

May 16, 2022

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

Re: *Salt Wynd Preserve Preliminary Plat Approval Request*

Dear Chairman Neve and Town of Beaufort Planning Board:

On behalf of Coastal Carolina Riverwatch, the Southern Environmental Law Center submits these public comments on the environmental impact statement (EIS) the Planning Board requested to inform its decision on the preliminary plat application for the Salt Wynd Preserve Phase I development proposal. As explained below, neither the Planning Board nor the public have had adequate time to review the EIS. The Planning Board should postpone its decision on the preliminary plat application to allow time to review the document and to refer it to appropriate state agencies for input.

### **Background**

Salt Wynd Preserve is a development proposal on the banks of Gibbs Creek in Beaufort. Our March 16, 2022 public comments detail the ecological significance and high water quality of Gibbs Creek, which make it the last creek in Beaufort not permanently closed to shellfishing. Our comments raise concerns with the effects of the proposed development on the Creek's ecological integrity and water quality.

On March 21, 2022, the Planning Board postponed consideration of the preliminary plat application pending preparation of an EIS pursuant to Subdivision Ordinance Art. VII § 3.05.23. The ability of local governments to request an EIS for a major development project is established in the state Environmental Policy Act (SEPA), N.C. Gen. Stat. 113A-8.

The purpose of an EIS is to serve as a "useful decisionmaking tool," meaning the agency must be able to review and consider the document, alongside public comments on it, before coming to a decision. *Matter of Envtl. Mgmt. Comm'n Final Order*, 53 N.C. Ap. 135, 145 (1981). SEPA contains provisions to facilitate these goals. First, it specifies there should be a *draft* and *final* version of the EIS. 01 NCAC 25 .0605(a) (describing "Review Process" for state agency-prepared EISs wherein a draft EIS is circulated for comment before preparing a final EIS). Second, there should be a 45-day public comment period on the draft EIS. *Id.* Third, SEPA authorizes the Planning Board to request input on the EIS from "state agencies with jurisdiction by law or special expertise [to] advise on matters related to the environmental documentation." 01 NCAC 25 .0802(a). Similarly, SEPA allows the Town to submit the EIS to the State Clearinghouse, which "shall circulate the document for review and comment" among state agencies with relevant experience. *Id.* .0802(b).

On April 28, 2022, an EIS for Salt Wynd was finalized by Atlantic Shores Environmental Services, Ltd., a consultant hired by Beaufort Agrihood Development, LLC. The agenda for the May 16, 2022 Planning Board meeting includes a decision whether to approve the preliminary plat application. This agenda was published on May 9, 2022. The Staff Report notes that “the applicant has provided an EIS as requested by the Planning Board and which was distributed to the Board . . . on May 2, 2022.”<sup>1</sup> This was the first indication to the public that the developer had completed an EIS, and the EIS was not included in the meeting packet. On May 10, the Town provided the EIS in response to a North Carolina Public Records Law request.<sup>2</sup> This timing means the Planning Board and public had approximately fourteen days and six days, respectively, to review the EIS prior to the meeting at which a decision is planned for the preliminary plat application.

## Discussion

The current plan to make a decision on the preliminary plat application just days after the preparation of the EIS contravenes the purpose of an EIS, which is to generate informed governmental decision making and public participation.

First, the April 28, 2022 EIS is not labeled as a “draft” and there is apparently no plan to revise the EIS following input from the public, the Planning Board, and the state. The state’s rules on SEPA implementation make clear that the first published version of an EIS should be a draft, and the final statement should take into account public and agency input. 01 NCAC 25 .0605. The Board should consider the currently submitted document a draft EIS, and should not make a decision on the preliminary plat application until comments on the draft have been compiled and the developer can prepare a final EIS incorporating those comments.

Second, and relatedly, there is not enough time for public comment on the EIS before the Planning Board’s decision on the preliminary plat application, currently scheduled for Monday, May 16. The Town has not published the EIS, and it only released the EIS to the public in response to a records request on May 10, 2022—giving only a small subset of the public just six days to review the EIS before the Planning Board meeting. This is not enough time to review the document or evaluate its discussion of the serious ecological consequences that could flow from granting the preliminary plat application. The Planning Board should publish the EIS on its website so that any interested person can read it, and should give the public the standard 45 days from May 10, 2022 to review and comment on the draft EIS. See 01 NCAC .0605(a). This would result in a public comment period ending June 24, 2022. The Planning Board should provide another 30-day public comment period following preparation of the final EIS, which should incorporate comments received on the draft EIS. *Id.* .0605(c).

Third, the SEPA regulations establish a process by which the Planning Board can request input from state agencies with special expertise on the subject matter raised in the EIS. 01 NCAC 25 .0802(a). To aid the Planning Board in its decision, it should take the opportunity to request input on the EIS from the Division of Coastal Management (DCM), which oversees the Coastal Area Management Act (CAMA). Our March 16, 2022 public comments raise several major concerns with the effect of the proposed development on coastal environments CAMA was enacted to protect. DCM’s review and comment on the EIS is essential to gauging the accuracy of

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<sup>1</sup> Planning Board Agenda Packet at 25, <https://mccmeetings.blob.core.usgovcloudapi.net/beaufortnc-pubu/MEET-Packet-51aeaa1084d0463c9d8d213058b765b1.pdf>.

<sup>2</sup> <https://www.dropbox.com/s/hz1fzxvzize41wn/220429%20Salt%20Wynd%20Preserve%20SEPA%20EIS%20-%20Final%20%281%29.pdf?dl=0>.

the scientific conclusions reached, particularly on the question of the proposal's estuarine and wetland impacts.

Similarly, SEPA regulations authorize the Planning Board to submit the EIS to the State Clearinghouse for review and comment. *Id.* .0802(b). The State Clearinghouse is maintained by the NC Department of Administration to "coordinate and administer" SEPA. *Id.* .0211. The Clearinghouse would then circulate the EIS "for review and comment" among state agencies. This would ensure other agencies with an interest in the outcome, potentially including the Division of Marine Fisheries, have an opportunity to share their expertise. Because the Planning Board has never requested or reviewed an EIS on a proposed development before, the expertise of the Clearinghouse and interested state agencies is critical in reviewing and evaluating the draft EIS. This iterative, cooperative process is intended to result in better decision making that results in "the wise, productive, and beneficial use of the natural resources of the State without damage to the environment." N.C. Gen. Stat. § 113A-2.

### Conclusion

The current plan to decide on the preliminary plat application a mere six days after the EIS was made public does not give the public or the Planning Board meaningful time to review, comment on, and revise the EIS. To remedy this situation, the Planning Board should consider the developer's currently submitted EIS a draft, and should establish a 45-day public comment period ending June 24, 2022, while also requesting input from DCM and submitting the draft EIS to the State Clearinghouse for review and comment by other interested state agencies. Following the developer's preparation of a final EIS that incorporates input from the public and the state, the Planning Board should provide a 30-day public comment period on the final EIS as prescribed by regulation. Only then would a decision on the preliminary plat application be appropriate.

Sincerely,



Alex Hardee



Geoff Gisler

Southern Environmental Law Center

Cc:

Lisa Rider, Coastal Carolina Riverwatch