

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

Memorandum

To: North Carolina Coastal Resource Commission
Fr: Mary L Lucasse, Esq.
Re: Legal Update for February Meeting (**CRC24-06**)
Date: April 11, 2024

I. WAKE COUNTY SUPERIOR COURT

CRC v. RRC, File No. 23CV031533. The CRC requested declaratory judgment against the RRC on issues relating to the RRC's decision not to approve thirty rules readopted and revised by the CRC during its periodic review of rules. The case is ongoing.

Cedar Point v. CRC, File No. 24CV000121-910. Plaintiff Cedar Point filed a complaint for declaratory judgment in Wake County Superior Court based on its allegation that the CRC abused the emergency rule process and by doing so caused it harm. In its Complaint, Cedar Point, a developer, alleged it received CAMA Major Permit No. 79-22 from DCM to begin developing a subdivision, including preparation of individual lots, roads, and stormwater and utility infrastructure on part of the Site located near Bogue Sound in Cedar Point, Carteret County, NC. The developer did not challenge the issuance of the CAMA Permit when it was issued in 2022. The Permit includes Condition No. 1 requiring the developer satisfy the NC Department of Natural and Cultural Resources' requirements, including performing a comprehensive archaeological survey after an initial archaeological survey found significant remains on site. I have been assigned to represent the CRC, The CRC's Motion to Dismiss Complaint was filed March 11, 2024 (see attached).

II. PETITIONS FOR JUDICIAL REVIEW (PJR)

Petitioners Clifton et. al. (22 CVS 1074) – Carteret Co. Superior Court. The Commission denied the request of several lot owners in the Beaufort Waterfront RV Park to appeal the permit issued to Collette Properties LLC & Beaufort Waterway RV Park to construct a dock on the waterfront by their lots. The Chair held that the property and contract claims raised were not within DCM, CRC, or OAH's jurisdiction. Petitioners filed a PJR in superior court. An order to stay was filed December 21, 2022 at Petitioner's request.

III. OFFICE OF ADMINISTRATIVE HEARINGS (OAH) - None

IV. VARIANCES: There were no variances at February meeting. The Commission will consider two variances at its April meeting.

V. REQUESTS BY THIRD PARTIES TO FILE CONTESTED CASES IN OAH:

Following is a review of the outstanding requests:

Lisa Collison (CMT24-01) a property owner in the Osprey Community in Duck, NC, submitted a request for a hearing to challenge the issuance of CAMA Major Permit 01-24 to Vesta North Carolina, PB LLC on January 5, 2024 authorizing placement of olivine sand within the shoreline including the Osprey community beach access in Dare County. Petitioner alleges the permit is contrary to 15A NCAC 07H. 0207. The decision denying the request was issued February 23, 2024. Petitioner did not appeal that decision and I will close my file.

Paul Mills (CMT24-02) submitted a request for a hearing to challenge the issuance of CAMA Permit 91628B authorizing construction of a pier and slip in Craven County, NC. On February 29, 2024, the Chair denied the request in part because Petitioner did not identify what about the Permit decision is contrary to CAMA or the Commission's rules. Petitioner did not file a PJR within the thirty days required by statute. I will close my file.

Mary Lowe (CMT24-04) requested a contested case hearing to challenge issuance of CAMA GP 92479C authorizing construction of a bulkhead based on the claim it violates 07H .1105(3) by allowing an extension 15 feet waterward from the current bulkhead. The FAD issued March 8, 2024 denied the request on the grounds the permitted development was not inconsistent with CAMA or the Commission's rules. To date, we have not received a PJR.

Roman Golovka and Olga Manziy (CMT24-05) requested a contested case hearing to challenge CAMA Minor Permit No. OB2023-111 issued on February 14, 2024 by Currituck County CAMA Local Permit Officer for the development of a new swimming pool and associated decking and fence. Petitioners allege the Permit was issued contrary to 15A NCAC 7H .0308(b)(1). The Chair granted the request on the grounds that Petitioner had raised factual issues to be resolved through a contested case hearing in OAH. Petitioners have until April 15, 2024 to file the petition for a contested case hearing.

Cox Family (CMT24-06) requested a contested case hearing to challenge Minor Permit No. 23-027 authorizing construction of bathhouse in the setback. Petitioner claims the Permit is contrary to N.C. Admin. Code 15A NCAC 07H .0209(d)(10)(C). The Chair will issue a FAD by April 12, 2024.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24-CV-000121-910

CEDAR POINT DEVELOPERS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 COASTAL RESOURCES COMMISSION,)
)
 Defendant.)

**MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT
Rule 12(b)(1) & (6)**

NOW COMES DEFENDANT, the North Carolina Coastal Resources Commission (“CRC”), by and through undersigned counsel, and moves this Court pursuant to Rule 12 of the North Carolina Rules of Civil Procedure, to dismiss Plaintiff’s entire Complaint for lack of subject matter jurisdiction pursuant to N.C.R. Civ. P. 12(b)(1) based on Plaintiff’s failure to exhaust administrative remedies and lack of standing and under N.C.R. Civ. P. 12(b)(6) on the grounds that Plaintiff’s Complaint fails to state a claim upon which relief can be granted. N.C. Gen. Stat. § 1A-1, Rule 12.

In support of this motion, Defendant shows the Court the following:

PROCEDURAL AND STATUTORY BACKGROUND

A. The Coastal Management Program.

1. The Coastal Zone Management Act of 1972 (“CZMA”) was enacted to address national coastal issues and establishes a voluntary partnership between the federal government and U.S. coastal and Great Lakes states, including North Carolina. 16 U.S.C. § 1451, *et. seq.* The federal statute requires each participating state to adopt its own coastal management program. The General Assembly met the federal CZMA requirement by adopting the Coastal Area Management Act of 1974 (“CAMA”). N.C. Gen. Stat. § 113A-100

et. seq. Through CAMA, the General Assembly established the CRC and set out the requirements and responsibilities for the CRC, the Division of Environmental Quality (“DEQ”), and the Division of Coastal Management (“DCM”), including delegating implementation of the program to the CRC and administration of the program to DCM within DEQ. *Id.*

2. The General Assembly included legislative findings in CAMA establishing “that among North Carolina’s most valuable resources are its coastal lands and waters . . . which should be preserved and enhanced.” N.C. Gen. Stat. § 113A-102(a). Accordingly, the General Assembly found “that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.” *Id.*

3. The General Assembly established the following legislative goals to guide the CRC’s work as it implemented the Coastal Area Management System:

- (1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
- (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
- (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
- (4) To establish policies, guidelines and standards for:
 - a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic

vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;

- b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
- c. Recreation and tourist facilities and parklands;
- d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
- e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
- f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
- g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

N.C. Gen. Stat. § 113A-102(b).

4. The CRC is statutorily required to adopt rules establishing guidelines that are “consistent with the goals of the coastal area management system.” N.C. Gen. Stat. § 113A-107(a). The CRC is additionally tasked with adopting rules related to permitting for development in the coastal area. N.C. Gen. Stat. § 113A-124(c). Together, CRC and the DCM are responsible for implementing and enforcing the permitting program set out in CAMA and the Dredge and Fill Law and the CRC’s associated rules. N.C. Gen. Stat. §§ 113A-117, 113A-124, 113-229(e), 113-230; 15A N.C. Admin. Code 7J .0201 *et. seq.*

5. The CRC’s rules implementing the coastal management program are set forth in Title 15A, Chapter 7 of the N.C. Administrative Code (hereinafter “N.C. Admin.

Code” or “Code”) and divided into various subchapters by subject matter. The sixteen CRC emergency rules at issue in this litigation are among those included in Subchapters 07H, 07I, 07J, and 07M.

6. Subchapter 07H provides “State Guidelines for Areas of Environment Concern” which describe types of areas, designates areas as AEC, explains the significance and management objectives for these areas, adopts general and specific “use standards” (otherwise known as requirements), and provides general permit guidelines that for certain types of development within designated AECs consistent with the legislative goal of preserving natural and cultural resources in N.C. Gen. Stat. § 113A-102(b)(4). In addition, the CRC’s objective of protecting fragile coastal natural and culture resource areas under 15A N.C. Admin. Code 07H .0500 *et. seq.* allows it to develop rules limiting “development [which] could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities.” 15A N.C. Admin. Code 07H .0501. The emergency rules that are the subject of this litigation include three rules in Subchapter 07H:

- a. 15A N.C. Admin. Code 07H .0507 Unique Coastal Geologic Formations (designating the Jockeys Ridge AEC);
- b. 15A N.C. Admin. Code 07H .0508 Use Standards (for the Jockey’s Ridge AEC); and
- c. 15A N.C. Admin. Code 07H .0509 Significant Coastal Archaeological Resources AEC (designating the Permuda Island AEC).

7. In Subchapter 07I, the CRC promulgated rules “establishing the means and procedures by which local governments may request and receive the funds necessary to implement” an approved program to issue and enforce CAMA minor permits (a delegated program with coastal local governments). The emergency rules that are the subject of this

litigation include one rule in Subchapter 07I:

- a. 15A N.C. Admin. Code 07I .0702 When the Local Permitting Agency Exceeds Local Authority.

8. In Subchapter 07J, the CRC promulgated rules establishing “procedures for processing and enforcement of major and minor development permits, variance requests, appeals from permit decisions, declaratory rules, and static line exceptions.” The emergency rules that are the subject of this litigation include five rules in Subchapter 07J:

- a. 15A N.C. Admin. Code 07J .0203 Standards for Work Plats;
- b. 15A N.C. Admin. Code 07J .0204 Application Processing;
- c. 15A N.C. Admin. Code 07J .0206 Public Notice Requirements (for permit applications);
- d. 15A N.C. Admin. Code 07J .0207 Review of Major Development and Dredge and Fill Applications; and
- e. 15A N.C. Admin. Code 07J .0208 Permit Conditions.

9. In Subchapter 07M, the CRC adopted policy guidelines to be “followed in public and private use of land and water areas within the coastal area” as required by N.C. Gen. Stat. § 113A-107. The general policy guidelines in 15A N.C. Admin. Code 07M also promote the State’s ability to comment on federal projects as allowed by the CZMA. The emergency rules that are the subject of this litigation include seven rules in Subchapter 07M:

- a. 15A N.C. Admin. Code 07M .0401 Coastal Energy Development – General Policies;
- b. 15A N.C. Admin. Code 07M .0402 Coastal Energy Development – Definitions;
- c. 15A N.C. Admin. Code 07M .0403 Coastal Energy Development – Specific Policy Statements;
- d. 15A N.C. Admin. Code 07M .0701 Mitigation – General Policies;

- e. 15A N.C. Admin. Code 07M .0703 Mitigation Projects;
- f. 15A N.C. Admin. Code 07M .0704 Mitigation – Specific Policies; and
- g. 15A N.C. Admin. Code 07M .1101 Beneficial Use of Dredged Materials From Navigation Channel Maintenance – General Policies.

B. The Periodic Review Process.

10. In the 2013 legislative session, the General Assembly enacted Session Law 2013-413 establishing the “Periodic Review and Expiration of Existing Rules.” The statute requires covered agencies, including the CRC, to review their existing rules every ten years. N.C. Gen. Stat. § 150B-21.3A,

11. As part of the decennial review requirement, agencies, including the CRC, must readopt all existing rules that the agency deems necessary. N.C. Gen. Stat. § 150B-21.3A(c)(2)g. The readopted rules can include technical and substantive changes. *Id.*

12. Once rules are readopted by an agency as part of its periodic review, the North Carolina Rules Review Commission (“RRC”) reviews the rules to determine whether each readopted rule meets the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

N.C. Gen. Stat. § 21.9(a).

13. The RRC’s review of agency-adopted rules may not include a substantive

review: “The [RRC] shall not consider questions related to the quality or efficacy of the rule.” *Id.*; *N.C. State Bd. of Ed. v. State*, 371 N.C. 149, 163, 814 S.E.2d 54, 63 (2018) (RRC does not review rules substantially.).

14. Based on whether a rule meets the standards of review in N.C. Gen. Stat. § 21.9(a), the RRC must approve, object, or extend the period of review. N.C. Gen. Stat. § 150B-21.10. When the RRC objects to a rule, the agency can either change the rule to satisfy the RRC’s objection or submit a written response “indicating that the agency has decided not to change the rule.” N.C. Gen. Stat. § 150B-21.12(a)(2). If the agency changes the rule, but the change does not satisfy the objection, the RRC must send the agency notice of a continued objection and the reason for the continued objection. *Id.*

15. Prior to October 3, 2023, a rule to which the RRC had objected remained under the RRC’s review until an agency (in this case that would be the CRC) decided not to satisfy the RRC’s objection and requested return of the rule. N.C. Gen. Stat. § 150B-21.12(d) (2022).

16. On October 3, 2023, Session Law 2023-134 became law and required that any pending proposed permanent rules be immediately returned to an agency if (1) the RRC objected to the rule, (2) the agency had not submitted changes to satisfy the RRC objection, and (3) more than sixty (60) days had passed since the RRC first notified the agency of the Commission’s objection to the rule. 2023 N.C. Sess. Laws. 2023-134, § 21.2.(m).

C. Periodic Review Process Relating To Rules At Issue.

17. Pursuant to N.C. Gen. Stat. § 150B-21.3A(d)(2), the RRC established a deadline of July 31, 2020 for the CRC to take final action to readopt the rules it had designated as “necessary with substantive public interest.” Rule Readoption Schedule, N.C. Office of Admin. Hearings, <https://www.oah.nc.gov/rules-division/periodic-review-and->

expiration-existing-rules/rule-readoption-schedule (last visited Nov. 2, 2023). The CRC timely readopted these rules. Therefore, the rules did not automatically expire and remained in the Code.

18. After the CRC submitted the readopted rules to the RRC, RRC counsel reviewed the rules and requested various technical changes. The CRC submitted revisions, sometimes multiple revisions, in an attempt to satisfy the requests for technical changes. During this process, some of the RRC's counsel's concerns were satisfied. Others were not resolved to the satisfaction of RRC's counsel. The RRC ultimately adopted the recommendation of its counsel and objected to thirty of the readopted rules.

19. During a specially called meeting on October 5, 2023, two days after Session Law 2023-134 became law, the RRC voted to return the thirty rules to the CRC. The same day, the Codifier of Rules removed the thirty existing rules from the Code. The rules removed from the Code correspond to the thirty rules which had been readopted and revised during the periodic review process and then returned to the CRC by the RRC.

D. Complaint For Declaratory Judgment Filed By the CRC Against the RRC.

20. As authorized by Session Law 2023-134, § 21.2.(m).1, the CRC filed its Verified Complaint for Declaratory Judgment against the RRC on November 3, 2023 in the Wake County Superior Court, File No. 23CV031533-910 to resolve the conflict between the two agencies over the RRC's objections and the return of the CRC's rules.

21. The CRC also moved for a temporary restraining order and preliminary injunction on the grounds that the RRC's objections to the returned rules were without legal foundation. The Honorable Judge Shirley Graham heard the CRC's request for a temporary restraining order on November 7, 2023. During the hearing, Counsel for defendant RRC

argued that a temporary restraining order was unnecessary because the CRC had the option of adopting temporary and emergency rules to mitigate any alleged harm to itself, its regulatory partners, or the regulated public under G.S. 150B-21.1A (emergency rules) or G.S. 150B-21.1 (temporary rules). The day after the hearing, RRC Counsel forwarded a letter again recommending the CRC consider emergency and temporary rulemaking. (November 8, 2023 letter to Mary Lucasse from RRC's Counsel attached as **Exhibit 1**) The court denied the request for a temporary restraining order. (January 4, 2024 Order attached as **Exhibit 2**)

E. CRC Begins Emergency and Temporary Rulemaking.

22. During its December 13, 2023 meeting the CRC reviewed the process for emergency and temporary rulemaking authorized by the Administrative Procedure Act. N.C. Gen. Stat. § 150B-1 *et seq.* The CRC considered the sixteen proposed emergency and temporary rules that its staff at DCM had determined were necessary for day-to-day operations including the subject of the rule, the RRC objection related to the rule, and any technical corrections proposed by DCM. (Memo CRC 23-25 to CRC attached as **Exhibit 3**) The CRC passed a motion finding that adherence to the notice and hearing requirements would be contrary to the public interest and that immediate adoption of sixteen emergency rules is required because there is a serious and unforeseen threat to public safety to the coastal management program because the rules have been removed from the Code. (Minutes from December 7, 2023 CRC Meeting attached as **Exhibit 4**)

23. The CRC also passed a motion to send the temporary rules, which are the same as the emergency rules, out for notice and public comment. (Exhibit 4) Three public hearings were held in January and the public comment period for the temporary rules

closed on February 22, 2024. A special meeting is scheduled for March 13, 2024 to allow the CRC to consider adopting the sixteen temporary rules.

24. The Codifier entered fifteen of the emergency rules in the Code on December 20, 2023. (December 20, 2023 Letter to CRC from Codifier attached as **Exhibit 5**) The requirement to consult with the Joint Legislative Commission on Governmental Operations regarding the sixteenth rule (which includes a permit fee provision) will be waived if that Commission does not meet before May 1, 2024 (90 days after the rule was published in the North Carolina Register). N.C. Gen. Stat. § 12-3.1. The emergency rules were published in the February 1, 2024 Register.

F. CAMA Permit Application, Review, and Issuance of Permit.

25. Approximately eighteen months before the emergency rules were entered in the Code and published in the Register for use by the regulated public, on May 19, 2022, Plaintiff's agent had submitted an expedited review request for a CAMA permit "to complete the site development for drainage, grading and subdivision infrastructure" for the Bridgeview subdivision. (See Attach. 1, p 8 to the Affidavit of Renee Gledhill-Early ("RGE Affidavit") attached as **Exhibit 6** along with Attachments 1 through 8 to the affidavit) (Hereafter, attachments to an affidavit will be referred to by "Exhibit number, Affidavit, Attachment number, and page number if necessary.) This expedited request was necessary after DCM had advised Plaintiff Developer that "all work must cease" after a grading contractor "inadvertently continued grading the gravel road" within the 575-foot setback for Outstanding Resource Waters without a permit. (Exhibit 6, RGE Affidavit, Attach.1, p 11)

26. The Permit application was processed under the existing rules in the Code at that time which had not been removed. The application was not processed under the emergency rules that that had not yet been adopted by the CRC.

27. Following submission of the CAMA application, it was circulated to the NC Historic Preservation Office (“NC HPO”) and the NC Office of State Archeology (“NC OSA”) in the NC Department of Natural and Cultural Resources (“DNCR”) for legally mandated reviews. (Exhibit 6, RGE Affidavit, ¶¶ 5-11)

28. On June 14, 2022, NC HPO provided its comments to DCM and advised that there are “two known and unassessed prehistoric archaeological sites (31CR93 and 31CR95)” within the proposed subdivision and records also indicate “there is an early plantation site with occupation through the antebellum period, with possible graves present” within the Bridgeview subdivision. (Exhibit 6, RGE Affidavit, ¶ 14, Attach. 2, p 1) Because of the “presence of the noted prehistoric sites along with the historical narrative . . . and potential for human remains, [NC OSA] recommend[s] a comprehensive archaeological survey be undertaken.” (*Id.*)

29. On July 28, 2022, DCM issued CAMA Major Permit No. 79-22 authorizing “grading and other land disturbing activities associated with the development of . . . 83 lots, 6 common areas, retention basins, roads and other associated infrastructure.” (Permit attached as **Exhibit 7** and workplan drawings dated May 20, 2022 attached as **Exhibit 8**).

30. The issuance of the Permit was based on the rule currently then in the Code and was not based on the emergency rules which are the subject of this litigation as it was issued approximately eighteen months before those rules were entered into the Code and for use in reviewing permit applications for proposed development.

31. By its terms, the Permit “authorizes only the proposed upland development, as depicted in the attached permit application, project narrative, and workplan drawings. Any other work or development proposed in an AEC . . . shall require a review and authorization from the Division of Coastal Management prior to work commencing.” (Exhibit 7, Permit Condition 2 and 3). The Permit also required that before “the initiation of any land-disturbing activities, the permittee shall satisfy the requirements of the NC Department of Natural and Cultural Resources (“NCDNCR”) and provide written approval from NCDNCR that this condition has been met. (Exhibit 7, Permit, Condition 1)

32. Plaintiff Developers did not challenge any of the terms or conditions in the Permit by filing a petition for a contested case hearing to the Office of Administrative Hearings (“OAH”). (Affidavit of William F. Lane attached as **Exhibit 9 ¶4**)

33. Instead, Plaintiff Developers hired archaeologists from TRC Environmental Corporation (“TRC”) to conduct the archaeological survey and fulfill the DCM’s CAMA permit requirements. (Exhibit 6, RGE Affidavit ¶ 15)

34. TRC has provided NC OSA with a management summary (like an abstract) for the Boat Dock area (.92 acres) and concluded there are “no intact cultural features that could provide information pertinent to regional research issues” and “[n]o further archaeological investigation of the proposed 0.92-acre community boat dock area is recommended.” (Exhibit 6, RGE Affidavit ¶ 15; Confidential Attach. 3, p 1) DNCR agreed with TRC that any “precontact components located within the community boat dock area appear to have been substantially disturbed by historic occupation from the early twentieth to present and that no intact cultural features are likely to remain that could significantly contribute information pertinent to regional research issues associated with this portion of

site 31CR95 and its eligibility for listing in the National Register of Historic Places.” (Exhibit 6, RGE Affidavit, Attach. 4, p 1) DNCR did not required a further survey in “the proposed 0.92-acre community boat dock area.” However, it advised Plaintiff that “all ground disturbing activities in the community boat ramp and water access areas must be conducted following an Unanticipated Discovery Plan approved by [OSA]”. (Id.)

35. TRC also provided a preliminary report on a 6.5-acre area within the “almost 21 acres” of “Section II of the Bridge View development.” (Exhibit 6, RGE Affidavit. Confidential Attach.5, p i) TRC concluded that “portions of the CAMA Permit AEC will not be impacted by any development activities and include forested areas along the drainage, shoreline, and wetlands for a total exclusion of four acres. In addition, portions of the Permit area are thought to have been previously disturbed to the extent that they are not considered likely to contain intact cultural deposits. These disturbed areas consist of the existing road system, including the adjacent ditches, and the sediment basins and erosion control systems.” (Id.) This preliminary survey identified “cultural features associated with precontact period occupations evidenced across the 6.5-acre investigation area, which based on the results of this investigation were substantial; involved seasonal or semi-permanent occupations as indicated by multiple structural patterns, the density and variety of cultural features, and the presence of features that appear likely to be human burials.” (Id., p ii) Plaintiff’s consultant stated, “a comprehensive technical report is forthcoming.” (Id., p i)

36. NC OSA has reviewed and commented on the work conducted to date and has kept DCM updated on the work. (Exhibit 6, RGE Affidavit ¶¶ 16-22, Attachs. 6, 7, 8)

37. NC HPO and NC OSA have recommended various approaches to help Plaintiff and future minor permit applicants (e.g., homeowners), avoid causing irreversible

damage to archaeological resources within the AEC. These approaches include archaeological excavation; total avoidance; and partial avoidance and partial excavation. (Exhibit 6, RGE Affidavit ¶ 23)

38. To complete the environmental review process, NC HPO and NC OSA expect a final, comprehensive report from TRC on the 6.5 acres that were the subject of the preliminary report. (Exhibit 6, RGE Affidavit, Attach. 8) That report has not yet been submitted. (RGE Affidavit ¶ 24)

G. Archeological Significance of the Site.

39. TRC archaeologists surveyed less than one-third of the total 21-acre AEC within the Site and documented the presence and extent of archaeological resources. (Affidavit of James Christopher Southerly (“JCS”) attached as **Exhibit 10** along with Attachments 1-6, JCS Affidavit, ¶ 13)

40. TRC’s preliminary report describes the scope of work and reports TRC “dug 16 trenches, removing the topsoil of approximately 1.13 total acres, to expose any cultural features indicating that people lived, hunted, and fished in that area.” TRC “identified over 2,000 cultural features or anomalies (variations in natural features, possibly caused by human activity), including concentrations of pottery, shell, and stone tools, soil stains marking the position of wooden foundation posts for dwelling or communal buildings, firepits, and human burials.” (Exhibit 10, JCS Affidavit ¶¶ 14-15, 22, Confidential Attach 5)

41. As explained by Mr. Southerly, the acting State Archeologist, “American Indians of this period and region commonly practiced communal burials of multiple individuals, with both intact skeletons of some individuals and cremains of others being buried together. A settlement site may contain numerous cluster burials, representing the

final resting places of multiple generations of the dead.” (Exhibit 10, JCS Affidavit ¶ 23) The preliminary survey by Plaintiff Developer consultant TRC identified “multiple co-mingled burials of American Indians in Lot 7 of the development outside the CAMA AEC, strongly suggesting there may be additional human burials within, and in the immediate vicinity of, the CAMA AEC.” (Exhibit 10, JCS Affidavit ¶ 24 (emphasis added))

42. Mr. Southerly further explained, “there is a significant gap in the knowledge of pre-contact American Indian history,” and the “archaeological record preserved at the sites” is “the main source of information about this period and these coastal communities.” (Exhibit 10, JCS Affidavit ¶ 25) Within the proposed Ridgeview subdivision is “significant information about how Algonkian people lived and organized their communities along the coast of North Carolina for over 2,000 years before the arrival of Europeans. Unlike most other archaeological sites, which have been disturbed or destroyed, this site has a high concentration of undisturbed, preserved-in-place cultural features, allowing archaeologists to understand them in their physical and historical contexts.” (Exhibit 10, JCS Affidavit ¶ 26) Mr. Southerly also explained that the site “may also be considered a sacred site for American Indian descendants who have ancestral connections to Cedar Point and Carteret County.” (Exhibit 10, JCS Affidavit ¶ 28) In summary, “Based on the information presented in the report and the site’s ability to produce new and important information on Woodland Period coastal occupations, NC OSA concurs with TRC that site 31CR95 is eligible for listing in the National Register of Historic Places.” (Exhibit 10, JCS Affidavit ¶ 29)

43. After bones were uncovered while Plaintiff’s contractor was excavating a trench on Lot 7, DCM issued a stop work order to Plaintiff, its CAMA agent, and Plaintiff’s Contractor on August 17, 2023 stating that DNCR has emphatically noted “that the

potential for human remains of American Indians within and in the immediate vicinity of the CAMA AEC is very high.” As a result, “DCM was concerned about the possibility that any continued ground disturbance activities, both within and outside the AEC, could impact cultural, historic, or scientific resources within the AEC due to the possible interconnected nature of these features.” (Affidavit of DCM Regulator Chief Jonathan Howell attached as **Exhibit 11** including attachments A through C, ¶6, Attach. A) After further consultation with NC OSH and Plaintiff Developer, DCM issued a Revised Stop Work Order limiting the Stop Work Order to the AEC. (*Id.*, Attach. B)

44. NC DCNR forwarded additional information to DCM on December 14, 2023 stating “Given the extremely high likelihood of the presence of human remains within the AEC and known remains that were disturbed through mechanical trenching of the house under construction on Lot 7 just outside the AEC, and because of the dispersed nature of American Indian ossuaries along the outer coastal areas of North Carolina, we continue to caution as to the extremely high likelihood of encountering additional burials within the AEC. Consequently, at this point and given these factors, encountering such unmarked burials within the AEC cannot be deemed “unanticipated. We strongly encourage your Division and our shared constituents to consider” using “the various avoidance measures recommended . . . to ensure protection” of these significant cultural resources. (Exhibit 6, RGE Affidavit, Attach 6, p 4)

45. In response to an inquiry from Plaintiff Developer, DCM explained that “Condition 1 of Major Permit 79-22 has not yet been satisfied sufficiently to proceed with further development within the AEC and the RSWO [(Revised Stop Work Order)] cannot be rescinded. Any additional development in common areas or on individual lots owned by

Cedar Point Developers in the AEC would be in violation of the RSWO and CAMA Major Permit 79-22.” December 21, 2023 Letter to Developer from DCM attached as **Exhibit 12)**

46. At the County’s request, by letter dated December 15, 2023, DCM agreed to handle any CAMA minor permit application for persons seeking to build in the subdivision. (Exhibit 11, JH Affidavit, Attach. C) To date, DCM has not received any requests for modification of the Permit from Plaintiff developer and has not received any requests for CAMA permits from third-party lot owners within the subdivision. (Exhibit 11, JH Affidavit, ¶ 10)

ARGUMENT

A. This Court should Dismiss the Complaint Based on Lack of Subject Matter Jurisdiction under Rule 12(b)(1).

“Subject matter jurisdiction is the predicate to the exercise of any authority by the courts of this State.” *Shell Island Homeowners Ass’n, Inc. v. Tomlinson*, 134 N.C. App. 286, 290, 517 S.E.2d 401, 403-04 (1999). Here, the court lacks subject matter jurisdiction based on Plaintiff’s failure to exhaust the administrative remedies provided by the legislature to challenge the terms of the Permit and a lack of standing because it accepted the benefit of the Permit and cannot now create a claim relating to the Permit based on emergency rules that were not adopted until over eighteen months after the Permit was issued.

In considering a motion to dismiss under Rule 12(b)(1), “[t]he trial court need not confine its evaluation . . . to the face of the pleadings but may review or accept any evidence, such as affidavits,” in determining whether it has subject matter jurisdiction. *Marlow v. TCS Designs, Inc.*, 288 N.C. App. 567, 572, 887 S.E.2d 448, 452–53 (2023) (punctuation and citation omitted).

1. Plaintiff Failed to Exhaust Administrative Remedies.

“An action is properly dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction where the plaintiff has failed to exhaust administrative remedies.” *Shell Island*, 134 N.C. App. at 220, 517 S.E.2d at 410. It is well-established that “[w]hen the legislature has established an effective administrative remedy, that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts.” *Presnell v. Pell*, 298 N.C. 715, 721-22, 260 S.E.2d 611, 615 (1979). “This policy of judicial restraint has the status of a jurisdictional prerequisite when a party has effective administrative remedies.” *Flowers v. Blackbeard Sailing Club*, 115 N.C. App. 349, 353, 444 S.E.2d 636, 638 (1994), *disc. review improvidently allowed*, 340 N.C. 357, 457 S.E.2d 599 (1995) (trespass action collaterally attacking CAMA permit dismissed).

This is the requirement “even in a declaratory judgment action.” *Wake Cares, Inc. v. Wake Cty. Bd. of Educ.*, 190 N.C. App. 1, 13, 660 S.E.2d 217, 224-25 (2008) quoting *Lloyd v. Babb*, 296 N.C. 416, 428, 251 S.E.2d 843, 852 (1979)). However, if the administrative remedy does not “address challenges to rules and regulations promulgated” exhaustion is not required. *Wake Cares*, 190 N.C. App at 13, 660 S.E.2d at 25 (exhaustion not required to address rules and regulations under the Workers' Compensation Act).

In its Declaratory Judgment Complaint, Plaintiff claims that the sixteen emergency rules adopted by the CRC should not have been adopted because the agency’s written statement of findings of need is allegedly deficient. However, the only harms claimed are ones that can be and should have been addressed through administrative remedies. Specifically, Plaintiff claims that the adoption of the emergency rules “would result in direct harm to Cedar Point [Developers] in connection with a dispute between DCM and

Cedar Point [Developers relating to a permit that” has already been issued and not appealed and to future, as yet unsubmitted, requests for permit modifications by Plaintiff or permits for individual lot development sought by others. (Complaint ¶¶ 4 & 5)

In its Complaint, Plaintiff states that it holds CAMA Major Permit No. 79-22 issued July 28, 2022 (“Permit”). (Complaint, ¶ 54 and Exhibit 7, Permit) The Permit “authorizes the grading and other land disturbing activities associated with the development of the above referenced property, including the 83 lots, 6 common areas, retention basins, roads and other associated infrastructure, all as expressly and specifically set forth in the attached permit application and workplan drawing.” (Exhibit 7, Permit, Condition 2) The Permit “authorizes only the proposed upland development, as depicted in the attached permit application, project narrative, and workplan drawings.” (*Id.*, Permit, Condition 3)

Prior to issuance of the Permit, the permit application was circulated for comment to the DNCR. (Complaint, ¶¶ 56, 57) Following review, DNCR “recommend[ed] a comprehensive archaeological survey to be undertaken within the project area to relocate and assess the archaeological sites already present, as well as any other potentially significant archaeological resources that may be also present prior to any ground disturbing activities.” (Complaint ¶ 58)

DCM issued the Permit in 2022 and included Condition 1 requiring that the Plaintiff shall “satisfy the requirements of the NC Department of Natural and Cultural Resources” “[p]rior to the initiation of any land-disturbing activities” and must provide a copy of “written approval” “before land-disturbing activities begin.” (Complaint, ¶ 59; Exhibit 7, Permit, Condition 1). The Permit also informed Plaintiff that the “permit does not eliminate

the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.” (Exhibit 7, Permit, p 2)

Plaintiff began the work authorized by the Permit, retained archeology consultant TRC to do the required surveys, and coordinated with the DNCR regarding its findings at the Site. (Complaint, ¶ 62; RGE Affidavit ¶¶ 15-22) Although Plaintiff’s consultant has submitted a preliminary report of its findings, TRC has not provided the required final report and has stated “a full technical report meeting the NC OSA’s guidelines will be submitted when those are complete.” (RGE Affidavit ¶ 24, Attach 5, p 6)

Based on its review of the preliminary report, DNCR anticipates Plaintiff through its consultant TRC will be required to delineate the boundaries of site 31CR95 and nature and boundaries of 31CR93 (within the subdivision) in consultation with DNCR. (Exhibit 6, RGE Affidavit, Attach 6, p 2) Depending on those findings, DNCR may recommend that Plaintiff avoid the culturally significant areas, preserve the cultural resources in place, donate or sell the site to The Archaeological Conservancy or other land trust, establish a protective easement, reduce the area of ground disturbance, establish protective covenants for adoption by the Homeowners’ Association, and/or fostering individual archaeological stewardship. (Exhibit 6, RGE Affidavit, Attach 6, pp 2-5)

DCNR has indicated to DCM and Plaintiff that in order to satisfy Condition 1 of the Permit, Plaintiff must provide “the comprehensive technical report” and together “TRC, DCM, Cedar Point Developers, LLC, and Tidewater Associates, Inc.” must work with DNCR “to develop an avoidance plan or data recovery plan for the proposed undertaking using one or more of the recommendations outlined [by DNCR].” (Exhibit 6, RGE Affidavit, Attach 6, Attach 7, and Attach 8, p 3)

The Site contains an extraordinarily high concentration of undisturbed, preserved-in-place cultural features showing “how Algonkian people lived and organized their communities along the coast of North Carolina for over 2,000 years before the arrival of Europeans.” (Exhibit 10, JCS Affidavit ¶ 26) The Site also contains burial sites and bones (possibly spanning generations) that may cause the Site to be considered sacred to native Indian descendants. (*Id.*, ¶28)

In this case, the remedy Plaintiff is seeking through its nominal challenge to the emergency rules is the overturn of terms and conditions included in the Permit issued in 2022 to protect these valuable cultural resources which Plaintiff did not challenge at the time it was issued. To date, Plaintiff has not provided written confirmation from DNCR stating that the requirements of NCDNCR have been satisfied. Moreover, Plaintiff’s excavation in Lot 7 uncovered bones leading to DCM issuance of a Stop Work Order (later revised to exclude the .92 area that DNCR and TRC agreed did not to include any significant cultural resources). (Complaint, ¶¶ 63, 65; Exhibit 6, RGE Affidavit, Attach 4; Exhibit 11)

Plaintiff now complains that Condition 1 “is not specific enough to indicate what Cedar Point must do to satisfy it and does not reference any limitations on Cedar Point’s planned activities . . . ‘reasonably necessary to protect the public interest’ as required by N.C. Gen. Stat. § 113A-120(b).” (Complaint, ¶ 60) Plaintiff also complains that DCM has not lifted the Revised Stop Work Order nor has DCM confirmed that Condition No. 1 has been satisfied. (Complaint, ¶¶ 65, 67)

Plaintiff further complains that the CRC’s adoption of emergency rules 15A N.C. Admin. Code .07H .0508, .0509, and 15A N.C. Admin. Code 07J .0203, .0207, and .0208 has

harmed Plaintiff because the emergency rules will allegedly expand DCM's authority relating to the existing Permit's conditions (apparently absent a permit modification) and the revised stop work order and will impact some unspecified, and as yet unsought future permits for development of the Site by Plaintiff or the third-parties to whom it sells lots within the Site. (Complaint, ¶ 68)

Plaintiff did not pursue the effective administrative remedies provided by the CAMA and the Administrative Procedure Act to timely challenge the Permit within twenty days of when it was issued. N.C. Gen. Stat. § 113A-121.1(a). Any complaints that Plaintiff now raises about the terms and conditions of the 2022 permit should have been raised through a contested case hearing in the OAH under N.C. Gen. Stat. § 113A-121.1(a) and such a challenge would have been based on the rules in the Code at the time the Permit was issued (not the emergency rules adopted eighteen months later).

Plaintiff was entitled under CAMA to an evidentiary "contested case hearing under N.C. Gen. Stat. § 150B-23 of the Administrative Procedure Act, through which it could have been fully heard on the claim that DCM "exceeded its authority," "deprived [Plaintiff] of property" or "otherwise substantially prejudiced" its rights by issuance of the Permit which includes terms and conditions Plaintiff now claims are confusing or ambiguous.

Furthermore, Plaintiff was also entitled to file a petition for judicial review in superior court to appeal any adverse decision at the OAH under Article 4 of the Administrative Procedure Act and the provision governing judicial review of final administrative decision. N.C. Gen. Stat. § 150B-43.

Similarly, if there are any applications by third-parties denied under the emergency rules, any applicant whose request is denied may either seek a variance from the CRC's

development standards under N.C. Gen. Stat. § 113A-120.1 or file a petition for a contested case hearing under N.C. Gen. Stat. § 113A-121.1(a). As with any decision in a contested case hearing, a variance decision is also subject to juridical review under N.C. Gen. Stat. § 150B-51. Finally, CAMA provides an administrative remedy for any claim that application of the emergency rules result in a regulatory taking without compensation under N.C. Gen. Stat. § 113A-123(b).

Plaintiff Developer has not submitted a request for a contested case hearing to challenge the terms of its 2022 Permit as allowed by CAMA through the available administrative process. (Exhibit 9, Lane Affidavit ¶¶ 4 and 5) Plaintiff has not requested any modification of the existing Permit. (Exhibit 11, JH Affidavit, ¶ 9) Nor have any third-parties requested a permit for development on the Site within the AEC area. (*Id.*, ¶10) Accordingly, there is no dispute that Plaintiff has not pursued any available administrative remedies for any alleged harm to the development under the existing Permit or any future permit applications. Given Plaintiff's failure to exhaust the administrative remedies available to challenge Condition 1 of the Permit, this Court should dismiss the Complain for lack of subject matter jurisdiction.

Moreover, if Plaintiff were to claim exhaustion is futile, Plaintiff has “the burden of showing, by allegations in the complaint, that the particular remedy is inadequate.” *Shell Island*, 134 N.C. App. at 223, 517 S.E.2d at 411. Plaintiff has not made such allegations of futility in the Complaint nor can it in light of the administrative remedies available.

Under the Administrative Procedure Act, only a “person aggrieved by an emergency rule adopted by an agency may file an action for declaratory judgment[.]” N.C. Gen. Stat. § 150B-21.1A(c). Plaintiff was provided with an effective administrative remedy to remedy

any harm caused by the terms and conditions of the Permit at the time it was issued. However, because Plaintiff did not obtain a final judgment through that process, this Court lacks subject matter jurisdiction to consider its attempt to sidestep the administrative procedure provided by claiming that emergency rules adopted after the Permit was issued have somehow caused it harm.

Under facts involving other aspects of CAMA, the panels of the North Carolina Court of Appeals have granted motions to dismiss for failure to exhaust the administrative remedies provided for review of a permit decision. For example, in *Leeuwenburg v. Waterway Inv. Ltd. Partnership*, the Court determined that a judicial review by way of a declaratory judgement action was precluded because the third party who objected to issuance of a CAMA general permit had failed to exhaust his administrative remedies. 115 N.C. App. 541, 445 S.E.2d 614 (1994). Similarly, in *Shell Island*, the appellate court held that the trial court lacked subject matter jurisdiction over nonconstitutional claims for declaratory and injunctive relief stemming from the denial of various permit and variance requests with different development plants when Plaintiff had failed to exhaust administrative remedies prior to filing the complaint. 134 N.C. App. 217, 517 S.E.2d 406.

Plaintiff accepted the requirements of Permit Condition 1 and provided NCDNCR with a management summary and a preliminary survey for review and comment. (Exhibit 6, RGE Affidavit ¶¶ 16, 19, Attach 3 and Attach 5) DNCR reviewed and commented on both documents and provided its preliminary recommendations while waiting to receive the final report. (Exhibit 6, RGE Affidavit ¶¶ 19-22, Attachs 6, 7, and 8) Instead of moving forward with the final report and coordinating with DNCR to establish a plan for protecting the significant cultural resources, Plaintiff filed this Complaint in an apparent attempt to

make an end run around the Permit's requirements. The Court should reject Plaintiff's approach.

In *Ward v. New Hanover County*, a case involving a special use permit, plaintiff and the county disagreed about a term of the permit, and without resolving the dispute and before obtaining a formal determination regarding the proposed use of the marina and rights under the permit, plaintiff filed a declaratory judgment action in superior court. 75 N.C. App. 671, 625 S.E.2d 598, *disc. review denied*, 360 N.C. 582, 636 S.E.2d 200 (2006). The trial court granted summary judgment in the county's favor. On appeal, the appellate court upheld the trial court decision based on the plaintiff's failure to exhaust administrative remedies. *Id.*

The Court explained,

[Where] the legislature has expressed an intention to give the administrative entity most concerned with a particular matter the first chance to discover and rectify error. Only after the appropriate agency has developed its own record and factual background upon which its decision must rest should the courts be available to review the sufficiency of its process. An earlier intercession may be both wasteful and unwarranted. "To permit the interruption and cessation of proceedings before a commission by untimely and premature intervention by the courts would completely destroy the efficiency, effectiveness, and purpose of administrative agencies.

Id. at 674–75, 625 S.E.2d at 601.

Here too, the Plaintiff developer has not received a formal judgment on the enforceability of Condition 1 of the Permit and attempts to short circuit ongoing discussions with its consultant, DNCR, and DCM about how to protect the significant archaeological finds on the site. The court should reject this approach and dismiss the complaint. Where, as here, "the legislature has provided by statute an effective administrative remedy" for

Plaintiff to use to challenge the Permit condition, “that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts.” *See Presnell*, 298 N.C. at 721, 260 S.E.2d at 615 (citations omitted).

Plaintiff also asserts that it will be harmed by the effect of the emergency rules on its future application for permit modifications or third-parties’ applications for development at the Site. However, neither Plaintiff nor third-parties have requested permits subject to the emergency rules. “Courts have no jurisdiction to determine matters that are speculative, abstract, or moot, and they may not enter anticipatory judgments, or provide for contingencies which may arise thereafter.” (citation omitted). Plaintiff’s abstract and speculative claims are insufficient to establish the CRC’s adoption of emergency rules caused it harm. Therefore, this Court lacks subject matter jurisdiction and should dismiss the Complaint.

The requirement that administrative remedies be exhausted ensures that “matters of regulation and control are first addressed by commissions or agencies particularly qualified for the purpose.” *Abrons Fam. Prac. & Urgent Care, PA v. N. Carolina Dep't of Health & Hum. Servs.*, 370 N.C. 443, 450, 810 S.E.2d 224, 230 (2018) citing *Presnell*, 298 N.C. at 721, 260 S.E.2d at 615. In this case, any challenge to the Permit terms and conditions should have been timely asserted within the administrative process and any dissatisfaction with as yet unmade, speculative future permit decisions can be asserted against DCM, the agency making permit decisions, in OAH when they are made.

Plaintiff failed to seek a contested case hearing to obtain a final decision as to the purported ambiguity of the Permit condition. Furthermore, because Plaintiff has not submitted a request for a modification of the Permit, Plaintiff has not obtained a final

decision on the application of the emergency rules to Plaintiff's project. Finally, because DCM has not received any permit applications from third-parties or from Plaintiff for development on individual lots within the Site, there is no final decision on the application of the emergency rules to any application for permits which have not yet been submitted. Therefore, Plaintiff's claim is not ripe and no justiciable controversy exists between the parties sufficient to meet the requirements of the Declaratory Judgment Act. N.C. Gen. Stat. § 1-253, *et. seq.*

2. Plaintiff Lacks Standing.

Under the Administrative Procedure Act, a person has standing to "file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes" if "aggrieved by an emergency rule adopted by an agency." N.C. Gen. Stat. § 150B-21.1A(c). However, in this case, Plaintiff is estopped from arguing the emergency rules will cause harm to its permitted development.

First, Plaintiff has accepted the benefit from DCM's issuance of the Permit in 2022 and has begun work (and nearly completed the infra-structure work authorized) for the proposed subdivision development. (Complaint, ¶¶ 61-62) Having accepted the benefit of the Permit and not timely challenging the condition included in the Permit as allowed by N.C. Gen. Stat. § 113A-121.1(A) which provides an administrative remedy, Plaintiff is barred by the "doctrine of quasi-estoppel," from taking an inconsistent position now. *See Carolina Medicorp, Inc. v. Board of Trustees*, 118 N.C. App. 485, 492-93, 456 S.E.2d 116, 120 (1995) ("Where one having the right to accept or reject a transaction or instrument takes and retains benefits thereunder, he ratifies it, and cannot avoid its obligation or effect by taking a position inconsistent with it.") (citations and punctuation omitted).

Moreover, the acceptance of benefits precludes a subsequent inconsistent position, even where acceptance is involuntary, arises by necessity, or where a party voluntarily accepts a benefit in order to avoid the risk of harm. *Shell Island*, 134 N.C. App. at 226, 517 S.E.2d at 413 citing *Carolina Medicorp* at 493, 456 S.E.2d at 121.

The facts in *Shell Island* are instructive here. During the two years before filing their complaint, the plaintiffs sought a permit and variances to construct various hardened erosion control structures to protect Shell Island Resort from the southward migration of Mason's Inlet. 134 N.C. App. 217, 517 S.E.2d 406. Defendants denied all the requests and plaintiffs did not seek administrative review of any of those decisions. *Id.* In their complaint, plaintiffs sought declaratory and injunctive relief challenging the validity and enforcement of the CRC's permanent erosion control structure rules and seeking a declaration that they were entitled to build a permanent hardened erosion control structure. *Id.* The court denied Plaintiffs' requests finding that even if the variance Plaintiffs eventually received was not their preferred option, the complaint fails to state a claim upon which relief can be granted because it "establishes that Plaintiffs allege that they [eventually] . . . received, and accepted a variance permit under the rules which they now challenge, and that, pursuant to the variance permit, they were able to construct a sandbag revetment which has protected the Shell Island Resort since 17 September 1997." *Id.*, 134 N.C. App. at 226, 517 S.E.2d at 413. *See also, Convent v. Winston-Salem*, 243 N.C. 316, 90 S.E.2d 879 (1956) (challenge to zoning ordinance rejected since the challengers had accepted the benefit of the original permit allowing them to operate a school in an otherwise residential area.).

Because a party may, by his or her conduct, be estopped to assert both statutory and constitutional rights, in this case, Plaintiff is estopped from asserting alleged harms from the adoption of the emergency rules based on its acceptance of the benefit received from the Permit issued in 2022 and the speculative nature of any future harm. *See Cameron v. McDonald*, 216 N.C. 712, 6 S.E.2d 497 (1940); *Goforth Properties, Inc. v. Town of Chapel Hill*, 71 N.C. App. 771, 773, 323 S.E.2d 427, 429 (1984). Accordingly, this Court lacks subject matter jurisdiction over the challenged emergency rules because Plaintiff lacks standing to challenge the rules.

B. THIS COURT SHOULD DISMISS THE COMPLAINT PURSUANT TO RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF MAY BE GRANTED.

Dismissal under Rule 12(b)(6) is proper when “no law exists to support the claim made, if sufficient facts to make out a good claim are absent, or if facts are disclosed which will necessarily defeat the claim.” *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990) (citing *Forbis v. Honeycutt*, 301 N.C. 699, 273 S.E.2d 240 (1981)). For purposes of the Rule 12(b)(6) motion, the facts as stated in the Complaint are assumed to be true. Defendant does not, however, admit the truthfulness of the facts as stated in the Amended Complaint.

Some cases have also upheld dismissal under rule 12(b)(6) for failure to exhaust administrative remedies. *See Leeuwenburg*, 115 N.C. App. 541, 445 S.E.2d 614 (collateral attack on CAMA permit dismissed); *Concerned Citizens v. N.C. Environmental Management Comm’n*, 89 N.C. App. 708, 711, 367 S.E.2d 13 (1988) (failure to seek judicial review of permit was “insurmountable bar to plaintiff’s claim for declaratory judgment and injunctive relief.”).

The CRC adopted sixteen emergency rules on December 7, 2023. (Complaint, ¶ 2) Fifteen emergency rules were entered in the Code on January 3, 2024 and published in the N.C. Register on February 1, 2024. (Exhibit 5) The emergency rules will expire on April 1, 2024, sixty days from date they are published in the Register, unless temporary rules are submitted to the RRC. N.C. Gen. Stat. § 150B-21.1A(d)(4). Once expired, Plaintiff's complaint is moot.

If temporary rules are submitted to the RRC and not approved, the emergency rules expire five business days from submission of supplemental information which will be no later than May 24, 2024. N.C. Gen. Stat. § 150B-21.1(b1), (d)(3), and Sess. Law 2023-134. The purpose of emergency rules is to allow a stopgap for the protecting of the regulated public based on an agency's determination of the need for emergency rules. Even if the Codifier disagrees with the Commission's determination of the need for the emergency rules, under the Administrative Procedure Act, the rules are entered into the Code over the Codifier's objection. N.C. Gen. Stat. § 150B-21.1A(b). Plaintiff has failed to provide any basis for this Court to override the CRC's determination that emergency rules are required.

More importantly, approximately eighteen months before the adoption of the sixteen emergency rules, Plaintiff had already obtained the Permit authorizing development at the Site and begun development at the Site. The Permit was not granted pursuant to the emergency rules and they are not relevant to the enforcement of the Permit. Any failure by Plaintiff to comply with the Permit conditions is enforceable under the terms of the Permit, not pursuant to emergency rules adopted after the Permit was issued. Therefore, any complaints about the Permit condition or DCM's enforcement of the Permit terms cannot be

remedied by a challenge to the emergency rules. For this reason alone, the Complaint should be dismissed for failure to state a claim upon which relief can be granted.

Similarly, since neither Plaintiff nor any third party have applied for a permit authorizing additional work on individual lots within the Site, any claimed harm from application of the emergency rules to such future proposed development work is speculative and fails to establish a claim upon which relief can be granted. *Alford*, 131 N.C. App. at 218, 505 S.E.2d at 920.

Finally, the Complaint indiscriminately alleges that Plaintiff has been harmed by the CRC's adoption of all sixteen rules. However, in its Complaint, Plaintiff fails to identify any harms relating to eleven of the emergency rules. Therefore, in addition to the other arguments set forth above, the Complaint fails to state a claim upon which relief can be granted for the following emergency rules.

Specifically, the Commission's emergency rule set forth at 15A N.C. Admin. Code 07H .0507 impacts one specific unique coastal geologic formation—Jockeys Ridge. Plaintiff's development is not located at Jockeys Ridge. Based on location alone, this emergency rule has no impact on the Bridgeview subdivision development located in Carteret County undertaken by Plaintiff. Therefore, Plaintiff has failed to state a claim upon which relief can be granted based on the Commission's adoption of this emergency rule.

The Commission's emergency rule at 15A N.C. Admin. Code 07I .0702 establishes requirements for when a local permitting agency exceeds its authority. In this case, the facts in the Complaint state that DCM issued the Permit and is the agency enforcing the Permit through stop work orders. Additionally, per the letter to Carteret Co, DCM will be handling future minor permits instead of the county (Complaint, ¶¶ 54, 63-65; Exhibit 11

JH Affidavit, Attach. C) Because no local authority is involved in permitting decisions or enforcement, this emergency rule is not applicable to the development at the Site or Plaintiff's claims. Thus, Plaintiff has failed to state a claim upon which relief can be granted based on the Commission's adoption of this emergency rule.

Plaintiff has not identified any way in which the emergency rules relating to Public Notice (07J .0206), or policy statements relating to Coastal Energy Development, Mitigation, or the beneficial use of dredged materials (07M .0401, 07M .0402, 07M .0403, 07M .0701, 07M .0703, 07M .0704, and 07M .1101) have any connection to the existing Permit or any proposed development at the Site. Therefore, Plaintiff has failed to state a claim upon which relief can be granted based on the Commission's adoption of these emergency rules.

As Plaintiff points out in its Complaint, the Commission's emergency rule at 15A N.C. Admin. Code 07J .0204 relating to the processing of applications has not been entered into the Code. (Complaint, footnote 1; Exhibit 5) As a result, this emergency rule cannot be used as the basis for any permit or enforcement decision. Therefore, Plaintiff has failed to state a claim upon which relief can be granted based on the Commission's adoption of this emergency rule when it has not been entered into the Code.

In addition to the other arguments provided, for each of these eleven rules, the record shows that the complaint does not allege an actual, genuine existing controversy.

For all the above stated reasons, this Court should grant the motion for dismissal under Rule 12(b)(6). *See Leeuwenburg v. Waterway Inv. Ltd. Partnership*, 115 N.C. App. 541, 543, 445 S.E.2d 614, 615 (1994) citing *Gaston Bd. of Realtors v. Harrison*, 311 N.C. 230, 316 S.E.2d 59 (1984).

WHEREFORE, the defendant CRC pray the Court to:

1. Enter an order dismissing Plaintiff's claim for lack of subject matter jurisdiction and for failure to state a claim for which relief may be granted; and
2. Such other relief as the Court may deem appropriate.

Respectfully submitted, this the 11th day of March, 2024.

JOSHUA H. STEIN
Attorney General



By: _____

Mary L. Lucasse
Special Deputy Attorney General
N.C. State Bar No. 39153
mlucasse@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
Tel: (919) 716-6600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served an electronic copy of DEFENDANT'S MOTION TO DISMISS filed March 11, 2024 upon the following addressed as follows:

VIA E-MAIL:

Plaintiff's Attorneys:

William M. Butler
Mary Katherine H. Stukes
Laura Boorman Truesdale

billbutler@mvalaw.com
marykatherinestukes@mvalaw.com
lauratruesdale@mvalaw.com

MOORE & VAN ALLEN, PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202-4003

JOSHUA H. STEIN
Attorney General



By: _____
Mary L. Lucasse
Special Deputy Attorney General
N.C. State Bar No. 39153
mlucasse@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
Tel: (919) 716-6600

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 24-CV-000121-910

CEDAR POINT DEVELOPERS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 COASTAL RESOURCES COMMISSION,)
)
 Defendant.)

**DEFENDANT’S EXHIBITS
 SUBMITTED IN SUPPORT OF
 MOTION TO DISMISS AND
 MEMORANDUM IN SUPPORT
 Rule 12(b)(1)**

<u>No.</u>	<u>Description</u>	<u>Beginning Page (in PDF filed electronically)</u>
1	November 8, 2023 letter to Mary Lucasse from John Branch regarding Temporary and Emergency Rulemaking Process	1
2	Order filed in 23CV031533-910 on January 4, 2024 denying TRO	3
3	Memo CRC-25 to CRC from DCM Deputy Director Michael Lopazanski regarding proposed temporary and emergency rules	4
4	Minutes from December 7, 2023 CRC Meeting	10
5	December 20, 2023 Letter to CRC from Codifier regarding emergency rules	14
6	Affidavit of Renee Gledhill-Early dated March 6, 2024 along with Attachments 1 through 8	16
7	Bridge View CAMA Major Permit No. 79-22 issued to Cedar Point Developers LLC on July 28, 2023	128
8	Bridge View CAMA Permit App Work Plan Drawings sealed May 20, 2022	131
9	Affidavit of William F. Lane dated March 4, 2024	132

10	Affidavit of James Christopher Southerly dated March 6, 2024 along with Attachments 1-6	134
11	Affidavit of DCM Regulatory Section Manager Jonathan Howell attached as Exhibit 11 including attachments A through C	169
12	December 21, 2023 letter to Ms. Mary Katherine Stukes from DCM Director Braxton Davis regarding Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point, NC	179

The undersigned, Mary L. Lucasse, certifies the following:

1. Exhibits 1, 2, and 5 are true and correct copies of letters received by the undersigned and the Order filed in CRC v. RRC, 23CV031533-910 in Wake County Superior Court.
2. Exhibits 3, and 4 are true and correct copies of documents maintained by the CRC.
3. Exhibits 6, 9, 10 and 11 along with their attachments are true and correct copies of affidavits provided in this litigation.
4. Exhibits 7, 8, and 12 are true and correct copies of documents maintained by DCM.

This the 11th of March, 2024.

JOSH STEIN
Attorney General



By:

Mary L. Lucasse N.C. State Bar No. 39153
Special Deputy Attorney General
mlucasse@ncdoj.gov
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
Tel: (919) 716-6600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served an electronic copy of DEFENDANT'S EXHIBITS SUBMITTED IN SUPPORT OF MOTION TO DISMISS AND MEMORANDUM IN SUPPORT Rule 12(b)(1) filed March 11, 2024 upon the following addressed as follows:

Plaintiff's Attorneys:

William M. Butler
Mary Katherine H. Stukes
Laura Boorman Truesdale

MOORE & VAN ALLEN, PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202-4003

VIA E-MAIL:

billbutler@mvalaw.com
marykatherinestukes@mvalaw.com
lauratruesdale@mvalaw.com

JOSHUA H. STEIN
Attorney General



By: _____

Mary L. Lucasse, N.C. State Bar No. 39153
Special Deputy Attorney General
mlucasse@ncdoj.gov
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
Tel: (919) 716-6600



John E. Branch III
T: 919.329.3828
john.branch@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

301 Hillsborough Street, Suite 1400
Raleigh, NC 27603
T: 919.329.3800 F: 919.329.3799
nelsonmullins.com

November 8, 2023

Via E-Mail

Mary Lucasse (mlucasse@ncdoj.gov)
Elizabeth Young (esyong@ncdoj.gov)

RE: *NC DEQ et al. v. NC RRC et al.*
CRC Post-TRO Hearing Options

Dear Ms. Lucasse,

At the hearing yesterday, you averred on behalf of the Coastal Resources Commission (“CRC”) that the public and North Carolina’s coastal resources are in peril in the absence of the rules returned by the Rules Review Commission (“RRC”) to the CRC on October 5, 2023 (the “Returned Rules”). As you are aware, the effect of the Returned Rules being returned to the CRC is that they have been removed from the Administrative Code and are no longer in effect. Regardless of the CRC’s litigation against the RRC, the RRC continues to stand ready (as it has over the last several months) to work with the CRC in the event that the CRC seeks to promulgate new rules addressing the subject matter of the Returned Rules.

Without forecasting the RRC’s position on specific rules or specific provisions within rules which we have not yet seen, the RRC reminds your client that, to the extent that the CRC wishes to mitigate any alleged harm to itself, its regulatory partners, or the regulated public, and assuming any rules promulgated meet the statutory criteria, the CRC may consider either emergency rulemaking under G.S. 150B-21.1A, or temporary rulemaking under G.S. 150B-21.1. Both of these alternatives provide the CRC with the opportunity to enter rules into the North Carolina Administrative Code under an expedited timeline. Forms for each of these options may be found as listed below:

- Temporary Rulemaking Flowchart may be found here: <https://www.oah.nc.gov/documents/rules/rulemaking-chart-temporary-rule/download>

November 8, 2023

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- Temporary Rule Form (0700) may be found here: <https://www.oah.nc.gov/rules-form-0700-proposed-temporary-rule-publication-oah-website>
- Proposed Temporary Rulemaking Findings of Need (0500) may be found here: <https://www.oah.nc.gov/rules-form-0500-temporary-rulemaking-findings-need>
- Emergency Rulemaking Flowchart may be found here: <https://www.oah.nc.gov/documents/rules/rules-rulemakingchart-emergencyrule-0/download>
- Emergency Rulemaking Findings of Need may be found here: <https://www.oah.nc.gov/rules-form-0600-emergency-rulemaking-findings-need>
- Other resources (including electronic filing instructions) for potentially preparing the rules can be found in the “Information for Rulemaking Coordinators” section of the RRC’s website, here: <https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators>

A number of arguments were made at the hearing yesterday about provisions in the Returned Rules, to which the RRC did not object, no longer being operative because the entire rule was returned to the CRC. The RRC notes that, as part of the potential emergency, temporary, or permanent rulemaking process, the CRC is entitled to draft its proposed rules in a way that places rule provisions over which the RRC did not previously object in one set of proposed rules, and the CRC could draft a separate set of proposed rules covering those topics or aspects that have drawn prior objection from the RRC. The RRC would obviously have to conduct an independent analysis of these rules (if applicable) and such separation is not a guarantee that the RRC would not object to them, but given the concerns raised by the CRC at the hearing the RRC notes that separating proposed rules in that way could assist narrowing the issues.

Please let us know if you have any additional questions about this process.

Best regards,



John E. Branch III

JB

CC: Lewis Lamar Jr. (llamar@ncdoj.gov)

FILED
DATE: January 4, 2024
TIME: 01/04/2024 4:06:15 PM
WAKE COUNTY
SUPERIOR COURT JUDGES OFFICE
BY: S. Smallwood

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV031533-910

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

Plaintiffs,

v.

NORTH CAROLINA RULES REVIEW COMMISSION, and ASHLEY SNYDER, in her official capacity as CODIFIER OF RULES, OFFICE OF ADMINISTRATIVE HEARINGS,

Defendants.

ORDER

Plaintiffs NC Department of Environmental Quality, Division of Coastal Management and North Carolina Coastal Resources Commission brought a motion for temporary restraining order before the undersigned judge at the November 6, 2023 session of Wake County Superior Court. Present for Plaintiffs was Mary L. Lucasse and Elizabeth S. Young of the North Carolina Department of Justice. Defendant North Carolina Rules Review Commission was represented by John E. Branch and D. Martin Warf of Nelson Mullins Riley & Scarborough. Defendant Ashley Snyder, in her official capacity as Codifier of Rules, Office of Administrative Hearings was represented by G. Mark Teague and Lewis W. Lamar, Jr. of the North Carolina Department of Justice.

Following an extensive period of argument from counsel for all parties, as well as a detailed review of the record and analysis of relevant law, including but not limited to Section 21.2(m) of S.L. 2023-134, the Court concludes that Plaintiffs have not met their burden to show that they are entitled to an order mandating that the Defendants restore the thirty Coastal Resources Commission rules to the Administrative Code which were removed by the Codifier on October 5, 2023.

Accordingly, Plaintiffs' Motion for Temporary Restraining Order is hereby DENIED.

So ordered.

January 4, 2024



Honorable A. Graham Shirley, II,
Superior Court Judge presiding

1/4/2024 11:32:42 AM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Order was served upon the persons indicated below via electronic mail addressed as follows:

Mary L. Lucasse
Special Deputy Attorney General
mlucasse@ncdoj.gov

Elizabeth S. Young
Assistant Attorney General
esyong@ncdoj.gov

G. Mark Teague
Special Deputy Attorney General
gteague@ncdoj.gov

Lewis W. Lamar, Jr.
Special Deputy Attorney General
llamar@ncdoj.gov

John E. Branch, III
john.branch@nelsonmullins.com

D. Martin Warf
martin.warf@nelsonmullins.com

This the ____ day of November, 2023.

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director



CRC-23-25

December 7, 2023

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Proposed Emergency and Temporary Rules

As was discussed at the November CRC meeting, the Commission has had several issues related to the readoption of your coastal development rules through the legislatively required periodic rules review process as well as proposed amendments submitted to the Rules Review Commission (RRC).

DCM Staff has worked through many of the RRC's technical change requests. However, the RRC continued its objections to 30 of the 132 rules submitted for review. Until Session Law 2023-134 became effective on October 3, 2023, a rule could not be returned to an agency without the agency requesting return. At their October 5, 2023, meeting, the RRC voted to return these 30 rules to the CRC. As a result, the Codifier removed these rules from the Administrative Code.

The CRC filed a declaratory judgment complaint in Wake Co. Superior Court, File No. 23CV031553-910 requesting the court resolve the dispute between the CRC and RRC over these rules.

During litigation, counsel for the RRC has suggested that the CRC may consider emergency and temporary rulemaking as a means to reinstate these rules in the NC Administrative Code. At your November 2023 meeting, the CRC directed DCM Staff to pursue this course of action.

Attached are 16 of your rules (a clean version and tracked change version) which the Division considers critical to the day-to-day administration of the NC Coastal Program. While these rules are not new, Staff has included amendments that address the RRC objections. The amendments focus on what the RRC considers vague and ambiguous language, clarify procedures, citations addressing statutory authority, and clarify definitions. The Division does not believe these amendments impose additional requirements on the regulated community as these are rules that were in existence as of October 5, 2023. At our upcoming meeting on December 13, 2023, I will briefly summarize the amendments.

Staff is recommending approval of these proposed rules for emergency and temporary rulemaking. I look forward to discussing any questions you may have on the 13th.



Summary of Amendments

15A NCAC 7H .0507 Unique Coastal Geologic Formations (Jockeys Ridge)

- APA compliance.
- Statutory citations.

15A NCAC 7H .0508 Use Standards

- APA compliance.
- Reference significant adverse impacts.

15A NCAC 7H .0509 Significant Coastal Archaeological Resources AEC

- APA compliance.
- Statutory citations.
- Coordination with Department of Cultural Resources.

15A NCAC 7I .0702 When the Local Permitting Agency Exceeds Local Authority

- APA compliance.
- Statutory citations.
- Title change.

15A NCAC 7J .0203 Standards for Work Plats

- APA compliance.
- Statutory citations.
- Clarifying how drawing are to be scaled.
- Clarifying information to be included in site plans (based on existing application)
- Clarifies surveyor and engineer role in establishing water depths and references Normal Water Level and Normal High Water (current rules).
- Clarifies development outside of an AEC may proceed provided DCM determines there is no direct impact on AECs
- Title change.

15A NCAC 7J .0204 Application Processing

- APA compliance.
- Statutory citations.
- APA requires applications to be included in rule. Since DCM has moved to an electronic permit application system, these requirements represent the fields addressed in the electronic permit application.
- Minor Permits still utilize a paper form. These requirements represent the information include on the Minor Permit application form.

15A NCAC 7J .0206 Public Notice Requirements

- APA compliance (repeats statute).
- Statutory citations.
- Title change.

15A NCAC 7J .0207 Review of Major Development and Dredge and Fill Applications

- APA compliance.
- Statutory citations (Both CAMA and Dredge & Fill involve state agencies in reviews).
- Title change.

15A NCAC 7J .0208 Permit Conditions

- APA compliance.
- Statutory citations.
- Clarifying language.

15A NCAC 7M .0401 Coastal Energy Development – General Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “policies, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .0402 Coastal Energy Development – Definitions

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “policies, guidelines and standards” in administration of the coastal program.
- Strike language referring to areas outside the CRC’s jurisdiction.
- Add definition of significant adverse impacts.
- Title change.

15A NCAC 7M .0403 Coastal Energy Development – Specific Policy Statements

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “policies, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .0701 Mitigation – General Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “policies, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .0703 Mitigation Projects

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional language clarify how the Division has reviewed mitigation projects for approval.
- Title change.

15A NCAC 7M .0704 Mitigation – Specific Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “policies, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .1101 Beneficial Use of Dredged Materials From Navigation Channel Maintenance – General Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Title change.

NC COASTAL RESOURCES COMMISSION (CRC)

Specially Called Meeting

December 13, 2023

Video Conference via Webex

Present CRC Members

Renee Cahoon, Chair

Neal Andrew, Vice-chair

D.R. Bryan

Bob Emory

Jordan Hennessy

Robert High

Sheila Holman, 2nd Vice-chair

Steve King

Lauren Salter

Steve Shuttleworth

Earl Smith

James "Robbie" Yates

Present from the Office of the Attorney General

Mary Lucasse

Present from the Department of Environmental Quality, Office of the General Counsel

Christine Goebel

CALL TO ORDER/ROLL CALL

CRC Chair Renee Cahoon called the specially called meeting to order at 9:00 a.m. on December 13, 2023, reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. The Chair requested that if any member knows of a conflict of interest or a potential conflict of interest, they state the conflict or potential conflict when the roll is called. Commissioner Larry Baldwin was absent. Based upon this roll call Chair Cahoon declared a quorum.

ACTION ITEMS

Emergency and Temporary Rule Process

Mary Lucasse

Mary Lucasse reviewed the requirements for emergency and/or temporary rules under the NC Administrative Procedures Act (APA). She also reviewed the timeline for the CRC to considering adopting emergency and/or temporary rules.

Summary of Emergency and Temporary Rules (CRC 23-25)

Mike Lopazanski

Mike Lopazanski reviewed each of the 16 proposed emergency and temporary rules that DCM had determined were necessary for day-to-day operations including the subject of the rule, the RRC objection related to the rule, and any technical corrections proposed by DCM. Specifically, he stated: 15A NCAC 07H .0507 addresses Unique Geologic Formations and contains the Jockey's Ridge AEC. The changes to this rule were to conform to APA requirements. 07H .0508 outline the use standards for fragile coastal natural or cultural resource areas. Amendments to this rule include APA compliance and adding definitions for significant adverse impacts. 07H .0509 address Significant Coastal Archeological Resources and includes the Permuda Island AEC protections. Amendments to this rule include APA compliance changes, updating statutory citations, and addressing coordination with the Department of Cultural Resources. 07I .0702 deals with the Minor Permit Program addressing when the local permitting agency exceeds local authority. The amendments address APA compliance and updates statutory citations. 07J .0203 addresses the preparation of work plats. While there are no new requirements, the amendments clarify how drawings are to be scaled, what information is to be included in site plans, the surveyor and engineer roles in establishing water depths, and that development outside the AEC may proceed provided DCM determines there is no direct impact on AECs. Additional changes include APA compliance issues, updating statutory citations, and changing the title. 07J .0204 is for Application Processing. The APA requires that the information required by the application be in rule. Since DCM has moved to an electronic permit application system, these revisions represent the fields addressed in the electronic permit application. Minor permits still use a paper form, and these revisions represent the information included on the Minor Permit application form. There are also minor APA compliance changes as well as statutory citations. 07J .0206 is for Public Notice Requirements. This revision includes a citation to the statute. 07J .0207 addresses the review of Major Development and Dredge and Fill permit application. Amendments include APA compliance changes and the additions of citations that allow DCM to circulate permits to other agencies for review. In 07J .0208 Permit Conditions, clarifying language was added, APA compliance changes were made, and statutory citations were updated. 07M .0401 Coastal Energy Development – General Policies was amended to satisfy RRC objections including APA compliance changes, updating statutory citations, and adding clarifying language. An additional statement on how policy statements are to be used was also included as CAMA authorizes the CRC to establish “policies, guidelines, and standards” in the administration of the coastal program. Amendments to 07M .0402 mirror 7M .0401 and remove the language referring to areas outside of the CRC's jurisdiction and add the definition for significant adverse impact. In 7M .0403, .0701, and .0704 additional language was added explaining how policy statements are used based on CAMA authorization to the CRC to establish “policies, guidelines, and standards” through rulemaking for the administration of the coastal program. Amendments to 07M .0703 Mitigation Projects add additional language to clarify how the Division has reviewed mitigation projects for approval. 07M .1101 Beneficial Use of Dredged Materials from Navigation Channel Maintenance – General Policies includes amendments to address APA compliance, updating statutory citations, and adding clarifying language. This rule is important to local governments and is used in federal consistency compliance.

Consideration of Adoption of Emergency Rules

Neal Andrew made a motion that for these 16 rules, the Commission find that adherence to the notice and hearing requirements would be contrary to the public interest for the reasons discussed during the meeting. Lauren Salter seconded the motion.

During discussion, Commissioner Hennessy spoke against the motion. Commissioners Bryan and Emory spoke in favor of the motion.

The motion passed with nine votes in favor (Cahoon, Andrew, Bryan, Emory, High, Holman, Salter, Shuttleworth, Smith) and two opposed (Hennessy, Yates)(King abstained).

Neal Andrew made a motion that for these 16 rules, the Commission find that immediate adoption of the rules is required because there is a serious and unforeseen threat to public safety to the coastal management program because the rules have been removed from the Code as discussed during this meeting. Lauren Salter seconded the motion.

Lauren Salter spoke in favor of the motion and stated that the temporary and emergency rulemaking process was suggested as a remedy by RRC counsel in the CRC v. RRC litigation. Commissioner Shuttleworth spoke against the motion and stated that temporary rulemaking would be appropriate, but he did not think that all 16 of these rules should be considered for emergency rulemaking. Commissioner Hennessy spoke against the motion and stated the temporary process allows for public hearings and the public an opportunity to speak to these rules. The Commission should be allowed more time to review and receive comments. Commissioner Salter added that these rules have been through the public comment period during the periodic review process and ultimately the permanent rulemaking process. These are not new rules. The public will again have an opportunity to comment during the temporary and permanent process following this action. Commissioner Emory spoke in favor of the motion and stated these rules were already in the Code and are not new. DCM staff know what constitutes a threat and we should defer to their judgement on which rules move forward as emergency rules.

D.R. Bryan made a motion to stop discussion and vote on the motion on the table. Sheila Holman seconded the motion. The motion passed unanimously (Cahoon, Andrew, Bryan, Emory, Hennessy, High, Holman, King, Salter, Shuttleworth, Smith, Yates).

The motion passed with nine votes in favor (Cahoon, Andrew, Bryan, Emory, High, Holman, King, Salter, Smith) and three opposed (Hennessy, Shuttleworth, Yates).

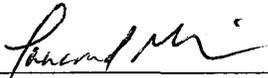
Neal Andrew made a motion to send the temporary rules, which are the same as the emergency rules, out for public comment and notice. Sheila Holman seconded the motion. The motion passed unanimously (Cahoon, Andrew, Bryan, Emory, Hennessy, High, Holman, King, Salter, Shuttleworth, Smith, Yates).

Director Braxton Davis addressed the Commission and stated, as you may have heard, I will be leaving my role with DCM in mid-January and beginning a new phase as executive director of NC Coastal Federation on February 1, 2024. After 12 years in this role, there are so many people

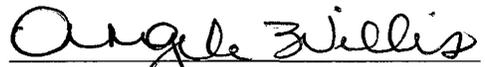
that I'd like to recognize for their commitment to the NC coastal program, but I will save much of that for another time. I would like to say a few words about what I've experienced working at DCM and with the Commission over the years. First, I have always appreciated the professional, collegial relationship between the Commission and DCM staff. I feel great about the coastal program framework that we have in NC, and I've bragged to my colleagues in other coastal states that it works well here because we've developed a level of trust and have open discussions that have benefited from our different perspectives and backgrounds. I think that has been based on a shared understanding that we're all trying to work for the greater good and find the right balance between environmental, social, and economic values, because we all love the NC coast. As you know, staff work hard to provide detailed policy and economic analyses to help you evaluate policy options in their memos and presentations on proposed rules, permit appeals, and variance petitions. After that's done, we respect the Commission's authority to ultimately decide where that balance lies, and then we work to enforce your rules and decisions. We strive to be collaborative and supportive of the Commission's work, and we really appreciate the positive working relationship we've had with you over the years. I know it's not a high-paying job for you, so again, thank you for all of your contributions to this program. Finally, I want to say that I believe the staff of the Division of Coastal Management are second to none. From the time I arrived at DCM, I was impressed with their dedication to public service, and that public service includes customer service. When people call or walk into our offices, staff try to help them with whatever they are dealing with, whether that means clarifying rules and procedures, finding a project design that works within your rules, or finding a way to resolve a conflict with their neighbor. I hear staff doing these things every day in hallways, offices, and reception areas. I think DCM's focus on public service has benefited from having staff that are, simply put, good with people. I've found that they are caring and solution-oriented, and they got into this line of work because they love our coast too. So, I just wanted to say that in my experience, DCM staff are great ambassadors for the Commission's work. I will sincerely miss working with you and the staff in the years ahead, but I know that I'll be seeing you at future meetings and look forward to partnering with the coastal program in my new role at the Coastal Federation.

With no further business, the CRC adjourned.

Respectfully submitted,



Tancred Miller, Executive Secretary



Angela Willis, Recording Secretary



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

December 20, 2023

Chair Renee Cahoon and Ms. Mary Lucasse
Coastal Resources Commission

Sent via email only: renee.cahoon@deq.nc.gov and mlucasse@ncdoj.gov

Re: Emergency Rule Filing, 15A NCAC 07H, 07I, 07J, 07M

Dear Ms. Cahoon and Ms. Lucasse:

As requested in your letter this morning, I will enter the Coastal Resources Commission's filed emergency rules into the Code over my objection effective January 3, 2024, the sixth business day after receiving your notice.

For the reasons stated in my December 14, 2023 email and December 19, 2023 letter, I do not have statutory authority to enter 15A NCAC 07J .0204 into the Code unless and until CRC satisfies the fee consultation requirement in G.S. 12-3.1. "Notwithstanding any other law, a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased." G.S. 12-3.1. Granting your request would require me to violate multiple statutes. *See, e.g.* G.S. 12-3.1, 150B-21.1A(b), 150B-21.3(c1), 150B-21.19(5). As a result, I will not enter 15A NCAC 07J .0204 into the Code until the consultation requirement in G.S. 12-3.1 has been satisfied.

Sincerely,

Ashley Snyder
Codifier of Rules

Donald R. van der Vaart, Director
Chief Administrative Law Judge

John C. Evans
Senior Administrative Law Judge

An Equal Employment Opportunity Employer

1711 New Hope Church Road, Raleigh, NC 27609
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871
www.oah.nc.gov

cc: Jennifer Everett, jennifer.everett@deq.nc.gov
Elly Young, esyong@ncdoj.gov

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24-CV-121-910

CEDAR POINT DEVELOPERS, LLC.,)
)
Plaintiff,)
)
v.)
)
COASTAL RESOURCES)
COMMISSION,)
)
Defendant.)

AFFIDAVIT OF
RENEE GLEDHILL-EARLEY

COMES NOW Renee Gledhill-Earley, being first duly sworn, and states the following:

1. I am over 18 years old and am competent to give this statement.
2. I have been employed since September 1, 1978 by the North Carolina State

Historic Preservation Office, and following a promotion from Survey Specialist, have been the Environmental Review Coordinator since February 1, 1983.

3. I hold a Bachelor of Arts degree in History from Florida State University (cum laude), and a Master of Arts degree in American History and a Master of Library Science, both from the University of North Carolina at Chapel Hill. I am also a Certified Public Manager.

4. This affidavit contains information that is confidential under G.S. § 70-18, which states:

Information concerning the nature and location of any archaeological resource, regardless of the ownership of the property, may be made available to the public under Chapter 132 of the North Carolina General Statutes or under any other provision of law unless the Department of Natural and Cultural Resources determines that the disclosures would create a risk of harm to such resources or to the site at which such resources are located.

I have marked several attachments containing confidential information by including "Confidential" within the name of the attachment, and on the pages of the attachment.

5. The North Carolina State Historic Preservation Office (“NC HPO”) and the North Carolina Office of State Archaeology (“NC OSA”) are administrative sections within the Division of Historical Resources, Office of Archives of History of the North Carolina Department of Natural and Cultural Resources.

6. The Environmental Review branch of the NC HPO coordinates any legally mandated environmental reviews on a wide variety of infrastructure and development projects that require federal and/or state permits, approvals, licenses, or funding. Residential subdivision development can trigger this review, depending on the permits, approvals, licenses, or funding involved.

7. Professional staff of the NC HPO and NC OSA examine a submitted project to determine the presence or likely presence of historic resources and to assess the project’s effect on historic resources, which can include historic buildings, districts, and sites, as well as archaeological sites, and provide comments for these purposes.

8. Federal and state laws requiring environmental review may include the National Historic Preservation Act of 1966 as amended and its state parallel, North Carolina General Statute § 121-12(a); the National Environmental Policy Act of 1969 and its state counterpart, the North Carolina Environmental Policy Act of 1971 (also known as “SEPA”); and the North Carolina Division of Coastal Management’s (“DCM”) Coastal Area Management Act (“CAMA”) statutes and administrative codes for coastal development major permits for protection of archaeological and historical resources.

9. The review and comment requirement ensures consideration of these historic resources by the permitting or funding agency, and may, ultimately, at the discretion of the permitting or funding agency, influence the scope of the final permit, funding, or approval.

10. The mandated review and comment are conducted collaboratively by NC HPO and NC OSA professional staff that meet 36 CFR 61.4(e) and the United States Secretary of the Interior's Qualification Standards, including architectural historians, historians, and/or archaeologists.

11. The Secretary of the Interior's Qualification Standards can be found here: <https://www.doi.gov/pam/asset-management/historic-preservation/PQS>.

12. Historic sites under review may include archaeological sites, which in turn often feature unmarked human burials, especially those of American Indians living prior to European contact in what is now North Carolina.

13. On June 1, 2022, the NC HPO received a packet from DCM for NC HPO's and NC OSA's review and comment on a major permit for upland development of the Bridgeview subdivision. (RGE Attach. 1, Bridgeview CAMA Application Review)

14. On June 14, 2022, NC HPO responded, and advised:

The Area of Potential Effect (APE) of the proposed subdivision contains two known and unassessed prehistoric archaeological sites (31CR93 and 31CR95) and is adjacent to three other archaeological sites identified in a survey for the neighboring subdivision. Our records also indicate that the APE was an early plantation site with occupation through the antebellum period, with possible graves present. Due to the presence of the noted prehistoric sites along with the historical narrative tied to the APE and potential for human remains, we recommend a comprehensive archaeological survey be undertaken within the project area to relocate and assess the archaeological sites already present, as well as any other potentially significant archaeological resources that may be also present prior to any ground disturbing activities. (RGE Attach. 2, 06-14-2022 NC HPO Comments re Permit Application)

15. Upon information and belief, Cedar Point Developers hired archaeologists from TRC Environmental Corporation ("TRC") to conduct this archaeological survey and fulfill the DCM's CAMA permit requirements.

16. TRC conducted a Phase I archaeological survey on a 6.5-acre portion of the CAMA AEC area where a communal boat dock was planned within 31CR95, and provided the NC HPO and NC OSA a management summary report on August 15, 2023, for review and comment. (RGE Attach. 3, Confidential 8-2023 Boat Dock Area Management Summary)

17. A management summary report is similar to an abstract. It lacks the specificity of a final report (e.g., details, context, artifact analysis), but includes first impressions on the archaeological site or project and descriptions of activities in the field. NC HPO and NC OSA do not normally review and comment on management summary reports. However, NC HPO and NC OSA agreed to do so to help Cedar Point Developers expedite the environmental review process by making recommendations for the next steps in the regulatory process.

18. On August 30, 2023, the NC HPO with NC OSA reviewed and commented on TRC's management summary report, concurring with the findings contained within. (RGE Attach. 4, 08-30-2023 NC HPO Comments re Management Summary)

19. On November 16, 2023, TRC submitted a "preliminary report" of its survey and assessment of potential impacts to site 31CR95 to the NC HPO and NC OSA for review and comment. (RGE Attach. 5, Confidential 11-2023 TRC Preliminary Report)

20. NC HPO and NC OSA allowed TRC to submit a preliminary report to convey to Cedar Point Developers, as early as possible, the significance of the site and its eligibility for listing on the National Register of Historic Places. The sooner a developer knows that development of a project will require mitigation or further archaeological work, the more time and money a developer saves. This allows a developer to move straight into measures to avoid the archaeological resources, or to mitigate adverse effects and start data recovery.

21. In mid-December 2023, NC HPO and NC OSA sent letters to DCM summarizing and commenting on the report's findings. NC HPO and NC OSA recommended that Cedar Point Developers, through TRC, try to define the boundaries of the archaeological site(s) to avoid or mitigate adverse effects to significant archaeological resources, including human burials. (RGE Attach. 6, 12-14-2023 HPO Letter to Davis re Preliminary Report; RGE Attach. 7, 12-13-2023 OSA Memo re Bridgeview Preliminary Report Summary)

22. The NC HPO with NC OSA reviewed the report and sent comments to TRC on January 3, 2024. (RGE 8, 01-03-2024 HPO Preliminary Report Comments)

23. Within those comments, NC HPO and NC OSA recommended various approaches to help Cedar Point Developers, and future minor permit applicants (e.g., homeowners) within the AEC, avoid causing irreversible damage to archaeological resources: (1) archaeological excavation; (2) total avoidance; and (3) partial avoidance and partial excavation.

24. To complete the environmental review process, NC HPO and NC OSA expect a final, comprehensive report from TRC for the communal boat dock and other areas of archaeological site 31CR95. That report has not yet been submitted.

[THIS SPACE INTENTIONALLY LEFT BLANK]

This the 6th day of March, 2024.

Renee Gledhill-Earley

Renee Gledhill-Earley
Environmental Review Coordinator,
North Carolina State Historic Preservation Office,
Division of Historical Resources,
N.C. Department of Natural and Cultural Resources

Wake County, North Carolina

Signed and sworn or affirmed to before me this day by Renee Gledhill-Earley

This 6th day of March, 2024.

Jennifer M. Fontes
Official Signature of Notary

(Official Seal)

Jennifer M. Fontes
Notary Public



My Commission expires: 11/6/2027



ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director

ER 22-1558

May 27, 2022

MEMORANDUM:

FROM: Gregg Bodnar, Assistant Major Permits Coordinator
NCDEQ - Division of Coastal Management
400 Commerce Avenue, Morehead City, NC 28557
Office: 252-515-5416 (**Courier 11-12-09**)
gregg.bodnar@NCDENR.gov

SUBJECT: **EXPRESS CAMA Application Review**

Applicant: Cedar Point Developers, LLC

Project Location: 1180 Cedar Point Blvd, Cedar Point, Carteret County

Proposed Project: Upland development for Bridgeview subdivision

Please indicate below your agency's position or viewpoint on the proposed project and **return this form to Gregg Bodnar** at the address above by **June 10, 2022**. If you have any questions regarding the proposed project, contact Heather Styron 252-515-5417. when appropriate, in-depth comments with supporting data is requested.

-
- REPLY:** _____ This agency has no objection to the project as proposed.
 Additional comments may be attached
- _____ This agency has no comment on the proposed project.
- _____ This agency approves of the project only if the recommended changes are incorporated. See attached.
- _____ This agency objects to the project for reasons described in the attached comments.

PRINT NAME _____

AGENCY _____

SIGNATURE _____

DATE _____



EXPRESS PERMIT APPLICATION
DIVISION OF COASTAL MANAGEMENT
FIELD INVESTIGATION REPORT

APPLICANT'S NAMES: Cedar Point Developers, LLC c/o Tidewater Associates, Inc.

LOCATION OF PROJECT SITE: The project is located at 1180 Cedar Point Blvd., Cedar Point, Carteret County. From Cedar Point follow Cedar Point Blvd. towards Cape Carteret for approximately 2.7 miles (14055 feet) until you see the Go Gas station on the right. Turn into the gas station or at the Bojangles light and follow the road to Coastline Circle. The tract is located directly behind the gas station.

Latitude: 34°40'49"

Longitude: -76°04'12"

INVESTIGATION TYPE: CAMA

INVESTIGATIVE PROCEDURE: Date(s) of Site Visit – 5/24/2022

Was Applicant or Agent Present –No

Photos Taken – No

PROCESSING PROCEDURE: Application Received Complete: 5/24/22

Office – MHC

SITE DESCRIPTION:

(A) Local Land Use Plan – (2/6/2013)

Land Classification from LUP – Vacant (future growth)

(B) AEC(s) Involved: Coastal/Estuarine Shoreline

(C) Water Dependent: No

(D) Intended Use: Single Family Residential

(E) Wastewater Treatment: Onsite wastewater systems

(F) Type of Development:

Existing – deteriorated non-habitable “fish” shack structure, remnants of derelict pier

Proposed - 83 single family lots (34 within the section II area), common areas, retention basin, filling, grading, asphalt road surface, electrical service lines and water system installation.

(G) Estimated Annual Rate of Erosion: N/A

Source – N/A

HABITAT DESCRIPTION: DREDGED FILLED Offsite

(A) Coastal Shoreline		702,897sf
-----------------------	--	-----------

(C) Total Area Disturbed: 16.14 acres

(D) Primary Nursery Area: No

(E) Water Classification: SA; ORW Open: Yes

**Field Investigation Report:
Cedar Point Developers, LLC Cedar point,
Carteret County Page 2**

- (F) Cultural Resources: None
- (G) Urban Waterfront: NO

Project Summary: The applicant proposes to complete the upland development for the proposed Bridgeview subdivision (45.81-acre tract) located at 1180 Cedar Point Blvd.

Narrative Description:

The project property is a vacant tract that is generally open field and is contiguous with Bogue Sound, in Cedar Point, Carteret County. The property is bordered on the east by Bogue Sound RV Park and on the west by Magens Bay subdivision. The existing drainage ground surface flow is into Bogue Sound. There was an old house onsite but this has since been removed. There is currently an existing dilapidated old “fish” shack and remnant dock structure. According to the applicant these would be removed in the near future.

The elevation of the high ground of the parcel is approximately 15’ above the normal high water (NHW), is partially wooded with sparse vegetation and covered with grassy vegetation. The 45.81-acre tract has approximately 2,221.17 linear feet of continuous shoreline. There are joint 404 and coastal wetlands along the shoreline of the property and 404 jurisdictional wetlands in areas on the upland portion of the tract. The coastal wetlands and normal high water contour was delineated by a previous field rep. (Ryan Davenport) with DCM in July of 2021 and the 404 jurisdictional wetlands delineated by Haywood Pittman of Pittman Soil Consulting in January 2021. The 404 wetland delineation was submitted for approval by the USACOE under Project Action ID SAW-2022-00474 on February 23,2022 with final jurisdictional approval still pending by the USACOE at this time.

This area is located within the Division of Water Resources White Oak River Basin area. The waters of Bogue Sound in this area are classified as SA; ORW. There is not a cultural resource within the project property. These waters are not classified as a primary nursery area and submerged aquatic vegetation was not observed at this location. This area is open to shellfish harvest.

Construction of the subdivisions section I (north of the 575 boundary line) infrastructure was constructed with approvals from the town and the following agencies;

- NCDEMLR Project ID; CARTE-2021-2021-8
- Stormwater; SWA-000127
- Public Water Supply: No. 21-00622
- NCDOT: No. E022-016-21-00171

**Field Investigation Report:
Cedar Point Developers, LLC Cedar point,
Carteret County Page 3**

- USACOE: Project Action ID: SAW 2022-0474

Proposed Development:

The entire Bridgeview subdivision project proposes 83 single family lots, six common areas which include a park, boat storage, offsite LPP septic for 8 lots, water access area to serve as amenities to the neighborhood and a constructed wetland area. Construction of the subdivision infrastructure has been completed landward, or north of the 575' AEC.

The stormwater permitting for the project is subject to high density guidelines with a maximum of 24% impervious for section II project, with a maximum of 25% of impervious coverage within the 575' AEC. Each lot within the subdivision has a recorded restrictive covenant of 25% impervious coverage. Stormwater treatment would be provided through four infiltration basins, and one constructed wetland. Per the applicant these areas are currently rough graded and used as erosion control measures.

The proposed wastewater treatment for the project would be provided by individual onsite septic systems at the time of home construction, except for eight lots, lots 35-42, which would be served by an offsite LPP system that would be located in one of the subdivisions common areas. The onsite soils were evaluated by Pittman Soil Consulting for both the stormwater BMP's and the individual septic systems. Coastal wetlands and 404 jurisdictional wetlands would not be impacted by this project.

The entire tract is 1,995,410sf (45.81 acres). The BUA consisting of roads, lots (building envelope) and the mail kiosk for the entire tract would be 483,803 sf (11.11 acres). The total project area within the 575'AEC would be 702,897 sf (16.14 acres). The Total BUA in the 575' AEC for the roads and lots would be 175,274 sf (4.02 acres), or 25 % impervious coverage within the total ORW area on the property. The closest land disturbance would be approximately 150' from NHW.

According to the applicant, no dredging or docking facilities are proposed as part of this submittal. This is due to not meeting the express criteria and the need to urgently resume work on the upland infrastructure due to financial commitments and deadlines. A proposed 9-slip community docking facility would be applied for through the major permit process in the future.

**Field Investigation Report:
Cedar Point Developers, LLC Cedar point,
Carteret County Page 4**

Anticipated Impacts:

The proposed section II infrastructure project would be within 575' of NHW. The closest land disturbance would be approximately 150' from NHW. Impacts would include temporary upland ground disturbance as a result of the infrastructure installation and the associated grading, filling and landscaping. If effective sedimentation barriers remain in place between the project site and the adjacent water body and a vegetative cover is in place, then there should be minimal impacts to the adjacent ORW waters. If the proposed work follows current adherence to the regulations and permits in place, then this should also help provide an effective level of protection. No wetlands would be impacted.



TIDEWATER ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
CEDAR POINT, NORTH CAROLINA

LETTER OF TRANSMITTAL

TO: NC Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
ATTN: Heather Styron

DATE: May 20, 2022
REF: Bridge View Subdivision
Cedar Point, Carteret County, NC
EXPRESS CAMA Major Permit Application

WE ARE SENDING YOU:

One (1) copy of the Express CAMA Permit Application and Workplan Drawings for Review
One (1) Check for Express CAMA Permit Application Fee

DELIVERY VIA:

- | | | |
|--|--|--|
| <input type="checkbox"/> Regular Mail | <input checked="" type="checkbox"/> Hand | <input type="checkbox"/> Federal Express |
| <input type="checkbox"/> UPS Overnight | <input type="checkbox"/> UPS Ground | <input type="checkbox"/> Other _____ |

THESE ARE TRANSMITTED AS CHECKED BELOW:

- | | | |
|---------------------------------------|---------------------------------------|--|
| <input type="checkbox"/> For Approval | <input type="checkbox"/> As Requested | <input checked="" type="checkbox"/> For Review and Comment |
| <input type="checkbox"/> For Your Use | <input type="checkbox"/> For Bids Due | |
| <input type="checkbox"/> Other _____ | | |

COMMENTS:

Please review for completeness of application and let me know if any other information or documents are needed. If this is acceptable as complete, I will hand-deliver the 26 copies of the workplan drawings. Thanks!

Roy Brownlow
Environmental Specialist
Tidewater Associates, Inc.

Copies To:

JLM

(if enclosures are not as noted, kindly notify us at once)



TIDEWATER ASSOCIATES, INC.

ENGINEERS • SURVEYORS • PLANNERS

CEDAR POINT, NORTH CAROLINA

May 19, 2022

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

**Re: *Express Major Permit Application
Cedar Point Developers, LLC
Bridge View Subdivision, Cedar Point, Carteret County***

Heather,

Please find enclosed the Express Major CAMA Development Permit application, the check for the express permit fee, and project plans submitted on behalf of Cedar Point Developers, LLC. The owners propose to complete the site development for drainage, grading and subdivision infrastructure for Bridge View Subdivision, located 1180 Cedar Point Blvd in Cedar Point, Carteret County, adjacent to Bogue Sound.

Thank you for your assistance with this project and permit application. If you have any questions or need additional information, please feel free to contact me at the Tidewater Associates, Inc. Cedar Point office by phone at 252.393.6101, or email me at RBrownlow@TidewaterENC.com. I look forward to our working together on this project.

Best Regards,

Roy Brownlow
Environmental Specialist
Tidewater Associates, Inc.

Enclosures

cc: Jonathan McDaniel, P.E., Tidewater Associates, Inc.

**Cedar Point Developers, LLC
Tidewater Associates, Inc., Authorized Agent
Bridge View Subdivision, Section II Upland
1180 Cedar Point Blvd
Cedar Point, Carteret County, North Carolina**

Express Major CAMA Permit Application

Contents

Application Documents

- Agent Authorization Form
- Project Narrative
- DCM MP-1 Application Form
- DCM MP-3 Upland Development Form
- Property Deed
- Adjacent Riparian Property Owner Notifications (Copies)
- Division of Water Resources Project Pre-Application Submittal Forms
- Copies of Restrictive Covenants
- Allowable Built Upon Area Chart
- Public Water Supply Authorization
- Sedimentation and Erosion Control Authorization
- Department of Transportation Authorization
- State Stormwater Management Project Authorization

Project Plans

- Wetlands Map for Jurisdiction Approval Review
- Grading, Drainage, Erosion and Sediment Control Site Plan
- Cross-Sectional Profile Plan

N.C. DIVISION OF COASTAL MANAGEMENT
AGENT AUTHORIZATION FORM

Date: April 6, 2022

Name of Property Owner Applying for Permit:

CEDAR POINT DEVELOPERS, LLC

Mailing Address:

166 CENTER ST

JACKSONVILLE, NC 28546

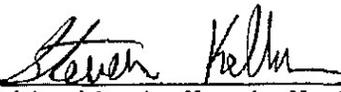
I certify that I have authorized (agent), TIDEWATER ASSOCIATES, INC., to act on my behalf, for the purpose of applying for and obtaining all CAMA Permits necessary to install or construct:

(activity) SUBDIVISION INFRASTRUCTURE, DRAINAGE, ROADS, & SITE IMPROVEMENTS

at my property located at 1180 CEDAR POINT BLVD, CEDAR POINT, NC 28584

This certification is valid thru (date): DECEMBER 31, 2022

Property Owner Signature:


(Registered Agent or Managing Member)

Date:

4-6-22



TIDEWATER ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
CEDAR POINT, NORTH CAROLINA

BRIDGE VIEW SUBDIVISION, SECTION II UPLAND DEVELOPMENT CAMA EXPRESS PERMIT APPLICATION

May 19, 2022

Project Narrative

Introduction

Cedar Point Developers, LLC is seeking an Express CAMA Major Permit to complete Section II of the upland development of Bridge View Subdivision's infrastructure within the 575' Outstanding Resource Water (ORW) Estuarine Shoreline in the North Carolina Coastal Resources Commission's Coastal Shoreline Area of Environmental Concern. The total tract is over 45 acres and the project would develop a total of 83 individual single-family residential lots. The property is located in the Town of Cedar Point, Carteret County adjacent to Bogue Sound.

During the development of the first phase, the grading contractor inadvertently continued grading the gravel road into the 575' ORW Estuarine Shoreline Area of Environmental Concern. A Division of Coastal Management Field Representative visited the site and advised that all development activity in the 575' AEC had to cease until a CAMA permit was obtained. Since the project involves authorizations from NCDEMLR, NCDWR, and the USACE, Section II of the proposed upland development that is located with the Area of Environmental Concern, requires a CAMA Major development permit in order to be completed.

Cedar Point Developers, LLC seeks an Express CAMA Major Development Permit to complete the final upland development of Bridge View Subdivision infrastructure consisting of the asphalt road surface, electrical service lines, drainage measures, and water supply lines for Section II. The development landward (north) of the 575'-boundary included road grading and paving, erosion control and drainage measures, electrical service lines and the water system installation.

Permitting Request

Tidewater Associates, Inc., on behalf of our client, Cedar Point Developers, LLC, are seeking an Express CAMA Major permit application to complete the construction of the Section II upland area, including property that is within the 575' AEC. Please see the enclosed site plan for reference. The infrastructure proposed inside the 575' AEC includes road area for the outer loop of "Coastline Circle" (50' right of way), lot grading, retention basin, and associated electrical utilities and waterline installation. All previous work has been done and the proposed work would be done in accordance with approved sedimentation and erosion, stormwater control BMP's and Coastal Management's authorized conditions.

Bridge View Subdivision Section II – CAMA Permit Application Narrative
May 19, 2022
Page 2 of 4

It should be noted, there would be a proposed 9-slip community dock proposed for this property, however, the community dock cannot be included under this CAMA Express Permit Application due to eligibility requirements for Express Permitting. It is not the intent to piecemeal the project. The need is to urgently resume work on the upland infrastructure as soon as possible due to financial commitments and deadlines. Work had to stop due to the Division of Coastal Management's cease and desist order. Once a CAMA Major permit is obtained, then a Major Modification to that permit would be applied for to construct a nine-slip community docking facility in the immediate future.

Existing Conditions

Bridge View subdivision is a proposed single-family, 83-lot, private-residential subdivision with 6 common areas located within the Town limits of Cedar Point in Carteret County. The 45.81-acre tract is located at 1180 Cedar Point Blvd near the intersection of NC Highway 58 and NC Highway 24, south of the Bojangles restaurant and GoGas commercial sites. The property is owned by Cedar Point Developers, LLC, who are developing the Bridge View subdivision project with private funding. The proposed development for this permit application is the Section II upland area of the property waterward (south) of the 575' AEC line and involves 34 lots and 4 common areas. The property is located in the White Oak River Basin.

The property is bordered on the east by Bogue Sound RV Park, to the south by Bogue Sound, to the west by Megans Bay residential subdivision and to the north by vacant commercial tracts and Hwy 24. This vacant property was previously owned by the Ennett family, with ownership dating back to the 18th century. There are no national register or individual study list entries according to the North Carolina State Historic Preservation Office (SHPO), although there is one individual survey point shown on the SHPO GIS service listing a 1930s "Old Ennett Place" site.

There is an existing deteriorated non-habitable structure identified as an "old fish cabin" by Bill Ennett (previous owner), which used to be located directly at the shoreline and extended partially over the water on pilings. A hurricane decades prior moved the structure to its approximate location. This 1930s structure (cabin) is planned to be moved offsite or demolished by the current owners. There was also a 1980s home on the property that has since been demolished. There are remnants of a relic and dilapidated pier on the southeast shore of the property. There is also the remnants of a derelict pier consisting of pilings and few framing members on the shoreline remaining in Bogue Sound. The remnants would be removed in the near future.

The site is generally open field (prior agriculture) and is partially wooded with sparse vegetation and covered with grassy herbaceous vegetation. This property was open field prior to initial construction for the Bridge View Subdivision Section I project which started in May of 2021. There is also a remnant boat launch area near the middle of the shoreline along the property, in the marsh, at or near the normal high water of Bogue Sound.

The existing topography has relatively shallow grades, and less than 5% with 2% average. The site has an average elevation of 16'+/- above normal high water and naturally drains to the southwest into Bogue Sound which is classified as SA; ORW. The ORW classification establishes a 575' area of environmental concern (ARC) from the normal high water of Bogue Sound that is managed by the Division of Coastal Management (DCM). There is 2,221 linear feet of shoreline on this property and there are 1.38 acres of coastal wetlands on the property at or near the normal high-water line. There is joint 404 and Coastal

Bridge View Subdivision Section II – CAMA Permit Application Narrative
May 19, 2022
Page 3 of 4

Wetlands on the shoreline of the property and upland area of non-coastal 404 wetland. The Coastal Wetlands and normal high water delineation was done by [then] DCM Field Representative Ryan Davenport in July of 2021 (see CAMA NOV Case No. 18-21C) and the 404 wetlands were delineated by Haywood Pittman of Pittman Soil Consulting in January of 2021. The 404 wetlands delineation was approved for submittal by the USACE under Project Action ID SAW-2022-00474 on February 23, 2022 with final jurisdictional approval still pending by the USACE at this time.

Construction of the subdivision's Section I (north of the 575' boundary line) infrastructure was constructed with approvals from the Town of Cedar Point for the subdivision and land disturbing activity with NCDEMLR, Land Resources Section, authorization under Project No. CARTE-2021-018 for a total of 42.1 acres of land disturbance. The public watermain extension is authorized under NC PWSS ID No. 21-00622. The local water utility is West Carteret Water Corporation who is providing the water supply for the project. The stormwater system is authorized under State Stormwater Project No. SWA 210817.

The land disturbance approval included areas within the 575' AEC, which was inadvertently disturbed while installing the road base and installation of erosion control measures for the proposed subdivision design specifications. This partial construction in the 575' AEC was done unknowingly of the need for additional DCM approval and resulted in Notice of Violation by the Division of Coastal Management (CAMA Case No. 21-18C) on July 30, 2021. The property has been restored and was confirmed by DCM staff on October 11, 2021. The case has since been closed and resolved. No other work or development activity has taken place within the 575' AEC since the cease and desist order was issued.

Proposed Development

The entire Bridge View subdivision project proposes 83 single family homes, and six (6) common areas which include a park, boat storage, off-site LPP septic for 8 lots, water access area to serve as amenities to the neighborhood and a constructed wetland area. Construction of subdivision infrastructure is completed landward, or north of the 575' AEC landward extents.

The stormwater permitting for the project is subject to high density guidelines with a maximum of 24% impervious for the Section II project, with a maximum of 25% allowable impervious surface within the 575' ORW AEC. Each individual lot within the subdivision has a recorded restrictive covenant of 25% impervious coverage. (Please see the attached "Bridge View Lot BUA Chart – November 2021" and attached recorded covenants). Stormwater treatment would be provided through four (4) infiltration basins, and one (1) constructed wetland. These areas are currently roughed graded and used as erosion control measures.

Wastewater treatment for the project is to be provided by individual on-site septic systems at time of the individual home construction, except for eight (8) lots, lots 35 through lot 42, which would be served by an off-site LPP that would be located within one of the subdivision's common areas. The onsite soils were evaluated by Pittman Soil Consulting for both the stormwater BMPs and individual septic systems. Coastal and non-coastal Federal Jurisdiction wetlands would not be impacted by this project.

The entire tract is 1,995,410sf (45.81 acres). The built upon area consisting of roads, lots (building envelope) and the mail kiosk for the entire tract would be 483,803sf (11.11 acres). The total project area within the 575' ORW would be 702,897sf (16.14 acres). The total built upon area in the 575' ORW for the

Bridge View Subdivision Section II – CAMA Permit Application Narrative
May 19, 2022
Page 4 of 4

roads and lots (building envelope) would be 175,274sf (4.02 acres), or 25% impervious coverage within the total ORW area on the property.

Anticipated Impacts

The subdivision infrastructure for Section II installation activities would be within the 575' of the normal high water (NHW) of Bogue Sound. The closest land disturbance would be 150'+/- feet from NHW. Impacts include temporary upland ground disturbance as a result of the infrastructure installation and the associated grading and landscaping. Effective sedimentation barriers and measures between the project site and the adjacent waterbody would remain in place until a vegetative cover could be established. There would be no wetlands impacts. The proposed design limits impervious cover to 25% and recorded deed restrictions limit each individual lot to 25% impervious cover. The existing topography has relatively shallow grades, and less than 5% with 2% average. The site has an average elevation of 16'+/- above normal high water and naturally drains to the southwest into Bogue Sound which is classified as SA; ORW. The waters in this area are open to the harvest of shellfish and is not a primary nursery area. The nature of the single-family residential development along with the proposed work following adherence to the regulations, practices, and services would provide an effective level of protection resulting in no adverse impacts on coastal resources.

Existing State and Federal Authorizations

- NCDEMLR Project ID: CARTE-2021-2021-18
- Stormwater: SWA – 000127
- Public Water Supply: No.21-00622
- NCDOT: No. E022-016-21-00171
- USACE: Project Action ID: SAW 2022-0474

DWR Statements:

This proposed project meets the "no written concurrence" as per GC 4175. Please note the following statements:

- The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief.
- The project proponent hereby requests that the certifying authority review and act on this CWA 401 certification request within the applicable reasonable period of time.

Authorized Agent Signature: _____

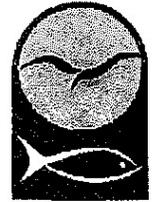
Roy Brownlow

Roy Brownlow, Environmental Specialist
Tidewater Associates, Inc.

Date: May 19, 2022

DCH MP-1

APPLICATION for Major Development Permit



(last revised 12/27/06)

North Carolina DIVISION OF COASTAL MANAGEMENT

1. Primary Applicant/ Landowner Information			
Business Name Cedar Point Developers, LLC		Project Name (if applicable) Bridge View Subdivision	
Applicant 1: First Name Steven	MI	Last Name Kellum, Managing Member	
Applicant 2: First Name N/A	MI	Last Name N/A	
<i>If additional applicants, please attach an additional page(s) with names listed.</i>			
Mailing Address 166 Center Street		PO Box	City Jacksonville
			State NC
ZIP 28546	Country US	Phone No. 910 - 938 - 5900 ext.	FAX No. N/A - -
Street Address (if different from above) N/A		City N/A	State N/A
			ZIP N/A-
Email elijahm@mortontrucking.com			

2. Agent/Contractor Information			
Business Name Tidewater Associates, Inc			
Agent/ Contractor 1: First Name Roy	MI	Last Name Brownlow, Authorized Tidewater Associates, Inc. Agent	
Agent/ Contractor 2: First Name Jonathan	MI	Last Name McDaniel, P.E.	
Mailing Address 604-E Cedar Point Blvd		PO Box	City Cedar Point
			State NC
ZIP 28584		Phone No. 1 252 - 393 - 6101 ext.	Phone No. 2 N/A - - ext.
FAX No. N/A	Contractor # Firm License No. F0108		
Street Address (if different from above) N/A		City	State
			ZIP -
Email RBrownlow@TidewaterENC.com			

<Form continues on back>

RGE Attach. 1

3. Project Location				
County (can be multiple) Carteret		Street Address 1180 Cedar Point Blvd		State Rd. # HWY 24
Subdivision Name Bridge View Subdivision		City Cedar Point	State NC	Zip 28584 -
Phone No. 252 - 393 - 6101 ext.		Lot No.(s) (if many, attach additional page with list) Tax Parcel ID 538413031785000, , See Attached Plat		
a. In which NC river basin is the project located? White Oak		b. Name of body of water nearest to proposed project Bogue Sound		
c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Manmade <input type="checkbox"/> Unknown		d. Name the closest major water body to the proposed project site. Bogue Sound		
e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Town of Cedar Point, Zoned R-10C		

4. Site Description	
a. Total length of shoreline on the tract (ft.) 2,221.17	b. Size of entire tract (sq.ft.) 45.81
c. Size of individual lot(s) 15,000sf min., 18,947sf max, (If many lot sizes, please attach additional page with a list)	d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) 15' avg <input checked="" type="checkbox"/> NHW or <input type="checkbox"/> NWL
e. Vegetation on tract Dominantly bermuda grass field R-10 with sparse hummocks (30' x 30') of native shrub, herbaceous plants and trees on the upland area, coastal and woody transitional zone non-coastal vegetation near the shoreline	
f. Man-made features and uses now on tract This property was a prior vacant, previously cleared tract, however, the area landward of the ORW 575' Estuarine Shoreline Area of Environmental Concern has been recently developed subdivision-infrastructure, roads, and drainage for residential single-family housing development. There is an existing 1920's fish cabin that is proposed to be removed.	
g. Identify and describe the existing land uses adjacent to the proposed project site. The property is bordered to the south by Bogue Sound, to the west by Magens Bay residential subdivision, to the north by vacant properties that border along Hwy 24, and is bordered to the east by Bogue Sound RV Park.	
h. How does local government zone the tract? R-10C	i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA If yes, by whom?	
l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	

<Form continues on next page>

m. (i) Are there wetlands on the site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(ii) Are there coastal wetlands on the site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(iii) If yes to either (i) or (ii) above, has a delineation been conducted? (Attach documentation, if available)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
n. Describe existing wastewater treatment facilities. Proposed individual onsite septic systems except for eight lots 35 - 42, which will be served by an off-site LPP system within a .45 acre common area.	
o. Describe existing drinking water supply source. Public - West Carteret Water Corp.	
p. Describe existing storm water management or treatment systems. Stormwater treatment provided under High Density requirements for waters that are SA-ORW with 25% impervious coverage under State Stormwater Permit No. SWA 000127	

5. Activities and Impacts

a. Will the project be for commercial, public, or private use?	<input type="checkbox"/> Commercial <input type="checkbox"/> Public/Government <input checked="" type="checkbox"/> Private/Community
b. Give a brief description of purpose, use, and daily operations of the project when complete. The proposed development would provide infrastructure and site improvements to support 83 lots for private residential single-family housing.	
c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored. Construction methodology would consist of installing effective sedimentation barriers, use of typical heavy equipment and earth moving machinery to create residential roads and site drainage and swales.	
d. List all development activities you propose. Activities would include land disturbing activity to install and construct roads, site drainage, filling and grading as needed, excavation for the installation of water supply and electrical lines to complete the project within the 575' ORW Estuarine Shoreline Area of Environmental Concern.	
e. Are the proposed activities maintenance of an existing project, new work, or both?	New work
f. What is the approximate total disturbed land area resulting from the proposed project?	42.1 <input type="checkbox"/> Sq.Ft or <input checked="" type="checkbox"/> Acres
g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
h. Describe location and type of existing and proposed discharges to waters of the state. All runoff from the existing and proposed built-upon areas on the property would drain into the permitted system via grading, stormwater collection, and/or a vegetated conveyance. A 50' vegetated buffer setback would be provide and maintained adjacent to all waters in accordance with the State Stormwater Permit. There would be a proposed collection system of constructed stormwater wetland plants.	
i. Will wastewater or stormwater be discharged into a wetland?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
If yes, will this discharged water be of the same salinity as the receiving water?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
j. Is there any mitigation proposed?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
If yes, attach a mitigation proposal.	

<Form continues on back>

6. Additional Information

In addition to this completed application form, (MP-1) the following items below, if applicable, must be submitted in order for the application package to be complete. Items (a) – (f) are always applicable to any major development application. Please consult the application instruction booklet on how to properly prepare the required items below.

- a. A project narrative.
- b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed.
- c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site.
- d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties.
- e. The appropriate application fee. Check or money order made payable to DENR.

f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management.

Name Bogue Sound RV Owner, LLC	Phone No.
Address 1206 Cedar Point Blvd, Cedar Point, NC 28584	
Name Shelly Myott	Phone No.
Address 123 Fawn Creek Ct, Cedar Point, NC 28584	
Name N/A	Phone No.
Address	

g. A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates.

NCDEMLR Project ID: CARTE-2021-018; SWA 000127	NCDOT Encroachment Agreement No. E022-016-21-00171
DWR Public Water Supply Serial No. 21-00622	USACE Action ID SAW 2022-00474

- h. Signed consultant or agent authorization form, if applicable.
- i. Wetland delineation, if necessary.
- j. A signed AEC hazard notice for projects in oceanfront and inlet areas. (Must be signed by property owner)
- k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act.

7. Certification and Permission to Enter on Land

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit.

I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

Date May 20, 2022 Print Name Roy Brownlow, Environmental Specialist, Tidewater Assoc., Inc

Signature Roy Brownlow

Please indicate application attachments pertaining to your proposed project.

- DCM MP-2 Excavation and Fill Information
- DCM MP-3 Upland Development
- DCM MP-4 Structures Information
- DCM MP-5 Bridges and Culverts

Form DCM MP-3

UPLAND DEVELOPMENT

(Construction and/or land disturbing activities)

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

GENERAL UPLAND DEVELOPMENT

a. Type and number of buildings, facilities, units or structures proposed.

Proposal is for the land disturbing activity for the installation and construction of roads, electrical & water utilities, and stormwater conveyances. Property owners will apply for their own Permits within the AEC to construct single-family residences.

b. Number of lots or parcels.

83 residential lots and 6 common areas

c. Density (give the number of residential units and the units per acre).

83 Single-family residential units are proposed at 1.8 Units per acre.

d. Size of area to be graded, filled, or disturbed including roads, ditches, etc.

42.1 acres total disturbed area

e. If the proposed project will disturb more than one acre of land, the Division of Land Resources must receive an erosion and sedimentation control plan at least 30 days before land-disturbing activity begins.

(i) If applicable, has a sedimentation and erosion control plan been submitted to the Division of Land Resources?

Yes No NA

(ii) If yes, list the date submitted: March 19, 2021

f. List the materials (such as marl, paver stone, asphalt, or concrete) to be used for impervious surfaces.

Asphalt roads

g. Give the percentage of the tract within the coastal shoreline AEC to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.

25% within the 575' ORW Estuarine Shoreline AEC. See attached "Bridge View Lot BUA Chart November 2021"

h. Projects that require a CAMA Major Development Permit may also require a Stormwater Certification.

(i) Has a site development plan been submitted to the Division of Water Quality for review?

Yes No NA

(ii) If yes, list the date submitted: 01/04/2022

i. Give the percentage of the entire tract to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.

25%

j. Describe proposed method of sewage disposal.

Individual on-site Septic Systems

k. Have the facilities described in Item (i) received state or local approval?

Yes No NA

If yes, attach appropriate documentation.

l. Describe location and type of proposed discharges to waters of the state (e.g., surface runoff, sanitary wastewater, industrial/commercial effluent, "wash down" and residential discharges).

No discharge within the 575' ORW AEC - utilizing infiltration basins (SCMs)

m. Does the proposed project include an innovative stormwater design?

Yes No NA

If yes, attach appropriate documentation.

Form DCM MP-3 (Upland Development, Page 2 of 2)

m. Describe proposed drinking water supply source (e.g., well, community, public system, etc.)
Public - West Carteret Water Corp

n. (i) Will water be impounded? Yes No NA
(ii) If yes, how many acres?

o. When was the lot(s) platted and recorded?
March 1, 2022

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?
 Yes No NA

May 20, 2022

Date

Bridge View Subdivision, Phase II

Project Name

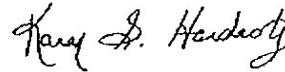
Tidewater Associates, Inc. for Cedar Point Developers, LLC

Applicant Name

Roy Brownlow



Applicant Signature



Loan Number 8032622693

SATISFACTION OF SECURITY INSTRUMENT

Submitted electronically by Nationwide Title Clearing, Inc. in compliance with North Carolina statutes governing recordable documents and the terms of the Submitter Agreement with the CARTERET County Register of Deeds. GS 47-14 (a1) (5)

The undersigned is now the secured lienholder of the Security Instrument identified as follows:

Type of Security Instrument: Deed of Trust

Original Grantor(s): LAWSON P. FAULKNER II

Original Secured Party(ies): MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS BENEFICIARY, AS NOMINEE FOR KELLER MORTGAGE, LLC DBA KELLER MORTGAGE, ITS SUCCESSORS AND ASSIGNS

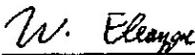
Recording Data: The Security Instrument is recorded in File # 1667183, in the office of the Register of Deeds for CARTERET County, North Carolina.

Loan Amount: \$219,632.00

This satisfaction extinguishes the underlying obligation secured by the Deed of Trust and terminates the effectiveness of that Deed of Trust.

Dated this 17th day of December in the year 2020

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS BENEFICIARY, AS NOMINEE FOR KELLER MORTGAGE, LLC DBA KELLER MORTGAGE, ITS SUCCESSORS AND ASSIGNS



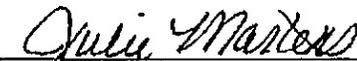
WILLIAM ELEAZAR

VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization on this 17th day of December in the year 2020, by William Eleazar as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS BENEFICIARY, AS NOMINEE FOR KELLER MORTGAGE, LLC DBA KELLER MORTGAGE, ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.



JULIE MARTENS

COMM EXPIRES: 5/22/2022



JULIE MARTENS
Notary Public - State of Florida
Commission # GG 221059
My Comm. Expires May 22, 2022
Bonded through National Notary Assn.

Document Prepared By: Dave LaRose/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

When Recorded Return To: PennyMac Loan Services, LLC, C/O Nationwide Title Clearing, Inc. 2100 Alt. 19 North, Palm Harbor, FL 34683

PNMRC 418951087 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) MIN

100410512061093361 MERS PHONE 1-888-679-6377 MERS Mailing Address: P.O. Box 2026, Flint, MI 48501-2026

DOCR T172012-12:19:44 [C-2] ERCNNC1



D0066352135

FOR REGISTRATION REGISTER OF DEEDS - 43 -
Karen S. Hardisty
Carteret County, NC
December 23, 2020 10:31:45 AM
DEED # Pages: 3
Fee: \$26.00 NC Revenue Stamp: \$2,800.00
FILE # 1701403

Karen S. Hardisty

WARRANTY DEED

PREPARED BY: GOINES LAW FIRM, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC 28557
RETURN TO: GOINES LAW FIRM, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC 28557

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

Excise Tax: \$ 2,800.00
Parcel #: 53841303178S000

THIS WARRANTY DEED made and entered into this 21 day of December, 2020, by and between:

Andrea Wilmoth and husband,
Randy Wilmoth
144 Curt Holland Road
Stella, NC 28582
(GRANTOR)

and

Cedar Point Developers, LLC
A North Carolina Limited Liability Company
166 Center Street
Jacksonville, NC 28546
(GRANTEE)

The designation GRANTOR and GRANTEE as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

That the GRANTOR, for a valuable consideration paid by the GRANTEE, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the GRANTEE in fee simple, all that certain lot, tract or parcel of land situated in CARTERET COUNTY, North Carolina and more particularly described as follows:

Submitted electronically by "Cook Legal, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter's agreement with the Carteret County Register of Deeds.

See Exhibit "A"

This IS X NOT the primary residence of the Grantor.

The above-described property is conveyed and accepted subject to such easements, restrictions and rights of way as appear of record in the Carteret County Registry.

TO HAVE AND TO HOLD the aforesaid lot, tract or parcel of land and all privileges and appurtenances thereto belonging to the GRANTEE in fee simple.

And the GRANTOR covenants with the GRANTEE, that GRANTOR is seized of the premises in fee simple, has the right to convey the same in fee simple, is marketable and free and clear of all encumbrances, and that GRANTOR will warrant and defend the title against the lawful claims of all persons whomsoever excluding the exceptions stated herein and designated on the map referred to above.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal, the day and year first above written.

BY: Andrea Wilmoth (SEAL)
Andrea Wilmoth

BY: Randy Wilmoth (SEAL)
Randy Wilmoth

STATE OF NORTH CAROLINA
COUNTY OF Carteret

I, a Notary Public of the county and state aforesaid, certify that Andrea Wilmoth and Randy Wilmoth personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 21 day of December, 2020.

Cook
Notary Public

C. W. Cook
Printed Name of Notary

My commission expires:
Aug 22, 2024

CHRISTOPHER W COOK
NOTARY PUBLIC
Carteret County
North Carolina
My Commission Expires Aug. 22, 2024

RGE Attach. 1

Exhibit "A"

Being that same property identified as "Andrea E. Wilmoth" and depicted on that plat recorded in Map Book 34, Page 121, Carteret County Registry said plat being referenced here for a more particular description. Further described in Book 562, Page 496, Carteret County Registry, bearing PIN #: 538413031785000, and being approximately 4.27 acres.

This being the same property conveyed to Grantor in Book 562, Page 496, Carteret County Registry.

FOR REC RATION REGISTER OF DEEDS - 45 -
Karen S. Hardsy
Carteret County, NC
December 23, 2020 10:31:45 AM
DEED # Pages: 3
Fee: \$26.00 NC Revenue Stamp: \$2,800.00
FILE # 1701404.

Karen S. Hardsy

WARRANTY DEED

PREPARED BY: GOINES LAW FIRM, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC 28557
RETURN TO: GOINES LAW FIRM, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC 28557

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

Excise Tax: \$ 78 00. 00
Parcel #: 537412956216000

THIS WARRANTY DEED made and entered into this 20 day of December, 2020, by and between:

Andrew D. Emmett, III and wife,
Jeannie Emmett
144 Curt Holland Road
Stella, NC 28582
(GRANTOR)

and

Cedar Point Developers, LLC
A North Carolina Limited Liability Company
166 Center Street
Jacksonville, NC 28546
(GRANTEE)

The designation GRANTOR and GRANTEE as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

That the GRANTOR, for a valuable consideration paid by the GRANTEE, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the GRANTEE in fee simple, all that certain lot, tract or parcel of land situated in CARTERET COUNTY, North Carolina and more particularly described as follows:

Submitted electronically by "Cook Legal, PLLC" in accordance with the North Carolina Rules of Practice and the terms of the submitter agreement with the Carteret County Register of Deeds.

See Exhibit "A"

This IS NOT X the primary residence of the Grantor.

The above-described property is conveyed and accepted subject to such easements, restrictions and rights of way as appear of record in the Carteret County Registry.

TO HAVE AND TO HOLD the aforesaid lot, tract or parcel of land and all privileges and appurtenances thereto belonging to the GRANTEE in fee simple.

And the GRANTOR covenants with the GRANTEE, that GRANTOR is seized of the premises in fee simple, has the right to convey the same in fee simple, is marketable and free and clear of all encumbrances, and that GRANTOR will warrant and defend the title against the lawful claims of all persons whomsoever excluding the exceptions stated herein and designated on the map referred to above.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal, the day and year first above written.

BY: *Andrew D. Emmett, III* (SEAL)
Andrew D. Emmett, III

BY: *Jeannie Emmett* (SEAL)
Jeannie Emmett

STATE OF NORTH CAROLINA
COUNTY OF Carteret

I, a Notary Public of the county and state aforesaid, certify that Andrew D. Emmett, III and Jeannie Emmett personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 20 day of December, 2020.

Margaret K. Herring
Notary Public

Margaret K. Herring
Printed Name of Notary



My commission expires:
August 24, 2022

RGE Attach. 1

Exhibit "A"

Being that same property identified as "Andrew D. Ennett III" and depicted on that plat recorded in Map Book 34, Page 121, Carteret County Registry said plat being referenced here for a more particular description. Further described in Book 616, Page 393, Carteret County Registry, bearing PIN #: 537412956216000, and being approximately 26.39 acres.

This conveyance is subject to a right of way reserved unto Margaret Hurst and A.D. Ennett, Jr. and their heirs, successors and assigns, as described in Book 562, Page 496, Carteret County Registry.

This being the same property conveyed to Grantor in Book 616, Page 393, Carteret County Registry.

FOR REGISTRATION REGISTER OF DEEDS - 47 -
Karen S. Hardisty
Carteret County, NC
December 23, 2020 10:31:45 AM
DEED # Pages: 5
Fee: \$26.00 NC Revenue Stamp: \$1,400.00
FILE # 17701405

Karen S. Hardisty

WARRANTY DEED

PREPARED BY: GOINES LAW FIRM, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC 28557
RETURN TO: GOINES LAW FIRM, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC 28557

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

Excise Tax: \$ 1400.00
Parcel #: 537412958499000

THIS WARRANTY DEED made and entered into this 20 day of December, 2020, by and between:

Richard Hurst and wife,
Kathy W. Hurst
3475 Coleman Road
Memphis, TN 38128
and

Weston B. Hurst and wife,
Marie Hurst
and

Charlotte Harper, unmarried
(GRANTOR)

and

Cedar Point Developers, LLC
A North Carolina Limited Liability Company
166 Center Street
Jacksonville, NC 28546
(GRANTEE)

The designation GRANTOR and GRANTEE as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

Submitted electronically by "eCock Legal, PLLC"
in compliance with the rules and procedures of the State of North Carolina
and the terms of the submitter agreement with the Carteret County Register of Deeds.

That the GRANTOR, for a valuable consideration paid by the GRANTEE, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the GRANTEE in fee simple, all that certain lot, tract or parcel of land situated in CARTERET COUNTY, North Carolina and more particularly described as follows:

WITNESSETH:

See Exhibit "A"

This IS NOT X the primary residence of the Grantor.

The above-described property is conveyed and accepted subject to such easements, restrictions and rights of way as appear of record in the Carteret County Registry.

TO HAVE AND TO HOLD the aforesaid lot, tract or parcel of land and all privileges and appurtenances thereto belonging to the GRANTEE in fee simple.

And the GRANTOR covenants with the GRANTEE, that GRANTOR is seized of the premises in fee simple, has the right to convey the same in fee simple, is marketable and free and clear of all encumbrances, and that GRANTOR will warrant and defend the title against the lawful claims of all persons whomsoever excluding the exceptions stated herein and designated on the map referred to above.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal, the day and year first above written.

BY: *H. Richard Hurst* (SEAL)
Richard Hurst

BY: *Kathy W. Hurst* (SEAL)
Kathy Hurst

STATE OF Tennessee
COUNTY OF SEMA

I, a Notary Public of the county and state aforesaid, certify that Richard Hurst and Kathy Hurst personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 17 day of DECEMBER, 2020.

Melissa Dillion
Notary Public

Melissa Dillion
Printed Name of Notary



My commission expires: July 20, 2021

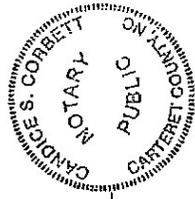
BY: Weston B. Hurst (SEAL)
Weston B. Hurst
BY: Marie Hurst (SEAL)
Marie Hurst

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, a Notary Public of the county and state aforesaid, certify that Weston B. Hurst and Marie Hurst personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 10th day of December, 2020.

Candice S. Corbett
Notary Public
Candice S. Corbett
Printed Name of Notary



My commission expires:
4.17.21

BY: Charlotte Harper (SEAL)
Charlotte Harper

STATE OF Texas
COUNTY OF Brewer

I, a Notary Public of the county and state aforesaid, certify that Charlotte Harper personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 17 day of December, 2020.

Lillian Rose Herdige
Notary Public
Lillian Rose Herdige
Printed Name of Notary

My commission expires:
May 22, 2023

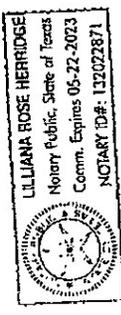
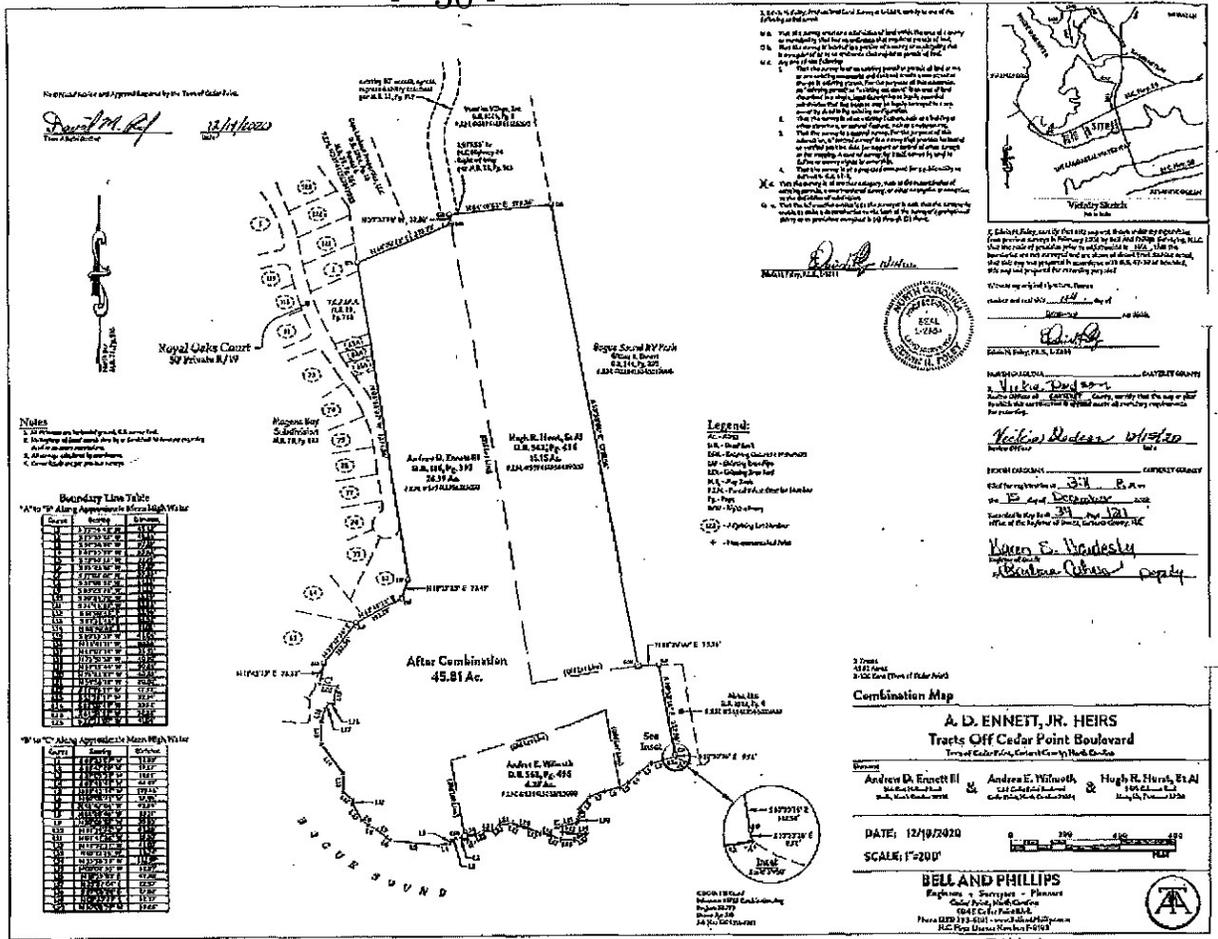


Exhibit "A"

Being that same property identified as "Hugh R. Hurst, Et. Al" and depicted on that plat recorded in Map Book 34, Page 121, Carteret County Registry said plat being referenced here for a more particular description. Further described in Book 562, Page 496, Carteret County Registry, bearing PIN #: 537412958499000, and being approximately 15.15 acres.

This being the same property conveyed to Grantors in Book 562, Page 496, Carteret County Registry.



Approved and approved by the Town of Cedar Point
David M. R. J. 12/19/2020
 Town Administrator

- Notes**
1. This plat is subject to all laws, ordinances, rules and regulations of the State of Ohio and the County of Lucas.
 2. All property shown on this plat is the property of the person or persons named herein.
 3. All property shown on this plat is the property of the person or persons named herein.
 4. All property shown on this plat is the property of the person or persons named herein.

Boundary Line Table

*A to *T Along Approximate Mean High Water

Point	Distance	Bearing	Distance	Point
A	10.00	N 00° 00' 00" E	10.00	T
B	10.00	N 00° 00' 00" E	10.00	U
C	10.00	N 00° 00' 00" E	10.00	V
D	10.00	N 00° 00' 00" E	10.00	W
E	10.00	N 00° 00' 00" E	10.00	X
F	10.00	N 00° 00' 00" E	10.00	Y
G	10.00	N 00° 00' 00" E	10.00	Z
H	10.00	N 00° 00' 00" E	10.00	AA
I	10.00	N 00° 00' 00" E	10.00	AB
J	10.00	N 00° 00' 00" E	10.00	AC
K	10.00	N 00° 00' 00" E	10.00	AD
L	10.00	N 00° 00' 00" E	10.00	AE
M	10.00	N 00° 00' 00" E	10.00	AF
N	10.00	N 00° 00' 00" E	10.00	AG
O	10.00	N 00° 00' 00" E	10.00	AH
P	10.00	N 00° 00' 00" E	10.00	AI
Q	10.00	N 00° 00' 00" E	10.00	AJ
R	10.00	N 00° 00' 00" E	10.00	AK
S	10.00	N 00° 00' 00" E	10.00	AL
T	10.00	N 00° 00' 00" E	10.00	AM

*W to *X Along Approximate Mean High Water

Point	Distance	Bearing	Point
W	10.00	N 00° 00' 00" E	X
Y	10.00	N 00° 00' 00" E	Z
Z	10.00	N 00° 00' 00" E	AA
AA	10.00	N 00° 00' 00" E	AB
AB	10.00	N 00° 00' 00" E	AC
AC	10.00	N 00° 00' 00" E	AD
AD	10.00	N 00° 00' 00" E	AE
AE	10.00	N 00° 00' 00" E	AF
AF	10.00	N 00° 00' 00" E	AG
AG	10.00	N 00° 00' 00" E	AH
AH	10.00	N 00° 00' 00" E	AI
AI	10.00	N 00° 00' 00" E	AJ
AJ	10.00	N 00° 00' 00" E	AK
AK	10.00	N 00° 00' 00" E	AL
AL	10.00	N 00° 00' 00" E	AM

1. Each of the following conditions shall apply to all of the tracts shown on this plat.
1. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.
 2. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.
 3. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.
 4. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.



1. Each of the following conditions shall apply to all of the tracts shown on this plat.

1. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.
2. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.
3. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.
4. That the owner of any tract shown on this plat shall be responsible for the maintenance and repair of the tract.

- Legend**
- Boundary Line
 - Easement
 - Right of Way
 - Other

Combination Map

A. D. ENNETT, JR. HEIRS
 Tracts Off Cedar Point Boulevard
 Town of Cedar Point, Lucas County, Ohio

Andrew D. Ennett, Jr. & Hugh R. Heirs, et al
 Owners of the Tracts to be Combined

DATE: 12/19/2020
 SCALE: 1"=200'

BELL AND PHILLIPS
 Engineers & Surveyors - Planners
 Cedar Point, Ohio
 Phone: 419-285-1111
 Fax: 419-285-1112

Notar Public
PL 1356 10/27/03/003
BR 1356035

NORTH CAROLINA, CARTERET COUNTY
No hanging (indications of Heavy Public) have
been observed for record. This instrument and the certificate
and the deed and one and in the
the book and page shown on the page listed.

CARTERET COUNTY
40200000
\$200.00
Real Estate
Excise Tax



By [Signature]
Robert E. Hildebrand
Notary Public, State of North Carolina
Commission Expires 10/06/05

PREPARED BY AND RETURN TO: Howard, Stallings, Froom & Butron, P.A., P.O. Box 974, New Bern, NC 28563
FAX: 252/478-9002
NORTH CAROLINA
CARTERET COUNTY

THIS DEED, made and entered into this 23rd day of October, 2003, by and
between VACATION VILLAGE, INC., a North Carolina corporation, party of the first part;
-TO-

CAPELOOKOUT PROPERTIES, LLC, a North Carolina limited liability company, whose
address is: 4644-A. Arundell Street, Morehead City, NC 28557, party of the second part;

WITNESSETH

The said party of the first part in consideration of the sum of ONE HUNDRED AND
NO/100 (\$100.00) DOLLARS and other good and valuable considerations to it paid by said party
of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by
their presents do grant, bargain, sell, and convey to said party of the second part, its successors and
assigns, a certain tract or parcel of land, lying and being in the Town of Cedar Point, White Oak
Township, Carteret County, North Carolina, and being more particularly described in Exhibit A
incorporated herein by reference.

TO HAVE AND TO HOLD the above said tract or parcel of land, and all privileges and

HOWARD, STALLINGS, FROOM & BUTRON, P.A.
Attorneys at Law
New Bern, North Carolina

BOOK 1024 PAGE 10

appurtenances thereto belonging to the said party of the second part, its successors and assigns, in
fee simple, to its only use and behoof forever.

And the said party of the first part for itself and its successors and assigns, covenants with
the said party of the second part, its successors and assigns, that it is seized of said premises in fee
and has the right to convey in fee simple that the same are free and clear from all encumbrances
except as above set out; and that it hereby forever warrants and will forever defend the title to the
same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the said party of the first part, has executed this Deed under
seal, this day and year first above written.

VACATION VILLAGE, INC.
BY: [Signature]
TITLE: President (SEAL)

ATTEST: [Signature]
TITLE: Assistant Secretary
(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Robert E. Hildebrand, a Notary Public of the County and State aforesaid,
certify that Robert E. Hildebrand personally came before me this day and
acknowledged that he is Asst. Secretary of Vacation Village, Inc., a North Carolina corporation,
and that by authority duly given and as the act of the corporation, the foregoing instrument was
signed in his name by its President, Robert E. Hildebrand and attested by him/her as
its Asst. Secretary.

WITNESS my hand and official stamp or seal, this 23rd day of October, 2003.



HOWARD, STALLINGS, FROOM & BUTRON, P.A.
Attorneys at Law
New Bern, North Carolina

BOOK 1024 PAGE 10

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

The foregoing certificate of _____ is certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the Office of the Registrar of Deeds of Carteret County, North Carolina in Book _____, Page _____.

This _____ day of _____, 20____ at _____ o'clock _____ m.

REGISTER OF DEEDS _____ BY: _____ Assistant/Deputy

HOWARD, STALLINGS, FIDON & RUTSON, P.A.
Attorneys at Law
New Bern, North Carolina

BOOK 1024 PAGE 10

EXHIBIT A

Being all of that certain tract or parcel of land beginning at a point which is South 71 degrees 51'16" East 78.36 feet, and thence South 68 degrees 00'24" West 438 feet from a Set Map Nail at the intersection of the centerlines of N.C. Highway 24 and N.C.S.R. 1117; THENCE FROM SAID POINT OF BEGINNING: South 21 degrees 59'56" East 265.06 feet to a new iron rod; thence North 62 degrees 18'17" West 347.60 feet to an existing iron pipe in the Southern boundary of the Right-of-way of N.C. Highway 24; thence along and with said boundary North 68 degrees 00'24" East 224.88 feet to the point and place of beginning, containing .68 acres more or less, as more particularly set forth on that certain survey for Cape Lookout Properties, by Cyrus Alan Ball, dated May 22, 2003.

HOWARD, STALLINGS, FIDON & RUTSON, P.A.
Attorneys at Law
New Bern, North Carolina

BOOK 1024 PAGE 10

The mailing address, if different from the street address, of the principal office of the company is:

Number and Street: _____

City: _____ State: NC Zip Code: _____ County: _____

b. The limited liability company does not have a principal office.

7. Any other provisions which the limited liability company elects to include (e.g., the purpose of the entity) are attached.

8. (Optional): Listing of Company Officials (See instructions on the importance of listing the company officials in the creation document.

Name	Title	Business Address
Steven M Kellum	Managing Member	166 Center Street Jacksonville NC, 28546-5707 United States
James E Maides	Member	166 Center Street Jacksonville NC, 28546-5707 United States

9. (Optional): Please provide a business e-mail address: Privacy Redaction
The Secretary of State's Office will e-mail the business automatically at the address provided above at no cost when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is offered, please see the instructions for this document.

10. These articles will be effective upon filing, unless a future date is specified:

This is the 4th day of December, 2020.

Faleris Law Firm, PLLC Organizer

Faleris Law Firm, PLLC
Signature

Beth Faleris, President
Type or Print Name and Title

The below space to be used if more than one organizer or member is listed in Item #2 above.

Signature

Signature

Type and Print Name and Title

Type and Print Name and Title

NOTE:

1. Filing fee is \$125. This document must be filed with the Secretary of State.

2. (Continued) Persons executing these articles - Cedar Point Developers, LLC

Elijah T Morton - 166 Center Street Jacksonville NC, 28546-5707 United States

Chris G Whaley - 166 Center Street Jacksonville NC, 28546-5707 United States

Danny L Whaley - 166 Center Street Jacksonville NC, 28546-5707 United States



LIMITED LIABILITY COMPANY ANNUAL REPORT

NAME OF LIMITED LIABILITY COMPANY: Cape Lookout Properties, LLC

SECRETARY OF STATE ID NUMBER: 0605111 STATE OF FORMATION: NC

REPORT FOR THE CALENDAR YEAR: 2020

Filing Office Use Only	
E - Filed Annual Report	
0605111	
CA202004300876	
2/12/2020 11:30	
<input type="checkbox"/>	Changes

SECTION A: REGISTERED AGENT'S INFORMATION

1. NAME OF REGISTERED AGENT: Reitz, Daniel J.

2. SIGNATURE OF THE NEW REGISTERED AGENT: _____
SIGNATURE CONSTITUTES CONSENT TO THE APPOINTMENT

3. REGISTERED AGENT OFFICE STREET ADDRESS & COUNTY	4. REGISTERED AGENT OFFICE MAILING ADDRESS
<u>1601 Shepard Street</u>	<u>1601 Shepard Street</u>
<u>Morehead City, NC 28557-4047 Carteret County</u>	<u>Morehead City, NC 28557-4047</u>

SECTION B: PRINCIPAL OFFICE INFORMATION

1. DESCRIPTION OF NATURE OF BUSINESS: Real Estate Investments

2. PRINCIPAL OFFICE PHONE NUMBER: (252) 241-5112 3. PRINCIPAL OFFICE EMAIL: Privacy Redaction

4. PRINCIPAL OFFICE STREET ADDRESS	5. PRINCIPAL OFFICE MAILING ADDRESS
<u>1601 Shepard Street</u>	<u>1601 Shepard Street</u>
<u>Morehead City, NC 28557-4047</u>	<u>Morehead City, NC 28557-4047</u>

6. Select one of the following if applicable. (Optional see instructions)

- The company is a veteran-owned small business
- The company is a service-disabled veteran-owned small business

SECTION C: COMPANY OFFICIALS (Enter additional company officials in Section E.)

NAME: <u>Daniel J Reitz</u>	NAME: _____	NAME: _____
TITLE: <u>Manager</u>	TITLE: _____	TITLE: _____
ADDRESS: _____	ADDRESS: _____	ADDRESS: _____
<u>1601 Shepard Street</u>		
<u>Morehead City, NC 28557</u>		

SECTION D: CERTIFICATION OF ANNUAL REPORT. Section D must be completed in its entirety by a person/business entity.

Daniel J Reitz 2/12/2020
SIGNATURE DATE

Form must be signed by a Company Official listed under Section C of This form.

Daniel J Reitz Manager
Print or Type Name of Company Official Print or Type Title of Company Official

This Annual Report has been filed electronically.

Type: CONSOLIDATED REAL PROPERTY
Recorded: 2/10/2022 9:59:32 AM
Fee Amt: \$116.00 Page 1 of 3
Revenue Tax: \$90.00
Onslow County, NC
Omega K. Jarman Reg. of Deeds

BK 5682 PG 614 - 616

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax \$90.00

Recording Time, Book and Page set forth above

This instrument prepared by: Gaylor Edwards & Vatcher, P.A., Licensed North Carolina Attorneys

Tax Parcel ID No(s): 036337

Brief description for index: Approx. 0.61 acre, Freedom Way

The hereinafter described property _____ does xx does not include the primary residence of Grantor.

THIS DEED made this 9 day of February, 2022 by and between:

GRANTOR:

GRANTEE:

M THREE PARTNERSHIP, LLC, a
North Carolina limited liability company

MORTON INVESTMENTS, LLC, a
North Carolina limited liability company

Mailing address:
121 Garnet Lane
Jacksonville, NC 28546

Mailing address:
121 Garnet Lane
Jacksonville, NC 28546

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, has and by these presents does grant, bargain, sell, and convey unto the Grantee, in fee simple, all that/those certain tract(s), lot(s) or parcel(s) of land, situated in Swansboro Township, Onslow County, North Carolina and more particularly described as follows:

Lying and being in Swansboro Township, Onslow County, North Carolina and beginning at an iron stake, the southeast corner of the (now or formerly) Dave Wiggins land, said beginning point being in the northern margin of NC Highway 24; running thence North 23 degrees 30 minutes West 210 feet to an iron stake, thence North 29 degrees 30 minutes West 93 feet to an iron stake, thence North 74 degrees 00 minutes East 87.5 feet to an iron stake, thence South 22 degrees 45 minutes East 303 feet to an iron stake in the northern margin of the NC Highway 24, thence South 75 degrees 05 minutes West 75 feet along the

J:\WPDOCS\GEVFORM\DEEDS\M THREE PSHIP_MORTON INVESTMENTS.wpd

submitted electronically by "Gaylor Edwards Vatcher LawFirm"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Onslow County Register of Deeds **PGE Attach. 1**

northern margin of said highway to the point of beginning.

The property herein above described was acquired, or is a portion of the property acquired, by Grantor by instrument recorded in: Book 5207, Page 362, Onslow County Registry.

TO HAVE AND TO HOLD the aforesaid tract(s), lot(s) or parcel(s) of land and all privileges and appurtenances thereto belonging to the Grantee, in fee simple.

THE GRANTOR COVENANTS WITH THE GRANTEE, that Grantor is seized of fee simple title to the premises, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property herein above described is subject to the following exceptions:

Property taxes for the year 2022 and thereafter; utility easements of record, and matters shown on any recorded map or plat of the above described property.

IN WITNESS WHEREOF, the Grantor has hereto set his/her hand and seal, or if corporate or other entity, has caused this instrument to be executed by its duly authorized partner(s), manager(s) or officer(s), the day and year first above written.

M Three Partnership, LLC, a North Carolina limited liability company

By: [Signature]

Name: Elijah T. Morton, Sr.

Title: Manager

STATE OF NORTH CAROLINA

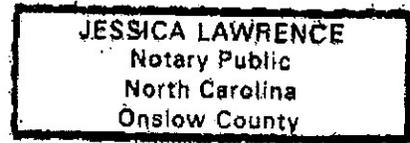
COUNTY OF ONSLOW

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes stated therein and in the capacity(ies) indicated: Elijah T. Morton, Sr.

Date: February 9, 2022

[Signature]
(Official Signature of Notary)

Jessica Lawrence
(Notary's printed or typed name)



My commission expires: June 20, 2026

DEPARTMENT OF TAX ADMINISTRATION



Tax Certification Form
(Check One Box)

This certifies that there are no delinquent ad valorem taxes, or other taxes which the Onslow County Tax Collector is charged with collecting, that are a lien on:

Parcel Identification Number:

036387 GRANTEE: MORTON INVESTMENTS LLC

This is not a certification that this Onslow County Parcel Identification Number matches the deed description.

No certification required, as attorney statement that any delinquent taxes will be paid from closing proceeds is included on first page of deed, and the assessor has obtained the desired information from the conveyance (G.S. 105-303).

Balance due on account. It must be paid to Onslow County Tax Collector. Please make payment within 5 days of closing.

KARYN JONES Digitally signed by KARYN JONES
Date: 2022.02.10 09:18:56 -0500

Tax Collections Staff Signature

02/10/2022

Date

This parcel may have deferred taxes which become due upon transfer of the property. Call the Tax Office, Land Records Division at 910-989-2204 for more information.

Bridge View
Lot BUA Chart - November 2021

Lot #	Permit BUA	ORW?
1	4700	N
2	4700	N
3	4700	N
4	4700	N
5	4700	N
6	4700	N
7	4700	N
8	4700	N
9	4700	N
10	4700	N
11	4700	N
12	4700	N
13	4700	N
14	4700	N
15	4700	N
16	4700	N
17	4700	N
18	4700	N
19	4700	N
20	4700	N
21	4700	N
22	3700	Y
23	3700	Y
24	12000	Y
25	3700	Y
26	3700	Y
27	3700	Y
28	3700	Y

Lot #	Permit BUA	ORW?
29	3700	Y
30	3700	Y
31	4500	Y
32	4500	Y
33	4500	Y
34	4500	Y
35	3700	Y
36	3700	Y
37	3700	Y
38	3700	Y
39	3700	Y
40	3700	Y
41	3700	Y
42	3700	Y
43	3700	Y
44	3700	Y
45	3700	Y
46	3700	Half
47	4700	N
48	4700	N
49	4700	N
50	4850	N
51	4700	N
52	4700	N
53	4700	N
54	4700	N
55	4700	N
56	4700	N

Lot #	Permit BUA	ORW?
57	4700	N
58	4700	N
59	4700	N
60	4700	N
61	4700	N
62	4700	N
63	4700	N
64	4700	N
65	4700	N
66	4700	N
67	4700	N
68	4700	N
69	4700	N
70	4700	N
71	4700	N
72	4700	N
73	4700	N
74	4700	N
75	3700	Y
76	3700	Y
77	3700	Y
78	3700	Y
79	3700	Y
80	3700	Y
81	3700	Y
82	3700	Y
83	3700	Y

ORW Area:

Total Project	
Area in ORW:	702897 SF
Roads in ORW:	33661 SF
Future in ORW:	6613 SF
Lots in ORW:	135450 SF

Total BUA in ORW: 175724 SF
25.0 % imperv.

Overall:

Total Property:	1995410 SF
(-) Coastal Wetlands:	60197 SF
Total Project Area	1935213 SF
Roads and Mail Kiosk:	101260 SF
Future:	14081 SF
Lots:	367750 SF
Total BUA:	483803 SF

25.0 % imperv.



4102 Hwy 24
Newport, NC 28570
(252) 393-1515
(877) 393-6329
(252) 393-1540
water@wcwc.biz

Toll Free
Fax
E-mail

West Carteret Water Corporation

A non-profit water corporation serving western Carteret County

June 15, 2021

Cedar Point Developers, LLC
Steven Kellum, Managing Member
166 Center St.
Jacksonville, NC 28546

SUBJECT: Bridge View Subdivision
Developer's Guide -- Item 2
Consent by Board

Dear Mr. Kellum:

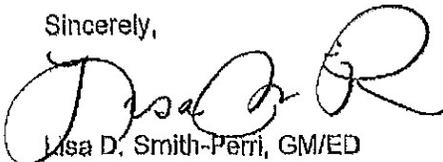
West Carteret Water Corporation is in receipt of a Letter of Intent to construct a development referenced as Bridge View Subdivision presented on your behalf by Bell and Phillips. Our Board of Directors met on Tuesday, June 15, 2021 and reviewed the information submitted. The project was approved as an addition of 83 residential connections to the system.

Please note the following:

- This approval will expire in 18 months from the date of this letter. Construction must begin within 18 months and be completed within 36 months.
- The bore is engineered for an 8-inch connection, but you do have the option of a 6-inch bore under NC Highway 24.
 - A 6-inch water line is sufficient to meet the water needs of the approved connections and would not require a p.m. water outage for Cedar Point. However, we do recognize and agree that with the challenges of boring the highway coupled with anticipated additional development, the 8-inch may be a benefit in the future.
 - If an 8-inch tap is installed, a shutdown will be required for the Town of Cedar Point and will be accomplished after midnight with WCWC staff on site. WCWC will absorb 50% of their staffing/labor cost to facilitate this outage.
 - If you continue with an 8-inch connection, I shared with your engineer that WCWC will pay the difference in the labor fee to increase from 6-inch to 8-inch, using our boring estimate. That amount will be credited towards your future invoices for inspection and testing fees. Our calculation documentation will be supplied to you.
 - You must coordinate the sidewalk removal and replacement with the Town of Cedar Point, if that becomes necessary.
 - An encroachment agreement from the properties impacted by the tap is your responsibility, including expenses related to the same. A copy must be on file with WCWC before construction.

If I can be of further help, please do not ever hesitate to contact me.

Sincerely,



Lisa D. Smith-Perri, GM/ED

STATE OF NORTH CAROLINA
COUNTY OF Carteret PROJECT Bridge View NC Hwy-24

DEPARTMENT OF TRANSPORTATION

THREE PARTY RIGHT OF WAY
ENCROACHMENT AGREEMENT ON
PRIMARY AND SECONDARY SYSTEM

-AND-

Cedar Point Developers, LLC (910)938-5900

166 Center St. Jacksonville, NC 28546

-AND-

West Carteret Water Corporation, Inc. (252)393-1515

4102 NC-24, Newport, NC 28570

THIS AGREEMENT, made and entered into this the _____ day of _____, 20 _____, by and between the Department of Transportation, party of the first part; and Cedar Point Developers, LLC party of the second part; and West Carteret Water Corporation, Inc. party of the third part,

WITNESSETH

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as Route(s) NC Hwy-24, located 1,400 ft west of the intersection of NC Hwy-24 and NC Hwy-5B. The project is on the southern side of NC Hwy-24. The encroachment is located just east of the GOGAS Entrance.

with the construction and/or erection of: 100 LF 8" HDPE SDR9 Water Main to be installed by directional bore.

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right of way as indicated, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment as shown on attached plan sheet(s), specifications and special provisions which are made a part hereof upon the following conditions, to wit:

That the installation, operation, and maintenance of the above described facility will be accomplished in accordance with the party of the first part's latest UTILITIES ACCOMMODATIONS MANUAL, and such revisions and amendments thereto as may be in effect at the date of this agreement. Information as to these policies and procedures may be obtained from the Division Engineer or State Utilities Manager of the party of the first part.

That the said party of the second part binds and obligates himself to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways and structures necessary due to installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the said facilities, that the said party of the second part binds himself, his successors and assigns, to promptly remove or alter the said facilities, in order to conform to the said requirement, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Division Engineer of the party of the first.

That the party of the second part hereby agrees to indemnify and save harmless the party of the first part from all damages and claims for damage that may arise by reason of the installation and maintenance of this encroachment.

That the party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Division Engineer of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silt or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Division of Environmental Management, North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the Division Engineer of the party of the first part.

That the party of the second part agrees to have available at the construction site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work contained in this agreement is being performed on a completed highway open to traffic; the party of the second part agrees to give written notice to the Division Engineer of the party of the first part when all work contained herein has been completed. Unless specifically requested by the party of the first part, written notice of completion of work on highway projects under construction will not be required.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the party of the first part unless written waiver is secured by the party of the second part from the party of the first part.

During the performance of this contract, the second party, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- a. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U. S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,
 - (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- f. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs "a" through "f" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

That when title to the subject that constitutes the aforesaid encroachment passes from the party of the second part and vests in the party of the third part, the party of the third part agrees to assume all responsibilities and rights and to perform all obligations as agreed to herein by the party of the second part.

R/W (166) : Party of the Second Part certifies that this agreement is true and accurate copy of the form R/W (166) incorporating all revisions to date.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

DEPARTMENT OF TRANSPORTATION

BY: _____
DIVISION ENGINEER

WITNESS:

Cedar Point Developers, LLC
166 Center Street
Jacksonville, NC 28546

Second Party

WITNESS:

West Carteret Water Corporation, Inc.
4102 NC-24
Newport, NC 28570

Third Party



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

BRIAN WRENN
Director

January 24, 2022

Cedar Point Developers, LLC
Attn: Steven Kellum, Managing Member
166 Center Street
Jacksonville, NC 28546

**Subject: Fast Track Authorization to Construct (ATC) Permit No. SWA 000127
Bridge View
Carteret County**

Dear Mr. Kellum:

The Division of Energy, Mineral and Land Resources received a complete "Authorization to Construct" (ATC) Permit Application Form for the subject project on January 4, 2022, to be permitted under the Post-Construction State Stormwater Fast Track Process. Staff have reviewed the application materials and have determined that the project, as proposed, complies with the Stormwater Regulations set forth in Rule 15A NCAC 02H.1043. We are hereby forwarding Authorization to Construct Permit No. SWA 000127 dated January 24, 2022, for the construction of the stormwater control measures (SCMs) and built-upon area associated with the subject project.

This Authorization to Construct Permit does not constitute an approval of the project at its completion. Approval of this project at completion will be based on Division review and approval of the final permit application completed by a North Carolina licensed professional. It shall be the Permittee's and the licensed professional's responsibility to ensure that the as-built project meets the appropriate stormwater rules. Failure to comply may result in penalties in accordance with North Carolina General Statute §143-215.6A through §143-215.6C and/or referral of the licensed professional to the appropriate North Carolina licensing board.

This Authorization to Construct Permit shall be effective from the date of issuance until January 24, 2027 and does not supersede any other agency permit that may be required. The project shall be subject to the conditions and limitations as specified therein. Failure to comply with these requirements will result in future compliance problems. Please note that this Authorization to Construct Permit is not transferable except after notice to and approval by the Division. The Division may require rescission and/or revocation and reissuance of this permit.

If you have any questions concerning this permit, please contact Garrett Zorda in the Wilmington Regional Office, at (910) 796-7215 or garrett.zorda@ncdenr.gov.

Sincerely,

For Brian Wrenn, Director
Division of Energy, Mineral and Land Resources

Enclosures: Attachment A – Fast Track Construction Commencement Form
Attachment B – Example Deed Restriction and Protective Covenants Language
Application Documents

DES/gdz: \\Stormwater\Permits & Projects\SWA Fast Track ATC\000127 ATC FT HD\2022 01 permit 000127

cc: Jonathan L. McDaniel, PE; Tidewater Associates, Inc.

Carteret County Building Inspections
Carteret County Engineering
Division of Coastal Management
Dan Sams, DEMLR
Wilmington Regional Office Stormwater File





NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

DIONNE DELLI-GATTI

Secretary

BRIAN WRENN

Director

April 13, 2021

**LETTER OF APPROVAL WITH MODIFICATIONS AND
PERFORMANCE RESERVATIONS**

Cedar Point Developers, LLC
ATTN: Elijah Morton, Manager
166 Center Street
Jacksonville, NC 28546

RE: Project Name: Bridge View Subdivision
Acres Approved: 42.1
Project ID: CARTE-2021-018
County: Carteret
City: Cedar Point
Address: 1180 Cedar Point Blvd.
River Basin: White Oak
Stream Classification: HQW
Submitted By: John M. Perrine, EI, Bell and Phillips
Date Received by LQS: March 19, 2021 and April 12, 2021
Plan Type: Residential

Dear Mr. Morton:

This office has reviewed the subject erosion and sedimentation control plan and hereby issues this Letter of Approval with Modifications and Performance Reservations. A list of the modifications and reservations is attached. This plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, as is required by Title 15A NCAC 4B .0129. Should the plan not perform adequately, a revised plan will be required (G.S. 113A-54.1)(b).

As of April 1, 2019, all new construction activities are required to complete and submit an electronic Notice of Intent (eNOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction General Permit. After the form is reviewed and found to be complete, you will receive a link with payment instructions for the \$100 annual permit fee. After the fee is received, you will receive the COC via email. You MUST obtain the COC prior to commencement of any land disturbing activity. The eNOI form may be accessed at deq.nc.gov/NCG01. Please direct questions about the eNOI form to Annette Lucas at Annette.lucas@ncdenr.gov or Paul Clark at Paul.clark@ncdenr.gov. If the owner/operator of this project changes in the future, the new responsible party is required to apply for his/her own COC.



Letter of Approval with Modifications and Performance Reservations
Cedar Point Developers, LLC
April 13, 2021
Page 2 of 4

Title 15A NCAC 4B .0118(a) and the NCG01 permit require that the following documentation be kept on file at the job site:

1. The approved E&SC plan as well as any approved deviation.
2. The NCG01 permit and the COC, once it is received.
3. Records of inspections made during the previous 12 months.

Also, this letter gives the notice required by G.S. 113A-61.1(a) of our right of periodic inspection to insure compliance with the approved plan.

North Carolina's Sedimentation Pollution Control Program is performance-oriented, requiring protection of existing natural resources and adjoining properties. If, following the commencement of this project, it is determined that the erosion and sedimentation control plan is inadequate to meet the requirements of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statute 113A-51 through 66), this office may require revisions to the plan and implementation of the revisions to ensure compliance with the Act.

Acceptance and approval of this plan is conditioned upon your compliance with Federal and State water quality laws, regulations, and rules. In addition, local city or county ordinances or rules may also apply to this land-disturbing activity. This approval does not supersede any other permit or approval.

Please note that this approval is based in part on the accuracy of the information provided in the Financial Responsibility Form, which you provided. This permit allows for a land-disturbance, as called for on the application plan, not to exceed the approved acres. Exceeding the acreage will be a violation of this permit and would require a revised plan and additional application fee. You are requested to file an amended form if there is any change in the information included on the form. In addition, it would be helpful if you notify this office of the proposed starting date for this project. Please notify us if you plan to have a preconstruction conference.

Your cooperation is appreciated.

Sincerely,

Rhonda Hall

Rhonda Hall
Assistant Regional Engineer
Land Quality Section

Enclosures: Modifications Required for Approval
NPDES NCG01 Fact Sheet

cc: John M. Perrine, EI, Bell and Phillips
604E Cedar Point Blvd., Cedar Point, NC 28584

Wilmington Regional Office file

MODIFICATIONS AND PERFORMANCE RESERVATIONS

Project Name: Bridge View Subdivision
Project ID: CARTE-2021-018
County: Carteret

1. This plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, as is required by Title 15A NCAC 4B .0129.
2. The developer is responsible for the control of sediment on-site. If the approved erosion and sedimentation control measures prove insufficient, the developer must take those additional steps necessary to stop sediment from leaving this site (NCGS 113A-57(3)). Each sediment storage device must be inspected after each storm event (NCGS 113A-54.1(e)). Maintenance and/or clean out is necessary anytime the device is at 50% capacity. All sediment storage measures will remain on site and functional until all grading and final landscaping of the project is complete (15A NCAC 04B .0113).
3. Any and all existing ditches on this project site are assumed to be left undisturbed by the proposed development unless otherwise noted. The removal of vegetation within any existing ditch or channel is prohibited unless the ditch or channel is to be regarded with side slopes of 2 horizontal to 1 vertical or less steep (15A NCAC 04B .0124 (d)). Bank slopes may be mowed, but stripping of vegetation is considered new earth work and is subject to the same erosion control requirements as new ditches (NCGS 113A-52(6)).
4. The developer is responsible for obtaining any and all permits and approvals necessary for the development of this project prior to the commencement of this land disturbing activity. This could include our agency's Stormwater regulations and the Division of Water Resources' enforcement requirements within Section 401 of the Clean Water Act, the U.S. Army Corps of Engineers' jurisdiction of Section 404 of the Clean Water Act, the Division of Coastal Management's CAMA requirements, the Division of Solid Waste Management's landfill regulations, the Environmental Protection Agency and/or The U.S. Army Corps of Engineers jurisdiction of the Clean Water Act, local County or Municipalities' ordinances, or others that may be required. This approval cannot supersede any other permit or approval; however, in the case of a Cease and Desist Order from the Corps of Engineers, that Order would only apply to wetland areas. All highland would still have to be in compliance with the N.C. Sedimentation Pollution Control Act.
5. If any area on site falls within the jurisdiction of Section 401 or 404 of the Clean Water Act, the developer is responsible for compliance with the requirements of the Division of Water Resources (DWR), the Corps of Engineers and the Environmental Protection Agency (EPA) respectively. Any erosion control measures that fall within jurisdictional wetland areas must be approved by the aforementioned agencies prior to installation. The Land Quality Section must be notified of a relocation of the measures in question to the transition point between the wetlands and the uplands to assure that the migration of sediment will not occur. If that relocation presents a problem or contradicts any requirements of either DWR, the Corps, or the EPA, it is the responsibility of the developer to inform the Land Quality Section regional office so that an adequate contingency plan can be made to assure sufficient erosion control remains on site. Failure to do so will be considered a violation of this approval (NCGS 113A-54.1(b)).

Cedar Point Developers, LLC

April 13, 2021

Page 4 of 4

6. Any borrow material brought onto this site must be from a legally operated mine or other approved source. Any soil waste that leaves this site can be transported to a permitted mine or separately permitted construction sites without additional permits under NCGS 74-49(7)(d). Disposal at any other location would have to be included as a permit revision for this approval.
7. This permit allows for a land disturbance, as called for on the application plan, not to exceed 42.1 acres. Exceeding that acreage will be a violation of this permit and would require a revised plan and additional application fee. Any addition in impervious surface, over that already noted on the approved plan, would also require a revised plan to verify the appropriateness of the erosion control measures and stormwater retention measures (NCGS 113A-54.1(b)).
8. Because of the proximity of High Quality Waters, the open land disturbance at any given time within a High Quality Water Zone should not exceed 20 acres.
9. The construction detail for the proposed silt fence requires reinforcing wire and steel posts a maximum of eight (8) feet apart. Omission of the reinforcing wire is a construction change that necessitates more posts for support, i.e., the spacing distance needs to be reduced to no greater than six (6) feet apart (E&SC Planning & Design Manual 6.63, Rev. 6/06).
10. Because the sediment traps and basins are shown on the plan as the primary sedimentation and erosion control devices on this project, it is necessary that the traps and basins and their collection systems be installed before any other grading takes place on site, and that every structure that receives more than one acre of drainage is built so that each dewater only from the surface (NCG010000). If that proves to be impractical, a revised plan must be submitted and approved that addresses erosion and sediment control needs during the interim period until the traps and basins are fully functioning (113A-54.1(b)).
11. A graveled construction entrance must be located at each point of access and egress available to construction vehicles during the grading and construction phases of this project. Access and egress from the project site at a point without a graveled entrance will be considered a violation of this approval. Routine maintenance of the entrances is critical (113A-54.1(b)).
12. As a condition of the NPDES General Stormwater Permit (NCG010000), the financially responsible party shall comply with the NCG01 Ground Stabilization And Materials Handling requirements that became effective April 1, 2019. The NCG01 Ground Stabilization And Materials Handling standard detail can be printed from the deq.nc.gov/NCG01 website.
13. As a condition of the NPDES General Stormwater Permit (NCG010000), the financially responsible party shall comply with the NCG01 Self-Inspection, Recordkeeping and Reporting requirements that became effective April 1, 2019. The NCG01 Self-Inspection, Recordkeeping and Reporting standard detail can be printed from the deq.nc.gov/NCG01 website.
14. As a part of routine monitoring of the approved land-disturbing activity, the financially responsible party shall assure inspections of the area covered by the approved plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with North Carolina General Statute 113A-54.1(e).
15. In order to comply with the basic control objectives of the SPCA (15A NCAC 04B .0106), both exposed area and time of exposure should be limited. We recommend this project be phased so that uncovered area is limited to a maximum of 20 acres at any given time. As per North Carolina General Statute 113A-57(5), the land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Ref: G.S. 113A-54.1 through G.S. 113A-57
Sections 15A NCAC 04A.0101 through 15A NCAC 04E.0504
General Permit NCG 010000 NPDES for Construction Activities

FOR REGISTRATION REGISTER OF DEEDS - 71 -
Karen S. Hardesty
Carteret County, NC
March 23, 2022 3:44:46 PM
DECL # Pages: 40
Fee: \$126.00 NC Revenue Stamp: \$0.00
FILE # 1761157

Karen S. Hardesty

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BRIDGE
VIEW, A PLANNED RESIDENTIAL DEVELOPMENT
CARTERET COUNTY, NORTH CAROLINA

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR BRIDGE VIEW (the "Declaration") is made as of this 20th day of March
2022, by Cedar Point Developers, LLC, a North Carolina Limited Liability Company (the
"Declarant").

RECITALS:

WHEREAS, Declarant is the owner of a certain tract of land located in the town of Cedar
Point, Carteret County, North Carolina, which is further described on Exhibit "A" attached
hereto and incorporated herein by reference (the "Property");

WHEREAS, Declarant hereby establishes the Property as a planned community within
the meaning of N.C.G.S. § 47F-1-103(23) to be known as "Bridge View" (referred to herein as
the "Community" or "Subdivision");

WHEREAS, Declarant desires to establish a general plan of development for the
Subdivision, to provide for the maintenance and upkeep of the Lots, Dwellings, and Common
Elements within the subdivision, as those terms are hereinafter defined, to provide for the
enforcement of the Declaration, to protect the value and desirability of the Property, and, to that
end, desires to subject the Subdivision to the covenants, conditions, restrictions, easements,
charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the
Subdivision and each owner of any part or all thereof;

AND WHEREAS, in furtherance of the foregoing, Declarant has incorporated or will
incorporate under the nonprofit corporation laws of the State of North Carolina BRIDGE VIEW
HOMEOWNERS ASSOCIATION, INC. (the "Association") to own and/or maintain and/or
administer Common Elements, to administer and enforce this Declaration and other covenants,
restrictions, and agreements applicable to the subdivision, and to collect and disburse the
assessments and charges provided for herein;

Submitted electronically by "Newborn & Associates, Attorneys at Law"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Carteret County Register of Deeds.

NOW THEREFORE, it is hereby declared that the Property is and shall be held,
transferred, sold, conveyed, and occupied subject to the covenants, easements, restrictions,
charges, and liens hereinafter set forth.

ARTICLE I
Definitions

- Section 1. "Association" shall mean and refer to "Bridge View Homeowners
Association, Inc."
- Section 2. "Bylaws" shall mean the Bylaws of the Association, as the same may be
amended from time to time.
- Section 3. "Common Area" shall mean all real property and any improvements
constructed thereon, if any, owned by the Association for the common use and enjoyment of the
Owners.
- Section 4. "Declarant" shall mean and refer to Cedar Point Developers, LLC.
- Section 5. "Declarant Control Period" shall mean the period of time commencing on
the date of recording of the Declaration and ending on the date on which the first of the
following occurs:
- (a) The date on which Declarant no longer owns any Lots in the
Development, including those lots which may be annexed following the date these covenants are
executed, and has conveyed all Common Areas to the Association.
 - (b) The Declarant voluntarily ends the Declarant Control Period by written
termination executed by the Declarant and recorded in the Carteret County Registry.
 - (c) 5:00 pm on December 31, 2041.
 - (d) Termination of the Declarant Control Period required by any law or
ordinance of the State of North Carolina, the County of Carteret, or the Town of Cedar Point.
- Declarant has the sole authority to resolve any issues or disputes regarding the date on which the
Declarant Control Period ends or is reinstated.
- Section 6. "Declaration" shall mean and refer to this instrument, as may from time to
time be amended.
- Section 7. "Development" or "Subdivision," such terms being used interchangeably,
shall mean and refer to Bridge View, a single-family residential development proposed to be
developed on the Property by the Declarant.

Section 8. "Dwelling" shall mean and refer to any building or portion thereof upon any Lot in the Development which is used or occupied, or intended for use or occupancy, as a residence by the Owner thereof or any tenants or sub-tenants of the Owner.

Section 9. "Governing Documents" shall mean and refer all of the following: this Declaration; the Articles and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; resolutions adopted by the Board; conditions of approval for development of any part or all of the property required by any Governmental Entity; Annexation Declarations; Supplemental Declarations; other declarations of restrictive or protective covenants applicable to the Property; all as the same may be amended, restated or supplemented from time to time. Any approvals granted by the Declarant under the Governing Documents shall be binding upon all successors to Declarant's approval authority.

Section 10. "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision Map of the Properties with the exception of the Common Area.

Section 11. "Improvement" shall mean and refer to any improvement of or on any Lot or other applicable portion of the Property, including but not limited to any or all of the following: Dwellings and other buildings and structures (specifically including exterior materials, colours, size, location and architectural style); decks; patios; car port; porches; driveways; playhouse; motor vehicle and other parking areas; exterior storage areas; exterior recreational areas, equipment and facilities; mail kiosks; exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or other signals; fences; exterior walls; hedges; other landscaping (including planted areas, grassed areas, natural areas and the plant and other materials therein); poles; flags; exterior decorative features and items; ponds; lakes; staking, clearing, grading, filling, change in grade or slope, and other site preparation; swimming pools; coverings for windows and other glass portions of a Dwelling or other building or structure (for example, curtains, blinds, and shutters), which coverings are visible from anywhere off of the Lot or other applicable portion of the Property; exterior lights and signs; lights and signs visible inside a Dwelling or other building or structure from anywhere off of the Lot or other applicable portion of the Property; and all other items used or maintained on a Lot or other applicable portion of the Property outside of a Dwelling or building or other structure located thereon or on the exterior surfaces of a Dwelling or building or structure on the Lot or other applicable portion of the Property. The definition of improvements stated for the purposes of this definition includes both initial improvements and all subsequent alterations, changes and additions to same. The term "initial improvements" is defined as all of the improvements constructed or placed or located on a Lot or other applicable portion of the Property, or approved for construction, placement, or location on a Lot or other applicable portion of the Property, in accordance with either plans and specifications or Architectural Guidelines existing at the time of issuance of a certificate of occupancy for the Dwelling on such Lot or other applicable portion of the Property. The examples of improvements stated for the purposes of this definition are not inclusive of all types of improvements and do not imply that all improvements listed as examples will be allowed in the Properties, and all improvements are subject to the architectural approval provisions of the Declaration. For the purposes of this definition, the word "exterior" means located on a Lot or other applicable portion of the Property outside of the Dwelling or other building or structure thereon, as well as attached to the outside

of (such as on a wall or roof) a Dwelling, building, or other structure on a Lot or other applicable portion of the Property.

Section 12. "Interior Lots" shall mean and refer to Lots 1-20 and Lots 47-73 as depicted on the Subdivision Map.

Section 13. "Subdivision Map" shall mean and refer to any recorded map of the subdivision, including specifically the map recorded in Map Book 34, Page 386, Carteret County Registry.

Section 14. "Member" shall mean a person subject to membership in the Association pursuant to Article IV, Section 2 of this Declaration.

Section 15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, or a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Parcel" shall mean and refer to a portion or part of real property, together with the improvements located thereon, which becomes subject to this Declaration. This term shall include any additions to the existing Properties as herein provided.

Section 17. "Person" shall mean a natural person, corporation, trust, limited liability company, partnership, or any other legal entity.

Section 18. "Property" or "Properties" shall mean and refer to any of the real property which is or may be subject to this Declaration or Supplemental Declaration.

Section 19. "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 20. "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided below.

Section 21. "Stormwater Control Measures" shall mean and refer to any one or more of the following devices and measures, together with any associated private stormwater drainage easements that serve any part or all of the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet-ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bioretention areas, retention or detention ponds, and other devices, facilities, appurtenances, and measures necessary to collect, convey store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property, and which are located outside public street rights-of-way and public drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on the Subdivision Map or any other plat, map, or document recorded in the Carteret County Registry, are deemed to be dedicated to the Association for the benefit of the Property or

any applicable portion thereof. All Stormwater Control Measures owned by or dedicated to the Association are Common Areas.

Section 22. "Supplemental Declaration" shall mean and refer to any declaration of Covenants, restrictions, easements, charges, and liens recorded by the Declarant, or its successors and assigns, which applies to a specific Parcel within the Properties.

ARTICLE II
Property Subject to this Declaration

Section 1. **Property Hereby Subjected to this Declaration.** The Declarant, for itself and its successors and assigns, hereby submits the real property described on Exhibit A to this Declaration, and said property shall be held, transferred, sold, conveyed, and occupied subject to this Declaration and the Bylaws, irrespective of whether there may be additions thereto as hereinafter provided.

Section 2. **Annexation of Additional Property.** Additional property, including any additions to the Common Elements, may be annexed and brought within the scheme of this Declaration, the Bylaws, and the jurisdiction of the Association at any time during the Declarant Control Period by Declarant at its sole and complete discretion by executing and recording in the Carteret County Registry an Amendment to this Declaration describing the portion of additional property being annexed.

After the termination of the Declarant Control Period, the Members of the Association may annex additional property within the scheme of this Declaration, the Bylaws, and the jurisdiction of the Association in the same manner as provided herein for Amending this Declaration.

Section 3. **All Lots Bear the Burdens and Enjoy the Benefits of this Declaration.** Every Owner, by taking record title to a Lot, agrees to accept title to such Lot and to be bound by all terms and provisions of this Declaration. Each Lot is subject to all burdens and enjoys all benefits made applicable hereunder.

ARTICLE III
Common Areas

Section 1. **Ownership of Common Areas.** After the completion of all improvements to the Common Areas, Declarant shall convey the Common Areas to the Association. Notwithstanding the recording of any Map or any other action by Declarant or the Association, all Common Areas, including streets and roads, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. **Owners' Rights to Use and Enjoy Common Areas.** Each Owner is hereby given the right to use and enjoy the Common Areas, which right shall be appurtenant to and shall pass with the title to the Lot, subject to the following:

(a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to ensure the safety and rights of all Owners.

(b) The right of the Association to suspend the voting rights in the Association and right to use the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(c) The right of the Declarant or the Association to grant utility, drainage, and other easements across the Common Areas.

Section 3. **Owners' Easements for Ingress and Egress.** Every Lot is hereby granted a perpetual, non-exclusive right to use those roadways shown on the Subdivision Map and which is described in Exhibit A for the purpose of providing access to and from each Lot. Additionally, each lot is granted a perpetual, non-exclusive right to use the easement described in that Deed of Easement recorded in Book 1759, Page 184, Carteret County Registry, for the purposes of ingress, egress, and regress between N.C. Highway 24 and each Lot.

Section 4. **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, said Owner's right of enjoyment to the Common Area and facilities to that Owner's immediate family members who are domiciled on the Owner's Lot. Immediate family members as used herein shall mean the Lot Owner's spouse and/or children. This provision shall be subject to any limitations on delegation contained in other provisions of this Declaration.

Section 5. **Maintenance.** The Association shall keep in good condition, order, and repair the Common Area including but not limited to the streets, drives, and accesses shown on the Subdivision Map, the entrance gate, mailbox kiosk, boat storage area, detention/retention ponds/bulkheads, sediment basins, all entry features and entry landscaping, and all street signage and streetlights.

The Board of Directors, in its sole discretion, may leave portions of the Common Area as undisturbed natural areas and may change the landscaping on the Common Area at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers. Any common irrigation system installed by the Declarant or the Association for use by the Association shall be operated, maintained, repaired, and replaced by the Association.

The Developer has additionally entered into a road maintenance agreement, recorded in Deed Book 1759, Page 185, Carteret County Registry for that variable width ingress, egress, and regress easement shown on that map recorded in Map Book 34, Page 128 of Carteret County Registry, which provides for ingress, egress, and regress between N.C. Highway 24 and the Property, and the Association agrees to accept assignment of Developer's rights and obligations under said agreement at any time following its formation and registration with the North Carolina Secretary of State. Upon assignment of said road maintenance agreement, the

Association shall pay for any continuing maintenance or repair costs incurred thereunder out of Association assessments as provided for maintenance of Common Areas in Article VI, Section 2 of this Declaration. Said road maintenance agreement shall be recorded in the Register of Deeds of Carteret County following execution.

Section 6. Conveyance of Common Areas. The Declarant shall convey by deed all Common Areas to the Association in fee simple absolute after completion of all improvements to the Common Areas. Declarant may convey or transfer all Common Areas, including any and all improvements thereof, to the Association in an "AS IS, WHERE IS" condition. Declarant hereby disclaims and makes no representations, warranties, or other agreements, express or implied, by law or fact, with respect to the Common Areas and improvements thereto, including, without limitation, representations or warranties of merchantability regarding the condition, construction, accuracy, completeness, design, adequacy of size or capacity thereof in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials, furniture, or equipment used therein. Neither the Association nor any Owner or any other Person shall make any claim against Declarant, its successors and assigns, relating to the condition, operation, use, accuracy, or completeness of the Common Areas, or for incidental or consequential damages arising therefrom.

Section 7. Declarant's Rights in Common Areas. In addition to the specific rights and easements reserved herein, Declarant and its employees, agents, affiliates, and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Declarant Control Period, and shall have the same right to use the Common Areas for promotional, sales, and similar purposes until all of the Lots have been conveyed by the Declarant.

Section 8. Insurance on Common Areas. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Common Areas. The Board shall obtain casualty insurance for all insurable improvements located on the Common Areas, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of any insurable improvement in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million and No/100 Dollars all damage or injury caused by the negligence of the Association and its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association. An insurer that has

issued an insurance policy under this Section shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Section may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 9. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least 67% of the Class A votes, and by Declarant during the Development Period, not to repair or reconstruct such damage. In the event that it shall be decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Class A Members, levy Special Assessments to cover the shortfall.

Section 10. No Partition. The Common Elements shall remain undivided, and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 11. Community Septic System. Lots 49 and 50 as shown on the Subdivision Map shall use and be subject to an off-lot community septic system to be maintained by the Association in the Common Area. The Owners of said Lots shall be required to contribute to the maintenance and upkeep of the community septic system by payment of a Septic Assessment as defined and provided in Article VI of this Declaration.

Section 12. Community Fencing. Lots 1-20, Lots 59-63, and Lots 67-70, as shown on the Subdivision Map, shall have fencing installed within a four (4) foot easement which is hereby reserved upon the rear lot lines of said lots, said fencing to be installed by the Declarant during the Declarant Control Period. The Declarant and the Association shall retain an easement four feet in width along the rear lot line of the above referenced lots, for the purpose of placing and keeping a fence. Said easement shall be appurtenant to and run with each affected Lot. The Owner of each Lot referenced above shall be responsible for the maintenance, upkeep, and repair of the portion of fence located upon their Lot, but shall not be responsible for the maintenance, upkeep, and repair of any other portion of the fence. The Owner of any Lot shall be permitted to tie in any fence constructed on their property to the community fencing along the rear lot line. If

any Owner should fail to comply with its responsibilities under this Section, it shall be considered a violation of these Covenants, and the Association shall be entitled to take enforcement or corrective action as provided in Article VII, Section 21 of this Declaration.

Section 13. Community Boat Ramp and Pier. The Declarant may construct a boat ramp and pier as part of the Common Area for the use of Lot Owners, renters, and guests as provided in this Section. This section shall not be construed to require Declarant to construct a boat ramp and pier. Each Lot Owner shall have the right to use and access said boat ramp and pier, subject to the restrictions contained herein. Any person who is a renter or authorized occupant of any Lot under an executed rental agreement with any Lot Owner may use and access said boat ramp and pier in the same manner as a Lot Owner. No Lot Owner or Renter shall be entitled to allow any guests to use and access the boat ramp or pier under any circumstances.

If such boat ramp and pier are constructed as provided herein, the following rules shall apply to their use. There shall be no parking in any boat ramp area, or upon the rights-of-way immediately adjacent to any boat ramp entrance. Furthermore, after any boat is placed in the water, said boat may be tied to the pier, but shall not remain tied to the pier for longer than thirty (30) minutes or interfere in any way with others using the boat ramp. No boat with a length of more than Twenty-Four (24) feet shall be placed in the water by use of any boat ramp.

Section 14. Owners' Easements for Drainage. Every Lot is hereby granted a perpetual, non-exclusive right to use any drainage easements designated as such on the Subdivision Map and any Common Areas designated for stormwater drainage on the Subdivision Map for the purpose of stormwater runoff and drainage from said Lots to the stormwater drainage ponds located upon the Common Areas.

Section 15. Stormwater Management. The following covenants and restrictions set forth herein are intended to ensure ongoing compliance with Post-Construction Stormwater Management Permit Number SWA 000127 as issued by the Division of Energy, Mineral, and Land Resources (the "Division") under 15A NCAC 02H.1000, effective January 1, 2017:

- (a) The State of North Carolina is made a beneficiary of this Declaration to the extent necessary to maintain compliance with the Stormwater Management Permit.
- (b) These covenants are to run with the land and be binding upon all persons and parties claiming under them.
- (c) The covenants pertaining to stormwater shall not be allowed to expire and may not be altered or rescinded without the express permission of the Division. Alteration of the drainage as constructed under the ATC permit approval and as shown on the final stormwater plans submitted as part of the as built package may not take place without the concurrence of the permittee and approval by the Division.
- (d) The maximum allowable built-upon area (BUA) per lot, in square feet, is as listed in the table attached hereto as Exhibit B and incorporated herein by reference. All Lots shall comply with the built-upon area requirements provided in Exhibit B, or as

may be required by any applicable governmental authority ("BUA Limits"). The allotted amounts shown on Exhibit B includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the street payment and/or sidewalk. The maximum allowable built-upon area shall not be exceeded on any lot until the permit is modified to ensure compliance with the stormwater rules. Built-upon area has the same meaning as G.S. § 143-214.7, as amended in Session Law 2017-10.

(e) For those lots within the CAMA Area of Environmental Concern, where DCM calculates a different maximum allowable built-upon area, the governing maximum allowable built-upon area shall be the more restrictive of the two amounts.

(f) All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished via grading, a stormwater collection system, and/or a vegetated conveyance.

(g) A 50 foot wide vegetated setback must be provided and maintained adjacent to all surface waters in accordance with 15A NCAC 02H.1003(4) and the final plans submitted as part of the as-built package.

(h) Any individual or entity found to be in non-compliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in N.C.G.S. § 143, Article 21.

(i) If permeable pavement or #57 stone is desired as credit for built-upon area in accordance with 15A NCAC 02H.1055 and G.S. § 143-214.7, the property owner must submit a request, with supporting documentation demonstrating compliance with the stormwater rules, to the permittee and receive approval prior to construction.

(j) The Committee, as hereinafter defined in Article V, Section 1 shall review all submitted development applications and plans for compliance with the BUA Limits and may in its sole discretion approve or disapprove any applications and plans in order to maintain compliance with any BUA Limits. Any application or plans submitted to the Committee must include and show any and all built-upon areas, and the Committee shall keep records of all approved plans and shall make such records available to the North Carolina Department of Environmental Quality upon written request as provided in the Governing Documents. Approval of any application or plan by the Committee shall not relieve any Owner, Builder, or other applicant from any obligation or responsibility to comply with all legal requirements with regard to BUA Limits. The Association shall have the right but not the obligation to use permeable pavement or permeable concrete for driveways, parking pads, alleys, and parking lots in the Common Areas within the Subdivision to comply with any BUA Limits required by the applicable Governmental Authority for development of the Subdivision.

(k) The Declarant may assign to the Association, and the Association shall accept from the Declarant, the assignment of said Stormwater Management Permit and

all obligations of the Declarant thereunder. Declarant may further assign to the Association, and the Association shall accept from the Declarant any and all agreements entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of all obligations, if any, required of the Declarant under any such agreement with respect to Stormwater Control Measures. The Association shall pay, provide for, or comply with all bonds and other financial obligations under any agreements or legal requirements related to the Stormwater Control Measures or the Stormwater Management Permit.

(l) Any Lot upon which any Stormwater Control Measures or any portion thereof is located will be maintained up to the bottom of the perimeter berm by the Association. The frequency of any mowing of grass in those portions of any Lot described above will be determined by the Declarant during the control period. The Owner of any Lot upon which any Stormwater Control Measures or portion thereof is located may choose to mow in addition to and more frequently than the Association, provided no damage is caused to any stormwater control measure by more frequent mowing. The Owner of a Lot upon which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures or portion of any Lot for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Declarant Control Period, unless the Declarant should otherwise assign such right to the Board, and shall be determined by the Board after the end of the Declarant Control Period. An Operation and Maintenance Agreement is attached hereto as Exhibit C outlining various remediation strategies for maintenance of the Stormwater Control Measures.

(m) The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all legal requirements with respect to stormwater management, including the execution of agreements regarding Stormwater Control Measures with the City, State, or other Persons, and the granting of easements to the City, State, or other Persons.

ARTICLE IV
Association

Section 1. The Association. Declarant has caused or will cause the Association to be formed, and the Association does or will exist under its Articles of Incorporation and Bylaws. The Association is and shall be responsible for the maintenance of the Common Elements, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required by the Association under the Governing Documents or as the Board of Directors shall deem to be in the best interests of the Members or applicable portion of Members of the Association. The Association shall have all rights and

powers reasonably necessary to provide the services and perform the obligation and functions required of it by the Governing Documents.

Section 2. Membership. Every record Owner of a Lot is a Member of the Association, and by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association and to be subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Lot. An Owner's membership in the Association automatically terminates whenever such person ceases to be an Owner, and Declarant shall be the Class B member at all times that Declarant owns at least one (1) Lot (Which may consist of any unsubdivided land owned by Declarant if Declarant owns no other Lots in the Property). Termination of membership shall not release or relieve any such Owner from any liability or obligation incurred under the Declaration during the period of such Owner's membership in the Association, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

Section 3. Classes of Membership Voting Rights. The Association shall initially have two classes of voting membership, Class A and Class B, which shall be described as follows:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Ownership of each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant, including those Lots annexed into the subdivision after execution of these covenants. The Declarant shall be entitled to five (5) votes for each Class B Lot owned by it.

Section 4. Amendment. Notwithstanding any other provisions contained herein, so long as Declarant owns any Lot, this Declaration, and/or the Bylaws of the Association, may not be amended without its written consent.

Section 5. Board of Directors. The Association shall be governed by a Board of Directors (the "Board") in accordance with the Bylaws. The initial Board of Directors shall consist of Danny Whaley, James Maides, and Steve Kellum. Notwithstanding any other provisions contained herein, the Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs:

- (a) Declarant no longer owns any Lot; or

(b) Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant.

Section 6. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such members obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association for unpaid assessments or other obligations under the Governing Documents.

Section 7. Rules and Regulations. As part of the general plan of development for the Property, the Governing Documents establish a framework of affirmative and negative covenants, easements, and restrictions. Within that framework, the Declarant, Board, and Members need the ability and flexibility to supplement this Declaration with additional Rules and Regulations to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. This section does not apply to the Board policies relating to use and operation of the Common Area adopted by the Board unless the Board in its discretion chooses to submit to such procedures. This section does not apply to administrative policies which the Board adopts to interpret, define, or implement the Rules and Regulations or other Governing Documents, nor does it apply to any Architectural Standards Guidelines.

All Owners and other Occupants of all portions of the Property and their guests and invitees shall abide by the Rules and Regulations. Compliance with the Rules and Regulations may be enforced in the same manner and to the same extent that this Declaration provides for enforcement of this Declaration, and any person determined by judicial action to have violated the Rules and Regulations shall be liable to the Declarant or Association or other applicable person for all damages and fines, including all costs incurred in seeking and enforcing applicable legal remedies, including reasonable attorneys' fees.

Subject to the terms of this section and Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, amend, modify, cancel, repeal, limit, create exceptions to, add to, or expand the Rules and Regulations. The Board shall give notice to each Owner concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. During the Declarant Control Period, no action taken by the Board pursuant to this subsection shall be effective unless approved in writing by the Declarant.

Prior to any such action taken by the Board becoming effective, the Board shall give notice of the new rule or explanation of any changes to the Rules and Regulations to each Owner, which notice shall state the effective date of the action, which shall not be less than thirty (30) days following the date on which the action is taken by the Board. The Association shall provide to any requesting Owner (but not to more than one Owner of a Lot), without cost, one copy of the Rules and Regulations then in effect, together with the action taken by the Board. Additional copies may be provided by the Association upon payment of a reasonable charge as established

by the Board. The action taken by the Board shall become effective on the later of the 31st day after the action is taken by the Board or such later effective date specified in the notice, unless, prior to the effective date, Members representing more than fifty percent (50%) of the total number of votes in the Association disapprove such action at a meeting or in writing to the Board. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt, prior to the effective date of the action taken by the Board, of a petition of the Members as required by the Governing Documents for special meetings of the Association or a written request from the Declarant. Upon such petition of the Members or written request from the Declarant prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

No action taken by the Board pursuant to this Section shall have the effect of modifying, amending, repealing, limiting, or expanding the Architectural Standards Guidelines or any provision of this Declaration or other Governing Documents. If the event of a conflict between the Rules and Regulations and the Architectural Standards Guidelines, this Declaration, or any other Governing Documents, the Architectural Standards Guidelines, this Declaration, or any other Governing Documents shall control.

All owners are hereby given notice that the use of their Lots and Dwellings is subject to the Rules and Regulations as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot and Dwelling can be affected by this provision and that the Rules and Regulations may change from time to time.

Notwithstanding the foregoing, nothing in the Rules and Regulations shall conflict with or violate the following requirements:

(a) Similarly situated Owners shall be treated similarly, the determination of which Owners are similarly situated being in the reasonable judgment of the Declarant or Board, as applicable.

(b) The rights of the Owners to display religious and holiday signs (the word "signs" here including signs, banners, flags, symbols, decorations, and other displays) inside dwellings shall not be abridged, and no rules shall regulate the content of political signs; however, rules may regulate the number, size, time, place, and manner, and length of time, of posting or displaying such political signs that are located outside of or are visible from outside of the Dwelling.

(c) No rule shall alter the allocation of financial burdens among the various portions of the Properties or rights to use the Common Areas to the detriment of any Owner over that Owner's objection expressed in writing to the Association. The foregoing shall not prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of the Common Areas, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common

Areas, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in this Declaration.

- (d) No rule shall prohibit leasing that is consistent with the terms of this Declaration, and no rule shall require the consent of the Association or Board for leasing or transfer of any Dwelling or Lot.
- (e) No rule shall require an Owner to dispose of personal property that was in a Dwelling or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who become Owners after adoption of the rule.
- (f) Without the consent of the Declarant, no rule or action by the Board or Members shall restrict, impair, prohibit, exclude, impede, interfere with, or in any way adversely affect any rights of the Declarant.

The limitations in subsections (a) through (f) shall only limit the rule making authority exercised under this Section; they shall not apply to other Sections and provisions of this Declaration.

Section 8. Right to Use Management Company. Notwithstanding any other provision of this Declaration, the Declarant, during the Declarant Control Period, or the Board, after the Declarant Control Period has ended, may contract with a Management Company as provided in the North Carolina General Statutes to manage the affairs of the Association and enforce this Declaration.

**ARTICLE V
Design and Architectural Control**

Section 1. Architectural Standards Committee. For the purposes of this Article, the Declarant shall function as the Architectural Standards Committee (the "Committee") so long as Declarant is a Class B Member of the Association. After the termination of the Declarant's Class B Membership, the Board of Directors of the Association shall establish the Committee, which shall initially consist of three (3) members, by appointing the members of the Committee to carry out the functions set forth in this Article. Members of the Committee may be appointed to or removed from the Committee at any time for any reason by the Board.

Section 2. Architectural Standards Guidelines. The Committee shall prepare and promulgate Architectural Standards Guidelines (the "Guidelines"), which may contain general provisions applicable to all of the Property. The Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Committee in considering plans and specifications. The Guidelines are not the exclusive basis for decisions of the Committee and compliance with the Guidelines may not be guarantee approval of any plan or specification. Declarant shall have sole and full authority to amend the Guidelines during the Declarant Control Period, and upon termination of the Declarant Control Period, the Board of

Directors shall have the authority to amend the Guidelines or to authorize the Committee to make such amendments as the Board of Directors may approve.

Section 3. General Guidelines.

- (a) **Reservations.** The Declarant reserves the right to change, alter, or redesignate roads, pedestrian easements, utility and drainage facilities, and such other present and proposed amenities or facilities as may, in the sole judgment of the Declarant be necessary or desirable.
- (b) **Variations.** The Committee shall be empowered to allow adjustments of the conditions and restrictions stated herein in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein, provided, however, that such is done in conformity to the intent and purposes hereof, and also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood. The Committee may provide for rules and procedures regarding how Variations may be requested and under what circumstances Variations may be granted or denied in the Guidelines.
- (c) **Development Concept.** It is the express intention of the Declarant to maintain in this residential community a uniform plan of development that will blend with and not detract from the natural environment with respect to design, type, and general appearance of the structures to be erected on the lots. Owners are encouraged to have their architects contact the Committee prior to any costly design work for concept guidelines pertaining to the residential community.

(d) **Submission and Approval of Plans.** Any proposed Site Plans, Grading Plans, Building Plans and Specifications, Exterior Colors and Finishes, and Construction Schedules must be submitted to and approved by the Committee as provided in the Guidelines. The Committee's Architectural Control shall be absolute and in its sole discretion; the Committee may require modifications of plans based on solely aesthetic considerations, or any offsite considerations. The Committee's approval is required for any improvement including but not limited to location and construction of individual boat slips, driveways, outbuildings, and fences.

Without the prior written consent of the Committee, no changes or deviations in or from such plans or specification as approved shall be made. No alterations in the exterior appearance of any building or structure, or in the grade, elevation, or physical characteristics of any lot shall be made without like approval by the Committee. Failure to obtain the Committee's approval of any plans as provided in the Guidelines, to adhere to any approved plan, or to obtain the Committee's approval of any changes or derivations in or from an approved plan shall be considered a violation of these covenants.

Section 4. Pier and Boat Dock Design and Location. The design and location of all piers, docks and pilings for pedestrian and boat docking use shall be subject to the approval and absolute discretion of the Declarant during the Declarant Control Period, and thereafter the Committee, subject to the requirements of any laws or ordinances promulgated by any government body.

**ARTICLE VI
Covenant for Maintenance Assessments**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for any purpose and (3) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes or assessments for any Common Areas, including roads, if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorneys' fees for collections, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest at the highest rate allowed under the laws of the State of North Carolina, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall include, but not be limited to, the uses as follows:

- (a) to maintain all roads constructed within the Common Areas to the standard of maintenance which would be required by the State of North Carolina before it would accept such roads for maintenance; provided that this provision does not require that the width of the road rights-of-way be the width required as set forth before such roads would be accepted by the State of North Carolina for maintenance;
- (b) to maintain all access easements in the Common Areas in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased, or decaying trees, shrubs, and bushes removed from such areas and to replace such items with new trees, shrubs, and bushes;
- (c) to maintain all drainage easements in the Common Areas to prevent flooding;
- (d) to keep the Common Areas and the drainage and access easements free of pollution and natural debris;
- (e) to keep all amenities in the Common Areas clean and free from debris and to maintain all amenities in an orderly condition, and to maintain the landscaping therein

in accordance with the highest standards for a private residential community including any necessary removal and replacement of landscaping;

- (f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire, and damage from animals;
- (h) to pay all ad valorem taxes levied against the Common Areas and any property owned by the Association;
- (i) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability;
- (j) to pay all legal, accounting, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (k) to accumulate and subsequently maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (j) above in order to fund unanticipated expenses of the Association.

Section 3. Minimum Annual Assessment. The initial minimum annual assessment shall be \$700.00 per year. Assessments shall commence beginning the first day of the month following conveyance of the Common Area to the Association. So long as there exists Class B Lots, the Declarant shall pay no dues or assessments.

The Owners of any Lots connected to the Community Septic System, including Lots 49-50 as shown on the Subdivision Map, shall be required to pay in addition to the initial assessment a pro-rata share of any costs associated with the community septic system (the "Septic Assessment"). The Septic Assessment shall be calculated by dividing the full cost of maintaining and repairing the community septic system the number of lots connected to the community septic system. Any amounts paid as part of the Septic Assessment which are not used in a given fiscal year for the maintenance and upkeep of the community septic system shall be carried over to the following fiscal year and used to offset the costs of maintenance and upkeep for the community septic system.

Section 4. Collection of Assessments. The annual assessments levied by the Association shall be collected as follows:

- (a) the first pro rata payment of the balance of the current year assessment shall be due and payable beginning on the day of closing. The Board of Directors shall fix the amount of the assessment against each lot at least thirty (30) days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments be paid in pro rata monthly installments, quarterly installments, semi-annually installments, as well as annually. The Association shall, upon demand, and for a reasonable charge, furnish a

certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

(b) from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the minimum annual assessment may be increased each year not more than fifteen percent (15%) above the minimum annual assessment for the previous year without a vote of the membership. Additionally, the Septic Assessment may be increased upon the same terms as provided herein for the minimum annual assessment.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the minimum annual assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose. Additionally, the Septic Assessment may be increased upon the same terms as provided herein for the minimum annual assessment. Except, however, increases attributable solely to the annexation of new areas, including new Common Areas, shall not be subject to this limitation.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for any purpose, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the Members.

Section 6. Notice and Quorum for Actions Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 and 5 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting the presence of Members or proxies entitled to cast fifty-one percent (51%) of all the votes of each Class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called, subject to the same notice requirement, and there shall be no required quorum at this subsequent meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid when due shall be delinquent. The assessment shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the maximum rate allowed by law, together with such late fees as may be set by the Board. The Association shall file a lien of record against any Lot where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the Office of the Clerk of Superior Court of Carteret County in a manner provided therefor in the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Area or abandoning his Lot. The Association may take legal action to enforce the lien in any manner prescribed by the North Carolina General Statutes, including but not limited to bringing an action at law against the Owner personally obligated to pay any assessments and interest, or foreclosing on the lien in like

manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes.

Costs and reasonable attorneys' fees for the prosecution of any such action or foreclosure proceeding shall be added to the amount of such assessment, and any and all fees, charges, late charges, fines, and interest may also be added to the amount of such assessment.

Section 8. Effect of Default in Payment of Ad Valorem Taxes of Assessments for Public Improvement by Association. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien subject to the lien of the governmental authority levying said ad valorem taxes on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro-rata from all Owners including the foreclosure sale purchaser. Such pro-rata portions are payable by all Owners notwithstanding the fact that such pro-rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 4. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

Section 10. Rights of Mortgagees. A holder or insurer of a mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the description of secured properties) will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the project or Lot securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments of charges owed by the Owner of any Lot upon which it holds a mortgage.

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed amendment to the project instruments effecting a change in the boundaries of any Lot, ownership of Common Elements, if any, the number of votes in the Association pertaining to any Lot or any proposed change in the restrictions on the Property.

ARTICLE VII

General Use Restrictions

Section 1. Residential Use. No structure, except as hereinafter provided, shall be erected, altered, placed, or permitted to remain on any residential lot other than a detached single-family dwelling. No building or other structure, or part thereof, at any time situated on such residential lots shall be used as a professional office, charitable or religious institution, business or manufacturing purpose, or for any use whatsoever other than residential and dwelling purposes as aforesaid; and no duplex residence or apartment house shall be erected or placed on or allowed to occupy such residential lots and no building shall be altered or converted into a duplex residence or apartment unit thereon. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant and any Builder (so long as the Builder owns or has the right to buy any Lot from Declarant), or such other Person with Declarant's consent, may maintain model homes, sales offices, and temporary construction trailers and other improvements and facilities within the Properties for the purpose of conducting business related to the development, improvement, and/or sale or marketing of any part or all of the Properties, including the sale and marketing of Lots. Additionally, the Owner of any Lot may use a portion of a building located on such Lot as a home office, provided that such use does not create a regular customer, client, or employee traffic to and from such Lot, and no sign, logo, symbol, or nameplate identifying any business is displayed anywhere on such Lot.

Section 2. Nuisances. No noxious, offensive, or illegal activity shall be carried out on or conducted upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

Section 3. No Timesharing. No Dwelling on the Property shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to use or occupancy of the Dwelling rotates among participants in the program on a fixed or floating time schedule over any period of time.

Section 4. Rentals. No Lot Owner shall lease any Lot or any improvement located thereon for any period shorter than 12 months in a single rental term. No lot or improvement located thereon shall be used for short-term rentals, vacation rentals, or for any other rental period which is less than 12 months in a single rental term. Notwithstanding the foregoing, Lot 24 as shown on Exhibit A may be used for short term rentals or vacation rentals.

Section 5. Flags. No flags other than the national flag of the United States of America, the state flag of North Carolina, or the flag of any military branch of the United States

Military (Army, Navy, Marines, Air Force, Coast Guard, Space Force) shall be permitted to be flown or hung on any lot. Any flag displayed shall be (i) no greater in size than four feet by six feet (4' x 6'), (ii) displayed in accordance with or in a manner consistent with the customs set forth in 4 U.S.C. §§ 5-10, as amended, and (iii) displayed only on individual Lots, not in Common Areas, easements, and or rights-of-way. Notwithstanding the foregoing, no yard mounted flag pole shall be installed upon any Lot.

Section 6. Signs. No signs shall be permitted to be placed, hung, or otherwise displayed on any Lot that is larger than 24 inches by 24 inches (24" x 24") in size. Signs placed upon any Lot shall not display any vulgar, obscene, or undesirable language or imagery, and shall not advertise or solicit for any business, enterprise, or organization. Display of political signs shall be permitted subject to the restrictions and requirements contained in North Carolina General Statute § 47F-3-12 (2). Furthermore, nothing herein shall be construed to prevent any Builder who currently owns or is contracted to develop any Lot from displaying a sign on that Lot, or to prevent any Owner from displaying a sign for any home security service whose system is installed upon that Lot, provided that those signs comply with the size requirement stated above.

Section 7. Exterior Antennae, Satellite Dishes, and Aerials. No exterior radio and television aerials and satellite dishes for reception of commercial broadcasts shall be permitted in the Subdivision.

Section 8. Animals and Pets. No animals of any kind shall be raised, bred, or kept on any Lot or in any Dwelling Unit or in the Common Areas, except that two dogs, two cats or one of each may be kept in a Dwelling, subject to the Rules and Regulations, provided that any such household pet is not kept, bred or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations of the Association. Dogs, cats or other household pets must be kept within the confines of the Owner's Dwelling or within a fence and/or electric fence upon any Lot, except when being held on hand leash by the pet owner of the animal. No Lot Owner shall install a fence and/or electric fence on any portion of the Common Area without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Area. A Lot Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Dwelling shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or occupants. No doghouse or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Areas. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot.

Section 9. Swimming Pools. Outdoor swimming pools, hot tubs, Jacuzzis, and other similar facilities may be located in the rear of a Lot only after Committee approval, and shall be screened and fenced so as not to be generally visible from adjoining lots, easements or common areas. All such improvements shall be subject to approval and compliance with all governmental

laws and regulations. Notwithstanding the foregoing, in no case shall an above ground pool be located or installed upon any Lot.

Section 10. Construction Guidelines.

(a) **Dwelling Sizes.** Dwellings located upon all Interior Lots shall not be less than 1,800 heated square feet in size. This size requirement shall not apply to any detached garages or outbuildings.

(b) **Dwelling Height.** No Dwelling shall be more than three and one-half stories tall, inclusive of the bottom floor of said Dwellings. This height requirement shall additionally apply to any other improvements built within the Development. Notwithstanding the foregoing, no Dwelling or improvement shall be permitted to measure more than forty (40) feet in height as measured from the lowest point of contact with the ground to the highest point of the Dwelling or improvement, excepting and excluding from that measurement any raised chimneys.

(c) **Fences.** Fences may be placed upon any lot, subject to the restrictions contained herein. Fences placed upon any Interior Lots, and shall be limited to a maximum height of five (5) feet and may only be constructed of aluminum or white vinyl. No fence may be located upon any Lot closer to the street right-of-way than the rear of the Dwelling located on said Lot and no closer to the street right-of-way than the minimum building line on any corner lot. Along any side or rear lot line which adjoins another Lot's side or rear lot line, no fence may be built within two (2) feet of said lot lines. In any event, no fence shall be placed upon any Lot without prior approval from the Committee.

The Owner of any Lot with a fence along a Lot line adjoining a neighboring Lot shall have the right of access over the neighboring Lot for the purpose of maintenance, upkeep, repair, and modification of said fence. The space in between fences located between adjoining lots shall be maintained by the Lot Owners of those Lots. Grass shall not be allowed to grow higher than six (6) inches in the space between fences located on any adjoining lots. If said Lot Owners fail to reasonably maintain the areas between their fencing and lot line, the Association may in its sole discretion take action as provided in Article VII, Section 21 to enter upon that Lot and provide for the maintenance of said space between any fence and a lot line.

(d) **Underground Utility Requirements.** All electric transmission or service lines within the perimeter bounds of any Lot, Common Area, or easement shall be installed beneath the surface of the ground.

(e) **Adequate Drainage Requirements.** It shall be the obligation of the Lot Owner to provide adequate drainage of his or her lot to the end that the property or properties adjacent to said lot shall not be subjected to other than the natural flow of drainage presently existing. It shall also be the obligation of the lot owners to provide, install, and maintain adequate culverts or drainage pipes beneath his or her driveway as it

crosses the street right-of-way in order that the natural flow of drainage will not at any time be blocked along the street right-of-way. The size of such drainage pipe shall be determined by the Association, or the appropriate municipal regulatory authorities.

All improvements constructed must have gutters to collect rain runoff off roofs and flat areas. All runoff and drainage must be directed to flow towards the streets, and shall not be allowed to flow towards the waterfront. There shall be no drainage or runoff from heat pumps, pools, showers or other improvements or facilities located on any lot which shall be allowed to run into or towards the waterfront.

(g) **Window Air Conditioning Units.** No window air conditioning unit shall be installed upon any improvement.

(h) **Outbuildings.** Any buildings which are not attached to the Dwelling located upon any Lot shall be site built, and shall be constructed of the same exterior materials, colors, and design as said Dwelling. Said outbuildings shall only be located in the rear yard of any Lot no closer to the street right-of-way than the rear of the Dwelling located upon said Lot.

Section 11. Sight Distances at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 12. Parking. Parking by any vehicle shall only be allowed upon concrete driveways located upon any Lot. No vehicle shall be parked in any yard, or in any street right-of-way. No vehicle without a current inspection sticker, vehicle with a Gross Vehicle Weight ("GVW") of over 5,000 lbs. empty, camper trailer, motor home, or bus shall be parked for more than twenty-four (24) hours consecutively on any Lot except in an enclosed garage; provided however, guests of an owner may park such vehicle for a period not to exceed seven (7) days each calendar year. No pleasure boat on its trailer or any boat trailer by itself shall be parked on any Lot for more than twenty-four (24) hours consecutively, and must be parked only upon a concrete driveway. No automobile(s), other vehicle(s), motorcycle(s), trailer(s), or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage.

Section 13. Prohibited Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently. No trailer, mobile home, camper or like vehicle shall be allowed on the property at any time, or any other structure which is finished or partially finished at a manufacturing unit or plant and transported for quick assembly or which is designed to be disassembled and relocated shall be allowed.

Section 14. Street Lighting Agreement. The Declarant reserves the right to subject the Properties to a contract with an electric utility company for the installation of underground electric cables and/or the installation of street lightings, either or both of which may require an initial payment and/or continuing monthly payments to an electric utility company by each Lot Owner.

Section 15. Trash Collection Agreement. The Declarant reserves the right to subject the Property to a contract with a trash collection service for all Lots, which may require an initial payment and/or continuing monthly payments to a trash collection company by each Lot Owner.

Section 16. Hazardous Activities. Nothing shall be done or kept on any lot or in the Common Area which shall increase the rate of insurance on the Common Area or any other lot without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept on his lot or in the Common Area which would result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law.

Section 17. Play Equipment. Recreational and playground equipment shall not be placed on the front or side yard of any Lot nor in the rear of any Lot adjacent to the Common Areas without prior written consent of the Committee. Materials, colors, and other specifications shall be as provided in the Guidelines and otherwise as approved by the Committee.

Section 18. Window Treatments. Except as may be otherwise approved in accordance with the Guidelines, all window treatments (which include curtains and other window coverings) visible from the outside of a Lot shall be white or off-white in color. No bed sheets, towels, newspaper, tinfoil, or similar materials may be used as window treatments.

Section 19. Wetlands. Portions of the Property may be or have been determined to meet legal requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein, any subsequent fill or alteration of this wetland shall conform to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this restriction is to prevent additional wetland fill, so the property owner should not assume that a future application for fill will be approved. The property owner shall report the name of the subdivision, in any application pertaining to wetland rules. This covenant is intended to ensure the continued compliance with wetland rules adopted by the State of North Carolina therefore benefits may be enforced by the State of North Carolina. This covenant is to run with the land and shall be binding on all parties and all persons claiming under them.

Section 20. Exclusion for the Declarant. Notwithstanding any other provision of this Declaration or any other Governing Documents, Declarant, during the Declarant Control Period, and the Board, after the termination of the Declarant Control Period, has the right to waive any one or more of the provisions of this Article with respect to construction or maintenance of any improvement in the Properties, except that there shall be no waivers with respect to soil erosion controls and any requirements of the laws and ordinances of the State of North Carolina, the County of Carteret, or the Town of Cedar Point. Any such waiver granted by the Declarant

during the Declarant Control Period shall be binding upon the Board after the Declarant Control Period has ended.

Section 21. General Owner Responsibility. Except where the Association has the express obligation to do so, each Owner shall maintain and keep in good repair all landscaping and yard maintenance not otherwise the responsibility of the Association, as well as all other exterior portions of the Lot, including windows, exterior lighting, painting, roofing, scoops, patios, porches, decks, and all structures, driveways, parking areas, and any other improvements comprising the Lot in a manner consistent with the scheme of development, community wide standards, and all Governing Documents. Owners shall keep their Lot free from all litter, trash, and refuse. In the event the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association shall, provide in emergency situations, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or in the event that such maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions herein, the Association may provide such maintenance, repair, or replacement and all costs thereof shall be assessed against the Owner as a specific assessment. In an emergency situation, the Association may perform the necessary maintenance, repair, or replacement without any prior notice to the Owner responsible for such maintenance, repair, or replacement, and such Owner shall be liable for the costs thereof.

ARTICLE VIII

Disclosures and Waivers

Section 1. Construction Activities. Owners and other persons are placed on notice that Declarant, Builders, and/or their respective agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may from time to time conduct activities related to construction and development within the Property.

Section 2. Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant, its successors and assigns, and its shareholders, directors, officers, partners, members, managers, agents, and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs of court, arbitration, or mediation, and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including without limitation, improvement, maintenance, and operation of Common Elements and the collection of assessments.

Section 3. View Impairment. None of Declarant, any Builder, or the Association guarantee or represent that any view from, over, or across any portion of the Property will be preserved without impairment. None of Declarant, any Builder, or the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Elements) has the right to add or remove trees and other landscaping to and from the Common Elements, subject to any legal requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

ARTICLE IX
Miscellaneous Provisions

Section 1. Enforcement. The Association or any Lot Owner may enforce these covenants, conditions, and restrictions. Enforcement of these covenants, conditions, and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any lawsuit filed to enforce this Declaration by injunction or restraint, there shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Titles. The titles, headings, and captions which have been used throughout the Declaration are for convenience only and are not to be used in construing the Declaration or any part thereof, except as necessary with respect to any cross-referencing of any provisions of the Declaration.

Section 4. Number and Gender. Whenever the context of the Declaration requires, the singular shall include the plural and one gender shall include all.

Section 5. No Exemption. No Owner may become exempt from any obligations imposed hereby by non-use or abandonment of the Common Elements or any Lot owned by such Owner.

Section 6. Subdivision of Lots. No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Association.

Section 7. Consent. Except as otherwise may be specifically required by the Governing Documents or Legal Requirements, where the consent of the Owner of a Lot is necessary, and such Lot is owned by more than one Person, the consent of any one of such Owners is sufficient.

Section 8. Conflicts. If there is any conflict between the provisions of this Declaration, and any amendment or supplemental declaration hereafter recorded, the Articles and Bylaws of the Association, the provisions of this Declaration shall control. If there is any conflict between the Articles and the Bylaws of the Association, the Articles shall control. To the extent that any governmental law, ordinance, or regulation requires a more restrictive standard than the standards set forth in this Declaration, said governmental law, ordinance, or regulation shall control.

Section 9. Assignment by Declarant. If the Declarant shall transfer or assign the Development of the Development or if it shall be succeeded by another in the development of the Development, then such transferee, assignee, or successor shall be vested with the several rights, powers, privileges, or authorities given said Declarant by any part or paragraph hereof. The foregoing provisions of this paragraph shall be automatic, but the Declarant may execute such instrument as it shall desire to evidence the vesting of the several rights, powers, privileges, and authorities in such transferee, assignee, or successor. In the event the Declarant contemplates or is in the process of dissolution, merger or consolidation, the Declarant may transfer and assign to such person, firm or corporation as it shall select any and all rights, powers, privileges, and authorities given the Declarant by any part or paragraph hereof, whether or not the Declarant shall also transfer or assign the development of such subdivision or be succeeded in the development of such subdivision. In the event that at any time hereafter there shall be no person, firm, or corporation entitled to exercise the rights, powers, privileges, and authorities given said Declarant under the provisions hereof, such rights, powers, privileges and authorities shall be vested in and exercised by the Association to be elected or appointed by owners of a majority of the lots of said land. In such event, the Association shall then have the same rights, powers, privileges, and authorities as are given to the Declarant by any part or paragraph hereof. Nothing herein shall be construed as conferring any rights, powers, privileges, and authorities in said Association except in the event aforesaid.

Section 10. Costs and Attorneys' Fees. In any action to enforce the provisions of this Declaration or the Governing Documents, the prevailing party shall be entitled to recover their costs of litigation and their reasonable attorneys' fees.

Section 11. Marketable Title Act. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other Legal Requirement that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may re-record in the Registry the Declaration or some memorandum or other notice hereof in order to continue the Declaration in

full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

Section 12. Amendment. This Declaration is subject to being altered, modified, cancelled, or changed at any time as to the Development as a whole or as to any Lot or part thereof as follows:

- (a) During the Declarant Control Period, the Declarant or the Declarant's assignee may amend this Declaration without the consent of any other party by written document executed by the Declarant and recorded in the Carteret County Registry.
- (b) During the Declarant Control Period, this Declaration may be amended by the Owners of not less than ninety percent (90%) or more of the lots by written document executed by said ninety percent (90%) of the Lot Owners and recorded in the Carteret County Registry.
- (c) Upon the termination of the Declarant Control Period, this Declaration may be amended by written document executed by not less than seventy-five percent (75%) of the Lot Owners and recorded in the Carteret County Registry.

Section 13. Remedies Against Violations. The covenants and restrictions herein shall be deemed to be covenants running with the land. If any person claiming under the Declarant shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for the Declarant, or any person or persons owning any residential lot on said land: (a) to prosecute proceedings at law for the recovery of damages against the person or persons so violating or attempting to violate any such covenant or restriction, or (b) to maintain a proceeding in equity against the person or persons so violating or attempting to violate any such covenant or restrictions for the purpose of preventing such violation, provided however, that the remedies in this paragraph contained shall be construed as cumulative of all other remedies now or hereafter provided by law. Without limiting the foregoing provisions of this paragraph, enforcement of these covenants and restrictions shall be made by the Association, of which every record owner of a fee or undivided fee interest in any lot shall be a member.

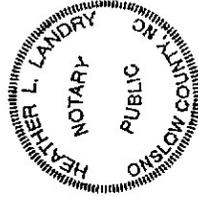
Section 14. Entry. The Association reserves for itself, its successors and assigns, and its agents the right to enter upon any residential lot, for the purpose of performing any of the Association's maintenance or repair obligations under this Declaration, and for mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, or for the purpose of building or repairing any land contour or other earthwork, which in the opinion of the Association detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed a trespass. The Association and its agents may likewise enter upon any lot to remove any trash which has collected without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not, however, be construed as an obligation on the part of the Association to undertake any of the foregoing.

Section 15. Term. Unless earlier terminated, the covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years.

Section 16. Dissolution of the Association. The Association may be dissolved by a written termination agreement executed by more than eighty percent (80%) of the votes of the Members of the Association, and recorded in Carteret County Registry. Notwithstanding the foregoing, during the Declarant Control Period, the Association may not be dissolved or terminated without the consent of the Declarant.

IN WITNESS WHEREOF Declarant has caused this declaration to be executed by their authorized person on this the 23 day of March, 2022.

CEDAR POINT DEVELOPERS, LLC



BY: [Signature]
Name: STEVEN KELLUM
Title: MEMBER

STATE OF North Carolina
COUNTY OF CASWELL

I, a Notary Public of the State and County aforesaid, certify that Steven Kellum personally appeared before me this day and acknowledged that he/she executed the foregoing document for the purposes stated therein and in the capacity indicated

Witness my hand and official seal, this the 23 day of March, 2022.

[Signature]
Notary Public
My Commission Expires: July 16, 2022

EXHIBIT A
(Description of the Property)

Being all of that property shown on that plat of record entitled "Bridge View Section I" prepared by Tidewater Associates, Inc., dated January 25, 2022 and recorded in Map Book 34, Page 386, Carteret County Registry.

EXHIBIT B

EXHIBIT C

Bridge View
Lot BUA Chart - July 2021

Lot #	Permit BUA	ORW?	Lot #	Permit BUA	ORW?	Lot #	Permit BUA	ORW?
1	4700	N	57	4700	N	101	4700	N
2	4700	N	58	4700	N	102	4700	N
3	4700	N	59	4700	N	103	4700	N
4	4700	N	60	4700	N	104	4700	N
5	4700	N	61	4700	N	105	4700	N
6	4700	N	62	4700	N	106	4700	N
7	4700	N	63	4700	N	107	4700	N
8	4700	N	64	4700	N	108	4700	N
9	4700	N	65	4700	N	109	4700	N
10	4700	N	66	4700	N	110	4700	N
11	4700	N	67	4700	N	111	4700	N
12	4700	N	68	4700	N	112	4700	N
13	4700	N	69	4700	N	113	4700	N
14	4700	N	70	4700	N	114	4700	N
15	4700	N	71	4700	N	115	4700	N
16	4700	N	72	4700	N	116	4700	N
17	4700	N	73	4700	N	117	4700	N
18	4700	N	74	4700	N	118	4700	N
19	4700	N	75	3700	Y	119	3700	Y
20	4700	N	76	3700	Y	120	3700	Y
21	4700	N	77	3700	Y	121	3700	Y
22	3700	Y	78	3700	Y	122	3700	Y
23	3700	Y	79	3700	Y	123	3700	Y
24	3700	Y	80	3700	Y	124	3700	Y
25	3700	Y	81	3700	Y	125	3700	Y
26	3700	Y	82	3700	Y	126	3700	Y
27	3700	Y	83	3700	Y	127	3700	Y
28	3700	Y						

ORW Area:	
Total Project	702897 SF
Area in ORW:	33661 SF
Roads in ORW:	6613 SF
Future in ORW:	133450 SF
Total BUA in ORW:	175724 SF
	25.0 % Imperv.

Overall:	
Total Property:	1995410 SF
Total Wetlands:	60197 SF
Total Project Area:	1995213 SF
Roads and Mail Kiosk:	101260 SF
Future:	14081 SF
Loss:	36750 SF
Total BUA:	483803 SF
	25.0 % Imperv.

Project Name: Bridge View
Project Location: Cedar Point

Maintenance records shall be kept on the following SCM(s). This maintenance record shall be kept in a log in a known set location. Any deficient SCM elements noted in the inspection will be corrected, repaired, or replaced immediately. These deficiencies can affect the integrity of structures, safety of the public, and the pollutant removal efficiency of the SCM(s).

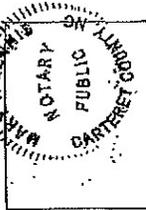
The SCM(s) on this project include (check all that apply, & corresponding O&M sheets will be signed automatically):

Quantity:	4	Location(s):	
Infiltration Trench		Location(s):	
Blowdown Cell		Location(s):	
Wet Pond	1	Location(s):	
Stormwater Wetland		Location(s):	
Permeable Pavement		Location(s):	
Sand Filter		Location(s):	
Rainwater Harvesting		Location(s):	
Green Roof		Location(s):	
Level Spreader - Filter Strip		Location(s):	
Proprietary System		Location(s):	
Treatment Swale		Location(s):	
Dry Pond		Location(s):	
Disconnected Impervious Surface		Location(s):	
Leaf Defeetd SCM		Location(s):	
Low Density		Location(s):	
		Type:	

I acknowledge and agree by my signature below that I am responsible for the performance of the maintenance procedures listed for each SCM above, and attached O&M tables. I agree to notify NCDHEQ of any problems with the system or prior to any changes to the system or responsible party.

Responsible Party: Steven Kellum
 Title & Organization: Managing Member, Cedar Point Developers, LLC
 Street address: 683 Center St
 City, state, zip: Lenoirville, NC 28545
 Phone number(s): 817-930-3506
 Email:

Signature: Steven Kellum Date: 8-4-2021
 County of Wayne, a Notary Public for the State of NC
 personally appeared before me this 4th day of August, 2021 and
 acknowledge the due execution of the Operations and Maintenance Agreement.
 Witness my hand and official seal, Wayne K. Dennis, Notary Public



Seal My commission expires 10-24-22

Important operation and maintenance procedures:

- The drainage area will be carefully managed to reduce the sediment load to the infiltration basin. No portion of the infiltration basin will be fertilized after the initial fertilization that is required to establish the vegetation. Limes may be allowed if vegetation is planted on the surface of the infiltration basin and a soil test shows that it is needed.
- The vegetation in and around the basin will be maintained at a height of four to six inches.

After the infiltration basin is established, it will be inspected quarterly and within 24 hours after every storm event greater than 1.0 inches (or 1.5 inches if in a Coastal County). Records of operation and maintenance shall be kept in a known set location and shall be available upon request.

Inspection activities shall be performed as follows. Any problems that are found shall be repaired immediately.

SCM element	Potential problem:	How to remediate the problem:
The entire infiltration basin	Trash/debris is present.	Remove the trash/debris.
The grass filter strip or other pretreatment area	Areas of bare soil and/or erosive gullies have formed.	Regrade the soil if necessary to remove the gully, plant ground cover and water until it is established. Provide lime and a one-time fertilizer application.
	Sediment has accumulated to a depth of greater than three inches.	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the SCM.
The flow diversion structure (if applicable)	The structure is clogged.	Unclog the conveyance and dispose of any sediment in a location where it will not cause impacts to streams or the SCM.
	The structure is damaged.	Make any necessary repairs or replace if damage is too much for repair.
The inlet device	The inlet pipe is clogged (if applicable).	Unclog the pipe and dispose of any sediment in a location where it will not cause impacts to streams or the SCM.
	The inlet pipe is cracked or otherwise damaged (if applicable).	Repair or replace the pipe.
	Erosion is occurring in the swale (if applicable).	Regrade the swale if necessary and provide erosion control devices such as reinforced turf matting or riprap to avoid future erosion problems.
The basin	Stone wege is clogged or covered in sediment (if applicable).	Remove sediment and clogged stone and replace with clean stone.
	More than four inches of sediment has accumulated.	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the SCM.
	Erosion of the basin surface has occurred or riprap is displaced.	Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.
	Water is standing more than three days after a storm event.	Replace the top few inches of soil to see if this corrects the standing water problem. If not, consult an appropriate professional for a more extensive repair.

SCM element:	Potential problem:	How to remediate the problem:
The embankment	Shrubs or trees are growing on the embankment. An annual inspection by an appropriate professional shows that the embankment needs repair.	Remove shrubs and trees immediately. Make needed repairs immediately.
The outlet device	Clogging has occurred. The outlet device is damaged. Erosion or other signs of damage have occurred at the outlet.	Clean out the outlet device and dispose of sediment in a location where it will not cause impacts to streams or the SCM. Repair or replace the outlet device. Repair the damage and improve the flow dissipation structure.
The receiving water	Discharges from the infiltration basin are causing erosion or sedimentation in the receiving water.	Contact the local NCDEQ Regional Office.

Important operation and maintenance procedures:

- Immediately following construction of the stormwater wetland, conduct bi-weekly inspections and water wetland plants bi-weekly until vegetation becomes established (commonly six weeks).
- Before and immediately after plant installation, monitor water level and adjust to ensure that plants are not completely inundated.
- No portion of the stormwater wetland will be fertilized after the initial fertilization that is required to establish the wetland plants.
- Stable groundcover will be maintained in the drainage area to reduce the sediment load to the wetland.
- At least once annually, a dam safety expert will inspect the embankment. Any problems that are found will be repaired immediately.

After the wetland is established, it shall be inspected quarterly and within 24 hours after every storm event greater than 1.0 inches (or 1.6 inches if in a Coastal County). Records of operation and maintenance shall be kept in a known set location and shall be available upon request.

Inspection activities shall be performed as follows. Any problems that are found shall be repaired immediately.

SCM element:	Potential problem:	How I will remediate the problem:
The entire wetland	Trash/debris is present.	Remove the trash/debris.
The perimeter of the wetland	Areas of bare soil and/or erosive gullies have formed.	Regrade the soil if necessary to remove the gully, plant ground cover and water until it is established. Provide lime and a one-time fertilizer application.
The Inlet device	The inlet pipe is clogged (if applicable).	Unplug the pipe. Dispose of the sediment off-site.
	The inlet pipe is cracked or otherwise damaged (if applicable).	Repair or replace the pipe.
	Erosion is occurring in the swale (if applicable).	Regrade the swale if necessary and provide erosion control devices such as reinforced turf matting or riprap to avoid future problems with erosion.
The forebay	Sediment has accumulated in the forebay to a depth of less than 15" or that inhibits the forebay from functioning well.	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the SCM.
	Erosion has occurred.	Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.
	Weeds are present.	Remove the weeds, preferably by hand. If pesticide is used, wipe it on the plants rather than spraying.

SCM element:	Potential problem:	How I will remediate the problem:
Embankment	<p>A tree has started to grow on the embankment.</p> <p>An annual inspection by an appropriate professional shows that the embankment needs repair.</p> <p>Evidence of muskrat or beaver activity is present.</p> <p>Algal growth covers over 30% of the deep pool and shallow water areas.</p> <p>Cattails, phragmites or other invasive plants cover 30% of the deep pool and shallow water areas.</p> <p>The temporary inundation zone remains flooded more than 5 days after a storm event.</p> <p>Plants are dead, diseased or dying.</p> <p>Best professional practices show that pruning is needed to maintain optimal plant health.</p> <p>Sediment has accumulated and reduced the depth to 75% of the original design depth of the deep pools.</p> <p>Sediment has accumulated and reduced the depth to 75% of the original design depth.</p>	<p>If the tree is <6" in diameter, remove the tree. If the tree is >6" in diameter, consult a dam safety specialist to remove the tree.</p> <p>Make all needed repairs immediately.</p> <p>Consult a professional to remove muskrats or beavers and repair any holes or erosion.</p> <p>Consult a professional to remove and control the algal growth.</p> <p>Remove the plants by hand or by wiping them with pesticide (do not spray) - consult a professional.</p> <p>Undo the outlet device immediately.</p> <p>Determine the source of the problem: soils, hydrology, disease, etc. Remedy the problem and replace plants. Provide a one-time fertilizer application to establish the ground cover if necessary.</p> <p>Prune according to best professional practices.</p> <p>Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the SCM.</p> <p>Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the SCM.</p> <p>Clean out the outlet device. Dispose of the sediment in a location where it will not cause impacts to streams or the SCM.</p> <p>Repair or replace the outlet device.</p>
Deep pool, shallow water and shallow land areas		
Micropool		
The outlet device		

SCM element:	Potential problem:	How I will remediate the problem:
The receiving water	<p>Erosion or other signs of damage have occurred at the outlet.</p> <p>Discharges from the wetland are causing erosion or sedimentation in the receiving water.</p>	<p>Repair the damage and improve the flow dissipation structure.</p> <p>Contact the local NCDEQ Regional Office.</p>

Subject: Copy of Form DWR - Wetlands - New Project Submittal
From: laserfiche@ncdenr.gov
Date: 4/19/2022, 5:43 PM
To: rbrownlow@tidewaterenc.com

Thank you!

Your Pre-Application Submittal has been submitted for Bridge View Subdivision Section II.

This email was automatically generated by Laserfiche workflow. Please do not respond to this email address, as responses aren't monitored.

You're receiving this email because someone requested that you get a copy of this form.

— Attachments: —

Project Submittal Interim Form.pdf

128 KB



Project Submittal Interim Form

Updated September 4, 2020

*Please note: fields marked with a red asterisk * below are required. You will not be able to submit the form until all mandatory questions are answered.*

Project Type: *

- For the Record Only (Courtesy Copy)
- New Project
- Modification/New Project with Existing ID
- More Information Response
- Other Agency Comments
- Pre-Application Submittal
- Re-Issuance\Renewal Request
- Stream or Buffer Appeal

Pre-Filing Meeting Date Request was submitted on:

4/19/2022

Project Contact Information

Name: Who is submitting the information?

Email Address: * RBrownlow@TidewaterENC.com

Project Information

Project Name: * Bridge View Subdivision Section II

Is this a public transportation project? *

- Yes
- No

Is the project located within a NC DCM Area of Environmental Concern (AEC)? *

Yes No Unknown

County (ies) *

Carteret

Please upload all files that need to be submitted.

Click the upload button or drag and drop files here to attach document

DWR Pre-File Site Map.pdf 370.69KB

BridgeView.SectionII_Upland_Development_Expr... 95.14KB

Only pdf or kmz files are accepted.

Describe the attachments or add comments:

* DWR Pre-Filing Site Map (Yellow highlight is the proposed infrastructure development (road) and utilities.

* Project Narrative to be submitted with CAMA Major permit application

Submitted by Roy Brownlow, Environmental Specialist, Tidewater Associates, Inc. (252) 393.6101, RBrownlow@TidewaterENC.com

* By checking the box and signing box below, I certify that:

- I, the project proponent, hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief.
- I, the project proponent, hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.
- I agree that submission of this online form is a "transaction" subject to Chapter 66, Article 40 of the NC General Statutes (the "Uniform Electronic Transactions Act");
- I agree to conduct this transaction by electronic means pursuant to Chapter 66, Article 40 of the NC General Statutes (the "Uniform Electronic Transactions Act");
- I understand that an electronic signature has the same legal effect and can be enforced in the same way as a written signature; AND
- I intend to electronically sign and submit the online form.

Signature: *

Roy Brownlow

Submittal Date:

Is filled in automatically once submitted.

Tidewater Associates, Inc. on behalf of Cedar Point Developers, LLC, submits this application for a CAMA Major Permit for Bridge View Subdivision, Section II, and affirms to our best belief and knowledge, this proposed development:

 X

Meets the "No Written Concurrence" as per GC 4175, or there is no fee split, and does not have to file a pre-filing meeting request, but the two statements are included in the information submitted by the applicant.

 Requires a "written concurrence," as indicated by below (Check Applicable standard):

Note: the date of either option below must have been 30 days prior to the date of submitting the CAMA Permit as Complete.

 A prior scoping meeting with DWR staff regarding this project was held on: *DWR was present and Water Quality was discussed.*

OR

The Applicant has visited the following link at <https://edocs.deq.nc.gov/Forms/Pre-Filing-Meeting-Request> on this date:

 and the applicant has supplied the confirmation email verifying this request.

 Roy Brownlow, Env. Specialist
Applicant / Authorized Agent

Tidewater Associates, Inc.

 5/3/2022

Date:

Regardless of the above scenarios, BOTH statements are included at the end of the CAMA Project Narrative:

- *The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief.*
- *The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.*

DWR GC 4175

Proposed activities meeting any one (1) of the following thresholds or circumstances **DO** require *written approval* for a 401 Water Quality Certification from the Division of Water Resources (DWR) and must comply with the pre-filing meeting provisions for early coordination in the water quality certification process:

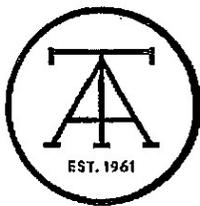
Note: Activities authorized by CAMA General Permits .1100 through .2600 are exempt from this requirement.

- | | |
|------------|---|
| <u>N/A</u> | 1. Boat Ramps and associated access (i.e. roads and parking lots) that involve the excavation or filling of more than 500 square feet total of wetland and open water area, or the excavation or filling of coastal wetlands (per 07H .0205) of more than 100 square feet. |
| <u>N/A</u> | 2. Shoreline protection measures (excluding living shorelines/marsh sills) that (1) do not tie into existing bulkheads, land or other shoreline protection measures, or (2) extends waterward of the normal high water or normal water line more than 10 feet, or the activity will involve the excavation or filling of any Submerged Aquatic Vegetation (SAV) or significant shellfish resources (as identified by the Division of Marine Fisheries) and impacts more than 500 square feet total of wetland, or the excavation or filling of coastal wetlands (as defined in 15A NCAC 07H .0205) that exceeds 100 square feet; |
| <u>N/A</u> | 3. Living shorelines/marsh sills where (1) the landward edge of the sill extends waterward of the normal high water or normal water line more than 30 feet or more than five feet waterward of the existing wetlands whichever distance is greater, (2) the activity will involve the excavation or fill of any Submerged Aquatic Vegetation (SAV) or significant shellfish resources (as identified by the Division of Marine Fisheries), and (3) does result in any fill landward of the toe of the sill alignment. |
| <u>N/A</u> | 4. Piers and docks designed to accommodate exceeding 10 vessels (except where prohibited in ORW Waters as defined in 15A NCAC 02B.0225(7) & (8)) and where the water depth is less than two feet of water at normal low water level or normal water level (whichever is applicable). |
| <u>N/A</u> | 5. Maintenance dredging of more than 0.5 acres (21,780sf) of open water or non-vegetated wetlands of undocumented or previously dredged areas, or SAV or shellfish beds are excavated or filled. |
| <u>N/A</u> | 6. Projects that involve only shading of waters or wetlands that meet the criteria listed in item 4. above. |
| <u>N/A</u> | 7. Wastewater lines and potable water discharge lines which are subject to an NPDES Permit, where all impacts are not temporary. |
| <u>N/A</u> | 8. Upland development which involves more than 1/10 of an acre (4,356sf) of excavation or filling of non-coastal wetlands, or more than 2,000 square feet of the non-coastal excavation or filling within a Coastal Shoreline Area of Environmental Concern (AEC). For the purposes of this area calculation, the excavation or filling impacts of the entire project shall be considered, which may include boat ramps, bulkheads or other shoreline stabilization measures. |
| <u>N/A</u> | 9. Single family home construction that results in fill of 404 wetlands and written concurrence is required from DWR for the applicable Corps of Engineers Nationwide Permit. |

- N/A 10. **Commercial shellfish aquaculture activities** that qualify for Nationwide Permit 48, provided the Division of Marine Fisheries (DMF) Lease Program submits the proposed site map and investigation report to DWR for comment prior to the DMF Director's recommendation on the application for public notice or denial; or
- N/A 11. Any stream relocation or stream restoration; or
- N/A 12. Any **high-density project**, as defined in 15A NCAC 02H .1003(2)(a) and by the density thresholds specified in 15A NCAC 02H .1017, which:
- Disturbs one acre or more of land (including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale); and
 - Proposes permanent wetland, stream, or open water impacts; and
 - Proposes new built-upon area; and
 - Does **not** have a stormwater management plan reviewed and approved under a state stormwater program¹ or a state-approved local government stormwater program².
- N/A 13. **Projects that have vested rights, exemptions, or grandfathering** from state or locally-implemented stormwater programs and projects that satisfy state or locally-implemented stormwater programs through use of community in-lieu programs require written approval; or
- N/A 14. Any impacts to **SAV or significant shellfish resources** as identified by the (DMF); or
- N/A 15. Any impacts to **Unique Wetlands (UWL)**; or
- N/A 16. Any impact associated with a **Notice of Violation or an enforcement action for violation(s) of NC Wetland Rules (15A NCAC 02H .0500), NC Isolated Wetland Rules (15A NCAC 02H .1300), NC Surface Water or Wetland Standards (15A NCAC 02B .0200), or State Regulated Riparian Buffer Rules (15A NCAC 02B .0200)**; or
- N/A 17. Any impacts to **subject water bodies and/or state regulated riparian buffers** along subject water bodies in the Neuse or Tar-Pamlico River Basins (or any other basin or watershed with State Regulated Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) **unless**:
- The activities are listed as "**EXEMPT**" (does not exceed threshold criteria in items no. 1 -9 above) from these rules; or
 - A *Buffer Authorization Certificate is issued by the NC Division of Coastal Management (DCM)*; or
 - A *Buffer Authorization Certificate or a Minor Variance is issued by a delegated or designated local government implementing a state riparian buffer program pursuant to 143-215.23.*

¹ e.g. Coastal Counties HQW, ORW, or state implemented Phase II NPDES

² e.g. Delegated Phase II NPDES, Water Supply Watershed, Nutrient-Sensitive Waters, or Universal Stormwater Management Program



TIDEWATER ASSOCIATES, INC.

ENGINEERS • SURVEYORS • PLANNERS

CEDAR POINT, NORTH CAROLINA

April 7, 2022

Pierre Molster
U.S. Real Estate
The Carlyle Group
1001 Pennsylvania Ave, NW
Washington, D.C. 20004

Re: Notification of Application for a State Coastal Area Management Act (CAMA) Permit

To Whom It May Concern:

Hope this correspondence finds you doing well.

We are applying for a State CAMA Major Development permit for our client, Cedar Point Developers, LLC. The North Carolina Division of Coastal Management requires that you, as an adjacent riparian property owner, are notified of this permit application. The permit being applied for is to install and construct the infrastructure, roads, and utilities to serve an 83-lot residential subdivision for single-family dwellings at 1180 Cedar Point Blvd, Cedar Point, NC 28584 in Carteret County, which is adjacent to your property. **A copy of the application and project drawing is enclosed for your review.**

If you have objections to what is being proposed, you must notify the N.C. Division of Coastal Management (DCM) in writing. Correspondence should be mailed to 400 Commerce Ave., Morehead City, NC 28557. DCM representatives can also be contacted at 252.515.5400.

If you have no objections to the proposed activity, please mark the appropriate statement on the enclosed form and please return the signed form to me within 10 days upon receipt of this notice. Please be advised that if no reply or comments are received within 10 days upon receipt of this notification, it would be interpreted as having no objections or comments regarding this proposed project if you have been notified by Certified Mail

If you do have objections or want to submit comments, please mark the appropriate statement on the enclosed form and send your comments in writing within 10 days upon receipt of this notice to: NCDQM, in care of Heather Styron, Field Representative, 400 Commerce Ave, Morehead City, NC 28557; and/or email to Heather.M.Styron@ncdenr.gov,

N.C. DIVISION OF COASTAL MANAGEMENT

ADJACENT RIPARIAN PROPERTY OWNER NOTIFICATION/WAIVER FORM
CERTIFIED MAIL · RETURN RECEIPT REQUESTED or HAND DELIVERY

(Top portion to be completed by owner or their agent)

Name of Property Owner: CEDAR POINT DEVELOPERS, LLC

Address of Property: 1180 CEDAR POINT BLVD, CEDAR POINT, NC 28584

Mailing Address of Owner: 166 CENTER ST, JACKSONVILLE, NC 28546

Owner's email: _____ Owner's Phone#: _____

Agent's Name: ROY BROWNLOW, Tidewater Assoc, Inc. Agent Phone#: 252.393.6101

Agent's Email: RBrownlow@TidewaterENC.com

ADJACENT RIPARIAN PROPERTY OWNER'S (ARPO) CERTIFICATION
(Bottom portion to be completed by the Adjacent Property Owner)

I hereby certify that I own property adjacent to the above referenced property. The individual applying for this permit has described to me, as shown on the attached drawing, the development they are proposing. A description or drawing, with dimensions, must be provided with this letter.

_____ I DO NOT have objections to this proposal. _____ I DO have objections to this proposal.

If you have objections to what is being proposed, you must notify the N.C. Division of Coastal Management (DCM) in writing within 10 days of receipt of this notice. Correspondence should be mailed to 400 Commerce Ave., Morehead City, NC 28557. DCM representatives can also be contacted at (252) 515-5400. No response is considered the same as no objection if you have been notified by Certified Mail.

WAIVER SECTION

Only for proposed pier, dock, mooring pilings, boat ramp, breakwater, boathouse, lift, or groin
I understand that any **proposed pier, dock, mooring pilings, boat ramp, breakwater, boathouse, lift, or groin** must be set back a minimum distance of 15' from my area of riparian access unless waived by me (this does not apply to bulkheads or riprap revetments). (If you wish to waive the setback, you **must sign** the appropriate blank below.)

I **DO** wish to waive some/all of the 15' setback _____

Signature of Adjacent Riparian Property Owner

NOTE: Setback waiver is valid for up to one year from ARPO's Signature

-OR-

I **do not** wish to waive the 15' setback requirement (initial the blank) _____

Signature of Adjacent Riparian Property Owner (ARPO): _____

Typed/Printed name of ARPO: _____

Mailing Address of ARPO: _____

ARPO's email: _____ ARPO's Phone #: _____

Date: _____

U.S. POSTAL SERVICE
CERTIFIED MAIL
Domestic Mail Only



7200 0640 0000 2725 2333
7200 0640 0000 2725 2333

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit us online at www.usps.com
OFFICIAL USE

Certified Mail Fee \$
Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$
 Return Receipt (electronic) \$
 Certified Mail Restricted Delivery \$
 Adult Signature Required \$
 Adult Signature Restricted Delivery \$
Postage \$
Total Postage and Fees \$

Sent to **Pierre Molster**
Street and Apt. No., or PO Box No. **1001 PENNSYLVANIA AVE**
City, State, ZIP+4® **WASHINGTON, D.C. 20004**

Postmark
Here

Bogue Sound RV Owner, LLC

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
**Pierre Molster
U.S. REAL ESTATE
The Carlyle Group
1001 Pennsylvania Ave.
Washington, D.C. 20004**



959079402 7488 2055 0145 83

2. Article Number (Transfer from service label)

7020 0640 0000 2725 2333

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Adult Signature Restricted Delivery
 Certified Mail®
 Collect on Delivery
 Registered Mail™
 Signature Confirmation™
 Signature Confirmation™ Restricted Delivery
 Priority Mail Express®
 Registered Mail™ Restricted Delivery

Domestic Return Receipt

PS Form 3811, July 2020 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Pierre Molster
 U.S. REAL ESTATE
 The Carlyle Group
 1001 Pennsylvania Ave.
 Washington, D.C. 20004*



9590 9402 7488 2055 0145 83

2. Article Number (Transfer from service label)

7020 0640 0000 2725 2333

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X Kurt Schumacher Addressee

B. Received by (Printed Name) C. Date of Delivery
Kurt Schumacher *4/22/22*

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Restricted Delivery
<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Insured Mail Restricted Delivery	
<input type="checkbox"/> Signature Confirmation Restricted Delivery	
<input type="checkbox"/> Signature Confirmation Restricted Delivery	

Domestic Return Receipt

Bogue Sound RV owner, LLC

USPS Tracking®

[FAQs >](#)

[Track Another Package +](#)

Bogus Sounds RV OWNER, UC

Tracking Number: 70200640000027252333

[Remove X](#)

Your item was picked up at a postal facility at 7:17 am on April 22, 2022 in WASHINGTON, DC 20018.

USPS Tracking Plus® Available

Delivered, Individual Picked Up at Postal Facility

April 22, 2022 at 7:17 am
WASHINGTON, DC 20018

[Feedback](#)

Get Updates

Text & Email Updates



Tracking History



April 22, 2022, 7:17 am
Delivered, Individual Picked Up at Postal Facility
WASHINGTON, DC 20018

Your item was picked up at a postal facility at 7:17 am on April 22, 2022 in WASHINGTON, DC 20018.

April 21, 2022, 10:02 am
Available for Pickup
WASHINGTON, DC 20004

April 21, 2022, 9:59 am
Arrived at Post Office

RGE Attach. 1

WASHINGTON, DC 20018

April 21, 2022, 6:15 am
Out for Delivery
WASHINGTON, DC 20004

April 20, 2022, 1:46 pm
Arrived at USPS Regional Destination Facility
WASHINGTON DC DISTRIBUTION CENTER

April 19, 2022
In Transit to Next Facility

April 18, 2022, 4:34 pm
Departed Post Office
SWANSBORO, NC 28584

April 18, 2022, 3:34 pm
USPS in possession of item
SWANSBORO, NC 28584

Feedback

USPS Tracking Plus®



Product Information



See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

RGE Attach. 1



TIDEWATER ASSOCIATES, INC.

ENGINEERS • SURVEYORS • PLANNERS

CEDAR POINT, NORTH CAROLINA

April 7, 2022

Shelly Myott
123 Fawn Creek Court
Cedar Point, NC 28584

Re: Notification of Application for a State Coastal Area Management Act (CAMA) Permit

Ms. Myott:

Hope this correspondence finds you doing well.

We are applying for a State CAMA Major Development permit for our client, Cedar Point Developers, LLC. The North Carolina Division of Coastal Management requires that you, as an adjacent riparian property owner, are notified of this permit application. The permit being applied for is to install and construct the infrastructure, roads, and utilities to serve an 83-lot residential subdivision for single-family dwellings at 1180 Cedar Point Blvd, Cedar Point, NC 28584 in Carteret County, which is adjacent to your property. **A copy of the application and project drawing is enclosed for your review.**

If you have objections to what is being proposed, you must notify the N.C. Division of Coastal Management (DCM) in writing. Correspondence should be mailed to 400 Commerce Ave., Morehead City, NC 28557. DCM representatives can also be contacted at 252.515.5400.

If you have no objections to the proposed activity, please mark the appropriate statement on the enclosed form and please return the signed form to me within 10 days upon receipt of this notice. Please be advised that if no reply or comments are received within 10 days upon receipt of this notification, would be interpreted as having no objections or comments regarding this proposed project if you have been notified by Certified Mail

If you do have objections or want to submit comments, please mark the appropriate statement on the enclosed form and send your comments in writing within 10 days upon receipt of this notice to: NCDCM, in care of Heather Styron, Field Representative, 400 Commerce Ave, Morehead City, NC 28557; and/or email to Heather.M.Styron@ncdenr.gov,

ADJACENT RIPARIAN PROPERTY OWNER NOTIFICATION/WAIVER FORM
CERTIFIED MAIL · RETURN RECEIPT REQUESTED or HAND DELIVERY

(Top portion to be completed by owner or their agent)

Name of Property Owner: BOGUE SOUND DEVELOPERS, LLC

Address of Property: 1180 CEDAR POINT BLVD, CEDAR POINT, NC 28584

Mailing Address of Owner: 166 CENTER ST, JACKSONVILLE, NC 28546

Owner's email: _____ Owner's Phone#: _____

Agent's Name: ROY BROWNLOW, Tidewater Assoc, Inc. Agent Phone#: 252.393.6101

Agent's Email: RBrownlow@TidewaterENC.com

ADJACENT RIPARIAN PROPERTY OWNER'S (ARPO) CERTIFICATION
(Bottom portion to be completed by the Adjacent Property Owner)

I hereby certify that I own property adjacent to the above referenced property. The individual applying for this permit has described to me, as shown on the attached drawing, the development they are proposing. A description or drawing, with dimensions, must be provided with this letter.

_____ I DO NOT have objections to this proposal. _____ I DO have objections to this proposal.

If you have objections to what is being proposed, you must notify the N.C. Division of Coastal Management (DCM) in writing within 10 days of receipt of this notice. Correspondence should be mailed to 400 Commerce Ave., Morehead City, NC 28557. DCM representatives can also be contacted at (252) 515-5400. No response is considered the same as no objection if you have been notified by Certified Mail.

WAIVER SECTION

Only for proposed pier, dock, mooring pilings, boat ramp, breakwater, boathouse, lift, or groin
I understand that any **proposed pier, dock, mooring pilings, boat ramp, breakwater, boathouse, lift, or groin** must be set back a minimum distance of 15' from my area of riparian access unless waived by me (this does not apply to bulkheads or riprap revetments). (If you wish to waive the setback, you **must sign** the appropriate blank below.)

I DO wish to waive some/all of the 15' setback _____

Signature of Adjacent Riparian Property Owner

NOTE: Setback waiver is valid for up to one year from ARPO's Signature

-OR-

I do not wish to waive the 15' setback requirement (initial the blank) _____

Signature of Adjacent Riparian Property Owner (ARPO): _____

Typed/Printed name of ARPO: _____

Mailing Address of ARPO: _____

ARPO's email: _____ ARPO's Phone #: _____

Date: _____

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
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For delivery information, visit www.usps.com
SPECIAL DELIVERY

Certified Mail Fee \$ _____

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Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ _____

Total Postage and Fees \$ _____

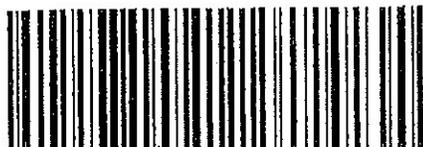
Postmark
Here

Sent To SHELLY MYOTT

Street and Apt. No. or P.O. Box No. 123 FAWN CREEK CT

City, State, ZIP+4® CEDAR POINT NC 28584

7202 0640 0000 2725 2326



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SHELLY MYOTT
123 FAWN CREEK CT
CEDAR POINT, NC 28584

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent

B. Received by (Printed Name) Addressee

C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

3. Service Type

Priority Mail Express®

Registered Mail™

Adult Signature Restricted Delivery

Certified Mail®

Certified Mail Restricted Delivery

Collect on Delivery Restricted Delivery

Registered Mail Restricted Delivery (\$500)

Signature Confirmation™

Signature Confirmation Restricted Delivery

Domestic Return Receipt

2. Article Number (transfer from service label)

9590 9402 7488 2055 0144 60

7020 0640 0000 2725 2326

PS Form 3811, July 2020 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SHELLEY MYOTT
 123 FAWN CREEK CT
 CEDAR POINT, NC 28584



9590 9402 7488 2055 0144 60

2. Article Number (Transfer from service label)

7020 0640 0000 2725 2326

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 X **SHELLEY MYOTT** Addressee
- B. Received by (Printed Name) Date of Delivery
SHELLEY MYOTT
- D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
- Adult Signature Restricted Delivery
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt



FAQs >

Myott

Track Another Package +

Tracking Number: 70200640000027252326

Remove X

Your item was delivered to an individual at the address at 2:01 pm on April 19, 2022 in SWANSBORO, NC 28584.

USPS Tracking Plus® Available v

Delivered, Left with Individual

April 19, 2022 at 2:01 pm
SWANSBORO, NC 28584

Feedback

Text & Email Updates



Tracking History



April 19, 2022, 2:01 pm
Delivered, Left with Individual
SWANSBORO, NC 28584

Your item was delivered to an individual at the address at 2:01 pm on April 19, 2022 in SWANSBORO, NC 28584.

April 19, 2022, 8:42 am
Out for Delivery
SWANSBORO, NC 28584

April 19, 2022, 8:31 am
Arrived at Post Office

RGE Attach. 1

SWANSBORO, NC 28584

April 18, 2022, 4:34 pm
Departed Post Office
SWANSBORO, NC 28584

April 18, 2022, 3:33 pm
USPS in possession of item
SWANSBORO, NC 28584

USPS Tracking Plus®



Product Information



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Feedback

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

- 110 -

EXPRESS - New CAMA Major Permit Application - Cedar Point Developers LLC

Cannon, Amanda J <Amanda.Cannon@ncdenr.gov>

Fri 5/27/2022 9:48 AM

To: Tracy Barnes <tracyb@carteretcountync.gov>; Steffey, Zachary <zsteffey@capecarteret.org>; Love-Adrick, Rachel A <rachel.love-adrick@ncdenr.gov>; Liz Hair <sarah.e.hair@usace.army.mil>; Padrick, Lee <lpadrick@commerce.nc.gov>; DCR - Environmental_Review <Environmental.Review@ncdcr.gov>; Cox, Heidi <heidi.cox@ncdenr.gov>; Harding, Kimberlee k <Kimberlee.Harding@ncdenr.gov>; Harrison, James A <James.Harrison@ncdenr.gov>; Harris, David B <davidharris@ncdot.gov>; Jenkins, Shannon <shannon.jenkins@ncdenr.gov>; Gupton, Sharon <sharon.gupton@ncdenr.gov>; Walton, Tim <tim.walton@doa.nc.gov>; Moser, Mike <mike.moser@doa.nc.gov>; Montalvo, Sheri A <sheri.montalvo@ncdenr.gov>; Sullivan, Shelton <shelton.sullivan@ncdenr.gov>; Perry, John M <John.Perry@ncdenr.gov>; Snider, Holley <holley.snider@ncdenr.gov>; Dunn, Maria T. <maria.dunn@ncwildlife.org>; Butler, Rodney A <Rodney.Butler@ncdcr.gov>

Cc: Bodnar, Gregg <gregg.bodnar@ncdenr.gov>; Howell, Jonathan <jonathan.howell@ncdenr.gov>; Styron, Heather M. <heather.m.styron@ncdenr.gov>

EXPRESS MAJOR– Please note comments are due by June 10th, thank you!

Hello All!

Please accept this correspondence as the official distribution of CAMA application from Cedar Point Developers, LLC in Carteret County.

Attachments include: Field Investigative Report, work plans, comment sheet, and any other documents intended for you.

NOTE: Please complete the bottom portion of the comment sheet with your information and signature.

RETURN TO GREGG BODNAR at gregg.bodnar@ncdenr.gov

The plans are oversized. If you would like a hard copy mailed to you, please let me know.

For questions or concerns, please contact Gregg Bodnar at gregg.bodnar@ncdenr.gov or (252)-515-5416

Thank you!



Amanda Cannon
Permit Support Coordinator, Division of Coastal Management
North Carolina Department of Environmental Quality
252. 515. 5406 (Office)
Amanda.cannon@ncdenr.gov

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

Click [HERE](#) to Find the DCM Field Rep in your CAMA region.

RGE Attach. 1



**North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office**

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary D. Reid Wilson

Office of Archives and History
Deputy Secretary, Darin J. Waters, Ph.D.

June 14, 2022

MEMORANDUM

TO: Gregg Bodnar, Assistant Major Permits Coordinator gregg.bodnar@ncdenr.gov
Division of Coastal Management
NC Department of Environmental Quality

FROM: Renee Gledhill-Earley 
Environmental Review Coordinator

SUBJECT: Construct Bridgeview subdivision, 1180 Cedar Point Boulevard, Cedar Point,
Carteret County, ER 22-1558

Thank you for your June 1, 2022, submission concerning the above-referenced project. We have reviewed the project and offer the following comments.

Based on the information provided we are unable to accurately determine impacts to historic properties within the APE. We will need to either see interior and exterior photographs of the extant Old Ennett Place (CR1355) house/"fish camp" or be allowed to perform a site visit to investigate the structure. Easter Office staff will be in the area in the latter half of June and are happy to schedule a visit if access can be granted by the property owner. If the applicant is interested in facilitating a site visit, they should contact John Wood at john.p.wood@ncdcr.gov or 252-830-6580 ext. 225 to schedule a date.

Otherwise, they must provide us with the requested photographs. A final determination will be made once we have a better understanding of the current state of the structure. Visit our Project Review Checklist Page for an example of Preliminary Reconnaissance photographs (<https://www.ncdcr.gov/state-historic-preservation-office/environmental-review/project-review-checklist>).

The Area of Potential Effect (APE) of the proposed subdivision contains two known and unassessed prehistoric archaeological sites (31CR93 and 31CR95) and is adjacent to three other archaeological sites identified in a survey for the neighboring subdivision. Our records also indicate that the APE was an early plantation site with occupation through the antebellum period, with possible graves present. Due to the presence of the noted prehistoric sites along with the historical narrative tied to the APE and potential for human remains, we recommend a comprehensive archaeological survey be undertaken within the project area to relocate and assess the archaeological sites already present, as well as any other potentially significant archaeological resources that may be also present prior to any ground disturbing activities.

The purpose of this survey is to identify archaeological sites and make recommendations regarding their eligibility status in terms of the National Register of Historic Places. This work should be conducted by an experienced archaeologist who meets the *Secretary of the Interior Professional Qualifications Standards*. A list of archaeological consultants who have conducted or expressed an interest in contract work in North Carolina is available at <https://archaeology.ncdcr.gov/archaeological-consultant-list>. The archaeologists listed, or any other experienced archaeologist, may be contacted to conduct the recommended survey.

Please note that our office requests consultation with the Office of State Archaeology Review Archaeologist to discuss appropriate field methodologies prior to the archaeological field investigation.

One paper copy and one digital copy (PDF) of all resulting archaeological reports, as well as a digital copy (PDF) of the North Carolina Site Form for each site recorded, should be forwarded to the Office of State Archaeology (OSA) through this office, for review and comment as soon as they are available and in advance of any construction or ground disturbance activities. OSA's Archaeological Standards and Guidelines for Background Research, Field Methodologies, Technical Reports, and Curation can be found online at: https://files.nc.gov/dncr-arch/OSA_Guidelines_Dec2017.pdf.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.



**North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office**

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary D. Reid Wilson

Office of Archives and History
Deputy Secretary, Darin J. Waters, Ph.D.

August 30, 2023

Heather Millis
Project Manager
TRC Companies
50101 Governors Drive, Suite 250
Chapel Hill, NC 27517

HMillis@trccompanies.com

Re: Management Summary for the Proposed Bridge View Community Boat Dock Area, Cedar Point, Carteret County (ER 22-1558)

Dear Ms. Millis:

Thank you for your email of August 15, 2023, transmitting the management summary for the above-referenced undertaking. We have reviewed the submittal and offer the following comments.

This management summary specifically addresses the proposed 0.92-acre community boat dock area, located in the southeastern portion of Section II of the Bridge View development project area, adjacent to Bogue Sound where forty-one soil anomalies (features) were documented, representing both precontact and historic occupation.

We concur that the precontact components located within the community boat dock area appear to have been substantially disturbed by historic occupation from the early twentieth to present and that no intact cultural features are likely to remain that could significantly contribute information pertinent to regional research issues associated with this portion of site 31CR95 and its eligibility for listing in the National Register of Historic Places (NRHP). No further archaeological investigation is necessary within the proposed 0.92-acre community boat dock area as it has reached its research potential at the current level of investigation. However, all ground disturbing activities in the community boat ramp and water access areas must be conducted following an Unanticipated Discovery Plan approved by the NC Office of State Archaeology.

We also concur that preliminary results of the fieldwork for the remainder of the proposed Section II contain substantial and significant intact cultural deposits associated with NRHP eligible site 31CR95. As such we look forward to receiving your full, forthcoming preliminary report providing initial information pertinent to prehistoric research questions.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@dncr.nc.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,



for Ramona Bartos, Deputy
State Historic Preservation Officer

cc: John Mintz, OSA
Chris Southerly, OSA/UAB
Dylan Clark, OSA
Braxton Davis, DCM
Jonathan Howell, DCM
Gregg Bodnar, DCM
Tracy Millis, TRC Companies
Roy Brownlow, Tidewater Associates, Inc.

John.Mintz@dncr.nc.gov
Chris.Southerly@dncr.nc.gov
Dylan.Clark@dncr.nc.gov
Braxton.Davis@deq.nc.gov
Jonathan.Howell@deq.nc.gov
Gregg.Bodnar@deq.nc.gov
TMillis@trccompanies.com
RBrownlow@tidewaterenc.com



North Carolina Department of Natural and Cultural Resources
Division of Historical Resources

Ramona M. Bartos, Division Director

Governor Roy Cooper
Secretary D. Reid Wilson

Office of Archives and History
Deputy Secretary Darin J. Waters, Ph.D.

December 14, 2023

Braxton Davis
Director, North Carolina Division of Coastal Management
NC Department of Environmental Quality
400 Commerce Avenue
Morehead City, NC 28557

Via email: braxton.davis@deq.nc.gov

RE: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point,
CAMA Major Permit No. 79-22, Carteret County, ER 22-1558

Dear Mr. Davis:

The North Carolina Office of State Archaeology (OSA) has completed its review of the **preliminary draft report** submitted by TRC on November 16, 2023, concerning the CAMA AEC and land-disturbing activities at Bridgeview subdivision in Cedar Point, North Carolina. To this end, I attach OSA's review memo, dated December 13, 2023. Please note that OSA looks forward to receiving for review **the full comprehensive technical report** and applicable archaeological site forms from TRC, which we will anticipate receiving through a submission to the State Historic Preservation Office.

Importantly, this memo includes our recommendations for the various options that we believe will aid your division and our shared constituent Cedar Point Developers LLC, as well as future minor permit applicants within this AEC, to ensure that the development of this residential subdivision complies with 15 NCAAC 07H .0209(d)(7), which provides that "Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by...the North Carolina Department of Natural and Cultural Resources."

OSA had previously documented archaeological site 31CR95 within the subject AEC, and site 31CR93 lying northward within the subdivision but largely outside of the AEC. To aid in determining the best course of action for compliance with this administrative rule, we recommended an archaeological survey, which has to date been undertaken in approximately 6.5 acres, or about a third, of the total AEC area.

Like the constituents' archaeological consultants, we agree that the site is indeed eligible for listing in the National Register of Historic Places and underscores its status as a "valuable...archaeological resource." In just that discontinuous 6.5-acre area, archaeological features were found that provide evidence of a pre-contact era American Indian settlement, representing long-term occupation over multiple centuries in that location, most likely from the Early, Middle, and Late Woodland periods (1000 BCE – 1600 CE).

Page 2

December 14, 2023, Letter to Braxton Davis, Division Director, NC Division of Coastal Management
RE: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point,
CAMA Major Permit No. 79-22, Carteret County, ER 22-1558

Notably included in what was discovered within the surveyed 6.5-acre area were no less than 11 potential human burial clusters that are likely ossuaries each containing multiple individuals in articulated and cremated presentations.

To that end, our recommendations for .0209 compliance consist of a suite of options for consideration that may be utilized by the developers as well as minor permit applicants for proposed development activities: (1) archaeological excavation; (2) total avoidance; and (3) partial avoidance and partial excavation.

(1) Archaeological excavation. Scientific documentation and excavation of archaeological features and likely human remains by professional archaeologists would avoid “irreversible damage” to the archaeological resources. Archaeological survey work in the rest of the AEC, beyond what has been accomplished to date in the 6.5-acre discontinuous area, would be necessary to delineate the extent of the archaeological site. Such work would answer the question as to whether the site extends into the northern section of the subdivision *outside* the AEC. This work would represent an additional financial investment as well as taking considerable time to accomplish.

Additionally, and importantly, unneeded excavation of buried human remains is highly disfavored by descendant groups and archaeological and professional preservationists alike. The Advisory Council on Historic Preservation’s June 2023 Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects’ Principle 2 states:

“Disturbing or disinterring burial sites, human remains, or funerary objects, when not requested by descendants, associated Indian Tribes or N[ative] H[awaiian] O[rganizations], or required by applicable law or regulation, should not be pursued unless there are no alternatives available and only after consultation with descendants or associated communities and fully considered avoidance of impact and preservation in place.”

I attach for your ready reference a copy of this Policy Statement and accompanying guidance, which while not mandatory for North Carolina state agencies, is informative for national-level professional best practices.

(2) Avoidance. Avoidance is another option whereby additional architectural survey work would be limited or perhaps even unnecessary.

(A) Sell lots to remain undeveloped as whole (“greenspace” option). The national Archaeological Conservancy is perhaps the most well-known nonprofit dedicated to preserving irreplaceable archaeological sites in perpetuity through fee-simple acquisition or conservation easements. We understand other land trusts such as the Conservation Fund have also worked to further archaeological site protection. Our agency has worked with both entities as well as other regional land trusts on a variety of projects in this vein, and we stand ready to provide introductions to their contacts to explore this option.

(B) Take measures to reduce the footprint of planned ground disturbance. Another approach which could be considered alone, *or* in combination with a partial greenspace option for some but not all lots, would be to reduce the overall footprint of planned ground disturbance, allowing a great deal of the archaeological site to be preserved in situ.

Page 3

December 14, 2023, Letter to Braxton Davis, Division Director, NC Division of Coastal Management
RE: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point,
CAMA Major Permit No. 79-22, Carteret County, ER 22-1558

A variety of strategies in regard to how residences would be built and how to limit overall ground disturbance for construction of needed infrastructure and resulting residential buildings could potentially include:

- 1) **Build houses on pylons, not slabs.** We understand some of the AEC is already subject to elevated houses because of flood zone considerations. We suggest continuing this approach for construction in the AEC. The remains on Lot 7 were discovered during mechanical trenching to prepare for a concrete slab.
- 2) **Use a sewer package plant for the development, not septic fields.**
- 3) **Protect known burial clusters in situ and encapsulate in a respectful manner.** This effort should be undertaken in consultation with descendant communities; a point of concern to such communities may be public knowledge of the location of burials.
- 4) **After reducing areas of planned disturbance, conduct needed archaeological survey and excavation only in those areas of planned disturbance, which would presumably be less than building on slab and using septic tank disposal methods.** These areas would likely include those on which house pylons would be placed, package plant site, deep grading, and a vegetative buffer around each house.
- 5) **If burials found during needed archaeological survey and investigation for house site, consider adjusting location of planned footprint of house to avoid, or selling to a land trust or subjecting to a conservation easement (a saleable interest) for green space.**
- 6) **Consider selling some lots to be greenspace, or subjecting them to conservation easements, also a saleable property interest.** Of most interest for greenspace would be lots containing burials. Archaeological delineation would be the best option to locate burials.

We would also suggest considering additional low-cost, high-impact steps to protect archaeological resources into the long-term future as homeowners begin their residence:

- **Homeowners Association (HOA) covenants amendments.** Assuming that the developers have declarant rights to amend the subdivision's HOA covenants, we would recommend the following to limit future owners' ground disturbance:
 - No ground-based swimming pools or other similar amenity on the lot.
 - No vegetable gardens.
 - No landscape trees or large bushes beyond what is initially planted by developer immediately around the house.
 - No grading.
 - No additional structures that require ground disturbance.

Page 4

December 14, 2023, Letter to Braxton Davis, Division Director, NC Division of Coastal Management
RE: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point,
CAMA Major Permit No. 79-22, Carteret County, ER 22-1558

- Permission of HOA required for ground disturbance below a particular depth, and requirement to consult with a professional archaeologist should such disturbance be absolutely necessary. The HOA could have a special assessment to establish a fund for a retainer with an archaeological consultant. Depth of acceptable ground disturbance would be derived from TRC's investigations to date, and/or in the future.

Given the extremely high likelihood of the presence of human remains within the AEC and known remains that were disturbed through mechanical trenching of the house under construction on Lot 7 just outside the AEC, and because of the dispersed nature of American Indian ossuaries along the outer coastal areas of North Carolina, we continue to caution as to the *extremely* high likelihood of encountering additional burials within the AEC. Consequently, at this point and given these factors, encountering such unmarked burials within the AEC cannot be deemed "unanticipated".

In the November 20, 2023, correspondence from the developers' legal counsel, we understand that the developers are unwilling to undertake at their expense any further due diligence to delineate the extent of this American Indian settlement, and in doing so, to better understand the full scope of archaeological resources, which CAMA regulations mandate shall not be "irreversibly damage[d]".

To that end, we strongly encourage your Division and our shared constituents to consider which of the various avoidance measures recommended herein are most feasible to the constituents, to ensure compliance with 15 NCAC 07H .0209(d)(7).

We would likewise recommend that the Division consider applying these avoidance measures to ground disturbing activities covered by CAMA minor permits, which we understand are also subject to the standards of .0209.

We stand ready to work with your division and our shared constituents, including future minor permit applicants, to take the necessary care to comply with .0209, to be mindful of the careful attention needed to avoid disturbing human burials, and to ensure long-term protection of irreplaceable archaeological resources.

Sincerely yours,



Ramona M. Bartos, Division Director and
Deputy State Historic Preservation Officer

CC: Cedar Point Developers, LLC
Mary Katherine Stukes, Esq.
Dr. Darin Waters, SHPO
Chris Southerly, State Archaeologist (Acting)
Karen Blum, Esq., DNCR Legal Counsel
Deans Eatman, DNCR Legislative Liaison

Renee Gledhill-Earley, HPO
Devon Borgardt, HPO
Jonathan Howell, CAMA, DEQ
Gregg Bodnar, CAMA, DEQ

Page 5

December 14, 2023, Letter to Braxton Davis, Division Director, NC Division of Coastal Management

RE: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point,
CAMA Major Permit No. 79-22, Carteret County, ER 22-1558

Enclosures:

- OSA review memo, December 13, 2023
- Advisory Council on Historic Preservation's Policy Statement on Burial sites, Human Remains, and Funerary Objects and Burial Policy Explanation and Discussion Guidance Document



North Carolina Department of Natural and Cultural Resources

Office of State Archaeology
Chris Southerly, State Archaeologist (acting)

Governor Roy Cooper
Secretary D. Reid Wilson

Office of Archives and History
Deputy Secretary Darin J. Waters, PhD

MEMORANDUM

DATE: December 13, 2023

TO: Ramona Bartos, Director, Division of Historical Resources
Deputy State Historic Preservation Officer
NC Department of Natural and Cultural Resources

FROM: Chris Southerly, State Archaeologist (acting) 
Office of State Archaeology
NC Department of Natural and Cultural Resources

SUBJECT: Construct Bridgeview subdivision, 1180 Cedar Point Boulevard, Cedar Point, Carteret County, ER 22-1558

The North Carolina Office of State Archaeology (OSA) is in receipt of the preliminary report of the Phase I survey, Phase II National Register of Historic Places (NRHP) evaluation of site 31CR95, and assessment of potential impacts to site 31CR95 within the proposed Section II of the Bridge View development in Carteret County, North Carolina, submitted on November 16, 2023, by TRC Environmental Corporation (TRC). The report was submitted on behalf of their client, Cedar Point Developers, LLC, and describes archaeological work performed in association with the conditions set forth in the Coastal Area Management Act (CAMA) Permit (#79-22).

Based on the abstract provided on pages i-ii of the preliminary report, TRC investigated 6.5 acres of the total 21-acre CAMA permit area through a Phase I archaeological survey to identify the subsurface presence of the archaeological site 31CR95 that was previously identified within the southern portion of the project tract. TRC opened 16 test trenches, exposing 1.13 acres of the site. Within those 16 trenches, a total of 2,058 subsurface soil anomalies were documented. Of those anomalies, 2,041 are archaeological features, including 11 probable precontact human burials.

During the Phase II NRHP evaluation of site 31CR95, TRC determined that based on the high density and intact nature of cultural features, the presence of temporally and functionally diagnostic artifacts, and the probability that some of the cultural features are human burials, site 31CR95 contains cultural deposits that have yielded, or may be likely to yield, important information regarding Early, Middle, and Late Woodland coastal human activity (1000 BCE – 1600 CE). Therefore, TRC recommended that site 31CR95 be considered eligible for the NRHP under Criterion D.

Raleigh Office
109 E. Jones Street
Raleigh NC 27601
919-814-6550
Mail: 4619 Mail Service Center
Raleigh NC 27699-4619

Research Center
215 W. Lane Street
Raleigh NC 27601
919-715-5599
Mail: 4619 Mail Service Center
Raleigh NC 27699-4619

Underwater Archaeology Branch
1528 Ft. Fisher Blvd South
Kure Beach NC 28449
910-251-7320

QAR Conservation Lab
1157 VOA Site C Road
Greenville NC 27834
252-744-6721

Western Office
176 Riceville Road
Asheville NC 28805
828-250-3100

Site 31CR95 is critical for understanding an intact, long-term, continuously inhabited, pre-contact residential site containing communal structures, refuse pits, funerary objects, and human burials. Many archaeological sites within the coastal region have been severely impacted or destroyed because of development and rising sea levels. Of the archaeological sites that have been recorded, few have been fully excavated, if excavated at all, and much of the research has been focused on their shell refuse middens. This circumstance has resulted in a significant gap in the knowledge of pre-contact American Indian occupation, particularly regarding the communal and daily life of pre-contact peoples of the coastal region.

Based on the summary presented in the abstract and the site's ability to produce new and important information on Woodland Period coastal occupations, OSA concurs that site 31CR95 is eligible for the NRHP under Criterion D. The site may also be eligible under Criterion A based on its association with an important period of time when events that made a significant contribution to the development of North Carolina coastal communities took place.

Based upon a preliminary review of the report, OSA recommends the following next steps:

1) Archaeological Site Delineation

- a. Due to the nature of the Phase I and Phase II survey conducted by TRC, the boundaries of site 31CR95 have not yet been determined. Knowing the full extent, nature, and boundaries of the archaeological site(s) that may be impacted by the Bridge View Development will aid in determining future steps to avoid or mitigate adverse impacts to significant archaeological resources including human burials.
- b. A second previously recorded archaeological site, 31CR93, extends into the 21-acre CAMA Area of Environmental Concern (AEC) and proposed Bridge View development Lots 75 and 77. The site was originally recorded in 1972 based on artifacts exposed on the surface. No subsurface archaeological investigation has ever been conducted on the site and it was not included in the TRC 6.5-acre investigation area.
- c. Based on the presence of 31CR93 and the findings within the 6.5-acre area investigated by TRC as part of 31CR95, there is an exceptionally high probability that additional archaeological deposits and features, including human burials, are located within the proposed Bridge View development Lots 74-83, and into the off-site septic common area that fall within the boundaries of the 21-acre CAMA AEC.
- d. Archaeological investigations are necessary to determine the boundaries of 31CR95 and the nature and boundaries of 31CR93. Consultation between OSA and TRC will be needed to determine the methodology for additional archaeological investigations in this section of the project.

Following the archaeological site delineation – or in lieu of, if avoidance of archaeological features is sought – OSA may provide the following recommendations:

1) Complete Avoidance

Based upon the NRHP eligibility and presence of human burials OSA strongly recommends that the site be avoided and preserved in place, which is the alternative preferred by the North Carolina Department of Natural and Cultural Resources (NCDNCR) for sites with burials, a position shared

by national guidance of the federal Advisory Council on Historic Preservation (ACHP). Avoidance measures include:

- a. Avoidance and Preservation in Place
 - i. Once delineation of 31CR95 and 31CR93 occurs, TRC submits a comprehensive delineation report of sites 31CR95 and 31CR93 to OSA. OSA in consultation with Department of Environmental Quality, Division of Coastal Management (DCM), TRC, and Cedar Point Developers will determine the area(s) that require avoidance based on the results of the delineation.
 - ii. If delineation of 31CR95 and 31CR93 does not occur, TRC submits their comprehensive technical report of the Phase I survey, Phase II NRHP evaluation of site 31CR95, and assessment of potential impacts to site 31CR95 within the proposed Section II of the Bridge View development to the OSA and all archaeological investigations cease. Open trenches, units, or other excavation methods are backfilled, and the site is closed. All existing archaeological features and human burials remain undisturbed, and the entire CAMA AEC becomes a permanent green space.
 - iii. If the developers have declarant rights to amend the subdivision's HOA covenants, we recommend the HOA restrict any ground disturbing activity within the green space.
- b. Donate or sell the site to The Archaeological Conservancy or other land trust.
 - i. If conveyed, The Archaeological Conservancy would preserve the site in situ in perpetuity. We understand that other land trusts in North Carolina have engaged in such work, including the Conservation Fund.
 - ii. Contact information for The Archaeological Conservancy: Eastern Regional Office, Kelley Berliner, Regional Director, tac.eastern@gmail.com; and for the Conservation Fund, Justin Boner, North Carolina Field Representative, jboner@conservationfund.org, and Michael Leonard, Senior Advisor mleonard@conservationfund.org.
 - iii. See the attached information sheet for The Archaeological Conservancy.
- c. Establish and fund a conservation easement with funds provided by the North Carolina Land and Water Fund – Stewardship Program, or other sources.
 - i. Conservation easements may be another means to avoid damaging or impacting archaeological resources and allow them to remain in situ while the underlying fee may be sold, subject to the restrictions of the conservation easement.
 - ii. State funds are available to nonprofit organizations, such as land trusts, to provide funding for acquisition from willing owners, including funding of conservation easements on lands.
 - iii. One such fund is the state North Carolina Land and Water Fund. The goal of the Stewardship Program is to ensure that the projects the North Carolina Land and Water Fund funds continue to provide benefits for North Carolina's citizens forever. This work is done through the establishment, monitoring, and enforcement of perpetual conservation agreements. These arrangements, which are entered into voluntarily, restrict certain uses of the property and guarantee that the land continues to exist in its natural state in perpetuity.

2) Reduce footprint of planned ground disturbance, limited archaeological delineation.

Another approach which could be considered, alone or in combination with a partial greenspace option for some but not all lots, would be to reduce the overall footprint of planned ground disturbance, allowing a great deal of the archaeological site(s) to be preserved in place. *Note that archaeological investigations and/or mitigation may still be needed in areas where ground disturbing activities are planned to address adverse impacts.* A variety of strategies regarding how residences would be built and how to limit overall ground disturbance for construction of needed infrastructure and resulting residential buildings could potentially include:

- a. Build houses on pylons, not slabs. We understand some of the AEC may already be subject to elevated houses because of flood zone considerations. We suggest continuing that approach throughout the AEC. The human remains on Lot 7 in Section I were discovered during mechanical trenching to prepare for a foundation/concrete slab.
- b. Use a sewer package plant, not septic fields.
- c. Protect known burial clusters in situ in a respectful manner. This effort would be undertaken in consultation with descendant communities; a point of concern to such communities may be public knowledge of burial locations.
- d. If burials are found during archaeological survey and excavation for a house site, consider adjusting location of construction to avoid, or selling to a land trust or subjecting to a conservation easement (a saleable interest) for green space.
- e. Consider leaving some lots to be greenspace or subjecting them to conservation easements.

3) Phase III Archaeological Excavation

- a. If sites 31CR95 and/or 31CR93 cannot be avoided by the proposed project, the important cultural and archaeological resources, and any human burials within these sites, would be destroyed unless systematically and scientifically removed by trained archaeologists. Data recovery excavations are the most appropriate method of mitigating the adverse effects to the eligible cultural resources. The data recovery plan presents the scope and methodology that will be used to recover as much information as possible from the portions of the site that will be destroyed by the development, as well as the form(s) and schedule for reporting the results of the excavations.
- b. The data recovery plan must also address the proper and respectful treatment of human burials.
- c. The data recovery plan is formulated by the archaeological consulting firm and then submitted to OSA, NCDNCR State Historic Preservation Office, and Department of Environmental Quality, DCM for review and comment by the OSA and any federally or state recognized American Indian tribes who have expressed interest in the county where the resources are located.
- d. Once revised and approved by all consulting parties, the data recovery plan is implemented.

We would also suggest considering additional low-cost, high-impact steps to protect archaeological resources into the long-term future as homeowners begin their residence:

- 4) **HOA covenants amendments:** If the developers have retained declarant rights to amend the subdivision's HOA covenants, we would recommend the following to limit future owners' ground disturbance:

- a. No ground-based swimming pools or other similar amenities on the lot.
- b. No vegetable gardens.
- c. No landscape trees or large bushes beyond what is initially planted by developer immediately around the house.
- d. No grading.
- e. No additional structures that require ground disturbance.
- f. Permission of HOA required for ground disturbance and requirement to consult with a professional archaeologist should such disturbance be necessary. The HOA could have a special assessment to establish a fund for a retainer with an archaeological consultant. Depth of acceptable ground disturbance would be derived from TRC's investigations to date, and/or in the future.

5) Fostering individual archaeological stewardship.

- a. We urge the developer and their realtors to check with the North Carolina Realtor Commission as to any material disclosure requirements for burials.
- b. North Carolina General Statute § 14-149 prohibits vandalism of unmarked human burials or human skeletal remains through desecrating, plowing over, or covering.
- c. Individual homeowners may also explore with entities like the Archaeological Conservancy placement of conservation easements on their individual lots or consider donating such easements, deriving a tax benefit.

We reiterate that the likelihood of the presence of additional human burials of American Indian people within and in the immediate vicinity of the CAMA AEC is very high, given both the ancestral burial practices of American Indian cultures of this region during the Woodland period and what has already been tentatively identified. As noted on page 19 of the preliminary report, communal burials were common in this region, and any potential burial features within the CAMA AEC may contain burials of multiple individuals. Consequently, at this point and given these factors, encountering such unmarked burials within the AEC cannot be deemed "unanticipated" and must be proactively planned for.

Finally, OSA notes that according to TRC, the report received on November 16, 2023, is a preliminary report of the results of the fieldwork and initial laboratory analysis for the Phase I and II investigations, and a comprehensive technical report is still forthcoming. OSA still requires the full comprehensive technical report and NC Archaeological Site Forms for review and concurrence as afforded in North Carolina General Statute § 121-12a. We look forward to reviewing the comprehensive technical report and working with TRC, the Department of Environmental Quality, Division of Coastal Management, and Cedar Point Developers to develop an avoidance plan or data recovery plan for the proposed undertaking using one or more of the recommendations outlined above.

If you have questions regarding the above comments, please contact Chris Southerly, State Archaeologist (acting), chris.southerly@dncr.nc.gov.



**North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office**

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary D. Reid Wilson

Office of Archives and History
Deputy Secretary, Darin J. Waters, Ph.D.

January 3, 2024

Heather Millis
Project Manager
TRC Companies
50101 Governors Drive, Suite 250
Chapel Hill, NC 27517

HMillis@trccompanies.com

Re: Construct Bridge View Subdivision, 1180 Cedar Point Boulevard, Cedar Point, Carteret County,
ER 22-1558

Dear Ms. Millis:

Thank you for your email of November 16, 2023, submitting the Phase I and II Preliminary Report for the above-referenced undertaking. We have reviewed the report and offer the following comments.

TRC investigated 6.5 acres of the total 21-acre Coastal Area Management Act (CAMA) Area of Environmental Concern (AEC) through a Phase I archaeological survey to investigate the subsurface presence of archaeological site 31CR95, which was previously identified within the southern portion of the project tract. TRC opened 16 test trenches, exposing 1.13 acres of the site. Within those 16 trenches, a total of 2,058 subsurface soil anomalies were documented, including 11 probable pre-contact human burials.

During the Phase II National Register of Historic Places (NRHP) evaluation of site 31CR95, TRC determined that based on the high density and intact nature of cultural features, the presence of temporally and functionally diagnostic artifacts, and the probability that some of the cultural features are human burials, site 31CR95 contains cultural deposits that have yielded, or may be likely to yield, important information regarding Early, Middle, and Late Woodland coastal human activity (1000 BCE – 1600 CE). Therefore, TRC recommended that site 31CR95 be considered eligible for the NRHP under Criterion D.

Site 31CR95 is critical for understanding long-term, continuously inhabited, precontact coastal sites containing residential and communal structures, refuse pits, funerary objects, and human burials. Many archaeological sites within the coastal region have been severely impacted or destroyed because of development and rising sea levels. Of the archaeological sites that have been recorded, few have been fully excavated, and much of the research has been focused on their shell refuse middens. This has resulted in a significant gap in the knowledge of precontact American Indian occupation, particularly the communal and daily life of precontact peoples of the North Carolina coastal region.

Based on the information presented in the report and the site's ability to produce new and important information on Woodland Period coastal occupations, OSA concurs that site 31CR95 is eligible for listing in the NRHP under Criterion D. The site may also be eligible under Criterion A based on its association with an important period during which events that made a significant contribution to the development of North Carolina coastal communities took place.

In the report, TRC recommends data recovery investigations as an appropriate means of mitigating the adverse effects to site 31CR95 by the proposed undertaking after any additional Phase I or II studies have been conducted, if it is determined that areas outside the 6.5-acre investigation area are subject to study. While we agree that data recovery investigations would be appropriate to mitigating the adverse effects to site 31CR95, the boundaries of the site have not yet been determined. Knowing the full extent, nature, and boundaries of the archaeological sites that may be impacted by the Bridge View Subdivision will aid in determining future steps to avoid or mitigate adverse impacts to significant archaeological resources including human burials. Additionally, a second previously recorded archaeological site, site 31CR93, extends into the 21-acre AEC and proposed Bridge View development. The site was originally recorded in 1972 based on artifacts exposed on the surface. No subsurface archaeological investigation has been conducted on the site and it was not included in TRC's 6.5-acre investigation area. We therefore recommend the archaeological delineation of sites 31CR95 and 31CR93 prior to the development of a data recovery plan.

As stated by TRC, consultation between the North Carolina Office of State Archaeology (OSA), North Carolina Division of Coastal Management (DCM), Cedar Point Developers, LLC, Tidewater Associates, Inc., and TRC included a visit to the CAMA AEC on June 13, 2023. As discussed during this meeting and noted in an email dated June 15, 2023 from Tidewater Associates, Inc., the parties agreed that "[T]he archaeological investigation area excludes the area north of Lot 40, Coastline Circle, and Lot 25, the road and road ROW and wetlands"... "unless the investigation reveals significant discoveries, such as, bones from a burial site, for example, at the boundary of the agreed-upon investigation area, then investigation may extend beyond [Lot 40, Coastline Circle, and Lot 25] up to the CAMA jurisdiction limits." Based on the information provided in the report, significant discoveries, including probable human burials, were revealed within the agreed-upon investigation area and therefore, the recommended additional investigations that extend up to the CAMA jurisdiction limits are warranted.

However, based upon the NRHP eligibility and presence of human burials, we strongly recommend that sites 31CR95 and 31CR93 be avoided and preserved in place. Preservation in place is the alternative preferred by the North Carolina Department of Natural and Cultural Resources (NCDNCR) for sites with burials, a position shared by national guidance of the federal Advisory Council on Historic Preservation (ACHP). Avoidance can either occur following archaeological site delineation to minimize the adverse effects to the sites(s) or in lieu of archaeological site delineation if the entire CAMA AEC is avoided by ground disturbing activities.

Consultation between our office, TRC, DCM, Cedar Point Developers, LLC, and Tidewater Associates, Inc., will be needed to determine the methodology for the archaeological delineation or avoidance measures, whichever is chosen.

Finally, we note that the report received on November 16, 2023, is a preliminary report of the results of the fieldwork and initial laboratory analysis for the Phase I and II investigations, and a comprehensive technical report is forthcoming. We still require the full comprehensive technical report and NC Archaeological Site Form for review and concurrence. Please send one (1) digital copy of the comprehensive technical report through ShareFile and one (1) digital copy of the NC Site Form with site

map(s) through ShareFile. Hard copies of the report will be requested by the OSA once we determine that no further changes to the report are needed.

We look forward to reviewing the comprehensive technical report and working with TRC, DCM, Cedar Point Developers, LLC, and Tidewater Associates, Inc., to develop an avoidance plan or data recovery plan for the proposed undertaking using one or more of the recommendations outlined above.

These comments are in accord with NCGS 113A-113(b)(4)(h) and 15 NCAAC 07H .0209(d)(7), and the conditions set forth in the Coastal Area Management Act (CAMA) Permit (#79-22). We also note that, in the event a federal action is or becomes part of the proposed undertaking, we will need to provide comments in accord with Section 106 of the National Historic Preservation Act, and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@dncr.nc.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,



for Ramona Bartos, Deputy
State Historic Preservation Officer

cc: Chris Southerly, OSA
Dylan Clark, OSA
Braxton Davis, DCM
Jonathan Howell, DCM
Gregg Bodnar, DCM
Tracy Millis, TRC Companies
Roy Brownlow, Tidewater Associates, Inc.

Chris.Southerly@dncr.nc.gov
Dylan.Clark@dncr.nc.gov
Braxton.Davis@deq.nc.gov
Jonathan.Howell@deq.nc.gov
Gregg.Bodnar@deq.nc.gov
TMillis@trccompanies.com
RBrownlow@tidewaterenc.com

Permit Class
NEW

- 128 -

Permit Number
79-22

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 Cedar Point Developers LLC., 166 Cedar Street, Jacksonville, NC 28546

Authorizing development in Carteret County at adj. to Bogue Sound, at 1180 Cedar Point

Blvd, known as Bridge View S/D, in Cedar Point, as requested in the permittee's application dated 5/20/22,
including attached workplan drawing (1), Sheet 1 of 1 dated 5/20/22.

This permit, issued on July 28, 2022, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes 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.

Cultural Resources

- 1) Prior to the initiation of any land-disturbing activities, the permittee shall satisfy the requirements of the NC Department of Natural and Cultural Resources (NCDNCR). Initiation of the permitted land-disturbing activities shall not begin until written approval is obtained from NCDNCR, and a copy of such approval has been submitted to the Division of Coastal Management.

(See attached sheets for Additional 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.

Braxton C. Davis, Director
Division of Coastal Management

All work must cease when the permit expires on

This permit and its conditions are hereby accepted.

December 31, 2025

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signature of Permittee

ADDITIONAL CONDITIONS

Bridge View Sub-Division

- 2) Unless specifically altered herein, this permit authorizes the grading and other land disturbing activities associated with the development of the above referenced property, including the 83 lots, 6 common areas, retention basins, roads and other associated infrastructure, all as expressly and specifically set forth in the attached permit application and workplan drawings.
- 3) This permit authorizes only the proposed upland development, as depicted in the attached permit application, project narrative, and workplan drawings. Any other work or development proposed in an Area of Environmental Concern (AEC), including but not limited to the Coastal and Estuarine Shoreline AECs and located within the applicant's property, shall require a review and authorization from the Division of Coastal Management prior to work commencing.

Stormwater Management

- 3) The Division Energy, Mineral and Land Resources (DEMLR) approval of this project under stormwater management rules of the Environmental Management Commission is covered by way of Stormwater Permit No. SWA 000127, which was issued on 1/24/22. Any violation of the permit approved by the DEMLR shall be considered a violation of this CAMA permit.

Sedimentation and Erosion Control

- 4) The Division Energy, Mineral and Land Resources (DEMLR) approval of this project under sedimentation and erosion control management rules of the Environmental Management Commission is covered by way of Sedimentation and erosion control permit No. SWCARTE-2021-018, which was issued on 4/13/21. Any violation of the permit approved by the DEMLR shall be considered a violation of this CAMA permit.
- 5) In order to protect water quality, runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters.
- 6) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses or properties.

General

- 7) This permit shall not be assigned, transferred, sold, or otherwise disposed of to a third party without the written approval of the Division of Coastal Management.
- 8) All construction debris associated with the removal or construction of the permitted development shall be contained within the authorized project area and disposed of in an approved upland location.
- 9) The permittee and/or his or her contractor shall meet with a representative of the Division prior to project initiation.

ADDITIONAL CONDITIONS

NOTE: The permittee is advised that if water utilities or new wells are required to service the authorized development, plans and specifications for all new waterlines should be submitted and approved by the Public Water Supply Section prior to the initiation of construction. Furthermore, water supply wells must be approved by the county in which the subject property is located, and local cross-connection requirements may be required. Public Water Supply can be contacted at (910) 796-7215.

NOTE: The NC Department of Transportation has assigned this project DOT ID No. E022-016-21-00171

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.

NOTE: The U.S. Army Corps of Engineers has determined that a permit is not required.

NOTE: The N.C. Division of Water Resources has assigned the project DWR Project No. 2022-0737.

NOTE: Future development of the permittee's property may require a modification of this permit. Contact a representative of the Division at (252) 515-5400 prior to the commencement of any such activity for this determination. The permittee is further advised that many non-water dependent activities are not authorized within 30 feet of the normal high-water level.

NOTE: An application processing fee of \$400 was received by DCM for this project.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 121-910

CEDAR POINT DEVELOPERS, LLC)
Plaintiff,)
v.)
COASTAL RESOURCES COMMISSION)
Defendant.)
)
)
)

**AFFIDAVIT OF
WILLIAM F. LANE, ESQ.
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

AFFIDAVIT OF WILLIAM F. LANE, ESQ.

I, William F. Lane, Esq., being first duly sworn, do hereby depose and say:

1. I am submitting this affidavit in support of Defendant's Motion to Dismiss.

These statements are true and correct to the best of my knowledge.

2. I am General Counsel for the North Carolina Department of Environmental Quality ("NCDEQ").

3. N.C. Gen. Stat. § 1A-1, Rule 4(j)(4)(b) requires that every state agency must file with the Attorney General the name and address of an agent upon whom process may be served. I have been designated as NCDEQ's agent for service of process. Information regarding NCDEQ's process agent is readily available by calling the Attorney General's Office.

4. As part of my responsibilities, I receive complaints, petitions for judicial review, and other documents served on NCDEQ and the Coastal Resources Commission, as well as other NCDEQ-related commissions.

5. I have not been served with a Contested Case Petition challenging the Division of Coastal Management's CAMA Major Permit #79-22 issued on July 28, 2022 to Cedar Point Developers, LLC.

6. I am not aware of any other employee of NCDEQ who has been served with such a Petition for a Contested Case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

This the 4th day of March, 2024.



William F. Lane, Esq., General Counsel
NC Department of Environmental Quality

STATE OF NORTH CAROLINA
WAKE COUNTY

I certify that William F. Lane, Esq., personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

This 4th day of March, 2024

Anita M. Wright
Notary Public

Anita M. Wright
Printed name of Notary Public



OFFICIAL SEAL:

My Commission expires: October, 1, 2028

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24-CV-121-910

CEDAR POINT DEVELOPERS, LLC.,)
)
Plaintiff,)
)
v.)
)
COASTAL RESOURCES)
COMMISSION,)
)
Defendant.)

AFFIDAVIT OF
JAMES CHRISTOPHER SOUTHERLY

COMES NOW James Christopher Southerly, being first duly sworn, and states the following:

1. I am over 18 years old and am competent to give this statement.
2. I have been employed since September 2000 by the Office of State Archaeology (“NC OSA”) in the North Carolina Department of Natural and Cultural Resources (“DNCR”). I have held the position of Deputy State Archaeologist since May 2019. I have been Acting State Archaeologist since December 2023.
3. I hold a Bachelor of Science degree in Anthropology from James Madison University with a focus on pre-contact archaeology and physical anthropology. Pre-contact archaeology includes American Indians living prior to European contact in what is now North Carolina. I did graduate work in historical archaeology at the College of William and Mary before earning a Master of Arts degree in Maritime History and Underwater Archaeology from East Carolina University. I have experience working/directing both terrestrial and underwater archaeological projects, from pre-contact to the modern era, in the mid-Atlantic and southeastern United States from the perspectives of contract/consulting, academic research, and regulatory

compliance. I am a qualified professional archaeologist in accordance with the Secretary of the Interior's Standards and Guidelines (36 CFR Part 61 and 48 FR 44738 to 44739) with expertise in prehistoric archaeology, historic archaeology, and marine archaeology. I am a Registered Professional Archaeologist and also a Certified Public Manager.

4. As Deputy State Archaeologist, I am supervising archaeologist for environmental review and compliance for 30 coastal counties in NC, including Carteret County. I am directly involved in the project review for the Bridgeview subdivision in Cedar Point, North Carolina. I became involved when the developer's agent, Tidewater Associates, inquired about an archaeological survey recommended by NC OSA in a standard survey request letter sent by the North Carolina State Historic Preservation Office ("NC HPO"). In conjunction with the then State Archaeologist and other NC OSA professional archaeologists, I have subsequently met and communicated with Tidewater Associates, Cedar Point Developers, and the Division of Coastal Management ("DCM") regarding this project.

5. I am familiar with the Bridgeview Subdivision project area, archaeological sites in the vicinity, archaeological scope of work, and completed archaeological work, having inspected the sites and survey areas on several occasions. In June 2023, I visually inspected archaeological resources that were disturbed by construction activities within the AEC before archaeological investigations had been conducted. In July 2023, I reviewed active archaeological investigations within the AEC with TRC archaeologists to examine the number, distribution, and types of features.

6. I also conducted an inspection of disturbed human remains outside the AEC (31CR617 - Lot 7) with the NC OSA bioarchaeology specialist. These human remains were exposed when an excavator dug a trench to lay the foundation for a house. I received the partial

set of pre-contact human remains collected by the Carteret County Sheriff's Office in accordance with NC OSA's statutory duties under Chapter 70, Article 3 of the North Carolina General Statutes, the Unmarked Human Burial and Human Skeletal Remains Protection Act. Thereafter, I participated in the planning and excavation by NC OSA staff of the remainder of the disturbed human remains from site 31CR617 - Lot 7 in August and September 2023. I currently supervise NC OSA's notification processes to return or repatriate to Indian Tribes the ancestral remains of Native Americans as required by the state's Unmarked Human Burial and Human Skeletal Remains Protection Act, Chapter 70, Article 3 of the North Carolina General Statutes, and the federal Native American Graves Protection and Repatriation Act (a.k.a., NAGPRA), Pub. L. 101-601, 25 U.S.C. 3001 *et seq.*, 104 Stat. 3048. In January 2024, NC OSA, at my direction, sent consultation letters to the Executive Director of the North Carolina Commission of Indian Affairs, and leaders of the federally-recognized Indian Tribes with possible ancestral affiliations with the people who occupied the Bridgeview Subdivision development area prior to European contact. NC OSA identified those Indian Tribes as the Catawba Nation, Nansemond Tribe, Pamunkey Tribe, and Tuscarora Nation. The consultation letters are attached as JCS Attach. 1, NAGPRA Consultation Letters. Maps and a draft inventory of human remains and associated funerary objects were attached to each letter, but are included herein only once. (JCS Attach. 1A, Bridgeview Map 1 – Overview; JCS Attach. 1B, Confidential Bridgeview Map 2 – Vicinity; JCS Attach. 1C, Confidential CR617_Draft Inventory)

7. This affidavit contains information that is confidential under G.S. § 70-18, which states:

Information concerning the nature and location of any archaeological resource, regardless of the ownership of the property, may be made available to the public under Chapter 132 of the North Carolina General Statutes or under any other provision of law unless the Department of Natural and Cultural Resources

determines that the disclosures would create a risk of harm to such resources or to the site at which such resources are located.

I have marked several attachments containing confidential information by including

“Confidential” within the name of the attachment, and on the pages of the attachment.

8. In June 2022, NC HPO and NC OSA reviewed and commented on a permit application for development of the Bridgeview subdivision in Cedar Point, North Carolina.

9. After receiving comments from NC OSA, NC HPO advised DCM:

The Area of Potential Effect (APE) of the proposed subdivision contains two known and unassessed prehistoric archaeological sites (31CR93 and 31CR95) and is adjacent to three other archaeological sites identified in a survey for the neighboring subdivision. Our records also indicate that the APE was an early plantation site with occupation through the antebellum period, with possible graves present. Due to the presence of the noted prehistoric sites along with the historical narrative tied to the APE and potential for human remains, we recommend a comprehensive archaeological survey be undertaken within the project area to relocate and assess the archaeological sites already present, as well as any other potentially significant archaeological resources that may be also present prior to any ground disturbing activities. (JCS Attach. 2, 06-14-2022 NC HPO Comments re Permit Application)

10. Upon information and belief, Cedar Point Developers hired archaeologists from TRC Environmental Corporation (“TRC”) to conduct this archaeological survey and fulfill the Division of Coastal Management’s CAMA permit requirements.

11. TRC’s survey assessed potential impacts of development on archaeological site 31CR95, which was previously identified within the southern portion of the project tract prior to Cedar Point Developers’ ownership.

12. In November 2023, TRC submitted to DNCR a preliminary report of its archaeological survey of Section II of the Bridgeview subdivision in Carteret County, North Carolina. (JCS Attach. 3, Confidential 11-2023 TRC Preliminary Report)

13. According to the report, TRC archaeologists investigated 6.5 acres of the total 21-acre Coastal Area Management Act (CAMA) Area of Environmental Concern (AEC) to document the presence and extent of archaeological resources at site 31CR95.

14. According to the report, TRC dug 16 trenches, removing the topsoil of approximately 1.13 total acres, to expose any cultural features indicating that people lived, hunted, and fished in that area.

15. According to the report, TRC identified over 2,000 cultural features or anomalies (variations in natural features, possibly caused by human activity), including concentrations of pottery, shell, and stone tools, soil stains marking the position of wooden foundation posts for dwelling or communal buildings, firepits, and human burials. In Algonkian villages of this period, human remains were treated after death in charnel houses where the bodies were routinely laid out on wooden scaffolds for an extended period of time prior to burial (see illustration in White 1585; Ward and Davis 1999:221). Full citations to references are attached as JCS Attach. 4, Citations and References.

16. These cultural features and human burials are consistent with what archaeologists know about communities of Algonkian-speaking indigenous people, who continuously occupied the area for more than two millennia, between c. 1000 BCE and 1600 CE (known scientifically as the Woodland Period). This period well pre-dates European contact.

17. TRC's findings are also consistent with what is known of at least 25 other Native American archaeological sites adjacent to the Bridgeview development and along the coast of Bogue Sound. Many of these sites were also identified through surveys for regulatory compliance ahead of developments at Broad Reach/Cannonsgate, Magens Bay, and by the U.S.

Marine Corps at Bogue Field between 1987 and 2013. (JCS Attach. 5, Confidential Map of Archaeological Sites)

18. Archaeological sites within a 2-mile radius of 31CR95 are listed on JCS Attach. 6, Nearby Archaeological Sites.

19. The cultural features and artifacts TRC documented are also consistent with remnants of wooden structures discovered in adjacent archaeological sites, suggesting the structures are part of a larger settlement that grew up and expanded over time. Early historical descriptions by European visitors to the indigenous villages in this area, such as those of John White (1585) and Thomas Harriot (1590), document and describe these different types of structures and explain their functions (Quinn 1985).

20. Archaeological investigations at nearby sites, such as Broad Reach and others, revealed patterns of post molds (remnants of wooden posts), pits, houses, and other buildings that all made up the settlements. Not all the houses and other buildings were constructed at the same time (Loftfield and Jones 1995; Mathis 1997; Ward and Davis 1999).

21. Other archaeological sites in the vicinity on similar terrain extend continuously as far as 2000 feet or more inland (Anthony and Drucker 1981; Loftfield 1985; Martin and Drucker 1986; Mathis 1993, 1994; Lautzenheiser, et al. 1994, 1995; Polglase, *et al.* 1997; Millis 2011).

22. According to the report, TRC identified 11 potential burial features on 31CR95.

23. Cluster burials (ossuaries) contain multiple individuals. American Indians of this period and region commonly practiced communal burials of multiple individuals, with both intact skeletons of some individuals and cremains of others being buried together. A settlement site may contain numerous cluster burials, representing the final resting places of multiple generations of the dead. These burials occurred often after ritual preparation in a charnel house

(such as those depicted in the 1585 John White drawings of coastal North Carolina), and in the cases of some individuals, after a communal cremation. Some of those drawings can be found here:

- a. Ossuary Temple: https://www.britishmuseum.org/collection/object/P_1906-0509-1-9 (showing charnal house).
- b. Town of Secoton: https://www.britishmuseum.org/collection/object/P_1906-0509-1-7 (showing charnal house in bottom left corner).
- c. Town of Pomeiooc: https://www.britishmuseum.org/collection/object/P_1906-0509-1-8 (showing bird's-eye view of Town of Pomeiooc).

24. Cedar Point Developers discovered multiple co-mingled burials of American Indians in Lot 7 of the development outside the CAMA AEC, strongly suggesting there may be additional human burials within, and in the immediate vicinity of, the CAMA AEC. *See* JCS Attach. 1C.

25. There is yet a significant gap in the knowledge of pre-contact American Indian history, particularly in terms of daily life and how these communities changed over time as they made significant contributions to the development of what is now eastern North Carolina. The lack of a written record by the people who lived in these settlements makes the archaeological record preserved at these sites the main source of information about this period and these coastal communities.

26. Site 31CR95 contains significant information about how Algonkian people lived and organized their communities along the coast of North Carolina for over 2,000 years before the arrival of Europeans. Unlike most other archaeological sites, which have been disturbed or destroyed, this site has a high concentration of undisturbed, preserved-in-place cultural features, allowing archaeologists to understand them in their physical and historical contexts. The site also has artifacts that tell us how and when in time they were used.

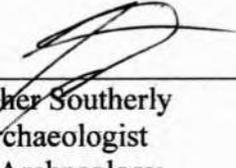
27. Site 31CR95 is also critical for understanding how and when socially and politically complex chiefdoms developed through long-term, continuous inhabitation of the site.

28. This site may also be considered a sacred site for American Indian descendants who have ancestral connections to Cedar Point and Carteret County.

29. Based on the information presented in the report and the site's ability to produce new and important information on Woodland Period coastal occupations, NC OSA concurs with TRC that site 31CR95 is eligible for listing in the National Register of Historic Places.

[THIS PART INTENTIONALLY LEFT BLANK]

This the 6 day of March, 2024.



 James Christopher Southerly
 Acting State Archaeologist
 Office of State Archaeology
 N.C. Dep't of Natural and Cultural Resources

New Hanover County, North Carolina

Signed and sworn or affirmed to before me this day by James C. Southerly

This 6 day of March, 2024.

Victoria Winslow-Turner
Official Signature of Notary

Victoria Winslow-Turner
Notary Public



My Commission expires: 4-25-27



**North Carolina Department of Natural and Cultural Resources
Office of State Archaeology**

**Governor Roy Cooper
Secretary D. Reid Wilson**

**Office of Archives and History
Deputy Secretary, Darin J. Waters, Ph.D.**

01/11/24

**Dr. Wenonah G. Haire
Catawba Indian Nation
Tribal Historic Preservation Officer
Cultural Center Executive Director
1536 Tome Steven Road
Rock Hill, SC 29730
wenonah.haire@catawba.com**

RE: NAGPRA Consultation for Archaeological Site 31CR617, Carteret County, North Carolina

Dear Dr. Haire:

This letter is to inform you that on July 3rd, 2023, a developer in Carteret County exposed unmarked human burials during preparation of the foundation of a new home on Lot 7 in the Bridgeview residential development. The developer notified the local authorities, and the Medical Examiner deemed the burials archaeologically significant. The Office of State Archaeology (OSA) visited the site, 31CR617, on July 7th, 2023, under N.C.G.S. § 70-30 of The Unmarked Human Burial and Human Skeletal Remains Protection Act, to assess the site, plan with the landowner, prevent further destruction, and recover any visible surface material. Subsequent visits to the site resulted in the recovery of multiple native ancestors and associated funerary objects from an ossuary-style burial which are now in the custody of the OSA.

As the Office of State Archaeology Research Center (OSARC) is under control of the North Carolina Department of Natural and Cultural Resources (NCDNCR), a state agency which receives federal funds, it is a Museum under 43 CFR § 10.2(a)(3) and subject to regulations implementing NAGPRA.

Determining cultural affiliation is a key step in the process by which materials may be repatriated. According to NAGPRA, determining the cultural affiliation of human remains and associated funerary objects means tracing relationships of shared group identity between the past group(s) that interred them and a present-day federally recognized tribe. These determinations must be based on a preponderance of evidence, which can include geography, genetics, archaeology, linguistics, folklore, oral tradition, and historical evidence, as well as other sources of information.

The purpose of this letter is to begin discussions regarding how the OSA can best consult with the Catawba Indian Nation during assessment of cultural affiliation, and the inventory process for the human ancestors and funerary objects from 31CR617. Please find the enclosed map showing the location of 31CR617 for reference, as well as the draft inventory.

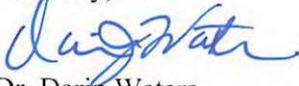
We intend to conduct our consultation efforts with sensitivity to the needs and culture of the tribes involved and with attention to the impact of our actions on tribal self-government. We recognize that one

tribe does not speak for another, and that there is no single voice for all tribes. The OSA will share information in a timely, open, and continuing manner and work to facilitate tribal participation. We will strive to clearly define our objectives, statutory requirements, and limitations. As the first step in this process, we are requesting information that will help us engage in meaningful consultation. In addition to the Catawba Indian Nation, the OSA is reaching out to the Tuscarora Nation, the Nansemond Indian Tribe, the Pamunkey Indian Tribe, and state tribal representatives from the North Carolina Commission of Indian Affairs due to their affiliation with the past groups that lived at the above-mentioned location. Please identify any additional groups you think should be identified in this consultation.

Emily McDowell, OSARC Laboratory Supervisor, will be coordinating OSA's consultation efforts. She can be reached at emily.mcdowell@dncr.nc.gov or 919-715-5599. Please let Emily know which of the following ways you would like to receive information: direct call, email, or mailed information.

We would be happy to schedule a time for tribal representatives to come to the Research Center to examine the collection and associated documents, or to travel to a place of your preference for an in-person meeting. Please let us know if you are interested in either or both of these options. We look forward to hearing from you by February 11th, 2024. If we do not hear from a Tribal representative by February 11th, 2024, we will resend this letter. Thank you in advance for taking the time to advise us on how the OSA can work best with the Catawba Indian Nation

Sincerely,



Dr. Darin Waters
Deputy Secretary, Archives and History
State Historic Preservation Officer

cc:

Tom Jonathan
Chief
Tuscarora Nation
5266 Walmore Road
Lewiston, NY 14092
tuscationhouse@gmail.com

Bryan Printup
Tuscarora Nation
Representative
5266 Walmore Road
Lewiston, NY 14092
bprintup@hetf.org

Caitlin Rogers
Catawba Indian Nation
Cultural Division Program Manager
1536 Tome Steven Road
Rock Hill, SC 29730
caitlin.rogers@catawba.com

Keith Anderson
Nansemond Indian Tribe
Chief
1001 Pembroke Lane
Suffolk, VA 23434
enrollment@nansemond.org

Robert Gray
Pamunkey Indian Tribe
Chief
1054 Pocahontas Trail
King Williams, VA 23086
pamunkeytribe@pamunkey.org

Gregory A. Richardson
Executive Director
NC Commission of Indian Affairs
NC Department of Administration
1317 Mail Service Center
Raleigh, NC 27699-1317
greg.richardson@doa.nc.gov

Chris Southery
North Carolina Office of State Archaeology
State Archaeologist, Interim
1528 For Fisher Blvd South
Kure Beach, NC 28449
chris.southerly@dncr.nc.gov

Kimberly Urban
North Carolina Office of State Archaeology
Assistant State Archaeologist
109 East Jones St.
Raleigh, NC 27601
kimberly.urban@dncr.nc.gov



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01/11/24

Keith Anderson
Nansemond Indian Tribe
Chief
1001 Pembroke Lane
Suffolk, VA 23434
enrollment@nansemond.org

RE: NAGPRA Consultation for Archaeological Site 31CR617, Carteret County, North Carolina

Dear Mr. Anderson:

This letter is to inform you that on July 3rd, 2023, a developer in Carteret County exposed unmarked human burials during preparation of the foundation of a new home on Lot 7 in the Bridgeview residential development. The developer notified the local authorities, and the Medical Examiner deemed the burials archaeologically significant. The Office of State Archaeology (OSA) visited the site, 31CR617, on July 7th, 2023, under N.C.G.S. § 70-30 of The Unmarked Human Burial and Human Skeletal Remains Protection Act, to assess the site, plan with the landowner, prevent further destruction, and recover any visible surface material. Subsequent visits to the site resulted in the recovery of multiple native ancestors and associated funerary objects from an ossuary-style burial, which are now in the custody of the OSA.

As the Office of State Archaeology Research Center (OSARC) is under control of the North Carolina Department of Natural and Cultural Resources (NCDNCR), a state agency which receives federal funds, it is a Museum under 43 CFR § 10.2(a)(3) and subject to regulations implementing NAGPRA.

Determining cultural affiliation is a key step in the process by which materials may be repatriated. According to NAGPRA, determining the cultural affiliation of human remains and associated funerary objects means tracing relationships of shared group identity between the past group(s) that interred them and a present-day federally recognized tribe. These determinations must be based on a preponderance of evidence, which can include geography, genetics, archaeology, linguistics, folklore, oral tradition, and historical evidence, as well as other sources of information.

The purpose of this letter is to begin discussions regarding how the OSA can best consult with the Nansemond Indian Tribe during assessment of cultural affiliation, and the inventory process for the human ancestors and funerary objects from 31CR617. Please find the enclosed map showing the location of 31CR617 for reference as well as the draft inventory.

We intend to conduct our consultation efforts with sensitivity to the needs and culture of the tribes involved and with attention to the impact of our actions on tribal self-government. We recognize that one tribe does not speak for another, and that there is no single voice for all tribes. The OSA will share

information in a timely, open, and continuing manner and work to facilitate tribal participation. We will strive to clearly define our objectives, statutory requirements, and limitations. As the first step in this process, we are requesting information that will help us engage in meaningful consultation. In addition to the Nansemond Indian Tribe, the OSA is reaching out to the Catawba Indian Nation, the Tuscarora Nation, the Pamunkey Indian Tribe, and state tribal representatives from the North Carolina Commission of Indian Affairs due to their affiliation with the past groups that lived at the above-mentioned location. Please identify any additional groups you think should be identified in this consultation.

Emily McDowell, OSARC Laboratory Supervisor, will be coordinating OSA's consultation efforts. She can be reached at emily.mcdowell@dncr.nc.gov or 919-715-5599. Please let Emily know which of the following ways you would like to receive information: direct call, email, or mailed information.

We would be happy to schedule a time for tribal representatives to come to the Research Center to examine the collection and associated documents, or to travel to a place of your preference for an in-person meeting. Please let us know if you are interested in either or both of these options. We look forward to hearing from you by February 11th, 2024. If we do not hear from a Tribal representative by February 11th, 2024, we will resend this letter. Thank you in advance for taking the time to advise us on how the OSA can work best with the Nansemond Indian Tribe.

Sincerely,



Dr. Darin Waters
Deputy Secretary, Archives and History
State Historic Preservation Officer

cc:

Tom Jonathan
Chief
Tuscarora Nation
5266 Walmore Road
Lewiston, NY 14092
tuscnationhouse@gmail.com

Bryan Printup
Tuscarora Nation
Representative
5266 Walmore Road
Lewiston, NY 14092
bprintup@hetf.org

Dr. Wenonah G. Haire
Catawba Indian Nation
Tribal Historic Preservation Officer
Cultural Center Executive Director
1536 Tome Steven Road
Rock Hill, SC 29730
wenonah.haire@catawba.com

Caitlin Rogers
Catawba Indian Nation
Cultural Division Program Manager
1536 Tome Steven Road
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1317 Mail Service Center
Raleigh, NC 27699-1317
greg.richardson@doa.nc.gov

Chris Southery
North Carolina Office of State Archaeology
State Archaeologist, Interim
1528 For Fisher Blvd South
Kure Beach, NC 28449
chris.southerly@dncr.nc.gov

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North Carolina Office of State Archaeology
Assistant State Archaeologist
109 East Jones St.
Raleigh, NC 27601
kimberly.urban@dncr.nc.gov



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01/11/24

Robert Gray
Pamunkey Indian Tribe
Chief
1054 Pocahontas Trail
King Williams, VA 23086
pamunkeytribe@pamunkey.org

RE: NAGPRA Consultation for Archaeological Site 31CR617, Carteret County, North Carolina

Dear Mr. Gray:

This letter is to inform you that on July 3rd, 2023, a developer in Carteret County exposed unmarked human burials during preparation of the foundation of a new home on Lot 7 in the Bridgeview residential development. The developer notified the local authorities, and the Medical Examiner deemed the burials archaeologically significant. The Office of State Archaeology (OSA) visited the site, 31CR617, on July 7th, 2023, under N.C.G.S. § 70-30 of The Unmarked Human Burial and Human Skeletal Remains Protection Act, to assess the site, plan with the landowner, prevent further destruction, and recover any visible surface material. Subsequent visits to the site resulted in the recovery of multiple native ancestors and associated funerary objects from an ossuary-style burial, which are now in the custody of the OSA.

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The purpose of this letter is to begin discussions regarding how the OSA can best consult with the Pamunkey Indian Tribe during assessment of cultural affiliation, and the inventory process for the human ancestors and funerary objects from 31CR617. Please find the enclosed map showing the location of 31CR617 for reference as well as the draft inventory.

We intend to conduct our consultation efforts with sensitivity to the needs and culture of the tribes involved and with attention to the impact of our actions on tribal self-government. We recognize that one tribe does not speak for another, and that there is no single voice for all tribes. The OSA will share

information in a timely, open, and continuing manner and work to facilitate tribal participation. We will strive to clearly define our objectives, statutory requirements, and limitations. As the first step in this process, we are requesting information that will help us engage in meaningful consultation. In addition to the Pamunkey Indian Tribe, the OSA is reaching out to the Catawba Indian Nation, the Tuscarora Nation, the Nansemond Indian Tribe, and state tribal representatives from the North Carolina Commission of Indian Affairs due to their affiliation with the past groups that lived at the above-mentioned location. Please identify any additional groups you think should be identified in this consultation.

Emily McDowell, OSARC Laboratory Supervisor, will be coordinating OSA's consultation efforts. She can be reached at emily.mcdowell@dncr.nc.gov or 919-715-5599. Please let Emily know which of the following ways you would like to receive information: direct call, email, or mailed information.

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Sincerely,



Dr. Darin Waters
Deputy Secretary, Archives and History
State Historic Preservation Officer

cc:

Tom Jonathan
Chief
Tuscarora Nation
5266 Walmore Road
Lewiston, NY 14092
tuscnationhouse@gmail.com

Bryan Printup
Tuscarora Nation
Representative
5266 Walmore Road
Lewiston, NY 14092
bprintup@hetf.org

Dr. Wenonah G. Haire
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Tribal Historic Preservation Officer
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Rock Hill, SC 29730
wenonah.haire@catawba.com

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Cultural Division Program Manager
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1001 Pembroke Lane
Suffolk, VA 23434
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Executive Director
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NC Department of Administration
1317 Mail Service Center
Raleigh, NC 27699-1317
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North Carolina Office of State Archaeology
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1528 For Fisher Blvd South
Kure Beach, NC 28449
chris.southerly@dncr.nc.gov

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North Carolina Office of State Archaeology
Assistant State Archaeologist
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Raleigh, NC 27601
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01/11/24

Tom Jonathan
Chief
Tuscarora Nation
5266 Walmore Road
Lewiston, NY 14092
tuscnationhouse@gmail.com

RE: NAGPRA Consultation for Archaeological Site 31CR617, Carteret County, North Carolina

Dear Mr. Jonathan:

This letter is to inform you that on July 3rd, 2023, a developer in Carteret County exposed unmarked human burials during preparation of the foundation of a new home on Lot 7 in the Bridgeview residential development. The developer notified the local authorities, and the Medical Examiner deemed the burials archaeologically significant. The Office of State Archaeology (OSA) visited the site, 31CR617, on July 7th, 2023, under N.C.G.S. § 70-30 of The Unmarked Human Burial and Human Skeletal Remains Protection Act, to assess the site, plan with the landowner, prevent further destruction, and recover any visible surface material. Subsequent visits to the site resulted in the recovery of multiple native ancestors and associated funerary objects from an ossuary-style burial, which are now in the custody of the OSA.

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The purpose of this letter is to begin discussions regarding how the OSA can best consult with the Tuscarora Nation during assessment of cultural affiliation, and the inventory process for the human ancestors and funerary objects from 31CR617. Please find the enclosed map showing the location of 31CR617 for reference as well as the draft inventory.

We intend to conduct our consultation efforts with sensitivity to the needs and culture of the tribes involved and with attention to the impact of our actions on tribal self-government. We recognize that one tribe does not speak for another, and that there is no single voice for all tribes. The OSA will share

information in a timely, open, and continuing manner and work to facilitate tribal participation. We will strive to clearly define our objectives, statutory requirements, and limitations. As the first step in this process, we are requesting information that will help us engage in meaningful consultation. In addition to the Tuscarora Nation, the OSA is reaching out to the Catawba Indian Nation, the Nansemond Indian Tribe, the Pamunkey Indian Tribe, and state tribal representatives from the North Carolina Commission of Indian Affairs due to their affiliation with the past groups that lived at the above-mentioned location. Please identify any additional groups you think should be identified in this consultation.

Emily McDowell, OSARC Laboratory Supervisor, will be coordinating OSA's consultation efforts. She can be reached at emily.mcdowell@dncr.nc.gov or 919-715-5599. Please let Emily know which of the following ways you would like to receive information: direct call, email, or mailed information.

We would be happy to schedule a time for tribal representatives to come to the Research Center to examine the collection and associated documents, or to travel to a place of your preference for an in-person meeting. Please let us know if you are interested in either or both of these options. We look forward to hearing from you by February 11th, 2024. If we do not hear from a Tribal representative by February 11th, 2024, we will resend this letter. Thank you in advance for taking the time to advise us on how the OSA can work best with the Tuscarora Nation.

Sincerely,



Dr. Darin Waters
Deputy Secretary, Archives and History
State Historic Preservation Officer

cc:

Bryan Printup
Tuscarora Nation
Representative
5266 Walmore Road
Lewiston, NY 14092
bprintup@hetf.org

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Tribal Historic Preservation Officer
Cultural Center Executive Director
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Rock Hill, SC 29730
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01/11/24

RE: NAGPRA Consultation for Archaeological Site 31CR617, Carteret County, North Carolina

Gregory A. Richardson
Executive Director
NC Commission of Indian Affairs
NC Department of Administration
1317 Mail Service Center
Raleigh, NC 27699-1317
greg.richardson@doa.nc.gov

Dear Mr. Richardson:

This letter is to inform you that on July 3rd, 2023, a developer in Carteret County exposed unmarked human burials during preparation of the foundation of a new home on Lot 7 in the Bridgeview residential development. The developer notified the local authorities, and the Medical Examiner deemed the burials archaeologically significant. The Office of State Archaeology (OSA) visited the site, 31CR617, on July 7th, 2023, under N.C.G.S. § 70-30 of The Unmarked Human Burial and Human Skeletal Remains Protection Act, to assess the site, plan with the landowner, prevent further destruction, and recover any visible surface material. Subsequent visits to the site resulted in the recovery of multiple native ancestors and associated funerary objects from an ossuary-style burial, which are now in the custody of the OSA.

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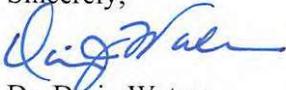
The purpose of this letter is to begin discussions regarding how the OSA can best consult with the Commission and the American Indian tribes with ancestral connections to Carteret County during assessment of cultural affiliation, and the inventory process for the human ancestors and funerary objects from 31CR617. Please find the enclosed map showing the location of 31CR617 for reference, as well as the draft inventory.

We intend to conduct our consultation efforts with sensitivity to the needs and culture of the tribes involved and with attention to the impact of our actions on tribal self-government. We recognize that one tribe does not speak for another, and that there is no single voice for all tribes. The OSA will share information in a timely, open, and continuing manner and work to facilitate tribal participation. We will strive to clearly define our objectives, statutory requirements, and limitations. As the first step in this process, we are requesting information that will help us engage in meaningful consultation. In addition to the North Carolina Commission of Indian Affairs, the OSA is reaching out to the Catawba Indian Nation, the Tuscarora Nation, the Pamunkey Indian Tribe, and Nansemond Indian Tribe due to their affiliation with the past groups that lived at the above-mentioned location. Please identify any additional groups or specific individuals you think should be identified in this consultation.

Emily McDowell, OSARC Laboratory Supervisor, will be coordinating OSA's consultation efforts. She can be reached at emily.mcdowell@dncr.nc.gov or 919-715-5599. Please let Emily know which of the following ways you would like to receive information: direct call, email, or mailed information.

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Sincerely,



Dr. Darin Waters
Deputy Secretary, Archives and History
State Historic Preservation Officer

cc:

Tom Jonathan
Chief
Tuscarora Nation
5266 Walmore Road
Lewiston, NY 14092
tuscnationhouse@gmail.com

Catilin Rogers
Catawba Indian Nation
Cultural Division Program Manager
1536 Tome Steven Road
Rock Hill, SC 29730
caitlin.rogers@catawba.com

Bryan Printup
Tuscarora Nation
Representative
5266 Walmore Road
Lewiston, NY 14092
bprintup@hetf.org

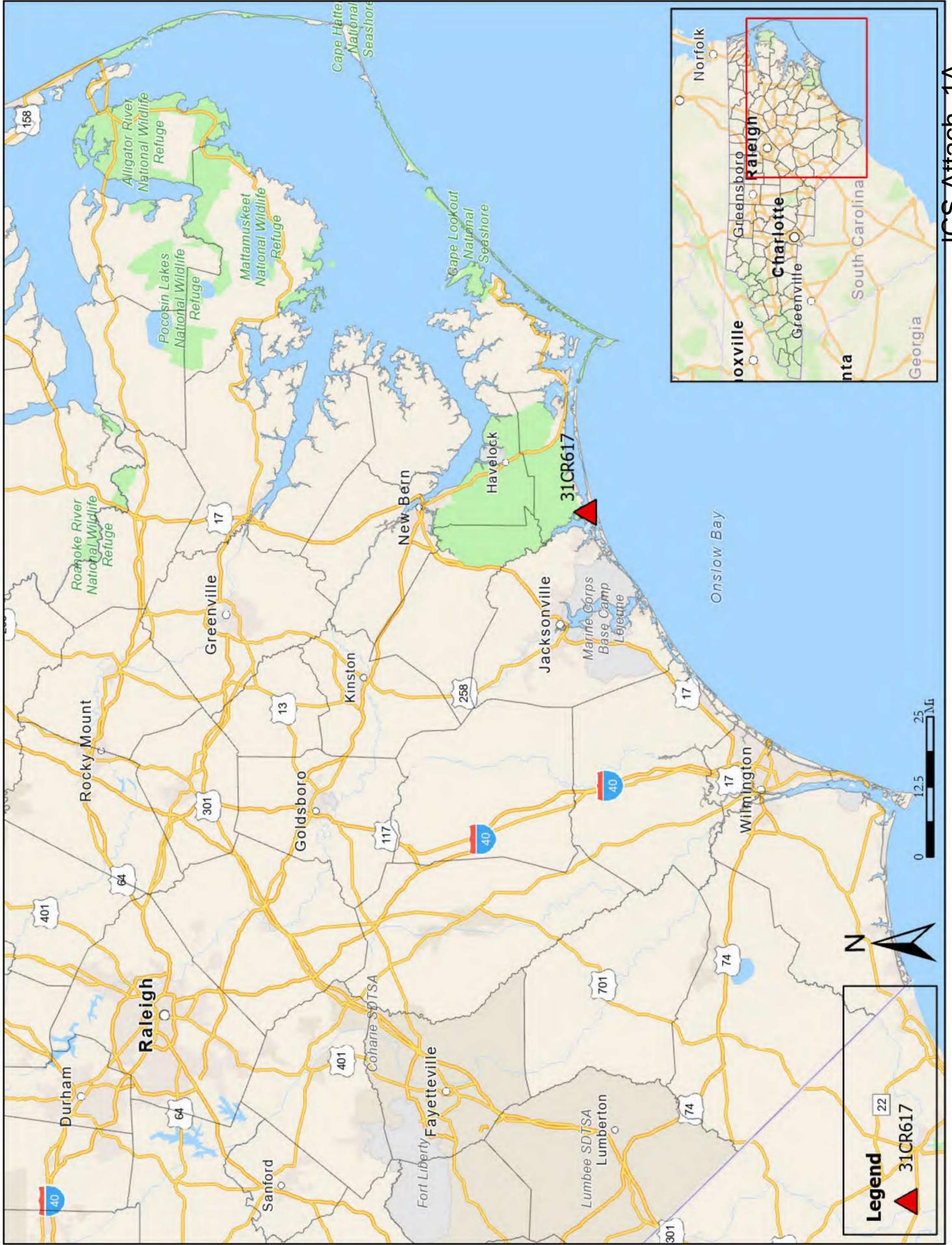
Robert Gray
Pamunkey Indian Tribe
Chief
1054 Pocahontas Trail
King Williams, VA 23086
pamunkeytribe@pamunkey.org

Dr. Wenonah G. Haire
Catawba Indian Nation
Tribal Historic Preservation Officer
Cultural Center Executive Director
1536 Tome Steven Road
Rock Hill, SC 29730
wenonah.haire@catawba.com

Keith Anderson
Nansemond Indian Tribe
Chief
1001 Pembroke Lane
Suffolk, VA 23434
enrollment@nansemond.org

Chris Southery
North Carolina Office of State Archaeology
State Archaeologist, Interim
1528 For Fisher Blvd South
Kure Beach, NC 28449
chris.southerly@dncr.nc.gov

Kimberly Urban
North Carolina Office of State Archaeology
Assistant State Archaeologist
109 East Jones St.
Raleigh, NC 27601
kimberly.urban@dncr.nc.gov





North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary D. Reid Wilson

Office of Archives and History
Deputy Secretary, Darin J. Waters, Ph.D.

June 14, 2022

MEMORANDUM

TO: Gregg Bodnar, Assistant Major Permits Coordinator gregg.bodnar@ncdenr.gov
Division of Coastal Management
NC Department of Environmental Quality

FROM: Renee Gledhill-Earley 
Environmental Review Coordinator

SUBJECT: Construct Bridgeview subdivision, 1180 Cedar Point Boulevard, Cedar Point,
Carteret County, ER 22-1558

Thank you for your June 1, 2022, submission concerning the above-referenced project. We have reviewed the project and offer the following comments.

Based on the information provided we are unable to accurately determine impacts to historic properties within the APE. We will need to either see interior and exterior photographs of the extant Old Ennett Place (CR1355) house/"fish camp" or be allowed to perform a site visit to investigate the structure. Easter Office staff will be in the area in the latter half of June and are happy to schedule a visit if access can be granted by the property owner. If the applicant is interested in facilitating a site visit, they should contact John Wood at john.p.wood@ncdcr.gov or 252-830-6580 ext. 225 to schedule a date.

Otherwise, they must provide us with the requested photographs. A final determination will be made once we have a better understanding of the current state of the structure. Visit our Project Review Checklist Page for an example of Preliminary Reconnaissance photographs (<https://www.ncdcr.gov/state-historic-preservation-office/environmental-review/project-review-checklist>).

The Area of Potential Effect (APE) of the proposed subdivision contains two known and unassessed prehistoric archaeological sites (31CR93 and 31CR95) and is adjacent to three other archaeological sites identified in a survey for the neighboring subdivision. Our records also indicate that the APE was an early plantation site with occupation through the antebellum period, with possible graves present. Due to the presence of the noted prehistoric sites along with the historical narrative tied to the APE and potential for human remains, we recommend a comprehensive archaeological survey be undertaken within the project area to relocate and assess the archaeological sites already present, as well as any other potentially significant archaeological resources that may be also present prior to any ground disturbing activities.

The purpose of this survey is to identify archaeological sites and make recommendations regarding their eligibility status in terms of the National Register of Historic Places. This work should be conducted by an experienced archaeologist who meets the *Secretary of the Interior Professional Qualifications Standards*. A list of archaeological consultants who have conducted or expressed an interest in contract work in North Carolina is available at <https://archaeology.ncdcr.gov/archaeological-consultant-list>. The archaeologists listed, or any other experienced archaeologist, may be contacted to conduct the recommended survey.

Please note that our office requests consultation with the Office of State Archaeology Review Archaeologist to discuss appropriate field methodologies prior to the archaeological field investigation.

One paper copy and one digital copy (PDF) of all resulting archaeological reports, as well as a digital copy (PDF) of the North Carolina Site Form for each site recorded, should be forwarded to the Office of State Archaeology (OSA) through this office, for review and comment as soon as they are available and in advance of any construction or ground disturbance activities. OSA's Archaeological Standards and Guidelines for Background Research, Field Methodologies, Technical Reports, and Curation can be found online at: https://files.nc.gov/dncr-arch/OSA_Guidelines_Dec2017.pdf.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

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Millis, Heather. 2011. Broad Reach - Cannonsgate, Six Management Summaries. Chapel Hill: TRC Environmental Corporation.

Polglase, Christopher, Thomas Davis, Meril Dunn, Patrick Giglio, Michael J. West, Martha Williams.
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Carolina. Frederick: R. Christopher Goodwin & Associates.

Archaeological Sites within a 2-mile radius of 31CR95

31CR8

Site was visited on February 10, 1963 by Tucker Littleton. Littleton collected 24 sherds and chipped pebbles, he also noted, "largest concentration of shell midden." Not much more information was given on this site.

31CR9

Site recorded by Tucker Littleton in August 6, 1963. He noted that, "the shore of an extension of land that is almost an island." He gathered around 13 sherds and shells from the shoreline. Not much more information was given on this site.

31CR10

Site first recorded by Tucker Littleton in 1963 and then visited by Coe, Keel, Egloff and Lotfield. The site is several hundred feet long and the site form states, "largest collection of sherds found in a concentration of shells in front of a small cottage near the water." They also noted that it is a tremendous midden.

31CR16

Site first recorded by Tucker Littleton in 1963 and again visited by Lotfield in 1973. Lotfield wrote his thesis *A Brief and True Report--: an Archaeological Interpretation of the Southern North Carolina Coast*, which is noted on the site form along with a note saying photos are included. The site is a shell midden which occurs on both sides of a road and extends to the shore. It is stated on the site form that the site is interesting because there are several types of tempering, but the depth of the midden does not appear to be great. Artifacts recovered from site include sherds, bones, flakes, and historic ceramics.

31CR17

Site recorded by Tucker Littleton in 1964. Littleton found sherds in a housing development scattered around houses. It is also noted on site form there is no shell midden.

31CR18

Site recorded by Tucker Littleton in 1964. Site was in an open field behind Cedar Point Beach. Contained some shell midden in circular patches and one projectile point was found along with sherds and flakes.

31CR20

Site recorded by Tucker Littleton in 1964. A bulldozer scattered the site for 2 blocks but from the scattering, bones, sherds, flakes, and clay pipe fragments were recovered.

31CR21

Site recorded by Tucker Littleton in 1964. Site form says the site is in the town of Cape Carteret at a service station on a corner. The site has been bulldozed and only sherds have been recovered.

31CR22

Site recorded by Tucker Littleton in 1964. Largest and most extensive shell midden in town but soil has been moved to make a street. Tucker says that the midden was a foot or more thick. Artifacts recovered were brick fragments, sherds, shell, a projectile point, and chipped pebbles.

31CR23

Site recorded by Tucker Littleton in 1964. Site was heavily bulldozed, and the artifacts recovered were sherds, historic ceramics, a projectile point, flakes and chipped pebbles.

31CR24

Site recorded by Tucker Littleton in 1964. Site was reached by boat and sherds were found washed out below the high-water mark. Other artifacts found were pecked stones, sherds, historic ceramics, and chipped pebbles.

31CR25

Site recorded by private collectors David and Marilyn Delling. They stated that the site is a large old dune covered by trees, but the middle of the hilltop has been bulldozed. Artifacts collected were sherds and a reconstructed bowl.

31CR33

Site was recorded by J. L. Mattson in 1969. Site was bulldozed for road, and a small amount of midden and pottery was exposed. Additional remarks on site form say that recorder suggests that a greater amount of material could be on higher ground. On the back of the site form is more handwritten information that says some flint, some agate, some granite, and a small white bead with a hole in it. He also says he found a graveyard where a skull was discovered that no one knew about, a local told him about it and said no one knew of any white people buried there. He also says that there is a shell mound that is nearby that is Indian burial ground and suggested two other areas that were also burial grounds.

Site was then revisited by Mathis in 1990 and found the site was destroyed by a subdivision (Forest Hills Traylor Park) and no trace of site could be found.

31CR35

Site recorded by J.L. Mattson in 1969. The site is in a road cut that leads to the Coast Guard Station and the road at that time was not recorded on any maps. Only 2 sherds were found.

31CR42

Site recorded by Tucker Littleton in 1969. The artifacts found were 7 sherds and 2 hammerstones.

31CR49

Site recorded by Bill Simpson and J.L. Mattson in 1969. The site was bulldozed away in 1973 but before that in 1969 they found 13 sherds and flakes.

31CR51

Site was recorded by T.R. Littleton and J.L. Mattson in 1969. The majority of material collected from this site was in the form of flakes and projectile points and little pottery of midden was in evidence. Artifacts recovered were 9 sherds, 6 projectile points, and 14 historic ceramics.

31CR52

Site was recorded by T.R. Littleton and J.L. Mattson in 1969. The site has been greatly disturbed by the military to provide a proper landing field. Large concentrations of midden have been bulldozed up into ramps and both historic and prehistoric artifacts were recovered. Site form says 374 sherds. Historic material. The site form also says Loftfield visited the site in 1973.

31CR81

Site was recorded by T.R. Littleton in 1971. Large site that is probably related to the other sites in the area. The landowner has found sherds, projectile points, and pipes but has given away over the years. One chlonite pipe was given to Mr. Gerald Parker who then contacted RLA. Loftfield also visited the site in 1973.

Site was again evaluated in 1986 by D.K. Martin. Who recommended further work be done if midden cannot be protected.

31CR82

Site was recorded by T.R. Littleton and L.J. Darmo in 1971. Small site marked by a circular shell midden of very shallow depth. A few sherds were recovered.

31CR83

Site recorded by T.R. Littleton and L.J. Darmo in 1971. Small circular shell midden quite shallow and few sherds were collected.

31CR90

Site recorded by B.C. Keel and T. Littleton in 1972. Thin shell midden destroyed by developers.

31CR91

Site recorded by B.C. Keel and T. Littleton in 1972. Thin shell midden destroyed by developers.

31CR92

Site recorded by B.C. Keel and T. Littleton in 1972. Thin shell midden destroyed by developers.

31CR93

Site recorded by Tucker Littleton in 1972. Destroyed by State Highway Commission, checked but no remains 11/8/72 BK

31CR94

Site was recorded by B.C. Keel and T. Littleton in 1972. No other information.

31CR95

Site was recorded by T. Littleton and T. Loftfield in 1973. Site is extremely disturbed by construction and probably fully destroyed. Material found in sewer line excavation at south end of construction area. Artifacts recovered were sherds and a core.

31CR96

Site recorded by T. Littleton and T. Loftfield in 1973. Site is composed of many small concentrations of shell and sherds were found in the shell deposits. The artifacts recovered were 350 sherds, a biface, flakes, and clay and stone pipe fragments.

31CR97

Site recorded by T. Littleton and T. Loftfield in 1973. Site was composed of several shell concentrations of shell which were collected separately, and the concentrations were small. Artifacts collected were a biface, sherds, hammerstones, and historic ceramics.

31CR98

Site recorded by T. Littleton and T. Loftfield in 1973. Site is composed of several concentrations of shell visible in plowed field. Artifacts recovered were a biface, a scraper, flakes, sherds, and stone and clay pipe fragments.

31CR126

Site was recorded by T. Littleton and Milton Gillette in 1973. Site is probably eroded away. Only 4 sherds were recovered.

31CR128

Site was recorded by T. Littleton and Jerry Burns in 1973. A very thin shell midden was observed covering a large area. Site is in planted corn and a few sherds were recovered but not in the shell midden area.

31CR130

Site was recorded by T. Littleton and James Littleton in 1973. A fair number of sherds were recovered considering the small area that was exposed. Most of the lot was covered in grass but the few bare spots had considerable shell midden. They believe the whole Hill Street area is one large site.

31CR135

Site was recorded by Littleton and Loftfield in 1973. The owner of the property has a few projectile points in his collection from the site, probably archaic-woodland periods. A few flakes and sherds were found in the field.

31CR139

Site was recorded by Littleton, Autry, and Loftfield in 1974. The property owner has found sherds while digging posts for his dog kennel. Shell midden undisturbed and 0.5 ft deep, perhaps more.

31CR140

Site was recorded by Littleton, Autry, and Loftfield in 1974. Artifacts collected were steatite sherds, chipped stones, sherds, and a projectile point which were collected from the surface of the field.

31CR142

Site was recorded by Littleton and Loftfield in 1974. The site is a shallow shell midden extensively plowed, sherds and flakes were collected from the surface.

31CR147

Site was recorded by Tucker Littleton in 1964. Site is located on an island and much of the island is tidal marsh. Artifacts collected were sherds, a hammerstone, flakes and chipped pebbles.

31CR154

Site was recorded by Steve Leonard and Tucker Littleton in 1978. The site is a small lens of a shell midden but has been bulldozed and virtually destroyed.

Mathis went back out in 1990 and saw that the site was destroyed and covered in fill for trailer park. He dug one shovel test and stated that if the site was still there it is deeply buried.

31CR155

Site was recorded by Steve Leonard and Tucker Littleton in 1978. Dirt road was bulldozed through a sand dune and artifacts were found in the road. They found an unusual amount of gastropod shell with holes at the end.

31CR156

Site recorded by Steve Leonard and Tucker Littleton in 1978. Sherds found in ditch bank.

31CR159

Site recorded by J. Wilson in 1978. Site is a historic cemetery with no above ground remains.

31CR169

Site was recorded by J. Littleton and T. Littleton in 1979. Site is on a slight rise along the roadside.

31CR170

Site was recorded by J. Littleton and T. Littleton in 1979. Cultural material was recovered from the north side of NC 24 where there was greater surface visibility.

31CR171

Site recorded by J. Littleton and T. Littleton in 1979. Site is on a rise that parallels NC 24 for almost 50-60 ft. and is on both sides of road.

31CR173

Site was recorded by J. Littleton and T. Littleton in 1979. No shell but cultural material is thinly scattered. The site is on a rise on the east side of NC 58.

31CR207 (This is where compliance archaeology survey projects start)

Site was recorded by Q. Bass and B. Kaylor in 1986 for a compliance project. Timber sale project. The site is situated on a knoll. Presence of concentrations of brick, metal, trash and oyster shells. A 20th century farmstead is present. Site was largely destroyed at time of acquisition.

31CR249

Site was recorded by Thomas Hargrove in 1990 for a compliance project. Sherds and a shell midden were recorded in a shovel tests. Site appears to be a short or long term fishing camp of Late Woodland period.

31CR250

Site was recorded by ARC in 1994 for a compliance project. No artifacts recovered, just shell midden.

31CR255

Site was recorded by ARC in 1991 for a compliance project. Site is in proposed right of way. Shell found in shovel tests indicating shell midden, but no other artifacts found.

31CR256

Site was recorded by ARC in 1991 for a compliance project. Shell found in shovel tests indicating shell midden, but no other artifacts were found. A dune-crest concentration of oyster and clam shell.

31CR264

Site was recorded by Mathis in 1994 for a compliance project. Road construction hit a partial pot, however plowing and other construction have probably done in most. Shell was scattered indicating likely a shell filled pit at one time. Hammerstone and other cobble frags observed. Cord marked, fabric impressed, simple stamped sherds found. This site is likely associated with the larger site of CR267 and probably a residential/campsite.

31CR266

Site was recorded by Mathis in 1994 for a compliance project. Cord marked and fabric impressed sherds found. Site form is basically the same as 264, looks like most was copied and pasted (Even the partial pot part)

31CR267

Site was recorded by Mathis in 1994 for a compliance project. Research potential is very high. Shell midden, features, burials, houses can all be expected. Seven features found in road cut, six shell filled pits and one burned shell pit. Bones, sherds, lithic artifacts were all recovered.

31CR268

Site was recorded by Loretta Lautzenheiser, Cynthia Satterfield, and Rob Jones in 1994 for a compliance project. Survey and limited data recovery for Crystal Shores subdivision. They argued the site was not eligible after evaluation. The collection strategy was random walkover, then shovel tests and test trench. Shell midden lithic artifacts, sherds and human remains were found. So, how is that *not* eligible?

31CR279

Site was recorded by Mathis in 1995 and it was not a compliance project. Could not get accurate size of site due to ground cover, but shell does not seem to be midden but truncated features. Sherds and shell scattered on surface. Recorder says site should be tested to determine whether features are there...bet there are.

31CR280

Site was recorded by Mathis in 1995 and was not a compliance project. Site has been destroyed by sand mining operations. Only 2 sherds and scattered shell observed in mine. Scattering of shell could indicated shell features were present at one point.

31CR289

Site was recorded by T.W. Davis and Goodwin and Associates in 1996 for a compliance project. Surrounding area was former location of housing buildings and has areas of severe subsurface disturbance. Artifact assemblage is limited and diffuse and found in questionable soil. Lithics suggests specialized activity area possibly related to hunting. Marine Corp Auxiliary Landing Field.

31CR313

Site was recorded by Michael Harmon in 2000 for a compliance project. Prehistoric and Historic settlement use and 18th century component may intact architectural remains and activity areas. Lithics, shell, sherds and historic debris were recovered.

31CR316

Site was recorded by Michael Harmon in 2000 for a compliance project. Site damaged by logging and tree planting and erosion. Shell and sherds were recovered.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 121-910

CEDAR POINT DEVELOPERS, LLC)
Plaintiff,)
v.)
COASTAL RESOURCES COMMISSION)
Defendant.)
)
)

**AFFIDAVIT OF
JONATHAN HOWELL
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

AFFIDAVIT OF JONATHAN HOWELL

I, Jonathan Howell being first duly sworn, do hereby depose and say:

1. I am submitting this affidavit in support of Defendant's Motion to Dismiss.

These statements are true and correct to the best of my knowledge.

2. I am the Regulatory Section Manager for the North Carolina Division of Coastal Management ("DEQ"), a division within the North Carolina Department of Environmental Quality ("NCDEQ").

3. I have worked in this position since November, 2022. Before accepting my current position, I worked in other positions with the Division since first joining DCM in 2004. The other positions I've held within DCM include District Planner, Field Representative, Assistant Major Permits Manager, District Manager and Major Permits Manager.

4. I have a B.S. Degree from Mount Olive College in Organizational Development and M.A. Degree from East Carolina University in Environmental Planning.

5. I am familiar with the Site of the Bridgeview Development owned by Plaintiff. I am aware that the upland portion of the development which is located within 575' of the high water mark of Bogue Sound is within the CAMA Coastal Shorelines AEC

for Outstanding Resource Waters, and pursuant to G.S. 113A-118, any development within the AEC requires CAMA permit authorization before taking place.

6. At the time Plaintiff received its CAMA Major Permit on July 28, 2022, I was the Major Permits Manager, and with the assistance of my staff, we reviewed the project before permit issuance. I also was involved in DCM's involvement with the Site following the July 2023 discovery of human remains on Lot 7 (outside the AEC), including DCM's response to the Plaintiff through the August 17, 2023 Stop Work Order, noting that work outside the AEC which has impacts on coastal resources within the AEC may be considered by DCM. A copy of former Director Davis's August 17, 2023 Stop Work Order is Attachment A to this Affidavit. A Revised Stop Work Order was issued on September 9, 2023 limiting the stop work order to only the Area of Environmental Concern. A copy of the Revised Stop Work Order is Attachment B to this Affidavit.

7. I have been on site multiple times. At the time of my last site visit, the road in the AEC was not paved. To my knowledge, that is the only work that has been permitted but not completed.

8. Since the September 9, 2023 Revised Stop Work Order, it is my understanding that the Permittee has not yet provided written assurance from NCDNCR that Condition 1 on the Permit has been met as of the date of this Affidavit, based on my review of the permit file materials and consulting with appropriate DCM major permits staff.

9. Since the September 9, 2023 Revised Stop Work Order, it is my understanding that the Permittee has not sought any modification of the Permit.

10. Since the September 9, 2023 Revised Stop Work Order, it is my understanding that neither the Plaintiff nor any third-party owner of a Bridgeview lot have applied for the development of a house on a lot within the CAMA Coastal Shorelines 575'

AEC, based on my review of the permit file materials and consulting with appropriate DCM staff. For this subdivision, Carteret County requested, and DCM agreed that DCM staff would process any CAMA Minor Permits for individual lot development as noted in the December 15, 2023 letter provided as Attachment C to this Affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

This the 11th day of March, 2024.



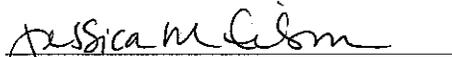
Jonathan Howell, Regulatory Section Manager
Division of Coastal Management
NC Department of Environmental Quality

STATE OF NORTH CAROLINA

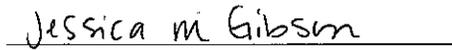
WAKE COUNTY

I certify that Jonathan Howell personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

This 11 day of March, 2024



Notary Public



Printed name of Notary Public



OFFICIAL SEAL:

My Commission expires: 03/23/2028



ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director

August 17, 2023

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

ALSO SENT EMAIL DELIVERY TO: elijahm@mortontrucking.com and rbrownlow@tidewaterenc.com

Cedar Point Developers, LLC.
c/o Steven Kellum, Managing Member
166 Center St.
Jacksonville, NC 28546

Tidewater Associates Inc.
c/o Roy Brownlow,
604-E Cedar Point Blvd.
Cedar Point, NC 28584

**RE: *STOP WORK ORDER AND NOTICE OF REGULATORY REQUIREMENTS
CAMA Permit No. 79-22***

Dear Mr. Morton, Mr. Kellum and Mr. Brownlow:

This letter is in reference to CAMA Permit No. 79-22, which was issued on July 28, 2022, and authorized an 83-lot subdivision known as Bridge View. The property is located at 1180 Cedar Point Blvd., adjacent to Bogue Sound, in Cedar Point, Carteret County, North Carolina. Portions of the subject property are within the Coastal and Estuarine Shoreline Areas of Environmental Concern (AEC) and adjacent to waters classified as Outstanding Resource Waters by the Environmental Management Commission.

Condition No. 1 of Permit No. 79-22 states, “Prior to the initiation of any land-disturbing activities, the permittee shall satisfy the requirements of the NC Department of Natural and Cultural Resources (NCDNCR). Initiation of the permitted land-disturbing activities shall not begin until written approval is obtained from the NCDNCR, and a copy of such approval has been submitted to the Division of Coastal Management”.

It is our understanding that the requirements of NCDNCR have not been satisfied. Specifically, NCDNCR requested a preliminary survey including a summary report which has not been submitted to the NCDNCR. However, the preliminary survey has uncovered a significant



North Carolina Department of Environmental Quality | Division of Coastal Management
Morehead City Office | 400 Commerce Avenue | Morehead City, North Carolina 28557
252.515.5400

Cedar Point Developers, LLC.
c/o Roy Brownlow, Tidewater Associates Inc.
Page 2 of 3

number of cultural features consistent with seasonal and long-term occupation of the site by Native Americans during the Middle and Late Woodland periods (as early as 300 BC), including at least 10 features that likely represent human burials in various forms. NC DNCR provided a letter dated August 15, 2023 (attached) detailing the cultural significance of the site, concerns regarding those features and remains, and required next steps. Specifically, the attached letter recommends a comprehensive archaeological survey of the subject property, a Phase II archeological investigation within the AEC, and states the site is eligible for the National Register of Historic Places under Criterion A (association with events that have made a significant contribution to the broad patterns of our history) and Criterion D (ability to yield information important in prehistory).

Cultural artifacts and human remains have been uncovered both within and outside the AEC boundary. The attached NC DNCR letter states, "...it is highly probable that archaeological sites 31CR93 and 31CR95 represent two loci of one larger continuous archaeological site rather than two distinct sites". Furthermore, the letter goes on to state that there is "...a strong indication that the habitation site may encompass much of the upland area outside the CAMA 575' AEC..." and that "We also wish to note and underline in the strongest terms that the potential for human remains of American Indians within and in the immediate vicinity of the CAMA AEC is very high...". DCM is concerned about the possibility that any work outside the AEC that impacts those cultural, historic, or scientific resources could adversely impact the cultural, historic or scientific resources within the AEC due to the possible interconnected nature of these features. DCM is hopeful that your consultant's forthcoming report may provide more information about what cultural, historic or scientific resources are present both within and outside the AEC.

Additionally, 15A NCAC 07H.0208(a)(2) states in part, "Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards...Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural Resources." Condition No. 1 of the permit must be satisfied for you to comply with this rule and your permit.

Cedar Point Developers LLC., and any contractor, subcontractor, or person functioning as a contractor are hereby requested to **STOP WORK IMMEDIATELY WITHIN THE BOUNDS OF THE BRIDGE VIEW SUBDIVISION AS DESCRIBED IN THE CAMA APPLICATION** (Tax Parcel ID 538413031785000 consists of approximately 45.81 acres and is bordered on the east by Bogue Sound RV Park, to the south by Bogue Sound, the west by Megans Bay residential subdivision and the north by vacant commercial tracts and Hwy 24. **NO WORK MAY PROCEED WITHOUT FINAL APPROVAL OF NC DCM AND NC DNCR.**

Failure or refusal to comply with the terms of this Notice after receipt may constitute a violation of the Coastal Area Management Act (CAMA) and Cedar Point Developers LLC. may be subject to civil and/or criminal penalties as provided by North Carolina General Statute (NCGS) 113A-126 and with the North Carolina Administrative Code, Title 15A, Subchapter 7J, Section .0409, as adopted by the Coastal Resources Commission. Pursuant to NCAC 7J .0409(f)(1)(E), any



Cedar Point Developers, LLC.
c/o Roy Brownlow, Tidewater Associates Inc.
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contractor, subcontractor, or person functioning as a contractor shall be subject to a Notice of Violation and assessment of a civil penalty in addition to that assessed against the landowner. Each day that the actions described in this Notice, continue or repeated may constitute a separate violation that is subject to an additional assessment of \$10,000. An injunction and civil penalty may also be sought to enforce any violation in accordance with NCGS 113A-126.

DCM hopes to convene an onsite meeting with representatives of Cedar Point Developers, NCDNCR, Carteret County, and our staff to resolve the situation and identify a path forward. Thank you for your time and cooperation in resolving this important matter. The relevant statutes and regulations are available from this office, and I am willing to assist you in complying with the requirements of these laws. Site inspections will be made to verify compliance with this **STOP WORK ORDER.**

Sincerely,



Jonathan Howell
Regulatory Section Chief

Cc: Heather Styron, District Manager, DCM
Gregg Bodnar, Major Permits Coordinator
Kara Guthrie, Coastal Management Representative
John Mintz, NC DNCR Archeologist
Ramona Bartos, NC DNCR Administrator





September 8, 2023

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director

ALSO SENT EMAIL DELIVERY TO: elijahm@mortontrucking.com and
rbrownlow@tidewaterenc.com

Cedar Point Developers, LLC.
c/o Steven Kellum, Managing Member 166
Center St.
Jacksonville, NC 28546

Tidewater Associates Inc. c/o
Roy Brownlow,
604-E Cedar Point Blvd.
Cedar Point, NC 28584

**RE: REVISED STOP WORK ORDER
CAMA Permit No. 79-22**

Dear Mr. Morton, Mr. Kellum and Mr. Brownlow:

This letter is in reference to CAMA Permit No. 79-22, which was issued on July 28, 2022 and authorized an 83-lot subdivision known as Bridge View. The property is located at 1180 Cedar Point Blvd., adjacent to Bogue Sound, in Cedar Point, Carteret County, North Carolina. Portions of the subject property are within the Coastal and Estuarine Shoreline Areas of Environmental Concern (AEC) and adjacent to waters classified as Outstanding Resource Waters by the Environmental Management Commission.

Condition No. 1 of Permit No. 79-22 states, "Prior to the initiation of any land-disturbing activities, the permittee shall satisfy the requirements of the NC Department of Natural and Cultural Resources (NCDNCR). Initiation of the permitted land-disturbing activities shall not begin until written approval is obtained from the NCDNCR, and a copy of such approval has been submitted to the Division of Coastal Management".

Following initial archaeological excavations, DCM was concerned about the possibility that any continued ground disturbance activities, both within and outside the AEC, could impact cultural, historic, or scientific resources within the AEC due to the possible interconnected nature of these features. As a result, DCM issued a Stop Work Order on 8/17/23 for Phases I and II of the subdivision/parcel. Since that time, meetings have been held between you, the Division, and the Office of State Archaeology. Through this coordination and your willingness to work to resolve this



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252.515.5400

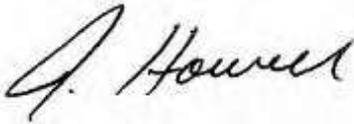
Cedar Point Developers, LLC.
c/o Roy Brownlow, Tidewater Associates Inc.
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issue, it has been determined that the Stop Work Order issued on 8/17/23 no longer applies to Phase I and only continues to apply to Phase II of Bridgeview Subdivision.

The Office of State Archaeology will be providing you with additional guidance on steps that should be taken in response to any further, unanticipated discoveries as development continues in Phase I.

Thank you for your time and cooperation in resolving this important matter.

Sincerely,



Jonathan Howell
Regulatory Section Chief

Cc: Heather Styron, District Manager, DCM Gregg Bodnar, Major Permits Coordinator
Kara Guthrie, Coastal Management Representative John Mintz, NC DNCR Archeologist
Ramona Bartos, NC DNCR Administrator



ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director



NORTH CAROLINA
Environmental Quality

December 15, 2023

Eugene Foxworth
Assistant County Manager
302 Courthouse Square
Beaufort, NC 28516

via email to: Eugene.Foxworth@carteretcountync.gov

Dear Mr. Foxworth,

I am in receipt of your November 27, 2023, letter requesting that the Division of Coastal Management (DCM) assume the permitting duties from the County's Coastal Area Management Act (CAMA) Local Permitting Program pursuant to 15A NCAC 071 .0507(d) and (e) for the Bridgeview Subdivision lots subject to the CAMA Major Permit. In this circumstance, those lots would be the lots located in Bridgeview Subdivision Section II.

On 7/28/22, DCM issued CAMA Major Permit number 79-22 to Cedar Point Developers, LLC authorizing the development of infrastructure for a 83-lot subdivision at 1180 Cedar Point Blvd. As part of the review process, it was determined by the State Historic Preservation Office (SHPO) that archaeological resources may be present at the project site. In order to address SHPO's concerns about resources at the Site, the CAMA Major permit was conditioned to require the permittee to satisfy the requirements of the SHPO related to cultural resources prior to undertaking development. To date, the permittee has partially complied with this permit condition by commissioning an archeological survey resulting in cultural resources and human burials being discovered at the site.

Based on the preliminary results of this survey, the SHPO has determined additional archaeological survey work is required. For this reason, any applications for CAMA Minor Permits within the CAMA Area of Environmental Concern (AEC) may also be subject to requirements for additional survey work and/or mitigation or avoidance measures as conditions of permit approval.

I have reviewed your request and agree that DCM will act as the permitting authority **for those lots within the AEC within the Site until such time as DCM determines that any impacts to archaeological/cultural resources have been appropriately addressed or avoided. At that time DCM will relinquish permitting authority for lots within the AEC of Bridgeview Section II.** I agree that because these lots are also within the scope of CAMA Major Permit No. 79-22 and subject to the Archaeological survey requirement it could cause confusion to have two different permitting authorities regulating a particular lot pursuant to CAMA at one time. For this reason, I believe your request meets the standards outlined in 15A NCAC 071 .0507(d) and (e) and your letter constitutes the written notice to the Commission as required by NCAC 071 .0507(d).



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252.515.5400

Heather Styron, the Division's District Manager in Morehead City will contact your staff to ensure a smooth transfer of the CAMA permit applications. Her staff will then contact the applicants to coordinate subsequent correspondence and permit processing. As always, the DCM enjoys the CAMA partnership with the County.

Sincerely,



Braxton Davis, Director
N.C. Division of Coastal Management



ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director



December 21, 2023

Ms. Mary Katherine Stukes
Moore & Van Allen PLLC
100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003

By email to: marykatherinestukes@mvalaw.com

Re: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point, NC

Dear Ms. Stukes:

This letter is in response to your letter dated November 16, 2023, in which you requested that the N.C. Department of Natural and Cultural Resources (DNCR) confirm satisfaction of Condition No. 1 of Coastal Area Management Act (CAMA) Major Permit No. 79-22 and that the Division of Coastal Management (DCM) lift the Revised Stop Work Order (RSWO) as soon as possible. In addition, you offered that, provided the September 8, 2023 Revised Stop Work Order is lifted, Cedar Point Developers, LLC is willing to provide reasonable access whereby DNCR – at its own cost – could access the Investigation Area and potentially additional portions of the Area of Environmental Concern (AEC) to conduct further data recovery. You also argued that DCM prematurely issued the CAMA Major Permit and is now operating outside of its authority, though this permit and Condition No. 1 were not challenged by Cedar Point Developers, LLC. DCM responds to each of these points below.

First, in your letter you asserted that certain areas directly disturbed by Cedar Point Developers, LLC for infrastructure-related development within the Bridgeview subdivision and the AEC are “the only areas subject to Condition No. 1 and the only areas regulated by the permit.” DCM does not agree with this position. As stated during our initial meeting, DCM asserts that residential subdivisions proposed within AECs designated by the N.C. Coastal Resources Commission (CRC) are evaluated based on the entire project as described in the project narrative and detailed in the permit application. For this reason, in accordance with CRC rules, some CAMA Major Permits are conditioned with a requirement for archaeological surveys in order to avoid sensitive historic and cultural resources – not just impacts caused by installing the infrastructure, but also impacts that will result from the intended development of homesites associated with a subdivision, as described in the project narrative. From the outset, this case has been challenging because Cedar Point Developers improperly undertook infrastructure development in an AEC without a CAMA permit, so that when a permit was ultimately granted following an enforcement action, ground disturbances for infrastructure had already occurred. As a result, those particular areas are no longer prioritized for archaeological resource evaluation. However, as stated in the attached correspondence from DNCR dated December 14, 2023,



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additional archeological investigations and/or data recovery would be required to avoid additional disturbances of likely human burials and cultural resources. Therefore, Condition 1 of Major Permit 79-22 has not yet been satisfied sufficiently to proceed with further development within the AEC and the RSWO cannot be rescinded. Any additional development in common areas or on individual lots owned by Cedar Point Developers in the AEC would be in violation of the RSWO and CAMA Major Permit 79-22. However, DCM does not object to paving the existing gravel road within the AEC as long as this will not result in any further disturbance of cultural resources.

DCM appreciates your willingness to afford access to DNCR for additional archaeological investigations prior to additional development within the AEC. However, you have indicated that this is only an option if the work is funded by the State or undertaken by the Office of State Archaeology. At this time, DCM is unaware of any available State funding for this work.

DCM acknowledges that it has no legal authority governing the sale of real property; rather, our agency reviews CAMA permit applications for specific development proposals. If Cedar Point Developers proceeds to sell individual lots within the AEC to third parties, you are reminded that those individual lots would require CAMA Minor Permits for construction activities. No CAMA permit or exemption can be issued by a local government or DCM that conflicts with CAMA and/or CRC rules, including G.S. 113A-120(a)(4) and 15A NCAC 07H .0200 et seq. Therefore, any Minor Permits or exemptions within the AEC would likely require additional archaeological investigations and/or mitigation or avoidance requirements. On November 27, 2023, our office received a letter from Carteret County asking DCM to assume Minor Permitting responsibilities for properties within the Bridgeview subdivision due to the ongoing situation and complexity of this case, and DCM has agreed to assume permitting responsibilities for Section II of the Bridgeview Subdivision pursuant to 15A NCAC 07I .0507.

Based on the attached correspondence from DNCR, DCM agrees that the preferred option at this time would be to avoid further disturbance of the area within the AEC and explore potential land acquisition and conservation opportunities, which would allow these historically significant and culturally sensitive human burials and archeological resources to remain undisturbed while providing open space and additional shoreline access and recreational opportunities. If Cedar Point Developers is interested in exploring this possibility, the attached DNCR letter presents multiple possibilities for funding opportunities. DCM is committed to working with DNCR to identify other potentially interested organizations and arranging meetings to discuss these options.

We look forward to continuing to work with you on these issues, and please let me know if you have any questions on the above.

Sincerely,



Braxton Davis
Director, N.C. Division of Coastal Management

