

AGENDA
MARINE RESOURCES COMMISSION
JANUARY 28, 2025

**** APPROVAL OF AGENDA.**

- 1. MINUTES** of previous meeting.
- 2. PERMITS** (Projects over \$500,000.00 with no objections and with staff recommendation for approval).
- 3. CONSENT AGENDA ITEMS.**
- 4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.**
- 5. OYSTER ROAD DOCKS, LLC, #24-2020**
requests authorization to convert a private use pier to a commercial operation at 41 Oyster Road along Urbanna Creek in Middlesex County. The project is protested by the adjacent commercial property owner.
- 6. COUNTY OF NORTHAMPTON, #23-2155**
requests authorization to install six (6) Aids to Navigation buoys and to dredge approximately 24,200 cubic yards of submerged bottom material at the confluence of Nassawadox Creek with overboard disposal into the Chesapeake Bay southwest of Nassawadox Point in Northampton County.
- 7. LEONARD CLARK, #22-1645, NTC #24-06**
requests after-the-fact approval to retain a 100-foot vinyl bulkhead that was constructed approximately two (2) feet in front of an existing failing bulkhead at property serving 1124 Wormley Creek Road situated along Wormley Creek in York County.
- 8. PUBLIC HEARING**
Update of the Commission's Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia (January 1, 1998) and its Wetlands Mitigation-Compensation Policy and Supplemental Guidelines Regulation (4VAC20-390) developed pursuant to the legislative mandate of Chapter 334 of the 2023 Acts of the Virginia General Assembly (HB 1950).
- 9. PUBLIC COMMENTS**

AGENDA

PAGE 2 ITEMS

A. JAMES DEANGELIS, #24-2578

requests authorization to install 171 linear feet of riprap, the toe of which may be installed a maximum of 6 feet channelward of the existing bulkhead and to install a 5-foot by 64-foot wharf and a 5-foot by 44-foot wharf on either side of an existing pier serving 1211 Davis Avenue, situated along the Indian River in Chesapeake. This project requires a VMRC Subaqueous and Wetlands permit.

B. NORTH-SOUTH DRIVE CIVIC ASSOCIATION, #24-2377

requests authorization to install one (1) low profile timber groin at 209 South Drive along the Rappahannock River in Essex County. This project requires a VMRC Subaqueous and Wetlands permit.

C. JOINT BASE LANGLEY EUSTIS, #24-0935

requests authorization to install, up to 12 times per year, a 24-foot wide, temporary causeway extending 1,300 feet channelward of mean low water and to excavate 26 cubic yards of jurisdictional beach, to facilitate the temporary causeway installation, as part of military training exercises along the James River at the Anzio Beach area of Joint Base Langley-Eustis in the City of Newport News. This project requires a VMRC Beaches and Dunes permit.

D. SAFE HARBOR BLUEWATER, #24-2497

requests authorization to replace an existing 8-foot by 240-foot pier in its existing footprint, construct an 8-foot by 6-foot walkway connecting the pier replacement to an existing main pier, replace an additional existing 8-foot by 172-foot pier in its existing footprint with the addition of three (3) 8-foot by 50-foot finger piers, and to mechanically dredge approximately 6,090 cubic yards of new material to a depth ranging from -6.5 feet MLW to -8.0 feet MLW surrounding the marina, including future maintenance dredging as necessary, adjacent to 25 Marina Road situated along Sunset Creek in the City of Hampton with disposal at an approved upland disposal facility. Recommend approval with a dredging royalty of \$3,654.00 for the dredging of 6,090 cubic yards of state-owned submerged bottom at a rate of \$0.60 per cubic yard. This project requires a VMRC Subaqueous permit.

E. CITY OF NEWPORT NEWS, #24-2073

requests authorization to remove existing docks and construct a 6-foot by 182-foot open pile pier, with four (4) 4-foot by 35-foot finger piers, two (2) 6-foot by 35-foot finger piers, four (4) 4-foot by 50-foot finger piers, 20 mooring piles, a 6-foot by 236-foot open pile pier, twelve (12) 4-foot by 35-foot finger piers, two (2) 6-foot by 35-foot finger piers, 24 mooring piles, a 6-foot by 182-foot open pile pier, eight (8) 4-foot by 50-foot finger piers, two (2) 6-foot by 50-foot finger piers, and 24 mooring piles serving the public facility at 524 Menchville Road South along Deep Creek in Newport News. This project requires a VMRC Subaqueous permit.

AGENDA

F. KINDER MORGAN, #24-1931

requests authorization to mechanically or hydraulically dredge up to 106,800 cubic yards of new material around piers X and IX, necessary to increase the maximum authorized depth to minus fifty-seven (-57) feet mean low water from the previously authorized maximum of minus fifty-five (-55) feet, at their facility (1900 Harbor Access Road) along the James River in the City of Newport News. The project additionally includes future maintenance dredging (approximately 200,000 cubic yards annually) and disposal of all dredge material at the Craney Island Dredge Spoil Facility or an approved upland location. Recommend approval with a dredging royalty of \$64,080.00 for the dredging of 106,800 cubic yards of state-owned submerged bottom at a rate of \$0.60 per cubic yard. This project requires a VMRC Subaqueous permit.

G. MONUMENT MARINE GROUP, #24-1041

requests authorization to remove the remnant pilings from a derelict fishing pier and construct a 535-foot long by 10-foot-wide replacement fishing pier with a 3,600 square foot T-head adjacent to property situated along the Potomac River at 190 Plantation Drive in Westmoreland County. This project requires a VMRC Subaqueous permit.

H. BAY POINT MARINA, LLC, #24-1886

requests authorization to install a 280-foot long by 16-foot wide floating dock extension to an existing floating pier serving Bay Point Marina located at 9500 30th Bay Street situated along Little Creek in the City of Norfolk. Staff recommends approval with royalties totaling \$13,440.00 for the proposed encroachment over 13,440 square feet of state-owned bottom (the proposed floating dock and the mooring areas on either side of the dock) at a rate of \$1.00 per square foot. This project requires a VMRC Subaqueous permit.

I. ROANOKE CEMENT COMPANY, LLC, #24-1360

requests authorization to construct a new multi-user 44-foot-wide clear span haul bridge across a 47-foot section of Catawba Creek west of the existing facility and east of Catawba Road in Botetourt County for their Catawba Farm Quarry. Recommend approval with an encroachment royalty of \$4,136.00 for the encroachment over 2,068 square feet of state-owned submerged bottom at a rate of \$2.00 per square foot. This project requires a VMRC Subaqueous permit.

MINUTES

COMMISSION MEETING

December 3, 2024

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia with the following present:

Jamie L. Green	Commissioner
Patrick Hand	
Lynn Kellum	
A.J. Erskine	
William Bransom	Associate Members
Jeremy Headley	
Thomas Preston	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Gerald Pitt	1 st . Sgt., Marine Police
Zach Widgeon	Director of Communications
Randy Owen	Chief, Habitat Management
Adam Kenyon	Chief, Shellfish Management
Alicia Nelson	Coordinator, RFAB/CFAB
Josh McGilly	Natural Resource Specialist
Brooke Lowman	Stock Assessment Scientist

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Alex Sabo
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Others present:

Katherine Chambers	Chuck Roadley	Wayne Young
Rob Allen	Wade Webb	Shari Miller
Kim Huskey	Jordan Krevonick	Rebecca Francese
Karla Havens	Brandon Eanes	Freddie Davis
George Mapp	Tom Dunlap	Vladimir Arona
Dave Sheffield	Brian Fletcher	Sharlynn Fletcher
and others.		

* * * * *

APPROVAL OF AGENDA. – Commissioner Jamie Green asked if there were any changes from the Board members or staff.

Associate Member Erskine moved to approve the agenda presented. Associate Member Headley seconded the motion. The motion carried, 6-0.

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MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the October 28, 2024, Commission Meeting minutes.

Associate Member Headley moved to approve the agenda presented. Associate Member Erskine seconded the motion. The motion carried, 5-0-1. Associate Member Hand abstained.

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Commissioner Green swore in the VMRC staff and VIMS staff that would be speaking or presenting testimony during the meeting.

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2. **PERMITS** (Projects over \$500,000.00 with no objections and with staff recommendation for approval).

Randy Owen, Chief, Habitat Management, reviewed the Page 2 items 2A through 2I for the Associate Members. Mr. Owen's comments are a part of the verbatim record.

2. **PERMITS** (Projects over \$500,000.00 with no objections and with staff recommendation for approval).

Randy Owen, Chief, Habitat Management, reviewed the Page 2 items 2A through 2I for the Associate Members. Mr. Owen's comments are a part of the verbatim record.

- 2A. **WEYMOUTH FAIN, VMRC #24-0248**, requests authorization to install two (2) riprap sills totaling 56 linear feet with associated backfill along Deep Creek at 2227 Firman Street in the City of Chesapeake. This project requires a VMRC Wetlands permit.
- 2B. **JOSEPH FOULIS, #24-1488**, requests authorization to place 120 cubic yards of clean sand fill upon 1,600 square feet of intertidal wetlands along the Mattaponi River shoreline at 416 Lee Street in the City of West Point. The project requires a VMRC Wetlands Permit.
- 2C. **DARRELL RODA, #24-1562**, requests authorization to replace an 11-foot by 35-foot section of an existing concrete boat ramp; install two (2) 25-foot long timber retaining walls; install and backfill a 52-foot long bulkhead two (2) feet channelward of an existing bulkhead with two (2) 10-foot returns; remove an existing bulkhead and install and backfill a 25-foot section of bulkhead landward of the old bulkhead; and construct a 45-foot long low profile timber groin along the Rappahannock River shoreline at 327 Riverdale Road in Essex County. The project requires a VMRC Wetlands and Subaqueous Permit.
- 2D. **CORDELL PRECIADO, #24-0998**, requests authorization to install 680 linear feet of riprap, the toe of which may be installed a maximum of 10 feet channelward of mean high water, at 12212 Almer Lane, situated along the James River in Chesterfield County. This project requires a VMRC Wetlands permit.
- 2E. **SCOTT ELIAS, #24-2196**, requests authorization to replace two (2) low-profile timber groins extending 40 feet channelward of an existing bulkhead along the Rappahannock River at 113 Wildwood Place in Essex County. The project requires a VMRC Wetlands Permit.

- 2F. **METRO MACHINE CORPORATION, #24-1421**, requests authorization to remove an existing floating pier and construct a new, 370-footlong floating pier at the General Dynamics shipyard adjacent to Ligon Street situated along the Southern Branch Elizabeth River in Norfolk. This project requires a VMRC Subaqueous permit.

- 2G. **LOUDON COUNTY DEPARTMENT OF TRANSPORTATION AND CAPITAL INFRASTRUCTURE, #24-0754**, requests authorization to construct a new multi-user clear spanbridge over a 40-foot section of Broad Run adjacent to Westwind Drive in Loudoun County. This project requires a subaqueous permit.

- 2H. **NASA GSFC WALLOPS FLIGHT FACILITY, #24-1660**, requests authorization to conduct three (3) barge landing tests on the beach adjacent to Launch Pad O-B for the transport of rocket components to the flight facility situated along the Atlantic Ocean Accomack County. This project requires a VMRC Dunes and Beaches permit.

- 2I. **NGL ENERGY PARTNERS, #24-1922**, requests authorization to mechanically (maintenance) dredge up to 20,000 cubic yards of state-owned submerged lands on an as-needed basis, to maximum depths of minus thirty-seven (-37) feet mean low water from the Southern Branch of the Elizabeth River adjacent to their commercial facility at 2901 South Military Highway in the City of Chesapeake. Dredged spoils will be barged to the Craney Island Dredged Material Management Area or another approved upland facility. This project requires a VMRC Subaqueous permit.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

Associate Member Bransom moved to approve the Page 2 items 2A through 2I as presented. Associate Member Erskine seconded the motion. The motion carried, 6-0.

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3. **CONSENT AGENDA ITEMS:** There were no Consent Agenda Items presented.

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4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. – No meeting needed**

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5. **VLADIMIR ARANA, VMRC #24-2086**, requests authorization to construct a 33-foot by 37-foot dual slip boathouse, along the Chickahominy River at 7671 Cypress Drive in James City County. The proposal is protested by an adjoining property owner.

Randy Owen, Chief, Habitat Management, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

Vladimir Arana, applicant, was sworn in and spoke in support of the application. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Erskine moved to approve the project as presented. Associate Member Bransom seconded the motion. The motion carried, 6-0.

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6. **RIZVI FAMILY PARTNERSHIP LLC, #24-2292**, requests authorization to construct a 16-foot by 28-foot open-sided boathouse as part of a statutorily authorized private pier proposal adjacent to 17299 Nanzatico Lane, situated along Nanzatico Bay in King George County. The proposal is protested by an adjacent property owner.

Randy Owen, Chief, Habitat Management, gave the briefing of the information provided in the staff’s evaluation, with PowerPoint slides. for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

Brian Fletcher, agent for the applicant, was sworn in and spoke in support of the application. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Bransom moved to approve the project as presented. Associate Member Headley seconded the motion. The motion carried, 6-0.

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7. **RAY LEWIS, #24-1654**, requests authorization to install a 14-foot by 22-foot open-sided gazebo roof structure onto a proposed statutorily authorized private pier along the Horn Harbor shoreline at 371 Peary Road in Mathews County. The project is protested by an adjacent property owner.

Randy Owen, Chief, Habitat Management, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. for the Associate Members. Mr. Owen's comments are a part of the verbatim record.

Wade Webb, agent for the applicant was sworn in and spoke. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Bransom Member moved to approve the project as presented. Associate Member Preston seconded the motion. The motion carried, 6-0.

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8. **PUBLIC COMMENT:**

Kim Huskey,

Ms. Huskey, Cherrystone Aquafarms, spoke on behalf of the Board of Directors of Shellfish Growers of Virginia, introduced Jordan Krevonik as the new Executive Director of Shellfish Growers of Virginia. Ms. Krevonik will be speaking to the Commission in the future about shellfish related issues.

John Eanes

Requested to get his Oyster User Fee All Gear re-instated because he did not purchase it each year. His comments are a part of the verbatim record.

Associate Member Headley moved to approve the re-instatement his Oyster User Fee All Gear with the understanding that Mr. Eanes pay for the previous years that he did not purchase. Associate Member Bransom seconded the motion. The motion carried, 6-0.

* * * * *

9. PETITIONER:

Petitioner Robert Allen requests, "Rulemaking by the Virginia Marine Resources Commission (VMRC) for a managed recreational Hickory Shad fishery in Chesapeake Bay waters and coastal rivers and their tributaries within Virginia with a daily creel limit informed by and adjusted based on best available data. The requested regulation would be part of existing VMRC fisheries management for Alosine species and is needed to conserve the Hickory Shad stock by replacing unrestricted recreational harvesting with a controlled fishery. Unrestricted take exposes this species to overharvesting and diminishes the contribution of Virginia coastal river spawners to species abundance."

Joshua McGilly, Natural Resource Specialist, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. McGilly's comments are a part of the verbatim record.

Wayne Young, representing Coastal Conservation Association of Virginia (CCA), was sworn in and spoke. His comments are a part of the verbatim record.

Robert Allen, representing Coastal Conservation Association of Virginia (CCA), was sworn in and spoke. His comments are a part of the verbatim record.

Tom Dunlap, representing the James River Association, was sworn in and spoke in support of the petition. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Headley made a motion to deny the petition as presented. Associate Member Bransom seconded the motion. The motion carried, 6-0.

* * * * *

10. PUBLIC HEARING:

Proposal to amend Chapter 4VAC20-252-10 et seq., "Pertaining to Atlantic Striped Bass" to 1) adjust the commercial Chesapeake area striped bass quota from 983,393 pounds to 914,555 pounds and 2) remove existing regulatory language that prohibits commercial striped bass harvesters from obtaining both Chesapeake area and Coastal area tags at one time.

Joshua McGilly, Natural Resource Specialist, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Mr. McGilly's comments are a part of the verbatim record.

Chris Moore, Chesapeake Bay Foundation, was sworn in and spoke in support of the recommendation. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Hand moved to approve the changes to the regulation as presented. Associate Member Erskine seconded the motion. The motion carried, 6-0.

* * * * *

11. RECOMMENDATION

Recommendation on funding proposals from the Commercial Fishing Advisory Board.

Alicia Nelson, Coordinator, RFAB/CFAB, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. Ms. Nelson's comments are a part of the verbatim record.

Ms. Nelson explained that the Marine Fishing Improvement Fund (MFIF) is made up of sales of Virginia commercial fishing licenses. The Commercial Fishing Advisory Board (CFAB) advises the Commission on expenditures from the MFIF. The Commercial

Fishing Advisory Board (CFAB) met virtually on November 6, 2024, to review several applications for funding from the MFIF. The Commercial Fishing Advisory Board recommended funding all four programs totaling \$118,656 from the Marine Fishing Improvement Fund.

The matter was before the Commission for discussion and action.

Associate Member Headley moved to approve staff’s recommendation for the funding as presented. Associate Member Bransom seconded the motion. The motion carried, 6-0.

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There being no further business, the meeting is adjourned at a.m. The next Commission meeting will be meeting on **Tuesday**, January 28, 2025.

Jamie L. Green, Commissioner

Jamie Hogge, Recording Secretary



COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

January 23, 2025

MEMORANDUM

TO: Commissioner Jamie Green
Mr. William Bransom
Ms. Kelci Block
Mr. Jeremy S. Headley
Ms. Jeannette Edwards
Mr. A. J. Erskine
Ms. Lynn Kellum
Mr. Preston White
Mr. Thomas Preston
Mr. Lyle Varnell
Mr. Patrick Hand

FROM: Randy Owen, Chief, Habitat Management Division *RDO*

SUBJECT: Habitat Management Division Evaluations for the January Commission Meeting

Attached please find the Habitat Management Division evaluation for this month's Commission meeting. We now have five full brief items and nine Page Two cases.

As a reminder, a more complete application record for each of the Habitat agenda items, including the permit applications, agency or public comments, and protests can be viewed on our agency website. The information can be found through the Habitat Permits link in the Habitat Management section of the VMRC home page or directly at <https://webapps.mrc.virginia.gov/public/habitat/> You can enter the project number to view the information (2024-1805).

I look forward to seeing everyone next Tuesday.

RDO/lra
HM
Attachments
cc: Dr. Mark Luckenbach, VIMS

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

Telephone (757) 247-2200 Information and Emergency Hotline 1-800-541-4646

GAIL TIESENGA
#2024-1805

1. Habitat Management Evaluation dated January 28, 2025
(Page 1)
2. Application drawings dated-received July 30, 2024
(Pages 2-6)
3. Adjacent property owner protest dated-received September 19, 2024
(Pages 7-9)
4. Lancaster County response to protestant dated-received October 30, 2024
(Pages 10-13)
5. Lancaster County Wetlands Board permit dated-received January 17, 2025
(Page 14)
6. U.S. Army Corps of Engineers PASDO permit dated-received September 27, 2024
(Pages 15-17)

HABITAT MANAGEMENT DIVISION EVALUATION

GAIL TIESENGA, #24-1805, requests authorization to install a 135 linear-foot rock sill with a 10-foot base, backfilled with 100 cubic yards of beach quality sand and wetlands plantings to construct a living shoreline at 269 Coppedge Farm Road, situated along Johnsons Cove in Lancaster County. The project is protested by an adjacent property owner.

Narrative

On July 30, 2024, VMRC received an application from Ms. Gail Tiesenga requesting authorization to construct a living shoreline to manage shoreline erosion at her property and promote the growth of tidal wetland vegetation to enhance ecosystem services. Given the rock sill component of the proposed living shoreline, staff notified both adjoining property owners.

Issues

The adjoining property owner immediately to the west, Mr. James Hawkins, protested the proposal. Due to Mr. Hawkins' protest, a living shoreline general permit could not be issued, so therefore a public notice was placed in The Rappahannock Record.

Mr. Hawkins questioned whether this project would increase Ms. Tiesenga's property or expand her riparian area. Additionally, Mr. Hawkins questioned if the project would affect or change his own property's riparian area.

Summary/Recommendation


This project, as designed, would have met the qualifications for the Living Shoreline Group 2 General Permit if not protested by an adjacent property owner. The techniques and conditions contained within the general permit were designed to limit the applicability of the permit to situations where the projects are most likely to be successful and to limit the potential for adverse impacts on the environment and adjoining properties.

Staff believes the proposed project is within Mrs. Tiesenga's riparian area and would provide shoreline stabilization and habitat restoration, however the Marine Resources Commission does not have the authority to apportion riparian rights. If the protestant, Mr. Hawkins, continues to express concerns regarding his riparian rights, he should file suit with the local circuit court.


Therefore, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommends approval of the living shoreline project as proposed.

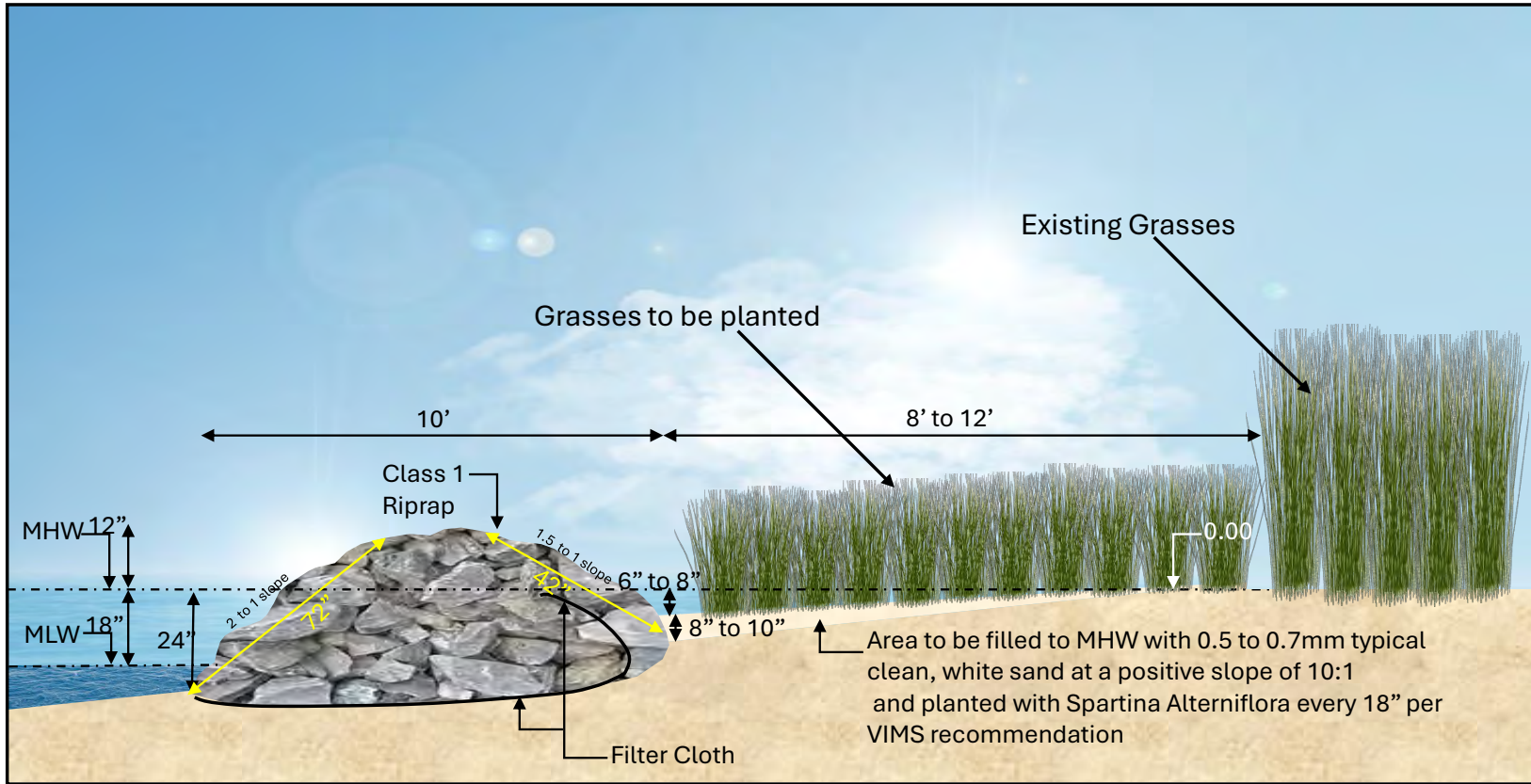
Benchmarks:	To MHW:
1 to rip-rap=10'	1 to MHW=10'
1 to 2=50'	2 to MHW=60'
2 to 3=45'	3 to MHW=86'
3 to 4=5'	4 to MHW=90'
4 to 5=25'	5 to MHW=89'
Total=130'	




 ECO Construction, LLC 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – odis@ecoconstllc.com	Project: Living Shoreline	Address:	Benchmark & Property View	Date: 7/23/2024
	Client: Gail Tiesenga	269 Coppedge Farm Rd White Stone, VA 22578		Page: 01/05
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 ECO Construction, LLC 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – odis@ecoconstllc.com	Project: Living Shoreline	Address:	Plan View	Date: 7/23/2024
	Client: Gail Tiesenga	269 Coppedge Farm Rd White Stone, VA 22578		Page: 02/05
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 ECO Construction, LLC 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – odis@ecoconstllc.com	Project: Living Shoreline	Address: 269 Coppedge Farm Rd White Stone, VA 22578	Side View (A)	Date: 7/23/2024
	Client: Gail Tiesenga			Page: 03/05
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 ECO Construction, LLC 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – odis@ecoconstllc.com	Project: Living Shoreline		Address: 269 Coppedge Farm Rd White Stone, VA 22578	Front View Gap (B)	Date: 7/23/2024
	Client: Gail Tiesenga				Page: 05/05
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Virginia Marine Resources Commission
Habitat Management Public Comments
Application Number 20241805

Print Date: Wednesday January 22 2025 08:39

Number	Name	Received	Position
1	JAMES HAWKINS	09/19/2024 08:24:59 AM	OPPOSE

SEE ATTACHED

Attachments:
https://webapps.mrc.virginia.gov/public/habitat/pc_pdfGet.php?id=1005

Part 2 – Signatures (continued)

ADJACENT PROPERTY OWNER'S ACKNOWLEDGEMENT FORM

I (we), Hawkins, James & Marye Beth, own land next to (across the water
(Print adjacent/nearby property owner's name)

from/on the same cove as) the land of Gail Tiesenga
(Print applicant's name(s))

I have reviewed the applicant's project drawings dated 7/23/2024
(Date)

to be submitted for all necessary federal, state and local permits.

I HAVE NO COMMENT _____ ABOUT THE PROJECT.

I DO NOT OBJECT _____ TO THE PROJECT.

I OBJECT X TO THE PROJECT.

The applicant has agreed to contact me for additional comments if the proposal changes prior to construction of the project.

(Before signing this form, be sure you have checked the appropriate option above).

Marye B. Hawkins
Adjacent/nearby property owner's signature(s)

9/13/2024
Date

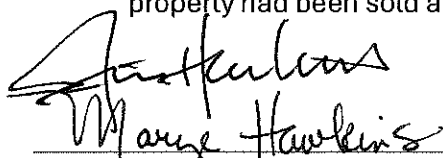
Note: If you object to the proposal, the reason(s) you oppose the project must be submitted in writing to VMRC. An objection will not necessarily result in denial of the project; however, valid complaints will be given full consideration during the permit review process.

see attached questions

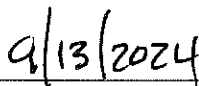
Attachment to Hawkins' APO Form signed 9/13/2024

Tiesenga Living Shoreline Application JPA #24-1805
and VMRC Letter to Hawkins dated 9/6/2024

1. What impact does the project have on Tiesenga property boundary? Does it change? Does it increase the property area?
2. Does the project increase the measurement of shoreline distance on the Tiesenga property?
3. Side View A (drawing) shows the proposed riprap extending 12 inches above the Mean High Water elevation. The current Mean Low Water elevation is at the edge of the "Existing Grasses". If the living shoreline is constructed as currently proposed, will the new MLW be measured on the channel side (aka "east side") of the proposed riprap?
4. Is this project in any way or under any agency definition, a shoreline modification?
5. Does the project affect, alter or change the Riparian area of the Tiesenga property?
6. Does the project affect, alter or change the Riparian area of the Hawkins property?
7. Regarding APO Acknowledgement Form for Gregg Gammon, we understand that this property had been sold and has new owners. Have they been notified?



Adjacent property owners signature(s)



date

From: [Olivia Hall](#)
To: [Howell, Beth \(MRC\)](#)
Cc: [Payne, Khadijah \(MRC\)](#); gtiesenga@msn.com; [Odis Cockrell \(odis@ecoconstllc.com\)](mailto:Odis.Cockrell@ecoconstllc.com); tylynn@ecoconstllc.com
Subject: Lancaster County response to Public Comment for JPA 2024-1805
Date: Wednesday, October 30, 2024 3:54:23 PM
Attachments: [Signed Response](#)
[County Answers to Public Comments on the JPA 2024-1805 - Howkins in red.pdf](#)

Good Afternoon Beth,

Please include the attached response from the County regarding the public comments for JPA 2024-1805.

Thank you,



Olivia Hall
Director of Planning and Land Use
County of Lancaster, Virginia
8311 Mary Ball Road
Lancaster, VA 22503

Phone: 804-462-5081
Website: www.lancova.com

Lancaster County Answers to Public Comments from APO Hawkins in red:


1. What impact does the project have on Tiesenga property boundary? Does it change? Does it increase the property area? **The only way to change a property boundary, would be to have a current survey showing metes and bounds, recorded in the County's Deeds and Records office. Tidal properties have the potential to erode and accrete land, so a stabilization project may or may not result in an increase in property. This could only be determined by a survey. In this case, the property has eroded over time and based on this, there may be no increase in property area.**



2. Does the project increase the measurement of shoreline distance on the Tiesenga property?
This information could only be determined by a survey after the project was completed. We do not require a survey upon completion.
3. Side View A (drawing) shows the proposed rip rap extending 12 inches above the Mean High Water elevation. The current Mean Low Water elevation is at the edge of the "Existing Grasses".
The current Mean Low Water elevation is **not at the edge of the existing grasses, see below.**


If the living shoreline is constructed as currently proposed, will the new MLW be measured on the channel side (aka “east side” of the proposed riprap? **No, see second drawing below.**



 ECO Construction, LLC 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – odis@ecoconstllc.com	Project: Living Shoreline	Address: 269 Coppedge Farm Rd White Stone, VA 22578	Benchmark & Property View	Date: 7/23/2024
	Client: Gail Tiesenga			Page: 01/05
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Received by VMRC July 30, 2024 /blh



 ECO Construction, LLC 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – odis@ecoconstllc.com	Project: Living Shoreline	Address: 269 Coppedge Farm Rd White Stone, VA 22578	Plan View	Date: 7/23/2024
	Client: Gail Tiesenga			Page: 02/05
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Received by VMRC July 30, 2024 /blh

4. Is this project in any way or under any agency definition, a shoreline modification? **This is a shoreline stabilization project that is being permitted as a living shoreline. The County does not have a definition for “shoreline modification”.**
5. Does the project affect, alter or change the Riparian area of the Tiesenga property? **Under Virginia Law, only a Court can establish the riparian area for a waterfront property.**
6. Does the project affect, alter or change the Riparian Area of the Hawkins property? **Under Virginia Law, only a Court can establish the riparian area for a waterfront property.**
7. Regarding APO Acknowledgement Forms for Gregg Gammon, we understand that this property has been sold and has new owners. Have they been notified? **No recent real estate transactions have been recorded for this property in our Deeds & Records office. All APOs have been notified as required by law.**



Don G. Gill
County Administrator

COUNTY OF LANCASTER

FOUNDED 1651 IN VIRGINIA

LANCASTER COURTHOUSE
8311 MARY BALL ROAD
LANCASTER, VIRGINIA 22503

804-462-5129
804-462-0031 (FAX)
www.lancova.com

BOARD OF SUPERVISORS

Craig H. Glese, 1st District
Ernest W. Palin, Jr., 2nd District
Jason D. Bellows, 3rd District
William R. Lee, 4th District
William C. Smith, 5th District

WETLANDS BOARD COUNTY OF LANCASTER, VIRGINIA WETLANDS PERMIT

Pursuant to chapter 2.1 of the Code of Virginia (1950) as amended, the Commonwealth of Virginia, Lancaster County Wetlands Board, hereinafter referred to as the Board, hereby authorizes the construction project described below.

1. **Permittee, Project, Special Conditions, And Board-Required Revisions Bearing the Date of August 14, 2024:**
Gail Tiesenga, c/o Odis Cockrell & Tylynn Lewis, 245 Blackwells Wharf Rd, Burgess, VA 22432; requests permission to install 135 ft of living shoreline to include 135 linear ft of sill, 50 cubic yards of beach nourishment and 1350 sq ft of wetlands vegetation plantings along the eroded shoreline of Johnson's Creek. Located off VSH 650 (Fleets Bay Road) on Coppedge Farm Road. Tax Map #29-64. VMRC #24-1805.
Approved as submitted.
2. The official and complete description of this project is contained in the permittee's application for wetlands permit as approved by this Board on this date and is made a part hereof.
3. The granting of this permit shall not relieve the permittee of the responsibility of obtaining any and all other permits or authority required for the project.
4. **DATES:** The project shall not be started before November 25, 2024, and must be completed prior to November 25, 2029.
NOTE: No extensions shall be granted beyond these dates without application for extension, in writing, to the wetlands board prior to the permit expiration date.
5. **GENERAL CONDITIONS: This Permit Is Granted Subject To The Following Terms And Conditions:**
 - a. Except as hereinafter provided, all phases of the project shall conform in all particulars to the permittee's application for wetlands permit. The duly authorized agents of the Board shall have the right to enter the premises at any reasonable time for the purpose of inspecting the work being done pursuant to this permit.
 - b. The permittee shall, to the greatest extent practicable, minimize the adverse effects of the project upon adjacent properties and wetlands and upon the natural resources of the Commonwealth. (Such other terms and conditions peculiarly applicable to the particular project being permitted in order to promote to the greatest extent possible the public policy expressed in the Act and to minimize the impact of the project upon the rights and property of others and upon the ability of the local government to provide governmental services.)
 - c. This permit shall not be transferred without the prior written approval of the Board.
 - d. Permittee shall comply with all applicable laws, ordinances, rules and regulations affecting the conduct of this project.
 - e. Permittee shall adhere to proper E & S controls during wetlands construction and acquire the necessary county E & S permits for work landward of mean high water.
 - f. This permit shall be revoked at any time by the Board upon failure of the permittee to comply with any of the terms and conditions hereof.

IN WITNESS, WHEREOF, the County of Lancaster, Virginia, Wetlands Board has caused these presents to be executed in its behalf by the Chairman, whose signature is affixed hereto as evidence of his acceptance of the terms and conditions hereof.

Commonwealth of Virginia
County of Lancaster
Wetlands Board:

By Edna Renee
Board Chairman
Affirmed before me this 25 day of NOV, 2024
By the Chairman, Lancaster Co. Wetlands Board

Cassandra Adams Ruby
Notary Public
My commission expires 2-29-28
Notary #: 280028
CASSANDRA ADAMS RUBY
Notary Public
Commonwealth of Virginia
Registration Number 280028
Comm. Expires: February 29, 28

Permittee: Gail Tiesenga
City/County of Lancaster
Commonwealth of Virginia
The foregoing instrument was acknowledged before me this
17 day of Dec, 2024

By Cassandra Adams Ruby
Notary Public (authentication & seal)
My commission expires 2-29-28
Notary #: 280028
CASSANDRA ADAMS RUBY
Notary Public
Commonwealth of Virginia
Registration Number 280028
Comm. Expires: February 29, 28

From: Davis, Nancy P CIV USARMY CENAO (USA)
To: odis@ecoconstllc.com
Cc: ohall@lancova.com; MRC - jpa Permits
Subject: NAO-2024-02056 (24-V1805) (Gail Tiesenga / Living Shoreline / 269 Coppedge Farm RD / Lancaster) PASDO Verification
Date: Friday, September 27, 2024 8:31:32 AM
Attachments: 24-1805-LivingShoreline.pdf
NAO_2024_02056_Certification.pdf
23-SPCL-Permit.pdf

Good morning, Odis:

The Corps has reviewed the referenced Joint Permit Application for your proposed project and has verified that it satisfies the terms and conditions of Norfolk District's State Programmatic General Permit for piers, aquaculture, shoreline, dredging, and other (23-SPGP-PASDO), Category B. For Category B, permittees must also obtain authorization from the Virginia Marine Resources Commission, Virginia Department of Environmental Quality, and/or a Local Wetlands Board by permit, rule, or regulation prior to commencing work in Waters of the U.S. Private piers for noncommercial purposes that qualify for the statutory authorization found in Section 28.2-1203(A)5 of the Code of Virginia (No permit required from the Marine Resources Commission) are covered under Category B. Provided that you follow the general and permit specific conditions of the 23-SPGP-PASDO and any additional special conditions that have been included below, no further authorization will be required from the Corps.

IF THE STATE OR LOCAL WETLAND BOARD DOES NOT AUTHORIZE THE PROPOSED ACTIVITY THIS IS A PROVISIONAL NOTIFICATION THAT A 23-SPGP-PASDO CATEGORY C AUTHORIZATION IS REQUIRED and you (the applicant) must certify that federally licensed or permitted activities affecting Virginia's coastal uses or resources will be conducted in a manner consistent with the Virginia's coastal zone management program (Virginia CZM program) and obtain concurrence from the DEQ, office of environmental impact review (OEIR). It is YOUR responsibility to submit a consistency certification to the OEIR for concurrence or objection, and proof of concurrence must be submitted to the Corps prior to final permit authorization. A template federal consistency certification can be found in the Federal Consistency Manual here: <https://www.deq.virginia.gov/our-programs/environmental-impact-review/federal-consistency>. For more information or to obtain a list of the enforceable policies of the Virginia CZM Program, contact the DEQ-OEIR at (804) 659-1915 or e-mail: bettina.rayfield@deq.virginia.gov.

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

If you suspect that your project may result in purposeful take of migratory birds,

contact the U.S. Fish and Wildlife Service Migratory Bird Program at PermitsR5MB@fws.gov. If you are interested in voluntarily reducing impacts to migratory birds and their habitats, please consult <https://fws.gov/birds/managment/project-assessment-tools-and-guidance/conservation-measures.php> for conservation measures.

Enclosed is a "compliance certification" form, which must be signed and returned within 30 days of completion of the project. Your signature on this form certifies that you have completed the work in accordance with the regional permit terms and conditions.

Unless suspended or revoked, the 23-SPGP-PASDO will be in effect until September 4, 2028. Activities which have commenced (i.e., are under construction) or are under contract to commence construction in reliance upon 23-SPGP-PASDO will remain authorized provided the activity is completed within 12 months of the date of this 23-SPGP-PASDO's expiration of September 4, 2028, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). Activities qualifying for this extension that are not complete by September 4, 2029, must apply for new general and/or individual Corps permit authorization. Activities which have NOT commenced and are NOT under contract to commence construction by the September 4, 2028, expiration require a new general and/or individual Corps permit authorization.

The State Water Control Board provided unconditional §401 Water Quality Certification (WQC) for this 23-SPGP-PASDO. Therefore, the activities that qualify for this 23-SPGP-PASDO meet the requirements of the VDEQ Virginia Water Protection Permit Regulation, provided that you abide by the conditions of this 23-SPGP-PASDO. You will not be required to obtain a separate §401 WQC from VDEQ. This authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You should contact your local government before you begin work to find out how the CBPA applies to your project.

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the VDEQ Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this SPGP-PASDO on June 6, 2023 and provided conditional concurrence that Category B authorizations under the 23-SPGP-PASDO are consistent with the VCP. Authorizations under this 23-SPGP-PASDO do not supersede State or local government authority or responsibilities pursuant to any State or local laws or regulations.

In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings. Please note that you should obtain all required State and local

authorizations before you proceed with the project.

If you have any questions and/or concerns about this permit authorization, please contact me via email at nancy.p.davis@usace.army.mil or via telephone at (757) 677-6298.

Attachments: Drawings, 23-SPGP-PASDO, Certificate of Compliance

Regards,
Nancy

Nancy Davis
Environmental Scientist
U.S. Army Corps of Engineers
Regulatory, Northern Section
803 Front Street
Norfolk, VA 23510
Office: (757) 677-6298
Email: Nancy.P.Davis@usace.army.mil

HELPFUL LINKS:

- Direct Link to Norfolk District Regulatory Website:
<https://www.nao.usace.army.mil/Missions/Regulatory/>
- Direct Link to Joint Permit Application:
<https://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>
- Direct Link to Commonly Used Forms (i.e. Pre-Application Request Form, Pre-Application Jurisdictional Determination Checklist):
<https://www.nao.usace.army.mil/Missions/Regulatory/Commonly-Used-Forms/>

OYSTER ROAD DOCKS, LLC
VMRC #2024-2020

1. Habitat Management Division Evaluation dated January 28, 2024
(Pages 1-2)
2. Application drawings dated-received August 2, 2024
(Pages 3-6)
3. Letter of Opposition from Andy and Amy Anderson opposing the project dated October 10, 2024
(Pages 7-8)
4. Middlesex County Wetlands Board exemption dated September 10, 2024
(Pages 9-10)
5. Virginia Department of Health: DSS approval dated October 17, 2024
(Pages 11-13)
6. Virginia Department of Health: OEHS approval January 16, 2024
(Pages 14-19)
7. United States Army Corps of Engineers comments of approval dated September 5, 2024
(Pages 20-21)
8. Town of Urbanna Business License dated August 22, 2024
(Page 22)

HABITAT MANAGEMENT DIVISION EVALUATION

OYSTER ROAD DOCKS, LLC, VMRC #24-2020, requests after-the-fact authorization to convert the use of a private use pier to a commercial operation at 41 Oyster Road along Urbanna Creek in Middlesex County. This project is protested by an adjacent property owner.

Narrative

Oyster Road Docks, LLC (ORD) is a small commercial marina that offers long-term slip rental and mooring located in the Town of Urbanna on Urbanna Creek. The area is a mix of commercial and residential properties with various marinas along the same shoreline including the Urbanna Town Marina and the Urbanna Boatyard and Marina. The ORD facility sits between the Urbanna Boatyard and Marina to the south and the Oyster Harbor Condominiums Facility to the north. The facility consists of a 5-foot by 48-foot open pile pier with a 5-foot by 35-foot floating dock, 6-foot by 54-foot T-head, and 6-foot by 28-foot finger pier creating five (5) slips, three (3) of which are rented currently.

The pier's current footprint was originally permitted by VMRC #2020-1925, with the later addition of a finger pier (VMRC #2023-1661) under what was understood to be private use. However, an on-site meeting between Mr. Lewis Hall of ORD and VMRC staff on July 30, 2024, confirmed the commercial usage of the previously permitted private pier. Following the meeting, staff sent a letter on August 14, 2024, instructing Mr. Hall to submit an after-the-fact application to commercially operate the pier facility. On August 22, 2024, VMRC received an application requesting authorization to convert the pier from private use to a commercial operation.

Issues

VMRC staff conducted a standard public interest review for this proposal notifying the adjacent property owners and placing an advertisement in the Southside Sentinel.

Andy and Amy Anderson, on behalf of their commercial facility the Urbanna Boatyard and Marina directly to the south of ORD, have submitted comments outlining their protests of the proposed commercial facility. Mr. and Mrs. Anderson state they understood that the ORD pier was intended to be for private use only, and they would not have approved of the project during its original public interest review (VMRC #2020-1925) had they been aware that it would be used commercially. Additionally, they are concerned with the facility's ability to provide adequate parking and believe that ORD customers will use parking intended for customers of the Urbanna Boatyard and Marina as a result.

The Middlesex County Wetlands Board did not require a permit for the project since there are no direct impacts to jurisdictional intertidal wetlands. The Town of Urbanna issued a business license for the commercial operation of the facility on July 6, 2024.

Issues (cont'd)

The Virginia Department of Health, Office of Environmental Health Services submitted comments on the project on October 10, 2023, and determined the project acceptable as proposed. The Virginia Department of Health, Division of Shellfish Safety submitted comments on the project on September 5, 2024, and determined the project acceptable as proposed.

The U.S. Army Corps of Engineers submitted comments on the project on September 5, 2024, and determined the project is acceptable as proposed.

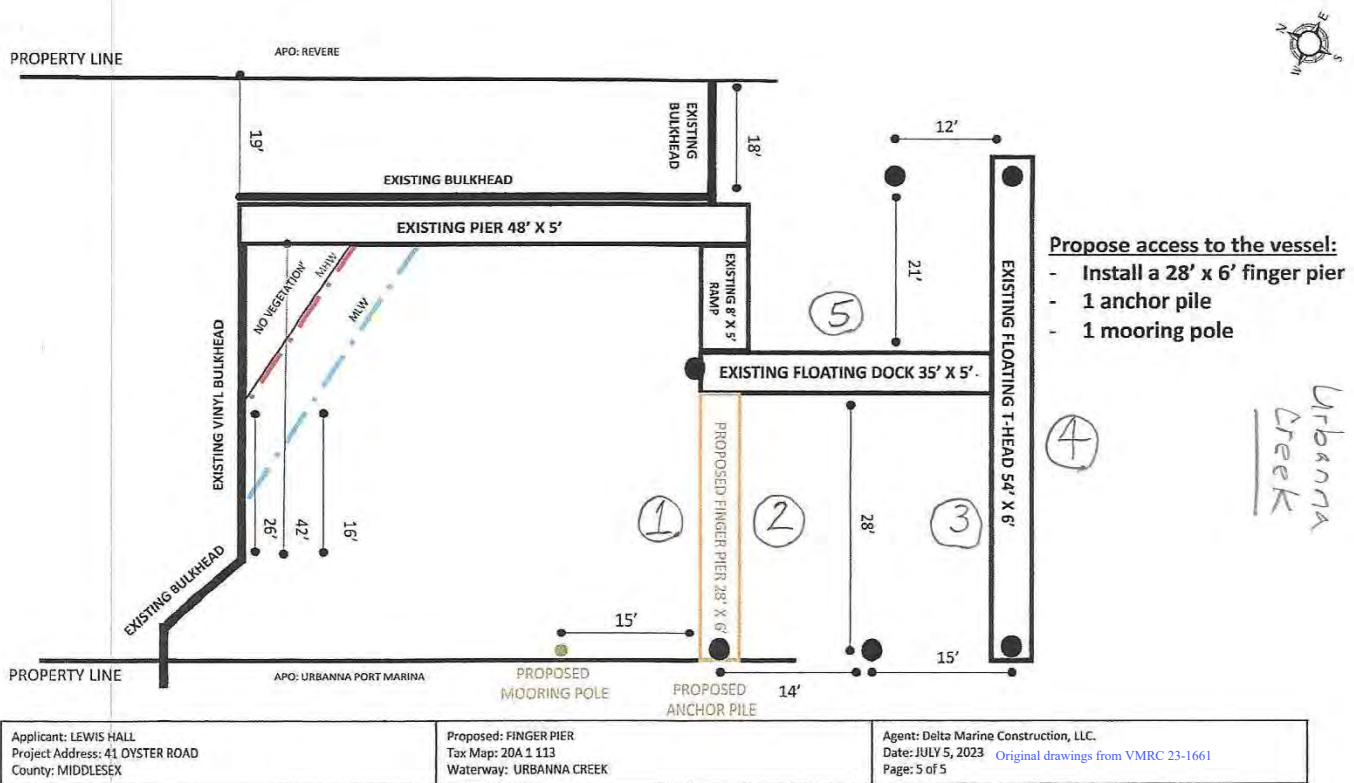
Summary/Recommendation

Oyster Road Docks LLC has worked cooperatively and diligently to acquire the necessary permit to come into compliance once informed of our agency requirements.

Staff does not believe the continued commercial use of the pier facility will result in any adverse impacts to navigation within the creek or on the overall marine environment. Nor do we feel it will result in any negative impacts to the adjacent commercial operations.

Accordingly, after evaluating the merits of the project and after considering all the factors contained in §28.2-1205(A) of the Code of Virginia, staff finds the proposal to be a reasonable and permissible use of state-owned submerged bottom and recommends approval for the conversion of a private use pier to a commercial operation with a royalty amount of \$3,771.00 for the overall encroachment over 3,771 square feet of state-owned submerged bottom at the standard rate of \$1.00 per square foot.

Oyster Road Docks, LLC



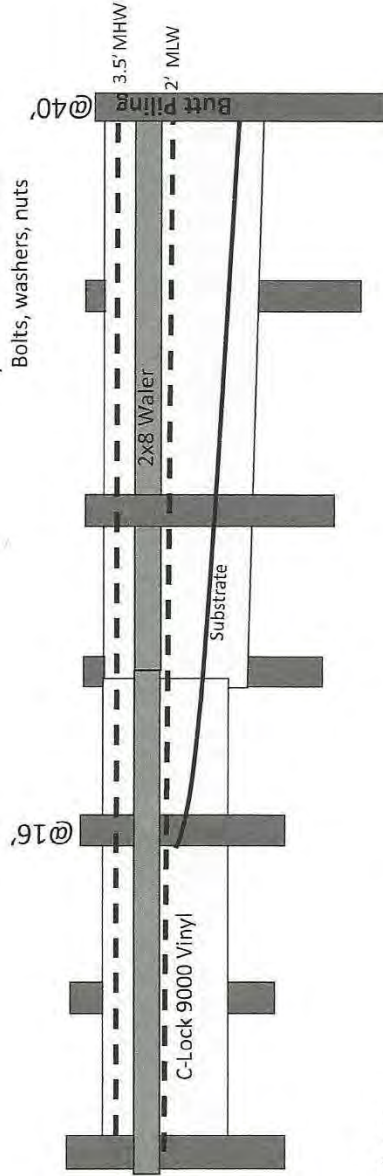
Project includes 5 slips as shown circled above:

- Slip #1 - Private Use
- #2 - Rented (Commercial Use)
- #3 - Private use
- #4 - Rented (Commercial Use)
- #5 - Rented (Commercial Use)

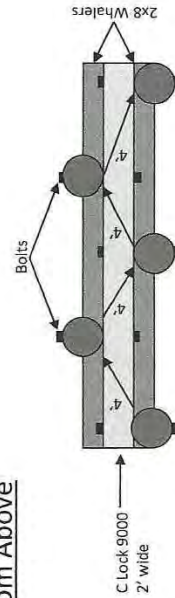
Bulkhead Cross Sectional

Pilings for the bulkhead will be installed in equal portions to whatever is above the substrate will also be below the substrate.

Materials to be used:
Butt Pilings
2x8 Walers
C-Lock 9000 Vinyl
5/8 Galvanized Timber
Bolts, washers, nuts



View from Above

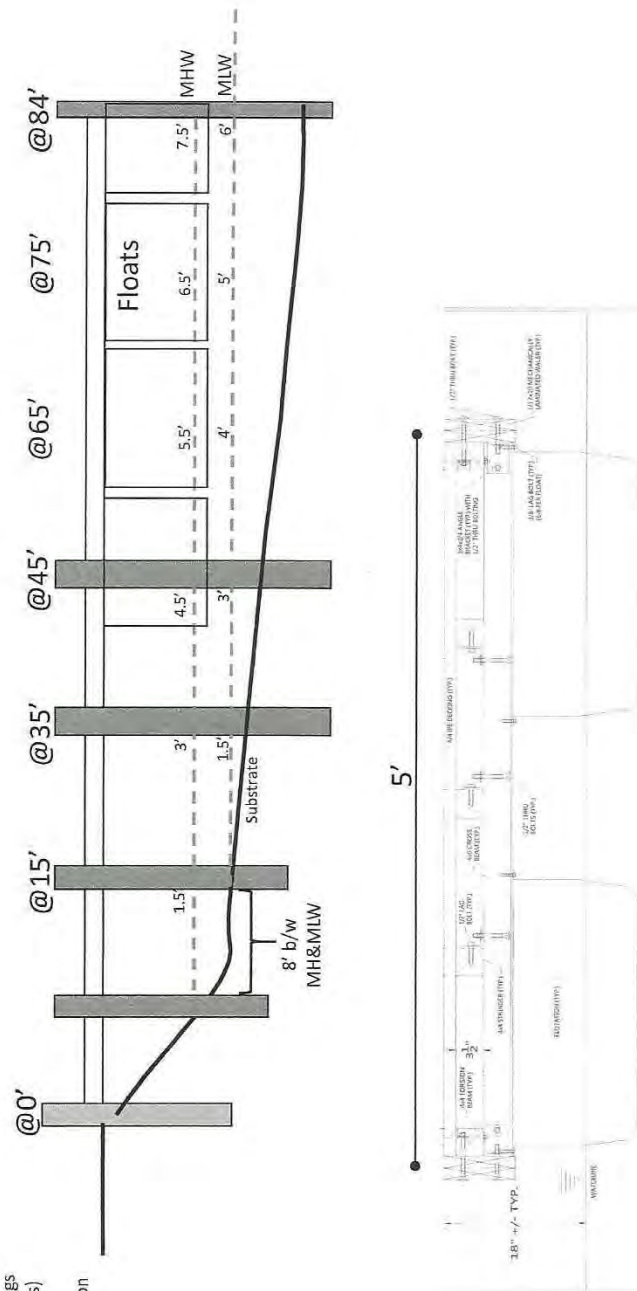


<p>Applicant: Lewis Hall Proj. Address: 41 Oyster Road, Urbanna County: Middlesex</p>	<p>Proposed: Bulkhead, Pier Tax Map: 20A 1 113 Waterway: Urbanna Creek</p>	<p>Agent: Michelle Meredith Date: October 16, 2020 Page: 2 of 6</p>
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Received by VMRC October 21, 2020 /blh

Measurements taken on the southern side of the proposed dock.

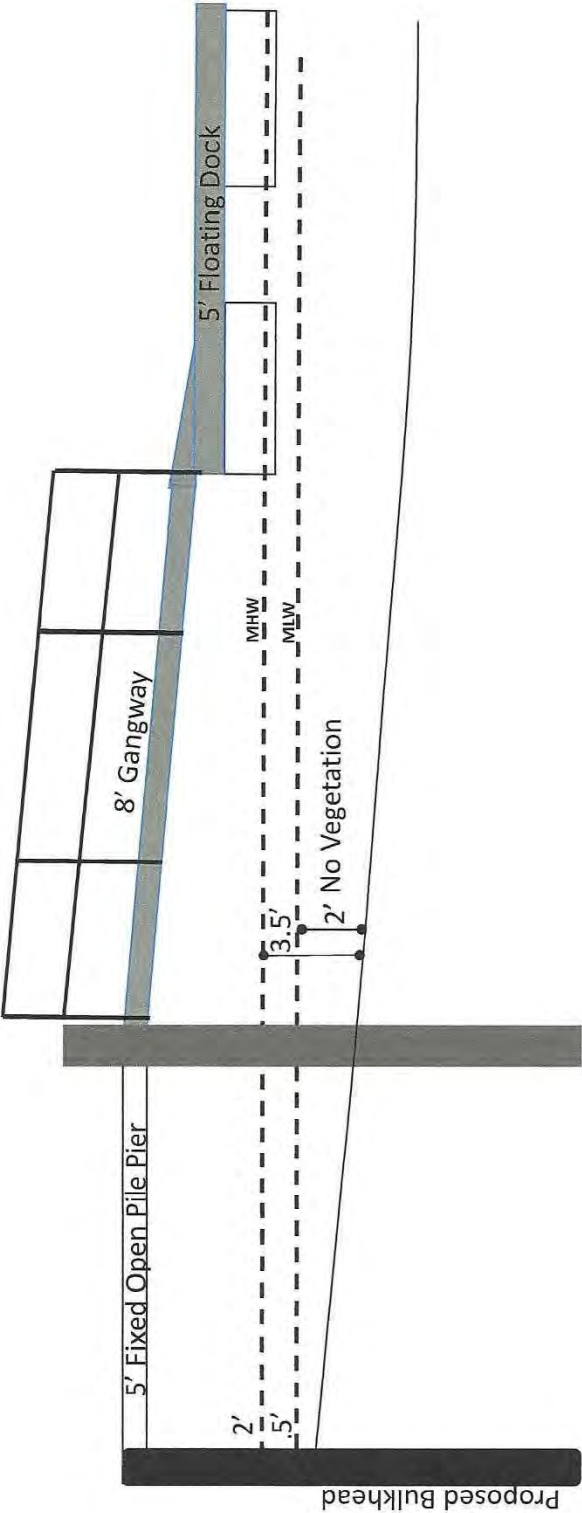
- 2x8 rough cut salt treated timber
- 10 inch butt 8 inch top timber pilings
- Galvanized hardware (screws, bolts)
- Poly-foam filled floats
- Pilings are placed 8 foot on center on fixed dock
- Deck boards are dressed



<p>Applicant: Lewis Hall Proj. Address: 41 Oyster Road, Urbanna County: Middlesex</p>	<p>Proposed: Bulkhead, Pier Tax Map: 20A 1 113 Waterway: Urbanna Creek</p>	<p>Agent: Michelle Meredith Date: October 16, 2020 Page: 3 of 6</p>
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Received by VMRC October 21, 2020 /blh

Floating Dock Gangway Cross Sectional



Applicant: Lewis Hall Proj. Address: 41 Oyster Road, Urbanna County: Middlesex	Proposed: Bulkhead, Pier Tax Map: 20A 1 113 Waterway: Urbanna Creek	Agent: Michelle Meredith Date: October 16, 2020 Page: 4 of 6
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Received by VMRC October 21, 2020 /blh

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: Oyster Road Docks LLC Application 2024-2020
Date: Thursday, October 10, 2024 12:25:24 PM

Good afternoon,

Could you please add this letter of opposition to JPA# 2024-2020?

Thank you,
Kirsten Travis
Environmental Engineer, Habitat Management
Virginia Marine Resource Commission
(757) 247-8027 (Office)

From: Andy Anderson <dockmaster@urbbymarina.com>
Sent: Thursday, October 10, 2024 12:49 AM
To: Travis, Kirsten (MRC) <Kirsten.travis@mrc.virginia.gov>
Cc: Amy Anderson <dubaidarlin6@gmail.com>; Andy Bury <AndyB@burylawoffices.com>
Subject: Oyster Road Docks LLC Application 2024-2020

Hello Kirsten,

This email correspondence is in response to your letter dated 9/26/24 regarding the commercialization of the Oyster Road Docks, Permit 2024-2020. Urbanna Boat Yard & Marina is objecting for the following reasons:

- A few years ago, as an adjacent neighbor, we approved the existing dock in question being constructed for personal use only.
- Next, we approved the property to have a variance of B1-B2 to accommodate a private residence that is currently being built and will take up a vast majority of the property. Frankly, the approval of the building on such a small property was a stretch and it will be hard to imagine they have enough parking for private use. Accommodating the additional parking of patrons /commercial traffic is unrealistic. Currently the slip renters are parking on the property between the foundations being built. You are aware that this property is already being used as a commercial marina?
- Our primary objection is that the commercial users will possibly, likely, inevitably park at our property that is just steps away as we do not see any provisions for parking for these added occupants within the proposal. Our parking is for our customers. Simply, the Oyster Road property is either used for private use or commercial, right? We would not have approved the recent construction of the docks and housing if we had known of the end game being presented.
 - In the event this does get approved, we would require that a full height 6'+ fence be constructed across the property line and dead-end street at their expense and that it is professionally constructed of metal and approved by Urbanna Boat Yard & Marina. This fence shall have no pedestrian access and a locked gate wide enough for a fire truck that is controlled by Urbanna Boat

Yard & Marina. The Fire Department would have keyed access.

- We have reviewed the application you reference, and it does not appear the same requirements are present for the proposed commercial Oyster Road Dock that we are required to maintain. While we do not know exactly what Virginia Government Agency (VMRC, DEQ, Health Dept) policies dictate, we are fully aware that we as a marina are required to have specified parking, bathrooms, sewage pump out, etc. for our clients. We are not receptive for the clients of Oyster Road Docks to have the opportunity to utilize these expensive requirements on our property. If a case is presented that all these requirements/variables are being addressed on their parcel, so be it. For example, they do not build the house and use it for commercial purposes they currently desire.

We trust that you will discuss the next steps with us. Should you have any questions or concerns regarding our position please contact us at 804-758-0000. Please be advised we are not available next week from 10/14 to 10/18 as we will be out of the country, however our lawyer, Andy Bury, can be reached at 804-695-3662 should there be any urgency.

Respectfully,

Amy & Andy Anderson

From: [Marc Longest](#)
To: lewishall35@yahoo.com
Cc: [Payne, Khadijah \(MRC\)](#); [MRC - jpa Permits](#)
Subject: VMRC 2024-2020 Oyster Road Docks, LLC
Date: Monday, September 9, 2024 1:02:21 PM
Attachments: [Wetlands No Permit Needed Letter 2024-2020 Oyster Road Docks, LLC.pdf](#)

Lewis Hall,

Please see attached. Thank you.

Marc K. Longest
Environmental and Codes Compliance Officer



Middlesex County, VA
Phone: (804) 758-3382
Fax: (804) 758-0061
m.longest@co.middlesex.va.us
www.co.middlesex.va.us

David W. Kretz, L.S.
Director

PO Box 428
Saluda VA 23149



County of Middlesex
Office of Planning and Zoning

September 09, 2024

Oyster Road Docks, LLC
P.O. BOX 603
Urbanna, VA 23175

RE: **JOINT PERMIT APPLICATION # 2024-2020**

Dear Oyster Road Docks, LLC:

Please be advised that the Middlesex County Wetlands Office has reviewed your proposed project for a **proposed 28'X6' finger pier, 1 anchor pile, and 1 mooring pile**. The project is located within Urbanna Creek at Tax Map #20A-1-113. The Wetlands Office has made the determination that this project will not conflict with the Middlesex County Wetlands Ordinance. A Middlesex County Wetlands Permit will not be required for this project.

Please note that if any modifications are proposed within the 100' RPA, a Resource Protection Area Modification Permit is required before work is to commence. Please note that the Middlesex County Department of Planning and Community Development must issue a Zoning and Building Permit for your project before any construction is permitted to begin. Please contact our staff at (804) 758-4305 for information on how to apply for a Zoning and Building Permit. Effective January 1, 2007, in order to receive the Building and Zoning permit, the contractor **MUST** be listed on the application. It is recommended that homeowners have the contractor apply for the Building Permit.

In addition, you may need approvals from the U. S. Department of the Army, Corps of Engineers, Norfolk, Virginia at (757) 441-7652 and the Virginia Marine Resource Commission, Newport News, Virginia at (757) 247-2254, Middlesex County Department of Planning and Community Development (804) 758-3382 (Resource Protection Area). **If approvals from these agencies are required, copies of those approvals must be on hand before Middlesex County Department of Planning and Community Development can issue a Zoning and Building Permit for the project.**

If you have any questions or comments, feel free to contact our staff at (804) 758-3382.

Sincerely,

Marc K. Longest
Environmental & Codes Compliance Officer

cc: Lewis Hall
VMRC
File, W# 2024-2020

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: Approved: RE: JPA: 20242020 in Middlesex, Applicant: Oyster Road Docks, LLC
Date: Thursday, October 17, 2024 11:06:44 AM

Good morning,

Could you please add this to JPA# 24-2020?

Thank you!

Kirsten Travis
Environmental Engineer, Habitat Management
Virginia Marine Resource Commission
(757) 247-8027 (Office)

From: Smigo, Margaret (VDH) <Margaret.smigo@vdh.virginia.gov>
Sent: Wednesday, October 16, 2024 3:50 PM
To: Travis, Kirsten (MRC) <Kirsten.Travis@mrc.virginia.gov>
Subject: Approved: RE: JPA: 20242020 in Middlesex, Applicant: Oyster Road Docks, LLC

Apologies for the delay, approval below...

[Application: 20242020](#)

Applicant: Oyster Road Docks, LLC
Locality: Middlesex
Project Description: Convert Private Pier to Commercial
Date Received: August 22, 2024
Engineer: Kirsten Travis

After reviewing the application, please reply to this email and indicate one of the following:

I HAVE CONDUCTED A THOROUGH REVIEW OF THE PROPOSED PROJECT BASED UPON THE STATUTORY RESPONSIBILITY OF THIS AGENCY AND MY EVALUATION IS THAT:

X THE PROPOSED PROJECT IS ACCEPTABLE.

[] CERTAIN ASPECTS OF THE PROPOSAL ARE OBJECTIONABLE AND UNLESS THE SUGGESTED MODIFICATIONS ARE INCORPORATED, THE PROJECT IS UNDESIRABLE. (SUGGESTED MODIFICATIONS SHOULD BE PROVIDED TO THE APPLICANT EXPEDITIOUSLY FOR HIS CONSIDERATION.)

[] THERE ARE ASPECTS THAT ARE OBJECTIONABLE AND, IN OUR OPINION, NOT RECONCILABLE; THEREFORE, THE PROJECT IS **UNACCEPTABLE**. (THIS IS CONSIDERED AN **AGENCY OBJECTION** REQUIRING REVIEW BY THE FULL COMMISSION IN ACCORDANCE WITH SECTION 28.2-1207(A2) OF THE CODE OF VIRGINIA; MUST BE FULLY JUSTIFIED AND MAY REQUIRE YOUR PRESENCE TO TESTIFY AT THE PUBLIC HEARING.)

WAS A FIELD INVESTIGATION OF THE PROPOSAL PERFORMED BY A MEMBER OF YOUR AGENCY? YES / NO

DATE OF INVESTIGATION: 10/16/24

NAME OF INVESTIGATOR: Margaret Smigo

COMMENTS: None

Margaret Smigo

Waterborne Hazards and Marina Programs Manager

Office of Environmental Health Services

Division of Shellfish Safety and Waterborne Hazards

Phone: (804)731-1352

HAB Hotline: (888) 238-6154

www.SwimHealthyVA.com

[Facebook](#) | [Twitter](#) | [YouTube](#) | [LinkedIn](#)

Virginia Department of Health
109 Governor Street
Richmond, VA 23219



**Office of Environmental
Health Services**

Division of Shellfish Safety
and Waterborne Hazards

From: Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>

Sent: Wednesday, September 4, 2024 3:00 PM

To: Smigo, Margaret (VDH) <Margaret.smigo@vdh.virginia.gov>; Wood, Adam (VDH)

<Adam.wood@vdh.virginia.gov>

Subject: JPA: 20242020 in Middlesex, Applicant: Oyster Road Docks, LLC

Joint Permit Application Request for Comments

Virginia Marine Resources Commission, Habitat Management Division, requests your review and evaluation of the following permit. Your evaluation is requested no later than September 25, 2024. By statute, we are obliged to refer an objection by any state agency to the full Commission in a public hearing. An unacceptable evaluation will be considered an agency objection. Evaluations suggesting modifications or indicating that the proposal is unacceptable should include comments in the justification of your finding.

Please click the link below for full application details.

[Application: 20242020](#)

Applicant: Oyster Road Docks, LLC

Locality: Middlesex

Project Description: Convert Private Pier to Commercial

Date Received: August 22, 2024

Engineer: Kirsten Travis

After reviewing the application, please reply to this email and indicate one of the following:

I HAVE CONDUCTED A THOROUGH REVIEW OF THE PROPOSED PROJECT BASED UPON THE STATUTORY RESPONSIBILITY OF THIS AGENCY AND MY EVALUATION IS THAT:

[] THE PROPOSED PROJECT IS **ACCEPTABLE**.

[] CERTAIN ASPECTS OF THE PROPOSAL ARE OBJECTIONABLE AND UNLESS THE SUGGESTED MODIFICATIONS ARE INCORPORATED, THE PROJECT IS **UNDESIRABLE**. (SUGGESTED MODIFICATIONS SHOULD BE PROVIDED TO THE APPLICANT EXPEDITIOUSLY FOR HIS CONSIDERATION.)

[] THERE ARE ASPECTS THAT ARE OBJECTIONABLE AND, IN OUR OPINION, NOT RECONCILABLE; THEREFORE, THE PROJECT IS **UNACCEPTABLE**. (THIS IS CONSIDERED AN **AGENCY OBJECTION** REQUIRING REVIEW BY THE FULL COMMISSION IN ACCORDANCE WITH SECTION 28.2-1207(A2) OF THE CODE OF VIRGINIA; MUST BE FULLY JUSTIFIED AND MAY REQUIRE YOUR PRESENCE TO TESTIFY AT THE PUBLIC HEARING.)

WAS A FIELD INVESTIGATION OF THE PROPOSAL PERFORMED BY A MEMBER

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: JPA: 20242020 in Middlesex, Applicant: Oyster Road Docks, LLC
Date: Thursday, January 16, 2025 3:51:42 PM
Attachments: [Outlook-twgduri2.png](#)
[Outlook-pug0z2da.png](#)
[DSS_20240905_20242020_CommentsMemo.pdf](#)

Good afternoon,

Could you please add these comments to JPA# 24-2020?

Thanks!

Kirsten Travis

Environmental Engineer, Habitat Management

Virginia Marine Resource Commission

(757) 247-8027 (Office)

From: Wood, Adam (VDH) <Adam.Wood@vdh.virginia.gov>
Sent: Thursday, September 5, 2024 12:23 PM
To: Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>
Subject: Re: JPA: 20242020 in Middlesex, Applicant: Oyster Road Docks, LLC

Good Morning,

This project will not cause any change in shellfish classification areas. Please accept the attached memo as VDH/DSS's response.

Applicant: Oyster Road Docks, LLC

Locality: Middlesex

Project Description: Convert Private Pier to Commercial

Date Received: August 22, 2024

Engineer: Kirsten Travis

After reviewing the application, please reply to this email and indicate one of the following:

I HAVE CONDUCTED A THOROUGH REVIEW OF THE PROPOSED PROJECT BASED UPON THE STATUTORY RESPONSIBILITY OF THIS AGENCY AND MY EVALUATION IS THAT:

[X] THE PROPOSED PROJECT IS ACCEPTABLE.

[] CERTAIN ASPECTS OF THE PROPOSAL ARE OBJECTIONABLE AND UNLESS THE SUGGESTED MODIFICATIONS ARE INCORPORATED, THE PROJECT IS UNDESIRABLE. (SUGGESTED MODIFICATIONS SHOULD BE

PROVIDED TO THE APPLICANT EXPEDITIOUSLY FOR HIS CONSIDERATION.)

[] THERE ARE ASPECTS THAT ARE OBJECTIONABLE AND, IN OUR OPINION, NOT RECONCILABLE; THEREFORE, THE PROJECT IS **UNACCEPTABLE**. (THIS IS CONSIDERED AN **AGENCY OBJECTION** REQUIRING REVIEW BY THE FULL COMMISSION IN ACCORDANCE WITH SECTION 28.2-1207(A2) OF THE CODE OF VIRGINIA; MUST BE FULLY JUSTIFIED AND MAY REQUIRE YOUR PRESENCE TO TESTIFY AT THE PUBLIC HEARING.)

WAS A FIELD INVESTIGATION OF THE PROPOSAL PERFORMED BY A MEMBER OF YOUR AGENCY? NO

Very Respectfully

Adam Wood

Growing Area Manager

Virginia Department of Health

Division of Shellfish Safety

Cell: (804) 839-2809

Office: (804) 577-4007

www.vdh.virginia.gov/shellfish



From: Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>

Sent: Wednesday, September 4, 2024 3:00 PM

To: Smigo, Margaret (VDH) <Margaret.smigo@vdh.virginia.gov>; Wood, Adam (VDH) <Adam.wood@vdh.virginia.gov>

Subject: JPA: 20242020 in Middlesex, Applicant: Oyster Road Docks, LLC

Joint Permit Application Request for Comments

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☐ CERTAIN ASPECTS OF THE PROPOSAL ARE OBJECTIONABLE AND UNLESS THE SUGGESTED MODIFICATIONS ARE INCORPORATED, THE PROJECT IS **UNDESIRABLE**. (SUGGESTED MODIFICATIONS SHOULD BE PROVIDED TO THE APPLICANT EXPEDITIOUSLY FOR HIS CONSIDERATION.)

☐ THERE ARE ASPECTS THAT ARE OBJECTIONABLE AND, IN OUR OPINION, NOT RECONCILABLE; THEREFORE, THE PROJECT IS **UNACCEPTABLE**. (THIS IS CONSIDERED AN **AGENCY OBJECTION** REQUIRING REVIEW BY THE FULL COMMISSION IN ACCORDANCE WITH SECTION 28.2-1207(A2) OF THE CODE OF VIRGINIA; MUST BE FULLY JUSTIFIED AND MAY REQUIRE YOUR PRESENCE TO TESTIFY AT THE PUBLIC HEARING.)

WAS A FIELD INVESTIGATION OF THE PROPOSAL PERFORMED BY A MEMBER OF YOUR AGENCY? YES / NO

DATE OF INVESTIGATION: _____

NAME OF INVESTIGATOR: _____

COMMENTS: _____

Should you have any questions regarding this permit application, please do not hesitate to contact me at (757) 247-8027 or kirsten.travis@mrc.virginia.gov

Kirsten Travis
Environmental Engineer
Virginia Marine Resources Commission
Phone: (757) 247-8027
Email: kirsten.travis@mrc.virginia.gov

Viewing application and related documents requires Google Chrome, Mozilla Firefox, Safari, or Microsoft Edge.



COMMONWEALTH of VIRGINIA

Department of Health

P. O. BOX 2448
RICHMOND, VA 23218-2448

TTY 7-1-1 OR
1-800-828-1120

MEMORANDUM

DATE: 9/5/2024
TO: Kirsten Travis
Virginia Marine Resources Commission
FROM: Adam Wood, Growing Area Manager
Division of Shellfish Safety Waterborne Hazards Control
SUBJECT: OYSTER ROAD DOCKS, LLC

City / County: Middlesex

Waterbody: Urbanna Creek

Type: ☐ VPDES ☐ VMRC ☐ VPA ☐ VWP ☒ JPA ☐ Other:

Application / Permit Number: 20242020

- ☐ The project will not affect shellfish growing waters.
- ☐ The project is located in or adjacent to approved shellfish growing waters, however, the activity as described will not require a change in classification.
- ☒ The project is located in or adjacent to condemned shellfish growing waters and the activity, as described, will not cause an increase in the size or type of the existing closure.
- ☐ The project will affect condemned shellfish waters and will not cause an increase in the size of the total condemnation. However, a prohibited area (an area from which shellfish relay to approved waters for self-purification is not allowed) will be required within a portion of the currently condemned area. See comments.
- ☐ A buffer zone (including a prohibited area) has been previously established in the vicinity of this discharge, however, the closure will have to be revised. Map attached.
- ☐ This project will affect approved shellfish waters. If this discharge is approved, a buffer zone (including a prohibited area) will be established in the vicinity of the discharge. Map attached.
- ☐ Other.

**ADDITIONAL
COMMENTS:**

Area #: 029

ACW

Recieved by VMRC Jan 16, 2025 map



OF YOUR AGENCY? YES / NO

DATE OF INVESTIGATION: _____

NAME OF INVESTIGATOR: _____

COMMENTS: _____

Should you have any questions regarding this permit application, please do not hesitate to contact me at (757) 247-8027 or kirsten.travis@mrc.virginia.gov

Kirsten Travis
Environmental Engineer
Virginia Marine Resources Commission
Phone: (757) 247-8027
Email: kirsten.travis@mrc.virginia.gov

Viewing application and related documents requires Google Chrome, Mozilla Firefox, Safari, or Microsoft Edge.

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: NAO-2017-01145 - Lewis Hall VMRC JPA 24-2020
Date: Thursday, September 5, 2024 9:32:56 AM

Good morning,

Could you please add this to JPA# 24-2020?

Thank you!

Kirsten Travis
Environmental Engineer, Habitat Management
Virginia Marine Resource Commission
(757) 247-8027 (Office)

From: Bannon, Michael R CIV USARMY CENAO (USA) <Michael.R.Bannon@usace.army.mil>
Sent: Thursday, September 5, 2024 7:24 AM
To: lewishall35@yahoo.com
Cc: Travis, Kirsten (MRC) <kristen.travis@mrc.virginia.gov>
Subject: NAO-2017-01145 - Lewis Hall VMRC JPA 24-2020

Hello Mr. Hall,

I hope all is well. I am reaching out to let you know the application VMRC JPA #24-2020 has been received and our records have been updated to reflect the change in use of the three slips. No further action from USACE is needed at this time. For your reference or if future projects were to be submitted, the USACE project number associated with the project is NAO-2017-01145. If you have any questions or concerns, please feel free to reach out.

Thank you,
Michael Bannon

Michael Bannon
Environmental Scientist
Southern Virginia Regulatory Section
U.S. Army Corps of Engineers, Norfolk District
Richmond Field Office
9100 Arboretum Pkwy, Ste 235
Richmond, Virginia 23236

Email: michael.r.bannon@usace.army.mil
Office: (804) 510-3505
Regulator of the Day (ROD) Help: (757) 201-7652

The Norfolk District is committed to providing the highest level of support to the public. In order for us to better serve you, please complete our Customer Satisfaction Survey at:
<https://regulatory.ops.usace.army.mil/customer-service-survey/>

TOWN OF URBANNA - BUSINESS LICENSE

TOWN OF URBANNA
P.O. BOX 179
URBANNA, VA 23175

Phone: (804)758-2613

License Id: 23-00822

Issued Date: 07/16/24

Effective Date: 07/01/24

Expiration Date: 06/30/25

License Type: BUSINESS LICENSE

Business Name: OYSTER ROAD DOCKS LLC

Business Location: 41 OYSTER RD

OYSTER ROAD DOCKS LLC
LEWIS HALL
41 OYSTER RD
PO BOX 603
URBANNA, VA 23175



2024

Summary of Services:

Description

BUSINESS LICENSE

NON-TRANSFERABLE

TO BE PLACED IN A CONSPICUOUS PLACE

License Id: 23-00822

Issued Date: 07/16/24

Effective Date: 07/01/24

Expiration Date: 06/30/25

License Type: BUSINESS LICENSE

Business Name: OYSTER ROAD DOCKS LLC

Business Location: 41 OYSTER RD

OYSTER ROAD DOCKS LLC
LEWIS HALL
41 OYSTER RD
PO BOX 603
URBANNA, VA 23175

2024

Summary of Services

Description

BUSINESS LICENSE

FILE COPY

County of Northampton

VMRC #2023-2155

1. Habitat Management Evaluation dated January 28, 2025
(Page 1 through 3)
2. Application plan view and cross sections dated-received January 13, 2025
(Page 4 through 8)
3. Application Dredged Material Management Plan dated-received January 13, 2025
(Page 9 and 10)
- 4a. Virginia Institute of Marine Science comments dated-received December 13, 2023
(Page 11)
- 4b. Virginia Institute of Marine Science comments dated-received September 17, 2024
(Page 12)
5. Department of Environmental Quality comments dated-received October 4, 2023
(Page 13 through 16)
6. Northampton County Local Wetlands Board comments dated-received October 11, 2023
(Page 17 and 18)
7. Department of Conservation and Recreation comments dated-received November 14, 2023
(Page 19 through 23)
8. Oyster leaseholder consent form dated-received November 26, 2024
(Page 24 through 26)
9. United States Coast Guard comments dated-received September 9, 2024
(Page 27 through 29)
10. Army Corps of Engineers comments dated-received January 22, 2025
(Page 30 through 33)

All project drawings, plans and application information are available at
<https://webapps.mrc.virginia.gov/public/habitat/>

HABITAT MANAGEMENT DIVISION EVALUATION

COUNTY OF NORTHAMPTON, VMRC #2023-2155, requests authorization to install six (6) Aids to Navigation buoys and to dredge approximately 24,200 cubic yards of submerged bottom material at the confluence of Nassawadox Creek with overboard disposal into the Chesapeake Bay southwest of Nassawadox Point in Northampton County.

Narrative

The dredging component of the project is located at the mouth of Nassawadox Creek on the Bayside of the Eastern Shore. Dredging is proposed at the confluence of Nassawadox Creek with the County's plans to dump the dredge spoils into the Chesapeake Bay just southwest of Nassawadox Point. The channel is proposed to be 60 feet wide, minus seven (-7) feet in depth, and will generate approximately 24,200 cubic yards of material. The proposed disposal site is located approximately 950 feet from the adjacent shoreline to the east. Nassawadox Creek was last dredged in 2005 in a joint effort by the Army Corps of Engineers (ACOE) and Northampton County. The County is utilizing funding from the Virginia Waterway Maintenance Fund, disbursed by the Virginia Port Authority, to restore navigable access to the creek.

Issues

The cost of proposed activities below mean low water exceeds \$500,000.00 and requires Commission approval. The dredging component of this project to maintain navigability of Nassawadox Creek is supported by staff; however, the proposed overboard disposal of dredged material over state-owned bottom is not supported.

The application states that the overboard disposal of dredged material will be utilized for the construction of an offshore "berm" to function as a passive sediment source and is further described as a beneficial use method of disposal. Comments provided by the Virginia Institute of Marine Science (VIMS) on December 13, 2023, and reiterated on September 19, 2024, cite concerns regarding the characterization of this disposal method as beneficial use, the sediment sample characterization, and the environmental implications resulting from overboard disposal.

Habitat staff and VIMS do not concur with the characterization of this disposal method as *beneficial use* given that there is no appreciable difference between standard overboard disposal and the placement of dredge material as a nearshore berm. Further, this method of disposal will not increase the resilience, enhance habitat, or increase ecological function of aquatic and/or intertidal habitat.

Regarding sediment characterization, a series of vibracore samples were taken by the agent along the proposed dredge footprint and adjacent to the overboard disposal area. While the application asserts that the majority of the dredge material is comprised of sand, these conclusions were not echoed by VIMS per comments provided on September 19, 2024. The channel sediment samples were comprised predominantly of fine sand mixed with silt and clay, while the placement area samples were comprised of medium grain sized sand or coarser. If placed overboard, the channel

Issues (cont'd)

material would result in increased turbidity due to the fine silt and clay composition and is also deemed unsuitable for beach nourishment. While the proposed placement area does not overlap with submerged aquatic vegetation mapped when the application was submitted, the current 2019 – 2023 SAV layer suggests that the proposed dredge cut may impact SAV. The cut will impact one private oyster lease directly, and there are several nearby SAV beds and private leases in the vicinity, further emphasizing turbidity and water quality concerns.

VMRC met with representatives from the Eastern Shore Planning District Commission (ESPDC), the Eastern Shore Regional Navigable Waterways Committee (ESRNC), Mr. J. T. Holland, and the County's agent from Moffatt & Nichol consulting firm on August 16, 2024. At this meeting, staff reiterated our and VIMS' concerns regarding the overboard disposal method. Staff encouraged the applicants to consider upland disposal or a beneficial use project including the consideration of upland disposal on privately owned adjacent farmlands.

To date, staff is not aware that the latter alternative has been explored. In fact, the Army Corps Regulatory Branch advised that, at the County's request, they suspended their public notice for this project back on December 14, 2023, to await a revised project design which has never been submitted. Per the Corps, the earliest they can reach a permit decision on the Nassawadox Creek dredging proposal will be a minimum of 120 days after their public notice is posted. This equates to a late April federal 2025 permit decision at the earliest.

More recently, on December 18, 2024, Habitat, VIMS and the Corps' project manager met with representatives from the ESPDC, ESRNC, and Moffatt & Nichol, at their request, to discuss future shallow water navigational dredge projects on the Eastern Shore. The goal of this meeting was to discuss the potential beneficial use of dredge material on low-lying areas of Tangier Island. While this meeting was not directly related to the Nassawadox Creek dredge proposal, staff believes this should be considered as a step in the right direction given the applicant's current attempt to characterize overboard disposal into the Chesapeake Bay as a beneficial use.

Summary/Recommendations

VMRC and VIMS are of the opinion that the proposed overboard disposal of dredged material from the Nassawadox Creek dredging project into the Chesapeake Bay poses considerable negative environmental impacts and sets a concerning precedence for future dredging projects. Overboard disposal of dredge material has long been recognized in the scientific literature as having pronounced adverse environmental impacts on marine and estuarine subaqueous beds/bottomlands. Key adverse impacts include:

- Increased localized turbidity which adversely affects shellfish populations, submerged aquatic vegetation beds and other marine aquatic flora & fauna.
- Burial of existing benthic communities that play an integral role in the Bay's ecological services (i.e., nutrient recycling, carbon sequestration, feeding grounds, etc.).

Summary/Recommendations (cont'd)

- Resuspension of pollutants/contaminants and nutrients, which can degrade water quality and lead to localized decreased oxygen concentrations through increased biological and chemical oxygen demand (BOD & COD).
- Reduced biological diversity of high food quality benthic prey organisms resulting from overboard placement of fine-grained material (fine to medium sand, silts, clays). An example of habitat loss or degradation resulting from overboard disposal is reflected in the burial (loss or reduction) of the larger, deeper-bodied benthic marine annelids (clam worms, etc.) that are fed on by drum fishes and other finfish species. These species are lost, soon after spoil placement, resulting from the invasion of opportunistic smaller-bodied infauna with less value as a food source for many fish species.

In light of the aforementioned adverse environmental impacts that can result from overboard disposal, staff recommends denial of the project as proposed. Staff has repeatedly advised the applicant that the proposed dredging is acceptable, and that we were ready to move forward with authorization provided the County identified an upland beneficial use disposal option.

Given the recent meeting to discuss beneficial use disposal options at Tangier Island (as part of their larger VPA funded cost and feasibility study for the Shores collective shallow water navigational channels), staff believes that upland disposal and beneficial use alternatives are feasible and available. Staff recommends that the Commission direct the applicant to include the current project in their analysis of beneficial use of dredge material alternatives at Tangier Island. And that the County be required to submit a new application for Nassawadox Creek once an upland disposal option or beneficial use project is identified. This will additionally allow more time for their consultant to include the new VMRC SAV 2019 – 2023 SAV layer, and to calculate any encroachment into the SAV 5-year bed layer.

Resubmittal of a new application, with a more complete alternatives analysis of beneficial use alternatives at Tangier Island with more current SAV impacts mapping, would seem to fit with the Corps' projected permit timeline. At this time, a Commission decision on this matter seems premature given the Corp's projected regulatory timeline.

The map displays the Chesapeake Bay area, highlighting the proposed alignment of the Eastern Shore Expressway. Key features labeled include:

- NASSAWADOX CREEK CHANNEL**: A narrow waterway flowing into the bay.
- DREDGE AREA**: A designated area for dredging operations.
- PRELIMINARY ALIGNMENT OF DREDGE TRANSPORT PIPING**: A line indicating the proposed route for transporting dredged material.
- NEARSHORE PLACEMENT AREA**: A designated area for the placement of dredged material near the shore.

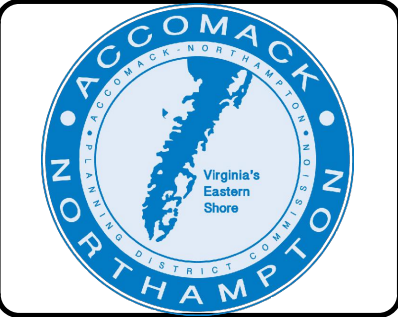
A north arrow is located in the top left corner, and the text "CHESAPEAKE BAY" is visible in the upper left. The map also shows the Eastern Shore Expressway Bridge and the surrounding land and water features.

VICINITY MAP

NTS

Sheet
Reference No.
G-001
1 OF 5

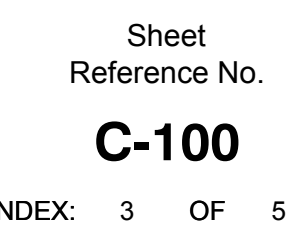
COUNTY OF NORTHAMPTON NASSAWADOX CREEK MAINTENANCE DREDGING	TITLE SHEET, LOCATION MAP AND INDEX OF DRAWINGS
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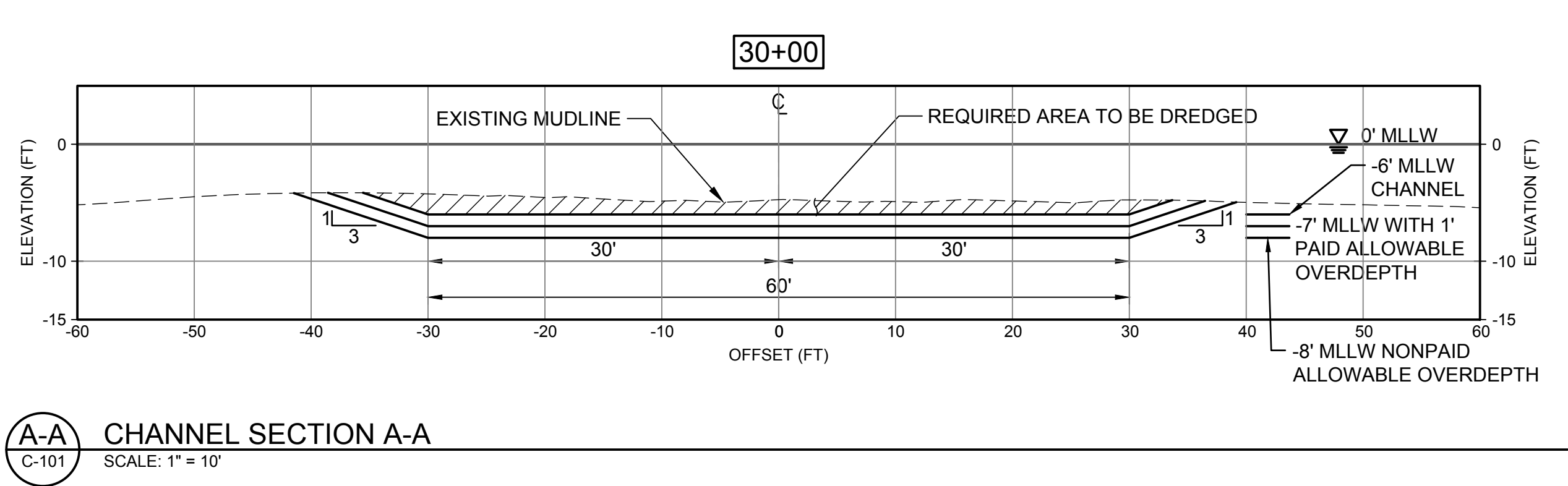
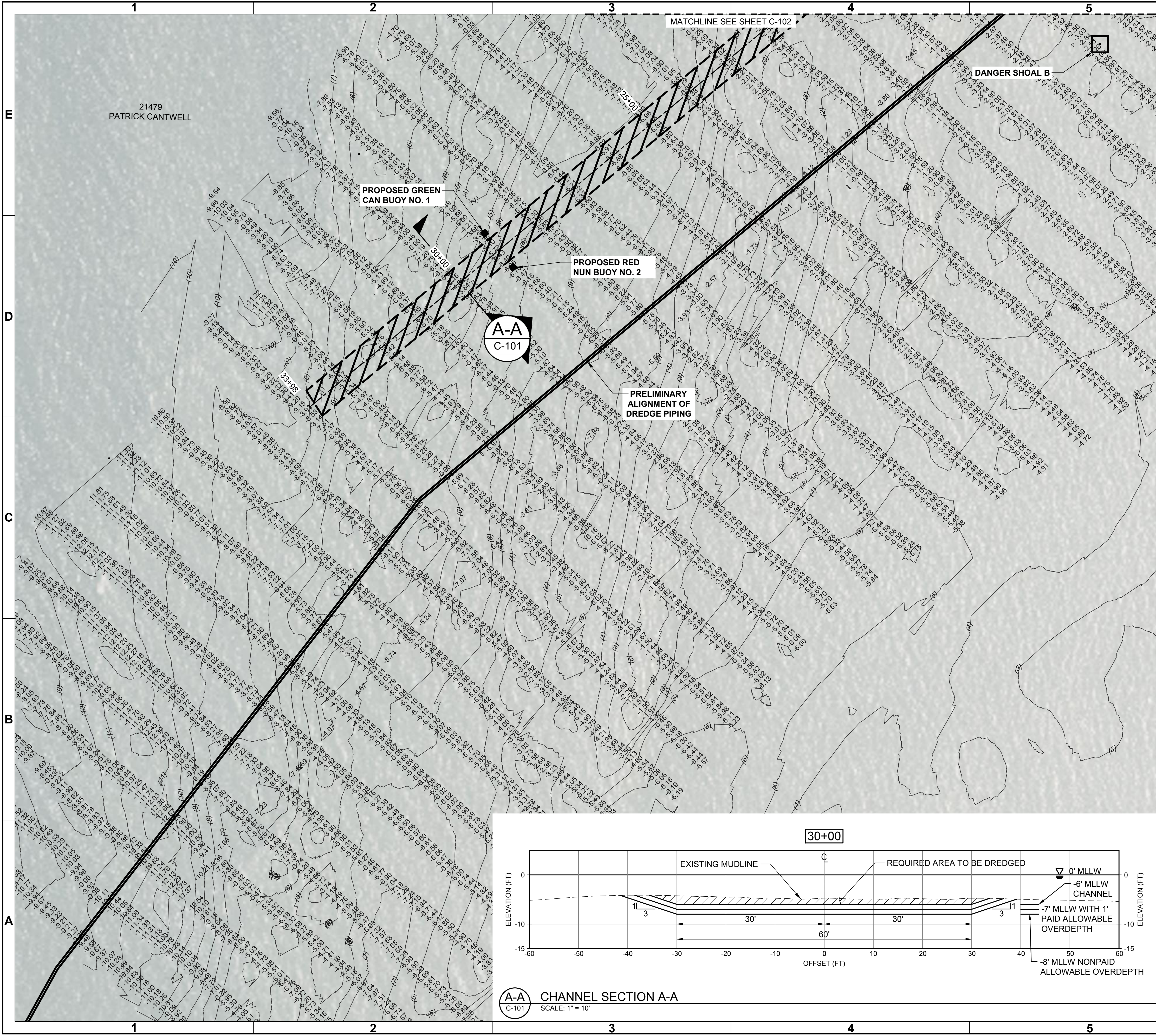


FOR PERMITS
AUGUST 2023
NOT TO BE USED FOR CONSTRUCTION

NOTE: INFORMATION FOR LIMITS OF SAV BEDS AND OYSTER LEASES ARE OBTAINED FROM THE VIRGINIA INSTITUTE OF MARINE SCIENCE (VIMS) (2021) AND THE VIRGINIA MARINE RESOURCES COMMISSION (2021).



File: Q:\NOR1201429-06120 CADD\ Active\ sheetset\20142906 C-100; Plotted: 12/3/2024 4:14 PM by WALKER, MARY; Saved: 10/20/2023 8:01 PM by MWALKER



- LEGEND**
- PROPERTY LINE
 - DREDGING AREA
 - (X) ELEVATION CONTOUR
 - 3.24 SPOT ELEVATION

- SURVEY NOTES:**
- HORIZONTAL CONTROL IS BASED ON VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 1983/1993 (HARN), US SURVEY FEET.
 - ELEVATIONS ARE IN FEET BASED ON NOS MEAN LOWER-LOW WATER (MLLW), 1983-2001 NTDE.
 - THE HYDROGRAPHIC SURVEY WAS COMPLETED UNDER THE DIRECT AND RESPONSIBLE CHARGE OF DAVE BERNSTEIN FROM AN ACTUAL SURVEY MADE UNDER HIS SUPERVISION. THAT ORIGINAL DATA WAS OBTAINED IN MARCH AND APRIL OF 2021. THIS MAP DATA INCLUDING METADATA MEETS MINIMUM ACCURACY STANDARDS UNLESS OTHERWISE NOTED.
 - SOURCE OF BACKGROUND IMAGE IS ESRI, MAXAR, GEOEYE, EARTH TAR GEOGRAPHICS, CNES/AIRBUS DS, USDA, USGS, AEROGRIID, IGN, AND THE GIS USER COMMUNITY.
 - PRELIMINARY ALIGNMENT OF DREDGE PIPELINE IS SUBJECT TO CHANGE BASED ON AWARDED CONSTRUCTION CONTRACTOR MEANS AND METHODS.

10' 0' 10' 20'

SCALE: 1"= 10'

100' 0' 100' 200'

SCALE: 1"= 100'

FOR PERMITS
AUGUST 2023
NOT TO BE USED FOR CONSTRUCTION

Date	Rev.
08/29/2023	

Designed by:	Drawn by:	Checked by:	Reviewed by:	Submitted by:
GS	IB	IB	IB	MOFFATT & NICHOL

101 W. MAIN STREET #5000
NORFOLK, VA 23510
757-628-8222

moffatt & nichol

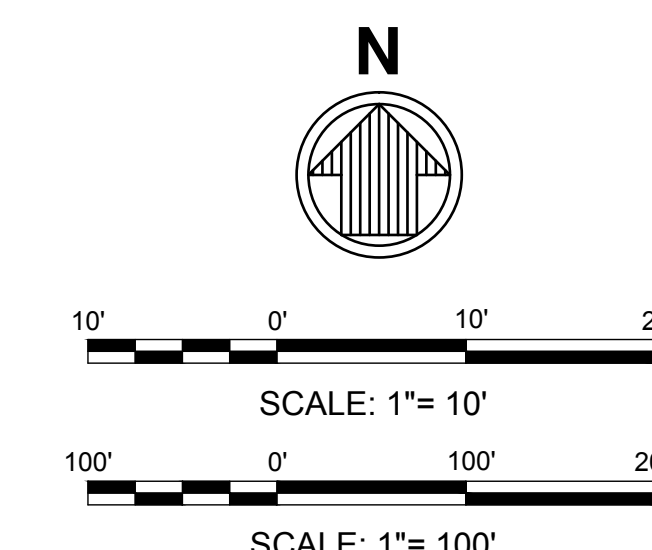
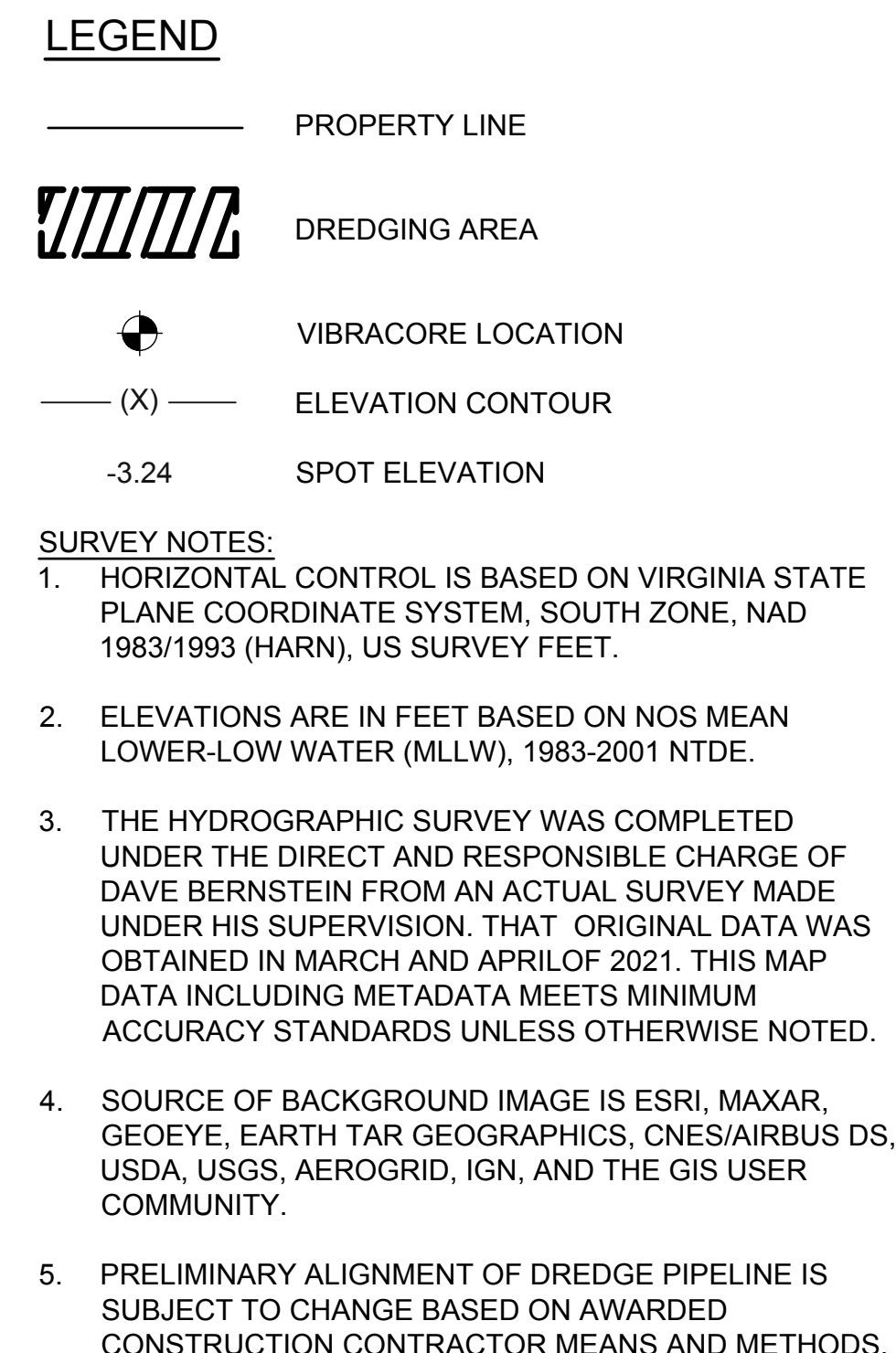
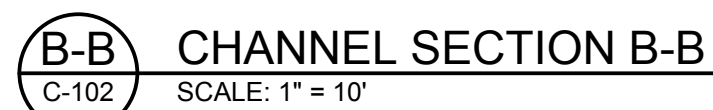
**COUNTY OF NORTHAMPTON
NASSAWADOX CREEK MAINTENANCE
DREDGING**

**LOCATION MAP (SHEET 1
OF 2)**

Sheet
Reference No.
C-101

INDEX: 3 OF 5


Seal area for professional stamp



FOR PERMITS
AUGUST 2023
NOT TO BE USED FOR CONSTRUCTION

[illegible]

	D
COUNTY OF NORTHAMPTON MASSAWADOX CREEK MAINTENANCE DREDGING	LOCATION MAP (SHEET 2 OF 2)

<div>  moffatt & nichol </div>		<div> 101 W. MAIN STREET #3000 NORFOLK, VA 23510 757-628-8222 </div>		<div> <div> <div>Designed by:</div> <div>GS</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Reviewed by:</div> <div>IB</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Submitted by:</div> <div>MOFFATT & NICHOL</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Reviewed by:</div> <div>IB</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Submitted by:</div> <div>MOFFATT & NICHOL</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Reviewed by:</div> <div>IB</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Submitted by:</div> <div>MOFFATT & NICHOL</div> </div> <div> <div>Date:</div> <div>08/29/2023</div> </div> </div>		<div> <div> <div>Reviewed by:</div> <div>IB</div> </div> <div> <div>Date:</div> 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SEAL

Sheet
Reference No.
C-102

File: Q:\INORI\201429-06120 CADD\ Active\ sheet\set\20142906 C-102, Plotted: 12/3/2024 4:15 PM by WALKER, MARY ; Saved: 12/3/2024 4:11 PM by MWALKER

Dredged Material Management Plan

Nassawadox Creek Maintenance Dredging

Nassawadox Creek, located on the Chesapeake Bay side of the Eastern Shore in Northampton County, requires maintenance dredging to restore navigability.

This Dredged Material Management Plan summarizes the existing conditions, materials to be dredged, volumes to be dredged, dredging methods and proposed beneficial use of the material. The permit requests dredging the reach of Nassawadox Creek from west of Church Point out to the Chesapeake Bay with beneficial use of the dredged material going toward shoal enhancement.

Existing Conditions. Condition surveys, as shown on the permit drawings, show shoaling along this channel and the need for dredging of this shallow draft navigation channel.

Material to be Dredged. Vibracores and soil gradation testing have been completed and are attached for reference. The vibracores are located in the vicinity of the proposed dredging area. Laboratory testing revealed that soil properties consist of sands and silty sands. Most of the cores have a percent of fines (silts and clays) less than 12% and the average percent fines is 14.9%. Vibracores 02 and 03, located between Stations 30+00 and 38+50, contains sands with a higher percentage of fines.

Channel Dimensions and Volumes. The selected channel bottom width is 60 feet with assumed side slopes of 3:1 (Horizontal:Vertical). The alignment of the dredging extents in plan view can be found in the drawings. A dredge depth of -6 feet MLLW was selected based on other adjacent shallow draft navigation projects. With a 1-foot allowable paid overdepth, and 1-foot of non-pay overdepth shown, the dredging template is to -8 feet MLLW. The estimated volume to be dredged within the paid template is 24,200 Cubic Yards.

Equipment. Dredging is to be completed by either hydraulic or mechanical dredging. Expected equipment includes:

- Hydraulic Dredging
 - Hydraulic dredge- transported to site via truck (smaller dredge) or towed by barge, can be cutterhead or horizontal auger.
 - Crane to offload and launch dredge (if required).
 - Long-reach excavator to dredge basin to allow sufficient water depth for launching and initial operation of dredge (approximately 3 ft needed to operate – if required).
 - Sufficient pipeline (combination of floating and submerged pipeline).
- Mechanical Dredging
 - Unpowered deck (or flat-top) barges (for excavator) and hopper barges (for transporting dredged material to offload areas) - each one an estimated 50 feet long, 50 feet wide, 5 feet draft.
 - Long-reach (estimated up to 60-foot) excavator on barge.

Revised 1/13/2025 (orig 8/29/2023)

- Powered boat/tug for pushing barges - each one at a maximum 30 feet long, 10 feet wide, 4 feet draft.
- Hydraulic offloading may also be used and will replace the hopper barges and additional shore side long reach excavator with a pump and piping.

Placement Area. An initial DMMP was developed to screen alternatives for beneficial use of the dredged material. The recommendation from that study was that the best use of the dredged material was placement in a nearshore berm. The area shown is selected due to its proximity to the dredge area, and distance from oyster leases. The nearshore berm is expected to act as a sediment source, allowing sandy material to be transported naturally through wave activity and transported both in the cross-shore direction and alongshore direction to the adjacent eroding shorelines. This process can be simulated using the USACE Sediment Mobility Tool ([Sediment Mobility Tool \(army.mil\)](https://www.army.mil)), which is a scoping level numerical model for siting nearshore placement areas of dredged material. For the proposed placement area, a simulation using the sediment mobility tool was performed and a summary report was completed which showed that an estimated 5,500CY per year will be transported onshore based on the proposed construction geometry of the nearshore placement berm.

Material may be placed either mechanically or hydraulically. Mechanically dredged material would entail loading on hopper barges. The hoppers would then be transported to the placement area and unloaded within the designated area. Material to be dredged hydraulically will be transported via pipeline directly to the placement area. In either method, a maximum fill elevation is shown to avoid navigation issues.

ATONs. Six single buoy Aids to Navigation (ATONs) are proposed, and locations are shown on attached figures. The buoys will be Can and Nun Buoys with appropriate sized anchor.

Shellfish Leases. Lease areas impacted by proposed dredging are summarized below and are identified on the drawing.

Lease Number Owner/Address

21479	Patrick Cantwell, 35494 Copes Dr., Belle Haven, VA 23306
-------	--

13 December 2023

Ms. Claire Gorman
Environmental Engineer
Virginia Marine Resources Commission
380 Fenwick Road, Bldg. 96
Fort Monroe, VA 23651

Dear Ms. Gorman:

We have reviewed the application by Northampton County to dredge the approach to Nassawadox Creek (VMRC #23-2155). The proposed dredging includes both maintenance and new dredging with dredged material hydraulically pumped or mechanically placed to the south in an overboard placement area. The application describes the resulting material as an offshore berm that will act as a source of sediment both cross- and along-shore and therefore is should be considered beneficial use. There are submerged aquatic vegetation (SAV) beds near the project area at the mouth of the creek and along the shoreline landward of the proposed placement area that are not anticipated to be directly impacted by the project.

We disagree with characterizing the proposed overboard disposal as beneficial use as there is no appreciable difference between what is proposed here and typical overboard disposal. The “berm” is not proposed as an engineered shape and the placement area depicted in the plan-view drawings is sized to account for future dredge cycles. Additionally, based on bottom sediment samples taken near the proposed dredge and placement areas, the dredged sediment is predominantly fine sand with silt and clay mixed in. The samples closest to and inshore of the placement area all have a median grain size coarser than those of the dredge area samples and are predominantly medium sand with fine sand mixed in. The high proportions of fine sediment in the dredged material makes it unsuitable for beach nourishment and will result in increased turbidity in and proximal to the placement area if deposited overboard. The material could be suitable for beneficial use in a properly designed marsh project where fine sediment would be appropriate. If such a project is not found or practicable, we recommend upland disposal.

Please let me know if you have any questions or require additional information.

Sincerely,



Emily Hein
Assistant Director for Advisory Services

From: [Emily A. Hein](#)
To: [Gorman, Claire \(MRC\)](#)
Cc: [Owen, Randy \(MRC\)](#); [MRC - jpa Permits](#); [Advisory](#)
Subject: Nassawadox Creek VMRC #23-2155)
Date: Tuesday, September 17, 2024 10:45:46 AM
Attachments: [Outlook-elhkij51.png](#)

Good morning, Claire,

After reviewing all materials posted on the permit tracking database as of today for the Nassawadox Creek dredging project (VMRC #23-2155), our comments of 13 December 2023 remain valid. We would also like to note that the data presented do not support the assertion that sand comprises approximately 80-85% of the total proposed dredge volume. That value is the average percentage of sand from the bulk sediment samples from the six vibracores that were taken near the proposed dredge channel. It cannot be assumed that the sand composition of sediment beds is homogenous between core locations, particularly as the sediment texture captured by the center two cores (VC-NC-02 and VC-NC-03) differs significantly from the others.

We would also like to reiterate that from a scientific perspective, the proposed overboard placement of the dredged material does not constitute beneficial use as its proposed placement is not expected to significantly increase the resilience, enhance habitat, or increase ecological function of aquatic and/or intertidal habitat. The portion of fine sediment within the dredged material is not expected to remain in the proposed placement area, and as it is planned between approximately 2100 and 2700 feet offshore and 9 and 12 feet MLLW, the sand fraction is not expected to contribute much, if any, sediment to the active inshore bar system.

Please let me know if you have any additional questions.

Best,

Emily

Emily Hein
Assistant Director for Advisory Services
VIMS Research and Advisory Services
Virginia Institute of Marine Science
William & Mary
www.vims.edu/oras
eahein@vims.edu
804-684-7482



[Book time to meet with me](#)

From: [Gorman, Claire \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: JPA 23-2155, DEQ Waiver Letter for Nassawadox Creek Channel Maintenance Dredging
Date: Wednesday, October 4, 2023 3:58:58 PM
Attachments: [Outlook_x-zz-zic.png](#)
[23-2155-20230726-DEQ Waiver Letter.pdf](#)

DEQ comment for #2023-2155

From: Phan, Kim (DEQ) <Kim.Phan@deq.virginia.gov>
Sent: Tuesday, September 26, 2023 3:13 PM
To: Kolakowski, Charles <ckolakowski@co.northampton.va.us>
Cc: ibrotman@moffattnichol.com (ibrotman@moffattnichol.com) <ibrotman@moffattnichol.com>; Kube, Peter R NAO (peter.r.kube@usace.army.mil) <peter.r.kube@usace.army.mil>; Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Subject: JPA 23-2155, DEQ Waiver Letter for Nassawadox Creek Channel Maintenance Dredging

Good afternoon,

Please see the attached DEQ letter regarding JPA No. 23-2155, the Nassawadox Creek Channel Maintenance Dredging project. Please let me know if you have any questions.

Thank you,

Kim Phan



VWP Permit Writer, Tidewater Regional Office

[Virginia Department of Environmental Quality](#)

5636 Southern Boulevard
Virginia Beach, VA 23462
757-705-9250



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000
www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Craig R. Nicol
Regional Director

September 26, 2023

SENT VIA E-MAIL: ckolakowski@co.northampton.va.us

Re: Notification that a Virginia Water Protection (VWP) Individual Permit or General Permit Coverage is Not Required
JPA No. 23-2155
Nassawadox Creek Channel Maintenance Dredging

The Virginia Department of Environmental Quality (DEQ) has received your JPA on September 22, 2023.

Based on the information provided, the project meets one of the following criteria, and therefore, will not require a VWP individual permit or general permit coverage:

- ☐ The project is not proposing impacts to surface waters.
- ☐ The project qualifies for an exclusion from the permitting requirements per 9VAC25-210-60 and/or the provisions noted:
 - ☐ Discharges of dredged or fill material into state waters, except wetlands, which are addressed under a U.S. Army Corps of Engineers (USACE) Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.
 - ☐ Any stormwater discharge from municipal separate storm sewer systems or land disturbing activities authorized by 9VAC25-870, or discharges authorized by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.
 - ☐ Any activity in a wetland governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. Even where such certification is required due to a pending USACE permit action, such certification is waived if the activity meets the provisions of subdivision 10.a of 9VAC25-210-60 - see below. (§ 62.1-44.15:21.G; 9VAC25-210-220.C)

Notification that a VWP Individual Permit or General Permit Coverage is Not Required

Page 2 of 3

[As referenced: (9VAC25-210-60.10.a) Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches that are operated for normal agricultural or silvicultural purposes, and are less than 25 feet in height or create a maximum impoundment capacity smaller than 100 acre-feet.]

- ☐ Normal residential gardening and lawn and landscape maintenance in a wetland. (§ 62.1-44.15:21.G)
- ☐ Maintenance of currently serviceable structures.
- ☐ Impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the designated uses of such waters.
- ☐ Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site.
- ☐ Normal agriculture and silviculture activities in a wetland. (§ 62.1-44.15:21.G)
- ☐ Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage ditches, provided the following:
 - no surface water withdrawal is proposed;
 - the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch; and,
 - the farm or stock pond or impoundment does not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities. (§ 62.1-44.15:21.H)
- ☐ Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.
- ☐ Wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater. (§ 62.1-44.15:21.I)
- ☐ The activities cause impacts to an isolated wetland of minimal ecological value as defined in 9VAC25-210-10 (§ 62.1-44.15:21.D; 9VAC25-210-220.A).
- ☒ The activity does not impact instream flows; qualifies for a permit issued by the USACE; and receives a permit from the Virginia Marine Resources Commission or wetlands boards, pursuant to Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia (9VAC25-210-220.B).
- ☐ Provided that the project is authorized by the USACE under a Regional permit and meets any applicable § 401 Certification Conditions, a VWP individual permit or general permit coverage will not be required for this project.

Notification that a VWP Individual Permit or General Permit Coverage is Not Required

Page 3 of 3

- ☐ Provided that the project is authorized by the USACE under a Nationwide permit and the applicant has certified that the project complies or will comply with all of VDEQ's General § 401 Water Quality Certification Conditions (A.1-A.12 listed in Appendix A - Norfolk District's Final Regional Conditions for the 2021 Nationwide permits, issued February 25, 2022) and any NWP-specific, General § 401 Water Quality Certification Conditions, if applicable, a VWP individual permit or general permit coverage will not be required for this project.

DEQ waives the issuance of a Virginia Water Protection (VWP) individual permit or general permit coverage for one or more of the reasons listed above. This letter also serves as a waiver of individual § 401 water quality certification for purposes of USACE Permits, when applicable.

Should the size or scope of the project change, a VWP individual permit or general permit coverage may be required.

If unauthorized impacts occur, you **must** contact DEQ at vwp.tro@deq.virginia.gov or 757-518-2077 (TRO) within 24 hours of discovery. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 757-518-2077 (TRO). If DEQ cannot be reached, the spill or fish kill shall be reported to the Virginia Department of Emergency Management (VDEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802. Any spill of oil as defined in § 62.1-44.34:14 of the Code of Virginia that is less than 25 gallons and that reaches, or that is expected to reach, land only is not reportable, if recorded per § 62.1-44.34:19.2 of the Code of Virginia and if properly cleaned up.

Please contact DEQ at vwp.tro@deq.virginia.gov or 757-518-2000 (TRO) if you have any questions.

Respectfully,



Jeffrey M. Hannah
Regional VWPP Program Manager

cc: Ira Brotman, Moffatt & Nichol
Peter Kube, U.S. Army Corps of Engineers
Claire Gorman, Virginia Marine Resources Commission

From: [Gorman, Claire \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: VMRC JPA 2023-2155 Northampton County/Nassawadox Creek Channel Dredge
Date: Wednesday, October 11, 2023 11:43:13 AM
Attachments: [Wetlands Board Agent Decision.pdf](#)

LWB comment for #2023-2155

From: Olivia Bennett <olivia.bennett@co.northampton.va.us>
Sent: Wednesday, October 11, 2023 9:25 AM
To: ibrotman@moffatnichol.com
Cc: Kolakowski, Charles <ckolakowski@co.northampton.va.us>; Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Subject: VMRC JPA 2023-2155 Northampton County/Nassawadox Creek Channel Dredge

Mr. Brotman,

Attached please find the Wetlands Board Agent's response with respect to VMRC JPA 2023-2155.

Thank you,

Olivia

Olivia Bennett
Administrative Clerk
Department of Planning, Permitting & Enforcement
P.O. Box 538
Eastville, VA 23347
757-678-0443, ext. 544

[External]JPA: 20232155 in Northampton, Applicant: Northampton, County of

VMRC JPA <beth.howell@mrc.virginia.gov>

Fri 9/22/2023 5:53 AM

To:Olivia Bennett <olivia.bennett@co.northampton.va.us>;Paul Watson
<paul.watson@co.northampton.va.us>

New Joint Permit Application Notice

Virginia Marine Resources Commission, Habitat Management Division, would like to notify you the following new permit application:

Please click the link below for full application details.

[Application: 20232155](#)

Applicant: Northampton, County of

Locality: Northampton

Project Description: Nassawadox Creek Channel Dredge

Date Received: September 15, 2023

Engineer: Claire Gorman

After reviewing the application, please reply to this email and indicate one of the following:

☒ Does not involve wetlands. A letter will be forwarded to the applicant advising that no permit will be required from this Board.

☐ Does involve wetlands and a permit will be required. A public hearing has been tentatively scheduled for _____ at _____.

☐ Does involve wetlands but a permit will not be required because _____

☐ Site inspection conducted on _____.

☐ No site inspection conducted.

Should you have any questions regarding this permit application, please do not hesitate to contact Claire Gorman at (757) 247-2285 or Claire.Gorman@mrc.virginia.gov

Beth Howell

Virginia Marine Resources Commission

Phone: (757) 247-2252

Email: beth.howell@mrc.virginia.gov

Viewing application and related documents requires Google Chrome, Mozilla Firefox, Safari, or Microsoft Edge.

From: [Gorman, Claire \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: MRC 23-2155, Nassawadox Creek Channel Dredge
Date: Monday, November 13, 2023 5:07:46 PM
Attachments: [image002.png](#)
[MRC 23-2155, Nassawadox Creek Channel Dredge.docx](#)

DCR comments for #2023-2155

Claire Gorman
Environmental Engineer

Habitat Management Division
Virginia Marine Resources Commission
380 Fenwick Road
Fort Monroe, VA 23651
(757) 247-2285

From: DCR-PRR Environmental Review (DCR) <envreview@dcr.virginia.gov>
Sent: Monday, November 13, 2023 4:51 PM
To: Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Subject: MRC 23-2155, Nassawadox Creek Channel Dredge

Hello Claire,

You have been expecting these comments for this project. They were due last Thursday.

Sorry for the delay,

Allison Tillett
Environmental Program Planner
Virginia Department of Conservation and Recreation
804-238-8620 | allison.tillett@dcr.virginia.gov



From: DCR-PRR Environmental Review (DCR) <envreview@dcr.virginia.gov>
Sent: Thursday, November 9, 2023 4:02 PM
To: DCR-PRR Environmental Review (DCR) <envreview@dcr.virginia.gov>
Subject: MRC 23-2155, Nassawadox Creek Channel Dredge

Travis A. Voyles
Secretary of Natural and Historic Resources

Matthew S. Wells
Director

Andrew W. Smith
Chief Deputy Director



COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

Frank N. Stovall
*Deputy Director
for Operations*

Darryl Glover
*Deputy Director for
Dam Safety,
Floodplain Management and
Soil and Water Conservation*

Laura Ellis
*Deputy Director for
Administration and Finance*

MEMORANDUM

DATE: November 9, 2023
TO: Claire Gorman
FROM: Allison Tillett, Environmental Impact Review Coordinator
SUBJECT: MRC 23-2155, Nassawadox Creek Channel Dredge

Division of Planning and Recreation Resources

The Department of Conservation and Recreation (DCR), Division of Planning and Recreational Resources (PRR), develops the *Virginia Outdoors Plan* and coordinates a broad range of recreational and environmental programs throughout Virginia. These include the Virginia Scenic Rivers program; Trails, Greenways, and Blueways; Virginia State Park Master Planning and State Park Design and Construction. PRR also administers the Land & Water Conservation Fund (LWCF) program in Virginia.

Division of Natural Heritage

The Department of Conservation and Recreation's Division of Natural Heritage (DCR) has searched its Biotics Data System for occurrences of natural heritage resources from the area outlined on the submitted map. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.

According to the information currently in Biotics, natural heritage resources have not been documented within the submitted project boundary including a 100 foot buffer. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources. In addition, the project boundary does not intersect any of the predictive models identifying potential habitat for natural heritage resources.

There are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity.

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species. The current activity will not affect any documented state-listed plants or insects.

600 East Main Street, 24th Floor | Richmond, Virginia 23219 | 804-786-6124

*State Parks • Soil and Water Conservation • Planning and Recreation Resources
Natural Heritage • Dam Safety and Floodplain Management • Land Conservation*

Received by VMRC November 14, 2023 /blh

Page 20

New and updated information is continually added to Biotics. Please re-submit project information and map for an update on this natural heritage information if the scope of the project changes and/or six months has passed before it is utilized.

The Virginia Department of Wildlife Resources (VDWR) maintains a database of wildlife locations, including threatened and endangered species, trout streams, and anadromous fish waters that may contain information not documented in this letter. Their database may be accessed <https://services.dwr.virginia.gov/fwis/> or contact Amy Martin at 804-367-2211 or amy.martin@dwr.virginia.gov.

Division of State Parks

DCR's Division of State Parks is responsible for acquiring and managing, state parks. Park development and master planning are managed by the Division of Planning and Recreation Resources. Master plans are required prior to a parks opening and are updated every ten years (Virginia Code § 10.1-200 *et seq.*).

Division of Dam Safety and Floodplain Management

Dam Safety Program:

The Dam Safety program was established to provide proper and safe design, construction, operation and maintenance of dams to protect public safety. Authority is bestowed upon the program according to *The Virginia Dam Safety Act*, Article 2, Chapter 6, Title 10.1 (10.1-604 *et seq.*) of the Code of Virginia and Dam Safety Impounding Structure Regulations (Dam Safety Regulations), established and published by the Virginia Soil and Water Conservation Board (VSWCB).

Floodplain Management Program:

The National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), and communities who elect to participate in this voluntary program manage and enforce the program on the local level through that community's local floodplain ordinance. Each local floodplain ordinance must comply with the minimum standards of the NFIP, outlined in 44 CFR 60.3; however, local communities may adopt more restrictive requirements in their local floodplain ordinance, such as regulating the 0.2% annual chance flood zone (Shaded X Zone).

All development within a Special Flood Hazard Area (SFHA), as shown on the locality's Flood Insurance Rate Map (FIRM), must be permitted and comply with the requirements of the local floodplain ordinance.

State Agency Projects Only

[Executive Order 45](#), signed by Governor Northam and effective on November 15, 2019, establishes mandatory standards for development of state-owned properties in Flood-Prone Areas, which include Special Flood Hazard Areas, Shaded X Zones, and the Sea Level Rise Inundation Area. These standards shall apply to all state agencies.

1. Development in Special Flood Hazard Areas and Shaded X Zones
 - A. All development, including buildings, on state-owned property shall comply with the locally-adopted floodplain management ordinance of the community in which the state-owned property is located and any flood-related standards identified in the Virginia Uniform Statewide Building Code.
 - B. If any state-owned property is located in a community that does not participate in the NFIP, all development, including buildings, on such state-owned property shall comply with the NFIP requirements as defined in 44 CFR §§ 60.3, 60.4, and 60.5 and any flood-related standards identified in the Virginia Uniform Statewide Building Code.

- (1) These projects shall be submitted to the Department of General Services (DGS), for review and approval.
 - (2) DGS shall not approve any project until the State NFIP Coordinator has reviewed and approved the application for NFIP compliance.
 - (3) DGS shall provide a written determination on project requests to the applicant and the State NFIP Coordinator. The State NFIP Coordinator shall maintain all documentation associated with the project in perpetuity.
- C. No new state-owned buildings, or buildings constructed on state-owned property, shall be constructed, reconstructed, purchased, or acquired by the Commonwealth within a Special Flood Hazard Area or Shaded X Zone in any community unless a variance is granted by the Director of DGS, as outlined in this Order.

The following definitions are from Executive Order 45:

Development for NFIP purposes is defined in 44 CFR § 59.1 as “Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.”

The Special Flood Hazard Area may also be referred to as the 1% annual chance floodplain or the 100-year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study. This includes the following flood zones: A, AO, AH, AE, A99, AR, AR/AE, AR/AO, AR/AH, AR/A, VO, VE, or V.

The Shaded X Zone may also be referred to as the 0.2% annual chance floodplain or the 500- year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study.

The Sea Level Rise Inundation Area referenced in this Order shall be mapped based on the National Oceanic and Atmospheric Administration Intermediate-High scenario curve for 2100, last updated in 2017, and is intended to denote the maximum inland boundary of anticipated sea level rise.

“State agency” shall mean all entities in the executive branch, including agencies, offices, authorities, commissions, departments, and all institutions of higher education.

“Reconstructed” means a building that has been substantially damaged or substantially improved, as defined by the NFIP and the Virginia Uniform Statewide Building Code.

Federal Agency Projects Only

Projects conducted by federal agencies within the SFHA must comply with federal Executive Order 11988: Floodplain Management.

DCR’s Floodplain Management Program does not have regulatory authority for projects in the SFHA. The applicant/developer must reach out to the local floodplain administrator for an official floodplain determination and comply with the community’s local floodplain ordinance, including receiving a local permit. Failure to comply with the local floodplain ordinance could result in enforcement action from the locality. For state projects, DCR recommends that compliance documentation be provided prior to the project being funded. For federal projects, the applicant/developer is encouraged reach out to the local floodplain administrator and comply with the community’s local floodplain ordinance.

To find flood zone information, use the Virginia Flood Risk Information System (VFRIS):

www.dcr.virginia.gov/vfris

To find community NFIP participation and local floodplain administrator contact information, use DCR's Local Floodplain Management Directory: www.dcr.virginia.gov/dam-safety-and-floodplains/floodplain-directory

The remaining DCR divisions have no comments regarding the scope of this project. Thank you for the opportunity to comment.

From: [Gorman, Claire \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: Nassawadox Creek Dredging 23-2155
Date: Tuesday, November 26, 2024 4:43:49 PM
Attachments: [Cantwell Consent Letter Nassawadox Creek Lease 10-17-24.pdf](#)

Additional information for #2023-2155

Claire Gorman
Environmental Engineer

Habitat Management Division
Virginia Marine Resources Commission
380 Fenwick Road
Fort Monroe, VA 23651
(757) 247-2285

Upcoming out of office: November 27 - 29

From: Brotman, Ira <IBrotman@moffattnichol.com>
Sent: Friday, November 22, 2024 10:10 AM
To: Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Cc: Kellen Singleton, (ksingleton@esvaplan.org) <ksingleton@esvaplan.org>
Subject: RE: Nassawadox Creek Dredging 23-2155

Good morning, Claire,
Please find attached a consent letter from Mr. Cantwell regarding the Oyster Lease at Nassawadox Creek.
Do you require the USCG ATONs application in advance of placing this project on the next VMRC agenda?
We are discussing switching the ATONs from piles to floating markers with anchors – does this require a modification to the drawings, or note?

Thank you,
Ira

Ira Brotman, PE
Vice President

Moffatt & Nichol
101 W Main Street, Suite 3000 | Norfolk, VA 23510
D +1 (757) 271-1070 | O +1 (757) 628-8222 | M +1 (757) 285-6600
E ibrotman@moffattnichol.com

From: Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Sent: Friday, October 18, 2024 2:50 PM
To: Brotman, Ira <IBrotman@moffattnichol.com>
Cc: Kellen Singleton, (ksingleton@esvaplan.org) <ksingleton@esvaplan.org>
Subject: RE: Nassawadox Creek Dredging 23-2155

Hi Ira,

The second round of comments from VIMS were uploaded to the file on 9/19. I can forward them directly to you if you'd like.

Regarding public comments, we have received a few but no formal protests.

Please let me know if you all have any other questions.

Have a nice weekend,
Claire

Claire Gorman
Environmental Engineer

Habitat Management Division
Virginia Marine Resources Commission
380 Fenwick Road
Fort Monroe, VA 23651
(757) 247-2285

Upcoming out of office: October 23 – November 1

Patrick Cantwell
35494 Copes Drive
Belle Haven, VA 23306
Phone: 757-678-6124

October 17, 2024

Virginia Marine Resources Commission (VMRC)
2600 Washington Avenue, 3rd Floor
Newport News, VA 23607

Consent for Dredging Activities within Leased Oyster Grounds at Nassawadox Creek

Lease Number: 21479
Plat Number: 20470
Acreage: 236.90

Dear Virginia Marine Resources Commission,

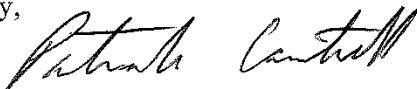
I, Patrick Cantwell, the leaseholder of the specified oyster grounds within the designated project area at Nassawadox Creek, hereby provide my formal consent for dredging activities to be conducted within the boundaries of Lease Number 21479.

The purpose of this dredging project is to improve safe and accessible navigation within Nassawadox Creek, ultimately benefiting both the community and the surrounding oyster grounds. I understand that all necessary precautions will be taken to protect oyster beds during and after dredging activities, and that measures will be implemented to minimize disruptions to ongoing operations.

This document serves as my official consent to proceed with the dredging operations as proposed.

Thank you for considering this request. Please feel free to contact me at the phone number above should you require any further information.

Sincerely,



Patrick Cantwell
Leaseholder, Lease Number 21479

From: [Gorman, Claire \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: [Non-DoD Source] JPA: 20232155 in Northampton, Applicant: Northampton, County of
Date: Monday, September 9, 2024 9:56:14 AM

USCG comments for #2023-2155

Claire Gorman
Environmental Engineer

Habitat Management Division
Virginia Marine Resources Commission
380 Fenwick Road
Fort Monroe, VA 23651
(757) 247-2285

From: Doody, Ryan P CIV USCG D5 (USA) <Ryan.P.Doody2@uscg.mil>
Sent: Thursday, September 5, 2024 1:23 PM
To: Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Subject: RE: [Non-DoD Source] JPA: 20232155 in Northampton, Applicant: Northampton, County of

Claire,

Good afternoon. The Coast Guard finds this project Acceptable, with some modifications.

-ATON: In the application it says proposed installation of 6 single pile aids to navigation, at this time the Coast Guard has no plans to maintain aids to navigation within the proposed newly dredge channel, the proposed ATON would need to be Private Aids to Navigation. If the plan is to install private, who will be the owner.

-Private Aids to navigation Application: attached to the email, this will need to be filled out, signed, and sent back to me for permitting before the piles and ATON are established.

-Currently there are 6 Federal Aids to Navigation Warning Daybeacon located within the area, they are currently on the project list to be removed, pending approval and contracting, TBD

If the applicant or owner has any questions, feel free to direct them my way. Thank you
Claire.

V/r

Ryan

From: VMRC JPA <Claire.Gorman@mrc.virginia.gov>
Sent: Wednesday, September 4, 2024 1:35 PM
To: Doody, Ryan P CIV USCG D5 (USA) <Ryan.P.Doody2@uscg.mil>; Adam.wood@vdh.virginia.gov
Subject: [Non-DoD Source] JPA: 20232155 in Northampton, Applicant: Northampton, County of

Joint Permit Application Request for Comments

Virginia Marine Resources Commission, Habitat Management Division, requests your review and evaluation of the following permit. Your evaluation is requested no later than September 25, 2024. By statute, we are obliged to refer an objection by any state agency to the full Commission in a public hearing. An unacceptable evaluation will be considered an agency objection. Evaluations suggesting modifications or indicating that the proposal is unacceptable should include comments in the justification of your finding.

Please click the link below for full application details.

[Application: 20232155](#)

Applicant: Northampton, County of

Locality: Northampton

Project Description: Nassawadox Creek Channel Dredge

Date Received: September 15, 2023

Engineer: Claire Gorman

After reviewing the application, please reply to this email and indicate one of the following:

I HAVE CONDUCTED A THOROUGH REVIEW OF THE PROPOSED PROJECT BASED UPON THE STATUTORY RESPONSIBILITY OF THIS AGENCY AND MY EVALUATION IS THAT:

☐ THE PROPOSED PROJECT IS **ACCEPTABLE**.

☐ CERTAIN ASPECTS OF THE PROPOSAL ARE OBJECTIONABLE AND UNLESS THE SUGGESTED MODIFICATIONS ARE INCORPORATED, THE PROJECT IS **UNDESIRABLE**. (SUGGESTED MODIFICATIONS SHOULD BE PROVIDED TO THE APPLICANT EXPEDITIOUSLY FOR HIS CONSIDERATION.)

☐ THERE ARE ASPECTS THAT ARE OBJECTIONABLE AND, IN OUR OPINION, NOT RECONCILABLE; THEREFORE, THE PROJECT IS **UNACCEPTABLE**. (THIS IS CONSIDERED AN **AGENCY OBJECTION** REQUIRING REVIEW BY THE FULL COMMISSION IN ACCORDANCE WITH SECTION 28.2-1207(A2) OF THE CODE OF VIRGINIA; MUST BE FULLY JUSTIFIED AND MAY REQUIRE YOUR PRESENCE TO TESTIFY AT THE PUBLIC HEARING.)

WAS A FIELD INVESTIGATION OF THE PROPOSAL PERFORMED BY A MEMBER OF YOUR AGENCY? YES / NO

DATE OF INVESTIGATION: _____
NAME OF INVESTIGATOR: _____
COMMENTS: _____

Should you have any questions regarding this permit application, please do not hesitate to contact me at (757) 247-2285 or Claire.Gorman@mrc.virginia.gov

Claire Gorman
Environmental Engineer
Virginia Marine Resources Commission
Phone: (757) 247-2285
Email: Claire.Gorman@mrc.virginia.gov

Viewing application and related documents requires Google Chrome, Mozilla Firefox, Safari, or Microsoft Edge.

From: [Gorman, Claire \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: NAO-2007-02923-TREC (23-V2155) (Nassawadox Creek Channel Dredging)
Date: Wednesday, January 22, 2025 2:40:00 PM
Attachments: [Preparing An Alternatives Analysis.FINAL.pdf safe.pdf](#)
[NLAA-Program-Verification-Form-01172024.pdf](#)

ACOE comment for #2023-2155

Claire Gorman
Environmental Engineer

Habitat Management Division
Virginia Marine Resources Commission
380 Fenwick Road
Fort Monroe, VA 23651
(757) 247-2285

From: Kopitsky, Brittany D CIV USARMY CENAO (USA) <Brittany.D.Kopitsky@usace.army.mil>
Sent: Wednesday, January 22, 2025 2:30 PM
To: Brotman, Ira <IBrotman@moffattnichol.com>
Cc: Owen, Randy (MRC) <Randy.Owen@mrc.virginia.gov>; Gorman, Claire (MRC) <Claire.Gorman@mrc.virginia.gov>
Subject: RE: NAO-2007-02923-TREC (23-V2155) (Nassawadox Creek Channel Dredging)

Hi Ira,

Sorry for the delay in getting back to your missed call. I was in training at the USFWS National Conversation Training Center last week.

In review of my notes, it looks like the last time we spoke was 1/23/2024 in reference to my 1/22/2024 email below. During our phone conversation 1/23/2024, we discussed that the Corps would hold off on issuance of a public notice as the project was being redesigned based on VIMS and VMRC input on the proposed dredge disposal. Therefore, the project was withdrawn from Corps processing while redesign was completed. My understanding was that you would contact me when you had a final design ready for Corps review. I have not heard from you since that time.

Are you at that point now? If so, I recommend notifying me via email and detailing any changes to the project that have occurred since the original submittal. Sending me a complete package that includes everything needed for an individual/standard permit is the best way to expediate Corps review. As discussed previously, an individual permit requires a full alternative analysis and public interest review.

33 CFR 325.1(d)(1)-(10) details what is needed for a public notice. In addition to those basic items, an alternative analysis is needed. Note, the purpose and need for the proposed work/activities

within waters of the U.S. drives the alternative analysis. The attached guide also provides a more detailed explanation of purpose and need, and the importance of the terms in conducting an alternative analysis. In accordance with the Guidelines at 40 CFR 230.10(a), a permit cannot be issued if a practicable alternative exists that would have less adverse impact on the aquatic ecosystem (known as the Least Environmentally Damaging Practicable Alternative [LEDPA]), provided that the LEDPA does not have other significant adverse environmental consequences to other natural ecosystem components.

Additionally, please provide the following information or fill out the attached NMFS NLAA Program Verification Form. If you're unable to fill out the form, I will do it for you after all details are received.

- Total area of impact to subaqueous bottom
- Total area of impact to SAV (if any)
- Current range of water depths at MLW
- Current range of water depths at MHW
- Salinity range (PPT)
- Water temperature range
- Substrate type (e.g., silt/mud, sand, etc.)
- Type of dredge (e.g., mechanical, hydraulic, etc.)
- Dredge disposal location and how dredge material will get to the disposal location
- Expected vessel traffic changes:
 - Type and amount of temporary project vessels for construction
 - Type and amount of added non-commercial (e.g., recreational motor boats) or commercial vessels
 - Expected change in overall vessel traffic

Pile Information:

- Pile material (e.g., timber, steel sheet, etc.)
- Pile diameter
- Number of piles
- Installation method (e.g., impact hammer, vibratory hammer, etc.)

Information on turbidity controls:

- Will a turbidity curtain be used during construction? If not, explain why (e.g., infeasibility due to wave energy). It would be beneficial to include the proposed turbidity curtain location on a drawing and provide approximately how far channelward of MHW and MLW is it proposed to be placed to expediate coordination.

Thank you,
Brittany

--

Brittany D. Kopitsky, M.S.
Biologist

Technical Regional Execution Center
U.S. Army Corps of Engineers, North Atlantic Division
Phone: 757-201-7893

From: Kopitsky, Brittany D CIV USARMY CENAO (USA)
Sent: Monday, January 22, 2024 8:48 AM
To: 'Brotman, Ira' <I.Brotman@moffattnichol.com>
Subject: RE: NAO-2007-02923-TREC (23-V2155) (Nassawadox Creek Channel Dredging)

Hi Ira,

I have back-to-back meetings today but available tomorrow.

Thank you,
Brittany

--

Brittany D. Kopitsky, M.S.
Biologist
Technical Regional Execution Center
U.S. Army Corps of Engineers, North Atlantic Division
Phone: 757-201-7893

From: Brotman, Ira <I.Brotman@moffattnichol.com>
Sent: Monday, January 22, 2024 8:24 AM
To: Kopitsky, Brittany D CIV USARMY CENAO (USA) <Brittany.D.Kopitsky@usace.army.mil>
Subject: [Non-DoD Source] RE: NAO-2007-02923-TREC (23-V2155) (Nassawadox Creek Channel Dredging)

Good morning Brittany – would be available for a quick call, say 9?

Ira Brotman, PE
Vice President

Moffatt & Nichol
Please contact me via my direct line.
101 West Main Street, Suite 3000 | Norfolk, VA 23510
D 757.271.1070 | P 757.628.8222 | M 757.285.6600

From: Kopitsky, Brittany D CIV USARMY CENAO (USA) <Brittany.D.Kopitsky@usace.army.mil>
Sent: Friday, January 19, 2024 1:17 PM
To: Brotman, Ira <I.Brotman@moffattnichol.com>
Subject: NAO-2007-02923-TREC (23-V2155) (Nassawadox Creek Channel Dredging)

CAUTION: This email originated from outside of the organization.

Hi Ira,

Before I put the project on public notice, I just wanted to verify no changes have been made as the public notice starts Federal coordination with certain Federal agencies.

Thank you,
Brittany

--

Brittany D. Kopitsky, M.S.
Biologist
Technical Regional Execution Center
U.S. Army Corps of Engineers, North Atlantic Division
Phone: 757-201-7893

LEONARD CLARK
VMRC #2022-1645, NTC #24-06

1. Habitat Management Evaluation dated January 28, 2025
(Pages 1 – 2)
2. Joint Permit Application drawings dated-received August 9, 2022
(Pages 3 – 6)
3. York County Wetlands Board permit approval dated October 13, 2022
(Page7)
4. VMRC no permit necessary issued dated October 28, 2022
(Pages 8 - 10)
5. Sworn Complaint dated August 15, 2024.
(Page 11)
6. Notice To Comply Documents, with certified mail receipts to Leonard Clark,
Living Shorelines LLC and Matt McQuillen.
(Pages 12 - 20)
7. VMRC notice to comply to Matt McQuillen sent by certified mail and served by
MPO Vargas on August 25, 2024.
(Pages 21 - 24)
8. After-the-fact request dated-received September 30, 2024
(Pages 25 - 30)
9. Agent's repairs to bulkhead tie-ins dated-received November 15, 2024
(Pages 31 - 34)

HABITAT MANAGEMENT DIVISION EVALUATION

LEONARD CLARK, #22-1645, NTC #24-06, requests after-the-fact approval to retain a 100-foot vinyl bulkhead that was constructed approximately two (2) feet channelward of an existing failing bulkhead serving 1124 Wormley Creek Road situated along Wormley Creek in York County.

Narrative

On July 13, 2022, Mr. Clark's agent, Randy Carnell, Living Shorelines Design, LLC, submitted a joint permit application (JPA) requesting to repair the existing deteriorating bulkhead. As proposed in the original application request, the work would involve "patching" the section of the failed bulkhead and leaving the functional sections of the bulkhead on either side of the "patch" as-is. Importantly, the application stated that "the bulkhead patch will be in the same footprint as the existing."

Based on the agent's commitment to repair the bulkhead in the same footprint of the existing structure, VMRC issued its No Permit Necessary letter on October 28, 2022. The letter clarified that a permit was not needed provided the repairs resulted in "no additional channelward encroachment within the waterway," as detailed in the application drawings dated received October 3, 2022, from Livings Shorelines LLC.

Issues

On July 11, 2024, VMRC staff conducted a routine compliance inspection of the Clark property. During the inspection, it was determined that the bulkhead repair was constructed approximately two (2) feet channelward of the original wall. Following a second inspection scheduled with Mr. Clark, the agent and York County, Living Shorelines LLC advised in writing and in revised project drawings that:

- Living Shorelines LLC was the general contractor and that Mr. Matt McQuillen, the subcontractor, constructed the wall.
- That additional unforeseen conditions resulted in a field-based decision to construct the repairs in front of the existing southern and northern portions of the bulkhead.

This field decision made by Living Shorelines LLC and Mr. McQuillen resulted in the unauthorized construction of the bulkhead over the Commonwealth's state-owned submerged lands without the required VMRC permit. In light of this discovery and documentation offered by the permit agent, VMRC staff issued its Sworn Complaint and Notice to Comply on (NTC) August 22, 2024, for the unlawfully constructed wall. The Notice was sent via certified mail to Mr. Clark, the agent and to Mr. McQuillen. The agent and Mr. McQuillen were further served with the NTC by VMRC marine police.

Issues (cont'd)

A third and fourth on-site inspection was conducted by VMRC staff, in response to the applicant and his structural engineer's request to meet onsite to review the integrity of the wall as constructed. Based on the engineer's position that the wall was constructed without the required return walls, which are standard for any bulkhead construction, Living Shorelines LLC agreed to return to the site and construct the returns. The agent advised that he was no longer utilizing Mr. McQuillen, the subcontractor.

On November 19, 2024, VMRC staff met with the applicant's representatives and Mr. Carnell to inspect the recently constructed return walls. The property owner indicated that they were satisfied with the returns.

Summary and Recommendation

The unauthorized construction of shoreline erosion control structures by marine contractors working throughout Tidewater has unfortunately increased over the past few years. We are very concerned that Mr. McQuillen and the agent, Living Shorelines LLC, chose to proceed with the unlawful construction of the wall beyond their stated intentions of repairing the wall in the existing structure's footprint. Had a phone call been made prior, VMRC staff could have initiated its standard public interest review required to issue the eventual permit that is required for the wall as now constructed.

Staff does agree that the unauthorized bulkhead and backfill should now be permitted, however, with appropriate civil charges and triple permit fees as outlined in the Commission's civil charge matrix and in keeping with §28.2-1213 of the Virginia Code. Both the marine agent and marine contractor are experienced and fully aware of the state's regulatory application and permit process. It appears in this situation that the contractor nor the agent would have contacted York County or VMRC staff if a compliance inspection had not occurred.

In light of both parties' decision to proceed without the required VMRC authorization, staff recommends after-the-fact approval of the bulkhead as constructed with a \$3,000.00 civil charge assessed to the agent Living Shorelines LLC, and a \$9,000.00 civil charge assessed to the contractor Mr. Matt McQuillen, in accordance with the Commission's civil charge matrix.

Staff also recommends a triple permit fee of \$900.00 be required, including a triple royalty in the amount of \$600.00 for the filling of 200 square feet at \$1.00 per square-foot. Should the marine agent and marine contractor not agree to the recommended civil charges, staff recommends that the Commission require the immediate removal of the unauthorized bulkhead section installed over state-owned submerged lands.

Project scope: BULKHEAD REPAIR

Repair 75LF of a failed section of bulkhead. The bulkhead is on a steep embankment. Most areas of the bulkhead are functional and serviceable. The bulkhead patch will be **in the same footprint as the existing**

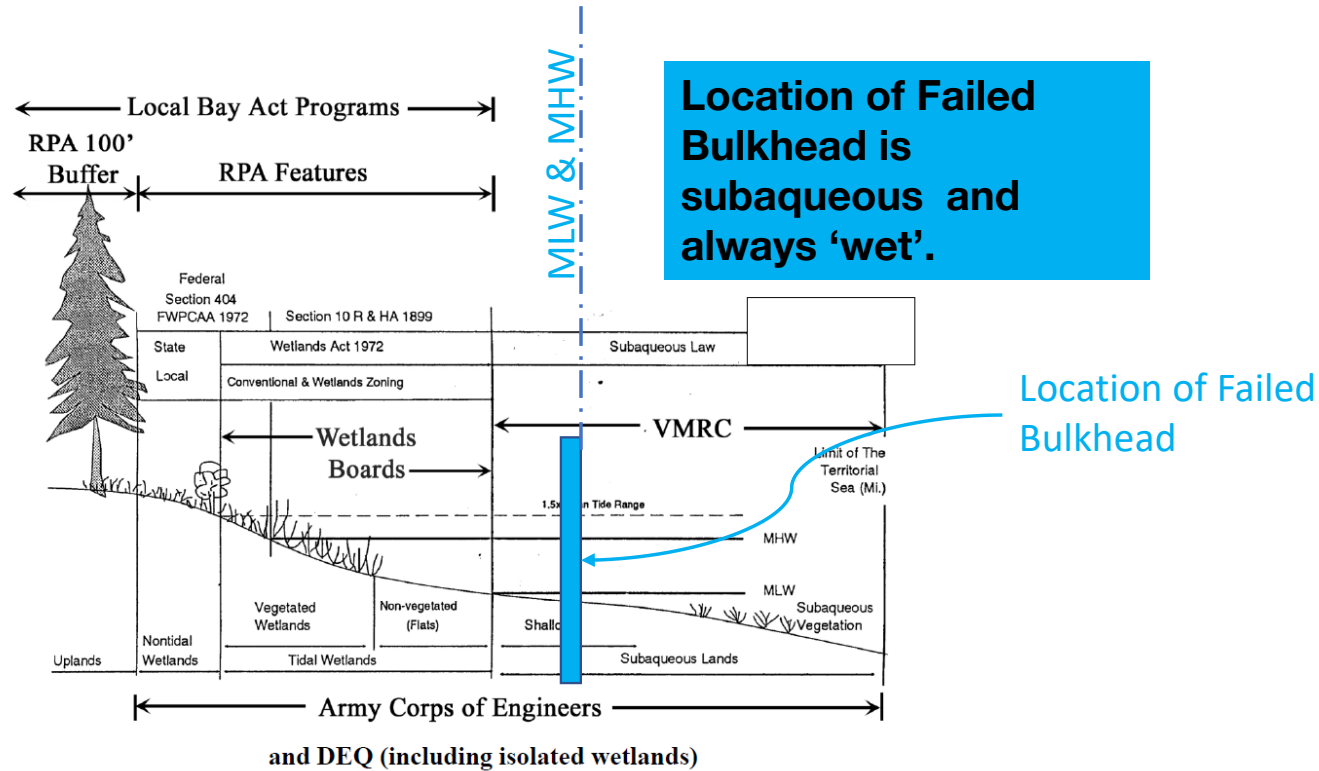
- Drive EVERLAST Vinyl ESP 3.1 Sheet Piles - 50 Year Manufacturer Warranty
- Weepholes installed per manufacturer specs 1' higher than mean high tide
- 8in Tip 2.5 CCA Butt Pilings installed in Front of Vinyl Bulkhead driven to refusal at 6' spacing
- 2x8 2.5 CCA Pressure Treated Top & Mid Wailers
- 20in wide 2x6in Treated Top Cap
- Backfill with clean fill dirt

Access via land and sea with barge. Pilings driven with vibratory earth compacting hammer on excavator.



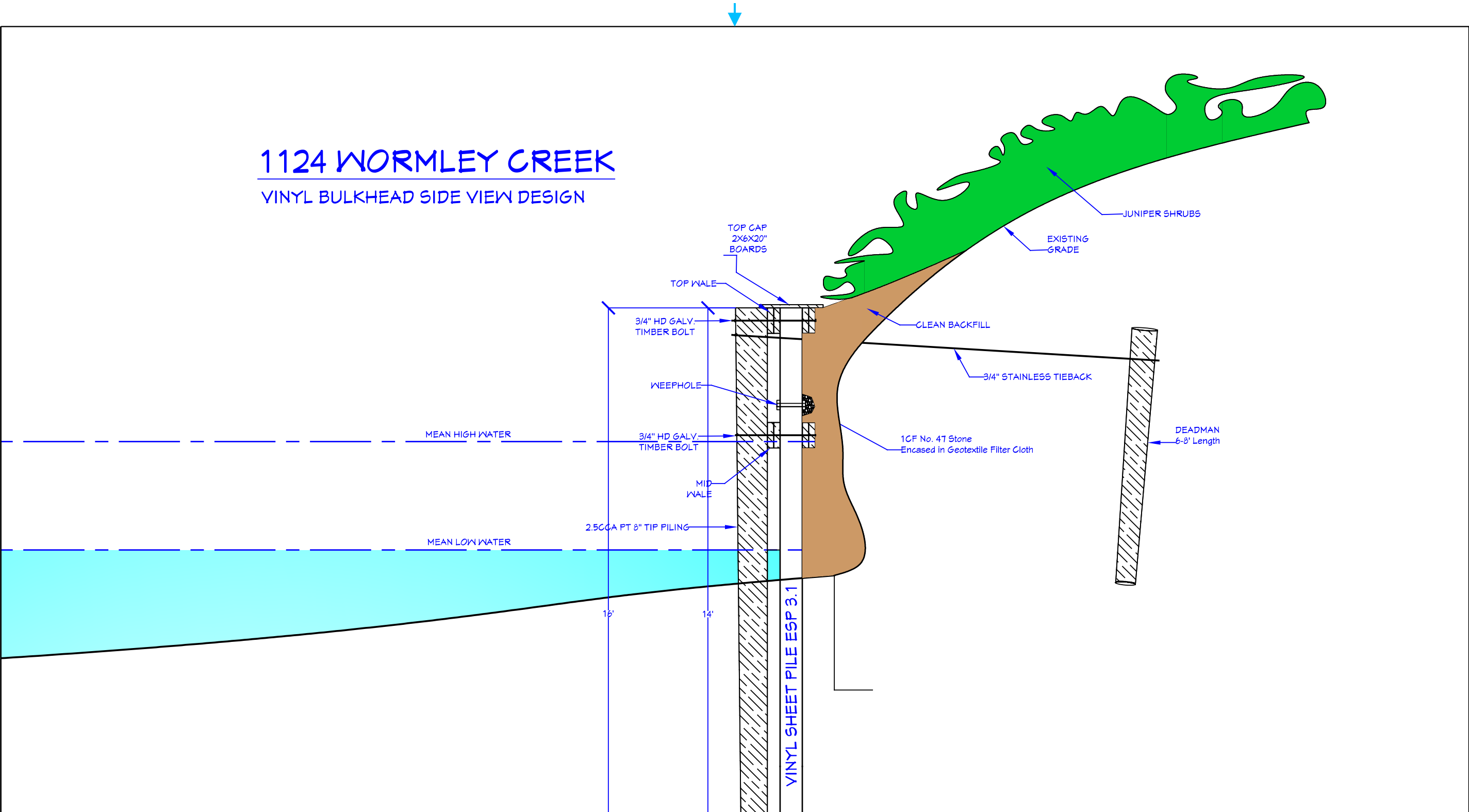
Living Shorelines LLC 2022
LivingShorelinesLLC@gmail.com
8/8/2022

1124 Wormley Creek Bulkhead



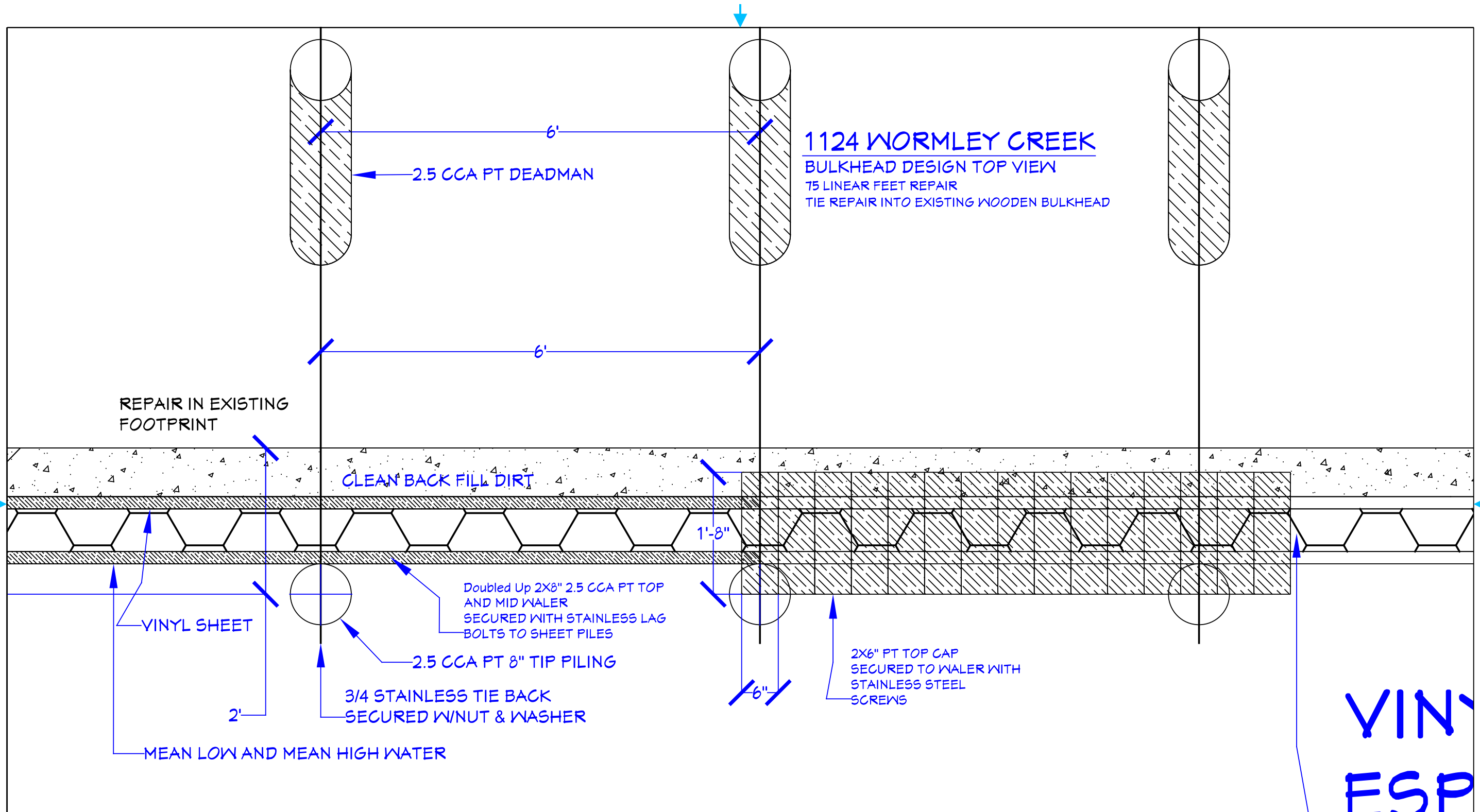
Living Shorelines LLC 2022
LivingShorelinesLLC@gmail.com
8/8/2022

1124 WORMLEY CREEK
VINYL BULKHEAD SIDE VIEW DESIGN



PROPERTY OWNER: LEONARD CLARK	THE REPRODUCTION, DISTRIBUTION AND UTILIZATION OF THIS DOCUMENT AS WELL AS THE COMMUNICATION OF ITS CONTENTS TO OTHERS WITHOUT EXPRESSED AUTHORIZATION IS PROHIBITED. OFFENDERS WILL BE HELD LIABLE FOR THE PAYMENT OF DAMAGES. ALL RIGHTS RESERVED IN THE EVENT OF A PATENT, UTILITY MODEL OR DESIGN. LIVING SHORELINESS LLC NOT RESPONSIBLE FOR RIPARIAR WATERWAY RIGHTS	EPD. No.: Invoice No.: Drawn Date: 8/8/22 Drawn By: Randy Carnell Check Date: Checked By: Approved By: Sent Date: Sent By:		1124 Wormley Creek Yorktown VA		
PROJECT ADDRESS: 1124 WORMLEY CREEK		Size: B Drawing No.: LS08082022 Number: BULKHEAD SIDE VIEW Revision:		Scale:	Weight:	Page:
BODY OF WATER: WORMLEY CREEK						
PROJECT LOCATION: 37°12'48.85"N 76°28'10.45"W						
JPA AGENT: RANDY CARNELL						
PROJECT TYPE: BULKHEAD REPAIR						

LIVING SHORELINES LLC 2022 - LIVINGSHORELINESLLC@GMAIL.COM



LIVING SHORELINES LLC 2022 - LIVINGSHORELINESLLC@GMAIL.COM



PROPERTY OWNER: LEONARD CLARK	THE REPRODUCTION, DISTRIBUTION AND UTILIZATION OF THIS DOCUMENT AS WELL AS THE COMMUNICATION OF ITS CONTENTS TO OTHERS WITHOUT EXPRESSED AUTHORIZATION IS PROHIBITED. OFFENDERS WILL BE HELD LIABLE FOR THE PAYMENT OF DAMAGES. ALL RIGHTS RESERVED IN THE EVENT OF A PATENT, UTILITY MODEL OR DESIGN. LIVING SHORELINESS LLC NOT RESPONSIBLE FOR RIPARIAR WATERWAY RIGHTS	EPD. No.: Invoice No.:		1124 Wormley Creek Yorktown VA							
PROJECT ADDRESS: 1124 WORMLEY CREEK		Drawn Date: 8/8/22 Drawn By: Randy Carnell									
BODY OF WATER: WORMLEY CREEK		Check Date: Checked By:		Size: B		Drawing No.: LS08082022B		Number: TOP VIEW		Revision: A	
PROJECT LOCATION: 37°12'48.85"N 76°28'10.45"W		Approved By: Sent Date:		Sent By:		Scale:		Weight:		Page:	
JPA AGENT: RANDY CARNELL											
PROJECT TYPE: BULKHEAD REPAIR											

YORK COUNTY WETLANDS BOARD



Wetlands Permit Number

22-44 (VMRC 22-1645)

Granted October 13, 2022

Pursuant to Chapter 13 of Title 28.2 of the Code of Virginia and the York County Wetlands Ordinance, the York County Wetlands Board, hereinafter referred to as the Board, grants unto Leonard Clark (Applicant), and Randolph Carnell (Agent), hereinafter referred to as the Permittee, permission to undertake the following described project:

LOCATION:

1124 Wormley Creek Drive, Yorktown VA

DESCRIPTION OF PROJECT:

Replace 100 linear feet of a failed section of bulkhead along the shoreline of Wormley Creek at 1124 Wormley Creek Drive.

For a more complete description of such project, reference is hereby made to the Permittee's application for a wetlands permit, received by York County on July 13, 2022, and which application is attached hereto and made a part hereof.

This permit is approved subject to following terms and conditions:

The application received by York County on July 13, 2022 will be revised as per drawings received on October 3, 2022. **The revised drawings and information will supersede any conflicting previously dated information.**



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, VA 23651

Travis A. Voyles
Acting Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

October 28, 2022

Mr. Leonard Clark
c/o Mr. Randy Carnell
1124 Wormley Creek Road
York County, VA
livingshorelinesllc@gmail.com
len23692@yahoo.com

Re: VMRC #2022-1645

Dear Mr. Clark:

This will acknowledge receipt of your request to replace 100 linear feet of an existing failed, timber bulkhead at property (1124 Wormley Creek) situated along Wormley Creek in York County.

Provided the new bulkhead will be in same footprint as the current bulkhead, with no additional channelward encroachment within the waterway, as detailed in the revised drawings dated received October 3, 2022, and the previous VMRC permit # 86-0662, your proposal is deemed "maintenance and repair" pursuant to Section 28.2-1209 of the Code of Virginia. No further authorization from this agency will be required.

For your information, you may need further authorization from the U. S. Army Corps of Engineers and York County prior to commencing your project. This letter and attached drawings were forwarded to both agencies.

If you have any future plans to expand the existing bulkhead, you must first complete a Joint Permit Application and submit it to the Virginia Marine Resources Commission for review. Should you have any questions regarding this matter, please contact me at (757) 247-2250.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Chartrand".

Lauren Chartrand
Environmental Engineer

LRC/bf
HM
Enclosure
cc: USACOE
York County Wetlands Board
Applicant/Agent

An Agency of the Natural and Historic Resources Secretariat

www.mrc.virginia.gov

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD



LIVING SHORELINES
Waterfront Design & Permitting
757.620.9530

PROPERTY OWNER: LEONARD CLARK
PROJECT ADDRESS: 1124 WORMLEY CREEK
BODY OF WATER: WORMLEY CREEK
PROJECT LOCATION: 37°12'48.85"N 76°28'10.45"W
JPA AGENT: RANDY CARNELL
PROJECT TYPE: BULKHEAD REPAIR

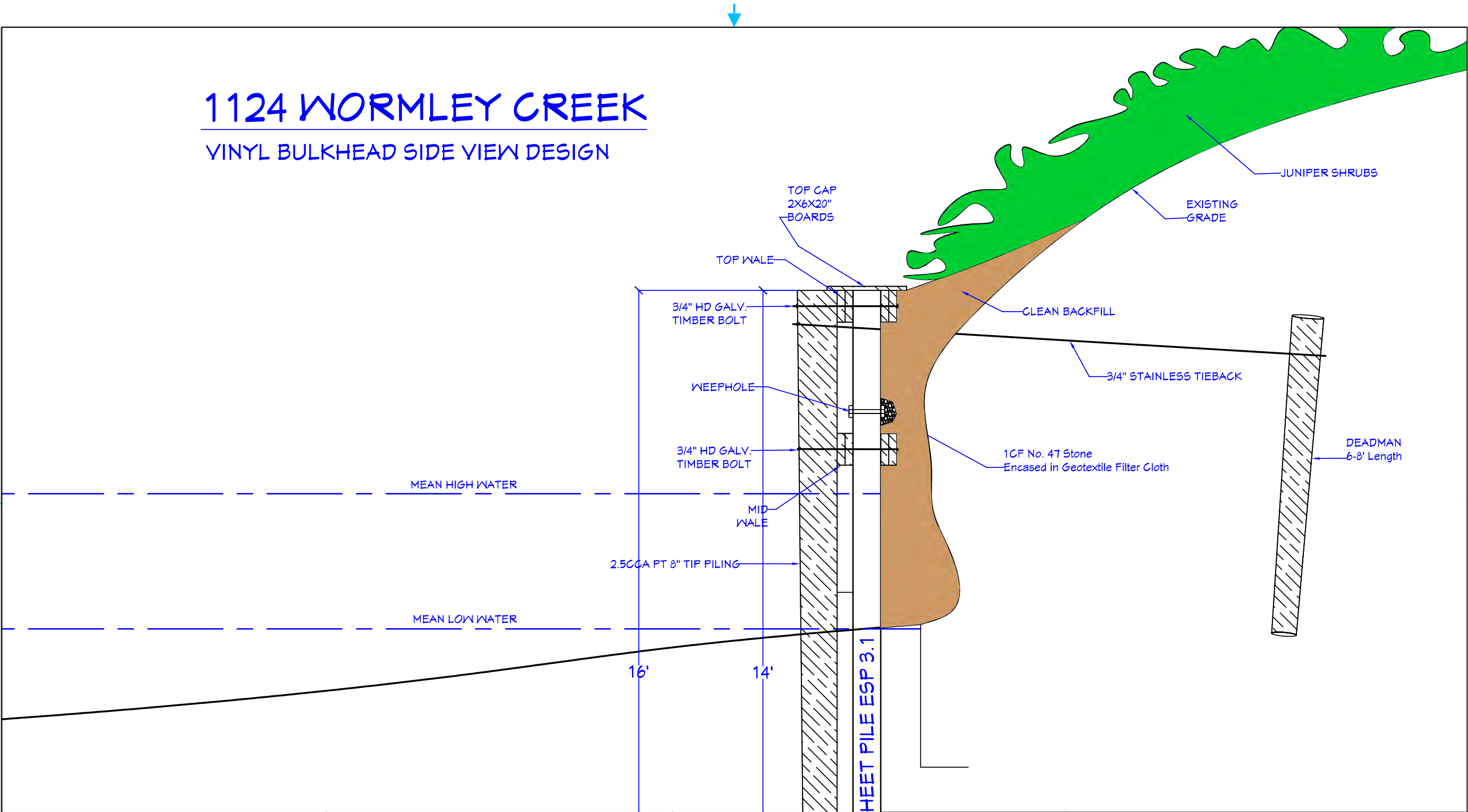
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EPD. No.:
Invoice No.:
Drawn Date: 10/3/2022
Drawn By: Randy Carnell
Check Date:
Checked By:
Approved By:
Sent Date:
Sent By:

1124 Wormley Creek			
Yorktown VA			
Size: B	Drawing No.: LS10032022B	Number: BACKFILL ESTIMATE	Revision:
Scale:	Weight:	Page:	

1124 WORMLEY CREEK

VINYL BULKHEAD SIDE VIEW DESIGN



LIVING SHORELINES LLC 2022 - LIVINGSHORELINESLLC@GMAIL.COM

LIVING SHORELINES LLC 2022 - LIVINGSHORELINESLLC@GMAIL.COM



757.620.9530

PROPERTY OWNER: LEONARD CLARK
PROJECT ADDRESS: 1124 WORMLEY CREEK
BODY OF WATER: WORMLEY CREEK
PROJECT LOCATION: 37°12'48.85"N 76°28'10.45"W
JPA AGENT: RANDY CARNELL
PROJECT TYPE: BULKHEAD REPAIR

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EPD. No.:	
Invoice No.:	
Drawn Date:	10/3/2022
Drawn By:	Randy Carnell
Check Date:	
Checked By:	
Approved By:	
Sent Date:	
Sent By:	

1124 Wormley Creek			
Yorktown VA			
Size: B	Drawing No.: LS07132022	Number: Side View	Revision: A
Scale:	Weight:	Page:	



COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

SWORN COMPLAINT

No. 24-06

Date: August 15, 2024

Pursuant to §28.2-1212(B) of the Code of Virginia, I hereby certify that a substantial violation of Chapter 12, Article 1 of the Code of Virginia has occurred at the property of Hilda A. Sheldon Estate, 1124 Wormley Creek Road, in the County of York.

During a compliance inspection of VMRC permit #2022-1645 on July 11, 2024, I found the following: a 100-foot section of vinyl bulkhead has been approximately placed two (2) feet in front of the existing timber bulkhead, not in the same footprint that was previously requested and authorized on October 28, 2022.

August 22, 2024

(Date)

Bradley Reams

Designated Enforcement Officer

COMMONWEALTH OF VIRGINIA

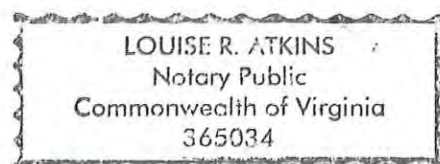
City of Hampton, to-wit:

I, Louise R. Atkins, a Notary Public within and for the City of Hampton, Commonwealth of Virginia, hereby certify that Bradley Reams, a Designated Enforcement Officer whose name is signed to the foregoing, has acknowledged the same before me in my City aforesaid.

Given under my hand this 22nd Day of August 2024

(Notary Public)

My Commission expires on January 31, 2025



An Agency of the Natural Resources Secretariat

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COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

NOTICE TO COMPLY

August 22, 2024

CERTIFIED MAIL

Mr. Matt McQuillen
1803 Dandy Loop Road
Yorktown, VA 23692

Re: Notice to Comply #24-06
VMRC #2022-1645

Dear Mr. McQuillen:

On, July 11, 2024, Bradley Reams and Daniel Royster of my staff conducted a routine compliance inspection of the County's previous wetlands permit, at your property (1124 Wormley Creek Drive) situated along Wormley Creek in the County of York. A second on-site compliance meeting was attended by Mr. Reams, Mr. Clark, and marine agent Mr. Carnell, with Kent Henkel and Charles White of the York County wetlands board staff, on July 30, 2024. During the site inspections, the following violation was identified:

1. The new 100-foot section of replacement vinyl bulkhead has been placed approximately two (2) feet in front of the existing timber bulkhead out over state-owned submerged lands. This installation does not comply with the VMRC #2022-1645 application drawings nor the no permit necessary letter that Lauren Chartrand of my staff authorized on October 28, 2022, for "maintenance and repair" to the existing bulkhead.

The following corrective measures are necessary to bring you into compliance and must be completed within 30 days of receipt of this notice: (1) Completely remove the unauthorized 100-foot section of vinyl bulkhead or (2) submit a complete Joint Permit Application requesting after-the-fact authorization to retain the unauthorized backfill and alignment of the newly constructed bulkhead. If an after-the-fact JPA is submitted, it should include a full explanation as to why the replacement bulkhead was installed out of compliance with the previous authorization, and who authorized the new channelward installation.

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Mr. Matt McQuillen
Page Two

August 21, 2024
NTC #24-06 VMRC #2022-1645

Should you submit a Joint Permit Application requesting after-the-fact authorization, your request will be scheduled for consideration by the full Commission at a future hearing. Please be advised, however, that the processing of an after-the-fact request does not guarantee that the Commission will approve the project. Should the Commission elect to approve your after-the-fact application, such approval may be conditioned on your agreement to pay a civil charge of up to \$10,000 per violation in lieu of further enforcement actions. **Any other party found responsible for this violation may also be assessed a civil charge by the Commission.**

You should also be aware that any person who violates or fails to obey any Commission notice authorized under Section 28.2-1212 of the Code of Virginia may be assessed civil penalties not to exceed \$25,000.00 by the appropriate court for each day of violation. **Please be advised that you and the applicant (Mr. Leonard Clark) will be required to attend this meeting.**

If you have any questions, please do not hesitate to contact Bradley Reams of my staff at (757) 247-8120 or brad.reams@mrc.virginia.gov.

Notice ordered by *Randal D. Owen* on August 22, 2024.

Randal D. Owen
Chief, Habitat Management Division

RDO/br:lra

cc: Commissioner, Jamie Green
Assistant Attorney General, Kelci Block
York County Wetlands Board
Applicant, Mr. Leonard Clark
Agent, Living Shorelines LLC, Mr. Randy Carnell, Jr.



COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

NOTICE TO COMPLY

August 22, 2024

CERTIFIED MAIL

Mr. Matt McQuillen
1010 Dandy Loop Road
Yorktown, VA 23692

Re: Notice to Comply #24-06
VMRC #2022-1645

Dear Mr. McQuillen:

On, July 11, 2024, Bradley Reams and Daniel Royster of my staff conducted a routine compliance inspection of the County's previous wetlands permit, at your property (1124 Wormley Creek Drive) situated along Wormley Creek in the County of York. A second on-site compliance meeting was attended by Mr. Reams, Mr. Clark, and marine agent Mr. Carnell, with Kent Henkel and Charles White of the York County wetlands board staff, on July 30, 2024. During the site inspections, the following violation was identified:

1. The new 100-foot section of replacement vinyl bulkhead has been placed approximately two (2) feet in front of the existing timber bulkhead out over state-owned submerged lands. This installation does not comply with the VMRC #2022-1645 application drawings nor the no permit necessary letter that Lauren Chartrand of my staff authorized on October 28, 2022, for "maintenance and repair" to the existing bulkhead.

The following corrective measures are necessary to bring you into compliance and must be completed within 30 days of receipt of this notice: (1) Completely remove the unauthorized 100-foot section of vinyl bulkhead or (2) submit a complete Joint Permit Application requesting after-the-fact authorization to retain the unauthorized backfill and alignment of the newly constructed bulkhead. If an after-the-fact JPA is submitted, it should include a full explanation as to why the replacement bulkhead was installed out of compliance with the previous authorization, and who authorized the new channelward installation.

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If you have any questions, please do not hesitate to contact Bradley Reams of my staff at (757) 247-8120 or brad.reams@mrc.virginia.gov.

Notice ordered by Randal D. Owen on August 22, 2024.

Randal D. Owen
Chief, Habitat Management Division

RDO/br:lra

cc: Commissioner, Jamie Green
Assistant Attorney General, Kelci Block
York County Wetlands Board
Applicant, Mr. Leonard Clark
Agent, Living Shorelines LLC, Mr. Randy Carnell, Jr.



COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

NOTICE TO COMPLY

August 22, 2024

CERTIFIED MAIL

Living Shorelines LLC
Attn: Mr. Randolph Carnell, Jr.
513 Dandy Loop Road
Yorktown, VA 23692

Re: Notice to Comply #24-06
VMRC #2022-1645

Dear Mr. Carnell:

On, July 11, 2024, Bradley Reams and Daniel Royster of my staff conducted a routine compliance inspection of the County's previous wetlands permit, at your property (1124 Wormley Creek Drive) situated along Wormley Creek in the County of York. A second on-site compliance meeting was attended by Mr. Reams, yourself, and Mr. Clark, with Kent Henkel and Charles White of the York County wetlands board staff, on July 30, 2024. During the site inspections, the following violation was identified:

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If you have any questions, please do not hesitate to contact Bradley Reams of my staff at (757) 247-8120 or brad.reams@mrc.virginia.gov.

Notice ordered by *Randal D. Owen* on August 22, 2024.

Randal D. Owen
Chief, Habitat Management Division

RDO/br:lra

cc: Commissioner, Jamie Green
Assistant Attorney General, Kelci Block
York County Wetlands Board
Applicant, Mr. Leonard Clark
Contractor, Matt McQuillen, Tidewater Marine Construction



COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

NOTICE TO COMPLY

August 22, 2024

CERTIFIED MAIL

Mr. Leonard Clark
1124 Wormley Creek Road
Yorktown, VA 23692

Re: Notice to Comply #24-06
VMRC #2022-1645

Dear Mr. Clark:

On, July 11, 2024, Bradley Reams and Daniel Royster of my staff conducted a routine compliance inspection of the County's previous wetlands permit, at your property (1124 Wormley Creek Drive) situated along Wormley Creek in the County of York. A second on-site compliance meeting was attended by Mr. Reams, yourself, your marine agent Mr. Carnell, with Kent Henkel and Charles White of the York County wetlands board staff, on July 30, 2024. During the site inspections, the following violation was identified:

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You should also be aware that any person who violates or fails to obey any Commission notice authorized under Section 28.2-1212 of the Code of Virginia may be assessed civil penalties not to exceed \$25,000.00 by the appropriate court for each day of violation. **Please be advised that your agent (Living Shorelines LLC) and your contractor (Tidewater Marine Construction) will be required to attend this meeting and you are welcome to attend as well.**

If you have any questions, please do not hesitate to contact Bradley Reams of my staff at (757) 247-8120 or brad.reams@mrc.virginia.gov.

Notice ordered by Randal D. Owen on August 22, 2024.

Randal D. Owen
Chief, Habitat Management Division

RDO/br:lra

cc: Commissioner, Jamie Green
Assistant Attorney General, Kelci Block
York County Wetlands Board
Agent, Living Shorelines LLC, Mr. Randy Carnell, Jr.
Contractor, Tidewater Marine Construction, Mr. Matt McQuillen

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Mr. Leonard Clark
1124 Wormley Creek Road
Yorktown, VA 23692
NTC #24-06 VMRC #22-1645

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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Mr. Matt McQuillen
1803 Dandy Loop Road
Yorktown, VA 23692
NTC 24-06 VMRC #22-1645

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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Mr. Matt McQuillen
1010 Dandy Loop Road
Yorktown, VA 23692
NTC #24-06 VMRC #22-1645

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

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Living Shorelines LLC
Attn: Mr. Randy Carnell, Jr.
513 Dandy Loop Road
Yorktown, VA 23692
NTC #24-06 VMRC #22-1645

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions



COMMONWEALTH of VIRGINIA

Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, Virginia 23651

Travis A. Voyles
Secretary of Natural and
Historic Resources

Jamie L. Green
Commissioner

NOTICE TO COMPLY

August 22, 2024

LAW ENFORCEMENT SERVICE TO:

Mr. Matt McQuillen
1010 Dandy Loop Road
Yorktown, VA 23692

Re: Notice to Comply #24-06
VMRC #2022-1645

Dear Mr. McQuillen:

On, July 11, 2024, Bradley Reams and Daniel Royster of my staff conducted a routine compliance inspection of the County's previous wetlands permit, at your property (1124 Wormley Creek Drive) situated along Wormley Creek in the County of York. A second on-site compliance meeting was attended by Mr. Reams, Mr. Clark, and marine agent Mr. Carnell, with Kent Henkel and Charles White of the York County wetlands board staff, on July 30, 2024. During the site inspections, the following violation was identified:

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Mr. Matt McQuillen
Page Two

August 21, 2024
NTC #24-06 VMRC #2022-1645

Should you submit a Joint Permit Application requesting after-the-fact authorization, your request will be scheduled for consideration by the full Commission at a future hearing. Please be advised, however, that the processing of an after-the-fact request does not guarantee that the Commission will approve the project. Should the Commission elect to approve your after-the-fact application, such approval may be conditioned on your agreement to pay a civil charge of up to \$10,000 per violation in lieu of further enforcement actions. **Any other party found responsible for this violation may also be assessed a civil charge by the Commission.**

You should also be aware that any person who violates or fails to obey any Commission notice authorized under Section 28.2-1212 of the Code of Virginia may be assessed civil penalties not to exceed \$25,000.00 by the appropriate court for each day of violation. **Please be advised that you and the applicant (Mr. Leonard Clark) will be required to attend this meeting.**

If you have any questions, please do not hesitate to contact Bradley Reams of my staff at (757) 247-8120 or brad.reams@mrc.virginia.gov.

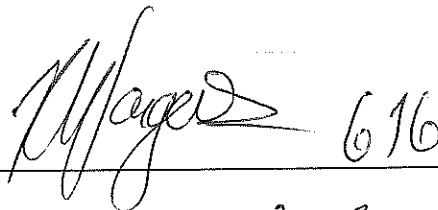
Notice ordered by Randal D. Owen on August 22, 2024.

Randal D. Owen
Chief, Habitat Management Division

RDO/br:lra

cc: Commissioner, Jamie Green
Assistant Attorney General, Kelci Block
York County Wetlands Board
Applicant, Mr. Leonard Clark
Agent, Living Shorelines LLC, Mr. Randy Carnell, Jr.

Serving Officer: _____

 616

Notice signed for by: _____



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Matt McQuillen
1803 Dandy Loop Road
Yorktown, VA 23692

2. Article Number
(Transfer from service label)

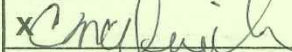
9589 0710 5270 0472 3681 79

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. McQuillen

C. Date of Delivery

8/24/2024

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

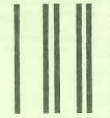
3. Service Type

☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

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**VMRC – Habitat Mngt.
380 Fenwick Rd, Bldg 96
Fort Monroe, VA 23651
Attn: Mr. Brad Reams**

NTC#24-06
VMRC#22-1645

TO:

Mr. Bradley Reams
Environmental Engineer
Habitat Management
(757) 262-6448

SUBJECT: NTC 24-06 JPA20221645

September 27th, 2024

Mr. Reams,

Regarding the 'Notice to Comply' NTC 24-06 related to JPA20221645 please see the attached documentation for the Bulkhead Replacement at 1124 Wormley Creek Drive in Yorktown VA. This letter is requesting after the fact authorization for the already completed bulkhead replacement.

After investigating the final position of the new bulkhead, the data appears to show that the bulkhead was installed directly in front of the remaining portions of the bulkhead that still existed at the start of construction. When the JPA20221645 was submitted on July 13th, 2022, the main sections of the bulkhead area to be replaced were already destroyed and missing. This resulted in the inability to record benchmarks on the eventually approved layout plan.

Eleven months after the JPA was initiated, the bulkhead experienced accelerated failure due to numerous, major winter storms. The result was only three remaining reference points for the new replacement bulkhead footprint: the southern bulkhead, the start of the spine of the existing dock, and the remaining northern bulkhead. Furthermore, additional unforeseen conditions were discovered when driving the sheet piles in the assumed, same footprint. Sub-surface debris from the failed bulkhead prevented correct installation of the pilings and vinyl sheets. They were not able to be driven to correct depths and without damaging the material. Using best practice, an onsite field change was required and implemented to install the ends of the bulkhead directly in front of the existing southern and northern portions of the bulkhead. This prevented interference between sub surface debris and new bulkhead material installation.

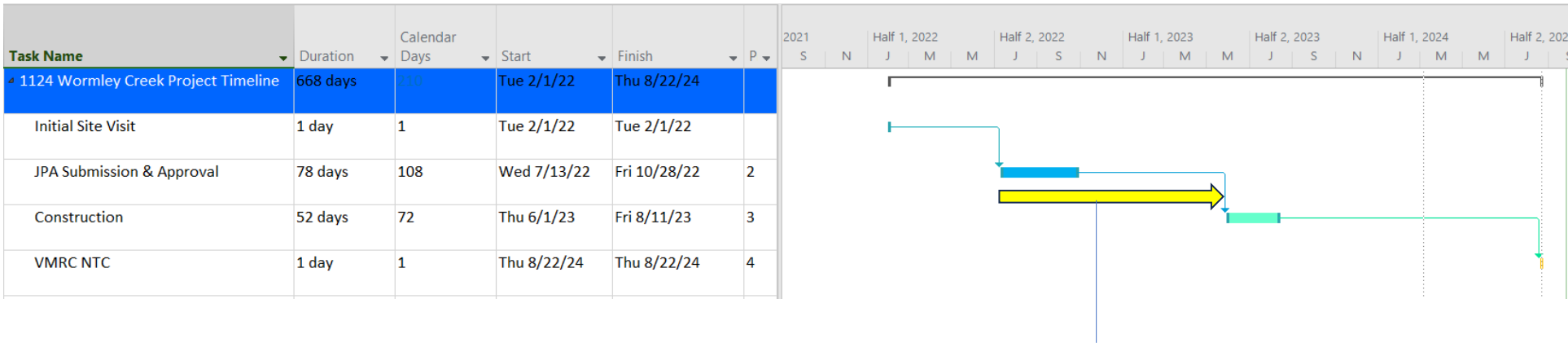
Best efforts were made onsite to install the new bulkhead in the same footprint. Any deviation from the permitted footprint that may have occurred was not done intentionally, or for personal or financial gain. The goal was to construct a properly installed seawall that will endure the test of time and protect the shoreline for years to come.

Very Respectfully,



Randolph W. Carnell Jr.
Owner, BSME
Living Shorelines, LLC

Project Timeline



JPA20221645 was initiated in July of 2022 and start of construction commenced eleven months later in June of 2023. During this period, the bulkhead continued to be subjected to numerous nor'easters which accelerated its rapid failure on the main area of repair. When construction started, it was unclear exactly where the original bulkhead was located. Only three points remained above the mudline for construction reference (See drawing LS09272024A).



LEONARD CLARK
1124 Wormley
Creek YORKTOWN
23692

WORMLEY CREEK
37°12'48.85"N
76°28'10.45"W

AGENT
Randy Carnell
757.620.9530

Preconstruction Aerial 9/28/2022



Areas of the bulkhead that were destroyed by the time construction started and were no longer existing as reference points for replacement bulkhead position.



LEONARD CLARK
1124 Wormley
Creek YORKTOWN
23692

WORMLEY CREEK
37°12'48.85"N
76°28'10.45"W

AGENT
Randy Carnell
757.620.9530

Completed Bulkhead 8/11/2023



LEONARD CLARK
1124 Wormley
Creek YORKTOWN
23692

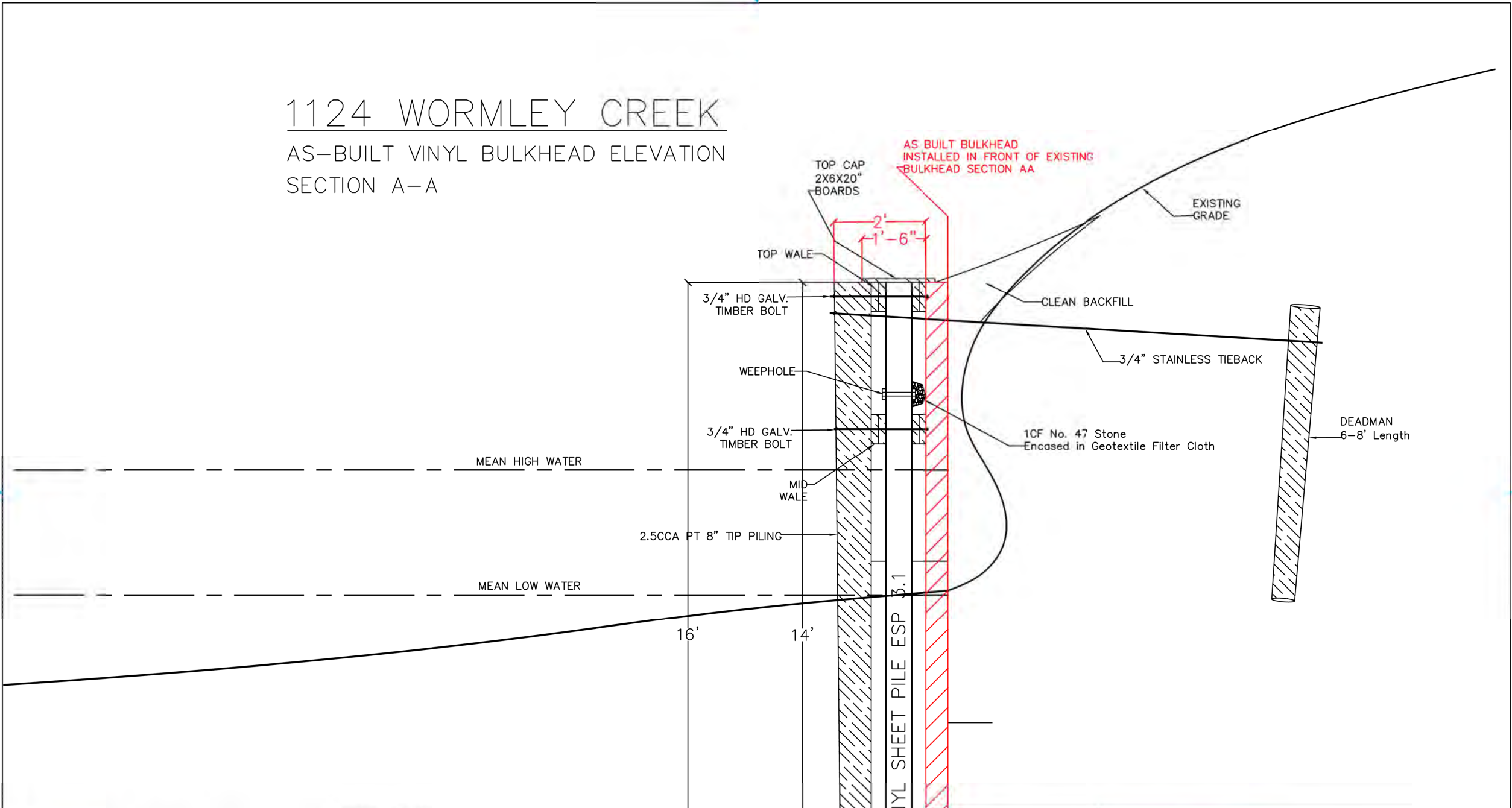
WORMLEY CREEK
37°12'48.85"N
76°28'10.45"W

AGENT
Randy Carnell
757.620.9530

LIVING SHORELINES LLC 2024 - LIVINGSHORELINESLLC@GMAIL.COM

LIVING SHORELINES LLC 2024 - LIVINGSHORELINESLLC@GMAIL.COM

1124 WORMLEY CREEK
AS-BUILT VINYL BULKHEAD ELEVATION
SECTION A-A



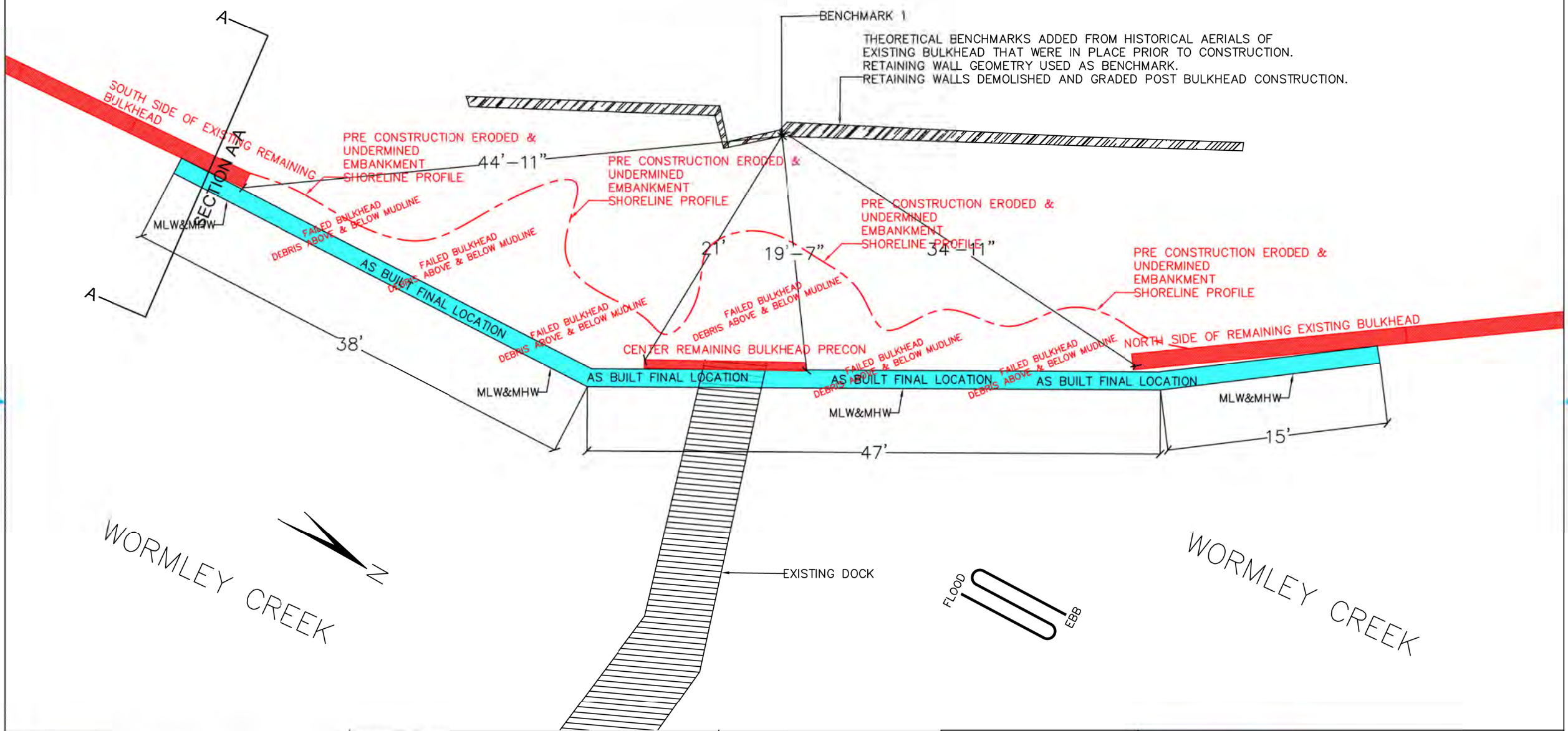
PROPERTY OWNER: LEONARD CLARK
PROJECT ADDRESS: 1124 WORMLEY CREEK
BODY OF WATER: WORMLEY CREEK
PROJECT LOCATION: 37°12'48.85"N 76°28'10.45"W
JPA AGENT: RANDY CARNELL
PROJECT TYPE: BULKHEAD REPAIR

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EPD. No.:
Invoice No.:
Drawn Date: 09/25/2024
Drawn By: Randy Carnell
Check Date:
Checked By:
Approved By:
Sent Date:
Sent By:

Bulkhead Elevation AS BUILT			
1124 Wormley Creek			
Yorktown VA			
Size: B	Drawing No.: LS09252024A	Number: NTC JPA	Revision: A
Scale:	Weight:	Page:	

PRECONSTRUCTION CONDITIONS AND AS-BUILT LOCATION
1124 WORMLEY CREEK ROAD, YORKTOWN VA 23692
JPA 2022-1645



PROPERTY OWNER: LEONARD CLARK
PROJECT ADDRESS: 1124 WORMLEY CREEK
BODY OF WATER: WORMLEY CREEK
PROJECT LOCATION: 37°12'48.85"N 76°28'10.45"W
JPA AGENT: RANDY CARNELL
PROJECT TYPE: BULKHEAD REPAIR

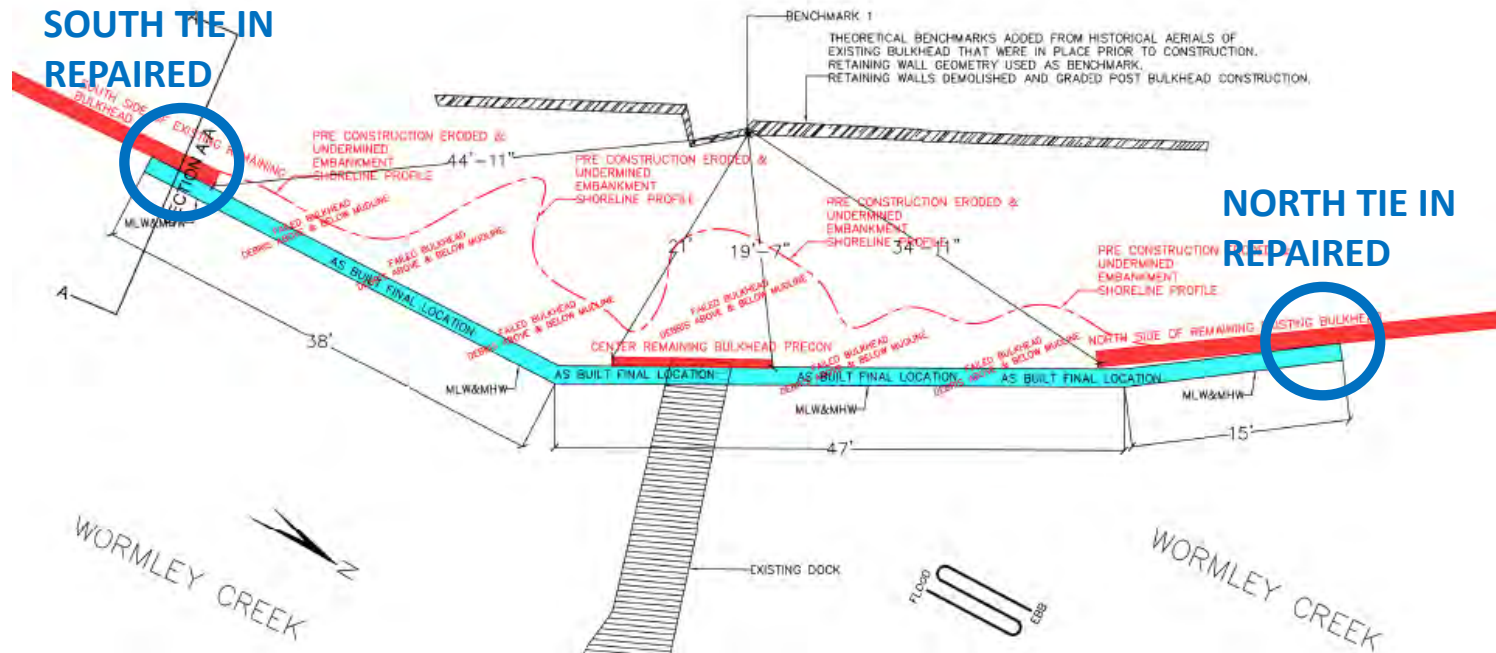
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EPD. No.:
Invoice No.:
Drawn Date: 09/27/2024
Drawn By: Randy Carnell
Check Date:
Checked By:
Approved By:
Sent Date:
Sent By:

Bulkhead Layout AS BUILT			
1124 Wormley Creek			
Yorktown VA			
Size: B	Drawing No.: LS09272024A	Number: NTC JPA	Revision: A
Scale:	Weight:	Page:	

Bulkhead Tie-in Repair

The North and South ends of the new bulkhead were properly tied into the existing bulkhead on November 13th, 2024.



LEONARD CLARK
1124 Wormley
Creek YORKTOWN
23692

WORMLEY CREEK
37°12'48.85"N
76°28'10.45"W

AGENT
Randy Carnell
757.620.9530

Living Shorelines LLC 2024
LivingShorelinesLLC@gmail.com
11/15/2024

Bulkhead Tie-in Repair (South End)

PREVIOUS CONDITION TIE-IN SOUTH END (VMRC PHOTO)



NEW CORRECTED CONDITION TIE-IN SOUTH END 11/13/2024



LIVING SHORELINES
Waterfront Design & Permitting

LEONARD CLARK

1124 Wormley
Creek YORKTOWN
23692

WORMLEY CREEK

37°12'48.85"N
76°28'10.45"W

AGENT

Randy Carnell
757.620.9530

Living Shorelines LLC 2024
LivingShorelinesLLC@gmail.com
11/15/2024

Bulkhead Tie-in Repair (North End)

PREVIOUS CONDITION TIE-IN NORTH END (VMRC PHOTOS)



**LIVING
SHORELINES**
Waterfront Design & Permitting

LEONARD CLARK

1124 Wormley
Creek YORKTOWN
23692

WORMLEY CREEK

37°12'48.85"N
76°28'10.45"W

AGENT

Randy Carnell
757.620.9530

Living Shorelines LLC 2024
LivingShorelinesLLC@gmail.com
11/15/2024

Bulkhead Tie-in Repair (North End)

NEW CORRECTED CONDITION TIE-IN NORTH END 11/13/2024



LEONARD CLARK
1124 Wormley
Creek YORKTOWN
23692

WORMLEY CREEK
37°12'48.85"N
76°28'10.45"W

AGENT
Randy Carnell
757.620.9530

Living Shorelines LLC 2024
LivingShorelinesLLC@gmail.com
11/15/2024

PUBLIC HEARING

Update of the Commission's *Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia (January 1, 1998)* and its *Wetlands Mitigation-Compensation Policy and Supplemental Guidelines* Regulation (4VAC20-390) developed pursuant to the legislative mandate of Chapter 334 of the 2023 Acts of the Virginia General Assembly (HB 1950)

1. Habitat Management Evaluation dated January 28, 2025
(Pages 1 - 3)
2. Draft Update to the Commission's *Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia*
(Pages 4 - 7)
3. Draft Update to the Commission's *Wetlands Mitigation-Compensation Policy and Supplemental Guidelines* Regulation (4VAC20-390)
(Page 8 - 22)

HABITAT MANAGEMENT DIVISION EVALUATION

PUBLIC HEARING: Update of the Commission's *Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia (January 1, 1998)* and its *Wetlands Mitigation-Compensation Policy and Supplemental Guidelines Regulation (4VAC20-390)* developed pursuant to the legislative mandate of Chapter 334 of the 2023 Acts of the Virginia General Assembly (HB 1950).

Introduction

The Commission's Tidal Wetlands Banking Guidelines (Guidelines) were adopted in 1998 and have never been updated. The Wetlands Mitigation-Compensation Policy and Supplemental Guidelines Regulation (Regulation) was originally adopted in 1989 and last updated in 2005. The proposed updates to both documents are necessary to comply with the mandate of Chapter 334 of the 2023 Acts of the Virginia General Assembly. This legislation directed VMRC to "*consider provisions relating to the generation of vegetated and unvegetated wetland credits from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.*"

The Commission was additionally directed to form a stakeholder group including representatives from the mitigation banking industry, conservation organizations, the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Institute of Marine Science for the purpose of reviewing and updating its guidelines.

To accomplish the legislative mandates of HB 1950, Commission staff developed a Request for Proposal (RFP), selected, and contracted with Pender and Coward to assist the agency with the legal requirements to form and convene the stakeholder workgroup. Expert team members were selected to assist in developing a plan required by the legislation. The group, outlined in Table 1, met on February 23, and again on March 22, 2024.

Table 1. House Bill 1950 Workgroup	
Agency/Group	Representative
Troutman Pepper	Shannon Varner
New Mill Creek Bank	Tom Tye
The Nature Conservancy	Karen Johnson
Chesapeake Bay Foundation	Jay Ford
Marine Resources Commission	Randy Owen
Army Corps of Engineers	Jeanne Richardson
Department of Environmental Quality	Sara Woodford
Virginia Institute of Marine Science	Lyle Varnell
NOAA Fisheries	Dave O'Brien

Introduction (cont'd)

Membership included federal and state representatives from the Commonwealth's Interagency Review Team (IRT). This group is responsible for the review and oversight of the compensatory requirements for permissible impacts to nontidal wetlands, tidal wetlands, and Virginia streams accomplished through the establishment and management of mitigation bank or in-lieu fee instruments pursuant to 33 CFR Section 332.8 and 28.2-1308 of the Virginia Code.

Principal Updates

The workgroup's expertise and experience with mitigation banking and in-lieu fee instruments provided an efficient mechanism in updating the Commission's guidelines necessary to meet the legislative tasks. The primary updates to the existing Tidal Wetlands Banking Guidelines included more accurately describing the initial process for proposing a new tidal wetlands mitigation bank for consideration by the IRT. Considerable edits included streamlining the guidance and removing antiquated language to ensure compliance with existing federal and state law.

The primary update to the existing Wetlands Mitigation and Compensation Policy centers on a new recommended sequencing of acceptable compensatory mitigation options. VMRC's past guidance directed the permittee and the local wetland boards to seek compensatory mitigation first from the creation of new wetlands on or off-site, secondly through any approved tidal wetland banks in the approved geographic service area, and lastly through the payment of any available in-lieu fee established by the given locality (ad hoc in-lieu fee). The new guidance now states that the local wetlands board or Commission "shall select the compensatory mitigation option that is ecologically preferable and shall consider them in the following order of preference: (1) use of an approved mitigation bank, (2) use of an approved in-lieu fee program, (3) permittee-responsible on-site and in-kind mitigation, or (4) permittee-responsible mitigation through off-site or out-of-kind mitigation within the same watershed."

Compensatory mitigation requirements may be met by payment of the previously utilized ad hoc in-lieu fee only in exceptional circumstances where federal regulators do not require compensatory mitigation, and the applicant demonstrates that other forms of compensatory mitigation are not available.

Public Comments Received

Following the workgroup meetings, the resulting proposed updates to VMRC's Tidal Wetland Banking Guidelines and the Wetlands Compensation Mitigation Policy were coordinated with the Commonwealth's Office of Regulatory Management (ORM). The documents were then posted on the Virginia Regulatory Town Hall site and the agency website calendar for public comments. As of January 21, 2025, no public comments have been received on either document. Any comments received between January 21, 2025, and January 27, 2025, will be collated and presented to the full Commission on January 28, 2025.

Summary and Recommendation

The proposed updates, mandated by HB 1950 and §28.2-1308 of the Virginia Code, will help bring the state guidance into conformity with existing federal and state law. Bringing our guidance in line with federal regulations and regulations promulgated by the Department of Environmental Quality for *non-tidal* wetlands mitigation banks should provide clearer direction to potential new bankers and favor the establishment of new *tidal* wetlands mitigation banks.

The public will benefit from additional tidal banks which ensure that existing wetland functions impacted by development will not be lost but instead will be replaced by functional wetlands created and monitored at the bank sites. Permittees will benefit by having more bank options available to purchase credits to satisfy compensatory mitigation requirements. This could be cheaper than requiring a permittee to establish and maintain new wetlands on or off-site.

Commission adoption of the revised guidelines and regulation should foster a market-based approach to compensatory mitigation through the establishment of additional tidal wetlands mitigation banks. Keeping the outdated guidance would fail to meet the legislative mandate and may discourage the opening of new banks, thus resulting in fewer and more expensive options to satisfy compensatory mitigation requirements.

Lastly, the proposed updates are meant to better facilitate meeting the Commonwealth's obligation as a signatory to the Chesapeake Bay Program Agreement to achieve no net loss of wetlands from the Commonwealth's permitting programs. Accordingly, in keeping with the authority of §28.2-103 of the Code of Virginia, staff recommends the adoption of the proposed updates to the Commission's *Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia* and its *Wetlands Mitigation-Compensation Policy and Supplemental Guidelines* Regulation (4VAC20-390) as presented for consideration by the full Commission on this date.

Guidelines for Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia

I. INTRODUCTION

These guidelines were originally promulgated in 1998. This update is necessary to comply with Chapter 334 of the 2023 Acts of the Virginia General Assembly, which requires the Virginia Marine Resources Commission (the “Commission”) to review and update these guidelines and to “consider provisions relating to the generation of vegetated and unvegetated wetland credits from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.” The law also requires the Commission to make these guidelines consistent with its Tidal Wetlands Guidelines (May 2021 Update), including updating wetlands types and properties. This update is also necessary to bring these guidelines into alignment with current banking guidelines and practices in place with the Interagency Review Team (“IRT”). The IRT is composed federal, state, tribal, and/or local regulatory entities and serves to review documentation for the establishment and management of mitigation banks and in-lieu fee programs. The IRT operates in accordance with the Final Compensatory Mitigation for Losses of Aquatic Resources Rule, codified at 33 C.F.R. part 332 and 40 C.F.R. part 230, subpart J, and other applicable laws and guidelines.

II. PURPOSE AND SCOPE

This document provides guidance to the Commission, local wetlands boards, and the public for the development and operation of tidal wetland mitigation banks in the Commonwealth of Virginia.

These guidelines will supplement the existing Wetlands Mitigation-Compensation Policy currently codified at 4 Va. Admin. Code §§ 20-390-10 through 20-390-50. . The effective date of these guidelines will be August 1, 2024.

III. DEFINITIONS

For the purposes of these guidelines, the terms defined in the Wetlands Zoning Ordinance, codified at Va. Code § 28.2-1302, as amended, and in the Compensatory Mitigation for Losses of Aquatic Resources Rule, codified at 33 C.F.R. part 332, as amended, shall have the same meanings when used herein except for those terms set forth below:

Cataloging Unit: Specific geographic area as defined by the U.S. Geological Survey in the Hydrologic Unit Map of the United States.

Mitigation Bank: A site, or suite of sites, where tidal wetlands are restored, established, enhanced, or, in exceptional circumstances, preserved for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a wetland where it previously existed with the goal of returning natural/historic functions.

Watershed: The drainage area for each major river system within the Commonwealth.

IV. TIDAL WETLAND MITIGATION BANKING GUIDANCE

Any project which involves the use of credits from an approved mitigation bank to provide compensatory mitigation for the project's adverse impacts to tidal wetlands must comply fully with existing State and Federal statutes and regulations, as well as be consistent with applicable agency policies, including, but not limited to:

1. Title 28.2 of the Code of Virginia
2. VMRC Wetlands Mitigation-Compensation Policy
3. Clean Water Act, Section 404 (33 U.S.C. § 1344)
4. Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. § 403)
5. Section 404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material (40 C.F.R. part 230)
6. Section 404 Permit Regulations (33 C.F.R. parts 320 through 330)

7. Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. part 332; 40 C.F.R. part 230, subpart J).

8. National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.) and the Council on Environmental Quality's implementing regulations (40 C.F.R. parts 1500 through 1508).

9. Fish and Wildlife Coordination Act (16 USC §§ 661 et seq.).

10. U.S. Fish and Wildlife Service Mitigation Policy available at <https://www.fws.gov/policy/a1501fw2.pdf>.

11. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.).

12. National Marine Fisheries Service Habitat Conservation Policy

13. Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)

The policies set forth in this document are intended solely as guidance. This guidance does not establish or affect legal rights or obligations, establish a binding norm on any party, or constitute the final determination of the issues addressed.

V. IMPLEMENTATION PROCEDURES

The following criteria should be followed for bank planning, siting, construction and operation:

1. Any party or parties interested in creating a tidal wetland mitigation bank should first contact the Commission and the U. S. Army Corps of Engineers ("Corps") regarding the proposal. The Corps and Commission will gather pertinent information about the proposal and will, as co-chairs, establish the IRT. The IRT will consider the proposal and review all submitted documentation, including the prospectus, proposed mitigation banking instrument, and other appropriate documents, in accordance with applicable Federal and State law.

2. The sponsor will be required to provide a bond, letter of credit, or other financial assurance to ensure alternative compensatory mitigation is provided in the event the mitigation bank fails.
3. The mitigation bank's service area must be specified in the mitigation banking instrument. Unless otherwise provided by law, a mitigation bank's service area may only include the cataloging unit in which it is located or an adjacent cataloging unit in the same watershed.
4. The IRT will determine the number of credits available at the mitigation bank. Credits will be available for the establishment, restoration, enhancement, or, in certain circumstances, preservation of wetlands.
5. Upon receipt of a complete banking instrument, the Commission or Corps shall provide notification to the public, through standard procedures, and provide a reasonable comment period.

"WETLANDS MITIGATION – COMPENSATION POLICY"**CHAPTER 4VAC20-390-10 ET SEQ.****PREAMBLE**

This chapter sets forth the policy of the Commonwealth to avoid, minimize, and then compensate for impacts to tidal wetlands. The chapter further sets forth the methods by which compensatory mitigation for unavoidable impacts to tidal wetlands may be achieved and the restrictions on each method.

This chapter is promulgated pursuant to the authority contained in §28.2-103 and §28.2-1301 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4VAC 20-390-10 et seq., which was promulgated May 24, 2005, and made effective July 1, 2005. The effective date of this chapter, as amended, is February 1, 2025.

4VAC20-390-10 Definitions.

The following words, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Ad hoc in-lieu fees” means the payment of funds to a participating locality for the restoration, establishment, enhancement or, in certain circumstances, preservation of wetlands resources to satisfy compensatory mitigation requirements. Ad hoc in-lieu fee programs are not governed by an in-lieu fee program instrument.

“Approved in-lieu fee program” means a program involving the restoration, establishment, enhancement, or, in certain circumstances, preservation of wetlands resources through funds paid to a governmental or non-profit natural resources management entity for the purchase of credits to

"WETLANDS MITIGATION – COMPENSATION POLICY"**CHAPTER 4VAC20-390-10 ET SEQ.**

satisfy compensatory mitigation requirements. The operation and use of an approved in-lieu fee program are governed by an in-lieu fee program instrument approved as provided in federal law.

~~"Compensation" means actions taken which have the effect of substituting some form of wetland resource for those lost or significantly disturbed due to a permitted development activity; generally habitat creation or restoration. Compensation is a form of mitigation.~~

"Compensatory mitigation" means the restoration, establishment, enhancement, or, in certain circumstances, preservation of wetlands resources for the purpose of offsetting unavoidable adverse impacts of a permitted development activity which remain after all appropriate and practicable avoidance and minimization has been achieved.

"Mitigation" means all actions, both taken and not taken, which eliminate or materially reduce the adverse effects of a proposed activity on the living and nonliving components of a wetland system or their ability to interact. Mitigation includes compensatory mitigation.

4VAC20-390-20 Policy.

~~In spite of the passage of the Virginia Wetlands Act and the Federal Water Pollution Control Act in 1972, the~~ Virginia, as a Chesapeake Bay Program partner, has committed to achieving "a no-net loss of existing wetlands acreage and function in [its] regulatory programs." In addition, Virginia's Coastal Resilience Master Plan recognizes the importance of tidal wetlands as natural flood buffers. Despite this, pressures to use or develop tidal wetlands along Virginia's shoreline, have continued ~~to accelerate as evidenced by the increasing number of permit applications being~~

"WETLANDS MITIGATION – COMPENSATION POLICY"**CHAPTER 4VAC20-390-10 ET SEQ.**

submitted. While losses are controlled by existing permit programs, ~~data compiled by the Virginia~~ Institute of Marine Science (VIMS) over the last 11 years (1993–2004) has shown a total permitted loss of 132 acres of tidal wetlands. Of these losses, most are associated with shoreline stabilization projects where each individual project may account for only a few hundred square feet of impact. ~~Compensation for these losses has not usually been required. In fact, during the same period only~~ 20.3 acres of mitigation have been required some impacts to tidal wetlands from development activity are unavoidable. Research, ~~however~~ has demonstrated that certain wetlands can be established ~~or reestablished~~ in areas where wetlands are not presently found, wetlands that were previously lost or degraded can be reestablished, and wetland functions in existing wetlands can be improved. As such, ~~compensation~~ compensatory mitigation for permitted wetland losses is viewed as a means of offsetting impacts of necessary projects.

The Marine Resources Commission (commission), ~~through this policy, intends to encourage,~~ encourages where appropriate, ~~the compensation of~~ compensatory mitigation for all permitted tidal wetland losses, ~~especially vegetated losses, impacts,~~ provided all other mitigative measures have been considered to avoid and minimize any impact. ~~This should include compensation on-site, compensation within the watershed, compensation through the use of a mitigation bank as authorized by § 28.2-1308 of the Code of Virginia or through acceptance of an applicant's offer of payment to an in-lieu fee account established at the local, regional or state level and dedicated to wetland creation and restoration.~~

"WETLANDS MITIGATION – COMPENSATION POLICY"**CHAPTER 4VAC20-390-10 ET SEQ.**

~~The need to compensate for all permitted wetland losses is further emphasized by the Commonwealth's commitment to the restoration of the Chesapeake Bay. In 2000, Virginia, as a Chesapeake Bay Program partner committed to "achieve a no-net loss of existing wetlands acreage and function in the signatories' regulatory programs." If Virginia is to meet this goal, wetland losses permitted through the tidal wetland regulatory program, no matter how small, must be replaced.~~

4VAC20-390-30 General Criteria.

~~It shall remain the policy of the Commonwealth to mitigate or avoid, minimize the loss of, and then compensate for impacts to wetlands and the adverse ecological effects of all permitted activities through the implementation of the principles set forth in the existing Wetlands Guidelines promulgated by the commission. To determine whether compensation is warranted and permissible a two-tiered mechanism will be implemented. This dual approach will consist first of an evaluation of necessity for the proposed wetlands loss (see specific criteria below). If the proposal passes this evaluation, compensation will be required and implemented as set forth in the second phase, the Supplemental Guidelines of this policy, 4VAC20-390-50.~~

~~The primary thrust of combining the existing Wetlands Guidelines with the two-tiered compensation guidelines aim is to preserve the wetlands as much as possible in their natural state and to consider appropriate requirements for ~~compensation~~ compensatory mitigation only after it has been proven that the ~~loss of~~ impact to the natural resource is unavoidable and that the project will have the highest public and private benefit.~~

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~~A reading of the original Wetlands Act clearly indicates that the General Assembly intended for the Commonwealth's wetland resources to be preserved in their "natural state," and emphasized through its declaration of policy, the importance of an overall ecological approach to wetlands management.~~

~~"The Commonwealth of Virginia hereby recognizes the unique character of the wetlands, an irreplaceable natural resource which, in its natural state, is essential to the ecological systems of the tidal rivers, bays and estuaries of the Commonwealth." (Emphasis added)~~

~~The General Assembly has also originally stated that where economic development in the wetlands is clearly necessary and justified it will be accommodated while preserving the wetlands resource.~~

~~".... it is declared to be the public policy of this Commonwealth to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation." (Originally adopted under § 62.1-13.1 of the Code of Virginia, now under Powers and Duties of the Commission pursuant to § 28.2-1301 of the Code of Virginia) (Emphasis added)~~

~~In § 28.2-1308 of the Code of Virginia the General Assembly mandated the preservation of the ecological systems within wetlands of primary ecological significance and then stated:~~

~~"Development in Tidewater, Virginia, to the maximum extent practical, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly~~

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~~disturbed before July 1, 1972, in nonvegetated wetlands which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater, Virginia, outside of wetlands."~~

~~The General Assembly has clearly spelled out that "necessary economic development" is to be accommodated in Tidewater, Virginia, but that the emphasis is on wetlands preservation in their natural state.~~

~~Since use and development of tidal wetlands are regulated through the Wetlands Zoning Ordinance, commitments to preserve other existing tidal wetlands are not ordinarily an acceptable form of compensation.~~

A permittee's commitment to preserve existing tidal wetlands can, under certain circumstances, be a form of compensatory mitigation.

Mitigation, including compensatory mitigation, shall be required for both vegetated and nonvegetated wetlands unless site-specific information indicates such mitigation is not necessary.

Where compensatory mitigation is required, the ratio of the area of required compensatory mitigation to the area of approved impact should, in most cases, be at least one to one.

4VAC20-390-40. Specific Criteria Repealed.

~~In order for a proposal to be authorized to destroy wetlands and compensate for same in some prescribed manner, the three criteria listed below must be met. If the proposal cannot meet one or more of these criteria, the activity shall be denied, or must occur in areas apart from the~~

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~~wetlands. Should it satisfy all three criteria, however, compensation for the wetlands lost is required. Since the proposed activity should stand on its own merits in the permit approval process, compensation should not be used to justify permit issuance.~~

- ~~1. All reasonable mitigative actions, including alternate siting, which would eliminate or minimize wetlands loss or disturbance shall be incorporated in the proposal.~~
- ~~2. The proposal shall clearly be water dependent in nature.~~
- ~~3. The proposal shall demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits.~~

4VAC20-390-50 Supplemental guidelines: Compensatory mitigation requirements.

A. When a permit is issued for the use or development of, or activities in, wetlands, the permit shall require, where appropriate, the provision of compensatory mitigation.

~~A. B. If compensation compensatory mitigation is required, then the following guidelines should be given due consideration and, if appropriate, may be included as conditions of the permit. In any case, on-site compensation at the project site is the preferred location alternative with off-site, in the same watershed, as a consideration when on-site is not feasible. Locating a compensation site outside the river basin of the project is not acceptable unless it is done as part of a state-coordinated program of ecological enhancement. The sequence of acceptable the permit must specify the appropriate mitigation option and amount of mitigation required as a condition~~

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of the permit. Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts. Unless otherwise permitted by law, the compensatory mitigation should occur in, or have an approved service area that includes, the same USGS cataloging unit or adjacent USGS cataloging unit in the same watershed as the permitted project. The wetlands board or commission shall select the compensatory mitigation options should be as follows On-site, option in the following order of preference: (i) use of an approved mitigation bank (ii) use of an approved in-lieu fee program, (iii) permittee-responsible on-site and in-kind mitigation, or (iv) permittee-responsible mitigation through off-site or out-of-kind mitigation within the same watershed or mitigation bank in the watershed, or through a proffered payment of an in-lieu fee if on-site and off-site compensation are shown by the applicant to be impractical considering the project location.

C. Use of mitigation banks. Pursuant to § 28.2-1308 of the Code of Virginia, when any activity involving the loss of tidal wetlands authorized by the commission or a wetlands board is conditioned upon compensatory mitigation, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any approved wetlands mitigation bank. Guidelines for the Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia have been promulgated by the commission. Unless the applicant can demonstrate compliance with specific criteria contained in § 28.2-1308 for use of a compensatory mitigation bank outside the watershed where a permitted project is located, the use of a mitigation bank for permitted activities requiring compensation must be in the same USGS cataloging unit or

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~~adjacent USGS cataloging unit in the same watershed. When approving the use of a compensatory mitigation bank the ratio of required compensation to approved loss~~ number and type of credits the permittee is required to secure must be specified by the commission or wetlands board and should incorporate the use of Function Specific Credit Calculation Method established by the Virginia Institute of Marine Science (VIMS) and contained in the Guidelines for the Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia. The credits secured should be of a type to replicate, as nearly as practicable, the functions of the wetlands impacted.

D. Approved in-lieu fee programs. An applicant may be permitted to satisfy all or part of any compensatory mitigation requirements by the purchase or use of credits from an approved in-lieu fee program. When approving the use of an approved in-lieu fee program, the number and type of credits the permittee is required to secure must be specified by the commission or wetlands board. The credits secured should be of a type to replicate, as nearly as practicable, the functions of the wetlands impacted.

~~B.~~ E. Use of on-site and off-site compensation. When on-site or off-site compensation is required as a condition of permit approval, the following items should be considered. The commission or wetlands board may wish to condition any approval on the receipt of an acceptable compensation plan before issuance of the final permit for an approved project apply.

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1. ~~A~~ The applicant must provide a detailed plan, including a scaled plan view drawing, ~~should be submitted~~ describing the objectives of the wetland compensation, the type of wetland to be created, the mean tide range at the site, the proposed elevations relative to a tidal datum, the exact location, the areal extent, the method of ~~marsh~~ wetland establishment ~~and, the vegetation to be planted,~~ the exact time frame from initial work to completion, ~~and~~ an abatement plan for any plants listed on the Virginia Invasive Species Plant List promulgated by the Virginia Department of Conservation and Recreation. The plan should also ~~include plans for~~ address replanting areas where vegetation fails to grow. The permittee must secure approval of the plan by the commission or wetlands board prior to commencing impacts to tidal wetlands.
2. Once the grading is completed at the planting site, it should be inspected by a competent authority to ~~insure~~ ensure that the elevations are appropriate for the vegetation to be planted and that the surface drainage is effective.
3. The compensation plan and its implementation should be accomplished by experienced professionals knowledgeable of the general and site-specific requirements for wetland establishment and long-term survival.
4. A performance bond or letter of credit should be required and remain in force until ~~the new wetland is successfully established;~~ a minimum of two growing seasons have passed and a ~~required~~ planting success rate established by the commission or wetlands board has been achieved.

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5. The ~~compensation marsh~~ replacement wetland should be designed to replace, as nearly as possible, the ~~functional values~~ functions of the lost resource on an equal or greater basis. ~~In general this means creating a marsh of similar plant structure to that being lost. This may not be the case where a lesser value marsh is involved (i.e. Group 4 or 5 wetlands). A minimum 1:1 areal exchange is required in all cases. The ratio of required compensation to approved loss should be specified by the commission or wetlands board and may be based on the use of the Function Specific Credit Calculation Method established by the Virginia Institute of Marine Science (VIMS) and contained in the Guidelines for the Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia.~~
6. The ~~compensation~~ compensatory mitigation should be accomplished prior to, or concurrently with, the construction of the proposed project. Before any activity under the permit may begin, the permittee must ~~own~~ hold all interests in the compensatory mitigation site that are needed to carry out the compensatory mitigation.
7. All reasonable steps must be taken to avoid or minimize any adverse environmental effects associated with the ~~compensation~~ compensatory mitigation activities themselves.
8. ~~In selecting a compensation site, one aquatic community should not be sacrificed to "create" another. In cases where dredged material must be placed overboard, the area may be used to create marsh, oyster rock or improve the resource value of the bottom.~~

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~~9. The type of plant community proposed as compensation must have a demonstrated history of successful establishment in order to be acceptable.~~

~~10. Manipulating the plant species composition of an existing marsh community, as a form of compensation, is unacceptable.~~

~~11. Nonvegetated wetlands should be treated on an equal basis with vegetated wetlands with regard to compensation and mitigation, unless site specific information indicates one is more valuable than the other.~~

~~12. 8.~~ Both short-term and long-term monitoring of ~~compensation~~ compensatory mitigation sites should be considered on a case-by-case basis. For ~~unproven types of compensation~~ the applicant The permittee will be responsible for funding such monitoring as is deemed necessary.

~~13. 9.~~ Conservation or other easements to be held in perpetuity should be required for the compensation marsh. Easements accepted by the commission will be processed in accordance with the provisions of § 28.2-1301 of the Code of Virginia. An appropriate site protection instrument that will protect the site in perpetuity should be required for the compensatory mitigation site except in cases where both the impact to wetlands and the compensatory mitigation required are determined by the wetlands board or the commission to be de minimis.

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~~D. Use of in-lieu fees. The use of in-lieu fees should be the last form of mitigation used to offset permitted wetland losses and must be the result of an agreed upon permit condition between the applicant and the commission or wetlands board provided the applicant can demonstrate that on-site or off-site compensation options are not practical and no compensatory mitigation banks have been established in the project watershed. Localities are encouraged to establish a fund for such payments that is dedicated to tidal wetlands restoration and creation. At the local level this could be the same fund established for the receipt of civil charges or civil penalties. Administration of such a fund should include an ability to trace the contribution of in-lieu fees to eventual use in actual wetland restoration or creation projects. If payments are made to other dedicated wetland restoration funds, this should be recognized in the permit issued by the board. In no case should an in-lieu fee amount be accepted for less than the cost of necessary compensation acreage or the purchase of necessary credits in an approved bank. This is intended to prevent the avoidance of use of on-site or off-site compensation, or compensatory mitigation bank for a cheaper alternative that would not be able to fund the same level of wetland restoration or creation required by on-site or off-site compensation or through use of a compensatory mitigation bank. Use of the fund could be for actual tidal wetland creation or restoration projects in the locality or for the purchase of credits in an approved compensatory mitigation bank that is authorized subsequent to the receipt of any in-lieu fee. Localities are encouraged to combine any in-lieu fee with other potential or available funds for wetland restoration or creation projects.~~

4VAC20-390-60. Ad hoc in-lieu fees.

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Compensatory mitigation requirements may be met by payment of an ad hoc in-lieu fee only in exceptional circumstances where federal regulators do not require compensatory mitigation and the applicant demonstrates that other forms of compensatory mitigation are not available. The use of ad-hoc in-lieu fees must be the result of an agreed upon permit condition between the applicant and the commission or wetlands board. Localities are encouraged to establish a fund for such payments that is dedicated to tidal wetlands restoration and creation. This could be the same fund established for the receipt of civil charges or civil penalties. Administration of such a fund should include an ability to trace the contribution of ad-hoc in-lieu fees to eventual use in actual wetland restoration or creation projects. If payments are made to other dedicated wetland restoration funds, this should be recognized in the permit issued by the commission or wetlands board. In no case should an ad-hoc in-lieu fee amount be accepted that is less than the cost, at the prevailing market rate, of establishing an area of wetlands that exceeds the area of wetlands impacted by a ratio of at least 2:1. Use of the fund could be for actual tidal wetland creation or restoration projects in the locality or for the purchase of credits in an approved compensatory mitigation bank that is authorized subsequent to the receipt of any ad-hoc in-lieu fee. Localities are encouraged to combine any ad-hoc in-lieu fee with other potential or available funds for wetland restoration or establishment projects

* * * * *

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §§28.2-103 and 28.2-1301 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Hampton, Virginia on January 28, 2025.

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COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: _____

Jamie L. Green
Commissioner

Subscribed and sworn to before me this _____ day of _____, 2025.

Notary Public