

March 16, 2022

Town of Beaufort Planning Board
701 Front Street
Beaufort, NC 28516
Submitted via email to: s.burdick@beaufortnc.org,
l.anderson@beaufortnc.org,
k.garner@beaufortnc.org

Re: Salt Wynd Preserve Preliminary Plat Approval Request

Dear Chairman Neve and Town of Beaufort Planning Board:

The Southern Environmental Law Center submits these comments regarding the proposed Salt Wynd Preserve Preliminary Plat approval request on behalf of Coastal Carolina Riverwatch. We request that the Planning Board consider these comments in advance of its March 21, 2022 meeting, and deny the Preliminary Plat approval request.

The proposal would subdivide a currently undeveloped 37-acre tract adjacent to Gibbs Creek into 47 lots for single-family residential development.¹ As detailed below, approving the development would result in significant degradation of the last high-quality tidal creek estuary in Beaufort, and would lock in as-yet-undetermined environmental effects of forthcoming future phases of development. Moreover, the proposal is inconsistent with the applicable rules for several reasons:

- The applicant is proposing a phased development without following the required procedure, which includes submission of a master plan.
- The applicant has omitted required information from its proposal, including information concerning infrastructure needs.
- Extending public infrastructure into a low-lying and flood-prone area would be inconsistent with the Town's new Comprehensive & CAMA [Coastal Area Management Act] Land Use Plan.
- The applicant has not demonstrated its ability to obtain the permits required under CAMA and Clean Water Act § 404, or to comply with the permits it does receive.
- The Planning Board should request an environmental impact statement under Subdivision Ordinance Article VII § 3.05.23 before evaluating the application.

For all these reasons, the Planning Board should deny the Preliminary Plat application.

¹ Staff Report, Salt Wynd Preserve Phase 1 – Preliminary Plat,
<https://www.beaufortnc.org/bc-pb/page/planning-board-regular-meeting-21> at page 112.

Background

Salt Wynd Phase I is a modified development proposal from Beltway Investment Group, which originally sought rezoning of the subject property for a high-density 400-unit residential development, known as Shackleford Landing, on Gibbs Creek.

Gibbs Creek is a spectacular tidal creek estuary that functions as important habitat for oysters, clams, shrimp, crabs, fish including flounder, red drum, and mullet, and raptors such as bald eagles.



Figure 1: Aerial view of Gibbs Creek watershed

The State has classified Gibbs Creek as “SA” (Market shellfishing, saltwater) and “HQW (High Quality Water).” These classifications mean commercial shellfishing was a use supported by the waters when designated, and in this case remains a use.² The designation as a “High Quality Water” means Gibbs Creek is “rated excellent based on biological and physical/chemical characteristics,” containing “primary nursery areas” for fish.³ The Creek is rated “exceptional” under the State’s wetland mapping tool.⁴

² NC Dep’t of Env’tl. Quality, “Classifications,” <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications#DWRPrimaryClassification>.

³ *Id.*

⁴ Staff Report at 118.

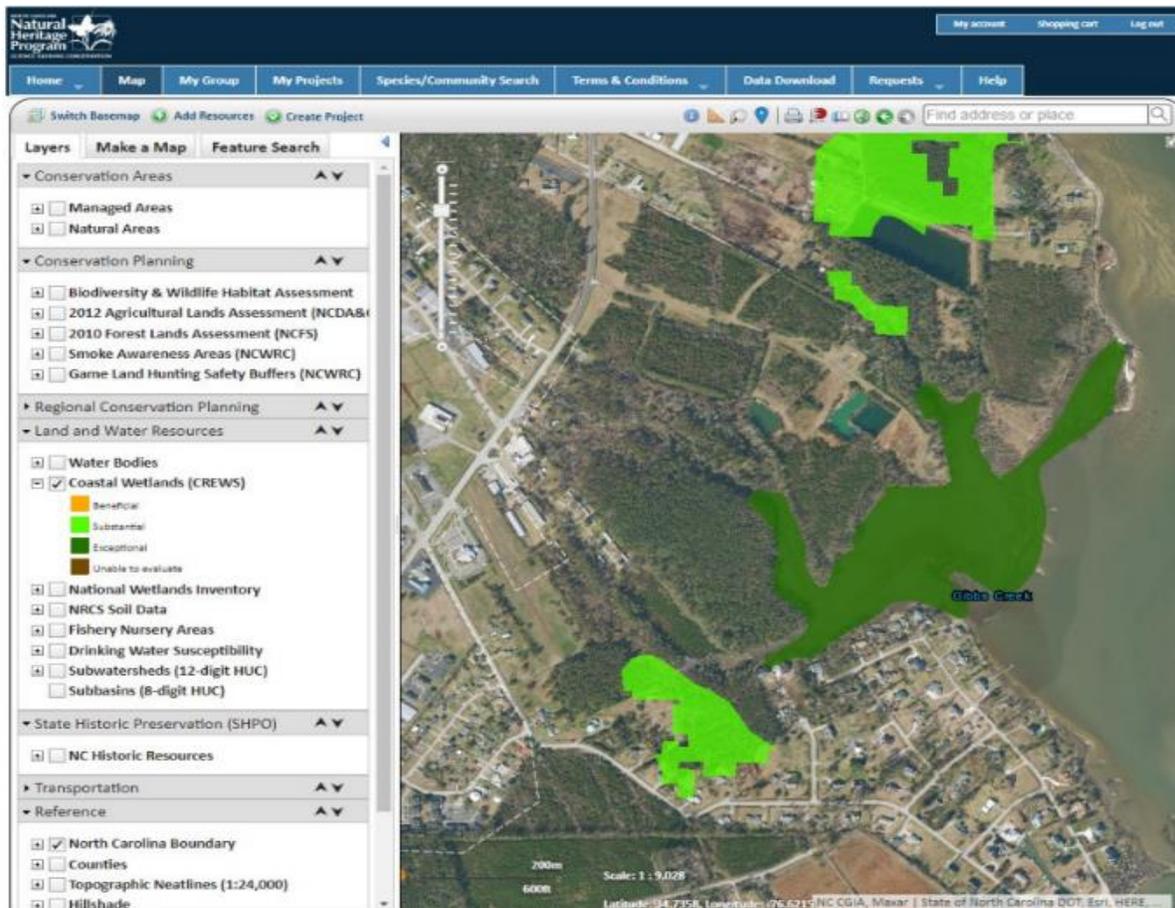


Figure 2: Wetland mapping showing Gibbs Creek as "exceptional"

Apart from the wetlands it contains, Gibbs Creek is an important shellfishery. It is the last tidal estuary in the Beaufort area that is *not* permanently closed to shellfish harvesting due to water pollution.⁵ Additionally, water quality in surrounding waterbodies has recently degraded even further due to the Beau Coast development. The developer of Beau Coast, Blue Treasure LLC, has clear-cut and graded right up to the wetland boundaries, including the headwaters of Town Creek. A recent Project Field Report submitted by project manager WithersRavenel admits a violation wherein a groundwater pumping operation failed, resulted in discharge of sediment-laden water into Town Creek.⁶

These development practices have irreversibly harmed water quality and the suitability of Town Creek for fishing. Now more than ever, Gibbs Creek really is the last waterbody in the Beaufort area suitable for shellfishing, as shown in the figure below.

⁵ *Id.* at 119.

⁶ See WithersRavenel, Project Field Report (Feb. 24, 2022), included as Attachment A (showing discharge into Town Creek, and resulting turbidity, from the failure of a mud bag and silt fence).



Figure 3: Shellfish closures in Beaufort, showing Gibbs Creek still open

The Shackleford Landing proposal would have irrevocably degraded Gibbs Creek. Following extensive public opposition, the Planning Board unanimously denied the application on October 18, 2021.

Beltway, through a subsidiary named Beaufort Agrihood Development LLC,⁷ now advances an alternative development that does not require rezoning for Phase I. Agrihood calls its new proposal “Salt Wynd Preserve.” Although the Salt Wynd Phase I proposal involves fewer units than Shackleford Landing, the footprint of the total project is virtually identical to Shackleford Landing, as shown in the two maps below.⁸

⁷ Beaufort Agrihood Development LLC is a subsidiary of Beltway. See Staff Report at 178; Town of Beaufort Special Meeting Minutes (July 21, 2021), <https://mccmeetings.blob.core.usgovcloudapi.net/beaufortnc-pubu/MEET-Minutes-d7d6efbf14d74f159042851f7dbd05fc.pdf>.

⁸ See Staff Report at 120.



Figure 4: Shackleford Landing proposed footprint at left compared to Salt Wynd proposed footprint at right

For the reasons described below, the Planning Board should deny the project once again.

Discussion

1. *The Planning Board should consider Agrihood’s proposal in its entirety, not a single segment in isolation, as required by Town ordinances.*

Agrihood proposes Salt Wynd as a phased development. “Phase I” is located directly on the shoreline of Gibbs Creek and in the Gibbs Creek Watershed, along the southernmost end of the property, and additional phases are closer to Live Oak Street, as shown in the figure on the next page (with North oriented toward the top left of the page).

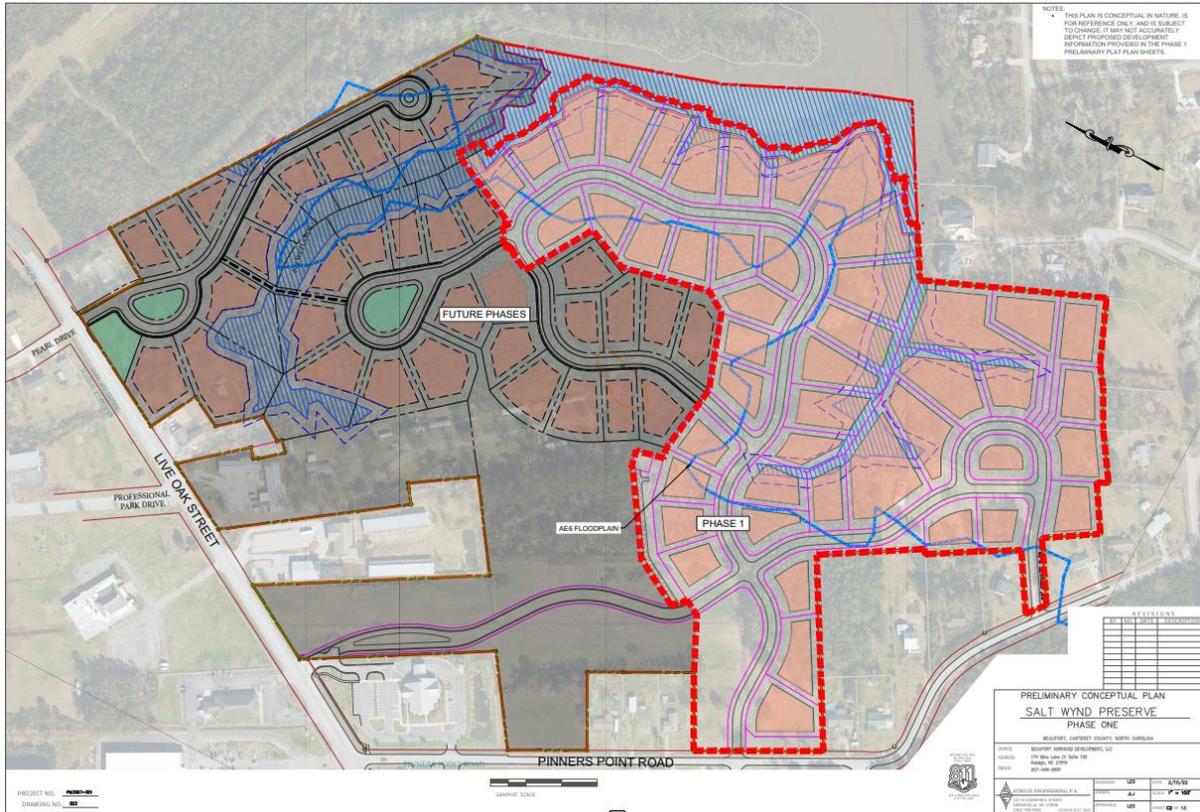


Figure 5: Conceptual illustration showing "Phase I" adjacent to "Future Phases"

The Town’s Subdivision Ordinance and Land Development Ordinance do not allow this piecemeal approach. These ordinances require consideration of the *total* proposal—not just a portion of it that favors preliminary approval and foregoes consideration of environmental impacts until after the point of no return. First, the Town’s Subdivision Ordinance requires that an application for a Preliminary Plat show the “total acreage” to be subdivided.⁹ Similarly, a Preliminary Plat application must show the “zoning classification(s) of the tract to be subdivided and on adjoining properties.”¹⁰

Agrihood’s application does not meet either of these requirements. It does not discuss the total acreage the developer wishes to subdivide and develop into Salt Wynd, and it does not discuss whether it will seek rezoning in the additional future phases. These omissions leave out critical information that is necessary for plat approval.

Segmenting the proposal conflicts with the Town’s ordinances. The Town’s Land Development Ordinance seeks to “regulate development” so as to “further the appropriate use of land and conservation of natural resources,” to “attain a balance between land uses and the ability of the natural resource base to support and sustain such uses,” and to “prevent overcrowding and avoid undue population concentration and urban sprawl.”¹¹ The Town cannot accomplish these objectives without considering the entire proposal in a comprehensive way.

⁹ Town of Beaufort Subdivision Ordinance (updated Aug. 8, 2005), Article VII § 2.05.03, <https://www.beaufortnc.org/planninginspections/page/subdivision-ordinance>.

¹⁰ *Id.* § 3.05.08.

¹¹ Town of Beaufort Land Development Ordinance (adopted Nov. 4, 2013) § 1(A)(3), <https://www.beaufortnc.org/planninginspections/page/land-development-ordinance>.

The Town’s Subdivision Ordinance contains provisions for precisely the type of development proposed—but the proposal does not meet those requirements. The ordinance requires a developer to submit a “master plan” for property exceeding 25 acres “to be developed in phases.”¹² That is exactly the case here, which means “the owner of such property shall file with the Town a proposed master plan providing a generalized overview of the proposed development including types of proposed land uses, the specific zoning district(s) within the proposed project needed to support the proposed development as either a permitted or special use, and the relative location of the proposed land uses and zoning districts.”¹³ The owner may “*simultaneously* apply for preliminary plat approval on any phase” of the project for which he or she intends to begin development¹⁴—but only when there is a master plan.

Consistent with this requirement, Beltway previously submitted a Master Plan for the now-rejected Shackelford Landing proposal, and that Plan contained a description of the rezoning necessary to support the development (from R-20 to primarily R-8 and TCA). Agrihood now seeks to use an alternate method—applying for Preliminary Plat approval for “Phase I” while postponing consideration of the future phases, without providing a description of the zoning needed.

Agrihood cannot omit a master plan with a discussion of the zoning needed to support the proposed development. The Subdivision Ordinance makes clear that master plans are “*required*” for areas proposed for development “in phases.”¹⁵

The Planning Board should reject the current Preliminary Plat application and require Agrihood to submit a master plan showing its zoning and development plans for the *entire* parcel—not just a preliminary portion that does not require rezoning.

2. *The Planning Board should reject the application because it omits required information.*

There are also several requirements in the Subdivision Ordinance that Agrihood has not met. These omissions are grounds to deny the Preliminary Plat application.¹⁶

First, the Subdivision Ordinance requires the Preliminary Plat application to contain a description of “wooded areas, creeks, rivers, bodies of water, marshes, swamps, ponds or lakes, streams or stream beds, and any other natural features affecting the site.”¹⁷ Although Agrihood’s application contains maps showing the high biodiversity of Gibbs Creek itself (see pages 117-18 of the Staff Report), it does not discuss the coastal forest or tidal marshes that development on the site would impact. Nor does it recognize the site as a tributary tidal creek watershed. Thus, the application omits information required by the Subdivision Ordinance, and in doing so, it fails to reckon with the impacts of the proposal, both in Phase I and in future phases.

¹² Subdivision Ordinance Article X § 2.

¹³ *Id.* § 2.01.

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* § 2.

¹⁶ The ordinance states that a Preliminary Plat application “shall” contain required information. *See, e.g., Anderson v. Yungkau*, 329 U.S. 482 (1947) (Noting “the word ‘shall’ is ordinarily ‘the language of command,’” and that its use means the act in question is “mandatory”) (quoting *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935) & *United States v. Thoman*, 156 U.S. 353, 360 (1895)).

¹⁷ Subdivision Ordinance Article VII § 3.05.17.

The Subdivision Ordinance also requires a preliminary plat application to contain “all information and data required by the duly adopted Flood Ordinance as amended for the Town of Beaufort.”¹⁸ Beaufort’s Flood Ordinance contains findings of fact that flood-prone areas within the Town’s jurisdiction are subject to “periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.”¹⁹

The Flood Ordinance further finds that “these flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood-prone areas by uses vulnerable to floods.”²⁰ With these findings in mind, the Flood Ordinance’s purposes, among others, are to “restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities,” and to “require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.”²¹ The Flood Ordinance applies to all special flood hazard areas within the Town’s jurisdiction, including its extraterritorial jurisdiction.²²

The Flood Ordinance states that “a floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within special flood hazard areas as determined in § 151.41.”²³ Agrihood’s Preliminary Plat application denotes AE6 Floodplains on the preliminary conceptual plan maps and notes that portions of the property are within FEMA Special Flood Hazard Areas, thus conceding that “the area within the AE6 Flood Hazard Area may become flooded as described above [a one-percent chance of being inundated by a flood event in any given year] including road, utility easements, and lot areas themselves, which may interfere with traversing over said roads during the flood event.”²⁴ The map also cautions that “owners are hereby advised of this caution and to take necessary preparations in the event of a forecasted flood event to assure the safety of property and life.”²⁵

The application packet for the Preliminary Plat demonstrates that 41 out of 47 (89%) of the lots in Phase 1 are in the AE6 Floodplain.²⁶ Yet the packet does not include “all information and data required by the duly adopted flood ordinance,”²⁷ including a floodplain development permit.²⁸

According to the National Oceanic and Atmospheric Administration (NOAA), the Beaufort, NC coast should expect between 1 and 1.6 feet of sea level rise by 2050 and accelerated sea level rise beyond that date.²⁹ Using NOAA’s Intermediate-High scenario, the area should expect over 5 feet of sea level rise by the end of the century. The impact of rising seas becomes even more powerful when storm surge or

¹⁸ *Id.* § 3.05.24.

¹⁹ Town of Beaufort Flood Ordinance, Title XV § 151.02 (“Flood Damage Prevention”), https://library.municode.com/nc/beaufort/codes/code_of_ordinances?nodeId=TITXVLAUS_CH151FLDAPR.

²⁰ *Id.* § 151.03.

²¹ *Id.*

²² *Id.* § 151.06.

²³ *Id.* § 151.08.

²⁴ Staff Report at 121-22.

²⁵ *Id.*

²⁶ *Id.* at 121.

²⁷ Subdivision Ordinance Article VII § 3.05.24.

²⁸ *See* Flood Ordinance § 151.08.

²⁹ William Sweet et al., Global and Regional Sea Level Rise Scenarios for the United States, (2022), <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report-sections.html>.

rainfall is added on top of a higher tide, therefore it is crucial to consider storm surge and rainfall vulnerabilities in addition to sea level rise. With the combination of increased rainfall, stronger storm surges, and sea level rise, areas that are already vulnerable to flooding will become increasingly exposed.

There is also an upward trend in the number of extreme rain events North Carolina experiences each year.³⁰ Making matters worse, in a climate scenario where today's emission levels remain constant, the number of extreme rainstorms in the Southeast will increase by two to three times the historic average by the end of the 21st century.³¹ Before the end of the century, throughout the Southeast, extreme summer thunderstorms that typically result in 100-year flooding events are expected to drop 40-80% more rain than today.³² Larger rain events not only flood communities, but also cause increased erosion and turbidity, which reduce stream and aquatic habitat quality.³³ The problem is made worse by urbanization and development, which increases impervious surfaces and associated polluted stormwater runoff into waterways.³⁴

In sum, changes facing the North Carolina coast reinforce the importance of Beaufort's Flood Ordinance and the need for Agrihood to submit a floodplain development permit, which it has not done. The application omits required information about the natural environment surrounding Gibbs Creek, including flooding-related data mandated by the Town's ordinances and, therefore, the application should be denied.

3. *The Planning Board should consider the proposal's compliance with the Town's Comprehensive & CAMA Land Use Plan, particularly its designation for Conservation and location in a Non-Intensification Zone.*

The Town is in the process of updating its Comprehensive & CAMA Land Use Plan. The Plan is up for consideration at the Planning Board's March 21, 2022 meeting, and it is highly significant to this proposal because it contains several provisions that directly relate to the Preliminary Plat application.³⁵ The application violates the Town's Draft Land Use Plan in several critical respects, and accordingly the Planning Board should delay consideration of the Preliminary Plat application until the Plan can be finalized and the application's consistency with the Plan can be fully considered.

³⁰ A day with rainfall totaling 3 inches or more qualifies as an extreme rain event in this report. Kenneth Kunkel et al., North Carolina Climate Science Report, North Carolina Institute for Climate Studies 6 (2020), https://ncics.org/wp-content/uploads/2020/10/NC_Climate_Science_Report_FullReport_Final_revised_September2020.pdf.

³¹ U.S. Global Change Research Program, *Precipitation Change in the United States*, Climate Science Special Report: Fourth National Climate Assessment, Volume I at 207-230, <https://science2017.globalchange.gov/chapter/7/>.

³² Andreas F. Prein et al., *Increased rainfall volume from future convective storms in the US*, Nature Climate Change (Dec. 2017), <https://doi.org/10.1038/s41558-017-0007-7>.

³³ S.Y. Lee et al., Impact of urbanization on coastal wetland structure and function, *Austral Ecology* 31(2) (2006), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1442-9993.2006.01581.x>.

³⁴ See https://www.bhamgov.org/A1_Runoff%20Potential.pdf and <https://files.nc.gov/ncdeq/Water%20Quality/Surface%20Water%20Protection/SPU/SPU%20-%20BMP%20Manual%20Documents/BMPMan-Ch03-SWCalcs-20090616-DWQ-SPU.pdf>.

³⁵ Town of Beaufort, Comprehensive & CAMA Land Use Plan Update, <https://www.beaufortnc.org/planninginspections/page/comprehensive-cama-land-use-plan-update>; Draft Comprehensive & CAMA Land Use Plan (last modified Jan. 5, 2022), https://www.beaufortnc.org/sites/default/files/filefield_paths/compplanbeaufort_draftb1_20220105a_lowres_1.pdf.

First, the Land Use Plan contains explicit goals to “reduce and address non point source pollution” by encouraging “reduction of impervious surface cover.”³⁶ Like the Shackelford Landing proposal before it, the current Preliminary Plat application would increase discharge of non-point source pollution into Beaufort’s last relatively clean tidal estuary.

Second, the Land Use Plan seeks to “identify areas of terrestrial habitat that are irreplaceable or otherwise significant and to preserve those areas, possibly through partnerships with other agencies.”³⁷ As noted above, the watershed that protects Gibbs Creek and its habitat is irreplaceable, and its function should be protected. Similarly, the Draft Land Use Plan makes a goal to “create an educational program to inform the public about the public rights to the estuarine habitat and public benefits... fisheries value, quality-of-life, etc.”³⁸ The Plan also designates the Gibbs Creek estuary for conservation as open space as shown in the map below.

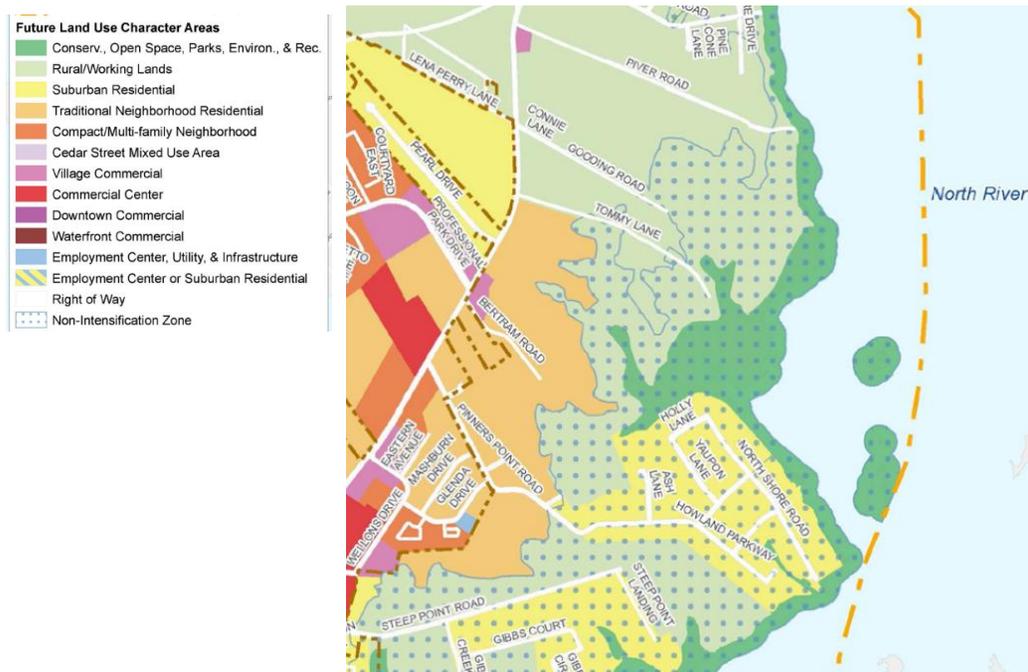


Figure 6: Gibbs Creek area and adjacent Live Oak Street development corridor

The Plan makes clear that areas designated as “Conservation/Open Space” are “important to the identity and natural character of the community.”³⁹ In fact, “*the natural environment is probably one of the top three reasons that people treasure Beaufort so much.*”⁴⁰ And these natural spaces provide “vital community support services,” including “floodwater storage, air purification, wildlife habitat and nurseries, passive recreation, and others.”⁴¹ Based on these benefits of preservation, the “Conservation/Open Space” designation indicates that “*traditional development should not occur.*”⁴² If development does occur, it should be “low-impact, community oriented, and/or recreation-oriented,” and

³⁶ Draft Land Use Plan at 130.

³⁷ *Id.* at 204.

³⁸ *Id.* at 206.

³⁹ *Id.* at 182.

⁴⁰ *Id.* (emphasis added).

⁴¹ *Id.*

⁴² *Id.* (emphasis added).

“great care should be taken to ensure development in these areas does not degrade the natural environment and that public investment does not encourage development of these areas.”⁴³

Salt Wynd, like Shackleford Landing before it, is inconsistent with these principles because it would locate a housing development in vulnerable areas that should be approached with “great care” if developed.⁴⁴ In deciding on the Preliminary Plat application, the Planning Board should consider the designated land uses in the Draft Land Use Plan, and work with developers to meet the Town’s future growth needs in designated development corridors, such as along Live Oak Street—not in areas, or in close proximity to areas, that are designated as having high conservation value.

In addition to its location within a Conservation/Open Space-designated area, much of the parcel targeted for development is within a Non-Intensification Zone: an area where intensive development is not appropriate due to “natural hazards associated with climate change and coastal storms and protection of the unique coastal environment, as shown below.”

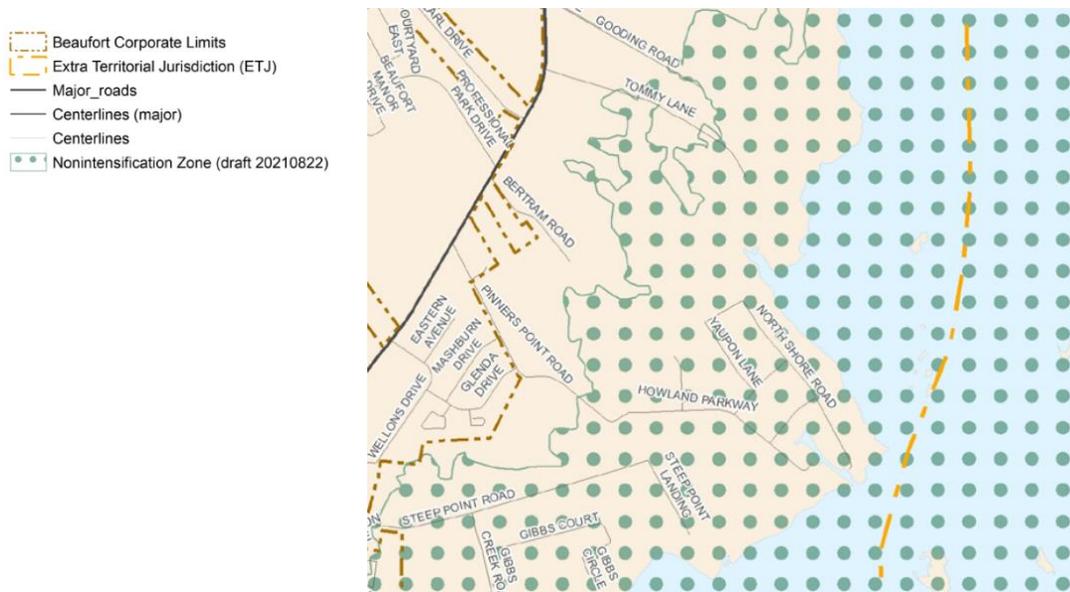


Figure 7: Map showing Gibbs Creek within Beaufort's Non-Intensification Zone

The Draft Land Use Plan makes clear that the “only uses allowed in the Non-Intensification Zone, with the exception of existing nonconformities,” should be “single family detached residential of low densities (i.e. – without public utilities) and other low intensity uses (parks, open space, hunting stands, docks and fishing areas, day-use areas, flood absorption, etc.).”⁴⁵ And new development should only occur “with the explicit acknowledgment that these properties will not be allowed to install bulkheads and that any structures placed in these areas will need to be designed such that they can be abandoned or relocated, in order to allow the natural shoreline to migrate as seas rise. In general, public infrastructure should not be expanded or extended further.”⁴⁶

The Preliminary Plat application for Salt Wynd is largely within the Non-Intensification Zone, as shown in the figure below.

⁴³ *Id.*; see also DEQ, Division of Energy, Mineral and Land Resources, Low Impact Development and Storm-EZ Guidelines, <http://www.conservationtool.nc.gov/web/lr/low-impact-development>.

⁴⁴ Draft Land Use Plan at 182.

⁴⁵ *Id.* at 196.

⁴⁶ *Id.*



Figure 8: Side-by-side comparison of Phase I and the Non-Intensification Zone

Agrihood’s plans for Phase I, and assuredly for the future phases, are not consistent with the designated uses for the Non-Intensification Zone. They would require construction of homes directly along Gibbs Creek, likely with bulkheads, and it would require extending public utilities such as sewer lines into the area.⁴⁷ Agrihood has also not provided evidence that such a dense development in a flood-prone area could rely on septic tanks.

The Town’s Land Use Plan acknowledges that one reason for the Non-Intensification Zone is the financial cost of new infrastructure, and even some existing infrastructure, within flood-prone areas. It may actually be “necessary or prudent in the future for the Town to abandon public infrastructure and service provision in some areas, to avoid unsafe conditions or maintenance liabilities that are insurmountable.”⁴⁸ The solution given in the Plan is to “direct growth to lower vulnerability areas,” which has been done in cities such as Norfolk, Charlotte, Boston, Miami, and Charleston.⁴⁹

In contrast, Agrihood proposes to build a development dependent on water and sewer infrastructure, construct the infrastructure, and then shift the increased burden of operation and maintenance from higher-frequency and intensity flooding to the Town. Fortunately, the Town has foreseen this type of problem, and has taken measures to prevent it by designating the Non-Intensification Zone. The Planning Board should follow the principles outlined in the Draft Land Use Plan and require a complete application that evaluates the potential impact of development in the sensitive areas surrounding Gibbs Creek.⁵⁰ Although the Plan is still officially a Draft, it has taken years of work to develop, and it is up for adoption at the same Planning Board meeting as the Preliminary Plat approval request. To allow the Plan to guide critical development and conservation decisions consistent with its intent, the Planning Board should delay approving the Preliminary Plat until the Plan can be adopted.

⁴⁷ See Staff Report at 114 (discussing proposed sewer allocation numbers).

⁴⁸ Draft Land Use Plan at 199.

⁴⁹ *Id.*

⁵⁰ *Id.* at 198.

4. *The Planning Board should consider the proposal's compliance with the Town's Watersheds Restoration Plan.*

The Town's 2017 Watersheds Restoration Plan, which covers Davis Bay and Gibbs Creek, provides additional reasons to deny the Preliminary Plat application.⁵¹ Like the Comprehensive & CAMA Land Use Plan, the Watersheds Restoration Plan seeks to “reduce instances of flooding and the amount of stormwater runoff that flows into the Beaufort Watersheds [including Gibbs Creek], since this is the conveyance medium in which bacteria and other harmful constituents find their way into waterbodies.”⁵² The Plan notes that Beaufort's watersheds have “tremendous recreational and tourism value,” but have been degraded through “increased development” which has diminished natural cover while increasing the amount of impervious surfaces.⁵³

The solution the Plan presents for impaired waterbodies is to “restore or mimic the natural, pre-development hydrology of the watersheds prior to water quality impairment.”⁵⁴ This is particularly true for the “Taylor Creek and Town Creek watershed,” where “substantial development has occurred.”⁵⁵ For Gibbs Creek, which the Plan confirms is the only creek in the Town to be “Conditionally Approved Open” for shellfish harvest,⁵⁶ the most cost-effective method is not to restore water quality that has already been lost, but rather to protect the still-intact natural systems that already support the Creek's water quality.

The Watersheds Restoration Plan is an important step forward in recognizing the importance of land use practices to flooding, polluted stormwater runoff, and resulting “bacteriological impairments.”⁵⁷ Preserving the existing functions of the Gibbs Creek watershed is critical to the Town's goal of restoring watershed water quality and reducing flooding intensity—thus the Watersheds Restoration Plan provides an additional ground on which to deny the Preliminary Plat Application.

5. *Agrihood has not demonstrated its ability to obtain the necessary permits and does not appear to have consulted with agencies as required by ordinance.*

Agrihood's intent to develop within wetlands, which are protected by Clean Water Act § 404 and CAMA, requires closer scrutiny. The Subdivision Ordinance does not mention wetlands permitting directly, but its inclusion of the “CAMA officer or Coastal Resources Commission” in the review procedure for Preliminary Plat approval indicates the Town wishes not to allow Preliminary Plat approval for developments that are not likely to obtain the necessary CAMA. As shown in the figure below, many of the waterfront lots within Phase I are on top of 404 Wetlands and within the 30-foot CAMA buffer.

⁵¹ Beaufort Watersheds Restoration Plan (2017), https://www.beaufortnc.org/sites/default/files/fileattachments/public_works/page/1031/beaufortwatershedsrestorat.pdf.

⁵² *Id.* at 7.

⁵³ *Id.* at 8.

⁵⁴ *Id.*

⁵⁵ *Id.* at 110.

⁵⁶ *Id.* at 23.

⁵⁷ *Id.* at 8.

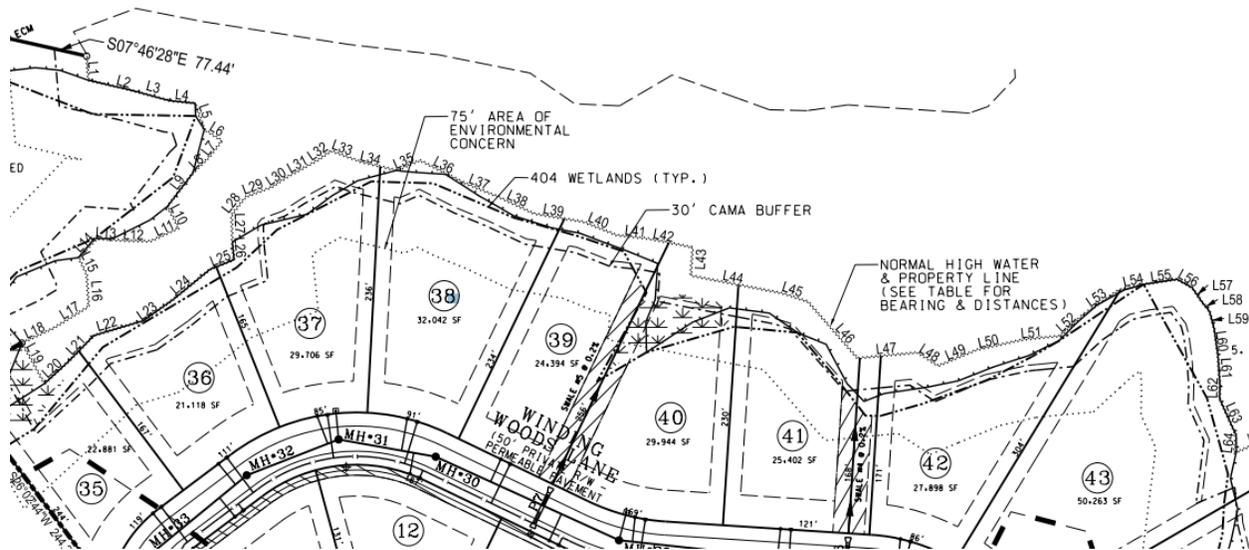


Figure 9: Phase I application showing presence of 404 wetlands

Intensive development in and adjacent to wetlands in coastal North Carolina will require a CAMA major permit issued by the Division of Coastal Management (DCM). Although the Wilmington District of the Army Corps of Engineers has issued the State a general permit that authorizes any project that would require a 404 permit if the project receives a CAMA permit, the Corps retains discretion to require an individual 404 permit, as well.

Agrihood's Preliminary Plat application does not indicate it has contacted DCM about a CAMA major permit application and associated mitigation that will be required within the 75-foot Area of Environmental Concern (AEC).⁵⁸ Moreover, the project does not meet CAMA requirements. DCM's regulations state it "must deny a permit if the project violates the CRC's standards for development in an [AEC], the local CAMA land use plan or a local development regulation," and as explained above, Agrihood's proposal is not consistent with Beaufort's Draft Comprehensive & CAMA Land Use Plan, which could be finalized at the same meeting as the Preliminary Plat application is considered.⁵⁹

Salt Wynd must also demonstrate its compliance with the stormwater provisions of the Clean Water Act's National Pollutant Discharge Elimination System (NPDES). Because its construction will discharge sediment pollution into waters of the United States, the developer must obtain coverage either under the North Carolina general permit for construction stormwater, or under an individual permit issued by the State. In either case, the developer must demonstrate that its discharges are not violating the water quality standards that apply to Gibbs Creek.⁶⁰

North Carolina's wetland-specific water quality standards specify that "floating or submerged debris, oil, deleterious substances, or other material shall not be present in amounts that may cause adverse impacts on existing wetland uses," and that "hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent detrimental impacts

⁵⁸ See 15A NCAC 07H .0209 (describing the Coastal Shorelines category including estuarine shorelines and public trust shorelines, which extend from the normal high water level "for a distance 75 feet landward").

⁵⁹ DCM, "CAMA Permits-Major Permits," <http://www.conservation.nc.gov/web/cm/major-permits>.

⁶⁰ See, e.g., North Carolina Construction General Permit NCG 010000, <http://www.wncstormwater.org/pdf/NCG01%20Permit%20Renewal%202016.pdf>.

on,” among other things, “the chemical, nutrient, and dissolved oxygen regime of the wetland,” “the movement of aquatic fauna,” and “water levels or elevations.”⁶¹ Moreover, “the populations of wetland flora and fauna shall be maintained to protect biological integrity.”⁶² “Biological integrity,” in turn, means “the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species composition, diversity, population densities, and functional organization similar to that of reference conditions.”⁶³

In addition, the “Review procedure” section of the Subdivision Ordinance specifies that “before taking final action on the [preliminary] plat, the Planning Board shall refer copies of the plat and any accompanying material to those public officials and agencies concerned with the new development including but not limited to town manager, Carteret County Health Department, the District Engineer for the N.C. Department of Transportation (four copies), town building inspector, CAMA officer or Coastal Resources Commission, and the appropriate county soil conservation service office, for review and recommendation.”⁶⁴

Before taking action on the pending application, the Planning Board should confirm that each of these officials and agencies has had an opportunity to review the application and provide a recommendation to the Planning Board. Because consultation with agencies may require modifications to the Preliminary Plat to meet these applicable standards, the Planning Board should require Agrihood to consult with the appropriate permitting agencies as required by the ordinance.

6. *The Planning Board should request an environmental impact statement to consider the proposal’s negative impacts on wetlands, water quality, and fisheries.*

As the Town has experienced, development in close proximity to tidal creeks has long-term destructive consequences for the estuarine ecosystems as well as community resilience. The Subdivision Ordinance allows the Planning Board to evaluate those effects by “requir[ing] the subdivider to submit an environmental impact statement [pursuant to N.C. Gen. Stat. chapter 113A] with his preliminary plat if (1) The development exceeds two acres in area; and (2) If the board deems it necessary due to the nature of the land to be subdivided.”⁶⁵

Both of those conditions are met because the proposal exceeds two acres and would be located on the banks of Gibbs Creek. This sensitive location evinces a great need for an environmental impact statement under N.C. Gen. Stat. Chapter 113A. The development would replace a largely intact coastal forest and wetland ecosystem and fundamentally alter the Gibbs Creek ecosystem. Two areas of particular importance for the environmental impact statement are wetlands and fisheries.

First, the area contains coastal wetlands that are an important component of long-term resilience and ecosystem function, yet are threatened by development onshore and sea level rise from offshore. As development encroaches on coastal wetlands and sea level rises, those wetlands often have no place to go.⁶⁶

⁶¹ 15A NCAC 02B .0231.

⁶² *Id.*

⁶³ 15A NCAC 02B .0202(12).

⁶⁴ Subdivision Ordinance Article VII § 3.06; *see also* Subdivision Ordinance Article VI § 3.

⁶⁵ *Id.* Article VII § 3.05.23.

⁶⁶ *See, e.g.*, North Carolina Natural and Working Lands Action Plan (June 2020), <https://files.nc.gov/ncdeq/climate-change/natural-working-lands/NWL-Executive-Summary.pdf> (noting a goal to “facilitate salt marsh migration through protection of migration corridors,” and noting that “there is a significant need for the state to facilitate

The wetlands at stake in this decision strongly support a decision by the Planning Board to require an environmental impact statement pursuant to Subdivision Ordinance Article VII § 3.05.23. The Planning Board should not grant the Preliminary Plat approval without being fully informed of the potential harm to wetlands and water quality that would result. Moreover, the impact statement should consider the effects of the *entire* proposal—not just Phase I—as discussed in the previous section.

Gibbs Creek’s importance to fisheries is another reason for the Planning Board to request an environmental impact statement under § 3.05.23. As explained above, Gibbs Creek is the last tidal creek in the Beaufort area not closed to shellfish harvesting. Granting the Preliminary Plat application would very likely cause Gibbs Creek to go the way of other creeks in the area: degraded and closed to shellfish harvest. This is precisely the type of situation envisioned by § 3.05.23 of the Subdivision Ordinance wherein an environmental impact statement is necessary before granting a Preliminary Plat application.

In sum, the Planning Board should request an environmental impact assessment as a prerequisite to giving the Preliminary Plat application full consideration, as the Subdivision Ordinance authorizes it to do, and should deny the Preliminary Plat application until an environmental impact statement is completed.⁶⁷

Conclusion

For all the above reasons, the Planning Board should deny the Preliminary Plat application for Salt Wynd Preserve. If the Board does not conclude it has adequate information to deny the application, it should request an environmental impact statement to evaluate effects to wetlands and fisheries.

Sincerely,



Alex Hardee



Geoff Gisler

Southern Environmental Law Center

Cc:
Lisa Rider, Coastal Carolina Riverwatch

conservation of migration corridors (natural areas without barriers such as development) for salt marsh, and other coastal habitats. Ensuring these migration spaces remain undeveloped is key to facilitating marsh migration with sea-level rise, and therefore preserving the coastal protection, ecological functions, and carbon benefits of North Carolina’s marshes.”).

⁶⁷ See Subdivision Ordinance Article VII § 3.07 (allowing Planning Board to disapprove the Preliminary Plat provided it “specif[ies] the reasons for such action in writing”).