



NORTH CAROLINA  
*Environmental Quality*

ROY COOPER

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TO: The Coastal Resources Commission

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: January 28, 2022 (for the February 10, 2022 CRC Meeting)

RE: **Variance Request by the NC Department of Transportation (CRC-VR-21-07)**

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Petitioner is the NC Department of Transportation (NCDOT), which owns the NC 12 right-of-way in the Rodanthe area, in the Outer Banks of Dare County. Once NCDOT completes the Jug Handle Bridge in the coming months and moves the NC 12 designation to the bridge, it plans to remove the NC 12 roadway in the portion of the Reserve bypassed by the new bridge. Just south of the Reserve boundary, NCDOT proposes to develop a turnaround area for traffic to continue to access north Rodanthe up to this dead-end. NCDOT also proposed a new sandbag structure to protect the new dead-end turnaround area. On October 25, 2021, DCM denied the Town's application for the minor development permit due to its inconsistency with the Commission's oceanfront setback rules and ruled regarding the orientation, size and color of sandbags. NC DOT now seeks a variance in order to develop the turnaround and new sandbag structure as proposed in its permit application.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules  
Attachment B: Stipulated Facts  
Attachment C: Petitioner's Positions and Staff's Responses to Variance Criteria  
Attachment D: Petitioner's Variance Request Materials  
Attachment E: Stipulated Exhibits including powerpoint

cc(w/enc.): Colin Justice, Special Deputy AG and NCDOT Counsel, electronically  
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically



**RELEVANT STATUTES OR RULES****APPENDIX A****SECTION .0300 - OCEAN HAZARD AREAS****15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. Ocean hazard areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6a); 113A-113(b)(6b); 113A-113(b)(6d); 113A-124;  
Eff. September 9, 1977.

**15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY**

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them. The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6a); 113A-113(b)(6b); 113A-113(b)(6d); 113A-124;  
Eff. September 9, 1977;  
Amended Eff. October 1, 1992.

**15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS**

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the

Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

*History Note:* Authority G.S. 113A-107(b); 113A-113(b)(6) a.; 113A-113(b)(6) b.; 113A-113(b)(6)d.; 113A-124; Eff. September 9, 1977; Amended Eff. October 1, 1992; December 1, 1991; September 1, 1985; February 2, 1981.

#### **15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long term annual erosion rate times 90; provided that, where there has been no long term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study” and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

#### **15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission’s rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established on state owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. “Development size” is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
  - (A) The total square footage of heated or air-conditioned living space;
  - (B) The total square footage of parking elevated above ground level; and
  - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

**(I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;**

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(8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

(9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

(10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

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(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

(1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(2) restore the affected environment; or

(3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgment shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A 107; 113A 113(b)(6); 113A 124;

Eff. September 9, 1977;

Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;

RRC Objection due to ambiguity Eff. January 24, 1992;  
 Amended Eff. March 1, 1992;  
 RRC Objection due to ambiguity Eff. May 21, 1992;  
 Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;  
 RRC Objection due to ambiguity Eff. May 18, 1995;  
 Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;  
 Temporary Amendment Eff. January 3, 2013;  
 Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013.

## 15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

### (a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
  - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
  - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
  - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
  - (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
  - (E) Project construction shall be timed to minimize adverse effects on biological activity.
  - (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
  - (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
    - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
    - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
    - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
  - (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
    - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
    - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
    - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
    - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
  - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
  - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
  - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
  - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
  - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
  - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
  - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.**
- (2) **Temporary Erosion Control Structures:**
- (A) **Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.**
  - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
  - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
  - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
  - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward

of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

- (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:
  - (i) a building and its septic system shall be considered separate structures,
  - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
  - (i) has been issued an active CAMA permit, where necessary, approving such project; or
  - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
  - (iii) has received a favorable economic evaluation report on a federal project; or
  - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall

- be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
  - (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
  - (L) **Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.**
  - (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
  - (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section

## SECTION .0200 - SHORELINE EROSION POLICIES

### 15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that development along the ocean and estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish these public purposes, the planning of future land uses, reasonable rules and public expenditures should be created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and public resources resulting from recognized coastal hazards.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12); Eff. March 1, 1979; RRC Objection due to lack of necessity Eff. October 17, 1991; Amended Eff. March 1, 1992.*

### 15A NCAC 07M .0202 POLICY STATEMENTS

- (a) Pursuant to Section 5, Article 14 of the North Carolina Constitution, proposals for shoreline erosion response projects shall avoid losses to North Carolina's natural heritage. All means should be taken to identify and develop response measures that will not adversely affect estuarine and marine productivity. The public right to use and enjoy the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach rescue services. Private property rights to oceanfront properties including the right to protect that property in ways that are consistent with public rights should be protected.
- (b) Erosion response measures designed to minimize the loss of private and public resources to erosion should be economically, socially, and environmentally justified. Preferred response measures for shoreline erosion shall include but not be limited to AEC rules, land use planning and land classification, establishment of building setback lines, building relocation, subdivision regulations and management of vegetation.

(c) The replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and private property. Experience in North Carolina and other states has shown that beach restoration projects can present a feasible alternative to the loss or massive relocation of oceanfront development. In light of this experience, beach restoration and sand renourishment and disposal projects may be allowed when:

- (1) Erosion threatens to degrade public beaches and to damage public and private properties;
- (2) Beach restoration, renourishment or sand disposal projects are determined to be socially and economically feasible and cause no significant adverse environmental impacts;
- (3) The project is determined to be consistent with state policies for shoreline erosion response and state use standards for Ocean hazard and Public Trust Waters Areas of Environmental Concern and the relevant rules and guidelines of state and federal review agencies.

When the conditions set forth in this Paragraph can be met, the Coastal Resources Commission supports, within overall budgetary constraints, state financial participation in Beach Erosion Control and Hurricane Wave Protection projects that are cost-shared with the federal government and affected local governments pursuant to the federal Water Resources Development Act of 1986 and the North Carolina Water Resources Development Program (G.S. 143-215.70-73).

(d) The following are required with state involvement (funding or sponsorship) in beach restoration and sand renourishment projects:

- (1) The entire restored portion of the beach shall be in permanent public ownership;
- (2) It shall be a local government responsibility to provide adequate parking, public access, and services for public recreational use of the restored beach.

**(e) Temporary measures to counteract erosion, such as the use of sandbags and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.**

(f) Efforts to permanently stabilize the location of the ocean shoreline with seawalls, groins, shoreline hardening, sand trapping or similar protection devices shall not be allowed except when the project meets one of the specific exceptions set out in 15A NCAC 7H .0308.

(g) The State of North Carolina will consider innovative institutional programs and scientific research that will provide for effective management of coastal shorelines. The development of innovative measures that will lessen or slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties is encouraged.

(h) The planning, development, and implementation of erosion control projects will be coordinated with appropriate planning agencies, affected governments and the interested public. Maximum efforts will be made by the state to accommodate the interest of each interested party consistent with the project's objectives. Local, state, and federal government activity in the coastal area should reflect an awareness of the natural dynamics of the ocean front. Government policies should not only address existing erosion problems but should aim toward minimizing future erosion problems. Actions required to deal with erosion problems are very expensive. In addition to the direct costs of erosion abatement measures, many other costs, such as maintenance of projects, disaster relief, and infrastructure repair will be borne by the public sector. Responses to the erosion should be designed to limit these public costs.

(i) The state will promote education of the public on the dynamic nature of the coastal zone and on effective measure to cope with our ever changing shorelines.

*History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);  
Eff. March 1, 1979;  
Amended Eff. March 1, 1985;  
RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;  
Amended Eff. March 1, 1992;  
RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;  
Amended Eff. May 4, 1995.

**STIPULATED FACTS****ATTACHMENT B**

1. Petitioner, the North Carolina Department of Transportation (NCDOT), is an agency of the State of North Carolina.
2. “The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law.” § 143B-346
3. NCDOT’s obligations under § 143B-346 include secondary state roads.
4. NCDOT owns, controls, and maintains a public right-of-way easement through the community of Rodanthe and the Pea Island National Wildlife Refuge (“Refuge”) on Hatteras Island in Dare County, North Carolina. The public highway is known as NC Highway 12 (“NC 12”). NC 12 provides the only roadway connection between the mainland and Hatteras Island, one of several barrier islands that comprise the Outer Banks.
5. NC 12 is North Carolina’s eastern-most primary route which runs throughout the entire Outer Banks from Corolla, Dare County in the northeastern part of the state, to the community of Sea Level in southeastern Carteret County.
6. Beach erosion, dune loss, and damage to NC 12 have been particularly severe in Rodanthe, the northern-most village on Hatteras Island, in an area commonly known as the Rodanthe S-Curves Hot Spot (“Rodanthe Hot Spot”). The Rodanthe Hot Spot also encompasses the southern end of the Refuge, which is managed by the U.S. Fish and Wildlife Service. The Rodanthe Hot Spot is adjacent, and runs parallel, to the Atlantic Ocean and the Pamlico Sound as represented in Exhibit 01.
7. The Rodanthe Hot Spot is a narrow point in the island characterized by low topography/elevations transitioning from sound and marsh to a flat beach and ocean within a few hundred feet. This topography subjects this area to erosive wave energy and coastal flooding.
8. Due to storm and tidal events and the geomorphology of this area, the Rodanthe Hot Spot is susceptible to shoreline erosion, overwash, coastal flooding, the loss of beach and dunes, and sand cover. These circumstances can undermine the integrity of the road, making travel by the general public unsafe and forcing NCDOT to close the road.
9. In 2002, NCDOT and the Federal Highway Administration (“FHWA”), along with other state and federal agencies, expanded the scope of the environmental study (“Study”) for TIP Project No. B-2500, which is also known as the “NC 12 Replacement of Herbert C. Bonner Bridge.” The Study includes NC 12 from the southern end of Bodie Island across the Oregon Inlet and through the Refuge to the village of Rodanthe, a distance of

approximately 14 miles. For decades, NCDOT and FHWA have studied alternatives for making long-term improvements in the Rodanthe Hot Spot area with the aim of minimizing erosion risks to NC 12 through the year 2060.

10. On December 20, 2010, the FHWA issued a Record of Decision (“2010 ROD”) that approved the Selected Alternative proposed by NCDOT for the NC 12 Replacement of Herbert C. Bonner Bridge, and approved construction of Phase I of the Project, including a replacement bridge (“Basnight Bridge”) over Oregon Inlet.
11. As part of the 2010 ROD, a coastal monitoring program was established to assist agencies in planning future phases of B-2500. The coastal monitoring program considers factors such as Atlantic Ocean shoreline erosion, accelerated sea level rise, potential for island breaches, and vulnerability to coastal processes.
12. The N.C. Division of Coastal Management (“DCM”) issued CAMA Major Permit #106-12 to NCDOT on September 19, 2012, authorizing NCDOT to construct the replacement of the Bonner Bridge (Phase 1). At the time of issuance, final design was not yet complete for subsequent phases of the B-2500 bridge replacement project.
13. Defenders of Wildlife and National Wildlife Refuge Association, represented by Southern Environmental Law Center, filed a legal challenge to DCM’s issuance of CAMA Major Permit #106-12, in which NCDOT intervened as a party. This legal challenge ultimately resulted in a settlement which included agreements about the replacement of Bonner Bridge (Phase 1), the construction of the Interim Bridge (Phase IIa), and construction of the “Jug Handle Bridge” (Phase IIb). A copy of the Bonner Bridge Settlement Agreement, signed on April 30, 2015, is attached as Exhibit 11.
14. CAMA Major Permit #106-12 has been modified numerous times since 2012 to authorize subsequent phases of the B-2500 project and to authorize other necessary changes during construction of these phases.
15. NCDOT worked with and collaborated with DCM, U.S. Army Corps of Engineers (“USACE”), Federal Highway Administration, U.S. Fish and Wildlife Service (“USFWS”), N.C. Wildlife Resources Commission (“NCWRC”), and other state and federal agencies throughout much of the NEPA/404 Merger process over the course of decades on the B-2500 project, including soliciting comments and recommendations throughout the planning process for the B-2500 project.
16. The Rodanthe Hot Spot falls within the project area of the B-2500 Study, specifically within Phase IIb.
17. Pursuant to the Record of Decision for NC 12 – Rodanthe Breach Long-Term Improvements Bonner Bridge Replacement Project Phase IIb issued in December 2016 (“2016 ROD”), NCDOT’s plan is to:
  - a. Move NC 12 designation to the new B-2500 Phase IIb bridge (the “Jug Handle Bridge”) when it opens to traffic (expected in 2022),

- b. Close approximately 1.8 miles of existing NC 12 within the Refuge upon completion of B-2500 Phase IIb Bridge (the “Jug Handle Bridge”),
  - c. Maintain the existing NC 12 roadway in Northern Rodanthe as a secondary state road that dead ends south of the Refuge boundary,
  - d. Remove 1.8 miles of pavement from existing NC 12 within the Refuge beginning at Northern Rodanthe heading North through the Refuge,
  - e. Remove the temporary sandbags running parallel to existing NC 12 through the Refuge, and
  - f. Transfer of 19.27 acres of existing NC 12 easement to the Refuge to be restored to a natural state.
18. Although the current CAMA permit #106-12 authorized NCDOT to construct a paved driveway just south of the Refuge boundary on existing NC 12, it did not include a turnaround area as represented in Exhibit 02.
19. On September 10, 2021, NCDOT filed a request for Modification of CAMA Permit #106-12 (Exhibit 03) to construct a paved turnaround and install a temporary sandbag structure in Northern Rodanthe on existing NC 12, south of the Refuge boundary where the dead end is to be located (“Turnaround Site”).
20. The section of existing NC 12 at the Turnaround Site has the following conditions present:
- a. The Turnaround Site is situated within the Rodanthe Hot Spot area,
  - b. There is an existing temporary sandbag structure running parallel to existing NC 12, (Exhibit 04)
  - c. There are private, residential homes located just south of the Turnaround Site on both sides of the roadway where existing NC 12 will terminate, including a private residential development just south of the Turnaround Site, (Exhibit 05)
  - d. Existing NC 12 is the only road providing any means of travel to/from the island for residents or visitors in the Turnaround Site to access emergency services, doctors, utilities, and other essential needs, and
  - e. The Turnaround Site is located within the Ocean Hazard Area of Environmental Concern (AEC) and it is located within the Oceanfront Setback area.
21. NCDOT proposes to place approximately 1,400 sq. ft. of new asphalt on the landward side of the existing roadway to provide a safe turnaround for traffic, within NCDOT’s existing Right of Way, where existing NC 12 will terminate south of the Refuge boundary. (Exhibit 02)
22. NCDOT proposes to install a temporary sandbag structure across the removed roadway bed, perpendicular to the shoreline, to protect the turnaround from erosion damage. (Exhibits 02 and 06.) The sandbag structure would run perpendicular to the currently existing sandbag structure that runs parallel to existing NC 12.
23. The proposed temporary sandbag structure being requested by NCDOT meets the following plan specifications:

- a. The temporary sandbags (multi-cellular trapezoidal shaped, woven polypropylene, white in color as represented in Exhibit 06) would be placed in two adjoining rows perpendicular to the shoreline at the end of where existing NC 12 will terminate. One bag would be 50 feet long, 6 feet wide and 4 feet high next to the turnaround with a 50 foot long, 8 foot wide, 6 feet tall bag directly next to it as represented in Exhibits 02 and 06.
  - b. The bags would be placed two feet below the roadway grade.
  - c. The bags would be dry-filled with clean sand from the project site or other source of compatible sand having the same general characteristics as the sand in the existing dune and beach of the project area. That sand would also be used to construct a dune on the bags with a maximum width of 30 feet and maximum height of 10 feet.
  - d. The sandbag structure would be buried in a protective dune
  - e. Sand would not be dredged from the swash zone on the beach. There would be no open water or wetland impacts.
24. The alternative sandbags are only available in white from the manufacturer.
25. The type of alternative sandbags NCDOT is requesting for the Turnaround Site's temporary sandbag structure were previously granted a variance in 2020 by the Coastal Resource Commission ("CRC") for use by NCDOT along NC 12 on Ocracoke Island in 2020 (Variance #CRC-VR-20-06).
26. The proposed alternative sandbags were not used on Ocracoke Island due to funding limitations at that time, and these alternative sandbags have not been implemented in an ocean beach area within North Carolina to the knowledge of NCDOT and DCM.
27. Due to its location, DOT believes the Turnaround Site would be exposed to similar erosion, overwash, or other severe weather and tidal events typically experienced in the Rodanthe Hot Spot without protection from the proposed temporary sandbag structure on the north end of the Turnaround Site, running perpendicular to the existing sandbags running along existing NC 12.
28. NCDOT's permit modification request to construct the turnaround and use the proposed alternative sandbag structure was denied by DCM through a denial letter dated October 25, 2021 (Exhibit 08) due to inconsistencies with the following CRC Rules:
- a. The proposed development is located seaward of the oceanfront hazard development setback as established under 15A NCAC 07H .0306 (a)(5)(I), which states in part: "Infrastructure that is linear in nature, such as roads...requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater..." where the proposed sandbags, NC 12 and the proposed Turnaround are seaward of the First Line of Stable Natural Vegetation. Further, the proposed

Turnaround and alternative sandbags do not meet any of the exceptions to the setback allowed under 15A NCAC 07H .0309 (a).

- b. The proposed temporary sandbag structure does not conform with 15A NCAC 07H .0308(a)(2)(A), which states in part: “permissible temporary erosion control structures shall be limited to sandbags placed ... parallel to the shore.”
  - c. The proposed temporary sandbag structure does not conform with 15A NCAC 07H .0308(a)(2)(L), which states in part: “sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to fifteen feet long...
29. USFWS, manages the Refuge and is the only adjacent riparian landowner. Following receipt of notice, USFWS indicated that it has “no objection” to NCDOT’s proposed paved turnaround and temporary sandbag structure in that location. A copy of USFWS’s completed adjacent riparian landowner form. This documentation is attached as Exhibit 09.
  30. USACE provided a comment which indicated that it has “no objection” to the project as the location of the project is outside of USACE’s jurisdiction. This documentation is attached as Exhibit 09.
  31. NCWRC indicated that it had “no comment” in response to NCDOT’s proposed paved turnaround and temporary sandbag structure in that location. This documentation is attached as Exhibit 09.
  32. DCM provided notice of the proposed turnaround and alternative sandbags on September 28, 2021 to SELC pursuant to the Bonner Settlement Agreement, attached as Exhibit 11. DCM has not received any comments in response.
  33. NCDOT has stipulated to the basis of the denial as required by 15A NCAC 7J.0701.
  34. NCDOT seeks variances from the oceanfront setback rules and sandbag rules, as noted in the denial letter, in order to construct the sandbag structure as proposed.

Stipulated Exhibits:

1. NC 12 Hot Spot Map
2. NC DOT Rodanthe Hot Spot Site Plan
3. NC DOT CAMA Modification Request
4. NC DOT map of existing NC 12 sandbags in Rodanthe
5. Photo of the Site and surrounding area and ocean
6. Sandbag plans
7. Sandbag manufacturer info
8. October 25, 2021 CAMA mod denial letter
9. Resource agency comments
10. Engineers plan
11. 2015 Bonner Settlement Agreement
12. Notice of Modification to SELC
13. Notice to adjacent riparian owners
14. Powerpoint

**PETITIONER'S and STAFFS' POSITIONS****ATTACHMENT C**

**To qualify for a variance, Petitioner must show all of the following:**

- I. Will Unnecessary Hardships result from strict application of the rules, standards, or orders? If so, Petitioner must identify the unnecessary hardships.**

**Petitioner's Position: Yes.**

Strict application of the applicable development rules, standards, or orders issued by the CRC will cause Petitioner North Carolina Department of Transportation (NCDOT) unnecessary hardship.

NC 12 is the only road connecting Hatteras Island with the mainland. As part of the B-2500B project, NCDOT is constructing a bridge to bypass a vulnerable hot spot area along NC 12 in the north part of Rodanthe and south part of Pea Island National Wildlife Refuge (the "Refuge"). After the bridge is open, NCDOT plans to remove 1.8 miles of pavement from the Refuge. To provide a safe area for traffic to turn around at the new dead end of old NC 12, NCDOT proposes to add approximately 1,400 sq. ft. of pavement to the landward side of the existing road to enable traffic to turn around where the road will end south of the Refuge border.

There is an existing a sandbag structure beneath the dune which runs parallel to the shoreline and existing NC 12. When the new bridge is opened to traffic, the bypassed section of NC 12 within the Refuge will be closed to traffic and removed, along with the adjacent existing sandbag structure. When the sandbag removal is complete, that section of the Refuge will be exposed to overwash events. These expected overwash events could produce significant erosion and potentially damage the existing NC 12 roadway south of the Refuge.

NCDOT requests a variance to use a new alternative sandbag design which is expected to be more durable and have a greater chance of remaining in place during storm events thus providing better protection of the turnaround against overwash coming from the nearby area of the Refuge where the sandbag structure was removed. The proposed sandbags are made of white polypropylene and have a trapezoidal shape with an 8' base that narrows to 2' at the top and is 6' tall. There is a baffle every 2 feet of length and the bags are manufactured in 50-foot sections which can be cut to make a shorter section. These bags can be filled using a steel frame to support the bags and act as a hopper while filling the bags with dry sand deposited by a front-end loader. This eliminates the need to pump sand from the swash zone along the beach. In June 2020, The CRC granted NCDOT's variance petition (CRC-VR 20-06) to use this same style of alternative sandbags on Ocracoke Island. Due to funding limitations at the time, those alternative sandbags were not installed.

On 10 September 2021, NCDOT submitted the information necessary for DCM to process a Minor Modification of Major CAMA 106-12 to allow the construction of the turnaround and the use of this alternative sandbag perpendicular to the shoreline. The proposed sandbag structure would be comprised of two rows of the new sandbags perpendicular to the existing sandbags along the roadway. One bag would be 50' L x 6' W x 4' H next to the turnaround with a 50' L x 8' W x 6' H bag directly next to it. The bags would be placed 2' below the roadway grade. Temporary sandbags would be dry-filled with clean sand from the project site or other source of compatible

sand having the same general characteristics as the sand in the existing dune and beach of the project area. That sand would also be used to construct a dune on the bags. Sand would not be dredged from the swash zone on the beach. The project would result in no open water or wetland impacts.

This permit modification request to construct the turnaround and use the alternative sandbag perpendicular to the shoreline was denied by a Denial letter on 25 October 2021 by Division of Coastal Management (DCM) regulatory staff due to the following inconsistencies with the following CRC rules:

- The proposed development is located seaward of the oceanfront hazard development setback as established under 15A NCAC 07H .0306 (a)(5)(I), which states in part: “Infrastructure that is linear in nature, such as roads...requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater...” and is seaward of the First Line of Stable Natural Vegetation which is inconsistent with exceptions allowed under 15A NCAC 07H .0309 (a).
- The proposed temporary sandbag structure does not conform with 15A NCAC 07H .0308(a)(2)(A), which states in part: “permissible temporary erosion control structures shall be limited to sandbags placed ... parallel to the shore.”
- The proposed temporary sandbag structure does not conform with 15A NCAC 07H .0308(a)(2)(L), which states in part: “sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to fifteen feet long...”

Strict application of the minimum setback rules would cause NCDOT unnecessary hardship by preventing NCDOT from adequately protecting the road from overwash and providing a safe turnaround for traffic on the dead end road.

Strict application of the rules limiting sandbags to be placed parallel to the shore would cause NCDOT unnecessary hardship by preventing NCDOT from adequately protecting the road from overwash and providing a safe turnaround for traffic on the dead end road.

Strict application of the rules pertaining to sandbag size and color cause would NCDOT unnecessary hardship by preventing NCDOT from utilizing an alternative sandbag design which could better protect the road and could be installed with less impact to the beach. The proposed reconfiguration using alternative sandbags would have a narrower footprint than if conforming-sized sandbags were used, amounting to less square footage occupied by sandbags.

The proposed new sandbags and configuration are expected to better protect the turnaround than the currently permitted sandbag structure. The proposed sandbags could be filled using dry sand which would eliminate open water impacts in the swash zone. The new sandbag design for NCDOT use would provide public benefits and be aligned with the spirit and intent of the Coastal Area Management Act (CAMA) and Coastal Resource Commission’s (CRC) rules by reducing impacts to the beach during installation, requiring less maintenance, and being easier to clean up after damage from storm events and removal after use.

**Staffs' Position: Yes.**

Staff agree that strict application of the Commission's rules for ocean erosion setbacks at 15A NCAC 7H .0306(a)(5)(I) and for temporary erosion control structures (orientation, size and color) found at 15A NCAC 7H .0208(a)(2)(A) and (L), from which NCDOT seeks a variance, cause it unnecessary hardships.

NCDOT is seeking a variance from 15A NCAC 7H .0306(a)(5)(I) which requires that new development in the Ocean Hazard AEC be setback from the vegetation line a distance (in this case) of 60'. While NCDOT has proposed the additional pavement for the turnaround to be on the landward side of the former NC 12 and further from the ocean than the ocean side, there is no where landward of the setback and within the existing right-of-way to place a new turnaround. Staff note that while 1.8 vulnerable miles of NC 12 through the Refuge will no longer need protection from sandbags, this portion of old NC 12 which remains in the right-of-way must continue to provide access to the homes at the north end of Rodanthe. Where design options are limited, NCDOT has designed the turnaround to be as landward as possible while still providing access within the right-of-way.

NCDOT is also seeking a variance from sandbag orientation, size, and color rules found at 15A NCAC 7H .0308(a)(2) (A) and (L), in order to use non-standard size sandbags and to authorize the use of white sandbags instead of tan, as well as to have a perpendicular orientation to the shoreline. The Commission sets limitations on the size of individual sandbags to ensure that they are well-defined and limited in application. In this case, NCDOT seeks to use these differently designed and installed sandbags in order to be able to install them at a faster rate and to allow less maintenance because they are expected to be more easy to repair if damage occurs during storm events. They are also proposed in a perpendicular orientation to the shoreline at this particularly narrow location at the Rodanthe Hot Spot in order to protect two sides of the NC 12/Turnaround. Strict adherence to these rules creates an unnecessary hardship that would make it more difficult for NCDOT to protect this turnaround on the former NC 12 for continued public transportation use in a timely manner.

**II. Do the hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property? Explain.****Petitioner's Position: Yes.**

The northern Rodanthe area is particularly vulnerable to overwash due to the erosion rate being high and Hatteras Island being narrow in that area. The duration and frequency of storms including Hurricane Matthew (2016), Hurricane Florence (2018) and Hurricane Dorian (2019) has accelerated erosion. The beach profile in the hot spot is flat, subjecting the reconstructed dunes built after the hurricanes to the maximum wave energy generated by subsequent northeasters and other smaller tropical storm events. The hot spot is a narrow point in the island and this area is characterized by low topography/elevations transitioning from sound and marsh to a flat beach and ocean within a few hundred feet. This topography subjects this area to erosive wave energy created

by storm surge from both the Pamlico Sound and Atlantic Ocean. Ocean wave energy on the outer banks is higher than anywhere else on the North Carolina coast, and east coast of the U.S., due to its close proximity to the continental shelf edge and deeper nearshore waters which create less bottom drag on wind-generated wave energy. In light of this, NCDOT, in cooperation with other state and federal agencies, determined that a bridge was the preferred solution for providing reliable and safe transportation from Hatteras Island to the mainland. Relocating NC 12 to the new bridge will allow NCDOT to remove 1.8 miles of vulnerable road from the Refuge.

**Staffs' Position: Yes.**

Staff notes that the Project Area of NC 12 at the Rodanthe Hot Spot is particularly narrow and vulnerable to erosion where it has one of the largest erosion rates in the state. This is seen in the various photographs contained in the stipulated exhibits and in the facts above. There is little elevation in this area, leaving imminently threatened NC 12 particularly vulnerable in this hot spot. For these reasons, Staff agree that this accelerated erosion is quickly altering the low topography of the site and that these are conditions peculiar to the property which contribute to NCDOT's hardships.

**III. Do the hardships result from actions taken by the petitioner? Explain.**

**Petitioner's Position: No.**

NCDOT's statutory purpose is to provide "an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law." N.C. General Statutes § 143B-346

The hardships facing NCDOT in maintaining safe travel in northern Rodanthe are the result of topography- and weather-related factors and are beyond the control of NCDOT. For decades, NCDOT has collaborated with other state and federal agencies to study and evaluate options for maintaining safe transportation in the area in light of topography and weather challenges.

**Staffs' Position: No.**

Staff's position is that the hardships facing NCDOT in maintaining safe travel in northern Rodanthe do not result from actions taken by NCDOT. NCDOT and the other participants in the NEPA/404 Merger Team process have long recognized the vulnerability of the Rodanthe Hot Spot and have made an effort to develop a long-term erosion protection response to protect NC12 by relocating nearly two miles of NC 12 on to the Jug Handle Bridge. Staff agree that temporary erosion control measures are needed to protect old NC 12 from overwash to provide a safe turnaround for traffic on the dead end road.

**IV. Is the requested variance (1) consistent with the spirit, purpose, and intent of the rules, standards, or orders, (2) will secure public safety and welfare; and (3) will preserve substantial justice? Explain.**

**Petitioner's Position: Yes.**

- **Consistent with the spirit, purpose, and intent of the rules, standards, or orders.**

By bridging this vulnerable area, installing a turnaround, and removing unnecessary pavement, NCDOT would continue to provide transportation for the public while allowing natural processes to occur within the bypassed area of the Refuge. NCDOT's proposed use of alternative sandbags perpendicular to the shoreline to temporarily protect the turnaround in northern Rodanthe is consistent with the spirit, purpose, and intent of the rules pertaining to the use of temporary erosion control structures in the Ocean Hazard Area of Environmental Concern (AEC) and its specific use standards found under NCAC 7H.0308(a). Also, and more importantly, petitioner feels the experimental use of these alternative sandbags is consistent with the State's policy for temporary erosion control structures found in NCAC 7M.0200.

The turnaround area meets the standards for an "imminently threatened structure" per 7H.0308(2)(B). When considering the storm and ocean wave climate and the resultant erosion rates in this area, any style polypropylene bag filled with sand will be only temporary and certainly will not exceed their usefulness beyond the eight-year timeframe allowed per 7H.0308(a)(2)(F). The proposed alternative sandbag structure would be limited to 4 feet above existing grade when installed and would be buried by a protective dune. NCDOT has designed the proposed additional pavement for turnaround to be on the landward side of the existing road, entirely within NCDOT's existing right of way, and as small as practicable while still providing adequate space for traffic to turn around safely.

The currently permitted temporary erosion control structure uses bags stacked on top of one another forming a pyramid shape which are susceptible to scatter when they fail during a storm event. NCDOT's opinion is that the proposed alternative temporary erosion control structure would fail less often, when damage does occur the proposed bags would fragment less, and the proposed structure would be easier to remove once its usefulness ends; therefore it is consistent with the intent of the specific use standard 7H.0308(a)(2)(K). Although the size and color of the alternative sandbags do not comply with 7H.0308(a)(2)(L), the proposed temporary erosion control structure is consistent with the remaining standards in (a)(2). The proposed temporary erosion control structure to be built using the alternative sandbag would have a base width (14 feet) which is significantly less than the currently permitted 20 feet and the proposed height is equal to the maximum allowed 6 feet. NCDOT proposes to cover the proposed structure with a protective dune.

The proposed alternative temporary erosion structure was designed by NCDOT to comply with 7H.0308(a)(H)(iii) by "limiting the extent and scope necessary" to provide some measure of protection to the turnaround during storm over wash events. Also, NCDOT feels the proposed

alternative structure would reduce impacts to the beach during construction because the proposed bags could be filled using dry sand, which eliminates the current impacts of extending a hydraulic pump and pipe from the surf zone across the beach.

Requests to modify a major CAMA permit are subject to the same processing procedure applicable to the original permit application or to a limited review if circulation would serve no purpose as determined by DCM per NCAC 7J.0405(a). NCDOT's 10 September 2021 modification request package is attached. U.S. Fish and Wildlife Service, which manages the adjacent Refuge, and U.S. Army Corps of Engineers each indicated that they have "no objection" to NCDOT's proposed paved turnaround and temporary sandbag structure. N.C. Wildlife Resources Commission indicated that it had "no comment." These agencies also participated in the evaluation and planning phases of the B-2500B project.

NCDOT feels the specific use standard found under 7H.0308(a)(1)(K) provides the ability for the CRC and DCM regulatory staff to consider "erosion control measures using innovative technology or design" as experimental on a "case by case basis to determine consistency with 15ANCAC 07.M.0200 and general and specific use standards within 7H.0308." This experimental use of this alternative sandbag structure (if allowed) will provide data for review by DCM regulatory staff and NCDOT regarding their effectiveness in protecting the turnaround and their associated environmental impacts. In June 2020, The CRC granted NCDOT's variance petition (CRC-VR 20-06) to use this same style of alternative sandbags on Ocracoke Island. Due to funding limitations at the time, those alternative sandbags were not installed.

- **Secure the public safety and welfare.**

This variance request would serve to provide benefits to public safety and welfare for the residents and visitors travelling to and from northern Rodanthe. Loss of vehicular access from erosion or storm and tidal events can severely impact homes and travel in northern Rodanthe, especially during the summer months which are the peak public travel period.

- **Preserve substantial justice.**

The requested variance will preserve substantial justice by enabling NCDOT to employ a better temporary erosion control structure to protect public access to old NC 12. CRC policy per NCAC 7M.0202(b) supports a decision to allow NCDOT to use a nonconforming alternative sandbag to protect the primary transportation route in northern Rodanthe. The social and economic benefits to the public of maintaining short-term vehicular access outweigh any significant environmental impact as demonstrated in the State and Federal review of NCDOT's request to modify Major CAMA permit no. 106-12 in which each agency issued a statement of "no objection" or "no comment" for use of the proposed alternative sandbag structure perpendicular to the shore in this location. Loss of vehicular access from erosion or storm and tidal events can severely impact homes and travel in northern Rodanthe, especially during the summer months which are the peak public travel period. Granting the proposed variance would allow NCDOT to continue to provide

access to homes in northern Rodanthe and a safe turnaround for traffic on the dead end road. For these reasons, the petitioner feels that granting of this variance will preserve substantial justice.

**Staffs' Position: Yes.**

Staff agrees that the new turnaround area meets the spirit of the Commission's rules where it will help retain access and safe transportation at the new dead-end, and while it does not meet the oceanfront setback, it is proposed landward within the existing right-of-way. Staff also agrees that the proposed use of alternative sandbags that are larger and white in color, as part of the larger, long-term solution of moving NC 12 to the Jug Handle Bridge, is consistent with the spirit, purpose, and intent of the Commission's rules. Finally, in this particularly narrow hot spot with high erosion rates where overwash has impacted the S-curves area on multiple occasions, it is within the spirit of the sandbag rules to allow a perpendicular orientation of the bags to protect the "top" of the turnaround area.

Staff agrees that the variance request to allow construction of the turnaround and the use of alternative sandbags will secure public safety and welfare. It is staff's position that the need to keep a public transportation connection open for access to and from the properties in Rodanthe and Mirlo Beach is essential and will further public safety and welfare.

Staff agrees with the Petitioner that the variance will preserve substantial justice as it will allow the Petitioner to construct a new turnaround at the old NC 12 road end, and to protect the new turnaround with alternative sandbags. This will allow the continued use by the public and residents of Rodanthe and Mirlo Beach, while also implementing the long-term solution for the Rodanthe Hot Spot by moving NC 12 to the Jug Handle Bridge allowing two miles of the Refuge to naturalize.

**ATTACHMENT D:**  
**PETITIONERS' VARIANCE REQUEST MATERIALS**  
**(except Petitioner's initially proposed facts/exhibits)**

**CAMA VARIANCE REQUEST FORM****DCM FORM 11****DCM FILE No.:** \_\_\_\_\_PETITIONER'S NAME N.C. Department of TransportationCOUNTY WHERE THE DEVELOPMENT IS PROPOSED Dare

Pursuant to N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

**VARIANCE HEARING PROCEDURES**

A variance petition will be considered by the CRC at a regularly scheduled meeting, heard in chronological order based upon the date of receipt of a complete petition. 15A N.C.A.C. 07J .0701(e). A complete variance petition, as described below, must be *received* by the Division of Coastal Management (DCM) a minimum of six (6) weeks in advance of the first day of a regularly scheduled CRC meeting to be eligible for consideration by the CRC at that meeting. 15A N.C.A.C. 07J .0701(e). The final set of stipulated facts must be agreed to at least four (4) weeks prior to the first day of a regularly scheduled meeting. 15A N.C.A.C. 07J .0701(e). The dates of CRC meetings can be found at DCM's website: **www.nccoastalmanagement.net**

If there are controverted facts that are significant in determining the propriety of a variance, or if the Commission determines that more facts are necessary, the facts will be determined in an administrative hearing. 15A N.C.A.C. 07J .0701(b).

**VARIANCE CRITERIA**

The petitioner has the burden of convincing the CRC that it meets the following criteria:

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

***Please make your written arguments that Petitioner meets these criteria on a separate piece of paper.*** The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

**For this variance request to be complete, the petitioner must provide the information listed below. The undersigned petitioner verifies that this variance request is complete and includes:**

The name and location of the development as identified on the permit application;

- A copy of the permit decision for the development in question;
- N/A A copy of the deed to the property on which the proposed development would be located;
- A complete description of the proposed development including a site plan;
- A stipulation that the proposed development is inconsistent with the rule at issue;
- Proof that notice was sent to adjacent owners and objectors\*, as required by 15A N.C.A.C. 07J .0701(c)(7);
- N/A Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- Petitioner’s written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- This form completed, dated, and signed by the Petitioner or Petitioner’s Attorney.

*\*Please contact DCM or the local permit officer for a full list of comments received on your permit application. Please note, for CAMA Major Permits, the complete permit file is kept in the DCM Morehead City Office.*

Due to the above information and pursuant to statute, the undersigned hereby requests a variance.

<u>Colin Justice</u>	<u>December 17, 2021</u>
Signature of Petitioner or Attorney	Date
<u>Colin Justice – Attorney for NCDOT</u>	<u>cjustice@cdoj.gov</u>
Printed Name of Petitioner or Attorney	Email address of Petitioner or Attorney
<u>1505 Mail Service Center</u>	<u>(919) 707-4533</u>
Mailing Address	Telephone Number of Petitioner or Attorney
<u>Raleigh, NC 27699-1505</u>	<u>(919) 733-9329</u>
City State Zip	Fax Number of Petitioner or Attorney

**DELIVERY OF THIS HEARING REQUEST**

This variance petition must be **received** by the Division of Coastal Management at least six (6) weeks before the first day of the regularly scheduled Commission meeting at which it is heard. A copy of this request must also be sent to the Attorney General's Office, Environmental Division. 15A N.C.A.C. 07J .0701(e).

Contact Information for DCM:**By mail, express mail or hand delivery:**

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

**By Fax:**

(252) 247-3330

**By Email:**

Check DCM website for the email  
address of the current DCM Director  
**[www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)**

Contact Information for Attorney General's Office:**By mail:**

Environmental Division  
9001 Mail Service Center  
Raleigh, NC 27699-9001

**By express mail:**

Environmental Division  
114 W. Edenton Street  
Raleigh, NC 27603

**By Fax:**

(919) 716-6767

Revised: July 2014

CAMA VARIANCE PETITION  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

Petitioner, North Carolina Department of Transportation, through its attorney, Colin Justice, Assistant Attorney General, stipulates that the proposed development that is subject of the Variance Petition is inconsistent with the following Coastal Resources Commission Rules:

- 15A NCAC 07H .0306 (a)(5)(I)
- 15A NCAC 07H .0308(a)(2)(A)
- 15A NCAC 07H .0308(a)(2)(L)



---

Colin Justice  
Special Deputy Attorney General  
NC Bar No. 42965  
cjustice@ncdoj.gov  
Attorney for NC Dept. of Transportation  
NC Dept. of Justice – Transportation Division  
1505 Mail Service Center  
Raleigh, NC 27699-1505  
Phone: (919) 707-4480  
Fax: (919) 733-9329

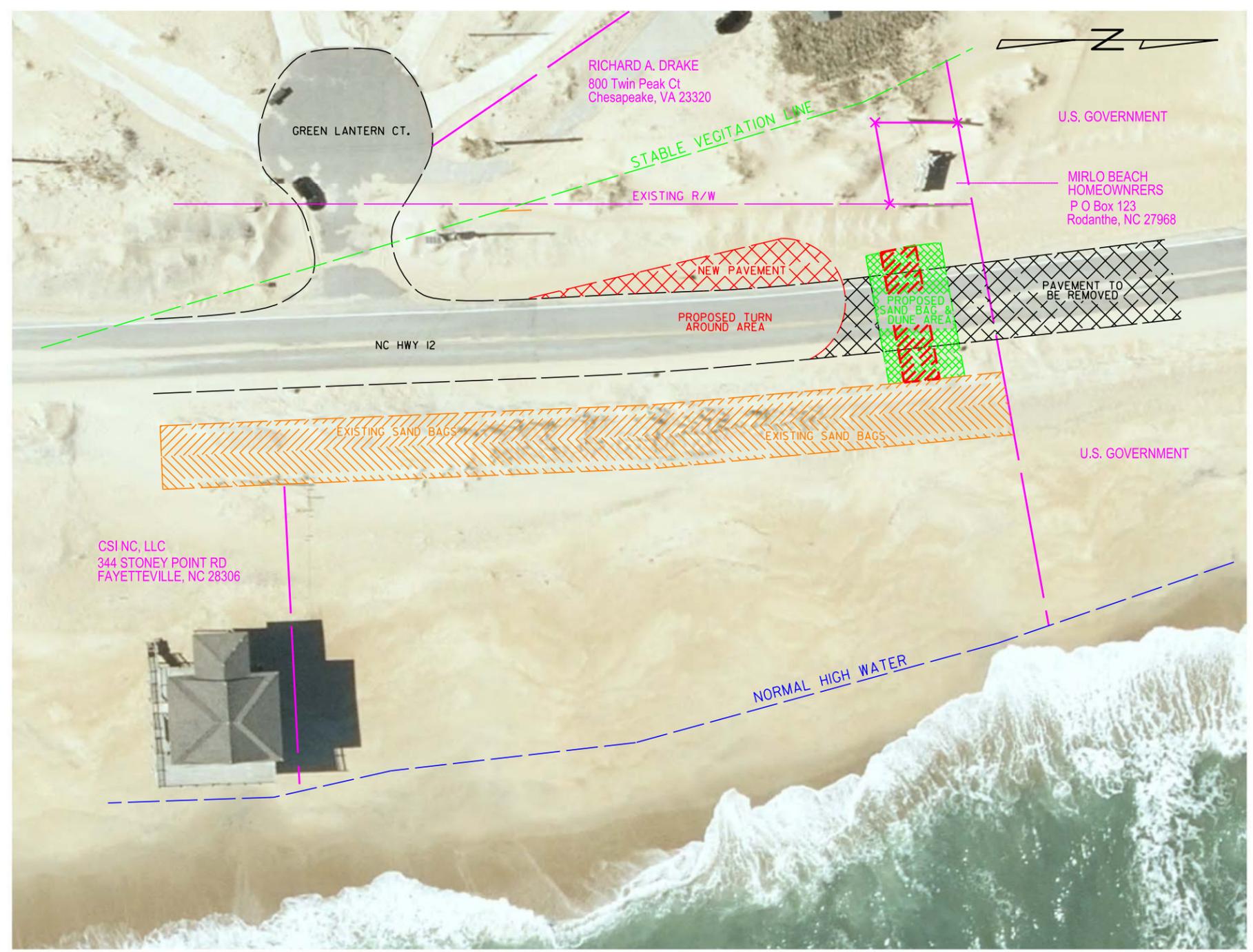
**ATTACHMENT E:  
STIPULATED EXHIBITS INCLUDING POWERPOINT**

030  
Rodanthe (S-Curves)  
NC 12 Hot Spot



# NC HWY 12 PROPOSED TURN AROUND AREA

# PLAN VIEW DETAIL



**SHEET 1 TOTALS**

NEW PAVEMENT:	1,400 SQ. FT.
---------------	---------------

**SHEET 1**      LAT: 35.606945°  
LONG: -75.465567°

NC DEPT OF TRANSPORTATION	
COUNTY:	DARE
QUAD:	RODANTHE
BASIN:	PASQUOTANK
PROJECT:	PROP. TURN AROUND AREA
WBS ELEMENT:	32635.3.10
SCALE:	1IN. = 50' FT.
DATE:	7/20/2021
DRAWN BY:	K.BROWN

# APPLICATION for Major Development Permit

(last revised 12/27/06)



North Carolina DIVISION OF COASTAL MANAGEMENT

<b>1. Primary Applicant/ Landowner Information</b>			
Business Name N.C. Department Of Transportation		Project Name (if applicable) B-2500B Mirlo Beach Turnaround	
Applicant 1: First Name Paul	MI C	Last Name Williams	
Applicant 2: First Name	MI	Last Name	
<i>If additional applicants, please attach an additional page(s) with names listed.</i>			
Mailing Address 113 Airport Road, Suite 100		PO Box	City Edenton
			State NC
ZIP 27932	Country	Phone No. 252 - 482 - 1861 ext.	FAX No. 252 - 482 - 8722
Street Address (if different from above)		City	State
			ZIP -
Email pcwilliams2@ncdot.gov			

<b>2. Agent/Contractor Information</b>			
Business Name			
Agent/ Contractor 1: First Name	MI	Last Name	
Agent/ Contractor 2: First Name	MI	Last Name	
Mailing Address		PO Box	City
			State
ZIP		Phone No. 1 - - ext.	Phone No. 2 - - ext.
FAX No.	Contractor #		
Street Address (if different from above)		City	State
			ZIP -
Email			

&lt;Form continues on back&gt;

<b>3. Project Location</b>			
County (can be multiple) Dare	Street Address NC 12, approximately 550 feet North of Seagull St.	State Rd. # 12	
Subdivision Name	City Rodanthe	State NC	Zip 27968 -
Phone No. - - ext.	Lot No.(s) (if many, attach additional page with list) , , , ,		
a. In which NC river basin is the project located? Pasquotank	b. Name of body of water nearest to proposed project Atlantic Ocean		
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. Atlantic Ocean		
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. Dare		

<b>4. Site Description</b>	
a. Total length of shoreline on the tract (ft.) 500	b. Size of entire tract (sq.ft.) 50,000 sq. ft.
c. Size of individual lot(s) (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) 3' <input checked="" type="checkbox"/> NHW or <input type="checkbox"/> NWL
e. Vegetation on tract None - oceanward of first line of stable vegetation.	
f. Man-made features and uses now on tract NC 12, existing temporary sand bags	
g. Identify and describe the existing land uses <u>adjacent</u> to the proposed project site. USFWS National Wildlife Refuge - conservation, residential	
h. How does local government zone the tract? Conservation and Community Residential	i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(ii) Are there coastal wetlands on the site?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(iii) If yes to either (i) or (ii) above, has a delineation been conducted? <i>(Attach documentation, if available)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
n. Describe existing wastewater treatment facilities. none	
o. Describe existing drinking water supply source. none	
p. Describe existing storm water management or treatment systems. none	

<b>5. Activities and Impacts</b>	
a. Will the project be for commercial, public, or private use?	<input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Public/Government <input type="checkbox"/> Private/Community
b. Give a brief description of purpose, use, and daily operations of the project when complete. Currently, the roadway in the project area is NC Highway 12. When the new B-2500B bridge is open to traffic, NC 12 will move to the bridge. The roadway in the project area will become a secondary State Road and will dead end south of the Pea Island National Wildlife Refuge boundary. The Right-of-Way will end at the PINWR boundary.	
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. The current plans for the B-2500B project include the removal of the pavement and temporary sand bags on Pea Island NWR when the new bridge is fully constructed and open to traffic. NCDOT proposes to place new asphalt on the landward side of the existing roadway south of the PINWR boundary to provide a turnaround for traffic. The size of the turnaround has been minimized as much as practicable for traffic to reverse direction. To protect the turnaround from anticipated erosion after the pavement and sand bags are removed from PINWR, NCDOT proposes to install a temporary sand bag structure across the removed roadway bed to protect the turnaround from erosion damage. Equipment will be staged along the NC 12 roadway and NCDOT Right-of-Way. . Equipment used will be excavators, loaders, and other heavy equipment, and construction would take place within NCDOT Right-of-Way.	
d. List all development activities you propose. Place temporary sand bags in a new dune across the roadway and install approximately 1,400 sq. ft. of new asphalt pavement for a turnaround area for traffic. Sand Bags would be Permashield Bags (multi-cellular trapezoidal shaped, woven polypropylene, white in color) placed in 2 adjoining rows perpendicular to the existing sand bags along the roadway. One bag would be 50' L x 6' W x 4' H next to the turnaround with a 50' L x 8' W x 6' H bag directly next to it. The bags would be placed 2' below the roadway grade. Temporary sand bags would be dry-filled with clean sand from the project site or other source of compatible sand having the same general characteristics as the sand in the existing dune and beach of the project area. That sand would also be used to construct a dune on the bags. Sand would not be dredged from the swash zone on the beach. The project would result in no open water or wetland impacts.	
e. Are the proposed activities maintenance of an existing project, new work, or both?	New - installation of asphalt pavement and temp. sandbags.
f. What is the approximate total disturbed land area resulting from the proposed project?	6,000 <input checked="" type="checkbox"/> Sq.Ft or <input 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 type="checkbox"/> No <input checked="" type="checkbox"/> NA
h. Describe location and type of existing and proposed discharges to waters of the state. Surface runoff from NC 12	

i. Will wastewater or stormwater be discharged into a wetland?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input 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 type="checkbox"/> NA
j. Is there any mitigation proposed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
If yes, attach a mitigation proposal.	

**<Form continues on back>**

<b>6. Additional Information</b>	
<i>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.</i>	
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	Phone No.
Scott Lanier, US Fish and Wildlife Service, Pea Island National Wildlife Refuge	
Address P. O. Box 1969, 100 Conservation Way, Manteo, NC 27954	
Name	Phone No.
CSI NC, LLC, agent Donald Ray Davis	
Address 7344 STONEY POINT RD., FAYETTEVILLE, NC 28306	
Name	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.	
CAMA Major Permit No. 106-12	
_____	
_____	
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. <i>(Must be signed by property owner)</i>	
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.	

<b>7. Certification and Permission to Enter on Land</b>
---------------------------------------------------------

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 9/10/2021 Print Name Paul Williams

Signature *Paul Williams*

Please indicate application attachments pertaining to your proposed project.

DCM MP-2 Excavation and Fill Information

DCM MP-5 Bridges and Culverts

DCM MP-3 Upland Development

DCM MP-4 Structures Information

Form DCM MP-2

# EXCAVATION and FILL

(Except for bridges and culverts)

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.

Describe below the purpose of proposed excavation and/or fill activities. **All values should be given in feet.**

	Access Channel (NLW or NWL)	Canal	Boat Basin	Boat Ramp	Rock Groin	Rock Breakwater	Other (excluding shoreline stabilization)
Length							
Width							
Avg. Existing Depth					NA	NA	
Final Project Depth					NA	NA	

**1. EXCAVATION**  This section not applicable

- a. Amount of material to be excavated from below NHW or NWL in cubic yards. \_\_\_\_\_
- b. Type of material to be excavated. \_\_\_\_\_
- c. (i) Does the area to be excavated include coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.  
 CW \_\_\_\_\_  SAV \_\_\_\_\_  SB \_\_\_\_\_  
 WL \_\_\_\_\_  None \_\_\_\_\_
- d. High-ground excavation in cubic yards. \_\_\_\_\_
- (ii) Describe the purpose of the excavation in these areas:  
 \_\_\_\_\_  
 \_\_\_\_\_

**2. DISPOSAL OF EXCAVATED MATERIAL**  This section not applicable

- a. Location of disposal area. \_\_\_\_\_
- b. Dimensions of disposal area. \_\_\_\_\_
- c. (i) Do you claim title to disposal area?  
 Yes  No  NA
- d. (i) Will a disposal area be available for future maintenance?  
 Yes  No  NA
- (ii) If no, attach a letter granting permission from the owner. \_\_\_\_\_
- (ii) If yes, where? \_\_\_\_\_
- e. (i) Does the disposal area include any coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.  
 CW \_\_\_\_\_  SAV \_\_\_\_\_  SB \_\_\_\_\_  
 WL \_\_\_\_\_  None \_\_\_\_\_
- f. (i) Does the disposal include any area in the water?  
 Yes  No  NA
- (ii) If yes, how much water area is affected? \_\_\_\_\_
- (ii) Describe the purpose of disposal in these areas:  
 \_\_\_\_\_  
 \_\_\_\_\_

**3. SHORELINE STABILIZATION**  This section not applicable  
 (If development is a wood groin, use MP-4 – Structures)

- a. Type of shoreline stabilization:  
 Bulkhead  Riprap  Breakwater/Sill  Other:  
     sandbags
- b. Length: 50 ft.  
 Width: 14
- c. Average distance waterward of NHW or NWL: 0
- d. Maximum distance waterward of NHW or NWL: 0
- e. Type of stabilization material:  
sandbags
- f. (i) Has there been shoreline erosion during preceding 12 months?  
 Yes  No  NA  
 (ii) If yes, state amount of erosion and source of erosion amount information.  
approx. 30 feet
- g. Number of square feet of fill to be placed below water level.  
 Bulkhead backfill 0 Riprap 0  
 Breakwater/Sill 0 Other 0
- h. Type of fill material.  
sand
- i. Source of fill material.  
n/a

**4. OTHER FILL ACTIVITIES**  This section not applicable  
 (Excluding Shoreline Stabilization)

- a. (i) Will fill material be brought to the site?  Yes  No  NA  
 If yes,  
 (ii) Amount of material to be placed in the water \_\_\_\_\_  
 (iii) Dimensions of fill area \_\_\_\_\_  
 (iv) Purpose of fill  
 \_\_\_\_\_  
 \_\_\_\_\_
- b. (i) Will fill material be placed in coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.  
 CW \_\_\_\_\_  SAV \_\_\_\_\_  SB \_\_\_\_\_  
 WL \_\_\_\_\_  None  
 (ii) Describe the purpose of the fill in these areas:  
 \_\_\_\_\_  
 \_\_\_\_\_

**5. GENERAL**

- a. How will excavated or fill material be kept on site and erosion controlled?  
American beach grass or Sea Oats to be sprigged at project end.
- b. What type of construction equipment will be used (e.g., dragline, backhoe, or hydraulic dredge)?  
Excavator, loader.
- c. (i) Will navigational aids be required as a result of the project?  
 Yes  No  NA  
 (ii) If yes, explain what type and how they will be implemented.  
 \_\_\_\_\_  
 \_\_\_\_\_
- d. (i) Will wetlands be crossed in transporting equipment to project site?  Yes  No  NA  
 (ii) If yes, explain steps that will be taken to avoid or minimize environmental impacts.  
 \_\_\_\_\_  
 \_\_\_\_\_

9/10/2021	
Date	Applicant Name
B-2500B Mirlo Beach Turnaround	Paul Williams <i>Paul Williams</i>
Project Name	Applicant Signature

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.

1  
\_\_\_\_\_  
\_\_\_\_\_

b. Number of lots or parcels.

1  
\_\_\_\_\_  
\_\_\_\_\_

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_

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

1,400 sq.ft.  
\_\_\_\_\_  
\_\_\_\_\_

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:  
\_\_\_\_\_

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

asphalt  
\_\_\_\_\_  
\_\_\_\_\_

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.

\_\_\_\_\_  
\_\_\_\_\_

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: \_\_\_\_\_

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.

\_\_\_\_\_  
\_\_\_\_\_

j. Describe proposed method of sewage disposal.

N/A  
\_\_\_\_\_  
\_\_\_\_\_

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).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Yes  No  NA  
If yes, attach appropriate documentation.

m. Describe proposed drinking water supply source (e.g., well, community, public system, etc.)

N/A

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---

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n. (i) Will water be impounded?  Yes  No  NA

(ii) If yes, how many acres?

---

o. When was the lot(s) platted and recorded?

N/A

---

---

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?

Yes  No  NA

---

9/10/2021

Date

B-2500B Mirlo Beach Turnaround

Project Name

Paul Williams

Applicant Name

*Paul Williams*

Applicant Signature

041  
NC 12 Rodanthe S-Curves Hot Spot  
Existing Sandbags



Aerial Imagery dated 6/18/2021



Relationship of Project Work to Atlantic Ocean



Left: Begin Roundabout approach work  
Right: Begin resurfacing work

Replace 18" Corrugated Metal Pipe Driveway pipe with 18" Reinforced Concrete Pipe.

Left: End resurfacing.  
Right: Begin Pavement Removal

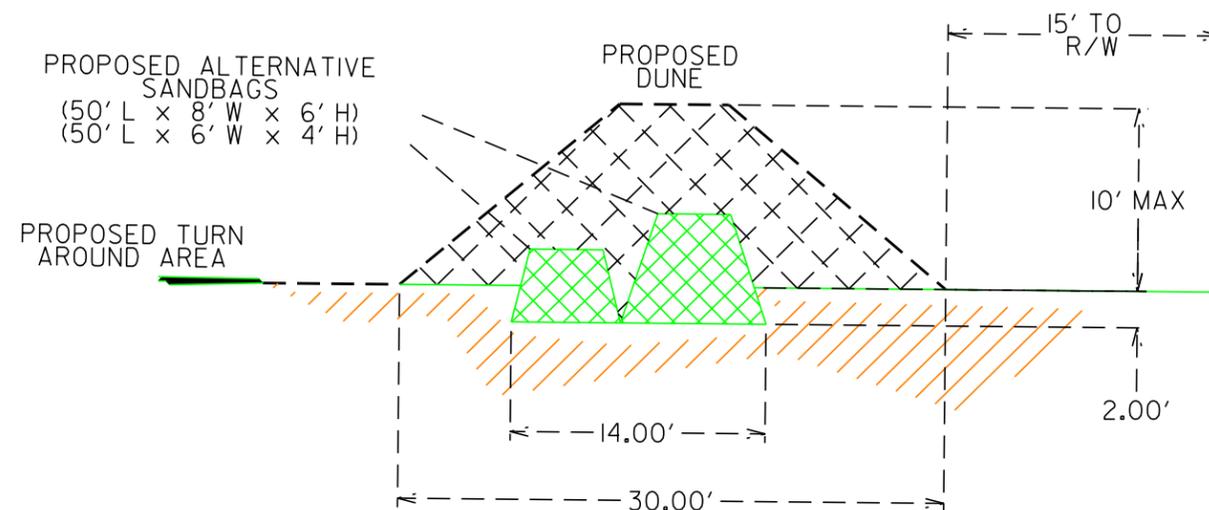


PROJECT REFERENCE NO.	SHEET NO.
ROADWAY DESIGN ENGINEER	PAVEMENT DESIGN ENGINEER
<b>INCOMPLETE PLANS</b> DO NOT USE FOR R/W ACQUISITION <b>PRELIMINARY PLANS</b> DO NOT USE FOR CONSTRUCTION	

# CROSS SECTION DETAIL

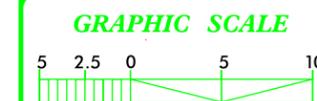


# PROFILE SECTION DETAIL



## SHEET 2

Prepared in the Office of:  
**DIVISION OF HIGHWAYS**  
 113 Airport Drive, Edenton, NC 27932



DATE: 06/23/2021

SHEET NO.: 2 OF 2

# PermaShield™ Product Specifications

## Patented Design Characteristics:

- Shape: Isosceles Trapezoid Prism – Turns lateral earth pressure or lateral water pressure into a downward force due to the angular wall design. (See illustration A below)
- Heights available: 2', 3', 4', and 6' (See illustration B below)
- Section Length: 50'
- Stackable to any height. (See illustration C below)
- Multi-cellular design: Isolates damage to a cell to keep the section from failing. Each 50' section is separated every 2' by a sewn baffle that acts as a natural expansion joint. Each 50' L section includes 25 cells. (See illustrations D and E)
- Can accept a variety of fill materials. Sand or other earthen materials, or concrete for permanent applications. (See approximate weights of sand filled and concrete filled section heights in illustration F)
- Mounting knobs to mount entire 50' L section on installation platform for quick installation. (See illustration G)
- Installation Platforms for sand and concrete materials. (See illustrations H and I)

## Product Material:

8 oz Woven Polypropylene (100% virgin material)

- UV resistance: depending on direct sunlight exposure: 70% after 2000 hours (For dune applications, PermaShield will be buried under sand that forms the dune.)
- Chain Stitching

## Connectivity: Ability to connect one 50' section to another:

- Male connection on one end; Female connection on the other end (See illustration J)
- Secured together with strapping with "D" rings as seen in the picture below. (See illustration K)

## Dimensions by Sections Heights Available:

2' Section:	50' L x 4' W x 2' H
3' Section:	50' L x 5' W x 3' H
4' Section:	50' L x 6' W x 4' H
6' Section:	50' L x 8' W x 6' H

## Testing:

- USACE tested in 2011 at the Vicksburg, MS test lab. Full report available upon request.
- Report Title: Evaluation of Rapid Installation Barrier System (RIBS) Flood Fighting Barrier.
- Material is physically tested according to a wide range of ASTM standards. (Full list available.)

Illustration A: Isosceles Trapezoid Prism design turns lateral pressure into a downward force.

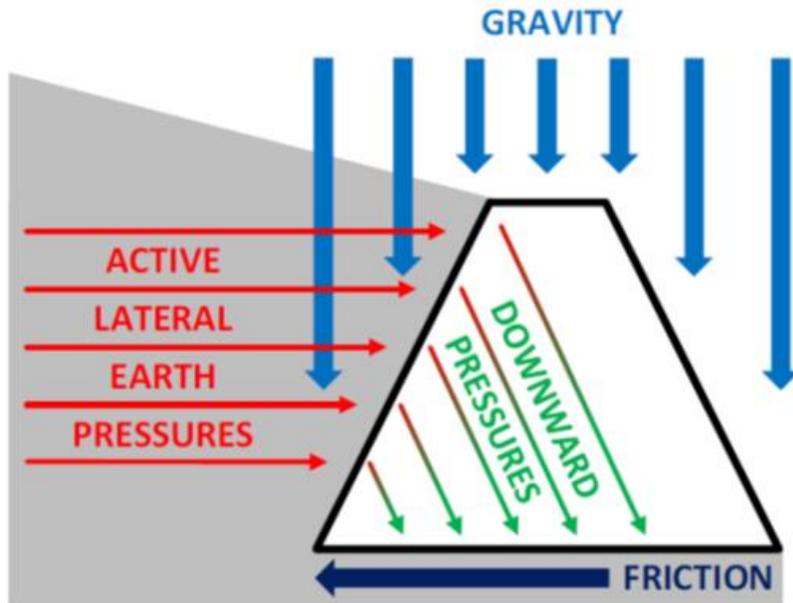


Illustration B: Heights available.



Illustration C: Stacking Examples that combine different height products.

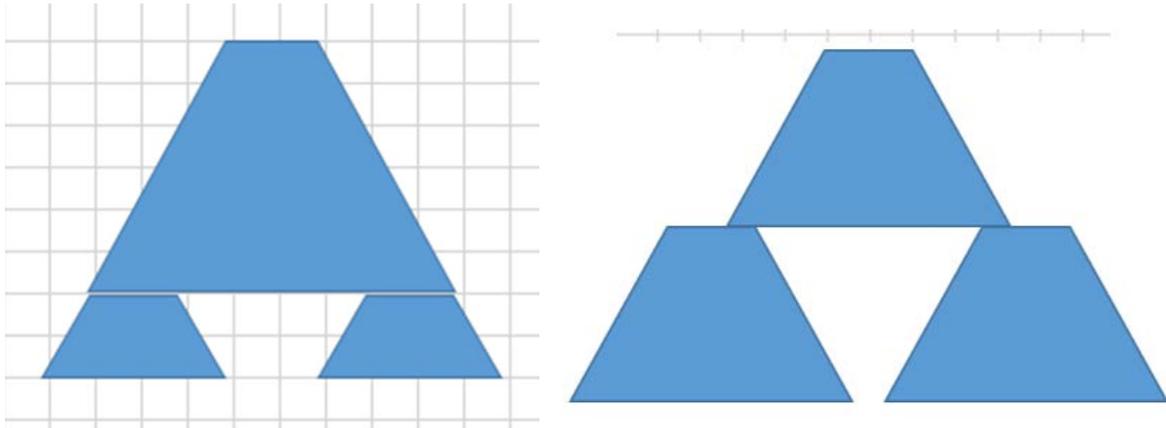


Illustration D: Multi-cellular Design

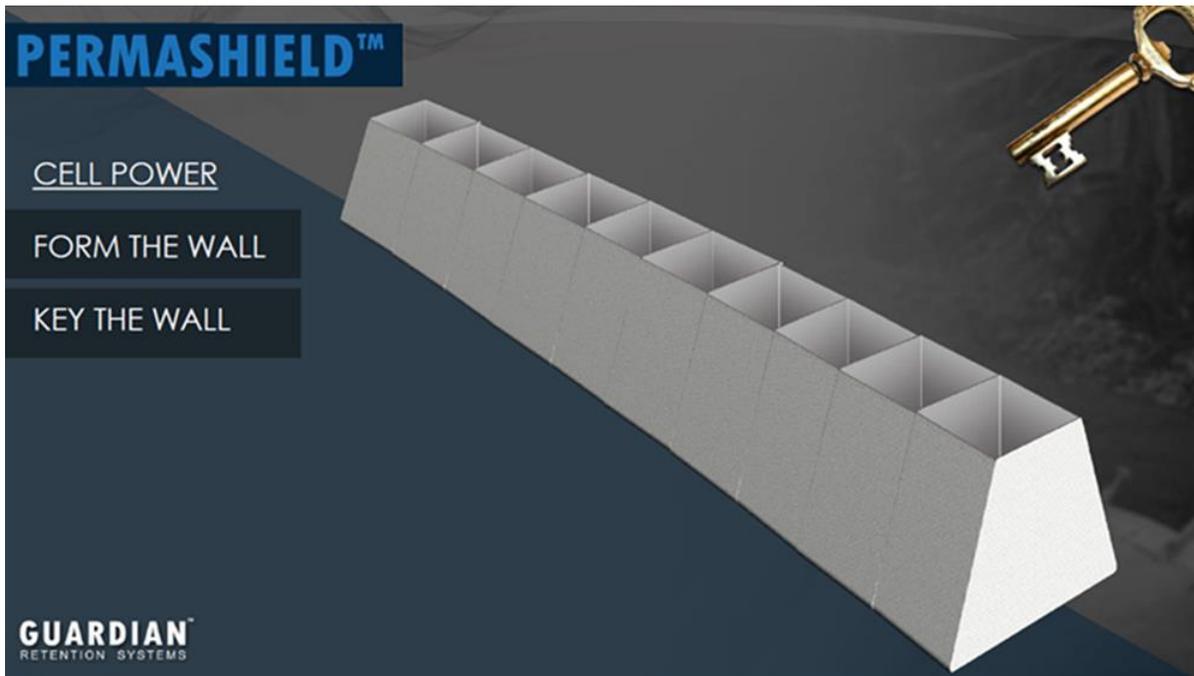


Illustration E: Example cell dimensions

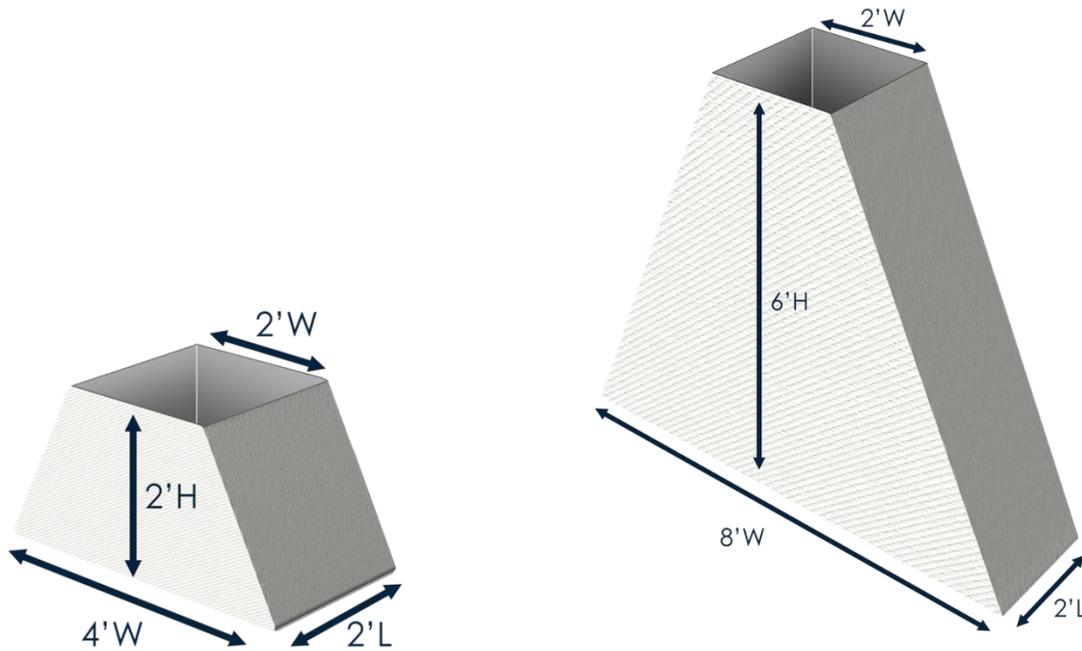


Illustration F: Approximate section weights with sand fill and concrete fill.

### Sand Fill:

- 2' H Section: 11 yards / 14 tons
- 3' H Section: 20 yards / 25.45 tons
- 4' H Section: 30 yards / 38 tons
- 6' H Section: 55 yards / 70 tons

## Concrete Fill:

- 2' H Section: 11 yards / 22.45 tons
- 3' H Section: 20 yards / 40.8 tons
- 4' H Section: 30 yards / 61.2 tons
- 6' H Section: 55 yards / 112.2 tons

**Illustration G: Mounting Knobs**



**Illustration H: Installation Platform for sand for quick and efficient fill.**



**Illustration I: Installation Platform for concrete for quick and efficient fill.**



**Illustration J: Female End with strapping**



**Illustration K: "D" Ring Strapping**



ROY COOPER  
Governor

ELIZABETH S. BISER  
Secretary

BRAXTON DAVIS  
Director



NORTH CAROLINA  
*Environmental Quality*

October 25, 2021

CERTIFIED MAIL --7016 1370 0002 3225 1105  
RETURN RECEIPT REQUESTED

N.C. Department of Transportation  
Division One  
113 Airport Drive, Suite 100  
Edenton, NC 27932

RE: TIP No. B-2500IIB, NC Highway 12 in Rodanthe, Dare County, CAMA Major Permit 106-12.

Dear Sir:

This letter is in response to a request from the N.C. Department of Transportation (NCDOT) dated September 10, 2021, for a minor modification of CAMA Major Permit 106-12, TIP No. B-2500IIB, NC Highway 12 in Rodanthe, Dare County. The NCDOT request is to place approximately 1,400 square feet of new asphalt at the north end of Rodanthe on the landward side of the existing NC Highway 12 to provide a turnaround for traffic at the boundary with the Pea Island National Wildlife Refuge (PINWR).

The proposed project also includes a temporary sandbag structure to protect the turnaround from erosion damage. The temporary sandbag structure would be covered with a sand dune and would be constructed perpendicular to the shoreline using two Permashield bags. One permashield bag would be 50' x 8 x 4' and the other 50' x 6' x 4'. The Permashield bags would be trapezoidal shaped and white in color and made out of woven polypropylene. The sand dune would have a maximum width of 30 feet and a maximum height of 10 feet to cover the bags.

NCDOT has indicated that the proposed project is needed due to the opening of the new "Jug Handle" bridge in Rodanthe. The roadway in the project area will become a secondary State Road and will dead end at the PINWR boundary. The existing pavement and temporary sandbags within PINWR will be removed when the new bridge is fully constructed and open to traffic. NCDOT states that the proposed turnaround has been minimized as much as practicable for traffic to reverse direction.

The proposed paved turnaround at the north end of Rodanthe on the current NC Highway 12 and installation of a temporary sandbag structure and associated sand dune, both positioned



North Carolina Department of Environmental Quality | Division of Coastal Management  
Morehead City Office | 400 Commerce Avenue | Morehead City, North Carolina 28557  
252.808.2808

perpendicular to the shoreline, constitutes development under the Rules of the Coastal Resources Commission (CRC) in an area classified by the Coastal Area Management Act (CAMA) as an Ocean Hazard Area of Environmental Concern. After reviewing the NCDOT application in conjunction with development standards established through rules of the CRC, and in accordance with CAMA, the proposed modification is inconsistent with the following CRC rules:

- The proposed development is located seaward of the oceanfront hazard development setback as established under 15A NCAC 07H .0306 (a)(5)(I), which states in part: “Infrastructure that is linear in nature, such as roads...requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater...” and is seaward of the First Line of Stable Natural Vegetation which is inconsistent with exceptions allowed under 15A NCAC 07H .0309 (a).
- The proposed temporary sandbag structure does not conform with 15A NCAC 07H .0308(a)(2)(A), which states in part: “permissible temporary erosion control structures shall be limited to sandbags placed ... parallel to the shore.”
- The proposed temporary sandbag structure does not conform with 15A NCAC 07H .0308(a)(2)(L), which states in part: “sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to fifteen feet long...”

Given the preceding findings, it is necessary that your Major Permit Application under the Coastal Area Management Act be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the state guidelines for Areas of Environmental Concern or local land use plans.

If you wish to appeal this denial, you are entitled to a contested case hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties before making a final decision on the appeal. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the General Statutes of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this denial letter. A copy of this petition should be filed with this office.

Another response to a permit application denial available to you is to petition the Coastal Resources Commission for a variance to undertake a project that is prohibited by the Rules of the Coastal Resources Commission. Applying for a variance requires that you first stipulate that the Division of Coastal Management applied the Rules of the Coastal Resources Commission properly in issuing this denial. You may then request that the Commission vary the rules at issue and show how you believe your request meets the four criterion found at GS 113A-120.1. To apply for a variance, you must file a petition for a variance with the Director of the Division of Coastal Management and the State Attorney General's Office on a standard form, which must be accompanied by additional information on the nature of the project and the reasons for requesting a variance. The variance request may be filed at any time but must be filed a minimum of six weeks before a scheduled Commission meeting for the variance request to be eligible to be heard at that meeting.



Information about both a permit appeal in the Office of Administrative Hearings and the Variance process may be obtained by contacting a member of my staff, or by visiting the Division's web page at: <http://www.nccoastalmanagement.net/web/cm/90>.

Members of my staff are available to assist you should you desire assistance in the future. If you have any questions concerning this matter, please contact Mr. Jonathan Howell at [Jonathan.Howell@ncdenr.gov](mailto:Jonathan.Howell@ncdenr.gov).

Please let DCM know if you have any questions about this permit decision. In addition, your attorney may contact DCM's attorney, DEQ Assistant General Counsel Christy Goebel, at [Christine.goebel@ncdenr.gov](mailto:Christine.goebel@ncdenr.gov) with any questions about the variance process.

Sincerely,



Braxton C. Davis  
Director, Division of Coastal Management





NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor

ELIZABETH S. BISER  
Secretary

BRAXTON DAVIS  
Director

**MEMORANDUM**

**DATE:** October 11, 2021

**FROM:** Cathy Brittingham, DCM Transportation Project Coordinator

**SUBJECT:** **CAMA / Dredge & Fill Application Review – modification request**

**Applicant:** N.C. Department of Transportation Division One

**Project Location:** TIP No. B-2500IIB, NC Highway 12 in Rodanthe, Dare County, CAMA Major Permit 106-12.

**Proposed Project:** Construct a paved turnaround at the north end of Rodanthe on the current NC Highway 12 and install a temporary sandbag structure using Permashield bags (multi-cellular trapezoidal shaped, woven polypropylene, white in color) to protect the turnaround from anticipated erosion. The proposal also includes a sand dune with a maximum width of 30 feet and a maximum height of 10 feet to cover the bags.

Please indicate below your agency's position or viewpoint on the proposed project and return this form **ASAP** to Cathy Brittingham by e-mail at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov). If you have any questions regarding the proposed project, please contact Cathy Brittingham at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov) or Greg Daisey at [Greg.Daisey@ncdenr.gov](mailto:Greg.Daisey@ncdenr.gov). When appropriate, in-depth comments with supporting data are requested.

**REPLY**     This agency has no objection to the project as proposed.

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 memo.

PRINT NAME Travis Wilson

AGENCY NCWRC

SIGNATURE [Signature]

DATE 10/12/2021





**Brittingham, Cathy**

---

**From:** Lanier, Scott <scott\_lanier@fws.gov>  
**Sent:** Tuesday, October 12, 2021 7:42 AM  
**To:** Brittingham, Cathy  
**Cc:** Beyer, Arthur; Harrison, Rebecca; rebekah\_p\_martin@fws.gov  
**Subject:** [External] Sandbag Project at Rodanthe Bridge Turnaround  
**Attachments:** Signed NC DCM No Object NC DOT Temp Sandbag Project at Rodanthe Bridge Turnaround.pdf

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Cathy,

Attached is the signed reply from US FWS/Pea Island NWR for CAMA Permit No. 106-12 Modification Request for Paved Turnaround and Temporary Sandbags on NC 12.

Scott

ROY COOPER  
Governor  
ELIZABETH S. BISER  
Secretary  
BRAXTON DAVIS  
Director



**MEMORANDUM**

**DATE:** October 11, 2021  
**FROM:** Cathy Brittingham, DCM Transportation Project Coordinator  
**SUBJECT:** **CAMA / Dredge & Fill Application Review – modification request**  
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Please indicate below your agency’s position or viewpoint on the proposed project and return this form **ASAP** to Cathy Brittingham by e-mail at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov). If you have any questions regarding the proposed project, please contact Cathy Brittingham at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov) or Greg Daisey at [Greg.Daisey@ncdenr.gov](mailto:Greg.Daisey@ncdenr.gov). When appropriate, in-depth comments with supporting data are requested.

- REPLY**      This agency has no objection to the project as proposed.  
                  \_\_\_ 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 memo.

PRINT NAME     Scott Lanier  
AGENCY         USFWS Pee Island NWR  
SIGNATURE     Scott Lanier  
DATE             10/12/21



**Brittingham, Cathy**

**From:** Barnes, Kyle W CIV USARMY CESAW (USA) <Kyle.W.Barnes@usace.army.mil>  
**Sent:** Tuesday, October 12, 2021 11:44 AM  
**To:** Brittingham, Cathy; Ward, Garcy; Wilson, Travis W.; Jordan, Gary; Harrison, Rebecca  
**Cc:** Daisey, Greg  
**Subject:** [External] RE: CAMA Permit Modification Request - B-2500B Turnaround and Sandbags  
**Attachments:** USACE Project Comments NC 12 Turnaround Rodanthe.pdf

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Cathy,

This request from NCDOT does not occur within USACE jurisdiction. I have indicted the Corps position on this project on the attached CAMA project description and comment sheet. Please let me know if you have any questions.

Kyle

**From:** Brittingham, Cathy <cathy.brittingham@ncdenr.gov>  
**Sent:** Monday, October 11, 2021 4:31 PM  
**To:** Barnes, Kyle W CIV USARMY CESAW (USA) <Kyle.W.Barnes@usace.army.mil>; Ward, Garcy <garcy.ward@ncdenr.gov>; Wilson, Travis W. <travis.wilson@ncwildlife.org>; Jordan, Gary <Gary\_Jordan@fws.gov>; Harrison, Rebecca <rebecca\_harrison@fws.gov>  
**Cc:** Daisey, Greg <Greg.Daisey@ncdenr.gov>  
**Subject:** [Non-DoD Source] CAMA Permit Modification Request - B-2500B Turnaround and Sandbags

Hello,

Attached for your review please find 6 pdf files that constitute a request from NCDOT for a modification of existing CAMA Major Permit 106-12 for TIP B-2500, NC Highway 12 in Dare County.

NCDOT is requesting approval to construct a paved turnaround at the north end of Rodanthe on the current NC Highway 12 and install a temporary sandbag structure using Permashield bags (multi-cellular trapezoidal shaped, woven polypropylene, white in color) to protect the turnaround from anticipated erosion. The proposal also includes construction of a sand dune with a maximum width of 30 feet and a maximum height of 10 feet to cover the bags.

Also please find attached in WORD a form for you to indicate your agency's position or viewpoint on the proposed project. **Please respond ASAP to Cathy Brittingham at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov).** When appropriate, in-depth comments with supporting data are requested.

If you have any questions regarding the proposed project, please contact Cathy Brittingham at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov) or Greg Daisey at [Greg.daisey@ncdenr.gov](mailto:Greg.daisey@ncdenr.gov).

Sincerely,



NORTH CAROLINA  
Environmental Quality

ROY COOPER  
Governor  
ELIZABETH S. BISER  
Secretary  
BRAXTON DAVIS  
Director

**MEMORANDUM**

**DATE:** October 11, 2021  
**FROM:** Cathy Brittingham, DCM Transportation Project Coordinator  
**SUBJECT:** **CAMA / Dredge & Fill Application Review – modification request**  
**Applicant:** N.C. Department of Transportation Division One  
**Project Location:** TIP No. B-2500IIB, NC Highway 12 in Rodanthe, Dare County, CAMA Major Permit 106-12.  
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Please indicate below your agency’s position or viewpoint on the proposed project and return this form **ASAP** to Cathy Brittingham by e-mail at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov). If you have any questions regarding the proposed project, please contact Cathy Brittingham at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov) or Greg Daisey at [Greg.Daisey@ncdenr.gov](mailto:Greg.Daisey@ncdenr.gov). When appropriate, in-depth comments with supporting data are requested.

- REPLY**     This agency has no objection to the project as proposed.  
               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 memo.

**USACE Action ID#: SAW-2021-02189**

PRINT NAME              Kyle Barnes          

AGENCY                  USACE          

SIGNATURE              *Kyle Barnes*          



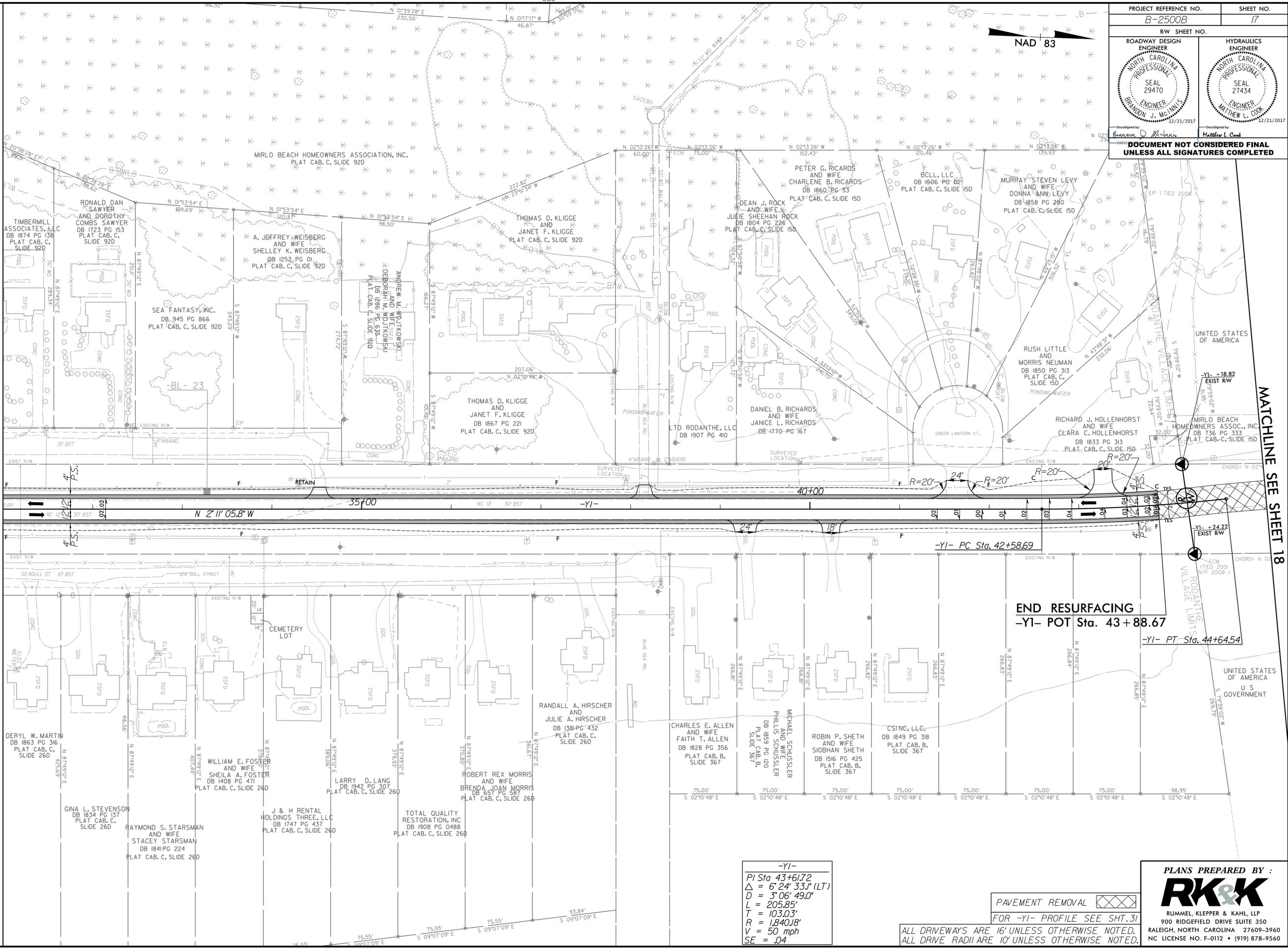
8.17.17.99

060

PROJECT REFERENCE NO. <b>B-2500B</b>		SHEET NO. <b>17</b>	
RW SHEET NO.			
ROADWAY DESIGN ENGINEER <b>NORTH CAROLINA PROFESSIONAL SEAL 29470</b> BRANDON J. MCINNIS 12/21/2017		HYDRAULICS ENGINEER <b>NORTH CAROLINA PROFESSIONAL SEAL 27434</b> MATTHEW L. COOK 12/21/2017	
DOCUMENT NOT CONSIDERED FINAL UNLESS ALL SIGNATURES COMPLETED			

MATCHLINE -Y1- STA. 31+00 SEE SHEET 16

MATCHLINE SEE SHEET 18



DERLY W. MARTIN DB 1863 PG 316 PLAT CAB. C. SLIDE 26D

GINA L. STEVENSON DB 1834 PG 137 PLAT CAB. C. SLIDE 26D

HAYMOND S. STARSMAN AND WIFE STACEY STARSMAN DB 1841 PG 224 PLAT CAB. C. SLIDE 26D

J & H RENTAL HOLDINGS THREE, LLC DB 1747 PG 437 PLAT CAB. C. SLIDE 26D

TOTAL QUALITY RESTORATION, INC DB 1908 PG 0488 PLAT CAB. C. SLIDE 26D

RANDALL A. HIRSCHER AND JULIE A. HIRSCHER DB 1381 PG 432 PLAT CAB. C. SLIDE 26D

CHARLES E. ALLEN AND WIFE FAITH T. ALLEN DB 1828 PG 356 PLAT CAB. B. SLIDE 367

MICHAEL SCHUSSLER AND WIFE PHILLIS SCHUSSLER DB 1859 PG 120 PLAT CAB. B. SLIDE 367

ROBIN P. SHETH AND WIFE SIOBHAN SHETH DB 1516 PG 425 PLAT CAB. B. SLIDE 367

CSINC, LLC DB 1849 PG 318 PLAT CAB. B. SLIDE 367



-Y1-  
 P/ Sta 43+61.72  
 $\Delta = 6' 24" 33.1" (LT)$   
 $D = 3' 06" 49.0"$   
 $L = 205.85'$   
 $T = 103.03'$   
 $R = 1,840.18'$   
 $V = 50 \text{ mph}$   
 $SE = .04$

PAVEMENT REMOVAL   
 FOR -Y1- PROFILE SEE SHT. 31

ALL DRIVEWAYS ARE 16' UNLESS OTHERWISE NOTED.  
 ALL DRIVE RADII ARE 10' UNLESS OTHERWISE NOTED.

PLANS PREPARED BY :



RUMMEL, KLEPPER & KAHL, LLP  
 900 RIDGEFIELD DRIVE SUITE 350  
 RALEIGH, NORTH CAROLINA 27609-3960  
 NC LICENSE NO. F-0112 • (919) 878-9560

R:\2017\2017\Projects\B2500B.Rdy\_psh17.dgn

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Defenders of Wildlife and National Wildlife Refuge Association (collectively “Plaintiffs”); North Carolina Department of Transportation (“NCDOT”) and Anthony J. Tata in his official capacity as North Carolina Secretary of Transportation (collectively the “NCDOT Parties”); North Carolina Department of Environment and Natural Resources, Division of Coastal Management (“DCM”); Federal Highway Administration (“FHWA”) and John F. Sullivan, III, in his official capacity as Division Administrator, FHWA; and Cape Hatteras Electric Membership Corporation. The Plaintiffs, NCDOT Parties, FHWA and Cape Hatteras Electric Membership Corporation are collectively referred to as the Parties.

WHEREAS, the NCDOT proposed the “NC 12 Replacement of Herbert C. Bonner Bridge” (the “Project”), and on December 20, 2010, the FHWA issued a Record of Decision (“ROD”) that approved the Selected Alternative (as defined in the ROD) and approved construction of Phase I of the Project ;

WHEREAS, the Plaintiffs challenged the 2010 ROD and related documents in the U.S. District Court for the Eastern District of North Carolina in *Defenders of Wildlife and National Wildlife Refuge Association v. North Carolina Department of Transportation, Eugene A. Conti, Jr., Secretary, North Carolina Department of Transportation, Federal Highway Administration, and John F. Sullivan III, Division Administrator Federal Highway Administration*, Civil No. 2:11-CV-00035-FL (the “Federal Action”), alleging claims under the National Environmental Policy Act (“NEPA”) and Section 4(f) of the Department of Transportation Act (“Section 4(f)”). Cape Hatteras Electric Membership Corporation intervened in the Federal Action;

WHEREAS, the district court entered summary judgment in favor of defendants in the Federal Action, 971 F. Supp. 2d 510 (E.D.N.C. 2013), and Plaintiffs appealed from that decision to the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed in part, reversed in part and remanded to the district court, 762 F.3d 374 (4th Cir. 2014), but the mandate has not yet issued;

WHEREAS, Plaintiffs filed a Petition for Contested Case Hearing in the North Carolina Office of Administrative Hearings challenging the September 19, 2012 issuance by the DCM of Coastal Area Management Act (“CAMA”) permit 106-12 (the “CAMA permit”) in *Defenders of Wildlife and National Wildlife Refuge Association v. North Carolina Department of Environment and Natural Resources, Division of Coastal Management*, 13 EHR 16087 (the “State Action”), and NCDOT intervened in the State Action. The State Action is pending and discovery has been completed;

WHEREAS, all parties to the Federal Action and the State Action believe it is in the best interest of the public, the Parties, and judicial economy to compromise and settle the issues in the Federal Action and the State Action;

NOW, THEREFORE, in consideration of the promises and covenants contained in this Settlement Agreement (“Agreement”), the Parties agree to settle all claims and causes of action arising in or related to the Federal Action and the State Action as follows:

1. NCDOT, DCM and Plaintiffs’ Actions and Covenants Prior to Dismissals, and Dismissals:
  - a. NCDOT shall rescind the current Phase IIa contract and enter into a contract to provide for interim safe and reliable transportation through the present Phase IIa area (as shown in Exhibit A) while a long-term solution for that area is reevaluated and constructed. Providing for interim safe and reliable transportation through the present Phase IIa area will involve constructing a new temporary bridge located in the existing NCDOT easement, maintaining the present bridge height approximately 15

feet above mean high water, lengthening the bridge to no more than 3,000 feet, and using pile bents to support the temporary bridge.

In the event NCDOT determines there is an impairment or immediate threat to safe and reliable transportation through the present Phase IIa area, NCDOT may alter the existing temporary structure; install a detour around this structure; or take such other emergency or temporary measures that are necessary or prudent to assure provisions for interim safe and reliable transportation through the Phase IIa area while a long-term solution is reevaluated and constructed, but shall not include construction of the currently planned and permitted Phase IIa bridge, any other permanent structure, permanent shoreline hardening, or artificially filling in the inlet created by Hurricane Irene. All such interim infrastructure shall be located within the existing NCDOT easement and shall not extend outside the easement unless clearly necessary to provide safe and reliable transportation, and in such case, only to the extent necessary to provide safe and reliable transportation.

- b. To provide for interim safe and reliable transportation through the present Phase IIa area, as described in paragraph 1.a., above, NCDOT shall submit an application to further modify the Modifications to CAMA Permit Number 106-12 that are related to Phase IIa, which Modifications were issued April 26, 2013 and October 17, 2013, to authorize the interim measures under paragraph 1.a. while a long-term solution is reevaluated and constructed.
- c. NCDOT shall identify Phase IIb Bridge on New Location as its preferred alternative and seek Merger Team Concurrence Point 3 (the terms "Concurrence" and "Concurrence Point" are used throughout this Agreement as described in the Memorandum of Understanding dated May 16, 2012 and its appendices; the Memorandum of Understanding and Appendix B are attached hereto as Exhibit D) on Phase IIb Bridge on New Location Alternative area (as shown in Exhibit B). Nothing in this Agreement requires or should be interpreted to predetermine the choice of the Phase IIb Bridge on New Location as the Selected Alternative.
- d. DCM shall expeditiously process any application for CAMA permit modification as described in paragraph 1.b., subject to applicable laws and rules for permit processing, including public comment provisions. DCM shall consult with NCDOT to identify any proposed modifications as described in paragraph 1.b. for Phase IIa which would require permit denial based on the CAMA, the State Dredge and Fill Law or the Coastal Resources Commission's administrative rules. If DCM determines an application for CAMA permit modification as described in paragraph 1.b. for Phase IIa requires permit denial, DCM shall work with NCDOT to expeditiously proceed through the CAMA variance process, including supporting any request to expedite a variance petition if requested by NCDOT.
- e. As part of the Merger Team Concurrence Point 3 process, DCM shall provide a written statement of DCM's support and preference for Phase IIb Bridge on New

Location and by expressing this preference and otherwise shall use best efforts to help NCDOT attempt to secure Merger Team concurrence.

- f. NCDOT shall provide written assurance to Plaintiffs that Phase I as currently planned, designed and contracted does not preclude the addition of a later extension into the Pamlico Sound to the south.
- g. Plaintiffs shall refrain from seeking an injunction against or otherwise impeding the mobilization of work for Phase I while NCDOT is working on completion of the actions set forth in paragraphs 1.a., 1.b., 1.c. and 1.d. above.
- h. Upon rescinding the current Phase IIa contract as set forth in paragraph 1.a and completing the actions set forth in paragraphs 1.b., 1.c., 1.d., 1.e., and 1.f. above, the securing of the CAMA permit modification described in paragraphs 1.b. and 1.d., and the securing of Concurrence Point 3 described in paragraph 1.c., Plaintiffs shall dismiss with prejudice both the federal lawsuit challenging the Record of Decision issued December 20, 2010 and the contested case challenging issuance of the CAMA Permit 106-12 as issued September 19, 2012, and refrain from seeking an injunction against or otherwise impeding the mobilization and implementation of work on Phase I. Plaintiffs retain the right to challenge future actions and decisions of NCDOT, FHWA and DCM consistent with applicable law and Plaintiffs' covenants and obligations under this Agreement.
- i. Plaintiffs, NCDOT, and DCM will issue a joint press release announcing the settlement immediately following the execution of the Settlement Agreement.

2. Plaintiffs' covenants and obligations after dismissals:

- a. Plaintiffs covenant not to sue the State of North Carolina (the "State") or the United States including any agency, official or employee as to any claim based on, arising out of or regarding, in whole or in part, the NEPA and Section 4(f) documents issued for the Phase I or the interim Phase IIa work described in paragraphs 1.a. and 1.b., or any permit, approval or any other decision regarding the Phase I or the interim Phase IIa work described in paragraphs 1.a. or 1.b.
- b. If the Phase IIb Bridge on New Location Alternative is determined to be the least environmentally damaging practicable alternative ("LEDPA") and becomes the Selected Alternative, Plaintiffs covenant not to sue the State or the United States including any agency, official or employee as to any claim based on, arising out of or regarding, in whole or in part, the NEPA and Section 4(f) documents issued for the Phase IIb Bridge on New Location Alternative, or any permit, approval or any other decision regarding the Phase IIb Bridge on New Location Alternative.
- c. If the Phase II Extension Alternative (as shown in Exhibit C) is determined to be the LEDPA and becomes the Selected Alternative for Phase IIa, Plaintiffs covenant not to sue the State or the United States including any agency, official or employee as to any claim based on, arising out of or regarding, in whole or in part, the NEPA documents

issued for the Phase II Extension, or any permit, approval or any other decision regarding the Phase II Extension. Plaintiffs retain the right to challenge any future actions and decisions of the State and the United States related to any Section 4(f) document issued for the Phase II Extension Alternative that they believe fails to comply with federal law or the decision of the United States Court of Appeals for the Fourth Circuit issued in the Federal Action.

- d. If the Phase II Extension Alternative is determined to be the LEDPA and becomes the Selected Alternative, Plaintiffs will make best efforts to assist NCDOT in obtaining the funding described in paragraph 3.d.viii., below.

### 3. NCDOT and FHWA covenants and obligations after dismissals

- a. NCDOT and FHWA shall not design Phase IIa and Phase IIb of the Project so as to preclude the construction of subsequent phases within Pamlico Sound. NCDOT and FHWA acknowledge that the studies to be conducted as part of the NEPA and Section 4(f) processes pursuant to paragraphs 3.c. and 3.d.v. of this Settlement Agreement may conclude that the selected alternative for the studied phase should be located partially or wholly within the Pamlico Sound in order to minimize or avoid the use of Pea Island National Wildlife Refuge, and that such an alternative may be found to be the “least overall harm alternative” (23 C.F.R. § 774.3(c)(1)). NCDOT and FHWA further acknowledge that if a subsequent phase is proposed beyond those described in this Settlement Agreement (Phase IIa and Phase IIb), the environmental studies that are conducted as part of the NEPA and Section 4(f) processes for the subsequent phase(s) may conclude that the subsequent phase(s) should be located partially or wholly within the Pamlico Sound in order to minimize or avoid the use of Pea Island National Wildlife Refuge, and that such an alternative may be found to be the “least overall harm alternative” (23 C.F.R. § 774.3(c)(1)). NCDOT and FHWA acknowledge that all of their obligations must be undertaken in accordance with applicable law, including but not limited to 23 C.F.R. Part 774.
- b. The Parties agree that Phase I can be implemented immediately after execution of the Settlement Agreement, subject to permitting requirements and other applicable law.
- c. Phase IIb Bridge on New Location Alternative –
  - i. If the Merger Team concurs that the Phase IIb Bridge on New Location Alternative is the LEDPA for Phase IIb, then NCDOT and FHWA shall promptly revise the December 3, 2013 Section 4(f) evaluation for the B-2500B Project, accompanied by an associated environmental document prepared pursuant to NEPA.

The revised Section 4(f) and NEPA documents would, without limitation:

1. Identify the Phase IIb Bridge on New Location Alternative as the preferred alternative. Nothing in this Agreement requires or should be interpreted to predetermine NCDOT’s or FHWA’s

- choice of the Phase IIb Bridge on New Location as the Selected Alternative.
2. Evaluate the potential use of Section 4(f) properties by the Phase IIb Bridge on New Location Alternative.
  3. Propose to identify the Phase IIb Bridge on New Location Alternative as the “least overall harm” alternative (23 C.F.R. § 774.3(c)(1)), pending receipt of comments from agencies with jurisdiction over the Section 4(f) properties in the study area.
  4. Provide information about the current status of Phase I and Phase IIa activities.
  5. Shall not assert the joint planning exception for the Phase IIb Bridge on New Location Alternative in connection with the use of the Pea Island National Wildlife Refuge and shall apply Section 4(f) to the Refuge as both a refuge and an historic property.
  6. Be published on the NCDOT's website and mailed in accordance with NCDOT's distribution guidelines and practices. A public hearing would be held and comments would be accepted as required by applicable regulations. All comments received would be considered by NCDOT and FHWA prior to a final decision.
- ii. NCDOT shall complete the NEPA, Section 4(f) and the Clean Water Act Section 404 permit processes in consultation with the appropriate State and federal agencies. Upon completion of the NEPA process, NCDOT shall seek a ROD from FHWA.
  - iii. If the Phase IIb Bridge on New Location Alternative is determined to be the LEDPA for Phase IIb, NCDOT shall provide written assurance that the Phase IIb Bridge on New Location Alternative will be planned, designed, and contracted so as not to preclude the addition of a later extension into the Pamlico Sound to the north.
- d. Phase II Extension Alternative – NCDOT and FHWA shall reevaluate the NEPA and Section 4(f) documentation for Phase IIa as outlined in the following steps.
    - i. NCDOT shall prepare a report on the Phase II Extension Alternative within one and one-half years of the dismissals referred to in paragraph 1.h. The report shall contain information and evaluation sufficient to support Concurrence Points 2 and 2A for the Phase II Extension, and shall inform the analysis necessary for Concurrence Point 3 and for the Section 4(f) evaluation. The report shall, without limitation:
      1. Describe the environmental features of the Phase II Extension study area, including performing new studies or updating existing

studies of the topography, coastal condition, wetland and open water habitat, protected species, essential fish habitat, historic properties, and utilities.

2. Identify preliminary corridors that address the Purpose and Need for the project and consider the environmental constraints within the study area, including preparing conceptual/functional designs with horizontal and vertical alignments, edge of pavements, slope stakes, and right of way limits on digital orthophotography, as needed.
  3. Include meeting summaries describing recommendations from members of the Merger Team, stating the rationale for retaining or dropping conceptual alternatives. Based on the input from the Merger Team, NCDOT shall identify the alternative(s) to be carried forward for more detailed design (preliminary level design).
  4. Describe the development of the preliminary designs and, after coordination with key federal and State agencies, identify environmental impacts and possible measures to minimize such impacts.
  5. Provide cost estimates and identify funding alternatives based on the preliminary design.
- ii. After completion of the report described in paragraph 3.d.i., NCDOT and FHWA shall consult on the NEPA and Clean Water Act Section 404 permit processes. As part of those processes, NCDOT and the FHWA shall propose that the Phase II Extension Alternative be a detailed study alternative, and shall seek Merger Team Concurrence Point 2 as to the Phase II Extension Alternative.
  - iii. NCDOT shall use best efforts to identify an alignment that, to the extent possible, avoids and then minimizes harm to submerged aquatic vegetation (“SAVs”), areas of environmental concern (“AECs”), Wildlife Refuge property, historic properties, and other environmental features, consistent with other statutory or regulatory requirements. NCDOT shall use best efforts to secure the Merger Team’s Concurrence Point 2A for the Phase II Extension Alternative.
  - iv. Based on the information gathered in the detailed study of Phase II Extension Alternative and other alternatives, and if: (1) NCDOT and FHWA determine the data support such a recommendation, and (2) such a recommendation is consistent with the requirements of Title 23 of the United States Code and other statutory and regulatory requirements; NCDOT and FHWA shall identify the Phase II Extension Alternative as their preferred alternative, recommend to the

Merger Team that it concur that the Phase II Extension Alternative is the LEDPA, and seek Concurrence Point 3 for the Phase II Extension Alternative.

- v. If the Merger Team concurs at Concurrence Point 3 for the Phase II Extension Alternative during the NEPA and Clean Water Act Section 404 permit processes, NCDOT, in consultation with FHWA shall finalize a NEPA document and Section 4(f) determination. The NEPA document and/or Section 4(f) determination would include without limitation:
  - 1. Identify the Phase II Extension Alternative as the preferred alternative. Nothing in this Agreement requires or should be interpreted to predetermine the choice of the Phase II Extension Alternative as the Selected Alternative.
  - 2. Evaluate the potential use of Section 4(f) properties by the Phase II Extension Alternative.
  - 3. Propose to identify the Phase II Extension Alternative as the “least overall harm” alternative (23 C.F.R. § 774.3(c)(1)), pending receipt of comments from agencies with jurisdiction over the Section 4(f) properties in the study area.
  - 4. Provide information about the current status of activities on Phases I and IIb.
  - 5. Shall not assert the joint planning exception for Phase IIa in connection with the use of the Pea Island National Wildlife Refuge and shall apply Section 4(f) to the Refuge as both a refuge and an historic property.
  - 6. Be published on the NCDOT's website and mailed in accordance with NCDOT's distribution guidelines and practice. A public hearing would be held, and comments would be accepted as required by applicable regulations. All comments received would be considered by NCDOT and FHWA prior to a final decision.
- vi. NCDOT shall complete the NEPA, Section 4(f) and the Clean Water Act Section 404 permit processes for Phase IIa in consultation with the appropriate State and federal agencies. Upon completion of the NEPA process, NCDOT shall seek a ROD from FHWA.
- vii. If the Phase II Extension Alternative is determined to be the LEDPA, NCDOT shall provide written assurance that the Phase II Extension Alternative will be planned, designed, and contracted so as not to preclude the addition of a later extension into the Pamlico Sound to the north.
- viii. If the Merger Team concurs at Concurrence Point 3 for the Phase II Extension Alternative, NCDOT shall make best efforts to obtain funding for it, including, but not limited to GARVEE bonds or other financing.

- e. If at any time during the Merger Team process it appears to NCDOT that there are major issues of concern from members of the Merger Team with regards to moving forward with the Merger Team concurrence process described in this Agreement, NCDOT agrees to allow Plaintiffs and other members of the public to submit information for consideration by the Merger Team that the commenter believes supports the need for and/or the selection of a particular alternative.
  - f. Upon written request and consistent with state law, NCDOT shall provide or make available to Plaintiffs copies of all public records related to any phase of the B-2500 project submitted by NCDOT to the Merger Team, to any of the agencies participating in the Merger Team, and to any other permitting agency.
4. DCM's covenants and obligations after dismissal:
- a. DCM shall facilitate and expedite the alternatives analysis of the Phase II Extension Alternative (if and as requested by NCDOT), including by providing expertise and technical assistance involving the delineation of coastal wetlands and SAV habitat.
  - b. As part of the Merger Team Concurrence Point 2 process, DCM shall provide a written statement of its support for the study of the Phase II Extension Alternative and use best efforts to help NCDOT secure Merger Team concurrence.
  - c. DCM shall continue to provide to Plaintiffs' counsel, timely notice of future-issued permits, future-issued modifications, and notice of new permit applications or modification requests for the B-2500 project.
  - d. DCM shall include a "note" in each subsequent CAMA permit or permit modification for the B-2500 project that states that "the specific development being permitted does not preclude the remainder of the B-2500 project being built in the Pamlico Sound provided that future development will be constructed in a way that avoids and minimizes impacts to AECs."
5. Plaintiffs agree that any judicial challenge to the procedures used or the conclusions drawn by NCDOT, FHWA or DCM for Phase IIa as described in paragraphs 3.d.i.-vi., 4.a.; or Phase IIb as described in paragraph 3.c., shall be brought only after the applicable process is complete and there is a final agency action. The Parties agree that any such challenge shall be brought in a newly filed complaint rather than as a continuation of the Federal Action or State Action.
6. The Parties shall work together to have the Fourth Circuit promptly issue the mandate. Within fourteen (14) days of the Fourth Circuit's entry of the mandate, the Parties will jointly request that the Federal Action and the State Action be stayed for one hundred twenty (120) days, subject to reopening for the dismissals required by paragraph 2.

7. Each of the provisions of this Agreement shall terminate upon its completion.
8. This Agreement does not affect the exercise of any authority by FHWA, NCDOT or DCM except as expressly set forth herein.
9. In the event of a dispute arising out of or relating to this Agreement, the Party raising the dispute shall provide the other Parties with written notice of the claim as provided in paragraph 10. The written notice shall include a description of the dispute, documentation related to the dispute, and any proposals for resolving the dispute. The Parties agree that they will meet and confer (either telephonically or in person) in a good faith effort to resolve any disputes. The Parties agree to use good faith efforts to schedule an opportunity to meet and confer within thirty (30) days of receipt of the notice of dispute and to resolve the dispute within thirty (30) days thereafter. Nothing in this paragraph is intended to preclude the Parties from engaging in informal communications to attempt to resolve potential disputes. Except for disputes related to the provisions addressed in paragraph 5, if the Parties fail to resolve a dispute, the sole remedy shall be limited to the filing of a new action. The Parties do not waive or limit any defense related to such litigation including that there is no right of action.
10. To the extent any notices are required or authorized under this Agreement, they shall be made in writing by U.S. mail, and addressed to the following:

- a. Plaintiffs:

Julie Youngman  
 Derb Carter  
 Southern Environmental Law Center  
 601 West Rosemary Street, Suite 220  
 Chapel Hill, NC 27516

Desiree Sorenson-Groves  
 Vice President, Government Affairs  
 National Wildlife Refuge Association  
 1001 Connecticut Ave., NW, Suite 905  
 Washington, DC 20036

Michael Senatore  
 Jason Rylander  
 Defenders of Wildlife  
 1130 17<sup>th</sup> Street, NW  
 Washington, DC 20036-4604

## b. State Parties:

North Carolina Dept. of Justice  
Transportation Section  
1505 Mail Service Center  
Raleigh, NC 27699-1505

North Carolina Dept. of Justice  
Environmental Division  
9001 Mail Service Center  
Raleigh, NC 27699-9001

North Carolina Dept. of Transportation  
General Counsel's Office  
1505 Mail Service Center  
Raleigh, NC 27699-1505

North Carolina Dept. of Environment and Natural Resources  
General Counsel's Office  
1601 Mail Service Center  
Raleigh, NC 27699-1601

## c. Federal Parties:

U.S. Dept. of Justice  
Environment and Natural Resources Div.  
Natural Resources Section  
P.O. Box 7611  
Washington, DC 20044-7611  
DJ#90-1-4-13479

Federal Highway Administration  
Office of the Chief Counsel  
1200 New Jersey Avenue, SE  
Washington, DC 20590

## d. Intervenor

Cape Hatteras Electric Cooperative  
Attn: General Manager  
P.O. Box 9  
Buxton, NC 27920

Vandeventer Black LLP  
 Attn: Wyatt Booth, Esq.  
 P.O. Box 2599  
 Raleigh, NC 27602-2599

If there is any change in the name or address of the person responsible for receiving notice on behalf of a Party, that Party shall inform each of the other Parties to this Agreement in writing.

11. This Agreement is for the benefit of the Parties only and may not be used by any other person or entity in any other proceeding. This Agreement is binding upon the Plaintiffs and Intervenor and their respective agents, successors and assigns, and is binding upon NCDOT, DCM and FHWA.
12. This Agreement resolves all claims related to or arising from the Federal Action and State Action which have been or could have been asserted except as expressly reserved in paragraph 2.
13. The Agreement is the result of compromise and settlement and sets forth the entire agreement among the Parties. The Agreement does not represent an admission by any party to any fact, claim, or defense concerning any issue in the Federal Action or State Action. The Parties agree the Agreement has no precedential effect.
14. The Agreement may not be modified, altered or changed except by written agreement of all Parties, specifically referring to this Agreement.
15. Whenever possible, each provision of this Settlement Agreement shall be interpreted in such a manner as to be effective and valid.
16. Each Party represents that it has not relied on, and does not rely on, any representations or agreements other than those expressly stated in this Agreement, about any facts or about the nature or extent of any claims, demands, damages or rights it may have against any other Party. Other than those expressly stated in this Agreement, no representations have been made to the Parties to induce them to enter into and execute this Agreement. Each Party expressly agrees it is assuming any and all risks that the facts and law may be or become different from the facts and law as known to, or believed to be, by the Party as of the date of this Agreement. This Agreement supersedes any prior agreements or understandings among the Parties in compromise of the Federal Action and the State Action.
17. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

- 18. The undersigned representatives of the Parties certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Agreement and to legally bind such Parties to it.
- 19. The terms of the Agreement shall become effective upon the signature of the last Party to approve the Agreement ("Effective Date").

DEFENDERS OF WILDLIFE

By:  Dated: 4-30-15  
 Michael Senatore  
 Vice President Conservation Law and General Counsel  
 Defenders of Wildlife

NATIONAL WILDLIFE REFUGE ASSOCIATION

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 David Houghton, President  
 National Wildlife Refuge Association

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION and ANTHONY J. TATA, in his official capacity as SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Anthony J. Tata, Secretary  
 North Carolina Department of Transportation

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Shelley R. Blake, General Counsel  
 North Carolina Department of Transportation

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF COASTAL MANAGEMENT

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Sam M. Hayes, General Counsel  
 North Carolina Department of Environment and  
 Natural Resources

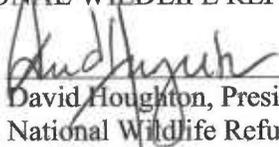
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DEFENDERS OF WILDLIFE

By: \_\_\_\_\_ Dated:  
Michael Senatore  
Vice President Conservation Law and General Counsel  
Defenders of Wildlife

NATIONAL WILDLIFE REFUGE ASSOCIATION

By:  \_\_\_\_\_ Dated: April 21, 2015  
David Houghton, President  
National Wildlife Refuge Association

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION and ANTHONY J. TATA, in his official capacity as SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Dated:  
Anthony J. Tata, Secretary  
North Carolina Department of Transportation

By: \_\_\_\_\_ Dated:  
Shelley R. Blake, General Counsel  
North Carolina Department of Transportation

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF COASTAL MANAGEMENT

By: \_\_\_\_\_ Dated:  
Sam M. Hayes, General Counsel  
North Carolina Department of Environment and  
Natural Resources

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DEFENDERS OF WILDLIFE

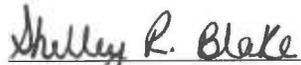
By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Michael Senatore  
 Vice President Conservation Law and General Counsel  
 Defenders of Wildlife

NATIONAL WILDLIFE REFUGE ASSOCIATION

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 David Houghton, President  
 National Wildlife Refuge Association

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION and ANTHONY J. TATA, in his official capacity as SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By:  Dated: 4/27/2015  
 Anthony J. Tata, Secretary  
 North Carolina Department of Transportation

By:  Dated: 4/27/2015  
 Shelley R. Blake, General Counsel  
 North Carolina Department of Transportation

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF COASTAL MANAGEMENT

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Sam M. Hayes, General Counsel  
 North Carolina Department of Environment and  
 Natural Resources

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DEFENDERS OF WILDLIFE

By: \_\_\_\_\_ Dated:  
Michael Senatore  
Vice President Conservation Law and General Counsel  
Defenders of Wildlife

NATIONAL WILDLIFE REFUGE ASSOCIATION

By: \_\_\_\_\_ Dated:  
David Houghton, President  
National Wildlife Refuge Association

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION and ANTHONY J. TATA, in his official capacity as SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

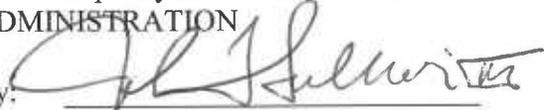
By: \_\_\_\_\_ Dated:  
Anthony J. Tata, Secretary  
North Carolina Department of Transportation

By: \_\_\_\_\_ Dated:  
Shelley R. Blake, General Counsel  
North Carolina Department of Transportation

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF COASTAL MANAGEMENT

By:  \_\_\_\_\_ Dated: 4-27-15  
Sam M. Hayes, General Counsel  
North Carolina Department of Environment and  
Natural Resources

FEDERAL HIGHWAY ADMINISTRATION and JOHN F. SULLIVAN, III, in his official capacity as DIVISION ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

By: 

Dated: 4/30/2015

John F. Sullivan, III  
Division Administrator  
Federal Highway Administration

CAPE HATTERAS ELECTRIC MEMBERSHIP CORPORATION

By: \_\_\_\_\_

Dated:

Susan Flythe  
General Manager  
Cape Hatteras Electric Membership Corporation

FEDERAL HIGHWAY ADMINISTRATION and JOHN F. SULLIVAN, III, in his official capacity as DIVISION ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

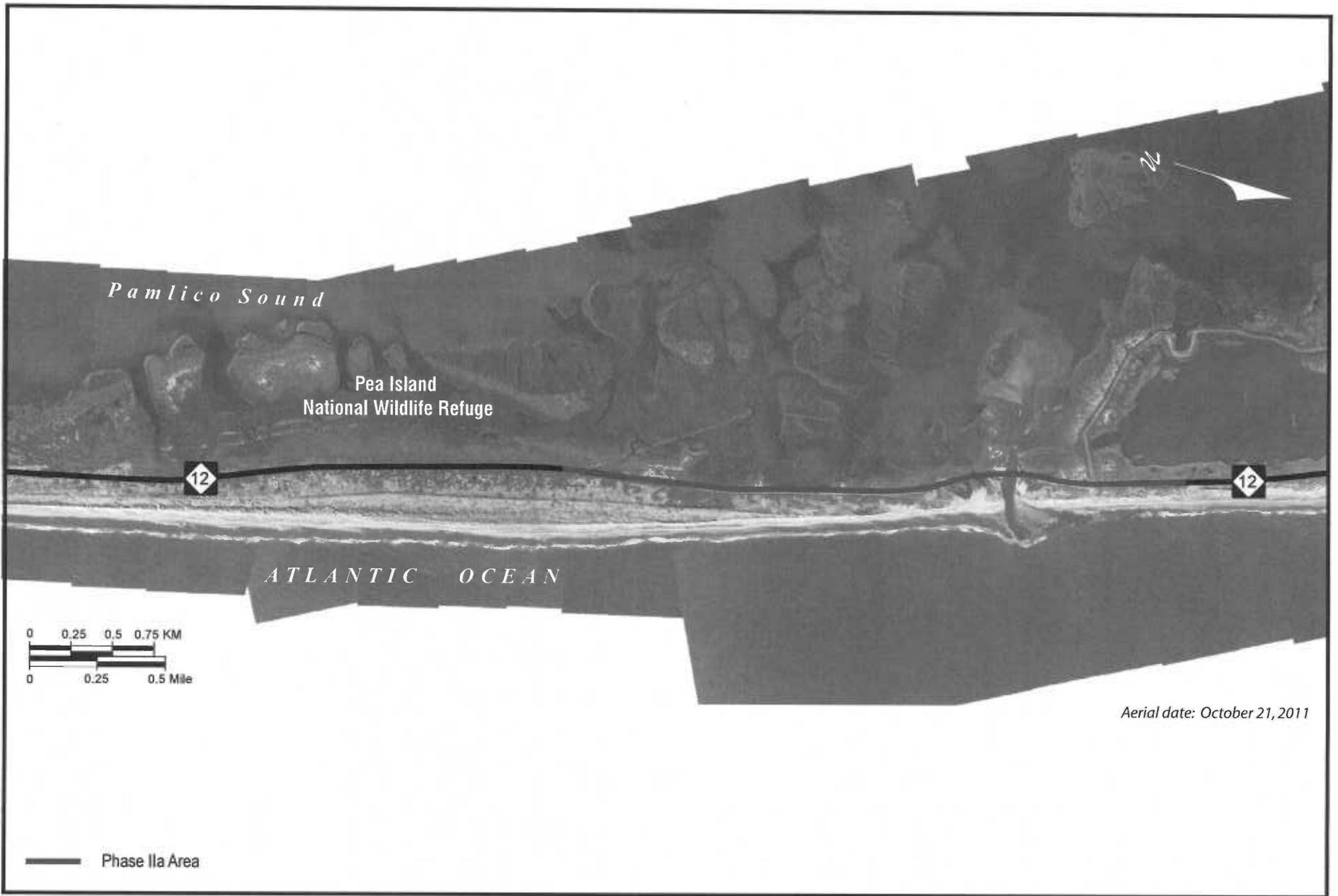
By: \_\_\_\_\_  
John F. Sullivan, III  
Division Administrator  
Federal Highway Administration

Dated:

CAPE HATTERAS ELECTRIC MEMBERSHIP CORPORATION

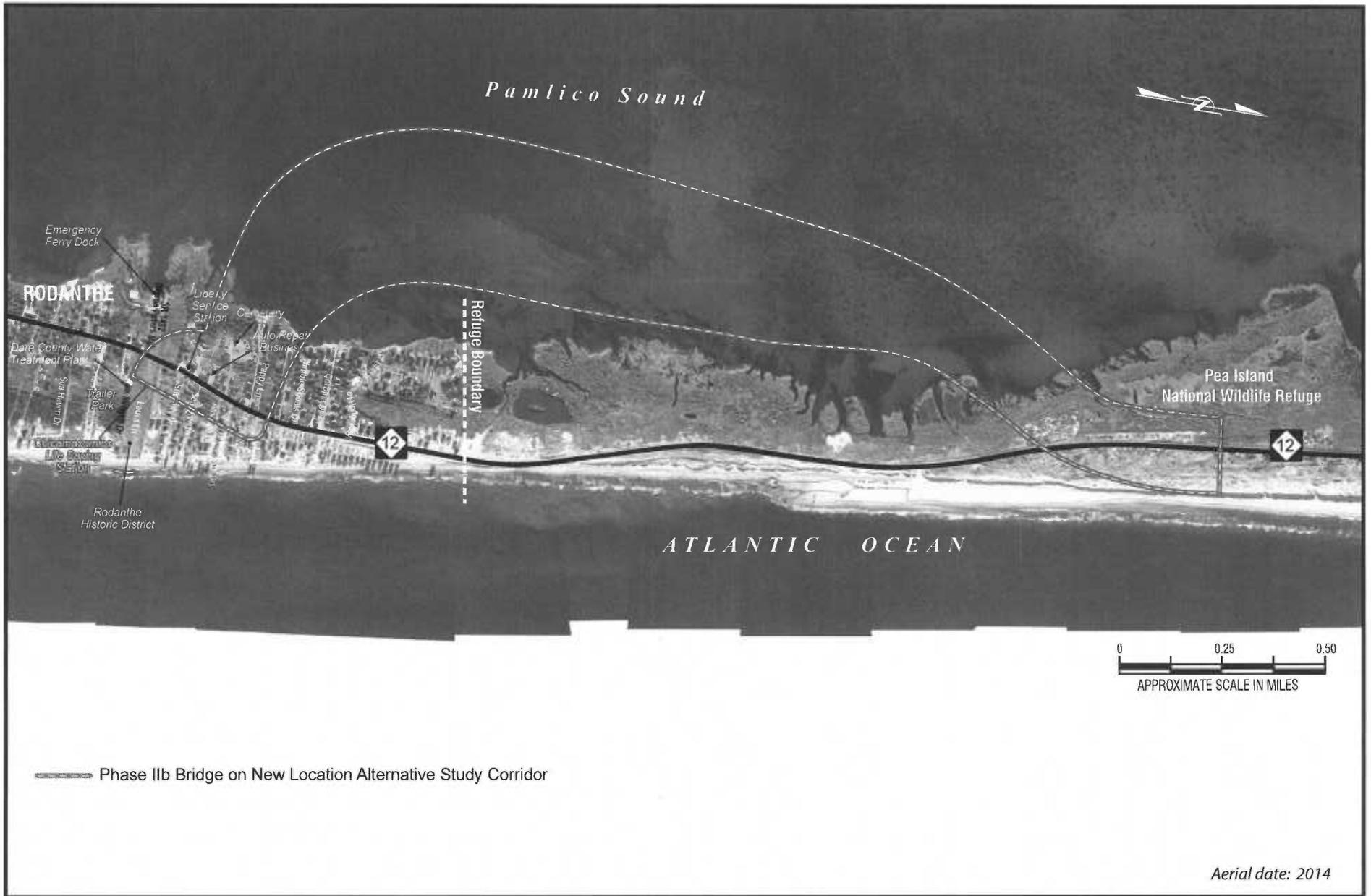
By: Susan E. Flythe  
Susan Flythe  
General Manager  
Cape Hatteras Electric Membership Corporation

Dated: 4/24/15



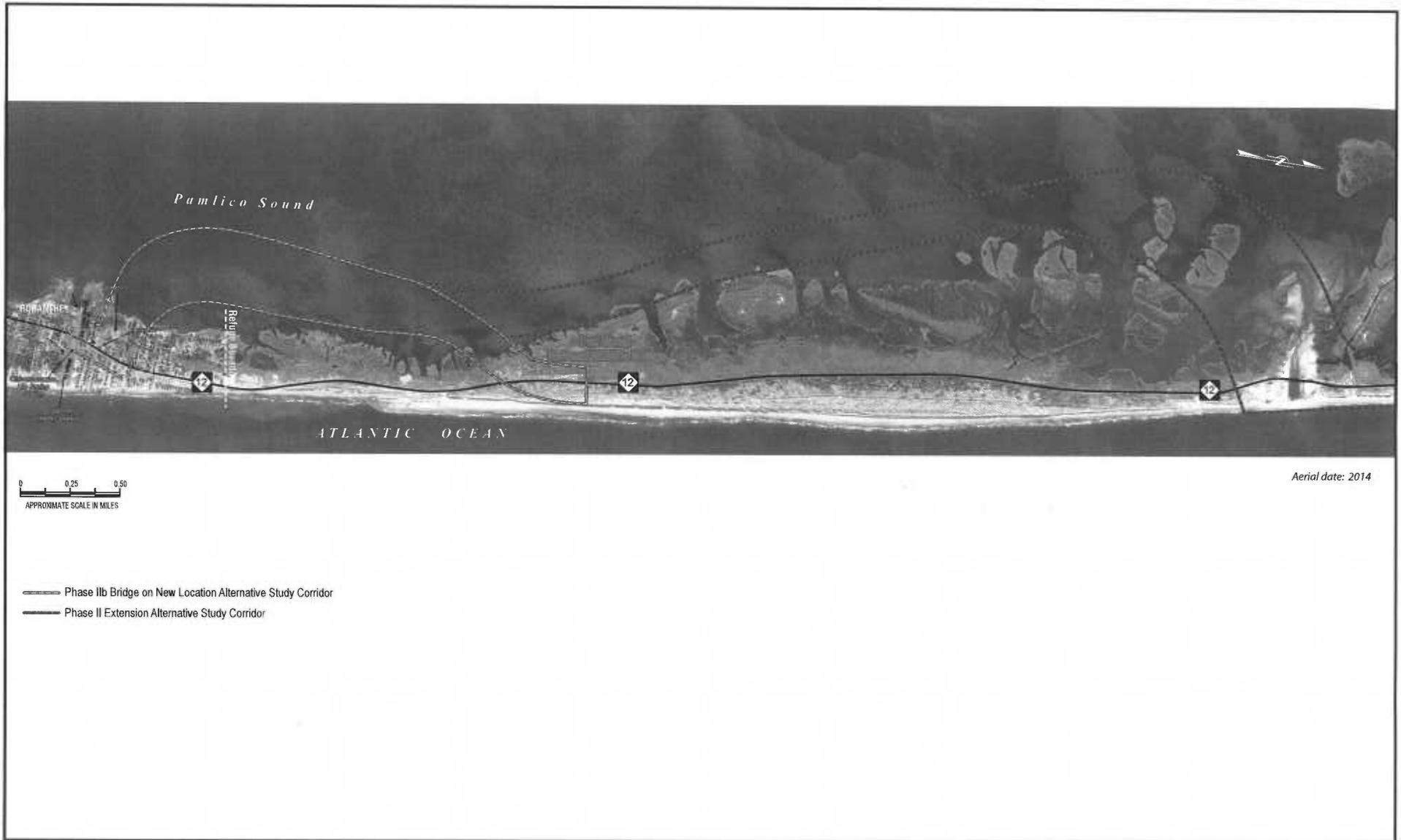
**PHASE IIa AREA**

Exhibit  
A



**PHASE IIb BRIDGE ON NEW LOCATION ALTERNATIVE STUDY CORRIDOR**

Exhibit  
B



**PHASE II EXTENSION ALTERNATIVE STUDY CORRIDOR**

Exhibit  
C

Rev. 5/16/12

**Memorandum of Understanding****Section 404 of the Clean Water Act****And****National Environmental Policy Act****Integration Process for Surface Transportation Projects in North Carolina*****Applicability:***

- A. These procedures will generally apply to all new location projects and all projects that require an individual permit under Section 404 of the Clean Water Act. FHWA, USACE, NCDENR, and NCDOT will consult early in the project development process and apply screening criteria to identify specific projects that will follow this process.

Note: If a project is being developed under the North Carolina Environmental Policy Act without FHWA involvement, this process will still be applicable but will be implemented without FHWA participation.

- B. Regulatory/Resource Agency participation in this process does not imply endorsement of all aspects of a transportation plan or project. Nothing in these procedures is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved. In the event of any conflict between this process and other statutes or regulations, the statutes or regulations control.

***Background:***

In a May 1, 1992 agreement, the U. S. Department of Transportation, the Office of the Assistant of the Army (Civil Works), and the U. S. Environmental Protection Agency (EPA) developed policy that would (a) improve interagency coordination and (b) would integrate NEPA and Section 404 procedures. On May 14, 1997, the Wilmington District of the USACE, the North Carolina Division of FHWA and NCDOT signed an Interagency Agreement that provided procedures to integrate NEPA and Section 404 for transportation projects in North Carolina. This integrated approach is part of an effort to streamline the project development and permitting processes. The objective is to ensure that the regulatory requirements of Section 404 of the Clean Water Act are incorporated into the NEPA decision-making process for transportation projects. The original process is hereby modified to incorporate experience gained with

years of use of the 1997 agreement, guidance from the USACE-NCDOT-NCDENR permit process improvement workshop, and incorporation of the streamlining provisions of the Transportation Equity Act for the 21<sup>st</sup> century (TEA-21). This process will continue to be regularly evaluated for its effectiveness and modified as appropriate.

***Concept of Concurrence:***

The process is conducted under the concept of "concurrence" with a project team organization. Concurrence implies that each team member and the agency they represent does not object to decisions made at strategic points in the project development process and in doing so "pledges" to abide by the decision made unless there is a profound changed condition. The USACE, NCDENR, NCDOT and FHWA jointly lead the project team. Concurrence points are defining points in the NEPA project development and Section 404 permitting process. Concurrence is sequential and must be achieved in proper order. As an example, it is not possible to have agreement on alternatives selected for detailed study (Concurrence Point 2) without first achieving agreement on purpose and need (Concurrence Point 1).

Each agency should enter discussion of a concurrence point with a solution oriented attitude. After sufficient discussion and an opportunity for NCDOT to provide requested information, each agency will either concur or non-concur, or, in exceptional cases, abstain.

If an organization decides to either non-concur or abstain, that organization is responsible for documenting its reasons in writing and providing that documentation to all Project Team Members within 5 business days of the Project Team meeting. Primary agencies are responsible for reviewing the reasons for abstaining to determine if the process should move forward. Definitions of concurrence, non-concurrence and abstention are provided below:

- **Concurrence**
  - "I do not object to the proposed action based on the laws and regulations of my program and agency."
- **Non-concurrence**
  - "I do not concur as the information is not adequate for this stage and/or concurrence could violate the laws and regulations of my program and agency."
    - Non-concurrence should not be utilized based on lack of information without affording NCDOT a reasonable opportunity to provide the requested information.
- **Abstention**
  - "I do not actively object, but I am not signing the concurrence form. The Merger Process may continue, and I agree not to revisit the concurrence point subject to the guidance on revisiting concurrence points".

The intent of the streamlined process is to ensure that agency concurrences are obtained before proceeding to the next step or concurrence point. Concurrence will be documented by signature of a concurrence form summary statement. If an agency cannot concur, they agree to provide a written explanation of the basis for non-concurrence to the Project Team. All agencies agree to attempt to resolve issues causing non-concurrence and to try to do this on an informal basis within 15 working days of the subject concurrence meeting.

Having concurred at a particular milestone, a team member will not request to revisit previous concurrence points unless there is substantive new information that warrants a reevaluation. Examples of such a reevaluation might include:

- a change in the assumptions on which the project purpose or need was based;
- a change in regulatory authority that extends regulatory jurisdiction to include an area or resource that was not previously regulated;
- discovery of an impact, resource or additional information that was not previously identified or did not previously exist; or
- discovery of engineering limitations.

All team members agree that staffing changes are not sufficient reason to revisit a previous concurrence point and that newly involved agency staff will abide by the project decisions made by previous staff and the team. A request to revisit a previous concurrence point will be provided in writing to team leaders and will include supporting documentation. Team leaders (FHWA, USACE, NCDENR, and NCDOT) will respond to the request in writing with a carbon copy, or email with cc's, to the entire Project Team.

***Project Team:***

NCDOT will coordinate with the USACE, FHWA, and NCDENR to identify team members for each project. NCDOT will provide written verification of participating team members for each project. It is recognized that many statutes and regulations must be met in order to achieve concurrence and make good project decisions. Therefore, the following agencies will normally participate unless they decline.

U. S. Army Corps of Engineers  
 Federal Highway Administration  
 North Carolina Department of Transportation  
 U. S. Environmental Protection Agency  
 U. S. Fish and Wildlife Service  
 North Carolina DENR, Division of Water Quality  
 North Carolina Wildlife Resources Commission  
 North Carolina Department of Cultural Resources

The following agencies will be requested to participate when a project is within their respective geographic area:

North Carolina DENR, Division of Coastal Management (within the twenty coastal counties)  
 Metropolitan Planning Organizations (MPO's)/Rural Planning Organizations (RPO's)\*  
 National Park Service (in the vicinity of national parklands)  
 U. S. Coast Guard (Coast Guard permitted bridges)  
 U. S. Forest Service (in the vicinity of national forest property)  
 Tennessee Valley Authority (within TVA region)  
 U. S. Fish and Wildlife Service – Refuge (in the vicinity of federal refuges)  
 Eastern Band of Cherokee Nation-Tribal Historic Preservation Officer  
 North Carolina Division of Marine Fisheries and National Oceanic and Atmospheric Administration (NOAA) (when there is any possibility that resources under their jurisdiction are in the project vicinity. Appendix B provides a list of Coastal Plain counties where the NOAA and NCDMF should be contacted to determine their participation in projects in these counties.)

- \* Each MPO and RPO representative serving on a project team will have authority to sign Merger concurrence forms. The effect of multiple MPO/RPO signatures for concurrence will be evaluated 24 months after the date of execution of this MOU and recommendations for revisions made as needed.

Each participating agency will develop protocol to determine which office or individual of each agency will participate. NCDOT's representative on the Project Team will be the Project Development Engineer. To represent NCDOT in all areas of concern related to the natural and human environment, design and safety considerations, a representative from the Human Environment Section, the Natural Environment Section, the Design Engineers (Roadway Design, Hydraulics, Structure, Geotechnical, etc.), Construction Engineers, Transportation Planning and the Division Office should also be invited to attend Project Team meetings to provide technical information and input. (Each agency will determine whom to invite to the meeting based on project issues.)

### ***Concurrence Points and Project Phases***

There are seven strategic decision (concurrence) points in the NEPA project development and permitting process:

1. Purpose and Need and Study Area Defined: The foundation upon which justification for the project is established.
2. Detailed Study Alternatives Carried Forward: Alternatives which satisfy the purpose and need for the project. These alternatives will be studied and evaluated in sufficient detail to ensure good transportation and permit decision-making.

- 2A. **Bridging Decisions and Alignment Review:** Identification of bridge and box culvert locations and their approximate lengths and dimensions, and a review of the preliminary alignment for each alternative.
- 3. **LEDPA/Preferred Alternative Selection:** The alternative selected as the "least environmentally damaging practicable alternative" or LEDPA (NEPA preferred alternative), through the project development and permitting process.
- 4A. **Avoidance and Minimization:** A detailed, interdisciplinary and interagency review to optimize the design and benefits of the project while reducing environmental impacts to both the human and natural environment.
- 4B. **30 Percent Hydraulic Design Review:** A review of the development of the stormwater best management practices and hydraulic design.
- 4C. **Permit Drawings Review:** A review of the completed permit drawings after the hydraulic design is complete and prior to permit application.

**Implementation Procedures:**

Attached to this MOU are implementation procedures which provide detailed information that have been developed to provide guidance for the Section 404/ NEPA Merger Process (Merger Process). These implementation procedures have been developed for three basic types of projects as follows:

- ◆ Process I - Projects on New Location
- ◆ Process II - Widening and Other Improvement Projects
- ◆ Process III - Bridge Replacement Projects Processed as a Categorical Exclusion

The guidance for each of these processes consists of a flow chart and detailed guidance on how to complete each step of the flow chart. If there is doubt as to which process to follow, the Project Team will decide which process to use.

***Conflict or Dispute Resolution:***

Concurrence at critical identified points in the project development and permitting process is the key to the success of the Merger Process. However, it is recognized that there may be instances where the Project Team cannot reach concurrence due to diverse agency missions, philosophical differences or policy issues. If the team members of an agency or agencies cannot concur, the approved guidance for conflict or dispute resolution will be initiated. See Appendix C.

**Modification:**

Substantive changes to this process will require approval of all primary signatories. Modification may be proposed by one or more signatories. Proposals for modification will be circulated to all signatories for a 30-day review period. Approval of such proposals will be indicated by written acceptance. A signatory may terminate participation in this agreement upon 30-day written notice to all other signatories.

*Signatures:*

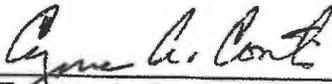
The four agencies listed below as primary signatories are the process owners of the Merger Process. These agencies are the primary decision-making authority with regard to NEPA and Section 404 permitting and are responsible for conflict or dispute resolution.

The agencies listed as partnering signatories have a significant role as project team members in the Merger Process, and in some cases, may have a statutory compliance role or regulatory function to fulfill. Nearly all of the listed agencies are currently participating as project team members under the existing Merger Process. In addition, many of the listed agencies have participated in developing the Merger Process procedures. By signing this document, these agencies agree to participate and abide by the procedures described in the Merger Process. Such agreement does not compromise or eliminate statutory or regulatory remedies available to the listed agencies (e.g. 404(q) or (c)) nor does it circumvent statutory requirements that are mandated to specific agencies. The intent of this agreement is to provide an interactive, predictable process that allows agencies to address their statutory and regulatory requirements during the development of transportation projects within the State of North Carolina.

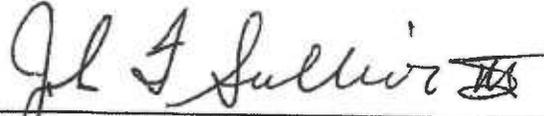
**Primary Signatories:**

  
\_\_\_\_\_  
Steven A. Baker  
Colonel, US Army  
District Commander

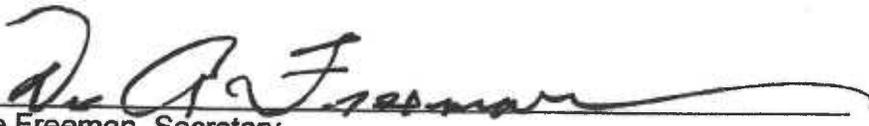
5/18/12  
Date

  
\_\_\_\_\_  
Eugene A. Conti, Secretary  
North Carolina Department of Transportation

5/21/12  
Date

  
\_\_\_\_\_  
John Sullivan, III, Division Administrator  
FHWA, North Carolina Division

5/24/12  
Date

  
\_\_\_\_\_  
Dee Freeman, Secretary  
North Carolina Department of Environment and Natural Resources

5-25-12  
Date

**Appendix B:**

**Implementation  
Guidance for Conflict or  
Dispute Resolution**

**NOTE (3-20-08): SAFETEA-LU provides a formal process for resolving serious issues that may delay the project or result in a denial of a required approval for the project. NCDOT or the Governor of North Carolina may invoke the Section 6002 process for issue resolution at any time. While the Section 6002 process is a tool available to States and project sponsors for resolving issues of concern, there are other options that are available to Lead and Participating agencies. Those options include this Implementation Guidance for Conflict or Dispute Resolution, other procedures embodied in a coordination plan, and the CEQ referral process under 40 CFR Part 1504.**

Agreement at critical identified points in project development and permitting is the key to the success of each agency's program. However, it is recognized that there may be instances where a project specific decision cannot be easily reached because of policy conflicts or philosophical differences. This Implementation Guidance is intended to apply to the full spectrum of conflicts and unresolved issues that arise during the development, design, and permitting of North Carolina Department of Transportation (NCDOT) projects. The guidance also provides the specific procedures for elevation to upper management in those cases where the Merger Process concurrence points cannot be reached by the Project Teams. It is understood that every effort will be taken to resolve issues at the Project Team level. In the Merger Process non-concurrence situations, a facilitator should be included in the Project Team discussions. When resolution still cannot be obtained, this elevation process should be initiated.

Any Project Team agency can initiate the elevation process by providing a written request to the NCDOT manager responsible for the project and a copy to the chairperson of the Merger Implementation Team providing the specific reason for the elevation request. NCDOT is responsible for administering the elevation process. Upon receiving the written request, the NCDOT Project Manager will send an e-mail notice of potential elevation to the Review Board members (see attached list for members and addresses) and all Project Team members. The e-mail notification should identify and briefly describe the project involved, the Concurrence Point or issue at which agreement cannot be reached, and the reason for the elevation request. Project Team members are responsible for keeping their respective chain of command informed.

The NCDOT Project Manager will coordinate a tentative Review Board meeting 30 days from the date of the e-mail notice of potential elevation or as soon as possible thereafter. This date will be coordinated with all parties and will be e-mailed to the Review Board, the elevating agency, and all other Project Team members. In advance of the Review Board meeting, the parties in dispute will attempt to resolve the issue by elevating the problem up their respective chains of command to the extent deemed appropriate (e.g. the existing NCDOT/NCDENR elevation process). If resolution is achieved, it will be documented by signing an agreement or the concurrence form and the NCDOT Project Manager will ensure that the Review Board meeting is canceled. In the event that the conflict cannot be resolved by the 21st day of the 30-day time period, the NCDOT Project Manager will ensure the Review Board receives written briefs from the agencies involved to support their respective positions. The NCDOT Project Manager will be responsible for assuring that this information is provided to the Review Board no later than five (5) days prior to the scheduled Review Board meeting.

Executive management and Project Team members from the elevating agency will be invited to present information for the Review Board to consider. All Project Team members may attend.

It is expected that the Review Board will be able to make a decision at the meeting or shortly thereafter. If the Review Board determines that additional information is needed, the decision will be delayed until the information is obtained for the Board's use.

After the Review Board makes a decision, all Project Team members will be given the opportunity to sign the Concurrence Form or an agreement that implements that decision. If a Review Board member represents a non-concurring agency, then the Review Board member has the option to sign the concurrence form for that agency. Concurrence by all Review Board members shall constitute a final decision. Final decisions shall not result in a violation of applicable laws, rules, or regulations.

It is understood that an agency's participation in this dispute resolution process does not preclude other conflict resolution or elevation options available by regulation to that agency. It is also understood that nothing in this agreement diminishes the USACE, Federal Highway Administration, and North Carolina Department of Environment and Natural Resources (NCDENR) roles and responsibilities to make decisions regarding permit requirements, permits, certifications or approvals.

S. Kenneth Jelly  
S. Kenneth Jelly, Chief, Regulatory Division  
USACE, Wilmington District

10/15/03  
Date

Delapray E. Benton  
Delapray E. Benton, Chief Deputy Secretary  
North Carolina Department of Environment  
and Natural Resources

10/17/03  
Date

Roger E. Sheets, Jr.  
Roger E. Sheets, Jr., Deputy Secretary  
North Carolina Department of Transportation

10/20/03  
Date

Don Voelker  
Don Voelker, Assistant Division Administrator  
FHWA, North Carolina Division

10/15/03  
Date

**REVIEW BOARD MEMBERS FOR ELEVATION PROCESS OF  
MERGER AGREEMENT**

U.S. Army Corps of Engineers – Chief, Regulatory Division

North Carolina Department of Environment and Natural Resources – Chief Deputy Secretary

North Carolina Department of Transportation – Chief Engineer

Federal Highway Administration – Assistant Division Administrator

Chairperson of the Merger Management Team – NCDOT Director of Preconstruction

ROY COOPER  
Governor  
ELIZABETH S. BISER  
Secretary  
BRAXTON DAVIS  
Director



September 28, 2021

Mr. Derb Carter  
Southern Environmental Law Center  
601 W. Rosemary St., Suite 220  
Chapel Hill, NC 27516-2356

**RE:** N.C. Department of Transportation, CAMA Major Permit No. 106-12, TIP No. B-2500  
Phase IIB, Rodanthe, NC Highway 12, Dare County, NC.

Dear Mr. Carter:

In accordance with paragraph 4.c. of the Bonner Bridge Settlement Agreement, please find enclosed a copy of a request from the N.C. Department of Transportation (NCDOT) for a Modification of CAMA Permit 106-12 to construct a paved turnaround and install a temporary sandbag structure at the north end of Rodanthe on the current NC Highway 12.

Please feel free to contact me if you have any questions or would like additional information. I can be reached via e-mail at [cathy.brittingham@ncdenr.gov](mailto:cathy.brittingham@ncdenr.gov).

Sincerely,

Cathy Brittingham  
Transportation Project Coordinator

Enclosure

CC: Jonathan Howell, DCM  
Christy Simmons, DCM



**SENDER: COMPLETE THIS SECTION** 093

- 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:

Scott Lanier  
 US Fish and Wildlife Service  
 Pea Island National Wildlife Refuge  
 P. O. Box 1969  
 Manteo, NC 27954



9590 9402 6413 0303 3290 99

2. Article Number (Transfer from service label)

7020 1290 0000 7856 8861

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

STEVE BLANKFELD

C. Date of Delivery

8/13/21

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

**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:

CSI NC, LLC  
 DONALD RAY DAVIS  
 7344 STONEY POINT RD.  
 FAYETTEVILLE, NC 28306



9590 9402 6413 0303 3280 23

2. Article Number (Transfer from service label)

7020 1290 0000 7856 8892

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

8-25-21

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt





## **NCDOT variance request (CRC-21-07)**

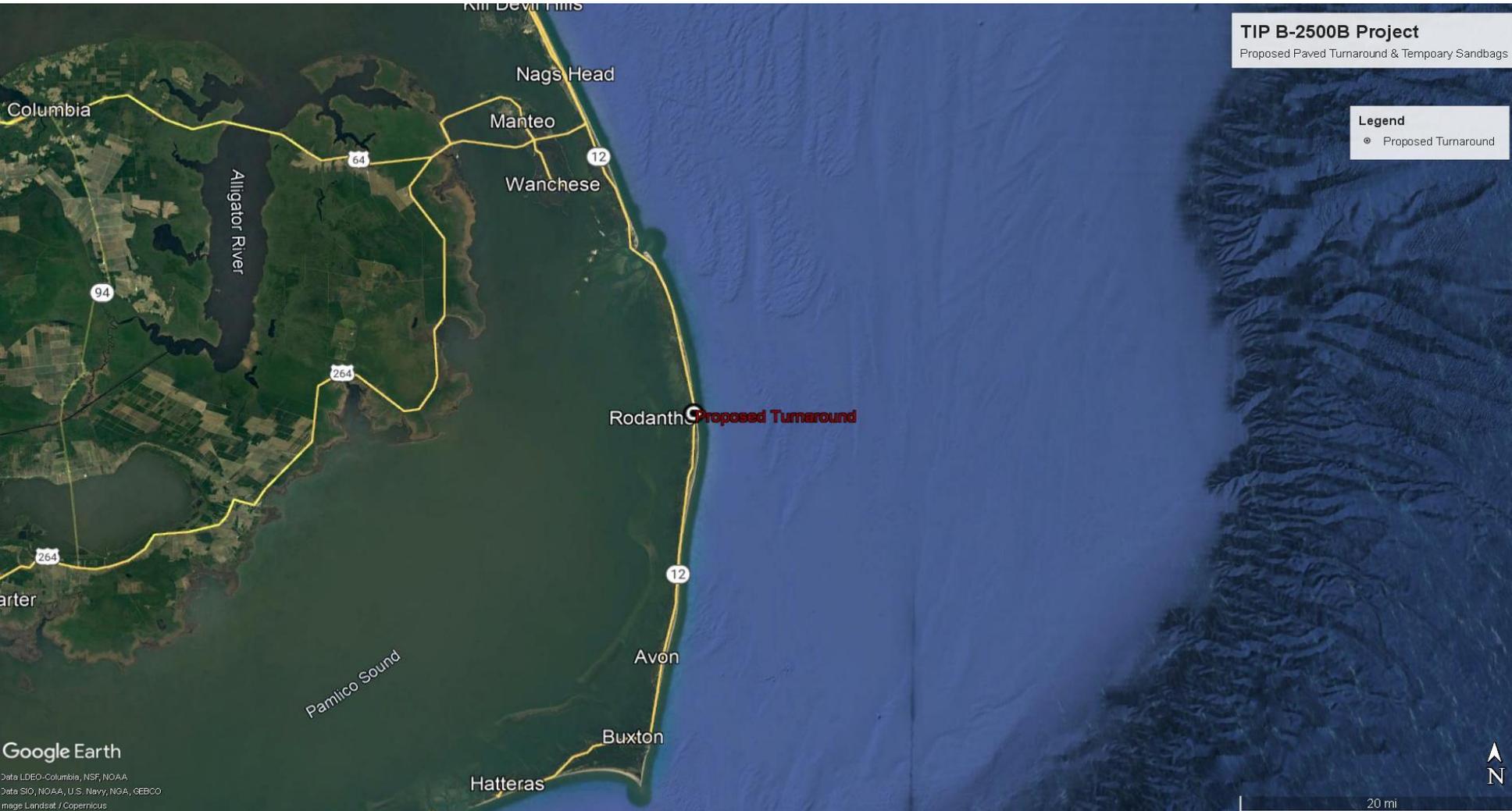
Jonathan Howell  
Major Permits Coordinator  
Division of Coastal Management

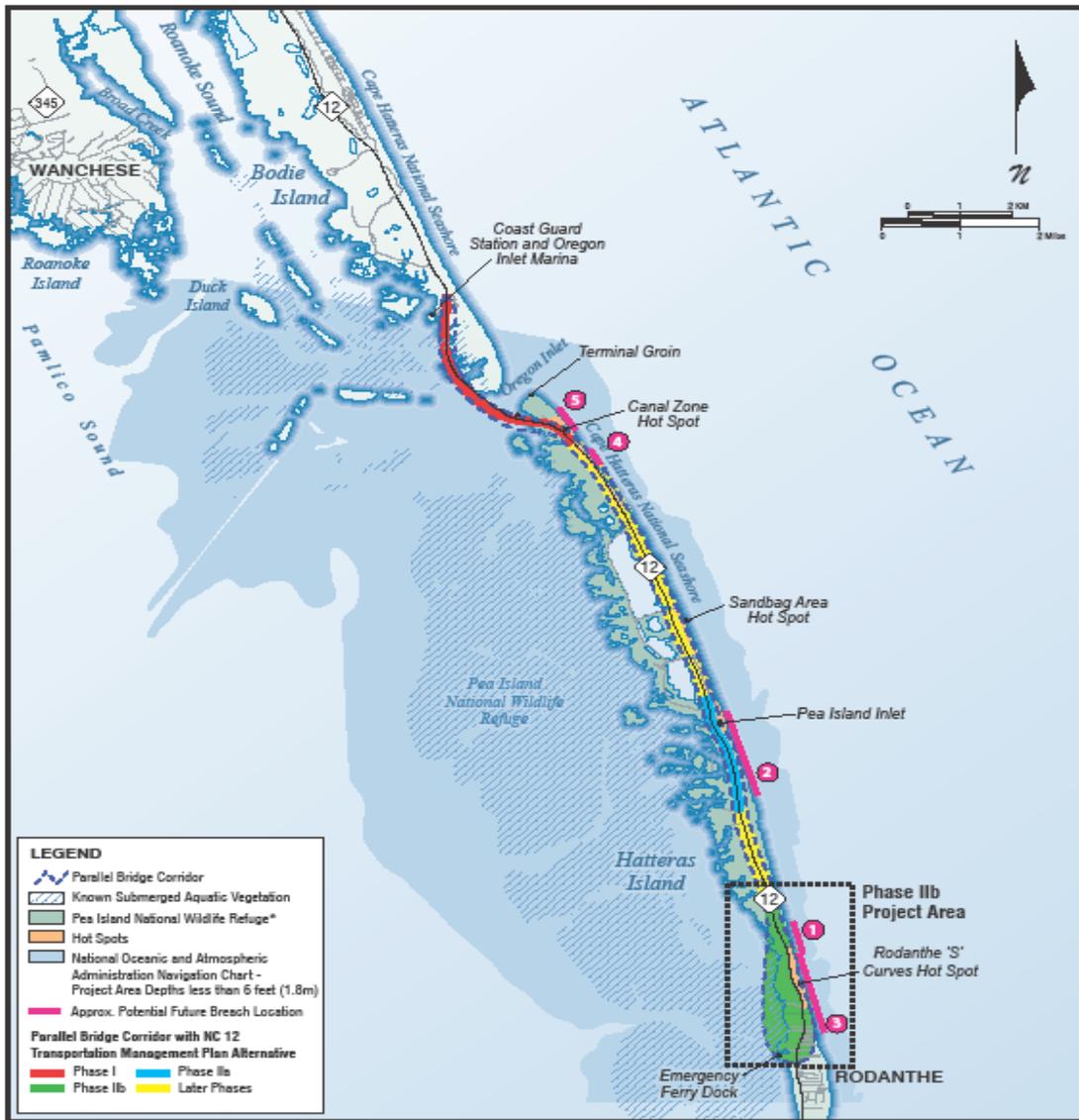
NC Coastal Resources Commission  
Meeting on February 10, 2022

*Department of Environmental Quality*



# NC Highway 12, North End of Rodanthe, Dare County



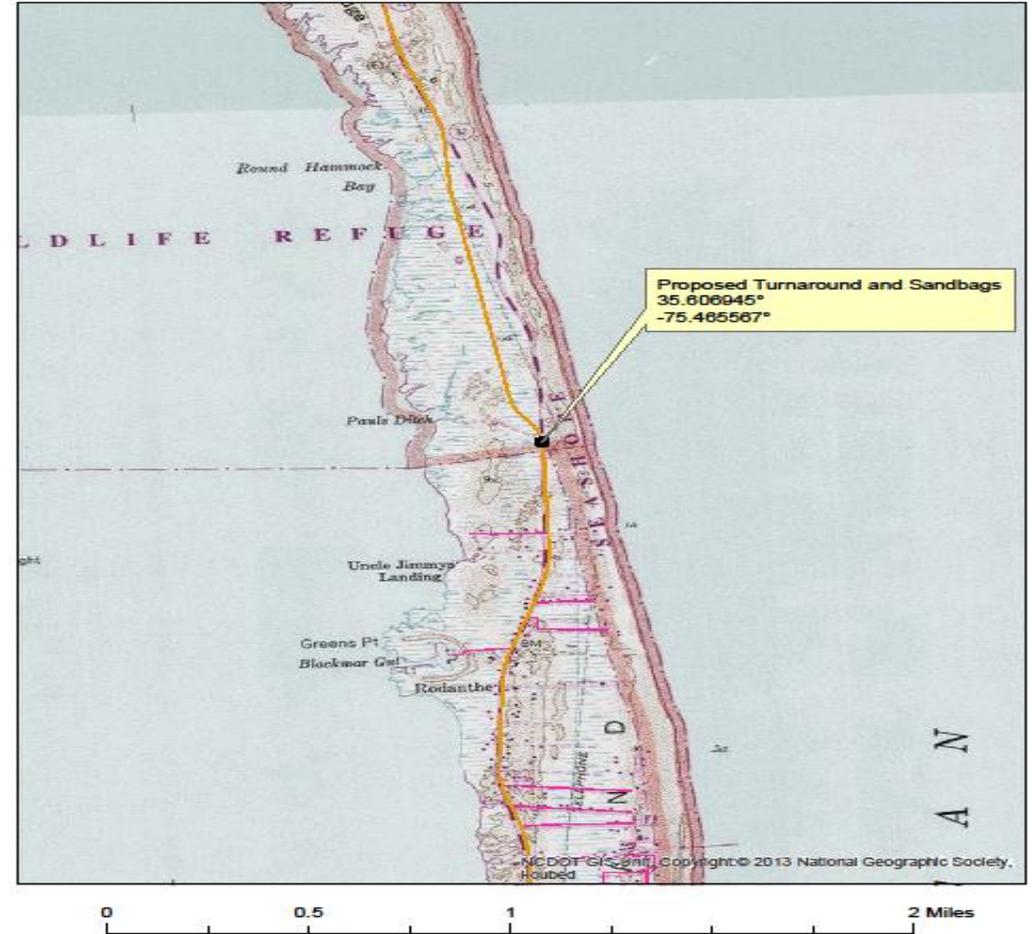


**PARALLEL BRIDGE CORRIDOR WITH NC 12  
TRANSPORTATION MANAGEMENT PLAN ALTERNATIVE**

Figure  
1

097

**B-2500B Rodanthe Project  
Mirlo Beach Turnaround and Sandbags  
Dare County Quad Name: Rodanthe**



Date: 8/6/2021

Author: Paul Williams

Figures Provided by NCDOT



098

**Legend**

- Proposed Turnaround





# Project Area

*Looking North*



Photo by DCM September 28, 2021



# Project Area

*Looking South*



Photo by DCM September 28, 2021

# Project Area<sup>101</sup> *Looking East*



Photo by DCM September 28, 2021





# Project Area

*Looking West*

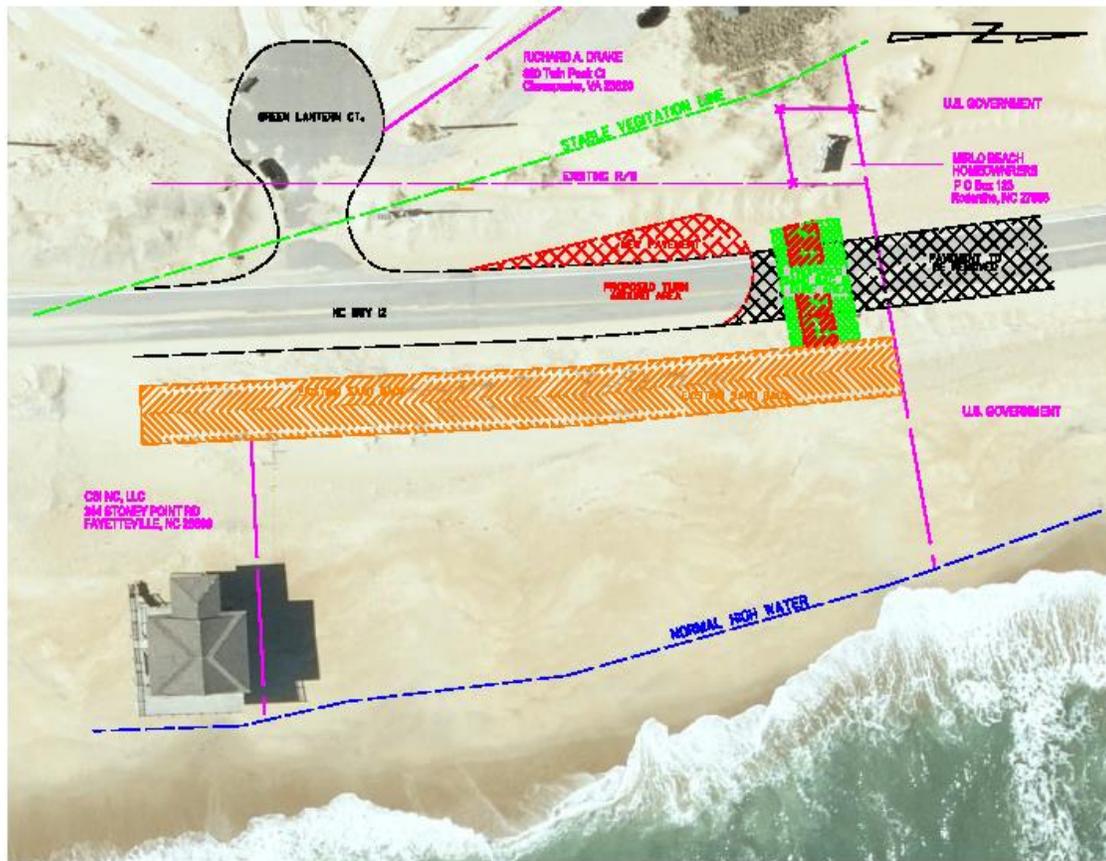


Photo by DCM September 28, 2021



**NC HWY 12  
PROPOSED TURN AROUND AREA**

**PLAN VIEW DETAIL**



**SHEET 1 TOTALS**  
NEW PAVEMENT: 1,400 SQ. FT.

**SHEET 1** LAT: 35.60945°  
LONG: -75.465567°

**NC DEPT OF TRANSPORTATION**

COUNTY:	DARE
GLAD:	RODANTHE
BASEIN:	PASQUOTTANK
PROJECT:	PROP. TURN AROUND AREA
WBS ELEMENT:	52886.5.10
SCALE:	1" = 50' FT.
DATE:	7/23/2021
DRAWN BY:	K.BROWN

Petitioner's  
Proposed  
Project  
Drawings





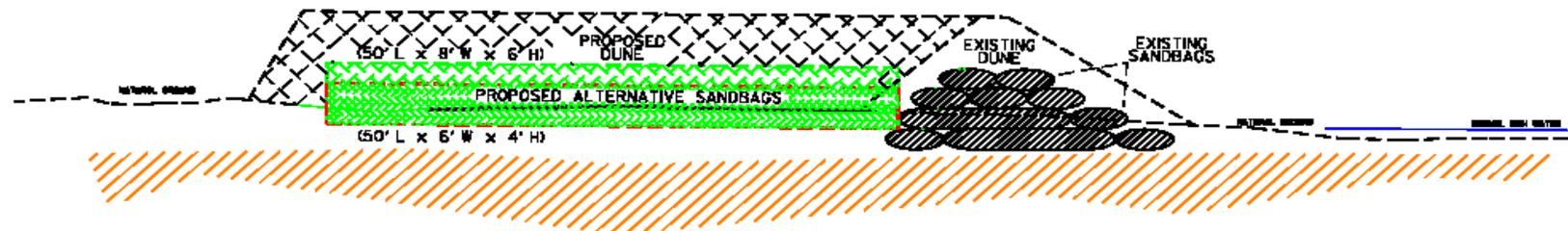
# Petitioner's Proposed Project Drawings

Drawings Submitted by NCDOT September 10, 2021

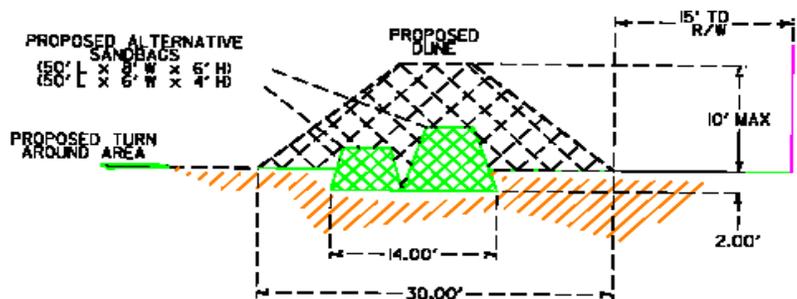


PROJECT REFERENCE NO.	SHEET NO.
DESIGNED BY	DRAWN BY
<b>INCOMPLETE PLANS</b> FOR THE STATE OF NORTH CAROLINA <b>PRELIMINARY PLANS</b> BY THE USE OF THESE PLANS	

### CROSS SECTION DETAIL



### PROFILE SECTION DETAIL



### SHEET 2

Prepared In The Office of:  
**DIVISION OF HIGHWAYS**  
 118 Algonet Drive, Raleigh, NC 27692

<b>GRAPHIC SCALE</b> 	<b>DATE: 06/23/2021</b>  <b>SHEET NO.: 2 OF 2</b>
--------------------------	---------------------------------------------------------

Petitioner's Proposed Project Drawings

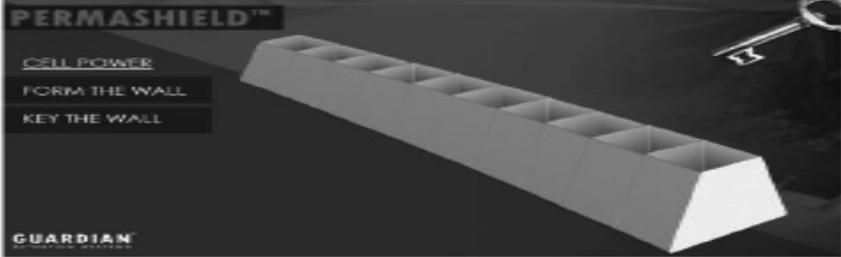
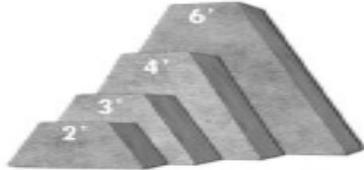


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**Patented System**

- Sold in 50' L sections; vary in height from 2' to 6'
- Can be cut to size to fit in confined spaces
- Baffles sewn together forming 25 trapezoidal shaped compartments



## Proposed Project Materials

Information Provided by NCDOT



## 15A NCAC 07J .0703 Procedures for Deciding Variance Petitions

**(f) To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).**

- (1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;**
- (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;**
- (3) that such hardships did not result from actions taken by the petitioner; and**
- (4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.**