

**AGENDA**  
**MARINE RESOURCES COMMISSION**  
**FEBRUARY 25, 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. ROANOKE CEMENT COMPANY, LLC, #24-1360**  
requests authorization to construct a clear span haul bridge across Catawba Creek west of the existing facility and east of Catawba Road in Botetourt County for their Catawba Farm Quarry. The project is protested by the adjacent property owner.
- 6. MARSHA WEATHERWAX, #24-2553**  
requests authorization to construct a 15-foot by 20-foot gazebo with screened sides on a statutorily authorized private pier along the Timberneck Creek shoreline at 6470 Williams Landing Road in Gloucester County. The project is protested by an adjacent property owner.
- 7. GAIL TIESENGA, #24-1805**  
requests authorization to construct a living shoreline at 469 Coppedge Farm Road, situated along Johnsons Cove in Lancaster County. The project is protested by the adjacent property owner.
- 8. CITY OF VIRGINIA BEACH, #24-2851**  
requests authorization to mechanically dredge a 19-foot wide by 63-foot long subtidal area to a maximum depth of minus two (-2) feet mean low water within Pleasure House Creek to create a shallow water channel necessary to provide the hydrological connection to the proposed municipal Pleasure House Point Mitigation Bank in Virginia Beach. This project is protested by nearby property owners.
- 9. PHILLIP GIBSON and BLACKWATER PIER & DOCK, INC., NOTICE TO COMPLY #24-07**  
Commission consideration of Phillip Gibson and Blackwater Pier & Dock, Inc.'s failure to comply with the Commission's August 22, 2024, directive to remove four timber piles and an unauthorized extension to an existing boathouse built in excess of its former authorization under VMRC Application #2000-0590 at 119 Dandy Haven Lane situated along Back Creek in York County.

## **AGENDA**

### **10. SHELLFISH**

Request for approval of the 2025 Oyster Replenishment and Restoration Plan (ORP) and the Associated Procurements Procedures.

### **11. PUBLIC COMMENTS**

### **12. PUBLIC HEARING**

Proposal to amend Chapter 4 VAC 20-1360-10 et seq., "Pertaining to Commercial Electrofishing", to expand the electrofishing fishery, broaden eligibility for new licenses, increase harvest areas, remove size limits on blue catfish, and clarify areas where electrofishing is prohibited.

# AGENDA

## PAGE 2 ITEMS

**A. JOHN PRESS, #24-2605**

requests authorization to install a 50-foot-long low-profile timber groin extending 37 feet channelward of mean low water at 371 Locust Lane along the Rappahannock River in Essex County. The project requires a VMRC Wetlands and Subaqueous Permit.

**B. MICHAEL VARNER, #24-2525**

requests authorization to construct a 173-foot-long rock revetment channelward of an existing bulkhead along the Mattaponi River shoreline at 94 and 110 Horse Landing Court in King William County. The project requires a VMRC Wetlands Permit.

**C. ERGON ASPHALT PARTNERS, LP, #24-2713**

requests authorization to mechanically or hydraulically dredge up to 125,000 cubic yards of state-owned submerged lands, on an as-need basis, with disposal at the Craney Island Rehandling Basin or an approved upland storage site at their commercial facility located along the James River at 801 Terminal Ave in the City of Newport News. The project will reestablish previously permitted (VMRC #16-0662) depths of minus 38 feet mean low water on the western side of the pier and depths of minus 18 feet on the eastern side of the pier. This project requires a VMRC Subaqueous permit.

**D. CITY OF VIRGINIA BEACH, #23-2820**

requests authorization to mechanically maintenance dredge on an as-necessary basis a maximum of 34,000 cubic yards of state-owned submerged lands to achieve and maintain a maximum depth of minus six (-6) feet mean low water within sections of the Western Branch Lynnhaven River municipal channel in Virginia Beach. Dredged spoils will be offloaded at either the Thalia Creek or Crab Creek Transfer Facility and will be truck-hauled to an approved upland facility. Staff recommends approval with instream work time-of-year restrictions on dredging activity from April 1st until July 1st for summer flounder and from July 1st until September 30th for local shellfish within areas situated north of Hebden Cove. This project requires a VMRC Subaqueous permit.

## MINUTES

## COMMISSION MEETING

January 28, 2025

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	
Jeremy Headley	Associate Members
Jeanette Edwards	
Thomas Preston	
Preston White	
Kelci Block	Assistant Attorney General Via phone
Jamie Hogge	Recording Secretary
Gerald Pitt	1 <sup>st</sup> . Sgt., Marine Police
Randy Owen	Chief, Habitat Management
Adam Kenyon	Chief, Shellfish Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Alex Sabo
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Others present:

Andy Dunton	Andy Anderson	Amy Anderson
Thomas Croswell Jr.	Thomas Croswell	Ian Blair
Ira Broman	Mike Ware	Bob Simon
Jon Simon	Mike Steelman	Pat McCrady
Lewis Hall	Emily Small	Mary Rowe

Jordan Krevonick	Rebecca Francese	Jackie Shannon
David O’Brien	Kevin Singleton	Randy Cornell
Shannon Varner	and others.	

\* \* \* \* \*

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

Randy Owen requested the agenda items 2E and 2 H be heard separately from the Page 2 Agenda items. Mr. Owen requested that items 2E and 2H be heard separately. His comments are a part of the verbatim record.

**Associate Member Bransom moved to approve the agenda as amended. Associate Member Erskine seconded the motion. The motion carried, 8-0.**

\* \* \* \* \*

**MINUTES:** Commissioner Green asked if there were any changes or corrections to be made to the December 3, 2024, Commission Meeting minutes.

**Associate Member Headley moved to approve the minutes as presented. Associate Member Bransom seconded the motion. The motion carried, 8-0.**

\* \* \* \* \*

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

\* \* \* \* \*

**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 2D, 2F, 2G, 2H and 2 I for the Associate Members. Mr. Owen’s comments are a part of the verbatim record.

- 2A. **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.
- 2B. **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.
- 2C. **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.
- 2D. **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.
- 2F. **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.

- 2G. 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.
- 2I. 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.

No one spoke in support or opposition of the projects.

The matter was before the Commission for discussion and action.

**Associate Member Erskine moved to approve the Page 2 items 2A through 2D, 2F, 2G, 2H and 2 I as presented. Associate Member Headley seconded the motion. The motion carried, 8-0.**

- 2E. 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.

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

**Associate Members Erskine and Kellum abstained from voting on agenda item 2E.**

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 item 2E as presented. Associate Member Edwards seconded the motion. The motion carried, 6-0-2. Associate Members Erskine and Kellum abstained from voting.**

**2H. 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.

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

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 item 2H as presented with contingent upon approval from the Navy as outlined in the presentation. Associate Member Headley seconded the motion. The motion carried, 7-0-1. Associate Member White abstained.**

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

\* \* \* \* \*

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

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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.

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.

Lewis Hall was sworn in and spoke on behalf of the project. His comments are a part of the verbatim record.

Andrew and Amy Anderson spoke in opposition of the project. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Headley moved to approve the project as presented. Associate Member Bransom seconded the motion. The motion carried, 8-0.**

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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.

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.

Andy Dunton, representative of the applicant, was sworn in and spoke in support of the project. His comments are a part of the verbatim record.

Kevin Singleton was sworn in and spoke in support of the project. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member White made a motion to deny approval of the project. Associate Member Bransom seconded the motion. The motion carried, 8-0.**

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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.

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

Mr. Ware stated that the applicant accepts full responsibility for penalty charges imposed.

Randy Cornell, agent for the applicant was sworn in. 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 project as presented to impose a civil penalty of \$3,000 to the agent, \$9,000 civil penalty to the contractor, and a**

**triple permit fee of \$900 and royalty fee of \$600 to the applicant contingent on the payment of all the civil penalties. Associate Member Erskine seconded the motion. The motion carried, 7-1. Associate Member Headly voted no.**

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- 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).

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.

Ian Blair, representing Wetlands Watch, was sworn in and spoke. His comments are a part of the verbatim record.

Shannon Varner was sworn in and spoke. His comments are a part of the verbatim record.

Jackie Shannon with Chesapeake Bay Foundation was sworn in and spoke. Her 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 guidelines as presented. Associate Member Bransom seconded the motion. The motion carried, 8-0.**

\* \* \* \* \*

- 9. PUBLIC COMMENT:**

**Mary Rowe** requested to transfer her late husbands' Oyster User Fee All Gear license. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

**Associate Member Headley moved to approve the transfer of her late husband's Oyster User Fee All Gear as requested. Associate Member Preston seconded the motion. The motion carried, 8-0.**

**Thomas Croswell Jr.** requested to have his Oyster User Fee All Gear license reinstated. 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 reinstate his Oyster User Fee All Gear, so long as he pays the back fees for the years he did not renew prior to purchasing his 2025 oyster license. Associate Member Bransom seconded the motion. The motion carried, 7-1. Associate Member Hand voted no.**

**Thomas P. Croswell** requested to have his Oyster User Fee All Gear license reinstated. His comments are a part of the verbatim record.

**No action was taken by the Commission.**

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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**, February 25, 2025.

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Jamie L. Green, Commissioner

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Jamie Hogge, Recording Secretary



# *COMMONWEALTH of VIRGINIA*

*Marine Resources Commission*

*Building 96*

*380 Fenwick Road*

*Fort Monroe, Virginia 23651*

Stefanie K. Taillon  
Acting Secretary of Natural  
and Historic Resources

Jamie L. Green  
Commissioner

February 20, 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 four 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 (2024-1360).

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](http://www.mrc.virginia.gov)

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

## **Roanoke Cement Company, LLC**

1. Habitat Management Evaluation dated February 25, 2025  
(Pages 1 and 2)
2. Project drawings dated received June 6, 2024, and January 21, 2025  
(Pages 3-10)
3. Appalachian Trail Conservancy letter of support dated August 7, 2024  
(Page 11)
4. Letters of protest from Mr. and Mrs. Robin Brown received January 28, 2025  
(Page 12)
5. Department of Environmental Quality Virginia Water Protection (VWP) Individual Permit dated October 3, 2024  
(Pages 13 and 14)

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

## **HABITAT MANAGEMENT DIVISION EVALUATION**

**ROANOKE CEMENT COMPANY, LLC, #24-1360**, requests authorization to construct a clear span haul bridge across Catawba Creek west of the existing facility and east of Catawba Road in Botetourt County for their Catawba Farm Quarry. The project is protested by the adjacent property owner.

### **Narrative**

The Roanoke Cement Company, LLC, is a cement plant located northwest of Roanoke in Botetourt County. The company has been operating in the area since 1951 and is planning to expand their quarry operations into an adjoining parcel to continue quarrying for limestone.

A Joint Permit Application was received on June 6, 2024, from Wetland Studies and Solutions, Inc. (agent) on behalf of the applicant, proposing to construct a clear span haul bridge across Catawba Creek for their Catawba Farm Quarry. Of the expansion project, only a 44-foot-wide by 154-foot-long clear span bridge crosses state-owned submerged lands and is jurisdictional to the Commission. The bridge is proposed to be installed approximately 20 feet above a 47-foot section of Catawba Creek, with no impacts to the creek itself. The bridge approaches and abutments are situated on upland property owned by the applicant.

Although the Commission approved this proposal as a page 2 item in January, staff was unaware at the time that the adjacent property owners had submitted a protest dated-received on January 28<sup>th</sup>, the date of the Commission hearing. As January 28<sup>th</sup> was the last day that the adjacent property owner could comment, staff felt the protest should be processed and addressed before the full Commission, prior to a subaqueous permit being drafted.

### **Issues**

The project is protested by the adjoining property owners to the southwest of the proposed bridge crossing, Mr. and Mrs. Robin Brown. Per their protest correspondence, the Browns object to the expansion of the quarry as a whole, including the proposed bridge. They specifically cited concerns regarding air quality, water quality, property damage, and safety of hikers on nearby trails. They advised that the quarry's haul trucks leave debris on the County roads which damages their vehicles. They additionally cited concerns of the water table being altered and private wells being destroyed or contaminated.

After receiving their written protest, staff spoke with Mrs. Brown by telephone on January 27, 2025, and again on February 14, 2025. Attempts were made by staff to meet with the protestants immediately after a February 13, 2025, site visit to the quarry, but Mr. and Mrs. Brown had to cancel at the last minute due to a conflict with their availability.

### **Issues (cont'd)**

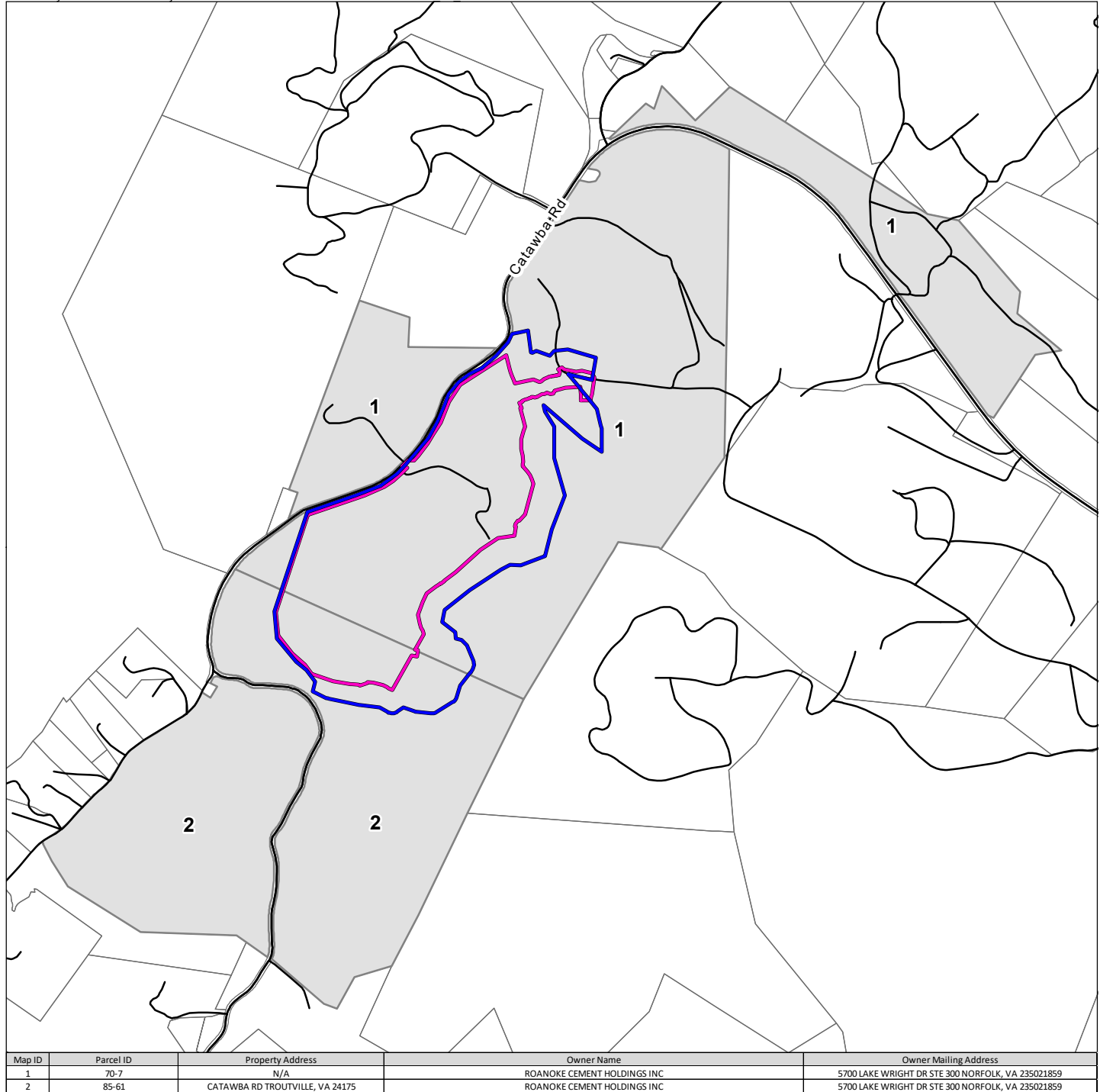
We received a letter of support from the Regional Manager of the Appalachian Trail Conservancy, specifically stating their support for the applicant's continued operations and proposed expansion.

The Department of Environmental Quality has issued a Virginia Water Protection Permit for other expansion-related impacts. The U.S. Army Corps of Engineers is in the process of amending an existing 404 Permit.

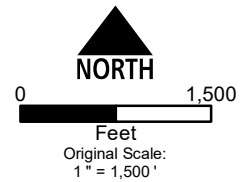
### **Summary/Recommendations**

We understand the protestants' concerns related to environmental and potential health impacts from the quarry's expansion. However, the clear span bridge is the only component that is jurisdictional for the Commission, and its construction will not directly impact state-owned submerged lands, nor the protestants' property.

Accordingly, after evaluating the merits of the project against the concerns expressed by Mr. and Mrs. Brown, and after considering all factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed including a royalty of \$4,136.00 for the encroachment of the bridge over 2,068 square feet of state-owned subaqueous land at a rate of \$2.00 per square foot.



- Site
- LOD
- Parcel ID



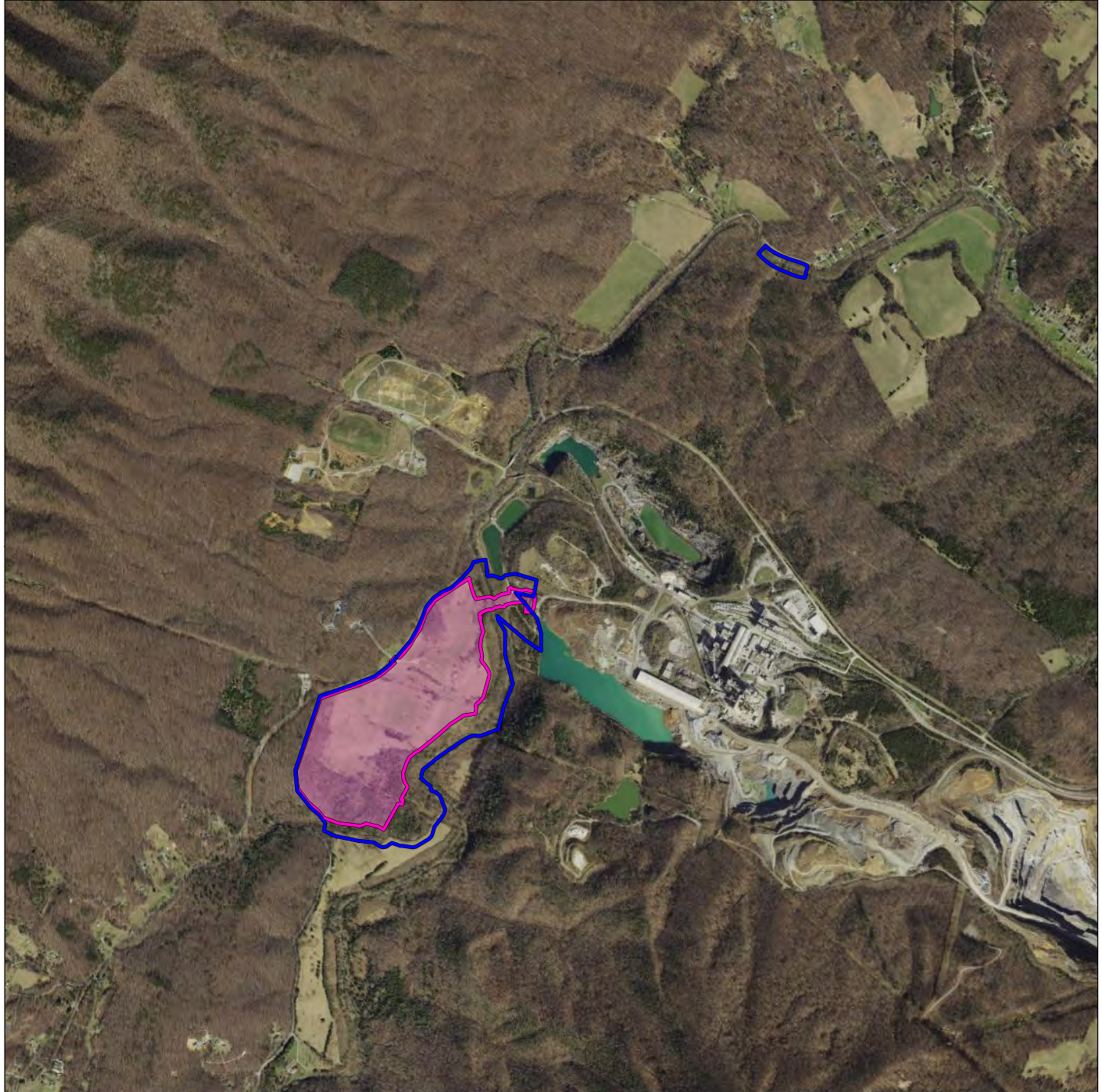
Source: Botetourt County Digital Data

**Wetland Studies and Solutions, Inc.**

a **DAVEY** company

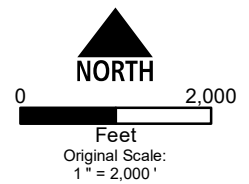
Received by VMRC June 6, 2024 /blh

**Exhibit 2**



- Site
- LOD

**Spring 2023 Natural Color Imagery  
Roanoke Cement Company  
- Catawba Farm Quarry  
WSSI #28724.02**



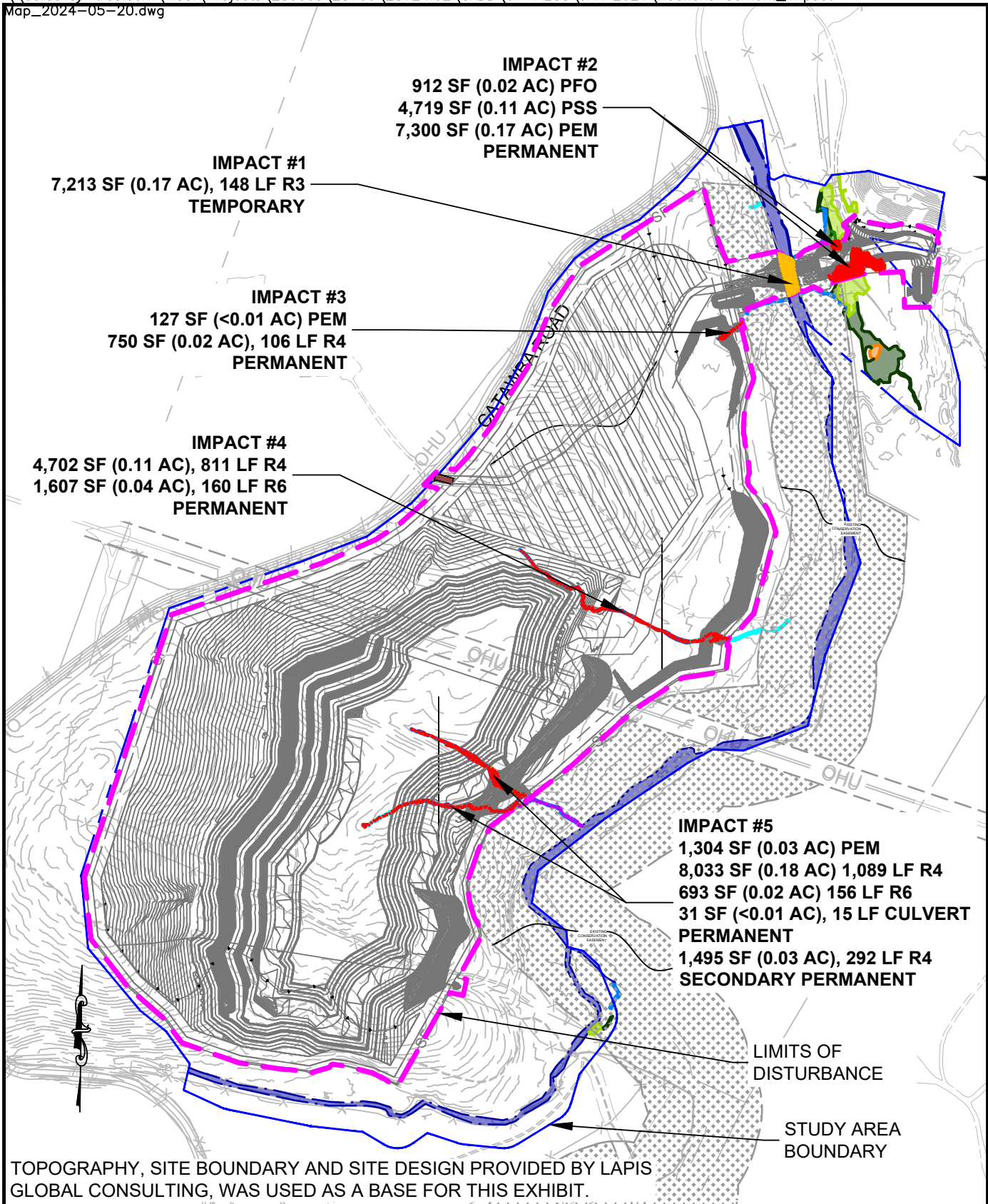
Source: Virginia Base Mapping Program (VBMP)

**Wetland Studies and Solutions, Inc.**

a **DAVEY** company

Received by VMRC June 6, 2024 /blh

**Exhibit 6**



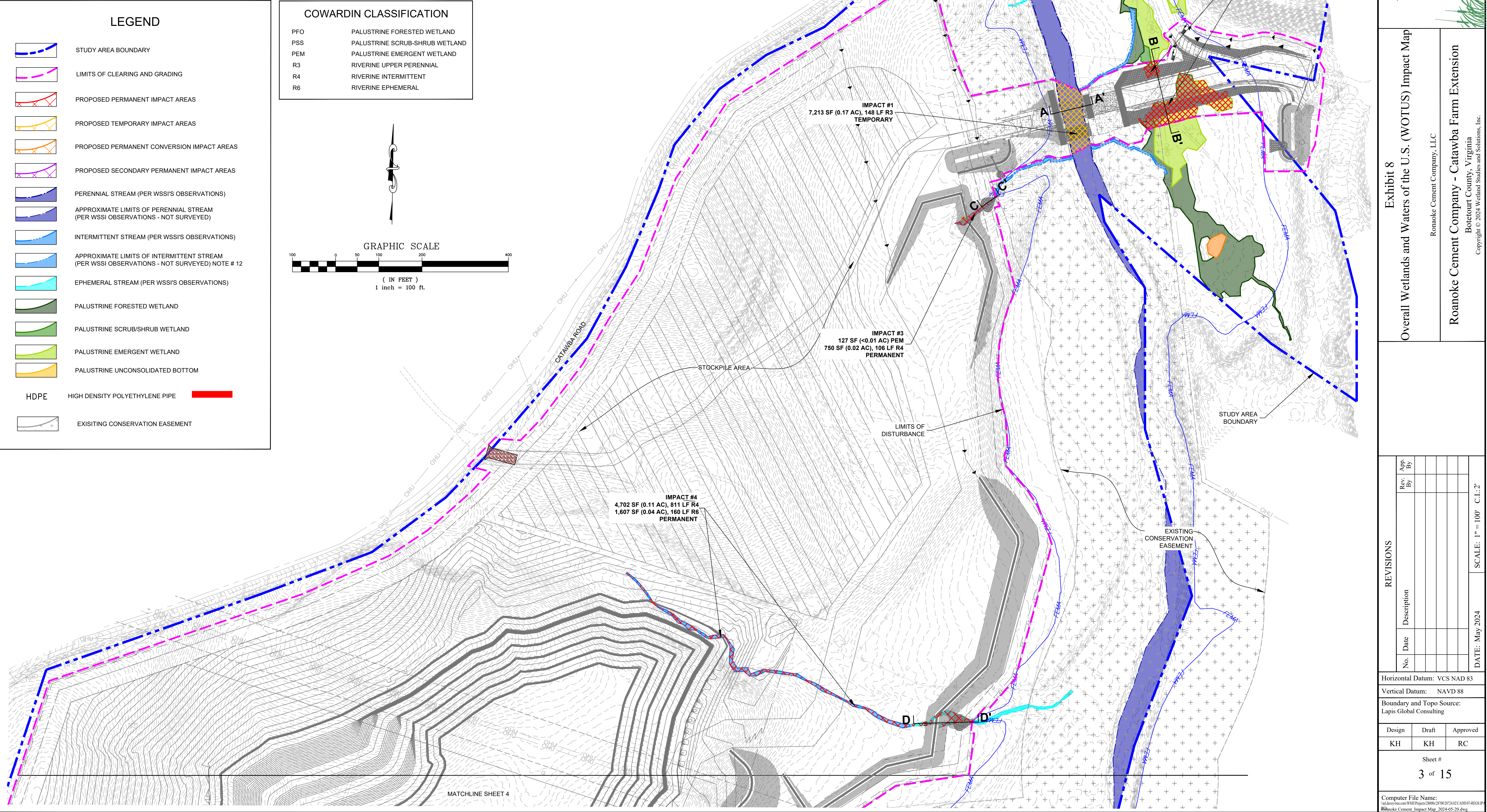
<p><b>Applicant:</b> Roanoke Cement Company, LLC 188 Summerfield Court, Suite 101 Roanoke, VA 24019</p> <p><b>Agent:</b> Wetland Studies and Solutions, Inc. 5300 Wellington Branch Drive, Suite 100 Gainesville, VA 20155 (Phone) 703-679-5600 (Fax) 703-679-5601</p>	<p><b>ROANOKE CEMENT COMPANY</b> <b>- CATAWBA FARM QUARRY</b> <b>Proposed Impacts to Nontidal</b> <b>Waters of the U.S.</b>  <b>Botetourt County, Virginia</b></p>	<p><b>Overall WOTUS</b> <b>Impact Map</b></p> <p><b>Date:</b> May 2024</p> <p><b>Scale:</b> 1" = 500' <b>Sheet:</b> 2 of 15</p>
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SUMMARY OF IMPACTS TABLE

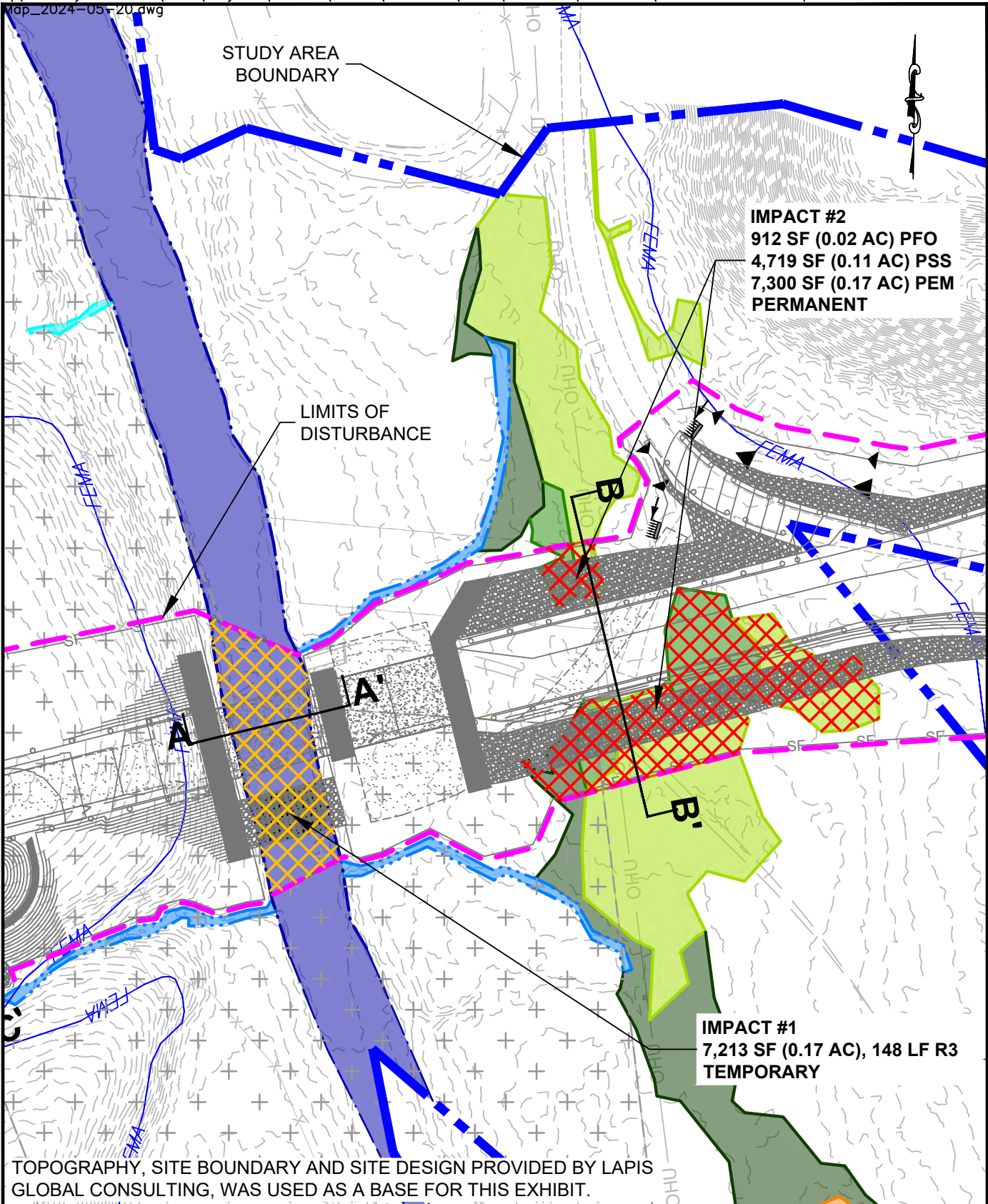
Impact Number/ Description	PFO (SF)	PFO (AC)	PSS (SF)	PSS (AC)	PEM (SF)	PEM (AC)	R3 (SF)	R3 (AC)	R3 (LF)	R4 (SF)	R4 (AC)	R4 (LF)	R6 (SF)	R6 (AC)	R6 (LF)	Quvert (SF)	Quvert (AC)	Quvert (LF)	Total Impact Area (SF)	Total Impact Area (AC)	Total Stream Impact Length (LF)	***Total Culvert Impact Length	Wetland/Stream Impact Description*	Impact Coordinates
1 (Temporary)	--	--	--	--	--	--	7,213	0.17	148	--	--	--	--	--	--	--	--	--	7,213	0.17	148	--	NT, TE, PR, IV (R3)	37.463299, -80.006437
2 (Permanent)	912	0.02	4,719	0.11	7,300	0.17	--	--	--	--	--	--	--	--	--	--	--	--	12,931	0.30	--	--	NT, F, PE, V, MC (PFO, PSS, PEM)	37.463397, -80.005708
3 (Permanent)	--	--	--	--	127	<0.01	--	--	--	750	0.02	106	--	--	--	--	--	--	877	0.02	106	--	NT, EX, PE, IN, V (PEM, R4)	37.462728, -80.007138
4 (Permanent)	--	--	--	--	--	--	--	--	--	4,702	0.11	811	1,607	0.04	160	--	--	--	6,309	0.14	971	--	NT, EX, PE, IN, IV (R4, R6)	37.459728, -80.008937
5 (Permanent)	--	--	--	--	1,304	0.03	--	--	--	8,033	0.18	1,089	693	0.02	156	31	<0.01	15	10,061	0.23	1,245	15	EX, NT, PE, IN, IV, V (PEM, R4, R6)	37.458119, -80.010500
5 (Secondary Permanent)	--	--	--	--	--	--	--	--	--	1,495	0.03	292	--	--	--	--	--	--	1,495	0.03	292	--	NT, PE, IN, IV (R4)	37.457586, -80.009350
Total Temporary Impact	--	--	--	--	--	--	7,213	0.17	148	--	--	--	--	--	--	--	--	--	7,213	0.17	148	--		
Total Permanent Impact	912	0.02	4,719	0.11	8,731	0.20	--	--	--	14,980	0.34	2,298	2,300	0.05	316	31	<0.01	15	31,673	0.73	2,614	15		
Overall Total	912	0.02	4,719	0.11	8,731	0.20	7,213	0.17	148	14,980	0.34	2,298	2,300	0.05	316	31	<0.01	15	38,886	0.89	2,762	15		

\*F = Fill, EX = Excavation, S = Structure, NT = Nontidal, TE = Temporary, PE = Permanent, PC = Permanent Conversion, PR = Perennial, IN = Intermittent, V = Vegetated, IV = Non-vegetated, MC = Mechanized Clearing Of PFO.

\*\*Impacts associated with existing culverts within WOTUS do not require compensatory mitigation. Therefore, 14 LF of culvert impact, which was incorporated into the overall threshold, does not require mitigation.

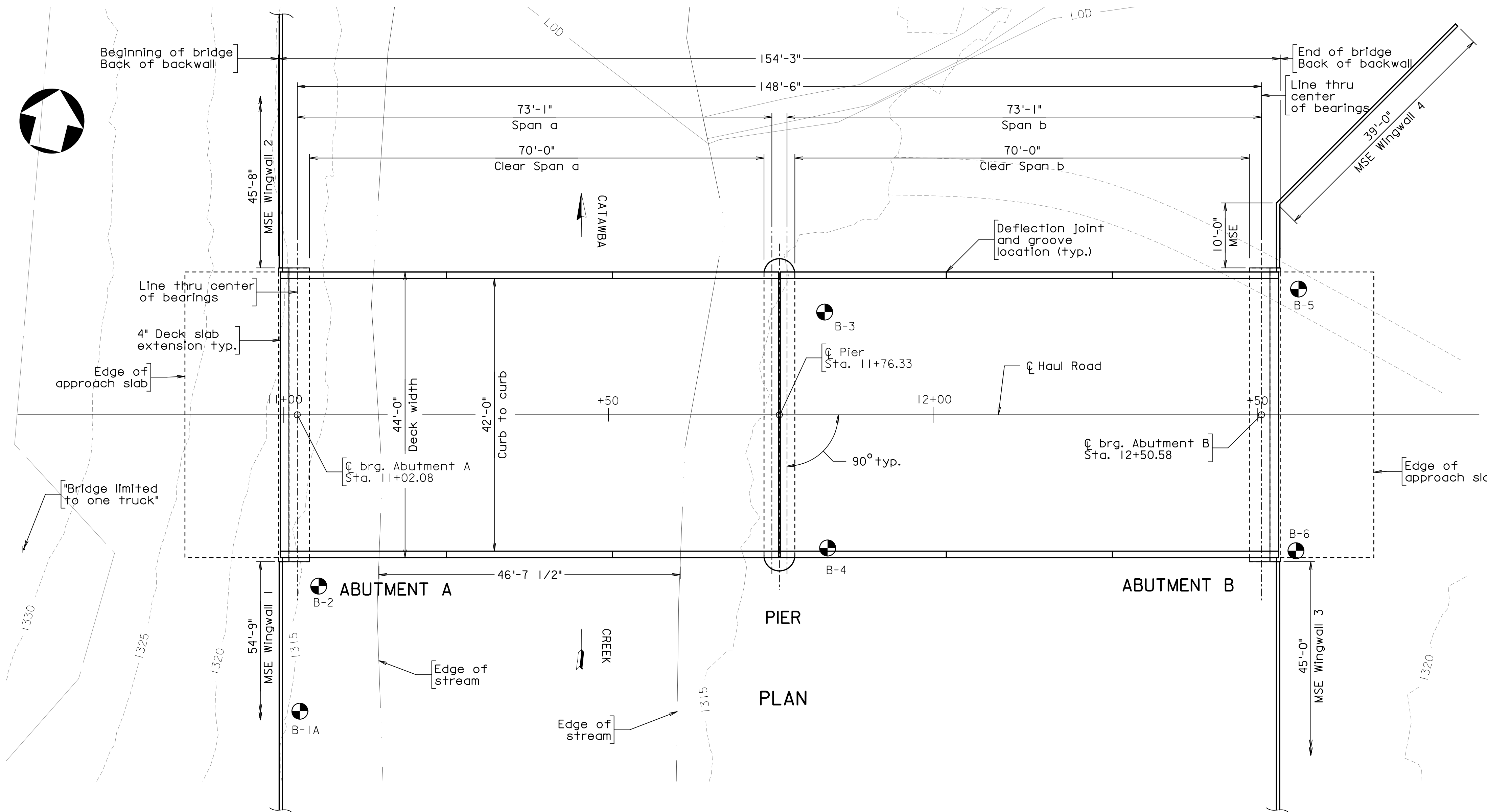






<p><b>Applicant:</b> Roanoke Cement Company, LLC 188 Summerfield Court, Suite 101 Roanoke, VA 24019</p> <p><b>Agent:</b> Wetland Studies and Solutions, Inc. 5300 Wellington Branch Drive, Suite 100 Gainesville, VA 20155 (Phone) 703-679-5600 (Fax) 703-679-5601</p>	<p><b>ROANOKE CEMENT COMPANY</b> <b>- CATAWBA FARM QUARRY</b> <b>Proposed Impacts to Nontidal</b> <b>Waters of the U.S.</b>  <b>Botetourt County, Virginia</b></p>	<p><b>IMPACTS # 1 &amp; 2</b></p> <p><b>Date:</b> May 2024</p> <p><b>Scale:</b> 1" = 80'      <b>Sheet:</b> 5 of 15</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------

308-44\_bridg plan and developed section.dgn



#### GENERAL NOTES:

Width: 42'-0" face-to-face of concrete safety railings.  
Span layout: 73'-1" - 73'-1" prestressed concrete 77" deep bulb-T beam simple spans.

Capacity: Special Cat 785 Truck (564 Kip) loading.

Drainage area: 33.6 sq. mi. For Hydrologic data, see sheet 4.

#### Specifications:

Construction: Virginia Department of Transportation Road and Bridge Specifications, 2020 with 2022 supplements; and SP407-000500 (Special Provision for Superstructure Erection Stability).

Design: AASHTO LRFD Bridge Design Specifications, 8th Edition, 2017; and VDOT Modifications.

Standards: Virginia Department of Transportation Road and Bridge Standards, 2016; Including all current revisions.

Design loading includes 20 psf allowance for construction tolerances and construction methods.

Design loading includes 30 psf for 3" stone and quarry dust wearing surface.

Prestressed concrete in bulb-T beams shall be Class A5 having a minimum compressive cylinder strength at 28 days equal to 10,000 psi and a minimum compressive cylinder strength at time of release of strands equal to 8,000 psi.

All reinforcing steel shall be deformed and shall conform to ASTM A615 Grade 60. All reinforcing bar dimensions on the detailed drawings are to centers of bars except where otherwise noted and are subject to fabrication and construction tolerances.

All structural steel, including bearings, shall be galvanized ASTM A709 Grade 50.

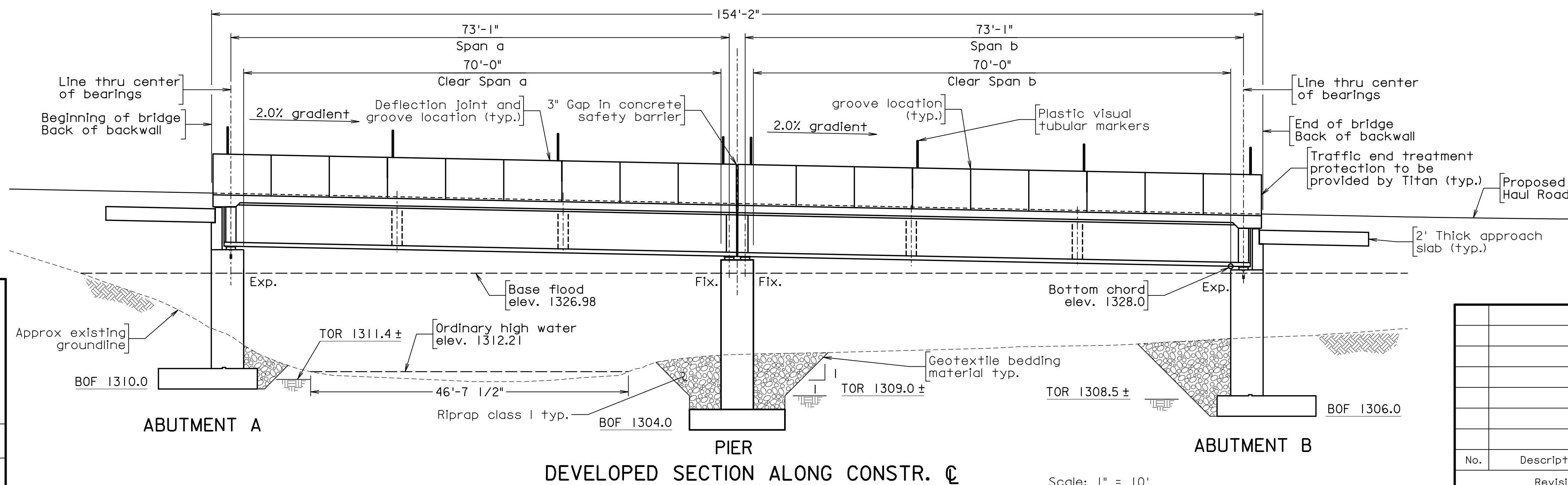
Prestressing strands in prestressed concrete bulb-T beams shall be uncoated, seven-wire, low-relaxation steel strands conforming to ASTM A416 Grade 270.

Footings for abutments and pier shall bear on competent bedrock. For bearing requirements for footings, see the Spread Footing Data Table on sheets 13, 16 and 18.

Bridge speed limit: 15 mph

Bridge is designed to VDOT/AASHTO standards with exception of using Stainless Steel/CRR reinforcing in bridge deck, where required if de-icing salts are used. De-icing salts should not be used on the bridge.

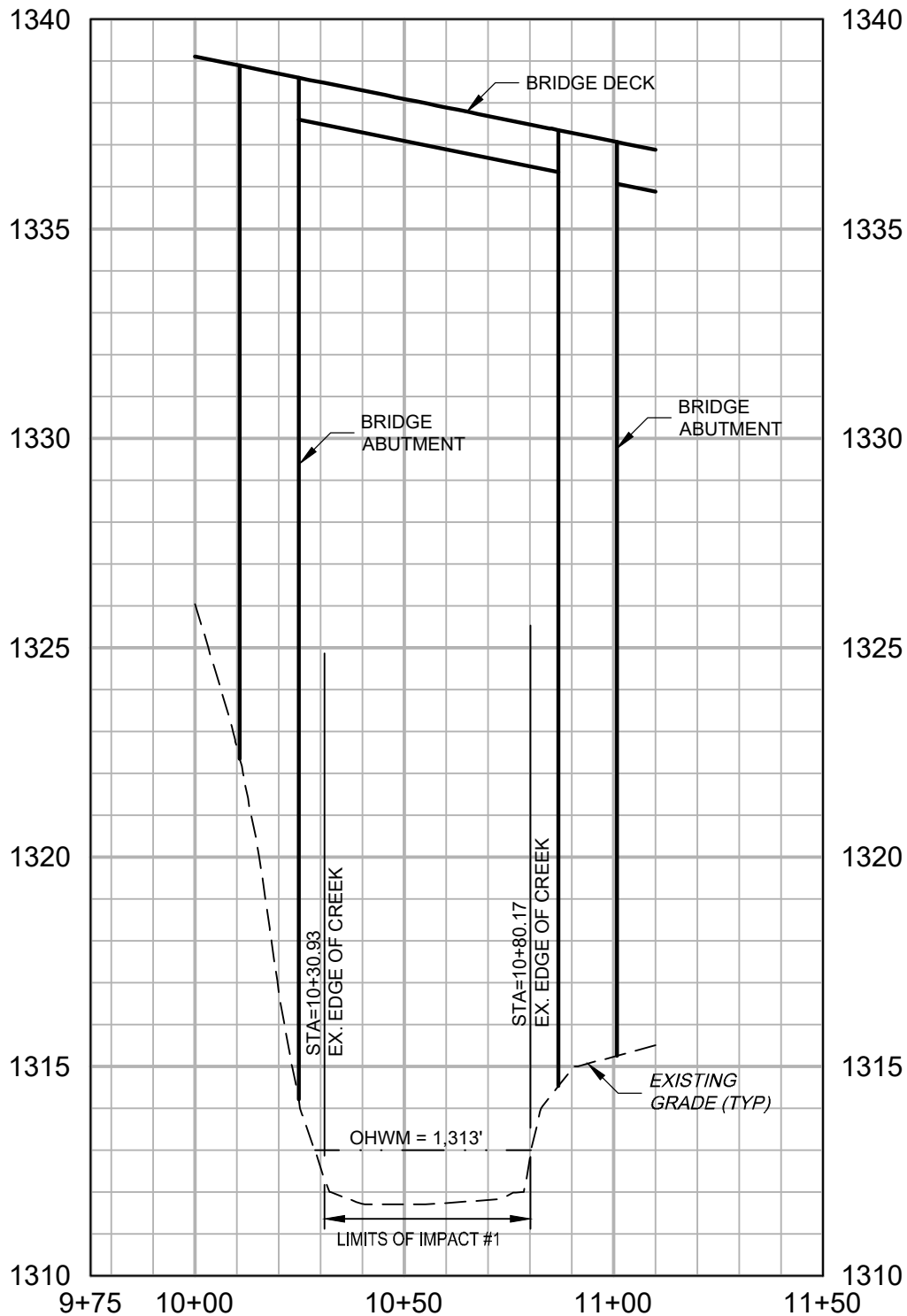
Where design life is considered in the design calculations a life of 50 years will be used.



NOT FOR  
CONSTRUCTION

ROANOKE CEMENT COMPANY, TROUTVILLE VA					
QUARRY EXPANSION HAUL BRIDGE OVER CATAWBA CREEK					
BRIDGE PLAN AND DEVELOPED SECTION					
No.	Description	Date	Designed: SM.....	Date	Plan No.
			Drawn: SM.....	Jan. 2025	308-44
			Checked: SK.....		6 of 31
Revisions					

STV INCORPORATED  
VIRGINIA BEACH, VA  
STRUCTURAL ENGINEER



APPLICANT:

ROANOKE CEMENT COMPANY, LLC  
188 SUMMERFIELD COURT, SUITE 101  
ROANOKE, VIRGINIA 24019  
PHONE: (703)-679-5600 FAX: (703)-679-5601

AGENT:

WETLAND STUDIES AND SOLUTIONS, INC.  
5300 WELLINGTON BRANCH DR, SUITE 100  
GAINESVILLE, VIRGINIA 20155  
PHONE: (703)-679-5600 FAX: (703)-679-5601

**ROANOKE CEMENT  
COMPANY - CATAWBA  
FARM QUARRY**

**IMPACT 1**

AMSTERDAM MAGISTERIAL DISTRICT,  
BOTETOURT COUNTY, VIRGINIA.

**CROSS-SECTION A-A**

DATE: MAY 22, 2024

SCALE: H: 1" = 40'  
V: 1" = 4'

SHEET: 6 of 15

August 7, 2024

Dear Ms. Heston:

I am writing on behalf of the Appalachian Trail Conservancy (ATC), a nonprofit organization whose mission is to protect, manage, and advocate for the Appalachian National Scenic Trail (A.T.). We support Roanoke Cement Company's continued operations and their proposed plan to relocate a quarry on their existing property.

Our organization holds an easement across the Roanoke Cement Company's property for public access to the A.T. via the Andy Layne Trail. Routine maintenance of the Andy Layne Trail and the A.T. in our area is performed by local volunteer members of the Roanoke Appalachian Trail Club (RATC). Our organization, RATC, and RCC have a collaborative relationship focused on environmental stewardship, community engagement, and conservation efforts along the Appalachian Trail and the Andy Layne Trail.

Over the years, RCC has supported both ATC and RATC's efforts through financial contributions, volunteer efforts, and providing materials or resources that aid in trail maintenance.

RCC supports environmental stewardship in many ways, such as hosting educational field trips for our region's young people on the various ecosystems on their property, planting a 40-acre riparian buffer along Catawba Creek, and revitalizing previous quarries, among others. They proactively sought our input and have worked closely with us on plans to minimize the impact of proposed mining activities on the hiking public, and preserve A.T. access.

It is my hope you will join us in supporting Roanoke Cement in their efforts to continue to better the lives of our community and environment.

Sincerely,



Kathryn Herndon-Powell  
Regional Manager, Central Virginia  
Appalachian Trail Conservancy

# Virginia Marine Resources Commission

## Habitat Management Public Comments

### Application Number 20241360

Print Date: Tuesday February 18 2025 08:01

Number	Name	Received	Position
2	ROBIN D BROWN	01/28/2025 11:07:50 AM	OPPOSE

THE ROANOKE CEMENT PLANT IS NOT ENVIRONMENTALLY FRIENDLY AND THEY ARE NOT A GOOD NEIGHBOR TO THE CATAWBA VALLEY. THEY HAVE DESTROYED THE LAND THEY ARE CURRENTLY MINING. THEY DO NOT ADDRESS ISSUES SUCH AS THE ROAD DUST FROM CEMENT PLANT . WHEN IT RAINS THIS TURNS TO PURE CEMENT ON THE ROADS. THIS IS IN THE AIR WE ALL BREATH WHICH IS PROVEN TO BE HARMFUL TO YOUR HEALTH THIS IS CALLED SILICA DUST FROM CEMENT PLANTS IT IS A PROVEN/KNOWN CANCER RISK . THIS GOING INTO OUR STREAMS AND AIR THAT WE BREATH EVERYDAY. THE CREEK NOW SHOWS FOAM NOT SURE HOW/WHERE THIS IS CURRENTLY COMING FROM ON THEIR PROPERTY. IT HAS BEEN REPORTED. THERE HAVE BEEN NUMEROUS INCIDENTS WITH THE TRUCK TRAFFIC RUNNING SCHOOL BUSES WITH CHILDREN OFF THE ROAD. THEY ARE USING BACK ROADS NOT APPROVED FOR TRAVEL BY THESE LARGE TRUCKS THEY HAVE RAN VEHICLES IN DITCHES. MORE IMPORTANTLY THEY WILL DESTROY THE BEAUTIFUL CATAWBA VALLEY LANDSCAPE THAT INCLUDES THE APPALACHIAN TRAIL . FROM THE TRAIL YOU BE LOOKING AT A HUGE CRATER PIT LIKE THE LANDSCAPE LOOKS WHERE THEY ARE MINING TODAY . IT LOOKS LIKE SOMEONE DROPPED AN ATOMIC BOMB. THEY NEVER ADDRESS ISSUES WHEN THEY ARE BROUGHT TO THEIR ATTENTION. WE FEEL THE BLAST TODAY AT OUR HOMES WHEN THEY BLAST FROM THEIR CURRENT LOCATION AND IF THEY ARE ALLOWED TO MINE CLOSER WITH THE INSTALLMENT OF THE NEW BRIDGE LOCATION IT WILL IMPACT THE NEIGHBORHOOD EVEN WORST. THEY WILL BE CREATING A VERY UNSAFE SITUATION FOR THE HIKERS ON THE APPLICATION TRAIL. THEY WILL BE BLASTING RIGHT NEXT TO WHERE THEY GET ON THE TRAIL SUPPOSEDLY WHERE THEY ARE RELOCATING AND BUILDING THEM A HIKING BRIDGE . THIS BE INTERESTING WHEN THEY BLAST HOW SAFE IT WILL BE TO WALK ACROSS THE BRIDGE SO CLOSE TO HIKERS. OUR NEIGHBORHOOD DOES NOT WANT THIS DANGEROUS CEMENT PLANT TO EXPAND AND RUIN OUR BEAUTIFUL VALLEY EVEN MORE THEY WILL BE POPULATING OUR AIR WITH MORE TOXIC CEMENT PLANT SILICA DUST AND POSITIONING OUR AIR AND THE BEAUTIFUL CATAWBA CREEK. IF YOU CARE ANYTHING ABOUT THE AIR QUALITY AND THE ENVIRONMENT THIS EXPANSION OF A NEW BRIDGE SHOULD BE DENIED TO PROTECT THE ENVIRONMENT. THERE IS ALSO MAJOR CONCERNS ABOUT THE WATER TABLES AS WE HAVE HEARD FROM NEIGHBORS THAT HAVE PROPERTY TODAY ADJACENT TO THE PLANT THEY THE CEMENT PLANT HAS DESTROYED THEIR WELLS AND THE PLANT IS REPLACING THEIR WELL. WE DON'T WANT OUR WELLS TO BE CONTAMINATE AND DESTROYED. ALSO, THE CONCERNS ABOUT MINING AND THE BLASTS MOVING CLOSER TO OUR HOMES AND DAMAGING THE FOUNDATION STRUCTURE. DO THE RIGHT THING AND DENY THIS REQUEST. I WELCOME YOU TO TAKE A DRIVE BY THE PLANT AND JUST LOOKED AT THE MESS WE DEAL WITH EVERYTHING DAY. PLEASE TAKE A DRIVE WHEN IT IS RAINING SO YOU CAN SPEND \$20 FOR A CAR WASH TO GET THE CONCRETE OFF OF YOUR VEHICLE. ALSO, PULL A REPORT AND SEE HOW MANY PEOPLE THAT LIVE IN THIS AREA HAVE TO HAVE WINDSHIELDS REPLACED DUE TO THE ROCKS BEING THROWN OFF OF THE BIG CONCRETE TRUCKS BREAKING WINDSHIELDS . THEY ARE A HOT MESS - HOLD THEM ACCOUNTABLE.



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

October 3, 2024

Roanoke Cement Company, LLC  
Attn: Patrick McCrady  
188 Summerfield Court, Suite 101  
Roanoke, VA 24019

**SENT VIA E-MAIL: [pmccrady@titanamerica.com](mailto:pmccrady@titanamerica.com)  
RECEIPT CONFIRMATION REQUESTED**

Re: Joint Permit Application No. 24-1360  
Roanoke Cement Company Catawba Farm Quarry, Botetourt County, Virginia  
Draft Permit and Public Notice

Dear Mr. McCrady:

Enclosed for your review are the Virginia Department of Environmental Quality (DEQ) public notice and draft Virginia Water Protection (VWP) individual permit to be issued for the above-referenced project. Please review all conditions provide herein.

Acceptance of the permit is evidenced by publishing the enclosed public notice, which must be done once at your (the applicant's) expense in a newspaper of general circulation in the area of the project. Once the public notice is published, changes cannot be made to the permit unless public comments warrant a change. Publication of the public notice initiates the required 30-calendar day comment period. To complete the public comment period dates, follow these instructions: The first day of the public comment period is the date of the publication of the notice. However, when counting days to the end of the public comment period, start with the day after publication. If the last day of the public comment period falls on a Saturday, Sunday or Holiday, set the close of the comment period on the first business day after the Saturday, Sunday or Holiday. It is your responsibility to ensure that the comment period stated on the public notice is for a minimum of 30 days (additional days may occur as noted above). *Failure to do so may result in the extension of the comment period and permit delays.*

DEQ requires proof of publication of the public notice. Please instruct the publisher to complete the attached sworn verification statement and forward the statement to my attention. Please also notify me via email as soon as a publication date is known (9VAC25-210-55).

If you have any questions, comments, or objections concerning the public notice or draft permit, please contact me within **14 calendar days** of the date of this letter. If the public notice is not published within 14 days of this letter, DEQ will suspend processing of your permit application until the notice is published (9VAC25-210-140). Failure to execute submittal of a public notice in accordance with regulations or to submit verification of the publication date may cause project delays and may result in denial of the application (9VAC25-210-230).

May 2024

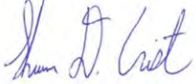
Received by VMRC October 7, 2024 /blh

Patrick McCrady  
Joint Permit Application No. 24-1360  
October 3, 2024  
Page 2 of 2

Please be advised that mitigation involves the requirement to compensate for any unavoidable impacts to State Waters, and compensatory mitigation credits required for permit issuance could comprise a significant portion of project costs. Credit prices are derived by individual mitigation bank sponsors, not DEQ, and are subject to market fluctuations. Applicants should inquire with any approved mitigation banks or in-lieu fee programs in the watershed in which impacts are proposed to determine the availability and current price of mitigation credits. Mitigation banking information can be found on the U.S. Army Corps of Engineers' RIBITS website (<https://ribits.ops.usace.army.mil/>), or through a general internet search.

Please contact DEQ at [shawn.crist@deq.virginia.gov](mailto:shawn.crist@deq.virginia.gov) or 540-562-6700 (BRRO) if you have any questions.

Respectfully,



Shawn Crist, VWP Project Manager  
Virginia Department of Environmental Quality  
434-316-4031  
[shawn.crist@deq.virginia.gov](mailto:shawn.crist@deq.virginia.gov)  
Blue Ridge Regional Office  
901 Russell Drive  
Salem, Virginia 24153  
540-562-6700

Enclosures: Draft Permit Cover Page  
Draft Part I - Special Conditions  
Draft Part II - General Conditions  
Attachment 1-VWP Permit Construction Status Update Form  
Attachment 2-Monthly VWP Permit Inspection Checklist  
Public Notice  
Public Notice Verification Form

cc: Robie Clark, Wetland Studies and Solutions, Inc. (via e-mail [rclark@wetlands.com](mailto:rclark@wetlands.com) )  
Katherine Chambers, Wetland Studies and Solutions, Inc. (via e-mail [kchambers@wetlands.com](mailto:kchambers@wetlands.com) )  
Jennifer Serafin, U.S. Army Corps of Engineers (via e-mail [Jennifer.M.Serafin@usace.army.mil](mailto:Jennifer.M.Serafin@usace.army.mil) )  
Beth Howell, Virginia Marine Resources Commission, Building 96, 380 Fenwick Road, Ft.  
Monroe, VA 23651, or [jpa.permits@mrc.Virginia.gov](mailto:jpa.permits@mrc.Virginia.gov)

**GAIL TIESENGA**  
**#2024-1805**

1. Habitat Management Evaluation dated February 25, 2025  
(Page 1)
2. Application drawings dated-received July 30, 2024 and January 23, 2025  
(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 construct a living shoreline at 469 Coppedge Farm Road, situated along Johnsons Cove in Lancaster County. The project is protested by the adjacent property owner.

### **Narrative**

On July 30, 2024, VMRC received an application from Mrs. Gail Tiesenga requesting authorization to construct a living shoreline using 130 linear feet of rock sill and clean sand backfill to manage erosion and enhance ecosystem services by promoting the growth of tidal wetland vegetation. The proposed project will be installed approximately 264 feet from the shared property line of the protestant.

### **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.

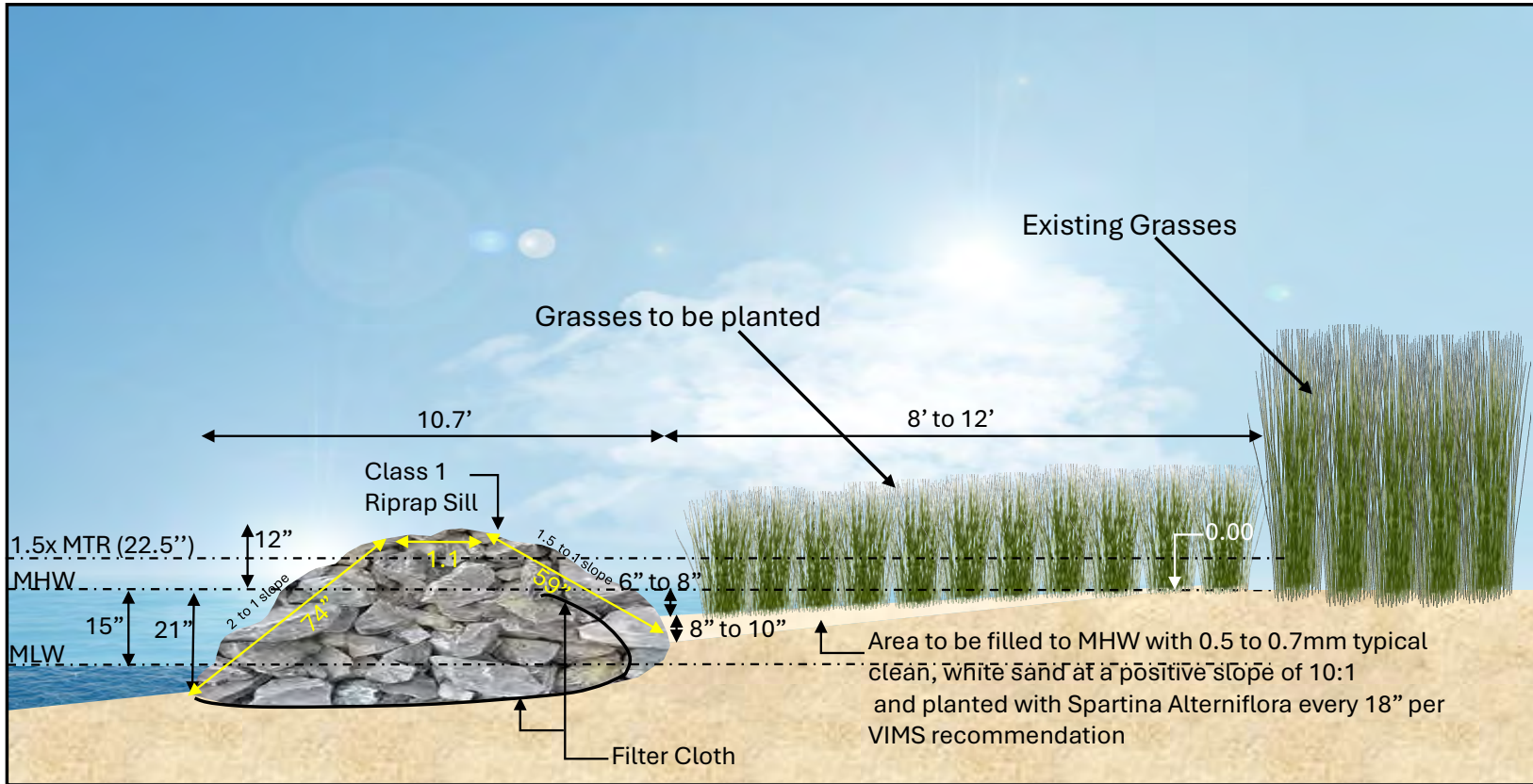
Benchmarks:	To MHW:
1 to rip-rap=10'	1 to MHW=10'
1 to 2=50'	2 to MHW=60'
2 to 3=45'	3 to MHW=86'
3 to 4=5'	4 to MHW=90'
4 to 5=25'	5 to MHW=89'
Total=130'	




 <b>ECO Construction, LLC</b> 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – <a href="mailto:odis@ecoconstllc.com">odis@ecoconstllc.com</a>	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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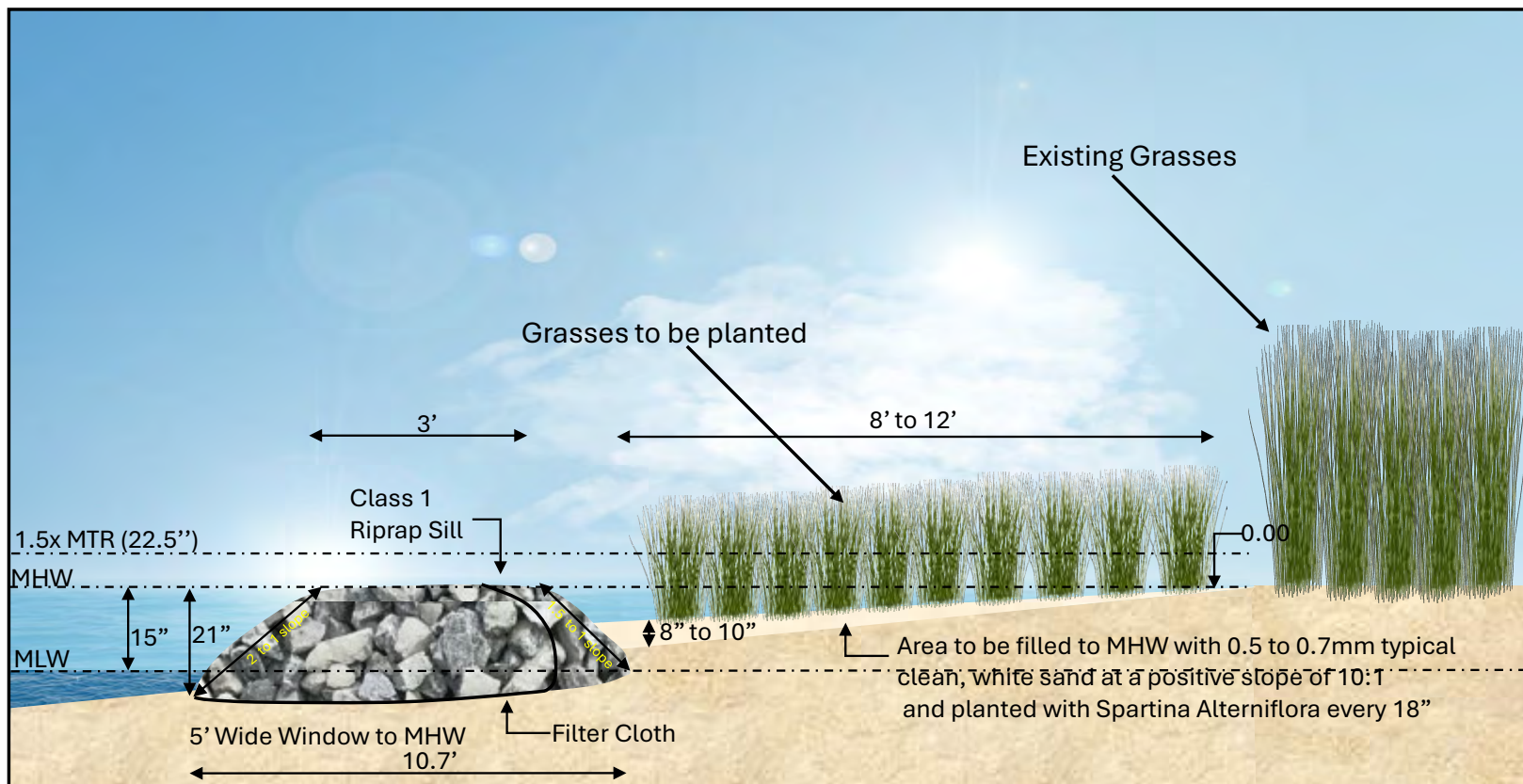


 <b>ECO Construction, LLC</b> 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – <a href="mailto:odis@ecoconstllc.com">odis@ecoconstllc.com</a>	Project: Living Shoreline	Address:	Plan View	Date: 7/23/2024
	Client: Gail Tiesenga	269 Coppedge Farm Rd White Stone, VA 22578		Page: 02/05
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Revised 1/23/2025


 <b>ECO Construction, LLC</b> 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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Revised 1/23/2025

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	Client: Gail Tiesenga	Page: 04/05			
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 <b>ECO Construction, LLC</b> 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – <a href="mailto:odis@ecoconstllc.com">odis@ecoconstllc.com</a>	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](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

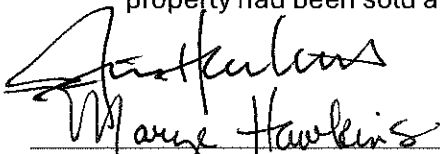
**Note: If you object to the proposal, the reason(s) you oppose the project must be submitted in writing to VMRC. An objection will not necessarily result in denial of the project; however, valid complaints will be given full consideration during the permit review process.**

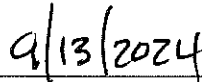
see attached questions

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](mailto:gtiesenga@msn.com); [Odis Cockrell \(odis@ecoconstllc.com\)](mailto:Odis.Cockrell@ecoconstllc.com); [tylynn@ecoconstllc.com](mailto: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](http://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.**



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



 <b>ECO Construction, LLC</b> 245 Blackwells Wharf Rd. Burgess, VA 22432 Phone: (804) 580-0608 Email – <a href="mailto:odis@ecoconstllc.com">odis@ecoconstllc.com</a>	<b>Project:</b> Living Shoreline	<b>Address:</b> 269 Coppedge Farm Rd White Stone, VA 22578	<b>Plan View</b>	<b>Date:</b> 7/23/2024
	<b>Client:</b> Gail Tiesenga			<b>Page:</b> 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



contact the U.S. Fish and Wildlife Service Migratory Bird Program at [PermitsR5MB@fws.gov](mailto: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](mailto: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](mailto: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/>

**Marsha Weatherwax**  
**MRC #24-2553**

1. Habitat Management Evaluation dated February 25, 2025.  
(Pages 1 and 2)
2. Project drawings dated received October 30, 2024, and February 12, 2025.  
(Pages 3 through 7)
3. Letter of protest:
  - A. From Mr. Bernie Goltermann received December 17, 2024.  
(Pages 8 through 11)
  - B. From Mr. Bernie Goltermann received December 19, 2024.  
(Pages 12 through 14)

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

## **HABITAT MANAGEMENT DIVISION EVALUATION**

**MARSHA WEATHERWAX, #24-2553**, requests authorization to construct a 15-foot by 20-foot gazebo with screened sides on a statutorily authorized private pier along the Timberneck Creek shoreline at 6470 Williams Landing Road in Gloucester County. The project is protested by an adjacent property owner.

### **Narrative**

The project is located along the Timberneck Creek shoreline in a residentially zoned area of Gloucester County. This area is characterized by single family homes with private piers, some of which have open-sided roof structures. Two public access piers exist within the immediate viewshed.

Ms. Weatherwax's Joint Permit Application (JPA) was received on November 1, 2024, requesting authorization to construct a private pier with an open-sided gazebo over the proposed deck. Due to the proposed gazebo roof structure, notification letters were sent to the adjacent property owners to ascertain whether they objected to the roof proposal. On December 17 and 19, 2024, letters of objection were received from Mr. Bernie Goltermann, the downstream adjacent property owner. No correspondence from the upstream adjacent property owner has been received.

Pursuant to §28.2-1203.A.5 of the Code of Virginia, staff determined that the private pier proposal was statutorily authorized, but that a VMRC subaqueous permit is required for the open-sided gazebo due to the neighbor's objections. A partial "no permit necessary" letter was issued on December 19, 2024, explaining the statutory authorization for the private pier and the permit requirement for the gazebo. A legal advertisement for the proposed gazebo was also published on December 26, 2024, in the Gloucester-Mathews Gazette Journal.

### **Issues**

Mr. Goltermann's protest letters included concerns that the proposed pier posed environmental concerns requiring mitigation, that the pier was excessive in size and posed navigation risks and was too close to shared property lines. He also indicated that dredging was being proposed for the existing channel serving the nearby public access pier, and that the pier may interfere with that project. After staff reached out to the protestant to clarify his objections, Mr. Goltermann replied with additional objections to the gazebo structure as he felt it interfered with his viewshed and should be minimized.

No State agencies have commented on the project and the other adjacent property owner is not opposed to the project. The project is exempt from the local wetlands board.

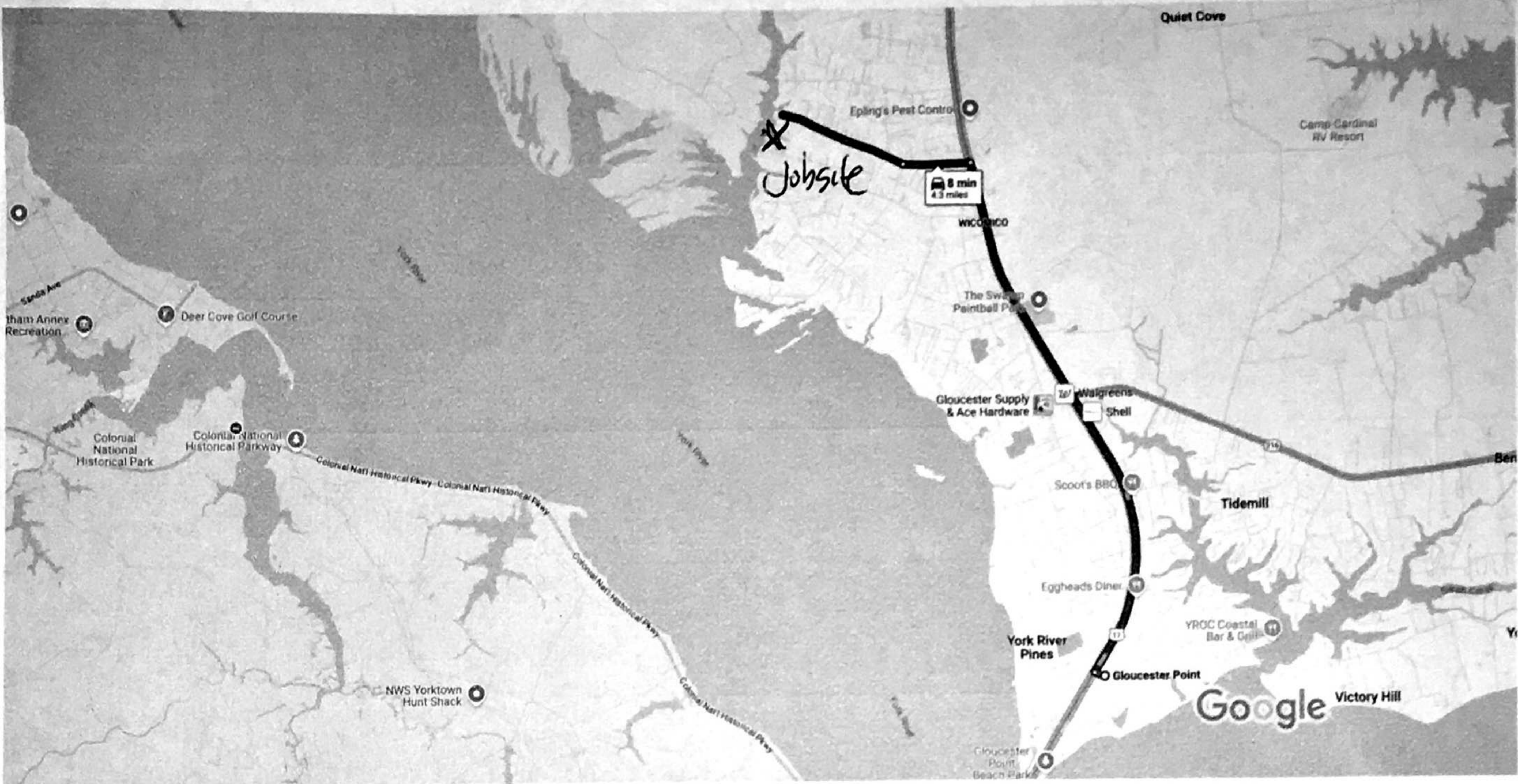
### **Summary/Recommendations**

Since Mr. Goltermann is objecting to the proposed gazebo a VMRC public hearing is required to determine if a subaqueous permit should be issued. During our site visit, staff observed that the protestant himself has an open-sided roofed shelter on his own private pier. Timberneck Creek currently has several piers, for both public and private access. There are three other piers in the immediate vicinity that also have boathouse and gazebo roof structures.

### **Summary/Recommendations (cont'd)**

The applicant's proposed gazebo meets the statutory authorization requirements defined in §28.2-1203.A.5 of the Code of Virginia. We do not believe it presents a navigation issue since it is proposed landward of the existing pier line in the immediate vicinity. Had the gazebo not been protested, it would also have been statutorily authorized under the aforementioned code section since it is under 400 square feet in size and open-sided. Staff considers any gazebo proposal with screened sides to be an open-sided structure.

In this case, we believe the open-sided design of the proposed gazebo roof structure minimally adds to the collective viewshed of Timberneck Creek beyond that of Ms. Weatherwax's statutorily authorized pier and the existing piers in the project vicinity, including the protestant's pier and open-sided roofed shelter. Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition, and after considering all the factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed.



Map data ©2024 Google 2000 ft

Gloucester Point  
Virginia

- ↑ 1. Head southwest on Greate Rd toward Terrapin Cove Rd  
26 ft
  - ↗ 2. Turn right onto Terrapin Cove Rd  
305 ft
  - ↗ 3. Turn right onto US-17 N  
3.1 mi
  - ↖ 4. Turn left onto Crewe Rd  
0.4 mi
  - ↑ 5. Continue onto Williams Landing Rd  
0.7 mi
- i** Destination will be on the left

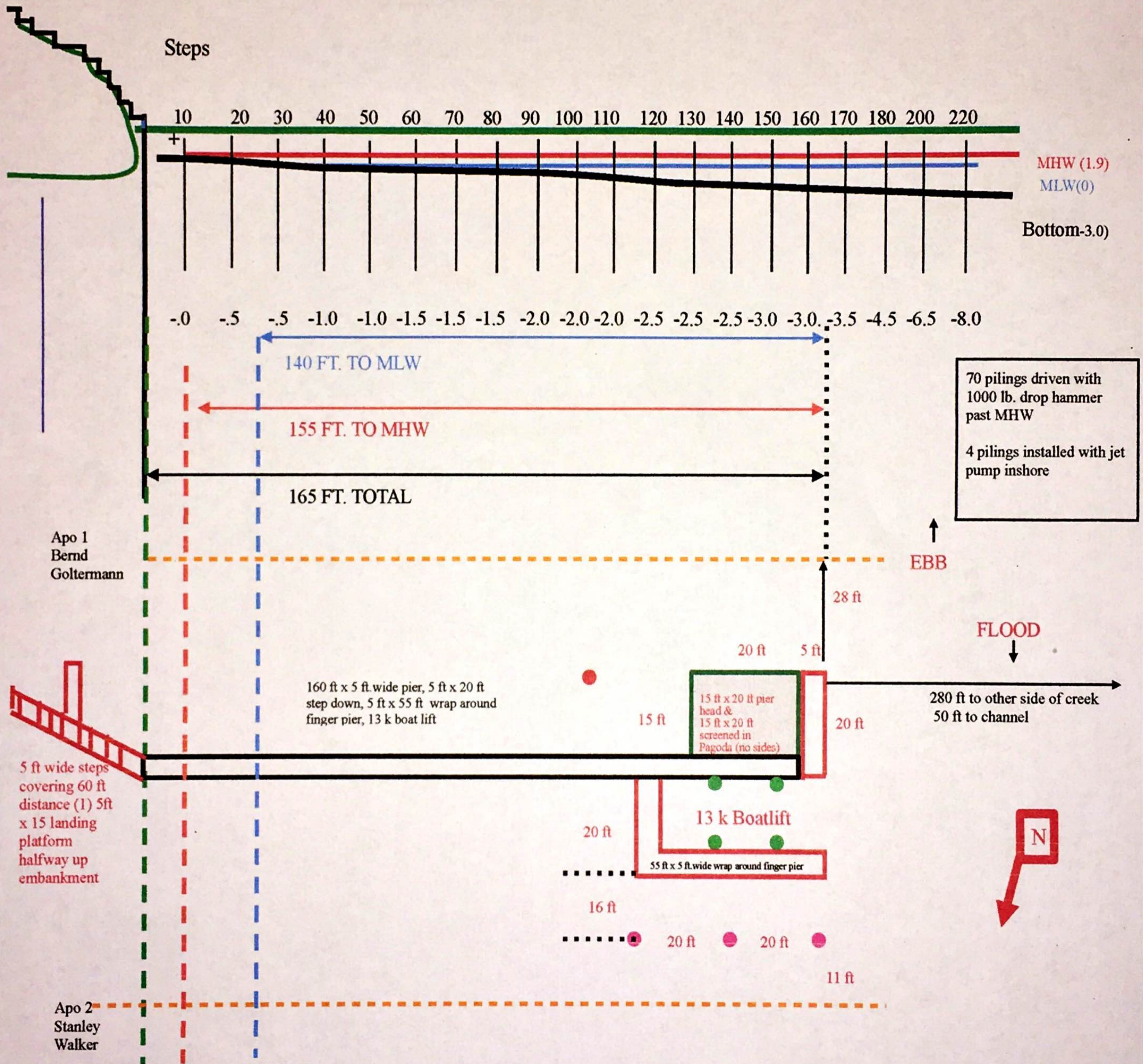
6470 Williams Landing Rd  
Hayes, VA 23072

mpmcpiers.com

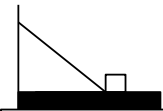
PO BOX 427  
DELTAVILLE, Va. 23043

mpmcpiers@gmail.com  
Phone (804)815-8922

## MIDDLE PENINSULA MARINE CONSTRUCTION



mpmcpiers.com



mpmcpiers.com

PO BOX 427  
DELTAVILLE, Va. 23043

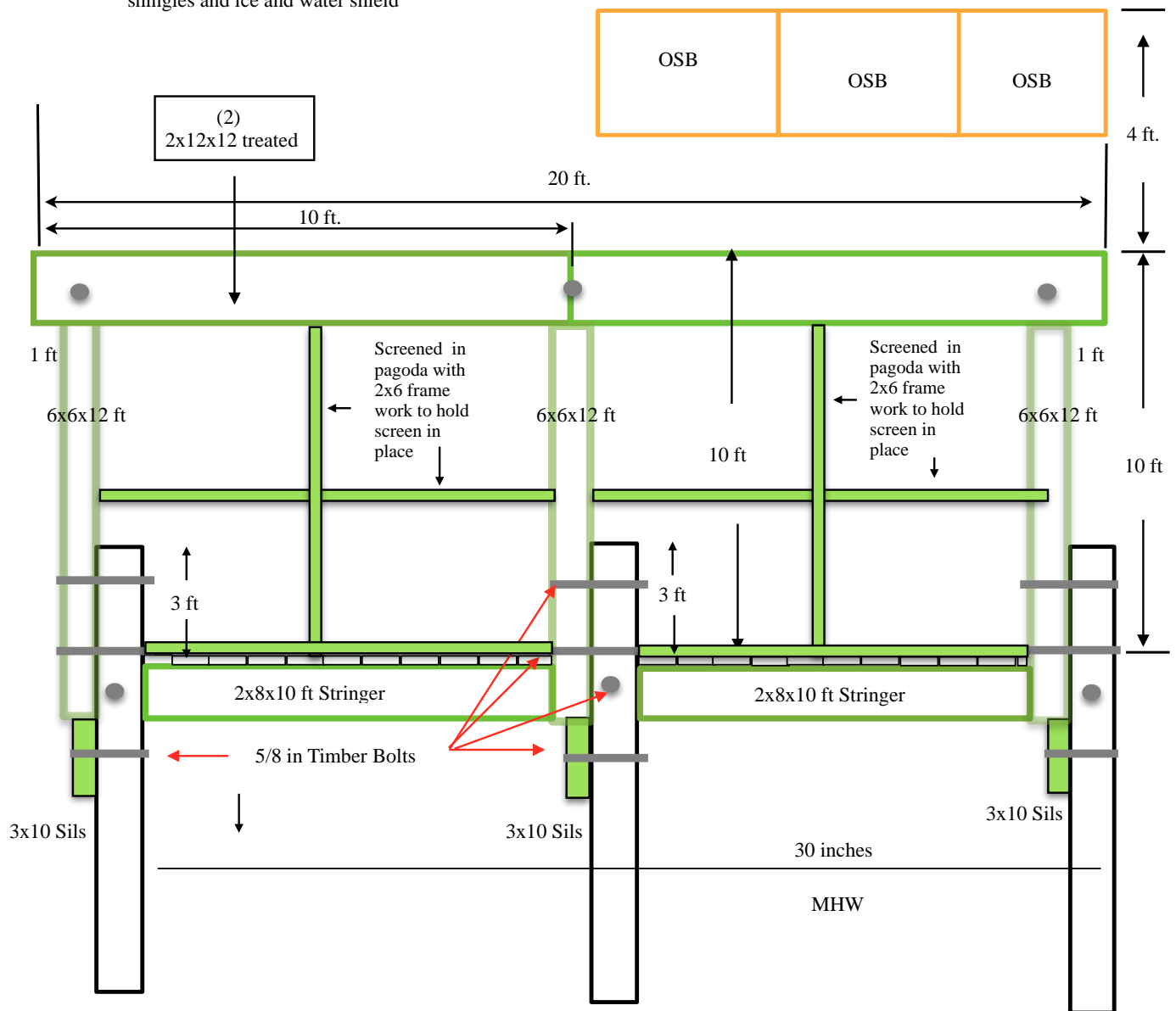
mpmcpiers@gmail.com  
Phone (804) 815-8922

## MIDDLE PENINSULA MARINE CONSTRUCTION

### Materials Used:

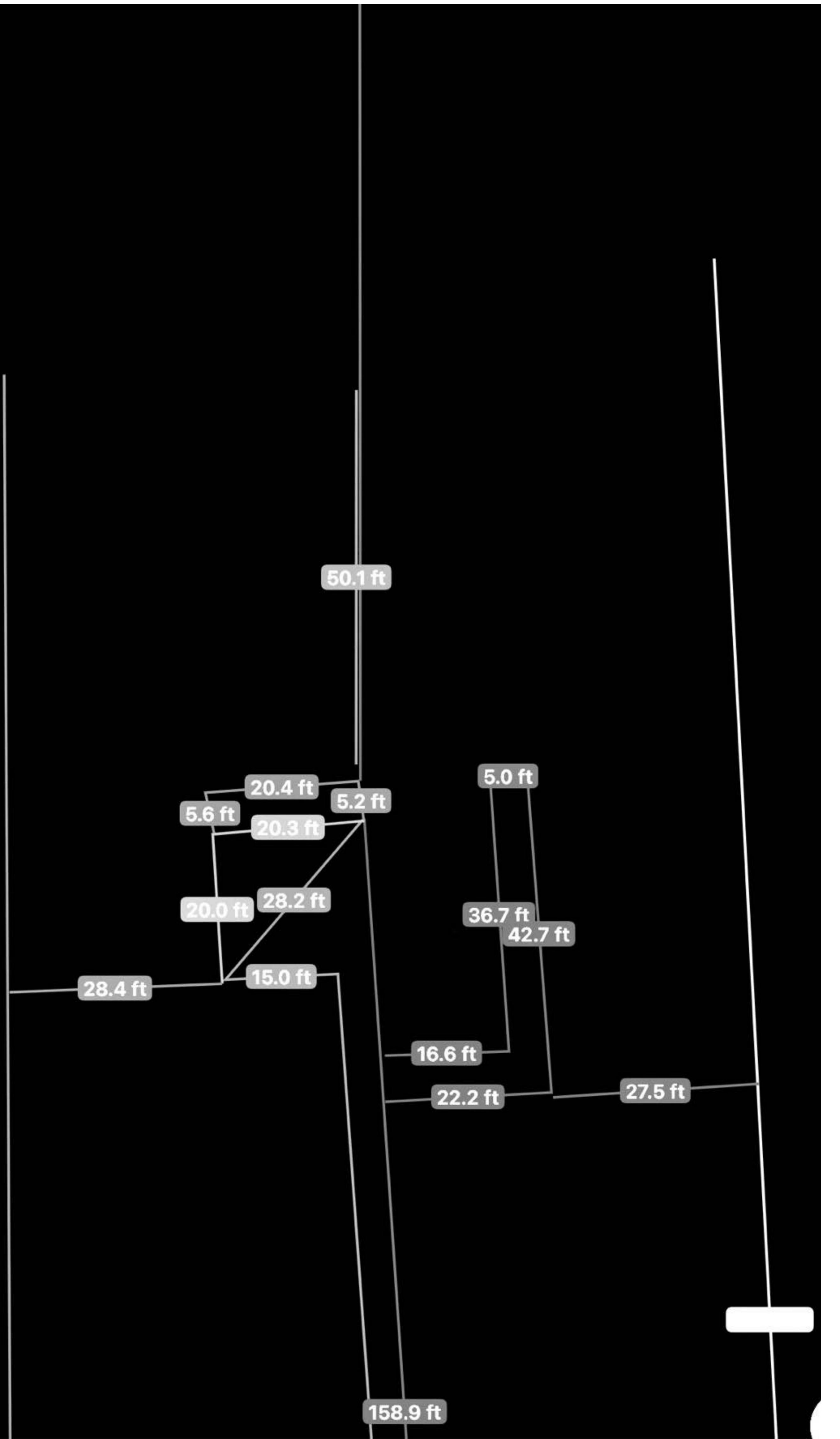
4ft x 8ft 1/2 OSB  
2x4x17 ft rafters on 16 inch centers  
2x12x12 ft stringers (Sil)  
6 x6 inch 15ft long double bolted to new pilings  
5/8 bolts  
shingles and ice and water shield

4/12 pitch trusses  
on 16 inch centers



MPMC





Mr. William Pickens  
Chairman Gloucester County Wetlands Board  
804.693.1217  
[EnvironmentalStaff@gloucesterva.info](mailto:EnvironmentalStaff@gloucesterva.info)

Date: December 11, 2024

RE: VMRC 24-2553

Mr. William Pickens,

I am writing to express serious concerns about the "No permit required" decision for the proposed pier at 6470 Williams Landing Road, Hayes VA 23072 (Ms. Weatherwax's property).

The proposed 60-foot staircase with a 5ft by 15ft landing platform, situated halfway up a 30-foot steep embankment, raises significant environmental concerns:

1. Wetland Impact

- The landing site currently contains wetland grasses and marsh
- The proposed location involves removing trees and brush crucial for bank stability
- Vegetation removal will compromise erosion prevention and bank integrity

2. Regulatory Concerns Despite property owners' rights to waterway access, I believe critical RPA guidelines require Wetlands Board review, specifically:

- Minimizing land disturbance
- Implementing erosion control practices
- Minimizing structure surface area
- Limiting vegetation disruption
- Ensuring erosion and sediment control
- Obtaining local government design approval
- Providing environmental impact assessment
- Developing vegetation removal mitigation strategies

3. Specific Environmental Risks

- The proposed site contains old-growth trees, including a 150+-year-old tree
- Tree root systems are critical for:
  - Soil stabilization
  - Erosion prevention
  - Sediment containment

In addition my property's well head is located within 20 feet of these trees and the current edge of the embankment and I am concerned with the adjoining properties maintaining crucial bank stability to mitigate future impacts.

Arbitrary tree and vegetation removal on this steep embankment will inevitably accelerate erosion without proper mitigation steps that a Wetlands Board review would have required. I have attached a photo taken in the past year to show the area of concern.

I respectfully request clarification on the Board's decision and hope this information will inform future project considerations.

I appreciate your time and look forward to your response.

Sincerely,

Bernie Goltermann  
540-273-8862  
3188 Henry Hogge Ln, Hayes, Va. 23072

cc:

J. Michael Johnson – Marine Resources Commission



January 22, 2024 at low tide. 6470 Williams Landing Road, Hayes VA 23072 (Ms. Weatherwax)

Mr. J. Michael Johnson  
Marine Resources Commission  
Building 96  
380 Fenwick Road  
Fort Monroe, VA 23651

December 11, 2024

Re: VMRC #2024-2553

Mr. Johnson,

Regarding Ms. Weatherwax's application (VMRC #2024-2553) for a private pier, I have several concerns and observations.

I have also communicated my concerns to the Gloucester County Wetlands Board and am providing a copy for your review. I recognize the complementary roles of various regulatory bodies in protecting marine resources. While the VMRC focuses primarily on waterway impacts, the Wetlands Board addresses environmental concerns within the 100-foot Resource Protection Areas (RPAs).

The proposed private pier raises potential issues:

- Insufficient environmental impact mitigation
- Potentially excessive length and square footage
- Possible interference with nearby public pier navigation at Williams Landing
- Unclear property line setbacks

In addition, there are two public infrastructure projects planned for access and use of the public pier at Williams Landing. The first being the proposed Timberneck Creek dredging project (December 2020 VIMS report), which aims to create a 7,200 ft long, 80 ft wide channel with a 160 ft turning basin to improve water quality and access.

The second being the Middle Peninsula Planning District Commission's FY23-RAISE Grant proposal for William's Landing which includes significant infrastructure improvements, such as a drivable concrete pier, paved access, turnaround, and parking facilities and a large basin dredging area around this new commercial level concrete pier. Given these upcoming developments, I recommend:

- Evaluating how the proposed channel and basin dredging might inform the private pier's design due to close proximity William's Landing and commercial seafoods and maritime industries upgrades
- Considering a potential delay in approvals to:
  - optimize pier length and environmental impact
  - benefit the applicant due to access to deeper water closer to shore after dredging

- Ensuring the new pier's placement does not impede future improvements to existing nearby pier of adjoining property

The concurrent development of public infrastructure and private pier projects requires careful coordination to minimize environmental impact and maintain effective waterway use.

I appreciate your review and look forward to your response.

Bernie Goltermann  
540-273-8862  
3188 Henry Hogge Ln, Hayes, Va. 23072

cc:  
Mr. William Pickens - Chairman Gloucester County Wetlands Board

Mr. J. Michael Johnson  
Marine Resources Commission  
Building 96  
380 Fenwick Road  
Fort Monroe, VA 23651

December 16, 2024

Re: VMRC #2024-2553

Mr. Johnson,

I am compelled by my wife to say that I used an AI to make my previous letters more concise, and it may have changed the tone of those letters. The result of not using AI follows.

To be clear, I am not objecting to a pier, but requesting it be adjusted. I am requesting that consideration be given and any potential conflicts identified with developments on the Williams Landing Pier. Due diligence and coordination at this time would best serve the public as well as the applicants interests and possible opportunities. It may be to the applicant's financial benefit to wait and see how the dredging around the marina facility can possibly benefit the design of a shorter pier with the same amount of deep-water access. In keeping with exemption requirements under the Code of Virginia Title 28.2-1203 A 5 in particular I see opportunities to:

- Limits in size and scope of construction
- Total square footage being minimized
- Ensure no obstruction to navigation channels
- Must maintain specific setbacks from property lines
- Must not interfere with public water access

Regarding my riparian area and pier, it was built by permit and approvals around 1990 I believe. I have attached a picture from 1960 with a pier located approximately where my current pier resides. The previous owner may have shown this historical use and line of navigation to inform and receive approvals to build.

My understanding of the riparian area is that it is unique to each waterfront property and that establishing the riparian area can be complex. I know that the "side" lines of the riparian area are not a straight extension of the upland property boundary lines.

In the applicant's pier plan it appears to show the southernmost boundary line for the applicant's riparian area depicted as straight extension of the landward property line. This may not be accurate. While it may be true that the applicants shared southern property line extension into the waterway meets up with my pier 165ft into the waterway, I do not believe this is an encroachment into the applicant's riparian and I'm not sure if the shown Apo plan lines of the application are not skewed towards my riparian area. The plan dimensional scaling or positioning of the structures shown page 16, (picture from above) doesn't depict the location accurately. Can the applicant provide a distance from my pier to the structure of the gazebo?

Also, I believe it would be in the public's best interest to have a distance measurement from the existing Williams Landing piers southernmost pier leg to the applicants mooring pilings on the north.

I do not believe that either the northern or southern waterfront property boundaries are accurately defined and shown in the plan. Without accurately establishing the waterfront property boundary points on the plan I cannot be assured that proper setback from property lines will be maintained, nor that the applicants riparian area is accurately defined.

I do not agree to the piers landing placement. The "dog leg" feature of the pier adds extra length and causes the landing to be near old growth trees. The landing halfway up the bank adds square footage unnecessarily and disturbs the fragile bank even more than just providing staircase access. I have environmental and erosion concerns with respect to the old growth trees and vegetation in the area with regards to the building of stairs and landings.

Timberneck Creek has no defined channel that I am aware of and has never been dredged (VIMS Report 2020). I assume that the applicants plan showing pier head 50ft from channel has a basis for this length. Can a reference be provided? Also, the applicants plan shows pier head 280ft to other side of creek (page 14). I believe this number to be inflated by some 80ft. Can you verify the correct distance?

I do object to a proposed roof structure on a pier that far out in the waterway. It will create a permanent visual barrier to the waterway. Alternatively, locating this pier head structure closer to shore with a shorter pier may be more acceptable and be in keeping with many exemption requirements such as:

- Limits in size and scope of construction
- Total square footage being minimized
- Ensure no obstruction to navigation channels
- Must not interfere with public water access

I would also note that the applicant might have a far more pleasant and safer experience should the pier head structures (gazebo) be located further from the navigable access to/from Williams Landing. A new drivable concrete pier at Williams Landing is to make it more viable, which also means increased waterway traffic and loading and unloading trucks on the pier which would be fairly close nearby pier/gazebo in the applicant's current design.

I feel I am only doing my due diligence in protecting my riparian area, trying to spur coordination and cooperation with respect to the public pier upgrades at Williams Landing, and having recently gone through the Wetlands Board process, I'm more keenly aware and respectful towards wetlands and its protections.

Sincerely,  
Bernie Goltermann  
540-273-8862  
3188 Henry Hogge Ln, Hayes, Va. 23072

cc:  
Mr. William Pickens - Chairman Gloucester County Wetlands Board



Timberneck Creek 1960. Parallel Red line indicating the old pier which is approximately same location as existing pier.

**City of Virginia Beach**  
**#2024-2851**

1. Habitat Management Evaluation dated February 25, 2025  
(Pages 1-3)
2. Joint Permit Application drawings dated-received December 13, 2024, January 6, 2025, and February 10, 2025  
(Pages 4-11)
3. Letters of opposition dated-received December 22, 2024 - January 30, 2025  
(Pages 12-44)
4. Chesapeake Bay Foundation comments dated-received February 19, 2025  
(Pages 45-48)
5. Virginia Institute of Marine Science comments dated-received February 10, 2025  
(Page 49)
6. Virginia Department of Wildlife Resources comments dated-received February 7, 2025 and February 14, 2025  
(Pages 50-54)
7. Virginia Department of Environmental Quality waiver dated-received February 5, 2025  
(Pages 55-57)
8. City of Virginia Beach Wetlands Board exemption letter dated-received February 12, 2025  
(Page 58)

## **HABITAT MAGAGEMENT DIVISION EVALUATION**

**CITY OF VIRGINIA BEACH, #24-2851**, requests authorization to mechanically dredge a 19-foot wide by 63-foot long subtidal area to a maximum depth of minus two (-2) feet mean low water within Pleasure House Creek to create a shallow water channel necessary to provide the hydrological connection to the proposed municipal Pleasure House Point Mitigation Bank in Virginia Beach. This project is protested by nearby property owners.

### **Narrative**

The project site is located south of Shore Drive and west of the Lynnhaven Inlet in Virginia Beach and is presently dominated by isolated non-tidal wetlands and forested uplands. Historically, the project area consisted mostly of tidal wetlands but was used as a dredged material disposal site by the Army Corps of Engineers between the early 1970s and 1990s, which effectively filled much of the existing tidal wetlands.

The City of Virginia Beach purchased the approximate 13-acre project parcel and the adjacent larger parcel in 2012. These two (2) parcels collectively make up the Pleasure House Point Natural Area, an approximate 98-acre public natural area used recreationally by many city residents and visitors.

Per the submitted application, the purpose of this project is to establish the Pleasure House Point Tidal Wetland Mitigation Bank and restore and create tidal wetlands and associated aquatic habitats within the Lynnhaven River Watershed. The proposed mitigation bank would provide approximately eight point six (8.6) tidal wetlands mitigation credits to satisfy the anticipated compensation requirements for future municipal projects. The interagency Mitigation Banking Instrument (MBI) was signed by the Army Corps of Engineers and The Department of Environmental Quality (DEQ) in 2020.

The project will impact over 69,000 square feet of uplands, non-tidal wetlands, tidal wetlands, and submerged lands. However, only approximately 1,200 square feet (12 cubic yards) of state-owned submerged lands will be mechanically dredged in an effort to establish a hydrological connection from Pleasure House Creek to the proposed tidal wetlands bank area.

As part of the Commission's permit review process, staff notified two (2) adjacent riparian property owners, the Department of Wildlife Resources (DWR) Conservation Easement Manager of the adjacent 85-acre city-owned parcel, and the Chesapeake Bay Foundation for the recently constructed artificial oyster reef situated just offshore (VMRC #2021-0632). A project advertisement was also published in the Virginia Pilot. According to the applicant, they also notified the public by reaching out to various civic leagues, holding public meetings and posting project updates, information, and answers to citizen questions on social media.

## **Issues**

Commission staff received a total of 23 comments in opposition from nearby property owners. Per their correspondence, their objections are: the proposal will destroy maritime forest and remove trees; the work will destroy critical nesting and foraging habitat for threatened and endangered bird species; tree mitigation should be required at a 1:1 ratio; the submitted application and survey information is dated; the proposed mitigation bank is not compatible with current recreational use by the public (i.e., existing walking trails); the project will eliminate public access and use of the site; it will remove the existing buffer protection afforded to the existing residential properties; the project has been rushed through without public input; and the project is too expensive.

The majority of concerns raised are not associated with the very small portion of the project within the Commission's purview. As stated, the Commission's jurisdiction on this project is restricted to the small dredge cut into Pleasure House Creek necessary to connect the bank hydrologically. Given the minimal cut required, the City has advised that the dredging will be accomplished using a long stick excavator working from the bank only.

The applicant maintains that the project is necessary to accommodate multiple municipal projects that are planned for future construction, which aim to reduce impacts from stormwater and flooding events throughout the city. Additionally, the public access and the existing walking trails will be maintained throughout construction, except during the proposed dredging activities for safety purposes. This portion of the existing public walking trail will be replaced by a public pedestrian bridge.

The Virginia Institute of Marine Science (VIMS) evaluated the proposal and recommended a dredging time of year restriction between July 1<sup>st</sup> and September 30<sup>th</sup> of any year to protect local shellfish during the proposed dredging activities. The Department of Environmental Quality did not require a permit for this work. The Department of Wildlife Resources recommended strict adherence to standard erosion and sediment controls. Additionally, the DWR Conservation Easement Manager of the adjacent parcel reviewed the proposal and had no concerns. The U.S. Army Corps of Engineers is currently processing this application for an Individual Permit.

## **Summary/Recommendations**

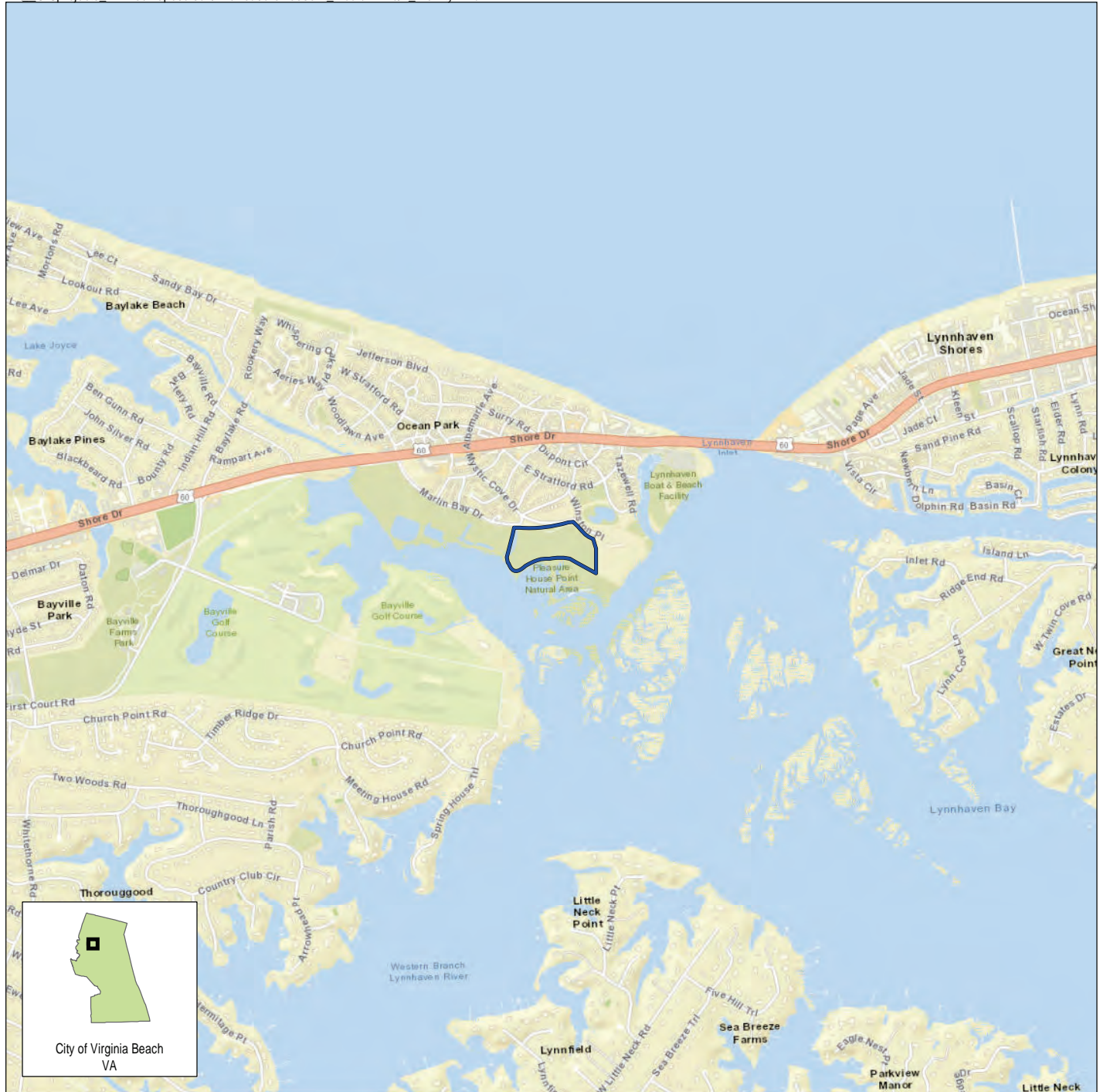
Most of the impacts associated with this project are located in non-tidal wetlands or uplands and not within the Commission's jurisdiction over state-owned submerged lands.

The protestants' concerns regarding the City's development of the mitigation bank and the associated impacts to uplands and non-tidal wetlands are outside of the purview of the Commission. Such issues are jurisdictional to the local government and/or the other federal and state regulatory agencies. The applicant has indicated their intent to adhere to time of year restrictions for threatened and endangered species, precautionary measures like exclusionary

### **Summary/Recommendations (cont'd)**

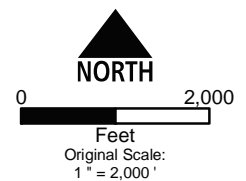
fences for terrapin, and strict erosion and sediment controls. The portion of the proposed dredging and impacts over state-owned submerged lands appears to be appropriately designed.

While staff is sensitive to the protests of the city residents, we feel that the overall benefits of the proposed dredging to support the restoration of tidal wetlands and the establishment of a new tidal mitigation bank outweigh the minor impacts to state-owned submerged lands. Additionally, any adverse environmental impacts associated with the dredging will be minimal and temporary. Accordingly, after evaluating the merits of the project against the concerns expressed by the protestants and after considering all factors contained in §28.2-1205 of the Code of Virginia, staff recommends approval of the project as proposed. Staff recommends further that the permit be conditioned on the inclusion of our standard dredging conditions, to include the requirement for a turbidity curtain around the area to be dredged, the relocation of shellfish present within the area to be dredged, and an instream work time-of-year restriction between July 1<sup>st</sup> and September 30<sup>th</sup> of any year to protect nearby shellfish resources.



 Project Area

## Vicinity Map Pleasure House Point Tidal Wetland Mitigation Bank



911 Address: 3957 Marlin Bay Dr, Virginia Beach, VA 23455  
Source: World Street Map - ESRI

**Wetland Studies and Solutions, Inc.**  
a **DAVEY** company

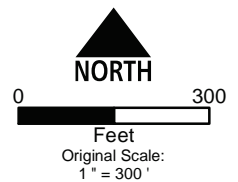
**Exhibit 4**

Received by VMRC December 13, 2024 /blh



 Project Area

**February 2024 Natural Color Imagery  
Pleasure House Point Tidal  
Wetland Mitigation Bank**



Source: Nearmap®

**Wetland Studies and Solutions, Inc.**

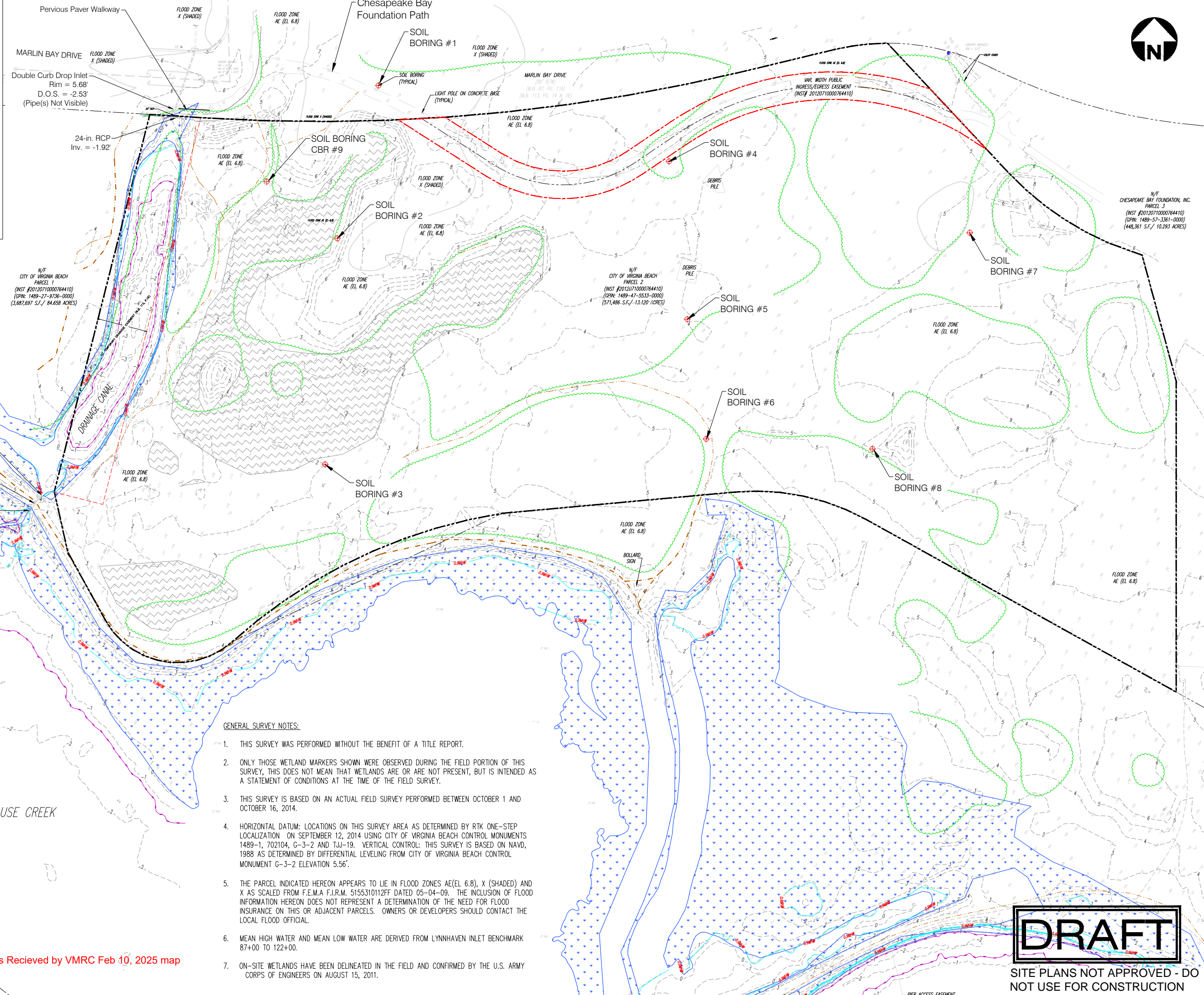
a **DAVEY** company

Received by VMRC December 13, 2024 /blh

**Exhibit 6**

LEGEND

- PROPERTY LIMITS
- EXISTING CONTOUR
- EXISTING TREELINE
- EXISTING TRAIL
- EXISTING NON-TIDAL WETLANDS (1.38 AC.)
- EXISTING TIDAL WETLANDS
- CHESAPEAKE BAY FOUNDATION (CBF) EASEMENT (NOT FOR MITIGATION USE)
- MEAN HIGH WATER = 0.9 NAVD88
- MEAN LOW WATER = -1.4 NAVD88
- SOIL BORING LOCATION
- EXISTING DRAINAGE EASEMENT



PARCEL 1 IS SUBJECT TO CONSERVATION EASEMENT DEED RESTRICTIONS AS DESCRIBED IN THE NOTICE OF GRANT AGREEMENT RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH, VIRGINIA AS INSTRUMENT NO. 20120710000764410.

N/F CITY OF VIRGINIA BEACH PARCEL 1 (INST. #20120710000764410) (GPN: 1489-27-9736-0000) (3,687.697 S.F. / 84.658 ACRES)

N/F CITY OF VIRGINIA BEACH PARCEL 2 (INST. #20120710000764410) (GPN: 1489-47-5533-0000) (571,486 S.F. / 13.120 ACRES)

N/F CHESAPEAKE BAY FOUNDATION, INC. PARCEL 3 (INST. #20120710000764410) (GPN: 1489-57-3361-0000) (448,361 S.F. / 10.293 ACRES)



GENERAL SURVEY NOTES:

1. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT.
2. ONLY THOSE WETLAND MARKERS SHOWN WERE OBSERVED DURING THE FIELD PORTION OF THIS SURVEY, THIS DOES NOT MEAN THAT WETLANDS ARE OR ARE NOT PRESENT, BUT IS INTENDED AS A STATEMENT OF CONDITIONS AT THE TIME OF THE FIELD SURVEY.
3. THIS SURVEY IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED BETWEEN OCTOBER 1 AND OCTOBER 16, 2014.
4. HORIZONTAL DATUM: LOCATIONS ON THIS SURVEY AREA AS DETERMINED BY RTK ONE-STEP LOCALIZATION ON SEPTEMBER 12, 2014 USING CITY OF VIRGINIA BEACH CONTROL MONUMENTS 1489-1, 702104, G-3-2 AND T.J-19. VERTICAL CONTROL: THIS SURVEY IS BASED ON NAVD, 1988 AS DETERMINED BY DIFFERENTIAL LEVELING FROM CITY OF VIRGINIA BEACH CONTROL MONUMENT G-3-2 ELEVATION 5.56'.
5. THE PARCEL INDICATED HEREON APPEARS TO LIE IN FLOOD ZONES AE(EL.6.8), X (SHADED) AND X AS SCALED FROM F.E.M.A F.I.R.M. 5155310112FF DATED 05-04-09. THE INCLUSION OF FLOOD INFORMATION HEREON DOES NOT REPRESENT A DETERMINATION OF THE NEED FOR FLOOD INSURANCE ON THIS OR ADJACENT PARCELS. OWNERS OR DEVELOPERS SHOULD CONTACT THE LOCAL FLOOD OFFICIAL.
6. MEAN HIGH WATER AND MEAN LOW WATER ARE DERIVED FROM LYNNHAVEN INLET BENCHMARK 87+00 TO 122+00.
7. ON-SITE WETLANDS HAVE BEEN DELINEATED IN THE FIELD AND CONFIRMED BY THE U.S. ARMY CORPS OF ENGINEERS ON AUGUST 15, 2011.

Additional Information/Revisions Received by VMRC Feb 10, 2025 map

**DRAFT**

SITE PLANS NOT APPROVED - DO NOT USE FOR CONSTRUCTION

DATE	2/10/2025	SHEET	1 OF 5
EXISTING CONDITIONS			
Site Plan for WETLAND RESTORATION AT PLEASURE HOUSE POINT TIDAL WETLAND MITIGATION BANK VIRGINIA BEACH			
DESIGNED	PJS	CHECKED	RPK
DRAWN	PJS	FILE	
REVISIONS			
#	DESCRIPTION	DATE	
1	REVISED PER CITY COMMENTS	2/20/15	
2	REVISED PER CITY COMMENTS	3/23/15	
3			
			
			
1008 Old Virginia Beach Road • Suite 200 Virginia Beach, Virginia 23451 Phone: 757-963-2008 • Fax: 757-963-8322 www.wetlands.com			

LEGEND

PROPERTY LIMITS

CHESAPEAKE BAY FOUNDATION (CBF)  
EASEMENT (NOT FOR MITIGATION USE)

EXISTING CONTOUR

EXISTING TREELINE

EXISTING TRAIL

PEDESTRIAN TRAIL & MAINTENANCE  
ACCESS (INSIDE MITIGATION BANK)

PEDESTRIAN TRAIL & MAINTENANCE  
ACCESS (OUTSIDE MITIGATION BANK)

WETLAND IMPACTS

NON-TIDAL WETLAND IMPACT  
(IMPACTS A - C)

TIDAL VEGETATED WETLAND IMPACT  
(IMPACTS D, G, AND H)

TIDAL NON-VEGETATED WETLAND  
IMPACT (IMPACT E)

SUBAQUEOUS BOTTOM IMPACT  
(IMPACTS F AND I)

MEAN HIGH WATER = 0.9 NAVD88

MEAN LOW WATER = -1.4 NAVD88

PROPOSED CONTOUR

EDGE OF MITIGATION BOUNDARY NEAR  
KAYAK LAUNCH

BOUNDARY OF HISTORICAL WETLAND

2X BUFFER

4X BUFFER

4X BUFFER IMPACTS

PARCEL 1 IS SUBJECT TO CONSERVATION EASEMENT DEED RESTRICTIONS AS DESCRIBED IN THE NOTICE OF GRANT AGREEMENT RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH, VIRGINIA AS INSTRUMENT NO. 2012071000764410

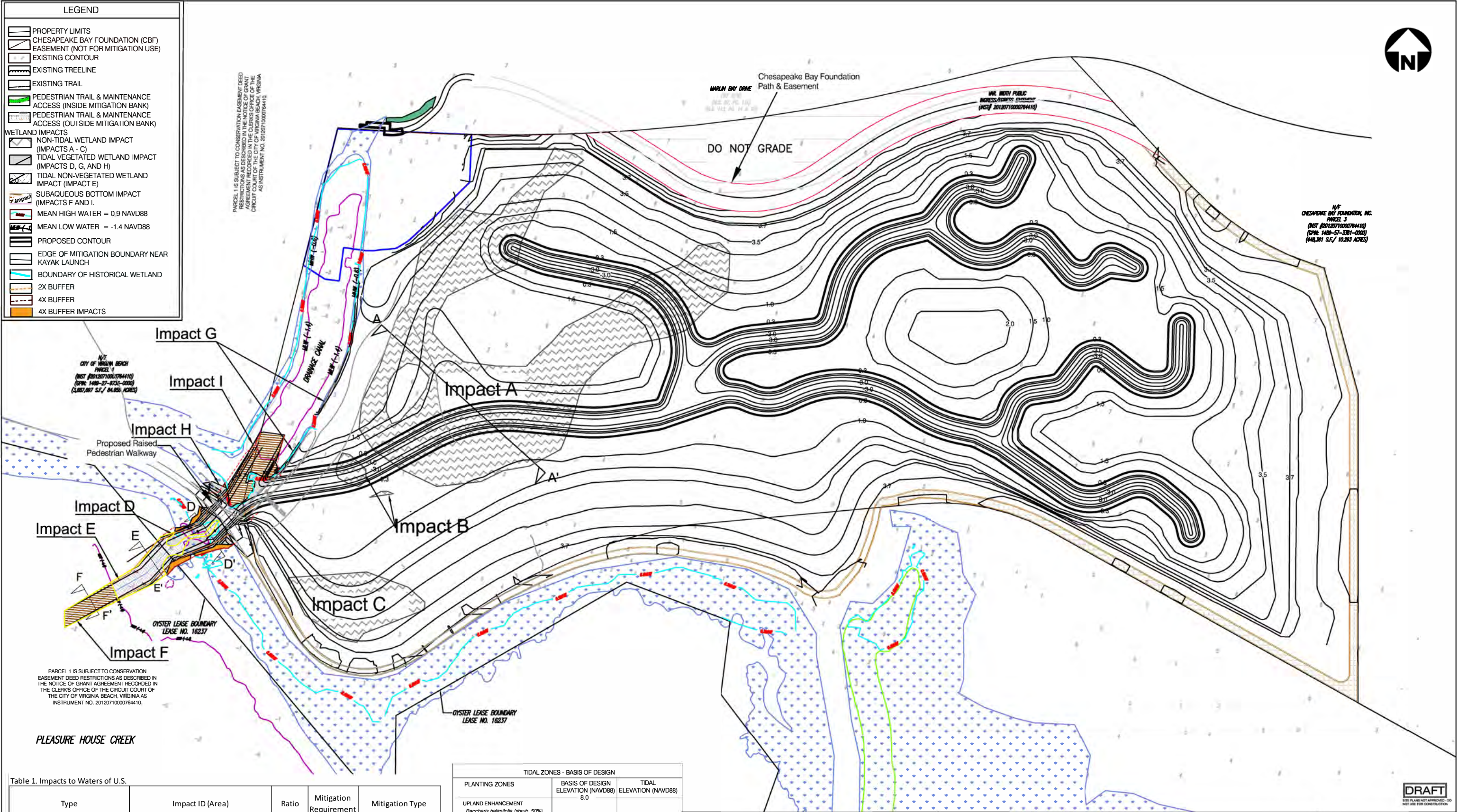


Table 1. Impacts to Waters of U.S.

Type	Impact ID (Area)	Ratio	Mitigation Requirement	Mitigation Type
Non-Tidal Herbaceous Wetland	Impact A (1.19 ac. / 51825.98 sq. ft)	1:1	1.38	Non-Tidal Wetland Credits
	Impact B (0.02 ac. / 897.21 sq. ft)			
Tidal Vegetated Wetlands	Impact C (0.17 ac. / 7355.16 sq. ft)	1:1	0.07	Tidal Wetland Credits
	Impact D (0.04 ac. / 1868.89 sq. ft)			
Tidal Non-Vegetated Wetlands	Impact G (0.02 ac. / 759.62 sq. ft)	1:1	0.05	Tidal Wetland Credits
	Impact H (0.01 ac. / 320.20 sq. ft)			
Subaqueous Bottom	Impact E (0.05 ac. / 2313.33 sq. ft)	N/A	None	Remains Subaqueous Shallow Water Habitat
	Impact F (0.03 ac. / 1184.17 sq. ft)			
4X Buffer Impacts	0.01 ac. / 441.54 sq. ft	1:1	0.01	Tidal Wetland Credits

TIDAL ZONES - BASIS OF DESIGN		
PLANTING ZONES	BASIS OF DESIGN ELEVATION (NAVD88)	TIDAL ELEVATION (NAVD88)
UPLAND ENHANCEMENT <i>Baccharis halimifolia</i> (shrub, 50%) <i>Iva frutescens</i> (shrub, 50%) Coastal Plain Salt Tolerant Grass Seed Mix (100%)	8.0	
HIGH MARSH <i>Spartina patens</i> (75%) <i>Juncus roemerianus</i> (25%)	3.7	
LOW MARSH <i>Spartina alterniflora</i> (100%)	1.5	0.90 MHW
TIDAL NON-VEGETATED WETLAND (SANDFLATS)	0.3	-0.25 MTL
SHALLOW WATER	-1.4	-1.40 MLW
	-3.0	

Note: Basis of design elevations were updated using biological benchmarks from on-site in October 2024 and reflect sea level rise to date

Wetland

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a DAVEY company

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Virginia Beach, Virginia 23451  
Phone: 757-963-2008 • Fax: 757-963-8322  
www.wetlands.com

JOINT PERMIT APPLICATION DRAWINGS

PROPOSED GRADING  
PLEASURE HOUSE POINT  
WETLAND MITIGATION BANK

VIRGINIA BEACH

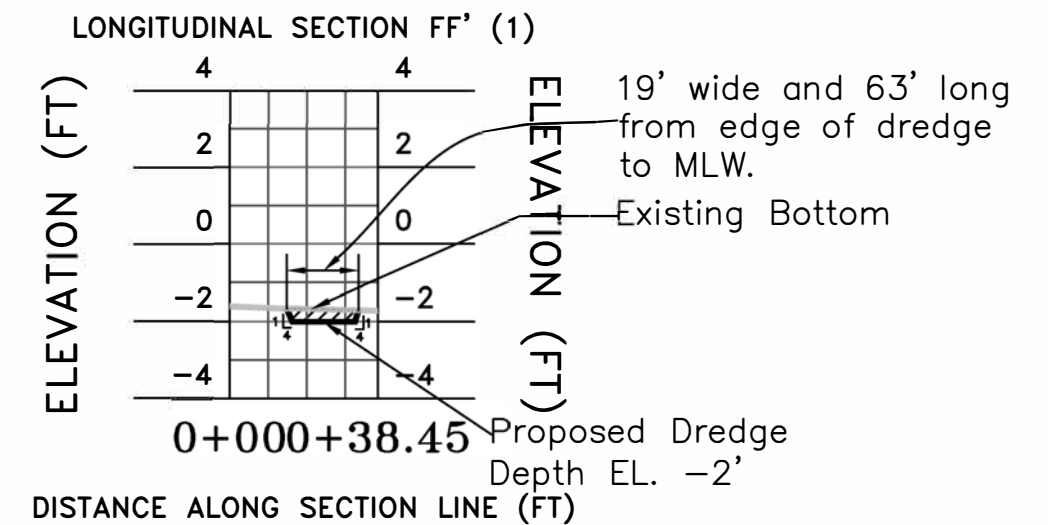
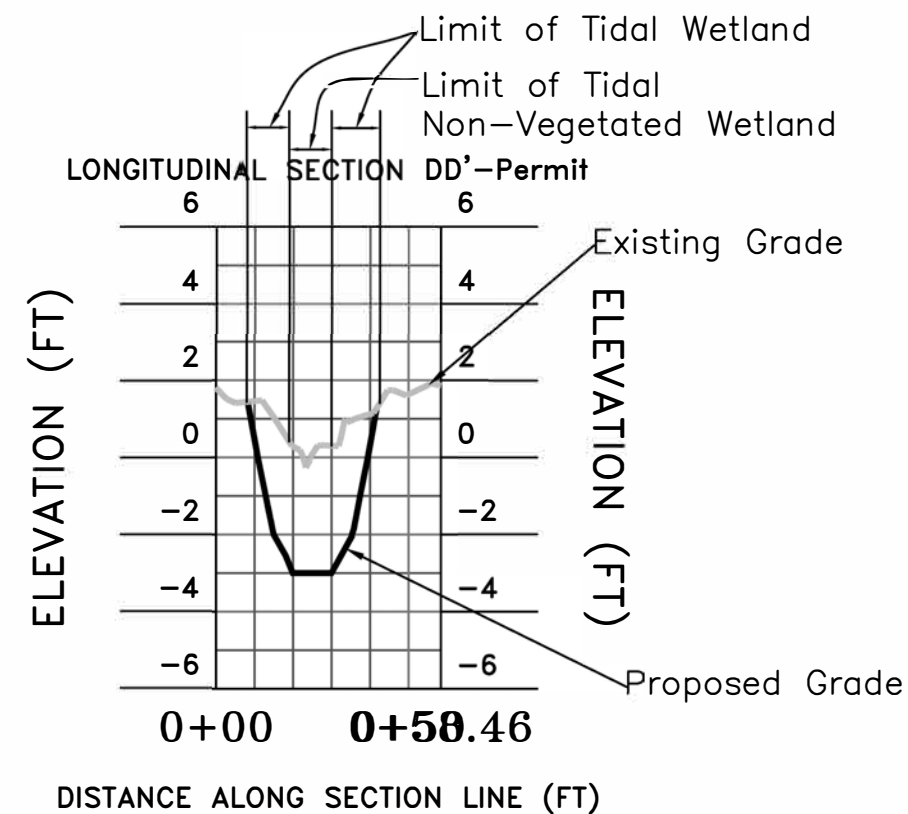
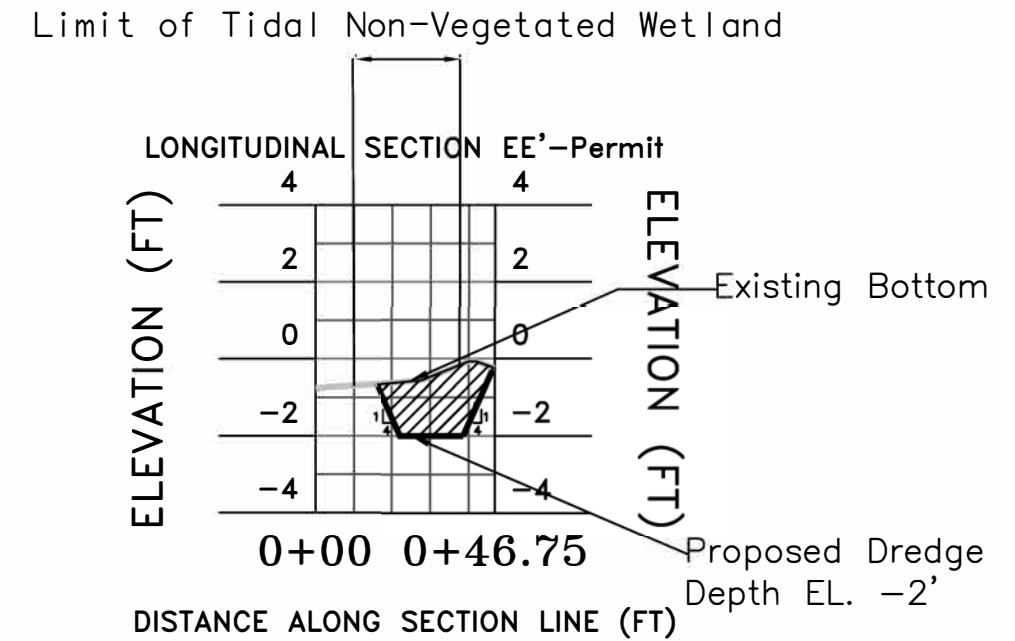
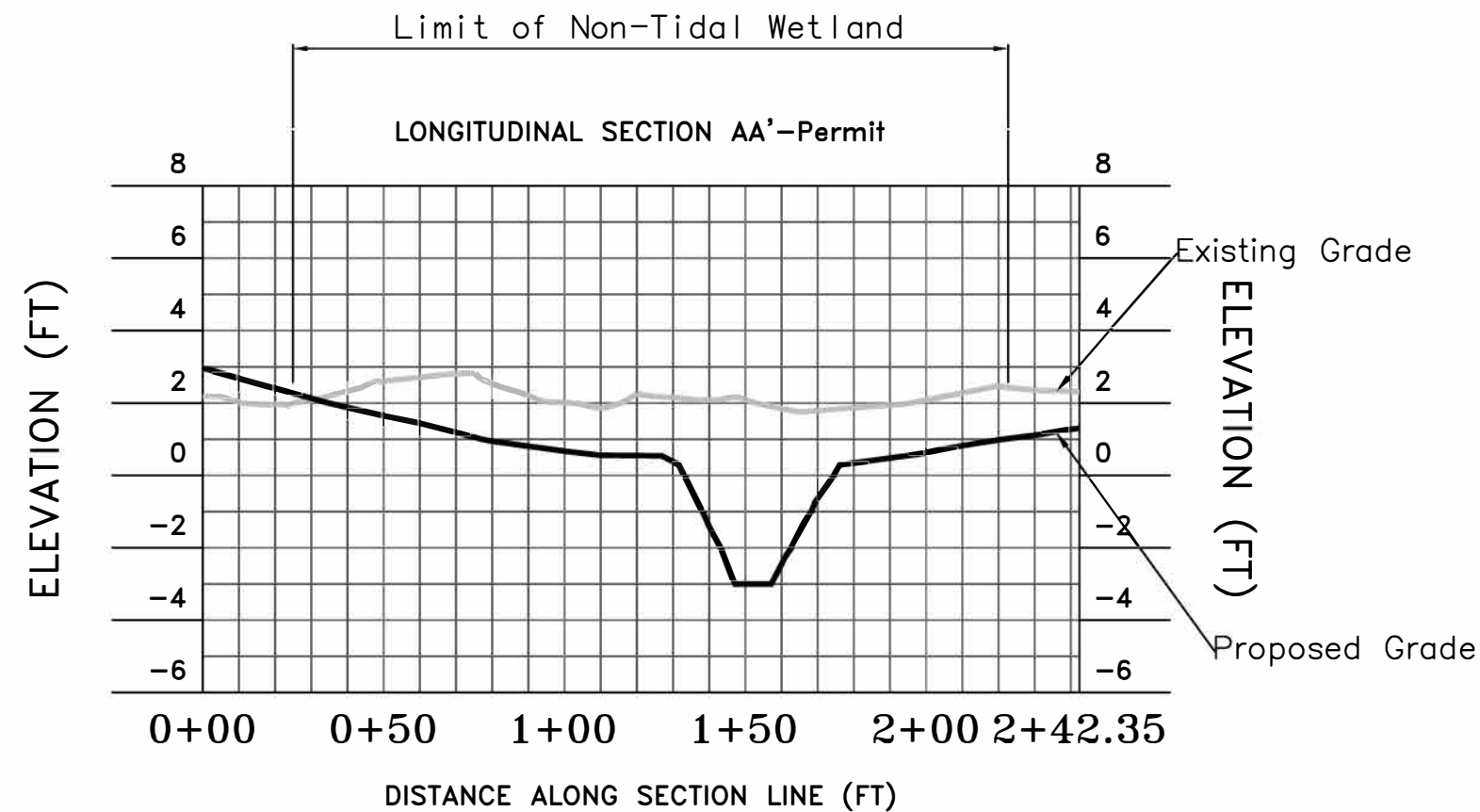
VIRGINIA

DRAFT

0 50 100 Feet  
1" = 100'

DATE  
2/10/2025

SHEET  
2 OF 5  
7



JOINT PERMIT APPLICATION DRAWINGS

CROSS SECTIONS  
PLEASURE HOUSE POINT  
WETLAND MITIGATION BANK

VIRGINIA BEACH

VIRGINIA

0 50 100 Feet  
1" = 100'

DATE	SHEET
2/10/2025	3 OF 5
	8



LEGEND

PROPERTY LIMITS

CHESAPEAKE BAY FOUNDATION (CBF)

EASEMENT (NOT FOR MITIGATION USE)

EXISTING CONTOUR

EXISTING TREELINE

EXISTING TRAIL

PEDESTRIAN TRAIL & MAINTENANCE

ACCESS (INSIDE MITIGATION BANK)

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NON-TIDAL WETLAND IMPACT

(IMPACTS A - C)

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(IMPACTS D, G, AND H)

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IMPACT (IMPACT E)

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(IMPACTS F AND I)

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THE CITY OF VIRGINIA BEACH, VIRGINIA AS  
INSTRUMENT NO. 20120710000764410.

PLEASURE HOUSE CREEK

Impact F  
19' wide and 63' long from  
edge of dredge to MLW.

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JOINT PERMIT APPLICATION DRAWINGS

EXISTING & PROPOSED CONDITIONS

PLEASURE HOUSE POINT  
WETLAND MITIGATION BANK

VIRGINIA BEACH

VIRGINIA

020

1" = 20'

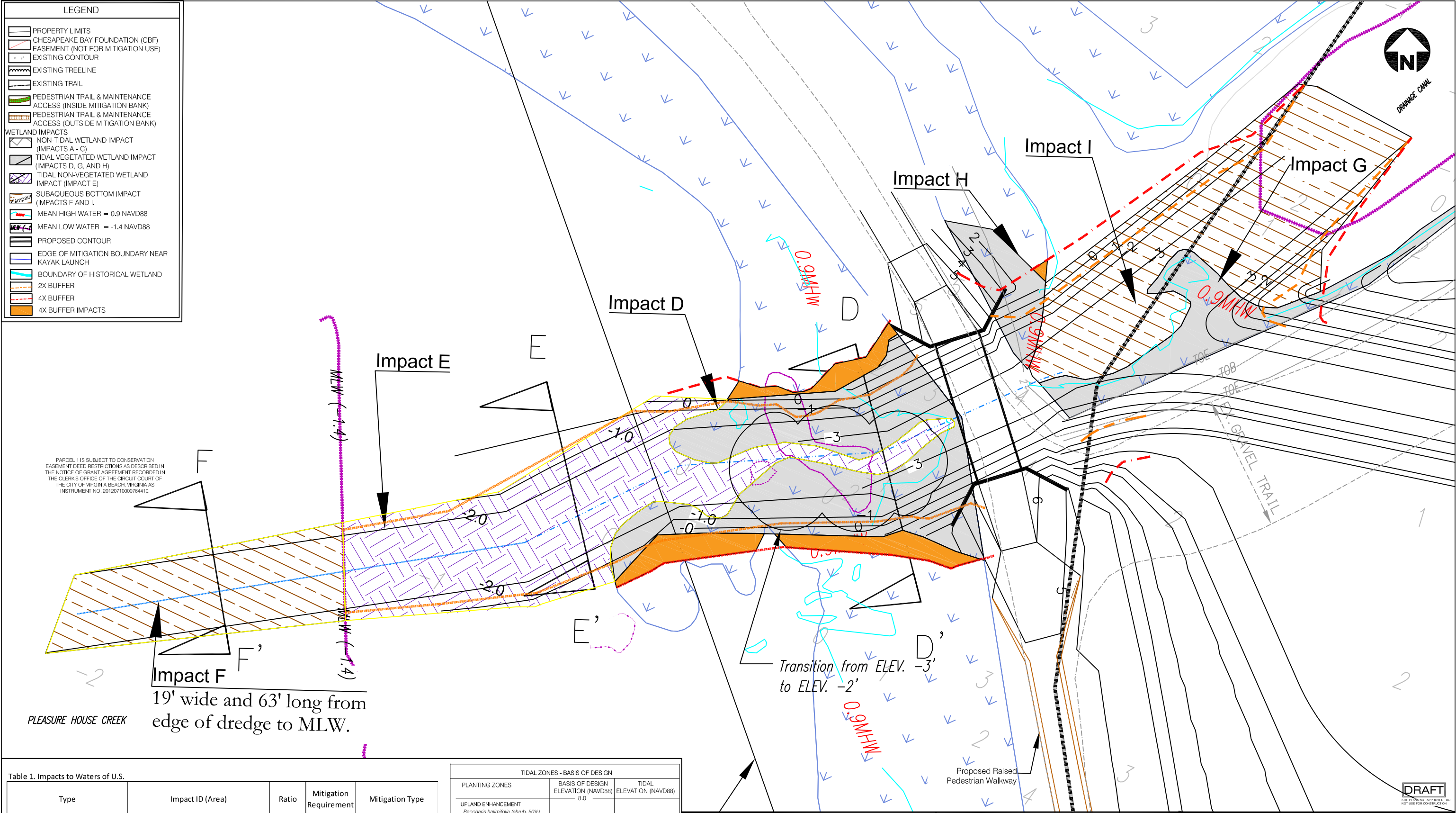
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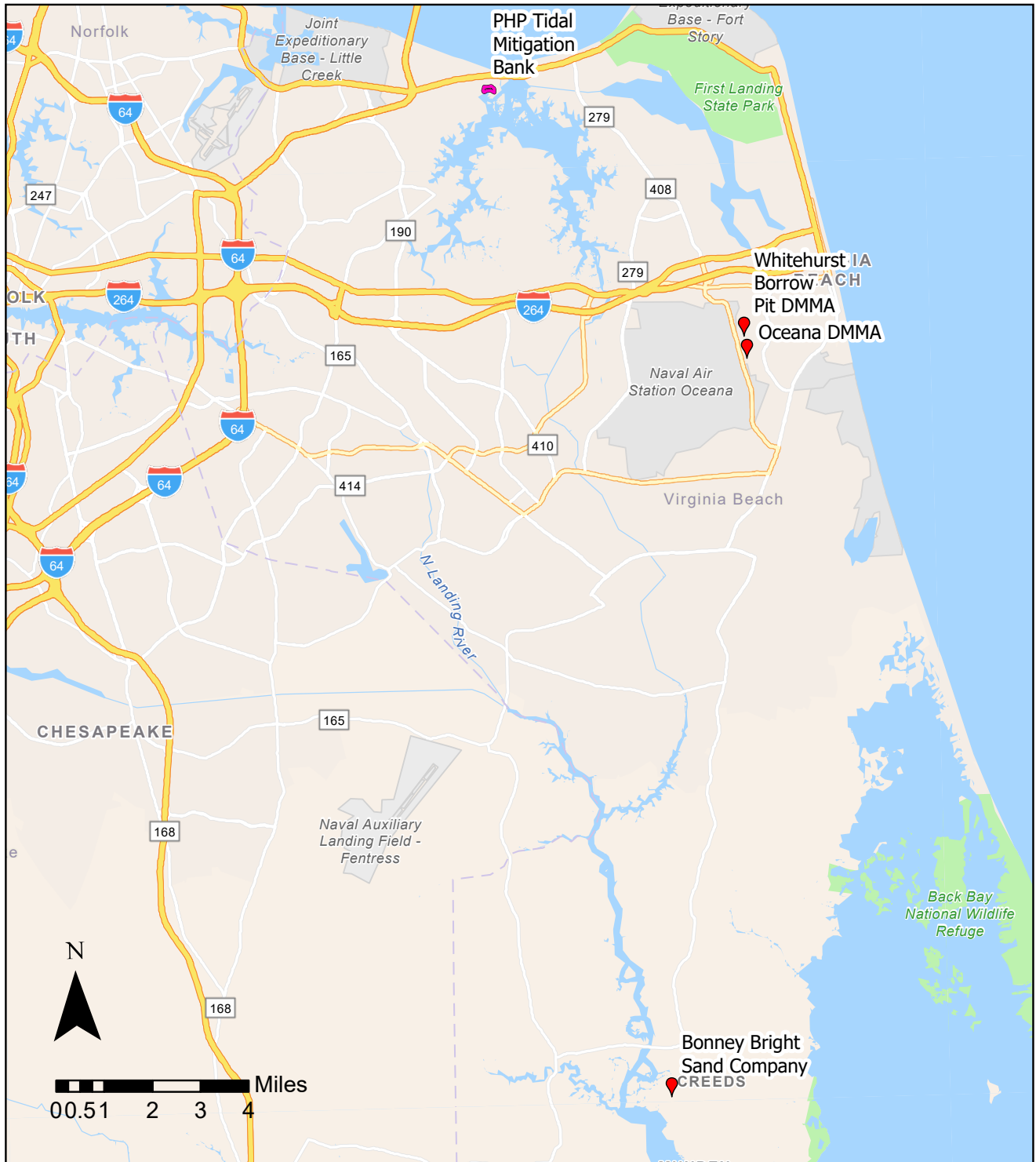
2/10/2025

SHEET

5 OF 5

10





Source: ESRI

**Vicinity Map**  
**Dredge Material Management Areas**  
**PHP Tidal Wetland Mitigation Bank**  
**WSSI #30552.03**

**Wetland Studies and Solutions, Inc.**  
 a **DAVEY** company

*Exhibit 1*

# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

Print Date: Wednesday February 19 2025 16:40

Number	Name	Received	Position
1	WALT L STONE	12/22/2024 18:26:37 PM	OPPOSE

THIS ENTIRE AREA AND IT'S RPA/RMA FEATURES WAS SAVED AND PROTECTED FROM DEVELOPMENT AND DISTURBANCE WITHIN THE CHESAPEAKE BAY PRESERVATION ACT REGULATIONS APPLICABLE AS A SENSITIVE AND VITAL ESTUARINE WETLANDS WATERSHED NATURAL HABITAT. CBF, VIRGINIA CONSERVANCY AND OTHERS ENTERED INTO AGREEMENT WITH THE CITY TO PRESERVE. WHOEVER HAS CONJURED UP THAT THIS IS JUST A DREDGE SITE DEFECTIVE WETLAND AREA AFTER THE SALT 50 YEARS AND THAT NOW REQUIRES "NEW" DEVELOPMENT RESTRUCTURE BY DESTROYING RMA WITH OVER 5000 TREES REMOVED AND EXCAVATION, HAS LOST THEIR MIND. THIS IS NOT A PUBLIC BENEFIT, DOES NOT MINIMIZE IMPACT, AND DESTROYS HABITATS AFFECTING ENDANGERED SPECIES AND INNUMERABLE WILDLIFE LIVING THERE, BY KILLING OR DISPLACING. NEXT: THIS VIOLATES CBPA REGULATIONS WHERE STORM WATER/RUNOFF DRAINING WILL EXPLODE PHOSPHORUS AND CONTAMINANTS RUNNING INTO THE LYNNHAVEN WITH TREE/ROOT SYSTEM BUFFERS COMPLETELY WIPED OUT. DID ANYONE EVALUATES THAT IMPACT? DID THEY THINK THAT PLANTING REPLACEMENT VEGETATION AND TREES TAKING 10-20 YEARS TO ESTABLISH WILL MITIGATE THAT? IT WON'T. THIS IS BEYOND WRONG. WE DON'T DESTROY WETLANDS/RMA BUFFERS TO MAKE NEW "BETTER" ONES TO BUY A FEW BANK CREDITS FOR BUILDING SOMEWHERE ELSE.

Attachments:

Submitted photos for this comment will begin on next page.

# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

*Print Date: Wednesday February 19 2025 16:40*

1734910092.jpg



1734910093.jpg



# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

*Print Date: Wednesday February 19 2025 16:40*

1734910093.jpg



1734910093.jpg



**Virginia Marine Resources Commission**  
**Habitat Management Public Comments**  
**Application Number 20242851**

*Print Date: Wednesday February 19 2025 16:40*

Number	Name	Received	Position
2	KIM MAYO	12/23/2024 14:05:36 PM	OPPOSE

THIS IS A RUSH JOB BEING FAST TRACKED OVER CHRISTMAS HOLIDAY. AS A CIVIC LEADER IN DISTRICT I HAVE NOT HAD AMPLE TIME TO INFORM STAKEHOLDERS. REMOVING APPROXIMATELY 5,000 TREES \$12M FOR TAXPAYERS TO BANK "CREDITS" NEEDS MORE SCRUTINY THAN ONE MEETING IN THE MIDDLE OF THE DAY. THIS PROJECT IS TO HELP A DEVELOPER & MY COUNCILMAN NEEDS TO BE INVESTIGATED. THANK YOU!

# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

*Print Date: Wednesday February 19 2025 16:40*

Number	Name	Received	Position
3	KATHY SPENCER	12/23/2024 16:36:43 PM	OPPOSE

THE DISRUPTION TO WILDLIFE AND THE TREES IS SIMPLY NOT NECESSARY. WETLANDS MITIGATION HAS A HISTORY OF NOT ALWAYS BEING SUCCESSFUL. WHILE IT WAS TRUE AT ONE TIME PART OF THE ACREAGE WAS WETLANDS THAT GOT FILLED IN, THAT WAS OVER 30 YEARS AGO AND THE LAND HAS ADAPTED TO THE CHANGED CIRCUMSTANCES BEAUTIFULLY. MANY BIRDS MAKE THEIR LONG JOURNEYS TO REST HERE, AND THE DIAMOND BACK TERRAPIN NESTS IN THE AREA THAT IS BEING PLOWED UNDER. A VERY EXPENSIVE BRIDGE THAT CONNECTED THE TRAILS WAS JUST PUT IN THIS YEAR AND THAT IS ALSO BEING REMOVED FOR CONSTRUCTION VEHICLES. I WILL ATTACH PHOTOS I TOOK OF SOME OF THE WILDLIFE IN THE AFFECTED AREA

# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

Print Date: Wednesday February 19 2025 16:40

Number	Name	Received	Position
4	MARTHA THEREAULT	12/31/2024 15:57:01 PM	OPPOSE

I OPPOSE THIS PROJECT BECAUSE I BELIEVE INFORMATION HAS BEEN LEFT OUT OR WITHHELD BY THE CITY AND THAT PAST STUDIES DONE HERE TO INVESTIGATE THE POSSIBILITIES OF DOING THIS ARE OLD AND OBSOLETE. IT HAS JUST BEEN BROUGHT TO THE CITIZENS ATTENTION RIGHT BEFORE THE HOLIDAYS THAT THE CITY NEEDS "WETLANDS CREDITS" FOR PROJECTS THEY HAVE BEGUN ELSEWHERE AND INTEND TO BEGIN ELSEWHERE. THEY TOLD US THEY HAVE NO CREDITS BANKED BUT WILL NOT TELL US WHERE THE CREDITS WENT AND TO WHOM. THEY KNEW THEY WOULD NEED THEM FOR THESE PROJECTS THEY ARE CURRENTLY WORKING ON. THE PROJECT THEY WANT TO DO AT PLEASURE HOUSE POINT WILL LITERALLY WIPE OUT A LARGE PART OF AN EXISTING MARITIME FOREST THAT STANDS BETWEEN HOMES AND THE RIVER/CREEK. THIS FOREST IS ESTIMATED TO BE AT A 4 FOOT ELEVATION, BUT THE CITY INTENDS TO FLATTEN AND FLOOD THAT AREA. ODDLY, THEY PLAN TO REPLANT 600 TREES. THEY ARE DISMISSIVE OF THE NATIVE PINES THAT MAKE UP THE BULK OF THE FOREST. NO ONE ON CITY PAYROLL SEEMS CONCERNED ABOUT DESTROYING THE HABITAT OF THE ANIMALS THAT LIVE ON THESE 12 ACRES AND ARE DISMISSING WHEN ASKED ABOUT IT. IT IS THE OPINION OF MANY THAT THIS PROJECT IS NOT ABOUT ENHANCING THIS AREA OF PHP BUT RATHER AN OPPORTUNITY FOR THE CITY TO EXPLOIT THE AREA. THE PRICE TAG THEY GIVE US IS \$12 MILLION. TEN YEARS AGO, IT WAS ESTIMATED TO BE \$3 MILLION. CITY GOVERNMENT IN THEIR PUBLIC HANDOUT STATES IT'S BECAUSE OF "INFLATION" AND THAT "THE NEW ESTIMATE INCLUDES MORE THAN 600 TREES WHICH WERE NOT PART OF THE ORIGINAL ESTIMATE." NO ONE IN THE CITY CAN ASSURE THE CITIZENS THAT THESE NEW TREES COULD EVEN SURVIVE THE SALTWATER INTRUSION THIS "NEW" WETLAND WOULD CREATE. THIS SUBJECT WAS BROUGHT UP TO STAFF AT THEIR 12/19/24 PRESENTATION TO THE PUBLIC BY STUDENTS OF THE VB ENVIRONMENTAL STUDIES PROGRAM. THE STAFF DID NOT KNOW HOW TO ANSWER AND SPOKE DOWN TO THE KNOWLEDGEABLE STUDENTS RATHER THAN DEMONSTRATE THAT THEY HAD ANY CLUE AS TO WHAT PROBLEMS COULD RESULT IN THEIR PLANS. GHOST TREES ALREADY EXIST ON PHP SERVING AS EXAMPLES TO THE FAILURE FOR TREES TO THRIVE WHEN SALT GETS TO THEM. THE PRESENTATION WAS WEAK AND THE STAFF REALLY DIDN'T HAVE ANSWERS TO MANY QUESTIONS. THIS CAN BE SEEN ON THE VIDEO OF THE MEETING. TO DESTROY ACRES OF AN ESTABLISHED MARITIME FOREST ALONG WITH THE WILDLIFE HABITAT FOR SO MANY CREATURES DESERVES A MUCH CLOSER INVESTIGATION. THIS PROJECT IS BEING RUSHED AND INFORMATION WITHHELD. THIS PROPERTY SERVES AS A BUFFER TO HOMES INLAND OF IT. TO FLATTEN IT AND FLOOD IT WILL EXPOSE THOSE HOMES TO THE ELEMENTS, INCLUDING HURRICANES. DIRECTLY ACROSS THE CREEK FOR THIS PROPERTY LIES THE BAYVILLE FARMS GOLF COURSE, ALONG WITH THE HOMES OF SEVERAL RICH AND FAMOUS DEVELOPERS. THEY SIT AT AN ELEVATION WITH TREE BUFFERS BETWEEN THEM AND THE WETLANDS. WHY, THEN, IS PLEASURE HOUSE POINT GOING TO BE TREATED ANY DIFFERENTLY? THANK YOU FOR YOUR TIME AND INTEREST. PLEASE KNOW THAT A GREAT MANY PEOPLE IN THIS AREA OF VIRGINIA BEACH CARE A GREAT DEAL ABOUT THIS PROPERTY AND ARE DESPERATELY TRYING TO PROTECT IT FROM ABUSE AND MISMANAGEMENT. WE APPRECIATE ANY HELP YOU MAY OFFER IN THIS REGARD.

Attachments:

**Virginia Marine Resources Commission**  
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Number	Name	Received	Position
5	KATHIE MCGRATTAN	12/23/2024 19:28:06 PM	OPPOSE

PLEASE DO NOT SPEND \$12 MILLION DOLLARS OF TAXPAYER MONEY TO DESTROY THE HABITAT THAT WAS NATURALLY CREATED FOLLOWING DECADES OLD DESTRUCTION OF THE ORIGINAL WETLANDS. Iâ€™D LIKE TO UNDERSTAND THE FUTURE INTENT FOR THIS PROPERTY AND WHY WETLANDS CREDITS ARE NEEDED ELSEWHERE IN THE CITY.

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Number	Name	Received	Position
6	MOSS JOHN	12/23/2024 23:15:04 PM	OPPOSE

IT IS WITH REGRET THAT I OPPOSE THIS PROJECT. MY OPPOSITION IS NOT THE PROJECT LOCATION MAY NOT BE APPROPRIATE AT SOME LESSOR SCOPE, BUT BECAUSE THE ANALYTICAL FRAMEWORK AND METHODOLOGIES EMPLOYED BY THE CITY WERE DEFICIENT. SPECIFICALLY, THE CITY DID NOT EMPLOY COMPLEX SYSTEMS THEORY NOR DID THEY APPLY THE EDGE OF CHAOS CONCEPT TO CONDUCT SENSITIVITY ANALYSIS ON THE CONSEQUENCES IF THEIR ASSUMPTIONS OR FINDINGS PROVE TO BE WRONG AND TO DETERMINE THE PROBABILITY OF CRITICAL RISKS MATERIALIZING.

I CANNOT SAY THAT A CASE CANNOT BE MADE, I AM JUST SAYING THE CITY HAS NOT A MADE A CASE THAT MERITS THE ANALYTICAL CONFIDENCE TO GRANT THEIR REQUEST. THE QUESTIONS POSED BY THE VIRGINIA BEACH HIGH SCHOOL STUDENTS AT THE DECEMBER MEETING OF THE VB BAYFRONT COMMISSION DID AN EXCELLENT JOB HIGHLIGHTING THE ANALYTICAL GAPS IN THE CITY'S EVIDENTIARY RECORD. THE CITY'S RETORT THAT THE TIME CRITICALITY OF BRINGING FLOOD MITIGATION ON-ONLINE HAS SIGNIFICANT MERIT IN THE COMMISSIONS DELIBERATIONS. THE 2.7 ACRES OF INLAND DESTRUCTION IDENTIFIED TO OFFSET THE IMPACT OF THE LAKE WINDSOR PUMP STATION AND TIDAL GATE IF DETERMINED TO BE AN UNAVOIDABLE TRADE DUE TO TIMING BRING LSKE WINDSOR SPECIFIC FLOODING PROTECTION, THE CITY SHOULD BE REQUIRED TO REPLICATE THE MORE MATURE TREES ON THE PROPERTY TO RECREATE THE HABITAT LOST. IF A PERMIT IS ISSUED, IT SHOULD BE LIMIT TO 2.7 ACRES NOT THE 8 ACRES REQUESTED.

THE CITY SHOULD NOT BE REWARDED FOR A LESS THAN AGGRESSIVE EFFORT TO PRODUCE ALTERNATIVE SOLUTIONS NOR BE REWARDED FOR AN ANALYSIS, WHICH DOES NOT REFLECT THE ROBUST APPLICATION OF THE MOST ANALYTICAL FRAMEWORKS AND TOOLS. THE CITY'S DEFENSIVENESS ABOUT ITS WORK PRODUCT IN REACTION TO RESIDENTS SHARED CONCERNS IS MOTIVATION ENOUGH FOR COMMSIOM MEMBERS TO DENY THE CITY'S REQUEST BENEFIT OF THE DOUBT,

IF THIS WAS A REQUEST FOR JUST THE 2.3 ACRES NECESSARY TO SUPPORT THE LAKE WINDSOR PUMPING STATION AND TIDAL GATE, I COULD SUPPORT WITH MATURE TREE RELOCATION AS A REQUIRED MITIGATION DUE TO TIMING CRITICALITY.

I SEE NO REASON WHY THE CITY DOES NOT HAVE THE TIME TO DO THE HOMEWORK TO CORRECT THE ANALYTICAL DEFICIENCIES IN THEIR REQUEST, AND AUTHORITATIVELY DISPROVE WHY BETTER ALTERNATIVES ARE NOT AVAILABLE

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Number	Name	Received	Position
7	WALT L STONE	12/24/2024 01:26:02 AM	OPPOSE

THIS AREA IS FILLED WITH THREATENED/ENDANGERED BIRD SPECIES AND OTHER WILDLIFE. BALD EAGLES ARE ACTIVELY PRESENT THROUGHOUT PHOTO DOCUMENTED SINCE 2010 AS IS THEIR NESTING AREAS WHICH ARE LAWFULLY PROTECTED FROM DISTURBANCE. THIS ACTION WILL DESTROY HABITAT NESTING AREAS AND IS FLATLY UNLAWFUL AND CANNOT BE GRANTED PERMIT.

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Number	Name	Received	Position
8	HENRY HIGHTON	12/24/2024 11:59:52 AM	OPPOSE

I OPPOSE THIS PROJECT BECAUSE IT IS CONTRARY TO EVERYTHING THAT WE STRIVE TO PRESERVE IN THIS FRAGILE ENVIRONMENT. THE WAY THAT THE CITY GOVERNMENT HAS TRIED TO RUN ROUGH SHOD OVER THE WILL OF THE PEOPLE IS ANOTHER EXAMPLE OF OVERREACH & CONTEMPTIBLE BEHAVIOR BY LONG TERM OFFICIALS COW TOWING TO WEALTHY POLITICAL CRONIES/DONORS. PLEASE CONSIDER THE RAMIFICATIONS OF DESTROYING THOUSANDS OF TREES THIS CLOSE TO THE WATER, & THE TRAGIC LOSS OF HABITAT FOR OUR NATIVE WILDLIFE. WE, AS CONCERNED, WILL NOT GO LIGHTLY INTO THIS DARK NIGHT. LET THE RIGHT THING & THE WILL OF THE PEOPLE TAKE PRECEDENT HERE. PLEASE

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Number	Name	Received	Position
9	PAM FOX	12/25/2024 15:45:06 PM	OPPOSE

ITâ€™S INCONCEIVABLE THAT ANYONE WOULD THINK THIS PLAN IS IN ANY WAY BENEFICIAL TO THIS AREA.  
ENOUGH OF CHOPPING DOWN TREES AND DESTROYING HABITATS .  
Iâ€™M SORRY TO SAY Iâ€™M NOT SURPRISED THAT GREEDY DEVELOPERS AND CORRUPT COUNCILORS  
WOULD BE IN FAVOR.  
PLEASE LEAVE IT AS IT IS !

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Number	Name	Received	Position
10	KENNETH W VEAZEY	12/24/2024 17:22:46 PM	OPPOSE

NATURE HAS NATURALLY RETURNED PHP TO A MARITIME FOREST ENJOYED BY ME AND OTHER CITIZENS OF THE AREA AND VB. NOW THE CITY WANTS TO REDUCE THE TREE COVER MORE WARMING , BULLDOZE A ROAD FOR ENTRANCE TO DO THE WORK, AND TAKE AWAY THIS NATURAL AREA FROM THE CITIZENS NA OF VB JUST TO SATISFY DEVELOPERS IN FILLING OTHER WETLAND AREAS AND BUILDING ON THEM. STAND FOR THE ENVIRONMENT AND THE CITIZENS OF VB. USE CREDITS FROM ELSEWHERE.

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Number	Name	Received	Position
11	JULIA CHERRY	12/25/2024 10:27:52 AM	OPPOSE

DESTRUCTION OF 12 ACRES OF ESTABLISHED FOREST AND WETLANDS IN ORDER TO CREATE 8 ACRES OF WETLANDS IS A SERIOUS MISTAKE.

THERE ARE TOO MANY UNKNOWNNS TO PROCEED WITH THE PHP PROJECT.

HAS AN EXPERT DONE A THOROUGH ANALYSIS ON THE SPECIES OF WILDLIFE WHO LIVE ON THIS SITE?

LETâ€™S TALK ABOUT TREES ~ PROVIDE PROOF OF THE EXISTING TREES THAT WILL BE LEVELED ON 12 ACRES. THE CITY REPS DIDNâ€™T HAVE THE ANSWER TO THIS QUESTION. THATâ€™S A HUGE RED FLAG!

HOW DID THIS PARTICULAR PART OF PHP BECOME THE SPOT CHOSEN TO BE CLEAR CUT?

ACCORDING TO RECORDS ON FILE AT VB PLANNING, A PLANNED AND APPROVED BY RIGHT DEVELOPMENT IS IN THE PIPELINE. IRONICALLY ITâ€™S ACROSS THE STREET FROM THE PHP PROJECT.

YES, Iâ€™VE SEEN THE PLAT FOR THE CARVED OUT DUPLEX LOTS. THE VIEW WILL BE AMAZINGLY DIFFERENT FOR THE FUTURE HOMES THAT WILL BE BUILT.

WETLANDS BANK CREDITS: EXPLAIN WHY PHP WAS CHOSEN AS THE BEST OPTION.

SOMETHING SMELLS FISHY IN MY OPINION.

PLEASE PUT THIS PROJECT ON THE SHELF AND GO SOMEWHERE ELSE FOR WETLAND BANK CREDITS.

JU

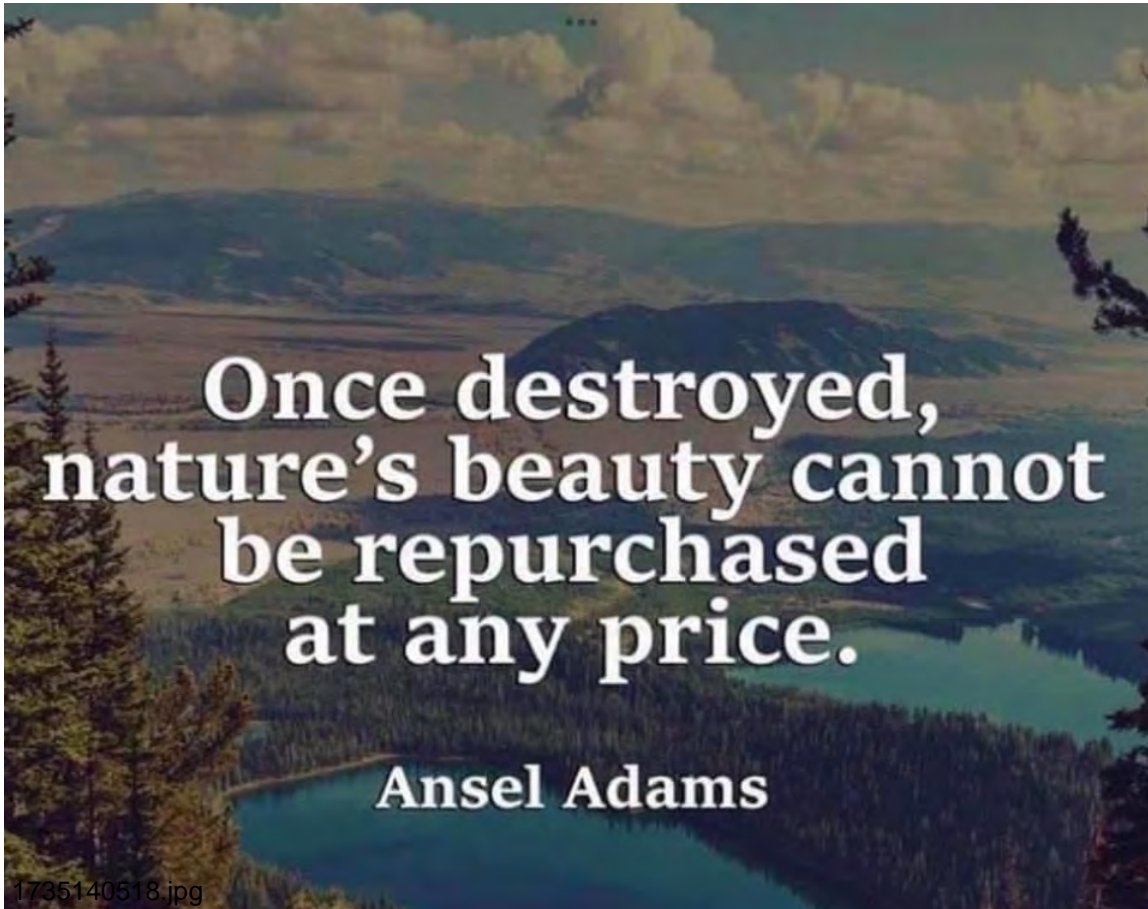
Attachments:

Submitted photos for this comment will begin on next page.

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## Marlin Bay devel...



### Project Proposal Details

Provide a brief description of the project proposal. Include information such as previously approved or pending City Council, or other Board actions, previously approved site plans, and pending or anticipated variance requests. Also include proposed number of units, number of stories and square footage of building, building construction type, etc. Please feel free to provide information as a separate attachment if needed.

This project includes the development of 14 existing residential lots along Marlin Bay Drive and 5 existing residential lots along Lockhaven Crescent. Public water and sanitary sewer services are available in the adjacent public right of ways. Stormwater management may be a combination of infiltrative measures and/or blue streets, stormwater ponds, under-driveway detention, and bioretention.

### Project Questions or Concerns

Provide below any specific questions or topics that you would like to discuss at the presubmittal meeting.

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Number	Name	Received	Position
12	LISA SIESS	12/25/2024 16:56:25 PM	OPPOSE

THIS APPLICATION IS USING A DELINEATION FROM AUGUST 2011 SEE NO. 7 UNDER GENERAL SURVEY NOTES . FURTHERMORE, THE DELINEATION THEY REFER IS AERIAL REMOTE-SENSING PERFORMED BY KIMLEY HORN, AND NOT ONSITE BY THE USACE AS THE APPLICANT CLAIMS SEE USACE PRELIMINARY JURISDICTIONAL DETERMINATION DATED MAY 6, 2016 . WHILE THE USACE DID GIVE A PRELIMINARY DETERMINATION, IT BASED ON THE 2011 REMOTE SENSING, AND WAS NEVER FOLLOWED UP WITH AN ONSITE ASSESSMENT.

SINCE THE INITIAL NAO-2006-3001, ALL SUBSEQUENT APPLICATIONS RELY UPON THIS 2011 AERIAL DELINEATION - NO ADDITIONAL DEPOSITS HAVE OCCURRED AT THIS SITE SINCE THE 2011 DELINEATION.

THE PARCEL IN ITS CURRENT STATE CONSISTS OF TIDAL, NON-TIDAL, AND FORESTED WETLANDS - AN ON-SITE DELINEATION AND FUNCTIONALITY ASSESSMENT IS NECESSARY PRIOR TO QUALIFYING THIS PARCEL FOR RESTORATION CREDITS.

THE APPLICANT'S CURRENT PLAN CALLS FOR EIGHT TO TWELVE ACRES OF DEFORESTATION AND FILL OF THE EXISTING HABITAT WHICH HAS NOT BEEN SURVEYED IN OVER THIRTEEN YEARS - THE PLAN, AS SUBMITTED, IS VOID. VMRC CANNOT LOGICALLY DETERMINE JURISDICTION BASED UPON AERIAL INFORMATION FROM OVER A DECADE AGO.

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Number	Name	Received	Position
13	RONA MARSH	12/28/2024 06:24:31 AM	OPPOSE

THE PROJECT WILL BULLDOZE 12 ACRES OF EXISTING WETLANDS TO OBTAIN 8 WETLANDS CREDITS. THIS REMOVES 5,200 TREES ESTIMATED BECAUSE THE PLANNING HAS NOT BEEN PROVIDED TO SHOW THE TREE COUNT OR THE REPLACEMENT TREES THAT SHOULD BE 1:1 REMOVED. THESE TREES ARE HABITAT FOR OWLS, NESTING BALD EAGLES, HERONS AND MANY OTHER BIRDS AND WETLANDS ANIMALS. THE CITY HAS CREATED THE NEED FOR WETLANDS CREDITS DUE TO USE FOR OTHER DEVELOPMENTS BELIEVED TO INCLUDE AMAZON DISTRIBUTION BLDG . DESTROYING AN EXISTING WETLANDS TO CREATE CREDITS SO MORE DEVELOPMENT CAN BE DONE HAS CITIZENS QUESTIONING HOW WETLANDS CREDITS HAVE BEEN USED OR MIS-USED ? NO ACCOUNTING OF HOW WETLANDS CREDITS HAVE BEEN USED IS BEING PROVIDED BY VBGOV?

**Attachments:**

Submitted photos for this comment will begin on next page.

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1735385422.jpg



to TPUtterback, Cityc... ^

From Mrs M ronamarsh  
To TPUtterback@vbgov.com  
Cc Citycouncil@vbgov.com  
Citycouncil@vbgov.com  
LJHansen@vbgov.com  
windy.crutchfield@gmail.com  
hcuellar@vbgov.com  
Date Dec 19, 2024 at 4:59 PM

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4:59



On Fri, Dec 20, 2024 at 4:24 PM RJ  
Mattes <[RMattes@vbgov.com](mailto:RMattes@vbgov.com)> wrote:

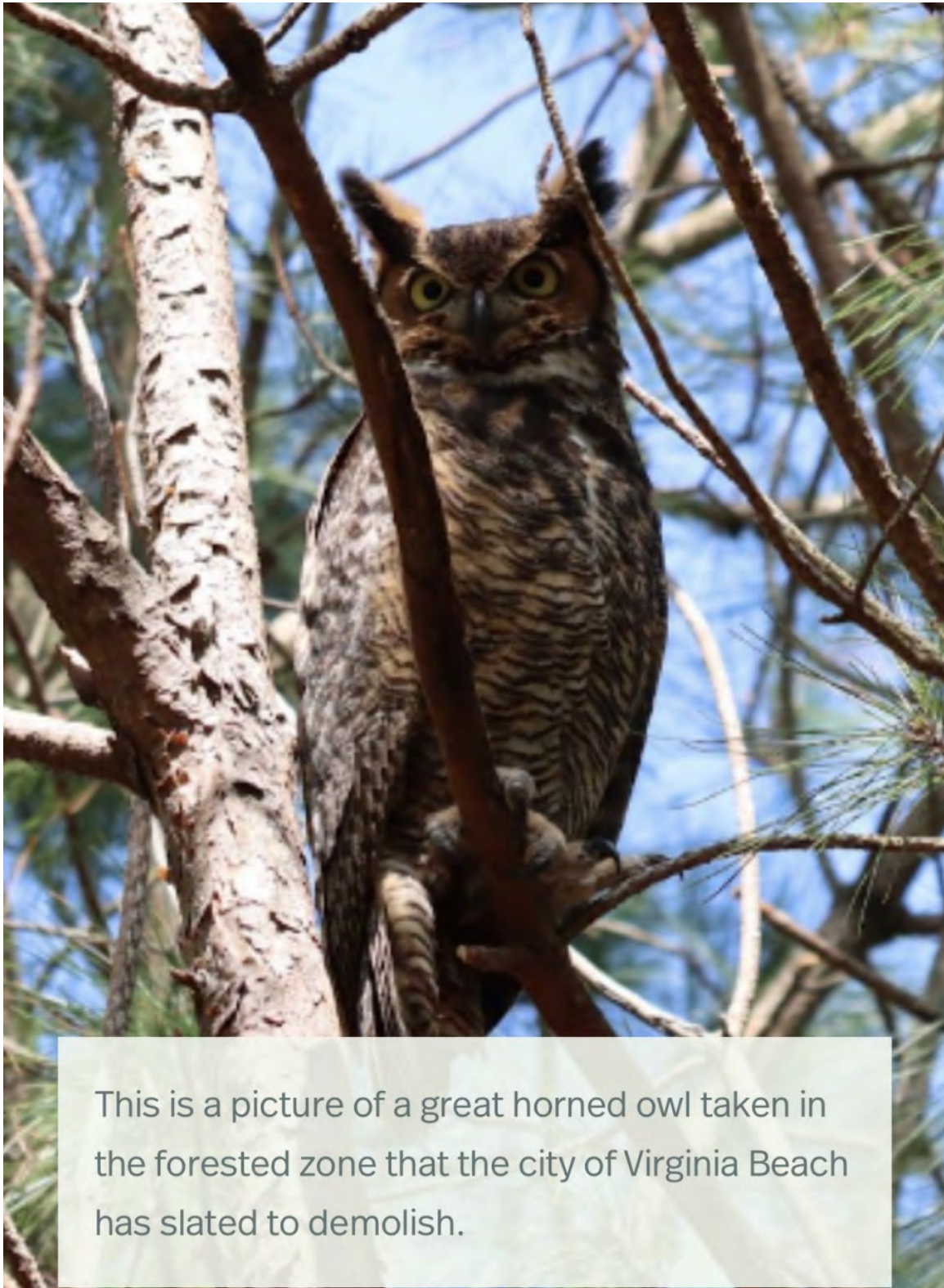
Hello Ms. Marsh,

Thank you for the below email. I  
wanted to touch base and let you know  
that we are currently working on this  
request

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This is a picture of a great horned owl taken in the forested zone that the city of Virginia Beach has slated to demolish.

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Number	Name	Received	Position
14	VIVIAN CLARK	12/28/2024 11:48:48 AM	OPPOSE

THIS AREA HAS BECOME A MARITIME FOREST WITH MATURE TREES AND HABITATS. A PLEASANT, CHARMING RECREATIONAL RESOURCE IN THE CITY THAT SHOULD BE PRESERVED. SURELY THERE MUST BE MANY PAVED AREAS OWNED BY THE CITY? IN CONTRAST TO THESE PLANS, IT WOULD BE WONDERFUL IF VIRGINIA BEACH CITY RESTORED THEIR ASPHALT AND CONCRETE PROPERTIES TO WETLANDS.

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Number	Name	Received	Position
15	VELVET M SMITH	12/28/2024 14:36:00 PM	OPPOSE

PLEASE LISTEN TO THE PRESENTATION AND THE OPINIONS OF MANY STUDENTS AND STAFF FROM MANY LOCAL ORGANIZATIONS THAT STUDY THESE FORESTS. THIS LAND WAS USED FOR DUMPING. IT MADE IT WAY BACK TO A THRIVING AND ESSENTIAL PART TO FLOOD MITIGATION. MANY OF THE HABITAT THAT LIVE THERE, INCLUDING PLANTS WILL NOT SURVIVE. DESTROYING WHAT NATURE HAS GIVEN US. FLOODING WILL S HORRIBLE IN VIRGINIA BEACH. BANKING WETLANDS IS OUTDATED AND SHOULD NOT BE ALLOWED.

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Number	Name	Received	Position
16	KELLY J ARMSTRONG	12/29/2024 11:33:25 AM	OPPOSE

THE DESTRUCTION OF THIS HABITAT AND TREES IS NOT JUSTIFIED AND THE PUBLIC HAS NOT BEEN PROVIDED SUFFICIENT INFORMATION ON THE ANIMALS THAT WILL BE KILLED OR DISPLACED. VB GOV HAS NOT EVEN PROVIDED AN ACTUAL TREE COUNT AND LEFT IT TO SOME GROUP OF STUDENTS TO COUNT. IF VB GOV HAD DONE THE DUE DILIGENCE WARRANTED FOR A DESTRUCTIVE PROJECT OF THIS SIZE, THIS INFORMATION WOULD BE PUBLIC, YET IT IS NOT! THE COST OF THIS PROJECT HAS CHANGED AND THE IMPACT IS TOO GREAT TO JUSTIFY. WE, THE PEOPLE OF THE COMMONWEALTH ARE SPEAKING! THE DEVELOPERS AND COUNCIL MEMBERS NEED TO LISTEN AND SAVE THE HABITAT AND THE WILDLIFE. ONCE IT IS GONE, IT WILL NEVER BE THE SAME AGAIN. THINK OF THE GREATER GOOD, NOT THE GREATER BANK ACCOUNT OF DEVELOPERS!

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Number	Name	Received	Position
17	WINDY S CRUTCHFIELD	12/31/2024 21:52:26 PM	OPPOSE

A SITE PLAN OF THE IMPACT AREA OR "PRELIMINARY MANAGEMENT PLAN" IS PROVIDED ON PAGE 109 OF THE APPLICATION FOR A PERMIT TO DISTURB AND RECONSTRUCT THIS PARCEL. THIS MAP SHOWS A SECTION OF MARITIME FOREST ON THE WEST BUT ELIMINATES IT FROM THE PARCEL WHERE THE IMPACT IS PLANNED. THE MARITIME FOREST THAT EXISTS ON THE CITY PARCEL OF PLEASURE HOUSE POINT IS AN IMPORTANT FEATURE TO THE ENTIRE ECOSYSTEM THAT SHOULD NOT BE CASUALLY DISCARDED. WHEN THIS PROPERTY WAS ACQUIRED BY THE CITY IT WAS DESCRIBED AS A "GLOBALLY RARE MARITIME FOREST" THAT WAS BEING PRESERVED FOR THE "BENEFIT OF FISH AND WILDLIFE DEPENDENT THEREON." THE CITY OF VIRGINIA BEACH SHOULD NOT BE GRANTED THE ABILITY TO DESTROY OR DISTURB THIS PRECIOUS AND DWINDLING MARITIME FOREST. I AM NOT OPPOSED TO RE-ESTABLISHING THE WETLAND ENVIRONMENT THAT EXISTED HERE AND IMPROVING IT FOR THE BETTERMENT OF THE WATERWAYS. I AM VERY OPPOSED TO THE CLEAR-CUTTING AND ABJECT DISREGARD FOR THE EXISTING AND THRIVING TREED ECOSYSTEM BOTH THE LOBLOLLY PINES AND THE 100+ YEAR OLD LIVE OAKS . THE CITY SHOULD BE PROHIBITED FROM DESTROYING THIS MARITIME FOREST.

I HAVE SOME CONCERNS ABOUT THE APPLICATION BEYOND THE PROJECT. EXHIBIT 7 INDICATES THE LAST DELINEATION OF THE PROPERTY WAS DONE IN 2015, WHICH IS NOW A DECADE AGO. THE PROPERTY HAS GROWN IN THAT TIME AND, IN MY OPINION, RECOVERED SINCE THEN. A NEW WETLAND DELINEATION SHOULD BE DONE PRIOR TO ANY PERMIT ISSUANCE. FURTHER, I AM CONCERNED THAT THE ONLY PRESENTATION TO THE PUBLIC WAS DONE IN 2017, WHICH CONSISTED OF A DIFFERENT PLAN THAT INCLUDED A KAYAK LAUNCH, PUBLIC RESTROOMS, AND A PARKING LOT. WE HAVE ONLY THIS MONTH LEARNED OF THE PROJECT AS IT WAS PRESENTED AT A CITY COMMISSION MEETING, WHICH SHOULD NOT BE CONSIDERED A TRUE PUBLIC MEETING. THE PERMIT APPLICATION SUMMARY INDICATES NEW DREDGING WOULD BE 160 CUBIC YARDS, WHEREAS THE PUBLIC HAS BEEN ADVISED THAT 60,000 CUBIC YARDS WILL BE DREDGED. IN ADDITION, THE APPLICATION BEFORE YOU STATES THAT THE PERMIT 2020-0645 WAS WITHDRAWN BEFORE BEING ISSUED DUE TO "LACK OF FUNDING," BUT IT APPEARS IT WAS WITHDRAWN ON 10/17/2024 BECAUSE THE WHITEHURST SPOILS SITE IS NEAR CAPACITY AND THEY WANT TO ADD OCEANA AS AN ALTERNATIVE. I DON'T UNDERSTAND WHY IT WAS REQUESTED TO "DELETE THE CURRENT PHP APPLICATION" JUST TO CHANGE A SPOILS DELIVERY SITE AND THEN SAY IT WAS WITHDRAWN DUE TO LACK OF FUNDING JUST THREE MONTHS BEFORE ASKING TO TRANSFER FUNDING TO PAY FOR THE PROJECT. I BELIEVE ADDITIONAL SCRUTINY IS MERITED HERE. THE LETTER FURTHER DESCRIBES THIS AS A "VERY HOT ITEM FOR THE CITY." THE SUDDEN SPEED AT WHICH THIS PROJECT IS UNFOLDING MAKES MANY OF US VERY LEERY THAT IT WILL BE DONE WITH THE LEAST IMPACT POSSIBLE AND WITH THE MOST CRITICAL EVALUATION AVAILABLE. PAGE 1 OF THE VMRC COVER LETTER STATES THAT THIS PROJECT AVOID IMPACTS WHERE POSSIBLE, WHEREAS IN ACTUALITY, THERE HAS BEEN NO ATTEMPT BY THE DESIGN TEAM TO AVOID DISTURBING THE EXISTING "GLOBALLY RARE MARITIME FOREST" ON THE CITY PARCEL. I ASK THAT A CURRENT COMPREHENSIVE ENVIRONMENTAL IMPACT STUDY BE CONDUCTED ON THE PROPERTY, INCLUDING NEW WETLAND DELINEATIONS, AND THAT THE MARITIME FOREST BE PRESERVED, AS INTENDED, WHEN THE PLEASURE HOUSE POINT NATURAL AREA WAS ACQUIRED AS A PRESERVATION. THANK YOU FOR YOUR MOST DILIGENT ATTENTION ON THIS PROJECT.

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Number	Name	Received	Position
18	SANDRA SHINABARGER	12/31/2024 15:32:51 PM	OPPOSE

PLEASE FIND ANOTHER SOLUTION TO OBTAIN THE WETLANDS CREDITS TO COMPLETE THE BOW CREEK PROJECT. NEARBY RESIDENTS NEED TO KEEP THIS WOODED AREA TO MAINTAIN THEIR QUALITY OF LIFE. PLEASE UPDATE VIEWS REGARDING FORESTS AND NATIVE EVERGREEN PINES. EVERGREENS PROTECT NEARBY HOMES ALL YEAR LONG ESPECIALLY WINTER TIME FROM HIGH WINDS, FLOODING, AND NOISE POLLUTION. THESE 5,000 TREES AT PLEASURE HOUSE POINT AFFECT WATER CYCLES AND CLIMATE. REPLACING ONLY 1/10TH OF THE NUMBER OF THESE TREES, TAKING DECADES FOR THEM TO BECOME THEIR CURRENT SIZE, IS NOT ACCEPTABLE. TREE LOSS HAS ALREADY BEEN SO RAMPANT THAT THIS AREA IS NOW SEEING MORE DANGEROUS AND LESS PREDICTABLE WEATHER CHANGES LIKE TORNADOES, UNEXPECTED TORRENTIAL DOWNPOURS, AND LONG PERIODS OF NO RAIN. REMOVING ANOTHER FOREST CAN CAUSE FLOODING IN OTHER AREAS OF VIRGINIA BEACH. IT IS ALREADY SO HOT IN THE SPRING AND SUMMER AT THIS PLEASURE HOUSE POINT AREA AND FURTHER TREE REMOVAL WILL CERTAINLY WORSEN THE RELENTLESS HEAT. IT DID NOT SOUND LIKE THE PROJECT PLANS WERE COMPLETE AND SOUNDED LIKE THERE COULD BE WAYS TO LEAVE HUNDREDS MORE RARE MARITIME TREES IN TACT.

Attachments:

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Number	Name	Received	Position
19	ELIZABETH S ELKS-STAGG	01/02/2025 21:38:17 PM	OPPOSE

THE WILDLIFE THAT IS VERY ABUNDANT, THE TREE CANOPY, THE NATURE PARK, WALKING TRAILS, THE  
ENDANGERED WILDLIFE, PILEATED WOODPECKER, THE BALD EAGLE , THE OYSTERS, THE CLAMS, THE  
FISH, THE CHILDREN. THEY ALL PLAY IN THE AREA AND THRIVE ON NATURAL RESOURCES. AS AN ADULT I  
THRIVE IN THE ENVIRONMENT, SO PEACEFUL, A PLACE TO PRAY.

Attachments:  
Submitted photos for this comment will begin on next page.

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# Virginia Marine Resources Commission

## Habitat Management Public Comments

### Application Number 20242851

Print Date: Wednesday February 19 2025 16:40

Number	Name	Received	Position
20	WALT L STONE	01/16/2025 17:38:11 PM	OPPOSE

AFTER REVIEWING THE SITE LINKED IN VMRC REF: OYSTER COLONY SITES LOCATED IN THE CREEK AND ADJACENT LYNNHAVEN WATERS, IT SEEMS THERE IS A MASSIVE OYSTER POPULATION LOCATED THROUGHOUT INCLUDING DIRECTLY INSIDE THE DREDGING AREA. HOW HAS THE APPLICANT EXPLAINED MITIGATION FOR THIS TO AVOID DEATH/DAMAGE TO THESE AREAS THAT FALL WITHIN VMRC SUBAQUEOUS REVIEW.

HOW WILL THE APPLICANT MEASURE FOR AND CONTROL THE SHEET FLOW STORM DRAINAGE RUNOFF FROM NON POINT SOURCES THAT WILL EXPONENTIALLY INCREASE WHEN THE 12 ACRES ARE TURNED INTO AN EXCAVATED DIRT FIELD CLEAR PLAIN WITH ZERO BUFFER/ROOT SYSTEMS OR OTHER MEANS PRESENT TO CONTAIN/ABSORB INCLUDING THE LARGE AREA OF DREDGING THAT WILL IMMEDIATELY IMPACT MARINE/SHELLFISH THERE? IT HAS TAKEN YEARS FOR THE OYSTER POPULATION TO ESTABLISH THERE. REMOVING/EXCAVATING AN ENTIRE RPA/RMA WETLAND AREA ACROSS 12 AND CREATING ESSENTIALLY A DIRT FIELD PLAIN WILL ELIMINATE ALL MEANS TO CONTROL/CONTAIN BY NATURAL DETAINMENT AND FILTERING/ABSORPTION. THAT IS NOT MINIMIZATION OR AVOIDANCE.

CONTAMINANTS IN SHEET FLOW RUN OFF WILL FREELY MOVE INTO THE SURROUNDING WATERS AND INTO THE OYSTER COLONIES WHEN A 25' BERM OPENING HAS BREECHED THE EXISTING OUTER PERIMETER. IT APPEARS THAT CHANNEL 3 ALSO RECEIVES OUTPUT OF STORM DRAINAGE FROM OCEAN PARK ABOVE.

SHOULD A LARGE STORM EVENT STRIKE THIS AREA PUSHING INLAND WATERS UP TO HIGHER LEVELS, THEY WILL EASILY PENETRATE THROUGH THE 25' BERM OPENING AND THE DREDGED OUT AREAS ACROSS THE 12 ACRES, BRINGING OUT EVEN HEAVIER LOADS OF CONTAMINANTS INTO THE OUTLYING WATERS DURING AND AFTER. THAT CANNOT BE MITIGATED FOR AND MUST BE AVOIDED ENTIRELY.

ULTIMATELY THIS RECONFIGURATION WILL CONTRIBUTE TO DESTRUCTION OF THE OYSTER COLONY BEDS AND AN OUTPOURING OF UNCONTAINED CONTAMINANTS - JUST AS ALL ENVIRONMENTAL RESEARCH STUDY LITERATURE IN THIS AREA WARNS AGAINST WHEN A WOODED COASTAL WETLAND AND ITS RMA ARE WIPED OUT.

WE HAVE PREVIOUSLY COMMENTED BUT WILL REPEAT THAT THE DESTRUCTION OF THIS AREA AND ITS FEATURES WITHIN WOODED NON TIDAL AND TIDAL WETLAND WILL IMMEDIATELY AND COMPLETELY WIPE OUT ALL WILDLIFE HABITAT WHERE THREATENED AND PROTECTED MIGRATORY BIRD SPECIES UNDER TIER IA- ST AND TIER IIA PER USFWS HAVE BEEN DOCUMENTED TO BE LIVING/BREEDING/FORAGING. ALL NESTS LOCATED WITHIN THIS AREA WILL BE DESTROYED WITH PROTECTED BIRDS KILLED OR DISPLACED. THERE IS ZERO MITIGATION FOR THIS. AT LAST COUNT THERE WERE 11 SPECIES PHOTOGRAPHED IN THIS AREA INCLUDING BALD AND GOLDEN EAGLES, PEREGRINE FALCONS, GULL BILLED TERNS, AMERICAN BLACK DUCKS, AMERICAN OYSTERCATCHERS DESTROYED FOOD SUPPLY SNOW EGRETS, LITTLE BLUE HERONS AND OTHERS. THIS PROJECT WILL HAVE CATASTROPHIC CONSEQUENCES AND SHOULD BE FLATLY DENIED. THE APPLICANTS SHOULD BE DIRECTED IN EVALUATING THE SAND FLATS/SCRUB BRUSH AND TREELESS AREAS AT THE FAR EASTERN END WHERE THERE IS FAR LESS IMPACT ASSOCIATED AND

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NEAR ZERO KNOWN MARINE AND WILDLIFE DESTRUCTION IN ORDER TO ACHIEVE FULL MINIMIZATION AND AVOIDANCE AND TO CREATE TIDAL WETLAND AS NECESSARY

# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

Print Date: Wednesday February 19 2025 16:40

Number	Name	Received	Position
21	JULIA CHERRY	01/23/2025 11:31:20 AM	OPPOSE

I AM AGAINST THE DESTRUCTION OF THE TREES AND THE DEATH SENTENCE TO THE PROTECTED SPECIES OF BIRDS AND WILDLIFE THRIVING IN THEIR ESTABLISHED FOREST AND WETLANDS. LET THE TREES STAND AND THRIVE IN THEIR NATURAL ENVIRONMENT. THE TREE CANOPIES AT PLEASURE HOUSE POINT ARE ABSOLUTELY STUNNING.

THEY ARE PERFECTLY POSITIONED AS IF THEY WERE PURPOSEFULLY PLANTED BY PROFESSIONALS. THE NATURAL TRAILS ARE A TREASURE FOR THE CITY OF VB AND THE THOUSANDS OF VISITORS WHO COME TO ENJOY NATURE AT ITS BEST.

VIRGINIA BEACH RANKS HIGHER THAN ANY OTHER CITY ON THE COAST FOR DESTROYING TREES. PLEASE DONâ€™T ALLOW THE CITY TO SPIN THEIR NARRATIVE THAT THIS HAS TO BE DONE. THE LAND SHOULD BE PROTECTED. ITâ€™S TIME TO STOP THIS WAR ON NATURE.

ITâ€™S TIME TO END IRRESPONSIBLE PRACTICES BY VIRGINIA BEACH CITY LEADERSHIP.

PLEASE SAVE AND PRESERVE PLEASURE HOUSE POINT ~ SAVE THE HOMES OF OUR WILDLIFE.

JULIA M. CHERRY

Attachments:

Submitted photos for this comment will begin on next page.

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1737650101.jpg



1737650101.jpg



# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

Print Date: Wednesday February 19 2025 16:40

Number	Name	Received	Position
22	AUSTIN MADDEN	01/28/2025 23:41:44 PM	OPPOSE

DEAR MEMBERS OF THE VIRGINIA MARINE RESOURCES COMMISSION AND VIRGINIA BEACH PUBLIC WORKS,

I AM SUBMITTING THIS PUBLIC COMMENT TO OPPOSE THE PROPOSED MECHANICAL DREDGING AND WETLAND MITIGATION PROJECT AT PLEASURE HOUSE POINT APPLICATION NO. 20242851 .

AS A RESIDENT DIRECTLY IMPACTED BY THIS PROJECT, I HAVE SIGNIFICANT CONCERNS ABOUT THE ENVIRONMENTAL CONSEQUENCES, INCREASED FLOOD RISKS, AND THE LACK OF TRANSPARENCY AND UP TO DATE STUDY’S SURROUNDING THIS DECISION.

THE REMOVAL OF 5,000+ TREES AND CREATING OF MAN MADE CHANNELS WILL IRREVERSIBLY DAMAGE THE LOCAL ECOSYSTEM. THESE TREES PROVIDE ESSENTIAL STORMWATER FILTRATION, WILDLIFE HABITAT, AND WIND PROTECTION FOR THE RESIDENTS OF OCEAN PARK.

I AM CONCERNED THAT THIS PROJECT WILL RESULT IN INCREASED FLOOD RISKS TO RESIDENTS ON THE SOUTHSIDE OF CHESTERFIELD AVENUE. LOWERING THE ELEVATION THROUGH DREDGING AND TREE REMOVAL COULD LEAVE RESIDENTS MORE VULNERABLE TO FLOODING, STORM SURGES, EROSION, AND WIND DAMAGE. NOT TO MENTION AN INCREASE FLOOD INSURANCE AND WIND INSURANCE PREMIUMS. I SUGGEST AN INDEPENDENT FLOOD IMPACT AND HYDROLOGICAL STUDY BASED ON SCENARIOS OF HURRICANE AND NORTHEASTER WEATHER CONDITIONS. THIS PROJECT AREA ALREADY FLOODS I HAVE SEEN FIRST HAND.

THE CITY APPEARS TO BE PRIORITIZING WETLAND MITIGATION BANKING OVER RESIDENT SAFETY AND ENVIRONMENTAL PRESERVATION.

USING THIS AREA TO COMPENSATE FOR LOST WETLAND CREDITS ELSEWHERE SUGGESTS MISMANAGEMENT OF WETLAND MITIGATION POLICIES AND INEPT CITY PLANNING, FORCING A LOCAL ENVIRONMENTAL SACRIFICE FOR THE BENEFIT OF UNRELATED DEVELOPMENT PROJECTS.

RESIDENTS HAVE NOT BEEN ADEQUATELY INFORMED OR CONSULTED ABOUT THE LONG-TERM CONSEQUENCES OF THIS PROJECT.

I STRONGLY URGE VMRC AND VIRGINIA BEACH PUBLIC WORKS TO DENY APPLICATION NO. 20242851 UNTIL A COMPREHENSIVE ENVIRONMENTAL IMPACT AND FLOOD RISK ASSESSMENT IS CONDUCTED BY AN INDEPENDENT THIRD PARTY. THERE HAS BEEN NO STUDY SHARED WITH LOCAL RESIDENTS.

THE CITY OF VIRGINIA BEACH HAS A RESPONSIBILITY TO PRIORITIZE ENVIRONMENTAL PRESERVATION AND RESIDENT SAFETY OVER BUREAUCRATIC CONVENIENCE. DESTROYING AN ESTABLISHED NATURAL ECOSYSTEM IN THE NAME OF WETLANDS MITIGATION IS COUNTERPRODUCTIVE AND HARMFUL TO BOTH THE ENVIRONMENT AND THE COMMUNITY.

I APPRECIATE YOUR TIME AND CONSIDERATION AND URGE YOU TO REJECT THIS APPLICATION, IF IT PROCEEDS WITHOUT ADEQUATELY ADDRESSING THE FLOOD RISKS AND IMPACTS TO RESIDENTS IT WOULD BE A BREACH OF DUTY/DUTY

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OF CARE AND CONSIDERED NEGLIGENT UNDER VIRGINIA LAW.

SINCERELY,  
AUSTIN MADDEN

**NEXT STEPS:**

- â€¢ SUBMIT THIS COMMENT TO VMRC & VIRGINIA BEACH PUBLIC WORKS BEFORE THE DEADLINE.
- â€¢ ENCOURAGE NEIGHBORS AND LOCAL ENVIRONMENTAL GROUPS TO SUBMIT SIMILAR OPPOSITION LETTERS.
- â€¢ REQUEST A PUBLIC HEARING AND CONTACT LOCAL MEDIA TO BRING AWARENESS TO THE ISSUE.
- â€¢ ATTEND CITY COUNCIL MEETINGS AND VOICE CONCERNS IN PERSON IF POSSIBLE.

WOULD YOU LIKE HELP FINDING WHERE TO SUBMIT THIS COMMENT OR CONTACTING THE APPROPRIATE OFFICIALS?

# Virginia Marine Resources Commission Habitat Management Public Comments Application Number 20242851

*Print Date: Wednesday February 19 2025 16:40*

Number	Name	Received	Position
23	LISAM WATTS	01/30/2025 11:49:09 AM	OPPOSE

SEEMS LIKE THE WRONG DIRECTION WHEN CITY COUNCIL HAS WAITED THIS LONG TO GET CREDITS TO PROCEED WITH WINDSOR OAKS FLOOD MITIGATION ND NOW HAS TO DESTROY A MARITIME FOREST THAT IS HOME TO ENDANGERED SPECIES, SUCH AS THE LONG EARED BAT AS WELL AS A PLACE WHERE GOLDEN AND BALD EAGLES ARE SEE REGULARLY. THIS IS A BEAUTIFUL HABITAT ENJOYED BY MANY, MANY LOCAL PEOPLE AND SPRING IS THE TIME WHEN MOST MAMMALS ARE NESTING. WHAT IS GOING TO BE DONE TO MITIGATE THIS DAMAGE? WHERE ARE TREES BEING PLANTED TO OFFSET THE DESTRUCTION OF ALL THE TREES WITHIN THIS PROJECT? WHEN ENVIRONMENTAL STUDIES SHOW THAT TRYING TO BRING LAND BACK TO ITS ORIGINAL STATE IS SELDOM SUCCESSFUL, WHY IS CITY COUNCIL TRYING TO PASS THIS OFF AS SOMETHING THAT WILL HAVE A POSITIVE IMPACT?  
SO, WE ARE GOING TO DESTROY THIS HABITAT IN ORDER TO GET CREDITS SO WE CAN DESTROY ANOTHER ONE?  
SURELY, THERE HAS TO BE A BETTER OPTION THAN THIS! PLEASE DO WHATEVER WE CAN TO STOP THIS LUNACY AND SAVE THE LIVES THAT WILL BE IMPACTED! STOP THE PHP PROJECT! PLEASE LET THE CITIZENS OF VIRGINIA BEACH WHO LOVE THIS AREA KEEP IT AS IS. THANK YOU!

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Number	Name	Received	Position
24	CHRISTY EVERETT	02/19/2025 16:00:48 PM	NO POSITION

PLEASE SEE THE ATTACHED LETTER.

Attachments:  
[https://webapps.mrc.virginia.gov/public/habitat/pc\\_pdfGet.php?id=1108](https://webapps.mrc.virginia.gov/public/habitat/pc_pdfGet.php?id=1108)



February 19, 2025

The Honorable Jamie Green  
Commissioner  
Virginia Marine Resources Commission  
380 Fenwick Rd.  
Hampton, VA 23651

*Submitted via email only to: [tiffany.birge@mrc.virginia.gov](mailto:tiffany.birge@mrc.virginia.gov)*

**RE: Comments on the City of Virginia Beach Proposal for Mechanical Dredging in  
Pleasure House Creek**

Dear Commissioner Green,

On behalf of the Chesapeake Bay Foundation (CBF), I wish to provide the following comments regarding the City of Virginia Beach permit application #24-2851 to mechanically dredge a 20-foot wide by 63-foot-long subtidal area to a maximum depth of minus two feet mean low water within Pleasure House Creek.

The dredging is proposed near a shallow, intertidal oyster reef complex that covers 11.02 acres of subaqueous bottom throughout Pleasure House Creek as depicted in the maps below. During the design and construction of this oyster reef restoration project, a fairway was provided in anticipation of this effort; therefore, CBF is aware of the City of Virginia Beach's plans to create a water channel connecting to the proposed municipal Pleasure House Point Mitigation Bank. We do, however, have concerns that the dredging activity and subsequent tidal action in the mitigation bank prior to the establishment of proposed vegetation could pose degradation to the oyster reef ecosystem due to increased turbidity and sedimentation especially during oyster spawning season.

In order to address these concerns, CBF requests the Virginia Marine Resources Commission (VMRC) implement the following mitigation practices to reduce negative impacts on water quality around the oyster reef restoration project in Pleasure House Creek before, during, and after dredging activities:

- A pre-dredge meeting to ensure all parties are aware of the scope, boundaries, and timeline of the project
- Confirmation that silt fencing is in working order to reduce upland sediment from entering the creek
- Placement of silt booms along the perimeter of the dredging activity to help ensure protection of the oyster reef

- Development of a plan and deployment of necessary temporary measures to reduce sedimentation during establishment of wetland vegetation within the mitigation bank.

CBF staff would further offer to be onsite during dredging activities near the Pleasure House Creek oyster reef.

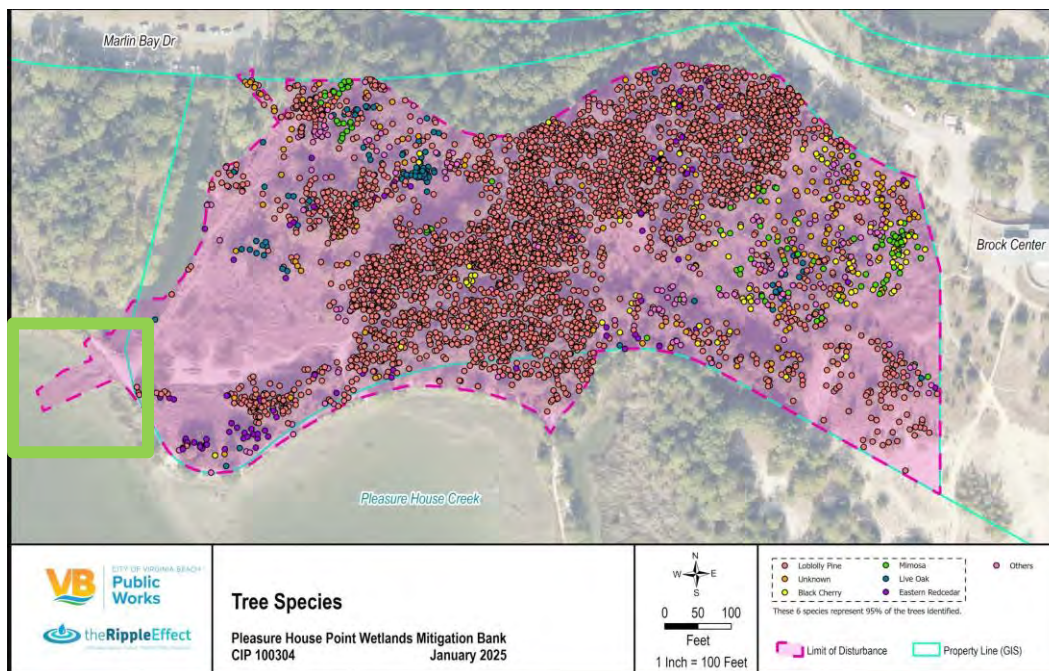
Thank you for your vital role in managing the Commonwealth's natural resources. We appreciate your consideration of these comments.

Respectfully,

A handwritten signature in black ink, appearing to read 'J Shannon', with a stylized flourish at the end.

Jackie Shannon  
Virginia Oyster Restoration Manager  
Chesapeake Bay Foundation

cc: VMRC Associate Commissioners  
Alison Prost, Vice President EPR, CBF  
Chris Moore, Virginia Executive Director, CBF  
Christy Everett, Hampton Roads Director, CBF  
Chris Gorri, Brock Center Manager, CBF



**A map by Virginia Beach Public Works showing the City project's limit of disturbance. The green square indicates proposed dredging near of the oyster reef restoration project.**



**Aerial imagery of the proposed dredging near the oyster reef**

**restoration project in Pleasure House Creek. The dark lines show the reef. The pink square shows the dredging project's approximate limit of disturbance.**

**From:** [Birge, Tiffany \(MRC\)](#)  
**To:** [MRC - jpa Permits](#)  
**Subject:** FW: Shellfish TOYR for the Lynnhaven  
**Date:** Monday, February 10, 2025 9:33:48 AM

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Please process the email as VIMS comments for 24-2851, City of VB.  
Thanks!

**Tiffany Birge**  
Environmental Engineer, Habitat Management

Virginia Marine Resources Commission  
Building 96, 380 Fenwick Road  
Ft. Monroe, VA 23651

[Tiffany.birge@mrc.virginia.gov](mailto:Tiffany.birge@mrc.virginia.gov), 757-247-2254

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**From:** Lyle M. Varnell <lyle@vims.edu>  
**Sent:** Monday, February 10, 2025 9:32 AM  
**To:** Birge, Tiffany (MRC) <Tiffany.Birge@mrc.virginia.gov>  
**Cc:** Advisory <advisory@vims.edu>; Howell, Beth (MRC) <Beth.Howell@mrc.virginia.gov>  
**Subject:** Shellfish TOYR for the Lynnhaven

Good morning, Tiffany:

This responds to your question of the need for protection of shellfish reproduction from dredging operations in the Lynnhaven River; specifically for the proposed dredging at Pleasure House Point. Dense beds of oysters within and proximal to the channel delineated for dredging were observed during our recent site visit. To provide water quality protection throughout the oyster spawning season we recommend consideration of a time-of-year restriction on dredging that extends from July 1<sup>st</sup> through September 30<sup>th</sup>.

Please let me know if you have questions.

Lyle

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**Lyle Varnell**  
Associate Director for Advisory Services  
Office of Research and Advisory Services  
(804) 684-7764



**From:** [Birge, Tiffany \(MRC\)](#)  
**To:** [MRC - jpa Permits](#)  
**Subject:** FW: ESSLog# 40613\_Pleasure House Point Mitigation Bank\_DWR\_HLB20250214  
**Date:** Friday, February 14, 2025 10:27:45 AM  
**Attachments:** [Northern Diamond-Backed Terrapin Information Sheet.docx](#)

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Please process the email and attachment as DWR comments for 24-2851, CVB.

Thanks!

Tiffany Birge

Environmental Engineer, Habitat Management

Virginia Marine Resources Commission  
Building 96, 380 Fenwick Road  
Ft. Monroe, VA 23651

[Tiffany.birge@mrc.virginia.gov](mailto:Tiffany.birge@mrc.virginia.gov), 757-247-2254

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**From:** Brann, Lee (DWR) <Lee.Brann@dwr.virginia.gov>  
**Sent:** Friday, February 14, 2025 9:20 AM  
**To:** Birge, Tiffany (MRC) <Tiffany.Birge@mrc.virginia.gov>  
**Cc:** nhreview (DCR) <nhreview@dcr.virginia.gov>; Strawderman, Nicole (DWR) <Nicole.Strawderman@dwr.virginia.gov>; Boettcher, Ruth (DWR) <Ruth.Boettcher@dwr.virginia.gov>; Norris, David (DWR) <David.Norris@dwr.virginia.gov>; Cooper, Jeffrey (DWR) <Jeff.Cooper@dwr.virginia.gov>; Thomas, Meagan (DWR) <Meagan.Thomas@dwr.virginia.gov>; Schul, Hannah (DWR) <Hannah.Schul@dwr.virginia.gov>  
**Subject:** ESSLog# 40613\_Pleasure House Point Mitigation Bank\_DWR\_HLB20250214

Ms. Birge,

We have reviewed the subject project that proposes to develop a wetland mitigation bank, to include the construction of a pedestrian bridge, at Pleasure House Point in Virginia Beach. We document federally endangered state endangered Kemp's Ridley Sea Turtles, federally threatened state threatened Loggerhead Sea Turtles, federally threatened state threatened Green Sea Turtles, federally endangered state endangered North Atlantic Right Whales, and federally threatened state endangered West Indian Manatees from the project area. Northern Diamond-Backed Terrapins, a Collection Concern species, are also documented from the project area.

Given the scope and location of the proposed work, we do not anticipate it to result in significant adverse impacts upon listed sea turtles, North Atlantic Right Whales, or West Indian Manatees. However, we recommend coordination with NOAA Fisheries Service to ensure the protection of listed sea turtles and marine mammals known from the project area.

DWR has concerns about potential adverse impacts upon Northern Diamond-Backed Terrapins that may result from activities associated with this project, particularly the potential for individuals of this species to be attracted to the disturbed areas along the shoreline, to areas where soil is deposited, and to other areas at the project site. To deter the terrapins from accessing these areas and attempting to nest in areas that are ultimately unsuitable for nesting, we recommend that appropriate silt fence exclusion be installed along the perimeter of the project site. We recommend that the fencing be checked periodically to ensure there are no gaps or breakage points which would allow terrapin entry into the project zone.

In addition, we recommend that, prior to the start of construction, all contractors working at the project site are trained in the identification, basic natural history, and legal status of Northern Diamond-Backed Terrapins. This could be accomplished via an appropriate information sheet distributed to those working on the project (see attached). We recommend adherence to the guidance provided in the attached information sheet,

including the measures recommended in the event that a terrapin is encountered at the project site.

The project site is located in an area of the Commonwealth known to have a year-round presence of federally endangered state endangered Northern Long-Eared Bat (NLEB). If your project has a federal connection (nexus), the U.S. Fish and Wildlife Service in Virginia has developed a website that provides the steps and information necessary to allow any individual or entity requiring review/approval of their project to complete a review and come to the appropriate conclusion regarding potential project impacts on Northern Long-Eared Bats. This site can be accessed at <https://www.fws.gov/office/virginia-ecological-services/virginia-field-office-online-review-process>. You may also need to coordinate with the appropriate federal agency that is authorizing, funding, or carrying out the proposed activity.

If your project has no federal nexus, and tree removal is proposed, we recommend the options below to avoid adverse impacts upon NLEB:

Option 1: Assume that NLEBs are present on site and adhere to a time of year restriction on any tree clearing within close proximity of NLEB from December 15 - February 15 and May 1 - July 15 of any year.

Option 2: Hire a consultant to perform a NLEB survey, in adherence to Service protocols, throughout the project/activity site and coordinate the results of that survey with DWR.

U.S. Fish & Wildlife Service Survey Protocols are available here:

<https://www.fws.gov/media/range-wide-indiana-bat-and-northern-long-eared-bat-survey-guidelines>

Coordinate with DWR: Rick Reynolds, DWR Mammologist, at 540-248-9360 or [Rick.Reynolds@dwr.virginia.gov](mailto:Rick.Reynolds@dwr.virginia.gov) and with DWR's Environmental Services Section at 804-481-5296 or [ESSProjects@dwr.virginia.gov](mailto:ESSProjects@dwr.virginia.gov). Upon review of the survey results, the DWR will make final comments regarding the protection of Northern Long-Eared Bats associated with your project.

Several Colonial Waterbird Colonies, known to support multiple waterbird species, are documented from the project area. To best protect Colonial Waterbirds from adverse impacts associated with this project, we recommend performing a visual assessment throughout the project area and adjacent lands to determine if rookeries are present within the project site or adjacent to it. We also recommend checking the [CCB Mapping Portal](#) for the newest (2018) data on the locations of Colonial Waterbird Colonies in the Commonwealth. We recommend a time of year restriction (TOYR) from February 15 through August 15 of any year on any project activities within 0.25 miles of a rookery. We also recommend maintaining an undisturbed naturally vegetated buffer of at least 500 ft around the rookery.

This project site is located within close proximity of historic and/or active bald eagle nests. To ensure protection of bald eagles in compliance with the Bald and Golden Eagle Act, we recommend using the Center for Conservation Biology (CCB) [Eagle Nest Locator](#) to determine if any active eagle nests are known from the project area. If active bald eagle nests have been documented from the project area, we recommend that the project proceed in a manner consistent with [state and federal guidelines for protection of bald eagles](#); including coordination, if indicated, with the U.S. Fish and Wildlife Service regarding possible impacts upon bald eagles or the need for a federal bald eagle take permit.

We recommend that all tree removal and ground clearing adhere to a time of year restriction (TOYR) protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

We recommend adherence to erosion and sediment controls during ground disturbance. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap.

We recommend use of native species for all plantings and coordination with DCRDNH regarding invasive species management.

The U.S. Fish and Wildlife Service (in Virginia) utilizes an online project review process (<https://www.fws.gov/office/virginia-ecological-services/virginia-field-office-online-review-process>) to facilitate compliance with the Endangered Species Act (16 U.S.C. 1531-1544, 87 Stat. 884) (ESA), as amended. The process enables users to 1) follow step-by-step guidance; 2) access information that will allow them to identify threatened and endangered species, designated critical habitat, and other Federal trust resources that may be affected

by their project; and 3) accurately reach determinations regarding the potential effects of their project on these resources as required under the ESA. If you have questions regarding the online review process, please contact Rachel Case at [rachel\\_case@fws.gov](mailto:rachel_case@fws.gov).

This project is located within 2 miles of a documented occurrence of a state or federal threatened or endangered plant or insect species and/or other Natural Heritage coordination species. Therefore, we recommend coordination with VDCR-DNH regarding protection of these resources.

Thank you,

**Lee Brann**

Environmental Services Biologist

**Wildlife Information and Environmental Services**

**P** 804.367.1295

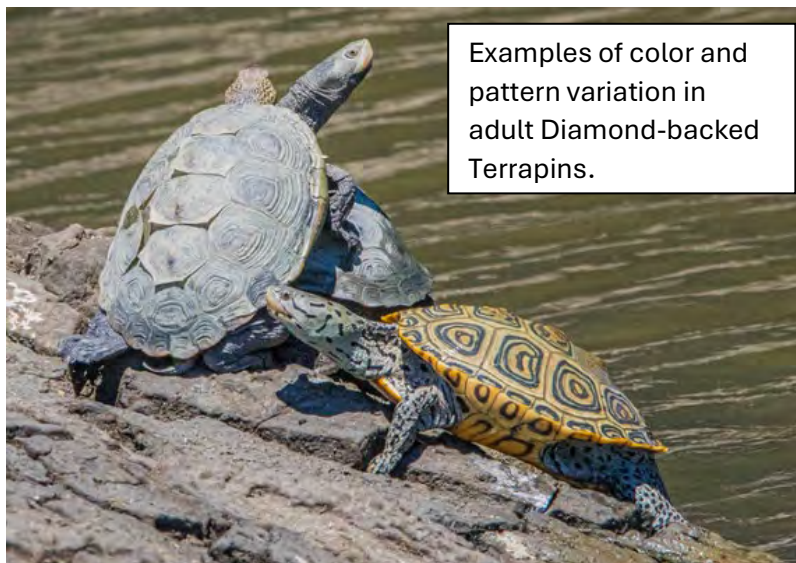
**C** 804.481.1934

**Department of Wildlife Resources**

*CONSERVE. CONNECT. PROTECT.*

**A** 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228

[www.VirginiaWildlife.gov](http://www.VirginiaWildlife.gov)



### **Diamond-backed Terrapin (*Malaclemys terrapin*)**

This is a moderate-sized estuarine turtle which is incredibly variable in coloration and pattern. The upper shell has a slightly raised middle ridge/keel but is otherwise smooth and can be gray, brown, yellowish green, or nearly black, and has brown concentric circles alternating with gray, black, or yellow. The bottom shell is yellowish to greenish, and often has an irregular pattern of black flecks; it may have a dark brown blotch in each scute and the margins of the scutes may be outlined with thin black lines. The skin varies in shade from white to black but is usually gray with an irregular pattern of small to large darker colored flecks.

Adult terrapins overwinter within creek beds and banks while juveniles hibernate in sandy soils above the high tide line. Hibernation generally occurs from October through late March. During warmer months, females typically come on land to lay clutches of 7-14 eggs in loose, sandy soils above the high tide line. Hatchlings typically emerge later that summer OR may overwinter in a nest and not emerge until the following spring.

**Specific recommendations to be used in conjunction with the Pleasure House Point Wetlands Restoration Project:**

- Utilize **silt fencing around the entirety of the project area** to prevent female terrapins from accessing and nesting in disturbed soils. Fencing should be checked periodically to ensure there are no gaps or breakage points which would allow turtle entry into the project zone.
- If any **injured terrapins** are found on site, please contact a wildlife rehabilitator (recommended contact numbers included, below) who is permitted to care for injured wildlife.
- **Prior to April 1, 2025:** Any terrapins found WITHIN the project/work area should not be released and instead should go to a permitted wildlife rehabilitator (recommended contact numbers included, below) for holding until weather is more suitable for release (i.e. after April 1<sup>st</sup>).
- **After April 1, 2025:** Any terrapins found WITHIN a project/work area during construction should be moved out of the construction site to similar habitat, ideally adjacent to project area, and no further than a 1/4 mile up or downstream from the project site. Juveniles and hatchlings should not be let go in the water and instead should be released in a terrestrial habitat above the high tide line, preferably near vegetation which they can use for cover.

**Recommended Wildlife Rehabilitator Contacts:**

- Tidewater Wildlife Rescue Hotline - (757) 255-8710
- Evelyn's Wildlife - (757) 434-3439
- Tidewater Rehabilitation (TREE) - (757) 235-3189
- [DWR Rehabber list](#) (by city)

**If you have any questions concerning Diamond-backed Terrapins, please contact Meagan Thomas, Virginia Department of Wildlife Resources, at 804-965-3013 or [Meagan.Thomas@dwr.virginia.gov](mailto:Meagan.Thomas@dwr.virginia.gov).**





*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

December 30, 2024

**SENT VIA E-MAIL:** [mmundy@VBgov.com](mailto:mmundy@VBgov.com)

Re: Notification that a Virginia Water Protection (VWP) Permit/Coverage is Not Required  
JPA No. 24-2851  
USACE No. NAO-2006-3001  
Pleasure House Point Tidal Wetland Mitigation Bank, Virginia Beach, Virginia

The Virginia Department of Environmental Quality (DEQ) has received your JPA and PCN on December 16, 2024. Provided that the size or scope of the project does not change, the project will not require issuance of a VWP individual permit or VWP general permit coverage per the selected checkboxes below.

If unauthorized impacts occur, you **must** contact DEQ at [ywp.tro@deq.virginia.gov](mailto:ywp.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.

It is the applicant's responsibility to obtain any required approvals, authorizations, or permits from other government agencies or programs for the proposed activities. Note that 23-SPGP-PASDO Category C projects may require coordination with VDEQ's Office of Environmental Impact Review for an individual [Coastal Zone Management Act \(CZMA\) federal consistency](#) determination. Questions regarding federal consistency with Virginia's Coastal Zone Management Program should be directed to Bettina Rayfield at (804) 659-1915 or [bettina.rayfield@deq.virginia.gov](mailto:bettina.rayfield@deq.virginia.gov).

A. Virginia Water Protection Permit Program regulations or State Water Control Law:

- ☐ 1. The project is not proposing impacts to surface waters.
- ☐ 2. The project qualifies for an exclusion from the permitting requirements per 9VAC25-210-60 and/or the provisions noted:
  - ☐ 2.a. Discharges of dredged or fill material into state waters, *except wetlands* [emphasis added], which are addressed under a U.S. Army Corps of Engineers (USACE) Regional, General or

Nationwide Permit, and for which no [individual] § 401 Water Quality Certificate[Certification] is required.

- ☐ 2.b. 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.
- ☐ 2.c. 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)  
  
[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. ]
- ☐ 2.d. Normal residential gardening and lawn and landscape maintenance in a wetland. (§ 62.1-44.15:21.G)
- ☐ 2.e. Maintenance of currently serviceable structures.
- ☐ 2.f. 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.
- ☐ 2.g. Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site.
- ☐ 2.h. Normal agriculture and silviculture activities in a wetland. (§ 62.1-44.15:21.G)
- ☐ 2.i. 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 that: (i) no surface water withdrawal is proposed; (ii) the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch; and, (iii) 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)
- ☐ 2.j. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.
- ☐ 2.k. 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)

- ☐ 3. 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).
- ☒ 4. The activity does not impact instream flows; the activity qualifies for a permit issued by the USACE; and the project proponent 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).

B. Section 401:

- ☒ 1. This letter confirms a waiver of § 401 Water Quality Certification for purposes of federal permits. No public notice is required by 9VAC25-210 *et seq.*

Please contact Millie Hair at [Mildred.E.Hair@deq.virginia.gov](mailto:Mildred.E.Hair@deq.virginia.gov) or (757) 987-0810 if you have any questions.

Respectfully,



Jeffrey M. Hannah, Regional VWPP Program Manager  
Virginia Department of Environmental Quality  
757-407-2510  
[Jeffrey.Hannah@deq.virginia.gov](mailto:Jeffrey.Hannah@deq.virginia.gov)  
Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, Virginia 23462  
757-518-2000

cc: Karen Dodson, Wetland Studies and Solutions, Inc.  
Pete Kube, U.S. Army Corps of Engineers  
Beth Howell, Virginia Marine Resources Commission



February 12, 2025

***Sent via email only:***

Karen Dodson, Wetland Studies and Solutions, Inc. – [kdodson@wetlands.com](mailto:kdodson@wetlands.com)

Mike Mundy, City of Virginia Beach – [mmundy@VBgov.com](mailto:mmundy@VBgov.com)

Subject: Joint Permit Application 2024-WTRA-00246, Pleasure House Point Tidal Wetland Mitigation Bank

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Dear Ms. Dodson,

The referenced application was received on December 13, 2024 and we have completed our review.

Based on our review of the subject application, the proposed wetlands impacts involved with the proposed improvements are exempt under City Code, Appendix A, Article 14, Sec 1402 (i). Accordingly, once the properties are recorded as being owned or leased by the City of Virginia Beach, the impacts associated with this project will not require approval from the Virginia Beach Wetlands Board related to the disturbance of wetlands. Please be advised that this letter pertains only to the jurisdiction of the Local Wetlands Board and additional approvals or authorization may be required from other agencies regarding impacts to wetlands and associated land disturbance with the project.

Please note that this project may be subject to requirements to comply with the Chesapeake Bay Preservation Area Ordinance. Should you have any further questions, feel free to contact our office.

Sincerely,

Heaven Manning, PWS  
Environmental Planner

cc: Virginia Marine Resources Commission – Tiffany Birge

**PHILLIP GIBSON and BLACKWATER PIER & DOCK, INC.,  
NOTICE TO COMPLY #24-07**

1. Habitat Management Evaluation dated February 25, 2025.
2. Stop Work Order email and response dated July 16, 2024.
3. After-the-fact Joint Permit Application drawings dated-received July 24, 2024, and revised drawings dated received August 7, 2024.
4. VMRC Notice To Comply sent by certified mail on August 22, 2024.
5. Protest dated-received August 13, 2024, and November 7, 2024.
6. Survey and revision dated received November 12, 2024.

February 25, 2025

## **HABITAT MANAGEMENT DIVISION EVALUATION**

**PHILLIP GIBSON and BLACKWATER PIER & DOCK, INC., NOTICE TO COMPLY #24-07.** Commission consideration of Phillip Gibson and Blackwater Pier & Dock, Inc.'s failure to comply with the Commission's August 22, 2024, directive to remove four timber piles and an unauthorized extension to an existing boathouse, built in excess of its former authorization under VMRC Application #2000-0590 at 119 Dandy Haven Lane situated along Back Creek in York County.

### **Narrative**

Mr. Gibson's property is situated at the confluence of Back Creek and The Thorofare in York County in a residentially zoned area of York County. Numerous private piers and open-sided boathouses exist on Back Creek. Mr. Gibson applied for and received VMRC authorization for an 18-foot by 38-foot open-sided boathouse at his property on Back Creek on April 14, 2000. The boathouse was constructed in 2002 by Woodchuck Marine Structures. Until recently, staff was unaware that the original boathouse construction exceeded the previous VMRC authorization.

On July 11, 2024, the adjacent property owner, Mr. Dewey Milton Ragans, contacted staff after observing new construction on the existing boathouse. A site inspection, conducted from Mr. Ragan's property that same day, confirmed that a portion of Mr. Gibson's existing boathouse roof had been removed and the structure was undergoing modifications that included four (4) new timber piles and framing to support an extension of the roof. Mr. Ragans advised onsite that he observed the marine contractor, Blackwater Pier and Dock, install the four new pilings to support the boathouse roof extension and install four (4) additional boat lift pilings adjacent to an existing finger pier.

On July 17, 2024, staff accompanied York County staff to the site wherein Mr. Gibson was issued a verbal stop work order by the County for the unauthorized framing and roof extension. Staff measured and photographed the unauthorized work that had begun without securing permits from VMRC and York County. Mr. Gibson was additionally informed by staff that no work could continue until VMRC approval was granted.

On July 24, 2024, Mr. Gibson submitted an application to retain the existing boathouse and continue with the proposed roof expansion. Specifically, the application requested to remove 20% of the boathouse roof, replace the compromised pilings, extend the roof three (3) feet longer than the existing roof, and to install two (2) new boat lifts.

On August 1, 2024, staff met onsite again with Mr. Gibson to further discuss the violation and Mr. Ragan's concerns that the unauthorized boathouse expansion was negatively affecting his riparian area and access to his property. The existing boathouse dimension, measured at 18 foot in width and 45 foot in length, was verified onsite with Mr. Gibson. He was informed that the boathouse measured 7 feet longer than what he was previously authorized by VMRC to construct on April 14, 2000, under VMRC Application #2000-0590.

## **Issues**

The work undertaken by Mr. Gibson and Blackwater Pier & Dock in July 2024 represents an unauthorized expansion of a boathouse originally constructed in excess of the VMRC authorization provided in 2000. On August 22, 2024, a Notice to Comply was issued to Mr. Gibson and the marine contractor directing the removal of the unauthorized boathouse support piles, extended roof framing, and the four (4) boat lift pilings. All were required to be removed within 30 days to bring the pier and boathouse into compliance.

Mr. Ragans retained the services of Mr. Carl Eason, an attorney with Wolcott/Rivers/Gates, and submitted a formal objection to Mr. Gibson's application on August 13, 2024. The objection noted that the previously constructed boathouse was built in excess of the authorized dimensions, and the proposed extension may likely encroach into Mr. Ragans's riparian area.

## **Summary/Recommendations**

The unauthorized installation of the eight timber pilings by Blackwater Pier & Dock signals an increasing trend by marine contractors to undertake work in the Tidewater region without the required VMRC authorization. The owner, Mr. Wade Webb, is a very experienced marine contractor who has operated in the York County area for decades. Staff notes that the installation of the pilings facilitated the framing and unauthorized expansion of the boathouse undertaken by Mr. Gibson. Mr. Webb appeared before the York County Wetlands Board in July 2024 for an unauthorized riprap revetment constructed in Goose Creek in the Seaford area, which is the same month that he was working at Mr. Gibson's property without the required VMRC permits.

Mr. Gibson himself is also very familiar with the regulatory permitting process and the requirements to obtain such permits before any marine construction work begins. Mr. Gibson received three (3) VMRC permits since 2000. VMRC permit #2001-0326 was issued for a boathouse on May 31, 2001, for a different property in the Grafton area of York County. Two additional permits (#2007-1425 & #17-1416) were issued to Mr. Gibson for riprap at his current property.

We are equally concerned with both the property owner and the current marine contractor, Blackwater Pier & Dock, for performing work without first contacting our agency or filing an application. It is imperative to note that the existing 18-foot by 48-foot boathouse is unauthorized and has been since its construction in 2002. In light of the past and recent unauthorized construction, staff recommends the following enforcement actions:

1. All work undertaken in 2024 must be completely removed within 30 days of the February 25, 2025, Commission hearing. This requires the removal of the four (4) support piles and framing for the roof expansion and the four (4) unauthorized boat lift pilings.
2. Assessment of a minimum civil charge of \$6,000 to Blackwater Pier & Dock, Inc. for their role in the unauthorized expansion of the original boathouse, previously constructed in excess of the original VMRC authorization.
3. Assessment of a minimum civil charge of \$6,000 to Mr. Gibson for the unauthorized framing associated with the roof expansion.

### **Summary/Recommendations (con't)**

Should the Commission agree with the aforementioned enforcement actions, staff recommends after-the-fact approval of the existing 18-foot by 48-foot open-sided boathouse with triple permit fees. This approval is contingent on the removal of all unauthorized work undertaken in 2024 and Mr. Gibson's payment of the assessed civil charge.

Should either party fail to agree with the required removal and recommended civil charges, staff recommends that the matter be turned over to the Office of the Attorney General for enforcement of the original Notice To Comply and assessment of appropriate civil penalties outlined in 28.2-1313 of the Code of Virginia.

Staff further recommends that no action be taken by the Commission on the current application (VMRC 24-1759) to expand the existing boathouse until revised plans are received shifting the boathouse expansion and entrance away from Mr. Ragan's property or receipt of a riparian apportionment and finding by the local circuit court that Mr. Gibson's proposed boathouse expansion will not encroach into or interfere with Mr. Ragan's riparian area.

**From:** [Reams, Brad \(MRC\)](#)  
**To:** [Phillip Gibson](#)  
**Cc:** [Wade Webb \(wlrwebb@gmail.com\)](mailto:wlrwebb@gmail.com)  
**Subject:** RE: VMRC request for JPA  
**Date:** Tuesday, July 16, 2024 4:04:00 PM  
**Attachments:** [image001.png](#)

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Mr. Gibson,

To ensure that only maintenance and repair work is being done, the VMRC needs to verify that the work will only occur within the footprint of the permitted existing boathouse. Thus, submitting a new application is required to review what is existing in contrast to the proposed new construction.

Also, I wanted to inform you, that any work done on a boathouse requires the property owner to notify the adjacent property owners (APO's) on an application.

Because the pier that Mr. Ragans built was within the criteria limits of what is statutorily authorized, no permit was required for his pier.

Also, the state code does not require notifying APO's for piers that are exempt, private, and noncommercial.

I'm assuming, that you don't have your own copy of VMRC permit 2001-0326?

NO work can be done until a JPA has been submitted and VMRC authorization for the new construction.

Sadly, if you had contacted VMRC before proceeding without the proper authorization, your boathouse wouldn't be in this state unstableness.

The York County building and zoning departments will also likely require a permit.

Let me know when you're available and we can arrange a time to visit your property.

Sincerely,



**Bradley Reams**  
Environmental Engineer  
Habitat Management  
757-262-6448

---

**From:** Phillip Gibson <pgibson@cardwellprinting.com>  
**Sent:** Tuesday, July 16, 2024 3:10 PM  
**To:** Reams, Brad (MRC) <Brad.Reams@mrc.virginia.gov>  
**Subject:** Re: VMRC request for JPA

Good afternoon Mr. Reams,

3rd response


Thank you for an update on the code. It was my understanding by the code that the repairs I have done fall under maintenance and repair although it has proved to be more repair and maintenance than planned. I did not see in the code where providing a JPA was required.

Please find attached a google image of the existing Boathouse as inspected and approved in 2006. Please email me your information for permit (VMRC # 20010326) I am doing everything possible to work with Mr. Ragans and will continue to do so but one question I have is Mr. Ragans extended the length of his pier considerably and I or his other neighbor were never given notice.

I am a Virginia Class A contractor and I believe at this point in the construction process it would be extremely dangerous to the main structure and surrounding structures to stop construction. The existing structure that has been opened for these repairs and maintenance is extremely vulnerable to high winds and could be severely impacted in a storm.

I will submit the JPA application for your review. I will acquire any permits and make any changes to the boathouse VRMC deems appropriate.

After reviewing this information, please let me know if you are demanding me to stop construction.

 Pier 115 Dandy Haven Lane

Thank you,

Phillip Gibson

Cardwell Printing

15470 Warwick Blvd.

Newport News, VA 23608

757.888.0674

757.888.0993 Fax

[www.cardwellprinting.com](http://www.cardwellprinting.com)

2nd email

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**From:** Reams, Brad (MRC) <Brad.Reams@mrc.virginia.gov>

**Sent:** Tuesday, July 16, 2024 11:39 AM

**To:** Phillip Gibson <pgibson@cardwellprinting.com>; Wade Webb (wlrwebb@gmail.com) <wlrwebb@gmail.com>

**Subject:** RE: VMRC request for JPA

Hello again Mr. Gibson and Mr. Webb,

I wanted to follow up and inform you about State Code 282.2-1203 section A-6.

This section of the code defines “maintenance or replacement of a previously authorized pier, provided it is reconstructed within the footprint of the existing pier”.

Thus, providing a JPA is required to assure that the new construction will meet this criteria.

Brad

1st email

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**From:** Reams, Brad (MRC)

**Sent:** Tuesday, July 16, 2024 11:15 AM

**To:** pgibson@cardwellprinting.com; Wade Webb (wlrwebb@gmail.com) <wlrwebb@gmail.com>

**Subject:** VMRC request for JPA

Mr. Gibson and Mr. Webb,

It's come to our attention that construction is occurring on your existing pier and boathouse, at 119 Dandy Haven Lane in York County.

This email will serve as a **notice to stop construction** and require you to submit a **JPA Joint Permit Application**.

If a JPA is not submitted, this will be considered a violation, and would require further enforcement action to be taken.

After submitting an application, a review of the previously issued permit (VMRC #

20010326) will be compared to the proposed construction in the new JPA. Once the JPA has been reviewed, a determination can be made if the new construction is within the same footprint of what was previously permitted, for this construction to be determined "maintenance and repair".

If any changes or modifications are planned for the new construction to the existing boathouse, a permit will be required by VMRC.

I have an open schedule open tomorrow if you would like to meet with me. Please let me know at your earliest convenience.

Sincerely,



**Bradley Reams**  
Environmental Engineer  
Habitat Management  
757-262-6448

- ❖ DEQ: Permit application fees required for Virginia Water Protection permits – while detailed in 9VAC25-20 – are conveyed to the applicant by the applicable DEQ office (<http://www.deq.virginia.gov/Locations.aspx>). Complete the Permit Application Fee Form and submit it per the instructions to the address listed on the form. Instructions for submitting any other fees will be provided to the applicant by DEQ staff.
- ❖ VMRC: An application fee of \$300 may be required for projects impacting tidal wetlands, beaches and/or dunes when VMRC acts as the LWB. VMRC will notify the applicant in writing if the fee is required. Permit fees involving subaqueous lands are \$25.00 for projects costing \$10,000 or less and \$100 for projects costing more than \$10,000. Royalties may also be required for some projects. The proper permit fee and any required royalty is paid at the time of permit issuance by VMRC. VMRC staff will send the permittee a letter notifying him/her of the proper permit fees and submittal requirements.
- ❖ LWB: Permit fees vary by locality. Contact the LWB for your project area or their website for fee information and submittal requirements. Contact information for LWBs may be found at [http://ccrm.vims.edu/permits\\_web/guidance/local\\_wetlands\\_boards.html](http://ccrm.vims.edu/permits_web/guidance/local_wetlands_boards.html).

FOR AGENCY USE ONLY	
	Notes:
	JPA # 24-1759

## APPLICANTS

### Part 1 – General Information

**PLEASE PRINT OR TYPE ALL ANSWERS:** If a question does not apply to your project, please print N/A (not applicable) in the space provided. If additional space is needed, attach 8-1/2 x 11 inch sheets of paper.

<b>Check all that apply</b>				
Pre-Construction Notification (PCN) <input type="checkbox"/>	PASDO – PGP Self Verification <input type="checkbox"/>			
NWP # _____ (For Nationwide Permits ONLY - No DEQ-VWP permit writer will be assigned)	(Replaces Regional Permit 17 (RP-17) checklist)			
<b>County or City in which the project is located:</b> <u>Yorktown</u>				
<b>Waterway at project site:</b> <u>Back Creek</u>				
<b>PREVIOUS ACTIONS RELATED TO THE PROPOSED WORK</b> (Include all federal, state, and local pre application coordination, site visits, previous permits, or applications whether issued, withdrawn, or denied)				
Historical information for past permit submittals can be found online with VMRC - <a href="https://webapps.mrc.virginia.gov/public/habitat/">https://webapps.mrc.virginia.gov/public/habitat/</a> - or VIMS - <a href="http://ccrm.vims.edu/perms/newpermits.html">http://ccrm.vims.edu/perms/newpermits.html</a>				
Agency	Action / Activity	Permit/Project number, including any non-reporting Nationwide permits previously used (e.g., NWP 13)	Date of Action	If denied, give reason for denial
	<u>Please see 8-1/2 x 11s attached</u>			

## Part 1 - General Information (continued)

1. Applicant's legal name\* and complete mailing address: Contact Information:

Phillip S. Gibson

Home (757) 880-5883

Work (757) 888-0674

Fax (757) 888-0993

Cell (757) 880-5883

e-mail pgibson@CardwellPrinting.com

State Corporation Commission Name and ID Number (if applicable) \_\_\_\_\_

2. Property owner(s) legal name\* and complete address, if different from applicant: Contact Information:

Phillip Gibson

Home ( ) \_\_\_\_\_

Work ( ) \_\_\_\_\_

Fax ( ) \_\_\_\_\_

Cell (757) 880-5883

e-mail \_\_\_\_\_

State Corporation Commission Name and ID Number (if applicable) \_\_\_\_\_

3. Authorized agent name\* and complete mailing address (if applicable):

Contact Information:

Home ( ) \_\_\_\_\_

Work ( ) \_\_\_\_\_

Fax ( ) \_\_\_\_\_

Cell ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

State Corporation Commission Name and ID Number (if applicable) \_\_\_\_\_

\* If multiple applicants, property owners, and/or agents, each must be listed and each must sign the applicant signature page.

4. Provide a detailed description of the project in the space below, including the type of project, its dimensions, materials, and method of construction. Be sure to include how the construction site will be accessed and whether tree clearing and/or grading will be required, including the total acreage. If the project requires pilings, please be sure to include the total number, type (e.g. wood, steel, etc), diameter, and method of installation (e.g. hammer, vibratory, jetted, etc). If additional space is needed, provide a separate sheet of paper with the project description.

Remove 20% of boathouse roof to access compromised pylons. Remove all compromised pylons, replace and reposition with new pylons in same footprint of lift.  
Rebuild boat house roof to original design. Install 2 boat lifts.

Note: After reinstalling boathouse roof, roof end up being 3' longer than existing roof.

## Part 1 - General Information (continued)

5. Have you obtained a contractor for the project? ☒ Yes\* ☐ No. \*If your answer is "Yes" complete the remainder of this question and submit the Applicant's and Contractor's Acknowledgment Form (enclosed)

Contractor's name\* and complete mailing address:

Contact Information:

Home ( ) \_\_\_\_\_

Work ( ) \_\_\_\_\_

Fax ( ) \_\_\_\_\_

Cell (757) 880- \_\_\_\_\_

email pgibson@cardwellprinting.com

State Corporation Commission Name and ID Number (if applicable) \_\_\_\_\_

**\* If multiple contractors, each must be listed and each must sign the applicant signature page.**

6. List the name, address and telephone number of the newspaper having general circulation in the area of the project. Failure to complete this question may delay local and State processing.

Name and complete mailing address:

Telephone number

WV daily for Yorktown  
info@wvdaily.com

( ) \_\_\_\_\_

7. Give the following project location information:

Street Address (911 address if available) 119 Dandy Haven Lane

Lot/Block/Parcel# \_\_\_\_\_

Subdivision \_\_\_\_\_

City/County Yorktown ZIP Code 23692

Latitude and Longitude at Center Point of Project Site (Decimal Degrees):

37.207431 1 - -76.417889 (Example: 36.41600/-76.30733)

If the project is located in a rural area, please provide driving directions giving distances from the best and nearest visible landmarks or major intersections. *Note: if the project is in an undeveloped subdivision or property, clearly stake and identify property lines and location of the proposed project. A supplemental map showing how the property is to be subdivided should also be provided.*

8. What are the *primary and secondary purposes of and the need for* the project? For example, the primary purpose may be "to protect property from erosion due to boat wakes" and the secondary purpose may be "to provide safer access to a pier." Store Boat/access to boat

## Part 1 - General Information (continued)

9. Proposed use (check one):  
☒ Single user (private, non-commercial, residential)  
☐ Multi-user (community, commercial, industrial, government)
10. Describe alternatives considered and the measures that will be taken to avoid and minimize impacts, to the maximum extent practicable, to wetlands, surface waters, submerged lands, and buffer areas associated with any disturbance (clearing, grading, excavating) during and after project construction. *Please be advised that unavoidable losses of tidal wetlands and/or aquatic resources may require compensatory mitigation.* N/A
11. Is this application being submitted for after-the-fact authorization for work which has already begun or been completed? ☒ Yes ☐ No. If yes, be sure to clearly depict the portions of the project which are already complete in the project drawings.
12. Approximate cost of the entire project (materials, labor, etc.): \$ 25,000  
Approximate cost of that portion of the project that is channelward of mean low water: \$ 25,000
13. Completion date of the proposed work: September - 2024
14. Adjacent Property Owner Information: List the name and complete **mailing address**, including zip code, of each adjacent property owner to the project. (NOTE: If you own the adjacent lot, provide the requested information for the first adjacent parcel beyond your property line.) Failure to provide this information may result in a delay in the processing of your application by VMRC.

John and Sarah Bryant  
113 Dandy Haven Lane  
Yorktown VA. 23692

Milton and Catherine Ragans  
126 Dandy Haven Lane  
Yorktown VA. 23692

## Part 2 – Signatures (continued)

### 2. Applicants having agents (if applicable)

#### CERTIFICATION OF AUTHORIZATION

I (we), \_\_\_\_\_, hereby certify that I (we) have authorized \_\_\_\_\_  
(Applicant's legal name(s)) (Agent's name(s))  
to act on my behalf and take all actions necessary to the processing, issuance and acceptance of this permit and any and all  
standard and special conditions attached.

We hereby certify that the information submitted in this application is true and accurate to the best of our knowledge.

\_\_\_\_\_  
(Agent's Signature)

\_\_\_\_\_  
(Use if more than one agent)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Use if more than one applicant)

\_\_\_\_\_  
(Date)

Note: Marine Contractor, Wade Webb demanded  
payment before returning contractor acknowledgment.  
All comment and cross out were made after  
applicant signed contract. All work was  
performed on 7/10/2024.

3. Applicant's having contractors (if applicable)  
**CONTRACTOR ACKNOWLEDGEMENT**  
I (we), Phillip Gibson, have contracted Blackwater Pier & Dock, Wade Webb  
(Applicant's legal name(s)) (Contractor's name(s))  
to perform the work described in this Joint Permit Application, signed and dated Phillip Gibson 7/17/24

We will read and abide by all conditions set forth in all Federal, State and Local permits as required for this project. We understand that failure to follow the conditions of the permits may constitute a violation of applicable Federal, state and local statutes and that we will be held liable for any civil and criminal penalties imposed by these statutes. In addition, we agree to make available a copy of any permit to any regulatory representative visiting the project to ensure permit compliance. If we fail to provide the applicable permit upon request, we understand that the representative will have the option of stopping our operation until it has been determined that we have a properly signed and executed permit and are in full compliance with all terms and conditions.

Wade Webb  
Contractor's name or name of firm

P.O Box 597 Nor H, VA, 23128  
Contractor's or firms address

Wade Webb President  
Contractor's signature and title

2705068987A MC  
Contractor's License Number

Phillip Gibson  
Applicant's signature

\_\_\_\_\_  
(use if more than one applicant)

7/17/24  
Date

Blackwater & its owner assume no civil or criminal liabilities.  
Blackwater & its owner only responsible for piling installation.

## Part 2 – Signatures (continued)

### ADJACENT PROPERTY OWNER'S ACKNOWLEDGEMENT FORM

I (we), John and Sarah Bryant, own land next to (across the water  
(Print adjacent/nearby property owner's name)

from/on the same cove as) the land of Phillip Gibson.  
(Print applicant's name(s))

I have reviewed the applicant's project drawings dated July 18, 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 \_\_\_\_\_ 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).

John P Bryant in D  
Adjacent/nearby property owner's signature(s)

July 18, 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.**

## Part 3 – Appendices

Please complete and submit the appendix questions applicable to your project, and attach the required vicinity map(s) and drawings to your application. If an item does not apply to your project, please write "N/A" in the space provided.

**Appendix A: (TWO PAGES) Projects for Access** to the water such as private and community piers, boathouses, marinas, moorings, and boat ramps. Answer all questions that apply.

**1. Briefly describe your proposed project.**

To remove 15' of boat house to make repair and replace lift piles  
replace roof after repairs.  
relocate piles in the same foot print for lifts  
Install 2 boat lifts

**2. For private, noncommercial piers:**

Do you have an existing pier on your property? ☒ Yes ☐ No

If yes, will it be removed? ☐ Yes ☒ No

Is your lot platted to the mean low water shoreline? ☒ Yes ☐ No

What is the overall length of the proposed structure? 48 feet.

Channelward of Mean High Water?            feet.

Channelward of Mean Low Water?            feet.

What is the area of the piers and platforms that will be constructed over

Tidal non-vegetated wetlands            square feet.

Tidal vegetated wetlands            square feet.

Submerged lands 840 square feet.

What is the total size of any and all L- or T-head platforms? none sq. ft.

For boathouses, what is the overall size of the roof structure? 840 sq. ft.

Will your boathouse have sides? ☐ Yes ☒ No.

NOTE: All proposals for piers, boathouses and shelter roofs must be reviewed by the Virginia Marine Resources Commission (Commission or VMRC), however, pursuant to § 28.2-1203 A 5 of the Code of Virginia a VMRC permit may not be required for such structures (except as required by subsection D of § 28.2-1205 for piers greater than 100 feet in length involving commercially productive leased oyster or clam grounds), provided that (i) the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers (USACE), (ii) the piers do not exceed six feet in width and finger piers do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are determined not to be a navigational hazard by the Commission. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204.

### Part 3 – Appendices (continued)

3. **For USACE permits**, in cases where the proposed pier will encroach beyond one fourth the waterway width (as determined by measuring mean high water to mean high water or ordinary high water mark to ordinary high water mark), the following information must be included before the application will be considered complete. For an application to be considered complete:
- The USACE MAY require depth soundings across the waterway at increments designated by the USACE project manager. Typically 10-foot increments for waterways less than 200 feet wide and 20-foot increments for waterways greater than 200 feet wide with the date and time the measurements were taken and how they were taken (e.g., tape, range finder, etc.).
  - The applicant **MUST** provide a justification as to purpose if the proposed work would extend a pier greater than one-fourth of the distance across the open water measured from mean high water or the channelward edge of the wetlands.
  - The applicant **MUST** provide justification if the proposed work would involve the construction of a pier greater than five feet wide or less than four feet above any wetland substrate.

4. Provide the type, size, and registration number of the vessel(s) to be moored at the pier or mooring buoy.

Type	Length	Width	Draft	Registration #
Catamaran	42 ft	10.5 ft	4 ft	USCG NO. 1346859
Gunter Console	24 ft	8.5 ft	3 ft	VA. 5712 BH
Catamaran Sail Boat	16 ft	5 ft	2 ft	Non-Motorized

5. **For Marinas, Commercial Piers, Governmental Piers, Community Piers and other non-private piers**, provide the following information:

- Have you obtained approval for sanitary facilities from the Virginia Department of Health? \_\_\_\_\_ (required pursuant to Section 28.2-1205 C of the Code of Virginia).
- Will petroleum products or other hazardous materials be stored or handled at your facility? \_\_\_\_\_.
- Will the facility be equipped to off-load sewage from boats? \_\_\_\_\_.
- How many wet slips are proposed? \_\_\_\_\_. How many are existing? \_\_\_\_\_.
- What is the area of the piers and platforms that will be constructed over
  - Tidal non-vegetated wetlands \_\_\_\_\_ square feet
  - Tidal vegetated wetlands \_\_\_\_\_ square feet
  - Submerged lands \_\_\_\_\_ square feet

6. For **boat ramps**, what is the overall length of the structure? \_\_\_\_\_ feet.
- From Mean High Water? \_\_\_\_\_ feet.
- From Mean Low Water? \_\_\_\_\_ feet.

Note: drawings must include the construction materials, method of installation, and all dimensions. If tending piers are proposed, complete the pier portion.

**Note: If dredging or excavation is required, you must complete the Standard Joint Point Permit application.**

2002 contract

# Virginia Marine Resources Commission Habitat Management Permit Applications

Print Date: Wednesday July 24 2024 10:34



Application	Received	Locality	Status	Brief Project Description	Applicant	Waterway
20171416	2017-08-11	York	NPN	Erosion repair/prevention	Gibson, Phillip	Back Creek (York Tho
20071425	2007-06-18	York	Issued	Breakwater/Bulkhead/Riprap	Gibson, Phillip	The Thorofare
<del>20010326</del>	<del>2001-02-26</del>	<del>York</del>	<del>Issued</del>	<del>Pier/Boathouse</del> <i>Not Applicant</i>	<del>Gibson, Phillip</del>	<del>Quarter March Creek</del>
20000590	2000-04-04	York	NPN	Pier/Boathouse <i>Pier only Built</i>	Gibson, Phillip	Back Creek (York Tho

*Note: Boathouse Built in 2002. Contractor was contracted to obtain all permits necessary for work to be performed. (see Attached contract)*

★ Existing  
Built in 2002



Woodchuck Marine Structures  
Contractor Agreement

The agreement made the 29 day of MAY 2002. By and between Woodchuck Marine Structures, hereinafter called the Contractor and Phillip Gibson, hereinafter called the owner.

Witnessed, that the contractor and the Owner for the consideration made agree as follows

Article 1. Scope of Work

The contractor shall furnish all of the materials and perform all of the work shown on the drawings an or described in the specifications entitles Exhibit A, as annexed hereto as it pertains to work to be performed on the property at:

Name: Phillip Gibson  
Address: 115 Dandy Haven Ln.  
City Yorktown State VA Zip 23692  
Phone: 870-1264 Work: 888-0674

Article 2. The Contract Price

The owner shall pay the Contractor for the named material and labor to be performed under the sum of dollars (\$18,300.00), subject to additions and deductions pursuant of change orders.

Article 3. Progress Payments

~~20% upon signing of the contract~~  
50 ~~40%~~ upon material drop and start of project  
50 ~~40%~~ upon completion

Article 4. Estimated Start Date 6/3/02

Article 5. General Provisions

- All work shall be completed in a workmanship like manner and in compliance with all building codes and other applicable law.
- To the extent required by law all work shall be performed by individuals dully licensed and authorize by law to perform said work.
- Contractor may at his discretion engage subcontractors to perform hereunder, provided Contractor shall fully pay said contractor and in all instances remain responsible for the proper completion of this contract.
- Owner agrees to provide adequate access for equipment, Contractors personnel, and delivery of materials and shall hold the Contractor harmless from any damage to property incurred by such access operations.
- All change orders shall be in writing and signed by Owner and Contractor.
- Contractor warrants it is adequately bonded to receive permits in the city or county that said work shall be performed.
- Contractor shall obtain all permits necessary for the work to be performed. Owner agrees to pay all fees required by government agencies and any required advertising fees.

Page 1 of 3

- Contractor agrees to remove all debris upon completion of the project.
- In the event Owner shall fail to pay any periodic or installment payment due hereunder, Contractor may cease work without breach pending payment or resolution of any dispute.
- All disputes hereunder shall be resolved by binding arbitration in accordance with rules of the American Arbitration Association, all arbitration fees to be paid by the Owner.
- Contractor shall not be liable for any delay due to circumstance beyond his control including but not limited to, strikes, casualty, severe weather, underground obstructions, general unavailability of materials, changes in permit lead time or revisions to said permits.
- In case of obstruction in planned pile foot print Contractor has the option to drive to refusal or reposition piling.
- Owner agrees to stay out of the work area during actual operations; progress inspection can be set up one half hour before or after construction operations.
- Owner agrees to provide contractor with a current property plat upon signing contract.
- If conditions require longer piling than set forth in contract agreement to maintain proper installation, per contractor's discretion, owner agrees to pay \_\_\_\_\_ per linear foot of piling as required.
- Signed this 29 day of MAY, 2002
- By Contractor [Signature]
- Contractor License 2705065549
- Owner(s) [Signature]

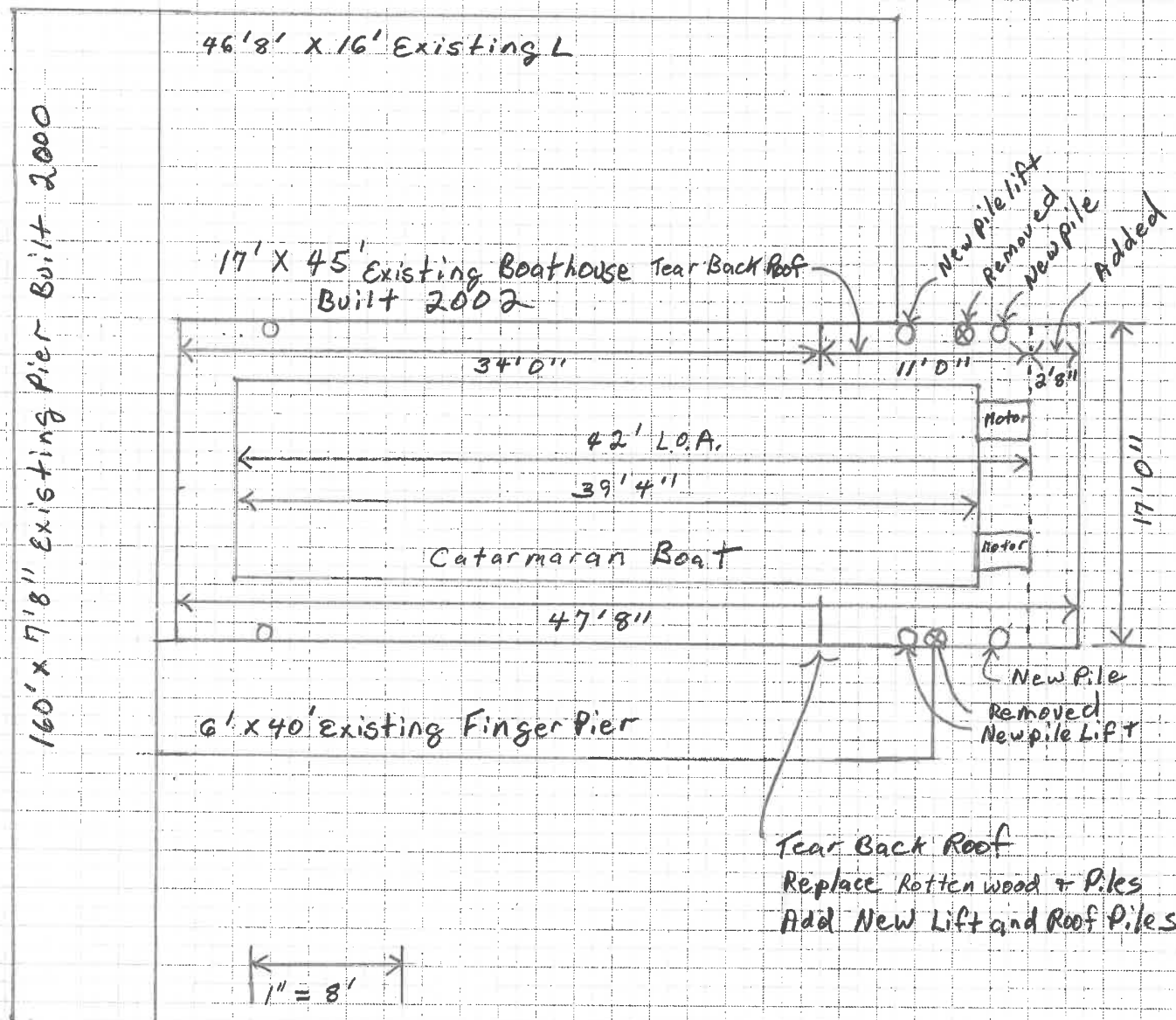
Exhibit A

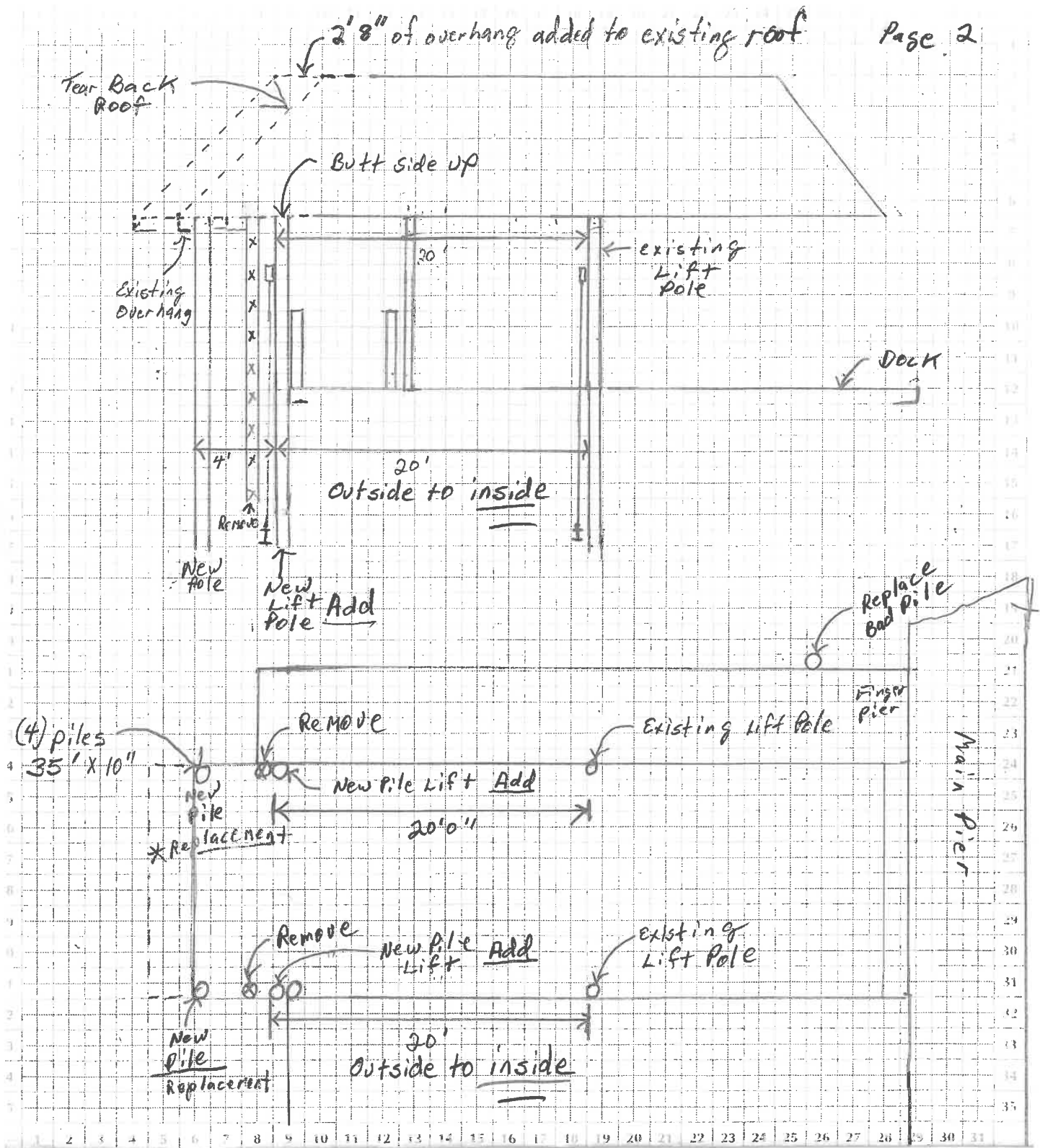
See Page 3 of 3

Approval of plan by Owner(s) R.S.C.  
Date \_\_\_\_\_

Page 2 of 3

REVISION





V/MRC 24-1759

119 Dandy Haven Lane  
Boathouse



# 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. Phillip Gibson  
115 Dandy Haven Lane  
Yorktown, VA 23692

Re: Notice to Comply #24-07  
VMRC #2024-1759

Dear Mr. Gibson:

Pursuant to our receipt of a complaint by Mr. Dewey Ragans, and in keeping with §28.2-1203 and §28.2-1212 of the Code of Virginia, Bradley Reams of my staff, Mr. Kent Henkel of the York County wetlands board staff and other York County building representatives conducted a site inspection on July 17, 2024, at your property (115 Dandy Haven Lane) situated along Back Creek. A second site inspection was attended by you, with Mr. Reams and Jeffrey Madden of my staff, on August 1, 2024. During the site inspections, the following violations were identified:

1. The existing boathouse was undergoing modifications, four timber piles had been driven, and construction had begun to extend the length of the roof over state-owned subaqueous bottomlands without VMRC authorization.
2. The existing boathouse was found to have been built larger (45-foot by 18-foot) than the previously authorized dimensions under VMRC #00-0590, that allowed for a 38-foot long by 18-foot wide open-sided boathouse.
3. Four separate timber piles were driven adjacent to your pier, apparently to accommodate the installation of a boatlift, without first submitting a joint permit application.

**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 support piles and framing for the roof extension and unauthorized boat lift. Failure to remove the unauthorized structures will result in the matter being scheduled for consideration by the full Commission at a future hearing. **Please be advised that you and your contractor (Wade Webb, Blackwater Pier & Dock, Inc.) will be required to attend this meeting.**

*An Agency of the Natural Resources Secretariat*

[www.mrc.virginia.gov](http://www.mrc.virginia.gov)

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

Mr. Phillip Gibson  
Page Two

August 22, 2024  
NTC #24-07 VMRC #2024-1759

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.

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](mailto: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 Building Safety  
Contractor (Blackwater Marine Construction)

**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. Phillip Gibson  
115 Dandy Haven Lane  
Yorktown, VA 23692**

2. Article Number

(Transfer from service label)

7021 2720 0002 8899 7583

PS Form 3811, July 2013

Domestic Return Receipt

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*Phillip Gibson*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Phillip Gibson

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If 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

UNITED STATES POSTAL SERVICE

RICHMOND VA RPDC 230

26 AUG 2024 PM 3 L

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

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

NTC#24-07

1-106460

VMRC#24-11-759



# 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

Blackwater Pier & Dock, Inc.  
Attn: Mr. Wade Webb  
Post Office Box 597  
North, VA 23128

Re: Notice to Comply #24-07  
VMRC #2024-1759

Dear Mr. Webb:

Pursuant to our receipt of a complaint by Mr. Dewey Ragans, and in keeping with §28.2-1203 and §28.2-1212 of the Code of Virginia, Bradley Reams of my staff, Mr. Kent Henkel of the York County wetlands board staff and other York County building representatives conducted a site inspection on July 17, 2024, at your property (115 Dandy Haven Lane) situated along Back Creek. A second site inspection was attended by you, with Mr. Reams and Jeffrey Madden of my staff, on August 1, 2024. During the site inspections, the following violations were identified:

1. The existing boathouse was undergoing modifications, four timber piles had been driven, and construction had begun to extend the length of the roof over state-owned subaqueous bottomlands without VMRC authorization.
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**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 support piles and framing for the roof extension and unauthorized boat lift. Failure to remove the unauthorized structures will result in the matter being scheduled for consideration by the full Commission at a future hearing. **Please be advised that you and the applicant (Mr. Phillip Gibson) will be required to attend this meeting.**

*An Agency of the Natural Resources Secretariat*

[www.mrc.virginia.gov](http://www.mrc.virginia.gov)

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

Blackwater Pier & Dock, Inc.  
Page Two

August 22, 2024  
NTC #24-07 VMRC #2024-1759

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.

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](mailto: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 Building Safety  
Applicant (Mr. Phillip Gibson)

## 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:

**Blackwater Pier & Dock, Inc.**  
**Attn: Mr. Wade Webb**  
**Post Office Box 597**  
**North, VA 23128**

2. Article Number  
(Transfer from service label)

9589 0710 5270 0472 3682 09

PS Form 3811, July 2013

Domestic Return Receipt

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Webb

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

Wade Webb

C. Date of Delivery

8-26-24

D. Is delivery address different from item 1? ☐ Yes  
If 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

UNITED STATES POSTAL SERVICE

FORT MONROE VA RPDC 230

27 AUG 2024 PM 2 L

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

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

NTC # 24-07

51-106480

VMRC # 24-1759

**From:** [Carl A. Eason](#)  
**To:** [Reams, Brad \(MRC\)](#)  
**Cc:** [Howell, Beth \(MRC\)](#)  
**Subject:** Dandy Haven Land Yorktown 24-1759  
**Date:** Thursday, August 15, 2024 3:06:45 PM  
**Attachments:** [08152024 Please be advised that the following have been retained, along with.pdf](#)

---

PROTEST

Brad/ Beth—Please find attached a formal protest on behalf of Milton Ragans to MRC # 24-1759. Please be so kind as to log this in the file and let me know when this is scheduled before the Commission if not sooner resolved. Best regards—Carl  
NOTICE TO THE DEBTOR: Please be advised that this law firm is a debt collector and this communication is an attempt to collect a debt. Any information obtained may be used for that purpose.

NOTICE: This communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

NOTICE: This message originates from the law firm of Wolcott Rivers Gates. The message and any file transmitted with it may contain confidential information which may be subject to the attorney-client privilege, or otherwise protected against unauthorized use. The information contained in this message and any file transmitted with it is transmitted in this form based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying or use of the information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Please notify the sender immediately by replying to this e-mail if you have received this e-mail by mistake and delete this e-mail as well as the original email from your system. All attachments are believed to be free of viruses, but any attachments should be checked for viruses before being opened. Any views, opinions or personal messages presented in this email are solely those of the sender and are not attributable to Wolcott Rivers Gates. Wolcott Rivers Gates will not accept any liability in respect of such communication for any damages or other liability arising from such views, opinions or personal messages.

IMPORTANT: You may opt out of receiving further email communications from Wolcott Rivers to this email address by replying with an email message that has the word 'stop' in the subject line.

# Wolcott | Rivers | Gates

ATTORNEYS AT LAW

200 Bendix Road, Suite 300  
Virginia Beach, Virginia 23452  
Telephone (757) 497-6633  
Fax (757) 497-7267  
[www.wolcotttriversgates.com](http://www.wolcotttriversgates.com)

PROTEST

Carl A. Eason, Esq.  
[eason@wolriv.com](mailto:eason@wolriv.com)

August 13, 2024

Direct Dial: (757) 554-0223

Brad Reams, Environmental Engineer  
Habitat Management  
Virginia Marine Resource Commission  
380 Fenwick Road, Building 96  
Fort Monroe, Virginia 23651

RE: JPA # 24-1759, Phillip Gibson  
My client: Dewey Milton Ragans

Dear Mr. Reams:

Please be advised that I have been retained, along with Scott A. Krystiniak, Esq., to represent the interests of Dewey Milton Ragans, who resides at 126 Dandy Haven Lane in Yorktown, Virginia. Mr. Ragans' immediate neighbor, Phillip Gibson, has submitted a JPA Application for consideration. The application number is 24-1759 and indicates in Appendix A, Paragraph 1 that the purpose of the JPA is to remove approximately "15' of boathouse to make repair and replace lift piles and replace roof after repairs... relocate piles in the same footprints for lifts... install two boatlifts." Mr. Ragans makes formal objection to the application, as proposed.

## HISTORY OF THE PROJECT

On April 14, 2000, pursuant to applications submitted by Mr. Gibson under VMRC No. 2000-0590, Gibson sought authorization to construct a 152' long x 5' wide pier with a 38' x 12' L-head and a 38' x 18' open-sided boathouse with a 38' x 4' finger pier and two mooring piles adjacent to his property along Back Creek. Notice was given to adjacent property owners, John P. Bryant and Dewey M. Ragans, Sr. Both consented to the project as proposed, and VMRC issued an NPN. Following the issuance of the NPN, Mr. Gibson constructed marine improvements that were out of compliance with the drawings submitted to VMRC. Specifically, the roof-covered pilings approved at 38' x 18' were in fact constructed at approximately 45' x 18'. The T-head adjacent to the boathouse was constructed at approximately 12' x 38', constituting 456 square feet. It should be noted that the VMRC guidelines reducing the T-head to 400 square feet were enacted in approximately 2003 and were not in effect at the time of the construction of the T-head on Mr. Gibson's pier. That said, however, the erection of a structure, which is illegal and not in compliance with the approvals, provides no vesting of rights, and the applicant should be required in the current application to bring it to conformity with current statutorily authorized guidelines or seek permission of the Commission to exceed same.

In 2024, Mr. Gibson decided to expand his boathouse, and to that end, contracted with Blackwater Pier & Dock, believed to be owned by Wade Webb. No VMRC permits were obtained

prior to commencing construction. After construction began, it was obvious to my client that the size of the boathouse was being substantially enlarged and objection was made. Ultimately, a stop work order was imposed by the municipality following VMRC's review.

#### **NATURE OF THE OBJECTION**

Starting with the premise that the original boathouse and related structures were not built in accordance with the 2000 NPN, the applicant attaches a copy of his contract with Woodchuck Marine Structures dated May 29, 2002 and cites to a provision that the contractor was required to obtain all necessary permits. In Virginia, the law is that the landowner is responsible for activities upon his property and to ensure that any and all necessary regulatory permits are obtained in advance thereof. It is also significant to note that the 2002 contract (attached as part of the current JPA – see Page 3) evidences a drawing for a roof of 17 feet 6 inches x 45 feet. As noted earlier, the initial NPN was for 38 feet. Thus, while it is understandable that the applicant would attempt to cast the responsibility for the permit onto the contractor, the question remains as to why the applicant attempted to build in excess of that for which he originally obtained an NPN.

Advancing to 2024, not only do we have a structure that does not comply with the prior authorization, but we have a structure that has been extended from 45' to approximately 48' and which encroaches toward Ragans' pier. While the structure can be statutorily authorized at 700 square feet, the one that is existing and the one that is proposed are in excess of those amounts. Mr. Gibson indicates that after the marine contractor completed his work on July 10, 2024, "the roof ended up being three feet longer than existing roof". The deviation is not *de minimis*, certainly not within construction standards, and certainly not permitted under either the original application or under the current statutory authorizations.

Mr. Ragans takes the position that the permit, for which an NPN was granted in 2000, likely does not encroach upon his riparian area at the then-permitted width of 38' x 18'. Any further encroachment, however, appears likely to encroach upon Ragans' riparian area and would be objected to upon that ground alone. Mr. Ragans has suggested that Mr. Gibson orient his boathouse such that ingress and egress of any vessels within it and/or moored appurtenant to it be oriented parallel to the pier and with the sterns perpendicular to the channel. By reorienting it in this fashion, any extension would be channelward and not toward the riparian area of Mr. Ragans. Mr. Ragans would have no objection to the construction of a 48' x 18' boathouse in that configuration as long as the adjacent mooring slips and/or pilings increase no further than those proposed in the 2000 NPN drawings.

As to the drawings, they are not to scale and, at best, are very difficult to read. If any assumptions have been made in this correspondence that are in error because of an inability to possess more specific drawings, I would be pleased to reconsider my client's position upon obtaining same. I do note and respectfully submit, however, that Staff's consideration and the Board's ultimate decisions would be well advanced by having some scaled drawings. Furthermore, it would be beneficial if the applicant would provide registration of the vessels demonstrating the necessity for the number of moorings and/or slip locations sought and information relative to the water depths adjacent to the pier and surrounding area for Staff's consideration.

Unless the applicant is willing to reduce the size of the structure as it currently exists, Mr. Ragans maintains his opposition. He is hopeful that the applicant would consider reorientation of the proposed marine structure so as not to encroach toward Mr. Ragans' property anymore than the 2000 NPN proposal demonstrated. Should the applicant be unwilling to do that, I leave to the Commission's consideration as to whether the initially illegal structure and the current, attempted, non-permitted expansion thereto should be removed in its entirety.

If I can provide further information relative to the foregoing, or if you wish to discuss the contents of this letter, please feel free to contact me upon receipt.

Very truly yours,

  
Carl A. Eason

CAE/stb

cc: Dewey M. Ragans

**From:** [Reams, Brad \(MRC\)](#)  
**To:** [MRC - jpa Permits](#)  
**Subject:** FW: 24-1759  
**Date:** Thursday, November 7, 2024 11:03:53 AM

---

## APO counsel comments

---

**From:** Carl A. Eason <[eason@wolriv.com](mailto:eason@wolriv.com)>  
**Sent:** Thursday, November 7, 2024 10:35 AM  
**To:** Reams, Brad (MRC) <[brad.reams@mrc.virginia.gov](mailto:brad.reams@mrc.virginia.gov)>  
**Cc:** Owen, Randy (MRC) <[randy.owen@mrc.virginia.gov](mailto:randy.owen@mrc.virginia.gov)>  
**Subject:** 24-1759

Brad—

Mike Ware, counsel for Gibson, called me back and said he now has a survey in hand. Mike said the surveyor was dragging his feet. From talking with counsel he had the surveyor prepare an exhibit showing the upland divisional property line between Gibson & Ragans extended out into the water.

We know a *property line extended* is not the proper method of determining one's riparian rights under *Groner v Foster* VLEX 893015462. And we know that the burden rests upon Gibson to demonstrate that the proposed structure is within his riparian area. That determination is not made by the applicant, the contestant, nor VMRC—that determination is reserved for the Courts.

Mike shared that there is about 7 feet or so between the proposed and enlarged boat/ lift structure being constructed by Gibson and *the property line extended*. I don't have a copy yet so don't hold me to the dimensions; I don't think that advances the consideration or resolves the violation. It certainly does not carry the burden of establishing that the proposed unpermitted enlargement is within Gibson's riparian area.

Ragans does not oppose Gibson's retention of the original structure (even though it was built substantially in excess of the initial drawings accompanying the permit in 2000-0590), but he still objects to the current, attempted, non-permitted enlargement of the structure which was the subject of the stop work order issued by the municipality following VMRC's review.

Enjoy the day and I anticipate Mike will be sending the survey along for your consideration in the near future. —Carl

Carl A. Eason, Esq.

**WOLCOTT | RIVERS | GATES**  
O: (757) 497-6633 | D: (757) 554-0223 | [eason@wolriv.com](mailto:eason@wolriv.com)  
[www.wolcottiversgates.com](http://www.wolcottiversgates.com)  
**200 Bendix Road, Suite 300**

Virginia Beach, VA 23452

---

**From:** Reams, Brad (MRC) <brad.reams@mrc.virginia.gov>  
**Sent:** Thursday, November 7, 2024 9:02 AM  
**To:** Carl A. Eason <eason@wolriv.com>  
**Subject:** RE: 24-1759

Hey Carl,

I spoke with Randy about it, and we feel that Mr. Gibson's continued stalling will serve as further evidence of non-compliance.

We still plan on presenting it before the commission sometime in early 2025.

I'll keep you apprised

Brad

---

**From:** Carl A. Eason <[eason@wolriv.com](mailto:eason@wolriv.com)>  
**Sent:** Thursday, October 31, 2024 4:10 PM  
**To:** Reams, Brad (MRC) <[brad.reams@mrc.virginia.gov](mailto:brad.reams@mrc.virginia.gov)>  
**Subject:** 24-1759

Brad—

I've reached out to Mike Ware, counsel for Gibson, a couple of times about the survey and other information you requested of him incident to the notice to comply of August 22<sup>nd</sup>. No response—no survey, no water depths, no info. on vessels, no dimensions on roof structure, etc. The promises of compliance with your requests for a survey have moved from August 16<sup>th</sup> to September 9 and here we are at the end of October with nothing in hand. (Gibson's e-mail to you said you would have it within a week of 9/9. It may be time to push this one on to the Commission for a hearing unless you have received something from him.--- Carl

Carl A. Eason, Esq.

**WOLCOTT | RIVERS | GATES**  
O: (757) 497-6633 | D: (757) 554-0223 | [eason@wolriv.com](mailto:eason@wolriv.com)  
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## SCHEMPF & WARE, PLLC

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Of Counsel:

Bryan H. Schempf

Attorneys and Counselors at Law

4000 George Washington Memorial Highway

Yorktown, Virginia 23692

Telephone: (757) 240-4000 Facsimile: (757) 240-4001

E-Mail Address: [mware@4000law.com](mailto:mware@4000law.com)

Michael B. Ware

November 8, 2024

Bradley Reames  
Environmental Engineer, Habitat Management  
Virginia Marine Resource Commission  
380 Fenwick Road, Building 96  
Fort Monroe, VA 23651

**In re: Phillip S. Gibson Structure**  
**119 Dandy Haven Lane**  
**Yorktown, VA 23692**  
**JPA #24-1759**

Dear Mr. Reames:

I have been engaged by Mr. Gibson regarding the issues surrounding the modifications to his existing boathouse and other matters.

So as to abbreviate the text of this letter, I have spoken to Carl Eason, Esquire on several occasions and reviewed his letter of August 13, 2024, which set forth his factual and position regarding his protest.

In addition, I have reviewed the correspondence you have engaged in with Mr. Gibson whereby you identified concerns and information you desired.

I have attempted to respond to your text of August 7, 2024 to Mr. Gibson as to information desired.

I have attached a copy of a survey prepared by Donald Davis and Associates dated August 19, 2024. (Please note this was the date request was submitted, however, a response setting forth information needed was only recently received in the first few days of November).

## Schempf & Ware, PLLC

Page 2

The Donald Davis survey indicates that the distance from the extended Ragans property line to the boathouse is 7.9' on the shore side of the boathouse, and 7.2' on the seaside of the boathouse structure.

I have also attached two drawings prepared by Living Shorelines that reflect the relevant dimensions, height of the structures, location of new pilings, location of removed pilings, total pier layout, depths for boat draft, and other details. (The depths were obtained by soundings and reflect the best information available).

The new pilings were set by Black Water Pier and Dock and the roof structure modification has been performed by Mr. Gibson.

I have also included the documentation for the three vessels owned by Mr. Gibson that he desires to dock at his home.

I believe the information provided addresses the information you and Carl Eason were requesting in the materials I have reviewed.

In response to Mr. Ragans' position that he would have no objection if the dockage repositioned North and South, as opposed to the current East and West, such structure would for the 3 vessels identified, would be wider than 48', which is closer to Mr. Ragans' property line which is of primary concern to Mr. Ragans. Second, the repositioning would subject the vessels to broadside wave action and wind, as the major exposure for such is from the East. Vessels docked in the North/South direction would not be able to handle the storms, and normal wave actions. Furthermore, it would require the complete dismantling and reconstruction of the pier dockage, boathouse, and platform.

I apologize for the time it took to respond, however, I wanted complete information as well as accuracy in the information provided.

***By copy of this letter to Carl Eason, I am providing him the information as it responds to some of his concerns in his protest.***

## Schempf & Ware, PLLC

Page 3

I look forward to working with you on this matter.

Sincerely,

*SCHEMPF & WARE, PLLC*



Michael B. Ware

MBW/acr

Enclosures

cc: Phillip S. Gibson (via email)  
Carl A. Eason, Esquire (via fax 757-497-7267)

LOT 10  
GOODWIN NECK ESTATES  
P.B.6 PG.197

DANDY HAVEN  
LANE-30' R/W  
(PRIVATE)

N/F RAGANS  
INST. #10000824

N01°40'43"W  
108.77'

546.07' TO  
DANDY LOOP  
ROAD

130.52'

PARCEL 2

N78°00'53"E 198'±

PARCEL 1  
TOTAL AREA  
0.7± AC.

AREA WITHIN TRAVERSE  
0.5198 AC.

APPROXIMATE  
MEAN HIGH WATER

APPROXIMATE  
MEAN LOW WATER

N67°30'19"W 139.44'  
TRAVERSE LINE ONLY

S09°36'38"W 200.00'

STONE RIP RAP  
(TYPICAL)

VEGETATED  
WETLANDS

EXISTING WOOD PIER

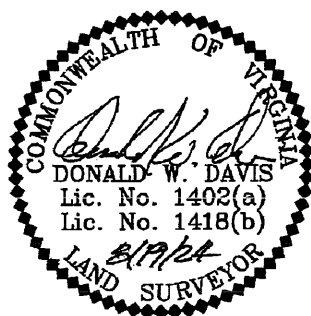
PROPERTY LINE  
EXTENDED

BOAT LIFT

7.9'  
7.2'

FRAME  
BOATHOUSE

17'x47.7'  
ROOF OVERHANG



**SYMBOLS :**

- PIPE FOUND
- IRON ROD SET
- IRON ROD FOUND
- CONC. MONUMENT

*Donald W. Davis*

HEREBY CERTIFY THAT THE  
SURVEY REPRESENTED BY THIS  
PLAT WAS MADE BY ME ON  
THIS DATE AND IS CORRECT  
TO THE BEST OF MY KNOW-  
LEDGE AND BELIEF THERE ARE  
NO ENCROACHMENTS OF BUILD-  
INGS UNLESS SHOWN HEREON.

DAVIS & ASSOCIATES, P.C.  
SURVEYORS - PLANNERS  
3630 GEORGE WASHINGTON  
MEMORIAL HIGHWAY - SUITE G  
YORKTOWN, VIRGINIA 23693  
(757)867-8583

NOTE:  
PHYSICAL IMPROVEMENTS ARE NOT SHOWN HEREON.

NOTE:  
PROPERTY SHOWN HEREON IS LOCATED IN ZONES AE (EL 7') & AE (EL 9')  
AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 510182,  
MAP NUMBER 51199C0133D, EFFECTIVE DATE JANURAY 16, 2015.

NOTE:  
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.  
PROPERTY MAY BE SUBJECT TO EASEMENTS AND SERVITUDES OF RECORD.

JOB LOCATION: #115 DANDY HAVEN LANE

PLAT OF THE PROPERTY OF:

**PHILLIP S. GIBSON & DANETTE C. GIBSON**

**PARCEL 1**

AS SHOWN ON PLAT ENTITLED  
"PLAT OF THE PROPERTY OF  
THE LEGAL HEIRS OF A. G. MORGAN  
PARCEL OF LAND CONTAINING 1.7± ACRES"  
COUNTY OF YORK, VIRGINIA  
P.B.12 PG.538 - D.B.990 PG.49

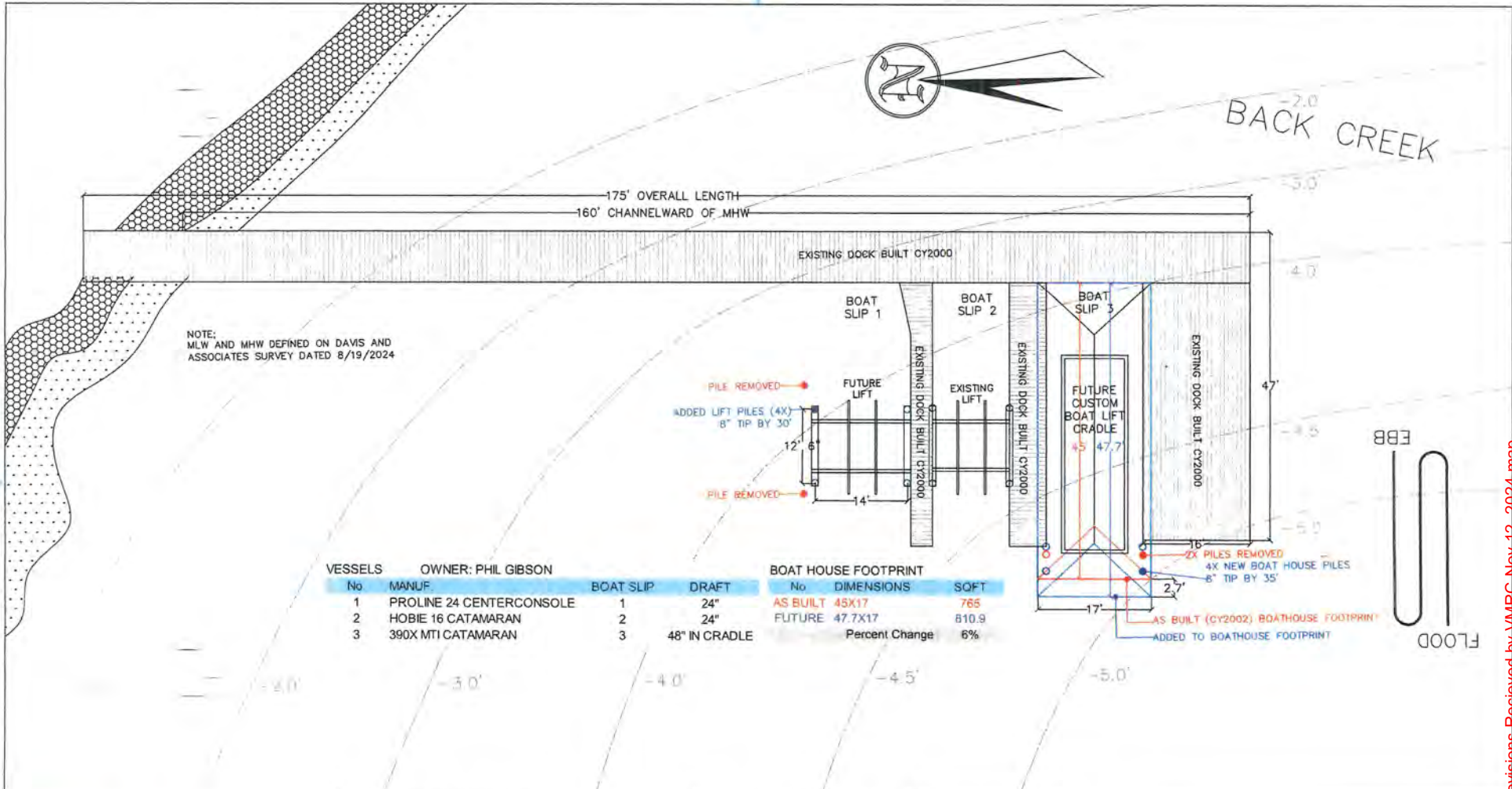
CODE: 97-0901

DWN.BY: TH

SCALE: 1"=50'

TO: GIBSON

DATE: AUGUST 19, 2024



**LIVING SHORELINES**  
Waterfront Design & Permitting

DRAWN BY: RANDY CARNELL, BSME. 757.620.9530

DRAWING: BOATHOUSE ELEVATION

DRAWING NUMBER: LS10242024A

DRAWING DATE: October 24th, 2024

PROJECT LOCATION:

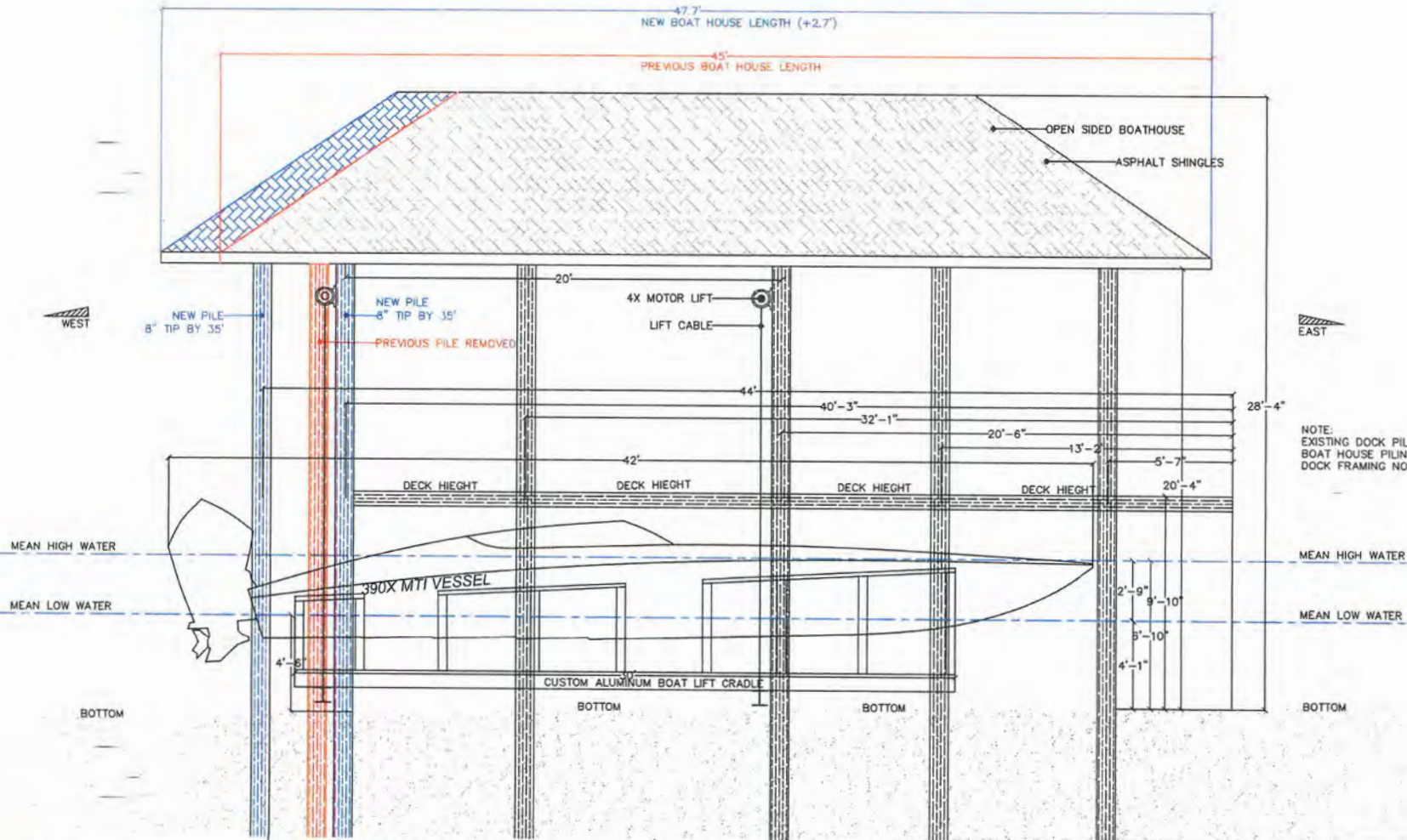
BODY OF WATER: BACK CREEK

PROJECT LOCALITY: YORK

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PROPERTY OWNER INFORMATION:

**GIBSON S PHILLIP**  
119 Dandy Haven Lane  
YORKTOWN, VA 23692



**LIVING SHORELINES**  
Waterfront Design & Permitting

DRAWN BY: RANDY CARNELL, BSME. 757.620.9530

DRAWING: BOATHOUSE ELEVATION

DRAWING NUMBER: LS10212024B

DRAWING DATE: October 21ST, 2024

PROJECT LOCATION:

BODY OF WATER: BACK CREEK

PROJECT LOCALITY: YORK

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PROPERTY OWNER INFORMATION:

**GIBSON S PHILLIP**  
119 Dandy Haven Lane  
YORKTOWN, VA 23692



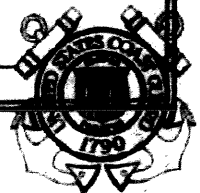
# UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

NATIONAL VESSEL DOCUMENTATION CENTER

## CERTIFICATE OF DOCUMENTATION

VESSEL NAME ZOOM CAT		OFFICIAL NUMBER 1346859	IMO OR OTHER NUMBER VIC39373K223	YEAR COMPLETED UNKNOWN	
HAILING PORT YORKTOWN VA		HULL MATERIAL FRP (FIBERGLASS)		MECHANICAL PROPULSION YES	
GROSS TONNAGE 10 GRT	NET TONNAGE 10 NRT	LENGTH 39.4	BREADTH 10.6	DEPTH 3.8	
PLACE BUILT UNKNOWN					
OWNERS PHILLIP STUART GIBSON		OPERATIONAL ENDORSEMENTS RECREATION			
MANAGING OWNER PHILLIP S GIBSON 115 DANDY HAVEN LN (YORKTOWN VA) 15470 WARWICK BLVD NEWPORT NEWS VA 23608					
RESTRICTIONS NO COASTWISE - BUILD EVIDENCE NOT PRESENTED NO FISHERY - BUILD EVIDENCE NOT PRESENTED					
ENTITLEMENTS NONE					
REMARKS NONE					
ISSUE DATE JUNE 11, 2024		THIS CERTIFICATE EXPIRES JUNE 30, 2029			
		Christian H. Walker DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER			



## **SHELLFISH MANAGEMENT DIVISION EVALUATION, 2/25/2025**

### **DISCUSSION:**

Request for approval of the 2025 Oyster Replenishment and Restoration Plan (ORP) and the Associated Procurements Procedures.

### **ISSUES:**

The Virginia Marine Resource Commission (VMRC) has been at the forefront of oyster restoration and replenishment efforts since the establishment of its Replenishment program in 1929.

The expenditures from the Replenishment Program are ~\$4-\$10 million annually. Funding is procured from a variety of sources, and includes \$4 million in annual General Funds, the remaining funding is a combination of grants, special legislative funds, and user fees collected from the oyster industry.

Each year the Commission is asked to review proposed projects, funding and procurement procedures that will be used for the maintenance and expansion of this ecologically, economically, and culturally important resource.

### **BACKGROUND:**

Although the public oyster resource is currently stable, the recent positive trends could decline as result of consecutive years of poor spat sets, diminished replenishment and restoration efforts, other natural causes, or significant changes in the current management strategy that result in substantial increases in harvest amounts.

Since about the mid-2000's, Virginia has been experiencing a period of relatively high and consistent spat sets or recruitment, in most areas most years. The record number of market oyster observed during the 2021 and 2022 survey is the likely result of the increased replenishment effort combined with these recent high recruitment events (spat sets), and adjustments in the management measures.

Current harvest levels are likely sustainable but are dependent on continued public investment in replenishment effort (shell planting, seed planting, and other substrates such as stone).

Current proposed State budget language indicates General Funds for replenishment remain unchanged from the previous Fiscal Year (FY). The budget, starting in FY2019, included a change in language in the budget bill. Previously, all the General Funds were for the "replenishment" of public oyster grounds. The new language makes a distinction between funding for "restoration" and funding for "replenishment". Although in the past, replenishment has been conducted on both harvest and non-harvest areas, it has been determined that, with the new budget language, restoration specific funds should generally be focused on non-harvest areas. This brings the potential available General Funds for this year's plan to \$4.0 million.

**Non-Federal Funding Sources and total dollar amounts anticipated for replenishment and restoration in 2025.**

<b>NON-FEDERAL FUNDING SOURCES</b>	<b>AMOUNT</b>
General Funds Replenishment (GF)	\$2,500,000
General Funds Restoration (GF)	\$1,500,000
Non-General Funds (NGF) Oyster Resource User Fees	\$300,000
Other Non-General Funds	Up to \$500,000
Total	\$4,800,000

**Federal Funding Sources and total dollar amounts available restoration in 2025.**

<b>FEDERAL FUNDING SOURCES</b>	<b>AMOUNT</b>
NOAA	Up to \$750,000
Total	\$750,000

**SEED TRANSFER:**

**James River**

Initially the majority of the transported seed from the James River was harvested from the Hand Tong Seed Areas and its survival in higher salinity areas tends to be low. This makes it only suitable for planting in locations such as the Potomac Tributaries with similar low salinity waters. Additionally, the cost of harvesting and then transporting this seed has continued to increase. As a result, the Conservation and Replenishment Department of the Shellfish Management Division (CRD-SMD) has replaced or supplemented the hand tong seed with seed that has been harvested from areas outside of the hand tong areas in the lower James River using larger oyster dredges. This seed can be moved for a significantly lower price and is suitable for planting broader geographic and higher salinity areas. The areas where seed is removed are then re-shelled and have been expanded several times recently. Most have continued to receive good spat sets. As a result of the lower cost, and as a way of increasing productivity in low recruitment areas beyond the Potomac tributaries, staff has transported some of this seed to multiple areas for the last 5 years.

After receiving input from the Shellfish Management Advisory Committee (SMAC), the CRD plans to establish an additional area suitable to remove seed by dredge through shell planting in a new location in the Jail Island area of the James River. Some seed may be able to be removed from this area and transplanted prior to shell being placed.

The CRD intends to contract to harvest and transport seed taken from the hand tong areas, the existing seed removal site in the lower James River, and if possible, the newly established seed

area to up to three areas that do not consistently receive high spat sets from shell planting alone. The areas recommended for planting are the Potomac River Tributaries, Area 6 in the Rappahannock River, and a portion of the Pocomoke Sound several miles from the Maryland Virginia state line. The areas planted with seed may not be opened for immediate harvest. Staff would evaluate the seed plant areas prior to opening them to harvest. The cost for each bushel of seed to be harvested by dredge, transported, and planted will be at least \$7.00/bushel.

Funds from Oyster Resource User Fees and replenishment GFs will be used for this project.

A notice to transport seed oysters from hand tong areas will again be put out to solicit persons who may be willing to conduct this work at the price offered. If no positive responses are received this funding will be used to plant additional high recruitment areas with shell that can then be moved later as seed. The cost to harvest transport and plant will be no more than \$15.00/bushel.

### **Great Wicomico River**

The SMAC requested that staff contract for the movement of seed from the traditional seed areas in the Great Wicomico River (Shell Bar and Sandy Point). This project would look to move up to 2,500 bushels of seed from these areas to a harvest area in the Chesapeake Bay south of Smith Point known as Black Berry Hangs.

Proposed Project	Up to 20,000 bushels of seed oysters @ ~\$7.00-\$15.00/bu.
Estimated Cost	\$300,000
Funding Sources	NGF and GF (Replenishment)

### **SHELL PLANTING:**

#### **Bay and Tributaries:**

Shells on public beds naturally degrade over time and lose their effectiveness as a substrate for oyster larval attachment. In most of the mid-salinity areas in Virginia, the half-life of shells appears to be 3 to 4 years. Additional shell is lost and degradation intensified by the harvest and removal of market oysters. The density of living oysters and shell volume are determined from the results of the VIMS-VMRC annual hydraulic patent tong survey, and this information is used to determine what areas are in the most in need of shell. If the mean volume of shell observed in the fall survey does not fall below 5 liters per square meter, a reasonable degree of productivity can be maintained. Maintaining areas at a mean shell volume closer to 10 liters per square meter or above is ideal.

Most of the harvest areas in the Chesapeake Bay and tributaries are experiencing a period of relatively consistent and high recruitment. However, there is strong evidence to suggest that extreme weather events, such as those seen in 2018, could become more frequent, resulting in the

possibility of localized high oyster mortality and low recruitment. Replenishment should continue in areas that are determined to need additional substrate. This will prevent further substrate degradation of the public ground that is opened to harvest and provide an additional buffer for localized high mortality events and low spat sets should they occur. In addition, should a good spat set occur, more substrate will be available for spat to settle on and the areas will be able to more quickly recover from harvest or unpredictable natural causes.

The majority of the replenishment specific General Funds appropriation for FY2025 will be used for adding new shell to those areas in most need of shell and/or those that have been recently opened to public oyster harvest. Some restoration General Funds will be used to maintain or expand sanctuary areas. Funds for oyster replenishment are not likely to be enough to maintain the public beds at maximum productivity but will be used to maintain a minimum volume of shell, as observed in the fall survey, above 5 liters per square meter where possible and practical, with a goal of maintaining 10 liters per square meter or more. In Table 1 and 2 there is a list of all of the areas and acreages of oyster beds that staff has determined to be in need of shell in 2025. In total, more than 6,000 acres of bottom are in need of replenishment, based on shell volume. However, a considerable portion of the areas most in need of replenishment are in the upper James River and are not practical or feasible to replenish on a large scale. These areas should continue to be monitored to assess their decline.

The CRD will seek to plant the largest quantity of comparable shells for the lowest area dependent per-unit price. This will likely be a combination of house, reef and dredged shells. There are currently two locations permitted for hydraulic shell dredging (reef shells), one in the lower James River and a second location in the vicinity of the Craney Island Eastward Expansion.

Proposed Project	600 – 800 acres of oyster shell restoration @ 750-1,000 bushels/acre @ \$2.50 - \$5.50/bushel
Estimated Cost	\$2,500,000-\$4,000,000
Funding Sources	GF

### **Eastern Shore:**

The CRD-SMD and The Nature Conservancy (TNC) have consistently collaborated on Seaside replenishment and restoration efforts. Last year, for the sixth year in a row, TNC funds were used on areas both closed and open to harvest. The CRD-SMD will contract for shell planting for a Nature Conservancy project, assist with the site selection, and shell planting monitoring. If funding allows additional locations will be planted using General Funds for restoration.

Up to 30 acres will be planted with shells harvested from local shell deposits or purchased from local sources.

Proposed Project	Up to 30 acres @ 2,000 to 10,000 bushels of shells/acre @
------------------	-----------------------------------------------------------

	~\$2.50-\$5.50/bushel
Estimated Cost	Up to \$425,000
Funding Sources	NGF-TNC and GF (restoration)

### **ALTERNATIVE CULTCH PROJECTS:**

The supply of shell for restoration, replenishment, and aquaculture will always be limited. The demand for shells in most years tends to be higher than the supply leading to increasing prices. Over the last several years, the CRD-SMD and other restoration partners have begun using alternative substrate in certain areas. Non-harvest locations have been planted with larger sized substrate. In the Rappahannock, several harvest areas have been planted with a smaller sized material. The first planting used crushed concrete that was slightly larger than ideal. Some oysters were crushed during harvesting. The other areas that were planted used a slightly smaller size. These areas have been open to harvest recently, and it appears that the size of the alternative substrate is no longer an issue. Not all areas are suitable for planting with stone or concrete. The bottom needs to be firmer than areas that can be planted with shell.

The CRD has identified a number of locations that could have suitable bottom for alternative cultch plantings. These areas tend to have sandier bottoms and low oyster densities. Staff has existing permits (JPAs) for several locations. The locations would be near the Deep Rock Area, two locations in the Lower Rappahannock, the Lower James River near Nansemond Ridge, and the lower Pocomoke Sound adjacent to Onancock Rock. Only a small portion of the permitted areas would be planted at any given time. In the event that issues with acquiring shell arise, these areas could be expanded as needed and as suitable for planting.

In addition to these harvest areas, VMRC in partnership with NOAA will continue alternative cultch projects that will primarily focus on the restoration of non-harvest areas. Current efforts are focused in the Mobjack Bay. The CRD-SMD will continue to carefully select locations in these areas for alternative substrate planting that will minimize potential user conflict. The intent is to create “new oyster reefs” that will have multiple benefits to adjacent areas, through improved water quality, increased fish habitat, and oyster larval transport to both public and private ground.

Proposed Project	0-100 acres @250 tons/acre @ ~\$70.00/ton Up to 100 acres @ 250-1000 tons/acre
Estimated Cost	\$750,000-\$4,500,000
Funding Sources	GF Restoration and Replenishment, Federal, Non- General Fund

### **Summary of proposed projects and costs for oyster replenishment and restoration for 2025.**

Proposed Project	Estimated Cost	Funding Sources
------------------	----------------	-----------------

Seed Oysters - Up to 20,000 bushels @ ~\$7.00-\$15.00/bu.	\$300,000	NGF and GF (Replenishment)
Shell Planting - 600 – 800 acres of oyster shell restoration @ 1,000-750 bushels/acre @ \$2.50 - \$5.50/bushel	\$2,500,000	GF Replenishment
	\$0-\$1,500,000	GF Restoration
Eastern Shore Shell Planting	\$425,000	GF Restoration and TNC
Alternative Cultch Projects: 0-50 acres @250 tons/acre @ ~\$50.00/ton Up to 100 acres @ 250-1000 tons/acre	\$750,000-\$4,500,000	GF Restoration and Replenishment and Federal

### **Attachments:**

1. Procurement Procedures
2. Table 1 summary of areas of potential areas of oyster replenishment and restoration activity
3. Table 2 All areas available for oyster replenishment and restoration activity

## **APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2025 OYSTER REPLENISHMENT PROGRAM:**

### **General:**

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures, and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

*“C. The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.”*

For the harvest and movement of wild seed oysters the Commission will set the per bushel price to be paid. For the production of oyster eyed larvae, the Commission will set a price per million larvae. Public notices will be posted, and all interested parties may apply. Selection of contractors will be according to the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$2.00 per bushel for conch shells, \$2.50 per bushel for clam shells, and \$3.00 per bushel of oyster shells at the shucking house. Loading, transporting, and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2025 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations, which provide the greatest benefit to the oyster industry and to the Commonwealth.

The Commission may also set the price per ton for ground concrete or granite stone that will be used as an alternative cultch material. Loading, transporting, and planting costs for this material will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Public Notices will be posted, and all interested parties may apply. Contractors will be selected by lottery, or allowed to provide the material until the project is completed.

The agency anticipates that all other 2025 oyster replenishment activities will be

completed using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the condition of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2025 Replenishment Program.

**APPROVAL, BY THE COMMISSION, OF THE REPLENISHMENT PROGRAM WILL ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.**

**Table 1. Summary of potential areas of oyster replenishment and restoration activity for the 2025 Oyster Replenishment Plan.**

	Acreage	Maximum Bushels Needed (1,000 bu/ac)	Cost Estimate (\$4/bu)
Total Most in Need of Replenishment (Shell Volume less than 5L)	4,338	4,338,000	\$ 17,352,000
Total in Need of Replenishment (Shell volume less than 10L)	6,371	6,371,000	\$ 25,484,000
<b>Total Targeted</b>	<b>885</b>	<b>885,000</b>	<b>\$ 3,540,000</b>

COLOR LEGEND	
Most in need	Shell volume less than 5L
In need	Shell volume less than 10L
Not in need unless open to harvest	greater than 10L

**Table 2. All areas available for oyster replenishment and restoration activity for the 2025 Oyster Replenishment Plan.**

Notes:

- This cost estimate is based on an average cost of planting shell and material that can range from \$2.50-\$5.50 per bushel.
- The average markets and Brown Shell Volume are derived from the annual VIMS/VMRC Joint oyster assessment survey.
- Areas are targeted based on criteria outlined in the ORP that include brown shell volume and open harvest status.

Area Name	Average Number of Markets	Average Brown Shell Volume (L)	Acreage	Minium Bushels Needed (7,500 bu/acre)	Maximum Bushels Needed (1,000 bu/ac)	Cost Estimate (\$4/bu)	Notes (S=Sanctuary, H=Harvest Area, O=Open Area 24/25, T=Target for 2025 planting)
<b>James River</b>							
LOWER JAIL ISLAND	1.2	1.0	150	112,500	150,000	\$600,000	H,O,T
UPPER JAIL ISLAND	0.8	1.4	612	459,000	612,000	\$2,448,000	H,O
OFFSHORE SWASH	1.1	1.7	641	480,750	641,000	\$2,564,000	H,O
SWASH MUD SLOUGH	1.2	1.7	1,230	922,500	1,230,000	\$4,920,000	H,O
OFFSHORE JAIL ISLAND	2.6	2.0	1,017	762,750	1,017,000	\$4,068,000	H,O
DAYS POINT	1.4	3.2	275	206,250	275,000	\$1,100,000	H,O
SWASH	1.8	3.9	201	150,750	201,000	\$804,000	H,O
WRECK INSHORE	7.6	5.2	585	438,750	585,000	\$2,340,000	S
LONG ROCK also Cross Rock	4.0	7.8	41	30,750	41,000	\$164,000	H,O
CRUISER'S SHOAL	8.5	8.3	55	41,250	55,000	\$220,000	H,O,T
NANSEMOND RIDGE	9.8	8.5	100	75,000	100,000	\$400,000	H,O,T
SHANTY ROCK	5.5	8.5	3	2,250	3,000	\$12,000	H,O
MULBERRY POINT	11.7	9.5	48	36,000	48,000	\$192,000	H,O
White Shoal	14.6	9.8	26	19,500	26,000	\$104,000	H,O
DOG SHOAL LOWER	21.4	10.6	35	26,250	35,000	\$140,000	H,O
HIGH SHOAL	13.6	11.2	44	33,000	44,000	\$176,000	H,O
THOMAS ROCK LOWER	21.4	11.2	93	69,750	93,000	\$372,000	H,O
BALLARD'S MARSH	23.7	11.3	78	58,500	78,000	\$312,000	H,O
UPPER DEEP WATER SHOAL	46.9	11.6	313	234,750	313,000	\$1,252,000	H,O
HOTEL ROCK	8.8	12.6	14	10,500	14,000	\$56,000	H,O
V-ROCK	20.1	13.3	76	57,000	76,000	\$304,000	H,O
THOMAS ROCK UPPER	37.0	13.3	103	77,250	103,000	\$412,000	H,O
Lower Brown Shoal	25.8	13.8	82	61,500	82,000	\$328,000	H,O
LOWER HORSEHEAD	14.6	14.2	21	15,750	21,000	\$84,000	H,O
SNYDER'S ROCK	26.7	14.3	9	6,750	9,000	\$36,000	H,O
DRY LUMPS	29.0	16.0	6	4,500	6,000	\$24,000	H,O

POINT OF SHOALS	31.5	16.0	155	116,250	155,000	\$620,000	H,O
DOG SHOAL UPPER	32.6	17.4	13	9,750	13,000	\$52,000	H,O
Upper Brown Shoal	32.8	18.4	23	17,250	23,000	\$92,000	H,O
MOON ROCK	24.7	19.0	3	2,250	3,000	\$12,000	H,O
TRIANGLE ROCK	36.0	19.0	7	5,250	7,000	\$28,000	H,O
LOWER DEEP WATER SHOAL	37.5	19.3	20	15,000	20,000	\$80,000	H,O
MIDDLE HORSEHEAD	53.1	21.6	44	33,000	44,000	\$176,000	H,O
UPPER HORSEHEAD	58.5	28.0	5	3,750	5,000	\$20,000	H,O

Area Name	Average Number of Markets	Average Brown Shell Volume (L)	Acreage	Minium Bushels Needed (7,500 bu/acre)	Maximum Bushels Needed (1,000 bu/ac)	Cost Estimate (\$4/bu)	(S=Sanctuary, H=Harvest Area, O=Open Area 24/25, T=Target for 2025 planting)
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#### York and Mobjack

Tow Stake East	4.0	2.8	6	4,500	6,000	\$24,000	H,O,T
Sarah's Creek 2	4.8	4.4	14	10,500	14,000	\$56,000	S,T
PULTZ BAR	6.7	5.5	14	10,500	14,000	\$56,000	H,O,T
Brown's Bay #2	6.6	5.7	22	16,500	22,000	\$88,000	S
Tow Stake West	4.8	6.0	3	2,250	3,000	\$12,000	H,O,T
Timberneck	3.8	6.9	47	35,250	47,000	\$188,000	H,O,T
Sarah's Creek 1	12.4	8.1	9	6,750	9,000	\$36,000	S
Cheatham PG 1	8.0	8.5	2	1,500	2,000	\$8,000	S
Brown's Bay #1	15.3	8.7	83	62,250	83,000	\$332,000	S
Pages Rock	8.8	10.8	116	87,000	116,000	\$464,000	H,O
Aberdeen Rock	11.0	10.9	45	33,750	45,000	\$180,000	H,O
Indian Field PG 2	26.7	17.0	1	750	1,000	\$4,000	S

Area Name	Average Number of Markets	Average Brown Shell Volume (L)	Acreage	Minium Bushels Needed (7,500 bu/acre)	Maximum Bushels Needed (1,000 bu/ac)	Cost Estimate (\$4/bu)	(S=Sanctuary, H=Harvest Area, O=Open Area 24/25, T=Target for 2025 planting)
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#### Piankatank/Deep Rock

THOMPSONS	1.0	1.3	1	750	1,000	\$4,000	S
SHIPLEYS EDGE	0.0	1.5	1	750	1,000	\$4,000	S
PALACE BAR B also PALACE B	2.0	2.2	7	5,250	7,000	\$28,000	S
DOCS VIEW	3.3	5.0	1	750	1,000	\$4,000	S
Iron Point Reef - TNC	6.3	5.0	4	3,000	4,000	\$16,000	S
BURTON POINT B	10.3	5.4	8	6,000	8,000	\$32,000	S
ISLAND BAR	2.7	6.1	5	3,750	5,000	\$20,000	S
Cape Toon NOAA Stone Plant	7.0	6.6	5	3,750	5,000	\$20,000	S
Burton Point NOAA Stone Pla	9.5	7.0	16	12,000	16,000	\$64,000	S
Fishing Point	8.6	7.0	2	1,500	2,000	\$8,000	S
HERON ROCK	9.6	7.0	13	9,750	13,000	\$52,000	S
COBBS CREEK	9.3	7.2	4	3,000	4,000	\$16,000	S
DEEP ROCK 4	8.4	7.2	8	6,000	8,000	\$32,000	H,O
HILLS BAY	12.0	7.3	5	3,750	5,000	\$20,000	S,T
BURTON POINT	10.4	7.5	39	29,250	39,000	\$156,000	H,O,T
CAPE TUNE	6.9	7.5	41	30,750	41,000	\$164,000	S,T
PALACE BAR also PALACE BA	6.1	8.1	38	28,500	38,000	\$152,000	H,O
STOVE POINT	8.4	8.8	5	3,750	5,000	\$20,000	S
Palace Bar NOAA Stone Plant	8.3	9.0	9	6,750	9,000	\$36,000	S
Island Bar NOAA Stone Plant	7.3	9.0	2	1,500	2,000	\$8,000	S
Ginney Point NOAA Stone Pla	9.0	9.1	6	4,500	6,000	\$24,000	S
BLAND POINT	6.4	9.6	11	8,250	11,000	\$44,000	S
Stove Point NOAA Stone Plan	19.9	10.4	9	6,750	9,000	\$36,000	S

GINNEY POINT	15.5	11.5	4	3,000	4,000	\$16,000	S
Heron Rock NOAA Stone Plan	20.3	11.5	3	2,250	3,000	\$12,000	S
Bland Point NOAA Stone Plan	14.1	13.0	11	8,250	11,000	\$44,000	S
BEVERLYS 4	19.4	13.6	15	11,250	15,000	\$60,000	H
BEVERLYS 3	20.8	14.3	7	5,250	7,000	\$28,000	H
BEVERLYS 1	24.0	14.7	14	10,500	14,000	\$56,000	H
THREE BRANCHES	24.0	15.3	1	750	1,000	\$4,000	S
BEVERLYS 2	26.8	15.4	7	5,250	7,000	\$28,000	H
DEEP ROCK	24.8	15.6	38	28,500	38,000	\$152,000	H
MILFORD HAVEN	50.0	18.7	1	750	1,000	\$4,000	H
<b>Area Name</b>	<b>Average Number of Markets</b>	<b>Average Brown Shell Volume (L)</b>	<b>Acreage</b>	<b>Minium Bushels Needed (7,500 bu/acre)</b>	<b>Maximum Bushels Needed (1,000 bu/ac)</b>	<b>Cost Estimate (\$4/bu)</b>	<b>(S=Sanctuary, H=Harvest Area, O=Open Area 24/25, T=Target for 2025 planting)</b>
<b>Rappahannock River</b>							
Mosquito Island	0.7	0.2	2	1,500	2,000	\$8,000	H
Drumming Ground sanctuary	0.3	1.3	3	2,250	3,000	\$12,000	S,T
Mill Creek sanctuary	18.8	4.8	4	3,000	4,000	\$16,000	S,T
Bush Park	5.0	5.2	4	3,000	4,000	\$16,000	H
Bush Park 2018 (Stone)	7.6	5.3	6	4,500	6,000	\$24,000	H
Drumming Ground sanctuary	9.5	5.4	7	5,250	7,000	\$28,000	S,T
Butler's Hole West	9.0	6.6	7	5,250	7,000	\$28,000	H,O,T
Broad Creek Inshore	9.0	6.9	8	6,000	8,000	\$32,000	H,O,T
Ferry Rock	7.3	7.0	4	3,000	4,000	\$16,000	H
Parrot Rock sanctuary	11.0	7.3	10	7,500	10,000	\$40,000	S,T
Lower Edge Broad Creek Middle	9.9	7.4	13	9,750	13,000	\$52,000	H,O,T
Larsons Bay	11.7	7.5	2	1,500	2,000	\$8,000	S
Broad Creek	10.2	7.8	16	12,000	16,000	\$64,000	H,O,T
Lower Edge Broad Creek West	13.7	8.1	22	16,500	22,000	\$88,000	H,O,T
Sturgeon Bar West (S.P. 552)	14.4	8.2	8	6,000	8,000	\$32,000	H
Big Wicks B	7.3	8.3	24	18,000	24,000	\$96,000	H
Corrotoman Point C-3	10.4	8.4	8	6,000	8,000	\$32,000	H
MORATTICO BAR	7.2	8.6	121	90,750	121,000	\$484,000	H,O
Larson's Lower sanctuary	18.3	8.7	3	2,250	3,000	\$12,000	S
Lower Edge Broad Creek East	11.7	9.6	18	13,500	18,000	\$72,000	H,O
Temple Bay 5	15.0	9.6	18	13,500	18,000	\$72,000	H,O,T
Spike B offshore	13.0	9.8	6	4,500	6,000	\$24,000	H,O
Little Wicks A	14.0	10.0	6	4,500	6,000	\$24,000	H,O
Little Wicks B	19.3	10.0	7	5,250	7,000	\$28,000	H,O
STOVE POINT	15.5	10.2	30	22,500	30,000	\$120,000	H,O
Whiting Creek	16.8	10.3	13	9,750	13,000	\$52,000	H
Corrotoman sanctuary	23.3	10.3	9	6,750	9,000	\$36,000	S
Temple Bay sanctuary	12.3	10.3	9	6,750	9,000	\$36,000	S
Corrotoman Point C-1	14.0	10.4	9	6,750	9,000	\$36,000	H
Corrotoman Point C-2	18.0	10.4	9	6,750	9,000	\$36,000	H
Temple Bay 2 (S.P. 136)	19.8	10.6	6	4,500	6,000	\$24,000	H,O,T
Butler's Hole East	14.8	11.0	6	4,500	6,000	\$24,000	H,O
Whitehouse East	15.6	11.0	13	9,750	13,000	\$52,000	S
Sturgeon Bar East (S.P. 551)	21.0	11.3	11	8,250	11,000	\$44,000	H
Parrot's Rock West	16.0	11.3	9	6,750	9,000	\$36,000	H,O,T
Monaskin Bluff	22.8	11.4	162	121,500	162,000	\$648,000	H,O
Middle Ground	8.2	11.4	5	3,750	5,000	\$20,000	H,O,T
Spike	19.8	11.6	7	5,250	7,000	\$28,000	H,O
Parrot's Rock East	22.2	12.1	11	8,250	11,000	\$44,000	H,O,T
Butler's Hole gravel plant	19.0	12.3	5	3,750	5,000	\$20,000	H,O
Drumming Ground Inshore	16.8	12.8	29	21,750	29,000	\$116,000	H

North End S.P. 553	4.2	12.8	10	7,500	10,000	\$40,000	H
Butler's Hole sanctuary	25.5	13.3	2	1,500	2,000	\$8,000	S
Broad Creek sanctuary	25.5	14.0	8	6,000	8,000	\$32,000	S
Waterview C	14.8	14.0	19	14,250	19,000	\$76,000	H,O
Smokey Point	21.2	14.2	26	19,500	26,000	\$104,000	H,O
Big Wicks C	27.0	15.3	24	18,000	24,000	\$96,000	H,O
Temple Bay 3	28.8	15.5	5	3,750	5,000	\$20,000	H,O,T
Larson's Upper sanctuary	28.5	15.8	4	3,000	4,000	\$16,000	S
Spike A	30.5	15.8	2	1,500	2,000	\$8,000	H,O
Waterview B	24.0	16.0	20	15,000	20,000	\$80,000	H,O
Whitehouse West	22.4	16.4	14	10,500	14,000	\$56,000	S
Temple Bay 4	24.0	16.5	12	9,000	12,000	\$48,000	H,O,T
Drumming Ground Offshore	39.8	18.2	28	21,000	28,000	\$112,000	H
Hog House Inshore	40.5	18.5	4	3,000	4,000	\$16,000	H
Hog House Offshore	39.8	19.5	6	4,500	6,000	\$24,000	H
Temple Bay 1 (S.P. 138)	33.0	19.5	6	4,500	6,000	\$24,000	H,O,T
Lower Sturgeon sanctuary	48.7	20.7	1	750	1,000	\$4,000	S
Drumming Ground Offshore A	76.0	22.6	7	5,250	7,000	\$28,000	H
Upper Sturgeon sanctuary	58.7	23.0	5	3,750	5,000	\$20,000	S
Area Name	Average Number of Markets	Average Brown Shell Volume (L)	Acreage	Minium Bushels Needed (7,500 bu/acre)	Maximum Bushels Needed (1,000 bu/ac)	Cost Estimate (\$4/bu)	(S=Sanctuary, H=Harvest Area, O=Open Area 24/25, T=Target for 2025 planting)
<b>Great Wicomico/Black Berry</b>							
VMRC 12/GW Corps 17	0.0	0.0	2	1,500	2,000	\$8,000	S
Mill Creek East	1.3	0.6	2	1,500	2,000	\$8,000	H,O
VMRC 15/GW Corps 21	2.3	1.3	3	2,250	3,000	\$12,000	S
Cockrell Creek Expansion Stc	15.8	3.8	10	7,500	10,000	\$40,000	S
VMRC 10/GW Corps 12, 13	10.3	5.3	5	3,750	5,000	\$20,000	S
VMRC 8/GW Corps 9	3.1	5.4	14	10,500	14,000	\$56,000	S
VMRC 9/GW Corps 10	6.3	5.5	7	5,250	7,000	\$28,000	S
VMRC 3/GW Corps 4	1.7	5.7	3	2,250	3,000	\$12,000	S
VMRC 13/GW Corps 18 & 19	2.0	6.3	6	4,500	6,000	\$24,000	S
VMRC 11/GW Corps 14,15 &	4.8	6.7	14	10,500	14,000	\$56,000	S
HILLY WASH	7.6	7.1	3	2,250	3,000	\$12,000	S
HARCUM FLATS	7.5	7.5	6	4,500	6,000	\$24,000	S
Dameron Marsh East	14.5	7.8	12	9,000	12,000	\$48,000	S
ROGUE POINT	5.8	7.8	3	2,250	3,000	\$12,000	S
INGRAM'S Bay South	9.2	10.0	9	6,750	9,000	\$36,000	H,O
SANDY POINT	10.6	10.4	12	9,000	12,000	\$48,000	H,O
VMRC 4/GW Corps 5	18.7	11.3	3	2,250	3,000	\$12,000	S
Rogue Point Expansion Stone	9.3	11.5	5	3,750	5,000	\$20,000	S
Shell Creek Expansion Stone	34.8	12.3	5	3,750	5,000	\$20,000	S
Back Yard Stone 2021	6.3	12.5	5	3,750	5,000	\$20,000	S
SHELL BAR	12.7	12.6	18	13,500	18,000	\$72,000	H,O
VMRC 1/GW Corps 1&2	17.3	12.8	6	4,500	6,000	\$24,000	S
CRANES CREEK also WHALEY	16.8	12.8	13	9,750	13,000	\$52,000	H,O
Cockrell Creek	33.3	13.0	4	3,000	4,000	\$16,000	H,O
HAYNIE POINT	23.4	13.0	5	3,750	5,000	\$20,000	H,O
FLEET POINT	32.0	13.3	15	11,250	15,000	\$60,000	H,O
VMRC 16/GW Corps 22, 23 &	20.0	14.0	7	5,250	7,000	\$28,000	S
BLACKBERRY HANG	43.7	15.3	11	8,250	11,000	\$44,000	H,O
INGRAM'S Bay North	15.0	18.0	22	16,500	22,000	\$88,000	H,O

Area Name	Average Number of Markets	Average Brown Shell Volume (L)	Acreage	Minium Bushels Needed (7,500 bu/acre)	Maximum Bushels Needed (1,000 bu/ac)	Cost Estimate (\$4/bu)	(S=Sanctuary, H=Harvest Area, O=Open Area 24/25, T=Target for 2025 planting)
<b>Tangier/Pocomoke</b>							
Public Ground #10 H-2	0.8	0.9	21	15,750	21,000	\$84,000	H,O
Public Ground #10 H-1	4.0	3.8	70	52,500	70,000	\$280,000	H,O
PG17 Parker's Rock A	2.2	4.4	34	25,500	34,000	\$136,000	H,T
Public Ground #9 H-2	4.6	4.7	32	24,000	32,000	\$128,000	H,O
Marshalls Rock	9.3	5.8	40	30,000	40,000	\$160,000	H,T
Public Ground 11-1	6.7	6.1	37	27,750	37,000	\$148,000	H,O,T
PG13 H-2	8.6	6.5	40	30,000	40,000	\$160,000	H,O,T
PG13 H-5	6.0	6.5	19	14,250	19,000	\$76,000	H,O,T
Public Ground #9 H-1	6.3	6.8	21	15,750	21,000	\$84,000	H,O
PG07 H-3 Thoroughfare	10.8	6.9	26	19,500	26,000	\$104,000	H,O
PG13 H-1	6.7	8.6	31	23,250	31,000	\$124,000	H,O,T
PG13 H-4	9.8	8.8	28	21,000	28,000	\$112,000	H,O,T
PG18 Onancock Rock A	5.3	9.0	10	7,500	10,000	\$40,000	H
Byrd Rock	4.8	9.5	65	48,750	65,000	\$260,000	H
PG08-H4 California Rock	15.0	10.0	15	11,250	15,000	\$60,000	H,O
Island Rock	20.1	10.8	47	35,250	47,000	\$188,000	H
PG13 H-3	19.8	10.8	24	18,000	24,000	\$96,000	H,O,T
PG08-H2 California Rock	17.8	11.0	9	6,750	9,000	\$36,000	H,O
PG07 H-5 Thoroughfare	14.8	11.8	9	6,750	9,000	\$36,000	H,O
PG07 H-1 Thoroughfare	22.0	11.8	14	10,500	14,000	\$56,000	H,O
PG04 Johnson's Rock	10.5	12.0	40	30,000	40,000	\$160,000	H
PG05 H-1 Fox Island Rock	14.5	12.0	6	4,500	6,000	\$24,000	H
PG08-H3 California Rock	10.3	12.3	7	5,250	7,000	\$28,000	H,O
PG07 H-2 Thoroughfare	28.2	12.6	15	11,250	15,000	\$60,000	H,O
PG08-H1 California Rock	24.0	13.3	9	6,750	9,000	\$36,000	H,O
PG01 Hurley's	19.3	13.3	7	5,250	7,000	\$28,000	H,O
PG07 H-4 Thoroughfare	23.0	14.3	4	3,000	4,000	\$16,000	H,O
Cod Harbor	32.8	15.2	5	3,750	5,000	\$20,000	S

## **FISHERIES MANAGEMENT DIVISION EVALUATION, 2/25/2025**

**PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1360-10 et seq., “Pertaining to Commercial Electrofishing”, to expand the electrofishing fishery, broaden eligibility for new licenses, increase harvest areas, remove size limits on blue catfish, and clarify areas where electrofishing is prohibited.

**ISSUES:** Blue catfish are a non-native species in Virginia, having been introduced to the James, York, and Rappahannock Rivers in the 1970s to create a new sport fishery. Since their introduction, the population has grown rapidly and they can now be found throughout the waters of Virginia in high densities. Studies have shown blue catfish consume a high number of commercially and recreationally important native species.

In 2020, the VMRC established a regulation to create a limited entry commercial electrofishing fishery for invasive catfishes. Since that time, the three licensees have harvested around 300,000 pounds of blue catfish per year, or 11% of the annual harvest. Programs like the Governor’s Blue Catfish Processing, Flash-freezing and Infrastructure Grant demonstrate interest in increasing Virginia’s blue catfish market, including through expanding the number of electrofishing licenses.

**BACKGROUND:** Blue catfish are native to the Mississippi River but were introduced to several Virginia tributaries in the 1970s by the Virginia Department of Game and Inland Fisheries (DGIF), as well as private parties, to create a sport fishery. Flathead catfish were similarly introduced in the 1960s. These invasive catfish species have spread throughout the waters of the Commonwealth; they are very successful colonizers, outcompeting the native catfish species both for food and nesting space.

In 2012, the Chesapeake Bay Sustainable Fisheries Goal Implementation Team (SF GIT) adopted a formal policy towards these invasive catfish, stating that the potential risk to the Chesapeake Bay ecosystem warranted actions to limit their impact. The SF GIT went on to create the Invasive Catfish Task Force (ICTF), a working group consisting of researchers, managers, fishermen, processors, governmental bodies, and other stakeholders across the Chesapeake Watershed jurisdictions. The ICTF released a report in 2014 making recommendations to meet objectives, including slowing and reducing the spread of invasive catfishes and minimizing the ecological impacts. Recommendation 2 to “Develop Commercial Fisheries” states: “We recommended that efforts and incentives to develop a large-scale,

commercial fishery be accelerated and coordinated across jurisdictions. Harvest incentives exploiting the growing populations of invasive catfishes have the potential to reduce populations while also providing economic benefits to the region”. Recommendation 3 to “Evaluate Removal Methods” states: “We recommend jurisdictions consider options to incentivize increased harvest operations for invasive catfishes by small boat operations and electrofishing.”

Electrofishing is generally used as a scientific survey technique, where researchers can capture fish, count and measure them, and release them with little to no mortality. Electrofishing is when a generator, either mounted on a backpack or boat, creates an electrical current that passes between the positive and negative electrodes (anodes and cathodes, respectively). The current elicits a muscular response called taxis, where fish within the field of electricity swim towards the electrodes and then become stunned at the surface. Fish only remain stunned for a matter of seconds before recovering and swimming away. Fish will build a tolerance to the electrical current, so repeated shocking in one area raises fewer and fewer fish over time.

The electrical current used is direct current (DC), continuous or pulsed. The frequency of the current can determine what species are affected, as shown in various studies. Salmon, perch, carp, and mullet are susceptible to high frequency electrofishing. Walleye and bass are susceptible to medium frequencies and catfish require low-frequency electrofishing, generally below 15 Hertz. Due to the physiological differences, low frequency electrofishing for catfish has no bycatch from other species groups.

From 2014 to 2017, the Virginia Marine Resources Commission (VMRC) issued scientific collection permits for low-frequency electrofishing for blue catfish on the James and Pamunkey Rivers. Funded by a VIMS Fishery Resource Grant, these studies showed that electrofishing can harvest a large amount of catfish per unit of effort, tested what electrical current and capture gears were most effective, and tested user conflicts between electrofishing and traditional hoop nets.

Based on this evidence, the VMRC established an electrofishing regulation in December 2019 that created three electrofishing licenses and a lottery system for eligibility; created harvest areas in the mainstem of the James, Pamunkey, and Rappahannock Rivers; established a maximum size limit of 25 inches (with a tolerance up to 28 inches); and placed buffer zones around marked fishing gear, public boat ramps, piers, and wherever people are in the water.

After several successful years of this fishery, there is a recommendation to consider expanding the number of licenses and harvest areas. While the harvest per river is confidential due to the limited number of licensees, together the electrofishing fishery harvests about 300,000 pounds of blue catfish per year. This represents around 11% of the 2.5-3 million pounds of catfish harvested in Virginia annually.

On November 12, 2024, staff presented blue catfish harvest information to the Finfish Management Advisory Committee (FMAC) and asked what changes they would like to see to the electrofishing regulation. After some discussion, the committee started with a motion to recommend keeping the same number of licenses and take the experimental eligibility out, add the Potomac tributaries below the Rt. 301 bridge to the fishing areas and to allow electrofishing licensees to move freely between allowed areas, to have no closed season for electrofishing, to remove size limits for blue catfish, and to keep catfish harvest as an eligibility constraint for new entrants to electrofishing fishery. During public comment, commercial pound netters and recreational anglers stated that electrofishing near their fishing locations impedes their harvest. The committee asked for more information on correlation between electrofishing harvest and nearby gear harvest, which staff said they could work on. FMAC thereby voted unanimously to table the previously introduced motion while they worked towards getting questions answered and finding compromises. They also voted unanimously to set up a work group of committee members and stakeholders to discuss electrofishing proximity rules and other issues. Concerns were also raised at FMAC that increasing licenses and harvest will not benefit Virginia until the bottleneck in the processing and marketing sectors is resolved, as buyers cannot handle even the current levels of harvest.

The agency is recommending expanding the electrofishing fishery to ten licenses, adding a harvest area in the Chickahominy River, and expanding the Pamunkey area to include the Mattaponi River. Both of these new areas are regularly sampled by electrofishing by the Department of Wildlife Resources.

Having ten commercial electrofishing licenses in four harvest areas means that most harvest areas will have more than one harvester, which has not previously been tried. The success of electrofishing is dictated by conductivity, which is dependent on such factors as temperature and salinity. As a result, the effective areas for electrofishing varies throughout the season. Additionally, catfish develop a tolerance to shocking after a local shock event, meaning that after one boat shocks

in an area, it may be five to ten days before another harvester will be able to effectively raise fish in that area.

There is also a recommendation to remove the maximum size limit on blue catfish caught by electrofishing. According to sampling by the Department of Wildlife Resources, less than 2% of blue catfish in the current harvest areas are greater than the present electrofishing size limit of 25". In 2019, staff established a maximum size limit on catfish for the following reasons: health advisories, competition with the trophy angling fishery, and the market. The Virginia Department of Health has an advisory of "Do Not Eat" on catfish greater than 32 inches in the James River and "No more than two meals per month" for catfish under 32 inches due to the presence of PCBs. Also, Virginia has a multi-million-dollar recreational trophy fishery for catfish, in which private anglers and charter vessels target trophy-size blue catfish—often on a catch-and-release basis. When VMRC staff met with representatives of the recreational catfish community in 2019, the anglers and charter captains expressed their concerns that an electrofishing fishery would harm their fishery and livelihoods. Because most buyers and processors prefer fish under eight pounds – roughly a 25" fish—staff proposed to set a maximum size limit to preserve large fish for the trophy fishery. There has been interest in removing the maximum size limit on blue catfish. As most buyers still prefer fish up to eight pounds, many big fish will likely be sold to pay lakes out of state who charge fishermen for access.

The agency recommends a few changes to eligibility for electrofishing licenses as well. The regulation currently states anyone who operated electrofishing equipment as the applicant on a Virginia-issued Scientific Collection Permit is eligible for a Commercial Electrofishing License, to include the waterman whose research was the impetus for this license. This inclusion is not necessary after the initial distribution of licenses and could confuse matters if someone was to leave the fishery and attempt to re-enter it. It is also recommended to remove prior catfish harvest as an eligibility criterion for the license lottery for an open electrofishing licenses. At the time this regulation was created, the agency intended these licenses to go to those already active in the catfish fishery.

Other changes recommended in Section 30 include removing the requirement of completing an electrofishing training course and making explicit in regulation that any new licensee or returning licensee with new electrofishing gear must provide proof from the manufacturer that the shock unit has been modified to not allow it to exceed 15 Hz. This

ensures no species but catfish will be affected. Previously this requirement had been made known to licensees administratively through the requirement “The commission must approve all electrofishing gear prior to the issuance of a Commercial Electrofishing License.”

The last recommendation, for Section 40, subdivision C8, is to clarify language defining areas where electrofishing is prohibited. When the Commission established this regulation in 2019, the motion had been to approve the regulation “with an additional prohibition on electrofishing near public boat ramps, fishing piers, and swimming areas.” The agency feels it is necessary to clarify whether fishing piers include public fishing piers, like the public boat ramps, or any fishing piers. To be more specific, the current recommendation is to change the language to prohibit fishing within 300 yards of “public or private piers”, with a pier defined as “any non-commercial or commercial open pile or floating structure extending from the uplands channelward of mean low water”, and to prohibit fishing within 300 yards of fixed fishing gear, while maintaining the 100 yard buffer around all other marked fishing gear.

Staff presented the proposed changes to FMAC at their February 10, 2025, meeting. There was much discussion around removing the size limit and in the end, the committee felt they would not be able to reach a consensus on that topic. The Committee voted 7-3-3 (Yes-No-Abstain) to recommend expanding the number of licenses to six and reconsidering further expansion in the future after further evaluation. The Committee voted 5-0-7 to support the additional harvest areas in the Mattaponi and Chickahominy, though current electrofishers are of the opinion that these areas would not be profitable. The Committee also voted 4-0-9 to recommend a 150 yard buffer around public fishing piers and public or commercial campgrounds and a 300 yard buffer around fixed fishing gear.

One public comment has been received in opposition to expanding the electrofishing fishery.

## **STAFF**

**RECOMMENDATION:** Staff recommends amending Chapter 4 VAC 20-1360-10 et seq., “Pertaining to Commercial Electrofishing”, to expand the electrofishing fishery, broaden eligibility for new licenses, increase harvest areas, remove size limits on blue catfish, and clarify areas where electrofishing is prohibited.



# COMMONWEALTH of VIRGINIA

## Marine Resources Commission

Building 96

380 Fenwick Road

Fort Monroe, VA 23651

Stefanie K. Taillon  
Acting Secretary of Natural  
and Historic Resources

Jamie L. Green  
Commissioner

## NOTICE

The Virginia Marine Resources Commission invites public comment on proposed amendments to regulations, as shown below. By February 6, 2025, the proposed draft regulations may be viewed on the VMRC web calendar at <https://mrc.virginia.gov/calendar.shtm>.

In accordance with Section 28.2-209 of the Code of Virginia, a public hearing on the proposed amendments to these regulations will be held on Tuesday, February 25, 2025, at the Virginia Marine Resources Commission, 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia.

Written public comments on the proposals below or on items not on the agenda must be provided by 12:00 p.m., Monday, February 20, 2025. Comments should be made at the following link: [https://webapps.mrc.virginia.gov/public/fisheries/search\\_publiccomments.php](https://webapps.mrc.virginia.gov/public/fisheries/search_publiccomments.php) or addressed to Public Comments, 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia 23651.

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### **I. Chapter 4VAC20-1360-10 et seq., “Pertaining to Commercial Electrofishing”**

The Commission proposes to amend Chapter 4 VAC 20-1360-10 et seq., “Pertaining to Commercial Electrofishing”, to expand the electrofishing fishery, broaden eligibility for new licenses, increase harvest areas, redefine restricted areas, and remove size limits on blue catfish.

The purpose of these amendments is to increase harvest of invasive blue catfish from Virginia waters, increase access for commercial watermen to a burgeoning resource, and reduce user conflicts with this fishery.

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**VMRC DOES NOT DISCRIMINATE AGAINST INDIVIDUALS WITH DISABILITIES; THEREFORE, IF YOU ARE IN NEED OF REASONABLE ACCOMMODATIONS BECAUSE OF A DISABILITY, PLEASE ADVISE MICHELE GUILFORD (757-247-2206) NO LATER THAN FIVE WORK DAYS PRIOR TO THE MEETING DATE AND IDENTIFY YOUR NEEDS.**

*An Agency of the Natural and Historic Resources Secretariat*

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# Virginia Marine Resources Commission

## Public Comments

Agenda Item: Proposal to amend Chapter 4 VAC 20-1360-10 et seq., "Pertaining to Commercial Electrofishing", to expand the electrofishing fishery, broaden eligibility for new licenses, increase harvest areas, remove size limits on blue catfish, and clarify areas where electrofishing is prohibited.

*Print Date: Thursday February 20 2025 12:13*

Number	Name	Received	Position
1	MELISSA R SMITH	02/10/2025	OPPOSE

BECAUSE Iâ€™M A COMMERCIAL WATERMAN AND ITâ€™S NOT BENEFICIAL TO ANYONE TO ALLOW MORE SHOCK PERMITS FOR WATERMAN TO MOVE AROUND. Iâ€™M THROWING PEOPLE UNDER THE BUS WITH THIS. THEY ONLY WANT THIS OPERATION TO COME TO THE PAMUNKY BECAUSE THEY THINK THE SHOCKING ONLY WORKS IN OUR RIVER. DAVID JOHNSON DOESNâ€™T EVEN HAVE A SHOCK BOX BUT WE WERE REQUIRED TO HAVE ALL EQUIPMENT CHRIS VON HATTEN AND MYSELF BEFORE WE RECEIVED OUR PERMIT. I FEEL THIS IS WRONG ON EVERY LEVEL ESPECIALLY WHEN GEORGE AND DAVID CANâ€™T CATCH A FISH WITHOUT FRYING THE BOTTOM OF THE RIVER. PLUS SHOCKING ISNâ€™T THE MOST BENEFICIAL WAY TO CATCH A CATFISH. I OPPOSE THIS PETITION.

**"PERTAINING TO COMMERCIAL ELECTROFISHING"****CHAPTER 4 VAC 20-1360-10 ET SEQ.****PREAMBLE**

This chapter establishes a gear license, gear restrictions, and reporting requirements for the commercial electrofishing fishery for catfish.

This chapter is promulgated pursuant to the authority contained in ~~§ 28.2-613~~ §28.2-201 of the Code of Virginia. ~~The effective date of this chapter is January 1, 2020.~~

~~This chapter is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~ This chapter amends and re-adopts, as amended, previous Chapter 4VAC 20-1360-10 et seq., which was promulgated December 17, 2019, and made effective on January 1, 2020. The effective date of this chapter, as amended, is March 1, 2025.

**4 VAC 20-1360-10. PURPOSE.**

The purpose of this regulation is to sustainably manage populations of nonnative catfish species through the creation of a low-frequency electrofishing gear license.

**4 VAC 20-1360-20. DEFINITIONS.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

“Agent” means any individual who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any registered commercial fisherman in order to fish that commercial fisherman’s gear or sell that commercial fisherman’s harvest.

“Blue catfish” means any fish of the nonnative species *Ictalurus furcatus*.

“Commercial electrofishing fishery” means low-frequency electrofishing and subsequent harvest by any individual where the harvest is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

“Electrofishing” means a method by which fish are immobilized by an electrical field created by pulsing direct current at a frequency not above 15 Hz.

**"PERTAINING TO COMMERCIAL ELECTROFISHING"****CHAPTER 4 VAC 20-1360-10 ET SEQ.**

"Fixed fishing device" means any fishing device requiring the use of more than two poles or stakes that have been pushed or pumped into the bottom, to include only fyke nets, pound nets, staked gill nets, and crab traps.

"Flathead catfish" means any fish of the nonnative species *Pylodictis olivaris*.

"Harvest area" means the waters of (i) the mainstem of the James River, from the James River Bridge upstream to the southern point of Turkey Island; (ii) the mainstem of the Chickahominy River, from the mouth of the river upstream to a transect from Watts Point to the southern point of Diascund Creek, (iii) the mainstem of the Pamunkey River, from the Rt. 33 Eltham Bridge upstream to the mouth of Matadequin Creek, and the mainstem of the Mattaponi River from the Rt. 33 Lord Delaware Bridge upstream to the Rt. 629 Walkerton Bridge; and ~~(iii)~~ (iv) the mainstem of the Rappahannock River, from the Rt. 360 Downing Bridge upstream to the Rt. 301 James Madison Memorial Bridge.

"Pier" means any non-commercial or commercial open pile or floating structure extending from the uplands channelward of mean low water.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

**4 VAC 20-1360-30. LICENSING AND ENTRY REQUIREMENTS.**

~~A.~~ The maximum number of Commercial Electrofishing Licenses issued in any calendar year shall be ~~three~~ ten.

**"PERTAINING TO COMMERCIAL ELECTROFISHING"****CHAPTER 4 VAC 20-1360-10 ET SEQ.**

~~B.~~ Any individual who meets all of the following criteria shall be eligible for a Commercial Electrofishing License:

1. The individual shall possess a valid Commercial Fisherman Registration License.
2. The individual shall complete a Commercial Electrofishing Application which shall be received by the Marine Resources Commission by the first of February of the current calendar year.
3. ~~The individual shall meet one of the following criteria:~~ The individual shall have possessed a Commercial Electrofishing License and reported harvest of at least 100 pounds by electrofishing gear to the Marine Resource Commission's Mandatory Harvest Reporting System in the previous calendar year.
  - ~~a. The individual shall have operated electrofishing equipment as the applicant on a Virginia-issued Scientific Collection Permit.~~
  - b. ~~The individual shall have possessed a Commercial Electrofishing License and reported harvest of at least 100 pounds by electrofishing gear to the Marine Resource Commission's Mandatory Harvest Reporting System in the previous calendar year.~~

**"PERTAINING TO COMMERCIAL ELECTROFISHING"****CHAPTER 4 VAC 20-1360-10 ET SEQ.**

~~C.~~ If the number of individuals eligible for a Commercial Electrofishing License pursuant to subsection B of this section is fewer than ~~three~~ ten by the second of February in the current calendar year, a lottery will be conducted including any individual ~~who meets all of the following criteria:~~ who possesses a valid Commercial Fisherman Registration License and has submitted a Commercial Electrofishing Lottery Application that was received by the Marine Resources Commission on or before the last day of March of the current calendar year.

- ~~1. The individual shall possess a valid Commercial Fisherman Registration License.~~
- ~~2. The individual shall complete a Commercial Electrofishing Lottery Application that was received by the Marine Resources Commission on or before the last day of February of the current calendar year.~~
- ~~3. The individual shall have reported harvest to the Marine Resource Commission's Mandatory Harvest Reporting System of at least 1000 pounds of catfish per year in at least three of the previous ten calendar years.~~

~~D.~~ Any individual selected under subsection B or C of this section who fails to return a completed Commercial Electrofishing License Acceptance Form provided by the commission indicating their acceptance within 14 days of selection shall forfeit their eligibility ~~for the current calendar year and another~~ an individual shall be selected from ~~the list of eligible individuals~~ those eligible pursuant to subsection C of this section.

**"PERTAINING TO COMMERCIAL ELECTROFISHING"****CHAPTER 4 VAC 20-1360-10 ET SEQ.**

~~E. A Commercial Electrofishing License shall not be issued to an eligible individual until the individual demonstrates to the Marine Resources Commission successful completion of an approved electrofishing operation safety training course.~~

~~F. E. The commission must approve all electrofishing gear~~ Electrofishing gear must be capped at a maximum of 15 Hz frequency and proof must be furnished by the manufacturer prior to the issuance of a Commercial Electrofishing License.

~~G. F. Using agents or transferring of any Commercial Electrofishing License shall be prohibited,~~ unless the commissioner or the commissioner's designee grants an exception.

~~H. The commissioner or the commissioner's designee may grant exceptions to subsection G of this section.~~

**4 VAC 20-1360-40. PROHIBITIONS.**

A. It shall be unlawful for any individual to harvest any fish immobilized by commercial electrofishing gear without possessing a Commercial Fisherman Registration License and Fish Dip Net License or a Commercial Electrofishing License.

B. It shall be unlawful for any individual in the commercial electrofishing fishery to: take, harvest, or possess any species other than blue catfish or flathead catfish.

~~1. Take, harvest, or possess any species other than blue catfish or flathead catfish.~~

~~2. Take, harvest, or possess any blue catfish greater than 25 inches in total length, except that up to 12 blue catfish per trip may be between 25 and 28 inches in total length.~~

**"PERTAINING TO COMMERCIAL ELECTROFISHING"****CHAPTER 4 VAC 20-1360-10 ET SEQ.**

C. It shall be unlawful for any individual licensed under the provisions of 4 VAC 20-1360-30 to:

1. Fail to be onboard the electrofishing vessel when conducting commercial electrofishing.
2. Conduct commercial electrofishing from October 16 through April 30.
3. Conduct commercial electrofishing between 11:59 a.m. on Friday and 12:01 a.m. Monday.
4. Conduct commercial electrofishing within 300 yards of any fixed fishing devices or within 100 yards of any other marked commercial fishing gear.
5. Conduct commercial electrofishing within the week prior to or during any local sampling conducted by the Virginia Department of ~~Game and Inland Fisheries~~ Wildlife Resources.  
The dates and locations of such sampling will be provided to licensees.
6. Fail to contact the Virginia Marine Resources Commission Operations Station toll free line at 1-800-541-4646 when intending to conduct commercial electrofishing within the following 24-hour period to report the specific location and estimated time of fishing.
7. Conduct commercial electrofishing in Virginia waters except in the harvest area specified on the individual's Commercial Electrofishing License as administered by the Marine Resources Commissioner or the commissioner's designee.
8. Conduct commercial electrofishing with ~~400~~ 300 yards of any public boat ramp, public or private fishing pier, or where people are in the water, including such activities as swimming and diving.

**4 VAC 20-1360-50. PENALTY.**

As set forth in § 28.2-903 of the Code of Virginia, any individual violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any

**"PERTAINING TO COMMERCIAL ELECTROFISHING"**

**CHAPTER 4 VAC 20-1360-10 ET SEQ.**

provision of this chapter committed by the same individual within 12 months of a prior violation is a Class 1 misdemeanor.

**4 VAC 20-1360-60. SANCTIONS.**

Any individual found guilty of violating any provision of this chapter may have his Commercial Electrofishing License revoked at any time upon review by the commission as provided for in § 28.2-232 of the Code of Virginia.

\* \* \* \* \*

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 §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at the meeting held in Hampton, Virginia, on February 24, 2024.

**COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION**

BY: \_\_\_\_\_  
**Jamie L. Green**  
**Commissioner**

Subscribed and sworn to before me this \_\_\_\_\_ day of February, 2025.

\_\_\_\_\_  
Notary Public