

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

307 Misty Grove Circle  
Morrisville, NC 27560  
December 3, 2024

NC Division of Coastal Management  
C/O Tancred Miller, Director  
400 Commerce Avenue  
Morehead City, NC 28557

**RECEIVED**

DEC 06 2024

**DCM-MHD CITY**

Subject: Petition for Rulemaking Pursuant to NCGS 150B-20  
Petition to Amend Coastal Resources Commission Rule  
15 NCAC 7H .0206 (a) Estuarine Waters

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Dear Director Miller,

This letter is to accompany the attached Petition for Rulemaking. This submission is pursuant to NCGS 150B-20. This Petition is being presented to request additional wording be added to 15 NCAC 7H .0206 (a).

This wording is a necessary and urgent matter of public disclosure regarding the relatively recent and novel practice of NC Division of Coastal Management field staff adding man-made ditches to the definition of the Estuarine Waters Area of Environmental Concern. This interpretative modification deviates substantially from the traditional and historical understanding of Estuarine Waters. This change also dramatically expands the reach and impact of the Coastal Area Management Act.

Adding this Petition wording to the definition of Estuarine Waters will provide constructive public notice of current Division practice. The Division will benefit as well, with the confidence that they are fully empowered to regulate man-made ditches by law.

Should you need any additional information in regard to this, please feel free to contact me using any of the methods indicated below.

Thank you!

Cordially,



Nelson G. Paul, Petitioner  
[Nelson@NelsonPaul.com](mailto:Nelson@NelsonPaul.com)  
(919) 271-8900 (Talk/Text)

**To: NC Division of Coastal Management  
C/O Tancred Miller, Director  
400 Commerce Avenue  
Morehead City, NC 28557**

**Subject: Petition for Rulemaking Pursuant to NCGS 150B-20**

**Title: Request to Amend Coastal Resources Commission Rule  
15 NCAC 7H .0206 (a) Estuarine Waters**

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:  
(1) either a draft of the proposed rule or a summary of contents;**

Response: This petition is to request the following addition to 15 NCAC 07H .0206 (a) Estuarine Waters (underline=addition):

*“(a) Definition. 'Estuarine Waters' are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200. All the waters' described herein include man-made ditches.”*

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:  
(2) a statement of reasons for adoption of the proposed rule(s);**

Response: Adoption of this rule will serve as constructive public notice regarding the extent to which Estuarine Waters jurisdiction is being applied by the NC Division of Coastal Management. The Division will benefit as well, with the confidence that they are officially fully empowered to regulate man-made ditches by law.

Adoption of this Petition wording is necessary because the current interpretation regarding man-made ditches is novel, deviating substantially from traditional and historical interpretations of CAMA Estuarine Waters. The present ambiguity leaves an unacceptable threat to the regulated public of being led into circumstances of unmet expectations, wasted expenditures and scrapped planning efforts. In some cases, individuals could enter unaware into situations that lead to financial ruin.

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:  
(3) a statement of effect on existing rules or orders;**

Response: Adoption of the proposed Petition wording will provide official notification to the public as to the current practice of the Division of Coastal Management in reference to determining the jurisdictional extent of the Estuarine Waters AEC. Adding this wording to the Estuarine Waters definition will simply codify current practice and is not anticipated to have any effect on any other



existing rules or orders.

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:  
(4) any data in support of the proposed rule(s);**

Response: An example is provided to show how the Estuarine Waters definition is currently being applied by Division field staff where it pertains to man-made ditches.

Attached are selected drawings from the mining permit of the Thomas Borrow Pit in Carteret County located adjacent to Highway 70 north of Beaufort. These drawings illustrate how an Estuarine Waters jurisdictional call, using man-made ditches, rendered a large portion of the tract undevelopable.

From these drawings it can be seen that the Estuarine Waters designation was made using ONLY man-made ditches. Of particular concern is the regulatory impact shown regarding the effect of the Coastal Shorelines Area of Environmental Concern, that always follows the Estuarine Waters AEC. The impacts of the Coastal Shorelines AEC is enormously magnified by the Division ditch-designation practice.

In these drawings it can be seen that the Coastal Shorelines AEC not only creates a zone in which CAMA permits are required for development, but also includes a mandatory setback. Closely spaced ditches, when determined to be Estuarine Waters jurisdictional, can double the Coastal Shorelines setback. Ultimately, the setback presented by the Coastal Shorelines, combined with the ditches being Estuarine Waters jurisdictional, rendered development of a large segment of the property impossible. In addition, the maps indicate a determination was also made that volunteer marsh species growing in the ditches were CAMA jurisdictional Coastal Wetlands Area of Environmental Concern.

These jurisdictional determinations hinged entirely on the idea that these man-made ditches are Estuarine Waters. Outside these drawings, the larger picture is that the closest water body (North River) is some 2,000 feet away, through the woods and by way of another man-made ditch.

As this example illustrates, CAMA jurisdictional impacts domino when the Estuarine Waters AEC designation is applied to man-made ditches. The "...bays, sounds, rivers and tributaries..." criteria of the Estuarine Waters definition in 15 NCAC 07H .0206 (a) lacks sufficiency in describing the impacts of these kinds of jurisdictional calls. The proposed Petition wording provides clarity for the public in considering these potential situations.

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:  
(5) a statement of the effect of the proposed rule on existing practices;**

Response: It is necessary and urgent to clarify just how the Estuarine Waters AEC designation is being applied with this Petition wording. Not only will the public benefit, but the Division will benefit as well with the confidence that they are fully empowered to regulate man-made ditches by law. Leaving the wording of 15 NCAC 07H .0206 (a) unchanged would continue to mislead and deceive the regulated public.

**Mandatory Requirements pursuant to 15A NCAC 07J .0605:  
(6) the name and address of the petitioner.**

Response: Nelson G. Paul, Petitioner  
307 Misty Grove Circle  
Morrisville, NC 27560

List of Attachments:

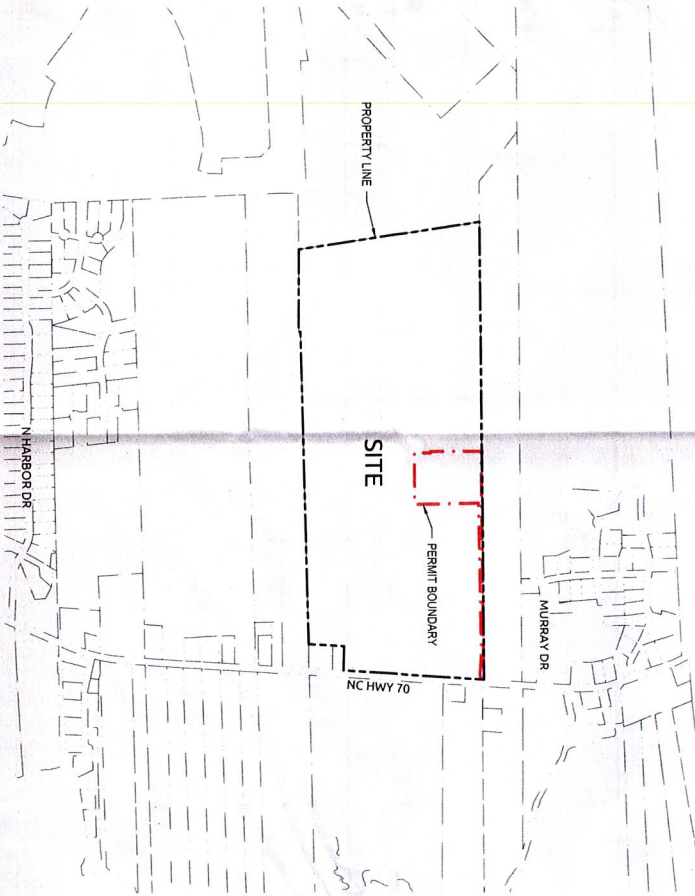
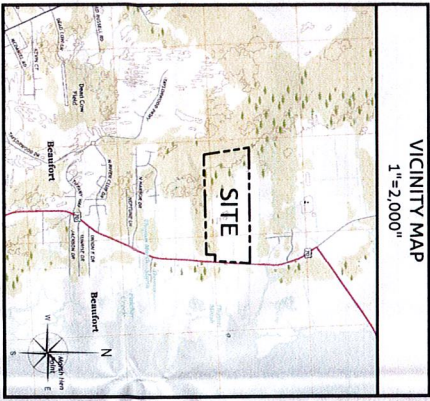
Select drawings from the Thomas Borrow Pit mining permit, Beaufort, NC, Carteret County (.pdf file)



# MINING PERMIT PLAN FOR THOMAS BORROW PIT

## 3101 HWY 70, BEAUFORT, CARTERET COUNTY, NORTH CAROLINA

MARCH 25, 2021



**INDEX OF SHEETS**

COVER SHEET	SHEET 1
EXISTING CONDITIONS	SHEET 2
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PROPOSED CONDITIONS	SHEET 4
EROSION CONTROL	SHEET 5
CROSS SECTIONS	SHEET 6
EROSION CONTROL DETAILS	SHEET 7

**PIT SUMMARY**

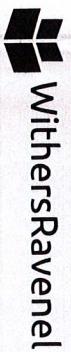
CATEGORY	AREA(AQ)
UNEXCAVATED BUFFER	0.57
HAUL ROAD	1.07
MINE EXCAVATION	4.82
OTHER	0.50
<b>TOTAL PERMIT AREA</b>	<b>6.96</b>

RECEIVED  
APR 28 2021  
LAND QUALITY SECTION

**APPLICANT/OWNER**

**RALPH THOMAS**  
106 PLEASANT DRIVE  
BEAUFORT, NORTH CAROLINA 28516  
252-241-1927  
ralphthomasjr@hotmail.com

**PREPARED BY:**



**WithersRavenel**

115 Mackenzie Drive | Cary, NC 27511 | 919.469.3940 | license # C-08321 | www.withersravenel.com




NO.	REVISION	DATE	BY

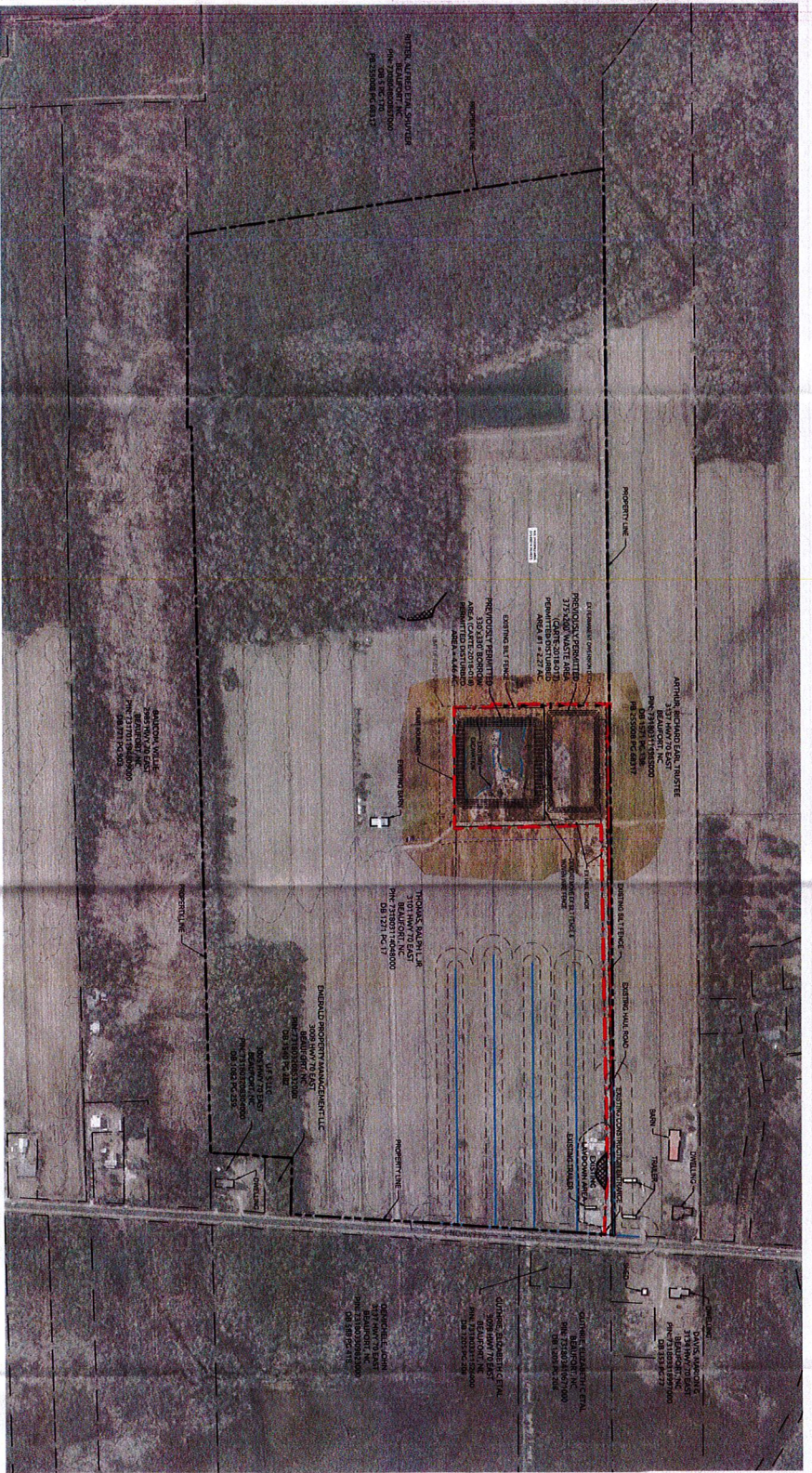
THOMAS BORROW PIT  
CARTERET  
NORTH CAROLINA

EXISTING CONDITIONS







115 Midway Drive | Cary, NC 27513 | 919.433.2300 | www.wither-ravenel.com



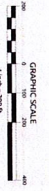
Scale: 1" = 400'



**LEGEND**

-  404 JURISDICTIONAL WETLANDS
-  EXISTING CONTOUR
-  PROPERTY LINE
-  DITCH (TIDAL)
-  COASTAL WETLANDS
-  DITCHES-NON-TIDAL (404)

NOTE:  
 1. PROPERTY AND TOPOGRAPHIC INFORMATION IS PROVIDED BY CARTERET COUNTY GIS.  
 2. PROVISIONS OF THE GENERAL PERMITS FOR THE CONSTRUCTION OF WETLANDS AND COASTAL WETLANDS WAS FIELD VERIFIED BY TOM CARTERET WITH THE DIVISION OF COASTAL WETLANDS, MARINE AND LIMITS OF CALVA, MARCH 27, 2021.





NO.	Revision	Date	By

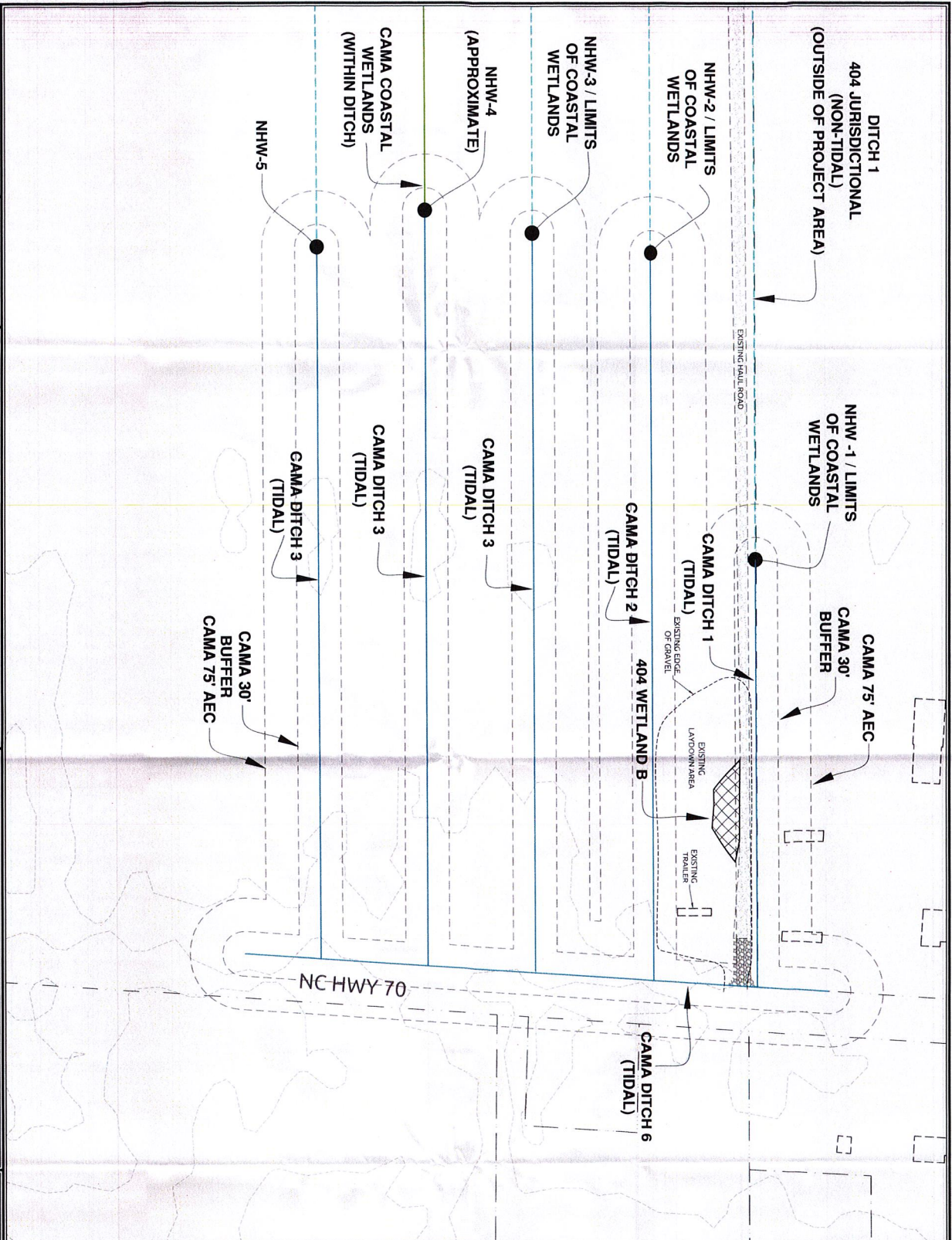
BEAUFORT THOMAS BORROW PIT  
CARTERET NORTH CAROLINA

JURISDICTIONAL FEATURES

131 Macomber Drive Cary, NC 27513 | 919.444.3300 | [www.wITHERSRAVENEL.com](http://www.wITHERSRAVENEL.com)

**WITHERSRAVENEL**  
Engineers | Planners | Scientists | Surveyors

Sheet No. **2**



**LEGEND**

- WETLANDS
- 400 FOOT WETLANDS BUFFER (PER AUGUST 2015 REPORT PREPARED BY ENOCH ENGINEERS, P.A.)
- EXISTING CONTOUR
- PROPERTY LINE
- SILT FENCE
- HAUL ROAD
- EXISTING GRAVEL CONSTRUCTION ENTRANCE

**GRAPHIC SCALE**  
0 10 20 30 40  
1" = 200'







