

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

No MCB- Concerned Citizens and Visitors Opposed to the
Mid-Currituck Bridge, and the Sierra Club
PETITIONER,

v.

Division of Coastal Management of the Department of
Environmental Quality
RESPONDENT.
(The State agency or board about which you are complaining)

**PETITION
FOR A
CONTESTED CASE HEARING**

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:
(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

Issued CAMA Major Development Permit No. 105-25 in contravention of the requirements of state law as detailed on Attachment A to this form.

(4) Amount in controversy \$ N/A (if applicable)
(If more space is needed, attach additional pages.)

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

 deprived me of property; exceeded its authority or jurisdiction;
 ordered me to pay a fine or civil penalty; or acted erroneously;
 X otherwise substantially prejudiced my rights; **AND** X failed to use proper procedure;
 X acted arbitrarily or capriciously; or
 X failed to act as required by law or rule.

(6) Date: November 26, 2025 (7) Your phone number: (919) 967-1450

(8) Print your full address: 136 East Rosemary Street, Suite 500 Chapel Hill, NC 27514

(9) Print your name: Julia Furr Youngman, Kimberley Hunter, and Zoe Mehta c/o Southern Environmental Law Center

(10) Your signature: 

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

CERTIFICATE OF SERVICE

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

(11) See attached Certificate of Service (12) _____
(name of person served) (State agency or board listed on line 3)
(13) _____
(street address/p.o. box) (city) (state) (zip code)

(14) This the _____ day of _____, 20__.

(15) _____
(your signature)

When you have completed this form, you **MUST** mail or deliver the **ORIGINAL** to the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609.

This box for OAH use only.

<p>Amount Paid \$ _____</p> <p><input type="checkbox"/> Cash – receipt number _____</p> <p><input type="checkbox"/> Money Order <input type="checkbox"/> Certified Check <input type="checkbox"/> Attorney Trust Account</p> <p>Check number _____</p>	<p><input type="checkbox"/> Indigent (must complete form HOI)</p> <p><input type="checkbox"/> Mandated federal cause of action</p> <p>Received by: _____</p>
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Attachment 1
Petition for Contested Case Hearing

No MCB and Sierra Club

v.

N.C. Department of Environmental Quality, Division of Coastal Resources

Re: CAMA Major Permit No. 105-25

No MCB-Concerned Citizens and Visitors Opposed to the Mid-Currituck Bridge (“No MCB”) and Sierra Club (together, the “Petitioners”) respectfully submit this Petition for a Contested Case Hearing pursuant to sections 113A-120, 113A-121.1, 150B-23, and Articles 1 and 3 of Chapter 150B of the North Carolina General Statutes, challenging the decision by the Division of Coastal Management of the North Carolina Department of Environmental Quality (“DCM”) to issue Coastal Area Management Act (“CAMA”) major development permit 105-25 (the “Permit”) to the North Carolina Department of Transportation (“NCDOT”) and the North Carolina Turnpike Authority (“NCTA”) (an agency located within and supervised by NCDOT) for the alternative for the Mid-Currituck Bridge Project, TIP No. R-2576, (the “Project”) that will include construction of nearly 6.5 miles of bridging through Maple Swamp and Currituck Sound (the “Bridge Alternative”). A copy of the Permit is attached hereto as Exhibit A.

DCM granted the Permit to NCDOT and NCTA to build the Bridge Alternative: an unnecessary, environmentally-damaging, billion-dollar transportation project from a point on highway U.S. 158 between the towns of Coinjock and Aydlett on the mainland to the northern end of the Outer Banks in Corolla; it would include a 1.5-mile bridge through Maple Swamp on the mainland and a 4.7-mile bridge through Currituck Sound. DCM granted the Permit for the Bridge Alternative even though a practicable alternative exists that would accomplish the overall Project purposes with less adverse impact on public resources than the Bridge Alternative will cause, and even though construction of the Bridge Alternative would cause significant adverse

impacts to estuarine waters including submerged aquatic vegetation and coastal shorelines, contribute to unacceptable levels of cumulative effects, jeopardize the public’s rights to use public trust areas, and occur in natural hazard areas in such a way as to endanger life or property. Thus, DCM’s decision to issue the Permit violated N.C. Gen. Stat. §§ 113A-120 and related sections of the N.C. Administrative Code.

In support of the petition, Petitioners allege and show the following:

I. Jurisdiction and Parties

A. Petitioners have satisfied the requirements of N.C. Gen. Stat. § 113A-121.1.

Pursuant to N.C. Gen. Stat. § 113A-121.1(b) and 15A N.C. Admin. Code 07J .0301, a third party must secure a determination from the North Carolina Coastal Resources Commission (“CRC”) 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.

Petitioners timely filed a third-party hearing request, made the showing required by the statute, and received notice on November 7, 2025, from the CRC that the CRC Chair had determined that a contested case hearing is appropriate.

B. Petitioners Timely File this Petition for a Contested Case Hearing

The North Carolina Administrative Procedure Act (“APA”) sets a 60-day limitation for filing a petition for contested case hearing, unless another statute sets a different limit.¹ CAMA sets a shorter limit of 20 days for filing petitions for contested case hearings after notice that the CRC

¹ N.C. Gen. Stat. § 150B-23(f).

has made the determination described in section I(A) above. This petition is filed within 20 days of November 7, 2025, and is therefore timely.

C. Petitioners Are Entitled to Bring this Contested Case as “Persons Aggrieved” Because They Are Substantially Prejudiced by Issuance of the Permit.

The APA provides that a contested case may be brought by a “person aggrieved,” N.C. Gen. Stat. § 150B-23(a), and it defines that term to mean “[a]ny person or group of persons of common interest directly or indirectly affected substantially in his, her, or its person, property, or employment by an administrative decision.”² The APA defines “person” to include “[a]ny natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society that may sue or be sued under a common name.”³ As alleged in further detail below, DCM has substantially prejudiced the rights and interests of Petitioners and their members within the meaning and intent of CAMA by issuing the Permit to NCDOT and NCTA for the Bridge Alternative, which will in turn cause the harms described herein. Accordingly, Petitioners are “persons aggrieved” within the meaning of the APA and are entitled to bring this Petition for Contested Case Hearing challenging the Permit.⁴

Each Petitioner is an organization of persons of common interest whose members will be directly and substantially adversely affected by DCM’s decision to grant the Permit, and specifically who have one or more members with a “geographical nexus” to the site in Currituck

² N.C. Gen. Stat. § 150B-2(6).

³ N.C. Gen. Stat. § 150B-2(5a).

⁴ See *Empire Power Co. v. Dep’t of Env’t, Health, & Nat. Res.*, 337 N.C. 569, 584 (1994) (“[W]e . . . reaffirm that the NCAPA confers upon any ‘person aggrieved’ the right to commence an administrative hearing to resolve a dispute with the agency involving the person’s rights, duties, or privileges.”). See also, e.g., *id.* at 588 (explaining the term “person aggrieved” has been interpreted “expansive[ly]” and “depends on the circumstances involved”); *In re Halifax Paper Co.*, 259 N.C. 589, 595 (1963) (“person aggrieved” “may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights”).

Sound where the Bridge Alternative would be constructed “such that those members would suffer . . . from any environmental consequences” of its construction and operation.⁵ Petitioners and their members each have significant direct interests in the preservation of Currituck Sound and the nearby natural areas, the wildlife that use those areas for habitat, the other natural resources that will be harmed by the Bridge Alternative, and the character of the neighboring communities that depend on and value those natural resources. Petitioners’ interests will be injured by the construction of the Bridge Alternative pursuant to the Permit, and their rights are thus substantially prejudiced by DCM’s actions. Their interests fall within the zone of interests protected by CAMA such that Petitioners are in the class of persons for whom the APA confers a right to an administrative decision.⁶

No MCB is a Currituck County-based membership organization group 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,

⁵ See *Orange Cnty. v. N.C. Dep’t of Transp.*, 46 N.C. App. 350, 360-62 (1980).

⁶ See *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 602 (2021); see also *Empire Power*, 337 N.C. at 589 (finding petitioner affected by pollution “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” to qualify as a person aggrieved); *Save Our Rivers, Inc. v. Town of Highlands*, 113 N.C. App. 716, 723 (1994) (recognizing that a non-profit corporation that used a river for “recreational, religious, and other purposes” was a “person aggrieved”), *rev’d on other grounds*, 341 N.C. 635 (1995).

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.

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 in 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 a long 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 the construction and operation of the Bridge Alternative and the induced growth and environmental destruction that it will cause.

The Permit for the construction of the Bridge Alternative would induce dramatic increases in traffic and development on both the mainland and Outer Banks, strain already-overburdened coastal wastewater and drinking water infrastructure, permanently harm estuarine waters, wetlands, and other surface waters. These adverse effects caused by the Permit will, in turn, disrupt communities on both the mainland in the vicinity of the towns of Barco, Coinjock, and Aydlett and on the Outer Banks in the vicinity of Corolla, where many of the members of the Petitioners live, work, and recreate. The continued degradation of the area's natural resources will preclude the Petitioners and their members and staff from continuing to enjoy the character of Currituck Sound and other areas along the Outer Banks and on the mainland that make the region so special.

Petitioners, through their counsel, submitted extensive written comments opposing issuance of the Permit, and members of both Petitioners spoke in opposition to the Permit at public meetings held by DCM. Nearly 700 members and supporters of No-MCB have signed a petition opposing the Bridge Alternative, and members of each Petitioner wrote separate comments in opposition. Petitioners also submitted comments opposing the Bridge Alternative in 2024, and No MCB submitted comments opposing the Bridge Alternative in 2016 and 2019.

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 the Bridge Alternative approved by the CAMA Permit is

constructed, it will harm their scientific, aesthetic, recreational, economic, professional, and spiritual interests and their ability to enjoy Currituck Sound, its abundant wildlife, and their communities. Other practicable Project alternatives would cause far less environmental damage, induce less growth, and result in less harm to their interests. A favorable decision would redress Petitioners' and their members' injuries. Accordingly, Petitioners are directly affected parties and persons aggrieved within the meaning of N.C. Gen. Stat. § 150B-2(6) and other applicable law, and they are therefore entitled to commence this contested case hearing to challenge DCM's decision to issue the Permit.

II. DCM's Decision to Issue the Permit Is Contrary to N.C. Gen. Stat. § 113A-120(a)(9).

Under CAMA, DCM must deny a permit application if, "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."⁷ DCM should have carefully considered whether such an alternative exists and made a finding to that effect, but it did not. And indeed, at least one practicable alternative would accomplish the overall Project purposes with less adverse impact on the public resources than the Bridge Alternative, rendering DCM's decision to issue the Permit erroneous, arbitrary and capricious, and flawed by improper procedure and errors of law. Accordingly, the CRC granted Petitioners' request for a contested case hearing on the issue whether DCM's issuance of the Permit was improper when such a practicable alternative exists.

As discussed in Petitioners' comments on NCDOT and NCTA's application for the Permit and as evidenced by the Project's environmental review documents and other evidence

⁷ N.C. Gen. Stat. § 113A-120(a)(9).

that may be revealed during discovery, the “Existing Roads” or “ER2” alternative is a practicable alternative that would accomplish the overall project purposes and cause less adverse impact to public resources—both environmental and fiscal—than the Bridge Alternative. ER2 would not include construction of a bridge through Currituck Sound but would instead simply widen existing roads along both sides of the Sound and add helpful interchanges and intersection improvements to facilitate traffic flow.⁸ Accordingly, DCM’s decision to issue the Permit for the Bridge Alternative was improper.

First, ER2 would accomplish the overall project Purposes. Indeed, the Final Environmental Impact Statement (“FEIS”) published in 2012 by NCTA and NCDOT⁹ pursuant to the National Environmental Policy Act (“NEPA”) concluded, “All of the detailed study alternatives would meet the project purpose and need.”¹⁰ Thus, according to NCTA and NCDOT, ER2 would satisfy the threefold Project purpose to “substantially improve traffic flow on the project area’s thoroughfares,” “reduce travel time for persons traveling between the Currituck County mainland and the Currituck County Outer Banks,” and “reduce . . . hurricane evacuation times from the Outer Banks for residents and visitors.”¹¹ In fact (though not necessary for this claim), ER2 would be *more* effective at meeting the Project’s purpose of improving hurricane evacuation than the Bridge Alternative, according to NCTA and NCDOT’s reevaluation of the

⁸ USDOT & NCDOT, *Administrative Action Final Environmental Impact Statement* 2-1, 2-5, Fig. 2-1 (Jan. 2012) (hereinafter “FEIS”).

⁹ Together with their federal counterparts, the U.S. Department of Transportation and the Federal Highway Administration.

¹⁰ FEIS at 2-44.

¹¹ FEIS 1-3, 2-5. Though the FEIS notes that neither ER2 nor a bridge alternative completely eliminate traffic congestion on summer weekdays, it explains that “[t]raffic improvements are seldom designed to eliminate completely the worst hours of congestion” and thus, none of “the detailed study alternatives, including the Preferred [Bridge Alternative] were . . . designed to handle all summer weekend congestion in 2035, which will occur only 26 days a year on the 13 summer weekends.” FEIS at 2-17.

FEIS in 2024.¹² While the hurricane clearance modeling in the 2012 FEIS was based on an 18-hour goal set by the North Carolina General Assembly, the agencies reevaluated the FEIS in 2019 and considered a 30-hour goal (36 hours minus 6 hours of pre-hazard time) as well as the 18-hour goal.¹³ The FEIS projected that in 2035, both the Bridge Alternative 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, while the reevaluation of the FEIS projected that in 2040, ER2 would outperform the Bridge Alternative in achieving hurricane clearance times.¹⁴ A draft version of the reevaluation study report even candidly stated that “ER2 would result in lower clearance time than” the preferred Bridge Alternative.¹⁵ The table below summarizes the 2024 findings regarding hurricane clearance times in hours for each alternative (ER2, Bridge Alternative, and an alternative for no transportation improvements in the area).

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 hours	37.2	40.3	43.2
ER2	30.7	32.3	41.1	43.2
Bridge Alternative	32.3	32.3	43.2	43.2

Table 1: Comparison of Hurricane Clearance Estimates and Reevaluation Hurricane Clearance Estimates¹⁶

¹² See generally NCDOT, *Mid-Currituck Bridge Study Reevaluation of Final Environmental Impact Statement Study Report* (Mar. 6, 2019), <https://perma.cc/6V3J-QFMQ> (hereinafter “FEIS Reevaluation”).

¹³ *Id.* at 3-8.

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

¹⁵ NCDOT, *Draft Mid-Currituck Bridge Study Reevaluation of Final Environmental Impact Statement Study Report* at 3-40 (Jan. 29, 2018).

¹⁶ *Id.*

Second, ER2 is practicable. At the time the FEIS was drafted, NCDOT, NCTA, and their federal counterparts selected certain alternatives to study in detail, including ER2 and the Bridge Alternative, based in part on their practicability from both an engineering and financial standpoint.¹⁷ NCTA and NCDOT have never claimed that ER2 was not practicable from an engineering standpoint. However, the agencies have 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 it could not be constructed with the funding models in place under state law at the time.¹⁸ The FEIS insinuated that ER2 was less financially feasible than the Bridge Alternative, with statements such as, “If ER2 were selected for implementation, the project would have to be built by NCDOT with traditional highway financing methods rather than by” NCTA with sources such as toll revenue bonds, TIFIA loans, or private equity, and “There is no state funding for construction of road improvements in the project area listed in the 2009 to 2015 State Transportation Improvement Program (STIP).”¹⁹

This reasoning was a red herring, however, as NCDOT and NCTA to this day still have no plan for financing the Bridge Alternative. NCTA and NCDOT published a report in July 2020 (the “LEDPA Report”) that states that “the current plan of finance for the Selected [Bridge] Alternative includes a combination of toll revenue bonds, a TIFIA loan, GARVEE bonds, and

¹⁷ See FEIS at xii, 2-52 to 2-54 (explaining that other alternatives were rejected for inability to meet project purposes, financial infeasibility, impacts to resources and communities, and/or lesser physical practicability).

¹⁸ See, e.g., FEIS Reevaluation at 1-17 (concluding that for the 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)).

¹⁹ FEIS at 2-49.

State matching funds.”²⁰ But this “plan” was illusory. To date, the Bridge has failed to qualify for a TIFIA loan, INFRA grant, MEGA grant, GARVEE bonds, or any other federal financing or secure a private equity partner. State matching funds for the Project are currently limited to \$173 million in the STIP. Yet the overall Project cost for the Bridge Alternative has now ballooned to approximately \$1 billion,²¹ and will continue to climb over time as the project timeline is pushed further out pending receipt of funding.²² Recent statements from NCDOT make clear that “a final decision on financing has not been determined.”²³ And upon information and belief, discovery including deposition testimony will demonstrate that there is no financial path forward for the Bridge alternative.

In sum, the state has no ability to pay for the Bridge Alternative. By contrast, ER2 would be much easier to fund. First, the project is much less costly overall. But more importantly, NCDOT could break out some of the different elements of the ER2 alternative and fund them individually over a number of years through regular STIP funding. NCDOT could start with those aspects of ER2 that are expected to provide the most traffic relief and thus begin to provide actual relief for traffic congestion incrementally. By contrast, a lengthy bridge cannot be divided into components and built in increments, and construction of the Bridge Alternative can only begin when the entire \$1 billion has been secured.

²⁰ NCDOT, *Identification of the Least Environmentally Damaging Practicable Alternative* at 38 (July 2020), <https://perma.cc/8WG9-8L5G> (the “LEDPA Report”).

²¹ Kipp Tabb, *Construction of Mid Currituck Bridge Could Start in 2026*, The Outer Banks Voice (July 25, 2024), <https://perma.cc/ASX4-GGFM>.

²² See generally NCDOT, *MCB Operations and Maintenance and Repair and Replacement Costs* (Apr. 17, 2024) (showing costs over time); 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.”).

²³ 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).

Had DCM adequately considered the application for the Permit and Petitioners' comments on that application, it would have understood that the reasons NCDOT and NCTA gave for selecting and permitting the Bridge Alternative over ER2 cannot withstand scrutiny. Between the two alternatives, ER2 is much *more* financially practicable than the Bridge Alternative because it is significantly less expensive, has a smaller funding gap than the Bridge Alternative,²⁴ and can be built in stages as funds become available, making it now the only practicable alternative from a funding standpoint, while the Bridge Alternative cannot be built in stages and depends on a windfall that is unlikely to ever arise.

Third, ER2 would cause far less adverse impacts on all categories of public resources than the Bridge Alternative. In terms of public financial resources, ER2 would cause far less adverse impact by costing far less than the Bridge Alternative, as discussed above, leaving more transportation funds for projects that are desperately needed elsewhere.

It would also cause significantly less adverse environmental impacts than the Bridge Alternative. 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.²⁵ It also projects additional impacts to submerged aquatic vegetation ("SAV") 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,²⁶ while NCDOT and NCTA's July 2020 LEDPA Report states the Bridge

²⁴ Currently there is a shortfall of several hundreds of millions of dollars necessary to pay for the much more expensive Bridge Alternative. 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.

²⁵ CAMA Application at 6, <https://perma.cc/7ZMZ-SXX>.

²⁶ *Id.* at 9.

Alternative's shading could impact as many as 22.45 acres of potential SAV.²⁷ That same report misstates the impacts of the alternatives by ignoring revisions to their designs. For ER2; the revised design would have only 8.5 acres of wetlands impacts (down from 12.6 in the original design) and would have no impacts at all to SAV, while the revised version of the Bridge Alternative increased the acreage of potentially shaded SAV from 4.8 to 5.1 acres.²⁸ Furthermore, as of 2022 and 2023, SAV was discovered at depths as great as 7.3 feet, whereas the Reevaluation of the FEIS had assumed that SAV would not grow in areas deeper than six feet.²⁹ Thus, even the 2019 FEIS figures for the acreage for the revised designs—which did not account for these deeper areas—are likely underestimates. Finally, also missing from the calculation of adverse environmental impacts of the Bridge Alternative is an additional 32.9 acres of wetlands that would be cleared for the bridge over Maple Swamp. NCDOT and NCTA's 4.2-acre wetlands impacts figure in its 2020 report³⁰ counts only wetlands that would need to be *filled*, but impacts from clearing activities can also degrade wetland ecosystems.³¹ The table below summarizes these figures, revealing that the Bridge Alternative would cause significantly greater adverse environmental impacts relative to ER2:

²⁷ LEDPA Report, <https://perma.cc/8WG9-8L5G>.

²⁸ LEDPA Report at 26.

²⁹ FEIS Reevaluation at 4-33, 4-18, <https://perma.cc/6V3J-QFMQ>.

³⁰ LEDPA Report at 31, <https://perma.cc/8WG9-8L5G>.

³¹ See, e.g., Econ. Rsch. Serv., *Wetlands and Agriculture: Private Interests and Public Benefits*, USDA, <https://perma.cc/5JVW-KD5Z>; Md. Dep't of Env't, *Wetland Disturbance and Impact*, <https://perma.cc/ZL9W-LMJX>.

	ER2	Bridge Alternative
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 Plus additional acreage for submerged aquatic vegetation in water depths > 6 feet

Table 2: Comparison of Wetland and SAV Impacts.

The Bridge Alternative causes more severe environmental impacts than ER2 in several other ways as well. ER2 would create just 33.7 acres of increased impervious surface compared to the Bridge Alternative’s 64.3 acres. ER2 would also better serve aquatic wildlife habitat: ER2 would cause 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.”³² 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 essential fish habitat impacted by ER2.³³

Moreover, many of the “temporary” impacts that will be caused by construction of the Bridge Alternative 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.

In sum, the Bridge will have a greater adverse impact on public resources (both natural and financial) and will be less effective at meeting the Project’s purposes than ER2. DCM should

³² FEIS Reevaluation at 4-18, H-18, <https://perma.cc/6V3J-QFMO>

³³ *Id.* at 4-19.

have identified ER2 as a practicable alternative that would accomplish the overall project purposes with less adverse impact on public resources and, accordingly, declined to issue a permit for the Bridge Alternative. Its failure to do so violates CAMA. DCM ignored the central requirement of N.C. Gen. Stat. § 113A-120(a)(9): it never actually determined which alternative—ER2 or the Bridge Alternative—would cause less adverse impacts to environmental resources and other public resources, or even directly acknowledged the requirement at all. DCM’s decision to grant the Permit despite failing to meaningfully compare the alternatives’ impacts was classically arbitrary and capricious.

More generally, DCM was obliged to exercise the utmost care in deciding whether to grant the Permit under the North Carolina Environmental Policy Act (“NCEPA”) and CAMA. NCEPA declares that 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.”³⁴ And CAMA directs “that the development or preservation of the land and water resources of the coastal area proceed[] in a manner consistent with . . . ecological considerations” and “the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation.”³⁵ These statutes create additional responsibilities for DCM to protect the interests of the public by declining to issue a permit for one project alternative when there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on public resources.

³⁴ N.C. Gen. Stat. § 113A-3.

³⁵ N.C. Gen. Stat. § 113A-102(b)(2), (3).

III. DCM's Decision to Issue the Permit Is Also Contrary to N.C. Gen. Stat. § 113A-120(a)(2).

Under CAMA, “estuarine waters” consist of “the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters.”³⁶ CAMA requires that DCM deny a permit application if, in “the case of estuarine waters, . . . a permit for the development would be denied pursuant to G.S. 113-229(e).”³⁷ Section 113-229(e) further provides that “an application for a dredge or fill permit” should be denied “upon finding . . . that there will be significant adverse effect” on “the use of the water by the public;” “the value and enjoyment of the property of any riparian owners;” “public health, safety, and welfare;” “the conservation of public and private water supplies;” or “wildlife or fresh water, estuarine or marine fisheries.” The Bridge Alternative would pass through the estuarine waters of Currituck Sound and Maple Swamp and cause adverse environmental impacts to shorelines, wetlands, fisheries, wildlife habitat, and other coastal estuarine resources, whereas ER2 would not.

The CRC concluded that the Petitioners had made a non-frivolous request for a contested case hearing on whether DCM's issuance of the Permit was improper in light of these requirements.

Of particular concern, the Bridge Alternative is expected to cause significant adverse impacts to SAV and other essential fish habitat within Currituck Sound, whereas ER2 would cause no such harm to SAV at all. *See* Table 2 above. The CAMA use standards for the Estuarine and Ocean Systems Area of Environmental Concern (which, again, includes estuarine waters, sounds, shorelines, and wetlands) state that development “shall be sited and designed to avoid

³⁶ N.C. Gen. Stat. § 113A-113(b)2); *see also* 15A N.C. Admin. Code 07H .0201.

³⁷ N.C. Gen. Stat. § 113A-120(a)(2).

significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, . . . submerged aquatic vegetation, . . . and [fish] spawning and nursery areas.”³⁸

Currituck Sound contains marshes with extensive SAV, which provides not only vital habitat for fish and other wildlife, but also important ecosystem services: filtering stormwater, improving water quality, sequestering carbon, stabilizing shorelines, and slowing flooding and storm impacts.³⁹ SAV is an especially important habitat for juvenile and adult fish, and Currituck Sound’s wealth of SAV has made it a boon for many species popular with commercial and recreational fishermen, such as the Atlantic croaker, striped bass, southern flounder, red drum, spotted sea trout, and blue crab.⁴⁰ A single acre of seagrass, one type of SAV, “can support upwards of 40,000 fish and 50 million small invertebrates,” earning these areas the title of “biodiversity hotspots.”⁴¹

Protecting these habitats is not only ecologically important but also economically critical. 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.⁴² The Albemarle-Pamlico Estuarine System, of which Currituck Sound is an important part, is the second largest estuary system in the United States, and the habitat it provides is vitally important to North Carolina’s commercial and recreational fishing industries.⁴³ Many species popular with commercial and recreational fishers, such as red drum, spotted sea trout, and flounder, rely on the SAV in the Sound.⁴⁴

³⁸ 15A N.C. Admin. Code 07H .0208(a)(2)(A).

³⁹ Currituck Marsh Conservation Plan at 4, 10, <https://perma.cc/45P6-NMX4>.

⁴⁰ *Id.*

⁴¹ Pamela L. Reynolds, *Seagrass and Seagrass Beds*, *Smithsonian* (Apr. 2018), <https://perma.cc/Z67M-48LY>.

⁴² Albemarle-Pamlico Nat’l Estuary P’ship, *Our Estuary*, <https://perma.cc/KP44-5Y5K>.

⁴³ *Id.*

⁴⁴ See Eric Edwards et al., *Submerged Aquatic Vegetation in the Albemarle-Pamlico Estuary*, N.C. State Extension Publ’ns (July 17, 2023), <https://perma.cc/J8UR-4Q4Q>.

Ducks and other waterfowl also rely on SAV, which is especially important to recreational duck hunters in Currituck County, where duck hunting is a major driver of recreational tourism and may be harmed by SAV losses.⁴⁵ The Sound is “among the most important places for birds in the world, and could serve as a stronghold for species as climate changes,” because it supports migratory waterfowl.⁴⁶ Like the Sound’s aquatic species, waterfowl are both ecologically critical and commercially important, especially to Currituck County’s robust ecotourism and duck hunting industries.⁴⁷ However, waterfowl and other marsh birds depend on SAV, and when SAV populations decrease, waterfowl populations do, too.⁴⁸ Some federally listed species, such as the eastern black rail and red-cockaded woodpecker, also inhabit the area and rely on its rich natural resources.⁴⁹

But this habitat is fragile, and development, dredging, and construction in Currituck Sound associated with the Bridge Alternative will stir up sediment pollution, blocking light and threatening SAV, as they have in the past.⁵⁰ As Project documents acknowledge, with the Bridge Alternative, there is “potential for temporary and permanent effects on water quality and biotic communities in Currituck Sound related to bridge and roadway stormwater runoff, localized turbidity and sedimentation during construction, altered light levels, and the introduction of piles

⁴⁵ See Sara A. Sutherland et al., *Economic Valuation of Submerged Aquatic Vegetation in the Albemarle-Pamlico Estuary* at 40–41 (June 2021), <https://perma.cc/Z7V7-PP3T>.

⁴⁶ Currituck Marsh Conservation Plan at 11, <https://perma.cc/45P6-NMX4>.

⁴⁷ *Id.*

⁴⁸ *Id.* (citing Natasha Biarrieta et al., *SAVE Currituck Sound: Submerged Aquatic Vegetation Evaluation in Currituck Sound, NC*, NCDOT Project 2018-05 (June 2020), <https://perma.cc/45P6-NMX4>).

⁴⁹ *Id.*

⁵⁰ Eric Edwards et al., *Submerged Aquatic Vegetation in the Albemarle-Pamlico Estuary*, N.C. State Extension Publ’ns (July 17, 2023), <https://perma.cc/J8UR-4Q4Q>.

as a hard substrate.”⁵¹ The threat to SAV and thus to aquatic species is not solely from poor water quality, however; “[c]onversion of wetlands by draining, filling, and water control projects are the major sources of wetland loss in eastern North Carolina . . . dredging for navigation channels and marinas . . . threatens remaining shell bottom and submerged aquatic vegetation habitat and impedes establishment of those habitats.”⁵² As one Project document explained, “cumulative effects to fish and shellfish habitats and resources” could be caused by the degradation of water quality from “planned and expected development” induced by the construction of the Bridge Alternative.⁵³

Shading from the Bridge Alternative will be a major threat to SAV in the Sound. SAV “need calm, well-lit environments to thrive.”⁵⁴ SAV in North Carolina’s intracoastal waters are vulnerable to shade from structures like bridges, dredging and filling, development, increased runoff of sediment and nutrients, and other threats.⁵⁵ Construction of the Bridge Alternative will accordingly reduce SAV, with the FEIS reevaluation estimating that at least twenty acres of essential fish habitat will be directly adversely impacted by shading from the Bridge.⁵⁶

Indirect effects also pose a significant threat to SAV, as “piers, docking facilities, and open-water marinas may shade areas of SAV” and “[i]mproper boat and marine vessel use may

⁵¹ 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* at 2, U.S. Geo. Survey (Apr. 17, 2020) (hereinafter “USGS Water Quality Report”), <https://perma.cc/SU5R-G7BX>.

⁵² NCDEQ, *North Carolina Coastal Habitat Protection Plan* 18 (2016), <https://perma.cc/6XUU-38T7>.

⁵³ *Mid-Currituck Bridge Cumulative Effects Report for Coastal Resources*, at 27 (June 2021), attached as Attachment 21 to CAMA Application (hereinafter, “Coastal Resources Cumulative Effects Report”), <https://perma.cc/V4KX-LRBZ>.

⁵⁴ J. Turner et al., *SAVing the Gulf: Education, Restoration, Conservation* 5, Mobile Bay Nat’l Estuary Program (2005), <https://perma.cc/2RW6-5MTY>.

⁵⁵ See NCDEQ, *Submerged Aquatic Vegetation* (last visited July 3, 2024), <https://perma.cc/SA2U-VEUM>.

⁵⁶ The FEIS Reevaluation estimated up to 27.8 acres of essential fish habitat would be shaded by the Bridge, with an additional 0.1 acre affected by pilings or possibly 20 acres with the narrower bridge deck. FEIS Reevaluation at 4-19, 4-26, <https://perma.cc/6V3J-QFMQ4-26>.

scar SAV beds.”⁵⁷ The Bridge Alternative is expected to induce the development of such waterfront facilities along the edges of Currituck Sound and further harm SAV. Specifically, the Bridge Alternative is expected to induce development on both the mainland and Outer Banks sides of Currituck Sound in and around the estuarine waters as described in more detail in Petitioners’ comments on the Permit application,⁵⁸ which will in turn cause secondary or indirect harms to those estuarine waters, as well as to the value and enjoyment of existing riparian owners who own houses and other property on the Sound. The additional residential units will also unduly tax public and private water supplies with increased demand and runoff and reduced percolation. The induced growth within and near the estuarine waters that border Currituck Sound on both the mainland and Outer Banks sides of the sound will disrupt the use of those waters by the public for fishing and other recreation.

The Bridge Alternative is expected to cause more induced development and, therefore, more of these harms than ER2. The FEIS and subsequent reevaluation acknowledged that approximately 2,476 additional residential units would be constructed on the Outer Banks if the Bridge Alternative is constructed, as compared with a No-Build scenario; in contrast, ER2 is expected to induce the construction of only 1,545 new residential units.⁵⁹ Much of this increased development is expected to occur on or near the oceanfront and sound shorelines, making those areas less accessible to the public, increasing impervious cover and associated runoff, degrading water quality in the nearby estuarine waters, and stressing water and wastewater systems, among

⁵⁷ Coastal Resources Cumulative Effects Report at 32, 55, <https://perma.cc/V4KX-LRBZ>.

⁵⁸ See, e.g., *id.* at 13, 15.

⁵⁹ FEIS Reevaluation at 4-43, <https://perma.cc/6V3J-QFMQ>. The FEIS phrases this in terms of the “reduction” attributable to the No-Build Alternative, when in reality, the development under the Bridge Alternative scenario represents an *increase* above the No-Build Alternative baseline. *Id.* NCDOT’s 2024 Cumulative Impact Report for the project updates estimates but focuses on comparing the Bridge Alternative to a No-Build alternative; it states that the “scale of the revised estimates is comparable.” Cumulative Impact Report for Water Quality at 38-47, 109, <https://perma.cc/728F-8SND>.

other things. For all of these reasons, DCM should have denied the Permit pursuant to N.C. Gen. Stat. § 113A-120(a)(2).

The issuance of the Permit also violates several of the CAMA use standards for estuarine waters found in the N.C. Administrative Code. Among other things, CAMA rules require DCM to prioritize “the conservation of estuarine waters and their vital components”⁶⁰ in order “to safeguard and perpetuate their biological, social, aesthetic, and economic values,”⁶¹ and “to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation . . . and spawning and nursery areas.”⁶² The rules also require DCM to decline to permit development that will “increase siltation” or “jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.”⁶³ The rules also require DCM to decline to permit uses “in coastal wetlands, estuarine waters, and public trust areas” “that are not water-dependent” and could be built elsewhere.⁶⁴ In this case, the Permit allows construction of an unnecessary bridge for the Project, whose purposes could be satisfied instead with construction of ER2’s improvements to existing roads and intersections entirely outside of estuarine waters. By permitting the Bridge Alternative instead, DCM has failed to prioritize conservation of estuarine waters; failed to safeguard the biological, social, aesthetic, and economic values of Currituck Sound and its surroundings; failed to prevent adverse impacts to SAV and spawning and nursery areas; allowed construction of a structure that may increase siltation; and jeopardized the public’s use of the Sound for navigation and commercial and recreational fishing.

⁶⁰ 15A N.C. Admin. Code 07H .0206(d).

⁶¹ 15A N.C. Admin. Code 07H .0206(c).

⁶² 15A N.C. Admin. Code 07H .0208(a)(2)(A).

⁶³ 15A N.C. Admin. Code 07H .0208(a)(2)(D), (G).

⁶⁴ 15A N.C. Admin. Code 07H .0208(a)(1).

Accordingly, DCM should have denied the Permit because the Bridge Alternative will cause harm to: SAV; estuarine waters; the ability of the public to use those waters; the value and enjoyment of riparian property owned by existing landowners; public health and welfare; public and private water supplies; wildlife; and fresh water, estuarine, or marine fisheries.

IV. DCM’s Decision to Issue the Permit Is Also Contrary to Additional Subsections of N.C. Gen. Stat. § 113A-120.

The Chair of the CRC, exercising authority delegated by the CRC, “determine[d] that a contested case is appropriate” on Petitioners’ challenge to DCM’s “decision to . . . grant a . . . major development permit.”⁶⁵ She then purported to limit the issues in this Petition for Contested Case Hearing to the two issues raised in sections II and III above, and deny the request as to several additional issues, purporting to prevent Petitioners from raising alternative grounds for setting aside the Permit in their contested case.

The governing statute, CAMA, however, does not authorize the CRC Chair to consider the merits of individual legal grounds; it only authorizes the CRC to determine whether a contested case would be frivolous or not. Rather, CAMA and the APA make clear that the authority to consider the merits of any and all individual specific legal issues is a matter for the Office of Administrative Hearings and the Administrative Law Judge assigned to preside over the contested case.

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

⁶⁵ N.C. Gen. Stat. § 113A-121.1(a).

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.

...

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.⁶⁶

Thus, when a Petitioner that meets three criteria—i.e., it (1) is directly affected by a decision to issue a CAMA permit, (2) has alleged that the decision is contrary to a statute or rule, and (3) has alleged facts or made legal arguments that show that the request for hearing is not frivolous—the CRC must simply grant the request to initiate a contested case hearing and cannot pick and choose which issues the Petitioner may raise before the Administrative Law Judge and later before the courts on any appeal.

As the CRC, acting through the chair, has determined that Plaintiffs meet all three requirements, including that a contested case would not be frivolous, Petitioners are

⁶⁶ Order Denying Motions for Partial Dismissal at 4-5, *Cowell v. DCM*, NC Office of Admin. Hearings, 06 HER 1185 (Jan. 30, 2007).

entitled to challenge the Permit on any and all grounds that provide a basis for judgment in their favor.

As ALJ Mann further 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.”⁶⁷ He explained,

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, . . . 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 notice motion⁶⁸

For these reasons, the CRC’s attempts in the present case to cherry-pick which of the Petitioners’ arguments the Administrative Law Judge may consider, and which he may not, must fail. Once the CRC determined that each of the three criteria were met and that a contested case *hearing* on the propriety of the Permit was appropriate on any grounds, the logical effect under CAMA and the APA is that the Petitioners may challenge the Permit as a whole; they may present—and the Administrative Law Judge may consider—any and all grounds for consideration by this body. It is therefore for this court to assess the merits of Petitioners’ additional arguments under other subsections of 113A-120.

⁶⁷ *Id.* at 7.

⁶⁸ *Id.* at 7-8 (emphasis added).

A. DCM’s Decision to Issue the Permit Is Contrary to N.C. Gen. Stat. § 113A-120(a)(10).

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.”⁶⁹ 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.”⁷⁰

The CRC’s Decision stated that Petitioners’ claim regarding cumulative impacts had met the requirements to allege that the Permit was contrary to a statute and to show that they are directly affected but had not met the requirement to allege facts and legal arguments to demonstrate that the claim would not be frivolous. The CRC’s attempt to dispose of this claim as frivolous underscores the impropriety of the CRC slicing and dicing a third-party hearing request to grant the request as to some arguments but not others as doing so effectively amounts to one party in a contested case substituting its own judgment for that of the judge and granting a dispositive motion in its own favor.

In casting Petitioners’ § 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 “CAMA permits being requested for the construction of more bridges in the

⁶⁹ N.C. Gen. Stat. § 113A-120(a)(10).

⁷⁰ *Id.*

area and not just the potential increase of development activity in the area surrounding the Site.” The law, however, does not limit the definition of “cumulative impacts” so restrictively, that is, to the effects of identical projects (here, other long bridges transecting the Sound), and DCM’s narrow reading of this provision is neither supported by case law nor owed any deference.⁷¹ In fact, CAMA states that cumulative effects “are impacts attributable to the collective effects of a number of projects and *include*,” but are presumably are not limited to, “the effects of additional projects similar to the requested permit in areas available for development in the vicinity.”⁷² The impacts of the Bridge Alternative may, and should, be considered collectively with the effects of other development, including future induced development, in the vicinity of the Project.

Further, Petitioners’ claim under § 113A-120(a)(10) is far from a “meritless legal theory.”⁷³ Ample evidence in the Project documents, including the Cumulative Impacts Report and FEIS, supports the conclusion that the Bridge Alternative would contribute to cumulative adverse environmental effects with other existing structures and additional development that will be induced in the future in the vicinity of the Project that would be inconsistent with the guidelines set forth in §113A-120.

As explained in Petitioners’ comments on the Permit application, above in section III, and in various Project studies, the Bridge Alternative is expected significantly increase the amount of visitors and residents to the area, which will in turn induce significantly more development including construction of houses, hotels, and commercial buildings in and near the

⁷¹ See *Savage v. N.C. Dep’t of Transp.*, 388 N.C. 196 (2025) (renouncing deference to agency interpretation of statutes).

⁷² N.C. Gen. Stat. § 113A-120(a)(10) (emphasis added).

⁷³ 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.” *Griffith v. N.C. Dep’t of Corr.*, 196 N.C. App. 173, 174 (2009); see also *Batson v. Coastal Res. Comm’n*, 282 N.C. App. 1, 9-10 (2022) (“Importantly, frivolous does not mean unlikely to succeed or meritless.”).

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 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, and further deplete the area's wetlands and other natural buffers. This induced development would be inconsistent with the written guidelines set forth in § 113A-120(a) (1) through (9) and harm Petitioners' interests.

B. DCM's Decision to Issue the Permit Is Contrary to N.C. Gen. Stat. § 113A-120(a)(5).

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;”⁷⁴ those areas 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.” 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

⁷⁴ N.C. Gen. Stat. § 113A-120(a)(5).

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.⁷⁵

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.

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.

The issuance of the Permit will also 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

⁷⁵ 15A N.C. Admin. Code 07H .0207.

Vegetation (SAV),” among other things.⁷⁶ DCM’s own comments on the environmental review documents for the Project express concern for its adverse effects on public trust rights.⁷⁷ The harm to public trust rights that would be caused by the Bridge Alternative harms Petitioners’ rights and should have led to denial of the Permit.

C. DCM’s Decision to Issue the Permit Is Contrary to N.C. Gen. Stat. § 113A-120(a)(6).

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.”⁷⁸

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.”⁷⁹

DCM’s own comments on the environmental review documents for the Project expressed concern that NCDOT and NCTA 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 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

⁷⁶ 15A N.C. Admin. Code 07H .0209(d)(4) (emphasis added).

⁷⁷ 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> (stating, DCM stated that the Bridge Alternative “will impact the Public Trust Area, Estuarine Waters Coastal Shoreline, and CAMA Wetlands Areas of Environmental Concern . . .”).

⁷⁸ N.C. Gen. Stat. § 113A-120(a)(6).

⁷⁹ N.C. Gen. Stat. § 113A-113(b)(6).

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.⁸⁰

NCDOT and NCTA 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 and NCTA did not adequately account for sea level rise; they did not use updated sea level rise projections, and they only projected 20 years into the future rather than the full lifespan of the Project; they 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 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.

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

⁸⁰ 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").

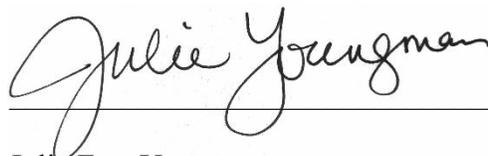
hazard areas and expose countless additional visitors and residents to the worsening effects of sea level rise and shoreline erosion—is precisely the kind of danger to life and property that this provision of CAMA was intended to prevent. DCM should not have granted a Permit in light of those unaddressed concerns and the resulting danger to life and property.

V. CONCLUSION

For the foregoing reasons, DCM erred when it issued the Permit to NCDOT and NCTA for the Bridge Alternative in violation of state law. Accordingly, Petitioners respectfully request that a contested case be commenced, an Administrative Law Judge be assigned, a hearing be held, and that the assigned Administrative Law Judge issue a decision ruling that DCM’s issuance of the Permit was contrary to law, in excess of DCM’s authority, erroneous, based on improper procedure, arbitrary and capricious, order that the Permit be vacated and remanded, and order the assessment of reasonable attorneys' fees and witnesses' fees against DCM, pursuant to N.C. Gen. Stat. §§ 113A-121.1, 150B-23, -33(b)(6), -33(b)(11), -34.

This the 26th day of November, 2025.

SOUTHERN ENVIRONMENTAL LAW CENTER



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CERTIFICATE OF SERVICE

The undersigned certifies that, on the dates shown below, the foregoing Petition for a Contested Case Hearing has been served on the State agencies named below by depositing a copy of the same with the United States Postal Service with sufficient postage affixed and by sending a courtesy copy by email, addressed as follows:

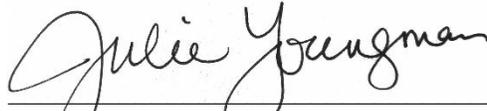
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EXHIBIT A

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.