

ROY COOPER
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ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director



MEMORANDUM

CRC-23-17

TO: Coastal Resources Commission

FROM: Rachel Love-Adrick, District Planner

SUBJECT: AEC Nomination of the Gibbs Creek Watershed

DATE: May 30, 2023

On March 13, 2023, Logan L. Jones, on behalf of the Beaufort Citizens Alliance (Petitioner), nominated a site within the Town of Beaufort to be considered for designation as a Coastal Complex Natural Area of Environmental Concern (AEC) within the broader category of Fragile Natural or Cultural Resource Areas of Environmental Concern in accordance with the procedures set forth in 15A NCAC 7H .0500. Fragile Natural and Cultural Resource Areas are defined as “areas containing environmental, natural or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities” ([15A NCAC 07H .0501](#)) and “are generally recognized to be of educational, scientific, or cultural value because of the natural features of the particular site. These features in the coastal area serve to distinguish the area designated from the vast majority of coastal landscape and therein establish its value. Such areas may be key components of systems unique to the coast which act to maintain the integrity of that system” ([15A NCAC 07H .0502\(a\)](#)). Coastal Complex Natural Area AECs are defined as “lands that support native plant and animal communities and provide habitat qualities which have remained essentially unchanged by human activity” ([15A NCAC 07H .0506](#)).

The Petitioner refers to the site as the Gibbs Creek Watershed and offers “the complexity of the site’s topography, network of perennial and intermittent streams, freshwater pools, multiple drainage areas leading to the tidal creek, and extensive and ecologically important 404 and coastal wetlands, federal and state endangered or threatened species, and possible adverse cumulative impacts” as the reasons for seeking this Coastal Complex Natural Area AEC designation.

PRELIMINARY EVALUATION

[15A NCAC 07H.0503\(c\)](#) requires that the Division of Coastal Management conduct a preliminary evaluation of a proposed AEC nomination. The landowners, local governments, and Coastal Resources Commission (CRC) and Coastal Resources Advisory Council (CRAC) members in whose jurisdiction the site is located are to be informed of the proposed nomination and shall meet to discuss the nomination. The rule states that “various protection methods shall be examined to determine if AEC designation is appropriate”.



North Carolina Department of Environmental Quality | Division of Coastal Management
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Notification of the proposed nomination was emailed on April 5, 2023, to the landowners Bertie Eubanks Neely, Pearl G. West Trustee (Roberta West), and Beaufort Agrihood Development, LLC. (Beth Clifford, CEO); the Town of Beaufort (Kyle Garner, AICP, Planning Director and Todd Clark, Town Manager) and CRC and CRAC members from Carteret County (Larry Baldwin and Lauren Salter, CRC; Ryan Davenport, CRAC).

On May 8, 2023, DCM staff conducted a meeting to discuss the proposed nomination. Staff presented an overview of the Coastal Management Program and existing protections for the site under the NC Dredge and Fill Act, NC Coastal Area Management Act, rules of the Coastal Resources Commission, and other state and federal regulations that would apply to any future development of the site. DCM staff also presented an overview of the AEC nomination and designation process. The Petitioner, represented by Dr. Judd Kenworthy, presented an overview of the proposed [Gibbs Creek Watershed AEC nomination](#).

Property owners described historical uses of each property. The Eubanks family stated that their property has been used by several private businesses including a dairy farm, family crop farm, family homeplace, tire store/service center and rental property, adding that most of the land was cleared over the years due to these uses. Additionally, the Eubanks stated that they have no active purchase contract with Ms. Clifford. Roberta West stated that her family property has also been used as a farm and family homeplace; and that the property was timbered in 1993. Ms. Clifford stated that her property has been used for commercial and residential uses, including a mobile home park, and on-site there are currently abandoned homes and septic tanks, fuel tanks, and a junk yard with derelict vehicles. The property owners spoke in opposition to the proposed AEC nomination, with each stating that the site does not meet the requirement of having “more than local significance” to be classified as a Natural and Cultural Resource Area.

Ms. Clifford, who has proposed a subdivision development within portions of the proposed AEC, reasoned that the proposed development would not cause uncontrolled or incompatible development that could result in major or irreversible damage to natural systems or cultural resources. An overview of the various protection methods to be included in the deed restrictions associated with a proposed subdivision development was outlined (i.e., stormwater detention on each lot would be limited to no greater than 10% increase over pre-development runoff, individual homeowners would be required to maintain 50% of each lot as natural area, preservation of trees greater than 5” in diameter, and the use of organic landscape products). Additionally, she presented an overview of existing stormwater from offsite entering the properties and explained that they proposed the installation of additional swales to handle the exiting stormwater and the stormwater created by the proposed development (DCM Staff note that the proposed AEC designation should not be based on any specific development proposal, including the potential designs or conditions associated with future permits).

Todd Clark, Beaufort Town Manager, spoke on behalf of the Town and provided clarifications regarding information contained in the nomination:

- The property has not been annexed by the town; annexation was predicated on Beaufort Agrihood Development LLC’s purchase of the properties and that has not occurred.
- The planning and review process with the Town will need to restart as the previous approvals have lapsed.
- The Town has not conducted an Environmental Impact Study, and there is a question of whether this would be appropriate as the expenditure of public funds requires a public purpose and these are private properties.
- The Town’s Land Use Plan Update referenced in the nomination is still under review by DCM and has not yet been certified by the CRC.



- The nomination identified the Beaufort Board of Commissioners and Planning Board as being contacted regarding the nomination or the possibility of developing ways to protect this area. This item has not been on the Planning Board or Board of Commissioners agendas and is neither supported nor opposed by either board.

Larry Baldwin, CRC Member requested that the information from the nomination and meeting be presented to the CRC at the June 2023 meeting and requested that the meeting be in person rather than virtual.

A. Overview of Nominated Area

The site is within the Town of Beaufort’s Extraterritorial Jurisdiction (ETJ), two miles northwest of the Town of Beaufort in Carteret County ([Map 1 and 2](#)), and is part of the Outlet North River HUC 12 Subwatershed ([Map 3](#)). The nominated area is made up of four privately-owned parcels:

- Parcel 731609167703000 (42.39 acres) Neely, Bertie Eubanks, 846 Neely Road, Asheboro, NC 27203
- Parcel 731609161556000 (unknown) Beaufort Agrihood Development, LLC, 10 State Road #289, Bath, ME 04530
- Parcel 731609153648000 (25.84 acres) West, Pearl G. Trustee, 231 Pinners Point Road, Beaufort, NC 28516
- Parcel 731609066438000 (7.92 acres) West, Pearl G. Trustee, 231 Pinners Point Road, Beaufort, NC 28516

There is a mix of residential and commercial development surrounding the properties. To the north the site is bordered by Live Oak St. (U.S. 70), undeveloped parcels, Gibbs Creek, and commercial development; to the east by Gibbs Creek, undeveloped parcels, and single-family residential; to the south by single-family residential; and to the west by Pinners Point Rd, Live Oak Street, and a mix of residential and commercial development.

B. Existing Uses

The privately owned parcels are zoned R-20 Residential Single-Family District under the Town of Beaufort Zoning Map and Land Development Ordinance. On-site along Bertram Rd there is a business, mobile home park, and vacant residential properties. Additionally, the Pearl G West Trustee property includes a private residence with parts of the parcel appearing to be regularly mowed per Google Earth Pro historic imagery.

The current [Town of Beaufort Core Land Use Plan](#) certified by the CRC on January 26, 2007 classifies the site as Low Density Residential. The plan states that, “The Low Density Residential classification is intended to delineate lands where the predominant land use is low density detached residences (pg. 89).”

The AEC nomination states, “The Town of Beaufort Comprehensive & CAMA Land Use Plan, Future Land Use Map identifies the site’s Land Use Character Area as “Conservation, Open Space, Parks, Environmental and Recreational” and “Rural/Working Lands”. The site also is classified as “Traditional Residential Neighborhood” in the updated Comprehensive and CAMA Land Use Plan, which was locally adopted by the Town of Beaufort on December 12, 2022 and is currently under review by DCM staff. The updated Plan has not yet been certified by the CRC through the DCM Director.



C. Natural Resources

The nomination states that Gibbs Creek is classified as an Outstanding Resource Waters (ORW). This is incorrect, as the public trust waters within or adjacent to the nominated area are classified as SA (Market Shellfishing, Tidal Salt Waters); HQW (High Quality Waters) by the Division of Water Resources (DWR). DWR defines SA waters as “Tidal salt waters that are used for shellfishing for marketing purposes and are also protected for all Class SC and Class SB uses. All SA waters are also HQW by supplemental classification”. High Quality Waters are defined as a “supplemental classification intended to protect waters which are rated excellent based on biological and physical/chemical characteristics through monitoring or special studies, primary nursery areas designated by the Marine Fisheries Commission, and other functional nursery areas designated by the Marine Fisheries Commission” (DWR).

Additionally, the creek is not designated as a Primary or Secondary fish nursery area by the NC Marine Fisheries Commission as stated in the nomination and letters of support. Primary Nursery Areas are defined as “those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size that have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system” ([15A NCAC 03I .0101](#)).

At the time of the nomination, Gibbs Creek was classified by the NC Division of Marine Fisheries (DMF) as “Conditionally Approved-Open” for the harvesting of shellfish. “Conditionally Approved is defined as areas that can be open to harvest under certain conditions, such as dry weather when stormwater runoff is not having an impact on surrounding water quality.” According to Andy Haines, DMF Environmental Program Supervisor in the Shellfish Sanitation and Recreational Water Quality Section, “Gibbs Creek is managed, along with the main stem of North River, to close after 1.5 inches of rain or more in a 24-hour period. The creek was last closed January 23, 2023, for three days. The creek and the lower part of the river have been temporarily closed on average 11 times/year for an average of 69 days/year, with the specific yearly summary of temporary closures shown in the table”.

Year	# Times Closed	# Days Closed
2013	14	64
2014	11	68
2015	13	84
2016	14	96
2017	11	68
2018	11	94
2019	7	36
2020	12	76
2021	10	56
2022	10	46
Avg.	11	69

Gibbs Creek Temporary Closures

The nomination states that the area has “extensive and ecologically important 404 and coastal wetlands” and that the Gibbs Creek watershed received a score of 7 out of 10 in the Biodiversity/Wildlife Habitat



Assessment from the [North Carolina Natural Heritage Program Conservation Planning Tool \(CPT\)](#). The CPT Report indicates that the “rankings show relative significance of the areas but are not quantitative”. The data that the tool uses were gathered from various state and federal agencies. The report also states that the tool was created for planning purposes and recommends field verification at the parcel level due to the ever-changing landscape and variability of datasets. There has been no on-site assessment of the proposed AEC by the Natural Heritage Program. The score was based on a rating of Exceptional Significance from the North Carolina Coastal Region Evaluation of Wetland Significance (NC-CREWS). Developed in 1999 by DCM, NC-CREWS was a watershed-based GIS wetland functional assessment model created to assess level of water quality, wildlife habitat, and hydrologic functions of individual wetlands. The tool and underlying data have not been updated since 1999. According to the [NC CREWS report](#) “The primary objective of the NC-CREWS wetland functional assessment is to provide users with information about the relative ecological importance of wetlands for use in planning and management of wetlands. It is intended to be used as a planning and decision support tool rather than a decision making tool”. The report further states, “Wetlands receive an Exceptional functional significance rating if two of the primary wetland functions (water quality, hydrology, and habitat) are rated High. Also, if the wetland meets any one of the overriding considerations, it is rated as being of Exceptional functional significance”. Overriding considerations are:

1. Meets the North Carolina statutory definition of a "coastal wetland," or is an estuarine forested or estuarine scrub-shrub wetland;
2. Is adjacent to a primary nursery area; or
3. Is known habitat for threatened or endangered species, or is identified by the Natural Heritage Program as a unique natural ecosystem or special wildlife habitat.

Due to the age of the data, it is unknown what factors resulted in a rating of Exceptional functional significance and if this rating would still apply.

Several species are identified in the nomination as being known to occur in the area. Species identified as having protected statuses are outlined below. The nomination states that the status of the species originates from the Natural Heritage Program [List of Rare Animal Species of North Carolina](#). In North Carolina, all state status species (Endangered, Threatened, and Special Concern) are given state protection under the State Endangered Species Act. Significantly Rare is a Natural Heritage Program designation only and not afforded official state protection. Species with federal status are protected under the Federal Endangered Species Act of 1973.

- State-listed Endangered Species: Common Tern.
- State- and federally-listed Species: Loggerhead sea turtle, Green sea turtle, and Bald eagle.
- State-listed Species of Special Concern: 14 species identified in nomination.
- Significantly Rare: Four species identified in nomination (No official state protection).
- Protected Species – the nomination lists the following species as “protected”. This classification is not found in the NHP List of Rare Animal Special of North Carolina.
 - Spotted Turtle. The nomination cites [Session Law 2003-100, Senate Bill 825](#), this bill prohibits the “commercial taking” of turtles and terrapins in the families Emydidae and Trionychidae.
 - The Spotted Turtle does have a NHP State Status of “Population Decline” defined as “Any native or once-native species of wild animal known to be declining in North Carolina. The distribution or population sizes of such species in the state are fairly well known; loss of habitat is not necessarily a factor”.



- Atlantic Bottlenose Dolphin (*Tursiops truncatus*) – Protected under the U.S. [Marine Mammal Protection Act](#) of 1972 (MMPA). This species is not listed in the NHP List of Rare Animal Special of North Carolina.
- Overfished Species: Six species identified in nomination. Overfished is not a classification found in the NHP List of Rare Animal Special of North Carolina. Source of classification and protection status is unknown.

D. Existing Protections

The Petitioner raises concerns that “the loss of the forested uplands, perennial and intermittent streams, and coastal/404 wetlands will have adverse cumulative impacts on water quality, wildlife and fisheries habitat, and the natural functions of the tidal creek”. As background information, natural resources in the nominated area are currently managed under various state and federal regulatory programs, as outlined below.

The waters and intertidal salt marshes of Gibbs Creek (and its navigable tributaries) are designated as Estuarine, Public Trust Waters, and/or Coastal Wetland AECs by the CRC. Any “development” occurring in or over these waters or wetlands must be permitted and comply with CAMA and CRC rules ([15A NCAC 07H .0208](#) et seq). These rules generally restrict development to water dependent uses to conserve the important features and functions of estuarine waters and coastal wetlands.

The shoreline areas along Gibbs Creek and its tributaries are designated as Estuarine Shoreline AECs, and any development within 75’ of the normal high water level or normal water level must be permitted and comply with CAMA use standards found in the Coastal Shorelines AEC [[15A NCAC 07H .0209\(d\)](#)]. These rules include a buffer requirement that all new, non-water dependent development shall be located a distance of 30 feet landward of the normal high water level or normal water level. Limitations on impervious surfaces within the 75’ zone, and additional restrictions on development within 30’ of the shoreline, are intended to limit the impact of land based activities on the quality and productivity of estuarine waters.

Waters in the area classified as high quality waters are provided additional protection through state water quality antidegradation rules. The area’s freshwater wetlands are subject to the permitting requirements of Section 404 of the federal Clean Water Act (U.S. Army Corps of Engineers) and a state '401' water quality certification (NC DEQ Division of Water Resources) must be obtained before any filling or other alterations to freshwater wetlands can occur. Both programs allow for limited filling of wetlands based on purpose and need, typically in conjunction with mitigation requirements as determined by the Corps of Engineers.

E. Petitioner’s Proposed AEC Buffers / Use Standards

The petitioner has proposed expanded development buffers as part of their AEC nomination. See [Map 4](#) for an approximation of the buffer locations overlaid on the proposed AEC, as follows:

1. 575 feet landward from normal high water as provided for designated Outstanding Resource Waters pursuant to 15A NCAC 07H .0209(a)(1).
 - a. *Note: The waters of Gibbs Creek are not designated as Outstanding Resource Waters. Outstanding Resource Water designations are implemented under the authority of the Environmental Management Commission.*



- b. *Note: The CRC's 575 foot AEC adjacent to Outstanding Resource Waters does not restrict all development; rather, it limits the total built-upon area (BUA) to 25% of the AEC.*
2. 100 feet of undisturbed vegetative setbacks from intermittent and/or perennial streams NS1, NS2, and NS3, Waters of the U.S. as provided by 15A NCAC 02H .1019(6)(b).
 - a. *Note: The cited rule is the Division of Water Resources/Environmental Management Commission's rule.*
3. 100 feet of undisturbed vegetative setbacks from 404 wetlands pursuant to NCGS 113A-113(b)(1) and 15A NCAC 07H .0501.
 - a. *Note: NCGS 113A-113(b)(1) authorizes the Coastal Resources Commission to designate "coastal wetlands as defined in G.S. 113-229(n)(3) and contiguous areas necessary to protect those wetlands" as areas of environmental concern.*
 - b. *Note: 404 wetlands are managed by the US Army Corps of Engineers on the federal level and the Division of Water Resources at the state level. Both programs allow limited filling of wetlands based on purpose and need, typically in conjunction with mitigation requirements.*

F. Staff Recommendation

The petitioner proposes that the site be designated as a Coastal Complex Natural Area AEC within the Natural or Cultural Resource Areas of Environmental Concern. Natural and Cultural Resource Areas are defined as "areas containing environmental, natural or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities." Coastal Complex Natural Areas AECs are defined as "lands that support native plant and animal communities and provide habitat qualities which have remained essentially unchanged by human activity" (15A NCAC 07H .0506).

Staff does not recommend CRC endorsement of this AEC nomination based on the following findings:

1. The nomination does not include the entire watershed area that drains into Gibbs Creek. The boundary of the AEC focuses solely on four parcels initially proposed for development of a single-family residential subdivision. While the town stated neither support nor opposition to the AEC nomination, these properties have been classified as Low Density Residential on their plan's Future Land Use Map since January 26, 2007.
2. The properties have not "remained essentially unchanged by human activity". The properties were historically used as farmland and have been cleared for farming and logging over the years. Additionally, the properties have been and continue to be used by several commercial businesses and residences that may have resulted in impacts to the area.
3. While the proposed AEC contains many of the natural resources that make tidal creek systems some of our state's most valuable wildlife habitat, DCM Staff has not made a determination of whether the standard of "more than local significance" (as required by 15A NCAC 07H .0501) or that the natural features "distinguish the area designated from the vast majority of coastal landscape" [as required by (15A NCAC 07H .0502(a))] has been met, since the characteristics at this site are common to tidal creek systems found throughout Carteret County and coastal North



Carolina. In this context, the designation of a single tidal creek system or watershed as an AEC with unique development standards would be precedent setting for all similar tidal creek systems along the coast.

4. During the public meeting, the Petitioner indicated that while Gibbs Creek has not been designated as Outstanding Resource Waters by the Environmental Management Commission through the Division of Water Resources, the Creek deserves such recognition and subsequent CRC protections because Petitioner believes the Creek meets the statutory and regulatory definitions and criteria. However, the CRC and DCM do not have the authority or expertise to consider requests to reclassify waters that are officially designated under the federal Clean Water Act. For Gibbs Creek to be reclassified as Outstanding Resource Waters, the Petitioner would need to submit a separate petition to the Environmental Management Commission. The procedures for assignment of water quality standards can be found in 15A NCAC 02B .0100. Staff have reached out to the NCDEQ Division of Water Resources, Water Quality Section, for further information on this process.

DCM staff look forward to reviewing and discussing the proposed AEC nomination at your upcoming meeting.

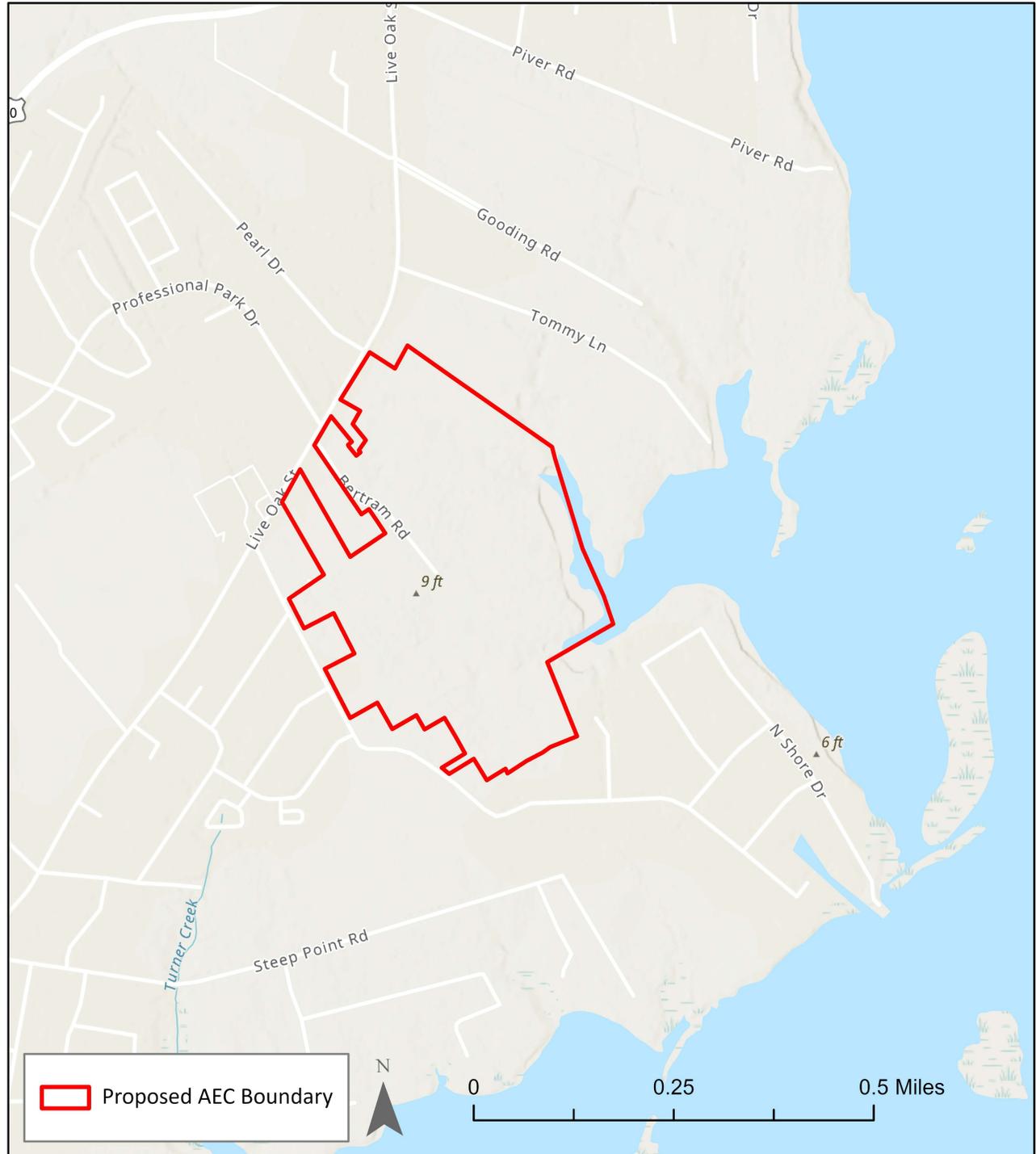
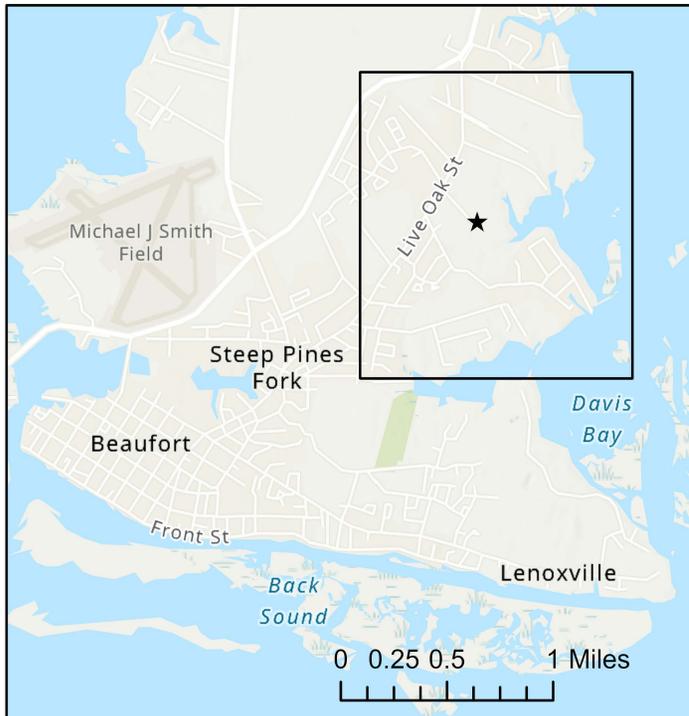
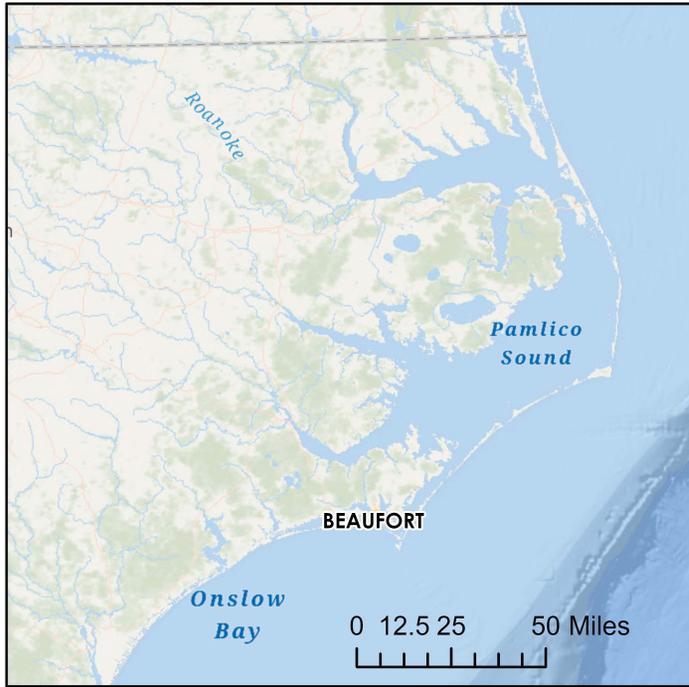
Attachments:

[Gibbs Creek Watershed AEC nomination](#)

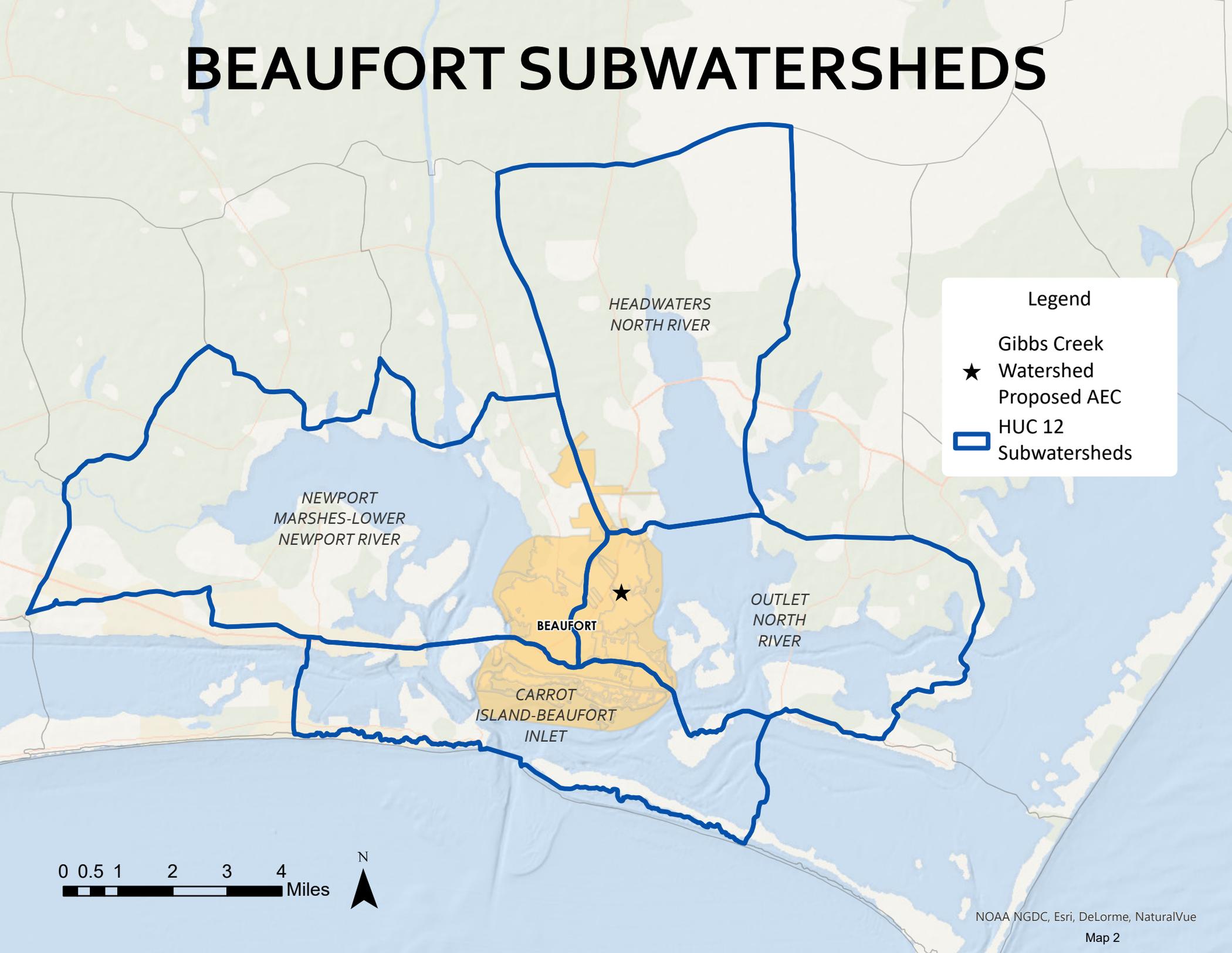
[Nomination Comments and Stakeholder Presentations](#)



Gibbs Creek Watershed Proposed AEC Overview



BEAUFORT SUBWATERSHEDS



Legend

- Gibbs Creek
- ★ Watershed Proposed AEC
- HUC 12
- Subwatersheds



Overview of Gibbs Creek and AEC Nomination



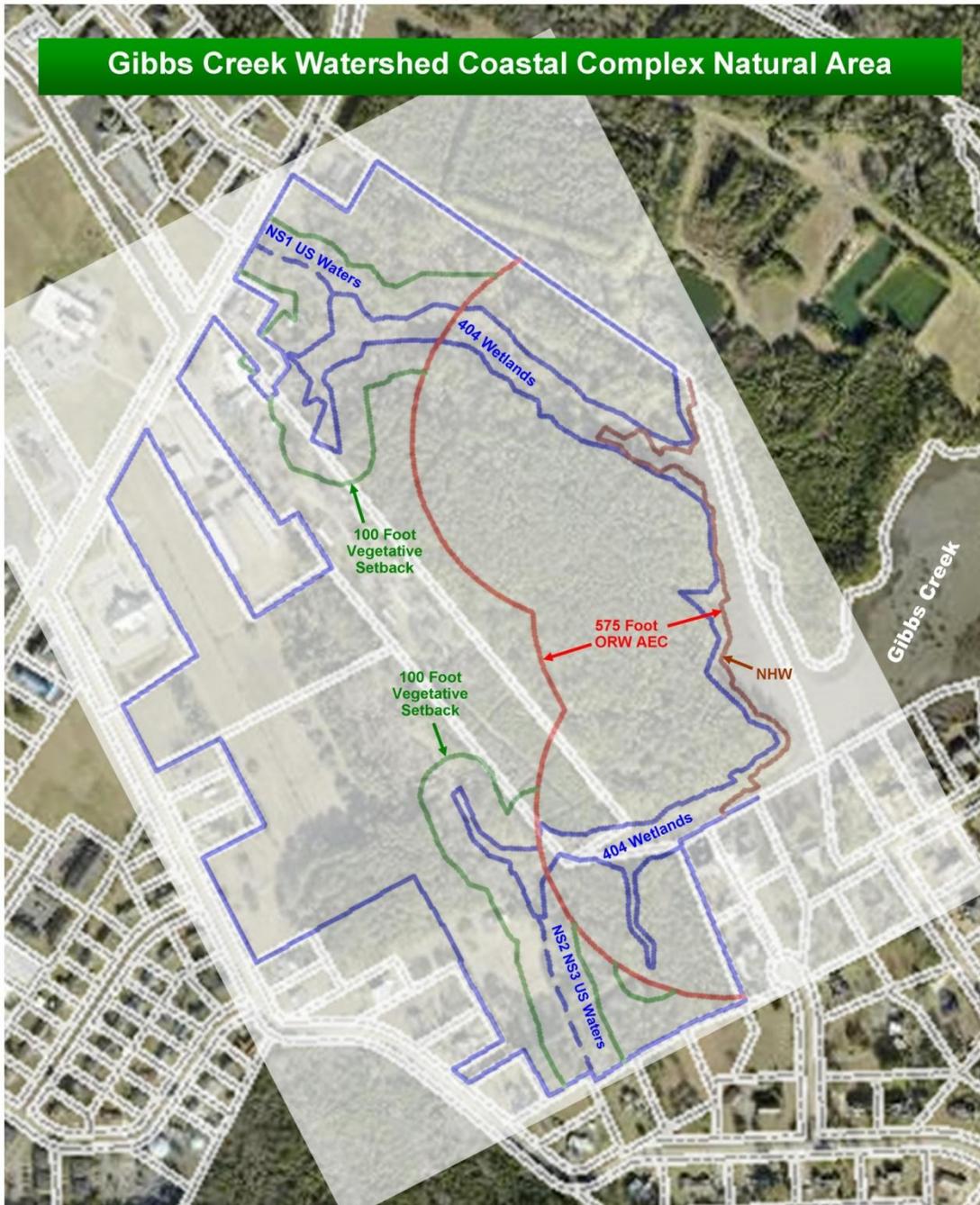
Legend

-  Proposed AEC Boundary
-  Gibbs Creek Surface Water Classification Boundary (DWR)

0 250 500 1,000 1,500
US Feet



Gibbs Creek Watershed Coastal Complex Natural Area



Gibbs Creek Watershed Coastal Complex Natural Area, an Area of Environmental Concern pursuant to 15A NCAC 07H .0506, as delineated on the map above, consisting of the following areas:

1. 575 feet landward from Normal High Water as provided for Outstanding Resource Waters pursuant to 15A NCAC 07H .0209(a)(1).
2. 100 feet of undisturbed vegetative setbacks from intermittent and/or perennial streams NS1, NS2 and NS3 Waters of the US as provided for by 15A NCAC 02H .1019 (6)(b).
3. 100 feet of undisturbed vegetative setbacks from 404 Wetlands pursuant to NCGS 113A-113 (b)(1) and 15A NCAC 07H .0501.

Figure 2.