

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
WILLIAM F. LANE
General Counsel



MEMORANDUM

TO: Rob Bizzell, MFC Chair & Chair of the Shellfish Cultivation Lease Review Committee (SCLRC), via MFC Counsel
Steve Yuhasz, SCLRC Committee Public Member, via MFC Counsel
Sammy Corbett, SCLRC Committee Public Member, via MFC Counsel
Phillip Reynolds, Special Deputy AG and SCLRC Co-Counsel, via email
Sarah Zambon, Assistant AG and SCLRC Co-Counsel, via email
Shawn Maier, DEQ Asst. General Counsel, via email
Kathy Rawls, DMF Director, via email
Jacob Boyd, DMF Habitat Section Chief, via email
Owen Mulvey-McFerron, DMF Shellfish Lease Program Coordinator, via email
Zach Harrison, DMF Aquaculture Permit Coordinator, via email
Lara Klibansky, MFC Liaison, via email

CC: Robert B. (“BRYCE”) Pike, II, Counsel for Petitioner, via email to bryce@pikelawfirm.com
Changing Tide Renovations, LLC Approved Shellfish Leaseholder,
c/o Charles Chris Allen, Registered Agent, via email to ccallen68@gmail.com

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: June 23, 2023

RE: Staff Recommendation: Third Party Hearing Request by
Lukens Island Timber Enterprises, LLC (SCLRC-2023-01)

Please find enclosed: The DMF Staff’s Recommendation in the above referenced Shellfish Lease Third Party Hearing Request. The Shellfish Cultivation Lease Review Committee’s (SCLRC) public meeting is scheduled for Tuesday, July 18, 2023 at 10:00 a.m. at the DMF Central District Office, 5285 Highway 70 West in Morehead City. The SCLRC’s final agency decision is due by August 3, 2023 (90 days from May 5, 2023 petition filing date). The SCLRC’s decision will come from Special Deputy AG Phillip Reynolds and Assistant AG Sarah Zambon, who are counsel for the SCLRC.

Enclosure



North Carolina Department of Environmental Quality | General Counsel
217 West Jones Street | 1601 Mail Service Center | Raleigh, North Carolina 27699-1601
919.707.8600

IN THE MATTER OF THE THIRD-PARTY
HEARING REQUEST BY:
**LUKENS ISLAND TIMBER
ENTERPRISES, LLC**

**RECOMMENDATION OF THE
DIVISION OF MARINE FISHERIES**

I. BACKGROUND

Petitioner Lukens Island Timber Enterprises, LLC (“Petitioner”) requests permission to file a petition for a contested case hearing as a third party pursuant to N.C.G.S. § 113-202(g). Petitioner seeks to challenge the April 5, 2023 decision by Kathy Rawls, Director of the NC Division of Marine Fisheries (“DMF”) to grant both a bottom shellfish lease and a water column lease (the “Lease Area”) to Changing Tide Renovations, LLC (“Potential Lessee”). The Lease Area proposed by the Potential Lessee is located in South River near the eastern shore approximately 1.3 nautical miles from the Neuse River in Carteret County. Petitioner owns property to the east of the Lease Area.

Under law, a third party may file a contested case hearing petition to challenge the approval of a shellfish bottom lease or water column lease to someone else only if the Shellfish Cultivation Lease Review Committee (“SCLRC”), established pursuant to N.C.G.S. § 143B-289.57(f), first determines that a contested case hearing is appropriate. N.C.G.S. § 113-202 (g) provides that along with being timely filed, the determination as to whether a hearing is appropriate should be based upon a consideration of whether a petitioner:

1. Has alleged that the decision is contrary to a statute or rule;
2. Is directly affected by the decision; and
3. Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

The SCLRC determines whether a third-party request for a hearing should be granted or denied. A third party whose hearing request is granted may file a contested case hearing petition with the Office of Administrative Hearings (“OAH”) and a third party whose hearing request is denied may seek judicial review. N.C.G.S. § 113-202(g).

II. FACTS

A. The Potential Lessee is a North Carolina Limited Liability Company organized in 2019. The Registered Agent is Charles “Chris” Allen. The current registered office address (as well as the principal office and mailing address) is 218 Lands End Road in Morehead City. The description of the business is listed as “home improvement.” A copy of the Potential Lessee’s 2019 Articles of Organization and the 2022 Annual Report are attached.

B. Mr. Allen owns property with his wife Susan at 189 South River Drive in Merrimon. The Allens have owned this property since September 20, 2016 as shown on a deed recorded at Book 1554, Page 250 of the Carteret County Registry, a copy of which is attached, as is the tax card. Recent aerial photography, a copy of which is attached, show this property developed with a house, a garage, and a pier. Using the GIS measurement tool, this property and the Lease Area are approximately one mile away from each other across South River.

C. The Lease Area is approximately 3.72 acres in size and sits within South River off the eastern shore approximately 1.3 nautical miles from the Neuse River. The Shellfish Lease Investigation Report, a copy of which is part of the Decision Record, indicates a water depth in the Lease Area of 0.75 meters (2.5 feet). The Lease Area is approximately 112 feet waterward from the shoreline. Aerial and ground level photographs are attached showing the Lease Area, its

distance to the Neuse River, its distance to the shoreline, and its distance to the existing lease. Screen shots from the DMF Shellfish Leasing Tool of the Lease Area are also attached.

D. In addition to this potential shellfish lease, Changing Tide Renovations, LLC has an existing bottom and water column lease that was transferred to it on June 13, 2022 (Shellfish Lease/Bottom 1994813/Water Column 1994821 or “Existing Lease”) from David Osborne and Hardy Bobbitt. Osborne and Bobbitt were originally granted the shellfish lease on September 17, 2020, and DMF received no written or oral comments in opposition to this lease in 2020. A copy of the transfer document is attached. Staff report that there have been no compliance or enforcement issues with this Existing Lease. A screen shot showing the location of the Existing Lease is attached and shows the proximity to the Lease Area.

E. Petitioner is a North Carolina Limited Liability Company Organized in 1996. The Registered Agent is Patrick P. Joyce. The current registered office address and principal office address is 6994 US Hwy 70 West in Newport. The Registered Agent’s Mailing Address is PO Box 190, Newport. The description of the business is listed as “timber growth and harvesting.” A copy of the Petitioner’s 1996 Articles of Organization and the 2023 Annual Report are attached.

F. Petitioner owns eleven parcels of property in Carteret County according to Carteret County tax and GIS records. Ten of those parcels appear to form a contiguous property approximately 7,427 acres in size and with a linear shoreline length of approximately six (6) miles, comprising most of a peninsula bordered by South River to the west and Abraham and Turnagain bays to the east. Petitioner also owns one parcel on the south side of South River located at 257 Tosto Road in Merrimon, just south of the South River Boat Ramp. A map from the Carteret County GIS is attached showing these parcels and copies of the tax cards for each of the eleven parcels are attached.

G. The following Coastal Area Management Act (“CAMA”) permits have been issued authorizing development on the Petitioner’s parcels:

1. CAMA General Permit #12094 issued November 23, 1993 authorizing the development of a 130’ x 6’ 4-slip pier with a 30’ x 8’ T-head and five mooring pilings in the Horton’s Bay area of Petitioner’s property. A copy of this Permit is attached.
2. CAMA General Permit #13121 issued on July 7, 1994 authorizing the development of a 20’ long x 15’ wide boat ramp south of the 4-slip pier. A copy of this Permit is attached.
3. CAMA General Permit #15941 issued February 23, 1996 authorizing the modification of the existing pier by extending it 50’ and adding a new 28’ x 6’ T-head. The existing mooring pilings were removed and replaced with seven new mooring pilings at the end of the new T-head, but it would continue to have four slips. A copy of this Permit is attached.
4. CAMA General Permit #23500 issued September 28, 1999 authorizing the development of a 200’ rip-rap bulkhead in the area of the then-existing pier.
5. CAMA General Permit #55358C issued on May 5, 2010 authorizing the development of a replacement boat ramp, this time 12’ by 60’ in the same location as the previous ramp.

There may be other CAMA permits that had been issued for construction of the other structures on Petitioner’s property which were not located by Division of Coastal Management (“DCM”) staff, including a permit for the construction of the existing lodge building and associated accessory structures¹ which are noted on the attached tax cards. Based on a review of the limited development on Petitioner’s property, DMF Staff concluded that it other than the riprap bulkhead, boat ramp and pier, which are not near the Lease Area, Petitioner’s property was not not a developed shoreline and did not require a proposed lease to be 250 feet from the shoreline per 15A NCAC 03O .0201(a)(2). Copies of these permits and their application materials are attached.

¹ Upland structures are usually issued CAMA Minor Permits by the Carteret County CAMA Local Permitting Officer, and related documents are held by the LPO and not by DCM.

H. There are no recognized submerged lands claims (as described in N.C.G.S. § 113-205 and -206) around the Lease Area, as shown on the DMF GIS delineation of recognized claims. A screenshot of the DMF GIS with the submerged lands layer is attached showing no recognized claims in the area at issue. Therefore, the submerged lands below mean high water are owned by the State, as is most often the case.

I. South River at the Lease Area is classified as Coastal SA Waters, High Quality Waters (HQW) and Nutrient Sensitive Waters (NSW) by the Environmental Management Commission (“EMC”). These waters are not classified as a Primary Nursery Area (PNA), a Secondary Nursery Area (SNA) or a Special Secondary Nursery Area (SSNA) by the Marine Fisheries Commission (“MFC”). These waters at the Lease Area are in the F2 Growing Area in the Central Region and are an Approved harvest area for shellfish harvesting. A screenshot of the DMF Shellfish Siting GIS tool is attached showing the Lease Area is open and shows a closure line south of the Lease Area referenced by Petitioner.

J. In the general area around the Lease Area DMF Staff viewing aerial imagery identified two duck blind structures in various states of repair/disrepair². The closest two duck blind to the Lease Area are located approximately 25 feet and 75 feet from the Lease Area as measured with the DMF Shellfish Siting GIS tool. Attached are google earth and ground-level photographs showing these two duck blinds.

K. In researching cases and laws related to duck blinds, the Undersigned summarizes the laws regarding duck blinds in North Carolina as follows:

1. The North Carolina Department of Justice (“DOJ”) wrote a memo in 1985, a copy of which is attached, that concluded that at that time, there were no laws prohibiting hunting in a duck blind located within/over public trust waters but near (50 yards

² Petitioner had indicated it would be producing information about the location of duck blinds along its shoreline but has not provided them to DMF Staff to date.

in the 1985 case) private upland riparian property. It also notes that hunting is understood to be one of the activities which comprises “public trust rights” as commonly understood in North Carolina.

2. As noted in the 1985 memo, at that time and since, the DCM has not required permits pursuant to the CAMA or the State Dredge & Fill Law for the construction of duck blinds³ in public trust waters.
3. While a CAMA permit is not required for duck blind construction, regulations promulgated by the Coastal Resources Commission (CRC) pursuant to the CAMA include a description of water-dependent uses in 15A NCAC 7H .0208(a)(1) where it notes that “uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas...Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culvers, groins navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;” 15A NCAC 07H .0206(d) also notes that the prioritization of uses in Estuarine Waters Area of Environmental Concern are for “those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.”
4. The EMC also defines “water dependent structures” at 15A NCAC 02B .0202(59) as “those structures that require access or proximity to or siting within surface waters to fulfill its purpose, such as boat ramps, boat houses, docks, and bulkhead. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water dependent structures.”
5. Statutes administered by the Department of Administration requiring submerged lands easements for structures built within/over public trust waters specifically note that such easements are not required for duck blinds. See N.C.G.S. § 76-40(b).
6. Session Law 1981-581, a copy of which is attached, is a local act regarding migratory waterfowl hunting in Carteret and Pamlico counties which states that “it is unlawful to take migratory wild waterfowl within 500 yards of another person’s permanently established hunting location” and defines a “permanently established hunting location” as a structure including a blind which is “permanently established” for hunting by “(2) The riparian landholder, if the site is on or in water and hunting rights in that water are not controlled by someone other than the riparian landholder;”
7. While Dare and Currituck counties have local laws requiring permits from their local government’s Game & Wildlife Commissions for in-water duck hunting from

³ There have been enforcement situations in the past by DCM related to structures built within/over public trust waters which the builders alleged were “duck blinds” but were in fact habitable structures or cabins.

blinds, no similar local regulations specific to Carteret County were found in the Carteret County Ordinances or Carteret County Land Use Plan.

L. On or about April 19, 2022, the Potential Lessee, through Member-Manager Charles C. Allen, applied for a shellfish lease at the Lease Area. A copy of the application materials date-stamped as received on April 19, 2022, is part of the Decision Record.

M. The Lease Area was reviewed thoroughly as all proposed shellfish leases are, through a comprehensive review process. The shellfish lease application process is a multistep process that is dependent upon review and comment by DMF Staff from multiple sections and from outside agencies such as DCM and the Division of Water Resources (“DWR”). Requirements for shellfish leases including the application process are specified in N.C.G.S. § 113-201 and 202.2, and in the MFC rules at 15A NCAC 03O .0201 through -.0211. The shellfish lease application process includes an initial Internal Review Process where staff from various sections of DMF and other pertinent state and federal agencies review shellfish lease applications and provide comments back to DMF staff. In this case for the Lease Area, comments were received back from:

1. Tina Moore of the DMF Fisheries Management Section on June 15, 2022.
2. Officer Justin Lott and Officer Jonathan Morris of the DMF Marine Patrol on June 24, 2022.
3. Andy Haines of the DMF Shellfish Sanitation Section on October 18, 2019.
4. Daniel Govoni of DCM on August 9, 2022.
5. John Perry of DWR on June 14, 2022.

Copies of Internal Review Process comments are part of the Decision Record.

N. A Shellfish Lease application must also meet federal requirements promulgated by the U.S. Army Corps of Engineers (“Corps”) through their Nationwide Permit #48. The Shellfish Lease Application to DMF serves as a joint application with the Corps.

O. Also, as part of the shellfish lease application process, DMF Staff complete Biological Site Investigations, where they observe the proposed Lease Area and sample for the presence of Submerged Aquatic Vegetation (“SAV”) and natural shellfish beds and record other pertinent information regarding the location. In this case, the Biological Site Investigation took place on June 9, 2022. Staff found no presence of SAV and zero bushels per acre of natural shellfish. Documentation of these findings is part of the Decision Record.

P. Through a memo dated October 20, 2022, DMF Shellfish Lease staff, through DMF Habitat and Enhancement Section Chief Jacob Boyd, summarized the Proposed Lease and Lease Area for DMF Director Kathy Rawls, a copy of which is part of the Decision Record. This memo summarized the findings to date, and following her review of that information, on December 16, 2022, Director Rawls decided to proceed with a 30-day public comment period followed by a public hearing for the Potential Lease.

Q. On February 15, 2023, at 6:00 p.m., the public hearing was held for this Potential Lease via a WebEx virtual hearing. A transcript from the hearing is part of the Decision Record. Three of Petitioner’s members Matt Godwin, Doug Brady and Jet Matthews spoke against the Potential Lease. Chris Matteo spoke in favor of the Potential Lease.

R. As part of the public comment period regarding this shellfish lease, there were nine comments which referenced this Potential Lease, copies of which are part of the Decision Record. Of these, nine opposed the Potential Lease (including Haroldson, Godwin, Burton, Ward, Baker, Batton, Brady- who are members of Petitioner) and three supported it.

S. Petitioner, through its attorney Bryce Pike, submitted written objections to the Potential Lease dated February 10, 2023, February 13, 2023 and February 16, 2023, copies of which are part of the Decision Record. Mr. Allen also submitted a written response to the public comments dated February 16, 2023, a copy of which is part of the Decision Record.

T. Following the public hearing and public comment period, on February 22, 2023, Mr. Boyd summarized the information obtained about this Potential Lease in a memo to Director Rawls, a copy of which is past of the Decision Record. On April 5, 2023, Director Rawls made the decision to grant this Proposed Lease as it had been proposed as indicated by her marking and signature on the April 5, 2023 memo. DMF Staff also mailed a notice letter dated April 6, 2023 to Mr. Allen notifying him of the shellfish lease decision, a copy of which is attached to the Decision Record.

U. DMF's Mr. Mulvey-McFerron called Petitioner's attorney Mr. Pike on April 5, 2023 to notify him of the April 5, 2023 shellfish lease decision and emailed him the appeal form on April 6, 2023. A copy of this email is part of the Decision Record.

V. On May 4, 2023, DMF received Petitioners' third-party hearing request, a copy of which is available on the DMF's website for this matter. This was twenty-nine (29) days after the April 5, 2023 shellfish lease application decision.

W. On June 2, 2023, Counsel for the Committee, Special Deputy Attorney General Phillip Reynolds, wrote to Staff, the Potential Lessee, and Petitioner's Counsel with information about the process the SCLRC would use for deciding this matter, including a hearing date of July 18, 2023, as well as deadlines and details about requested submission.

X. On June 12, 2023, Staff received two affidavits from the Petitioner for Mr. Trowell and Mr. Mitchell, copies of which are attached.

Y. Staff did not receive a written response from the Potential Lessee by the June 19, 2023 deadline indicated by the Committee’s Counsel in his letter of June 2, 2023.

Z. A recent Final Decision of ALJ Lassiter in the 8 ½ Marina v. DEQ and Boyd contested case (17 EHR 1382) in May of 2018 is helpful to understanding how DMF applies the language of the shellfish statutes and rules, a copy of which is attached.

III. DMF’S RECOMMENDATIONS

A. Has the Petitioner Alleged that the Decision is Contrary to a Statute or Rule?

Yes/No. Petitioner lists and argues that the Lease decision was contrary to seven rules/laws, and makes the following arguments:

1. N.C.G.S. § 113-202(a)(1) which requires a lease to produce shellfish in commercial quantities where Petitioner argues that the closures approximately 150 yards south of this Lease Area demonstrate that the Proposed Lease would often be closed to harvest, and the oysters harvested could be contaminated.
2. N.C.G.S. § 113-202(a)(3) which requires a lease to be compatible with the lawful utilization by the public of other marine and estuarine resources, including, but not limited to, navigation, fighting and recreation.
3. N.C.G.S. § 113-202(a)(4) which states “Cultivation of shellfish in the leased area will not impinge upon the rights of riparian owners” where Petitioner argues that the Proposed Lease infringes on Petitioner’s riparian rights.
4. Session Law 1981-581 (SB 616) which makes it “unlawful to take [waterfowl] within 500 yards of another person’s permanently established hunting location.”
5. 15A NCAC 02B .0202(59) where Petitioner argues that duck blinds are “water dependent structures” and that this rule requires a 250’ setback from duck blinds as it does require setbacks for boat ramps, piers, and other similar structures.
6. 15A NCAC 02B .0201. Petitioner lists this rule, which is the Environmental Management Commission’s Anti-degradation rule, but does not explain how the proposed lease was issued contrary to this rule.
7. 15A NCAC 03O .0201. Petitioner lists this rule, which is part of the MFC’s shellfish lease rules, but does not explain how the proposed lease was issued contrary to this rule.

On Arguments 1-3 and 5 above, Staff agrees that Petitioner has “*alleged* that the agency has made a decision that is contrary to a statute or rule” which is relevant to the shellfish lease decision *and within DMF’s jurisdiction*, and therefore meets the requirements of N.C.G.S. § 113-202(g).

On Argument 4 above, while Staff contends that while Petitioner has “alleged that the agency has made a decision that is contrary to a statute or rule” it is not a law within DMF’s jurisdiction to enforce as it pertains specifically to the taking of migratory wild waterfowl (the act of hunting). Petitioner incorrectly characterized the law as requiring “...that, for safety reasons, in Carteret County, duck blinds are required, by law, to be 500 yards apart.” (Petition Item 2, Paragraph 2). That is not what the law says. There is no distance between blinds required in this session law, or buffer area around each blind in which shellfish leases or other development are prohibited. As this potential future act of hunting is speculative at the Lease Area, and because this law does not prevent the siting of shellfish leases near blinds, Staff contend that Petitioner in raising this local law does not meet the requirements of N.C.G.S. § 113-202(g).

On Arguments 6-7 above, Staff disagrees that Petitioner has “alleged that the agency has made a decision contrary to a statute or rule” where Petitioner simply lists these two rules in its initial list, but neither cites these rules further nor describes in the Petition how the shellfish lease was issued contrary to these two rules. For these reasons, Staff asserts that Petitioner does not meet the requirements of N.C.G.S. § 113-202(g) regarding these two rules.

B. Is the Petitioner Directly Affected by the Decision?

No. In Petitioner’s argument related to this “directly affected” factor, Petitioner’s only allegation about how its member/managers would be directly affected by the lease decision is

where it alleged that the lease “will infringe upon Lukens riparian ownership rights.” (Petition, Item 2, Paragraph 4) Petitioner owns upland property east of the Lease Area and this property appears to be riparian in nature where a boundary line follows mean high water. Our Supreme Court in Capune v. Robbins, 273 N.C. 581 (1968) held that riparian rights are

a qualified property [right] in the water frontage belonging, by nature, to their land, the chief advantage growing out of the appurtenant estate in the submerged land being the right of access over an extension of their water fronts to natural water, and the right to construct wharves, piers, or landings, subject to such general rules and regulations as the Legislature...may prescribe for the protection of public rights in rivers or navigable waters.

Riparian rights end at “natural water” (also described as “deep water”), which is not a universally set depth, but is based on the characteristics of a specific waterbody being navigated by vessels reasonably used in that area. In this case, the depth at the Lease Area is approximately -0.75 meters (-2.5 feet) which is possibly within the Petitioner’s riparian area. However, a riparian area is not exclusively controlled by a riparian owner for the owner to hunt, navigate, fish, and recreate alone, but is subject to the exercise of public’s trust rights in the public trust waters.

Petitioner claims that its members have erected “over 75 duck blinds on this shoreline” including “two blinds within 50 yards of the proposed lease.” Petitioner’s description appears to claim exclusive ownership of all these blinds regardless of whether they are on upland or within the water. However, as noted in the 1985 DOJ memo referenced in the facts above and attached, blinds erected into and over state-owned submerged bottom within/over public trust waters are not owned by the riparian owner. Staff understand that these two duck blinds referenced by Petitioner to be within 50 yards of the Lease Area are both within the water, and so would not be owned by Petitioner.

Petitioner further alleges that its members would have to “abandon their hunting spots they have maintained for over 30 years and have invested a great deal of time and money in” if this lease is signed. This statement exaggerates the likely impacts of this shellfish lease which is 3.72 acres and approximately 820 feet in length along the approximately six (6) mile shoreline of Petitioner’s property and comprises less than 1% of Petitioner’s shoreline. There are other locations and blinds on Petitioner’s property from which to continue to hunt and fish at times when the Potential Lessee is present on the Lease Area.

Additionally, the existence of this proposed shellfish lease does not exclude undertaking these activities in the area of the lease. The Potential Lessee does not work the shellfish lease during all daylight hours and every day of hunting season, and so there is an ability for the parties to both use the resource. Petitioner’s use is already subject to the exercise of the general public for public trust uses, and this would be an impact similar to that. While the Potential Lessee and members of the Petitioner’s organization will have to take turns to share the public trust resources during hunting season, the shellfish lease does not foreclose all use of Petitioner’s property in this area for hunting and fishing.

Finally, Petitioner alleges that it has drawn up a “master plan” for possible future development of its property not currently considered a “developed shoreline”. It does not appear that a final plat has been approved, and Staff are unaware of any other steps having been taken for approvals beyond an initial plan completed in 2017 for its members consideration described by Petitioner. There is an existing 4-slip pier, boat ramp and rip-rap stabilized shoreline developed on the property, which is not in the same area as the proposed Lease Area. If a platted subdivision is one day approved and the developer or individual lot owners wish to then apply for a CAMA permit to build a pier to wharf out within their riparian area, any shellfish lease holder will have to

accommodate those riparian rights. Denial of the Potential Lease is not necessary to accommodate possible additional new piers for lots not platted or piers not yet proposed. For these reasons, Staff disagree that the shellfish lease may directly affect Petitioner and its members, and that it does not meet the requirement of N.C.G.S. § 113-202. Staff finally note that even meeting this “directly affected” standard in this proceeding may not satisfy the elevated standard of harm employed at the OAH.

C. Has the Petitioner Demonstrated that the Hearing Request is not Frivolous?

No. Petitioners’ arguments consist of the seven issues noted in Section A above and will be discussed separately below considering this statutory factor.

1. Commercial quantities will not be met as required

Petitioner first asserts that the shellfish lease was issued in a location that would often be closed to harvest and the oysters harvested could be contaminated due to the closure area line approximately 150 yards south of this Lease Area, and as a result, the lease will not produce the required commercial quantities per N.C.G.S. § 113-202(a)(1). First, Staff notes that this argument is speculative about whether closures will prevent the Potential Lessee from producing the commercial quantities required of a shellfish lease. Staff contend on that basis alone it would be frivolous to have a contested case in OAH regarding the shellfish lease decision on Petitioner’s speculative theory that proximity to a closure line will result in less than required yields. While that could be an issue between DMF Staff and the Potential Lessee in the future if that in fact happens, it is not now a proper basis for a contested case.

Staff further note that proximity to adjacent closure lines has no bearing on the eligibility of a proposed shellfish lease if the lease is situated in approved or conditionally approved waters and does not include an area which the State Health Director has recommended be closed to

shellfish harvest by reason of pollution per N.C.G.S. § 113-202(a)(6). The proposed shellfish lease is located in growing area F2 and is an approved harvest area that is closed an average of 7% of the year (26 days) over the last five years. This is one of the least-closed areas of the State. The Lease Area also has not been recommended for closure to shellfish harvest due to pollution. As the standards provided by N.C.G.S. § 113-202(a)(6) for closure are not met at the Lease Area, Staff contend it would be frivolous to have a contested case on the shellfish lease decision where leases are allowed in the Lease Area as described.

2. Incompatible competing uses of the public trust resources

Petitioner asserts that the shellfish lease issued is not compatible with the lawful utilization by the public of other marine and estuarine resources, including, but not limited to, navigation, fighting and recreation. While the internal review comments do note other potential public uses in and around the proposed Lease Area, this was taken into consideration by Director Rawls to determine the compatibility of the Lease Area with other public trust uses. When determining whether to grant or deny a shellfish lease, the DMF Director determines whether the lease meets the minimum statutory criteria set forth in a N.C.G.S. § 113-202(a) and includes (a)(3) which requires that “[c]ultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources.” This phrase “compatible with” is not further defined by statute or regulation. DMF does not interpret this standard to mean there can be no impact to other public trust uses but interprets this minimum standard to mean that existing uses must be able to exist along with the shellfish lease within the general area at the same time. Additionally, DMF “may not grant a new lease in an area heavily used for recreational purposes.” N.C.G.S. § 113-202(b). The phrase “area heavily used for recreational purposes” under N.C.G.S. § 113-202(b) is not further defined by statute or regulation. DMF interprets the phrase “area

heavily used for recreational purposes” pursuant to this subsection as an area where recreational use is concentrated relative to the surrounding water body. DMF makes this determination by examining whether there is heavy recreational or other public trust use concentrated within the shellfish lease footprint. Usually, this is an area where people tend to congregate, such as a popular sandbar, beach, or particular fishing spot. DMF’s approach for determining if a lease is “compatible with” other public trust uses was upheld in the May 11, 2018 Final Decision of ALJ Lassiter in the 8 ½ Marina v. DEQ and Boyd contested case (17 EHR 1382), a copy of which is attached. In Finding of Fact 11, ALJ Lassiter found that

DMF’s interpretation of the phrase ‘compatible with’ is reasonable, is consistent with, and supported by the plain language of the statute and statutory framework. For that reason, the undersigned defers to DMF’s interpretation of this minimum standard in determining the validity of Petitioners’ claims in this case. Even in the absence of deference, the undersigned independently adopts DMF’s interpretation of this minimum standard.

Likewise, in Finding of Fact 14, ALJ Lassiter both deferred to DMF’s interpretation of “heavily used for recreational purposes” and independently adopted DMF’s interpretation of this minimum standard.

Water column shellfish leases must also “not significantly impair navigation.” N.C.G.S. § 113-202.1(b)(1). The phrase “significantly impair navigation” is not further defined by statute or rule. DMF does not interpret this minimum standard to require that there be no impact to navigation, but would exclude shellfish leases in marked channels or in unmarked channels if the unmarked channel is the only deep passage through the area, and would exclude proposed leases which take up more than a third of the water body in a smaller water body such as a creek, to allow plenty of access for navigation. Finding of Fact 17 reflects that ALJ Lassiter found DMF’s

interpretation of this phrase reasonable, and both deferred to DMF's interpretation and independently adopts DMF's interpretation.

The DMF Director may, in their discretion, authorize shellfish bottom and associated water column leases when they determine that the public interest will benefit from issuance of such a lease, and the proposed shellfish lease otherwise meets certain minimum standards required by law. 15A NCAC 03O .0203 explains that the DMF Director shall consider the shellfish lease application, DMF's proposed shellfish lease area analysis, and public comments, and may in their discretion lease or decline to lease the proposed shellfish lease area or any part thereof. Based on all the information and data compiled during the shellfish lease application process, Director Rawls found this proposed Lease Area is compatible with lawful utilization of the waterbody. As Director Rawls properly considered the required information in making her shellfish lease decision, and followed the interpretations of the minimum standards which were upheld by ALJ Lassiter in the 8 ½ Marina contested case, Staff contend that it would be frivolous to have a contested case on this issue, and that Petitioner fails to meet the requirements of N.C.G.S. § 113-202(g)(3).

3. The Lease will infringe upon Petitioner's riparian rights

Petitioner next asserts that the shellfish lease was issued contrary to Petitioner's riparian rights, and so the lease was issued contrary to N.C.G.S. § 113-202. Riparian rights as recognized by North Carolina case law were described in Section B above from Capune v. Robbins. [See also e.g., Bond v. Wool, 107 NC 139 (1890)]. Staff addressed this issue regarding riparian rights in Section B, above and incorporates that response here. For those reasons, Staff contend that such a hearing would be frivolous and would fail to meet the requirements of N.C.G.S. § 113-202(g)(3).

4. The lease is violative of Session Law 1981-581 forbidding hunting near another's established hunting location.

Petitioner alleges that the potential shellfish lease was issued contrary to S.L. 1981-581, which forbids hunting “within 500 yards of another person’s permanently established hunting location.” Staff incorporate their argument from Section A, above, that this law is outside of DMF’s jurisdiction, and that having a contested case on the issue of whether the shellfish lease was issued contrary to Session Law 1981-581 over which DMF lacks jurisdiction would be frivolous.

Additionally, this law only pertains to the taking of migratory wild waterfowl (the act of hunting). However, Petitioner incorrectly characterized the law as requiring “...that, for safety reasons, in Carteret County, duck blinds are required, by law, to be 500 yards apart.” (Petition Item 2, Paragraph 2). That is not what the law says. There is no distance between blinds required in this session law, or buffer area around each blind in which shellfish leases, other development are prohibited.

Staff also note that the language in SL 1981-581 describes a “permanently established hunting location” as either “(1) The landowner of the property; or (2) The riparian landholder, if the site is on or in water and hunting rights in that water are not controlled by someone other than the riparian landholder;” In this case, the blinds described by Petitioner as being near the Lease Area are apparently in the water. However, this law would not apply under (1) if the blinds are in the public trust waters and not on Petitioner’s upland. Staff contend that (2) also does not apply because “hunting rights in that water” *are* “controlled by someone other than the riparian landholder.” As noted in Section B, above, while the lease and apparent duck blinds may be within the Petitioner’s riparian area if they are landward of “natural (or deep) water”, case law holds that riparian areas of the upland owner are *still* “subject to such general rules and regulations as the Legislature...may prescribe for the protection of public rights in rivers or navigable waters.” As

these waters are subject to public trust use rights, they are not “controlled” by Petitioner. While there may be some locations where a navigable waterbody may be controlled by a riparian landowner, such as when the entire waterbody is within the landowner’s property and therefore not accessible by the public, that is not the case here. South River is a navigable waterbody bordered by many riparian landowners who may all access it and use it for public trust activities including fishing, hunting, navigation, and recreation.

As DMF and OAH lack jurisdiction over enforcement of S.L. 1981-581, as this law only regulates hunting near the described hunting structures and does not require a setback or buffer between duck blinds and shellfish leases, and because this law does not apply to in-water blinds even if located in Petitioner’s riparian area, Staff contend that the lease decision was not issued in violation of S.L. 1981-581. For these reasons, Staff believe it would be frivolous to have a contested case on this issue and that Petitioner does not meet the requirements of N.C.G.S. § 113-202(g)(3).

5. Duck Blinds are “water dependent structures” which require a 250-foot setback

Petitioner argues that duck blinds are “water dependent structures” and that 15A NCAC 03O .0201(a)(2) requires a 250-foot setback from duck blinds as it requires setbacks for “water-dependent shore-based structures” such as “docks, wharves, boat ramps, bridges, bulkheads, and groins.” Staff disagree for the reasons described below.

Staff contend that the Lease Area is “bordered by undeveloped shoreline” and 15A NCAC 03O .0201(2) does not require the Lease Area to meet a 250-foot setback. Staff’s conclusion that Petitioner’s property near the Lease Area is an “undeveloped shoreline” is supported by the attached aerial photographs of Petitioner’s property, by the tax office property cards describing where structures are located on Petitioner’s property (which is not within the area which “borders”

the Lease Area), and by the CAMA permits which authorized the development of the 4-slip pier, rip-rap shoreline and boat ramp in an area which does not “border” the Lease Area.

Staff also disagree that duck blinds are “water dependent structures” as alleged by Petitioner and by Petitioner’s affidavits from Mr. Trowell and Mr. Mitchell. The MFC defines the term “water dependent structures” in 15A NCAC 03O .0201(a)(2) for the purposes of the shellfish rules, as a water-dependent shore-based structure that “shall include docks, wharves, boat ramps, bridges, bulkheads, and groins”. Further, The CRC and EMC rules defining “water dependent structures” both necessitate that such structures “require access or proximity to or siting within surface waters to fulfill its purpose” or “require water access and use which cannot function elsewhere.” (See 15A NCAC 02B. 0202(59) and 15A NCAC 07H .0206(d)) While it is clear that duck blinds can be constructed in the water, they can also be constructed on land and still “fulfill its purpose” and “function.” This necessitates a finding that duck blinds are not “water dependent structures”.

As the Lease Area borders an undeveloped shoreline and because a duck blind is not a “water dependent structure”, 15A NCAC 03O .0201(a)(2) does not require the Lease Area to be setback 250-feet from Petitioner’s riparian shoreline. To have a contested case on this issue would be frivolous. Staff believe that Petitioner does not meet the requirements of N.C.G.S. § 113-202(g)(3).

6. 15A NCAC 02B .0201 (EMC Anti-degradation rule) and

7. 15A NCAC 03O. 0201 (Shellfish rule, no specific portion highlighted).

Finally, Petitioner’s sixth and seventh argument listed in Section A above are that the Potential Lease was contrary to 15A NCAC 02B .0201 (the EMC’s Anti-degradation rule) and 15A NCAC 03O .0201 (an MFC rule related to shellfish leases). As noted in Section A above,

while Petitioner lists these two rules, it gives no explanation or argument about how the lease decision was made contrary to these rules. Staff contend that it would be frivolous to have a contested case in OAH on the issue of whether the lease was issued contrary to these two rules where Petitioner fails to articulate an argument or explanation to demonstrate how the lease decision is violative of these rules. For these reasons, Staff believe that Petitioner does not meet the requirements of N.C.G.S. § 113-202(g)(3).

IV. CONCLUSION

In conclusion, Staff believes that Petitioner has not met the criteria justifying a contested case hearing. For the reasons stated herein, the DMF, through its undersigned attorney, recommends that Petitioner's Third Party Hearing Request be DENIED by the Committee.

This the 23rd day of June 2023.

FOR THE DIVISION OF MARINE FISHERIES

 /s/ Christine A. Goebel
Christine A. Goebel
Assistant General Counsel
North Carolina Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601
(919) 707-8554
Christine.goebel@deq.nc.gov

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the attached Recommendation of the Division of Marine Fisheries on following people:

Robert B. (“Bryce”) Pike, III, Attorney for Petitioner, via email to: bryce@pikelawfirm.com

(Charles) “Christopher” Allen, Member/Manager of Changing Tides, LLC, Lessee, via email to: ccallen68@gmail.com

Shellfish Cultivation Lease Review Committee, via email to: mhc@deq.nc.gov
Special Deputy AG Phillip Reynolds, SCLRC Counsel preynolds@ncdoj.gov
Assistant AG Sarah Zambon, SCLRC Co-Counsel szambon@ncdoj.gov

This the 23rd day of June, 2023.

____/s/ Christine A. Goebel____
Christine A. Goebel
DEQ Assistant General Counsel

LIST OF ATTACHMENTS TO THE STAFF RECOMMENDATION

1. Changing Tides, LLC 2019 Articles of Organization (Fact A)
2. Changing Tides, LLC 2022 Annual Report (Fact A)
3. Allens deed to 189 South River Drive 1554/250 (Fact B)
4. Allens tax card (Fact B)
5. Aerial of Allen's house at 189 South River Dr, and one showing distance to lease(Fact B)
6. Aerial/Ground images of Lease Area (Fact C)
7. Aerial from lease tool showing distance of 1.3 NM from Neuse River (Fact C)
8. Aerial from lease tool showing distance of 112' waterward from shoreline (Fact C)
9. Aerial from lease tool showing distance from proposed lease to existing lease (Fact C)
10. Lease transfer from Osborne/Bobbitt to Changing Tides on June 13, 2022 (Fact D)
11. Lukens Island Timber Enterprises, LLC 1996 Articles of Organization (Fact E)
12. Lukens Island Timber Enterprises, LLC 2023 Annual Report (Fact E)
13. Lukens Island Timber Enterprises, LLC eleven tax cards (Fact F)
14. Lukens Island Timber Enterprises, LLC Carteret Co GIS showing 10 parcels (Fact F)
15. CAMA GP 12094 from 1993 (Fact G)
16. CAMA GP 13121 from 1994 (Fact G)
17. CAMA GP 15941 from 1996 (Fact G)
18. CAMA GP 23500 from 1999 (Fact G)
19. CAMA GP 55358C from 2010 (Fact G)
20. Aerial from lease tool showing no recognized submerged lands claims in area (Fact H)
21. Aerial from lease tool showing nearby closure line (Fact G)
22. GIS of two nearest duck blinds' distance from lease(Fact J)
23. Two ground-level photos showing two duck blinds nearest lease area (Fact J)
24. 1985 DOJ memo re: duck blinds (Fact K)
25. SL 1981-581 about waterfowl hunting in Carteret Co and Pamlico Co (Fact K)
26. Trowell and Mitchell affidavits from Petitioner received on June 12, 2023 (Fact X)
27. 8.5 marina contested case- final decision (Fact Z)

ARTICLES OF ORGANIZATION
OF
CHANGING TIDE RENOVATIONS, LLC

Pursuant to §57D-2-20 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Organization for the purpose of forming a Limited Liability Company.

ARTICLE I

The name of the Limited Liability Company is **CHANGING TIDE RENOVATIONS, LLC.**

ARTICLE II

The name and address of the person executing these articles of organization is as follows:

M. Douglas Goines
911 Arendell Street
Morehead City, NC 28557
Carteret County

ARTICLE III

The name of the initial registered agent is:

Charles Chris Allen

ARTICLE IV

The street address and county of the initial registered office of the Limited Liability Company is:

189 S. River Drive
Beaufort, NC 28516
Carteret County

ARTICLE V

The mailing address and county of the initial registered office of the Limited Liability Company is:

189 S. River Drive
Beaufort, NC 28516
Carteret County

ARTICLE VI

The Limited Liability Company has a principal office. The principal office telephone number is 336-607-4463. The street address and county of the principal office of the Limited Liability Company is:

189 S. River Drive
Beaufort, NC 28516
Carteret County

ARTICLE VII

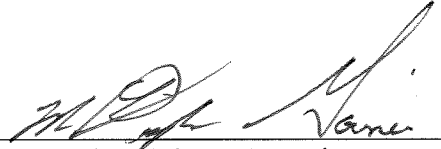
The mailing address and county of the initial Principal office of the Limited Liability Company is:

189 S. River Drive
Beaufort, NC 28516
Carteret County

ARTICLE VIII

These articles will be effective upon filing.

This the 19th day of March, 2019.



M. Douglas Goines, Organizer



LIMITED LIABILITY COMPANY ANNUAL REPORT

1/6/2022

NAME OF LIMITED LIABILITY COMPANY: Changing Tide Renovations, LLC

SECRETARY OF STATE ID NUMBER: 1823931 STATE OF FORMATION: NC

REPORT FOR THE CALENDAR YEAR: 2022

Filing Office Use Only
E - Filed Annual Report
1823931
CA202300501745
1/5/2023 12:15
<input type="checkbox"/> Changes

SECTION A: REGISTERED AGENT'S INFORMATION

1. NAME OF REGISTERED AGENT: Allen, Charles Chris

2. SIGNATURE OF THE NEW REGISTERED AGENT: _____

SIGNATURE CONSTITUTES CONSENT TO THE APPOINTMENT

3. REGISTERED AGENT OFFICE STREET ADDRESS & COUNTY	4. REGISTERED AGENT OFFICE MAILING ADDRESS
<u>218 LANDS END ROAD</u>	<u>218 LANDS END ROAD</u>
<u>MOREHEAD CITY, NC 28557 Carteret County</u>	<u>MOREHEAD CITY, NC 28557</u>

SECTION B: PRINCIPAL OFFICE INFORMATION

1. DESCRIPTION OF NATURE OF BUSINESS: Home improvement

2. PRINCIPAL OFFICE PHONE NUMBER: (252) 503-2686 3. PRINCIPAL OFFICE EMAIL: Privacy Redaction

4. PRINCIPAL OFFICE STREET ADDRESS	5. PRINCIPAL OFFICE MAILING ADDRESS
<u>218 LANDS END ROAD</u>	<u>218 LANDS END ROAD</u>
<u>MOREHEAD CITY, NC 28557</u>	<u>MOREHEAD CITY, NC 28557</u>

6. Select one of the following if applicable. (Optional see instructions)
- The company is a veteran-owned small business
- The company is a service-disabled veteran-owned small business

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

NAME: <u>Charles C Allen</u>	NAME: <u>Allyson Y Allen</u>	NAME: _____
TITLE: <u>Managing Member</u>	TITLE: <u>Managing Member</u>	TITLE: _____
ADDRESS: _____	ADDRESS: _____	ADDRESS: _____
<u>218 LANDS END ROAD</u>	<u>218 Lands End Rd</u>	_____
<u>MOREHEAD CITY, NC 28557</u>	<u>Morehead City, NC 28557</u>	_____

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

<u>Charles C Allen</u>	<u>1/5/2023</u>
SIGNATURE	DATE

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

<u>Charles C Allen</u>	<u>Managing Member</u>
Print or Type Name of Company Official	Print or Type Title of Company Official

This Annual Report has been filed electronically.

MAIL TO: Secretary of State, Business Registration Division, Post Office Box 29525, Raleigh, NC 27626-0525

NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

Jerry T. Hardesty, Register of Deeds
By K. J. Austin
Asst. Deputy, Register of Deeds



FILE # 1554250

FOR REGISTRATION REGISTER OF DEEDS
Jerry T. Hardesty
Carteret County, NC
September 20, 2016 02:09:17 PM
TRAVIS DEED 6 P
FEE: \$26.00
NC REVENUE STAMP: \$308.00
FILE # 1554250

WARRANTY DEED

PREPARED BY: BESWICK, GOINES, WICKIZER & MEEKS, PLLC, 911 ARENDELL STREET, MOREHEAD CITY,
NC 28557
RETURN TO: BESWICK, GOINES, WICKIZER & MEEKS, PLLC, 911 ARENDELL STREET, MOREHEAD CITY, NC
28557

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

Excise Tax: \$ 308.00
Parcel # 742503129813000

THIS WARRANTY DEED made and entered into this 15 day of September, 2016, by and
between:

Kirk A. Rupp and wife, Deborah Carrol Edwards Rupp
Deborah Carrol Edwards Rupp, Trustee under the Will of Anne Lloyd Edwards dated October
12, 1995 for benefit of Robert Larry Edwards, Jr. and Lori Davis Cook, Trustee under the Will of
Anne Lloyd Edwards dated October 12, 1995 for benefit of Mark Weldon Gordon
(GRANTOR)

and

Charles Christopher Allen and wife, Susan Allyson Allen
4420 Bunton Swain Road
Liberty, NC 27235
(GRANTEE)

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

WITNESSETH:

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

BOOK 1554 PAGE 250

(6)

WHEREAS, in a General Warranty Deed dated September 26, 1980 and recorded on September 30, 1980 in Book 444, Page 57 of the Carteret County Registry, The Trust received a parcel of land located in Carteret County.

NOW, THEREFORE, GRANTOR, pursuant to the provisions of the Trust, does hereby grant, bargain, sell and convey unto the GRANTEE, its heirs and/or successors and assigns in fee simple, all that certain lot, tract or parcel of land situated in Carteret County, North Carolina and more particularly described as follows:

BEING Lot No. 6 of Sportsman Village Sub-Division – Revised Section B – as shown on plat prepared by Clotus Craven, Registered Surveyor, August, 1969, said plat is to be found recorded in the Office of the Register of Deeds, Carteret County, North Carolina, in Map Book 7, at page 87.

This property IS NOT the primary residence of Grantor.

It is the intent of this conveyance to remove the property from trust and to hold it as individuals.

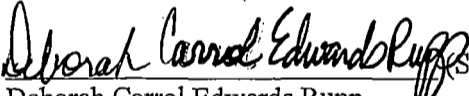
The above-described property is conveyed and accepted subject to such easements, restrictions and rights of way as appear of record in the Carteret County Registry.

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

And Grantor covenants with Grantee that Grantor has done nothing to impair such title as Grantor has received and Grantor will warrant and defend title to the same against the lawful claims of all persons claiming by, through, under, or on account of Grantor, as Trustee of Trust, insofar as it is the said Grantor's duties to do so by virtue of the said Grantor's office as Trustee as aforesaid, and no further.

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

 (SEAL)
Kirk A. Rupp

 (SEAL)
Deborah Carrol Edwards Rupp

BOOK 1554 PAGE 250

Deborah Carol Edwards Rupp (SEAL)
Deborah Carol Edwards Rupp, Trustee of The
Under the Will of Anne Lloyd Edwards
Dated October 12, 1995 for Benefit of Robert Larry
Edwards Jr.

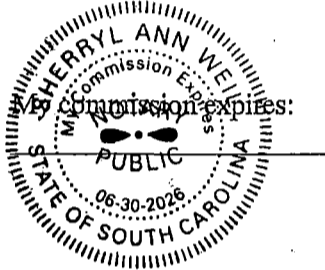
_____(SEAL)
Lori Davis Cook, Trustee of The
Under the Will of Anne Lloyd Edwards
Dated October 12, 1995 for Benefit of Mark
Weldon Gordon

STATE OF NORTH CAROLINA

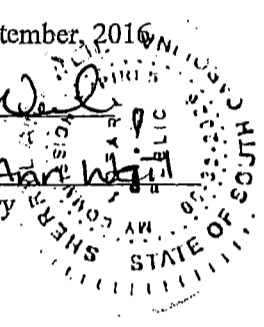
COUNTY OF Lexington

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

Witness my hand and official stamp or seal, this 16th day of September, 2016



Sherryl Ann Weill
Notary Public
Sherryl Ann Weill
Printed Name of Notary



STATE OF NORTH CAROLINA

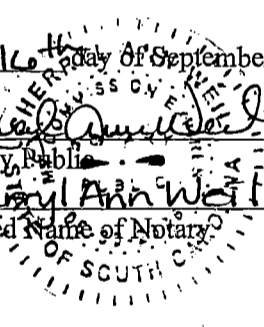
COUNTY OF Lexington

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

Witness my hand and official stamp or seal, this 16th day of September, 2016



Sherryl Ann Weill
Notary Public
Sherryl Ann Weill
Printed Name of Notary



BOOK 554 PAGE 250

STATE OF NORTH CAROLINA

COUNTY OF Lexington

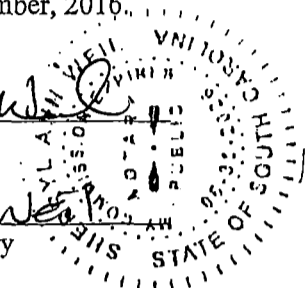
I, Sheryl Ann Weil, a Notary Public of the county and state aforesaid, certify that Deborah Carol Edwards Rupp, Trustees under the Will of Anne Lloyd Edwards dated October 12, 1995 for benefit of Robert Larry Edwards, Jr. personally appeared before me this day and, first being duly sworn, signed the foregoing instrument.

Witness my hand and official stamp or seal, this 16th day of September, 2016.



Sheryl Ann Weil
Notary Public

Sheryl Ann Weil
Printed Name of Notary



STATE OF NORTH CAROLINA

COUNTY OF Lexington

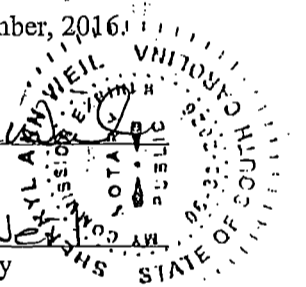
I, Sheryl Ann Weil, a Notary Public of the county and state aforesaid, certify that Lori Davis Cook, Trustee under the Will of Anne Lloyd Edwards dated October 12, 1995 for benefit of Mark Weldon Gordon personally appeared before me this day and, first being duly sworn, signed the foregoing instrument.

Witness my hand and official stamp or seal, this 16th day of September, 2016.



Sheryl Ann Weil
Notary Public

Sheryl Ann Weil
Printed Name of Notary



BOOK 1554 PAGE 250

(SEAL)
Deborah Carrol Edwards Rupp, Trustee of The
Under the Will of Anne Lloyd Edwards
Dated October 12, 1995 for Benefit of Robert Larry
Edwards Jr.

Lori Davis Cook, Trustee (SEAL)
Lori Davis Cook, Trustee of The
Under the Will of Anne Lloyd Edwards
Dated October 12, 1995 for Benefit of Mark
Weldon Gordon

STATE OF NORTH CAROLINA

COUNTY OF _____

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

Witness my hand and official stamp or seal, this _____ day of September, 2016

My commission expires:

Notary Public

Printed Name of Notary

STATE OF NORTH CAROLINA

COUNTY OF _____

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

Witness my hand and official stamp or seal, this _____ day of September, 2016

My commission expires:

Notary Public

Printed Name of Notary

BOOK 1554 PAGE 250

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the county and state aforesaid, certify that Deborah Carrol Edwards Rupp, Trustees under the Will of Anne Lloyd Edwards dated October 12, 1995 for benefit of Robert Larry Edwards, Jr. personally appeared before me this day and, first being duly sworn, signed the foregoing instrument.

Witness my hand and official stamp or seal, this ____ day of September, 2016.

My commission expires:

Notary Public

(SEAL)

Printed Name of Notary

STATE OF NORTH CAROLINA

COUNTY OF Guilford

I, Catherine R. Cress, a Notary Public of the county and state aforesaid, certify that Lori Davis Cook, Trustee under the Will of Anne Lloyd Edwards dated October 12, 1995 for benefit of Mark Weldon Gordon personally appeared before me this day and, first being duly sworn, signed the foregoing instrument.

Witness my hand and official stamp or seal, this 15th day of September, 2016.

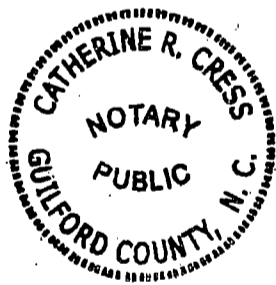
My commission expires:

04-30-2021

Catherine R. Cress
Notary Public

(SEAL)

Catherine R. Cress
Printed Name of Notary



BOOK 1554 PAGE 250

Carteret County

Property Data

Parcel Number: 742503129813000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

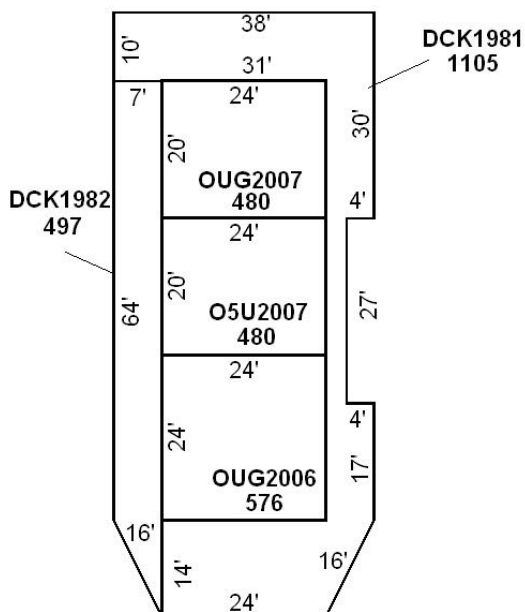
PARCEL NUMBER: 742503129813000
OWNER: ALLEN, CHARLES C ETUX SUSAN A
PHYSICAL ADDRESS 189 S RIVER DR
BEAUFORT
MAILING ADDRESS: 218 LANDS END ROAD
MOREHEAD CITY NC 8941 28557
LEGAL DESCRIPTION: L6 B2 SB SPORTSMAN VILLAGE
DEED REF: 1554-250
PLAT REFERENCE: 7-87
NEIGHBORHOOD: 100002

SALE DATE: 09/20/2016
SALE PRICE: \$154,000
ACREAGE: 0.437
LAND VALUE: \$69,608
EXTRA FEATURE VALUE: \$25,016

Building Info

BATHS: 2
BEDROOMS: 2
CONDITION: N/A
EXTERIOR WALLS: 26 VINYL
FLOOR FINISH: 14 CARPET
08 VINYL
FOUNDATION: 03 POST
HEAT: 10 HEATPUMP
ROOF COVER: 03 COMP SHNGL
ROOF STRUCTURE: 03 GABLE
SQUARE FOOTAGE: 3138
YEAR BUILT: 1981
BUILDING VALUE: \$157,240
PARCEL VALUE: \$251,864

Sketches



Photos



RT 10002.040.000 ALLEN,CHARLES C ETUX SUSAN A 2023 251,864 MKT
 CARD 001
 PID R 7425.03.12.9813000 251,864 PY Val USE
 69,608 LAND 001
 218 LANDS END ROAD DEF
 157,240 BLDG 001
 LISTER 8/28/2020 MEH MOREHEAD CITY NC 28557 8941 .437 ACRES
 25,016 XFOB 003
 TWP MERRIMON CITY FIRE SRIVER/MERRIMON FIRERESCUE SOUTH RIVER
 RESCUE OTHER
 LOT BLK PL BK/PG 7 87 PLAT ADDRESS 0000189 RIVER
 DR S BEAUFORT 28516
 NBHD 10000200 USE 000100 RESIDENTIAL DEED 1554 250 AICUZ PRINTED
 6/16/2023 BY ALLENW
 LEGAL: L6 B2 SB SPORTSMAN VILLAGE

BUILDING CHARACTERISTICS for BldgSeq# 001 (Item# 001)

Code	Description	Code	Description	Code	Description	Code	Description	Code	Description
MODL 01	SNG FAMILY SIZE N/A	BVAL 00001C	SNG FAMILY	ARCH 10	CONVENTL	QUAL 0C	C GRADE	STYS	1.0
FNDN 03	POST	FRME	N/A	WNDO	N/A	EXW1 26	VINYL	EXW2	.
HEAT 10	HEATPUMP	A/C	N/A	RSTR 03	GABLE	RCV1 03	COMP SHNGL	RCV2	.
INT1 05	DRYWALL	INT2 06	WOODPANEL	INT2% 10		FLR1 14	CARPET	FLR2 08	VINYL
KTCH	N/A	DPRT 02		BATH	2.00	BDRM	2	ROOM	
SPCD	N/A	FRPL 1C	FIREPLACE	UD-3	N/A	UD-4	N/A	HTFL	04
ELECTRIC	HTF2	N/A		UD-9	N/A	UD-9	N/A	UD-9%	
COND 0G	GOOD	INSP	N/A						
AYB 1981	EYB 1995								

AREA CALCULATION

TRAVERSE

Subarea	Actual	Adj	Heated	Prime	Rate	Value	%Good	RCNLD	DCK1981=1105\$	DCK1982=497\$
OUG2007=480\$		O5U2007=480\$								
DECK	1105	276			18.30	20224	73.00	14,763		OUG2006=576\$.
DECK	497	124			18.28	9087	73.00	6,633		
ONE/UF	480	696	480	480	106.25	50999	73.00	37,229		
ONE/UF	480	912	720	480	139.22	66827	73.00	48,783		
ONE/UF	576	835	576	576	106.22	61184	73.00	44,664		
LUMP						7078	73.00	5,168		
TOTAL	3138		1776		121.28		73.00			
TOTAL		2843		1536		215399		157,240		

Tax Parcel Information:



Owner: ALLEN,CHARLES C ETUX SUSAN A

Current PIN: 742503129813000

Site Address:

189 S RIVER DR

BEAUFORT

Mailing Address:

218 LANDS END ROAD

MOREHEAD CITY NC 28557

Legal Description:

L6 B2 SB SPORTSMAN VILLAGE

Prior PIN: 10006B0217

City Limits:

Rescue District: SOUTH RIVER RESCUE

Fire District: SRIVER/MERRIMON FIRE

Tax District: 10

Township: MERRIMON

Use: RESIDENTIAL

Land Value: \$69,608

NBHD: 100002

Bldg Value: \$157,240

Bldg Htd Sq Ft: 1776

Other Value: \$25,016

Bldg Tot Sq Ft: 3,138

Total Value: \$251,864

Year Built: 1981

Sale Price: \$154,000

Noise Level:

Taxed Acres: 0.437

AICUZ Zone:

GIS Acres: 0.454

Plat Ref: 7 / 87

Roll Type: R

Deed Ref: 1554 / 250

Deed Date: 20160920

Bedrooms: 2

Bathrooms: 2



The information displayed by this website is prepared for the inventory of real property found within this jurisdiction and is compiled from recorded deeds, plats, and other public records and data. Users of this information are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this site. Carteret County assumes no legal responsibility for the information contained on this site. Carteret County does not guarantee that the data and map services will be available to users without interruption or error. Furthermore, Carteret County may modify or remove map services and access methods at will.

nc dmf shellfish lease gis tool - S x NC DMF Shellfish Leasing Tool x

https://www.arcgis.com/apps/webappviewer/index.html?id=de86f3bb9e634005b12f69a8a5947367&extent=-8551979.8781%2C4121555.1994%2C-8515290.1046%2C4140072.0696%2C102100

NC DMF Shellfish Leasing Tool

Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Measurement

Miles

Measurement Result

0.94 Miles

Clear

Press CTRL to enable snapping

Merrimon River

Lukens

Tarpon Water

POWERED BY **esri**

NC Open Road, Esri Community Maps Contributors, Carteret County, State of North Carolina DOT, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph...

nc dmf shellfish lease gis tool - 1 X NC DMF Shellfish Leasing Tool X +

https://www.arcgis.com/apps/webappviewer/index.html?id=de86f3bb9e634005b12f69a8a5947367&extent=-8551979.8781%2C4121555.1994%2C-8515290.1046%2C4140072.0696%2C102100

NC DMF Shellfish Leasing Tool

Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Measurement

Miles

Measurement Result

1.35 Miles

Clear

Press CTRL to enable snapping

Map showing shellfish leases in a coastal area. The map includes labels for "Horton Bay", "Sandy Point", "S. River Rd", "S. River", "Western Ln", and "Lukens". The map is overlaid with green areas representing leases, and a blue line indicates a measurement of 1.35 Miles. The interface includes a legend, search bar, and navigation tools.

POWERED BY **esri**

nc dmf shellfish lease gis tool - 5 x NC DMF Shellfish Leasing Tool x +

https://www.arcgis.com/apps/webappviewer/index.html?id=de86f3bb9e634005b12f69a8a5947367&extent=-8551979.8781%2C4121555.1994%2C-8515290.1046%2C4140072.0696%2C102100

NC DMF Shellfish Leasing Tool Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Measurement

Feet

Measurement Result

112.3 Feet

Clear

Press CTRL to enable snapping

-76.575 34.965 Degrees

100ft

esri

nc dmf shellfish lease gis tool - 5 x NC DMF Shellfish Leasing Tool x +

https://www.arcgis.com/apps/webappviewer/index.html?id=de86f3bb9e634005b12f69a8a5947367&extent=-85.1979,87.81%2C-85.1529,104.6%2C4140072.0696%2C102100

NC DMF Shellfish Leasing Tool Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Measurement

Miles

Measurement Result

0.49 Miles

Clear

Press CTRL to enable snapping

Ullingo Dr

Silver Rd

-76.586 34.972 Degrees

6000'

esri

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TRANSFER OF SHELLFISH BOTTOM LEASE No. 1994813 and
SHELLFISH WATER COLUMN LEASE AMENDMENT No. 1994821

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

This Shellfish Lease Transfer ("Transfer") of Shellfish Bottom Lease No. 1994813 ("Lease"), and Shellfish Water Column Amendment No. 1994821 ("Amendment"), made this 13th day of June 2022, by and between, David W. Osborne and Hardy K. Bobbitt, party of the first part, to Changing Tide Renovations, LLC, Charles C. Allen and Mason H. Allen, party of the second part of 218 Lands End Road, Morehead City, NC 28557, North Carolina residents for the previous six months.

WITNESSETH: The receipt of which is hereby acknowledged, the party of the first part, subject to the conditions hereinafter made, hereby sells, transfers and assigns unto the party of the second part their successors and assigns, all the right, title and interest of the party of the first part in and to the issues, profits and specifically the oysters and/or clams and rights and benefits of the following described shellfish bottom lease and water column lease(s): a 0.59-acre shellfish bottom lease superjacent water column lease(s) located in a portion of South River, Carteret County, N.C., which is more particularly described as follows:

Within the area described by a line beginning at the point 34° 58.35484163 N, 76° 34.61946351 W; running southeasterly to the point 34° 58.32933165 N, 76° 34.59091353 W; running southwesterly to the point 34° 58.31690163 N, 76° 34.60833353 W; running northwesterly to the point 34° 58.34414164 N, 76° 34.63994353 W; running northeasterly to the point of beginning as not to exceed a total of 0.59 acres.

This Transfer is made subject to all the terms and conditions of the current shellfish lease contract agreement(s) executed between David W. Osborne and Hardy K. Bobbitt, of Beaufort and the Secretary of the Department of Environmental Quality through his designee, the Director of the Division of Marine Fisheries, in the permanent assignment of the Lease and Amendment, dated from the 1st day of July 2021 and expiring on the 30th day of June 2031. The terms and conditions of the current shellfish lease contract agreement(s) are enclosed.

Signature of party of the first part:

David W. Osborne
David W. Osborne

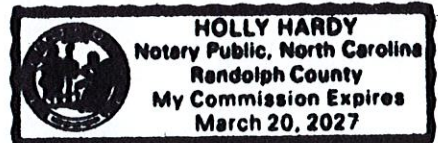
STATE OF NORTH CAROLINA

COUNTY OF Guilford

I, Holly Hardy, Notary Public, do hereby certify that David W. Osborne, party of the first part, personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein, and in the capacity indicated.

WITNESS my hand and seal, this the 8 day of June, 2022.

Holly Hardy
NOTARY PUBLIC SIGNATURE



Signature of party of the first part:

Hardy K. Bobbitt
Hardy K. Bobbitt

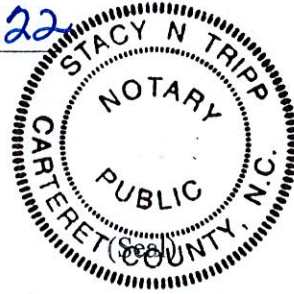
STATE OF NORTH CAROLINA

COUNTY OF Carteret

I, Stacy N. Tripp, Notary Public, do hereby certify that Hardy K. Bobbitt, party of the first part, personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein, and in the capacity indicated.

WITNESS my hand and seal, this the 13 day of June, 20 22

Stacy N. Tripp
NOTARY PUBLIC SIGNATURE



My Commission expires: 11-3-24

Signature of party of the second part: _____

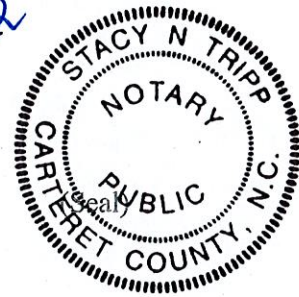
Charles C. Allen
Charles C. Allen

STATE OF NORTH CAROLINA
COUNTY OF Carteret

I, Stacy N. Tripp, Notary Public, do hereby certify that Charles C. Allen, party of the second part, personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein, and in the capacity indicated.

WITNESS my hand and seal, this the 13 day of June, 20 22

Stacy N. Tripp
NOTARY PUBLIC SIGNATURE



My Commission expires: 11-3-24

Signature of party of the second part: _____

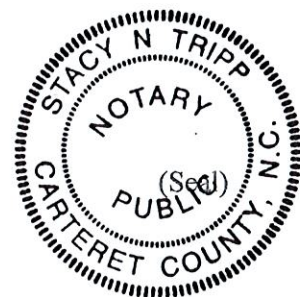
Mason H. Allen
Mason H. Allen

STATE OF NORTH CAROLINA
COUNTY OF Carteret

I, Stacy N. Tripp, Notary Public, do hereby certify that Mason H. Allen, party of the second part, personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein, and in the capacity indicated.

WITNESS my hand and seal, this the 13 day of June, 20 22

Stacy N. Tripp
NOTARY PUBLIC SIGNATURE



My Commission expires: 11-3-24

Initial _____

SHELLFISH BOTTOM LEASE CONTRACT CONDITIONS

TO HAVE AND TO HOLD the above-described Leased Premises, and all privileges and appurtenances thereto appertaining, to the said LESSEE and their heirs, successors and assigns, subject to and in accordance with the following terms and conditions:

1. This Lease shall commence upon its issuance by the LESSOR and shall expire at noon on the first day of July following the tenth anniversary of said commencement date (the "Term").
2. During the Term, rent shall be paid on an annual basis as follows:
 - a. Rent shall be ten dollars (\$10.00) per acre, per year and must be paid in advance prior to the first day of July each year.
 - b. All of the foregoing conditions relating to rent, including the amount of rent, are subject to change at the expiration of the Term, and new terms and conditions may be imposed on any renewal of this Lease in accordance with amendments to the North Carolina General Statutes or regulations under which this Lease is granted.
3. During the Term, the LESSEE shall meet productions requirements in accordance with the North Carolina General Statutes and rules under which this Lease is granted. Failure to meet such production requirements shall be grounds for termination of this Lease.
4. All of the provisions of Article 16 of Chapter 113 of the North Carolina General Statutes and the regulations of the Marine Fisheries Commission concerning leased bottoms are incorporated herein by reference and made a part of this Lease.
5. All laws, rules and regulations now in effect or hereinafter enacted which are applicable to public bottoms or the general public shall also be applicable to the above-described Leased Premises and to the LESSEE, unless such laws, rules and regulations specifically exclude leased bottoms or unless the operation of such laws, rules and regulations are contrary to any of the express terms of this Lease.
6. Any permanent assignment of the Lease, in whole or in part, shall be considered a transfer. No transfer of this Lease or sublease of the Leased Premises, in whole or in part, shall be valid until notice is provided to the LESSOR as provided in Article 16 of Chapter 113 of the North Carolina General Statutes and the LESSOR provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of the North Carolina General Statutes and the Marine Fisheries Commission. A transfer may only be made by the use of forms approved or furnished by the LESSOR. A sublease shall be any temporary assignment of the Leased Premises, in whole or in part. In no event shall this Lease or any interest in the Leased Premises be transferred or subleased to a nonresident of North Carolina. The purported transfer of this Lease or sublease of the Leased Premises to a nonresident of North Carolina shall result in the termination of this Lease. Subject to the foregoing, this Lease shall be binding upon and enforceable against, and shall inure to the benefit of, the LESSOR and LESSEE and their respective, legal representatives, successors and permitted assigns.
7. The LESSEE shall maintain compatibility with the lawful utilization by the public of other marine and estuarine resources including but not limited to navigation, fishing and recreation. The LESSEE may place permitted markers, devices or aquaculture equipment related to the cultivation and harvesting of shellfish on the Leased Premises; provided, that in no event shall any markers, devices or equipment permitted hereunder extend more than eighteen (18) inches above the Leased Premises.

Initial CA MA

8. This Lease is subject to all rights conferred in previous conveyances by LESSOR in and to the Leased Premises. That portion of the Leased Premises within the limits of the riparian zone of upland property owners (i.e. the area within those lines that extend perpendicular from the point of intersection of the mean high water mark on the shore of the riparian land to the channel or deep water in front of the riparian land) remains subject to the lawful exercise of those riparian rights, including the right to build piers or other structures for access to navigable waters within the boundaries of the Lease Premises. The LESSOR shall have the right to amend this Lease for the purpose of excepting from the description of the Leased Premises such portion thereof as may interfere with the lawful exercise of riparian rights by an upland owner. The following is the general process by which any such amendment shall be made:
 - a. Upon application of an upland owner whose riparian zone overlaps or lies adjacent to the Leased Premises, LESSOR may amend this Lease by excluding so much of the portion of the Leased Premises and superjacent water column as interferes with the upland owner's exercise of riparian rights.
 - b. Such application by an upland owner must show that they have obtained the necessary permits for the construction or placement of a pier(s) or other structure(s) within the Leased Premises or a portion thereof.
 - c. LESSOR shall allow not less than a six (6) month interval between notification of the issuance of the permit for the construction or placement of a pier(s) or other structure(s) and any amendment of this Lease. During said interval, upon notice from LESSOR, LESSEE shall remove all markers, devices, and aquaculture equipment placed within that portion of the Leased Premises or superjacent water column that is to be excepted from the operation of this Lease. Lessee may also remove from such excepted portion of the Lease Premises any shellfish, including cultch materials, which have resulted from the LESSEE'S cultivation activities.
 - d. Any amendment of this Lease as provided in this section shall except such portion of the Leased Premises and superjacent water column as interferes with the upland owner's construction or placement of a pier(s) or other structure(s), and in any event the amended Leased Premises shall be set back a minimum of one hundred (100) feet from the approximate normal high-water shoreline of the upland property. In such amendment, the annual rent due and production requirements hereunder shall be reduced by an amount proportional to the excepted portion of the Leased Premises.
9. In order to ensure there is no degradation of coastal wetland species due to prop-wash or other activities associated with the working of the Leased Premises, LESSEE shall maintain a twenty (20) foot buffer between any coastal wetlands and any part of any device or equipment LESSEE may place within the Leased Premises.
10. Within thirty (30) days of the expiration of the Term or the earlier termination of this Lease, LESSEE, in accordance with N.C.G.S. § 113-202(n), shall remove all markers, devices and aquaculture equipment from the Leased Premises. The LESSOR may, after ten (10) days' notice to the LESSEE, remove all markers, devices and aquaculture equipment from the Leased Premises at LESSEE'S expense, and recover from LESSEE the cost of such removal and any expense associated with the cleanup of Leased Premises.
11. LESSEE shall be in default under this Lease if it violates or otherwise fails to observe or perform any of its obligations herein or under Article 16 of Chapter 113 of the North Carolina General Statutes and the regulations of the Marine Fisheries Commission concerning leased bottoms incorporated herein by reference, and does not cure any such breach or default within thirty (30) days written notice from LESSOR; provided that if more time is required to complete such performance, LESSEE shall not be in default if LESSEE commences such performance within the thirty (30)-day period and thereafter diligently pursues its completion. In the event of LESSEE'S default and failure to cure as provided herein, LESSOR may terminate this Lease and reenter and take possession of the Leased Premises and pursue any other remedy now or hereafter available to LESSOR under North Carolina law.
12. LESSEE agrees to release, discharge, indemnify and hold harmless LESSOR from and against all loss, costs, expense, liability, claims, judgments, actions, penalties or fines whatsoever, in connection with or arising out of LESSEE'S violation or breach of any of the provisions of this Lease or any of the provisions of Article 16 of Chapter 113 of the North Carolina General Statutes and the regulations of the Marine Fisheries Commission concerning leased bottoms incorporated herein by reference.

Initial MA

13. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principals, and court actions arising therefrom may be brought only within the courts of the State of North Carolina.
14. It is agreed that if a court of competent jurisdiction finds that this Lease was issued contrary to law, this Lease shall be terminated once all rights of appeal have been exhausted.
15. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. No provision of hereof shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
16. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.
17. Service of any notice shall be made as required under N.C.G.S. § 113-202(m), but in any other event, notices, requests and other communications hereunder shall be deemed to have been fully given, by either party to the other, when made in writing and either deposited in the United States mail (sent certified, return receipt requested); personally delivered; or transmitted by overnight courier for next business day delivery to the addresses of LESSOR and LESSEE set forth below, or to such other addresses as the parties hereto may, from time to time, designate by written notice.
18. All of the special conditions listed by the LESSOR in the approval letter and application for the Lease are incorporated herein by reference and made a part of this Lease.
19. It is agreed that upon failure on the part of the LESSEE to observe or carry out any of the above provisions or any of the provisions incorporated by reference or any of the conditions imposed on the leased premises by the LESSOR, this Lease shall be terminated. The State of North Carolina, its' agencies and its' employees will not and do not assume any responsibility for any suit or claim that might arise from the leasing of the above-described bottom.


SHELLFISH WATER COLUMN LEASE AMENDMENT CONTRACT CONDITIONS

TO HAVE AND TO HOLD the above-described Amendment Premises, and all privileges and appurtenances thereto appertaining, to the said LESSEE and their heirs, successors and assigns, subject to and in accordance with the following terms and conditions:

1. None of the terms and conditions contained in the Lease governing the lease of public bottom are altered or superseded by this Amendment except those which are contrary to use of the water column and are expressly set forth herein.
2. This Amendment shall commence upon its issuance by the LESSOR and shall expire at noon on the first day of July following the tenth anniversary of said commencement date (the "Term") or the remainder of the term of the Lease, whichever is shorter.

Initial CA MA

3. During the Term, rent for the Amendment shall be paid on an annual basis in addition to the rent required for the Lease as follows:
 - a. Rent shall be one hundred dollars (\$100.00) per acre, per year and must be paid in advance prior to the first day of July each year.
 - b. All of the foregoing conditions relating to rent, including the amount of rent, are subject to change at the expiration of the Term, and new terms and conditions may be imposed on any renewal of this Amendment in accordance with amendments to the North Carolina General Statutes or regulations under which this Amendment is granted.
4. During the Term, the LESSEE shall meet productions requirements in accordance with the North Carolina General Statutes and rules under which this Amendment is granted. Failure to meet such production requirements shall be grounds for termination of this Amendment.
5. All of the provisions of Article 16 of Chapter 113 of the North Carolina General Statutes and the regulations of the Marine Fisheries Commission concerning leased bottoms are incorporated herein by reference and made a part of this Amendment.
6. All laws, rules and regulations now in effect or hereinafter enacted which are applicable to public bottoms or the general public shall also be applicable to the above-described Amendment Premises and to the LESSEE, unless such laws, rules and regulations specifically exclude leased bottoms or unless the operation of such laws, rules and regulations are contrary to any of the express terms of this Amendment.
7. Any permanent assignment of the Lease, in whole or in part, shall be considered a transfer. No transfer of this Amendment or sublease of the Amendment Premises, in whole or in part, shall be valid until notice is provided to the LESSOR as provided in Article 16 of Chapter 113 of the North Carolina General Statutes and the LESSOR provides written consent in order to ensure that a transferee or sub-lessee meets the requirements of the North Carolina General Statutes and the Marine Fisheries Commission. A transfer may only be made by the use of forms approved or furnished by the LESSOR. A sublease shall be any temporary assignment of the Amendment Premises, in whole or in part. In no event shall this Amendment or any interest in the Amendment Premises be transferred or subleased to a nonresident of North Carolina. The purported transfer of this Amendment or sublease of the Amendment Premises to a nonresident of North Carolina shall result in the termination of this Amendment. Subject to the foregoing, this Amendment shall be binding upon and enforceable against, and shall inure to the benefit of, the LESSOR and LESSEE and their respective, legal representatives, successors and permitted assigns.
8. The LESSEE shall maintain compatibility with the lawful utilization by the public of other marine and estuarine resources including but not limited to navigation, fishing and recreation. The LESSEE may place permitted markers, devices or aquaculture equipment related to the cultivation and harvesting of shellfish on the Amendment Premises.
9. This Amendment is subject to all rights conferred in previous conveyances by LESSOR in and to the Amendment Premises. That portion of the Amendment Premises within the limits of the riparian zone of upland property owners (i.e. the area within those lines that extend perpendicular from the point of intersection of the mean high water mark on the shore of the riparian land to the channel or deep water in front of the riparian land) remains subject to the lawful exercise of those riparian rights, including the right to build piers or other structures for access to navigable waters within the boundaries of the Amendment Premises. The LESSOR shall have the right to amend this Amendment for the purpose of excepting from the description of the Amendment Premises such portion thereof as may interfere with the lawful exercise of riparian rights by an upland owner. The following is the general process by which any such amendment shall be made:
 - e. Upon application of an upland owner whose riparian zone overlaps or lies adjacent to the Amendment Premises, LESSOR may amend this Amendment by excluding so much of the portion of the Amendment Premises and superjacent water column as interferes with the upland owner's exercise of riparian rights.

Initial 

- f. Such application by an upland owner must show that they have obtained the necessary permits for the construction or placement of a pier(s) or other structure(s) within the Amendment Premises or a portion thereof.
 - g. LESSOR shall allow not less than a six (6) month interval between notification of the issuance of the permit for the construction or placement of a pier(s) or other structure(s) and any amendment of this Amendment. During said interval, upon notice from LESSOR, LESSEE shall remove all markers, devices, and aquaculture equipment placed within that portion of the Amendment Premises that is to be excepted from the operation of this Amendment. Lessee may also remove from such excepted portion of the Amendment Premises any shellfish, including cultch materials, which have resulted from the LESSEE'S cultivation activities.
 - h. Any amendment of this Amendment as provided in this section shall except such portion of the Amendment Premises as interferes with the upland owner's construction or placement of a pier(s) or other structure(s), and in any event the amended Amendment Premises shall be set back a minimum of one hundred (100) feet from the approximate normal high-water shoreline of the upland property. In such amendment, the annual rent due and production requirements hereunder shall be reduced by an amount proportional to the excepted portion of the Amendment Premises.
10. In order to ensure there is no degradation of coastal wetland species due to prop-wash or other activities associated with the working of the Amendment Premises, LESSEE shall maintain a twenty (20) foot buffer between any coastal wetlands and any part of any device or equipment LESSEE may place within the Amendment Premises.
 11. Within thirty (30) days of the expiration of the Term or the earlier termination of this Amendment, LESSEE, in accordance with N.C.G.S. § 113-202(n), shall remove all markers, devices and aquaculture equipment from the Amendment Premises. The LESSOR may, after ten (10) days' notice to the LESSEE, remove all markers, devices and aquaculture equipment from the Amendment Premises at LESSEE'S expense, and recover from LESSEE the cost of such removal and any expense associated with the cleanup of Amendment Premises.
 12. LESSEE shall be in default under this Amendment if it violates or otherwise fails to observe or perform any of its obligations herein or under Article 16 of Chapter 113 of the North Carolina General Statutes and the regulations of the Marine Fisheries Commission concerning leased bottoms incorporated herein by reference, and does not cure any such breach or default within thirty (30) days written notice from LESSOR; provided that if more time is required to complete such performance, LESSEE shall not be in default if LESSEE commences such performance within the thirty (30)-day period and thereafter diligently pursues its completion. In the event of LESSEE'S default and failure to cure as provided herein, LESSOR may terminate this Amendment and reenter and take possession of the Amendment Premises and pursue any other remedy now or hereafter available to LESSOR under North Carolina law.
 13. LESSEE agrees to release, discharge, indemnify and hold harmless LESSOR from and against all loss, costs, expense, liability, claims, judgments, actions, penalties or fines whatsoever, in connection with or arising out of LESSEE'S violation or breach of any of the provisions of this Amendment or any of the provisions of Article 16 of Chapter 113 of the North Carolina General Statutes and the regulations of the Marine Fisheries Commission concerning leased bottoms incorporated herein by reference.
 14. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principals, and court actions arising therefrom may be brought only within the courts of the State of North Carolina.
 15. It is agreed that if a court of competent jurisdiction finds that this Amendment was issued contrary to law, this Amendment shall be terminated once all rights of appeal have been exhausted.
 16. In case any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. No provision of hereof shall be construed against or interpreted to the disadvantage of

Initial

CA MA

any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

17. Capitalized terms used in this Amendment shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.
18. Service of any notice shall be made as required under N.C.G.S. § 113-202(m), but in any other event, notices, requests and other communications hereunder shall be deemed to have been fully given, by either party to the other, when made in writing and either deposited in the United States mail (sent certified, return receipt requested); personally delivered; or transmitted by overnight courier for next business day delivery to the addresses of LESSOR and LESSEE set forth below, or to such other addresses as the parties hereto may, from time to time, designate by written notice.
19. All of the special conditions listed by the LESSOR in the approval letter and application for the Amendment are incorporated herein by reference and made a part of this Amendment.
20. It is agreed that upon failure on the part of the LESSEE to observe or carry out any of the above provisions or any of the provisions incorporated by reference or any of the conditions imposed on the Amendment Premises by the LESSOR, this Amendment shall be terminated. The State of North Carolina, its' agencies and its' employees will not and do not assume any responsibility for any suit or claim that might arise from the leasing of the above-described water column superjacent to the leased bottom.

Initial CR MA

0-01413169
FILED
10:01a
DEC 17 1996

96 351 5074

ARTICLES OF ORGANIZATION
OF
LUKENS ISLAND TIMBER ENTERPRISES, LLC

EFFECTIVE
JANICE H. FAULKNER
SECRETARY OF STATE
NORTH CAROLINA

We, the undersigned, hereby do make and acknowledge these Articles of Organization for the purpose of forming a limited liability company under and by virtue of the laws of the State of North Carolina, as contained in Chapter 57C of the General Statutes of North Carolina, entitled "North Carolina Limited Liability Company Act," and to that end hereby do set forth:

1. The name of the limited liability company is "LUKENS ISLAND TIMBER ENTERPRISES, LLC."

2. The limited liability company shall dissolve no later than January 1, 2027, unless the members unanimously shall extend the term prior to the dissolution date.

3. The name and address of each person executing these Articles are:

<u>Name</u>	<u>Address</u>
Thomas R. Crawford	Post Office Box 867 New Bern, NC 28563
A. Rexford Willis, III	Post Office Box 867 New Bern, NC 28563

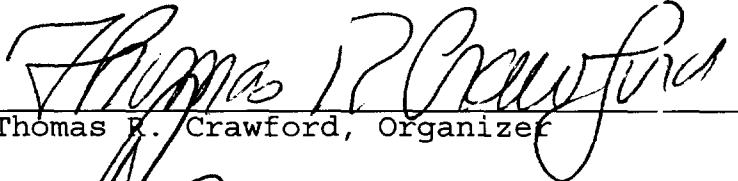
4. The street address of the initial registered office of the limited liability company is 1001 College Court, New Bern, Craven County, North Carolina 28562; the mailing address of the initial registered office of the limited liability company is Post Office Box 867, New Bern, Craven County, North Carolina 28563-0867; and the name of the initial registered agent of the limited liability company at such address is J. Troy Smith, Jr.

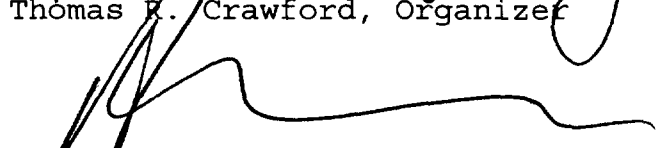
5. All members of the limited liability company also shall be managers of the limited liability company.

6. These Articles of Organization shall be effective upon the filing of same by the North Carolina Secretary of State.

WARD AND SMITH, P.A., ATTORNEYS AT LAW

IN TESTIMONY WHEREOF, the undersigned have executed this instrument in their respective names, this the 13th day of December, A.D. 1996.


Thomas R. Crawford, Organizer


A. Rexford Willis, III, Organizer

Prepared by and return to:

A. Rexford Willis, III
For the firm of
Ward and Smith, P.A.
1001 College Court
Post Office Box 867
New Bern, North Carolina 28563-0867
Telephone: (919) 633-1000
Facsimile: (919) 636-2121

WARD AND SMITH, P.A., ATTORNEYS AT LAW

WSMAIN/204142.



LIMITED LIABILITY COMPANY ANNUAL REPORT

1/6/2022
NAME OF LIMITED LIABILITY COMPANY: Lukens Island Timber Enterprises, LLC

SECRETARY OF STATE ID NUMBER: 0413169 STATE OF FORMATION: NC

REPORT FOR THE CALENDAR YEAR: 2023

Filing Office Use Only
E - Filed Annual Report
0413169
CA202305303420
2/22/2023 03:15
 Changes

SECTION A: REGISTERED AGENT'S INFORMATION

1. NAME OF REGISTERED AGENT: Joyce, Patrick P

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

3. REGISTERED AGENT OFFICE STREET ADDRESS & COUNTY 4. REGISTERED AGENT OFFICE MAILING ADDRESS
6994 US Hwy 70 West PO Box 190
Newport, NC 28570 Carteret County Newport, NC 28570

SECTION B: PRINCIPAL OFFICE INFORMATION

1. DESCRIPTION OF NATURE OF BUSINESS: Timber Growth & Harvesting

2. PRINCIPAL OFFICE PHONE NUMBER: (252) 241-8752 3. PRINCIPAL OFFICE EMAIL: Privacy Redaction

4. PRINCIPAL OFFICE STREET ADDRESS 5. PRINCIPAL OFFICE MAILING ADDRESS
6994 US Hwy 70 West PO BOX 190
Newport, NC 28570 Newport, NC 28570

6. Select one of the following if applicable. (Optional see instructions)
- The company is a veteran-owned small business
- The company is a service-disabled veteran-owned small business

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

NAME: <u>W Douglas Brady</u>	NAME: <u>Gregory S. Georgiade</u>	NAME: <u>John A. Haroldson</u>
TITLE: <u>Member</u>	TITLE: <u>Member</u>	TITLE: <u>Member</u>
ADDRESS: _____	ADDRESS: _____	ADDRESS: _____
<u>805 Front St</u>	<u>3929 Pleasant Green Road</u>	<u>PO Box 1169</u>
<u>Beaufort, NC 28516</u>	<u>Durham, NC 27705</u>	<u>New Bern, NC 28563</u>

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

Patrick P. Joyce 2/22/2023
SIGNATURE DATE

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

Patrick P. Joyce Member
Print or Type Name of Company Official Print or Type Title of Company Official

SUBMIT THIS ANNUAL REPORT WITH THE REQUIRED FILING FEE OF \$200.00

MAIL TO: Secretary of State, Business Registration Division, Post Office Box 29525, Raleigh, NC 27626-0525

SECTION E: ADDITIONAL COMPANY OFFICIALS

NAME: William D. Munden

TITLE: Member

ADDRESS: _____

328 Munden Farm Road

Newport, NC 28570

NAME: Patrick P. Joyce

TITLE: Member

ADDRESS: _____

715 Comet Drive

Beaufort, NC 28516

NAME: Dana L. McQueen

TITLE: Member

ADDRESS: _____

144 Bayview Blvd.

Atlantic Beach, NC 28512

NAME: Matthew H. Godwin

TITLE: Member

ADDRESS: _____

165 Camp Morehead Dr

Morehead, NC 28557

NAME: A Mack Baker

TITLE: Member

ADDRESS: _____

5224 Driftwood Lane

Morehead, NC 28557

NAME: Donald Batten

TITLE: Member

ADDRESS: _____

571 Deer Run Road

New Bern, NC 28562

NAME: Thomas E. Matthews

TITLE: Member

ADDRESS: _____

2645 Temples Point Road

Havelock, NC 28532

NAME: John A. Ward

TITLE: Member

ADDRESS: _____

1400 Green Springs Road

New Bern, NC 28560

NAME: E Edward Burton

TITLE: Member

ADDRESS: _____

3308 White Oak Road

Raleigh, NC 27609

NAME: Gerald L. Coates

TITLE: Member

ADDRESS: _____

PO Box 180

Davis, NC 28524

NAME: Thomas R Crawford

TITLE: Member

ADDRESS: _____

P O Box 300

Sylva, NC 28779

NAME: _____

TITLE: _____

ADDRESS: _____

NAME: _____

TITLE: _____

ADDRESS: _____

NAME: _____

TITLE: _____

ADDRESS: _____

Name: _____

TITLE: _____

ADDRESS: _____

NAME: _____

TITLE: _____

ADDRESS: _____

NAME: _____

TITLE: _____

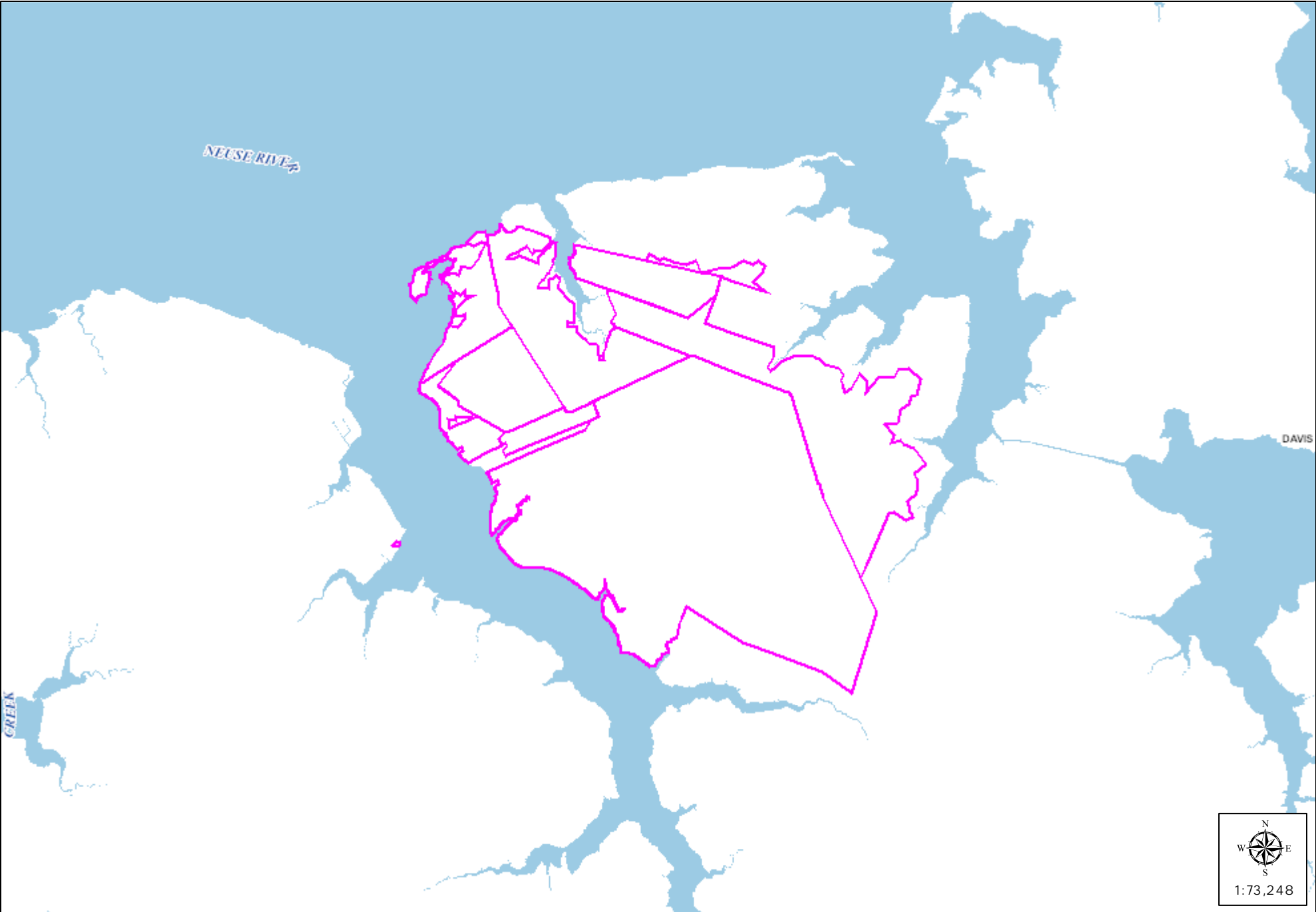
ADDRESS: _____

NAME: _____

TITLE: _____

ADDRESS: _____

Carteret County, N.C.



June 13, 2023

The information displayed by this website is prepared for the inventory of real property found within this jurisdiction and is compiled from recorded deeds, plats, and other public records and data. Users of this information are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this site. Carteret County assumes no legal responsibility for the information contained on this site. Carteret County does not guarantee that the data and map services will be available to users without interruption or error. Furthermore, Carteret County may modify or remove map services and access methods at will.

Carteret County

Property Data

Parcel Number: 742401378049000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 742401378049000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS 257 TOSTO RD
BEAUFORT
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: PART TR-1A GT TOSTO HEIRS DIV SOUTH RIVER
DEED REF: 1688-316
PLAT REFERENCE: 27-67
NEIGHBORHOOD: 100014
SALE DATE: 09/23/2020
SALE PRICE: \$60,000
ACREAGE: 1.376
LAND VALUE: \$65,934
EXTRA FEATURE VALUE: \$6,736

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$72,670

Sketches

Photos

Carteret County

Property Data

Parcel Number: 742500499436000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 742500499436000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS: 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: ACREAGE SOUTH RIVER
DEED REF: 942-301
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE: 05/21/2002
SALE PRICE: \$0
ACREAGE: 74.22
LAND VALUE: \$7,422
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$7,422

Sketches

Photos

Carteret County

Property Data

Parcel Number: 743500691125000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 743500691125000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS: 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: ACREAGE SOUTH RIVER MERRINON
DEED REF: 783-956
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE:
SALE PRICE: \$0
ACREAGE: 292.54
LAND VALUE: \$267,725
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$267,725

Sketches

Photos

Carteret County

Property Data

Parcel Number: 743500165734000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 743500165734000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS: 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: TRACT 9 LUKENS ISLAND HUNT CLUB
DEED REF: 0806-00739
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE:
SALE PRICE: \$0
ACREAGE: 723.5
LAND VALUE: \$460,099
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$460,099

Sketches

Photos

Carteret County

Property Data

Parcel Number: 742500881301000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

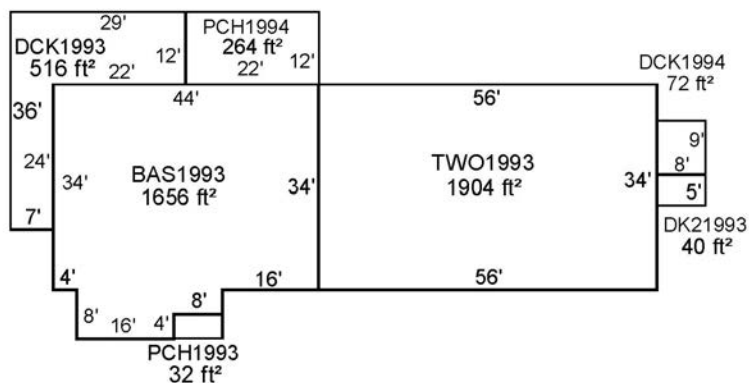
Property Info

PARCEL NUMBER: 742500881301000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: TRACT 10A LUKENS ISLAND HUNT CLUB
DEED REF: 942-301
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE: 05/21/2002
SALE PRICE: \$0
ACREAGE: 426.14
LAND VALUE: \$806,485
EXTRA FEATURE VALUE: \$49,435

Building Info

BATHS: 3
BEDROOMS: 8
CONDITION: N/A
EXTERIOR WALLS: 02 WOOD LAP
N/A
FLOOR FINISH: N/A
N/A
FOUNDATION: N/A
HEAT: N/A
ROOF COVER: N/A
N/A
ROOF STRUCTURE: N/A
SQUARE FOOTAGE: 4484
YEAR BUILT: 1993
BUILDING VALUE: \$299,980
PARCEL VALUE: \$1,155,900

Sketches



RT 100051.014 LUKENS ISLAND TIMBER ENTRP LLC 2023 1,155,900 MKT
 CARD 001
 PID R 7425.00.88.1301000 1,155,900 PY Val USE
 806,485 LAND 005
 PO BOX 190 DEF
 299,980 BLDG 001
 LISTER 8/15/2000 JG NEWPORT NC 28570 426.140 ACRES
 49,435 XFOB 008

TWP MERRIMON CITY FIRE RESCUE
 OTHER
 LOT BLK PL BK/PG PLAT ADDRESS 0000000
 NBHD 10005100 USE 000503 HUNTING CLUB DEED 942 301 AICUZ PRINTED
 6/16/2023 BY ALLENW
 LEGAL: TRACT 10A LUKENS ISLAND HUNT CLUB

BUILDING CHARACTERISTICS for BldgSeq# 001 (Item# 001)

Code	Description	Code	Description	Code	Description	Code	Description	Code	Description
MODL 11	HOTL & CLB	BVAL 110050	CLUBHOUSE	ARCH	N/A	QUAL 05	GOOD	STYS	1.0
SIZE	N/A								
FNDN	N/A	FRME 04	WOOD	D WND0	N/A	EXW1 02	WOOD LAP	EXW2	N/A
EXW2%									
HEAT	N/A	A/C	N/A	RSTR	N/A	RCV1	N/A	RCV2	N/A
RCV2%									
INT1	N/A	INT2	N/A	INT2%		FLR1	N/A	FLR2	N/A
FLR2%									
KTCH	N/A	DPRT 89		BATH	3.00	BDRM	8	ROOM	
SPCD	N/A								
HTFL 04	ELECTRIC	ELEC	N/A	HVAC	N/A	ELEV	N/A	SPKR	N/A
LCMU JD	JACKSONVLE								
UD-7	N/A	UD-8	N/A	FNSH	N/A	FNSH	N/A	UD-9%	
AYB 1993	EYB 1993								

AREA CALCULATION

Subarea	Actual	Adj	Heated	Prime	Rate	Value	%Good	RCNLD	TWO1993=1904\$
BAS1993=1656\$		PCH1993=32\$	DCK1993=516\$						
TWO STO	1904	3808	3808	1904	217.98	415042	48.00	199,220	DCK1994=72\$
PCH1994=264\$		DK21993=40\$.							
BASE AR	1656	1656	1656	1656	108.99	180488	48.00	86,634	
PORCH	32	11			37.50	1200	48.00	576	
DECK	516	129			27.25	14062	48.00	6,750	
DECK	72	18			27.25	1962	48.00	942	
PORCH	264	92			37.97	10024	48.00	4,812	
2STYDEC	40	20			54.53	2181	48.00	1,047	
TOTAL	4484		5464		114.37		48.00		
TOTAL		5734		3560		624959		299,981	

TRAVERSE

Carteret County

Property Data

Parcel Number: 742500848757000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 742500848757000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: PART TRACT 10B LUKENS ISLAND - SOUTH RIVER
DEED REF: 1186-301
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE:
SALE PRICE: \$0
ACREAGE: 378.83
LAND VALUE: \$369,359
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$369,359

Sketches

Photos

Carteret County

Property Data

Parcel Number: 743600701455000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 743600701455000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: PART CARTERET 21 MERRIMON
DEED REF: 942-301
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE: 05/21/2002
SALE PRICE: \$0
ACREAGE: 59.29
LAND VALUE: \$40,929
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$40,929

Sketches

Photos

Carteret County

Property Data

Parcel Number: 744400356008000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 744400356008000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS: 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: PART CARTERET 21 MERRIMON
DEED REF: 1330-137
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE:
SALE PRICE: \$0
ACREAGE: 4024.03
LAND VALUE: \$1,554,306
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$1,554,306

Sketches

Photos

Carteret County

Property Data

Parcel Number: 744500427289000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 744500427289000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: TRACTS 5 8 LUKENS ISLAND HUNT CLUB
DEED REF: 942-301
PLAT REFERENCE: 30-220
NEIGHBORHOOD: 100051
SALE DATE: 05/21/2002
SALE PRICE: \$0
ACREAGE: 1229.46
LAND VALUE: \$231,851
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$231,851

Sketches

Photos

Carteret County

Property Data

Parcel Number: 743500126993000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 743500126993000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS: 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: PART TRACT 10B LUKENS ISLAND HUNT CLUB
DEED REF: 0806-00739
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE:
SALE PRICE: \$0
ACREAGE: 106.02
LAND VALUE: \$82,439
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$82,439

Sketches

Photos

Carteret County

Property Data

Parcel Number: 742500727712000

Inquiry Date: 6/22/2023

DISCLAIMER: For confirmation of the number of buildings on each parcel, please contact the Carteret County Tax Office.

Property Info

PARCEL NUMBER: 742500727712000
OWNER: LUKENS ISLAND TIMBER ENTRP LLC
PHYSICAL ADDRESS 0
MAILING ADDRESS: PO BOX 190
NEWPORT NC 28570
LEGAL DESCRIPTION: PART TRACT 10B LUKENS ISLAND HUNTING CLUB
DEED REF: 0806-00739
PLAT REFERENCE: -
NEIGHBORHOOD: 100051
SALE DATE:
SALE PRICE: \$0
ACREAGE: 157.95
LAND VALUE: \$134,750
EXTRA FEATURE VALUE: \$0

Building Info

BATHS:
BEDROOMS:
CONDITION:
EXTERIOR WALLS:
FLOOR FINISH:
FOUNDATION:
HEAT:
ROOF COVER:
ROOF STRUCTURE:
SQUARE FOOTAGE:
YEAR BUILT:
BUILDING VALUE: \$0
PARCEL VALUE: \$134,750

Sketches

Photos



CAMA AND DREDGE AND FILL
GENERAL
PERMIT

as authorized by the State of North Carolina
Department of Environment, Health, and Natural Resources and the Coastal Resources Commission
in an area of environmental concern pursuant to 15 NCAC

Carteret - C No 12094

Applicant Name Lukong Island Hunting Club Phone Number 919-726-8064
Address 410 Bill Munden
City PO Box 67 Marshfield City State NC Zip 28557
Project Location (County, State Road, Water Body, etc.) Carteret County off of Hwy 70 E
Stacy, Horton's Bay off of South River
Type of Project Activity 130' x 6' pier, two 30' x 5' w, 5 mooring pilings
no more than 4 boats to be moored

PROJECT DESCRIPTION	SKETCH
Pier (dock) length <u>130' x 6'</u>	
Groin length _____	
number _____	
Bulkhead Length _____	
max. distance offshore _____	
Basin, channel dimensions _____	
cubic yards _____	
Boat ramp dimensions _____	
Other _____	

This permit is subject to compliance with this application, site drawing and attached general and specific conditions. Any violation of these terms may subject the permittee to a fine, imprisonment or civil action; and may cause the permit to become null and void.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. The applicant certifies by signing this permit that 1) this project is consistent with the local land use plan and all local ordinances, and 2) a written statement has been obtained from adjacent riparian landowners certifying that they have no objections to the proposed work.

In issuing this permit the State of North Carolina certifies that this project is consistent with the North Carolina Coastal Management Program.

Bill Munden
applicant's signature

Charles O Piggott
permit officer's signature

11-23-93 issuing date 2-23-94 expiration date

attachments NCAC 7H 1200

application fee \$50.00 ch # 1080

Distance from shore Normal water level

10' = 1" of water

20' = 1' 6" "

30' = 2' "

40 = 2' 1" "

50 = 2' "

60 = 2' 2" "

70 = 2' 2" "

80 = 2' 3" "

90 = 2' 6" "

100 = 2' 6" "

110 = 2' 4" "

120 = 2' 2" "

130 = 2' 6" "

140 = 2' 6" "

150 = 3' 3" "

163 = 3' 6" "

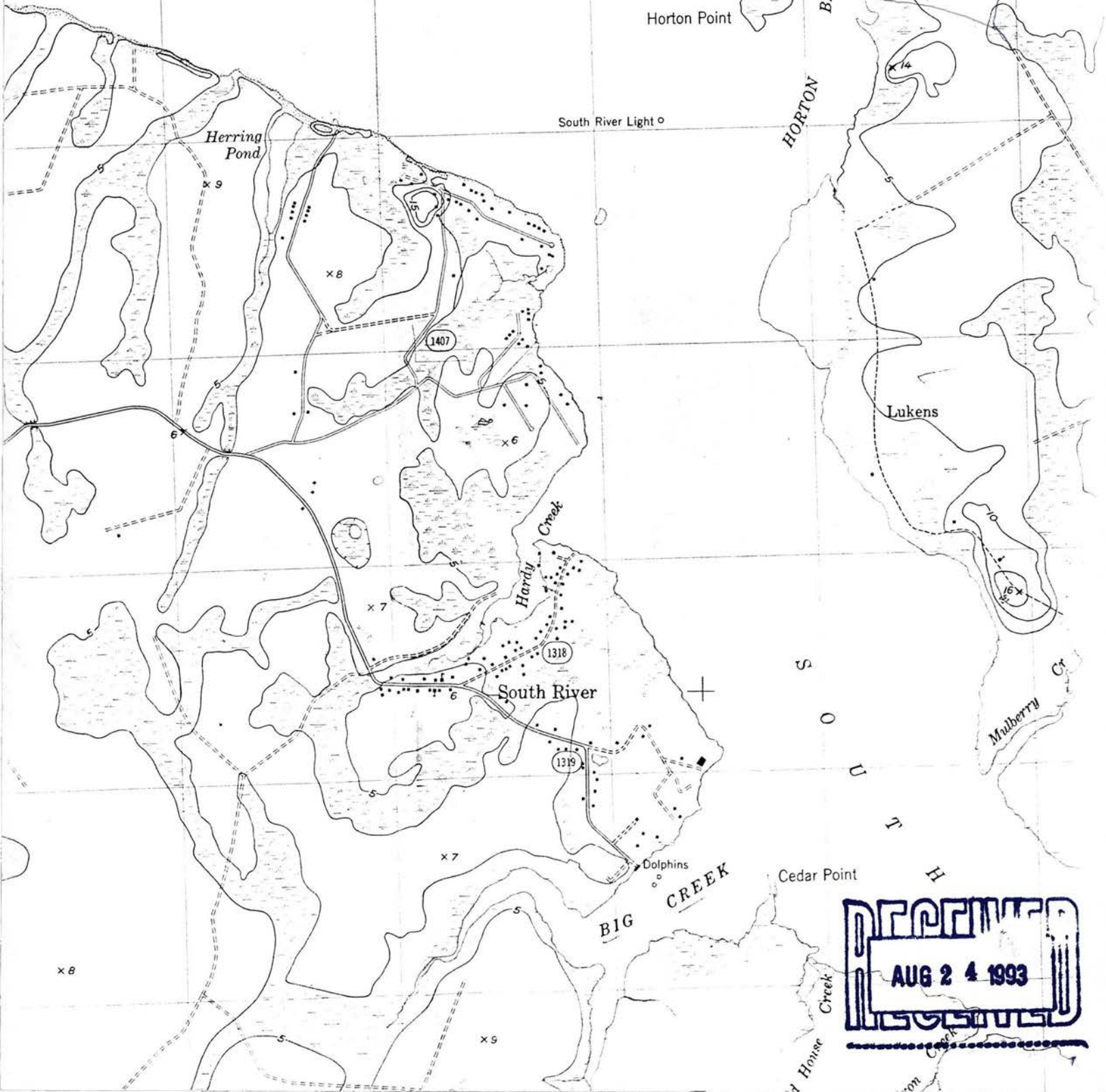
Lukens Island Hunting Club

Bill Munden treasurer 11-23-93

Luke Island Land + Development Co.
8-24-83

E U S E R I V E R

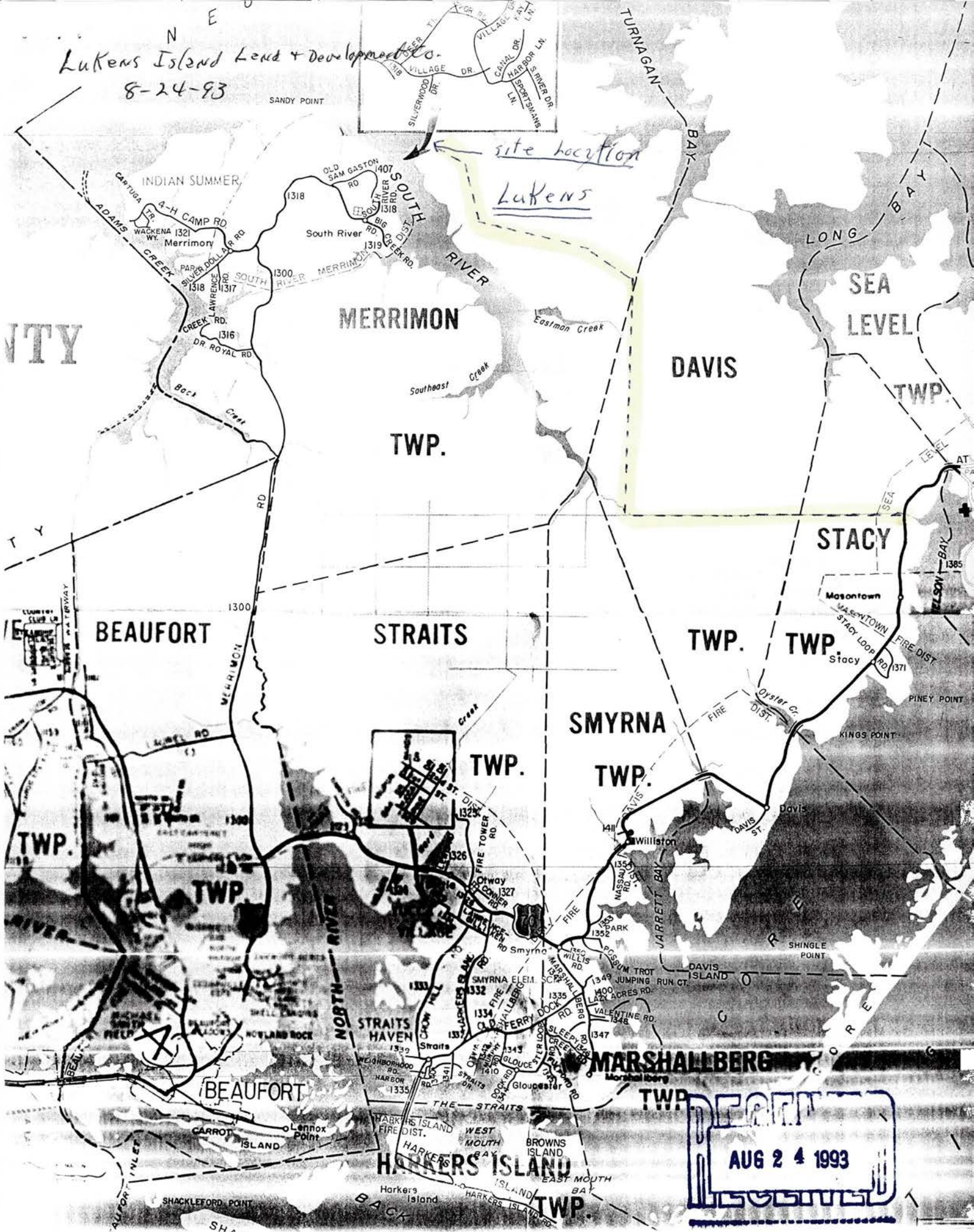
Project



RECEIVED
AUG 24 1993

Lukens Island Land + Development Co.

8-24-93



site location

Lukens

RECORDED
AUG 24 1993

Jere A. Henderson
P.O. Box 407
Troy, Alabama 36081

October 29, 1992

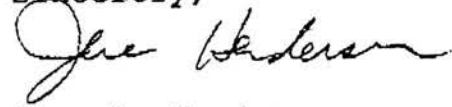
Bill Munden
Lukens Island Hunting Club
FAX# 919-726-6133

Dear Bill:

I hereby give my blessing and support to Lukens Island Hunting Club, Inc. in your efforts to construct a house and dock on the property that adjoins me.

If I can be of further help, please let me know.

Sincerely,

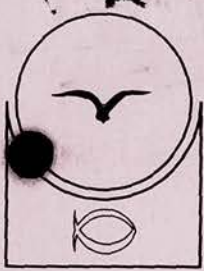


Jere A. Henderson

lp

Jett Matthews
444-1805

RECEIVED
AUG 24 1993
REGISTERED



CAMA AND DREDGE AND FILL
GENERAL
PERMIT

as authorized by the State of North Carolina
Department of Environment, Health, and Natural Resources and the Coastal Resources Commission
in an area of environmental concern pursuant to 15A NCAC 7H-1300

Carteret-C
cop
9
13121
AM

Applicant Name Lukens Island Hunting Club Inc. Phone Number 919-444-1805
Address PO Box 69
City Morhead City State NC Zip 28557
Project Location (County, State Road, Water Body, etc.) Carteret County Lukens Island
Stacy off Hwy 70E South River
Type of Project Activity boat ramp 20' L beyond MHW, 15' W

PROJECT DESCRIPTION

Pier (dock) length _____

Groin length _____

number _____

Bulkhead length _____

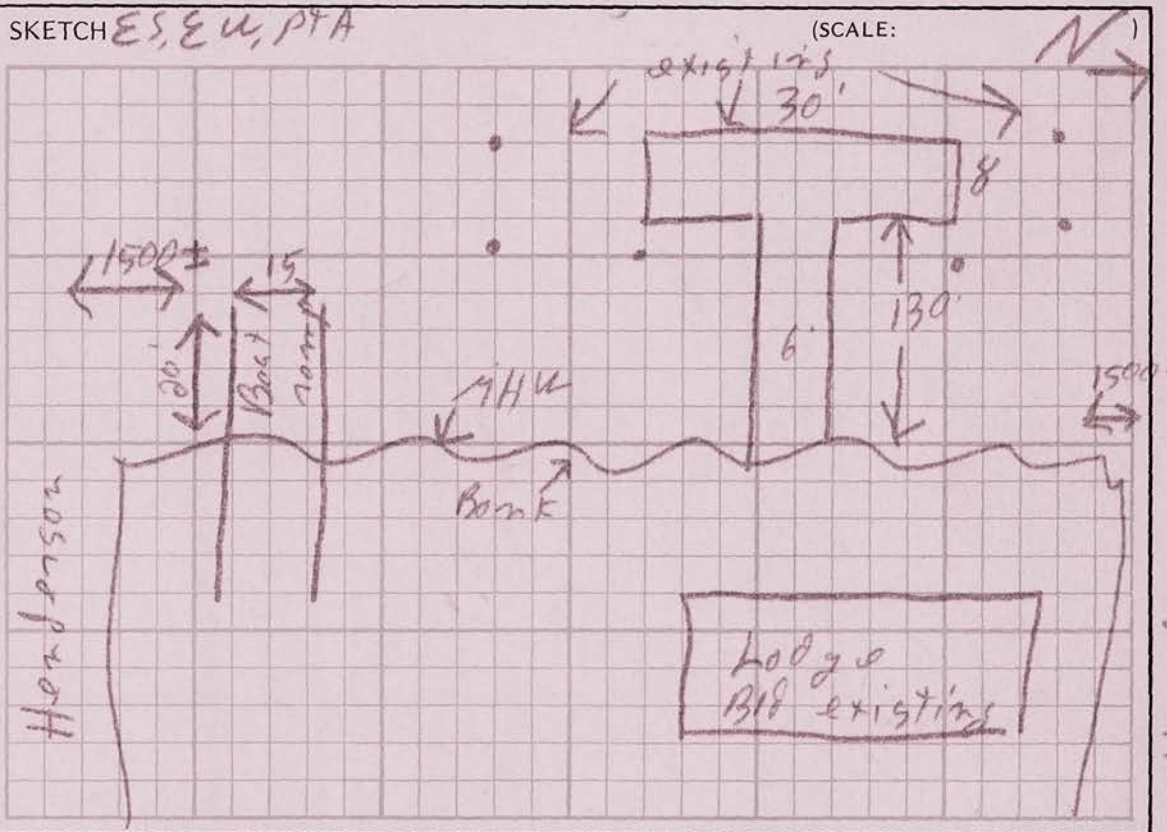
max. distance offshore _____

Basin, channel dimensions _____

cubic yards _____

Boat ramp dimensions 20' L x 15' W

Other _____



This permit is subject to compliance with this application, site drawing and attached general and specific conditions. Any violation of these terms may subject the permittee to a fine, imprisonment or civil action; and may cause the permit to become null and void.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. The applicant certifies by signing this permit that 1) this project is consistent with the local land use plan and all local ordinances, and 2) a written statement has been obtained from adjacent riparian landowners certifying that they have no objections to the proposed work.

In issuing this permit the State of North Carolina certifies that this project is consistent with the North Carolina Coastal Management Program.

Phil A. Wilk applicant's signature
Charles O. Piggott permit officer's signature
7-7-94 issuing date 10-7-94 expiration date
attachments NCA C 7H 1300
application fee \$50.00 CH 1115

JUN-30-1994 16:30 FROM STROTHER TIMBERLANDS TO 19194441805 P.01

Jere A. Henderson
P.O. Box 407
Troy, Alabama 36081

VIA FACSIMILE (919) 444-1805

TO: Jet Matthews

FROM: Jere A. Henderson

RE: Boat Ramp

I Jere A. Henderson do not have any objections to Lukens Island Hunting Club building a boat ramp beside the pier.

Jere A. Henderson 6-28-94
Jere A. Henderson Date

Split 1000500103
ALL 1000100105
ALL 1000400105

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

THIS DEED, made and entered into this the 27th day of August, 1992, by and between HENDERSON TIMBERLANDS, LTD., a limited partnership, party of the first part; and LUKENS ISLAND HUNTING CLUB, INC., whose address is Route 1, Box 176, Havelock, North Carolina 28532, party of the second part;

WITNESSETH:

That the party of the first part in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations said party paid by the party of the second part, the receipt of which hereby is acknowledged, has bargained and sold and by these presents does bargain, sell and convey, subject to the reservations and limitations provided herein, unto the party of the second part, said party's successors and assigns, the following described property, to wit:

All those certain tracts and parcels of land and appurtenant rights more particularly described on Exhibit A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said property and all privileges and appurtenances thereunto belonging to the party of the second part, said party's successors and assigns forever, subject to the reservations and limitations provided herein.

And the party of the first part does covenant that said party is seized of said property in fee and has the right to convey the same in fee simple; that the same is free from encumbrances except any encumbrances and restrictions mentioned above and that said party will warrant and defend the title to the same against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the party of the first part has caused this instrument to be executed under seal and in such form as to be binding, all by authority duly given, this the day and year first above written.

BOOK 696 PAGE 160

Prepared By:
Ward and Smith, P.A.
1001 College Court
New Bern, NC 28563

WARD AND SMITH, P.A. ATTORNEYS AT LAW

704

\$704.00

Real Estate
Excise Tax



STATE OF
NORTH
CAROLINA



HENDERSON TIMBERLANDS, LTD., (SEAL)
A Limited Partnership

By: Jere A. Henderson (SEAL)
Jere A. Henderson,
General Partner

By: SOUTH ALABAMA TIMBERLAND,
INC.
General Partner

By: James B. Hootler
President

Attest: Jere A. Henderson
Secretary

WARD AND SMITH, P.A. ATTORNEYS AT LAW

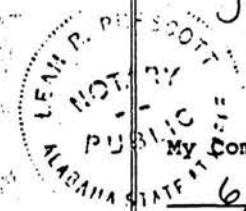
STATE OF Alabama
COUNTY OF Pike

I, Leah R. Prescott, Notary

Public in and for said County and State, do hereby certify that
JERE A. HENDERSON personally came before me this day and
acknowledged that he is a general partner in HENDERSON TIMBERLANDS,
LTD., a limited partnership and that the foregoing and annexed
instrument was signed by him as a general partner of HENDERSON
TIMBERLANDS, LTD. and that the instrument is the act and deed of
said partnership.

WITNESS my hand and notarial seal, this the 27 day of
August, 1992.

Leah R. Prescott
Notary Public



My Commission Expires:
6/13/94



STATE OF Alabama
COUNTY OF Pike

I, Leah R. Prescott, a Notary Public in and for said County and State, do hereby certify that Jere A. Henderson personally came before me this day and acknowledged that he is Secretary of SOUTH ALABAMA TIMBERLAND, INC., a corporation which is a General Partner in the limited partnership of HENDERSON TIMBERLANDS, LTD.; that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary; that the act of the General Partner is the act of the limited partnership; and that the typewritten word "SEAL" appearing on the name of the limited partnership has been adopted by the limited partnership as its seal.

WITNESS my hand and notarial seal, this the 27 day of August, 1992.

Leah R. Prescott
Notary Public

My Commission Expires:

6/13/94

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

The foregoing certificates of Leah R. Prescott

Notaries Public of said Count[y/ies], and State[s], are certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the Register of Deeds of Carteret County, North Carolina, in Book 696, Page 160.

This 4th day of September, 1992, at 11:35 o'clock A.M.

Deborah Murrell
Register of Deeds
Deputy

92-0447
08/12/92
CDR\CDR
WSPHAIN\33057.

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WARD AND SMITH, P.A. ATTORNEYS AT LAW

EXHIBIT A

All those certain tracts or parcels of land lying and being situate in Merrimon Township, Carteret County, North Carolina, and being more particularly described as follows:

TRACT 1:

Beginning at a point in the centerline of a sixty foot right-of-way (said beginning point is sometimes referred to herein as POINT "CIRCLE"). The point of beginning is located the following courses and distances from the intersection of the centerline of the 100' in width easement described in Book 381, Page 1, with the southern line of the property conveyed to Henderson Timberlands, Ltd. by deed recorded in Book 662, Page 102:

North 04° 33' 18" East 2,012.16 feet to a point;
thence North 47° 46' 03" West 2,868.43 feet to a point;
thence North 24° 11' 42" East 4,063.66 feet to a point;
thence North 18° 28' 31" West 1,699.46 feet to the point of beginning (said point being referred to as POINT "CIRCLE").
THENCE FROM SAID POINT OF BEGINNING SO LOCATED, along and with the centerline of the aforesaid sixty foot right-of-way the following three courses:
North 18° 35' 28" West 4,210.57 feet to a point;
thence North 10° 39' 28" West 5,327.29 feet to a point;
thence North 62° 39' 31" West 4,993.55 feet to a point;
thence along and with a ditch
North 62° 39' 31" West 3,969.31 feet to a point;
thence North 05° 45' 00" West 98.74 feet to a point;
thence North 40° 20' 00" West 163.10 feet to a point;
thence North 33° 15' 00" East 446.16 feet to a point;
thence North 14° 55' 00" West 709.50 feet to a point;
thence North 15° 55' 00" West 397.32 feet to a point;
thence North 70° 30' 00" East 218.46 feet to a point;
thence South 64° 10' 00" East 3,887.60 feet to a point;
thence North 57° 00' 00" East 1,688.28 feet to a point (said point hereinafter sometimes referred to as POINT "STAR");
thence South 24° 50' 00" West 1,444.82 feet to a point;
thence South 64° 10' 00" East 3,479.95 feet to a point;
thence South 16° 40' 00" West 479.82 feet to a point;
thence South 34° 40' 00" West 539.22 feet to a point;
thence South 25° 15' 00" East 195.36 feet to a point;
thence North 66° 45' 00" East 376.86 feet to a point;
thence North 53° 25' 00" East 289.08 feet to a point;
thence North 70° 45' 00" East 632.94 feet to a point;
thence North 82° 00' 00" East 325.38 feet to a point;
thence South 77° 05' 00" East 693.66 feet to a point;
thence South 36° 10' 00" East 204.60 feet to a point;
thence South 82° 00' 00" East 135.30 feet to a point;
thence South 44° 05' 00" East 351.12 feet to a point;
thence South 66° 35' 00" East 691.02 feet to a point;
thence South 27° 40' 00" East 335.28 feet to a point;
thence South 15° 55' 00" West 194.70 feet to a point;

WARD AND SMITH P.A. ATTORNEYS AT LAW

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thence South 60° 45' 00" West 122.10 feet to a point;
 thence South 33° 20' 00" East 173.58 feet to a point;
 thence South 04° 20' 00" East 453.42 feet to a point;
 thence North 71° 00' 00" East 351.12 feet to a point;
 thence North 36° 20' 00" East 803.22 feet to a point;
 thence South 37° 50' 00" East 533.94 feet to a point;
 thence South 10° 25' 00" West 482.46 feet to a point;
 thence North 45° 15' 00" East 889.68 feet to a point;
 thence South 81° 05' 00" East 730.62 feet to a point;
 thence North 34° 35' 00" East 462.66 feet to a point;
 thence North 86° 25' 00" East 525.36 feet to a point;
 thence South 37° 10' 00" East 787.38 feet to a point;
 thence South 17° 20' 00" West 745.80 feet to a point;
 thence South 86° 25' 00" West 300.96 feet to a point;
 thence South 25° 00' 00" West 413.16 feet to a point;
 thence South 56° 00' 00" West 454.74 feet to a point;
 thence South 17° 00' 00" West 642.18 feet to a point;
 thence North 89° 25' 00" West 613.80 feet to a point;
 thence South 31° 40' 00" East 656.70 feet to a point;
 thence South 20° 45' 00" West 386.10 feet to a point;
 thence North 80° 40' 00" East 462.00 feet to a point;
 thence South 27° 10' 00" East 240.24 feet to a point;
 thence South 68° 45' 00" East 532.62 feet to a point;
 thence South 26° 40' 00" East 971.52 feet to a point;
 thence South 58° 30' 00" West 712.80 feet to a point;
 thence South 21° 50' 00" East 375.54 feet to a point;
 thence South 10° 30' 00" West 310.86 feet to a point;
 thence South 22° 25' 00" West 396.00 feet to a point;
 thence South 63° 45' 00" West 287.10 feet to a point;
 thence South 39° 00' 00" West 208.56 feet to a point;
 thence South 10° 30' 00" East 285.12 feet to a point;
 thence South 17° 50' 00" West 143.22 feet to a point;
 thence South 33° 50' 00" East 168.96 feet to a point;
 thence South 10° 30' 00" East 230.02 feet to a point;
 thence South 79° 28' 26" West 348.45 feet to a point;
 thence North 49° 47' 34" West 658.49 feet to a point;
 thence South 80° 55' 46" West 263.65 feet to a point;
 thence South 30° 03' 39" West 3,379.64 feet to the point or place
 of beginning.

SAVING AND EXCEPTING from the above-described property that portion
 of the property located within 30 feet of the following described
 line: Beginning at the beginning point of the above-described
 property (said point of beginning being the point previously
 designated POINT "CIRCLE"). Thence from said point of beginning
 North 18° 35' 28" West 4,210.57 feet to a point; thence North 10°
 39' 28" West 5,327.29 feet to a point; thence North 62° 39' 31"
 West 4,993.55 feet to a point. The property being excepted is that
 portion of the property which is located within the sixty foot
 right-of-way which is appurtenant to the above-described property.



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TOGETHER WITH a perpetual non-exclusive easement for ingress, egress, regress, further subdivision, and the installation and maintenance of utilities to and from the northern end of the easement recorded in Book 381, Page 1, to and from the above-described property over, under, and upon the following described 60' in width right of way: The centerline of the 60' in width right of way is more particularly described as follows: Beginning at the centerline of the northern end of the 100' in width easement described in Book 381, Page 1;
thence North 04° 33' 18" East 2,012.16 feet to a point;
thence North 47° 46' 03" West 2,868.43 feet to a point;
thence North 24° 11' 42" East 4,063.66 feet to a point;
thence North 18° 28' 31" West 1,699.46 feet to a point (said point being the point previously designated as POINT "CIRCLE");
thence North 18° 35' 28" West 4,210.57 feet to a point;
thence North 10° 39' 28" West 5,327.29 feet to a point;
thence North 62° 39' 31" West 4,993.55 feet to a point;
thence South 72° 01' 51" West 30 feet to a point;
thence North 62° 39' 31" West 3,969.31 feet to a point.

FURTHER TOGETHER WITH a non-exclusive perpetual easement for ingress and regress to and from the public road and to and from the beginning of the easement described above over and upon the 100' in width easement described in Book 381, Page 1, in the office of the Register of Deeds of Carteret County. This easement crosses the property known as the Open Grounds Farm.

Henderson Timberlands, Ltd. shall maintain the aforesaid easements in a condition at least as good as the present condition of the easements; provided, however, Lukens Island Hunting Club, Inc. shall be liable for and shall pay all costs and expenses incurred by Henderson Timberlands, Ltd. to correct or repair any damage caused to the easement areas by logging equipment or commercial or private vehicles servicing the above-described property except Lukens Island Hunting Club, Inc. shall not be responsible for any damage caused by any logging equipment or commercial or private vehicles which are serving the above-described property under Henderson Timberlands, Ltd.'s authority and right to the Pine Timber on the property as hereinafter provided. Lukens Island Hunting Club, Inc. agrees to indemnify and hold Henderson Timberlands, Ltd. harmless from and against any and all loss, cost, claim, damage or expense of any kind, including attorney fees, threatened against or incurred by Henderson Timberlands, Ltd. which arise out of the use of the easements by Lukens Island Hunting Club, Inc., their guests, agents, licensees, or employees, including personal injury and property damage. Lukens Island Hunting Club, Inc., its successors or assigns, agrees to maintain general liability insurance on the easement areas in the minimum sum of \$500,000 for the benefit of Lukens Island Hunting Club, Inc. and Henderson Timberlands, Ltd.

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RECEIVED
AUG 24 1993

SAVING AND EXCEPTING from the above-described property all pine timber on the above-described property, together with the right to enter upon the above-described property and remove the Pine Timber, for a period of five years from June 30 1992. The right to the pine timber on the above described property includes the right to construct haul roads as needed and to obtain borrowed materials to use to construct such haul roads. Any pine timber not removed by the aforesaid date automatically shall become the property of Lukens Island Hunting Club, Inc., without any additional compensation or execution of any documents. Henderson Timberlands, Ltd. will make every effort to insure that all timber harvesting on the above-described property is carried out in a responsible manner and according to accepted forestry practices.

The above-described property is conveyed subject to the reservation of mineral right reserved by International Paper Company, Weyerhaeuser Company, Shell Oil Company and John L. Roper Lumber Company.

TRACT 2:

Beginning at a point in the centerline of a sixty foot right-of-way (said beginning point is sometimes referred to herein as POINT "TRIANGLE"). The point of beginning is located the following courses and distances from the intersection of the centerline of the 100' in width right-of-way described in Book 381, Page 1, with the southern line of the property conveyed to Henderson Timberlands, Ltd. by deed recorded in Book 662, Page 102:

North 04° 33' 18" East 2,012.16 feet to a point;
thence North 47° 46' 03" West 2,868.43 feet to a point;
thence North 24° 11' 42" East 4,063.66 feet to a point;
thence North 18° 28' 31" West 1,699.46 feet to a point;
thence North 18° 35' 28" West 4,210.57 feet to a point;
thence North 10° 39' 28" West 5,327.29 feet to a point;
thence North 62° 39' 31" West 4,993.55 feet to a point;
thence South 72° 01' 51" West 2,342.55 feet to a point;
thence South 72° 24' 05" West 2,859.13 feet to a point;
thence South 71° 08' 48" West 1,247.56 feet to a point;
thence North 67° 00' 46" West 179.68 feet to a point;
thence North 25° 27' 14" West 4,809.85 feet to the point or place of beginning. (Said point of beginning sometimes hereinafter referred to as POINT "TRIANGLE").

THENCE FROM SAID POINT OF BEGINNING SO LOCATED,

South 64° 43' 15" West 5,175.99 feet to a point;
thence North 28° 00' 32" East 1,000.0 feet to a point;
thence North 41° 16' 25" East 1,226.97 feet to a point;
thence North 22° 05' 00" East 759.66 feet to a point;
thence North 63° 00' 00" East 260.04 feet to a point;
thence South 72° 15' 00" East 318.12 feet to a point;
thence North 45° 10' 00" East 549.12 feet to a point;
thence North 09° 40' 00" East 159.06 feet to a point;

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WARD AND SMITH, P.A. ATTORNEYS AT LAW

thence South 72° 20' 00" West 227.70 feet to a point;
 thence North 85° 00' 00" West 209.22 feet to a point;
 thence North 00° 25' 00" West 327.36 feet to a point;
 thence North 45° 15' 00" East 172.92 feet to a point;
 thence North 51° 55' 00" East 495.66 feet to a point;
 thence North 73° 05' 00" East 272.58 feet to a point;
 thence North 70° 35' 00" West 278.52 feet to a point;
 thence North 10° 50' 00" East 285.12 feet to a point;
 thence South 54° 55' 00" West 306.24 feet to a point;
 thence North 50° 10' 00" West 291.72 feet to a point;
 thence South 50° 15' 00" West 170.94 feet to a point;
 thence North 33° 50' 00" West 147.18 feet to a point;
 thence North 10° 00' 00" West 300.30 feet to a point;
 thence North 28° 55' 00" West 380.82 feet to a point;
 thence North 36° 50' 00" East 223.74 feet to a point;
 thence North 78° 45' 00" East 358.38 feet to a point;
 thence South 68° 15' 00" East 258.72 feet to a point;
 thence North 29° 55' 00" East 444.18 feet to a point;
 thence South 67° 10' 00" East 436.92 feet to a point;
 thence North 43° 03' 00" East 636.90 feet to a point;
 thence North 29° 40' 00" East 750.42 feet to a point;
 thence North 66° 10' 00" West 181.50 feet to a point;
 thence South 71° 10' 00" West 386.10 feet to a point;
 thence North 59° 10' 00" West 386.76 feet to a point;
 thence North 48° 20' 00" East 667.26 feet to a point;
 thence South 86° 50' 00" East 483.80 feet to a point;
 thence South 04° 34' 36" East 2,346.51 feet to a point;
 thence South 04° 34' 36" East 1,048.46 feet to a point;
 thence South 10° 53' 20" West 241.56 feet to a point;
 thence South 25° 31' 04" East 1,178.89 feet to the point or place
 of beginning.

SAVING AND EXCEPTING from the above-described property that portion
 of the property located within 30 feet of the following described
 line: Beginning at the beginning point of the above-described
 property (said point of beginning being the point previously
 designated POINT "TRIANGLE"). Thence from said point of beginning
 South 64° 43' 15" West 5,175.99 feet to a point. The property
 being excepted is that portion of the property which is located
 within the sixty foot right-of-way which is appurtenant to the
 above-described property.

SAVING AND EXCEPTING from the above-described property that portion
 of the property located within 30 feet of the following described
 line: Beginning at the beginning point of the above-described
 property (said point of beginning being the point previously
 designated POINT "TRIANGLE"). Thence from said point of beginning
 North 25° 31' 04" West 1,178.89 feet to a point; thence North 10°
 53' 20" East 241.56 feet to a point; thence North 04° 34' 36" West
 1,048.46 feet to a point; thence North 04° 34' 36" West 2,346.51
 feet to a point. The property being excepted is that portion of

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 BOOK 696 PAGE 160

DECEMBER
 AUG 24 1993
 REGISTERED

the property which is located within the sixty foot right-of-way which is appurtenant to the above-described property.

TOGETHER WITH a perpetual non-exclusive easement for ingress, egress, regress, further subdivision, and the installation and maintenance of utilities to and from the northern end of the easement recorded in Book 381, Page 1, to and from the above-described property over, under, and upon the following described 60' in width right of way: The centerline of the 60' in width right of way is more particularly described as follows: Beginning at the centerline of the northern end of the 100' in width easement described in Book 381, Page 1;

thence North 04° 33' 18" East 2,012.16 feet to a point;
thence North 47° 46' 03" West 2,868.43 feet to a point;
thence North 24° 11' 42" East 4,063.66 feet to a point;
thence North 18° 28' 31" West 1,699.46 feet to a point (said point being the point previously designated as POINT "CIRCLE");
thence North 18° 35' 28" West 4,210.57 feet to a point;
thence North 10° 39' 28" West 5,327.29 feet to a point;
thence North 62° 39' 31" West 4,993.55 feet to a point;
thence South 72° 01' 51" West 2,342.55 feet to a point;
thence South 72° 24' 05" West 2,859.13 feet to a point;
thence South 71° 08' 48" West 1,247.56 feet to a point;
thence North 67° 00' 46" West 179.68 feet to a point;
thence North 25° 27' 14" West 4,809.85 feet to a point (said point sometimes referred to as POINT "TRIANGLE");
thence South 64° 43' 15" West 5,175.99 feet to a point.

TOGETHER WITH a perpetual non-exclusive easement for ingress, egress, regress, further subdivision, and the installation and maintenance of utilities to and from the northern end of the easement recorded in Book 381, Page 1, to and from the above-described property over, under, and upon the following described 60' in width right of way: The centerline of the 60' in width right of way is more particularly described as follows: Beginning at the centerline of the northern end of the 100' in width easement described in Book 381, Page 1;

thence North 04° 33' 18" East 2,012.16 feet to a point;
thence North 47° 46' 03" West 2,868.43 feet to a point;
thence North 24° 11' 42" East 4,063.66 feet to a point;
thence North 18° 28' 31" West 1,699.46 feet to a point (said point being the point previously designated as POINT "CIRCLE");
thence North 18° 35' 28" West 4,210.57 feet to a point;
thence North 10° 39' 28" West 5,327.29 feet to a point;
thence North 62° 39' 31" West 4,993.55 feet to a point;
thence South 72° 01' 51" West 2,342.55 feet to a point;
thence South 72° 24' 05" West 2,859.13 feet to a point;
thence South 71° 08' 48" West 1,247.56 feet to a point;
thence North 67° 00' 46" West 179.68 feet to a point;
thence North 25° 27' 14" West 4,809.85 feet to a point

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(said point sometimes referred to as POINT "TRIANGLE");
thence North 25° 31' 04" West 1,178.89 feet to a point;
thence North 10° 53' 20" East 241.56 feet to a point;
thence North 04° 34' 36" West 1,048.46 feet to a point;
thence North 04° 34' 36" West 2,346.51 feet to a point.

FURTHER TOGETHER WITH a non-exclusive perpetual easement for ingress and regress to and from the public road and to and from the beginning of the easements described above over and upon the 100' in width easement described in Book 381, Page 1, in the office of the Register of Deeds of Carteret County. This easement crosses the property known as the Open Grounds Farm.

Henderson Timberlands, Ltd. shall maintain the aforesaid easements in a condition at least as good as the present condition of the easements; provided, however, Lukens Island Hunting Club, Inc. shall be liable for and shall pay all costs and expenses incurred by Henderson Timberlands, Ltd. to correct or repair any damage caused to the easement areas by logging equipment or commercial or private vehicles servicing the above-described property except Lukens Island Hunting Club, Inc. shall not be responsible for any damage caused by any logging equipment or commercial or private vehicles which are serving the above-described property under Henderson Timberlands, Ltd.'s authority and right to the Pine Timber on the property as hereinafter provided. Lukens Island Hunting Club, Inc. agrees to indemnify and hold Henderson Timberlands, Ltd. harmless from and against any and all loss, cost, claim, damage or expense of any kind, including attorney fees, threatened against or incurred by Henderson Timberlands, Ltd. which arise out of the use of the easements by Lukens Island Hunting Club, Inc., their guests, agents, licensees, or employees, including personal injury and property damage. Lukens Island Hunting Club, Inc., its successors or assigns, agrees to maintain general liability insurance on the easement areas in the minimum sum of \$500,000 for the benefit of Lukens Island Hunting Club, Inc. and Henderson Timberlands, Ltd.

SAVING AND EXCEPTING from the above-described property all pine timber on the above-described property, together with the right to enter upon the above-described property and remove the Pine Timber, for a period of five years from June 30, 1992. The right to the pine timber on the above described property includes the right to construct haul roads as needed and to obtain borrowed materials to use to construct such haul roads. Any pine timber not removed by the aforesaid date automatically shall become the property of Lukens Island Hunting Club, Inc., without any additional compensation or execution of any documents. Henderson Timberlands, Ltd. will make every effort to insure that all timber harvesting on the above-described property is carried out in a responsible manner and according to accepted forestry practices.

BOOK 696 ⁷ PAGE 160



The above-described property is conveyed subject to the reservation of mineral rights reserved by International Paper Company, Weyerhaeuser Company, Shell Oil Company and John L. Roper Lumber Company.

TRACT 3:

Beginning at a point located North 24° 50' 00" East 1,200.54 feet from the point previously referred to above as POINT "STAR". Said point of beginning being hereinafter referred to as POINT "RECTANGLE". THENCE FROM SAID POINT OF BEGINNING SO LOCATED,

North 70° 10' West 3,696.00 feet to a point;
thence North 31° 20' East 328.68 feet to a point;
thence South 48° 15' East 570.90 feet to a point;
thence North 69° East 258.72 feet to a point;
thence South 61° East 496.98 feet to a point;
thence North 73° 40' East 584.10 feet to a point;
thence North 74° 50' East 498.30 feet to a point;
thence South 18° 20' East 652.08 feet to a point;
thence North 84° 55' East 845.46 feet to a point;
thence South 86° 15' East 627.00 feet to a point;
thence North 67° 40' East 650.76 feet to a point;
thence South 60° 50' East 483.78 feet to a point;
thence North 58° 40' East 349.80 feet to a point;
thence South 44° 45' East 447.48 feet to a point;
thence South 31° 25' West 362.32 feet to a point;
thence South 54° 00' West 588.72 feet to a point;
thence South 41° 35' East 769.56 feet to a point;
thence North 64° 15' West 2,343.66 feet to the point or place of beginning.

W. JO AND SMITH, P.A. ATTORNEYS AT LAW

TOGETHER WITH a perpetual non-exclusive easement for ingress, egress, regress, further subdivision, and the installation and maintenance of utilities to and from the northern end of the easement recorded in Book 381, Page 1, to and from the above-described property over, under, and upon the following described 60' in width right of way: The centerline of the 60' in width right of way is more particularly described as follows: Beginning at the centerline of the northern end of the 100' in width easement described in Book 381, Page 1;

thence North 04° 33' 18" East 2,012.16 feet to a point;
thence North 47° 46' 03" West 2,868.43 feet to a point;
thence North 24° 11' 42" East 4,063.66 feet to a point;
thence North 18° 28' 31" West 1,699.46 feet to a point (said point being the point previously designated as POINT "CIRCLE");
thence North 18° 35' 28" West 4,210.57 feet to a point;
thence North 10° 39' 28" West 5,327.29 feet to a point;
thence North 62° 39' 31" West 4,993.55 feet to a point;
thence South 72° 01' 51" West 30 feet to a point;
thence North 62° 39' 31" West 3,969.31 feet to a point.

BOOK 696 PAGE 460



FURTHER TOGETHER WITH a non-exclusive perpetual easement for ingress and regress to and from the public road and to and from the beginning of the easement described above over and upon the 100' in width easement described in Book 381, Page 1, in the office of the Register of Deeds of Carteret County. This easement crosses the property known as the Open Grounds Farm.

Henderson Timberlands, Ltd. shall maintain the aforesaid easements in a condition at least as good as the present condition of the easements; provided, however, Lukens Island Hunting Club, Inc. shall be liable for and shall pay all costs and expenses incurred by Henderson Timberlands, Ltd. to correct or repair any damage caused to the easement areas by logging equipment or commercial or private vehicles servicing the above-described property except Lukens Island Hunting Club, Inc. shall not be responsible for any damage caused by any logging equipment or commercial or private vehicles which are serving the above-described property under Henderson Timberlands, Ltd.'s authority and right to the Pine Timber on the property as hereinafter provided. Lukens Island Hunting Club, Inc. agrees to indemnify and hold Henderson Timberlands, Ltd. harmless from and against any and all loss, cost, claim, damage or expense of any kind, including attorney fees, threatened against or incurred by Henderson Timberlands, Ltd. which arise out of the use of the easements by Lukens Island Hunting Club, Inc., their guests, agents, licensees, or employees, including personal injury and property damage. Lukens Island Hunting Club, Inc., its successors or assigns, agrees to maintain general liability insurance on the easement areas in the minimum sum of \$500,000 for the benefit of Lukens Island Hunting Club, Inc. and Henderson Timberlands, Ltd.

WARD AND SMITH, P.A. ATTORNEYS AT LAW

SAVING AND EXCEPTING from the above-described property all pine timber on the above-described property, together with the right to enter upon the above-described property and remove the Pine Timber, for a period of five years from June 30 1992. The right to the pine timber on the above described property includes the right to construct haul roads as needed and to obtain borrowed materials to use to construct such haul roads. Any pine timber not removed by the aforesaid date automatically shall become the property of Lukens Island Hunting Club, Inc., without any additional compensation or execution of any documents. Henderson Timberlands, Ltd. will make every effort to insure that all timber harvesting on the above-described property is carried out in a responsible manner and according to accepted forestry practices.

The above-described property is conveyed subject to the reservation of mineral rights reserved by International Paper Company, Weyerhaeuser Company, Shell Oil Company and John L. Roper Lumber Company.

BOOK 696 ⁹ PAGE 120



ALL REFERENCES HEREIN TO LUKENS ISLAND HUNTING CLUB, INC. AND/OR HENDERSON TIMBERLANDS, LTD. SHALL INCLUDE EACH PARTIES HEIRS, SUCCESSORS, AND ASSIGNS AND SHALL BE BINDING ON AND SHALL RUN TO THE BENEFIT OF THEM. All easements described herein shall run with the land they benefit.

The above-described property is shown and depicted on the survey entitled "Lukens Island Hunting Club, Inc." prepared by James I. Phillips, RLS and Associates dated July, 1992 recorded in Map Book 28, Pages 385-386, in the office of the Register of Deeds of Carteret County.

92-0447
08/13/92
CDR/WLR
WMAH/32508.

WARD AND SMITH, P.A. ATTORNEYS AT LAW

10

BOOK 696 PAGE 160



UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address and ZIP Code in the space below.
- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.



PENALTY FOR PRIVATE USE \$300



Bill Maulden
 PO Box 69
 Morehead City, NC 28557

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

3 and 4. **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items to and the date of delivery. For additional fees the following services are available. Consult postmaster card from being returned to you. The return receipt fee will provide you the name of the person delivered to and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
 Gere Henderson
 Henderson Investments
 PO Box 407
 Troy AL 36081

5. Signature - Address
 X
 6. Signature - Agent
 X
 7. Date of Delivery
 5-23-93

8. Addressee's Address (ONLY if requested and fee paid)

Always obtain signature of addressee or agent and DATE DELIVERED.

4. Article Number: P383203464

Type of Service:
 Insured
 Registered
 Certified
 Express Mail

Return Receipt for Merchandise

P 383 203 464

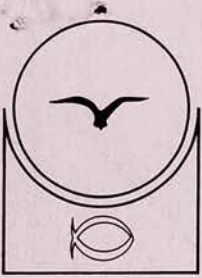
Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)



Sent to _____
 Street and No _____
 P. O., State and ZIP Code _____
 Postage \$ _____
 Certified Fee \$ _____
 Special Delivery Fee _____
 Restricted Delivery Fee _____
 Return Receipt (optional) to Whom & Date Delivered _____
 Return Receipt (optional) to Whom, Date, and Addressee's Address _____
 TOTAL Postage & Fees \$ 2.25
 Postmark or Date _____

PS Form 3800, June 1991



CAMA AND DREDGE AND FILL
GENERAL

PERMIT



9 N# 015941
Carteret-C
col
M³
M³

as authorized by the State of North Carolina
Department of Environment, Health, and Natural Resources and the Coastal Resources Commission
in an area of environmental concern pursuant to 15A NCAC 7H 1200

Applicant Name Lukens Island Hunting Club Inc. Phone Number 919-247-6444
Address P.O. Box 67
City Yonahood City State NC Zip 28557
Project Location (County, State Road, Water Body, etc.) Carteret County Lukens Island
off Hwy 70E, South River Story
Type of Project Activity extend pier 50' x 6' w all Tee 28' x 6' w
total of 4 boat slips maximum, 7 mooring pilings

PROJECT DESCRIPTION	SKETCH
Pier (dock) length <u>50' x 6' w</u>	
Groin length _____	
number _____	
Bulkhead length _____	
max. distance offshore _____	
Basin, channel dimensions _____	
cubic yards _____	
Boat ramp dimensions _____	
Other <u>Tee 28' x 6' w</u> <u>7 mooring pilings</u> <u>total of 4 slips</u>	

This permit is subject to compliance with this application, site drawing and attached general and specific conditions. Any violation of these terms may subject the permittee to a fine, imprisonment or civil action; and may cause the permit to become null and void.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. The applicant certifies by signing this permit that 1) this project is consistent with the local land use plan and all local ordinances, and 2) a written statement has been obtained from adjacent riparian landowners certifying that they have no objections to the proposed work.

In issuing this permit the State of North Carolina certifies that this project is consistent with the North Carolina Coastal Management Program.

Lukens Island Hunting Club, Inc.
By Mark Baker
applicant's signature

Charles O. Pigott
permit officer's signature

226-96 issuing date 526-96 expiration date

attachments NCAC 7H 1200

application fee \$ 50.00 cl # 1337

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Coastal Management

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
Roger N. Schechter, Director



February 27, 1996

Mr. Mack Baker
P.O. box 3074
Atlantic Beach, NC 28512

Dear Mr. Baker:

Attached is General Permit #C-15941 to extend a pier and add 7 mooring pilings for a total of 4 boat slips at Lukens Island and adjacent South River, off Hwy. 70 East, in Stacy, Carteret County.

In order to validate this permit, please sign all three (3) copies as indicated. Retain the white copy for your files and return the yellow and pink signed copies to us in the enclosed, self-addressed envelope.

Your early attention to this matter would be appreciated.

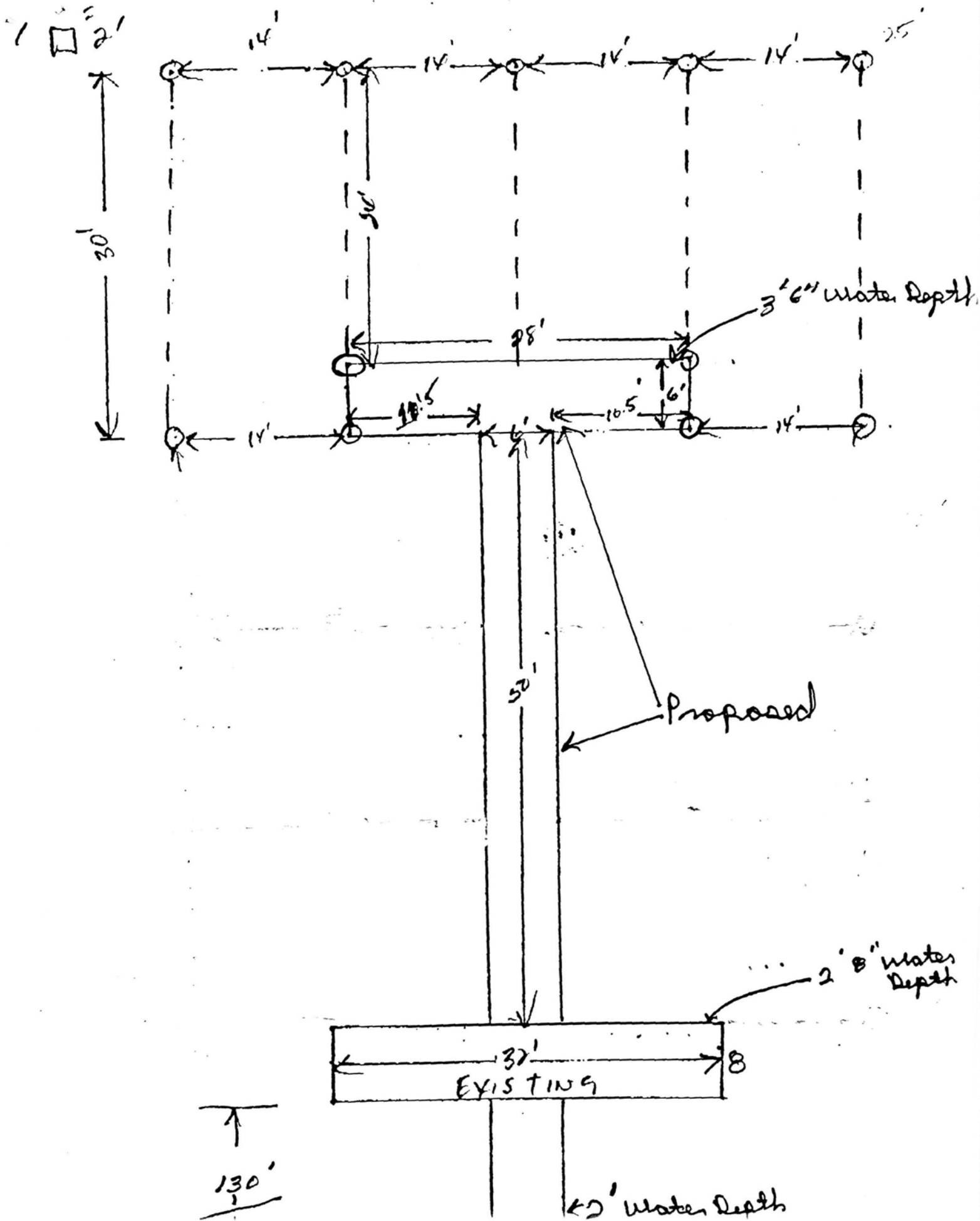
Sincerely,

A handwritten signature in black ink that reads 'Charles O. Pigott' with a small flourish at the end.

Charles O. Pigott
Field Representative

COP/dh
Enclosures

Tuleen Island Dock



January 25, 1996

Lukens Island Land & Timber Co.
P.O. Box 69
Morehead City, NC 28557

Jere Henderson
P.O. Box 407
Troy, AL 36081

Dear Mr. Henderson:

Per Cama Regulations we are writing to inform you of our intentions to extend our existing dock and walkway by adding 50 feet of walkway and an 8' X 30' dock on the end. We are not asking that you waive any setback requirements.

Please sign the enclosed form and return it to me in the enclosed stamped self-addressed envelope at your earliest convenience. If you have any questions please do not hesitate to call me at 919-247-6444. Thank you for your help.

Sincerely,

Mack Baker

Mack Baker
Lukens Island Land & Timber Co.

MB/fa

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. Addressee's Address
2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. Jere Henderson
 P.O. Box 407
 Troy, AL 36081

4a. Article Number
 P 839 628 588

4b. Service Type

Registered Insured

Certified COD

Express Mail Return Receipt for Merchandise

7. Date of Delivery
 1-29-96

5. Signature (Addressee)


8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

Thank you for using Return Receipt Service.

MONTGOMERY AL 361 01/29/96 18:27

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



Print your name, address and ZIP Code here

Mack Baker
PO Box 3074
Atlantic Beach, NC 28512

u m



ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

I hereby certify that I own property adjacent to Lukens Island Hunting Club
property located at Lukens Island on Pamlico Sound
(lot, block, road, etc.) (water
body) in Carteret, N.C. He has
(town and/or county)
described to me as shown below the development he is proposing at that
location and I have no objections to his proposal. I understand that a pier
must be set back a minimum distance of 15 feet from my area of riparian
access unless waived by me. I do ~~do not~~ wish to waive that setback requirement.
(circle one)

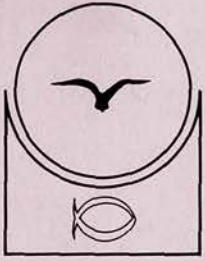
Description and/or drawing of proposed development: (to be filled in by
individual proposing development)



Joe A. Wenders
signature

name

phone number



CAMA AND DREDGE AND FILL
GENERAL
PERMIT

as authorized by the State of North Carolina
Department of Environment, Health, and Natural Resources and the Coastal Resources Commission
in an area of environmental concern pursuant to 15A NCAC 7H 1100

✓ ^{not} cop ^(PS)
NO 23500-C
Carter et
for

Applicant Name Lukens Island Hunting Club Phone Number 252-444-1805
Address 40 Joe Matthews 2645 Tompkins Point Road
City Havelock State NC Zip 28532
Project Location (County, State Road, Water Body, etc.) Currituck County Lukens Island
South River, Beaufort
Type of Project Activity 200' rock rip rap

PROJECT DESCRIPTION	SKETCH <u>EU, PTA, ES</u>	(SCALE:)
Pier (dock) length _____		
Groin length _____		
number _____		
Bulkhead length <u>200'</u>		
max. distance offshore _____		
Basin, channel dimensions _____		
cubic yards _____		
Boat ramp dimensions _____		
Other _____		

This permit is subject to compliance with this application, site drawing and attached general and specific conditions. Any violation of these terms may subject the permittee to a fine, imprisonment or civil action; and may cause the permit to become null and void.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. The applicant certifies by signing this permit that 1) this project is consistent with the local land use plan and all local ordinances, and 2) a written statement has been obtained from adjacent riparian landowners certifying that they have no objections to the proposed work.

In issuing this permit the State of North Carolina certifies that this project is consistent with the North Carolina Coastal Management Program.

Joe Matthews
applicant's signature
Charles O. Broughton
permit officer's signature

9-28-99 10-28-99
issuing date expiration date

attachments NCAC 7H 1100

application fee \$50.00 ch # 4314

- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. May 1, 1990; December 1, 1987;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994.

.1105 SPECIFIC CONDITIONS

- (a) This general permit is applicable only along shorelines void of wetland vegetation including marsh grass and wooded swamp, or where all construction is to be accomplished landward of such vegetation.
- (b) Along natural shorelines e.g. rivers, creeks, bays, sounds, etc., bulkheads and riprap material must be positioned as follows:
 - (1) Bulkheads must be positioned so as not to exceed more than an average distance of 2 feet waterward of the mean high water mark, or the normal water level contour, whichever is applicable. In no case shall the bulkhead be positioned more than 5 feet waterward of the mean high water or normal water level contour at any point along its alignment.
 - (2) Riprap must be positioned so as not to exceed a maximum of 5 feet waterward of the mean high water mark or normal water level contour at any point along its alignment. This location standard also applies to riprap proposed waterward of the existing bulkheads.
- (c) Along shorelines within upland basins, canals, and ditches, bulkheads or riprap material must be positioned so as not to exceed more than an average distance of 5 feet waterward of the mean high water mark or the normal water level contour, whichever is applicable. In no case shall the bulkhead or riprap be positioned more than 10 feet waterward of the mean high water or normal water level contour at any point along its alignment. For the purpose of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline and development must occur as described in 7H .1105(b).
- (d) Construction authorized by this general permit will be limited to a maximum shoreline length of 500 feet.
- (e) All backfill material shall be obtained from an upland source.
- (f) The bulkhead must be constructed, or the riprap must be in place prior to any backfilling activities.
- (g) The bulkhead or riprap must be structurally tight so as to prevent seepage of backfill materials through the structure.
- (h) Riprap material shall be free from loose dirt or any other pollutant. It must be of a size sufficient to prevent its movement from the site by wave or current action.
- (i) Riprap material must consist of clean rock or masonry materials such as but not limited to granite or broken concrete. Materials such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material or similar material, are not considered riprap.
- (j) The bulkhead must be solid and constructed of treated wood, concrete slabs, metal sheet piles or other suitable materials approved by department personnel. No excavation is permitted except for that which may be required for the construction of the bulkhead wall, riprap, deadmen cables, etc. This permit does not authorize any excavation waterward of the approved alignment.
- (k) Bulkheads or riprap shall not extend beyond established alignments nor restrict the original width of the canal or basin.
- (l) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan must be filed with the Division of Land Resources, Land Quality Section, or appropriate local government having jurisdiction. This plan must be approved prior to commencing the land-disturbing activity.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. December 1, 1991; January 1, 1989; December 1, 1987.

SECTION .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND THE
PLACEMENT OF RIPRAP FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC
TRUST WATERS

.1101 PURPOSE

This permit will allow the construction of bulkheads and the placement of riprap for shoreline protection in the public trust waters and estuarine waters AECs according to authority provided in Subchapter 7J .1100 and according to the following guidelines. This permit will not apply to shoreline protection within the ocean hazard AEC.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984.*

.1102 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed bulkhead alignment can be appropriately marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the bulkhead or riprap structure must begin within 90 days of this visit or the general authorization expires and it will be necessary to re-examine the alignment to determine if the general authorization can be reissued.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. January 1, 1990; December 1, 1987.*

.1103 PERMIT FEE

The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-119; 113A-124;
Eff. March 1, 1984;
Amended Eff. March 1, 1991.*

.1104 GENERAL CONDITIONS

(a) This permit authorizes only the construction of bulkheads and the placement of riprap conforming to the standards herein.

(b) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of the bulkhead or the riprap authorized herein.

(d) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

Charles Ribbet
Coastal Area Mangrove
Marchhead City, N.C.

Fokers Island Hunting Club
c/o Jet Matthews
2045 Temple Pt. Rd.
Havelock, N.C. 28532

Phone 444-1805

Dear Charles

As per our conversation 9/28/99
please find a drawing of the area in front
of the Camp that we need to repair. We
are getting our estimates together and
would like to fix this as soon as possible.
If you could show up our permit based
on the guidelines that we discussed. We
would implement them to the letter. I
will come by in several days and pay
for the permit. I sincerely appreciate your
help. We want to see really what a
contractor can get for us. No one will
be able to fix this this fall.

Sincerely,

Jet Matthews

LUKENS Island Hunting Club.

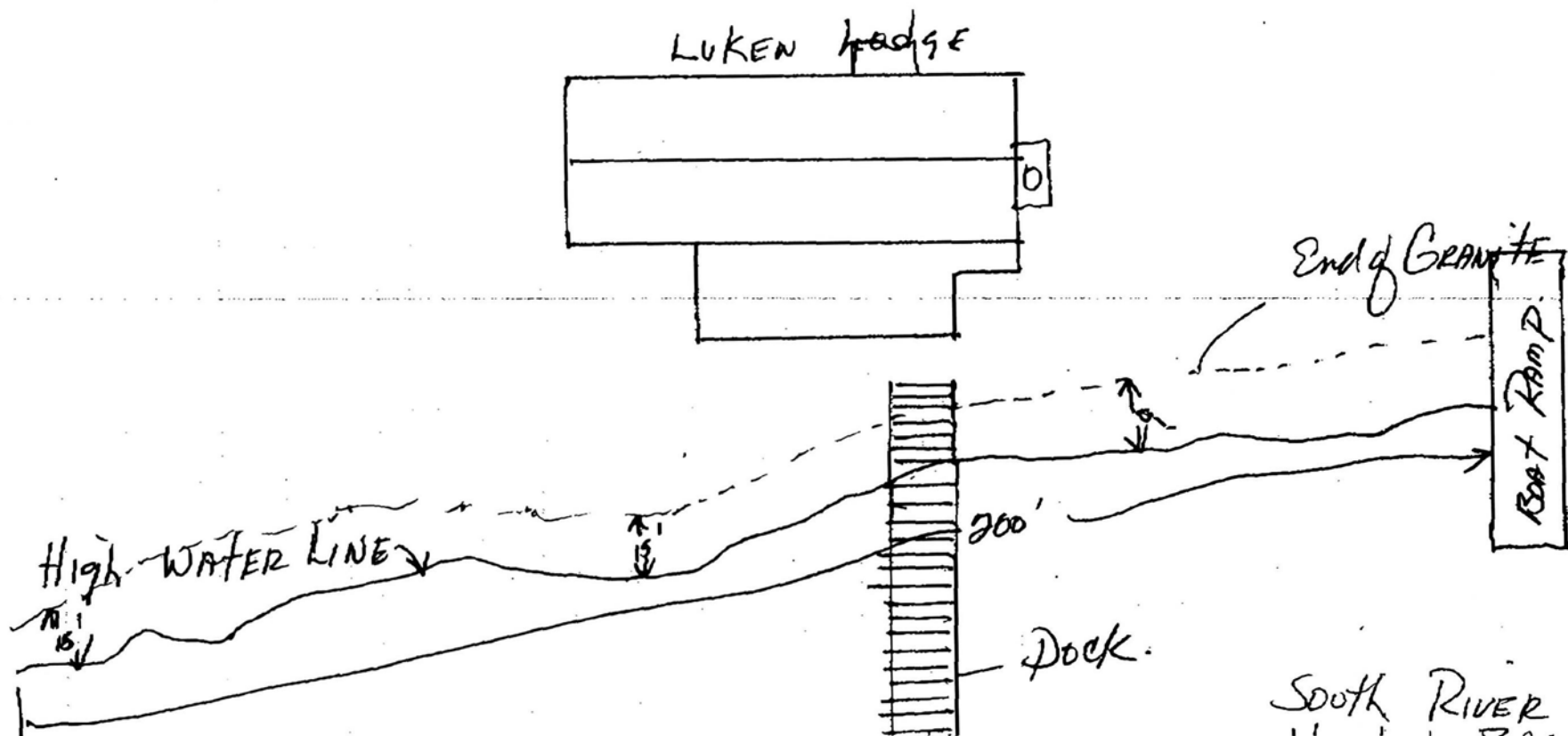
C/o JET MATTHEWS

2445 TEMPLES Pt. Rd.

HAVELock, N.C.

28532

PHONE 444-1805



=== COVER PAGE ===

TO: _____

FAX: 2473330

FROM: MATTHEWS POINT YACHT

FAX: 2524443262

TEL: 2524441805

COMMENT:



CAMA / DREDGE & FILL
GENERAL PERMIT

New Modification Complete Reissue Partial Reissue

Amo

5/6/10 156

NP 55358C

Previous permit # _____
Date previous permit issued _____

As authorized by the State of North Carolina, Department of Environment and Natural Resources and the Coastal Resources Commission in an area of environmental concern pursuant to 15A NCAC

7H.1300

Rules attached.

Applicant Name Lukens Land & Timber, LLC Baker
Address 5224 Driftwood Lane
City Morehead City State NC ZIP 28557
Phone # (252) 247-6444 Fax # ()
Authorized Agent _____

Project Location: County Carteret
Street Address/ State Road/ Lot #(s) Lukens Island @ Lukens Lodge
Subdivision _____
City Beaufort ZIP 28516
Phone # () _____ River Basin Neuse
Adj. Wtr. Body South River (nat./man./unkn)
Closest Maj. Wtr. Body Neuse River

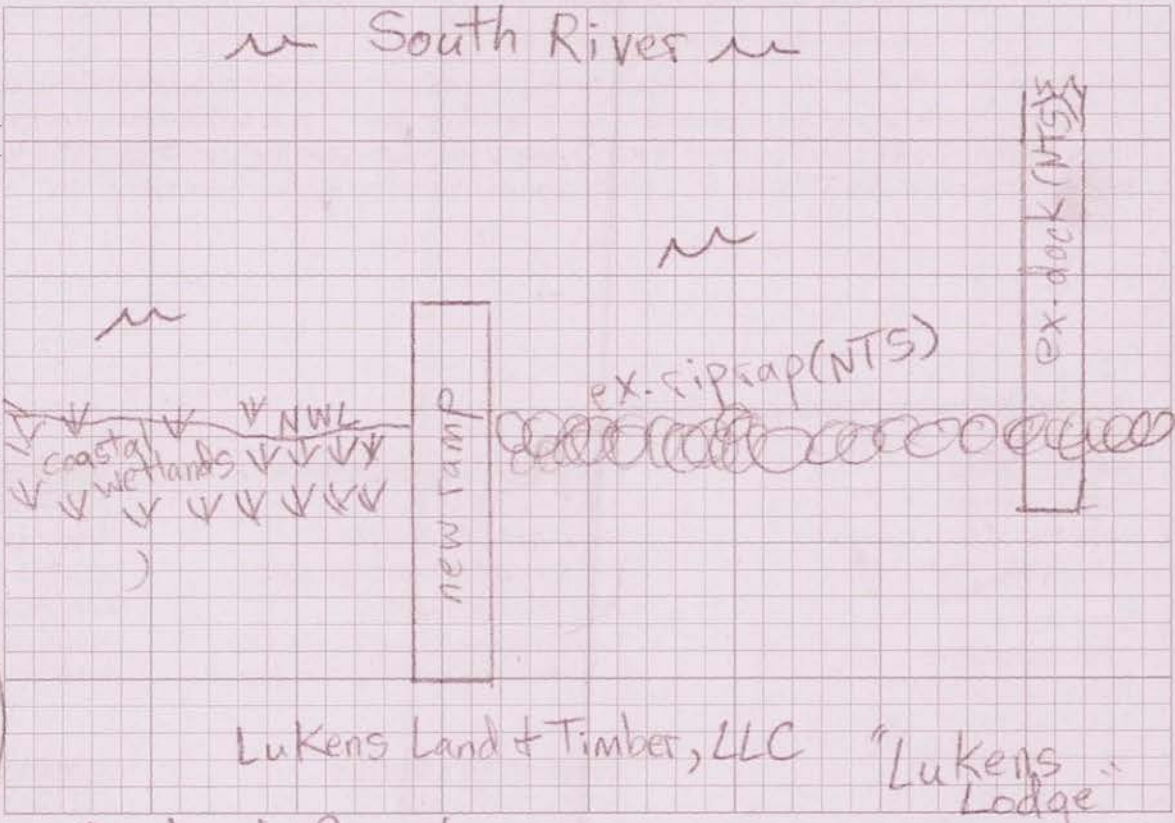
Affected CW EW PTA ES PTS
 OEA HHF IH UBA N/A
AEC(s): PWS: _____ FC: _____

ORW: yes / no PNA yes / no Crit.Hab. yes / no

Type of Project/ Activity Replace existing boat ramp

(Scale: 1" = 30')

Pier (dock) length _____
Platform(s) _____
Finger pier(s) _____
Groin length number _____
Bulkhead/ Riprap length avg distance offshore _____ max distance offshore _____
Basin, channel _____
cubic yards _____
Boat ramp 12' x 60'
Boathouse/ Boatlift _____
Beach Bulldozing _____
Other _____
Shoreline Length >1,000'
SAV: not sure yes no
Sandbags: not sure yes no
Moratorium: n/a yes no
Photos: yes no
Waiver Attached: yes no



A building permit may be required by: Carteret County See note on back regarding River Basin rules.

Notes/ Special Conditions No excavation or fill of Coastal Wetlands. Boat Ramp is not to exceed 20' waterward.

Agent or Applicant Printed Name Mack Baker
Signature Mack Baker ** Please read compliance statement on back of permit **
Application Fee(s) \$200 Check # 1533

Permit Officer's Signature Brad Connell
Issuing Date 5/5/10 - 5/1/11 Expiration Date
Local Planning Jurisdiction Beaufort Rover File Name L050509A

Statement of Compliance and Consistency

This permit is subject to compliance with this application, site drawing and attached general and specific conditions. Any violation of these terms may subject the permittee to a fine or criminal or civil action; and may cause the permit to become null and void.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. The applicant certifies by signing this permit that 1) prior to undertaking any activities authorized by this permit, the applicant will confer with appropriate local authorities to confirm that this project is consistent with the local land use plan and all local ordinances, and 2) a written statement or certified mail return receipt has been obtained from the adjacent riparian landowner(s).

The State of North Carolina and the Division of Coastal Management, in issuing this permit under the best available information and belief, certify that this project is consistent with the North Carolina Coastal Management Program.

River Basin Rules Applicable To Your Project:

- Tar - Pamlico River Basin Buffer Rules
- Neuse River Basin Buffer Rules

Other: _____

If indicated on front of permit, your project is subject to the Environmental Management Commission's Buffer Rules for the River Basin checked above due to its location within that River Basin. These buffer rules are enforced by the NC Division of Water Quality. Contact the Division of Water Quality at the Washington Regional Office (252-946-6481) or the Wilmington Regional Office (910-796-7215) for more information on how to comply with these buffer rules.

Division of Coastal Management Offices

Raleigh Office

Mailing Address:
1638 Mail Service Center
Raleigh, NC 27699-1638

Location:
2728 Capital Blvd.
Raleigh, NC 27604
919-733-2293
Fax: 919-733-1495

Morehead City Headquarters

400 Commerce Ave
Morehead City, NC 28557
252-808-2808/ 1-888-4RCOAST
Fax: 252-247-3330
(Serves: Carteret, Craven, Onslow -above
New River Inlet- and Pamlico Counties)

Elizabeth City District

1367 U.S. 17 South
Elizabeth City, NC 27909
252-264-3901
Fax: 252-264-3723
(Serves: Camden, Chowan, Currituck,
Dare, Gates, Pasquotank and Perquimans
Counties)

Washington District

943 Washington Square Mall
Washington, NC 27889
252-946-6481
Fax: 252-948-0478
(Serves: Beaufort, Bertie, Hertford, Hyde,
Tyrrell and Washington Counties)

Wilmington District

127 Cardinal Drive Ext.
Wilmington, NC 28405-3845
910-796-7215
Fax: 910-395-3964
(Serves: Brunswick, New Hanover,
Onslow -below New River Inlet- and
Pender Counties)

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

I hereby certify that I own property adjacent to Lukens Land & Timber
(Name of Property Owner)

property located at Lukens Island
(Lot, Block, Road, etc.)

on South River, in Carteret County, N.C.
(Waterbody) (Town and/or County)

Applicant's phone # 252-247-6444 Mailing Address: 5224 Driftwood Lane
Morehead City, NC 28557

He has described to me, as shown below, the development he is proposing at that location, and, I have no objections to his proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT:
(To be filled in by property owner proposing development)

Replace Boat Ramp and add Breakwater Walls

(Information for Property Owner Applying for Permit)

5224 Driftwood Lane
Mailing Address
Morehead City, NC 28557
City/State/Zip
252-247-6444
Telephone Number

Aaron Mack Baker 4/6/2010
Signature Date

(Riparian Property Owner Information)

Charles Brinson
Signature
Charles Brinson
Print or Type Name
919-965-3790
Telephone Number
4/20/10
Date

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

I hereby certify that I own property adjacent to Lukens Land & Timbers
(Name of Property Owner)

property located at Lukens Island
(Lot, Block, Road, etc.)

on South River, in Carteret County, N.C.
(Waterbody) (Town and/or County)

Applicant's phone # 252-247-6444 Mailing Address: 5224 Driftwood Lane
Morehead City, NC 28557

He has described to me, as shown below, the development he is proposing at that location, and, I have no objections to his proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT:
(To be filled in by property owner proposing development)

Replace Boat Ramp and add Breakwater Walls

(Information for Property Owner Applying for Permit)

(Riparian Property Owner Information)

5224 Driftwood Lane
Mailing Address

[Signature]
Signature

Morehead City, NC
City/State/Zip

ELECO, INC.

Print or Type Name

252-247-6444
Telephone Number

252-637-4122

Telephone Number

Aaron Mark Baker

4/6/2010
Date

4/14/10

Date

7009 2250 0003 7489 5025

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 City, State, ZIP+4 **SPLMA NC 28560**

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Total Postage & Fees	\$ 6.00

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 Postmark Here
 NC 28551
 04/06/2010

Sent To **ELECO, INC.**
 Street, Apt. No., or PO Box No. **PO BOX 599**
 City, State, ZIP+4 **New Bern, NC 28560**

PS Form 3800, August 2006 See Reverse for Instructions

NC Division of Coastal Mgt. Habitat Impact Computer Sheet

Applicant: Lukens Land and Timber, LLC

Date: May 5, 2010

General Permit #: 55358C

Describe below the HABITAT disturbances for the application. **All values should match the name, and units of measurement found in your Habitat code sheet.**

Habitat Name	DISTURB TYPE Choose One	TOTAL Sq. Ft. (Applied for. Disturbance total includes any anticipated restoration or temp impacts)	FINAL Sq. Ft. (Anticipated final disturbance. Excludes any restoration and/or temp impact amount)	TOTAL Feet (Applied for. Disturbance total includes any anticipated restoration or temp impacts)	FINAL Feet (Anticipated final disturbance. Excludes any restoration and/or temp impact amount)
SB	Dredge <input type="checkbox"/> Fill <input checked="" type="checkbox"/> Both <input type="checkbox"/> Other <input type="checkbox"/>	240	240		
HG	Dredge <input type="checkbox"/> Fill <input checked="" type="checkbox"/> Both <input type="checkbox"/> Other <input type="checkbox"/>	480	480		
	Dredge <input type="checkbox"/> Fill <input type="checkbox"/> Both <input type="checkbox"/> Other <input type="checkbox"/>				
	Dredge <input type="checkbox"/> Fill <input type="checkbox"/> Both <input type="checkbox"/> Other <input type="checkbox"/>				
	Dredge <input type="checkbox"/> Fill <input type="checkbox"/> Both <input type="checkbox"/> Other <input type="checkbox"/>				

nc dmf shellfish lease gis tool - 5 x NC DMF Shellfish Leasing Tool x +

https://www.arcgis.com/apps/webappviewer/index.html?id=de86f3bb9e634005b12f69a8a5947367&extent=-8551979.8781%2C4121555.1994%2C-8515290.1046%2C4140072.0696%2C102100

NC DMF Shellfish Leasing Tool

Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Submerged Lands

-

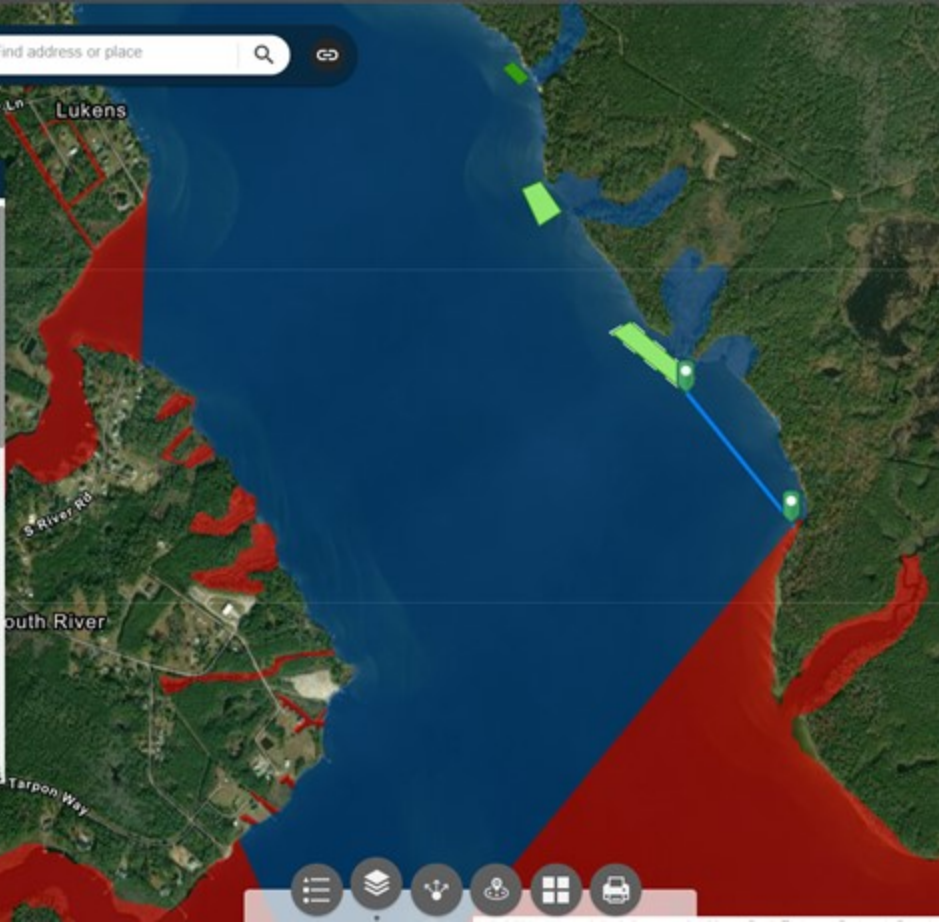
Layer List

- National Estuarine Research Reserves ...
- Wildlife Boating Locations ...
- Primary Nursery Areas ...
- Permanent Secondary Nursery Areas ...
- Special Secondary Nursery Areas ...
- Submerged Lands ...
- Taking Crabs with Dredge ...
- Temporary Shellfish Closures ...
- Trawl Net Prohibited ...
- Trip Ticket Waterbodies ...
- 2020 Orthoimagery ...



Layer List

- Layers
- Leases
- Shellfish Growing Area Boundaries
- Shellfish Growing Areas
- Submerged Aquatic Vegetation
- Cultch Planting Sites
- Oyster Sanctuaries
- Artificial Reefs
- Core Sound Moratorium - Shellfish Lease
- Bogue Moratorium - Shellfish Lease
- New Hanover Moratorium - Shellfish Lease



Measurement

Feet

Measurement Result

1,694 Feet

Clear

Press CTRL to enable snapping

-76.563 34.960 Degrees



nc dmf shellfish lease gis tool - 5 x NC DMF Shellfish Leasing Tool x +
https://www.arcgis.com/apps/webappviewer/index.html?id=de86f3bb9e634005b12f69a8a5947367&extent=-85.1979,8781%2C4121555.1994%2C-85.15290,1046%2C4140072.0696%2C102100

NC DMF Shellfish Leasing Tool Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Submerged Lands

Measurement

Yards

Measurement Result

57.1 Yards

Clear

Press CTRL to enable snapping

-76.575 34.966 Degrees

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nc dmf shellfish lease gis tool - 5 x NC DMF Shellfish Leasing Tool x +
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NC DMF Shellfish Leasing Tool Find address or place

Legend

Leases

- Proposed - Water Column
- Proposed - Bottom
- Water Column
- Bottom
- Franchise
- Research Demonstration
- Terminated

Submerged Lands

Measurement

Yards

Measurement Result

24.7 Yards

Clear

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-76.572 34.965 Degrees

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State of North Carolina
Department of Justice
P.O. BOX 629
RALEIGH
27602-0629

LACY H THORNBURG
ATTORNEY GENERAL

5 February 1985

MEMORANDUM

TO: Mr. Vernon Bevill
Executive Director
Wildlife Resources Commission

FROM: J. Allen Jernigan *Allen Jernigan*
Associate Attorney General

RE: Regulation of Hunting from Duck Blinds
in Proximity of Occupied Dwellings

The Attorney General's Office recently received and responded to a citizen inquiry from a Mr. Leigh Winslow, Jr. of Hertford, concerning hunting from a duck blind located on the Perquimans River approximately fifty yards from his home. (Letter and response attached). In my response, I informed Mr. Winslow that my research uncovered no state laws, regulations or policies which prohibited duck hunting from blinds located in such proximity to occupied dwellings.

The purpose of this memorandum is to inform your office of this situation, and to forward to you a response from Joseph H. Henderson of the Department of Administration's State Property Office which expresses concern respecting this situation. The State Property Office regulates state-owned lands, including the submerged lands beneath the Perquimans River upon which the duck blind in question is located.

Thank you for your attention to this matter. If I may be of assistance, please do not hesitate to contact me at 3-9039.

/bs

Attachments

cc: Joseph H. Henderson
Reggie Watkins
Dan McLawhorn



1504

State of North Carolina
Department of Justice

RUFUS L. EDMISTEN
ATTORNEY GENERAL

P. O. BOX 829
RALEIGH
27602-0829

4 December 1984



Mr. Leigh Winslow, Jr.
Route 3, Box 66
Hertford, North Carolina 27944

RE: Regulation of duck blinds

Dear Mr. Winslow:

Your letter of November 17, 1984 regarding the location of a duck blind in the Perquimans River near Hertford, was recently forwarded to me for response. As a matter of state law and long-standing policy, the Attorney General's Office provides legal counsel and advice only to its clients, the State of North Carolina, and its agencies and officials. This office, however, has researched the general question which your letter presented, and I am happy to provide you with the following information.

The issue your letter raises appears first to have arisen in the 1846 North Carolina Supreme Court case of Hatfield v. Grimsted, 29 NC 139 (1846). From that decision, it appears that a landowner may prevent persons from hunting from a duck blind, if he owns the land on which the blind is located. Under North Carolina law, however, lands beneath navigable waters such as the Perquimans River, are generally considered to be held by the State in public trust for the use and benefit of all the State's citizens. This common law principle has been applied in this State and most others which evolved from English colonial areas, and has been construed to include the hunting of waterfowl.

Although the Wildlife Resources Commission is authorized by statute to regulate hunting in North Carolina, the Commission does not, at this time, regulate or license duck blinds in Perquimans County. Only Currituck County, by virtue of special local legislation creating the Currituck

Mr. Leigh Winslow, Jr.

4 December 1984

Page 2

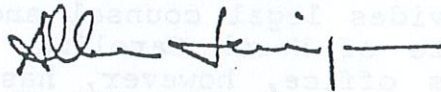
County Game Commission, issues licenses to control the location of duck blinds.

Generally, the regulation of "development" activities, including the construction of structures, in areas of environmental concern such as estuarine or navigable waters, is within the jurisdiction of the Coastal Resources Commission (CRC) under the Coastal Area Management Act (CAMA). (North Carolina General Statute 113A-100, et seq.) Currently, however, the CRC does not require CAMA permits for the construction of duck blinds. At this time, this office is not aware of any State law which prohibits the construction of duck blinds in the vicinity of occupied dwellings.

I hope this information is of assistant to you. Perhaps consultation with a private attorney could yield more positive results. If I may be of further assistance, please feel free to contact me.

Sincerely,

RUFUS L. EDMISTEN
Attorney General



J. Allen Jernigan
Associate Attorney General

JAJ/dw

cc: Preston Page
Reggie Watkins
Charles Holliday

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 581
SENATE BILL 616

AN ACT TO PROVIDE FOR SAFE DISTANCES FOR HUNTING MIGRATORY
WILD WATERFOWL IN CARTERET AND PAMLICO COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Except as provided in Section 2 of this act, it is unlawful to take migratory wild waterfowl within 500 yards of another person's permanently established hunting location.

Sec. 2. This act does not apply to a person taking migratory wild waterfowl:

(1) On property of which he is the landholder or has the landholder's permission to hunt; or

(2) Within the riparian water area of property of which he is the landholder or has the landholder's permission to hunt; or

(3) If he comes within 500 yards of another person's permanently established hunting location only after legally shooting at migratory wild waterfowl and while in active pursuit of a visible, crippled bird.

Sec. 3. The definitions of Subchapter IV of Chapter 113 of the General Statutes apply in interpreting this act. A "permanently established hunting location" is a blind, float, raft, mat, or other buoyant craft or any other location, position, or device that is permanently established for hunting migratory wild waterfowl at a specific site by:

(1) The landholder of the property; or

(2) The riparian landholder, if the site is on or in water and hunting rights in that water are not controlled by someone other than the riparian landholder; or

(3) A person who has written permission to establish the permanent site from a landholder who would qualify under subdivisions (1) or (2).

Sec. 4. Any person who violates this act is guilty of a misdemeanor. A first offense is punishable by a fine of not less than ten dollars (\$10.00) nor more than two hundred fifty dollars (\$250.00), imprisonment not to exceed five months, or both. A second offense is a misdemeanor punishable by mandatory revocation of the violator's hunting licenses and cancellation of all his hunting privileges for one year and by fine, imprisonment or both in the discretion of the court. The court must notify the North Carolina Wildlife Resources Commission of such revocation of licenses and cancellation of privileges.

Sec. 5. This act applies only to the counties of Carteret and Pamlico.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of June, 1981.

State of North Carolina

Carteret County

AFFIDAVIT

The undersigned, having first been duly sworn, deposes and states as follows:

1. My name is Steve Trowell and I am, eighteen years of age or older, and a citizen and resident of Bertie County, North Carolina.
2. The information provided herein is based on my personal knowledge, and if upon information and belief, I believe it to be true.
3. I worked as a field representative for the Division of Coastal Management, the agency responsible for the administration of the Coastal Resource Commission's rules under the Coastal Area Management Act (CAMA) G.S 113A-100 and Dredge and Fill Law G.S. 113-229 for 21 years and have been a private consultant working with landowners on riparian issues and State and Federal permits regarding the same for 4 years.
4. I am familiar with the North Carolina Administrative Code (NCAC) for water dependent development in both the CRC (15A NCAC 07H.0208) and Environmental Management Commission's (EMC) rules for water dependent development and the EMC's definition of a water dependent structure, as defined by 15A NCAC 02B .0202(59).
5. I administered the CRCs rules for water dependent development, both through enforcement and permitting, for two decades and have advised clients for the last 5 years that included projects that must meet the EMC's definition of a water dependent structure for location within the Neuse and Tar-Pamlico River Basins Riparian Buffer, 15A NCAC 02B.0714 and 15A NCAC 02B.0734 respectively.
6. It is my opinion that a duck blind in the water or one on land that is meant to hunt ducks on an open body of water is a water dependent structure as defined by 15A NCAC 02B .0202(59).
7. Duck blinds are a water dependent normal pile supported structure because they are used to hunt a water dependent bird, waterfowl.
8. Duck blinds require access or proximity to or siting within surface waters to fulfill its purpose.
9. Therefore, duck blinds are a water-dependent shore based structure which no shellfish lease should be allowed closer than 250 feet, as provided in 15A NCAC 03O .0201

Further Affiant Sayeth Not.

This the 23 day of May, 2023



Steve Trowell

State of North Carolina

Carteret County

AFFIDAVIT

The undersigned, having first been duly sworn, deposes and states as follows:

1. My name is Gary A. Mitchell and I am, eighteen years of age or older, and a citizen and resident of Bladen County, North Carolina.
2. The information provided herein is based on my personal knowledge, and if upon information and belief, I believe it to be true.
3. I worked as a regulatory biologist for the U.S. Army Corps of Engineers for 4 years and have been a private consultant working with landowners on riparian issues and State and Federal permits regarding the same for over 39 years.
4. I am familiar with the buffer rules for a water dependent structure, as defined by 15A NCAC 02B .0202(59).
5. I deal with this statute on an almost daily basis and have for decades.
6. It is my opinion that a duck blind in the water or one on land that is meant to hunt ducks on an open body of water is a water dependent structure as defined by 15A NCAC 02B .0202(59).
7. Duck blinds are a water dependent structure because they are used to hunt water dependent birds (waterfowl).
8. Duck blinds require access or proximity to surface waters to fulfill their essential purpose, and are therefore necessarily constructed in or immediately adjacent to bodies of water.
9. Therefore, a duck blind constitutes a water-dependent structure which, pursuant to 15A NCAC 030 .0201, no shellfish lease can be permitted within 250 feet.
Further Affiant Sayeth Not.

This the 23 day of May, 2023



Gary A. Mitchell

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 EHR 01382

8 1/2 Marina Village John F Matthews VP Petitioner, v. NC Department of Environmental Quality Respondent, v. Samuel G. Boyd Respondent-Intervenor.	FINAL DECISION
---	-----------------------

This contested case was heard by Administrative Law Judge Melissa Owens Lassiter on September 20-22, 2017 and January 8-10, 2018, in Beaufort, North Carolina, pursuant to Petitioners filing a contested case petition on February 27, 2017, appealing Respondent's decision to issue a shellfish bottom lease and a water column lease to Respondent-Intervenor.

APPEARANCES

For Petitioners: Keith H. Johnson, Robert John Glowacki
Poyner Spruill LLP, Raleigh, North Carolina

For Respondent: Scott A. Conklin, Thomas Hill Davis, Assistant Attorneys General
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent-Intervenor: Stevenson L. Weeks,
Wheatly, Wheatly, Weeks, Lupton, & Massie
Beaufort, North Carolina

ISSUE

Whether Respondent otherwise substantially prejudiced Petitioners' rights and acted erroneously, or acted arbitrarily or capriciously when it granted Respondent-Intervenor's application for a shellfish bottom lease and the associated water column lease?

STATUTES AND RULES AT ISSUE

N.C. General Statute, Chapter 113, Article 16
15A NCAC 03O .0201- .0211 (Marine Fisheries)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioners: 1 - 8, 13, 17(A-DD), 20 - 28

For Respondent: 1 - 24

For Respondent-Intervenor: 2 - 11, 14 - 16, 16A, 17, 17A, and 18

WITNESSES

For Petitioners: The Honorable Alfred Braswell Cooper, III; Thomas Edward Briley, Jr; James Hinton Pugh Bailey, Jr.; Adrian Tyndall; Rebecca Bunn Matthews; Charles Steven Smith; Mike Gurrera; John Heath; Floyd Cohoon; Christopher Hill; Leslie Clinton Collins

For Respondent: Stephen Murphey; Officer Joe Marlette; Captain Steven Anthony; Dr. Braxton Davis

For Respondent-Intervenor: David Sledge; John Hopkins; Sammy Boyd; Charles Steven Smith

FINDINGS OF FACT

BASED UPON careful consideration of the preponderance of the evidence presented at the contested case hearing, including the undersigned's assessment of each witness' credibility and testimony, and the documents and exhibits admitted into evidence, the undersigned finds as follows:

PARTIES

1. Petitioner 8½ Marina Village (8½ Marina) is the homeowners' association for a condominium development located on Bogue Sound in Atlantic Beach, North Carolina. Petitioner John F. Matthews was the Vice President of 8½ Marina at the time the contested case petition was filed, and is an owner of a residence at 8½ Marina.
2. Respondent North Carolina Department of Environment Quality, Division of Marine Fisheries (Division or DMF) is a state agency authorized to administer and implement the North Carolina laws and rules for the protection of marine and estuarine fisheries and habitats of the State.
3. Respondent-Intervenor Sammy G. Boyd (Respondent-Intervenor) is the holder of the approved shellfish bottom and water column lease at issue in this case.

LEASE SITE

4. On June 2, 2016, Respondent-Intervenor applied for a shellfish bottom lease (181458) and associated water column lease (1871466) (hereinafter referred to collectively as the “lease”). (Resp. Exh. 6). The lease application included a management plan, a site map, a water column amendment application, and a site view map. (Resp. Exh. 6).

5. The lease site is located in Bogue Sound, east of the Atlantic Beach Bridge, between the navigation channel going out of 8½ Marina to the west, and the navigation channel going out of Triple S Marina to the east. The lease is approximately .690 miles to the northeast of the navigation channel as it enters 8½ Marina. (T p 669). (Resp. Exh. 1).

6. The lease site is not located in a marked navigation channel. (T p 758).

7. The lease site is located approximately 381 feet off the shore. (Resp. Exh. 1). The riparian owner to the south of the lease site is David Sledge. (T pp 942-45). 8½ Marina is not a riparian owner adjacent to the lease. (T p 668).

8. Respondent-Intervenor also applied for adjoining shellfish bottom leases and associated water column leases located to the east and west of the lease site, respectively. The Division denied these lease sites. (Resp. Ex. 1).

9. There is an approximate six-inch difference in depth between the northern boundary of the lease site and the southern boundary. (T p 759). At low tide, the depth of the water within the lease site is on average approximately two feet. (T p 760).

REVIEW OF APPLICATION

10. When determining whether to grant or deny a lease, the Division determines whether the lease meets the minimum statutory criteria set forth in N.C. Gen. Stat. §§ 113-202 and 202.1. (T p 852).

11. One minimum statutory criteria of particular relevance to this case is that “[c]ultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources.” N.C. Gen. Stat. § 113-202(a)(3). The phrase “compatible with” under N.C. Gen. Stat. § 113-202(a)(3) is not further defined by statute or regulation. DMF does not interpret this standard to mean there can be no impact to other public uses. Instead, DMF interprets this minimum standard to mean that existing uses must be able to exist along with the shellfish lease within the general area at the same time. (T pp 604, 854-55).

12. Additionally, DMF “may not grant a new lease in an area heavily used for recreational purposes.” N.C. Gen. Stat. § 113-202(b). The phrase “area heavily used for recreational purposes” under N.C. Gen. Stat. § 113-202(b) is not further defined by statute or regulation. The Division interprets the phrase “area heavily used for recreational purposes” pursuant to this subsection as an area where recreational use is concentrated relative to the surrounding water body. (T pp 853-54). The Division makes this determination by examining

whether there is heavy recreational use concentrated within the lease footprint. (T pp 853-54). Usually, this is an area where people tend to congregate, such as a popular sandbar, beach, or particular fishing spot. (T pp 606-07).

13. Water column leases must also “not significantly impair navigation.” N.C. Gen. Stat § 113-202.1(b)(1). The phrase “significantly impair navigation” is not further defined by statute or rule. The Division does not interpret this minimum standard to require that there be no impact to navigation. The Division interprets “significantly impair navigation” under this subsection to exclude leases in marked channels or in unmarked channels if the unmarked channel is the only deep passage through the area. The Division also prohibits a lease from taking up more than a third of the water body in a smaller water body such as a creek, to allow plenty of access around the lease so that individuals can get by. (T pp 608-09).

14. After receiving Respondent-Intervenor’s lease application and determining that the application was complete, DMF provided Respondent-Intervenor with four laminated proposed lease signs, and instructed Respondent-Intervenor to put a sign on each corner of the proposed lease site. The signs make the public aware that the area is being considered for a shellfish lease and provides contact information for DMF. Respondent-Intervenor marked the lease site pursuant to DMF’s requirements. (T pp 613, 631-32).

15. After Respondent-Intervenor marked the lease site with signs, the Division performed a site investigation on July 14, 2016. During its investigation of the lease site, Division staff looked for submerged aquatic vegetation and shellfish. (T p 614, Resp. Exh. 7). The Division determined that there was no submerged aquatic vegetation during the site visit. (T p 660). It also determined that the site did not contain a natural shellfish bed. (T p 667).

16. After the site investigation, DMF staff developed maps showing the location of the site, and sent the maps for internal review within DMF to the Marine Patrol, the Fisheries Management Section, and Shellfish Sanitation. DMF also requested the Division of Coastal Management review the proposed lease site. (T pp 616-17).

17. The Fisheries Management Section within DMF has the responsibility of managing sustainable fisheries for the benefit of the people of North Carolina. The Division seeks input from the Fisheries Management Section to determine whether there may be an issue with traditional fishing gear use, or if the area is considered under some sort of management status. (T p 618). Trish Murphey with Fisheries Management opined that the proposed lease would be compatible with recreational, commercial fishing, and shellfishing interests in the area, and would not adversely affect navigation. (Resp. Exh. 9).

18. Shellfish Sanitation determined that the lease was in an area that is approved for the harvest of shellfish, and that the status of the area had not changed within the last year. (Resp. Exh. 9).

19. The Division's usual practice is to request comment from the Division of Coastal Management ("DCM") on leases because they are familiar with coastal development issues. The Division did not start requesting comments from DCM until early 2016. Therefore, comment from DCM is relatively new. The Comments provided by DCM for this lease site were general comments that DCM provides on nearly all water column leases and are not site-specific comments. (T p 624).

20. Out of the three commenting sections within the Division, Fisheries Management, Shellfish Sanitation, and Marine Patrol, the Marine Patrol is the section that usually has the most information pertaining to the public's recreational use of an area. This is because the Marine Patrol officer assigned to the specific area spends more time in that area than anyone else in the Division. (T p 623).

21. The shellfish leasing program sought input from Captain Steven Anthony from Marine Patrol. Captain Anthony is the District Captain for the Central District. Captain Anthony began working for DMF in 1995. Captain Anthony was a pilot and then chief pilot for the Division before becoming a captain over ten years ago. Captain Anthony oversees 12 field officers, 2 sergeants, and a pilot. His district includes Bogue Sound, Core Sound, Neuse River, Pamlico River, and part of the Pamlico Sound. (T pp 816-17).

22. Captain Anthony forwarded the request for comments to Officer Marlette, the local officer charged with patrolling the area in which the lease site is located. (T pp 817-18).

23. Officer Marlette has been a marine patrol officer for approximately ten years. Prior to working for the Division, Officer Marlette served in the military, worked for the Lenoir County and Carteret County sheriffs' offices, and ran a forty-passenger ferry. (T p 753).

24. Officer Marlette is specifically assigned to work the area around Morehead City, which is the area marked as 215 on Respondent's Exhibit 19. This area includes the specific area shown in Respondent's Exhibit 1, which includes the lease site. (T p 754). Officer Marlette has been assigned to this location for approximately nine and a half years. (T p 780).

25. Officer Marlette spends the majority of his patrol time within the area shown as Respondent's Exhibit 1, because there is a lot of activity in the Intracoastal Waterway and the State Port area. (T pp 754-55). Officer Marlette's patrol time includes weekends and nights. (T p 755). It is a necessary part of Officer Marlette's duties to know those areas within his patrol area where recreational users tend to congregate to ensure individuals in his patrol area are complying with the rules and laws pertaining to boat safety and fishery resources. (T pp 753, 756).

26. Officer Marlette visited the lease site before submitting comments. The lease site was clearly marked with poles and signs with the lease number and the applicant's name. (T p 757). Officer Marlette did not notice anything about the lease site that would distinguish it from the surrounding area in terms of recreational use. (T p 758). Based on his observations, Officer Marlette concluded that there was very minimal recreational activity in and around the lease area.

27. Officer Marlette has observed that the majority of boating traffic in the general vicinity uses the marked channels, including the Intracoastal Waterway. (T pp 756, 802). Officer Marlette had not noticed any particular concentration of boating within close proximity to the area where the lease is located prior to the time that the lease was granted. (T p 759).

28. Officer Marlette would occasionally see paddle boarders going up and down the shoreline within the general vicinity of the lease site but not many. (T p 811). Officer Marlette has seen some kayakers go up and down the shoreline within the general vicinity of the lease during the summer. (T p 758). Officer Marlette opined that there is still enough room for kayakers to paddle between the lease and the shoreline. (T p 763).

29. At night time, Officer Marlette has also seen flounder giggers around the shoreline within the general vicinity. However, fishing activities were not concentrated within close proximity to the lease site. (T p 758). Officer Marlette opined that individuals could still fish in the area around the lease site. (T p 764).

30. Officer Marlette has seen only a few jet skis in the general vicinity of the lease site. Officer Marlette may occasionally see a Hobie Cat sailboat on the outside of the lease site, but nothing within the lease site. He opined that the granting of the lease would not prevent future sailing activity within the general vicinity of the lease site. (T p 811).

31. Based on his knowledge of the lease site, Officer Marlette submitted the comments contained in Respondent's Exhibit 20. Specifically, Officer Marlette commented that:

- a) the lease would be compatible with fishing, boating, and other recreational interests, and that the proposal is not in a high traffic area;
- b) the lease would adversely affect navigation in the area, but is not in a channel;
- c) the lease would be compatible with commercial fishing and shellfishing interests in the area; and
- d) he had not received any public comment concerning the proposed lease.

(Resp. Exh. 20).

32. After completing the comment form marked as Respondent's Exhibit 20, Officer Marlette discussed the lease site and his answers on the form with Captain Anthony. Officer Marlette informed Captain Anthony that there was very minimal activity in and around the lease site. (T p 801).

33. Captain Anthony was somewhat familiar with the location of the lease site. Specifically, when Captain Anthony was a pilot for the Division, he would fly out of the Beaufort Airport and over the general area around the lease site. (T p 820). Further, Captain Anthony has passed by this area about ten or twelve times within the last year while going out in the field with officers in his office. (T p 821). The boat traffic Captain Anthony witnessed in the general area was mostly to the north of the lease site, and coming in and out of the channels to the marinas. In his opinion, Captain Anthony thought there was no reason the recreational activities he observed could not continue with the proposed lease in place. (T p 823).

34. Captain Anthony questioned Officer Marlette as to why he had commented that the proposed lease site would adversely affect navigation. (T p 819). Officer Marlette explained to Captain Anthony that anything that is put in the water is going to affect navigation, because boats would have to go around it. When Captain Anthony asked whether one could go around the lease, Officer Marlette explained that there was plenty of room to go around the lease site. (T p 766). Based upon this conversation, Captain Anthony changed the Marine Patrol's written comment to state that the lease would not adversely affect navigation, while commenting: "[n]ot in the channel but small boats do operate in the area." (T p 82). Officer Marlette agreed with this change. (T p 767). Captain Anthony submitted the comments contained in Respondent's Exhibit 21 on behalf of the Marine Patrol to the Respondent's shellfish program. (T p 819-20).

35. N.C. Gen. Stat. § 150B-34(a) provides that the undersigned shall "giv[e] due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency."

36. The undersigned finds the testimony by Officer Marlette to be particularly persuasive as to the level of recreational use in the general and specific areas where the lease site is located, as well as the lease's impact to recreational use and navigation. This weight is based, in part, upon Officer Marlette's years of experience as a marine patrol officer charged with enforcing safety and fishing regulations within the general area of Bogue Sound where the lease is located.

37. Dr. Braxton Davis is the Director of the North Carolina Division of Coastal Management. Dr. Davis also served as Director of the Division of Marine Fisheries from April 2016 to January 2018. (T p 847).

38. Dr. Davis has a great deal of experience in Coastal and Marine Science and Policy, including experience handling user conflicts relating to Marine Resources. This experience includes serving as the Director of the North Carolina's Division of Coastal Management, the Director of the Policy, and Planning Division with the South Carolina Coastal Management Program, and as a policy analyst with the National Oceanic and Atmospheric Administration. Dr. Davis' prior experience and education is summarized in Respondent's Exhibit 22.

39. Dr. Davis has experience with boats as he previously held a Captain's license from the Coast Guard, and previously owned a 30-foot sailboat, a 25-foot power boat, and a 23-foot power boat. Dr. Davis also owns kayaks and a paddle board.

40. Part of Dr. Davis' delegated authority as Director of Marine Fisheries (DMF) is to approve or deny shellfish leases. (T p 850). Dr. Davis has been involved with approximately 40 to 50 lease decisions during his time as Director of Marine Fisheries. (T p 850).

41. After the Fisheries Management Section, Marine Patrol, Shellfish Sanitation Section, and DCM submitted comments on the proposed lease, a memorandum from Mr. Stephen Murphey (Resp. Exh. 9) was sent to Dr. Davis. (T p 628).

42. Mr. Murphey is the current Director of the Division of Marine Fisheries as of January 1, 2018. (T p 593). Mr. Murphy began his employment with the Division of Marine Fisheries in 1987. In 1999, Mr. Murphey transferred to the Shellfish Sanitation section which was with the Division of Environmental Health at the time. In 2015, Mr. Murphey returned to the Division where he was employed as the Section Chief of the Habitat Enhancement Section within the Division. Mr. Murphey served as Section Chief until he was named Director of DMF in January 2018. (T pp 593-94).

43. The memorandum from Mr. Murphey (Resp. Exh. 9) was presented to Dr. Davis so Dr. Davis could determine whether to proceed with a public hearing. Dr. Davis decided to proceed with a public hearing. (T pp 628-29).

44. A Notice for the public hearing for the proposed lease and other proposed shellfish leases was published in the Carteret County News Times, the Jacksonville Daily News, and on the Division's website. In addition, the Division notified an individual at 8½ Marina about the public hearing. (T pp 629-30).

45. On January 18, 2017, DMF staff conducted a public hearing at DMF's central district office in Morehead City. The meeting minutes (Resp. Ex. 15) accurately reflect what was discussed at the public hearing. During the public hearing, the Division received comments both in favor and in opposition to the subject lease. (T pp 638-39, Resp. Exh. 15).

46. In addition to holding a public hearing, the Division also accepted written public comments. (T p 633). The majority of the written comments received by the Division were form letters, such as the letter introduced as Respondent's Exhibit 13. The second paragraph of that letter stated that the lease area is closed to shellfishing. This statement is incorrect as the lease site was not in an area closed to shellfishing. (T pp 633-64).

47. Some of the comments DMF received from the public pertained to concerns regarding the potential impact to recreational use in the general area. (Res Exh. 24).

48. The Division also received comments relating to the proposed leases' effect on the viewshed of the area. The letter introduced as Respondent's Exhibit 14 is an example of such a comment. Nonetheless, the Division does not consider impacts on viewshed as a basis for denying a shellfish lease, as this is not a criterion in the relevant statutes or rules pertaining to shellfish leases. (T pp 635-36).

49. After the public hearing and comment period, Dr. Davis received Mr. Murphey's memorandum that summarized the comments received by the Division during the public hearing. (Resp. Exh. 16). In addition to this Memorandum, Dr. Davis received the entire lease package which included internal comments, as well as the written public comments. (T p 639). Dr. Davis read all of the public comments prior to making his decision in this case. (T p 899). Mr. Murphey then met with Dr. Davis and discussed the lease site further. (T p 640).

50. Dr. Davis has driven his boats by the general area of Bogue Sound where the lease site is located, and hence, has a general familiarity with the boat traffic in that area and the width of the water body. (T pp 865, 928).

51. When determining whether to grant or deny a lease, Dr. Davis considers the minimum statutory criteria described in N.C. Gen. Stat. §§ 113-202 and 113-202.1. (T p 852).

52. In this case, Dr. Davis did not see sufficient evidence during the application review to conclude that there was a concentration of recreational activity within the specific footprint of the lease site. Based upon the evidence, Dr. Davis concluded that the lease site was not within an area heavily used for recreational purposes. (T p 862).

53. Dr. Davis further concluded that the lease would not significantly impair navigation as he did not see sufficient evidence during the application review that the lease site would be located within a navigation channel. He also determined that there would be plenty of area to maneuver around the lease. Dr. Davis also determined that the lease would be compatible with other public uses in the general area. (T p 863).

54. Taking into account public concerns regarding navigation and recreational use, Dr. Davis denied the outer two leases due to: (1) their proximity to the entrance channels to 8½ Marina and Triple S Marina, and (2) to reduce the footprint of the overall area that would be covered to ensure that the lease site would be compatible with recreational activities in the area. (T pp 867-68).

55. The lease site is not in an area that is any more heavily used by recreational users than other areas in which the Division has granted leases. (T p 642).

TESTIMONY FROM RESPONDENT-INTERVENOR'S WITNESSES

56. David Sledge has lived in Carteret County since 1951. (T p 943). Mr. Sledge owns and resides at the property directly in front of the lease site. (T pp 942-43). He has owned this property for over five years. (T p 943).

57. Mr. Sledge has an unobstructed view of the lease site from his house. Mr. Sledge has observed very little boat traffic between Triple S Marina and 8½ Marina. (T pp 944-45, 949). Mr. Sledge may see a boat go by that area once every three days. (T p 945).

58. Mr. Sledge has seen only about four kayaks in the area in front of his property in the seven or eight months preceding his testimony at the hearing on January 9, 2018. (T p 947). Mr. Sledge opined that there was limited kayak traffic because there is no nearby public access.

59. Mr. Sledge and his family own and use kayaks. Mr. Sledge also keeps a boat at Ft. Macon Marina. The proposed lease does not interfere with Mr. Sledge's use of the area around the lease site. (T pp 945-47).

60. John Hopkins has been living at 125 Island Quay Drive for over twenty years. Mr. Hopkins also has an unobstructed view of the lease site from his house. (T pp 959-60). Depending on the weather, Mr. Hopkins sees a tremendous amount of traffic in the Intracoastal Waterway. As Mr. Hopkins gets closer into shore and out of the Triple S, particularly the proposed oyster lease, he estimates that "less than one percent of the boat traffic he has viewed going east-west and west to east are -- are ever anywhere close to shore because it's so shallow there." (T p 961).

61. Mr. Hopkins has seen jet skis in the subject Bogue Sound area, but has not observed any jet skis riding through the lease site, and not that close to shore. (T pp 962, 964). Mr. Hopkins has never observed anyone pulling another individual on a tube behind a boat in the area were the lease site is located. Mr. Hopkins has pulled his son and his son's friends on a tube on numerous occasions, but does not use the area of the lease site as there is not enough water in the area for the outboard motor on his boat. (T p 962).

62. Respondent-Intervenor Boyd has lived in Morehead City for forty-seven years. (T p 969). Mr. Boyd has fished in Bogue Sound since he was about 12 or 13 years old. (T p 970).

63. Mr. Boyd visits the lease site about three times a week during the spring, summer, and fall. He has not seen any boating traffic at the lease site during the times that he has visited the site. (T p 981).

64. Mr. Boyd was familiar with the boat traffic in the area prior to obtaining the lease. The lack of boat traffic in the lease site, and the fact that he would not be infringing or impeding on anyone else, was the reason Mr. Boyd chose that area. (T p 985).

TESTIMONY FROM PETITIONER'S WITNESSES

65. The Town of Atlantic Beach (the Town) also challenged the issuance of the lease at issue in this case by filing a contested case petition (17 EHR 01564). The Town's challenge was consolidated with this contested case for hearing. The Town offered two witnesses in support of its case: The Honorable Alfred Braswell Cooper, III, Mayor of the Town, and Town Councilman Thomas Edward Briley, Jr. The undersigned dismissed the Town's contested case (17 EHR 01564) by Order dated November 3, 2017 for lack of standing pursuant to N.C. Rule of Civil Procedure 41(b) following the close of the Town's evidence. However, the undersigned Granted Petitioner's Motion to adopt the testimony of the Town's witnesses, Mayor Alfred Braswell Cooper, III and Town Councilman Thomas Edward Briley, Jr. as part of this contested case.

66. Atlantic Beach Town Mayor Alfred B. Cooper, III alleged that the Town was concerned about the lease based on potential conflicts with use of the waters of Bogue Sound by tourists. (T p 62). However, the Mayor's concerns were general and not specific to the use of the lease site. The Mayor did not claim any personal use of the lease site, and had not even been to the location for several years. (T p 83). Although the Mayor voiced concerns about potential loss of revenue from tourism and taxes, the Mayor could point to no evidence establishing any such losses, much less any such losses attributable to the lease site. (T pp 63-66).

67. Atlantic Beach Town Councilman Thomas Edward Briley, Jr. is familiar with the general area of the lease site. Despite fishing in the general area, Mr. Briley has never fished within the bounds of the lease site, and has never observed others fishing in the area of the lease site, except perhaps on the outer fringes. Yet, he has seen recreational fishing occur in deeper water offshore of the lease site. (T p 101). Despite the presence of signs marking the lease site since July 2016, Mr. Briley has not personally seen the lease site until after the public hearing on whether to approve the lease in January 2017. (T p 123). Mr. Briley typically passes the lease site on his way to somewhere else. He does not spend much time personally recreating in the area near or around the lease site. (T pp 108, 110). Mr. Briley thinks that boat traffic could still transit the area with the proposed lease in place. (T pp 107-09). He is not concerned with this lease site specifically, but is generally concerned with the potential for future leases in the waters surrounding the Town. (T pp 106, 125).

68. Petitioners offered nine witnesses in support of their case: four residents of 8½ Marina Village, two residents of Triple S Marina, the owner of a jet ski rental outfit, the owner of a local marina, and the technician who took photographs of the lease site on behalf of Petitioners.

69. James Hinton Pugh Bailey, Jr., is the owner of Anchorage Marina in the Town of Atlantic Beach and lives in a home that overlooks the area of Bogue Sound near the lease site. Mr. Bailey described his business and the use of the waters in the area by the boats that use his marina. Mr. Bailey generally explained about use of the waters in the vicinity of the lease site. Although testifying at length about general uses of the waters in the vicinity of the lease site, Mr. Bailey had never seen a boat within the lease site itself. (T pp 172-73). Mr. Bailey opined that there was no need for the boats traversing the general area to cut through the actual lease site. (T pp 174-75). Mr. Bailey similarly noted that the other activities occurring in the general area, such as kayaking, flounder-gigging, and fireworks viewing, do not occur in the lease footprint, and would not be prevented by the presence of the lease. (T pp 176-778).

70. Adrian Tyndall is the owner of Eastern Carolina Computers. At the request of Petitioners, and with Petitioners' knowledge, Tyndall installed a video recorder and digital camera to record activity in the area of the lease site from July 8, 2017 through September 6, 2017. This recording occurred after Respondent granted Respondent-Intervenor's lease, and before the contested case hearing in this matter. (T pp 214-15). On behalf of Petitioners, Mr. Tyndall selected images of east to west boat traffic in the general area of the lease. (Pet. Ex. 17A-17DD). (T pp 217-18). These pictures were selected with the specific purpose of showing boat traffic and other activity in the area and were not random samples. (T pp 236-37). All pictures were taken during the summer tourist season, and all but four of the pictures were taken on weekends. (T pp 235-

36). Much of the activity depicted in the photographs occurred outside the marked lease area. (T p 239).

71. Rebecca Bunn “Bunny” Matthews kayaks in the general area of Bogue Sound east of the Atlantic Beach Bridge, between the channel going out of 8½ Marina, the channel going out of Triple S Marina to the east, and the lease site. (T p 253). On September 20, 2017, the day Ms. Matthews testified in this case, she kayaked in the area between the shore and the southern portion of the lease area. (T pp 262-263).

72. Ms. Matthews has also witnessed small boat traffic in this general area of Bogue Sound. (T pp 258-59, 262). The presence of the lease site did not prevent or impede her continued kayaking in the water area at issue. (T p 263).

73. Charles Steven Smith has fished by wading along the marsh line within sight of the lease site. The majority of his fishing is basically limited to the shoreline and the sloughs in close proximity to 8½ Marina. (T pp 287-288). Mr. Smith has never fished within the lease itself, and the lease site did not affect his fishing. (T pp 284, 288). Although Mr. Smith expressed general concerns regarding small boat traffic, particularly jet skis, in the Bogue Sound area at issue, Mr. Smith does not own a jet ski, and, to his knowledge, no one at 8½ Marina owns a jet ski. He has personally never witnessed any problems with jet skis at the lease site, and there was ample room for jet skis to avoid the lease site. (T pp 285-86, 289).

74. Floyd “Chip” Cohoon owns a unit at 8½ Marina Village and resides there approximately five months during the year. Mr. Cohoon has observed small boat traffic in the lease site. He also cuts through the area on his own skiffs. Mr. Cohoon’s primary concern regarding the lease was for the safety of other users of Bogue Sound that lacked local knowledge and not for the residents of 8½ Marina. The general area of activity he is concerned about runs from the shoreline on the sound side of Atlantic Beach at the south, to roughly the Intracoastal Waterway at the north, and from the Atlantic Beach bridge on the west, to Spoils Island and the North Carolina State Port on the east in Morehead City. (T pp 382, 384). In Mr. Cohoon’s opinion, there is no reason that boaters cannot continue to use the area surrounding the lease site. He does not think the proposed lease will interfere with boat traffic transiting the area. (T pp 386-87). Mr. Cohoon has only seen one or two boats pass through the leased site daily, which he could see from his home at 8½ Marina. (T p 390).

75. Leslie Clinton Collins frequently transits the general area of the lease site in his boats, typically running from east to west along the shoreline when doing so. Mr. Collins drives his boats up and down the Bogue Sound, offshore, and as far north as Ocracoke. (T pp 427-28, 471). Mr. Collins has observed other general recreational activity in the area surrounding the lease site, including the area from the Atlantic Beach Causeway to the N.C. State Port. (T pp 468-69). The majority of the recreational and navigational activity described by Mr. Collins occurs outside of the specific lease site. (T pp 432-35, 472-74). Other than transiting the area and occasional tubing in the vicinity of the lease, Mr. Collins does not personally use the lease site or the surrounding area too much.

76. Mike Gurrera is the owner of AB Water Sports in Atlantic Beach. He is not a resident of 8½ Marina. The majority of AB Watersports' business is jet ski rentals; but it also rents kayaks, paddleboards, and offers parasailing. (T pp 298-99). AB Watersports limits jet ski rentals to the area between the Atlantic Beach causeway and the N.C. State Port. AB Watersports also offers guided tours outside of this area. (T pp 301-02, 312). Mr. Gurrera opined that the lease site is approximately half of one percent of the total riding area between the Atlantic Beach Causeway and the N.C. State Port. (T pp 320-21). Mr. Gurrera also thought that jet skiers could safely pass along the sides of the lease, both the side nearest the shoreline and the side nearest the Intracoastal Waterway. (T p 324).

77. John Heath and Christopher Hill own residences at Triple S Marina, a mobile home community on Bogue Sound on the opposite (eastern) side of the lease from 8½ Marina. (Resp. Exh. 1).

78. Mr. Heath and his family boat in the general area of the lease site between the Atlantic Beach Causeway and the N.C. State Port, and south of the Intracoastal Waterway. Mr. Heath has seen approximately one boat a day go through the lease site. (T p 351). One of Mr. Heath's chief concerns is that he does not want to see the oyster lease from his home. (T pp 353, 361, 366).

79. Mr. Hill and his family boat, tube, paddleboard, and swim in the general area of the lease site between the Atlantic Beach Causeway and the N.C. State Port, and south of the Intracoastal Waterway. (T pp 392-98). Mr. Hill can navigate his boat to the north and south of the lease site as necessary. (T p 407). Even with the PVC pipes marking the lease site, Mr. Hill has continued to tube straight through the lease site as of the date of the hearing. (T pp 408-09).

80. To the extent the testimony of Petitioners' witnesses regarding the general public's use of the waters (Bogue Sound) within and surrounding the lease area conflicts with the testimony of Officer Marlette, Captain Anthony, Mr. Sledge, and Mr. Hopkins, the undersigned finds the testimony of Mr. Sledge, Mr. Hopkins, Captain Anthony, and Officer Marlette to be more credible, even in the absence of any deference given to the demonstrated knowledge and expertise of Officer Marlette and Captain Anthony concerning existing uses of the area.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and the preponderance of the evidence in the whole record, the undersigned concludes as follows:

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels.

2. Petitioners bear the burden of proof by a preponderance of the evidence to show that Respondent otherwise substantially prejudiced Petitioners' rights and acted erroneously, or acted arbitrarily or capriciously when it granted Respondent-Intervenor's application for a shellfish bottom lease and an associated water column lease. N.C. Gen. Stat. § 150B-25.1(a).

3. North Carolina law presumes that a regulatory agency has properly performed the duties it has been delegated to perform. *Matter of Broad and Gales Creek Community Ass'n*, 300 N.C. 267, 280, 266 S.E.2d 645, 654 (1980); *Adams v. North Carolina State Bd. Of Registration for Professional Engineers and Land Surveyors*, 129 N.C. App. 292, 297, 501 S.E.2d 660, 663 (1998).

4. The proper interpretation of a law or rule is a question of law, and an agency interpretation of a statute or rule is not binding on the undersigned. Nevertheless:

It is a tenet of statutory construction that a reviewing court should defer to the agency's interpretation of a statute it administers 'so [] long as the agency's interpretation is reasonable and based on a permissible construction of the statute.'

County of Durham v. North Carolina Dept. of Environment and Natural Resources, 131 N.C. App. 395, 397, 507 S.E.2d 310, 311 (1998), *dis. rev. denied*, 350 N.C. 92, 528 S.E.2d 361 (1999) (citations omitted).

5. "[W]here the waters covering land are navigable in law, those lands are held in trust by the State for the benefit of the public." *State ex rel. Rohrer v. Credle*, 322 N.C. 522, 527, 369 S.E.2d 825, 828 (1988).

6. The General Assembly has declared in N.C. Gen. Stat. § 113-201(a) that:

[I]t is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources.

7. The Secretary of the Department of Environmental Quality (Secretary) may, in his discretion, authorize shellfish bottom and associated water column leases when he determines that the public interest will benefit from issuance of such a lease, and the proposed lease otherwise meets certain minimum standards set forth in N.C. Gen. Stat. §§ 113-202, 113-202.1. N.C. Gen. Stat. §§ 113-202(a), 113-202.1(a). 15A NCAC 03O .0203 states that:

the Secretary shall consider the lease application, the Division's proposed lease area analysis, and public comments, and may in his discretion lease or decline to lease the proposed lease area or any part thereof.

8. Pursuant to N.C. Gen. Stat. § 113-201(a), the Secretary has delegated his authority for issuing leases to the Director of the Division of Marine Fisheries. See N.C. Gen. Stat. § 143B-10.

9. N.C. Gen. Stat. § 113-202(a) declares:

To increase the use of suitable areas underlying coastal fishing waters for the production of shellfish, the Secretary may grant shellfish cultivation leases to persons who reside in North Carolina under the terms of this section when the Secretary determines, in accordance with his duty to conserve the marine and estuarine resources of the State, that the public interest will benefit from issuance of the lease. Suitable areas for the production of shellfish shall meet the following minimum standards:

- (1) The area leased must be suitable for the cultivation and harvesting of shellfish in commercial quantities.
- (2) The area leased must not contain a natural shellfish bed.
- (3) Cultivation of shellfish in the leased area will be **compatible with** lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation.
- (4) Cultivation of shellfish in the leased area will not impinge upon the rights of riparian owners.
- (5) The area leased must not include an area designated for inclusion in the Department's Shellfish Management Program.
- (6) The area leased must not include an area which the State Health Director has recommended be closed to shellfish harvest by reason of pollution.

(Emphasis added)

10. The phrase “compatible with” under N.C. Gen. Stat. § 113-202(a)(3) is not further defined by statute or regulation.

11. The undersigned finds that DMF’s interpretation of the phrase “compatible with” is reasonable, is consistent with, and supported by the plain language of the statute and statutory framework. For that reason, the undersigned defers to DMF’s interpretation of this minimum standard in determining the validity of Petitioners’ claims in this case. Even in the absence of deference, the undersigned independently adopts DMF’s interpretation of this minimum standard.

12. N.C. Gen. Stat. § 113-202(b) states that DMF “may not grant a new lease in an area heavily used for recreational purposes.”

13. The phrase “area heavily used for recreational purposes” under N.C. Gen. Stat. § 113-202(b) is not further defined by statute or regulation.

14. The undersigned finds that DMF’s interpretation of the phrase “area heavily used for recreational purposes” is reasonable, consistent with, and supported by the plain language of the statute and statutory framework. Therefore, the undersigned defers to DMF’s interpretation of this minimum standard in determining the validity of Petitioners’ claims in this case. Furthermore, even in the absence of deference, the undersigned independently adopts DMF’s interpretation of this minimum standard.

15. N.C. Gen. Stat § 113-202.1(b) states:

Suitable areas for the authorization of water column use shall meet the following minimum standards:

- (1) Aquaculture use of the leased area must not significantly impair navigation; . . .

16. The phrase “significantly impair navigation” is not further defined by statute or rule.

17. The undersigned finds that DMF’s interpretation of the phrase “significantly impair navigation” is reasonable, consistent with, and supported by the plain language of the Statute and statutory framework. Therefore, the undersigned defers to DMF’s interpretation of this minimum standard in determining the validity of Petitioners’ claims in this case. Furthermore, even in the absence of deference, the undersigned independently adopts DMF’s interpretation of this minimum standard.

18. When an agency follows the applicable law and procedure and makes a decision within its discretion, as is the case here, this decision can only be overturned if the agency acted arbitrarily and capriciously. See N.C. Gen. Stat. § 150B-23(a); See also *ACT-UP Triangle v. Commission for Health Services of the State of N.C.*, 345 N.C. 699, 707, 483 S.E.2d 388, 393 (1997) (reviewing an agency’s discretionary decision under the arbitrary and capricious standard and holding that “[t]he reviewing court does not have authority to override decisions within agency discretion when that discretion is exercised in good faith and in accordance with law.”).

19. “Administrative decisions may be reversed as arbitrary or capricious if they are ‘patently in bad faith,’ or ‘whimsical’ in the sense that ‘they indicate a lack of fair and careful consideration’ or ‘fail to indicate ‘any course of reasoning and the exercise of judgment.’” *ACT-UP Triangle*, 345 N.C. at 707, 483 S.E.2d at 393 (quoting *State ex re. Com’r of Ins. v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980)).

20. When determining whether an agency acted arbitrarily and capriciously, a reviewing court should not “replace the [agency]’s judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result.” *Thompson v. Wake County Bd. of Educ.*, 292 N.C. 406, 410, 233 S.E.2d 538, 541 (1977).

21. N.C. Gen. Stat. § 150B-34(a) requires that an Administrative Law Judge “shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.”

22. In this contested case, Petitioners specifically challenge DMF’s determination that the lease site is not within a heavily recreated area, and is compatible with recreational uses in the area. To the extent Petitioners contend that DMF acted arbitrarily and capriciously in its evaluation of the lease application, Petitioners have failed to establish by the preponderance of the evidence that DMF acted “whimsically” or in “bad faith.”

23. The preponderance of the evidence demonstrates that: (1) DMF reasonably interpreted the minimum standards set forth in N.C. Gen. Stat. §§ 113-202 and 202.1, and (2) Director Davis reasonably and rationally determined that the lease met the aforementioned minimum standards based on a thorough evaluation of the relevant information before him.

24. Even if the undersigned were not to give deference to DMF or to the testimony of its employees, Petitioners nevertheless failed to establish by the preponderance of the evidence that the bottom and water column leases at issue in this case are: (1) not “compatible with lawful utilization by the public of other marine and estuarine resources;” (2) in “an area heavily used for recreational purposes;” (3) significantly impairs navigation; or (4) otherwise does not meet the standards set forth in N.C. Gen. Stat. §§ 113-202 and 202.1. For those reasons, Petitioners failed to meet their burden to show that DMF acted erroneously, or acted arbitrarily or capriciously in granting Respondent-Intervenor’s application for a shellfish bottom lease and the associated water column lease.

25. Furthermore, in order to succeed on their claims, Petitioners are required to prove by a preponderance of the evidence that an allegedly unlawful agency action “substantially prejudiced the petitioner’s rights.” See N.C. Gen. Stat. §§ 150B-23(a), 150B-29(a).

26. The “harm required to establish substantial prejudice cannot be conjectural or hypothetical,” rather it “must be concrete, particularized, and ‘actual’ or imminent.” *Surgical Care Affiliates, LLC v. N.C. Dept. of Health and Human Services, Div. of Health Service Regulation, Certificate of Need Section*, 235 N.C. App. 620, 631, 762 S.E.2d 468, 476 (2014), *disc. review denied*, 368 N.C. 242, 768 S.E.2d 564 (2015).

27. Petitioners failed to establish by the preponderance of the evidence that Respondent’s issuance of the applied-for lease would substantially prejudice (1) Petitioners’ and its members’ recreational use of the area around the lease site; (2) navigation in the general area around the lease site; (3) exercise of the riparian rights of adjacent shoreline property owners; or (4) would be a hazard to public safety in the general area of Bogue Sound at issue. Further, Petitioners failed to present persuasive evidence that their use of the lease area would be prevented or adversely impacted by the shellfish in the applied-for lease.

FINAL DECISION

BASED UPON the above Findings of Fact and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent's decision to grant the Respondent-Intervenor's application for a shellfish bottom and associated water column lease.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.**

In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. Gen. Stat. § 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 11th day of May, 2018.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 11th day of May, 2018.



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