NCDOT knowingly encourages induced growth in an area that is subject to increasing sea level rise. A situation such as this--where a project would induce thousands of additional units to be developed in a flood- and storm-prone ocean hazard AEC and expose countless additional visitors and residents to the worsening effects of sea level rise and shoreline erosion—is precisely the situation this provision of CAMA was intended to prevent. In so doing, NCDOT knowingly asks DCM to issue a CAMA permit for a Bridge that will increase the adverse impacts with ocean hazard AECs, public trust beaches, and other natural hazard AECs, including the adverse impacts described in the previous section as the shoreline recedes and the high-water line migrates toward the oceanfront and soundside structures.

VIII. Cumulative effects.

The CAMA permit must be denied based on the cumulative effects that the Bridge will cause. CAMA provides that a permit shall be denied on the basis “that the proposed development would contribute to cumulative effects that would be inconsistent with the written guidelines set forth in subdivisions (1) through (9) of this subsection.”¹⁹⁴ The statute defines “cumulative effects” as those “impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.”¹⁹⁵ As NCDOT acknowledged in the Cumulative Effects Report, this also includes “‘secondary impacts’ or ‘indirect impacts’”—that is, the knock-on effects, such as induced traffic and development, that occur as a result of a project. Thus, DCM should consider both the direct effects of constructing the Bridge as well as the indirect, secondary effects from the induced travel and development it causes *and* the incremental, cumulative effects of the Bridge when added to other actions and phenomena, like sea level rise, that are already impacting water quality and coastal resources in the Sound and elsewhere in the project area.¹⁹⁶

The consideration of cumulative and indirect effects is particularly important here. Indeed, as NCDOT notes in the Cumulative Effects Report for Coastal Resources for the Mid-Currituck Bridge project (albeit seemingly begrudgingly), “the unique situation involving the construction of the Mid-Currituck Bridge warrants a separate cumulative effects analysis” because it will induce so much growth and development in an already-overburdened area.¹⁹⁷ The Cumulative Effects Report describes NCDOT’s analysis of cumulative impacts, but this analysis

¹⁹⁴ N.C. Gen. Stat. § 113A-120(a)(10).

¹⁹⁵ *Id.*

¹⁹⁶ See Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 Fed. Reg. 66558, 66599-600 (Sept. 27, 2023) (“For example, a section 401 certification on a [Clean Water Act] section 404 permit authorizing the discharge of dredge or fill material in waters of the United States may consider both the construction associated with dredging (e.g., removing sediment from the waterbody to place dock pilings) as well as the subsequent operation associated with the completion of the dredging (e.g., increased vessel pollution in the water associated with increased vessel traffic due to the construction of the dock).”).

¹⁹⁷ Coastal Resources Cumulative Effects Report, at 1-2 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

is flawed in several ways, and other project documents reveal the total cumulative and secondary impacts of the project are too great to allow it to move forward.

A. Existing rules are inadequate to prevent cumulative impacts

NCDOT begins its analysis of cumulative effects by downplaying its importance, claiming that CAMA regulations “are designed in a manner that helps to limit cumulative effects of numerous projects of a certain type by limiting by rule the amount of allowable impacts for individual projects.”¹⁹⁸ This reasoning is circular. It is akin to saying that, just because a particular CAMA rule limits bulkheads built under a general permit to 500 feet,¹⁹⁹ the cumulative effects of 100 bulkheads, each 500 feet long, built end-to-end by property owners building new oceanfront homes and docks in a previously pristine area of estuarine marsh, would be negligible; this is an obvious logical fallacy and would fail to prevent the cumulative impacts that will likely result as a result of additional development induced by the Bridge. This is precisely why the statutory requirement of assessing cumulative impacts for *each* CAMA permit application—rather than merely relying on generally-applicable CAMA rules—is a key backstop for preventing degradation of coastal resources.

Relying on existing CAMA rules to address project impacts more generally is also suspect because, even if they were sufficient to protect against cumulative impacts, uncertainty regarding the future of these rules warrants extra precaution. Documents included in permitting materials conclude that effects on coastal wetlands related to water quality “should be minimal” if various North Carolina Coastal Resources Commission’s rules remain in effect,²⁰⁰ but this is a big “if” in light of ongoing litigation over the North Carolina Rules Review Commission blocking thirty CAMA rules.²⁰¹ Moreover, this conclusion is premised on the assumption that the water quality-focused cumulative impacts analysis recommendations are addressed and, without conditions in a 401 certification that has not yet been issued, it is unclear whether these recommendations will in fact be implemented.²⁰²

¹⁹⁸ *Id.* at 1.

¹⁹⁹ 15A N.C. Admin. Code 07H .1105(m).

²⁰⁰ *See, e.g.*, Coastal Resources Cumulative Effects Report at 15-16 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ> (“NCCRC rules provide for coastal wetland protection by requiring that bulkheads be constructed landward of coastal wetlands NCCRC provides for significant protection to coastal wetlands during dock and pier construction . . . provided the NCCRC buffer rules remain in effect and are enforced, it is anticipated that buffers adequate to provide protection for coastal wetlands would remain . . . NCCRC rules provide for significant protections for coastal wetlands as they relate to dredging projects . . .”).

²⁰¹ *N.C. DEQ, Div. of Coastal Mgmt. v. N.C. Rules Rev. Comm’n*, 23-CV-031533 (Wake Cty. Superior Ct. Feb. 13, 2025); *see* Trista Talton, *Coastal Resources Commission Adopts 16 Rules to Keep Natural Resources Protected*, NCNewslines (Mar. 15, 2024), <https://perma.cc/KW5B-H8H8> (describing effort to restore some removed rules, which ultimately were blocked by the Rules Review Commission again).

²⁰² Coastal Resources Cumulative Effects Report at 17 (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

B. Cumulative and secondary impacts to surface water²⁰³

The Bridge would not be the only source putting pressure on Currituck Sound, but it would substantially exacerbate the other sources by increasing stress from pollution and habitat destruction. The Corps has identified four primary threats to the Sound's water quality: nutrient loading from runoff and septic wastewater contamination; turbidity; saltwater intrusion; and pollution from draining basins.²⁰⁴ Researchers have also found that Currituck Sound is facing "one of the highest rates of relative sea level rise along the Atlantic East Coast," and is losing dozens of acres of marsh each year due to sea level rise and erosion.²⁰⁵ The loss of marshes, which are critically important to filtering and improving water quality, amplifies the potential threat of any further degradation to the Sound's water quality. Moreover, once pollutants reach saturation, marshes and wetlands may become overwhelmed and lose their ability to absorb harmful chemicals and support life, leading to further wetland loss.²⁰⁶ In addition to these water quality threats, the Sound faces invasive species, inadequate sediment to maintain surface elevation, saltwater intrusion, and damage from increasingly intense storms. Climate change and overdevelopment are already straining the Sound. Adding the Bridge, which will induce more development along the coast, will only worsen it. The incremental additional stress that would be created by the Bridge must be considered in tandem with these already-present stressors.

Destruction of wetlands in the Currituck Sound and surrounding swamps are especially concerning in light of the existing problems with eutrophication in the water body. In its application materials, NCDOT includes a study of water quality in the Sound from 2011-18, which found high levels of chlorophyll *a* in Currituck Sound, indicating eutrophication, and identified numerous species of toxin-producing cyanobacteria, which are commonly associated with harmful algal blooms.²⁰⁷ Harmful algal blooms are encouraged by excess nutrients, which can come from septic systems (especially those that are not functioning as they should), sewage, and runoff, all of which will increase as a secondary effect of the Bridge and the development it induces.²⁰⁸ Wetlands and SAV can filter and trap nutrients and septic byproducts, which has the beneficial effect of discouraging harmful algal blooms. However, in an unfortunate cycle, harmful algal blooms can block the sunlight that SAV need to thrive and thus degrade SAV beds,

²⁰³ For more on impacts to water resources, *see generally* 2024 Comments, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

²⁰⁴ Currituck Sound Coal., *Marsh Conservation Plan 10*, Audubon N.C. (Dec. 2021), <https://perma.cc/45P6-NMX4> (citing U.S. Army Corps of Eng'rs, *Currituck Sound Ecosystem Restoration Study* (Sept. 2, 2011), <https://perma.cc/TF55-GQGN>).

²⁰⁵ *Id.* at 12.

²⁰⁶ *Id.* at 13.

²⁰⁷ *See generally* Stephen L. Harden et al., *Characterization of Water-Quality and Bed-Sediment Conditions in Currituck Sound, North Carolina, Prior to the Mid-Currituck Bridge Construction, 2011-2018*, U.S. Geo. Survey (Apr. 17, 2020), <https://perma.cc/SU5R-G7BX>.

²⁰⁸ Taylor Breton, *Protecting our Waterways: What You Should Know About Harmful Algal Blooms*, Univ. of Md. Ctr. for Env't Sci. Integration and Application Network (2024), <https://perma.cc/EXU8-4J48>.

reducing their ability to prevent algal blooms.²⁰⁹ Loss of SAV due to construction of the Bridge will only exacerbate this cycle. Similarly, with a reduced acreage of wetlands and their natural capacity to filter and store excess nutrients, cyanotoxins, which are “an emerging water-quality concern in the Albemarle Sound region, particularly the Currituck Sound,” could worsen.²¹⁰

As discussed above, one further concern is the knock-on effects of induced development on other wetlands and aquatic and coastal resources. As discussed above, some areas likely to see increased development due to the Bridge being built “are bounded on the Currituck Sound side by vast areas of coastal wetlands.”²¹¹ The Cumulative Effects Report touches on potential cumulative effects to these protected resources, but concludes that cumulative effects to coastal wetlands relating to water quality, shoreline stabilization, docking facilities, and dredging will be minimal.²¹² However, this conclusion rests on a slew of shaky presumptions: that non-binding recommendations of the water quality report are followed, all CRC rules stay in effect, and those rules are sufficient to protect against cumulative effects. Considering the importance and legal protections afforded to coastal wetlands and other impacted resources, and the magnitude of potential impacts from this project, this kind of conjecture is simply insufficient to support the granting of a CAMA permit.

The substantial degradation of the wetlands in and around Currituck Sound will have significant, real-world consequences. These wetlands help protect people in this low-lying coastal community from flooding, and they filter stormwater to prevent water quality degradation after storms and precipitation events. Moreover, they are vital for wildlife to survive and thrive. If the Bridge is permitted, the loss of these wetlands services will become more problematic for local communities as storm frequency and magnitude and rising rates of sea level continue to accelerate in the coming years.

C. Cumulative and secondary impacts to groundwater

In addition to the myriad cumulative impacts to coastal resources such as SAV degradation and loss discussed in pages 17-20 above, the Bridge will have devastating effects on water quality—particularly with respect to groundwater, which will impact both surface water quality and drinking water supplies—that must be considered as part of the CAMA permitting process. As DCM’s rules acknowledge,

Uncontrolled development within the designated boundaries of a watershed or well field site could cause significant changes in runoff patterns or water withdrawal rates that may adversely affect the quantity and quality of the raw water supply. Also, incompatible

²⁰⁹ *Id.*; see also EPA, *Harmful Algal Blooms (HABs) in Water Bodies* (last updated July 25, 2024), <https://perma.cc/MDB8-MN4U>.

²¹⁰ USGS Water Quality Report at 39, <https://perma.cc/SU5R-G7BX>.

²¹¹ Coastal Resources Cumulative Effects Report at 13, (June 2021), attached as Attachment 21 to CAMA Application, <https://perma.cc/V4KX-LRBZ>.

²¹² *Id.* at 17.

development could adversely affect water quality by introducing a wide variety of pollutants from homes, businesses, or industries, either through subsurface discharge, surface runoff, or seepage into the vulnerable water supply.²¹³

Where, as in Currituck County, “[a]ll potable water systems . . . are supplied from ground water sources,” the protection of groundwater is especially important.²¹⁴ The Bridge is likely to lead to increased groundwater pollution due to secondary effects. As more visitors and residents come to the area, there will be more wastewater produced that must be managed by either septic systems—many of which are already failing and contaminating groundwater, a problem which would only be worsened by adding even more systems—or already-overburdened wastewater treatment plants. The potential for expansion of existing wastewater treatment systems would require increased pumping of groundwater to dispose of treated wastewater effluent. Some wastewater treatment plants in the area land-apply their treated effluent. As more wastewater is generated by increased development, more land application occurs, necessitating an increase in groundwater pumping. Similarly, an increase in impervious surface cover as residential and commercial areas are induced to development by the Bridge will increase the amount of stormwater that must be processed by these plants.

Groundwater lowering is a technique used in low-lying coastal areas to lower the water table by pumping groundwater up and out, thereby increasing the capacity to accept stormwater and reducing runoff. In the Currituck Sound area, this pumped water is discharged into retention ponds that are known to be experiencing breaches into Currituck Sound. Increased pumping of groundwater is problematic both because of its hydrological implications for wetlands and water quantity, and because it can cause problems with both surface and groundwater quality. The groundwater being pumped to wastewater treatment plants is in direct hydraulic connection with failing septic system fields.²¹⁵ This contaminated groundwater is deposited in leaky retention ponds²¹⁶ that are known to have breaches and channels connecting to Currituck Sound, meaning

²¹³ 15A N.C. Admin. Code 07H .0402(b).

²¹⁴ Currituck Cty., *Imagine Currituck 2040 Vision Plan* (2022), <https://perma.cc/Q2WS-CQVZ>.

²¹⁵ Many of the residential septic systems in the area have leach fields that are already failing—either because they are too small for the size of the house, built too densely in proximity to other leach fields, are old or leaking, or otherwise in need of maintenance, and/or are coming into contact with groundwater as the sea level rises and pushes the groundwater levels up to intersect with the leach fields. These failures allow untreated wastewater to contaminate the groundwater and reach the surface of the adjacent land and beaches. The additional homes, with additional septic systems and wastewater treatment system customers packed into the same area, that will be built as the Bridge induces growth on Currituck Island, will only exacerbate the water contamination problems. *See generally* 2024 Comments, available at Sharefile URL: <https://southernenvironment.sharefile.com/f/fo2d85c6-a8fa-49ce-bd5b-ff2da125c552>.

²¹⁶ *See generally, e.g.*, John Dorney, NCDOT, *Interagency Meeting Presentation on Draft Cumulative Impact Report for Water Quality* at Slide 13 (Dec. 16, 2020) (attached hereto as Exhibit 058).

the pollution it brings with it from septic fields are carried to the Sound.²¹⁷ These breaches in retention ponds that store discharges from groundwater lowering bring, among other pollutants, nitrogen—a nutrient known to cause harmful algal blooms and eutrophication.

Pumped water may be polluted by septic and wastewater treatment wastewater and is, in at least some cases, “in direct hydraulic connection with the many residential septic systems in the area and will carry an additional nutrient load that would not otherwise reach the [S]ound.”²¹⁸ Accordingly, “NCDWR believes that septic tanks and drain fields, along with conventional reuse/reclaimed water systems in the Outer Banks of Currituck County, are contributing to surface water contamination, especially when combined with groundwater lowering devices in place in this area.”²¹⁹ Sewer overflows and septic failures are already a chronic public health problem on the mainland portions of Currituck County as well.²²⁰

DWR has repeatedly raised the alarm about this issue, calling this problem “[a] primary concern,” because as development increases, so too will the need for groundwater lowering and strain on septic and wastewater treatment systems, potentially exacerbating these polluted discharges from retention ponds into Currituck Sound.²²¹ NCDOT’s cumulative impacts assessment acknowledges that the Bridge will result in more properties being developed than if they were not built, and these “in-fill properties have the potential to exacerbate a current issue” with groundwater pumping.²²² As one DWR representative noted, “if flooding during a storm event becomes an issue and pumping is used then the mix of groundwater, stormwater, and septic tank

²¹⁷ See generally NCDOT, *Interagency Project Meeting Summary* (June 20, 2019) (attached hereto as Exhibit 059); NCDOT, *Interagency Coordination Meeting Summary* (Dec. 19, 2019) (attached hereto as Exhibit 060); NCDOT, *Interagency Project Meeting Summary* (Aug. 19, 2020) (attached hereto as Exhibit 061); NCDOT, *Agency Coordination Meeting Summary* (Feb. 20, 2020) (attached hereto as Exhibit 062); NCDOT, *Agency Coordination Meeting Summary* (Mar. 12, 2020) (attached hereto as Exhibit 063); NCDOT, *Interagency Project Meeting Summary* (Dec. 16, 2020) (attached hereto as Exhibit 064); NCTA, *Mid-Currituck Bridge Interagency Meeting Summary* (Sept. 7, 2022) (attached hereto as Exhibit 004); NCDOT, *Interagency Meeting Agenda* (Dec. 14, 2023) (attached hereto as Exhibit 003); Memorandum from Garcy Ward, NCDWR, to Missy Pair, NCDOT, responding to Mid-Currituck Cumulative Impact Report for Water Quality dated May, 2021 (Dec. 28, 2023) (attached hereto as Exhibit 065); NCDOT, *Interagency Project Meeting Draft Meeting Summary* (Jan. 10, 2024) (attached hereto as Exhibit 002); NCDOT, *Interagency Project Meeting Summary* (Feb. 7, 2024) (attached hereto as Exhibit 066); see also Memorandum from Garcy Ward, NCDWR, to Tracy Roberts, NCDOT, commenting on draft Mid-Currituck Bridge Cumulative Impact Report for Water Quality dated December, 2020 (Feb. 2, 2021) (attached hereto as Exhibit 067).

²¹⁸ NCDOT, *Agency Coordination Meeting Summary* at 4 (Mar. 12, 2020) (attached hereto as Exhibit 063).

²¹⁹ Cumulative Impact Report for Water Quality at 1, attached as Attachment 6 to NCDOT’s CAMA Application, <https://perma.cc/728F-8SND>.

²²⁰ Lisa Sorg, *N.C. Policy Watch: Currituck Sewer Systems Racked Up Most State Penalties Since 2018*, OBX Today (Dec. 18, 2021), <https://perma.cc/ZT5B-YEE4>.

²²¹ NCDOT, *Interagency Project Meeting Summary 2* (Feb. 7, 2024) (attached hereto as Exhibit 066); see also Email from Logann Perry, NCDOT, to Dennis Jernigan, NCDOT (Feb. 5, 2024) (“NCDEQ-DWR is concerned about the current wastewater treatment (water quality) issues that exist on the Outer Banks. They are concerned that future development on the Outer Banks could exacerbate these issues and are questioning their ability to permit the project.”) (attached hereto as Exhibit 068).

²²² NCDOT, *Interagency Project Meeting Summary 2* (Feb. 7, 2024) (attached hereto as Exhibit 066).

effluent will be pumped to ditches and outfalls.”²²³ The same representative noted that until the relevant local authorities and property owners evaluate a plan for the undeveloped parcels, NCDOT should not approach DWR with a proposal for 401 certification; another representative confirmed that, without addressing these cumulative impact water quality issues, the application would be denied.²²⁴

Yet NCDOT has inexplicably moved forward to seek a CAMA permit without meaningfully addressing these issues.²²⁵ Like its 401 certification and 404 permit application, NCDOT’s CAMA permit application fails to adequately address the likelihood that the additional discharges of nutrients, septic waste, and other pollutants caused by induced growth will lead to eutrophication and violations of North Carolina’s water quality numeric and narrative criteria for chlorophyll, dissolved oxygen, Enterococcus, turbidity, and pH, among others. NCDOT’s revisions to its Cumulative Impact Report for Water Quality in May 2024 did little to resolve these concerns—and no update appears to have been done for the Coastal Resources Cumulative Effects Report in nearly four years. Although the former summarily concluded that the Bridge was “expected to result in minimal indirect or cumulative impacts to downstream water quality,” it based this on sweeping statements that existing wastewater treatment plants are functioning properly and that DWR would be able to avoid wastewater issues using its permitting authority, but these conclusions are not supported by the facts.²²⁶ The wastewater treatment plants are not functioning properly, as DWR has explained on numerous occasions; though they may not be *permitted* to discharge into Currituck Sound, these discharges are occurring nonetheless.²²⁷ The failure of the permitting regime to control discharges currently is proof that adding more fuel to the fire by inducing additional development is unwise; or, as one DWR representative explained, “added development results in added wastewater to be treated. This, in combination with a rising water table as the result of climate change, more intense storm events, and groundwater-lowering activities all complicate the issue.”²²⁸ DWR itself “has expressed concerns that existing NCDWR, Currituck County, and Albemarle Regional Health Services regulatory programs may not adequately address the water quality implications of the additional growth.”²²⁹ Finally, DWR

²²³ *Id.* at 6.

²²⁴ *Id.* at 9.

²²⁵ See NCDOT, *Response to Comments Provided by Garcy Ward (NCDWR) in his February 2, 2021 Memorandum to Tracy Roberts (NCDOT) Concerning the Draft Cumulative Impact Report for Water Quality for the Mid-Currituck Bridge* (Feb. 8, 2021) (attached hereto as Exhibit 069); Memorandum from Missy Pair, NCTA, to Amy Chapman, NCDWR, and Garcy Ward, NCDWR, responding to NCDWR’s Dec. 28, 2023 comments on the Final Mid-Currituck Bridge Cumulative Impact Report for Water Quality, dated May, 2021 (May 13, 2024) (attached hereto as Exhibit 070).

²²⁶ Cumulative Impact Report for Water Quality at 6, attached as Attachment 6 to NCDOT’s CAMA Application, <https://perma.cc/728F-8SND>.

²²⁷ See, e.g., NCDOT, *Interagency Project Meeting Summary* at 4 (Feb. 7, 2024) (attached hereto as Exhibit 066) (“The current permits for these two wastewater treatment plants do not have an allowance for a discharge of water from the plants . . . The discharges exist but are not part of the permit.”).

²²⁸ *Id.* at 5.

²²⁹ Cumulative Impact Report for Water Quality at 6, attached as Attachment 6 to NCDOT’s CAMA Application, <https://perma.cc/728F-8SND>.

does not have permitting authority over septic systems, which many plots developed as a result of induced growth from the Bridge will use, so even if DWR's permitting regime were effective, it would be incomplete.²³⁰

Despite these fatal weaknesses, NCDOT is attempting to secure a CAMA permit by pretending that the Bridge exists in a vacuum and asking DCM to ignore the Bridge's cumulative and secondary impacts to coastal resources and particularly to water quality and wetlands. NCDOT explained that "[i]t is the opinion of NCDOT and NCTA that issues related to [septic systems, sewage treatment plants, and future growth] are separate from the MCB permit . . . It is the Department's intention to proceed with the permitting process, while contesting DWR's suggestion that these issues be tied together."²³¹ Divorcing the project from its knock-on effects defeats the purpose of analyzing cumulative impacts. Because of the inevitable secondary and cumulative impacts that will be caused by the growth induced by the Bridge, DCM must deny a CAMA permit.

UNMET PREREQUISITES FOR ISSUANCE OF A CAMA PERMIT

Even if NCDOT's proposal to build the Bridge complied with CAMA's substantive requirements, granting a CAMA Permit at this time would be premature. Before DCM can issue the CAMA permit, NCDOT must receive 401 certification and obtain a more certain level of design.

Section 113-229 of the General Statutes provides that applications for permits to dredge or fill in estuarine waters, including coastal wetlands, "shall be circulated [by DEQ] 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." Implicit in this requirement is a mandate to meet and address the concerns expressed by other agencies, and to deny an application for a CAMA permit if DEQ denies a 401 certification, the Army Corps of Engineers denies an application for a 404 permit, on another agency denies a required permit or certification. Accordingly, DCM should await a decision by DEQ and the Army Corps on NCDOT's pending application for 401 certification and 404 permit, as well as a decision on a Coast Guard permit and any other required permits, before making a decision on the CAMA application. By way of example, in one case, DCM issued a CAMA permit to a developer and conditioned it on the developer obtaining a 401 certification; when the certification was denied, DCM denied the CAMA permit application.²³² The developer challenged the denials, but the North Carolina Court of Appeals upheld the agency action, holding that the state's denial of the "401 certification [which necessitated denial of a CAMA permit] was not an unreasonable

²³⁰ Email from Ken Gilland, NCDOT, to Roy Bruce, H.W. Lochner (Apr. 4, 2024) (acknowledging that "parcels [that] would use septic systems . . . would be outside the purview of NCDWR's permitting authority") (attached hereto as Exhibit 071).

²³¹ Email from Clemmon Bridgers, NCDOT, to Missy Pair, HTNB (Mar. 20, 2024) (attached hereto as Exhibit 072).

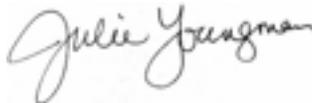
²³² *King v. State*, 125 N.C. App. 379, 381-82, 481 S.E.2d 330, 331 (1997).

exercise of police power in violation of” CAMA.²³³ Similarly, DCM should condition its decision on the CAMA Application on the outcome of the 401 certification process.

CONCLUSION

For the many reasons discussed above and in prior comments, we respectfully request that DCM hold a public hearing on the CAMA Application for the benefit of concerned members of the public and that DCM decline to issue a CAMA permit for the environmentally damaging and economically wasteful Mid-Currituck Bridge.

Sincerely,



Julie F. Youngman
Senior Attorney



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Cc:

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Erin Carey, North Carolina Sierra Club
Chris Herndon, North Carolina Sierra Club
Rick Savage, Carolina Wetlands Association
Jen Symonds, No Mid-Currituck Bridge
Barb Marzetti, No Mid-Currituck Bridge

²³³ *Id.*, 125 N.C. App. at 384–85, 481 S.E.2d at 333 (citing N.C. Gen. Stat. § 113A-123(b)).

Exhibit 4

Order Denying Motions for Partial Dismissal
Cowell v. DCM, Case No. 06-EHR-1185 (Jan. 30, 2007)
N.C. Office of Administrative Hearings

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N.C. ATTORNEY GENERAL
Environmental Division

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF PAMLICO

06 EHR 1185

OFFICE OF
ADMINISTRATIVE
HEARINGS

Henry S Cowell III and
Carolyn E Dressler

PETITIONERS,

v.

Division of Coastal Management

RESPONDENT

Earl C. and Mary Jane Westphal

RESPONDENT-INTERVENORS

**ORDER
DENYING MOTIONS FOR
PARTIAL DISMISSAL**

This Contested Case comes before the undersigned on Respondent and Respondent-Intervenors' Motions for Partial Dismissal. The undersigned heard oral argument on the Motions from all three parties in New Bern on October 17, 2006.

The Motions make the claim that the Office of Administrative Hearings (OAH) lacks the power to hear the issues raised by Petitioners for lack of subject matter jurisdiction. The movants have not questioned the substance of Petitioners' claims, and all issues as to the substance of claims and defenses will await further proceedings.

This contested case is a third party appeal of a permit granted by the Respondent, challenging a CAMA Permit to construct a pier and floating dock in a protected area. Third party challenges to CAMA permits face a unique statutory hurdle. All other third party environmental challenges to permits may proceed directly to OAH by filing a petition for a contested case. Third party challenges to CAMA permits, however, must first cross a threshold. That threshold requires a review by the Coastal

Resources Commission. In the words of the statute, these challenges may be filed "only if the Commission determines that a hearing is appropriate." N.C. Gen. Stat. §113A-121.1(b).

In *Empire Power Co. v. N.C. Dep't of Env't & Natural Resources*, the North Carolina Supreme Court held that the types of economic and environmental interests asserted by Petitioners are legally protected. 337 N.C. 569, 447 S.E.2d 768 (1994). In *Empire*, the Supreme Court determined that an adjacent property owner, after the State awarded an air pollution control permit to the Respondent utility company, was a "person aggrieved" and, thus, entitled to a hearing. *Id.* The state agency argued, unsuccessfully, that only the permit applicant or permittee was entitled to a contested hearing. *Id.* The Supreme Court held that the APA conferred upon any "person aggrieved" the right to commence an administrative hearing involving the person's rights, duties, or privileges. *Id.* at 584, 447 S.E.2d at 777.

The Supreme Court held that a property owner in conjunction with the property owner's proximity to the permitted site constituted an aggrieved person because the property owner would suffer injury to health, property, and quality of life if the permit was granted. *Id.* at 589, 447 S.E.2d at 780. *Empire* is instructive in identifying the types of economic and environmental interests that a third party may seek to protect in a contested case hearing. Mr. Cowell and Ms. Dressler, Petitioners herein, assert the same type of legal interests that Mr. Clark established as an aggrieved person in *Empire*, as the adjoining property owner. This determination was made, in part, because of the Petitioners' proximity to the permitted property, defined by *Empire*, as being within a zone of protected interests.

The Court wrote the following about the neighboring landowner in *Empire*, and the same analysis serves as precedential authority as to Petitioners' interests in this contested case:

Clearly, Clark alleged sufficient injury in fact to interests within the zone of those to be protected and regulated by the statute, and rules and standards promulgated pursuant thereto, the substantive and procedural requirements of which he asserts the agency violated when it issued the permit. As an adjacent property owner downwind of the LCTS, Clark may be expected to suffer from whatever adverse environmental consequences the LCTS might have. In addition, a judgment in favor of Clark would substantially eliminate or redress the injury likely to be

caused by the decision to permit Duke Power to build the LCTS. Clark therefore is a "person aggrieved" within the meaning and intent of the air pollution control act.

337 N.C. 569, at 589-90.

This analysis of the "interests within the zone of those to be protected and regulated by the statute" clearly affects a property right and interest (both real and intangible) that is owned by Petitioners. The protection of this property interest, administratively, is rooted in the United States Supreme Court's holding regarding a property interest to be protected in an administrative hearing based upon the Due Process Clause of the 14th Amendment to the U.S. Constitution. [*Goldberg v. Kelly*, 397 U.S. 254 (1970)]. The procedural due process right to an impartial administrative hearing, prior to a deprivation of a governmentally created property interest, was confirmed in *Goldberg*. Many states responded to *Goldberg* by enacting uniform administrative procedures. North Carolina responded with the enactment of a new Administrative Procedure Act, Chapter 150A, followed later by Chapter 150B with the creation of the Office of Administrative Hearings. The North Carolina General Assembly established the Office of Administrative Hearings "to ensure that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative action . . . and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process." N.C. Gen. Stat. § 7A-750

Against this legal backdrop of third party interests and the administrative protection of those interests, the General Assembly balanced a third party's unlimited challenge to the issuance of a CAMA permit by granting to the Commission a threshold determination as to whether a contested case is "appropriate," as follows:

A determination of the appropriateness of a contested case shall be made within 15 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 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.

N.C. Gen. Stat. §113A-121.1(b).

The statute neither directs nor empowers the Commission to decide the challenge on the merits. The Commission is only to determine whether the Petitioner is directly affected, has *alleged* that the decision is contrary to a statute or rule, and has *alleged* facts or made legal arguments that show that the request for hearing is not *frivolous*. (Emphasis Added) In other words, the Commission is simply to determine, as gatekeeper, that the Petitioner is someone who has a right to challenge the particular permit, and that the Petitioner's challenge is not frivolous. If these contingencies are met, then the third party challenge to the permit goes to the Office of Administrative Hearings for a contested case hearing on the merits. This statutory process at the CRC is analogous to a probable cause determination hearing in District Court. In this third party challenge, Petitioners followed the statutory procedure to seek a determination by the Commission. The Commission determined, pursuant to the statute quoted above, that the three requirements in the statute were met and concluded "[f]or the reasons stated herein, Petitioners' Third Party Hearing Request is GRANTED." (Emphasis in original).

The Movants argue, however, that the Commission did not mean to simply grant the Petitioners' Third Party Hearing Request but, instead, meant to limit Petitioners' right to a contested case hearing to one issue raised by Petitioners, grant a hearing on that one issue, and deny Petitioners' request as to all other issues. Movants base this argument on the fact that the Chairman of the Commission mentioned only the one issue in his two sentence discussion of whether the appeal was frivolous.

The statute does not either expressly or by implication empower the Commission to parse individual issues. The contested case is either appropriate or not. Nowhere in the statute is there any

mention of such a procedure or power. The statute speaks exclusively of the Commission determining the whole appeal. The statute does not state that the Coastal Resources Commission or its Chairman has the authority to decide what issues a person may bring as a contested case or does the statute state that the CRC may limit the issues a person aggrieved may bring in a contested case. In fact, the statute simply speaks of a "determination of the appropriateness of a contested case hearing," N.C. Gen. Stat. §113A-121.1(b). The statute requires the CRC to make this determination within fifteen (15) days of receiving the request. Again, the statutory language speaks of the overall "appropriateness of the contested case," and does not authorize or empower the limitation of issues that may be included in the contested case. In short, neither the statute nor any rules promulgated thereunder expressly grant the CRC the authority to do anything other than determine whether a contested case may or may not proceed. The CRC is simply to decide that either the applicant is entitled to a contested case or is not. The satisfaction of the three conditions found in §113A-121.1(b) triggers the right to file a contested case petition.

The Commission's determination is contained in the "Final Decision" signed by the Commission Chairman. The Final Decision does not contain an analysis of each issue or arguments advanced by Petitioners. It does not contain conclusions as to each issue. The "Conclusions of Law" in the decision are short, three in number (to match the three statutory requirements), and contain no words of exclusivity. That is, at no point did the Commission's decision state "only" a certain issue may proceed to hearing, or that the hearing request was being granted "as to this one issue", or why issues were rejected. There is nothing to indicate that the Commission or its Chairman analyzed each issue raised by the Petitioners and rejected some of them.

The statute requires that the Commission's determination "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.

N.C. Gen. Stat. §113A-121.1(b).

If, as Movants argue, the Commission's determination is not as to the totality of the challenge, but is as to each individual issue, then such an assertion must be found in the plain language of the statute. The statute states only that the Commission must make "a determination of the appropriateness of a contested case." No where does the statute expressly grant this authority to limit issues so it leads to a logical interpretation of the plain language that the determination is to the totality of the proffered challenge. In determining the totality of the challenge, per this construction of the statute, the Commission must broadly decide each of the three factors as to the totality of the applicant's challenge, either granting or denying the contested case. In this contested case, the Commission appears to have addressed the totality of the appeal. The Commission did not discuss the merits of each point raised by Petitioners. The Commission granted the hearing request and correctly followed the statute. If the Commission denied the hearing request as to some issues, then the Commission, without clarifying which issues it denied, would have failed to determine the totality of Petitioners' third party challenge. There is no reason here to adopt such an interpretation of the Commission's decision that would make its determination inopposite to a determination of the totality of the entire third party challenge, because the Commission allowed Petitioners' contested case to go forward without any clarification of any issues it may have denied.

As stated above, the Commission did not partially deny the relief sought in Petitioners' Third Party Hearing Request because the Final Decision does not state that any part of the Request was denied. To the contrary, the Final Decision states, without qualification, that "Petitioners' Third Party Hearing Request is GRANTED." This part of the Commission's Order is not only instructive in interpreting the Commission's Order, but it is also instructive as a matter of interpreting the appeal rights protected by the statute. A denial of a right to a contested case would become immediately appealable. Failure to

meet the appeal deadline of such a denial defeats an appeal of the Commission's final decision on this point. N.C. Gen. Stat. § 150B-45. Clearly, in the case of denial, Petitioners must be put on notice of such an adverse decision, and Petitioners must be immediately put on notice of their appeal rights. Petitioners in this case received a Final Decision from the Commission concluding that their "Third Party Hearing Request is GRANTED." The decision contained no limiting language to this broad conclusion. No statement that anything was denied is contained anywhere in the decision. Nothing in the decision gives notice of appeal rights. Petitioners represented at oral argument that they received no other indication in writing or otherwise, until the present Motions were filed, that anyone considered that part of their request as being denied. This lack of notice of appeal rights would be fatal to Petitioners' right to preserve their claims. Of course, it is perfectly logical to have not given a notice of appeal rights if Petitioners' request was granted in its totality.

Finally, the proposed statutory interpretation that would allow the Commission to parse the issues creates an otherwise strained and irrational appeal process of the Commission's gatekeeping function. If the Commission approves a contested case on some issues raised by an applicant and denies the right to a contested case on others, the applicant must do two things to preserve all of the issues. The applicant must file a contested case in the Office of Administrative Hearings on the issues approved within 20 days and file a Petition for Judicial Review in the Superior Court as the Commission's Final Decision on the issues denied within 30 days. This is a strained interpretation for two reasons. First, requiring a person to simultaneously pursue two distinct avenues of resolution in two different forums in order to preserve a single third party challenge is wasteful, confusing, and burdensome with the added potential of producing inconsistent results. Second, in this instance, the evidentiary hearing in the Office of Administrative Hearings must proceed before the completion of the appeal on the issues denied. The administrative law judge in the Office of Administrative Hearings must either stay the contested case proceedings, awaiting the resolution of what could be a lengthy appeal process on the issues denied or proceed immediately to a contested case hearing on the issues allowed, which would be followed by a

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decision by the administrative law judge and then a final agency decision before an appeal could reach the Superior Court under Article 4 of Chapter 150B. If the Superior Court in the separate appeal of a final decision on the issues denied reverses and remands to the Commission to permit a challenge on an issue once denied to proceed in the Office of Administrative Hearings, then a right to a second contested case hearing would be triggered that should have been logically joined to the first contested hearing. This second contested case would also proceed to a second appeal under Article 4 of the APA. There would be a great potential for inconsistent administrative decisions and inconsistent appellate review arising from one challenge. It is more logical, assuming the applicant meets the three requirements of §113-121.1(b) and is through the threshold, to allow the hearing process in the Office of Administrative Hearings to proceed on all issues raised in the petition, allowing the administrative law judge to consider dismissal, pursuant to a properly filed and noticed motion, which would eliminate the non-justiciable issues as authorized by the Rules of Civil Procedure. Under the Office of Administrative Hearings procedures, the issues raised by Petitioners can be tested by Motions to Dismiss, Failure to State a Claim, Summary Judgment, and finally, by the evidentiary process itself. The contested case process in the Office of Administrative Hearings has proven to be effective in eliminating issues and reducing them to those that are worthy of hearing. Such a contested case decision is then ready to proceed through the administrative appellate review, under a singular and rational avenue of appeal.

Therefore, for all the reasons stated herein, each of which supports the others and each of which independently justifies this decision, the Motions for Partial Dismissal are DENIED.

This the 30th day of January 2007.


Julian Mann
Chief Administrative Law Judge