

AGENDA
MARINE RESOURCES COMMISSION
MAY 27, 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. PHILLIP GIBSON, #24-1759**
requests authorization to construct a 17-foot by 48-foot open-sided boathouse adjacent to an existing private pier serving 119 Dandy Haven Lane, situated along Back Creek in York County. This project is protested by the adjacent property owner.
- 6. WYATT LANDING DEVELOPMENT LLC, #24-2634**
Commission review, on appeal by the applicant of the April 2, 2025, decision of the Portsmouth Wetlands Board to deny their request to construct two (2) stormwater outfalls with an associated riprap aprons in tidal wetlands serving the proposed residential subdivision adjacent to 3552 Cardinal Lane along Lily Creek in Portsmouth.
- 7. PUBLIC COMMENTS**
- 8. PUBLIC HEARING**
Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2025 recreational management measures for this species.

AGENDA

PAGE 2 ITEMS

A. **PERDUE AGRIBUSINESS LLC, #25-0254**

requests authorization to mechanically dredge 14,000 cubic yards of state-owned submerged lands to a maximum depth of -38 feet mean low water adjacent to the existing unloading dock, and -42 mean low water adjacent to the existing loading dock at the Perdue Agribusiness facility located along the confluence of the Southern Branch Elizabeth River and Jones Creek in the City of Chesapeake. Dredged material will be barged and offloaded at either Craney Island Dredged Material Management Area, Shirley Plantation in Charles City, or Precon Marine facility in the City of Chesapeake. Staff recommends approval with our standard dredge conditions. This project requires a VMRC Subaqueous permit.

B. **CITY OF VIRGINIA BEACH, #25-0277**

requests authorization to maintenance dredge approximately 500,000 cubic yards (per cycle) of state-owned submerged bottom within the Rudee Inlet federal navigational channel, sand trap, and outer deposition basin, to a maximum depth of -22 feet mean lower low water, situated along the Atlantic Ocean in Virginia Beach. Dredging will occur either by hydraulic or hopper-dredge methods on an as-necessary basis, with sidecast dredging utilized as an emergency measure. Dredged sand will be hydraulically pumped to the resort beach area, released/placed in the near-shore beach area north of Rudee Inlet, or placed on Croatan Beach south of Rudee Inlet. Staff recommends approval with our standard dredge conditions and the previous sidecast dredging special conditions. This project requires a Subaqueous permit.

C. **ELIAS SCOTT, #24-2196**

requests authorization to construct a 40-foot low profile groin extending channelward of an existing bulkhead along the Rappahannock River shoreline at 113 Wildwood Place in Essex County. The project requires a VMRC Wetlands and a VGP-2 Groin General Permit.

D. **VIRGINIA PORT AUTHORITY and ROCKET LAB USA, #25-0521**

request authorization to dredge approximately 59,042 cubic yards of state-owned submerged lands to achieve a maximum depth of minus seven (-7) feet mean low water, on an as-needed basis, within Sloop Gut Channel adjacent to Wallops Island in Accomack County. Dredged material will be barged to Shirley Plantation and offloaded for upland disposal. Staff recommends approval with our standard dredge conditions and the use of a turbidity curtain and environmental dredge bucket to minimize impacts on adjacent leased shellfish beds. This project requires a Subaqueous permit.

E. **NAVAL STATION NORFOLK #2023-1875**

requests authorization to construct a 200-foot-long by 16-inch-wide concrete sheet pile breakwater structure spanning the northside of an exempt concrete open-pile pier adjacent to Building V-47 serving Norfolk Naval Station situated along Willoughby Bay in the City of Norfolk. The project

AGENDA

requires a Subaqueous permit.

F. VIRGINIA ELECTRIC & POWER D/B/A DOMINION ENERGY, #25-0278

requests authorization to install a monopile support structure that will result in 20 square feet of tidal vegetated wetland impacts situated along Proctors Creek in Chesterfield County, serving Dominion Chesterfield Power Station. The applicant has purchased tidal wetlands credits from the Virginia Aquatic Resources Trust Fund. This project requires a VMRC Wetlands permit.

MINUTES

COMMISSION MEETING

April 22, 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	Associate Members
Jeremy Headley	
Jeanette Edwards	
Thomas Preston	
Preston White	
Kelci Block	Assistant Attorney General
Jamie Hogge	Recording Secretary
Randy Owen	Chief, Habitat Management
Pat Geer	Chief, Fisheries Management

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Emily Hein	Mark Luckenbach
Alex Sabo		

Others present:

Phil Zalesok	Jacob Stenberg	Sergio Garcia
Randy Whittaker	John Tyson	Thomas Moore
Monty Deihl	Forrest Brann	Fredrick Rogers
Robert Birch	Taylor Deihl	Mike Mohler
Aileen Black	Reed Black	Brian Collins
Kathryn Walker	Ben Russo	Alan Hinson
David Reed	Jimmy Kellum	Ross Kellum

Chad Dameron	Julie Kacmarak	Lynn Jenkins
Tom Charlock	Tom Lilly	Deb Campbell
David O’Brien	Brad Beach	Dawn Beach
Chris Ambrio	J.C. Hudgins	Bob Simon
Tommy Byrne	Bill Lascara	Lyons Lascara
Joan Millard	Vance Hull	Rebecca Frances
Nathan Everett	Greg Henrick	Jackie Shannon
Robert Wiley	Steve Horton	David Hiltop
Jacob Jewell	Austin Robbins	John Balderson
and others.		

* * * * *

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

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

* * * * *

MINUTES: Commissioner Green asked if there were any changes or corrections to be made to the March 25, 2025, Commission Meeting minutes.

Associate Member Erskine moved to approve the minutes as presented. Associate Member Bransom seconded the motion. The motion carried, 7-0-1. Associate Member Headley abstained.

* * * * *

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 2E for the Associate Members. Mr. Owen's comments are a part of the verbatim record.

- 2A. **PHILIP HORNER, #24-2520**, requests authorization to construct two (2) 50-foot riprap groins along the York River shoreline at 147 Ridge Road in King and Queen County. The project requires a VMRC Beach Permit and a Virginia General Permit #2 (Groins).
- 2B. **BRIAN PEAY, #25-0398**, requests authorization to construct a 158-foot long rock revetment along the Mattaponi River at Tax Map Parcel 24-31L-14B1 on Grass Creek Trail in King and Queen County. The project requires a VMRC Wetlands Permit.
- 2C. **CHRISTINE SOTIR, #24-1242**, requests authorization to install a living shoreline consisting of 275 linear feet of oyster castle and core log sill with backfill and plantings and loose oyster shell serving 2822 Meadowgreen Court situated along Drum Point Creek in Chesapeake. This project requires a VMRC Wetlands Permit.
- 2D. **RED SKY HOLDINGS LLC, #25-0021**, requests authorization to construct a 23-foot wide by 72-foot long open-pile deck with an attached 20-foot by 8-foot floating dock, and to install 72 linear feet of riprap, the toe of which may be installed a maximum of five (5) feet channelward of mean high water, serving the commercial facility at 103 Watson Road along the Southern Branch of the Elizabeth River. This project requires a VMRC Wetlands Permit.
- 2E. **W.F. MAGANN CORPORATION, #25-0144**, requests authorization to mechanically dredge up to 59,250 cubic yards of state-owned submerged lands to maximum depths of minus 17 feet mean low water with future maintenance dredging as necessary, adjacent to their East Yard Facility at 3106 West Norfolk Road, situated along the Western Branch of the Elizabeth River in Portsmouth. Dredged spoils will be barged to and offloaded at Shirley Plantation for eventual upland disposal. Previous VMRC permit #22-0093 authorized the dredging of 42,525 cubic yards of material at this site; the royalty was paid; however, the dredging did not occur. This project requires a VMRC Subaqueous Permit, and staff recommends approval with standard dredging special conditions and a royalty totaling \$10,035.00 for the removal of 16,725 cubic yards at a rate of \$0.60 per cubic yard.

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 Page 2 items 2A through 2E as presented. Associate Member Headley seconded the motion. The motion carried, 8-0.

* * * * *

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

* * * * *

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

* * * * *

5. **PETITION:** Petition for Rulemaking Regarding Atlantic Menhaden, the Chesapeake Bay, and the reduction fishery.

Deputy Commissioner Joseph Grist provided the petition process prior to the presentation. Chief, Fisheries Management Pat Geer, gave a briefing of the information provided in the staff's evaluation for the Associate Members. Their comments are a part of the verbatim record.

Several people spoke, both in support and opposition to the petition. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Hand moved to amend the petition to a 20% reduction to #1 across all sectors of the Chesapeake Bay and deny the remaining petition. Associate Member White seconded the motion. The motion fails, 6-2. Associate Members Kellum, Erskine, Bransom, Headley, Edwards and Preston voted no.

Associate Member Preston moved to deny the petition as presented. Associate Member Headley seconded the motion. The motion carried, 6-2. Associate Members Hand and White voted no.

* * * * *

- 6. JACEY VINEYARD LLC, #24-0701,** requests authorization to construct an 80-foot long by 6-foot wide timber commercial pier with a 30-foot long by 12-foot wide L-head and three (3) associated mooring piles, adjacent to property situated along Mill Creek at 619 Trane Lane in Northumberland County. The project is protested by adjacent and nearby property owners.

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.

Tommy Burn 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 Erskine moved to approve the project with a modified width up to 8 feet as amended by Associate Member Headley. Associate Member Bransom seconded the motion. The motion carried, 7-0. Associate Member Hand was not present during the final vote.

* * * * *

- 7. DONALD DEBORD, #24-2678,** requests authorization to install a 14-foot by 37-foot open-sided boathouse and a 16-foot by 18-foot open-sided gazebo on an existing statutorily authorized private pier along the York River at 361 Simpson Creek Road in King and Queen County. The project is protested by an adjacent property owner.

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

Greg Hendrich was sworn in and spoke. His comments are a part of the verbatim record.

Tresure Johnson was sworn in and spoke in opposition of the project. Her comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Preston moved to approve the project as presented. Associate Member Bransom seconded the motion. The motion carried, 7-0. Associate Member Hand was not present during the final vote.

* * * * *

8. **BRADLEY BEACH, #24-1402**, requests authorization to construct a 16-foot by 18-foot open-sided gazebo roof structure and an 18-foot by 26-foot open-sided boathouse adjacent to an existing private pier serving 353 Whiting Lane, situated along Back Bay in Virginia Beach. This project is protested by nearby property owners.

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.

Chris Ambrosio, attorney for the applicant, spoke in support of the application. His comments are a part of the verbatim record.

Bill Lascara, attorney representing the family opposing the project. His comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member White moved to approve the project as presented. Associate Member Headley seconded the motion. The motion carried, 6-0. Associate Member Hand and Preston were not present during the final vote.

* * * * *

9. **DISCUSSION:** Request for approval to support the Potomac River Fisheries Commission Implementation of an oyster revitalization project in the Potomac River.

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

The matter was before the Commission for discussion and action.

Associate Member Bransom moved to approve the project as presented. Associate Member Edwards seconded the motion. The motion carried, 5-0. Associate Member Hand and Preston was not present during the final vote. Associate Member Kellum abstained.

* * * * *

10. **PUBLIC COMMENT:** No one spoke during public comment.

* * * * *

11. **PUBLIC HEARING:** The Commission proposes to amend Chapter 4VAC20-490, "Pertaining to Sharks" to prohibit overnight soaks for Virginia spiny dogfish permit holders on gillnets with 5.25-to-10-inch mesh from November 1 through March 31 in specified areas in Virginia coastal waters.

Pat Geer, Chief, Fisheries Management, gave the briefing on information provided in the staff's evaluation for the Associate Members. Mr. Geer's comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Bransom moved to approve the regulation as presented. Associate Member White seconded the motion. The motion carried, 5-0. Associate Member Hand, Erskine and Preston were not present during the final vote.

* * * * *

12. **PUBLIC HEARING:** The Commission proposes to amend Chapter 4VAC20-1190, "Pertaining to Gill Net Control Date" to establish an extended drift gill gear license (up to 6,000 ft) and to develop associated gear requirements, season and time restrictions.

Pat Geer, Chief, Fisheries Management, gave the briefing on information provided in the staff's evaluation for the Associate Members. Mr. Geer's comments are a part of the verbatim record.

Several people spoke in support of the new gear type and amendment to the regulations. If the season is restricted, they recommended the season begin May 1 through October 31. Their comments are a part of the verbatim record.

The matter was before the Commission for discussion and action.

Associate Member Bransom moved to approve the regulation as presented with a modified season from May 1 to October 15. Associate Member Edwards seconded the motion. The motion carried, 6-0. Associate Member Hand and Preston were not present during the final vote.

* * * * *

13. **DISCUSSION:** Commission briefing on three locality proposals to the Abandoned and Derelict Vessel Program to remove a total of 7 vessels.

Joseph Grist, Deputy Commissioner, gave the briefing of the information provided in the staff's evaluation, with PowerPoint slides. for the Associate Members. Mr. Grist's comments are a part of the verbatim record.

Associate Member Headley moved to approve approved seven applications for funding to the Abandoned and Derelict Vessel (ADV) grant program. as presented. Associate Member Edwards seconded the motion. The motion carried, 5-0. Associate Member Hand, Erskine and Preston were not present during the final vote.

* * * * *

Commission Meeting

19312
April 22, 2025

There being no further business, the meeting was adjourned at 12:03 p.m. The next Commission meeting will be held on **Tuesday**, May 27, 2025.

Jamie L. Green, Commissioner

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

May 21, 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 May Commission Meeting

Attached please find the Habitat Management Division evaluations for this month's Commission meeting. We now have two full brief items and six 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 (2024-1759).

I look forward to seeing everyone next Tuesday.

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

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

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

PHILLIP GIBSON, #24-1759

1. Habitat Management evaluation dated May 27, 2025.
(Pages 1 – 2)
2. Habitat Management letter of finding dated February 28, 2025.
(Pages 3 – 6)
3. Habitat Management evaluation dated February 25, 2025.
(Pages 7 – 9)
4. Stop Work Order email and response dated July 16, 2025.
(Pages 10 – 13)
5. After-the-fact Joint Permit Application drawings dated received July 24, 2024, and revised drawings dated received August 7, 2024.
(Pages 14 – 27)
6. VMRC Notice to Comply sent by certified mail on August 22, 2024.
(Pages 28 – 35)
7. Protest dated August 15, 2024, and November 7, 2024.
(Pages 36 – 42)
8. Survey and revision dated received November 12, 2024.
(Pages 43 – 49)

May 27, 2025

HABITAT MANAGEMENT DIVISION EVALUATION

PHILLIP GIBSON, #24-1759, requests authorization to construct a 17-foot by 48-foot open-sided boathouse adjacent to an existing private pier serving 119 Dandy Haven Lane, situated along Back Creek in York County. This project is protested by the adjacent property owner.

Narrative

On July 24, 2024, Mr. Gibson submitted an application to retain his existing boathouse, constructed in 2002 as an 18-foot by 45-foot open-sided boathouse, and to construct a 2.7-foot extension to the roof to accommodate his largest boat. This after-the-fact application was submitted after the adjacent property owner complained, and staff confirmed that Mr. Gibson and his contractor had begun construction on the roof expansion without VMRC authorization.

Specifically, the application requested to remove 20% of the existing boathouse roof, replace the compromised pilings, extend the roof approximately three (3) feet longer to a new length of 47.7 feet, and to install two (2) new boat lifts. Mr. Gibson has provided a vessel certificate of documentation for a 39-foot Zoom Cat, which the Coast Guard issued on June 11, 2024. He also owns a 24-foot Proline boat that is registered in his name.

At the February 25, 2025, Commission hearing, the Commission voted to assess both Mr. Gibson and the marine contractor Mr. Wade Webb \$6,000.00 civil charges, respectively for the unauthorized construction. Mr. Gibson paid his civil charge for the unauthorized framing on March 24th, 2025. Mr. Wade Webb paid his civil charge on March 24th, 2025.

The Commission additionally directed Mr. Gibson to remove eight (8) unauthorized pilings and the framing for the boathouse roof expansion. On April 24, 2025, staff met with Mr. Gibson and documented that the unauthorized framing for the boathouse had been removed. At Mr. Gibson's request, staff and the Commissioner agreed to allow the pilings to remain until the Commission decides whether to allow the after-the-fact approval of the existing boathouse and proposed roof expansion.

Issues

The adjacent property owner, Mr. Dewey Ragans, maintains his objection to the proposed construction/expansion of Mr. Gibson's boathouse. Mr. Ragans, and his attorney Mr. Carl Eason, believe the proximity of the boathouse proposal encroaches closer to the shared property line and creates a navigation hazard for Mr. Ragans to access his private pier. They have stated that they are not opposed to the previously constructed boathouse dimensions but object to the 2.7-foot additional length. Mr. Eason has formally stated, however, that he does not believe Mr. Gibson's boathouse expansion encroaches into Mr. Ragans' riparian area.

Issues (cont'd)

A public notice was advertised in the Daily Press on May 7, 2025, and no additional protests have been received on Mr. Gibson's request.

Summary/Recommendations

Mr. Gibson's boathouse has existed for 23 years and has not created an issue for his neighbor, Mr. Ragans, to access his pier nor does it appear to represent a riparian issue. Staff feels that Mr. Gibson's expansion request to increase the size of his boathouse from 45 feet to 47.7 feet is a reasonable use of state-owned submerged lands to accommodate his recent purchase of the larger vessel. 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(A) of the Code of Virginia, staff recommends after-the-fact approval of the project with triple permit fees of \$900.00.



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, Virginia 23651

Stefanie K. Taillon
Acting Secretary of Natural
and Historic Resources

Jamie L. Green
Commissioner

February 28, 2025

Mr. Phillip Gibson
115 Dandy Haven Lane
Yorktown, VA 23692
pgibson@cardwellprinting.com

Re: VMRC NTC #24-07

Dear Mr. Gibson:

This is to inform you that the Marine Resources Commission, at its regularly scheduled meeting on February 25, 2025, considered your failure to comply with the Commission's August 22, 2024, directive to remove eight (8) timber piles and the unauthorized framing 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.

The Commission reviewed a staff presentation and heard testimony from you and your attorney, Mr. Michael Ware. After careful deliberation and after considering all of the factors contained in §28.2-1205.A and §28.2-1213 of the Code of Virginia, the Commission voted to order the removal of the unauthorized structures within 60 days of the February 25, 2025, Commission hearing. This requires the removal of the four (4) support piles and framing for the boathouse roof expansion and the four (4) unauthorized boat lift pilings. Furthermore, the Commission voted to assess a \$6,000.00 civil charge to you and your marine contractor, Mr. Wade Webb, for this violation. Please remit this payment to our office within 30 days. If the payment is not received within 30 days, this matter will be referred to the Office of the Attorney General to seek civil penalties pursuant to §28.2-1213 of the Code of Virginia.

Please be advised that any person aggrieved by a decision of the Marine Resources Commission has the right of judicial review. Part 2A of the Rules of the Supreme Court of Virginia applies to judicial appeal of Commission decisions reviewable in accordance with the Administrative Process Act. As provided by Rule 2A:2, you have 30 days from the date of service of this decision within which to initiate an appeal of this decision by filing a Notice of Appeal with:

Ms. Michelle Guilford, Agency Secretary
Virginia Marine Resources Commission
Building 96, 380 Fenwick Road
Fort Monroe, Virginia 23651

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

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

Mr. Phillip Gibson
Page Two

February 28, 2025
VMRC NTC #24-07

In the event that this decision is served on you by mail, three days are added to the 30-day period.

Should you have any questions concerning this matter, please feel free to contact me at (757) 247-2251.

Sincerely,

Randal D. Owen

Randal D. Owen
Chief, Habitat Management

RDO/br:lra

HM

cc: Jamie Green, Commissioner
Kelci Block, Assistant Attorney General
Attorney Mike Ware



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, Virginia 23651

Stefanie K. Taillon
Acting Secretary of Natural
and Historic Resources

Jamie L. Green
Commissioner

February 28, 2025

CERTIFIED MAIL

Blackwater Pier & Dock, Inc.

Attn: Mr. Wade Webb

Post Office Box 597

North, VA 23128

Re: VMRC NTC #24-07

Dear Mr. Webb:

This is to inform you that the Marine Resources Commission, at its regularly scheduled meeting on February 25, 2025, considered your failure to comply with the Commission's August 22, 2024, directive to remove eight (8) unauthorized timber piles and an unauthorized extension to an existing boathouse, built in excess of its former authorization under VMRC #2000-0590 at 119 Dandy Haven Lane, situated along Back Creek in York County.

The Commission reviewed a staff presentation and heard testimony from Mr. Phillip Gibson and his attorney, Mr. Michael Ware. After careful deliberation and after considering all of the factors contained in §28.2-1205.A and §28.2-1213 of the Code of Virginia, the Commission voted to order the removal of the unauthorized timber pilings and boathouse extension within 60 days of the February 25, 2025, Commission hearing. This specifically requires the removal of the four (4) unauthorized support piles for the boathouse roof expansion and the four (4) unauthorized boat lift pilings. Furthermore, the Commission voted to assess a \$6,000.00 civil charge to you as the marine contractor for this violation. Please remit this payment to our office within 30 days. If the payment is not received within 30 days, this matter will be referred to the Office of the Attorney General to seek civil penalties pursuant to §28.2-1213 of the Code of Virginia.

Please be advised that any person aggrieved by a decision of the Marine Resources Commission has the right of judicial review. Part 2A of the Rules of the Supreme Court of Virginia applies to judicial appeal of Commission decisions reviewable in accordance with the Administrative Process Act. As provided by Rule 2A:2, you have 30 days from the date of service of this decision within which to initiate an appeal of this decision by filing a Notice of Appeal with:

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

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

Ms. Michelle Guilford, Agency Secretary
Virginia Marine Resources Commission
Building 96, 380 Fenwick Road
Fort Monroe, Virginia 23651

In the event that this decision is served on you by mail, three days are added to the 30-day period.

Should you have any questions concerning this matter, please feel free to contact me at (757) 247-2251.

Sincerely,

Randal D. Owen

Randal D. Owen
Chief, Habitat Management

RDO/br:lra
HM

cc: Jamie Green, Commissioner
Kelci Block, Assistant Attorney General
Applicant

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](#)

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

2nd email

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

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.

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.

Check all that apply				
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)			
County or City in which the project is located: <u>Yorktown</u>				
Waterway at project site: <u>Back Creek</u>				
PREVIOUS ACTIONS RELATED TO THE PROPOSED WORK (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 - https://webapps.mrc.virginia.gov/public/habitat/ - or VIMS - http://ccrm.vims.edu/perms/newpermits.html				
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
	Please see 8-1/2 x 11s attached			

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

WY daily for Yorktown
info@wydaily.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 ~~liable for 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.**

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
20010326	2001-02-26	York	Issued	Pier/Boathouse <i>Not Applicant</i>	Gibson, Phillip	Quarter March Creek
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

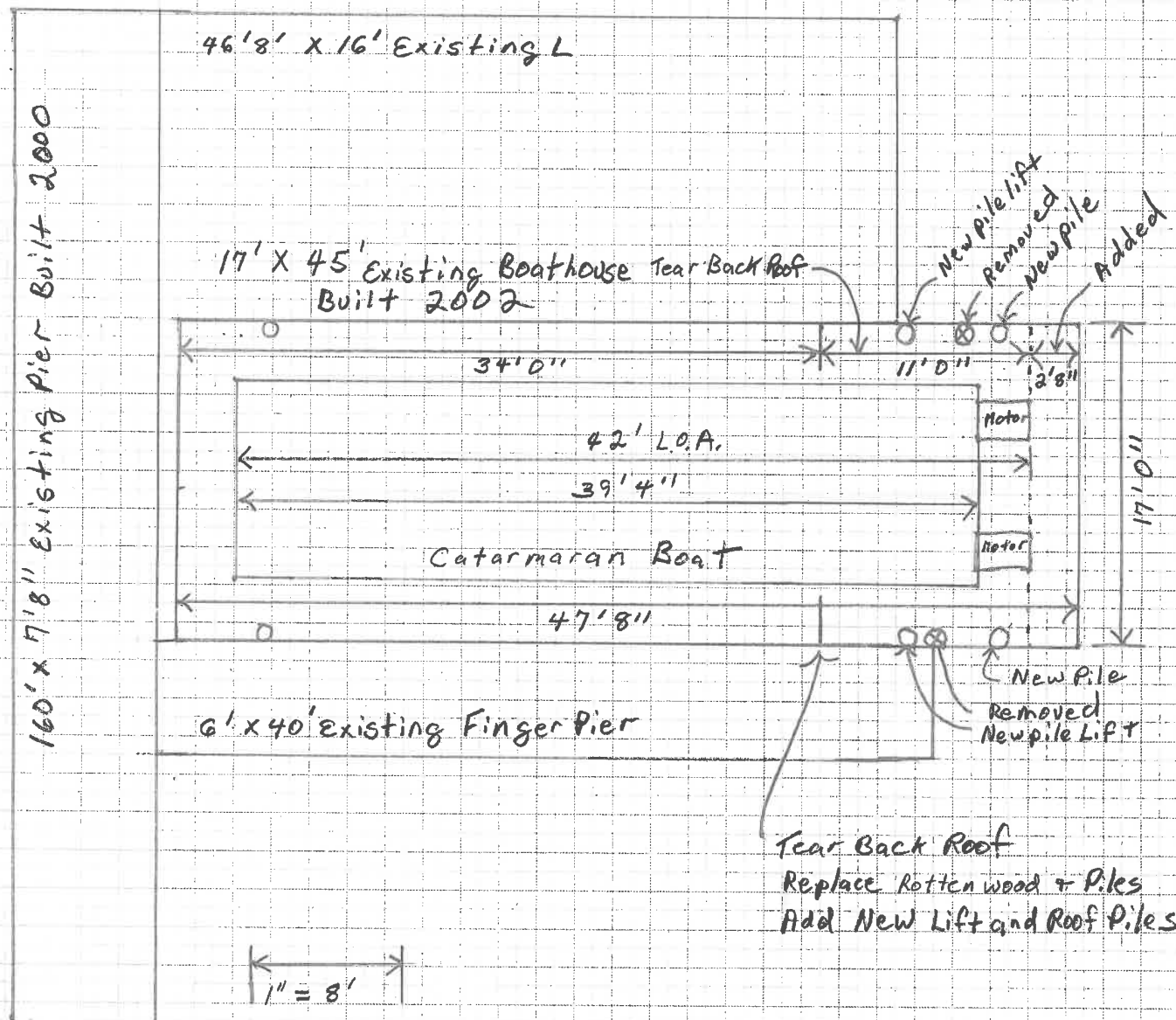
See Page 3 of 3

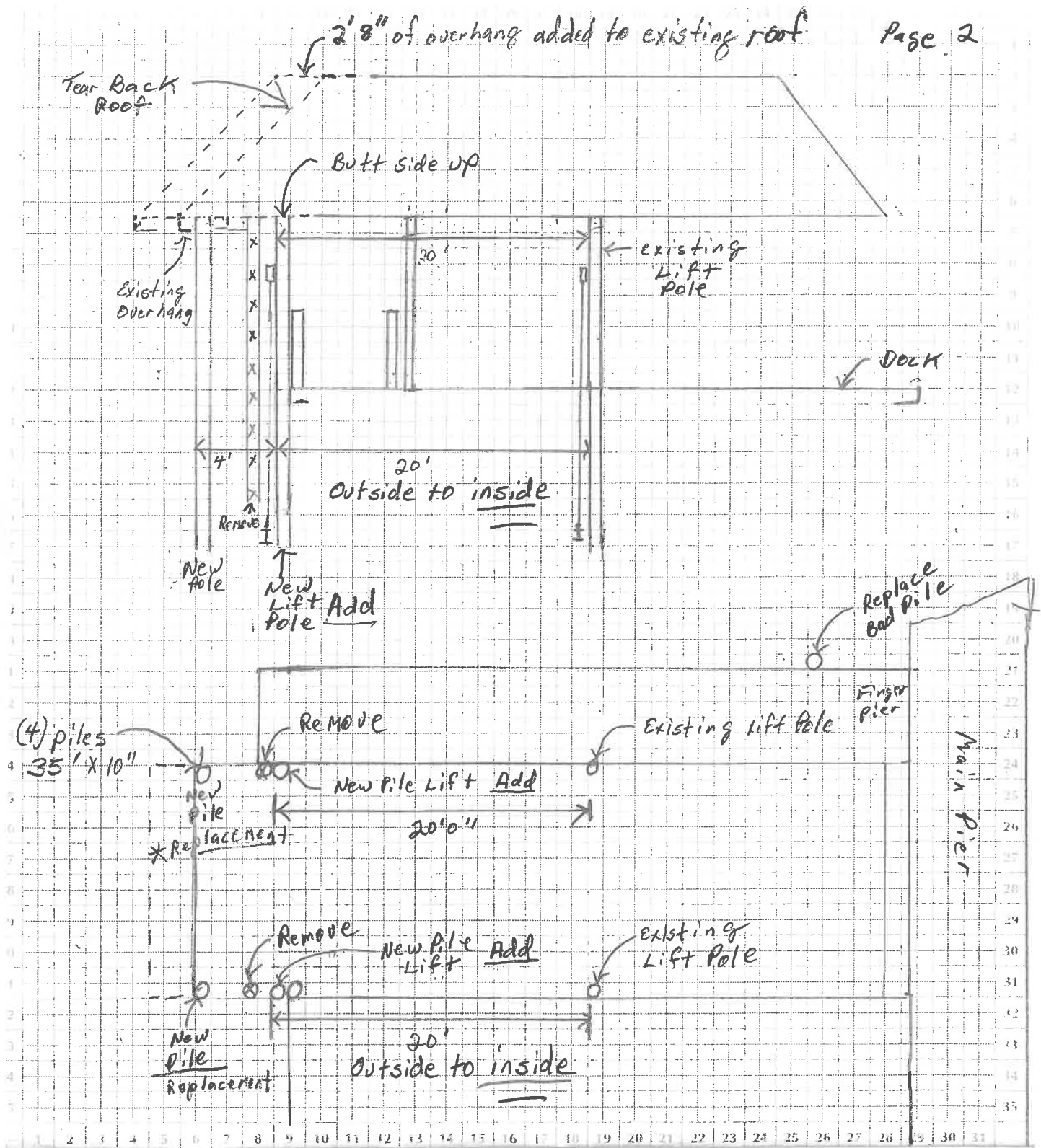
Approval of plan by Owner(s) _____
Date _____

R.S.C.

Page 2 of 3

REVISION





VMRC 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

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.

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

B. Received by (Printed Name)

Phillip Gibson

C. Date of Delivery

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

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☐ Yes

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.
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 the applicant (Mr. Phillip Gibson) will be required to attend this meeting.**

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

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

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.

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

Wade 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

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](#)

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.wolcottriversgates.com

Carl A. Eason, Esq.
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>
Sent: Thursday, November 7, 2024 10:35 AM
To: Reams, Brad (MRC) <brad.reams@mrc.virginia.gov>
Cc: Owen, Randy (MRC) <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
www.wolcotttriversgates.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>

Sent: Thursday, October 31, 2024 4:10 PM

To: Reams, Brad (MRC) <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 22nd. 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 16th 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

www.wolcottiversgates.com

200 Bendix Road, Suite 300

Virginia Beach, VA 23452

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.

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.

SCHEMPF & WARE, PLLC

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

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. #110000824

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
TRAVERSE LINE ONLY
139.44'

S09°36'38"W 200.00'

STONE RIP RAP
(TYPICAL)

VEGETATED
WETLANDS

EXISTING WOOD PIER

PROPERTY LINE
EXTENDED

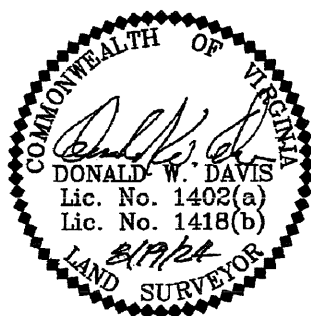
BOAT LIFT

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



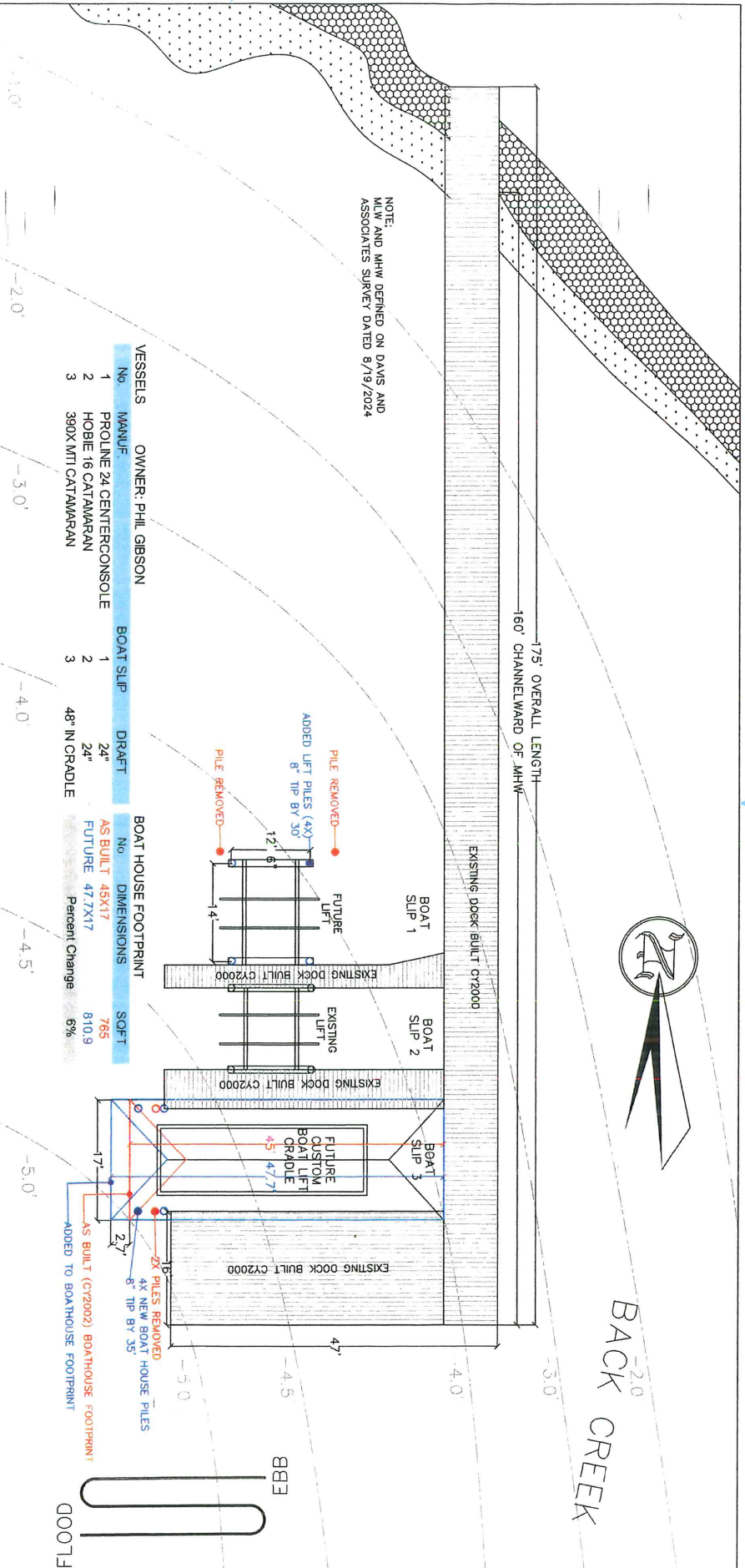
LIVING SHORELINES
Waterfront Design & Permitting

DRAWN BY: RANDY CARNELL, BSWE, 757.620.9530

DRAWING: BOATHOUSE ELEVATION
DRAWING NUMBER: LS10242024A
DRAWING DATE: October 24th, 2024
PROJECT LOCATION:
BODY OF WATER: BACK CREEK
PROJECT LOCALITY: YORK

THE REPRODUCTION, DISTRIBUTION AND UTILIZATION OF THIS DOCUMENT AS WELL AS THE COMMUNICATION OF ITS CONTENTS TO OTHERS WITHOUT THE WRITTEN PERMISSION OF LIVING SHORELINES LLC IS PROHIBITED. APPROPRIATE USE IS HELD LIABLE FOR THE USER. LIVING SHORELINES LLC IS NOT RESPONSIBLE FOR A PATENT, UTILITY MODEL, OR DESIGN. LIVING SHORELINES LLC IS NOT RESPONSIBLE FOR RIPARIAN WATERWAY RIGHTS. THIS IS NOT A SURVEY

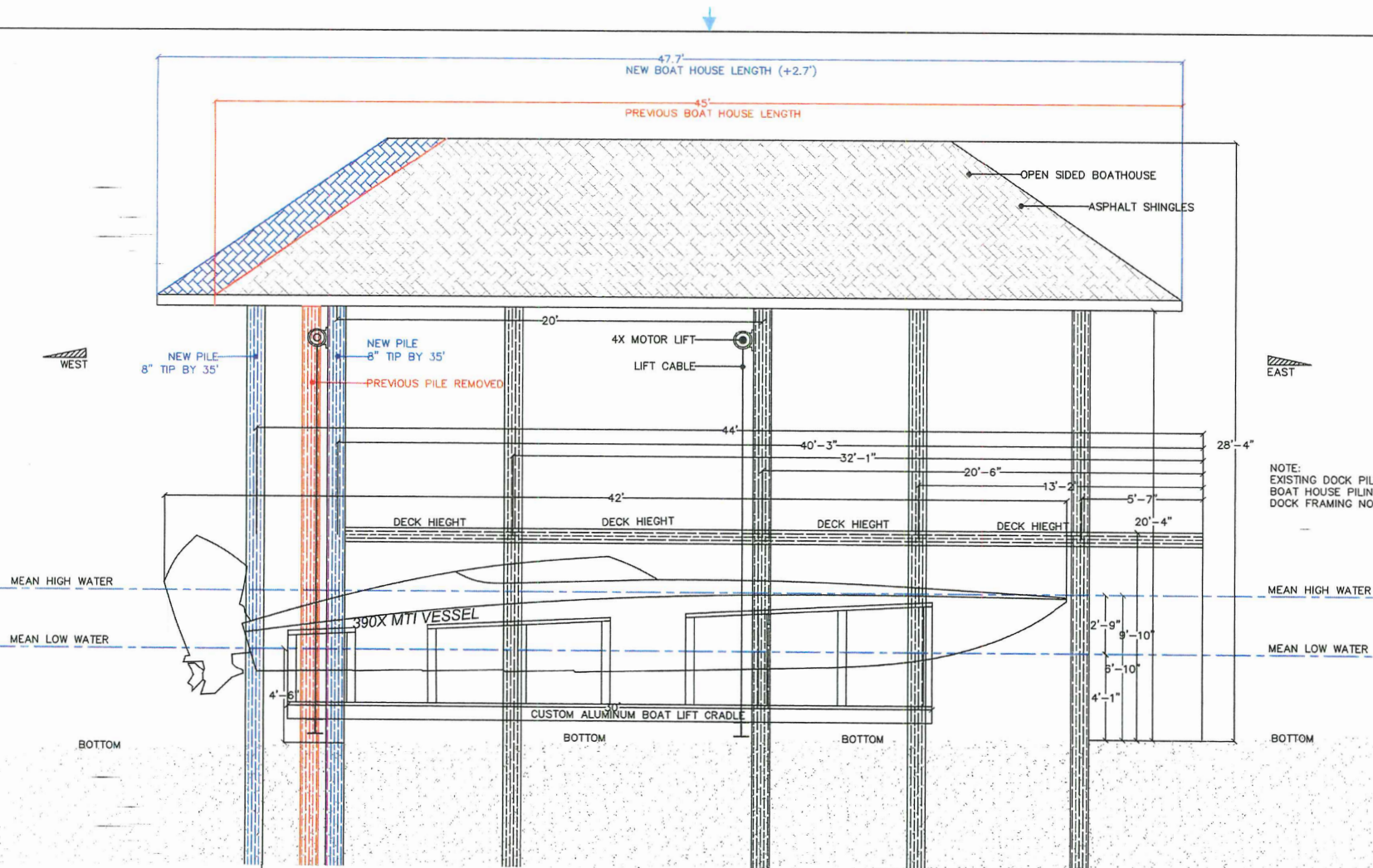
PROPERTY OWNER INFORMATION:
GIBSON S PHILLIP
119 Dandy Haven Lane
YORKTOWN, VA 23692



NOTE:
MLW AND MHW DERIVED ON DAVIS AND ASSOCIATES SURVEY DATED 8/19/2024

VESSELS		OWNER: PHIL GIBSON	
No	MANUF	BOAT SLIP	DRAFT
1	PROLINE 24 CENTERCONSOLE	1	24"
2	HOBBIE 16 CATAMARAN	2	24"
3	390X MTI CATAMARAN	3	48" IN CRADLE

BOAT HOUSE FOOTPRINT		SOFT	
No	DIMENSIONS	765	810.9
AS BUILT 45X17			
FUTURE 47X17			
Percent Change	6%		



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

THE REPRODUCTION, DISTRIBUTION AND UTILIZATION OF THIS DOCUMENT AS WELL AS THE COMMUNICATION OF ITS CONTENTS TO OTHERS WITHOUT EXPRESSED AUTHORIZATION IS PROHIBITED. OFFENDERS WILL BE HELD LIABLE FOR THE PAYMENT OF DAMAGES. ALL RIGHTS RESERVED IN THE EVENT OF A PATENT, UTILITY MODEL OR DESIGN. LIVING SHORELINES LLC IS NOT RESPONSIBLE FOR RIPARIAN WATERWAY RIGHTS. THIS IS NOT A SURVEY

PROPERTY OWNER INFORMATION:

GIBSON S PHILLIP
119 Dandy Haven Lane
YORKTOWN, VA 23692



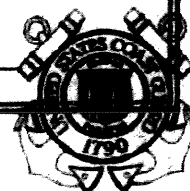
UNITED STATES OF AMERICA

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			
DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER					



May 27, 2025

**WYATT LANDING DEVELOPMENT, LLC,
VMRC #24-2634**

1. Habitat Management Division Evaluation dated May 27, 2025 (Pages 1-3)
2. Letters of Appeal from Dustin Pringle opposing the wetlands board decision dated April 7, 2025 (Pages 4-6)
3. Letter from Randy Owen to Tim Jones dated April 10, 2025, advising of the May 27, 2025, Commission hearing (Pages 7-8)
4. Letter from Randy Owen to Portsmouth Wetlands Board dated April 10, 2025, advising the applicant of the May 27, 2025, Commission hearing (Pages 9-10)
5. Official record received from the City of Portsmouth, dated-received May 2, 2025, including: Transcript of the April 2, 2025 public hearing, Transcript of the March 5, 2025 public hearing, April 2, 2025 agenda containing the permit application and drawings (including revisions), March 5, 2025 agenda containing the permit application and drawings (including revisions), City Staff presentation containing their evaluation and recommendations. (Pages 11-190)
 - a. Verbatim Transcripts of the April 2, 2025, hearing and the March 5, 2025, hearing. (Pages 13-62)
 - b. Meeting Agendas for the April 2, 2025, and March 5, 2025, hearings containing the staff's evaluation and recommendation, the application and drawings, and photos of the project site. (Pages 63-179)
 - c. Staff presentation for the April 2, 2025, public hearing. (Pages 180-190)

HABITAT MANAGEMENT DIVISION EVALUATION

WYATT LANDING DEVELOPMENT, LLC, #24-2634. Commission review, on appeal by the applicant, of the April 2, 2025, decision of the Portsmouth Wetlands Board to deny their request to construct two (2) stormwater outfalls with associated riprap aprons in tidal wetlands serving the proposed residential subdivision adjacent to 3552 and 3600 Cardinal Lane along Lilly Creek in the City of Portsmouth.

Narrative

The project proposes to construct two (2) stormwater outfalls into tidal wetlands along Lilly Creek in support of a proposed 8.48-acre residential subdivision (Wyatt Landing) consisting of 17 lots in the City of Portsmouth. Both vegetated and non-vegetated wetlands exist onsite along the shoreline on the southwestern portion of the proposed development. Construction of the outfalls and associated splash aprons will impact a total of 912 square feet of tidal wetlands (324 square feet of vegetated wetlands, and 588 square feet of non-vegetated wetlands).

The Portsmouth Wetlands Board originally considered the project at its March 5, 2025, public hearing. After some discussion, the matter was tabled due to the board not having met a quorum.

At its April 2, 2025, public hearing, the Wetlands Board received a staff briefing, including photographic slides of the shoreline showing the staked alignments of the two (2) outfalls and splash aprons, and copies of the application drawings. Wetlands staff, as part of the city's Planning Department, recommended approval with compensation through the purchase of tidal wetlands bank credits. Staff's position was that the proposed wetland impacts were minimized as much as practicable, while constructing the required stormwater outfalls necessary to comply with the erosion and sediment control and stormwater management regulations set forth by the state. Wetlands staff additionally confirmed that the erosion and sediment control plan and the stormwater management plan were previously approved by the city's Engineering Department.

During the public hearing, the board heard the concerns of six (6) protestants (one of whom submitted a letter of protest). They included: 1) alternative designs that would minimize wetlands impacts were not adequately considered; 2) inadequate public notice to surrounding properties; 3) the increase in housing would result in more car traffic, congestion, and increased runoff (pollutants) into Lilly Creek; 4) trees were cleared beyond the limits of what was permitted by the city; and 5) past stormwater non-compliance by an adjacent residential development, suggesting that the proposed Wyatt Landing subdivision would follow suit.

Following public comment, the board questioned the necessity of two (2) outfalls and asked for clarification on the size of the development and the outfalls' orientation in the development plan. The board also discussed the possibility of using a different stormwater management system, such as a Best Management Practice System (BMP System), which may collect and treat stormwater before it enters the tidal wetlands. Wetlands staff advised the Board throughout the discussion that only the proposed outfalls and riprap splash aprons were within the Board's

Issues (cont'd)

jurisdiction, and that the proposed stormwater management plan had been approved by the city's Engineering Department.

The Board considered their staff's recommendation for approval and the testimony of the applicant's agent and multiple speakers in opposition to the project. After a lengthy hearing, the Board voted unanimously to deny the project. The motion to deny was based on a finding that the project's anticipated public detriments outweighed its anticipated public benefits.

On April 7, 2025, Commission staff received a letter from Mr. Dustin Pringle with Bay Environmental, the applicant's agent, appealing the Board's denial of the project. That letter was considered timely under the provisions of §28.2-1311(B) of the Code of Virginia. The applicant additionally waived their rights to an appeal hearing within 45 days, and the matter was scheduled for the Commission's consideration at its May 27, 2025, meeting.

In their notice of appeal, the agent states that the stormwater outfalls are required by state and local law and this is a by-right project. They argue that the Board's denial was based on factors unrelated to the proposed tidal wetlands impacts, and that the decision resulted from their concerns for the proposed residential development that are outside of the wetlands board's jurisdiction.

Summary/Recommendations

Section 28.2-1302.10.B of the Code states that the board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
2. The proposed development conforms with the standards prescribed in §28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to §28.2-1301 of the Code of Virginia.
3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

Pursuant to §28.2-1302.10.C of the Code of Virginia, if the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

Based on our attendance at both hearings and our review of the record including the transcript, it is unclear to Habitat Management staff that the Board's rationale to deny the project was limited to the impacts to 912 square feet of jurisdictional tidal wetlands. Considerable discussion by the Board centered on the project's stormwater design, compliance with stormwater regulations, and the concerns raised by the protestants for the residential subdivision's broader impacts to

Summary/Recommendations (cont'd)

uplands. Also missing from the Board's review of this project was any assessment of impacts to tidal wetlands by the Virginia Institute of Marine Science (VIMS).

Section 28.2-1313 of the Code of Virginia states that the Commission shall modify, remand or reverse the Board's decision if the Board in reaching its decision, failed to fulfill its responsibilities under the wetlands zoning ordinance; or the substantial rights of the applicant have been prejudiced because the findings, conclusions, or decisions of the Board are in violation of constitutional provisions, in excess of statutory authority or jurisdiction of the Board, made upon unlawful procedure, affected by other error of law, unsupported by the evidence on the record considered as a whole, or arbitrary, capricious, or an abuse of discretion.

After careful review of the record, staff recommends that the matter be remanded to the Portsmouth Wetlands Board with specific instructions to limit their review to the jurisdictional impacts of tidal wetlands, and what measures, if any, could be undertaken to further minimize tidal wetlands impacts. Furthermore, the Board should consider formally requesting that VIMS provide a written recommendation after an application review and on-site inspection of the project. Lastly, the Board should reconsider their staff's recommendation for approval of the project with direction to require compensation for any permissible impacts from the appropriate tidal wetlands bank.

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: Wyatt Landing Project LWB Meeting April 2nd
Date: Monday, April 7, 2025 11:51:22 AM
Attachments: [image001.png](#)

Good afternoon,

Can you please add this wetlands appeal to VMRC# 2024-2634?

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

From: Dustin Pringle <Dustin@bay-environmental.com>
Sent: Friday, April 4, 2025 12:04 PM
To: Malzone, Valerie Lynn <malzonev@portsmouthva.gov>
Cc: Tim Jones <tjones@jflpventures.com>; Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>; Jim Cahoon <jim@bay-environmental.com>
Subject: RE: Wyatt Landing Project LWB Meeting April 2nd

Valerie,
Due to the decision of a 5-0 vote to deny a project that has been reviewed multiple times by the City of Portsmouth and their engineering review team at Kimley-Horn to ensure that the stormwater outfalls meet the requirements of any project for state and local regulations we wish to appeal this decision. The stormwater outfalls are required by state and local law and this is a by right project. With no other additional impacts to the wetlands or buffer we feel this was a decision that was based on many other factors that do not directly relate to the wetland impacts for stormwater that are required and were more related to the previous development and the other aspects of the development that are outside of the wetlands board jurisdiction. Please let us know the next steps that are required and please provide any documentation we may need to expedite this process.

Thank you for your time,

Dustin Pringle
Natural Resource Manager



From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: Request for Appeal of City of Portsmouth Wetlands Board Decision on Wyatt Landing Project located at 4600 Thornwood Street Portsmouth VA (VMRC# 2024-2634)
Date: Monday, April 7, 2025 2:16:39 PM
Attachments: [image.png](#)

Good afternoon,

Can you please add this appeal to VMRC# 2024-2634?

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

From: Dustin Pringle <Dustin@bay-environmental.com>
Sent: Monday, April 7, 2025 1:48 PM
To: Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>; Tim Jones <tjones@jflpventures.com>
Cc: Malzone, Valerie Lynn <malzonev@portsmouthva.gov>; Jim Cahoon <jim@bay-environmental.com>
Subject: Request for Appeal of City of Portsmouth Wetlands Board Decision on Wyatt Landing Project located at 4600 Thornwood Street Portsmouth VA (VMRC# 2024-2634)

Kirsten,

Due to the decision of the City of Portsmouth local wetlands board to deny a project that has been reviewed up to eight times by the City of Portsmouth and their engineering review team at Kimley-Horn to ensure that the stormwater outfalls meet the requirements of any project for state and local regulations, the applicant wishes to appeal this decision. The project design was already pre-approved with the City of Portsmouth engineering and planning department. The stormwater outfalls are required by state and local law and this is a by right project with wetland impacts limited to only the stormwater outfalls which is a water dependent use. With no other additional impacts to the tidal wetlands or RPA buffer we feel this was a decision that was based on many other factors that do not directly relate to the proposed wetland impacts for stormwater themselves that are required by state law, and were more related to the previous development in the neighborhood, and the other aspects of the currently proposed development that are outside of the wetlands board jurisdiction. Under VMRC code § 28.2-1313 the applicant requests an appeal under provision #2 due to the substantial rights of the applicant have been prejudiced because the findings, conclusions, or decisions of the board are:

- e. unsupported by the evidence on the record considered as a whole
- f. Arbitrary, capricious, or an abuse of discretion

Due to timing constraints, we would like to schedule the appeal hearing for the May schedule.

Sincerely,

Dustin Pringle

Natural Resource Manager



Bay Environmental, Inc.

648 Independence Parkway Suite 100

Chesapeake, VA 23320

Office: [757.436.5900](tel:757.436.5900) Ext. 207

Mobile: [757.814.6475](tel:757.814.6475)

Email: Dustin@bay-environmental.com



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, Virginia 23651

Stefanie K. Taillon
Acting Secretary of Natural
and Historic Resources

Jamie L. Green
Commissioner

April 10, 2025

Mr. Tim Jones
c/o Bay Environmental
Attn: Mr. Dustin Pringle
648 Independence Parkway Suite 100
Chesapeake, VA 23320

Re: VMRC #2024-2634

Dear Mr. Jones:

This will acknowledge receipt of your agent Dustin Pringle's emails, dated April 4, 2025, and April 5, 2025, requesting to appeal the April 2, 2025, decision by the Portsmouth Wetlands Board to deny the above-referenced application. Your original correspondence was received on April 4, 2025, as such, your appeal is being considered timely under the provisions of §28.2-1311(B) of the Code of Virginia.

In accordance with the provisions of § 28.2-1312(B) of the Code of Virginia, the Commission will conduct its review based on the record transmitted by the Board. While the Commission may take such additional evidence as may be necessary to resolve any controversy as to the correctness of the record, they normally confine their review to the record and testimony considered by the board.

This will serve as your formal notification that the matter will be reviewed by the Commission at their monthly meeting on May 27, 2025, commencing at 9:30 a.m. in the Commission meeting room at 380 Fenwick Road, Fort Monroe in the City of Hampton.

VMRC does not discriminate against individuals with disabilities. Therefore, if you are in need of reasonable accommodations due to a disability, please advise Mrs. Michele Guilford at (757) 247-2206 and identify your needs no later than five (5) working days prior to the meeting.

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

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

Mr. Tim Jones
Page Two

April 10, 2025
VMRC #2024-2634

Should you have any questions regarding this matter, please contact Ms. Kirsten Travis of my staff at (757) 247-8027 or Kirsten.travis@mrc.virginia.gov.

Sincerely,

Randal D. Owen

Randal D. Owen
Environmental Engineer

RDO/lra
HM

cc: Commissioner Jamie Green
Ms. Kelci Block, Assistant Attorney General
Mr. Derek Challenger, Deputy City Attorney, City of Portsmouth
Ms. Valerie Malzone, Portsmouth Wetlands Staff
Ms. Ellen Comstock, Portsmouth Wetlands Board Chairman



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, Virginia 23651

Stefanie K. Taillon
Acting Secretary of Natural
and Historic Resources

Jamie L. Green
Commissioner

April 10, 2025

Ms. Ellen Comstock, Chairman
Portsmouth Wetlands Board
Planning Department
801 Crawford Street
Portsmouth, VA 23704

Re: VMRC #2024-2634
Wyatt Landing Development LLC

Dear Ms. Comstock:

This is to advise you that Mr. Dustin Pringle, on behalf of Wyatt Landing Development LLC, has appealed the April 2, 2025, decision by the Portsmouth Wetlands Board to deny the above-referenced application.

In accordance with Section 28.2-1312(B) of the Code of Virginia, please forward a transcript of the testimony taken at the September 18, 2017, public hearing on this project, along with the originals of all exhibits (letters, maps, slides, photographs, etc.) entered into evidence or considered by the Board.

This will serve as your formal notification that this matter will be reviewed by the Commission at their regularly scheduled meeting on Tuesday, May 27, 2025, commencing at 9:30 a.m. in the Commission meeting room, 380 Fenwick Road, Fort Monroe in the City of Hampton.

VMRC does not discriminate against individuals with disabilities. Therefore, if you are in need of reasonable accommodations due to a disability, advise Mrs. Michele Guilford at (757) 247-2206 and identify your needs no later than 5 working days prior to the meeting.

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

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

Ms. Ellen Comstock, Chairman
Page Two

April 10, 2025
VMRC #2024-2634

Should you have any questions regarding this matter, please contact Ms. Kirsten Travis of my staff at (757) 247-8027 or Kirsten.travis@mrc.virginia.gov.

Sincerely,

Randal D. Owen

Randal D. Owen
Environmental Engineer

RDO/lra
HM
cc:

Commissioner Jamie Green
Ms. Kelci Block, Assistant Attorney General
Mr. Derek Challenger, Deputy City Attorney, City of Portsmouth
MS. Valerie Malzone, Portsmouth Wetlands Staff
Mr. Dustin Pringle, Agent
Mr. Tim Jones, Applicant

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: JPA 2024-2634 Documentation for VMRC Appeal
Date: Friday, May 2, 2025 9:46:21 AM
Attachments: [Outlook - JPA 2024-2634.pptx](#)
[April 2, 2025 VMRC JPA 2024-2634 transcript.pdf](#)
[JPA 2024-2634 JPA comment.docx](#)
[March 5, 2025 VMRC JPA 2024-2634 transcript.pdf](#)
[WP 04-02-2025 JPA 2024-2634 packet.pdf](#)
[WP 04-02-2025 JPA 2024-2634 actions.pdf](#)
[WP April 1, 2025 JPA 2024-2634.pptx](#)

Good morning,

Could you please add these documents to VMRC# 24-2634?

Thank you!

Kirsten Travis

Environmental Engineer, Habitat Management

Virginia Marine Resource Commission

(757) 247-8027 (Office)

From: Malzone, Valerie Lynn <malzonev@portsmouthva.gov>
Sent: Thursday, April 17, 2025 1:08 PM
To: Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>
Cc: Cecilia Boyd <Cecilia.a.boyd@gmail.com>; Ellen Comstock <ewcoms@verizon.net>; Jennifer Monument <jmonument1@gmail.com>; Rich Calvert <rich@calvertmarine.net>; Gaskins, Debrah <gaskinsd@portsmouthva.gov>; Russell, Rhonda <russellr@portsmouthva.gov>; gregglc@gmail.com; mdavilabanrey@yahoo.com; megan.balestra@bldr.com
Subject: JPA 2024-2634 Documentation for VMRC Appeal

Good afternoon Kirsten,

Please see link below for documents requested by VMRC for the appeal of the April 2, 2025 decision by the Portsmouth Wetlands Board scheduled for May 27, 2025.

<https://portsmouthva.box.com/s/bs869e1s776rjy52hzcwipsafvxcldwu8>

In addition to the transcript of the April 2, 2025 meeting, I have also included the transcript from the March 5, 2025 meeting in case you needed it. JPA 2024-2634 was initially scheduled for March 5, 2025, but since there was not a quorum present at this meeting, the Board was unable to take action on it.

Feel free to reach out with any questions.

Thank you,

Valerie Malzone

Principal Planner

City of Portsmouth

Planning Department

801 Crawford Street, 4th Floor

Portsmouth, VA 23704

(757) 393-8836 Ext. 4210



CITY OF PORTSMOUTH

WETLANDS BOARD

TRANSCRIPT OF PUBLIC HEARING

WEDNESDAY, APRIL 2, 2025, at 3:30 P.M.

SIXTH FLOOR CONFERENCE ROOM, CITY HALL

BOARD MEMBERS PRESENT:

Ellen Comstock, Chairperson
Richard Calvert, Vice Chair
Jennifer Monument
Cecilia Boyd
Marcos Davila-Banrey
Leon Gregg

STAFF PRESENT:

Valerie Malzone, Senior Planner,
Debrah Gaskins, Environmental Manager

ZAHN COURT REPORTING

(757) 627-6554

I N D E X

ITEM	PAGE
JPA 2023-2539 3106 WEST NORFOLK ROAD	4

1 (Call to order at 3:30 p.m.)

2 CHAIR COMSTOCK: All right. I'd like
3 to welcome you all today, Wednesday, April the
4 2nd, 2025 to the Wetlands Board meeting. We are
now in session.

5 I would like to confirm the members of
6 the Wetlands Board are present by calling the
roll. When I call your name, please respond with
a verbal response.

(Roll call)

7 CHAIR COMSTOCK: So we have five
8 members of the board present today. You have
been provided with a copy of minutes from
9 February the 5th and March the 5th, 2025.
Can we -- do you have any changes or corrections
to the February 5th, 2025, minutes?

10 COMMISSIONER MONUMENT: No.

11 VICE-CHAIR CALVERT: No.

12 CHAIR COMSTOCK: Hearing no changes,
can I have a motion that we approve those
minutes?

13 COMMISSIONER MONUMENT: Motion to
approve the minutes from the February 5th, 2025,
14 Wetlands Board meeting.

COMMISSIONER BANREY: I second.

15 CHAIR COMSTOCK: Second. We have a
motion and a second to approve those minutes of
16 the February 5th, 2025, minutes meeting. Will
you respond with a verbal response.

(Roll-call vote)

17 CHAIR COMSTOCK: Okay. So we have 5 to
0 approval of those minutes for February.

18 MS. MALZONE: I'd like to clarify that.
Because we did not have a quorum at the March 5th
19 meeting, we are approving both the minutes from
the February 5th and the March 5th meeting, so we
20 can do the March 5th now.

21 CHAIR COMSTOCK: Okay. You have been
provided with the minutes for March 5th, 2025.
Are there any corrections or changes to those
22 minutes?

23 VICE-CHAIR CALVERT: No.

COMMISSIONER MONUMENT: No.

24 COMMISSIONER BANREY: No.

25 CHAIR COMSTOCK: Hearing that we've got
no changes or revisions to those minutes, does
anybody want to -- who would like to make a
motion?

ZAHN COURT REPORTING

(757) 627-6554

1 COMMISSIONER MONUMENT: I'll make a
2 motion to approve the minutes from the March 5th,
2025, meeting of the Portsmouth Wetlands Board.

CHAIR COMSTOCK: Do we have a second?

3 COMMISSIONER BANREY: Second.

4 CHAIR COMSTOCK: We have a motion and a
second. And let us -- if there are no changes,
let us vote on approval of those minutes again.

5 (Roll-call vote)

6 CHAIR COMSTOCK: Then those minutes are
approved from 5 to 0 once again, and we have now
approved that order.

7 So we are ready for a public hearing,
8 and we have all the parties that we'd like to
have here.

9 MS. MALZONE: Yes. We do have a quorum
and one public hearing item.

10 JPA 2024-2634, 4600 Thornwood Street:

11 CHAIR COMSTOCK: So we have one public
hearing item, JPA 2024-2634 at 4600 Thornwood
Drive.

12 COMMISSIONER MONUMENT: 4600 Thornwood
Street. Is that correct or is Drive correct?

13 MS. MALZONE: Street is correct.

14 CHAIR COMSTOCK: My bad. Thornwood
Street on Carney Creek, a tributary of Western
Branch of the Elizabeth River also known on some
15 maps as Lilly Creek.

16 MS. MALZONE: So this is an application
to construct stormwater outfalls to impact
vegetated and non-vegetated tidal wetlands at
17 4600 Thornwood Street along Carney Creek, which
is a tributary of the Western Branch of the
18 Elizabeth River.

19 This request consists of two outfalls,
outfall A and outfall B. Outfall A is the
northernmost. It will impact approximately
20 369 square feet of tidal wetlands, 188 square
feet of which are vegetated tidal wetlands. The
21 remaining 355 square feet non-vegetated tidal
wetlands.

22 Outfall B consists of -- oh. I gave
you outfall B measurements. Outfall A consists
23 of 369 square feet of tidal wetlands, 136 of
which are vegetated, 233 of which are
24 non-vegetated. Outfall B will impact 543 square
feet of tidal wetlands, 188 square feet of
25 vegetated tidal wetlands, and 355 square feet of
which are non-vegetated.

ZAHN COURT REPORTING

(757) 627-6554

1 Planning department staff upon review
2 of the application is recommending approval with
3 the recommended conditions. We have found that
4 the impact to wetlands have been minimized as
5 much as practicable while constructing stormwater
6 outfalls that are required to the erosion and
7 sediment control and stormwater management
8 regulations set forth by the state.

9 The proposed loss of vegetated wetlands
10 will be compensated for with the purchase of
11 compensatory mitigation credits. Planning
12 department staff found that the proposed
13 compensatory mitigation credits covered all loss
14 of vegetated wetlands. The City of Portsmouth
15 does not require compensation for the loss of
16 non-vegetated tidal wetlands.

17 Does anyone have any questions? The
18 applicant is also present, so after you're done
19 discussing he can also give a presentation.

20 COMMISSIONER MONUMENT: So the City of
21 Portsmouth is requiring mitigation credits or is
22 not?

23 MS. MALZONE: You are required to
24 provide mitigation either onsite or through
25 compensatory mitigation credits through a tidal
mitigation bank.

So what he -- he is compensating fully
for the loss of vegetated tidal wetlands. So
that's why we are recommending approval.

COMMISSIONER BANREY: And those are
credits that are going to Chesapeake?

MS. MALZONE: Correct. Portsmouth does
not have -- that is the closest mitigation bank,
yes.

CHAIR COMSTOCK: Are we ready to hear
the applicant explain the application?

MS. MALZONE: Sounds good. The
applicant is present. If you would like to come
up. We have a little podium space for you today,
and you will have up to five minutes to give a
brief presentation. And you may be asked
questions from the board afterwards.

MR. PRINGLE: Hi. My name is Dustin
Pringle. I'm with Bay Environmental. I'm
representing the applicant. This project site is
a 17-lot project. All -- I guess all wetland
impacts were minimized to only the water
dependent use activity, which is for the
outfalls. So there's no additional impacts to
wetlands, and there's no additional impact to the

1 hundred foot CBA buffer as well. Does anybody
have any questions?

2 VICE-CHAIR CALVERT: You showed your
area of disturbance on your two outlets is shaded
3 and they go through the property line. Is there
a reason why they don't go to mean low water?

4 MR. PRINGLE: There was no reason to go
below mean low water. At that point that would
5 put it also in VMRC jurisdiction, which the
applicant wanted to stay out of and to minimize
6 as much as practicable.

VICE-CHAIR CALVERT: But is there a
7 reason why the nontidal doesn't stop at mean low
water because it becomes subaqueous at that point
8 instead of stopping at the property line? So the
way you've got it shown now, there's a portion of
9 that shaded area that's subaqueous.

MR. PRINGLE: Yes.

10 VICE-CHAIR CALVERT: Because it goes
beyond mean low water.

11 MR. PRINGLE: Yeah. The design of that
was to meet the requirements by the State of
12 Virginia and the locality of Portsmouth. So the
design of that is representative of what the
13 state requires.

VICE-CHAIR CALVERT: So that means that
14 VMRC will be charging for subaqueous impact for
this?

15 MR. PRINGLE: There are no subaqueous
-- there is no impact below the mean low
16 waterline as you're referencing. It stops before
the mean low waterline.

17 VICE-CHAIR CALVERT: Okay. So that
doesn't make sense to me so because I can see
18 mean low water right there, and I can see the
property line. So what is the shaded? Why is
19 that an impact? You're saying that only the
riprap, only the rock and the outlet are the only
20 impact?

MR. PRINGLE: No. The shaded area is
21 representative of the entire impact area.

VICE-CHAIR CALVERT: Okay.

22 MR. PRINGLE: But it does not go below
mean low water into VMRC jurisdiction.

23 VICE-CHAIR CALVERT: Then once again, I
would ask why is it shaded as being an impact?

24 MR. PRINGLE: It's just the required
square footage for the outfall itself. The
25 riprap is to prevent erosion and scouring, but
the impact area as a total is inclusive of the

ZAHN COURT REPORTING

(757) 627-6554

1 entirety for the outfall.

2 VICE-CHAIR CALVERT: Okay. So another
3 question: Is there any way that you can take
4 these two outfalls and combine them and just go
5 through the wetlands in one place?

6 MR. PRINGLE: That I'm not sure. That
7 would be a more of an engineering question. I'm
8 not sure the state and local requirements will
9 allow such a large outfall in that area.

10 VICE-CHAIR CALVERT: Okay.

11 CHAIR COMSTOCK: Other questions?

12 VICE-CHAIR CALVERT: I think I got one
13 more. It states in the Bay Environmental report
14 that compensation is not required because it's
15 less than .10 acres.

16 MR. PRINGLE: Compensation is required
17 with the local Wetlands Board, but it's not
18 required with the Army Corps of Engineers. So
19 the Army Corps of Engineers portion of the permit
20 anything under a tenth of an acre does not
21 require any mitigation. So the mitigation
22 requirements for this project are specifically
23 for the local Wetlands Board.

24 COMMISSIONER MONUMENT: Thank you for
25 clarifying that because it wasn't clear the way
it was written.

Can you just for the sake of everyone
in the room explain what the 50-foot buffer and
the 100-foot buffer mean?

MR. PRINGLE: Yes. So those are in
reference to the Chesapeake Bay Preservation Act.
So under the Chesapeake Bay Preservation Act,
anything that is contiguous and connected,
including wetlands, including nontidal wetlands
that feed into the Chesapeake Bay they are
required to have a 100-foot buffer.

And the 50-foot buffer is in reference
to areas are considered an IDA. So sometimes
that buffer is used in an area of which is an
IDA, which is an intensely developed area.

But in this -- in this case for this
project, they're completely staying out of the
entire 100-foot buffer.

COMMISSIONER MONUMENT: So any trees or
any vegetation that's within the 100-foot buffer
all the way to the waterline will remain intact?

MR. PRINGLE: Yes. That is correct.

COMMISSIONER MONUMENT: And where the
shaded areas are where there's riprap added in to
help facilitate the two stormwater outfalls. Is

ZAHN COURT REPORTING

(757) 627-6554

1 that a fair --

MR. PRINGLE: Yes.

2 COMMISSIONER MONUMENT: -- summary?

MR. PRINGLE: Yes.

3 CHAIR COMSTOCK: Other questions from
4 the board members? Some of you all did not get
5 to hear him speak last time. So if you want to
6 give us any other information as far as how that
-- because we talked a little bit about where the
pipes would go and how all that would work in
terms of other --

MR. PRINGLE: Yes.

7 CHAIR COMSTOCK: So if you can address
any of that would be helpful.

8 MR. PRINGLE: Sure. Sure. So the
9 outfall pipes themselves as you can see they're
10 tying into the existing neighborhood next door.
11 The pipes will be laying underground. So they'll
be temporary trenches to install the pipes, and
then it will be backfilled and they will be
underground.

12 Additionally, other information that
13 may be pertinent is the mitigation. So I'm sure
14 there's going to be questions about the
mitigation. Why are we not doing it onsite
versus why are we paying for mitigation credits.

15 There's two factors that went into
16 that. One being there already is a natural stand
17 of spartina alterniflora, which is your smooth
18 cordgrass. That pretty much goes along the
19 entirety of the shoreline. Now, it is thin, but
20 it's within its natural range of elevation.

21 In addition to that, in Outfall B
22 location in that half of the shoreline has a
23 significant stand of phragmites. And when
24 there's phragmites present, which is an invasive
25 species, it makes it more difficult to have
success and to meet the success criteria of
onsite mitigation.

CHAIR COMSTOCK: Any other questions
from the board before we go to the public?

22 MS. MALZONE: So I have a few follow-up
23 items from some questions that were presented
24 because they applied more to the city's
25 regulations. So I was able to speak with the
stormwater compliance manager about some of the
erosion and sediment control issues that came up
last time.

25 So she let me know that they are
approved as noted for their stormwater and

ZAHN COURT REPORTING

(757) 627-6554

1 erosion sediment controls. And what that means
2 is that it's in full compliance with the
3 regulations of the state.

4 She did let me know because we talked
5 about the sedimentation coming out, if there
6 would be excess sedimentation that could provide
7 additional impact to the wetlands that weren't
8 shown here.

9 She did let me know that part of the
10 approved erosion and sediment control plan is
11 that no additional sedimentation should be coming
12 out of this outfall. If there was, they would be
13 found negligent and they could be fined in
14 violation of the state regulations.

15 Also she did inform me that the riprap
16 is completely necessary for the stormwater
17 outfall and actually protect the wetlands that
18 are underneath where the outfall is coming out
19 from the erosion of the running water.

20 COMMISSIONER MONUMENT: Thank you for
21 following up with that. I don't have any further
22 questions.

23 CHAIR COMSTOCK: Since it's a public
24 hearing, anyone --

25 MS. MALZONE: One more thing. We have
a written public comment first. As far as -- so
it was provided to you all at your desks. So it
was provided via email. So I just wanted to make
you aware of it and make sure that you would
review it because it was a written submitted
public comment that should be considered along
with all the other public comments that you hear.

CHAIR COMSTOCK: Should we read this
aloud?

MS. MALZONE: You may.

CHAIR COMSTOCK: I think it would be
appropriate to read it aloud.

This is from Dr. Janice Bray, 4700
Thornwood Street, Portsmouth, Virginia,
Portsmouth Wetlands Board, 801 Crawford Street,
Portsmouth, Virginia, 23704.

Opposition to Proposed Stormwater
Outfalls at 4600 Thornwood Street and Related
Residential Development Activities.

Dear Members of the Portsmouth Wetlands
Board. I am writing as a deeply concerned
resident of Portsmouth residing at 4700 Thornwood
Street to express my strong opposition to the
proposed stormwater outfalls planned by Real
Carpentry Association, Inc. at 4600 Thornwood

1 Street.

2 My residence is situated directly
3 adjacent to the development site making my
4 property highly vulnerable to the negative impact
5 that this project would cause.

6 Environmental impact: The proposed
7 stormwater outfalls threatens critical tidal
8 wetlands along Carney Creek, part of the Western
9 Branch Elizabeth River system.

10 As per Virginia Code 28.2-1308, the
11 destruction of these wetlands should only be
12 allowed if all practical measures to avoid
13 impacts have been exhausted. The project
14 currently calls for significant permanent loss of
15 marsh area, approximately 912 square feet
16 including 324 square feet of essential vegetated
17 tidal marsh.

18 The removal of this vital natural
19 buffer risks exacerbating flooding and erosion,
20 endangering the environmental health of our
21 fragile estuarine ecosystem. These wetlands are
22 crucial for filtering pollutants, providing
23 habitat for wildlife, and mitigating flooding,
24 benefits that directly protect our property
25 and quality of life. I am particularly troubled
by the absence of consideration for living
shoreline solutions as required by Virginia's
Living Shoreline Law, Senate Bill 776. This
legislation clearly mandates that non-structural,
vegetative approaches to shoreline management
must be prioritized unless proven unsuitable.

The current design disregards these
proven ecological alternatives, favoring
hard-engineered outfalls that will inevitably
degrade local ecosystems and diminish resilience
to climate change and sea-level rise.

Further exacerbating these concerns is
additional proposed land disturbing activity
associated with the development of 14 more
residential lots adjacent to the outfall
location.

Given that this company has already
exhibited poor sediment and erosion management at
nearby sites, evidenced by documented stormwater
runoff and sedimentation impacting my own
property, the cumulative ecological damage from
these projects is alarming. The incremental loss
of wetland function coupled with increased
pollutant load from construction runoff could
irreparably harm the creek's aquatic ecosystems,

ZAHN COURT REPORTING

(757) 627-6554

1 violating the no net loss principle fundamental
to Virginia's environmental laws.

2 Traffic and community impact:

3 Moreover, the increase in residential density
4 with the addition of these new lots raises
significant concerns about the impact on the
5 local traffic patterns. The additional traffic
6 generated by 14 new residences would create
congestion on the already strained neighborhood
streets, diminishing the safety and quality of
life in our residential community.

7 Existing infrastructure on Thornwood
8 Street and connecting roads is not equipped to
manage the additional load safely, and heightened
9 traffic would substantially increase risk to
pedestrian safety, noise pollution, and
environmental degradation from vehicle emissions.

10 Regulatory compliance concerns: Given
11 past experiences, including documented water
damage to properties such as mine from previous
12 development activity by the same company, I have
significant concerns about compliance with
13 existing stormwater and sediment control
regulations. The observed sedimentation and the
14 runoff issues demonstrate inadequate adherence to
erosion and sediment control laws posing ongoing
15 threats to properties, public safety, and
environmental quality. Failure to manage
16 construction runoff properly suggests a high
likelihood of noncompliance with state and
federal laws including the Clean Water Act and
the Chesapeake Bay Preservation Act.

17 This proposal, therefore, fails to
18 demonstrate the required careful planning and
minimization of environmental impact mandated
under state and federal guidelines, notably the
19 Virginia Tidal wetlands Act, Chesapeake Bay
Preservation Act, and Virginia's Stormwater
20 Management Regulations. The piecemeal loss of
critical environmental functions, coupled with
21 potential increased flooding and sedimentation on
adjacent properties significantly outweighs any
22 private benefit derived from the development.

23 Conclusion: For these substantial
reasons, I strongly urge the Portsmouth Wetlands
Board to deny the stormwater outfall permit at
24 4600 Thornwood Street as it is currently
proposed. Approval without substantial revision
25 and strict conditions ensuring environmental
compliance and protection of community interests

ZAHN COURT REPORTING

(757) 627-6554

1 would constitute a clear departure from your
2 mandate to protect our natural resources and
community welfare.

3 Thank you very much for your
consideration. Sincerely, Dr. Janice Bray.

4 MS. MALZONE: I would like to provide
some clarification on some of the items in here.
5 This application before you today is only being
evaluated for the impact to the tidal wetlands.
6 So any Chesapeake Bay Preservation Act impacts
will be verified and checked by the city during
7 the site plan review process, but I know most of
you are already familiar with that. Just a
reminder.

8 CHAIR COMSTOCK: You said the planning
review process as opposed to the Wetlands Board
9 process?

10 MS. MALZONE: Yes. So the Planning
Department reviews the use, the subdivision, and
the engineering. And Planning reviews the
11 Chesapeake Bay Preservation area impact. And
Engineering with the city reviews the erosion and
12 sediment control and stormwater impact.

13 MR. BANREY: We have to approve them
before they start their process; right?

14 MS. MALZONE: You can, but actually
this is a -- like this is a unique case in that
the erosion and sediment control and stormwater
15 was approved as noted already. So to be approved
subdivision, the zoning, and the Chesapeake Bay
16 Preservation Act regulations.

17 VICE-CHAIR CALVERT: So a living
shoreline wouldn't be required here because they
are not doing any shoreline stabilization either?

18 MS. MALZONE: Correct.

COMMISSIONER MONUMENT: Correct.

19 VICE-CHAIR CALVERT: So I just still
have one question, and it's for the Bay
20 Environmental guy. Can you show me where high
water is on that map? I'm trying to see where
21 our area is. I see low water. Is it where the
delineated edge of the wetlands are at?

22 MR. PRINGLE: So I have additional
figures with me that show -- that were included
23 in the permit application that show both outfalls
being above mean low water.

24 VICE-CHAIR CALVERT: Can you show me on
the map?

25 MR. PRINGLE: Not on that figure, no.

MS. MALZONE: I can pull up the whole

ZAHN COURT REPORTING

(757) 627-6554

1 agenda packet. Let me pull up your agenda
packet.

2 VICE-CHAIR CALVERT: Because we are
3 also talking about ULW here too because it's
4 vegetated wetland. So our area that we are
required to look at, I'm just trying to define
where it is. I'm looking for the site plan that
shows the outfall that you had up.

5 MS. MALZONE: Oh, that I had up. This
one?

6 VICE-CHAIR CALVERT: So I see mean low
7 water right past the property line. Where is
mean high water at? Is it near the delineated
8 wetlands line? It looks like to me that
everything is in the --

9 MR. PRINGLE: Yeah. So these figures
that were included they break down where upper
limit of tidal, mean high water, and mean low
10 water. And these were in the permit application.
So these are the cross-sections that show exactly
11 what you are referencing.

12 VICE-CHAIR CALVERT: Right, but you
haven't shown the high waterline on the drawing
or the ULW line. So we really don't know where
13 our jurisdiction is right now.

14 COMMISSIONER MONUMENT: I think if we
go back to the minutes, we had that same question
last month. And I believe the answer was that it
15 was the delineated wetlands line.

16 MS. MALZONE: Yes because --

17 VICE-CHAIR CALVERT: So everything is
in our jurisdiction.

18 MR. PRINGLE: Yeah. There --
everything.

19 MS. MALZONE: So it's mean low to 1.5
times the mean high range, so that's your
delineated wetlands line right here.

20 MR. PRINGLE: Everything is within the
local wetlands board jurisdiction. Nothing goes
below mean low water and nothing goes above 1.5
21 times mean high water.

22 VICE-CHAIR CALVERT: I understand that,
but that's still in the intertidal zone. Between
mean low and mean high is the intertidal zone.
23 That's where the wetlands are at.

24 MR. PRINGLE: Correct.

MS. MALZONE: Yeah. So it's this one.

25 VICE-CHAIR CALVERT: That's all. I'm
just trying to ascertain where we are.

MS. MALZONE: I thought you wanted the

1 cross-section.

2 VICE-CHAIR CALVERT: I think VRMC
understands what I'm trying to ask here. That's
all.

3 CHAIR COMSTOCK: Okay. Do we have some
other folks that want to speak?

4 COMMISSIONER MONUMENT: I had a
question about this reference in the letter just
5 really quickly for clarification.

6 It says with the development of 14 more
residential lots adjacent to the outfall
7 location, but on the map it looks like three
residential lots adjacent to the outfall
location.

8 So can you show me? Are there
additional outfalls we don't know about, or is
9 she just referencing the lots that will go into
this --

10 MS. MALZONE: I believe --

11 COMMISSIONER MONUMENT: -- stormwater
system?

12 DR. BRAY: I'm here to give that
reference. And I'm Dr. Janice Bray and I have
been next door to the adjacent property that
13 started off with permit 3608 and Cardinal Lane.
That proposed 14 lots. It opened up a cul-de-sac
14 at Thornwood Street. And I was at the end of
that cul-de-sac. So that neighboring Ester Court
15 is 14 residences. And the result of the
construction site, the stormwater runoff, has
16 been a non-vegetated areas that you see. And
that has been going on for three years. And
17 there is 14 sites there. And I may have
misquoted how many more are proposed with this
18 new development.

19 It may have been 14 or 20, but the
cumulative effect is over 30 people coming
towards my home and through the neighborhood
20 cul-de-sac directly at my home. And you're going
to turn 30 families into this small area.
21 Certainly that's not why we're here today.

22 There's a bald eagle nest that lies
right near this outflow of stormwater.
Stormwater is not salinated. All of the
23 property, vegetation, and wildlife is abundant
and at jeopardy when we are pouring desalinated
24 water into this saline area.

25 I'd like to say that the question
regarding a living wetland, there's a perfect
example within a hundred or 500 yards. I can't

ZAHN COURT REPORTING

(757) 627-6554

1 tell the distance, but it's across the water.
 2 And they've done a beautiful job with over
 3 500 feet of wetlands in similarly-situated
 4 picture that you see on the applicant picture
 5 that looks like sludge, a picture that was taken
 6 at low tide, but it's a beautifully populated
 area that is abundant with birds and ducks and
 fish and crabs and oysters that we are
 considering pouring stormwater into that area.
 That would be very destructive. And so that is
 my concern.

These pipes are directly next to the
 waterfront where I have water rights. And to
 pour desalinated water, I look at it as a direct
 depreciation of my property and would like to see
 some kind of development. Enjoy Portsmouth, but
 to put a very dense population that's directed
 towards an older community with 30 families an
 increase in land pollution that will go directly
 into that stormwater drain, I would ask that the
 developer consider a living waterfront, consider
 one pipe that might decrease the number of
 housing units that can be smashed into this
 little area but have some consideration for a
 better balance.

CHAIR COMSTOCK: Thank you.

COMMISSIONER MONUMENT: And, Valerie,
 did we get an answer from the question that came
 up last month about why we needed the stormwater
 drain going directly to the creek versus having
 the stormwater gone into the city sewer system?

MS. MALZONE: No. No. I did not.

A VOICE: I'm sorry. I missed your
 question.

COMMISSIONER MONUMENT: Oh, no. I was
 asking Valerie. So we don't have a clear answer
 why the stormwater couldn't go into the city
 sewer system versus going directly into the creek
 from engineering?

MR. PRINGLE: That's an engineering
 question that I don't have an answer for.

DR. BRAY: And if I might just chime
 in, there is a water treatment plant within a
 block. There is a sewer system huge pipe right
 in front of that cul-de-sac. So I'm not clear
 why we are dumping into the waterfront.

VICE-CHAIR CALVERT: I don't think they
 like to put stormwater in sewage.

COMMISSIONER BANREY: You've got waste
 water treated.

1 VICE-CHAIR CALVERT: Because it has to
 2 be treated. It would be lot of water that would
 3 have to be treated not necessarily, but they
 4 could put a BMP onsite and dump all their
 5 drainage into that and then have one drain that
 6 goes out to the water, but we're not here to look
 7 at that. And if the City of Portsmouth is happy
 8 with what they've given them and approved it, I
 9 don't know there's much we can say about that.

CHAIR COMSTOCK: Are there others that
 want to speak? Come on up.

MS. MALZONE: Before you start, just
 make sure you say your name and address, and you
 will be limited to five minutes.

MR. CARROLL: It won't take that long.
 Steve Carroll, 312 Riveredge Drive. I live in
 Wise Beach, which is just a stone's throw from
 where this is happening. I'm on the other side
 of Carney Farm Lane.

I've lived here all my life. I have
 fished just about every creek and crabbed every
 creek in this city. And I can tell you I can
 remember when there were no houses back there.
 And I can tell you this. The waterfront quality
 has degraded with residential development. Some
 of the things that Bray has already touched on
 I'd like to reiterate.

First of all, this is more than just
 vegetation that's going to be impacted. It's
 marine life. Okay. The crabs, the small fry,
 whatever you want to look at are going to be
 impacted by this. I counted nine lots that are
 impacting the wetlands out of the total number.
 That's a huge percentage of this. It's not going
 to be one car per house. It's going to be
 several cars per house. And any car with age on
 it leaks oil. And where is that oil going to go?
 Unmitigated right into the creek.

And to put it in perspective, I worked
 at Norfolk Naval shipyard in 1975. And I worked
 at the south end of the yard where the heaviest
 pollution is and from there further up the
 southern branch. Don't know what the source of
 the petroleum products were, but you can stand
 there on the waterfront and look out in the river
 and watch the oil bubble to the surface and
 spread out in a sheen.

What do you think is going to happen to
 all that road oil that's washing off that
 pavement going into this creek. It's going to

1 happen. You're not treating the water. BMP is
2 the most logical suggestion I've heard here so
far. And that needs to be seriously considered.

3 No, you may not have any impact on what
the city has approved, but you're here for
4 approval of this project. Let me add one more
thing. What you decide here, whether you realize
5 it or not, sets a precedent that's going to be
used again and again and again. And we're going
6 to continually degrade our waterfront. And that
is Portsmouth. It's going to happen. This is
not a one-shot deal. It's going to happen.

7 And I would urge you to reject this,
and I can almost guarantee you that another
8 developer that is looking at a project currently
being considered is going to look at what you do
9 here and use it as a precedent to allow him to do
the very same thing.

10 And it's really unthinkable to me that
Portsmouth would be asked to surrender water
11 quality to be given up to another city. That's
unthinkable. Whether you have any impact on that
12 or not, but you have a vote. And that should be
considered in your vote. Thank you.

13 CHAIR COMSTOCK: Thank you. Who's
next?

14 MS. CLARK: Good afternoon. Joanne
Clark, past chair of the Board of Zoning Appeals
15 and a member for seven years. Please indulge me.
The first thing we were taught when you give
16 certificates of use permits or any other permits,
it should not to be an owner who's ever violated
17 such permits.

18 May I please go to the board? I live
directly behind lot seven on Thornwood Street.
19 Outfall A, excuse me, up here. I can see from my
kitchen window. They were not supposed to
20 destroy that property without permits, but they
did in December 2017.

21 It took me forever to get ahold of
anybody during the month mid Christmastime while
22 there was land disturbance without a permit and
without a tree permit of removal for months.

23 When I went to the city and talked
about it, at the time the gentleman who was in
charge of, I guess, these outfalls said to me,
24 well, ma'am, how do you know they took down too
many trees? I said, sir, I can look at my
25 kitchen window before and see trees. Now I see
water.

1 So they violated what they were
2 supposed to do on Outfall A. All of these houses
3 here all the way around 12 going all the way
4 around to that thicker line there, and this is
5 adjacent to Ms. Bracy. All of those lots were
6 done while there was continual sediment and
7 erosion and the silt fences were not properly
8 maintained.

9 What is to tell me in the future and
10 anybody else living on the water that their
11 shoreline will be protected because of past
12 behaviors? These are two separate builders, but
13 we are one city with the same laws that should
14 apply to both.

15 We allowed this builder here, Augustine
16 Gulf, to do numerous violations. I think it's
17 unfortunate that we do not operate this city like
18 the City of Chesapeake is operated. They don't
19 just look at one item. They look at an area in a
20 two-mile radius. Because one thing affects more
21 than just one parcel.

22 It affects all the contingent
23 properties around it. All of the properties
24 around here most of these people were not
25 notified; and like the Brays, you were not
26 notified either. The people who have shorelines
27 the stakeholders, the taxpayers to this city were
28 not notified of the risks involved. And I'll
29 leave you with that. Thank you.

30 CHAIR COMSTOCK: Thank you. You
31 keeping time?

32 MS. MALZONE: That's what I'm doing on
33 my phone. I'm keeping time on my phone. I was
34 just letting you know.

35 MS. BIGGS: Hi. Hi. I'm Donna Biggs,
36 and I live at 3104 Garland Drive, and I visited.
37 I'm a farm girl from Stoney Creek, Virginia. I
38 saw nature all over the place, swamps and
39 everything. So I love God, and I love the clouds
40 and the land, but I visited my friend. And so I
41 had to go around. I'm a visual, action person.
42 I don't learn by hearing. I learn by -- so I
43 walked -- drove my car around. I said what?
44 You're going to put all those houses behind her
45 house and you're going to see everything? That
46 the back of their walls and everything.

47 And then I saw the trees and the brush
48 and whatever. And you're going to tear all that
49 down to put houses on it? I live where the old
50 high school was. Guess what. When I look out my

ZAHN COURT REPORTING

(757) 627-6554

1 window, I see all those houses.

2 You think that's right? If these
3 people are having -- loving nature, want to make
4 sure they're not flooded. In fact, I told the
5 fellow. He said, oh, there's flooding back there
6 all the time. So I did my research. I got my
7 maps. See? God controls water, not man. And so
8 we need to respect our people. If that is
9 bothering them and they know how that water is
10 going to affect them if they get playing around
11 with it, then we ain't doing our job as the
12 government of this city.

13 COMMISSIONER MONUMENT: Thank you.

14 CHAIR COMSTOCK: Anybody else?

15 MS. BRAY: Hello. I'm Samantha Bray.
16 I live at 4700 Thornwood Street. Dr. Bray is my
17 mom. I'm 24. I was in college most of the time,
18 so I don't have very illustrative stories of
19 living in Virginia.

20 The thing that concerns me about this
21 discussion, it was mentioned that the wetlands
22 damage will be tested to see if it's within
23 regulations. My issue, especially hearing the
24 stories about how people in the neighborhoods
25 aren't contacted about damage or can't reach out
26 to people to air their grievances about damage to
27 their property to the waterline. It causes
28 concern because I haven't heard about a plan for
29 when and how frequently the damage is going to be
30 assessed. And from these stories, I don't know
31 that as a resident I would trust that the damage
32 is going to be assessed in an appropriate way.

33 The other thing I had to say is I'm
34 concerned that alternatives to these two
35 pipelines haven't been considered.

36 Mr. Calvert brought up some treatment
37 plans. I don't know, but that is concerning me.
38 I think it is the -- what is it. The Virginia --

39 COMMISSIONER BANREY: Initiative?

40 MS. BRAY: The one that requires that
41 alternatives be considered especially given how
42 damaging this could be. That's what I'm
43 concerned about, but thank you.

44 COMMISSIONER MONUMENT: Thank you.

45 CHAIR COMSTOCK: Others?

46 COMMISSIONER MONUMENT: If are there no
47 other public comments, Valerie, would you be able
48 to pull up the map, the larger map that's in the
49 permit application of Lilly Creek so we can kind
50 of see where on the creek this is, too, because I

1 think that can show, like, potential impact
upstream versus downstream on the creek.

2 There it is. Okay. So the area that
3 we're looking at is at the base of Lilly Creek or
4 it's all the way in Lilly Creek so you can see
Hatton Point is there. And then the yellow area,
correct, Valerie? The yellow area is the area
we're talking about?

5 MS. MALZONE: Correct.

6 COMMISSIONER MONUMENT: Off of Manor
Avenue. Thornwood Street. So Lilly Creek really
goes into all these neighborhoods, too. And this
particular area that we're looking at is right on
the point where all of these tributaries go into
Lilly Creek, too.

9 So it's not like it's down at Hatton
Point at the end of Lilly Creek. It's all the
way up the creek, or almost all the way up the
creek.

11 So whatever stormwater or sediment or
erosion impact that comes out of that is going
not just straight down the creek to the crabs or
everybody else. It's going into all these other
neighborhoods too. Thank you. Inlets.
Sometimes I have a hard time with my English.

14 So I just think that that is something
to consider, if there's an alternative to having
these two drains coming out right there.

15 What does sediment and erosion say? Is
this the recommended proposal? Is this the
recommended proposal that's going to keep the
most wetlands in that area?

17 MS. MALZONE: This is an approved
proposal, and that's all we have.

18 COMMISSIONER MONUMENT: Okay. Thank
you.

19 MS. MALZONE: So that means it complies
with all state mandated.

20 VICE-CHAIR CALVERT: Can you pull up
the site pictures real quick?

21 MS. MALZONE: The ones on the Power
Point?

22 VICE-CHAIR CALVERT: The ones on the
upper corner up there, the site pictures.

23 MS. MALZONE: Okay. Got you.

24 VICE-CHAIR CALVERT: So one thing that
concerns me is there's active erosion all along
this shoreline. And, you know, we're taking care
of the storm drains, but there's no initiative to
try and stop the act of erosion that's occurring.

1 And I feel like if it's not addressed at some
 2 point it's going to get worse and then the
 3 wetland will be gone; but we can only rule on the
 4 permit in front of us. And there's no shoreline
 5 protection proposed in this proposal.

6 So that's one of my concerns as well.
 7 We're making sure we can build the new houses,
 8 but we're not taking care of the problems at
 9 present. I understand cost is a consideration as
 10 well. I don't want to hinder somebody who's
 11 trying to develop our city, but at the same time,
 12 this has to be approved by us for the public as
 13 well as the developers.

14 CHAIR COMSTOCK: From a staff point of
 15 view, what other options do we have to consider
 16 other than yes or no?

17 MS. MALZONE: You may choose to approve
 18 with the conditions, approve with modified
 19 conditions, deny or defer to another date.

20 VICE-CHAIR CALVERT: Can you go back to
 21 the site plan one more time, the drawing right
 22 below the picture? So that one storm drain at
 23 the top of the sheet on Lot 13, what is that
 24 going to? So how do they know the volume of
 25 water that's going through that pipe if we don't
 know what it's serving? It looks like it's just
 kind of required for future development.

MS. CLARK: Can I comment?

CHAIR COMSTOCK: Would you like to make
 a comment? You want to come up? State your
 name, please, sir.

MR. CLARK: I'm Leslie Clark. I live
 at 4717 Thornwood Street. You heard from my wife
 a few minutes ago. The first development up on
 the top here, now my wife did speak out, a
 comment. The first outfall they did is actually
 up here which is right next -- in between these
 two lots, which is very close to Dr. Bray's
 house. They put in storm structure here, here,
 and down here, and they have drainage from this
 cul-de-sac all up end to this outfall here. Then
 they have pipe coming over here and pipe coming
 over here put in for the future development to
 pick up drainage from this side and this side.

So all that drainage from here is not
 shown that is going down into this structure here
 and going out and then going into this structure
 here and is tied into that one.

VICE-CHAIR CALVERT: So there's an
 existing storm drain one lot over from the one

1 shown at the top of the sheet?

2 MR. CLARK: Right, that they just put
in a couple years ago.

3 VICE-CHAIR CALVERT: Thank you for
that, sir.

4 COMMISSIONER MONUMENT: Thank you.

5 MS. MALZONE: State your name and
address again.

6 MS. CLARK: Joanne Clark, 4717
Thornwood Street. All of the houses within the
7 Manor Farms estates project, and I'm sure this,
too, because we have a long plat from years back
8 when we met the builder walking through the woods
one day. They're all five bedroom homes. So
they're going to generate a lot of vehicles.

9 COMMISSIONER MONUMENT: Thank you.

10 CHAIR COMSTOCK: I really would like to
be able to see what stormwater and the
11 engineering plans have been, what that looks like
in terms of this and in terms of the
environmental.

12 MS. MALZONE: So this is the plan.
This is the approved site plan.

13 COMMISSIONER MONUMENT: Did we hear any
comments from VMRC?

14 MS. TRAVIS: Is there a specific
question?

15 COMMISSIONER MONUMENT: Just have you
done a site visit?

16 MS. TRAVIS: Yes.

17 COMMISSIONER MONUMENT: Is this the
recommendation of the VMRC to approve this permit
as it stands?

18 MS. TRAVIS: VMRC doesn't have
jurisdiction in this case. It's all where it
goes up above mean low water. VMRC cannot tell
19 you what to do. It is up to your discussion.

20 CHAIR COMSTOCK: Thank you.

21 DR. BRAY: I'm Dr. Bray, and just as a
final comment, I hear there's already been due
process and time that's put into this plan. It's
22 a 96-page plan. And I think what I have heard
for the third time that made me rise as we're
trying to wrap up and leave you to your job of
23 making a decision, is that it's already approved.

24 And I just wanted to reiterate as part
of this plan, there's a sheet of paper that tells
you who's been notified. I'm not a part of that
25 notification. And so this plan is being
approved. They are very well aware that I'm next

1 door, and I just don't know why there's been
2 oversight or just weren't able to get our
3 addresses why the plan is approved without
4 notification when it has such a huge impact.

5 There's considerable concerns that the
6 properties happens to be next door to each other.
7 The developers are different, but it's the same
8 Wyatt Landing that was proposed in 2018. And my
9 property has been there the entire time, and so
10 not sure what has happened in the past or why I
11 wasn't notified or how it gets approved without
12 notification.

13 But I at the least would ask that those
14 properties that are impacted and are required of
15 the developer to provide sufficient notification.
16 Thank you.

17 CHAIR COMSTOCK: That is beyond
18 wetlands board jurisdiction.

19 MS. MALZONE: Yes. I can clarify that
20 what has already been approved as noted is the
21 stormwater management plan and the erosion and
22 sediment control plan. Those are not items that
23 require public hearings. Those are not items
24 that require adjacent property owner
25 notification.

CHAIR COMSTOCK: That's a problem.

COMMISSIONER MONUMENT: For our permit
today, are we simply approving the riprap to
mitigate the damage to existing wetlands within
our scope versus having no riprap at the site?

Is that basically what I'm hearing that
we have no -- that this is the approved plan for
the outfalls and that our bailiwick is merely the
shaded area here that has a wetlands impact?

MS. MALZONE: What you are reviewing
the application for is ensuring that permits
address avoidance and minimization of wetlands
impact to the maximum extent practicable. A
permit shall only be issued if the board finds
the effect of the impact together with other
existing or supposed impacts to wetlands will not
contribute to a significant impairment of state
waters.

CHAIR COMSTOCK: Can you read that
again, please?

MS. MALZONE: Yeah. So permit shall
address avoidance and minimization of wetlands
impact to the maximum extent practicable. A
permit shall be issued only if the board finds
that the effect of the impact together with other

1 existing or proposed impacts to wetlands will not
 2 cause or contribute a significant impairment of
 3 state waters, fish and wildlife resources. The
 4 other thing you are reviewing it for is permit
 5 shall contain requirements for compensating
 6 impacts on wetlands.

7 VICE-CHAIR CALVERT: And don't we also
 8 have to ability to see if this meets the public
 9 -- it means that the loss of wetlands outweighs
 10 the loss of the public? I know there's wordage
 11 in there. I'm at a loss for words right now.

12 MS. MALZONE: Yeah. I have it
 13 somewhere.

14 VICE-CHAIR CALVERT: Generally you're
 15 saying when you approve something outweighs the
 16 detriment.

17 MS. MALZONE: So those two that I just
 18 read are state code provisions, so the wetlands
 19 board review standards in our local ordinance are
 20 in deciding whether to grant -- to grant and
 21 modify form or to deny a permit under this
 22 division the wetlands board shall consider the
 23 following: The testimony of any person in
 24 support or in opposition to the permit
 25 application. The impact of the proposed
 development on the public health, safety, and
 welfare, and the proposed development's
 conformance of the standard prescribed in
 sections 28.2-1308, which I just read to you, of
 the Code of Virginia and guidelines promulgated
 pursuant to 28.2-1301 of the Code of Virginia.
 Oh. Wait. That was not what I read to you, but
 yes.

So state code, the wetlands board shall
 grant the permit if all of the following criteria
 are met: The anticipated public and private
 benefit of the proposed activity exceeds its
 anticipated public and private detriment.

The proposed development conforms with
 the standards prescribed in 28.2-1308 of the Code
 of Virginia and guidelines promulgated pursuant
 to 28.2-1301 of the Code of Virginia.

The proposed activity does not violate
 the purposes and intent of this ordinance meaning
 the wetlands ordinance or chapter 13 of Title
 28.2 of the Code of Virginia.

COMMISSIONER GREGG: I do have one
 question. So we already gave not just the direct
 impact to the wetlands, but also the impact to
 wildlife, fish, et cetera, from what we're --

1 VICE-CHAIR CALVERT: Public benefit.
 2 COMMISSIONER MONUMENT: The public benefit.

3 VICE-CHAIR CALVERT: So I am favor of
 4 development in our city. We need as much as we
 5 can, but I am concerned that there's two outlets
 6 that there couldn't be done with one, but that
 7 goes back to the city review.

8 We don't have any jurisdiction over
 9 what the city approves and doesn't approve, and
 10 that seems to be one of the items here that I
 11 think could help mitigate some of the issues that
 12 we're up against for this project.

13 If a BMP or some other thing was
 14 implemented in their stormwater management plan
 15 it could avoid maybe one of these potential
 16 impacts. You're going to have one at least one
 17 somewhere if you do have a BMP.

18 But from what I'm hearing from
 19 testimony is that public impact is in that
 20 neighborhood and the surrounding areas appears to
 21 be something that we need to take into
 22 consideration.

23 And I do this for a living, and I can
 24 tell you right now that the piers are going to
 25 start popping up down that canal soon, too,
 which, you know, is neither here nor there. So I
 think it's a tough decision to make.

So would it do any good to talk to
 stormwater management about alternate
 possibilities, or are we stepping out of our
 lane?

COMMISSIONER GREGG: I would believe
 we're in our lane. Like my concern is the impact
 to wildlife, crab, and fishery. I believe that
 is in our lane.

COMMISSIONER MONUMENT: Yeah.

COMMISSIONER GREGG: So looking at
 options to improve that.

VICE-CHAIR CALVERT: And since we can
 only rule on what's before us today, it doesn't
 mean that if there was an alternate plan that
 improves on this that we wouldn't have a chance
 to review that and -- but I would make a motion
 that based on the information and the testimony
 today that the project be denied.

COMMISSIONER MONUMENT: My concern is
 the placement of the project on the creek and
 does the benefit to this development outweigh the
 potential impact to all of the houses on the

1 creek based on where this project is and based on
2 the location of the outfalls. Would it have an
3 impact on -- for example, on the wetlands further
4 down the creek based on the flow that's coming
5 from these lots, from these five-bedroom homes.

6 MS. MALZONE: So, Mr. Calvert or Ms.
7 Comstock, whoever answered about this deferral to
8 speak with stormwater, I don't believe that would
9 be something that would help the situation in
10 that the stormwater management practices were
11 already approved by the engineering department
12 and it's outside the jurisdiction of this board.

13 And as far as any commentary or
14 consideration of the houses going on the
15 property, that is a buy-right use. That is also
16 outside the jurisdiction of this board as far as
17 the homes that are being built, so...

18 VICE-CHAIR CALVERT: I understand that.
19 That's why I'm trying to --

20 MS. MALZONE: Yeah.

21 VICE-CHAIR CALVERT: -- to make a
22 determination based on the impact of the outfalls
23 only.

24 COMMISSIONER MONUMENT: Correct.

25 VICE-CHAIR CALVERT: And I also -- this
is just my thinking that perhaps if a BMP was
done, you might lose one lot, but I think it
would be a better project for everyone and so be
it, if that's necessary.

But based on just the impact that I
see, that the public detriment to the waterway
and to their comments, that I feel like that -- I
don't know deferral would really solve anything,
so that's why I went with a hard deny.

MS. MALZONE: I got you. Ms. Comstock,
your question.

CHAIR COMSTOCK: So you are making a
motion. Can you state that motion once again for
us?

VICE-CHAIR CALVERT: I make a motion
that project is denied because of the impact to
the wetlands and the public benefit to the
waters, to the wetlands, to the resources of the
City of Portsmouth outweigh the value of the
project.

CHAIR COMSTOCK: Is there a second?

COMMISSIONER MONUMENT: I will second
it.

CHAIR COMSTOCK: Okay. We have a
motion and to deny. And do we have any other

1 discussion on the motion? Okay. As I call your
2 name, let's reply with a verbal response. A
motion to deny.

(Roll-call vote)

3 CHAIR COMSTOCK: So that would be five
to zero to deny this permit.

4 MS. MALZONE: I'll be in contact with
the applicant.

5 CHAIR COMSTOCK: So it's been denied by
a vote to five to zero. The applicant whose
6 application for the wetlands permit is denied by
the wetlands board shall have the right to appeal
7 to VMRC within ten days of the date of the
board's decision. It is recommended that VMRC be
8 contacted for specific appeal requirements. The
applicant may reapply at any time.

9 VICE-CHAIR CALVERT: I think we'd like
the representative know that we're not against
10 development, but I think that we need a little
fine-tuning on this so that we can keep everyone
11 happy and keep our natural resources intact. And
that's all.

12 COMMISSIONER MONUMENT: And I agree.
If we had voted to approve, it would have set a
13 precedent and that we need to take -- put a foot
in the mud, so to say, and make sure that we're
14 doing the best job we can to protect what
waterways we have left. And I think we need to
15 do a better job of contacting those that are
affected.

16 CHAIR COMSTOCK: All right. So that is
-- we are -- that concludes the public hearing
17 for 2024-2634 JPA application.

18 MS. MALONE: One item of new business.
I sent it pretty close to when you-all probably
19 left for this meeting, so if you didn't get it
yet, a violation notice of public hearing was
sent to the owner of 101 and 103 West Road. His
20 public hearing date is June 4, 2025.

21 So I will follow up with you closer to
that date with an agenda packet. And if we have
any other public hearing items, just letting you
22 know that is coming up. I am going to reach out
to the Virginia Institute of Marine Sciences to
23 hopefully conduct a site visit and maybe perhaps
give a recommendation.

24 VICE-CHAIR CALVERT: Yeah. Let me know
when you do that. I'd like to be there.

25 COMMISSIONER MONUMENT: Right, because
you weren't on the initial site visit. It was

1 pretty bad.

2 VICE-CHAIR CALVERT: Yeah. I've never
seen it. I pulled it up on satellite and went
oh, my goodness. What in the world is that.

3 MS. MALZONE: And if I can get in
contact with the applicant, I -- the property
4 owner, I would like to set up a site visit, but I
have not heard back from him. And we do need
5 their permission.

6 VICE-CHAIR CALVERT: Okay.

7 CHAIR COMSTOCK: So I believe that
concludes our agenda for today. Board members,
are there any further business? Okay.

8 This concludes our meeting. Do we have
a motion for adjournment?

9 VICE-CHAIR CALVERT: I motion we
adjourn.

10 COMMISSIONER MONUMENT: Second.

11 CHAIR COMSTOCK: Then I will say that
this meeting is now adjourned.

(Meeting adjourned at 4:45 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24


25

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Jayne M. Gromkoski, Registered
3 Professional Reporter, a Notary Public for the
4 Commonwealth of Virginia at large, of
5 qualification in the Circuit Court of the City of
6 Norfolk, Virginia, do hereby certify that the
7 proceeding was recorded in Stenotype by me and
8 reduced to computer printout under my direction;
9 and that the foregoing constitutes a true,
10 accurate, and complete transcript of such
11 proceeding.

12 I further certify that I am not related to
13 nor otherwise associated with any counsel or
14 party to this proceeding, nor otherwise
15 interested in the event thereof.

16 Given under my hand and notarial seal this
17 17th day of April at Norfolk, Virginia.

18 
19 Jayne M. Gromkoski, RPR
20 Notary/eNotary Reg. No. 210056
21 My Commission Expires 08-31-27
22
23
24
25

Dr. Janice Bray 4700 Thornwood Street Portsmouth, VA

Portsmouth Wetlands Board 801 Crawford Street Portsmouth, VA 23704

Subject: Opposition to Proposed Stormwater Outfalls at 4600 Thornwood Street and Related Residential Development Activities

Dear Members of the Portsmouth Wetlands Board,

I am writing as a deeply concerned resident of Portsmouth, residing at 4700 Thornwood Street, to express my strong opposition to the proposed stormwater outfalls planned by Real Carpentry Association Inc. at 4600 Thornwood Street. My residence is situated directly adjacent to the development site, making my property highly vulnerable to the negative impacts this project would cause.

Environmental Impact: The proposed stormwater outfalls threaten critical tidal wetlands along Carney Creek, part of the Western Branch Elizabeth River system. As per Virginia Code §28.2-1308, the destruction of these wetlands should only be allowed if all practical measures to avoid impacts have been exhausted. The project currently calls for significant permanent loss of marsh area, approximately 912 square feet, including 324 square feet of essential vegetated tidal marsh. The removal of this vital natural buffer risks exacerbating flooding and erosion, endangering the environmental health of our fragile estuarine ecosystem. These wetlands are crucial for filtering pollutants, providing habitat for wildlife, and mitigating flooding—benefits that directly protect our properties and quality of life.

I am particularly troubled by the absence of consideration for living shoreline solutions as required by Virginia's Living Shoreline Law (Senate Bill 776). This legislation clearly mandates that non-structural, vegetative approaches to shoreline management must be prioritized unless proven unsuitable. The current design disregards these proven ecological alternatives, favoring hard-engineered outfalls that will inevitably degrade local ecosystems and diminish resilience to climate change and sea-level rise.

Further exacerbating these concerns is additional proposed land-disturbing activity associated with the development of 14 more residential lots adjacent to the outfall location. Given that this company has already exhibited poor sediment and erosion management at nearby sites—evidenced by documented stormwater runoff and sedimentation impacting my own property—the cumulative ecological damage from these projects is alarming. The incremental loss of wetland function coupled with increased pollutant load from construction runoff could irreparably harm the creek's aquatic ecosystems, violating the "no net loss" principle fundamental to Virginia's environmental laws.

Traffic and Community Impact: Moreover, the increase in residential density with the addition of these new lots raises significant concerns about the impact on local traffic patterns. The additional traffic generated by 14 new residences would create congestion on already strained neighborhood streets, diminishing the safety and quality of life in our residential community.

Existing infrastructure on Thornwood Street and connecting roads is not equipped to manage the additional load safely, and heightened traffic would substantially increase risks to pedestrian safety, noise pollution, and environmental degradation from vehicle emissions.

Regulatory Compliance Concerns: Given past experiences, including documented water damage to properties such as mine from previous development activities by the same company, I have significant concerns about compliance with existing stormwater and sediment control regulations. The observed sedimentation and runoff issues demonstrate inadequate adherence to erosion and sediment control laws (9VAC25-875-600), posing ongoing threats to properties, public safety, and environmental quality. Failure to manage construction runoff properly suggests a high likelihood of noncompliance with state and federal laws, including the Clean Water Act and Chesapeake Bay Preservation Act.

This proposal, therefore, fails to demonstrate the required careful planning and minimization of environmental impact mandated under state and federal guidelines, notably the Virginia Tidal Wetlands Act, Chesapeake Bay Preservation Act, and Virginia's Stormwater Management Regulations. The piecemeal loss of critical environmental functions, coupled with potential increased flooding and sedimentation on adjacent properties, significantly outweighs any private benefit derived from the development.

Conclusion: For these substantial reasons, I strongly urge the Portsmouth Wetlands Board to deny the stormwater outfall permit at 4600 Thornwood Street as it is currently proposed. Approval without substantial revision and strict conditions ensuring environmental compliance and protection of community interests would constitute a clear departure from your mandate to protect our natural resources and community welfare.

Thank you very much for your consideration.

Sincerely,

Dr. Janice Bray

CITY OF PORTSMOUTH
WETLANDS BOARD
TRANSCRIPT OF PUBLIC HEARING
WEDNESDAY, MARCH 5, 2025 at 3:30 P.M.
SIXTH FLOOR CONFERENCE ROOM, CITY HALL

Transcript of Proceedings - March 05, 2025

BOARD MEMBERS PRESENT:

Ellen Comstock, Chairperson
Jennifer Monument
Marcos Davila-Banrey

STAFF PRESENT:

Valerie Malzone

ALSO PRESENT:

Dustin Pringle, Bay Environmental
Kylie Harris, Virginia Marine Resources
Commission

1	I N D E X	
2	ITEM	PAGE
3	JPA 2024-2634	4
4	New Business	14
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (Call to order at 3:30 p.m.)

2 CHAIR COMSTOCK: Welcome to the Wetlands
Board meeting on the 5th of March, 2025. Let's see
3 who is here.

3 (Roll call.)

4 CHAIR COMSTOCK: So we have three
of us that are here. That's not a quorum, correct?

5 MS. MALZONE: Correct.

6 CHAIR COMSTOCK: So what are -- what are
the options?

7 MS. MALZONE: So in a meeting without a
quorum you can discuss the application, ask questions
of the applicant. We will -- I will ask you would
you like the applicant to still present what they
8 have and give a summary of their presentation. You
can do anything but vote on the item.

9 CHAIR COMSTOCK: What is your -- what
is your pleasure?

10 MS. MONUMENT: I just have a couple
of questions about the application itself so maybe
the applicant can introduce themselves and we can
just have a quick discussion about some of the
11 topics that I had a question about, and if either
of you had a question now would be the time to
12 ask so that when we come back for the next session
maybe we'll have some of those answers and may be
13 more complete so that we can do one big presentation
rather than having two big presentations, wasting your
14 time.

15 MS. MALZONE: Okay. So let's do that.
16 So we will still proceed with approval of the minutes
and then we will announce the public hearing.

17 CHAIR COMSTOCK: Okay. Do we have a
motion as we present the minutes? Do you have any
18 additions or changes to the minutes?

19 MS. MONUMENT: I would like to make a
motion to approve the February, 2025 meeting minutes
as recorded with no amendments or changes.

20 CHAIR COMSTOCK: Do I have a second?

21 MR. DAVILA-BANREY: Second.

22 CHAIR COMSTOCK: Well, then the motion
has been made and seconded that we approve the
February 5th minutes.

23 All in favor say aye.

(Response.)

24 CHAIR COMSTOCK: The minutes are
approved.

25 MS. MONUMENT: Can they be approved
without a quorum since everything else needs to
be --

1 MS. MALZONE: I'll check on that. It's
2 good to know -- it's good to know that there were
no amendments.

MS. MONUMENT: There are no amendments.

3 MS. MALZONE: Okay. So we will -- we
will check on that. We might have to reapprove it.

4 CHAIR COMSTOCK: We will -- we will
amend, if necessary, to vote.

5
ITEM JPA 2024-2634

6 CHAIR COMSTOCK: Okay. Today we have
a presentation of an applicant. This is applicant
7 D. Pringle on behalf of T. Jones to construct
stormwater outfall structures to impact vegetated
8 and non-vegetated tidal wetlands at 4600 Thornwood
Street along Carney Creek, a tributary of the Western
9 Branch of the Elizabeth River, JPA 2024-2634.

10 MS. MALZONE: So the applicant is
proposing to construct two stormwater outfalls
at 4600 Thornwood Street. This is going to
11 facilitate the development of single-family
residential structures, and the outfalls are necessary
12 to provide the required stormwater management features
for the featured development.

13 So I have added some site photos of
Outfall A, which is to the north, and Outfall B,
14 which is to the south. So Outfall A will impact
369 square feet of tidal wetlands, 136 square feet
15 of which to be vegetated and 233 square feet of
which to be non vegetated, so Outfall A, here is
16 your non vegetated. The applicant placed these
flags. The flags are non vegetated wetlands, and then
17 these are the vegetated wetlands. As you can see, the
flags mark the edge of the vegetated wetlands to be
18 impacted.

Outfall B, slightly to the south,
19 will impact 543 square feet of tidal wetlands, 188
of which are vegetated tidal wetlands, shown here,
20 and 355 square feet of non vegetated tidal wetlands,
shown here.

21 The applicant is proposing to mitigate
the loss of vegetated tidal wetlands with the
22 purchase of 324 square feet of compensatory
mitigation credits for purchase from Chesapeake
23 Land Development's New Mill Creek Tidal Mitigation
Bank, and no mitigation is required in the City
24 of Portsmouth for the loss of non-vegetated tidal
wetlands, and that concludes my presentation.

25 Does anyone have any questions?

MS. MONUMENT: I had a quick question.

1 So could we go back to the very first map that
2 shows the lots?

2 Thank you.

3 So the delineated wetlands line cuts
4 into Lot 8, and then the project limit line cuts
5 into Lot 8 -- I'm just taking one lot. Lot 8,
6 so it cuts in that quite a bit. Where are -- and
7 this says the delineated wetlands line. So we
8 have the impacted wetlands down here for A and B,
9 but what is the status of the wetlands up here
10 in lots 8, 9, 10, 17, 16 and 15? Where is -- is
11 the project limit line the buildable line, so nothing
12 will be built past that? I just wanted to understand
13 the map better for me.

8 MR. PRINGLE: Sure, yeah. So lots
9 8, 9 and 10 -- sorry. My name is Dustin Pringle.
10 I'm with Bay Environmental. So lots 8, 9, 10,
11 17 --

10 MS. MONUMENT: Seven.

11 MR. PRINGLE: Sorry, 7, so those lots
12 have been -- it was confirmed with the applicant
13 that no construction activities -- or no impact
14 will be conducted on those lots with the associated
15 delineated wetlands and the RPA buffer. The lots --
16 the construction activities will be limited to outside
17 of the RPA buffer.

14 MS. MALZONE: And if I can make a
15 clarifying statement. The project limit line is the
16 RPA delineated line.

16 MR. PRINGLE: Yes.

17 MS. MALZONE: So I believe what
18 they're trying to show is that no new development will
19 be occurring in the RPA.

18 MS. MONUMENT: Okay. Thank you. That
19 was -- that was one of my questions.

20 And then also we're talking about
21 a silt fence all the way to the water so I wanted
22 to understand on the same map, where it goes from
23 Thornwood Street, that looks like a circle, so it's
24 a city street I'm imagining that has a circle and
25 then there is driveways that connect to lots 12 to 13
along that street and circle. So -- and that's an
extension of the existing Thornwood Street, so are --
the drains and silt fencing, where does that start?
Does it start where it says Outfall A 24" RCP and go
all the way to the waterline?

24 MR. PRINGLE: Yeah. The silt fence was
25 directly related only to the outfall locations. They
will be -- they will run protecting the outfall
locations.

1 MS. MONUMENT: Okay. And help me
2 understand the lines on either side of those. Are
3 those buffer lines, where for example lot 13 cannot
4 build between the first dotted line and the middle
5 of the Outfall A line?

MR. PRINGLE: I have to see it.

4 MS. MONUMENT: You're fine. I couldn't
5 see very well on my phone so that's why I wanted to
6 see it big and ask the question.

MR. PRINGLE: Sorry. Repeat the
6 question, please.

MS. MONUMENT: So my question -- I'll
7 go up here too. So my question is, on both of
8 these outfalls, here and here, what is the restriction
9 for the owners of lots 14, 15 and 13? Are they not
10 allowed to build along the silt fence? Will be that
11 be protected somehow? How does -- what does that look
12 like, or is it a ditch?

MR. PRINGLE: No. Those will be --
10 those will be underground. Those are pipes, so those
11 are going to be pipe outfalls, which I believe Outfall
12 A, I believe, is a 24-inch pipe that's going to be
underground.

MS. MONUMENT: Okay.

13 MR. PRINGLE: And then the second
14 outfall, B, I believe, is a 15-inch outfall pipe
15 that's going to be -- that's going to be more of
16 a temporary -- temporary RPA impact, so it's going
17 to be laid down underground and then restored to the
18 previous content.

MS. MONUMENT: Okay. Thank you.

17 All right. I had one question --
18 and I apologize, I had it pulled up on my phone
19 and I don't now. Under the first Part 2 signatures,
20 we have signatures on this page, and then we don't
21 have the contractor's name. On this page, we didn't
22 have the property owner's signature on it. So was
23 that just --

MR. PRINGLE: So Tim Jones is the
20 property owner --

MS. MONUMENT: And the applicant?

MR. PRINGLE: -- and the applicant, yes,
22 ma'am.

MS. MONUMENT: Okay. Thank you.
23 And then --

MS. MALZONE: I was trying to pull this
24 up earlier. That's the pipe.

MS. MONUMENT: Oh, okay, there is the
25 pipe.

MS. MALZONE: Yes.

1 MS. MONUMENT: This is what I didn't
understand. So the proposed home not to scale --
2 not to scale and then the RPA buffer. So the pipe
is ten feet underground? How does that read? So
3 how far deep is this pipe and then where exactly
is it connecting? Is it connecting to all the storm
4 drains around the circle of the street?

MR. PRINGLE: So they --

5 MS. MONUMENT: How does it -- where does
it connect?

6 MR. PRINGLE: The existing storm drains
that are existing from the existing neighborhood
7 surrounding it, they're tying into those, and
it's going to be -- I'm not sure on the depth
8 of them. I would have to obtain that information
from the engineer, on how deep they are --

9 MS. MONUMENT: Okay.

MR. PRINGLE: -- but yeah, they are tying
10 into existing infrastructure.

MS. MONUMENT: Okay. I was just --
11 I was concerned -- I was not understanding whether
it was a ditch or it was actually buried, if it
12 was -- you know, from this because it looks like it's
under the house.

13 MR. PRINGLE: Yeah. So it will be
buried. It is an underground pipe.

14 MS. MONUMENT: Okay. All right.

And then there is -- the last question
15 I had was, it says the ESC -- the erosion and sediment
control plan, the ESC plan, is yet to be developed
16 for this site. Do you know what the status of that
is?

17 MR. PRINGLE: I do not. I do know
that in talking with the applicant and going in
18 here to, you know, all of the state and local
regulations, that that has not been determined.

19 MS. MONUMENT: Okay. I think --
could we go back to the map that shows the wetlands
20 line? That was -- or actually could we go, please,
to the map that shows where this property sits along
21 the river, along the -- excuse me, along Lilly Creek,
aka Carney Creek?

22 MS. MALZONE: Was that in the packet or
are you wanting like a Google map? Was it a picture
23 in the --

MS. MONUMENT: It was a picture in the
24 packet, and I believe it was -- they had a satellite
picture submitted.

25 CHAIR COMSTOCK: Jennifer, this?

MS. MONUMENT: Yes.

1 MS. MALZONE: What page?

MS. MONUMENT: There we are.

2 So because this particular spot jets
3 out onto a peninsula, that then you have one,
4 two, three -- three smaller tributary creeks that
5 are downstream from it, right. I just wondered
6 where we were with that and if that was something
7 that was -- and maybe staff could give us on the
8 Wetlands Board guidance on whether or not that's
9 handled by the Corps of Engineers or by City -- it
10 looks from the packet like it's handled by the City
11 Engineering Department.

MS. MALZONE: Are you speaking
specifically about the erosion and sediment control
plan?

MS. MONUMENT: Correct.

MS. MALZONE: Okay. So I can give a
little input into the process. So the erosion and
sediment control plan is addressed during the site
plan review process, which is the Engineering
Department, so they do require -- as part of the
site plan approval, they're going to require the
wetlands permit. So they do -- while they can happen
in tandem, that is not going to be finally approved
before it comes before Wetlands Board because the
Wetlands Board approval is a prerequisite for the site
plan approval.

MS. MONUMENT: I see. So it's this
group and body and then they have to go to
engineering?

MS. MALZONE: Correct, yeah.

MS. MONUMENT: Got you. That -- that
helps a lot.

MS. MALZONE: And during -- and during
that process -- sorry.

MS. MONUMENT: No, you're fine.

MS. MALZONE: That's also when all
of the CBPA, the Chesapeake Bay Preservation Area,
encroachments will be reviewed, and the mitigation
for that will be reviewed too.

MS. MONUMENT: Okay. I guess it's a
little chicken and the egg -- for us, just coming --
from my mindset, it feels a little chicken and egg
for us to approve it without having all the knowledge
about how the sediment and the erosion is going to
be handled, especially if it's coming out of two
large underground pipes, and I'm trying to understand
how -- in the soft, muddy soil how those are going
to stay underground, and I had some concerns about
that, but thank you, sir, for clarifying what that --

1 what that cross section is showing for me. I
2 appreciate it.

3 I just have concerns about where the
4 two outlets -- or, excuse me, outfalls are placed
5 and the erosion or potential for erosion that we
6 don't know about yet. It seems like it's a wooded
7 area. Is that correct?

8 MS. MALZONE: When I was out there,
9 it is pretty wooded. It is moderately wooded, with
10 some trails through it, yes.

11 MS. MONUMENT: Okay.

12 CHAIR COMSTOCK: But it won't be once
13 it's developed.

14 MS. MONUMENT: But once it's developed --

15 CHAIR COMSTOCK: And it was an old
16 farmhouse. They clear cut everything, and whatever
17 has grown back --

18 MR. PRINGLE: Outside of the shoreline
19 fringe, the wetland shoreline fringe, the upland
20 portion of the property has already been clear cut
21 and developed.

22 MS. MALZONE: I should clarify, the
23 reefer protection area and the wetland area that
24 we're discussing is the --

25 MS. MONUMENT: The only part that
we're concerned with is a hundred square feet or
whatever that is our jurisdiction or bailiwick
or what have you, is what we're talking about.

CHAIR COMSTOCK: That's just whatever
has grown to this part.

MS. MONUMENT: That's whatever is grown.
And is it staff recommendation to
approve the permit so that it can go to engineering
for further review?

MS. MALZONE: Yes. So that is --
Planning staff is recommending approval specifically
because it appears that the structures are required
by state law to meet the -- from our management
regulations and that they are providing -- although
offsite, they are providing mitigation for the loss
of vegetated tidal wetlands.

MS. MONUMENT: And the loss that they
are -- the mitigation is actually being done in
Chesapeake; is that correct?

MS. MALZONE: Yes, at New Mill Creek.

CHAIR COMSTOCK: My question was,
why do -- why get mitigation credits and not do it at
the site?

MR. PRINGLE: Good question. Mitigation
credit -- you know, you can do it either way, but the

1 process is a lot faster and you get more value because
2 with monetary requirements that are associated with
3 onsite mitigation, the time process involved,
4 whereas if you do mitigation you're taking a site that
5 has -- that is -- that is -- was tidal wetlands at one
time and you're reestablishing it and you're allowing
it to grow in a better way I guess would be the best
way to explain it versus onsite mitigation on a
residential site.

CHAIR COMSTOCK: But this is a site
6 that is low and has the potential for flooding. We
7 have sea level rise. We have all sorts of stuff
8 coming, and then other parts of that creek, so I
9 am -- I am concerned that we are giving away
the possibility of establishing a new marsh and
establishing protection around that site, so that's
my -- that's my concern with that.

MS. MONUMENT: And the applicant,
10 question for you. So the riprap is being used --
11 only going to be used ~~in~~ these gray shaded areas
12 that have sort of the arrow where the outfalls are,
correct?

MR. PRINGLE: Yes. It's the triangle
13 areas that are indicated on that figure, yes.

MS. MONUMENT: So where the circles are,
14 that is indicating the riprap?

MR. PRINGLE: Yes, that's correct.

MS. MONUMENT: Okay. So there is no
15 other riprap being put down here?

MR. PRINGLE: No. It is just in the
16 outfall location.

MS. MONUMENT: Okay. So only in the
17 outfall location is the vegetated -- vegetation being
18 impacted. Everything else will remain vegetated
wetlands.

MR. PRINGLE: Correct.

MS. MALZONE: Does that help, Ellen?

CHAIR COMSTOCK: It does and it
20 doesn't because I would like to go to the site
21 and see really what is in between there because
22 when you're talking about the lines up on the
23 other lots, that kind of thing -- I know we are
24 only allowed to talk about those two spots, but
25 I know that there -- there should have been -- there
are neighbors that wanted to come today to speak
and they are not able to, so if we're not voting
until whenever, I think, you know, we need to
republish the public hearing part, but they have
not been -- they have felt that they -- that it
needs to be looked at as a whole, and I know that

1 goes to engineering, but I don't know how to -- I
2 don't know how to put that together in terms of
two spots versus a neighborhood of 17 houses.

3 MS. MONUMENT: Could you clarify
4 for me, is this -- so for the Wetlands Board
purposes, just for Wetlands Board, we are reviewing
5 the use of, what, the 100 foot buffer to here or
6 the 50 foot buffer to here or the wetlands line?

7 MS. MALZONE: So you are reviewing
8 for tidal wetlands, so you're specifically looking
9 at mean low water to the mean tide range. So what
10 that means is specifically what he is calling the
11 tidal impacts on that, so the 543 square feet on
12 Outfall B and the 369 square feet of tidal impacts
13 on Outfall A specifically. The RPA, the CBPA
14 buffer impacts are going to be reviewed by the
15 City administratively during the site plan review
16 process.

17 MS. MONUMENT: So they have not gone
18 through the site plan review process for the same
19 reason it hasn't gone to engineering, it's because
20 this body has to issue a permit first?

21 MS. MALZONE: Yes.

22 CHAIR COMSTOCK: Marcos, you had a
23 question, didn't you?

24 MR. DAVILA-BANREY: Do you know what the
25 annual volume -- expected volume is?

MR. PRINGLE: That I do not know. I
would have to get that information.

MR. DAVILA-BANREY: And then annual
expected erosion by volume?

MR. PRINGLE: Same. I would have to
get that from engineering. All those calculations
I would have to get directly from engineering.

MS. MONUMENT: And that was my question,
so we're on the same page, Marcos. I -- I just
don't have enough information, but I'm being asked
to go ahead and approve it so that we can get the
information that we would be interested in in
order to approve it. It's a little catch 22.

I just wanted to make sure that
we're not overstepping into an area that doesn't
fall within our purview, if that makes sense. So
if he is saying the mean low tide -- if you are
saying -- staff is saying the mean low tide, is
that the same as the delineated wetlands line?

MS. MALZONE: Yes, and the delineated
wetlands line will show you that range basically,
yeah, so --

MS. MONUMENT: That entire range?

1 MS. MALZONE: Are you -- I guess my
2 question is, is your question questioning whether
3 or not this would be the minimum necessary to
4 provide their stormwater requirements?

5 MS. MONUMENT: That's one of the
6 concerns, that -- that until they do the soil
7 erosion study, how do we know that they wouldn't
8 need to have -- if engineering came back and
9 said, well, now they need a third outfall say
10 along -- if you go back to the previous map that
11 had all the lots on it, how would we know if they
12 needed another outfall, a third outfall basically,
13 in another area, and then we don't know how much
14 sediment is going to come out of that and if that's
15 going to impact more than the vegetated square feet
16 that we're looking at just for -- so if the sediment
17 builds up, it will impact the vegetated wetlands
18 all along that entire section. So if it's going
19 to impact just that little triangle where the
20 riprap is, that's one thing, but if it's going to
21 have -- like Marcos is saying, once it overflows could
22 it have a potential to impact the wetlands all along
23 that property line?

24 MS. MALZONE: Okay. So I see what
25 you're saying. It's not whether or not this can
facilitate their stormwater requirements, it's
more about are the impacts shown not completely
accurate due to like down the line.

MS. MONUMENT: Correct. So we know
what the impacts are going to be during construction,
correct, and that's sort of what we're talking about.
We know that there will be impacts during
construction, and we know that the company is
proposing to buy credits to mitigate those impacts.
However, post construction we don't know what the
sediment is going to be yet, so we don't know if
post construction there could be impacts along
the entire section of that particular property.
Never mind other properties, we're just looking at
this one property right now, right, so is it going
to impact that, and should we be looking at vegetated
credits for anything that could be impacted. We
may have to go back and look at it afterwards, and
I believe that is within our range. Within the two
years we can go back and look and see if something
has changed.

I would suggest that we table this
for the next meeting when we have a quorum and
think about what that might look like. If it's
a possibility, we -- I would say I would personally

1 want to approve the permit so that it did go to
2 engineering. That is where I'm leaning. However,
3 I would want to get a report from engineering --
4 I would want to get the ESC plan, and then I
5 would want to -- you know, so if we approve the
6 permit, I would want to put it as a condition of
7 reviewing the ESC plan from engineering to make
8 sure there aren't additional vegetated wetlands
9 impacts. I think that's a simple condition that
10 we can put in there, that, you know, we can review
11 it, staff can review it, the builder can review
12 it, and if it makes sense we should actually go
13 back and ask for those additional mitigation
14 credits.

15 CHAIR COMSTOCK: Or that we look at
16 mitigating on site.

17 MS. MONUMENT: Or we look at how
18 could we mitigate on site and save everybody money,
19 and maybe we could do it during the building process
20 and save everyone money, so -- but yeah, it's just
21 difficult when you don't have all the information
22 to make an informed decision, but in terms of
23 what -- the information that's been presented,
24 those are my only questions in the packet.

25 Rich may have questions about
the silt fence and how that is constructed, so
I really do think we should make sure that he
is present too.

MS. MALZONE: Yes, and what we can
do is try to send out the minutes from our meeting
a little earlier than the agenda packet, basically
a summary of the discussion and the questions and
answers.

MS. MONUMENT: Sure.

CHAIR COMSTOCK: Other questions?

MR. DAVILA-BANREY: I'm good.

CHAIR COMSTOCK: So it's a consensus then
that we close the discussion, or do you have anything
else you would like to add?

MR. PRINGLE: No.

MS. MALZONE: VMRC, do you have anything
you would like to add?

MS. HARRIS: No.

MS. MALZONE: Okay. So no action may
be taken, but we appreciate you coming and answering
questions.

MR. PRINGLE: Thank you.

MS. MONUMENT: Thank you.

MR. PRINGLE: You're welcome.

MS. MALZONE: So I believe we can move

1 on.

2 CHAIR COMSTOCK: Can we close the public
3 hearing if there is no further discussion or questions
4 for the applicant at this point?

5 NEW BUSINESS

6 MS. MONUMENT: I have one item.

7 MS. MALZONE: Is it about -- I was going
8 to bring up new business, and it cannot be displayed.
9 I had a picture for you. I actually had a picture for
10 you.

11 MS. MONUMENT: It's not you guys. That's
12 the good news.

13 MS. MALZONE: I had -- that's
14 unbelievable.

15 MS. MONUMENT: What was the --

16 MS. MALZONE: The official determination
17 for what we were talking about, a pending violation
18 at 103 West Road, technically 101 and 103 West Road,
19 it was confirmed earlier in the week that it is still
20 under violation. He is being sent a letter and will
21 be scheduled for the May 7th public hearing because
22 the application deadlines were in the March -- to
23 March 26th for the May 7th application deadline.

24 MS. MONUMENT: Okay.

25 MS. MALZONE: So it's still moving
forward.

MS. MONUMENT: Just for Marcos' benefit,
this was a violation that Valerie and I went and did
a site visit, and he assured us that he would have
it cleaned up within the week. This was last October,
November. Technically -- Valerie, correct me if I'm
wrong, but it's a \$10,000 fine.

There we go.

MS. MALZONE: I wanted to prove I had the
picture.

MS. MONUMENT: It's a difficult area
because it is -- when it's at low tide, it's a very
low tide, and when it's a high tide is most of the
time because of where it's located, right -- if
you kept going past that tree, the Churchland Bridge
is right there, so it's in the Glensheallah area,
and the gentleman who owns the property is a masonry
contractor, and when we did the initial site visit,
there were, as you can see, multiple pieces of
concrete, building materials, bricks, trash, random
stuff, and his contention was that some of that
was there before they purchased the property, they
were inheriting it, but then he admitted that the
bricks and -- all the cinderblocks, the bricks, the

1 building materials were stuff that his guys, quote,
2 unquote, had put on the property to help with the
3 erosion. So we're like, sir, you really don't want
to do that. You should have come to the City with
your concerns.

The tricky part about this land parcel
4 is that part -- it's got his house and home, his
5 front yard, a city street and then a strip of land
6 that's to the river, which is also his property
technically. Now, right where -- at the end of
this -- I don't know, did you get a picture of the
drain pipe?

7 MS. MALZONE: I'm standing in front
8 of the drain pipe, so it's right at the corner
of what we can confirm is his property line.

9 MS. MONUMENT: Okay, great.

10 So there is a huge drain pipe that has
11 collapsed that is his property. That is run by the
Engineering Department. So that -- he has been in
touch with them about that item coming out of that,
so his contention is where the drain pipe is doesn't
belong to him.

12 So, Valerie, this picture is just
13 showing stuff that we know is on his property.

14 MS. MALZONE: Yeah, and it was just
to confirm that the violation wasn't remediated.

15 MS. MONUMENT: Right.

16 MS. MALZONE: So the exact wording,
any person who has violated any provision of the
aforementioned chapter, which is the wetlands
ordinance, or of this ordinance, or who has violated
or failed, neglected or refused to obey any Commission
17 or Wetlands Board order, rule, regulation or permit
condition, the Wetlands Board may provide in an order
18 issued by the Wetlands Board against such person for
the one-time payment of civil charges for each
19 violation in specific sums, not to exceed \$10,000
for each violation.

20 So that would be -- the hearing is
21 where we would determine the impact to wetlands
and any potential civil charges, and that is what
is -- tentatively will be scheduled for May.

22 MS. MONUMENT: So at the May meeting
23 we could -- what are our options, we could give
him a slap on the wrist and give him a certain
number of days to remediate it with no fine, out
24 of the goodness of our heart, we could impose a
fine and ask him to remove it within a certain
25 number of days or face additional charges, but
between the first summons -- so we couldn't fine

1 him at the meeting, we would have to have him
2 come to the meeting first and then fine him?

3 MS. MALZONE: So this is where we
4 would have the City Attorney's Office present to
5 answer these questions. The City Attorney's Office
6 would have a presence at the meeting and then give
7 you the options, and then I believe those options
8 would change whether or not the person was present,
9 so those questions we can just take care of at
10 that time. I wanted to let you know it was
11 upcoming.

12 MS. MONUMENT: Okay. Is that the kind
13 of thing that maybe you could potentially ask him
14 and then we could ask him questions at the April
15 meeting, when we revisit this?

16 MS. MALZONE: Yeah, I can do that.

17 MS. MONUMENT: Let's do that.

18 MR. MALZONE: We can -- yeah, if he
19 would be able to come or just to answer the specific
20 questions.

21 MS. MONUMENT: Or provide -- his office
22 could provide answers at the April meeting so that
23 we're more prepared for the May meeting.

24 MS. MALZONE: Okay. And that would be
25 answers for options about a violation hearing?

MS. MONUMENT: A violation hearing,
options regarding fines versus sanctions, whatever
we would call that.

MR. DAVILA-BANREY: When were we first
notified of this?

MS. MONUMENT: Last year.

MS. MALZONE: It was a while ago. You
will be notified of the hearing as you would for
like a normal meeting. So you haven't been notified
of the meeting officially yet.

MR. DAVILA-BANREY: Okay.

CHAIR COMSTOCK: This has been ongoing
for -- it seems like it's more than a year because we
didn't meet for --

MS. MONUMENT: Sure, it's been more
than a year, so he has had ample opportunity to have,
quote, unquote, his guys come and pick up what they
dropped off.

MS. MALZONE: Okay.

CHAIR COMSTOCK: So how do we --
back to what we were discussing, so we are going
to defer -- is there -- do we have to make a
motion to defer this to the April meeting?

MS. MALZONE: No, there is no
motion. We will speak after the meeting with

1 the applicant about which meeting he would want
2 to be on, and then we would advertise, you
3 know, in such a way that would put him on that
4 meeting.

5 CHAIR COMSTOCK: And I wanted to
6 ask you about the advertising because we have
7 neighbors that are -- that are interested in the
8 process.

9 MS. MALZONE: So ask what
10 the legal advertising requirements for applications
11 are?

12 CHAIR COMSTOCK: Yeah, that one.

13 MS. MALZONE: Okay. So there are
14 timeframes associated with this, but the applicant,
15 the City Council, the Commissioner, which is the
16 Virginia Marine Resources Commission, the owner
17 of record of any land adjacent to the wetlands in
18 question, the Virginia Institute of Marine Science,
19 the State Department of Wildlife Resources, the
20 State Water Control Board, the State Department of
21 Transportation, any government agencies expressing
22 interest therein shall be notified of a Wetlands
23 Board -- of a hearing by mail not less than 20 days
24 prior to the date set for the hearing. This was
25 completed for this hearing and then will be
readvertised for the next hearing.

The Wetlands Board shall also post
a notice of the hearing on its website at least
14 days prior to such hearing -- that's the City's
website -- provide a copy of such notice to the
Commission for submittal to the Virginia regulatory
town hall, cause notice of the hearing to be published
at least once in the seven days prior to such
hearing in a newspaper having general circulation in
the City. That was also done, and it's published in
The Virginian-Pilot, so that was published last
Sunday.

CHAIR COMSTOCK: Sunday previous?

MS. MALZONE: Correct.

CHAIR COMSTOCK: Sometimes they're
difficult to find.

MS. MALZONE: Yes.

Okay. Was there any other questions?

MR. DAVILA-BANREY: No.

MS. MONUMENT: Motion to adjourn the
meeting.

MR. DAVILA-BANREY: Second.

CHAIR COMSTOCK: All in favor.

(Response.)

CHAIR COMSTOCK: The motion is passed.

1 **We are adjourned.**
2 **(Meeting adjourned at 4:11 p.m.)**
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

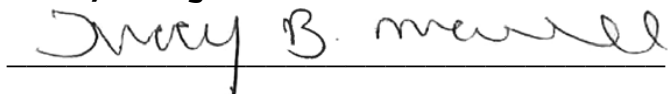
Transcript of Proceedings - March 05, 2025

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Tracy B. Marinelli, RPR, a Notary Public
3 for the Commonwealth of Virginia at Large,
4 of qualification in the Circuit Court of the City
5 of Chesapeake, Virginia, and whose commission expires
6 July 31, 2026, do hereby certify that the
7 above-captioned cause was recorded in Stenotype by me
8 and reduced to typescript under my direction; and that
9 to the best of my ability the foregoing constitutes a
10 true, accurate, and complete transcript of such
11 proceedings.

12 I further certify that I am not related
13 to nor otherwise associated with any counsel or party
14 to this proceeding, nor otherwise interested in the
15 event thereof.

16 Given under my hand this 17th day of
17 March, 2025 at Norfolk, Virginia.

18 

19 Tracy B. Marinelli, RPR

20 Notary Registration No. 212131

21

22

23

24

25



**WETLANDS BOARD
AGENDA
WEDNESDAY, APRIL 2, 2025
6th FLOOR CONFERENCE ROOM
CITY HALL, 801 CRAWFORD STREET
PUBLIC MEETING 3:30 PM**

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF THE MINUTES FROM FEBRUARY 5, 2025, AND MARCH 5, 2025

D. PUBLIC HEARING ITEM

1. **JPA 2024-2634** – Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

E. NEW BUSINESS

1. Violation – 101 & 103 West Road.

F. ADJOURNMENT

*801 Crawford Street, Portsmouth, Virginia 23704
Phone: (757) 393-8836 • Fax: (757) 393-5223*



To: Wetlands Board
From: Planning Staff
Date: March 5, 2025
Re: **JPA 2024-2634** - Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

Summary Date:

Wetlands Board Public Hearing:

March 5, 2025

Summary Facts:

I. APPLICANT

T. Jones, 920 Professional Place, Chesapeake, Virginia, 23320

II. AGENT

D. Pringle, Bay Environmental, Inc., 648 Independence Parkway, Suite 100, Chesapeake, Virginia 23320

III. LOCATION & LEGAL DESCRIPTION

4600 Thornwood Street, also referenced as Tax Map 734, Parcel 22.1

IV. PROPERTY OWNER

Wyatt Landing Development, LLC, 920 Professional Place, Chesapeake, Virginia, 23320

V. PURPOSE

The applicant requests a Wetlands Permit to authorize construction of two (2) stormwater outfalls within the intertidal zone at 4600 Thornwood Street.

VI. RECOMMENDATION

Approval with conditions - Staff recommends approval of this application. With the recommended conditions, the impacts to wetlands have been minimized as much as practicable while constructing stormwater outfalls required for future development of the site. The proposed loss of vegetated wetlands will be compensated for with the purchase of compensatory mitigation credits.

Staff Contact: Valerie Malzone

757-393-8836 Ext. 4210

VII. FINDINGS OF FACT

a. Site Description

The property at 4600 Thornwood Street is approximately 6.9 acres in size and is currently vacant. The property is located within the AE8/AE9 Flood Zone and is also within the Resource Management Area (RMA) and Resource Protection Area (RPA) of the Chesapeake Bay Preservation Area (CBPA). The subject property is surrounded to the north, south, and west by single-family residential properties zoned General Residential (GR). The east side of the property extends into Carney Creek.

Figure 1. Aerial image of applicant's site



b. Project Information and Proposed Use of the Property

The applicant requests a Wetlands Permit to authorize the construction of two (2) stormwater outfalls within the intertidal zone at 4600 Thornwood Street. The proposed stormwater outfalls will serve an 8.5-acre residential development consisting of seventeen (17) single-family dwellings. The applicant indicates that the outfalls will be required to meet state-mandated stormwater management requirements. The project site is located along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

Outfall A, the northernmost outfall, will impact 369 square feet of tidal wetlands: 136 square feet of vegetated tidal wetlands and 233 square feet of non-vegetated tidal wetlands. Outfall B will impact 543 square feet of tidal wetlands: 188 square feet of vegetated tidal wetlands and 355 square feet of non-vegetated tidal wetlands. In total, the project will impact 324 square feet of vegetated tidal wetlands and 588 square feet of non-vegetated tidal wetlands.

The construction of stormwater features that cover additional wetlands are not included as a general permitted use of and/or activity on wetlands specified in *Wetlands Ordinance Sec. 39-24*. Other than for the purpose of conducting the activities specified in *Sec. 39-24*, the Ordinance (*Sec. 39-81*) specifies that the use or development of tidal wetlands within the city requires a Wetlands Permit issued by the Wetlands Board.

Figure 2. Outfall A, non-vegetated wetlands



Figure 3. Outfall A, vegetated wetlands



Figure 4. Outfall B, non-vegetated wetlands



Figure 5. Outfall B, vegetated wetlands



c. Impacts to Wetlands

Code of Virginia §62.1-44.15:21(A) requires that, “Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.”

The proposed stormwater outfalls will impact 324 square feet of vegetated tidal wetlands and 588 square feet of non-vegetated tidal wetlands. The applicant indicates that the stormwater outfalls were located and designed to minimize impacts to wetlands.

Code of Virginia §62.1-44.15:21(B) requires that, “Permits shall contain requirements for compensating impacts on wetlands.” Compensation requirements shall be sufficient to achieve no net loss of existing vegetated wetlands through one or more of the methods listed in Code of Virginia §62.1-44.15:21(B).

The applicant provided confirmation that 324 square feet of compensatory mitigation credits were available for purchase from Chesapeake Land Development’s New Mill Creek Tidal Mitigation Bank as of January 20, 2025, to provide mitigation for the proposed loss of 324 square feet of

vegetated tidal wetlands. The City of Portsmouth does not require compensation for the loss of non-vegetated tidal wetlands.

VIII. WETLANDS BOARD REVIEW STANDARDS – Sec. 39-86

- a. *In deciding whether to grant, to grant in modified form or to deny a permit under this division, the wetlands board shall consider the following:*
 1. *The testimony of any person in support of or in opposition to the permit application;*
 2. *The impact of the proposed development on the public health, safety, and welfare; and*
 3. *The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.*
- b. *The wetlands board shall grant the permit if all of the following criteria are met:*
 1. *The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.*
 2. *The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.*
 3. *The proposed activity does not violate the purposes and intent of this ordinance or chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.*
- c. *If the wetlands board finds that any of the criteria listed in subsection (d) of this section 39-86 are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.*

VIII. PROPOSED CONDITIONS

The following conditions are recommended by staff for consideration by the Wetlands Board to ensure compliance with the general intent and purpose of all Ordinance and Code requirements and to prevent or minimize adverse effects from the proposed Permit to Use or Develop Wetlands:

1. The Permit shall expire two (2) years after the date of issuance.
2. The applicant shall purchase 324 square feet of compensatory tidal mitigation credits and provide proof of such purchase to Planning Department staff prior to the issuance of the Wetlands Permit.
3. The project shall comply with the plans approved by the Wetlands Board, which will be attached to the issued permit.
4. The proposal shall submit to the Engineering Department's Site Plan Review Process. The Engineering Department can be reached at (757) 393-8592. Prior to site plan approval, the permittee shall demonstrate compliance with the Chesapeake Bay Preservation Area District Overlay Ordinance (Chapter 9.1) and present all permits required by the Virginia Marine Resources, Army Corps of Engineers, and/or Wetlands Board.
5. A duly authorized agent of the Wetlands Board shall have the right to enter upon the premises, at a reasonable time, for the purpose of inspecting the work being done pursuant to this permit.

6. The permittee shall, to the greatest extent practicable, minimize the adverse effects of the project upon adjacent properties and wetlands and upon natural resources of the Commonwealth.
7. The permittee shall comply with all applicable laws, ordinances, rules and regulations affecting the conduct of the project. 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.
8. This permit may be revoked at any time by the Wetlands Board upon the failure of the permittee to comply with any of the terms and conditions listed herein.

AFFIDAVIT OF NOTICE TO PROPERTY OWNERS
WETLANDS BOARD

An affidavit of notice to property owners concerning the application listed below as required by §15.2-2204 of the Code of Virginia (1950), as amended:

Date: March 13, 2025

I, Valerie Malzone, hereby certify that the Planning Department mailed on this date the following notices via First Class Mail and that said notices informed property owners and adjacent property owners of the Wetlands Board Public Hearing on April 2, 2025, regarding Application No. JPA 2024-2634:

JPA 2024-2634 – Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

Staff Coordinator: Valerie Malzone

<u>Parcel No.</u>	<u>Adjacent Property</u>	<u>Owner</u>	<u>Mailing Address</u>
-------------------	--------------------------	--------------	------------------------

See attached list


Staff Signature

3/13/25
Date

Valerie Malzone
Staff Name (Print)

SUBJECT PROPERTY AND ADJOINING PROPERTIES LIST
JPA 2024-2634

<u>Parcel No.</u>	<u>Adjacent Property</u>	<u>Owner</u>	<u>Mailing Address</u>
07340221	4600 THORNWOOD ST	WYATT LANDING DEVELOPMENT LLC	920 PROFESSIONAL PL CHEESAPEAKE VA 23320
07350011	4 NORTH POINT DR	LADD DOROTHY L	4 NORTH POINT DR PORTSMOUTH VA 23703
07350012	6 NORTH POINT DR	DELLINGER KATHLEEN M	6 NORTH POINT DR PORTSMOUTH VA 23703
07350013	8 NORTH POINT DR	BENFIELD GARY J & SUZANNE LYNN	8 POINT DR N PORTSMOUTH VA 23703
07350152	11 NORTH POINT DR	GIRARD WILLIAM JR & PATRICIA TRUSTE	11 NORTH POINT DR PORTSMOUTH VA 23703
07350151	10 NORTH POINT DR	GIRARD WILLIAM JR & PATRICIA TRUSTE	11 NORTH POINT DR PORTSMOUTH VA 23703
07340203	3608 CARDINAL LN	CLARK LARRY II & PARIS M	3608 CARDINAL LN PORTSMOUTH VA 23703
07340212	3600 CARDINAL LN	COGGINS ALEXUS M & DARRELL L JR	3600 CARDINAL LN PORTSMOUTH VA 23703
07340211	3602 CARDINAL LN	NORTON ERIC E & KIMBERLYN	3602 CARDINAL LN PORTSMOUTH VA 23703
07340213	3550 CARDINAL LN	THOMASSON KATHERINE A & PEETE JAMAR	3550 CARDINAL LN P PORTSMOUTH VA 23703
07340218	4604 THORNWOOD ST	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340204	134 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340216	102 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462

07340215	106 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340214	110 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340205	130 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340209	114 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340208	118 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340207	122 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340206	126 ESTER CT	AUGUSTINE GOLF CLUB LCC	609 NEWTOWN RD 109 VIRGINIA BEACH VA 23462
07340210	3604 CARDINAL LN	EDC HOMES LLC	1439 GREAT NECK RD N 201 VIRGINIA BEACH VA 23454
		DUSTIN PRINGLE BAY ENVIRONMENTAL INC	648 INDEPENDENCE PK STE 100 CHESAPEAKE, VA 23320
		KIRSTEN TRAVIS VIRGINIA MARINE RESOURCES COMMISSION	BUILDING 96, 380 FENWICK RD FT MONROE VA 23651
		VIRGINIA INSTITUTE OF MARINE SCIENCE	1370 GREATER RD GLOUCESTER POINT VA 23062



**NOTICE OF PUBLIC HEARING
PORTSMOUTH WETLANDS BOARD**

DATE: Wednesday, April 2, 2025
TIME: 3:30 PM
LOCATION: Sixth Floor Conference Room
801 Crawford Street, 6th Floor
Portsmouth, Virginia 23704
CASE: JPA 2024-2634

JPA 2024-2634 – Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

Dear Property Owner:

Our records show that you own property located in the immediate vicinity of the subject property described above. You are encouraged to attend the above referenced Public Hearing to state your views on this application. **IF YOU ARE UNABLE TO ATTEND AND WOULD LIKE TO PROVIDE COMMENT ON THIS APPLICATION, PLEASE FEEL FREE TO FAX US AT (757) 393-5223, EMAIL malzonev@portsmouthva.gov, CALL (757) 393-8836, OR MAIL A LETTER TO THE ADDRESS FOUND BELOW. PLEASE SUBMIT CORRESPONDENCE PRIOR TO THE PUBLIC HEARING DAY.**

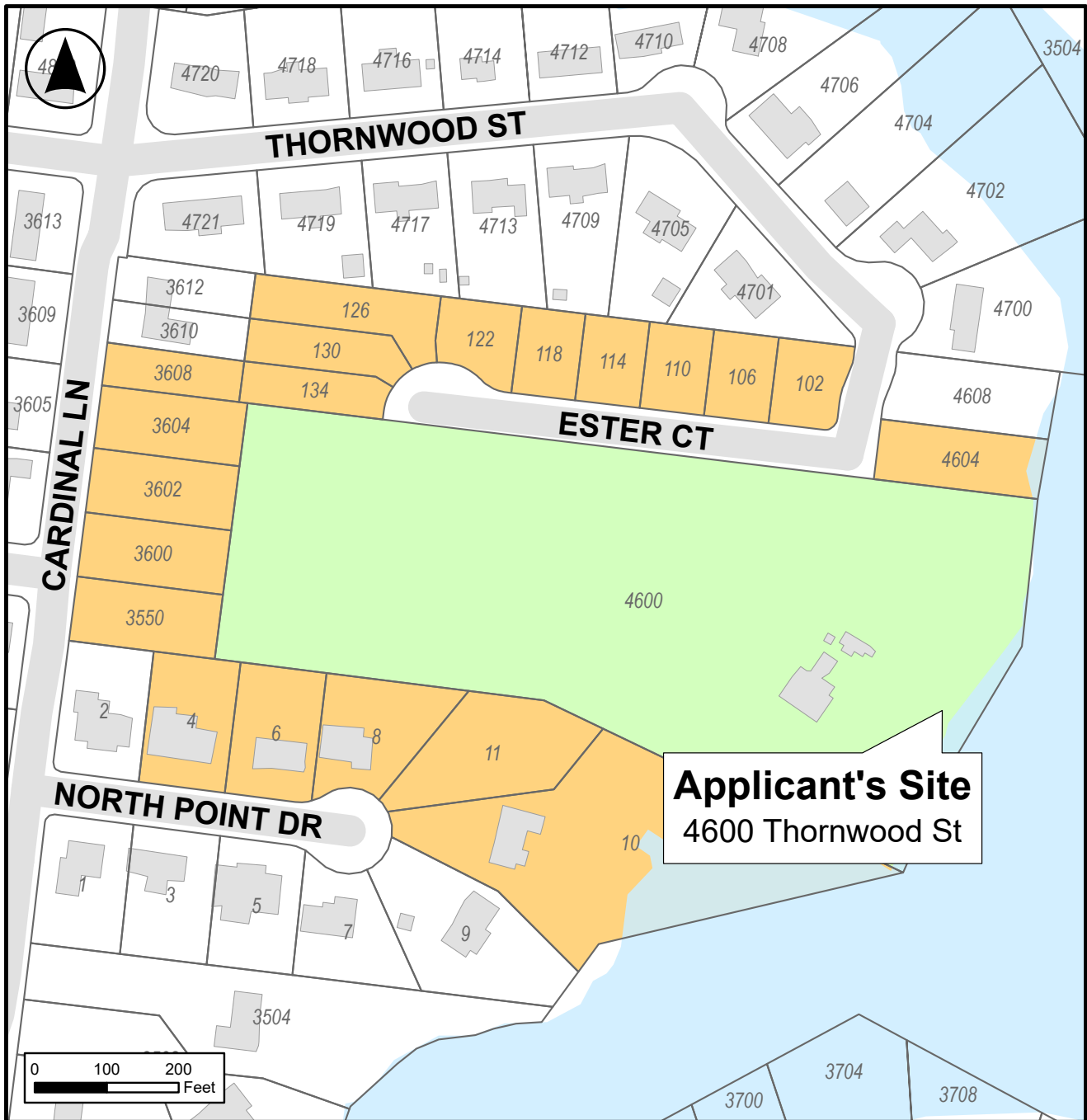
Information relative to this matter will be available on the Planning Department website Wetlands Board webpage at <https://www.portsmouthva.gov/184/Wetlands-Board> or for inspection in the Planning Department, located on the 4th Floor of City Hall at 801 Crawford Street, Portsmouth, Virginia. The Planning Department telephone number is (757) 393-8836.

The City Hall Building, which is the regular meeting place of the Wetlands Board of the City of Portsmouth, Virginia, is physically accessible to persons with physical disabilities. However, if you are disabled and require a reasonable accommodation in order to attend or participate in the meeting of the Portsmouth Wetlands Board, please notify the Americans with Disabilities Act (ADA) Coordinator, Regina O. Jackson, at (757) 393-8836 to advise her of your needs at least 72 hours prior to the scheduled Wetlands Board meeting that you plan to attend.

In accordance with the Virginia Freedom of Information Act (FOIA), all public comments are considered public records and may be released upon request for inspection and copying without prior notification (Virginia Code § 2.2-3706)

Sincerely,

Valerie Malzone
Senior Planner



- Applicant's Parcel
- Adjacent Parcels

Adjacent Property Owner Notifications

JPA 2024-2634



November 6, 2024

Claire Goreman
VMRC
Habitat Management Division
308 Fenwick Road
Hampton, VA 23651

RE: **Pre-Construction Notification**
Wyatt Landing
3552 & 3600 Cardinal Lane
City of Portsmouth Virginia Parcel #s: 07340220 & 07340210

Mrs. Goreman,

On behalf of Tim Jones, we respectfully submit the following information in pursuit of a Nationwide Permit #7 for Outfall Structures. The applicant proposes an 8.48-acre project named Wyatt Landing, a residential subdivision consisting of 17 lots located in Portsmouth, Virginia. The proposed residential project will require the construction of two stormwater outfalls to meet the state requirements under state code 9VAC25-875-600 for Channel & Flood Protection (Stormwater Outfall A and B respectively). Stormwater Outfall A consists of 11 sq ft of non-tidal impacts with 369 sq ft of tidal impacts for a total of 380 sq ft of wetland impacts. Stormwater Outfall B consists of a total of 543 sq ft of tidal impacts. We are seeking a jurisdictional determination from the USACE on the property with the Nationwide Permit 7 submittal package and wetland limits are pending approval with this submittal. Please see attached documents detailing the information required for the pre-construction notification.

Please do not hesitate to contact me if you have any questions or if you require any additional information at 757-436-5900 or dustin@bay-environmental.com.

Sincerely,

Bay Environmental, Inc.
Dustin Pringle

A handwritten signature in black ink, appearing to read "Dustin Pringle", is written over a light blue horizontal line.

Natural Resource Manager

648 Independence Parkway, Suite 100 - Chesapeake, Virginia 23320
Phone: (757) 436-5900 Fax: (757) 436-5909

Received by VMRC November 7, 2024 /blh
Additional Information/Revisions Recieved by VMRC May 2, 2025 map

From: [Travis, Kirsten \(MRC\)](#)
To: [MRC - jpa Permits](#)
Subject: FW: JPA: 20242634 in Portsmouth, Applicant: Wyatt Landing Development LLC
Date: Thursday, December 19, 2024 10:11:37 AM
Attachments: [image001.png](#)
[image002.png](#)

Good morning,

Could you please add this revision to JPA# 24-2634?

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

From: Dustin Pringle <Dustin@bay-environmental.com>
Sent: Wednesday, December 18, 2024 9:14 AM
To: Malzone, Valerie Lynn <malzonev@portsmouthva.gov>
Cc: Travis, Kirsten (MRC) <kirsten.travis@mrc.virginia.gov>; Howell, Beth (MRC) <beth.howell@mrc.virginia.gov>; Gaskins, Debrah <gaskinsd@portsmouthva.gov>
Subject: RE: JPA: 20242634 in Portsmouth, Applicant: Wyatt Landing Development LLC

Valerie,
The impact areas have been staked and the vegetated areas for each impact are as follows:

Outfall A Impact - (369 sq ft tidal impacts/ 11 sq ft non-tidal impacts total)
Outfall A contains 136 sq ft of vegetated impacts. The remaining 233 sq ft is non-vegetated.

Outfall B Impact – (543 sq ft tidal impacts total)
Outfall B contains 188 sq ft of vegetated impacts. The remaining 355 sq ft is non-vegetated.

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

Sincerely,

***** Please note: Bay Environmental will be closed December 23rd through December 27th and again on January 1st.
Happy Holidays!***

Dustin Pringle
Natural Resource Manager

NATIONWIDE 7 WETLAND PERMIT
PRE-CONSTRUCTION NOTIFICATION

Wyatt Landing Suffolk, VA

Received by VMRC November 7, 2024 /blh



Wyatt Landing Portsmouth, Virginia
Pre-Construction Notification
Nationwide 7 – Outfall Structures
November 6, 2024

1. Permittee Information:

Tim Jones
920 Professional Place
Chesapeake, Virginia 23320
(678) 362-9449
tjones@jflpventures.com

2. Location of activity:

3552 & 3600 Cardinal Lane Portsmouth, Virginia
City of Portsmouth Parcel #s: 07340220 & 07340210
36.859803°N, -76.366372°W

From USACE office located on Front Street in Norfolk, Head southeast on Front St toward Colley Avenue and then turn left onto 2nd Street. Take US-58 and VA-164 W to Cedar Lane in Portsmouth. Exit from VA 164 W to Cedar Lane. Drive 1.4 miles to Manor Avenue and turn left until Manor Ave terminates at the intersection with Cardinal Lane. Project is located at the terminus east of Cardinal Lane.

3. Nationwide Permit Information:

We are seeking authorization under NWP #7 Outfall Structures.

4. Project Information:

The proposed 8.48-acre project named Wyatt Landing Development is a residential subdivision consisting of 17 lots located in Portsmouth, Virginia. The proposed residential project will require the construction of two stormwater outfalls to meet the state requirements under state code 9VAC25-875-600 for Channel & Flood Protection (Stormwater Outfall A and B respectively). Stormwater Outfall A consists of 11 sq ft of non-tidal impacts with 369 sq ft of tidal impacts for a total of 380 sq ft of wetland impacts. Stormwater Outfall B consists of a total of 543 sq ft of tidal impacts. Collectively both outfalls total impact area is 923 sq ft (0.02 acres). Both outfalls will utilize Class B riprap free and clear of any toxins (Please refer to attached site design plans for reference). The proposed project will utilize the existing Thornwood Street and Ester Court to access the property. Tree clearing will occur and will total approximately 1.4 acres with 0.1 acres required for the construction of Outfall A within the buffer and associated wetland impact area. All construction, except for the (2) stormwater outfalls and tree mitigation plantings for outfall disturbance, shall be outside the RPA 100' buffer limits. Silt fence will be placed along/ just outside the RPA 100' limits (except in (2) outfalls where fence goes down to near water edge) as deterrent to enter RPA and wetland areas during construction. All erosion and sediment controls will be adhered to under state regulations to prevent any additional secondary wetland and/or buffer impacts.

In an effort to reduce and minimize wetland impacts as much as practicable, the site design was reduced to 0.02 acres of impacts. In order to avoid secondary impacts, a project-specific Erosion and Sediment Control (ESC) plan will be developed for approval of the land disturbing activity. The ESC plan will be prepared in accordance with the Virginia Erosion & Sediment Control Law and Regulations. During construction activities, the project site

will be inspected and maintained for ESC throughout the life of the construction activity providing enhanced protection for the avoided jurisdictional areas and aquatic resources. Mitigation is not required for this project as wetland impacts are under 0.10 acres.

5. Wetland Delineation:

Enclosed is the wetland delineation information to be used for confirmation purposes for the project site in tandem with permit application. A wetland confirmation with the USACE is pending approval with the permit application.

6. Compensation:

As stated in Item 4 above, mitigation is not required for this project under the NWP# 7 given that the total proposed wetland impacts will be under 0.10 acres. The applicant has avoided and minimized impacts to wetlands as much as practicable.

7. Threatened and Endangered Species:

Correspondence obtained from the U.S. Fish and Wildlife Service IPaC is attached. There were no species on the list for this project area. VaFWIS indicated green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), peregrine falcon (*Falco peregrinus*), Atlantic Sturgeon (*Acipenser oxyrinchus*), Wilson's plover (*Anarhynchus wilsonia*) and yellow-crowned night heron (*Nyctanassa violacea*) has been geolocated within the two-mile radius of the project area. No areas of critical habitat were identified within the study area.

8. Cultural/Historic Resources:

No architectural/archeological resources were identified by DHR staff onsite or within a 0.25-mile radius of the project area. There were No historical districts within the project area.

9. Wild Scenic River:

Project is not located on a Wild or Scenic River.

10. Section 408:

No federal project or channel exists within the proposed project boundary.

- ❖ 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.

FOR AGENCY USE ONLY	
	Notes:
	JPA # 24-2634

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.

<i>Check all that apply</i>				
Pre-Construction Notification (PCN) <input checked="" type="checkbox"/>	NWP # <u>7 Outfall Structures</u> (For Nationwide Permits ONLY - No DEQ-VWP permit writer will be assigned)		PASDO – PGP Self Verification <input type="checkbox"/> (Replaces Regional Permit 17 (RP-17) checklist)	
County or City in which the project is located: <u>Portsmouth VA</u>				
Waterway at project site: <u>Lily Creek</u>				
PREVIOUS ACTIONS RELATED TO THE PROPOSED WORK (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 - https://webapps.mrc.virginia.gov/public/habitat/ - or VIMS - http://ccrm.vims.edu/perms/newpermits.html				
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
N/A	N/A	N/A	N/A	N/A

Part 1 - General Information (continued)

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

Tim Jones
920 Professional Place
Chesapeake, Virginia 23320
(678) 362-9449
tjones@jflpventures.com

Home () _____
Work (678) 362-9449
Fax () _____
Cell () _____
e-mail tjones@jflpventures.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:

Home () _____
Work () _____
Fax () _____
Cell () _____
e-mail _____

State Corporation Commission Name and ID Number (if applicable) _____

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

Dustin Pringle
Bay Environmental Inc.
648 Independence Pkwy Suite100
Chesapeake VA 23320

Contact Information:

Home () _____
Work (757) 436-5900
Fax () _____
Cell (757) 814-6475
e-mail dustin@bay-environmental.com

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.

The proposed 8.48 acre project named Wyatt Landing Development is a residential subdivision consisting of 17 lots located in Portsmouth, Virginia. The proposed residential project will require the construction two stormwater outfalls to meet the state requirements under state code 9VAC25-875-600 for Channel & Flood Protection (Stormwater Outfall A and B respectively). Stormwater Outfall A consists of 11 sq ft of non-tidal impacts with 369 sq ft of tidal impacts for a total of 380 sq ft of wetland impacts. Stormwater Outfall B consists of a total of 543 sq ft of tidal impacts. Collectively both outfall impact areas total 923 sq ft (0.02 acres). Both outfalls will utilize Class B riprap free and clear of any toxins (Please refer to attached site design plans for reference). The proposed project will utilize the existing Thornwood Street and Ester Court to access the property. Tree clearing will occur and will total approximately 1.4 acres with 0.1 acres required for the construction of Outfall A within the buffer and associated wetland impact area. All construction, except for the (2) stormwater outfalls and tree mitigation plantings for outfall disturbance, shall be outside the RPA 100' buffer limits. Silt fence will be placed along/ just outside the RPA 100' limits (except in (2) outfalls where fence goes down to near water edge) as deterrent to enter RPA and wetland areas during construction. All erosion and sediment controls will be adhered to under state regulations to prevent any additional secondary wetland and/or buffer impacts.

Part 1 - General Information (continued)

5. Have you obtained a contractor for the project? ____ Yes* X 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:

N/A

Contact Information:

Home (____) _____

Work (____) _____

Fax (____) _____

Cell (____) _____

email _____

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:

Virginia Pilot

150 West Brambleton Ave #2018 Norfolk VA 23510

Telephone number

(866) 236-0172

7. Give the following project location information:

Street Address (911 address if available) 3552 & 3600 Cardinal Lane

Lot/Block/Parcel# Parcel #s: 07340220 & 07340210

Subdivision _____

City / County Portsmouth VA ZIP Code 23703

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

36.859803 / -76.366372 (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.*

N/A

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."

The primary purpose is to provide affordable housing in a current housing market where demand is high and availability is low for families in the Hampton Roads area. The secondary purpose is to provide the best stormwater management practices within this proposed development to ensure properties are designed in a way that meets the local city and state stormwater management requirements and provides families flood relief during storm events.

Part 1 - General Information (continued)

9. Proposed use (check one):
 ___ Single user (private, non-commercial, residential)
 x 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.*
- A portion of the project site contains shoreline of Lily Creek which contains a resource protection area 100-ft buffer. This allows for 17 lots to be constructed with no wetland impacts as well as no CBPA buffer impacts with the exception of the stormwater outfalls. The impacts were reduced and minimized to the maximum extent possible. The wetland impacts and buffer encroachments were reduced and minimized to account for only the 2 stormwater outfalls required for the development of the site.
11. Is this application being submitted for after-the-fact authorization for work which has already begun or been completed? ___ Yes x 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.): \$ 850,000
Approximate cost of that portion of the project that is channelward of mean low water:
\$ 10,000
13. Completion date of the proposed work: November 2025 - _____
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.

Augustine Golf Club LLC
609 NEWTOWN RD 109
MAIL2 VIRGINIA BEACH VA 23462

Part 2 - Signatures

1. Applicants and property owners (if different from applicant).

NOTE: REQUIRED FOR ALL PROJECTS

PRIVACY ACT STATEMENT: The Department of the Army permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972. These laws require that individuals obtain permits that authorize structures and work in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters prior to undertaking the activity. Information provided in the Joint Permit Application will be used in the permit review process and is a matter of public record once the application is filed. Disclosure of the requested information is voluntary, but it may not be possible to evaluate the permit application or to issue a permit if the information requested is not provided.

CERTIFICATION: I am hereby applying for all permits typically issued by the DEQ, VMRC, USACE, and/or Local Wetlands Boards for the activities I have described herein. I agree to allow the duly authorized representatives of any regulatory or advisory agency to enter upon the premises of the project site at reasonable times to inspect and photograph site conditions, both in reviewing a proposal to issue a permit and after permit issuance to determine compliance with the permit.

In addition, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Tim Jones

Applicant's Legal Name (printed/typed)

(Use if more than one applicant)

Tim Jones

Applicant's Signature

(Use if more than one applicant)

10/22/2024

Date

Property Owner's Legal Name (printed/typed)
(If different from Applicant)

(Use if more than one owner)

Property Owner's Signature

(Use if more than one owner)

Date

Part 2 – Signatures (continued)

2. Applicants having agents (if applicable)

CERTIFICATION OF AUTHORIZATION

I (we), Tim Jones hereby certify that I (we) have authorized Bay Environmental Inc.
(Applicant's 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.

Tim Jones
(Agent's Signature) (Use if more than one agent)
Applicant
10/22/2024
(Date)

(Applicant's Signature) (Use if more than one applicant)
Agent
11/7/24
(Date)

3. Applicant's having contractors (if applicable)

CONTRACTOR ACKNOWLEDGEMENT

I (we), , have contracted
(Applicant's legal name(s)) (Contractor's name(s))
to perform the work described in this Joint Permit Application, signed and dated .

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 liable for any civil and/or 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.

Contractor's name or name of firm

Contractor's or firms address

Contractor's signature and title

Contractor's License Number

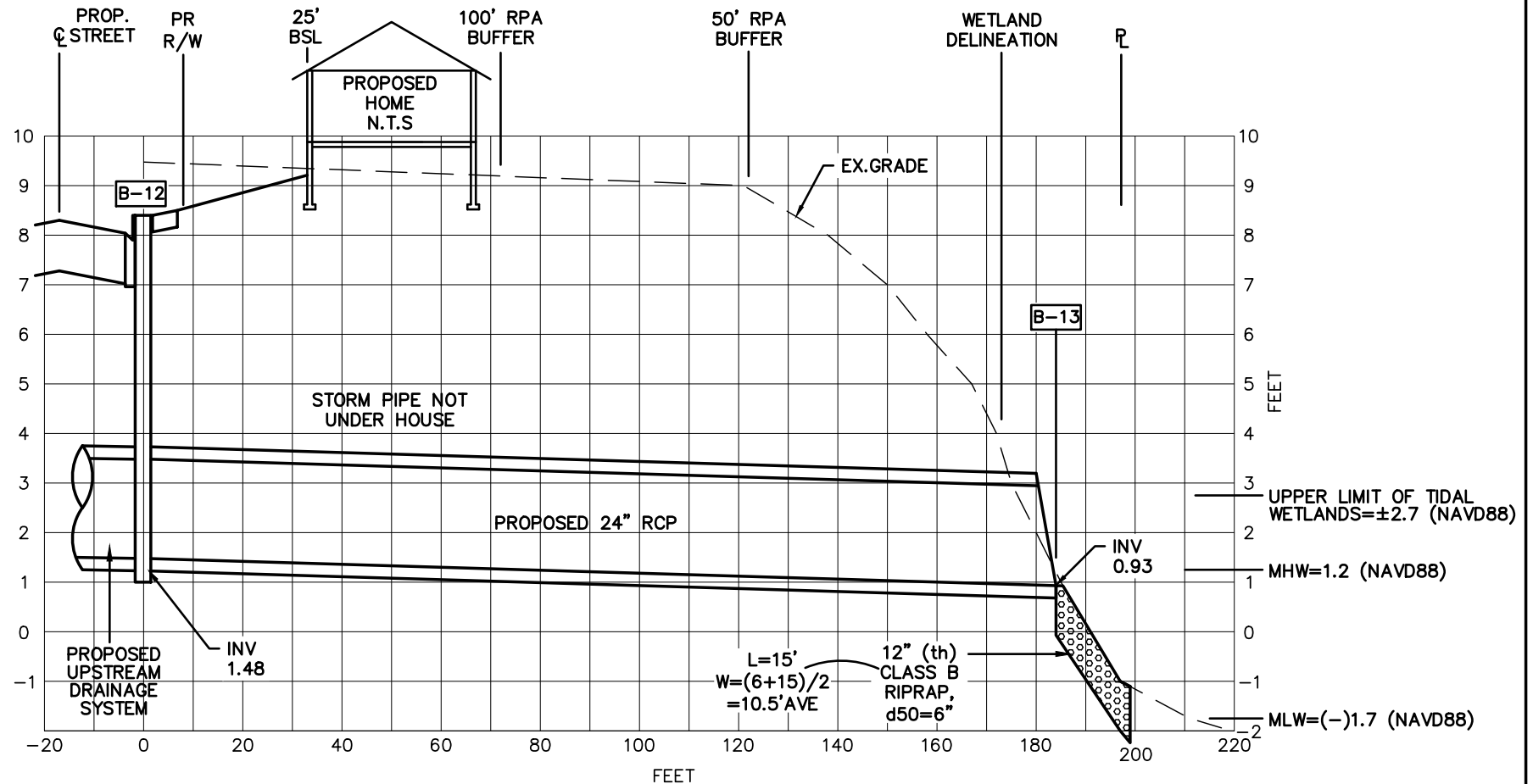
Applicant's signature (use if more than one applicant)

Date

FIGURES

Wyatt Landing Suffolk, VA

Received by VMRC November 7, 2024 /blh



PROPOSED OUTFALL "A" & OUTLET PROTECTION

PROPOSED OUTFALL PROFILE VIEW

PROJECT: WYATT LANDING SUBDIVISION, PORTSMOUTH, VA

PROJECT NO.: 2018-019

DESCRIPTION: DRAWING DEPICTING PROPOSED OUTFALL & OUTLET PROTECTION AND FILL IN WETLANDS

DATE ISSUED: 11-22-24

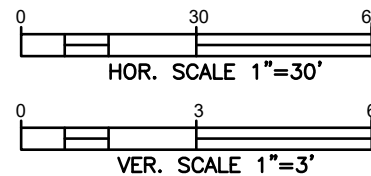
DATE APPROVED:

DATE MODIFIED:

DATE MODIFIED:

SCALE: HOR.: 1"=30', VER.: 1"=3'

NOTES: REFER TO PLAN VIEW AND REPORT FOR MORE INFORMATION



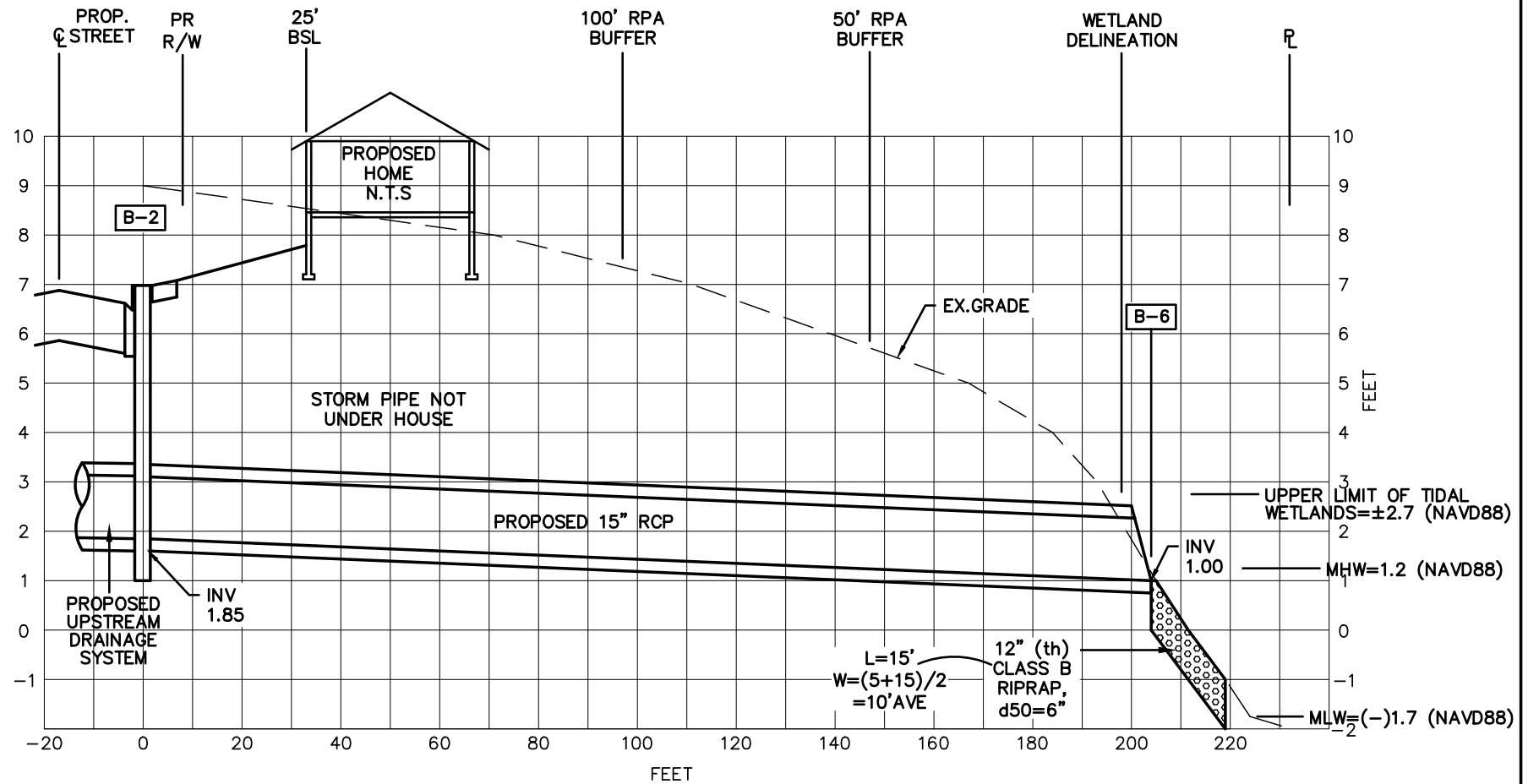
PINNACLE GROUP ENGINEERING, INC.

804 Newtown Road, Suite 101
Virginia Beach, Va. 23462
Tele: (757) 424-7724 & Fax: (757) 424-5606
E-mail: rlores@pgeva.com

COPYRIGHT © 2024, PINNACLE GROUP ENGINEERING, INC.

SHEET 2 OF 4

Additional Information/Revision Received by VMRC November 26, 2024 / Ira
Additional Information/Revisions Received by VMRC May 2, 2025 map



PROPOSED OUTFALL "B" & OUTLET PROTECTION

PROPOSED OUTFALL PROFILE VIEW

PROJECT: WYATT LANDING SUBDIVISION, PORTSMOUTH, VA

PROJECT NO.: 2018-019

DESCRIPTION: DRAWING DEPICTING PROPOSED OUTFALL & OUTLET PROTECTION AND FILL IN WETLANDS

DATE ISSUED: 11-22-24

DATE APPROVED:

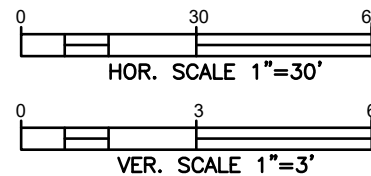
DATE MODIFIED:

DATE MODIFIED:

SCALE: HOR.: 1"=30', VER.: 1"=3'

NOTES: REFER TO PLAN VIEW AND REPORT FOR MORE INFORMATION

SHEET 3 OF 4

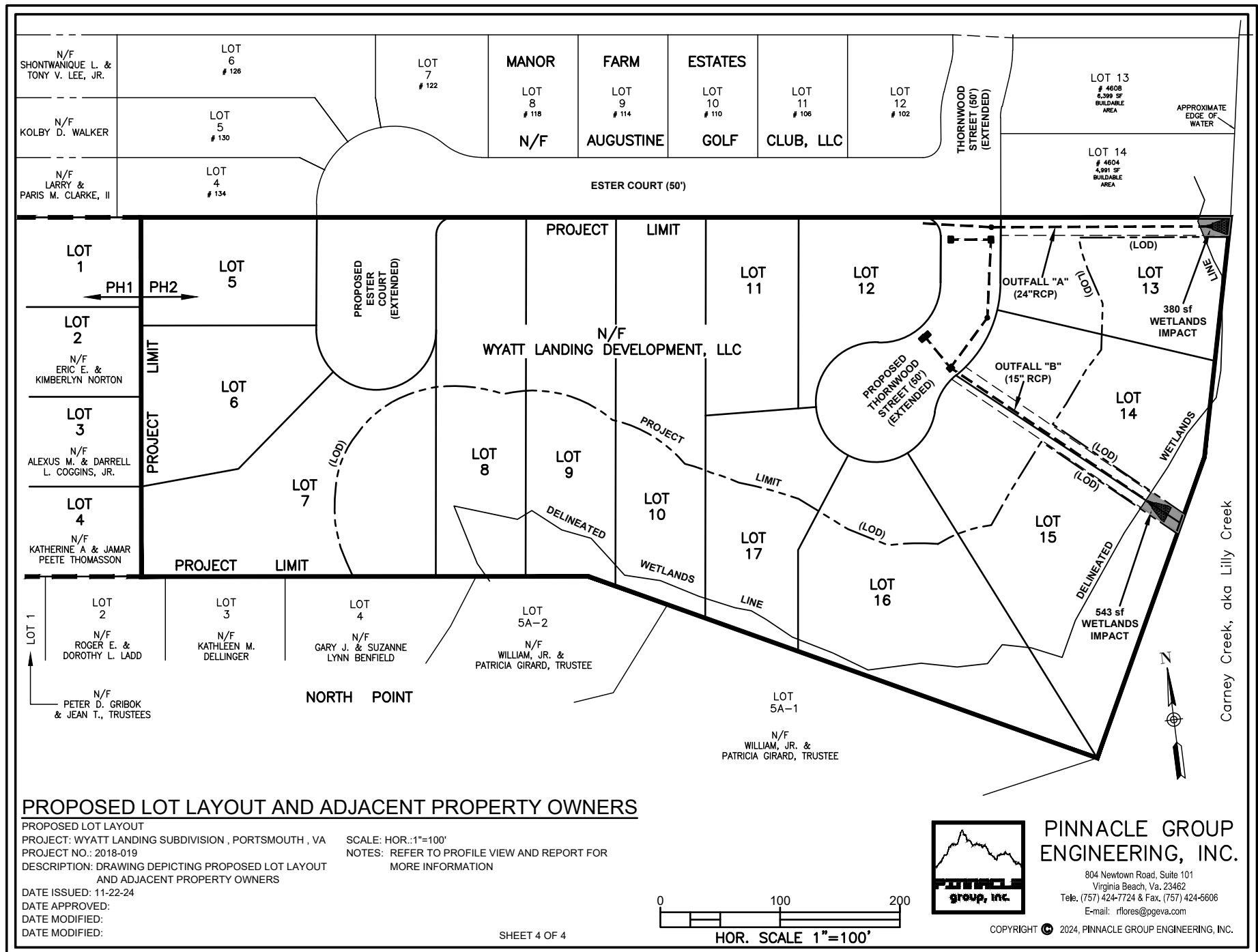


**PINNACLE GROUP
ENGINEERING, INC.**

804 Newtown Road, Suite 101
Virginia Beach, Va. 23462
Tele: (757) 424-7724 & Fax: (757) 424-5606
E-mail: rlflores@pgeva.com

COPYRIGHT © 2024, PINNACLE GROUP ENGINEERING, INC.

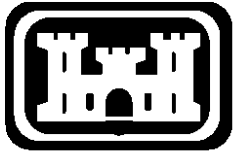
Additional Information/Revision Received by VMRC November 26, 2024 / Ira
Additional Information/Revisions Received by VMRC May 2, 2025 map



Wetland Delineation Information

Wyatt Landing Suffolk, VA

Received by VMRC November 7, 2024 /blh



NORFOLK DISTRICT REGULATORY OFFICE PRE-APPLICATION AND/OR JURISDICTIONAL WATERS DETERMINATION REQUEST FORM

This form is used when you want to determine if areas on your property fall under regulatory requirements of the U.S. Army Corps of Engineers (USACE). Please supply the following information and supporting documents described below. This form can be filled out online and/or printed and then mailed, faxed, or e-mailed to the Norfolk District. Submitting this request authorizes the US Army Corps of Engineers to field inspect the property site, if necessary, to help in the determination process. **THIS FORM MUST BE SIGNED BY THE PROPERTY OWNER TO BE CONSIDERED A FORMAL REQUEST.**

The printed form and supporting documents should be mailed to:

U.S. Army Corps of Engineers, Norfolk District
Regulatory Branch
803 Front Street
Norfolk, Virginia 23510-1096

Or faxed to (757) 201-7678

Or sent via e-mail to: CENAO.REG_ROD@usace.army.mil

Additional information on the Regulatory Program is available on our website at:

<http://www.nao.usace.army.mil/>

Please contact us at 757-201-7652 if you need any assistance with filling out this form.

Location and Information about Property to be subject to a Jurisdictional Determination:

1. Date of Request: 10/14/2024
2. Project Name: 3552 and 3600 Cardinal Lane
3. City or County where property located: Portsmouth Virginia
4. Address of property and directions (attach a map of the property location and a copy of the property plat): 3552 and 3600 Cardinal Lane
5. Coordinates of property (if known): 36.859803° N, -76.366372° W
6. Size of property in acres: 8.49 ac
7. Tax Parcel Number / GPIN (if available): City of Portsmouth Parcel #s: 07340220 & 07340210
8. Name of Nearest Waterway: Lily Creek

Revised: November 2013

Received by VMRC November 7, 2024 /blh

Additional Information/Revisions Recieved by VMRC May 2, 2025 map

9. Brief Description of Proposed Activity, Reason for Preapplication Request, and/or Reason for Jurisdictional Waters Determination Request: NWP Application

10. Has a wetland delineation/determination been completed by a consultant or the Corps on the property previously? ☐ YES ☐ NO ☒ UNKNOWN

If yes, please provide the name of the consultant and/or Corps staff and Corps permit number, if available:

Property Owner Contact Information:

Property Owner Name: Wyatt Landing Development LLC
Mailing Address: 920 Professional Place
City: State: Zip: Chesapeake, VA 23320
Daytime Telephone: 678-362-9449
E-mail Address: tim.jones@alsco.com

If the person requesting the Jurisdictional Determination is **NOT** the Property Owner, please also supply the Requestor's contact information here:

Requestor Name: Bay Environmental, Inc. Attn: Dustin Pringle
Mailing Address: 648 Independence Parkway, Suite 100
City: State: Zip: Chesapeake Virginia 23320
Daytime Telephone: 757-436-5900
E-mail Address: dustin@bay-environmental.com

Additionally, if you have any of the following information, please include it with your request: wetland delineation map, other relevant maps, drain tile survey, topographic survey, and/or site photographs.

CERTIFICATION: I am hereby requesting a preapplication consultation or jurisdictional waters and/or wetlands determination from the U.S. Army Corps of Engineers, for the property(ies) I have described herein. I agree to allow the duly authorized representatives of the Norfolk District Corps of Engineers and other regulatory or advisory agencies to enter upon the premises of the project site at reasonable times to evaluate inspect and photograph site conditions. This consent to enter the property is superior to, takes precedence over, and waives any communication to the contrary. For example, if the property is posted as "no trespassing" this consent specifically supercedes and waives that prohibition and grants permission to enter the property despite such posting. I hereby certify that the information contained in the Request for a Jurisdictional Determination is accurate and complete:

Property Owner's Signature



10/28/2024

Date

Revised: November 2013

Received by VMRC November 7, 2024 /blh

Additional Information/Revisions Recieved by VMRC May 2, 2025 map

WETLAND DELINEATION AND CBPA DETERMINATION REPORT

3552 and 3600 Cardinal Lane

City of Portsmouth Parcel #s: 07340220 & 07340210
Portsmouth, VA 23703



For

Kristian Jones

By



Bay Environmental, Inc.
648 Independence Parkway, Suite 100
Chesapeake, Virginia 23320

September 13, 2018

Received by VMRC November 7, 2024 /blh

TABLE OF CONTENTS

Introduction	1
Resource Mapping.....	1
Findings	2
Conclusion.....	4

LIST OF PHOTOGRAPHS

Photograph 1: Representative view of the tidal wetlands at Data Point A

Photograph 2: Representative view of the forested uplands at Data Point B

LIST OF FIGURES

Figure 1: Topographical Vicinity Map

Figure 2: Site Conditions

Figure 3: National Wetlands Inventory Map

Figure 4: NRCS Soils Map

Introduction

On behalf of Kristian Jones, Bay Environmental conducted a wetland delineation located at 3552 and 3600 Cardinal Lane in Portsmouth, Virginia (Parcel #s: 07340220 & 07340210). The study area is approximately 8.49 acres along Lily Creek. Representatives of Bay Environmental, Inc. conducted the site visit on September 5, 2018. Figure 1 is a USGS topographical map that depicts the approximate location of the site and its general vicinity. The wetland delineation involved both desktop data analysis and interpretation as well as a site investigation to field verify the available information and identify the location of wetlands. Prior to conducting the site investigation, scientists reviewed United States Geological Survey (USGS) topographical information, aerial photography, National Wetland Inventory Maps (NWI), and the available soil survey for the subject site. A site investigation was conducted in accordance with the 1987 *Corps of Engineers Wetlands Delineation Manual* and the *Atlantic and Gulf Coastal Plain Regional Supplement to the Corps of Engineers Wetland Delineation Manual*, which both examine the three criteria necessary for an area to be considered a wetland. These three criteria are the presence of wetland hydrology, hydric soils, and hydrophytic vegetation.

Resource Mapping

The *USA Topo Map from ESRI, Norfolk South, VA topographic* quadrangle map (Figure 1) shows the study area at an elevation of approximately 5-10 feet above sea level. The study area is depicted as a cleared residential area with Lily Creek along the eastern boundary of the site and Cardinal Lane along the western boundary of the site. The surface and groundwater most likely flow in an eastern direction into Lily Creek, a tributary to the western branch of the Elizabeth River.

The National Wetlands Inventory Map, prepared by the U.S. Fish and Wildlife Service (USFWS), identifies three wetland classes within the study area. E1UBL is a subtidal, estuarine wetland system with an unconsolidated bottom. Tidal salt water continually covers the substrate in these areas. E2EM1P is an intertidal, estuarine wetland system that contains persistent, emergent vegetation. This wetland system is irregularly flooded, which means that the area is flooded by tides less often than daily. PFO1R is a palustrine forested wetland system that contains broad-leaved, deciduous vegetation. This wetland system is seasonally flooded-tidal, which means that tidal fresh surface water is typically present for more than a month of the growing season but is usually absent by the end of the growing season in most years. When the surface water is absent, depth to saturation is highly variable. It is important to note that the USFWS issues a disclaimer with this data recognizing that these maps are prepared from the analysis of high altitude aerial photography and, consequently, "a margin of error is inherent in the use of the imagery".

The soil survey for Tidewater Cities Area, VA, prepared by the National Resource Conservation Service (NRCS), has listed four soil series within the study area (Figure 4). Altavista-Urban land complex (1) is a 0 to 3 percent sloped, very deep, moderately well drained soil. Bohicket muck (6) is a 0 to 1 percent sloped, very deep, very poorly drained soil. State-Urban land complex (22) is a 0 to 3 percent sloped, very deep, well drained soil. Tomotley-Urban land complex (24) is a 0 to 2 percent sloped, very deep, poorly drained soil. Altavista-Urban land complex, Bohicket muck, and Tomotley-Urban land complex soil series are listed on the NRCS' National List of Hydric soils but the State-Urban land complex soil series is not.

Findings

Following the analysis of available data, scientists with Bay Environmental conducted an on-site investigation to complete the wetland delineation. The investigation included examining the site for areas possessing all three parameters required for an area to be considered a wetland. The site was examined to find the presence of wetland hydrology, hydric soils, and hydrophytic vegetation. Wetland hydrology is present when an area is permanently or periodically inundated or has soils saturated to the surface for a set amount of time during the growing season. Evidence of wetland hydrology includes both primary (standing water, saturated soils, oxidized root channels) and secondary (a predominance of wetland plants, geomorphic position) indicators. An area must possess one primary or two secondary indicators of wetland hydrology to satisfy this parameter. Hydric soils are soils that possess certain physical and chemical characteristics that result from saturation or inundation. These soils can be identified based on color and the presence of mottling. Hydrophytic vegetation includes those plants that are adapted to life in permanently or periodically saturated soils.

The site investigation resulted in identifying approximately 0.65 acre of wetlands within the study area (Photograph 1). These wetlands were located along the eastern and southern boundaries of the study area. The wetlands consisted of tidal wetland areas associated with Lily Creek and forested wetlands that are connected and contiguous to the tidal areas. The dominant vegetation within the tidal wetlands consisted of needlegrass rush (*Juncus roemerianus*) and smooth cordgrass (*Spartina alterniflora*). The soil within the wetlands was mucky and had a hydrogen sulfide odor, indicating the hydrogen sulfide and loamy mucky mineral hydric soil indicators. Wetland hydrology indicators included high water table, saturation, hydrogen sulfide odor, geomorphic position and FAC-neutral test.



Photograph 1: Representative view of the tidal wetlands at Data Point A

The site investigation resulted in identifying approximately 7.84 acres of uplands within the study area. The uplands consisted of portions of the forested area in the northern portion of the study area (Photograph 2) as well as the cleared, lawn area. The dominant vegetation within the forested uplands consisted of hackberry (*Celtis occidentalis*), eastern red cedar (*Juniperus virginiana*), Chinese privet (*Ligustrum sinense*), English ivy (*Hedera helix*), and greenbrier (*Smilax rotundifolia*). The soil within the uplands bright and loamy, lacking the presence of hydric soil indicators. No wetland hydrology indicators were observed.



Photograph 2: Representative view of the forested uplands at Data Point B

CBPA Determination

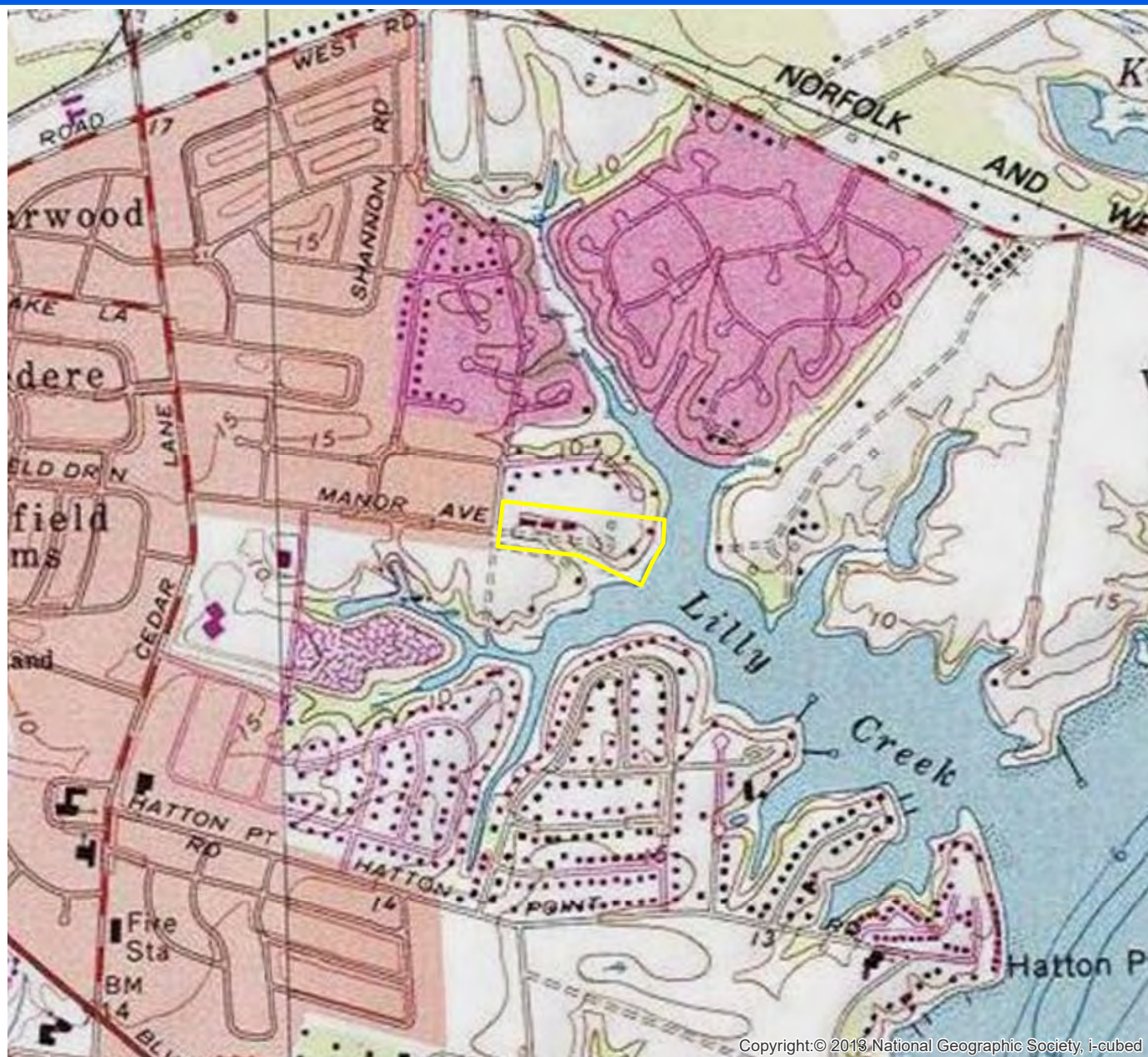
Bay Environmental evaluated the property for the presence of tidal wetlands, perennial streams and limits of required Resource Protection Area (RPA) buffering in accordance with the Chesapeake Bay Preservation Act (CBPA) and the City of Portsmouth's Planning Department policies. The City of Portsmouth requires an onsite delineation of the limits of tidal wetlands and perennial stream features in order to determine their presence and/or extent. Tidal wetlands, perennial streams, and their associated connected and contiguous wetlands located within the Chesapeake Bay watershed are subjected to regulation under the CBPA. The CBPA requires a 100 foot RPA buffer along regulated areas with the intent of improving and maintaining the water quality within the Chesapeake Bay watershed.

During the site investigation, Lily Creek and the connected and contiguous tidal and forested wetlands were observed in the eastern and southern portions of the study area. All wetlands on site will require RPA buffering as illustrated in Figure 2. No streams were observed on site; therefore, stream assessments were not conducted.

Conclusion

In summary, while the U.S. Army Corps of Engineers ultimately determines the jurisdictional status of land, Bay Environmental's professional opinion of wetland limits is depicted on Figure 2. We recommend having the U.S. Army Corps of Engineers look at the site to confirm the extent of the wetlands determined via the wetland delineation. Please note that the limits of wetlands and waters of the U.S. are subject to change pending their review and approval. Wetlands are regulated under Section 404 and 401 of the Clean Water Act, and impacting these areas requires a permit from the U.S. Army Corps of Engineers and/or the Virginia Department of the Environmental Quality. Tidal wetlands are also regulated by the Virginia Marine Resource Commission and the City of Portsmouth.

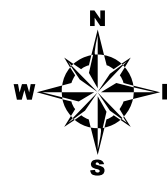
While the City of Portsmouth's Planning Department determines the extent of RPA buffering required under the Chesapeake Bay Preservation Act, Bay Environmental's professional opinion of how the CBPA will impact the property is depicted on Figure 2. We recommend having the City of Portsmouth's Planning Department look at the site to confirm the extent of buffering required under the CBPA. The buffering required for areas subjected to these regulations is typically 100 feet. The extent of RPA buffering may change based on the final approval of the City of Portsmouth's Planning Department.



Copyright:© 2013 National Geographic Society, i-cubed

Legend

Study Area ~ 8.49 acres



0 250 500 1,000 1,500 2,000
Feet

Source: USA Topo Maps from ESRI; Study Area estimated from Portsmouth Interactive Map.

Scale: 1 in = 1,000 ft
Bay #: 18-430-01
Date: 08/30/18
Prepared by: AJLC

Figure 1: Topographical Vicinity Map
3552 & 3600 Cardinal Lane
Wetland and RPA Delineation
Portsmouth, VA





Virginia Geographic Information Network (VGIN)

Legend



Study Area ~ 8.49 acres



Wetlands ~0.65 acre



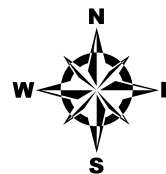
Data Point



Limits of CBPA Regulated Wetlands



100 foot RPA buffer



0 50 100 200 300 400
Feet

Source: Virginia 2017 Orthophotographs; Study Area estimated from Portsmouth Interactive Map; Wetlands Marked by Trimble Geo7X

Scale: 1 in = 200 ft
Bay #: 18-430-01
Date: 9/12/18
Prepared by: GCF
Reviewed by: AJLC
PWD# #3402000113

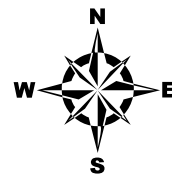
Figure 2: Site Conditions
3552 & 3600 Cardinal Lane
Wetland and RPA Delineation
Portsmouth, VA





Legend

Study Area ~ 8.49 acres



0 50 100 200 300 400
Feet

Source: Virginia 2017 Orthophotographs; Study Area estimated from Portsmouth Interactive Map.

Scale: 1 in = 200 ft
Bay #: 18-430-01
Date: 08/30/18
Prepared by: AJLC

Figure 3: National Wetlands Inventory Map
3552 & 3600 Cardinal Lane
Wetland and RPA Delineation
Portsmouth, VA



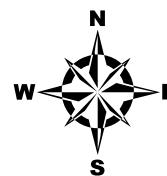


Legend

Study Area ~ 8.49 acres

Soils Key

- 1 - Altavista-Urban land complex
- 6 - Bohicket muck
- 22 - State-Urban land complex
- 24 - Tomotley-Urban land complex
- W - Water



0 50 100 200 300 400
Feet

Source: Virginia 2017 Orthophotographs; Study Area estimated from Portsmouth Interactive Map.

Scale: 1 in = 200 ft
Bay #: 18-430-01
Date: 08/30/18
Prepared by: AJLC

Figure 4: NRCS Soils Map
3552 & 3600 Cardinal Lane
Wetland and RPA Delineation
Portsmouth, VA



WETLAND DETERMINATION DATA FORM – Atlantic and Gulf Coastal Plain Region

Project/Site: 3552 & 3600 Cardinal Lane City/County: Portsmouth Sampling Date: 9/5/18
 Applicant/Owner: Kristian Jones State: VA Sampling Point: DPA
 Investigator(s): Bay Environmental, Inc. Section, Township, Range: _____
 Landform (hillslope, terrace, etc.): _____ Local relief (concave, convex, none): _____ Slope (%): _____
 Subregion (LRR or MLRA): T Lat: 36.859803° N Long: -76.366372° W Datum: _____
 Soil Map Unit Name: Bohicket muck NWI classification: E2EM

Are climatic / hydrologic conditions on the site typical for this time of year? Yes ☒ No _____ (If no, explain in Remarks.)
 Are Vegetation ☐, Soil ☐, or Hydrology ☐ significantly disturbed? Are "Normal Circumstances" present? Yes ☒ No _____
 Are Vegetation ☐, Soil ☐, or Hydrology ☐ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes <input checked="" type="checkbox"/> No _____	Is the Sampled Area within a Wetland? Yes <input checked="" type="checkbox"/> No _____
Hydric Soil Present? Yes <input checked="" type="checkbox"/> No _____	
Wetland Hydrology Present? Yes <input checked="" type="checkbox"/> No _____	
Remarks: The hydrophytic vegetation, hydric soil, and wetland hydrology parameters were met. This area consists of E2EM wetlands.	

HYDROLOGY

Wetland Hydrology Indicators: <u>Primary Indicators (minimum of one is required; check all that apply)</u> <input type="checkbox"/> Surface Water (A1) <input type="checkbox"/> Aquatic Fauna (B13) <input checked="" type="checkbox"/> High Water Table (A2) <input type="checkbox"/> Marl Deposits (B15) (LRR U) <input checked="" type="checkbox"/> Saturation (A3) <input checked="" type="checkbox"/> Hydrogen Sulfide Odor (C1) <input type="checkbox"/> Water Marks (B1) <input type="checkbox"/> Oxidized Rhizospheres along Living Roots (C3) <input type="checkbox"/> Sediment Deposits (B2) <input type="checkbox"/> Presence of Reduced Iron (C4) <input type="checkbox"/> Drift Deposits (B3) <input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6) <input type="checkbox"/> Algal Mat or Crust (B4) <input type="checkbox"/> Thin Muck Surface (C7) <input type="checkbox"/> Iron Deposits (B5) <input type="checkbox"/> Other (Explain in Remarks) <input type="checkbox"/> Inundation Visible on Aerial Imagery (B7) <input type="checkbox"/> Water-Stained Leaves (B9)		<u>Secondary Indicators (minimum of two required)</u> <input type="checkbox"/> Surface Soil Cracks (B6) <input type="checkbox"/> Sparsely Vegetated Concave Surface (B8) <input type="checkbox"/> Drainage Patterns (B10) <input type="checkbox"/> Moss Trim Lines (B16) <input type="checkbox"/> Dry-Season Water Table (C2) <input type="checkbox"/> Crayfish Burrows (C8) <input type="checkbox"/> Saturation Visible on Aerial Imagery (C9) <input checked="" type="checkbox"/> Geomorphic Position (D2) <input type="checkbox"/> Shallow Aquitard (D3) <input checked="" type="checkbox"/> FAC-Neutral Test (D5) <input type="checkbox"/> Sphagnum moss (D8) (LRR T, U)
Field Observations: Surface Water Present? Yes _____ No <input checked="" type="checkbox"/> Depth (inches): N/A Water Table Present? Yes <input checked="" type="checkbox"/> No _____ Depth (inches): 6" Saturation Present? (includes capillary fringe) Yes <input checked="" type="checkbox"/> No _____ Depth (inches): 0"		Wetland Hydrology Present? Yes <input checked="" type="checkbox"/> No _____
Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:		
Remarks: Primary wetland hydrology indicators observed included high water table (A2), saturation (A3), and hydrogen sulfide odor (C1). Secondary wetland hydrology indicators observed included geomorphic position (D2) and FAC-neutral test (D5). Wetland hydrology is present in this area.		

VEGETATION (Five Strata) – Use scientific names of plants.

 Sampling Point: DPA

Tree Stratum (Plot size: <u>30-foot radius</u>)	Absolute % Cover	Dominant Species?	Indicator Status	
1. _____				Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A) Total Number of Dominant Species Across All Strata: <u>2</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>100%</u> (A/B)
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
0 = Total Cover				Prevalence Index worksheet: Total % Cover of: _____ Multiply by: _____ OBL species _____ x 1 = _____ FACW species _____ x 2 = _____ FAC species _____ x 3 = _____ FACU species _____ x 4 = _____ UPL species _____ x 5 = _____ Column Totals: <u>0</u> (A) <u>0</u> (B) Prevalence Index = B/A = <u>0</u>
50% of total cover: _____ 20% of total cover: _____				
Sapling Stratum (Plot size: <u>30-foot radius</u>)				
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
0 = Total Cover				Hydrophytic Vegetation Indicators: ___ 1 - Rapid Test for Hydrophytic Vegetation ✓ 2 - Dominance Test is >50% ___ 3 - Prevalence Index is ≤3.0 ¹ ___ Problematic Hydrophytic Vegetation ¹ (Explain)
50% of total cover: _____ 20% of total cover: _____				
Shrub Stratum (Plot size: <u>30-foot radius</u>)				
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
0 = Total Cover				Definitions of Five Vegetation Strata: Tree – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH). Sapling – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and less than 3 in. (7.6 cm) DBH. Shrub – Woody plants, excluding woody vines, approximately 3 to 20 ft (1 to 6 m) in height. Herb – All herbaceous (non-woody) plants, including herbaceous vines, regardless of size, and woody plants, except woody vines, less than approximately 3 ft (1 m) in height. Woody vine – All woody vines, regardless of height.
50% of total cover: _____ 20% of total cover: _____				
Herb Stratum (Plot size: <u>30-foot radius</u>)				
1. <u>Juncus roemerianus</u>	50	Yes	OBL	
2. <u>Spartina alterniflora</u>	40	Yes	OBL	
3. <u>Distichlis spicata</u>	7	No	OBL	
4. <u>Symphyotrichum tenuifolium</u>	3	No	OBL	
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				
10. _____				
11. _____				
100 = Total Cover				Hydrophytic Vegetation Present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
50% of total cover: <u>50</u> 20% of total cover: <u>20</u>				
Woody Vine Stratum (Plot size: <u>30-foot radius</u>)				
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
0 = Total Cover				
50% of total cover: _____ 20% of total cover: _____				

Remarks: (If observed, list morphological adaptations below).
 The dominance test was met. Hydrophytic vegetation is present in this area.

SOIL

Sampling Point: DPA

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)							
Depth (inches)	Matrix		Redox Features			Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹		
0-18+	10YR 4/1	100					mucky loam

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains. ²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)		Indicators for Problematic Hydric Soils ³ :
<input type="checkbox"/> Histosol (A1)	<input type="checkbox"/> Polyvalue Below Surface (S8) (LRR S, T, U)	<input type="checkbox"/> 1 cm Muck (A9) (LRR O)
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Thin Dark Surface (S9) (LRR S, T, U)	<input type="checkbox"/> 2 cm Muck (A10) (LRR S)
<input type="checkbox"/> Black Histic (A3)	<input checked="" type="checkbox"/> Loamy Mucky Mineral (F1) (LRR O)	<input type="checkbox"/> Reduced Vertic (F18) (outside MLRA 150A,B)
<input checked="" type="checkbox"/> Hydrogen Sulfide (A4)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Piedmont Floodplain Soils (F19) (LRR P, S, T)
<input type="checkbox"/> Stratified Layers (A5)	<input type="checkbox"/> Depleted Matrix (F3)	<input type="checkbox"/> Anomalous Bright Loamy Soils (F20)
<input type="checkbox"/> Organic Bodies (A6) (LRR P, T, U)	<input type="checkbox"/> Redox Dark Surface (F6)	(MLRA 153B)
<input type="checkbox"/> 5 cm Mucky Mineral (A7) (LRR P, T, U)	<input type="checkbox"/> Depleted Dark Surface (F7)	Red Parent Material (TF2)
<input type="checkbox"/> Muck Presence (A8) (LRR U)	<input type="checkbox"/> Redox Depressions (F8)	Very Shallow Dark Surface (TF12)
<input type="checkbox"/> 1 cm Muck (A9) (LRR P, T)	<input type="checkbox"/> Marl (F10) (LRR U)	Other (Explain in Remarks)
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input type="checkbox"/> Depleted Ochric (F11) (MLRA 151)	
<input type="checkbox"/> Thick Dark Surface (A12)	<input type="checkbox"/> Iron-Manganese Masses (F12) (LRR O, P, T)	³ Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.
<input type="checkbox"/> Coast Prairie Redox (A16) (MLRA 150A)	<input type="checkbox"/> Umbric Surface (F13) (LRR P, T, U)	
<input type="checkbox"/> Sandy Mucky Mineral (S1) (LRR O, S)	<input type="checkbox"/> Delta Ochric (F17) (MLRA 151)	
<input type="checkbox"/> Sandy Gleyed Matrix (S4)	<input type="checkbox"/> Reduced Vertic (F18) (MLRA 150A, 150B)	
<input type="checkbox"/> Sandy Redox (S5)	<input type="checkbox"/> Piedmont Floodplain Soils (F19) (MLRA 149A)	
<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> Anomalous Bright Loamy Soils (F20) (MLRA 149A, 153C, 153D)	
<input type="checkbox"/> Dark Surface (S7) (LRR P, S, T, U)		

Restrictive Layer (if observed): Type: _____ Depth (inches): _____	Hydric Soil Present? Yes <input type="checkbox"/> No <input type="checkbox"/>
---	--

Remarks:

The hydrogen sulfide (A3) and loamy mucky mineral (F1) hydric soil indicators were observed. Hydric soil is present in this area.

WETLAND DETERMINATION DATA FORM – Atlantic and Gulf Coastal Plain Region

Project/Site: 3552 & 3600 Cardinal Lane City/County: Portsmouth Sampling Date: 9/5/18
Applicant/Owner: Kristian Jones State: VA Sampling Point: DPB
Investigator(s): Bay Environmental, Inc. Section, Township, Range: _____
Landform (hillslope, terrace, etc.): _____ Local relief (concave, convex, none): _____ Slope (%): _____
Subregion (LRR or MLRA): T Lat: 36.860959° N Long: -76.369002° W Datum: _____
Soil Map Unit Name: Altavista-Urban land complex NWI classification: UPL

Are climatic / hydrologic conditions on the site typical for this time of year? Yes ☒ No _____ (If no, explain in Remarks.)
Are Vegetation ☐, Soil ☐, or Hydrology ☐ significantly disturbed? Are "Normal Circumstances" present? Yes ☒ No _____
Are Vegetation ☐, Soil ☐, or Hydrology ☐ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes _____ No <input checked="" type="checkbox"/>	Is the Sampled Area within a Wetland? Yes _____ No <input checked="" type="checkbox"/>
Hydric Soil Present? Yes _____ No <input checked="" type="checkbox"/>	
Wetland Hydrology Present? Yes _____ No <input checked="" type="checkbox"/>	
Remarks: The hydrophytic vegetation, hydric soil, and wetland hydrology parameters were not met. This area consists of uplands.	

HYDROLOGY

Wetland Hydrology Indicators:		Secondary Indicators (minimum of two required)
Primary Indicators (minimum of one is required; check all that apply)		
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Aquatic Fauna (B13)	<input type="checkbox"/> Surface Soil Cracks (B6)
<input type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Marl Deposits (B15) (LRR U)	<input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)
<input type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Hydrogen Sulfide Odor (C1)	<input type="checkbox"/> Drainage Patterns (B10)
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Oxidized Rhizospheres along Living Roots (C3)	<input type="checkbox"/> Moss Trim Lines (B16)
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Presence of Reduced Iron (C4)	<input type="checkbox"/> Dry-Season Water Table (C2)
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)	<input type="checkbox"/> Crayfish Burrows (C8)
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> Thin Muck Surface (C7)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Geomorphic Position (D2)
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)		<input type="checkbox"/> Shallow Aquitard (D3)
<input type="checkbox"/> Water-Stained Leaves (B9)		<input type="checkbox"/> FAC-Neutral Test (D5)
		<input type="checkbox"/> Sphagnum moss (D8) (LRR T, U)
Field Observations:		Wetland Hydrology Present? Yes _____ No <input checked="" type="checkbox"/>
Surface Water Present? Yes _____ No <input checked="" type="checkbox"/> Depth (inches): <u>N/A</u>		
Water Table Present? Yes _____ No <input checked="" type="checkbox"/> Depth (inches): <u>>24"</u>		
Saturation Present? (includes capillary fringe) Yes _____ No <input checked="" type="checkbox"/> Depth (inches): <u>>24"</u>		
Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:		
Remarks: No primary or secondary wetland hydrology indicators were observed, Wetland hydrology is absent in this area.		

VEGETATION (Five Strata) – Use scientific names of plants.

 Sampling Point: DPB

Tree Stratum (Plot size: <u>30-foot radius</u>)	Absolute % Cover	Dominant Species?	Indicator Status																	
1. <u>Celtis occidentalis</u>	80.0	Yes	FACU	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A) Total Number of Dominant Species Across All Strata: <u>5</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>40%</u> (A/B)																
2. <u>Juniperus virginiana</u>	20	Yes	FACU																	
3. _____																				
4. _____																				
5. _____																				
6. _____																				
100 = Total Cover																				
50% of total cover: <u>50</u> 20% of total cover: <u>20</u>																				
Sapling Stratum (Plot size: <u>30-foot radius</u>)																				
1. _____				Prevalence Index worksheet: <table style="width: 100%;"> <tr> <td style="width: 50%;">Total % Cover of:</td> <td style="width: 50%;">Multiply by:</td> </tr> <tr> <td>OBL species _____</td> <td>x 1 = _____</td> </tr> <tr> <td>FACW species _____</td> <td>x 2 = _____</td> </tr> <tr> <td>FAC species <u>79</u></td> <td>x 3 = <u>237</u></td> </tr> <tr> <td>FACU species <u>190</u></td> <td>x 4 = <u>760</u></td> </tr> <tr> <td>UPL species _____</td> <td>x 5 = _____</td> </tr> <tr> <td>Column Totals: <u>269</u> (A)</td> <td><u>997</u> (B)</td> </tr> <tr> <td colspan="2">Prevalence Index = B/A = <u>0</u> <u>3.7</u></td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species _____	x 1 = _____	FACW species _____	x 2 = _____	FAC species <u>79</u>	x 3 = <u>237</u>	FACU species <u>190</u>	x 4 = <u>760</u>	UPL species _____	x 5 = _____	Column Totals: <u>269</u> (A)	<u>997</u> (B)	Prevalence Index = B/A = <u>0</u> <u>3.7</u>	
Total % Cover of:	Multiply by:																			
OBL species _____	x 1 = _____																			
FACW species _____	x 2 = _____																			
FAC species <u>79</u>	x 3 = <u>237</u>																			
FACU species <u>190</u>	x 4 = <u>760</u>																			
UPL species _____	x 5 = _____																			
Column Totals: <u>269</u> (A)	<u>997</u> (B)																			
Prevalence Index = B/A = <u>0</u> <u>3.7</u>																				
2. _____																				
3. _____																				
4. _____																				
5. _____																				
6. _____																				
0 = Total Cover																				
50% of total cover: _____ 20% of total cover: _____																				
Shrub Stratum (Plot size: <u>30-foot radius</u>)																				
1. <u>Ligustrum sinense</u>	35	Yes	FAC	Hydrophytic Vegetation Indicators: ___ 1 - Rapid Test for Hydrophytic Vegetation ___ 2 - Dominance Test is >50% ___ 3 - Prevalence Index is ≤3.0 ¹ ___ Problematic Hydrophytic Vegetation ¹ (Explain)																
2. <u>Ligustrum japonicum</u>	7	No	FAC																	
3. _____																				
4. _____																				
5. _____																				
6. _____																				
42 = Total Cover																				
50% of total cover: <u>21</u> 20% of total cover: <u>8.4</u>																				
Herb Stratum (Plot size: <u>30-foot radius</u>)																				
1. <u>Hedera helix</u>	90	Yes	FACU	Definitions of Five Vegetation Strata: Tree – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH). Sapling – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and less than 3 in. (7.6 cm) DBH. Shrub – Woody plants, excluding woody vines, approximately 3 to 20 ft (1 to 6 m) in height. Herb – All herbaceous (non-woody) plants, including herbaceous vines, regardless of size, and woody plants, except woody vines, less than approximately 3 ft (1 m) in height. Woody vine – All woody vines, regardless of height.																
2. <u>Ligustrum sinense</u>	7	No	FAC																	
3. _____																				
4. _____																				
5. _____																				
6. _____																				
7. _____																				
8. _____																				
9. _____																				
10. _____																				
11. _____																				
97 = Total Cover																				
50% of total cover: <u>48.5</u> 20% of total cover: <u>19.4</u>																				
Woody Vine Stratum (Plot size: <u>30-foot radius</u>)																				
1. <u>Smilax rotundifolia</u>	25	Yes	FAC	Hydrophytic Vegetation Present? Yes _____ No <u>✓</u>																
2. <u>Vitis rotundifolia</u>	5	No	FAC																	
3. _____																				
4. _____																				
5. _____																				
30 = Total Cover																				
50% of total cover: <u>15</u> 20% of total cover: <u>6</u>																				

Remarks: (If observed, list morphological adaptations below).
 The dominance test and the prevalence index were not met. Hydrophytic vegetation is absent in this area.

SOIL

Sampling Point: DPB

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix		Redox Features			Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²	
0-4	10YR 4/2	100					sandy loam
4-10	10YR 6/3	100					sandy loam
10-16+	10YR 4/6	100					sandy loam

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

Indicators for Problematic Hydric Soils³:

<input type="checkbox"/> Histosol (A1)	<input type="checkbox"/> Polyvalue Below Surface (S8) (LRR S, T, U)	<input type="checkbox"/> 1 cm Muck (A9) (LRR O)
<input type="checkbox"/> Histic Epipedon (A2)	<input type="checkbox"/> Thin Dark Surface (S9) (LRR S, T, U)	<input type="checkbox"/> 2 cm Muck (A10) (LRR S)
<input type="checkbox"/> Black Histic (A3)	<input type="checkbox"/> Loamy Mucky Mineral (F1) (LRR O)	<input type="checkbox"/> Reduced Vertic (F18) (outside MLRA 150A,B)
<input type="checkbox"/> Hydrogen Sulfide (A4)	<input type="checkbox"/> Loamy Gleyed Matrix (F2)	<input type="checkbox"/> Piedmont Floodplain Soils (F19) (LRR P, S, T)
<input type="checkbox"/> Stratified Layers (A5)	<input type="checkbox"/> Depleted Matrix (F3)	<input type="checkbox"/> Anomalous Bright Loamy Soils (F20)
<input type="checkbox"/> Organic Bodies (A6) (LRR P, T, U)	<input type="checkbox"/> Redox Dark Surface (F6)	<input type="checkbox"/> (MLRA 153B)
<input type="checkbox"/> 5 cm Mucky Mineral (A7) (LRR P, T, U)	<input type="checkbox"/> Depleted Dark Surface (F7)	<input type="checkbox"/> Red Parent Material (TF2)
<input type="checkbox"/> Muck Presence (A8) (LRR U)	<input type="checkbox"/> Redox Depressions (F8)	<input type="checkbox"/> Very Shallow Dark Surface (TF12)
<input type="checkbox"/> 1 cm Muck (A9) (LRR P, T)	<input type="checkbox"/> Marl (F10) (LRR U)	<input type="checkbox"/> Other (Explain in Remarks)
<input type="checkbox"/> Depleted Below Dark Surface (A11)	<input type="checkbox"/> Depleted Ochric (F11) (MLRA 151)	
<input type="checkbox"/> Thick Dark Surface (A12)	<input type="checkbox"/> Iron-Manganese Masses (F12) (LRR O, P, T)	
<input type="checkbox"/> Coast Prairie Redox (A16) (MLRA 150A)	<input type="checkbox"/> Umbric Surface (F13) (LRR P, T, U)	
<input type="checkbox"/> Sandy Mucky Mineral (S1) (LRR O, S)	<input type="checkbox"/> Delta Ochric (F17) (MLRA 151)	
<input type="checkbox"/> Sandy Gleyed Matrix (S4)	<input type="checkbox"/> Reduced Vertic (F18) (MLRA 150A, 150B)	
<input type="checkbox"/> Sandy Redox (S5)	<input type="checkbox"/> Piedmont Floodplain Soils (F19) (MLRA 149A)	
<input type="checkbox"/> Stripped Matrix (S6)	<input type="checkbox"/> Anomalous Bright Loamy Soils (F20) (MLRA 149A, 153C, 153D)	
<input type="checkbox"/> Dark Surface (S7) (LRR P, S, T, U)		

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes ☐ No ☒

Remarks:

No hydric soil indicators were observed. Hydric soil is absent in this area.

THREATENED AND ENDANGERED SPECIES COORIDNATION

Wyatt Landing Suffolk, VA

Received by VMRC November 7, 2024 /blh



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Virginia Ecological Services Field Office

6669 Short Lane

Gloucester, VA 23061-4410

Phone: (804) 693-6694



In Reply Refer To:

11/06/2024 17:02:59 UTC

Project Code: 2025-0015763

Project Name: Wyatt Landing

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Any activity proposed on National Wildlife Refuge lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

Received by VMRC November 7, 2024 /blh

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Project Code in the header of this

letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Bald & Golden Eagles
- Migratory Birds

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Virginia Ecological Services Field Office
6669 Short Lane
Gloucester, VA 23061-4410
(804) 693-6694

PROJECT SUMMARY

Project Code: 2025-0015763

Project Name: Wyatt Landing

Project Type: Stormwater Discharge

Project Description: Proposed Residential Development

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.860479600000005,-76.36762667191583,14z>



Counties: Portsmouth County, Virginia

ENDANGERED SPECIES ACT SPECIES

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

BALD & GOLDEN EAGLES

Bald and golden eagles are protected under the Bald and Golden Eagle Protection Act¹ and the Migratory Bird Treaty Act².

Any person or organization who plans or conducts activities that may result in impacts to bald or golden eagles, or their habitats³, should follow appropriate regulations and consider implementing appropriate conservation measures, as described in the links below. Specifically, please review the ["Supplemental Information on Migratory Birds and Eagles"](#).

-
1. The [Bald and Golden Eagle Protection Act](#) of 1940.
 2. The [Migratory Birds Treaty Act](#) of 1918.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

There are likely bald eagles present in your project area. For additional information on bald eagles, refer to [Bald Eagle Nesting and Sensitivity to Human Activity](#)

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
<p>Bald Eagle <i>Haliaeetus leucocephalus</i></p> <p>This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p> <p>https://ecos.fws.gov/ecp/species/1626</p>	<p>Breeds Oct 15 to Aug 31</p>

PROBABILITY OF PRESENCE SUMMARY

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read "[Supplemental Information on Migratory Birds and Eagles](#)", specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Green bars; the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during that week of the year.

Breeding Season (🟡)

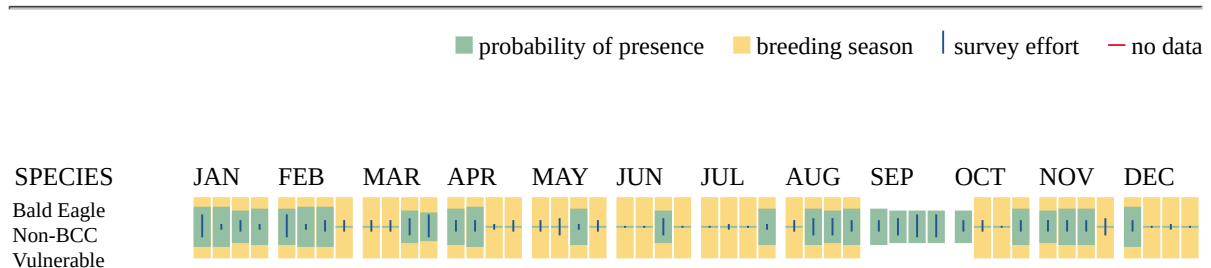
Yellow bars; liberal estimate of the timeframe inside which the bird breeds across its entire range.

Survey Effort (I)

Vertical black lines; the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps.

No Data (—)

A week is marked as having no data if there were no survey events for that week.



Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>

- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

MIGRATORY BIRDS

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats³ should follow appropriate regulations and consider implementing appropriate conservation measures, as described in the links below. Specifically, please review the "[Supplemental Information on Migratory Birds and Eagles](#)".

-
1. The [Migratory Birds Treaty Act](#) of 1918.
 2. The [Bald and Golden Eagle Protection Act](#) of 1940.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
American Oystercatcher <i>Haematopus palliatus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/8935	Breeds Apr 15 to Aug 31
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1626	Breeds Oct 15 to Aug 31
Black Skimmer <i>Rynchops niger</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/5234	Breeds May 20 to Sep 15

NAME	BREEDING SEASON
Blue-winged Warbler <i>Vermivora cyanoptera</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/9509	Breeds May 1 to Jun 30
Bobolink <i>Dolichonyx oryzivorus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9454	Breeds May 20 to Jul 31
Chimney Swift <i>Chaetura pelagica</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9406	Breeds Mar 15 to Aug 25
Eastern Whip-poor-will <i>Antrostomus vociferus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/10678	Breeds May 1 to Aug 20
Gull-billed Tern <i>Gelochelidon nilotica</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9501	Breeds May 1 to Jul 31
Hudsonian Godwit <i>Limosa haemastica</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9482	Breeds elsewhere
King Rail <i>Rallus elegans</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/8936	Breeds May 1 to Sep 5
Least Tern <i>Sternula antillarum antillarum</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/11919	Breeds Apr 25 to Sep 5
Lesser Yellowlegs <i>Tringa flavipes</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9679	Breeds elsewhere
Pectoral Sandpiper <i>Calidris melanotos</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9561	Breeds elsewhere

NAME	BREEDING SEASON
Prairie Warbler <i>Setophaga discolor</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9513	Breeds May 1 to Jul 31
Prothonotary Warbler <i>Protonotaria citrea</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9439	Breeds Apr 1 to Jul 31
Purple Sandpiper <i>Calidris maritima</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9574	Breeds elsewhere
Red-headed Woodpecker <i>Melanerpes erythrocephalus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9398	Breeds May 10 to Sep 10
Ruddy Turnstone <i>Arenaria interpres morinella</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/10633	Breeds elsewhere
Rusty Blackbird <i>Euphagus carolinus</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/9478	Breeds elsewhere
Scarlet Tanager <i>Piranga olivacea</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/11967	Breeds May 10 to Aug 10
Semipalmated Sandpiper <i>Calidris pusilla</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/9603	Breeds elsewhere
Short-billed Dowitcher <i>Limnodromus griseus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9480	Breeds elsewhere
Whimbrel <i>Numenius phaeopus hudsonicus</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/11991	Breeds elsewhere

NAME	BREEDING SEASON
Willet <i>Tringa semipalmata</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/10669	Breeds Apr 20 to Aug 5
Wood Thrush <i>Hylocichla mustelina</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9431	Breeds May 10 to Aug 31

PROBABILITY OF PRESENCE SUMMARY

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read "[Supplemental Information on Migratory Birds and Eagles](#)", specifically the FAQ section titled "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Green bars; the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during that week of the year.

Breeding Season (■)

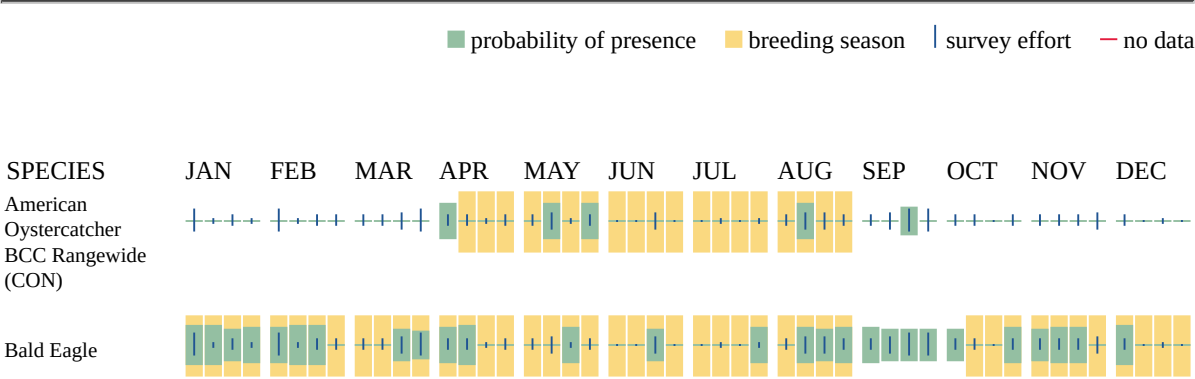
Yellow bars; liberal estimate of the timeframe inside which the bird breeds across its entire range.

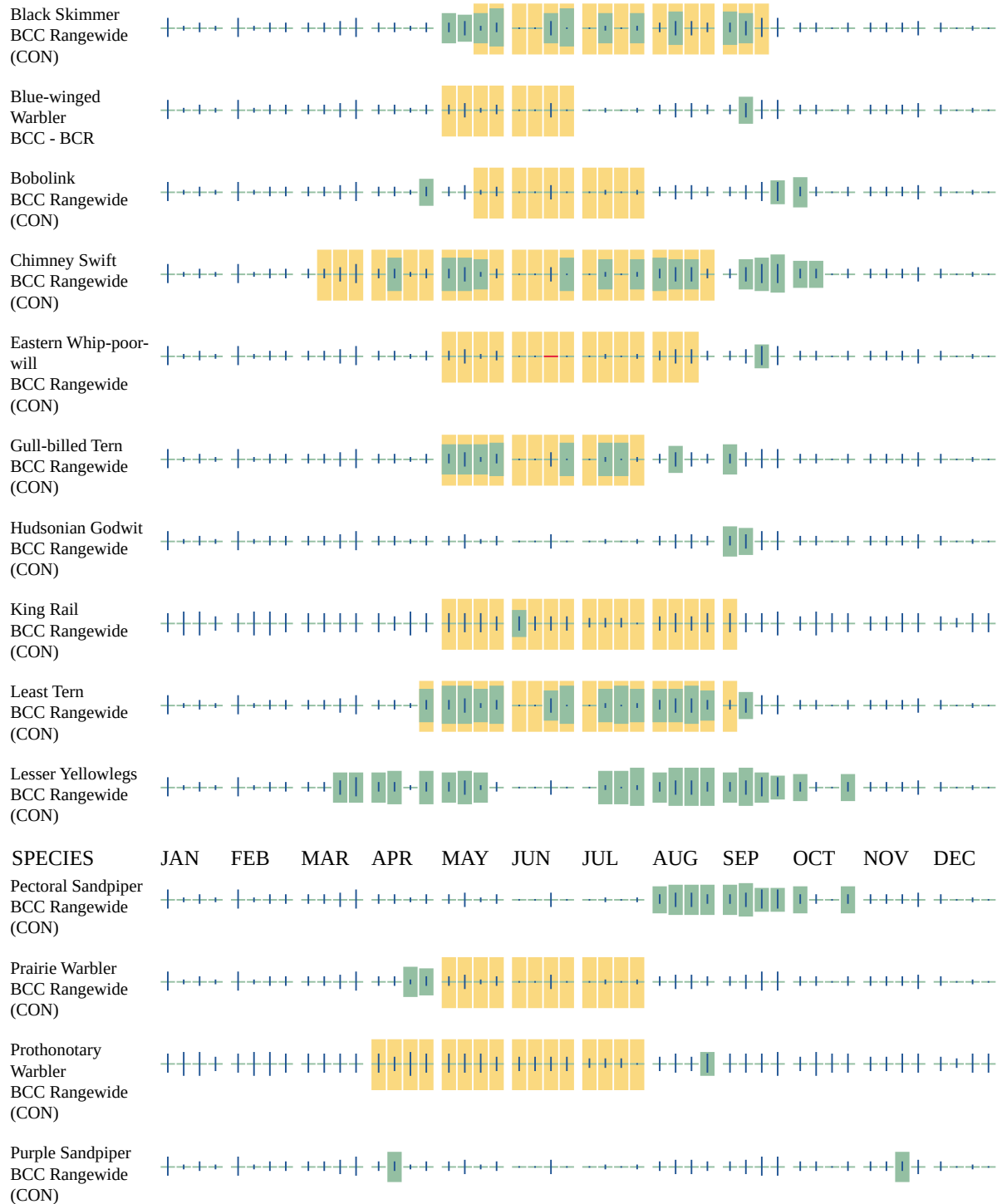
Survey Effort (|)

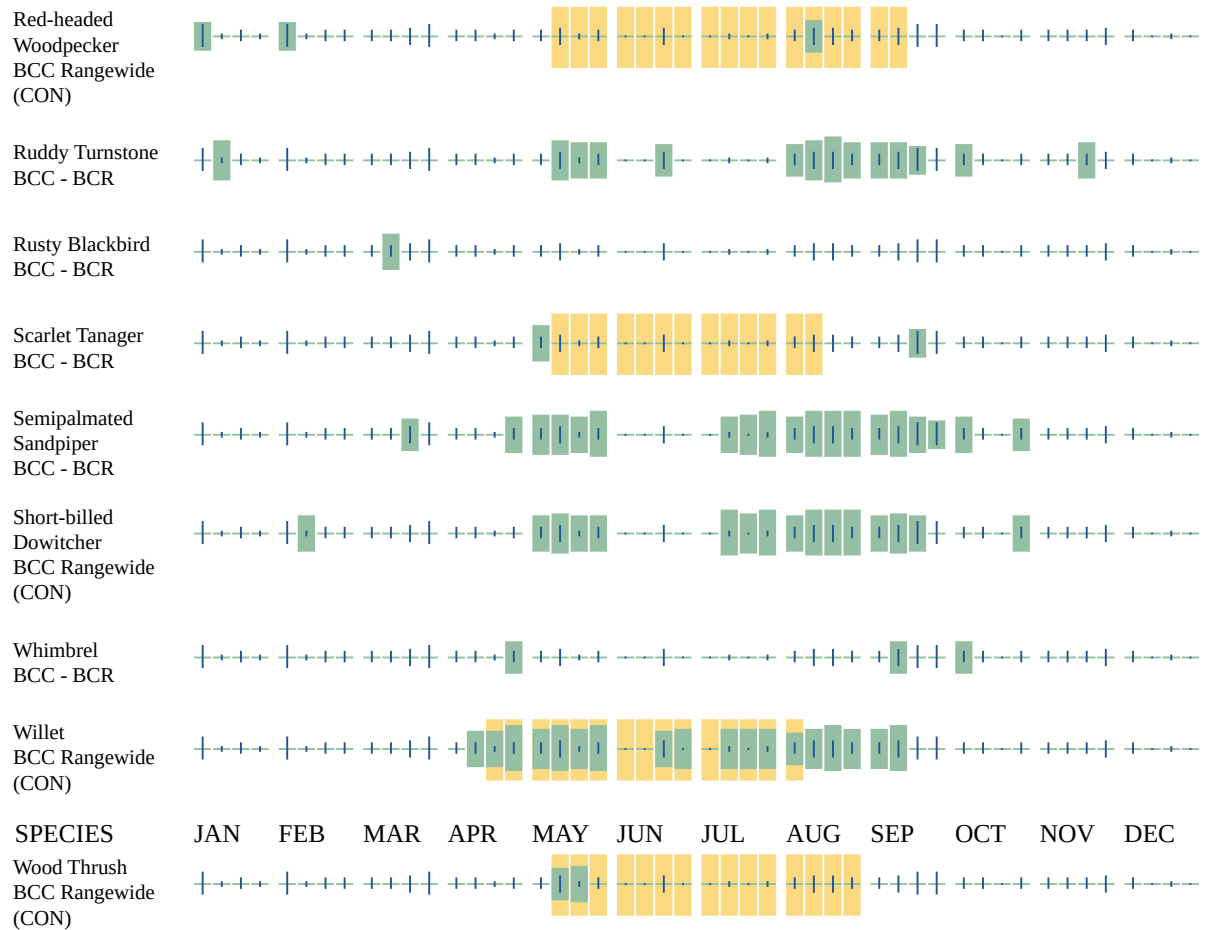
Vertical black lines; the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps.

No Data (—)

A week is marked as having no data if there were no survey events for that week.



Non-BCC
Vulnerable



Additional information can be found using the following links:

- Eagle Management <https://www.fws.gov/program/eagle-management>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>
- Supplemental Information for Migratory Birds and Eagles in IPaC <https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action>

IPAC USER CONTACT INFORMATION

Agency: Bay Environmental Inc.
Name: Dustin Pringle
Address: 648 Independence Parkway #100
City: Chesapeake
State: VA
Zip: 23320
Email: dustin@bay-environmental.com
Phone: 7574365900

Known or likely to occur within a **2 mile radius around point 36,51,39.9 -76,22,00.4**
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**

[View Map of
Site Location](#)

586 Known or Likely Species ordered by Status Concern for Conservation
(displaying first 38) (38 species with Status* or Tier I** or Tier II**)

BOVA Code	Status*	Tier**	Common Name	Scientific Name	Confirmed	Database(s)
030074	FESE	Ia	Turtle, Kemp's ridley sea	Lepidochelys kempii		BOVA
050022	FEST	Ia	Bat, northern long-eared	Myotis septentrionalis		BOVA
010032	FESE	Ib	Sturgeon, Atlantic	Acipenser oxyrinchus	Yes	BOVA,SppObs,HU6
030075	FESE	Ic	Turtle, leatherback sea	Dermochelys coriacea		BOVA
030073	FESE		Turtle, Hawksbill Sea	Eretmochelys imbricata		BOVA
030071	FTST	Ia	Turtle, loggerhead sea	Caretta caretta	Yes	BOVA,SppObs
040144	FTST	Ia	Knot, Rufa Red	Calidris canutus rufa		BOVA,HU6
040110	FTSE	Ia	Rail, eastern black	Laterallus jamaicensis jamaicensis		BOVA
030072	FTST	Ib	Turtle, green sea	Chelonia mydas	Yes	BOVA,SppObs
040120	FTST	IIa	Plover, piping	Charadrius melodus		BOVA,HU6
120030	FTSE	IVb	Manatee, West Indian	Trichechus manatus		BOVA
040118	SE	Ia	Plover, Wilson's	Charadrius wilsonia	Yes	BOVA,SppObs,HU6
050020	SE	Ia	Bat, little brown	Myotis lucifugus		BOVA
050034	SE	Ia	Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis		BOVA,HU6
050027	FPSE	Ia	Bat, tri-colored	Perimyotis subflavus		BOVA
030013	SE	IIa	Rattlesnake, canebrake	Crotalus horridus	Potential	BOVA,Habitat,HU6
040096	ST	Ia	Falcon, peregrine	Falco peregrinus	Yes	BOVA,SppObs,HU6
040293	ST	Ia	Shrike, loggerhead	Lanius ludovicianus		BOVA
040179	ST	Ia	Tern, gull-billed	Gelochelidon nilotica		BOVA
020044	ST	IIa	Salamander, Mabee's	Ambystoma mabeei		HU6
040292	ST		Shrike, migrant loggerhead	Lanius ludovicianus migrans		BOVA
100079	FC	IIIa	Butterfly, monarch	Danaus plexippus		BOVA
030067	CC	IIa	Terrapin, northern diamond-backed	Malaclemys terrapin terrapin	Potential	BOVA,Habitat,HU6
030063	CC	IIIa	Turtle, spotted	Clemmys guttata		BOVA,HU6
030031	CC	IIIc	Kingsnake, scarlet	Lampropeltis elapsoides		BOVA
040040		Ia	Ibis, glossy	Plegadis falcinellus		BOVA,HU6
040422		Ic	Warbler, Wayne's	Setophaga virens waynei		HU6
020063		IIa	Toad, oak	Anaxyrus quercicus		BOVA,HU6
040052		IIa	Duck, American black	Anas rubripes	Potential	BOVA,BBA,HU6
040033		IIa	Egret, snowy	Egretta thula	Potential	BOVA,BBA,HU6
040029		IIa	Heron, little blue	Egretta caerulea caerulea		BOVA
040036		IIa	Night-heron, yellow-crowned	Nyctanassa violacea violacea	Yes	BOVA,BBA,CWB
040181		IIa	Tern, common	Sterna hirundo	Potential	BOVA,BBA,HU6
040320		IIa	Warbler, cerulean	Setophaga cerulea		BOVA,HU6
040140		IIa	Woodcock, American	Scolopax minor		BOVA,HU6
040203		IIb	Cuckoo, black-billed	Coccyzus erythrophthalmus		BOVA
040105		IIb	Rail, king	Rallus elegans	Potential	BOVA,Habitat,HU6
040304		IIc	Warbler, Swainson's	Limnothlypis swainsonii		BOVA,HU6

To view **All 586 species** [View 586](#)

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed; FC=Federal Candidate;
CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II - Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need; IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need
Virginia Wildlife Action Plan Conservation Opportunity Ranking:

Received by VMRC November 7, 2024 /blh

Additional Information/Revisions Recieved by VMRC May 2, 2025 map

a - On the ground management strategies/actions exist and can be feasibly implemented.; b - On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c - No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

[View Map of All Query Results from All Observation Tables](#)

Bat Colonies or Hibernacula: **Not Known**

Anadromous Fish Use Streams (1 records)

[View Map of All Anadromous Fish Use Streams](#)

Stream ID	Stream Name	Reach Status	Anadromous Fish Species			View Map
			Different Species	Highest TE *	Highest Tier **	
C20	Elizabeth river	Confirmed	3		IV	Yes

Impediments to Fish Passage

N/A

Colonial Water Bird Survey (9 records)

[View Map of All Query Results Colonial Water Bird Survey](#)

Colony_Name	N Obs	Latest Date	N Species			View Map
			Different Species	Highest TE *	Highest Tier **	
Mainland	11	Jun 21 2018	2		II	Yes
Urban, Bowers Hill, Portsmouth	1	Jun 18 2013	1		II	Yes
Urban, Norfolk South, Portsmouth	5	Jun 18 2013	2		II	Yes
Greenbriar	2	May 18 2008	1		II	Yes
Lovett Point	2	May 18 2008	1		II	Yes
Pinehurst	2	Jul 11 2003	2		II	Yes
River Park	1	Jun 1 1993	1		II	Yes
WINSTON COLONY	1	Jun 1 1990	1			Yes
WINSTON	4	Jun 1 1989	1			Yes

Displayed 9 Colonial Water Bird Survey

Threatened and Endangered Waters

N/A

Managed Trout Streams

N/A

Bald Eagle Concentration Areas and Roosts

N/A

Bald Eagle Nests

N/A

Species Observations (87 records - displaying first 20 , 9 Observations with Threatened or

[View Map of All Query Results Species Observations](#)

Endangered species)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE*	Highest Tier**	
333313	SppObs	Jan 1 1968	VIMS-VA. INST. MAR. SCI.	1	FESE	I	Yes
634041	SppObs	Jun 1 2020	Sarah McCormack	1	FTST	I	Yes
634022	SppObs	Jan 12 2020	Joanna Daniel	1	FTST	I	Yes
86209	SppObs	May 21 1997	Don Schwab	1	SE	I	Yes
330011	SppObs	Apr 1 2009	Center for Conservation Biology, College of William and Mary - VCU	1	ST	I	Yes
305426	SppObs	May 1 2003	BRYAN D. WATTS, THE CENTER FOR CONSERVATION BIOLOGY	1	ST	I	Yes
305062	SppObs	May 1 2003	brian watts	1	ST	I	Yes
305408	SppObs	May 1 2002	BRYAN D. WATTS, THE CENTER FOR CONSERVATION BIOLOGY	1	ST	I	Yes
305391	SppObs	May 1 2001	BRYAN D. WATTS, THE CENTER FOR CONSERVATION BIOLOGY	1	ST	I	Yes
609001	SppObs	May 19 2010	Yancey; Powell	1		III	Yes
608995	SppObs	May 13 2010	Yancey; Powell	3		III	Yes
608993	SppObs	May 12 2010	Yancey; Powell	1		III	Yes
608992	SppObs	May 11 2010	Yancey; Powell	4		III	Yes
9155	SppObs	Jul 26 1996	Jack Carpenter, Chief Mate	1		III	Yes
7316	SppObs	Sep 9 1994	SHERMAN C JONES III	1		III	Yes
622125	SppObs	Apr 10 2014	Jimmy ; Sollner Yancey; Powell	3		IV	Yes
622421	SppObs	Apr 9 2014	Jimmy ; Sollner Yancey; Powell	2		IV	Yes
623528	SppObs	Apr 8 2014	Jimmy ; Sollner Yancey; Powell	2		IV	Yes
622124	SppObs	Apr 7 2014	Jimmy ; Sollner Yancey; Powell	1		IV	Yes
622419	SppObs	Apr 3 2014	Jimmy ; Sollner Yancey; Powell	2		IV	Yes

Displayed 20 Species Observations

Selected 87 Observations [View all 87 Species Observations](#)

Habitat Predicted for Aquatic WAP Tier I & II Species

N/A

Habitat Predicted for Terrestrial WAP Tier I & II Species (4 Species)

[View Map of Combined Terrestrial Habitat Predicted for 4 WAP Tier I & II Species Listed Below](#)

ordered by Status Concern for Conservation

BOVA Code	Status*	Tier**	Common Name	Scientific Name	View Map
030013	SE	IIa	Rattlesnake, canebrake	Crotalus horridus	Yes
030067	CC	IIa	Terrapin, northern diamond-backed	Malaclemys terrapin terrapin	Yes
040105		IIb	Rail, king.	Rallus elegans	Yes
040186		IIIa	Tern, least	Sternula antillarum	Yes

Virginia Breeding Bird Atlas Blocks (3 records)

[View Map of All Query Results](#)
[Virginia Breeding Bird Atlas Blocks](#)

BBA ID	Atlas Quadrangle Block Name	Breeding Bird Atlas Species	View Map
--------	-----------------------------	-----------------------------	----------

Received by VMRC November 7, 2024 /blh
 Additional Information/Revisions Recieved by VMRC May 2, 2025 map

		Different Species	Highest TE *	Highest Tier **	
59046	Newport News South, SE	13		II	Yes
60045	Norfolk North, SW	11		II	Yes
60031	Norfolk South, NW	3		II	Yes

Public Holdings: (1 names)

Name	Agency	Level
Craney Island NSC	U.S. Dept. of Navy	Federal

Summary of BOVA Species Associated with Cities and Counties of the Commonwealth of Virginia:

FIPS Code	City and County Name	Different Species	Highest TE	Highest Tier
550	Chesapeake City	491	FESE	I
710	Norfolk City	445	FESE	I
740	Portsmouth City	414	FESE	I

USGS 7.5' Quadrangles:

Bowers Hill
Newport News South
Norfolk South
Norfolk North

USGS NRCS Watersheds in Virginia:

N/A

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

HU6 Code	USGS 6th Order Hydrologic Unit	Different Species	Highest TE	Highest Tier
JL50	Hampton Roads-Streeter Creek	91	FTSE	I
JL55	Western Branch Elizabeth River	91	FTSE	I
JL56	Elizabeth River	75	FESE	I

Compiled on 11/6/2024, 12:26:26 PM I2783174.0 report=all searchType= R dist= 3218 poi= 36,51,39.9-76,22,00.4

PixelSize=64; Anadromous=0.021153; BBA=0.036271; BECAR=0.016751; Bats=0.0165899999999999; Buffer=0.067501; County=0.053188; HU6=0.075704; Impediments=0.017424; Init=0.102615; PublicLands=0.02156; Quad=0.041729; SppObs=0.270597; TEWaters=0.023317; TierReaches=0.036988; TierTerrestrial=0.162973; Total=1.205954; Tracking_BOVA=0.241408; Trout=0.023402; huva=0.040961

Received by VMRC November 7, 2024 /blh



Virginia Department of Wildlife Resources

11/6/2024 12:42:42 PM

Fish and Wildlife Information Service

VaFWIS Search Report

Compiled on 11/6/2024, 12:42:42 PM

[Help](#)

Known or likely to occur within a **2 mile radius around point 36,51,39.9 -76,22,00.4**
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**
where (030072) [Turtle, green sea](#) observed.

[View Map of Site Location](#)

Species Observations where Turtle, green sea (030072) observed (1 records , 1 Observation with Threatened or Endangered species)

[View Map of All Query Results](#)

[Species Observations where Turtle, green sea \(030072\) observed](#)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE*	Highest Tier**	
634022	SppObs	Jan 12 2020	Joanna Daniel	1	FTST	I	Yes

Displayed 1 Species Observations where Turtle, green sea (030072) observed

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed; FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II - Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need; IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need

Virginia Wildlife Action Plan Conservation Opportunity Ranking:

a - On the ground management strategies/actions exist and can be feasibly implemented.; b - On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c - No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

N/A

Compiled on 11/6/2024, 12:42:42 PM I2783174.1 report=BOVA searchType=R dist= 3218 poi= 36,51,39.9 -76,22,00.4

audit no. 2783174 11/6/2024 12:42:42 PM Virginia Fish and Wildlife Information Service

© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources

Received by VMRC November 7, 2024 /blh

1 Species Observations
where Turtle, green sea
(030072) observed

36.86108 -76.36677
is the Search Point

Show Position Rings

☒ Yes ☐ No

1 mile and 1/4 mile at the
Search Point

Show Search Area

☒ Yes ☐ No

2 Search distance miles
radius

Display Search Point is not
at center at map center

Base Map [Choices](#)

BW Aerial Photography ▾

Map Overlay [Choices](#)

Current List: Position, Search,
SppObs

Map Overlay Legend

-  Position Rings
1 mile and 1/4
mile at the
Search Point
-  2 mile radius
Search Area
-  Data
Observation Site

[back](#)

Map
Click

Pan TO M

Map
Scale

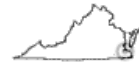
In Zoom Out

[Refresh Browser Page](#)

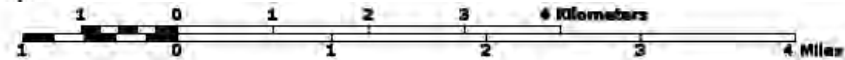
Screen
Size

Small Size Big

[Help](#)



© Commonwealth of Virginia Department of Game and Inland Fisheries - November 6, 2024



Point of Search 36.86108 -76.36677

Map Location 36.86567 -76.38155

Select **Coordinate System**: ☐ Degrees,Minutes,Seconds Latitude - Longitude
☒ Decimal Degrees Latitude - Longitude
☐ Meters UTM NAD83 East North Zone
☐ Meters UTM NAD27 East North Zone

Base Map source: Black & White USGS Aerial Photography (see [Microsoft terraserver-usa.com](https://microsoft.terraserver-usa.com) for details)

Map projection is UTM Zone 18 NAD 1983 with left 372057 and top 4085662. Pixel size is 16 meters . Coordinates displayed are decimal Degrees North and West. Map is currently displayed as 600 columns by 600 rows for a total of 360000 pixles. The map display represents 9600 meters east to west by 9600 meters north to south for a total of 92.1 square kilometers. The map display represents 31501 feet east to west by 31501 feet north to south for a total of 35.5 square miles.



Virginia Department of Wildlife Resources

11/6/2024 12:41:14 PM

Fish and Wildlife Information Service

VaFWIS Search Report Compiled on 11/6/2024, 12:41:14 PM

[Help](#)

Known or likely to occur within a **2 mile radius around point 36,51,39.9 -76,22,00.4**
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**
where (030071) [Turtle, loggerhead sea](#) observed.

[View Map of Site Location](#)

Species Observations where Turtle, loggerhead sea (030071) observed

(1 records , 1 Observation with
Threatened or Endangered species)

[View Map of All Query Results](#)

[Species Observations where Turtle, loggerhead sea \(030071\) observed](#)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE *	Highest Tier **	
634041	SppObs	Jun 1 2020	Sarah McCormack	1	FTST	I	Yes

Displayed 1 Species Observations where Turtle, loggerhead sea (030071) observed

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed; FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II -

Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need;

IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need

Virginia Wildlife Action Plan Conservation Opportunity Ranking:

a - On the ground management strategies/actions exist and can be feasibly implemented.; b -

On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c -

No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

N/A

Compiled on 11/6/2024, 12:41:14 PM I2783174.1 report=BOVA searchType=R dist= 3218 poi= 36,51,39.9 -76,22,00.4

audit no. 2783174 11/6/2024 12:41:14 PM Virginia Fish and Wildlife Information Service

© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources

Received by VMRC November 7, 2024 /blh

1 Species Observations where Turtle, loggerhead sea (030071) observed

36.86108 -76.36677
is the Search Point

Show Position Rings

☒ Yes ☐ No

1 mile and 1/4 mile at the
Search Point

Show Search Area

☒ Yes ☐ No

2 Search distance miles
radius

Display Search Point is not
at center at map center

Base Map Choices

BW Aerial Photography ▾

Map Overlay Choices

Current List: Position, Search,
SppObs

Map Overlay Legend

-  Position Rings
1 mile and 1/4
mile at the
Search Point
-  2 mile radius
Search Area
-  Data
Observation Site

[back](#)

Map
Click

Pan **TO** **M**

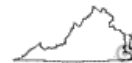
Map
Scale

In **Zoom** **Out**

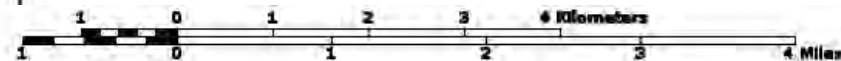
Screen
Size

Small **Size** **Big**

[Help](#)



© Commonwealth of Virginia Department of Game and Inland Fisheries - November 6, 2024



Point of Search 36.86108 -76.36677

Map Location 36.86554 -76.38047

Select **Coordinate System**: ☐ Degrees,Minutes,Seconds Latitude - Longitude
☒ Decimal Degrees Latitude - Longitude
☐ Meters UTM NAD83 East North Zone
☐ Meters UTM NAD27 East North Zone

Base Map source: Black & White USGS Aerial Photography (see [Microsoft terraserver-usa.com](https://microsoft.terraserver-usa.com) for details)

Map projection is UTM Zone 18 NAD 1983 with left 372153 and top 4085646. Pixel size is 16 meters . Coordinates displayed are decimal Degrees North and West. Map is currently displayed as 600 columns by 600 rows for a total of 360000 pixles. The map display represents 9600 meters east to west by 9600 meters north to south for a total of 92.1 square kilometers. The map display represents 31501 feet east to west by 31501 feet north to south for a total of 35.5 square miles.



Virginia Department of Wildlife Resources

11/6/2024 12:45:11 PM

Fish and Wildlife Information Service

VaFWIS Search Report Compiled on 11/6/2024, 12:45:11 PM

[Help](#)

Known or likely to occur within a **2 mile radius** around point 36,51,39.9 -76,22,00.4
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**
where (040096) [Falcon, peregrine](#) observed.

[View Map of
Site Location](#)

Species Observations where Falcon, peregrine (040096) observed

(5 records , 5 Observations with
Threatened or Endangered species)

[View Map of All Query Results](#)

[Species Observations where Falcon, peregrine \(040096\) observed](#)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE *	Highest Tier **	
330011	SppObs	Apr 1 2009	Center for Conservation Biology, College of William and Mary - VCU	1	ST	I	Yes
305062	SppObs	May 1 2003	brian watts	1	ST	I	Yes
305426	SppObs	May 1 2003	BRYAN D. WATTS, THE CENTER FOR CONSERVATION BIOLOGY	1	ST	I	Yes
305408	SppObs	May 1 2002	BRYAN D. WATTS, THE CENTER FOR CONSERVATION BIOLOGY	1	ST	I	Yes
305391	SppObs	May 1 2001	BRYAN D. WATTS, THE CENTER FOR CONSERVATION BIOLOGY	1	ST	I	Yes

Displayed 5 Species Observations where Falcon, peregrine (040096) observed

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed;
FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II -
Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need;
IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need

Virginia Wildlife Action Plan Conservation Opportunity Ranking:

a - On the ground management strategies/actions exist and can be feasibly implemented.; b -

On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c -

No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

HU6 Code	USGS 6th Order Hydrologic Unit	Different Species	Highest TE	Highest Tier
JL55	Western Branch Elizabeth River	91	FTSE	I
JL56	Elizabeth River	75	FESE	I

Compiled on 11/6/2024, 12:45:11 PM 12783174.1 report=BOVA searchType= R dist= 3218 poi= 36,51,39.9 -76,22,00.4

audit no. 2783174 11/6/2024 12:45:11 PM Virginia Fish and Wildlife Information Service
© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources

Received by VMRC November 7, 2024 /blh
Additional Information/Revisions Received by VMRC May 2, 2025 map

5 Species Observations where Falcon, peregrine (040096) observed

36.86108 -76.36677
is the Search Point

Show Position Rings

☒ Yes ☐ No

1 mile and 1/4 mile at the
Search Point

Show Search Area

☒ Yes ☐ No

2 Search distance miles
radius

Display Search Point is not
at center at map center

Base Map Choices

BW Aerial Photography ▾

Map Overlay Choices

Current List: Position, Search,
SppObs

Map Overlay Legend

-  Position Rings
1 mile and 1/4
mile at the
Search Point
-  2 mile radius
Search Area
-  Data
Observation Site

[back](#)

Map
Click

Pan TO M

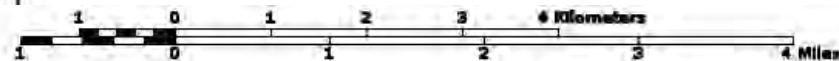
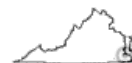
Map
Scale

In Zoom Out

Screen
Size

Small Size Big

[Help](#)



Point of Search 36.86108 -76.36677

Map Location 36.86669 -76.38067

Select **Coordinate System**: ☐ Degrees,Minutes,Seconds Latitude - Longitude
☒ Decimal Degrees Latitude - Longitude
☐ Meters UTM NAD83 East North Zone
☐ Meters UTM NAD27 East North Zone

Base Map source: Black & White USGS Aerial Photography (see [Microsoft terraserver-usa.com](https://microsoft.terraserver-usa.com) for details)

Map projection is UTM Zone 18 NAD 1983 with left 372137 and top 4085774. Pixel size is 16 meters . Coordinates displayed are decimal Degrees North and West. Map is currently displayed as 600 columns by 600 rows for a total of 360000 pixles. The map display represents 9600 meters east to west by 9600 meters north to south for a total of 92.1 square kilometers. The map display represents 31501 feet east to west by 31501 feet north to south for a total of 35.5 square miles.



Virginia Department of Wildlife Resources

11/6/2024 12:27:31 PM

Fish and Wildlife Information Service

VaFWIS Search Report

Compiled on 11/6/2024, 12:27:31 PM

[Help](#)

Known or likely to occur within a **2 mile radius around point 36,51,39.9 -76,22,00.4**
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**
where (010032) [Sturgeon, Atlantic](#) observed.

[View Map of
Site Location](#)

Species Observations where Sturgeon, Atlantic (010032) observed

(1 records , 1 Observation with
Threatened or Endangered species)

[View Map of All Query Results](#)

[Species Observations where Sturgeon, Atlantic \(010032\) observed](#)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE*	Highest Tier**	
333313	SpObs	Jan 1 1968	VIMS-VA. INST. MAR. SCI.	1	FESE	I	Yes

Displayed 1 Species Observations where Sturgeon, Atlantic (010032) observed

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed;
FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II -
Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need;
IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need

Virginia Wildlife Action Plan Conservation Opportunity Ranking:

a - On the ground management strategies/actions exist and can be feasibly implemented.; b -

On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c -

No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

HU6 Code	USGS 6th Order Hydrologic Unit	Different Species	Highest TE	Highest Tier
JL56	Elizabeth River	75	FESE	I

Compiled on 11/6/2024, 12:27:31 PM 12783174.1 report=BOVA searchType= R dist= 3218 poi= 36,51,39.9 -76,22,00.4

audit no. 2783174 11/6/2024 12:27:31 PM Virginia Fish and Wildlife Information Service

© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources

Received by VMRC November 7, 2024 /blh

Topographic maps and Black and white aerial photography for year 1990+-
are from the United States Department of the Interior, United States Geological Survey.
Color aerial photography aquired 2002 is from Virginia Base Mapping Program, Virginia
Geographic Information Network.
Shaded topographic maps are from TOPO! ©2006 National Geographic
<http://www.national.geographic.com/topo>
All other map products are from the Commonwealth of Virginia Department of Wildlife Resources.

map assembled 2024-11-06 12:33:36 (qa/qc March 21, 2016 12:20 - tn=2783174.1 dist=3218
I)
\$poi=36.8610833 -76.3667778

© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources
[| DWR](#) | [Credits](#) | [Disclaimer](#) | [Contact](#) | [Web Policy](#) |

Received by VMRC November 7, 2024 /blh

1 Species Observations where Sturgeon, Atlantic (010032) observed

36.86108 -76.36677
is the Search Point

Show Position Rings

☒ Yes ☐ No

1 mile and 1/4 mile at the
Search Point

Show Search Area

☒ Yes ☐ No

2 Search distance miles
radius

Display Search Point is not
at center at map center

Base Map Choices

BW Aerial Photography ▾

Map Overlay Choices

Current List: Position, Search,
SppObs

Map Overlay Legend

-  Position Rings
1 mile and 1/4
mile at the
Search Point
-  2 mile radius
Search Area
-  Data
Observation Site

[back](#)

Map
Click

[Pan](#) [To](#) [M](#)

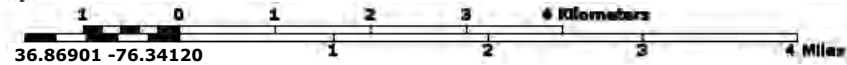
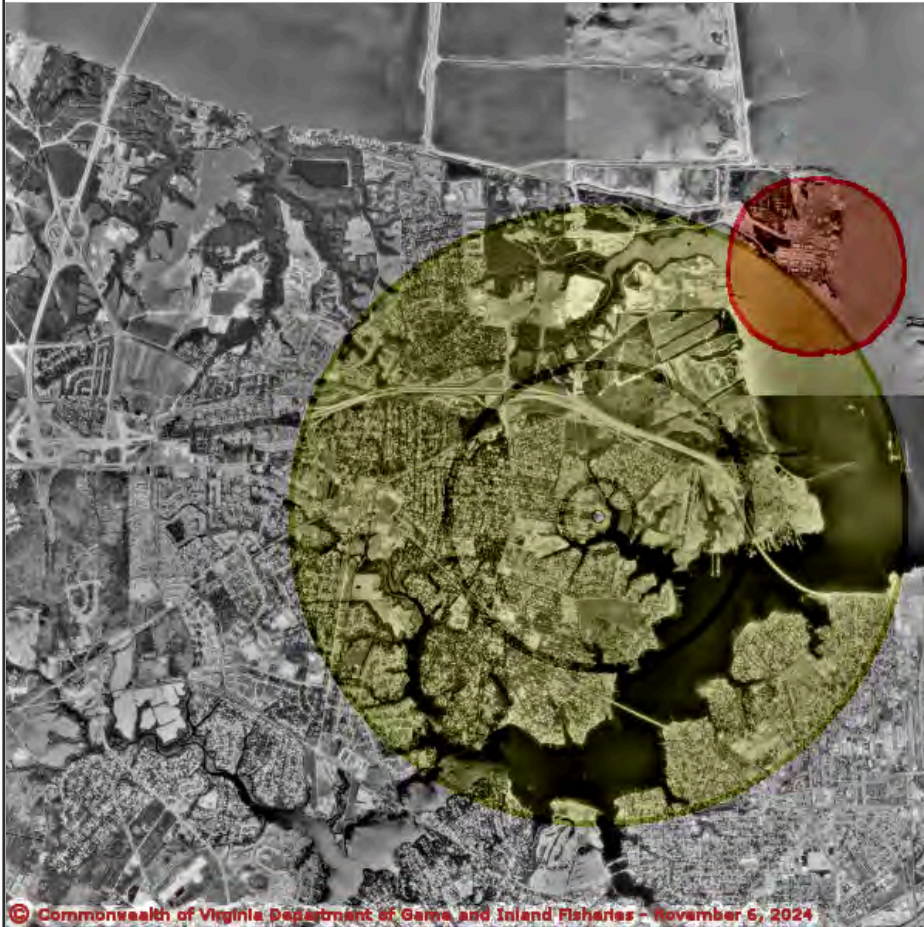
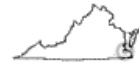
Map
Scale

[In](#) [Zoom](#) [Out](#)

Screen
Size

[Small](#) [Size](#) [Big](#)

[Help](#)



Point of Search 36.86108 -76.36677

Map Location 36.86552 -76.38191

Select **Coordinate System**: ☐ Degrees,Minutes,Seconds Latitude - Longitude
☒ Decimal Degrees Latitude - Longitude
☐ Meters UTM NAD83 East North Zone
☐ Meters UTM NAD27 East North Zone

Base Map source: Black & White USGS Aerial Photography (see [Microsoft terraserver-usa.com](https://microsoft.terraserver-usa.com) for details)

Map projection is UTM Zone 18 NAD 1983 with left 372025 and top 4085646. Pixel size is 16 meters . Coordinates displayed are decimal Degrees North and West. Map is currently displayed as 600 columns by 600 rows for a total of 360000 pixles. The map display represents 9600 meters east to west by 9600 meters north to south for a total of 92.1 square kilometers. The map display represents 31501 feet east to west by 31501 feet north to south for a total of 35.5 square miles.



Virginia Department of Wildlife Resources

11/6/2024 12:43:59 PM

Fish and Wildlife Information Service

VaFWIS Search Report

Compiled on 11/6/2024, 12:43:59 PM

[Help](#)

Known or likely to occur within a **2 mile radius around point 36,51,39.9 -76,22,00.4**
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**
where (040118) [Plover, Wilson s](#) observed.

[View Map of Site Location](#)

Species Observations where Plover, Wilson s (040118) observed (1 records , 1 Observation with Threatened or Endangered species)

[View Map of All Query Results](#)
[Species Observations where Plover, Wilson s \(040118\) observed](#)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE *	Highest Tier **	
86209	SppObs	May 21 1997	Don Schwab	1	SE	I	Yes

Displayed 1 Species Observations where Plover, Wilson s (040118) observed

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed; FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II - Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need; IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need

Virginia Wildlife Action Plan Conservation Opportunity Ranking:

a - On the ground management strategies/actions exist and can be feasibly implemented.; b -

On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c -

No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

HU6 Code	USGS 6th Order Hydrologic Unit	Different Species	Highest TE	Highest Tier
JL50	Hampton Roads-Streeter Creek	91	FTSE	I

Compiled on 11/6/2024, 12:43:59 PM 12783174.1 report=BOVA searchType=R dist= 3218 poi= 36,51,39.9 -76,22,00.4

audit no. 2783174 11/6/2024 12:43:59 PM Virginia Fish and Wildlife Information Service

© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources

Received by VMRC November 7, 2024 /blh

**1 Species Observations
where Plover, Wilson s
(040118) observed**

36.86108 -76.36677
is the Search Point

Show Position Rings

☒ Yes ☐ No

1 mile and 1/4 mile at the
Search Point

Show Search Area

☒ Yes ☐ No

2 Search distance miles
radius

Search Point is at
map center

Base Map [Choices](#)

BW Aerial Photography ▾

Map Overlay [Choices](#)

Current List: Position, Search,
SppObs

Map Overlay Legend

-  **Position Rings**
1 mile and 1/4
mile at the
Search Point
-  **2 mile radius
Search Area**
-  **Data
Observation Site**

[back](#)

Map
Click

[Pan](#) [In](#) [M](#)

Map
Scale

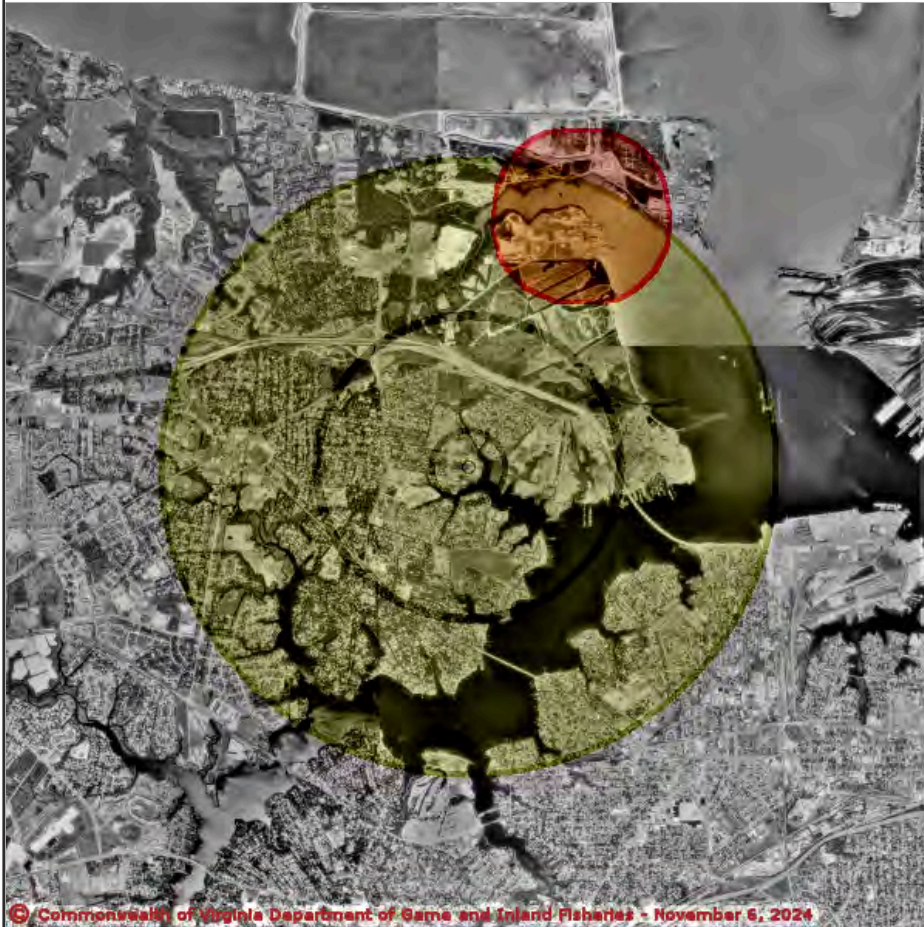
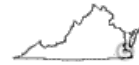
[In](#) [Zoom](#) [Out](#)

[Refresh Browser Page](#)

Screen
Size

[Small](#) [Size](#) [Big](#)

[Help](#)



1 0 1 2 3 4 Kilometers
36.88920 -76.34212 1 2 3 4 Miles

Point of Search 36.86108 -76.36677

Map Location 36.86108 -76.36677

Select **Coordinate System**: ☐ Degrees, Minutes, Seconds Latitude - Longitude

☒ Decimal Degrees Latitude - Longitude

☐ Meters UTM NAD83 East North Zone

☐ Meters UTM NAD27 East North Zone

Base Map source: Black & White USGS Aerial Photography (see [Microsoft terraserver-usa.com](https://microsoft.terraserver-usa.com) for details)

Map projection is UTM Zone 18 NAD 1983 with left 373367 and top 4085134. Pixel size is 16 meters. Coordinates displayed are decimal Degrees North and West. Map is currently displayed as 600 columns by 600 rows for a total of 360000 pixels. The map display represents 9600 meters east to west by 9600 meters north to south for a total of 92.1 square kilometers. The map display represents 31501 feet east to west by 31501 feet north to south for a total of 35.5 square miles.



Virginia Department of Wildlife Resources

11/6/2024 12:46:14 PM

Fish and Wildlife Information Service

VaFWIS Search Report Compiled on 11/6/2024, 12:46:14 PM

[Help](#)

Known or likely to occur within a **2 mile radius around point 36,51,39.9 -76,22,00.4**
in **550 Chesapeake City, 710 Norfolk City, 740 Portsmouth City, VA**
where (040036) [Night-heron, yellow-crowned](#) observed.

[View Map of Site Location](#)

[View Map of All Query Results from All Observation Tables](#) where Night-heron, yellow-crowned (040036) observed

Colonial Water Bird Survey where Night-heron, yellow-crowned (040036) observed

(7 records)

[View Map of All Query Results](#)

[Colonial Water Bird Survey where Night-heron, yellow-crowned \(040036\) observed](#)

Colony_Name	N Obs	Latest Date	N Species			View Map
			Different Species	Highest TE*	Highest Tier**	
Mainland	10	Jun 21 2018	1		II	Yes
Urban, Bowers Hill, Portsmouth	1	Jun 18 2013	1		II	Yes
Urban, Norfolk South, Portsmouth	4	Jun 18 2013	1		II	Yes
Greenbriar	2	May 18 2008	1		II	Yes
Lovett Point	2	May 18 2008	1		II	Yes
Pinehurst	1	Jul 11 2003	1		II	Yes
River Park	1	Jun 1 1993	1		II	Yes

Displayed 7 Colonial Water Bird Survey where Night-heron, yellow-crowned (040036) observed

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed; FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II - Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need; IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need

Virginia Wildlife Action Plan Conservation Opportunity Ranking:

a - On the ground management strategies/actions exist and can be feasibly implemented.; b -

On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.; c -

No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

Species Observations where Night-heron, yellow-crowned (040036) observed

N/A

Virginia Breeding Bird Atlas Blocks where Night-heron, yellow-crowned (040036) observed

(2 records)

[View Map of All Query Results](#)
[Virginia Breeding Bird Atlas Blocks](#)

BBA ID	Atlas Quadrangle Block Name	Breeding Bird Atlas Species			View Map
		Different Species	Highest TE [*]	Highest Tier ^{**}	
60045	Norfolk North, SW	11		II	Yes
60031	Norfolk South, NW	3		II	Yes

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

N/A

Compiled on 11/6/2024, 12:46:14 PM I2783174.1 report=BOVA searchType= R dist= 3218 poi= 36,51,39.9 -76,22,00.4

audit no. 2783174 11/6/2024 12:46:14 PM Virginia Fish and Wildlife Information Service
© 1998-2024 Commonwealth of Virginia Department of Wildlife Resources

Received by VMRC November 7, 2024 /blh

7 Colonial Water Bird
Survey where Night-
heron, yellow-crowned
(040036) observed

36.86108 -76.36677
is the Search Point

Show Position Rings

☒ Yes ☐ No

1 mile and 1/4 mile at the
Search Point

Show Search Area

☒ Yes ☐ No

2 Search distance miles
radius

Display Search Point is not
at center at map center

Base Map [Choices](#)


BW Aerial Photography ▾

Map Overlay [Choices](#)

Current List: Position, Search,
CWB

Map Overlay Legend

 Position Rings
1 mile and 1/4
mile at the
Search Point

 2 mile radius
Search Area

 Data
Observation Site

[back](#)

Map
Click

Pan To M

Map
Scale

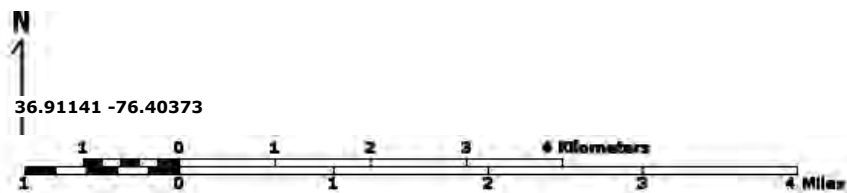
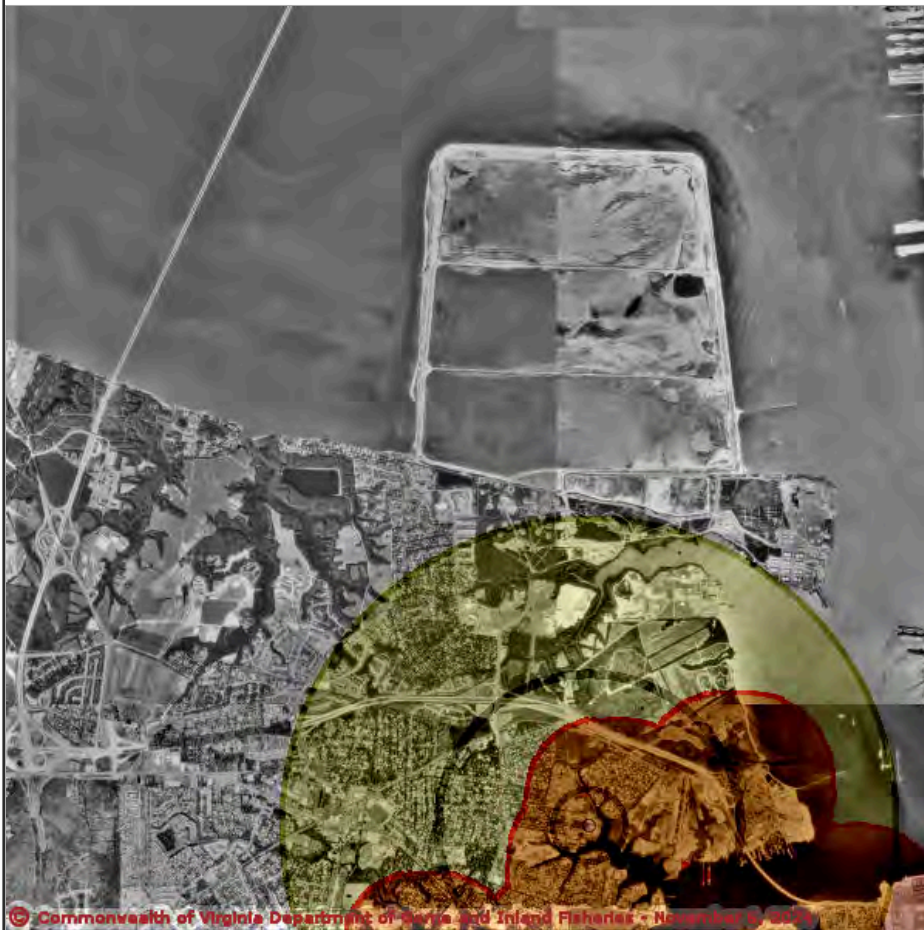
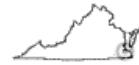
In Zoom Out

[Refresh Browser Page](#)

Screen
Size

Small Size Big

[Help](#)



Point of Search 36.86108 -76.36677

Map Location 36.89408 -76.38135

Select **Coordinate System**: ☐ Degrees, Minutes, Seconds Latitude - Longitude

☒ Decimal Degrees Latitude - Longitude

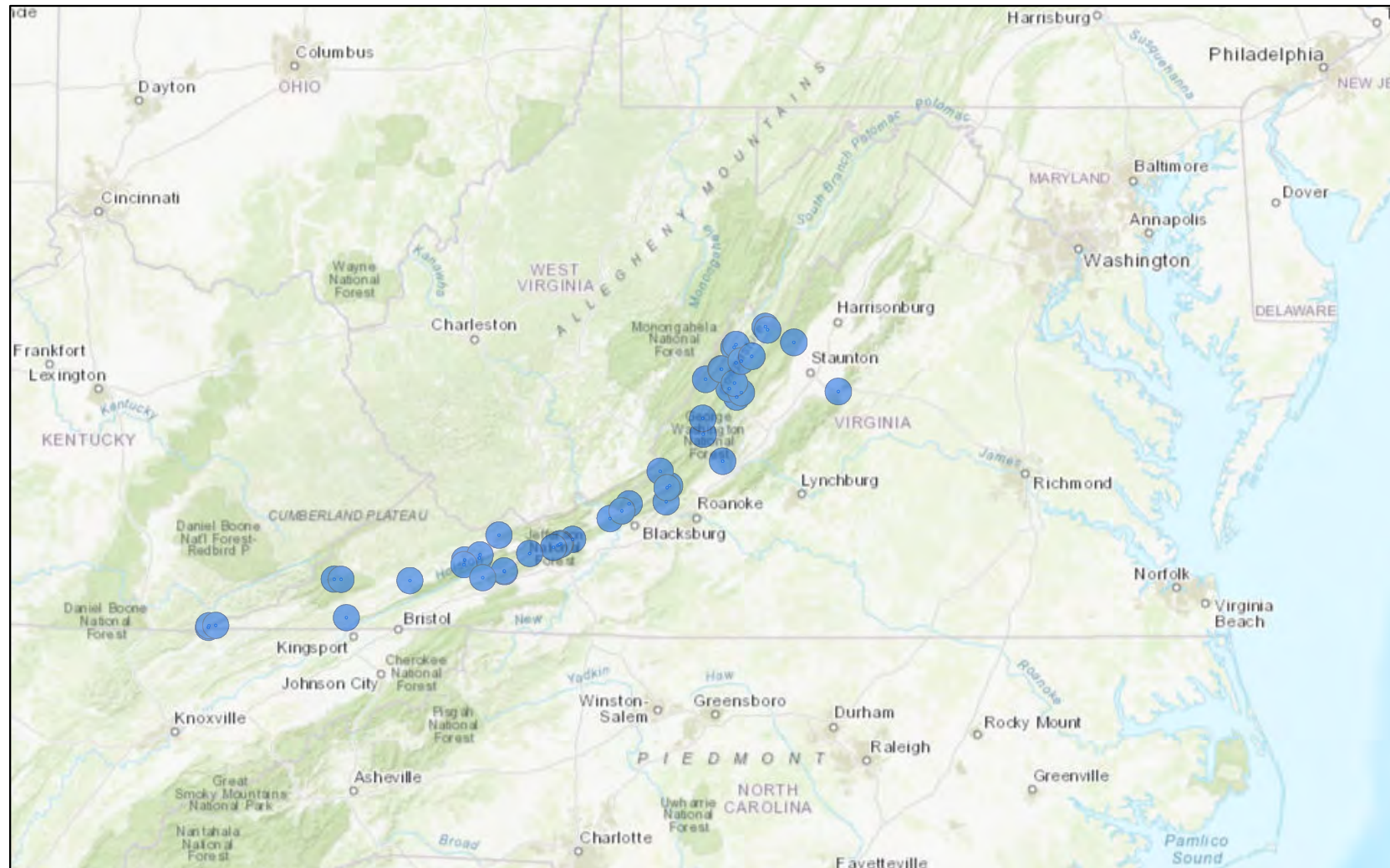
☐ Meters UTM NAD83 East North Zone

☐ Meters UTM NAD27 East North Zone

Base Map source: Black & White USGS Aerial Photography (see [Microsoft terraserver-usa.com](https://microsoft.terraserver-usa.com) for details)

Map projection is UTM Zone 18 NAD 1983 with left 372121 and top 4088814. Pixel size is 16 meters. Coordinates displayed are decimal Degrees North and West. Map is currently displayed as 600 columns by 600 rows for a total of 360000 pixels. The map display represents 9600 meters east to west by 9600 meters north to south for a total of 92.1 square kilometers. The map display represents 31501 feet east to west by 31501 feet north to south for a total of 35.5 square miles.

MYLU PESU



11/6/2024, 1:00:23 PM

- Tri-colored and Little Brown Hibernaculum Half Mile Buffer
- Tri-colored and Little Brown Hibernaculum 5.5 Mile Buffer

1:4,622,324

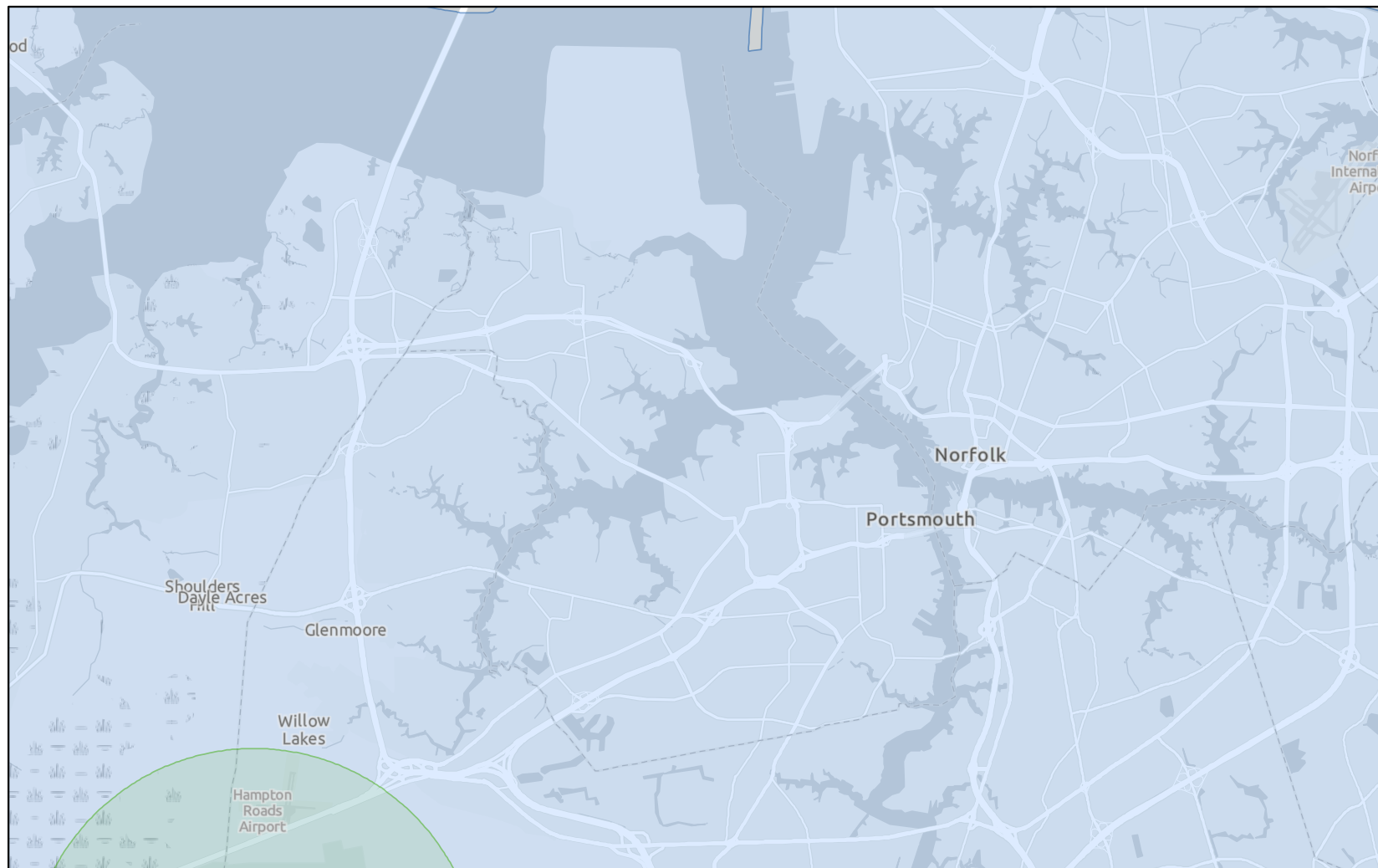
0 30 60 120 mi

0 50 100 200 km

Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS

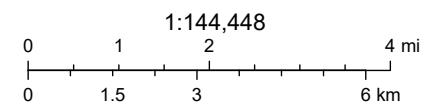
Dept. Game and Inland Fisheries
Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS |

NLEB Locations and Roost Trees



11/6/2024, 1:00:39 PM

- NLEB Capture 3 Mile Buffer
- NLEB Year-Round Presence



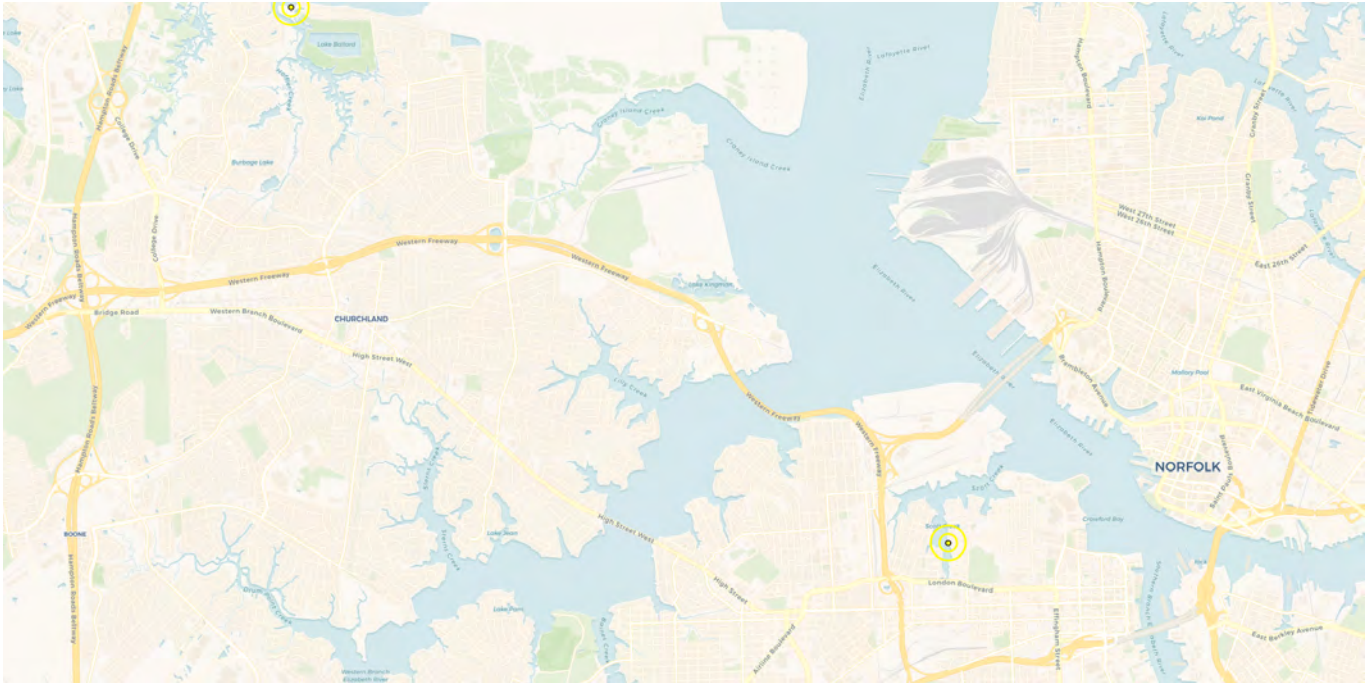
City of Chesapeake, City of Portsmouth, VA, VGIN, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA,

VA Dept. Game & Inland Fisheries

City of Chesapeake, City of Portsmouth, VA, VGIN, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS | Virginia Geographic Information Network (VGIN), and the Census and Localities and Towns submitting data



CCB Mapping Portal



Layers: VA Eagle Nest Locator, VA Eagle Nest Buffers, Eagle Roosts

Map Center [longitude, latitude]: [-76.35772705078125, 36.8569951650416]

Map Link:

<https://www.ccbbirds.org/maps/#layer=VA+Eagle+Nest+Locator&layer=VA+Eagle+Nest+Buffers&layer=Eagle+Roosts&zoom=14&lat=36.8569951650416&lng=-76.35772705078125&base=Street+Map+%28OSM%2FCarto%29>

Report Generated On: 11/06/2024

The Center for Conservation Biology (CCB) provides certain data online as a free service to the public and the regulatory sector. CCB encourages the use of its data sets in wildlife conservation and management applications. These data are protected by intellectual property laws. All users are reminded to view the [Data Use Agreement](#) to ensure compliance with our data use policies. For additional data access questions, view our [Data Distribution Policy](#), or contact our Data Manager, Marie Pitts, at mlpitts@wm.edu or 757-221-7503.

Report generated by [The Center for Conservation Biology Mapping Portal](#).

To learn more about CCB visit ccbbirds.org or contact us at info@ccbbirds.org

Received by VMRC November 7, 2024 /blh

Natural Heritage Resources

Your Criteria

Taxonomic Group: Select All

Global Conservation Status Rank: Select All

State Conservation Status Rank: Select All

Federal Legal Status: Select All

State Legal Status: Select All

Watershed (8 digit HUC): 02080208 - Hampton Roads

Subwatershed (12 digit HUC): JL55 - Western Branch Elizabeth River

Search Run: 11/6/2024 13:01:28 PM

Result Summary

Total Species returned: 2

Total Communities returned: 0

Click scientific names below to go to NatureServe report.

Click column headings for an explanation of species and community ranks.

Common Name/Natural Community	Scientific Name	Scientific Name Linked	Global Conservation Status Rank	State Conservation Status Rank	Federal Legal Status	State Legal Status	Statewide Occurrences	Virginia Coastal Zone
Hampton Roads								
Western Branch Elizabeth River								
BIRDS								
Peregrine Falcon	Falco peregrinus	Falco peregrinus	G4	S1B,S2N	None	LT	42	Y
REPTILES								
Canebrake	Crotalus horridus	Crotalus horridus	G4T4Q	S1	None	LE	19	Y
Rattlesnake	[Coastal Plain population]	[Coastal Plain population]						

Note: On-line queries provide basic information from DCR's databases at the time of the request. They are NOT to be substituted for a project review or for on-site surveys required for environmental assessments

of specific project areas.

For Additional Information on locations of Natural Heritage Resources please submit an [information request](#).

To Contribute information on locations of natural heritage resources, please fill out and submit a [rare species sighting form](#).

HISTORIC RESOURCE INFORMATION

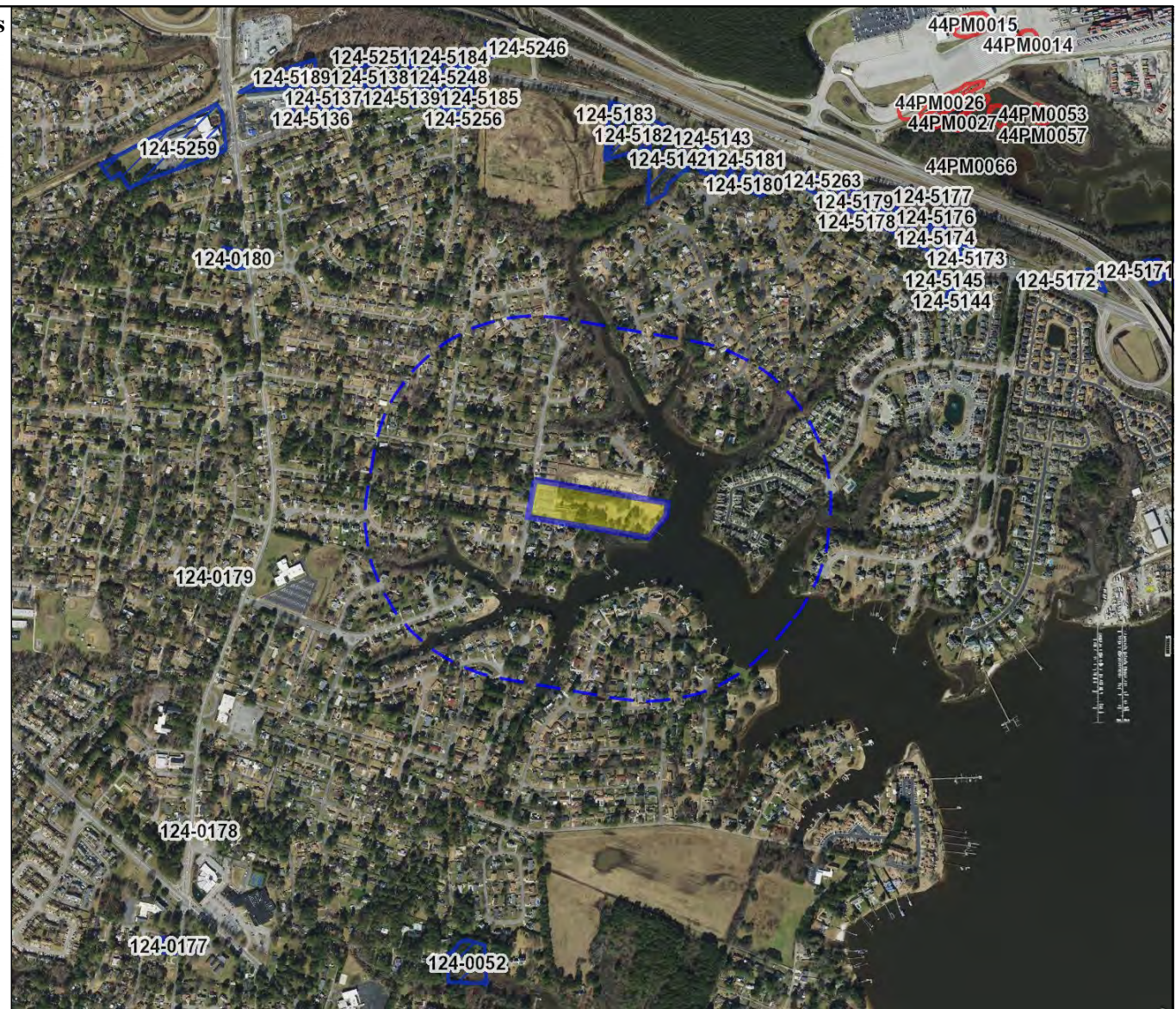
Wyatt Landing Suffolk, VA

Received by VMRC November 7, 2024 /blh



Legend

- Architecture Resources
- Architecture Labels
- Individual Historic District Properties
- Archaeological Resources
- Archaeology Labels
- DHR Easements
- County Boundaries



Title: Wyatt Landing VCRIS Map

Date: 11/6/2024

DISCLAIMER: Records of the Virginia Department of Historic Resources (DHR) have been gathered over many years from a variety of sources and the representation depicted is a cumulative view of field observations over time and may not reflect current ground conditions. The map is for general information purposes and is not intended for engineering, legal or other site-specific uses. Map may contain errors and is provided "as-is". More information is available in the DHR Archives located at DHR's Richmond office.

Notice if AE sites: Locations of archaeological sites may be sensitive the National Historic Preservation Act (NHPA), and the Archaeological Resources Protection Act (ARPA) and Code of Virginia §2.2-3705.7 (10). Release of precise locations may threaten archaeological sites and historic resources.



Feet

0 500 1000 1500 2000

1:18,056 / 1"=1,505 Feet

Chesapeake Land Development, LLC

6062 Indian River Road, Suite 104
Virginia Beach, Virginia 23464
(757) 424-4125 FAX 420-9740
Email: TomTye@ThomasTye.Com

January 20, 2025

Bay Environmental, Inc.
Dustin Pringle, Natural Resource Manager
648 Independence Parkway #100
Chesapeake, Virginia 23320

RE: 3553 & 3600 Cardinal Lane
Portsmouth, VA
Wyatt Landing

Dear Mr. Pringle:

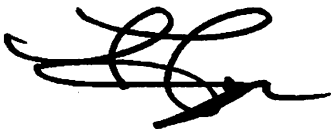
Thank you for your interest in the New Mill Creek Tidal Mitigation Bank. I understand you may need 324 square feet of credit for mitigation at the above referenced project. The charge for that area is \$13,000. We do have 324 square feet available and approved for purchase.

Once the project is approved, please send a check, made payable to Chesapeake Land Development, LLC, to the above referenced address. We will then send notifications to the appropriate agencies that your project has been credited and our bank debited for the number of credits purchased.

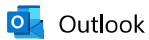
Please contact me if you have any questions.

Thank you,

Chesapeake Land Development, LLC



Thomas M. Tye, Manager/Member



Wyatt Landing Project LWB Meeting April 2nd

From Dustin Pringle <Dustin@bay-environmental.com>
Date Thu 3/13/2025 11:01 AM
To Malzone, Valerie Lynn <malzonev@portsmouthva.gov>

Valerie,

Based on the last meeting which did not have a quorum, here are the forwarded answers from the Pinnacle Group Engineering Team based on the feedback from the few board members in attendance. I am attempting to shift my schedule around to be present again on April 2nd. I will attempt to be present to state information below, but wanted to relay their responses in the event I am not able to be present a second time. Please let me know what time the meeting will be and let me know if you have any additional questions.

From the "additional questions" list:

1. Yes, these plans and calculations have been reviewed many times by the City team. We have them ready for final document submission once LWB has approved their part.
2. The plans have E&S measures shown & ready for final document submission.
3. The silt fence, in general, follows the 100' RPA limits across the site, except at the (2) new pipe outfalls where the installation working width is about 15'.
4. And the pipe depths are listed in the Storm Drainage Schedules on sheet C4. We also provided separate sections Exhibits early that the LWB have seen.

So we feel comfortable that these items have already been well addressed. And the LWB should see the review & approval process was begun a long while ago.

Dustin Pringle

Natural Resource Manager



Bay Environmental, Inc.

648 Independence Parkway Suite 100
Chesapeake, VA 23320
Office: [757.436.5900](tel:757.436.5900) Ext. 207
Mobile: [757.814.6475](tel:757.814.6475)
Email: Dustin@bay-environmental.com

**CITY OF PORTSMOUTH
WETLANDS BOARD
TRANSCRIPT OF PUBLIC HEARING
WEDNESDAY, FEBRUARY 5, 2025, at 3:30 P.M.
SIXTH FLOOR CONFERENCE ROOM, CITY HALL**

Transcript of Proceedings - February 05, 2025

BOARD MEMBERS PRESENT:

Ellen Comstock, Chairperson

Richard Calvert, Vice Chair

Jennifer Monument

Douglas Union

STAFF PRESENT:

Valerie Malzone, Senior Planner

1	I N D E X	
2	ITEM	PAGE
3	ELECTION OF OFFICERS	3
4	MEETING SCHEDULE	4
5	NEW BUSINESS	5
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Transcript of Proceedings - February 05, 2025

1 (Call to order at 3:44 p.m.)

2 CHAIR COMSTOCK: Welcome to the
3 Wetlands Board meeting on February the 5th, 2025,
4 and let's have a roll call of who is here.

5 (Roll Call.)

6 CHAIR COMSTOCK: Then there are it
7 looks like four of us that are present, and I think
8 that's a quorum, isn't it?

9 MS. MALZONE: It is.

10 CHAIR COMSTOCK: All right. The minutes
11 from February 7th, 2024, has everybody -- have we read
12 the minutes and looked at them? Do we have any
13 corrections or changes?

14 MR. CALVERT: No.

15 MS. MONUMENT: I have no corrections, and
16 I make a motion to approve the minutes.

17 MR. UNION: Second.

18 CHAIR COMSTOCK: The motion has been made
19 and seconded. Any discussion on that?

20 Then if there aren't any changes, we have
21 a motion to approve. So anybody wanting to vote for
22 accepting the minutes?

23 (Response.)

24 CHAIR COMSTOCK: The motion is made,
25 accepted and the motion is passed.

MS. MALZONE: The minutes have now been
approved by a vote of four to zero.

CHAIR COMSTOCK: I missed that one.

16

ELECTION OF OFFICERS:

17 CHAIR COMSTOCK: Okay. Then our next
18 item of business is to elect officers.

19 MS. MALZONE: Okay. So just a reminder,
20 to elect the officers, anybody who wants to nominate
21 somebody, there is nominations first for both Chair
22 and Vice Chair, and then you would vote on each one,
23 and as another reminder, people can be reelected.

24 MR. CALVERT: Question, who is still left
25 on the Board?

MS. MALZONE: So everybody but as of
today, unfortunately, Mr. Union, so Ellen has the
list on the minutes if you would rather see it,
but not present are Marcos Davila-Banrey, Cecilia Boyd
and Leon Gregg.

24 MR. CALVERT: It would be nice if they
25 were here during an election, but that's okay.

Well, I guess I'll nominate Ellen
Comstock to be the Chairman of the Portsmouth Wetlands

1 Board.

2 MS. MONUMENT: Rich, are you willing to
be Vice Chair again?

3 MR. CALVERT: Yeah, I don't mind doing
that.

4 MS. MONUMENT: Okay. I'll nominate
Rich Calvert to be Vice Chair, unless, Doug, you're
interested.

5 MR. UNION: I'm done.

6 MS. MONUMENT: You're done. This is your
last meeting, okay.

7 CHAIR COMSTOCK: Okay.

8 MS. MONUMENT: So do we need to make a
motion to vote on the nominations?

9 MS. MALZONE: So not the nominations,
but since there is only one, if somebody would just
make a motion. Let's do the Chair first, make a
motion to elect a Chair, second and then a normal
10 vote.

11 MR. CALVERT: I make a motion that we
elect Ellen Comstock to be the Chairman.

12 MR. UNION: I'll second.

13 MS. MALZONE: Okay. We have a motion and
a second. I'll read your name, and if you just want
to respond with a verbal yes or no.

(Roll-call Vote.)

14 MS. MALZONE: Okay. Ellen Comstock has
been approved to be the Chair for 2025 by a vote of
15 three to zero.

16 Next we will do Richard Calvert for
Vice Chair. We need a motion and a second.

17 MS. MONUMENT: I'll make a motion to
have Rich Calvert serve as Vice Chair of the
Portsmouth Wetlands Board for 2025.

18 MR. UNION: I'll second the motion.

19 MS. MALZONE: Okay. We have a motion
and a second for Richard Calvert for Vice Chair for
2025.

20 Please respond with a verbal yes or no.
(Roll-call Vote.)

21 MS. MALZONE: Richard Calvert will
be the Vice Chair for 2025 by a vote of two to zero.
22

23 MEETING SCHEDULE:

24 MS. MALZONE: Okay. Would you like
to continue with the 2025 Wetlands Board meeting
schedule?

25 CHAIR COMSTOCK: There is a meeting
schedule.

1 (There was an interruption in the
proceedings.)

2 MS. MONUMENT: It's still the first
3 Wednesday of each month, and there were no holiday
issues this year.

4 MR. CALVERT: There are not too many
holidays on Wednesday unless it's Christmas or
something.

5 MS. MALZONE: Yeah.

6 MR. CALVERT: So do we have to motion
to approve that schedule?

7 MS. MALZONE: Yes, a motion and a second
to approve.

8 CHAIR COMSTOCK: Do we have a motion?

9 MR. CALVERT: I make a motion to approve
the schedule for the 2025 calendar year.

10 MS. MONUMENT: I'll second it.

11 CHAIR COMSTOCK: Any discussion on this
motion?

12 Hearing none, let's vote on the motion
to approve the first Wednesday of each month at 3:30
p.m., Wetlands Board meeting schedule.

13 Approved?

14 (Response.)

15 CHAIR COMSTOCK: Okay. So we have three
to zero once again.

16 MS. MALZONE: Four.

17 CHAIR COMSTOCK: Four to zero. I did not
call my vote out.

18 What else do we need?

19 NEW BUSINESS:

20 MS. MONUMENT: Do we have any new
business, or can we bring up new business?

21 MS. MALZONE: Yes. So the new
business -- this concludes our agenda for today.

22 Board members, is there any further
business?

23 MS. MONUMENT: I would like to bring
up a violation that was noted in the minutes from
February 7th, 2024 and find out what the follow-up
has been from the City because they should have been
cited for that after discussions at the Wetlands Board
Council --

24 MS. MALZONE: And you're referring to --

25 MS. MONUMENT: -- or there should have
been some follow-up to the violation that was found
in Glensheallah. I can't recall the address, but it
is in the February 7th minutes.

MS. MALZONE: Okay. I believe you're

1 referring to 103 West Road, but I will confirm.

MS. MONUMENT: Yes, that is correct.

2 MS. MALZONE: I will confirm. The next
3 step is -- would be to come before the Wetlands
4 Board. So the next step, yes, would be to send him
5 a letter to come before the Wetlands Board because
6 the remediation was not complete in the 90 days, so
I will send that prior to our March meeting, and
then with the meeting date for -- depending on when
it goes out -- I need to look at our application
deadlines.

MS. MONUMENT: They're right here.

7 MS. MALZONE: If I send it prior to our
March 5th meeting, that will put him at May, 2025, so
8 let's do that.

MS. MONUMENT: May, 2025 should give
9 him plenty of time to avoid the \$10,000 a day penalty
that we're supposed to be fining him for -- on behalf
10 of the City.

MS. MALZONE: I absolutely agree. So
11 yes, let's plan for tentatively May 7th, 2025.

MR. CALVERT: What was that, an old
12 violation that was never fixed?

MS. MONUMENT: It was an old violation
13 that was never fixed, and there was going to be
follow-up too by someone with engineering because
14 part of the property fell into City property where
the street -- where West Street and the cross street
15 met at the corner of the property. There was a
duct, for lack of a better word, coming out to the
16 street, and he claimed that some of the -- some of
the debris that was on the property was actually from
17 the duct.

MR. CALVERT: Okay.

18 MS. MONUMENT: So in order for him to
not have that as an excuse, someone was supposed
19 to follow up with engineering and find out what
was going on because they actually -- when we did
20 our site visit, they actually had some sort of like
taped off section there at the time where they were
21 doing some sort of work on it. So someone from
Planning was going to follow up with engineering
22 to find out what was being done and if it would
indeed impact this gentleman's property.

23 MS. MALZONE: Right. So what we
can do is, if we still can't confirm where his --
24 you know, if his property extends over the
right-of-way, he would still be responsible for
25 what we know is his property in front of his house --

MS. MONUMENT: Correct.

1 MS. MALZONE: -- so we could do it that way as well.

2 MS. MONUMENT: Let's just do that just to be safe so that we can go ahead and get him to clean up what we know is his property that's got stuff on it, and then the other part of that was to take pictures when it was low tide because that was a -- that was something where we couldn't go out and do a site visit because we couldn't get it scheduled with the high tide. It was high tide when we went out.

3 MS. MALZONE: Very high tide.

4 MS. MONUMENT: You can still see the junk, but it was just the top portion of the junk.

5 MS. MALZONE: Yes, and those site photos would be part of -- if he came before Wetlands Board part of the staff presentation, so we would have the full extent.

6 MS. MONUMENT: That was the only business I had, I wanted to bring up.

7 CHAIR COMSTOCK: Thank you.

8 I found it at line -- the second -- third page -- well, let's see, page eleven -- nine, ten and eleven of our meeting.

9 MS. MALZONE: Okay.

10 CHAIR COMSTOCK: Okay. Any other new business?

11 MR. CALVERT: So with Doug leaving, does that leave a vacancy?

12 MS. MALZONE: It does, yes.

13 MR. CALVERT: Okay.

14 MS. MALZONE: So the next step is the Planning Department notifies the City clerk's office, and then they would just go through the normal application process and assign a new person to the Board.

15 MR. CALVERT: Okay.

16 MS. MALZONE: So hopefully that happens pretty quickly.

17 CHAIR COMSTOCK: Do we have a City Council liaison or is it just through Planning?

18 MS. MALZONE: I do not believe that the Wetlands Board has a City Council liaison, but I will be happy to confirm that before our next meeting.

19 MR. CALVERT: Is the federal funding impacting the City of Portsmouth now that President Trump has frozen everything?

20 MS. MALZONE: I am not aware of any of that yet, but that's not to say that there are

1 none, but --

2 MR. CALVERT: All right. Any other
issues?

3 MS. MONUMENT: I would like to make a
motion to adjourn.

4 MR. UNION: I'll second it.

CHAIR COMSTOCK: All in favor.

(Response.)

5 CHAIR COMSTOCK: The motion is carried.

We are adjourned.

6 (Meeting adjourned at 3:59 p.m.)

Transcript of Proceedings - February 05, 2025

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Tracy B. Marinelli, RPR, a Notary Public
3 for the Commonwealth of Virginia at Large,
4 of qualification in the Circuit Court of the City
5 of Chesapeake, Virginia, and whose commission expires
6 July 31, 2026, do hereby certify that the
7 above-captioned cause was recorded in Stenotype by me
8 and reduced to typescript under my direction; and that
9 to the best of my ability the foregoing constitutes a
10 true, accurate, and complete transcript of such
11 proceedings.

12 I further certify that I am not related
13 to nor otherwise associated with any counsel or party
14 to this proceeding, nor otherwise interested in the
15 event thereof.

16 Given under my hand this 17th day of
17 February, 2025 at Norfolk, Virginia.

18 

19 Tracy B. Marinelli, RPR

20 Notary Registration No. 212131

21

22

23

24

25



**WETLANDS BOARD
AGENDA
WEDNESDAY, MARCH 5, 2025
6th FLOOR CONFERENCE ROOM
CITY HALL, 801 CRAWFORD STREET
PUBLIC MEETING 3:30 PM**

A. CALL TO ORDER COMSTOCK (CHAIR) 3:30 PM

B. ROLL CALL

**ELLEN COMSTOCK (CHAIR)
JENNIFER MONUMENT
MARCOS DAVILA-BANREY**

***A QUORUM OF FOUR (4) MEMBERS WAS NOT PRESENT – NO CONDUCT
OF A HEARING OR TAKING OF ANY ACTION***

C. APPROVAL OF THE MINUTES FROM FEBRUARY 5, 2025

NO ACTION TAKEN

D. PUBLIC HEARING ITEM

JPA 2024-2634 – Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

NO ACTION TAKEN

E. NEW BUSINESS

F. ADJOURNMENT 4:11 PM

*801 Crawford Street, Portsmouth, Virginia 23704
Phone: (757) 393-8836 • Fax: (757) 393-5223*

**CITY OF PORTSMOUTH
WETLANDS BOARD
TRANSCRIPT OF PUBLIC HEARING
WEDNESDAY, MARCH 5, 2025 at 3:30 P.M.
SIXTH FLOOR CONFERENCE ROOM, CITY HALL**

Transcript of Proceedings - March 05, 2025

BOARD MEMBERS PRESENT:

**Ellen Comstock, Chairperson
Jennifer Monument
Marcos Davila-Banrey**

STAFF PRESENT:

Valerie Malzone

ALSO PRESENT:

**Dustin Pringle, Bay Environmental
Kylie Harris, Virginia Marine Resources
Commission**

1	I N D E X	
2	ITEM	PAGE
3	JPA 2024-2634	4
4	New Business	14
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (Call to order at 3:30 p.m.)

2 CHAIR COMSTOCK: Welcome to the Wetlands
Board meeting on the 5th of March, 2025. Let's see
3 who is here.

3 (Roll call.)

4 CHAIR COMSTOCK: So we have three
of us that are here. That's not a quorum, correct?

5 MS. MALZONE: Correct.

6 CHAIR COMSTOCK: So what are -- what are
the options?

7 MS. MALZONE: So in a meeting without a
quorum you can discuss the application, ask questions
of the applicant. We will -- I will ask you would
you like the applicant to still present what they
8 have and give a summary of their presentation. You
can do anything but vote on the item.

9 CHAIR COMSTOCK: What is your -- what
is your pleasure?

10 MS. MONUMENT: I just have a couple
of questions about the application itself so maybe
the applicant can introduce themselves and we can
just have a quick discussion about some of the
11 topics that I had a question about, and if either
of you had a question now would be the time to
12 ask so that when we come back for the next session
maybe we'll have some of those answers and may be
13 more complete so that we can do one big presentation
rather than having two big presentations, wasting your
14 time.

15 MS. MALZONE: Okay. So let's do that.
16 So we will still proceed with approval of the minutes
and then we will announce the public hearing.

17 CHAIR COMSTOCK: Okay. Do we have a
motion as we present the minutes? Do you have any
18 additions or changes to the minutes?

19 MS. MONUMENT: I would like to make a
motion to approve the February, 2025 meeting minutes
as recorded with no amendments or changes.

20 CHAIR COMSTOCK: Do I have a second?

21 MR. DAVILA-BANREY: Second.

22 CHAIR COMSTOCK: Well, then the motion
has been made and seconded that we approve the
February 5th minutes.

23 All in favor say aye.

(Response.)

24 CHAIR COMSTOCK: The minutes are
approved.

25 MS. MONUMENT: Can they be approved
without a quorum since everything else needs to
be --

1 MS. MALZONE: I'll check on that. It's
2 good to know -- it's good to know that there were
no amendments.

MS. MONUMENT: There are no amendments.

3 MS. MALZONE: Okay. So we will -- we
will check on that. We might have to reapprove it.

4 CHAIR COMSTOCK: We will -- we will
amend, if necessary, to vote.

5
ITEM JPA 2024-2634

6 CHAIR COMSTOCK: Okay. Today we have
a presentation of an applicant. This is applicant
7 D. Pringle on behalf of T. Jones to construct
stormwater outfall structures to impact vegetated
8 and non-vegetated tidal wetlands at 4600 Thornwood
Street along Carney Creek, a tributary of the Western
9 Branch of the Elizabeth River, JPA 2024-2634.

10 MS. MALZONE: So the applicant is
proposing to construct two stormwater outfalls
at 4600 Thornwood Street. This is going to
11 facilitate the development of single-family
residential structures, and the outfalls are necessary
12 to provide the required stormwater management features
for the featured development.

13 So I have added some site photos of
Outfall A, which is to the north, and Outfall B,
14 which is to the south. So Outfall A will impact
369 square feet of tidal wetlands, 136 square feet
15 of which to be vegetated and 233 square feet of
which to be non vegetated, so Outfall A, here is
16 your non vegetated. The applicant placed these
flags. The flags are non vegetated wetlands, and then
17 these are the vegetated wetlands. As you can see, the
flags mark the edge of the vegetated wetlands to be
18 impacted.

19 Outfall B, slightly to the south,
will impact 543 square feet of tidal wetlands, 188
20 of which are vegetated tidal wetlands, shown here,
and 355 square feet of non vegetated tidal wetlands,
shown here.

21 The applicant is proposing to mitigate
the loss of vegetated tidal wetlands with the
22 purchase of 324 square feet of compensatory
mitigation credits for purchase from Chesapeake
23 Land Development's New Mill Creek Tidal Mitigation
Bank, and no mitigation is required in the City
24 of Portsmouth for the loss of non-vegetated tidal
wetlands, and that concludes my presentation.

25 Does anyone have any questions?

MS. MONUMENT: I had a quick question.

1 So could we go back to the very first map that
2 shows the lots?

2 Thank you.

3 So the delineated wetlands line cuts
4 into Lot 8, and then the project limit line cuts
5 into Lot 8 -- I'm just taking one lot. Lot 8,
6 so it cuts in that quite a bit. Where are -- and
7 this says the delineated wetlands line. So we
8 have the impacted wetlands down here for A and B,
9 but what is the status of the wetlands up here
10 in lots 8, 9, 10, 17, 16 and 15? Where is -- is
11 the project limit line the buildable line, so nothing
12 will be built past that? I just wanted to understand
13 the map better for me.

8 MR. PRINGLE: Sure, yeah. So lots
9 8, 9 and 10 -- sorry. My name is Dustin Pringle.
10 I'm with Bay Environmental. So lots 8, 9, 10,
11 17 --

10 MS. MONUMENT: Seven.

11 MR. PRINGLE: Sorry, 7, so those lots
12 have been -- it was confirmed with the applicant
13 that no construction activities -- or no impact
14 will be conducted on those lots with the associated
15 delineated wetlands and the RPA buffer. The lots --
16 the construction activities will be limited to outside
17 of the RPA buffer.

14 MS. MALZONE: And if I can make a
15 clarifying statement. The project limit line is the
16 RPA delineated line.

16 MR. PRINGLE: Yes.

17 MS. MALZONE: So I believe what
18 they're trying to show is that no new development will
19 be occurring in the RPA.

18 MS. MONUMENT: Okay. Thank you. That
19 was -- that was one of my questions.

20 And then also we're talking about
21 a silt fence all the way to the water so I wanted
22 to understand on the same map, where it goes from
23 Thornwood Street, that looks like a circle, so it's
24 a city street I'm imagining that has a circle and
25 then there is driveways that connect to lots 12 to 13
along that street and circle. So -- and that's an
extension of the existing Thornwood Street, so are --
the drains and silt fencing, where does that start?
Does it start where it says Outfall A 24" RCP and go
all the way to the waterline?

24 MR. PRINGLE: Yeah. The silt fence was
25 directly related only to the outfall locations. They
will be -- they will run protecting the outfall
locations.

1 MS. MONUMENT: Okay. And help me
2 understand the lines on either side of those. Are
3 those buffer lines, where for example lot 13 cannot
4 build between the first dotted line and the middle
5 of the Outfall A line?

MR. PRINGLE: I have to see it.

4 MS. MONUMENT: You're fine. I couldn't
5 see very well on my phone so that's why I wanted to
6 see it big and ask the question.

MR. PRINGLE: Sorry. Repeat the
6 question, please.

MS. MONUMENT: So my question -- I'll
7 go up here too. So my question is, on both of
8 these outfalls, here and here, what is the restriction
9 for the owners of lots 14, 15 and 13? Are they not
10 allowed to build along the silt fence? Will be that
11 be protected somehow? How does -- what does that look
12 like, or is it a ditch?

MR. PRINGLE: No. Those will be --
10 those will be underground. Those are pipes, so those
11 are going to be pipe outfalls, which I believe Outfall
12 A, I believe, is a 24-inch pipe that's going to be
underground.

MS. MONUMENT: Okay.

13 MR. PRINGLE: And then the second
14 outfall, B, I believe, is a 15-inch outfall pipe
15 that's going to be -- that's going to be more of
16 a temporary -- temporary RPA impact, so it's going
17 to be laid down underground and then restored to the
18 previous content.

MS. MONUMENT: Okay. Thank you.

17 All right. I had one question --
18 and I apologize, I had it pulled up on my phone
19 and I don't now. Under the first Part 2 signatures,
20 we have signatures on this page, and then we don't
21 have the contractor's name. On this page, we didn't
22 have the property owner's signature on it. So was
23 that just --

MR. PRINGLE: So Tim Jones is the
20 property owner --

MS. MONUMENT: And the applicant?

MR. PRINGLE: -- and the applicant, yes,
22 ma'am.

MS. MONUMENT: Okay. Thank you.
23 And then --

MS. MALZONE: I was trying to pull this
24 up earlier. That's the pipe.

MS. MONUMENT: Oh, okay, there is the
25 pipe.

MS. MALZONE: Yes.

1 MS. MONUMENT: This is what I didn't
understand. So the proposed home not to scale --
2 not to scale and then the RPA buffer. So the pipe
is ten feet underground? How does that read? So
3 how far deep is this pipe and then where exactly
is it connecting? Is it connecting to all the storm
4 drains around the circle of the street?

MR. PRINGLE: So they --

5 MS. MONUMENT: How does it -- where does
it connect?

6 MR. PRINGLE: The existing storm drains
that are existing from the existing neighborhood
7 surrounding it, they're tying into those, and
it's going to be -- I'm not sure on the depth
8 of them. I would have to obtain that information
from the engineer, on how deep they are --

9 MS. MONUMENT: Okay.

MR. PRINGLE: -- but yeah, they are tying
10 into existing infrastructure.

MS. MONUMENT: Okay. I was just --
11 I was concerned -- I was not understanding whether
it was a ditch or it was actually buried, if it
12 was -- you know, from this because it looks like it's
under the house.

13 MR. PRINGLE: Yeah. So it will be
buried. It is an underground pipe.

14 MS. MONUMENT: Okay. All right.

And then there is -- the last question
15 I had was, it says the ESC -- the erosion and sediment
control plan, the ESC plan, is yet to be developed
16 for this site. Do you know what the status of that
is?

17 MR. PRINGLE: I do not. I do know
that in talking with the applicant and going in
18 here to, you know, all of the state and local
regulations, that that has not been determined.

19 MS. MONUMENT: Okay. I think --
could we go back to the map that shows the wetlands
20 line? That was -- or actually could we go, please,
to the map that shows where this property sits along
21 the river, along the -- excuse me, along Lilly Creek,
aka Carney Creek?

22 MS. MALZONE: Was that in the packet or
are you wanting like a Google map? Was it a picture
23 in the --

MS. MONUMENT: It was a picture in the
24 packet, and I believe it was -- they had a satellite
picture submitted.

25 CHAIR COMSTOCK: Jennifer, this?

MS. MONUMENT: Yes.

1 MS. MALZONE: What page?

MS. MONUMENT: There we are.

2 So because this particular spot jets
3 out onto a peninsula, that then you have one,
4 two, three -- three smaller tributary creeks that
5 are downstream from it, right. I just wondered
6 where we were with that and if that was something
7 that was -- and maybe staff could give us on the
8 Wetlands Board guidance on whether or not that's
9 handled by the Corps of Engineers or by City -- it
10 looks from the packet like it's handled by the City
11 Engineering Department.

MS. MALZONE: Are you speaking
specifically about the erosion and sediment control
plan?

MS. MONUMENT: Correct.

MS. MALZONE: Okay. So I can give a
little input into the process. So the erosion and
sediment control plan is addressed during the site
plan review process, which is the Engineering
Department, so they do require -- as part of the
site plan approval, they're going to require the
wetlands permit. So they do -- while they can happen
in tandem, that is not going to be finally approved
before it comes before Wetlands Board because the
Wetlands Board approval is a prerequisite for the site
plan approval.

MS. MONUMENT: I see. So it's this
group and body and then they have to go to
engineering?

MS. MALZONE: Correct, yeah.

MS. MONUMENT: Got you. That -- that
helps a lot.

MS. MALZONE: And during -- and during
that process -- sorry.

MS. MONUMENT: No, you're fine.

MS. MALZONE: That's also when all
of the CBPA, the Chesapeake Bay Preservation Area,
encroachments will be reviewed, and the mitigation
for that will be reviewed too.

MS. MONUMENT: Okay. I guess it's a
little chicken and the egg -- for us, just coming --
from my mindset, it feels a little chicken and egg
for us to approve it without having all the knowledge
about how the sediment and the erosion is going to
be handled, especially if it's coming out of two
large underground pipes, and I'm trying to understand
how -- in the soft, muddy soil how those are going
to stay underground, and I had some concerns about
that, but thank you, sir, for clarifying what that --

1 what that cross section is showing for me. I
2 appreciate it.

3 I just have concerns about where the
4 two outlets -- or, excuse me, outfalls are placed
5 and the erosion or potential for erosion that we
6 don't know about yet. It seems like it's a wooded
7 area. Is that correct?

8 MS. MALZONE: When I was out there,
9 it is pretty wooded. It is moderately wooded, with
10 some trails through it, yes.

11 MS. MONUMENT: Okay.

12 CHAIR COMSTOCK: But it won't be once
13 it's developed.

14 MS. MONUMENT: But once it's developed --

15 CHAIR COMSTOCK: And it was an old
16 farmhouse. They clear cut everything, and whatever
17 has grown back --

18 MR. PRINGLE: Outside of the shoreline
19 fringe, the wetland shoreline fringe, the upland
20 portion of the property has already been clear cut
21 and developed.

22 MS. MALZONE: I should clarify, the
23 reefer protection area and the wetland area that
24 we're discussing is the --

25 MS. MONUMENT: The only part that
we're concerned with is a hundred square feet or
whatever that is our jurisdiction or bailiwick
or what have you, is what we're talking about.

CHAIR COMSTOCK: That's just whatever
has grown to this part.

MS. MONUMENT: That's whatever is grown.
And is it staff recommendation to
approve the permit so that it can go to engineering
for further review?

MS. MALZONE: Yes. So that is --
Planning staff is recommending approval specifically
because it appears that the structures are required
by state law to meet the -- from our management
regulations and that they are providing -- although
offsite, they are providing mitigation for the loss
of vegetated tidal wetlands.

MS. MONUMENT: And the loss that they
are -- the mitigation is actually being done in
Chesapeake; is that correct?

MS. MALZONE: Yes, at New Mill Creek.

CHAIR COMSTOCK: My question was,
why do -- why get mitigation credits and not do it at
the site?

MR. PRINGLE: Good question. Mitigation
credit -- you know, you can do it either way, but the

1 process is a lot faster and you get more value because
2 with monetary requirements that are associated with
3 onsite mitigation, the time process involved,
4 whereas if you do mitigation you're taking a site that
5 has -- that is -- that is -- was tidal wetlands at one
time and you're reestablishing it and you're allowing
it to grow in a better way I guess would be the best
way to explain it versus onsite mitigation on a
residential site.

CHAIR COMSTOCK: But this is a site
6 that is low and has the potential for flooding. We
7 have sea level rise. We have all sorts of stuff
8 coming, and then other parts of that creek, so I
9 am -- I am concerned that we are giving away
the possibility of establishing a new marsh and
establishing protection around that site, so that's
my -- that's my concern with that.

MS. MONUMENT: And the applicant,
10 question for you. So the riprap is being used --
11 only going to be used ~~in~~ these gray shaded areas
12 that have sort of the arrow where the outfalls are,
correct?

MR. PRINGLE: Yes. It's the triangle
13 areas that are indicated on that figure, yes.

MS. MONUMENT: So where the circles are,
14 that is indicating the riprap?

MR. PRINGLE: Yes, that's correct.

MS. MONUMENT: Okay. So there is no
15 other riprap being put down here?

MR. PRINGLE: No. It is just in the
16 outfall location.

MS. MONUMENT: Okay. So only in the
17 outfall location is the vegetated -- vegetation being
18 impacted. Everything else will remain vegetated
wetlands.

MR. PRINGLE: Correct.

MS. MALZONE: Does that help, Ellen?

CHAIR COMSTOCK: It does and it
20 doesn't because I would like to go to the site
21 and see really what is in between there because
22 when you're talking about the lines up on the
23 other lots, that kind of thing -- I know we are
24 only allowed to talk about those two spots, but
25 I know that there -- there should have been -- there
are neighbors that wanted to come today to speak
and they are not able to, so if we're not voting
until whenever, I think, you know, we need to
republish the public hearing part, but they have
not been -- they have felt that they -- that it
needs to be looked at as a whole, and I know that

1 goes to engineering, but I don't know how to -- I
2 don't know how to put that together in terms of
two spots versus a neighborhood of 17 houses.

3 MS. MONUMENT: Could you clarify
4 for me, is this -- so for the Wetlands Board
purposes, just for Wetlands Board, we are reviewing
5 the use of, what, the 100 foot buffer to here or
the 50 foot buffer to here or the wetlands line?

6 MS. MALZONE: So you are reviewing
7 for tidal wetlands, so you're specifically looking
at mean low water to the mean tide range. So what
8 that means is specifically what he is calling the
tidal impacts on that, so the 543 square feet on
9 Outfall B and the 369 square feet of tidal impacts
on Outfall A specifically. The RPA, the CBPA
buffer impacts are going to be reviewed by the
City administratively during the site plan review
process.

10 MS. MONUMENT: So they have not gone
11 through the site plan review process for the same
reason it hasn't gone to engineering, it's because
this body has to issue a permit first?

12 MS. MALZONE: Yes.

13 CHAIR COMSTOCK: Marcos, you had a
question, didn't you?

14 MR. DAVILA-BANREY: Do you know what the
annual volume -- expected volume is?

15 MR. PRINGLE: That I do not know. I
would have to get that information.

16 MR. DAVILA-BANREY: And then annual
expected erosion by volume?

17 MR. PRINGLE: Same. I would have to
get that from engineering. All those calculations
I would have to get directly from engineering.

18 MS. MONUMENT: And that was my question,
19 so we're on the same page, Marcos. I -- I just
don't have enough information, but I'm being asked
20 to go ahead and approve it so that we can get the
information that we would be interested in in
order to approve it. It's a little catch 22.

21 I just wanted to make sure that
we're not overstepping into an area that doesn't
22 fall within our purview, if that makes sense. So
if he is saying the mean low tide -- if you are
23 saying -- staff is saying the mean low tide, is
that the same as the delineated wetlands line?

24 MS. MALZONE: Yes, and the delineated
wetlands line will show you that range basically,
25 yeah, so --

MS. MONUMENT: That entire range?

1 MS. MALZONE: Are you -- I guess my
2 question is, is your question questioning whether
3 or not this would be the minimum necessary to
4 provide their stormwater requirements?

5 MS. MONUMENT: That's one of the
6 concerns, that -- that until they do the soil
7 erosion study, how do we know that they wouldn't
8 need to have -- if engineering came back and
9 said, well, now they need a third outfall say
10 along -- if you go back to the previous map that
11 had all the lots on it, how would we know if they
12 needed another outfall, a third outfall basically,
13 in another area, and then we don't know how much
14 sediment is going to come out of that and if that's
15 going to impact more than the vegetated square feet
16 that we're looking at just for -- so if the sediment
17 builds up, it will impact the vegetated wetlands
18 all along that entire section. So if it's going
19 to impact just that little triangle where the
20 riprap is, that's one thing, but if it's going to
21 have -- like Marcos is saying, once it overflows could
22 it have a potential to impact the wetlands all along
23 that property line?

24 MS. MALZONE: Okay. So I see what
25 you're saying. It's not whether or not this can
26 facilitate their stormwater requirements, it's
27 more about are the impacts shown not completely
28 accurate due to like down the line.

29 MS. MONUMENT: Correct. So we know
30 what the impacts are going to be during construction,
31 correct, and that's sort of what we're talking about.
32 We know that there will be impacts during
33 construction, and we know that the company is
34 proposing to buy credits to mitigate those impacts.
35 However, post construction we don't know what the
36 sediment is going to be yet, so we don't know if
37 post construction there could be impacts along
38 the entire section of that particular property.
39 Never mind other properties, we're just looking at
40 this one property right now, right, so is it going
41 to impact that, and should we be looking at vegetated
42 credits for anything that could be impacted. We
43 may have to go back and look at it afterwards, and
44 I believe that is within our range. Within the two
45 years we can go back and look and see if something
46 has changed.

47 I would suggest that we table this
48 for the next meeting when we have a quorum and
49 think about what that might look like. If it's
50 a possibility, we -- I would say I would personally

1 want to approve the permit so that it did go to
2 engineering. That is where I'm leaning. However,
3 I would want to get a report from engineering --
4 I would want to get the ESC plan, and then I
5 would want to -- you know, so if we approve the
6 permit, I would want to put it as a condition of
7 reviewing the ESC plan from engineering to make
8 sure there aren't additional vegetated wetlands
9 impacts. I think that's a simple condition that
10 we can put in there, that, you know, we can review
11 it, staff can review it, the builder can review
12 it, and if it makes sense we should actually go
13 back and ask for those additional mitigation
14 credits.

15 CHAIR COMSTOCK: Or that we look at
16 mitigating on site.

17 MS. MONUMENT: Or we look at how
18 could we mitigate on site and save everybody money,
19 and maybe we could do it during the building process
20 and save everyone money, so -- but yeah, it's just
21 difficult when you don't have all the information
22 to make an informed decision, but in terms of
23 what -- the information that's been presented,
24 those are my only questions in the packet.

25 Rich may have questions about
the silt fence and how that is constructed, so
I really do think we should make sure that he
is present too.

MS. MALZONE: Yes, and what we can
do is try to send out the minutes from our meeting
a little earlier than the agenda packet, basically
a summary of the discussion and the questions and
answers.

MS. MONUMENT: Sure.

CHAIR COMSTOCK: Other questions?

MR. DAVILA-BANREY: I'm good.

CHAIR COMSTOCK: So it's a consensus then
that we close the discussion, or do you have anything
else you would like to add?

MR. PRINGLE: No.

MS. MALZONE: VMRC, do you have anything
you would like to add?

MS. HARRIS: No.

MS. MALZONE: Okay. So no action may
be taken, but we appreciate you coming and answering
questions.

MR. PRINGLE: Thank you.

MS. MONUMENT: Thank you.

MR. PRINGLE: You're welcome.

MS. MALZONE: So I believe we can move

1 on.

2 CHAIR COMSTOCK: Can we close the public
3 hearing if there is no further discussion or questions
4 for the applicant at this point?

5 NEW BUSINESS

6 MS. MONUMENT: I have one item.

7 MS. MALZONE: Is it about -- I was going
8 to bring up new business, and it cannot be displayed.
9 I had a picture for you. I actually had a picture for
10 you.

11 MS. MONUMENT: It's not you guys. That's
12 the good news.

13 MS. MALZONE: I had -- that's
14 unbelievable.

15 MS. MONUMENT: What was the --

16 MS. MALZONE: The official determination
17 for what we were talking about, a pending violation
18 at 103 West Road, technically 101 and 103 West Road,
19 it was confirmed earlier in the week that it is still
20 under violation. He is being sent a letter and will
21 be scheduled for the May 7th public hearing because
22 the application deadlines were in the March -- to
23 March 26th for the May 7th application deadline.

24 MS. MONUMENT: Okay.

25 MS. MALZONE: So it's still moving
forward.

MS. MONUMENT: Just for Marcos' benefit,
this was a violation that Valerie and I went and did
a site visit, and he assured us that he would have
it cleaned up within the week. This was last October,
November. Technically -- Valerie, correct me if I'm
wrong, but it's a \$10,000 fine.

There we go.

MS. MALZONE: I wanted to prove I had the
picture.

MS. MONUMENT: It's a difficult area
because it is -- when it's at low tide, it's a very
low tide, and when it's a high tide is most of the
time because of where it's located, right -- if
you kept going past that tree, the Churchland Bridge
is right there, so it's in the Glensheallah area,
and the gentleman who owns the property is a masonry
contractor, and when we did the initial site visit,
there were, as you can see, multiple pieces of
concrete, building materials, bricks, trash, random
stuff, and his contention was that some of that
was there before they purchased the property, they
were inheriting it, but then he admitted that the
bricks and -- all the cinderblocks, the bricks, the

1 building materials were stuff that his guys, quote,
2 unquote, had put on the property to help with the
3 erosion. So we're like, sir, you really don't want
to do that. You should have come to the City with
your concerns.

The tricky part about this land parcel
4 is that part -- it's got his house and home, his
5 front yard, a city street and then a strip of land
6 that's to the river, which is also his property
technically. Now, right where -- at the end of
this -- I don't know, did you get a picture of the
drain pipe?

7 MS. MALZONE: I'm standing in front
8 of the drain pipe, so it's right at the corner
of what we can confirm is his property line.

9 MS. MONUMENT: Okay, great.

10 So there is a huge drain pipe that has
11 collapsed that is his property. That is run by the
Engineering Department. So that -- he has been in
touch with them about that item coming out of that,
so his contention is where the drain pipe is doesn't
belong to him.

12 So, Valerie, this picture is just
13 showing stuff that we know is on his property.

14 MS. MALZONE: Yeah, and it was just
to confirm that the violation wasn't remediated.

15 MS. MONUMENT: Right.

16 MS. MALZONE: So the exact wording,
any person who has violated any provision of the
aforementioned chapter, which is the wetlands
17 ordinance, or of this ordinance, or who has violated
or failed, neglected or refused to obey any Commission
or Wetlands Board order, rule, regulation or permit
condition, the Wetlands Board may provide in an order
18 issued by the Wetlands Board against such person for
the one-time payment of civil charges for each
19 violation in specific sums, not to exceed \$10,000
for each violation.

20 So that would be -- the hearing is
21 where we would determine the impact to wetlands
and any potential civil charges, and that is what
is -- tentatively will be scheduled for May.

22 MS. MONUMENT: So at the May meeting
23 we could -- what are our options, we could give
him a slap on the wrist and give him a certain
number of days to remediate it with no fine, out
24 of the goodness of our heart, we could impose a
fine and ask him to remove it within a certain
25 number of days or face additional charges, but
between the first summons -- so we couldn't fine

1 him at the meeting, we would have to have him
2 come to the meeting first and then fine him?

3 MS. MALZONE: So this is where we
4 would have the City Attorney's Office present to
5 answer these questions. The City Attorney's Office
6 would have a presence at the meeting and then give
7 you the options, and then I believe those options
8 would change whether or not the person was present,
9 so those questions we can just take care of at
10 that time. I wanted to let you know it was
11 upcoming.

12 MS. MONUMENT: Okay. Is that the kind
13 of thing that maybe you could potentially ask him
14 and then we could ask him questions at the April
15 meeting, when we revisit this?

16 MS. MALZONE: Yeah, I can do that.

17 MS. MONUMENT: Let's do that.

18 MR. MALZONE: We can -- yeah, if he
19 would be able to come or just to answer the specific
20 questions.

21 MS. MONUMENT: Or provide -- his office
22 could provide answers at the April meeting so that
23 we're more prepared for the May meeting.

24 MS. MALZONE: Okay. And that would be
25 answers for options about a violation hearing?

MS. MONUMENT: A violation hearing,
options regarding fines versus sanctions, whatever
we would call that.

MR. DAVILA-BANREY: When were we first
notified of this?

MS. MONUMENT: Last year.

MS. MALZONE: It was a while ago. You
will be notified of the hearing as you would for
like a normal meeting. So you haven't been notified
of the meeting officially yet.

MR. DAVILA-BANREY: Okay.

CHAIR COMSTOCK: This has been ongoing
for -- it seems like it's more than a year because we
didn't meet for --

MS. MONUMENT: Sure, it's been more
than a year, so he has had ample opportunity to have,
quote, unquote, his guys come and pick up what they
dropped off.

MS. MALZONE: Okay.

CHAIR COMSTOCK: So how do we --
back to what we were discussing, so we are going
to defer -- is there -- do we have to make a
motion to defer this to the April meeting?

MS. MALZONE: No, there is no
motion. We will speak after the meeting with

1 the applicant about which meeting he would want
2 to be on, and then we would advertise, you
3 know, in such a way that would put him on that
4 meeting.

5 CHAIR COMSTOCK: And I wanted to
6 ask you about the advertising because we have
7 neighbors that are -- that are interested in the
8 process.

9 MS. MALZONE: So ask what
10 the legal advertising requirements for applications
11 are?

12 CHAIR COMSTOCK: Yeah, that one.

13 MS. MALZONE: Okay. So there are
14 timeframes associated with this, but the applicant,
15 the City Council, the Commissioner, which is the
16 Virginia Marine Resources Commission, the owner
17 of record of any land adjacent to the wetlands in
18 question, the Virginia Institute of Marine Science,
19 the State Department of Wildlife Resources, the
20 State Water Control Board, the State Department of
21 Transportation, any government agencies expressing
22 interest therein shall be notified of a Wetlands
23 Board -- of a hearing by mail not less than 20 days
24 prior to the date set for the hearing. This was
25 completed for this hearing and then will be
readvertised for the next hearing.

The Wetlands Board shall also post
a notice of the hearing on its website at least
14 days prior to such hearing -- that's the City's
website -- provide a copy of such notice to the
Commission for submittal to the Virginia regulatory
town hall, cause notice of the hearing to be published
at least once in the seven days prior to such
hearing in a newspaper having general circulation in
the City. That was also done, and it's published in
The Virginian-Pilot, so that was published last
Sunday.

CHAIR COMSTOCK: Sunday previous?

MS. MALZONE: Correct.

CHAIR COMSTOCK: Sometimes they're
difficult to find.

MS. MALZONE: Yes.

Okay. Was there any other questions?

MR. DAVILA-BANREY: No.

MS. MONUMENT: Motion to adjourn the
meeting.

MR. DAVILA-BANREY: Second.

CHAIR COMSTOCK: All in favor.

(Response.)

CHAIR COMSTOCK: The motion is passed.

1 **We are adjourned.**
2 **(Meeting adjourned at 4:11 p.m.)**
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

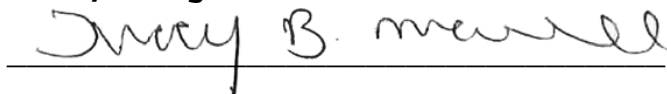
Transcript of Proceedings - March 05, 2025

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Tracy B. Marinelli, RPR, a Notary Public
3 for the Commonwealth of Virginia at Large,
4 of qualification in the Circuit Court of the City
5 of Chesapeake, Virginia, and whose commission expires
6 July 31, 2026, do hereby certify that the
7 above-captioned cause was recorded in Stenotype by me
8 and reduced to typescript under my direction; and that
9 to the best of my ability the foregoing constitutes a
10 true, accurate, and complete transcript of such
11 proceedings.

12 I further certify that I am not related
13 to nor otherwise associated with any counsel or party
14 to this proceeding, nor otherwise interested in the
15 event thereof.

16 Given under my hand this 17th day of
17 March, 2025 at Norfolk, Virginia.

18 

19 Tracy B. Marinelli, RPR

20 Notary Registration No. 212131

21

22

23

24

25



**WETLANDS BOARD
AGENDA
WEDNESDAY, APRIL 2, 2025
6th FLOOR CONFERENCE ROOM
CITY HALL, 801 CRAWFORD STREET
PUBLIC MEETING 3:30 PM**

A. CALL TO ORDER 3:35 PM

B. ROLL CALL

**ELLEN COMSTOCK (CHAIR)
RICHARD CALVERT (VICE-CHAIR)
MARCOS DAVILA-BANREY
JENNIFER MONUMENT
LEON GREGG**

C. APPROVAL OF THE MINUTES FROM FEBRUARY 5, 2025, AND MARCH 5, 2025

**FEBRUARY 5, 2025 – APPROVED 5-0
MARCH 5, 2025 – APPROVED 5-0**

D. PUBLIC HEARING ITEM

1. **JPA 2024-2634** – Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

DENIED 5-0

E. NEW BUSINESS

1. Violation – 101 & 103 West Road.

F. ADJOURNMENT 4:45 PM

*801 Crawford Street, Portsmouth, Virginia 23704
Phone: (757) 393-8836 • Fax: (757) 393-5223*



CITY OF PORTSMOUTH WETLANDS BOARD

PUBLIC HEARING

April 2, 2025

3:30 PM

6th Floor Conference Room

City Hall Building, 801 Crawford Street

AGENDA



A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF THE MINUTES FROM FEBRUARY 5, 2025

D. APPROVAL OF THE MINUTES FROM MARCH 5, 2025

E. PUBLIC HEARING ITEM

JPA 2024-2634 – Application by D. Pringle, on behalf of T. Jones, to construct stormwater outfall structures to impact vegetated and non-vegetated tidal wetlands at 4600 Thornwood Street along Carney Creek, a tributary of the Western Branch of the Elizabeth River.

E. NEW BUSINESS

F. ADJOURNMENT



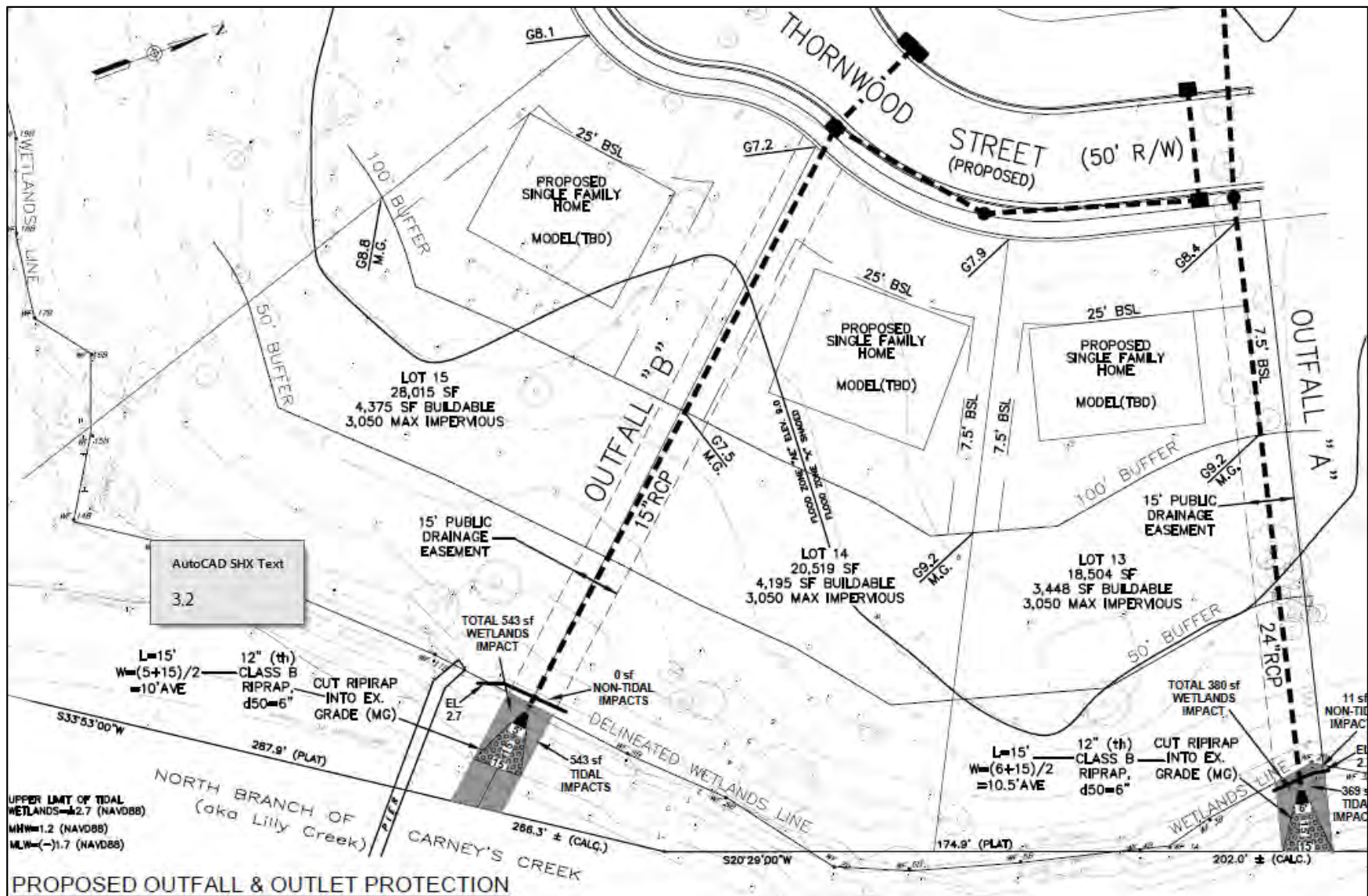












FISHERIES MANAGEMENT DIVISION EVALUATION, 5/27/2025

PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2025 recreational management measures for this species.

ISSUES: In December 2024, the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission Summer Flounder, Scup, and Black Sea Bass Board (Board) granted Virginia approval to conduct a 2025 February recreational fishery on the condition that any additional landings occurring during that season would result in a deduction of fishing days from the regular open season. During the February 2025 recreational black sea bass season, Virginia anglers landed 28,175 pounds of black sea bass. The 2025 regular recreational season will be shortened by nine days to pay back February landings.

BACKGROUND: Since 2018, the National Marine Fisheries Service has agreed to open federal waters for a February recreational black sea bass season for any state with an approved fishery. A condition of this approval is an agreement for the state to payback any February landings during the regular open season, which takes place between May and December.

Virginia participated in this special February recreational season from 2018 through 2021 and from 2023 to 2025. Permit holders (the captain or operator of the vessel) were required to report to the commission the number of trips they took, the number of anglers on board, and the number of black sea bass they landed and released. Permit holders were also required to call the Marine Police Operations Stations before each trip so VMRC staff could arrange to sample a subset of trips for fish lengths and weights. From these reports, staff were able to calculate total landings in February and close as many days as necessary from the regular season to account for the February landings.

In February 2025, 268 recreational black sea bass permits were issued to anglers and for-hire captains. Of those, 72 permittees reported taking 115 trips and landing 12,817 black sea bass. Using the average weight of 2.20 pounds per fish sampled by MRIP staff in 2025, staff calculated that 28,175 lbs. of black sea bass were landed during the 2025 February fishery.

Season adjustments to the 2025 season are based on average daily landings rates by wave from the most recent two years (2023-2024) of MRIP landings. The average daily landings rate for each wave (a two

month period) was calculated using 2023-24 MRIP harvest data, by dividing the total weight by wave by the number of days the wave was open. A closure of nine days in wave 4 (July-August) is expected to result in savings of 31,133 pounds. The regular season was closed by eight days in 2024 to account for February 2024 landings, so only one additional day will need to be closed from the season in 2025. The current regular recreational black sea bass season runs from May 15 to July 15 and from July 27 to December 31. Last year, the season was closed July 27-August 3. Closing August 4 as well will account for this year's February payback, making the 2025 season May 15 to July 15 and August 5 to December 31.

At their February 10, 2025, meeting, the VMRC's Finfish Management Advisory Committee (FMAC) agreed that Virginia should maintain the July-August closure for payback, though the total amount of February landings were not available at the time of that meeting. The ASMFC Black Sea Bass, Summer Flounder, and Scup Technical Committee is in support of Virginia's methodology and staff recommendation, and the Summer Flounder, Scup, and Black Sea Bass Board of ASMFC approved the staff recommendation unanimously.

Staff has received no public comment at this time.

STAFF

RECOMMENDATION: Staff recommends the Commission approve amendments to Chapter 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish the 2025 recreational management measures for this species.



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road
Building 96
Fort Monroe, VA 23651

Stefanie K. Taillon
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 May 8, 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, May 27, 2025, at the Virginia Marine Resources Commission, 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia 23651.

Written public comments on the proposals below or on items not on the agenda must be provided by 11:59 p.m., Thursday, May 22, 2025. Comments should be made at the following link: https://webapps.mrc.virginia.gov/public/fisheries/search_publiccomments.php or addressed to Public Comments, 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia 23651.

I. Chapter 4VAC20-950-10, “Pertaining to Black Sea Bass”

The Commission proposes to amend Chapter 4VAC20-950-10, “Pertaining to Black Sea Bass”, to establish the 2025 recreational management measures for this species.

The purpose of these amendments is to comply with the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan for this species.

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 WORKDAYS PRIOR TO THE MEETING DATE AND IDENTIFY YOUR NEEDS.

An Agency of the Natural and Historic Resources Secretariat

www.mrc.virginia.gov

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

“PERTAINING TO BLACK SEA BASS”**CHAPTER 4VAC20-950-10 ET SEQ.****PREAMBLE**

This chapter establishes minimum size limits, gear restrictions, and quotas for the harvest of black sea bass. This chapter authorizes the aquaculture of black sea bass and sets forth the conditions required for black sea bass culture. This chapter is promulgated pursuant to the authority contained in §§28.2-201 and 28.2-204.1 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4VAC20-950-10 et seq., which was adopted January 23 April 23, 2024 and made effective January 26 May 1, 2024. The effective date of this chapter, as amended, is May 1, 2024 June 1, 2025.

4VAC20-950-10. Purpose.

The purposes of this chapter are to (i) reduce fishing mortality in the black sea bass fishery to ensure that overfishing does not occur, (ii) promote the health of the spawning stock biomass, (iii) improve the yield from the fishery, (iv) distribute shares of the black sea bass quota to those fishermen who demonstrate a previous history of participation in the fishery, and (v) encourage safe black sea bass aquaculture practices.

4VAC20-950-20. Definitions.

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

“Annual quota” means Virginia’s 15.88% share of the annual coastwide commercial black sea bass quota managed by the Atlantic States Marine Fisheries Commission.

“Black sea bass” means any fish of the species *Centropristis striata*.

“Land” or “landing” means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

“Recreational vessel” means any vessel, kayak, charter vessel, or headboat fishing recreationally.

“PERTAINING TO BLACK SEA BASS”

CHAPTER 4VAC20-950-10 ET SEQ.

“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, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-950-30. Minimum size limit.

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 11 inches in total length. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches in total length, except as described in 4VAC20-950-70.

B. The minimum size of black sea bass harvested by recreational gear, including hook and line, rod and reel, spear and gig, shall be 13 inches in total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section, except as described in 4VAC20-950-70.

4VAC20-950-40. Gear restrictions.

It shall be unlawful for any person to place, set, or fish any fish pot in Virginia tidal waters for the purposes of harvesting black sea bass or to possess or to land in Virginia black sea bass harvested by fish pots which are not constructed as follows:

1. With two escape vents of 2-1/2 inches diameter circular dimension, or 2 inches square dimension, or 1-3/8 inches by 5-3/4 inches rectangular dimension.
2. With hinges or fasteners on one side panel or door, which measures at least 3 inches by 6 inches, made of the following materials:
 - a. Untreated hemp, jute, or cotton string of 3/16 inches or less diameter;
 - b. Magnesium alloy, timed float releases (pop-up devices), or similar magnesium alloy fasteners; or
 - c. Ungalvanized or uncoated iron wire of 0.094 inches or less in diameter.

“PERTAINING TO BLACK SEA BASS”**CHAPTER 4VAC20-950-10 ET SEQ.****4VAC20-950-45. Recreational possession limits and seasons.**

A. It shall be unlawful for any person fishing with hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing from a recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the vessel shall be responsible for that vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from May 15 through July 15 and August 4 5 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

E. From February 1 through the last day of February, it shall be unlawful for any person to possess or land any black sea bass harvested from a recreational vessel, unless the captain or operator of that recreational vessel has obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission (commission).

1. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide that captain's or that operator's Marine Resources Commission identification (MRC ID) number, the date of fishing, the number of persons on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the commission on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

a. It shall be unlawful for any permittee to fail to report each trip where black sea bass were targeted, whether black sea bass were harvested, released, or not caught, by March 15 of the current calendar year.

b. It shall be unlawful for any permittee who did not take any fishing trips to target black sea bass in the February recreational black sea bass season to fail to report lack of participation by March 15 of the current calendar year.

“PERTAINING TO BLACK SEA BASS”

CHAPTER 4VAC20-950-10 ET SEQ.

2. It shall be unlawful for any permittee to fail to contact the Law Enforcement Operations at 1-800-541-4646 before or immediately after the start of each fishing trip. The permittee shall provide the Law Enforcement Operations with the permittee's name, MRC ID number, the point of landing, a description of the vessel, estimated return to shore time, and a contact phone number.

3. Any permittee shall allow the commission to sample the vessel's catch to obtain biological information for scientific and management purposes.

4VAC20-950-46. Directed fishery and bycatch fishery permits.

A. It shall be unlawful for any person to participate in the commercial black sea bass fishery or to possess, harvest, or sell black sea bass, except as described in 4VAC20-950-60 and 4VAC20-950-70, without first qualifying for and obtaining either a directed fishery permit or a bycatch fishery permit from the commission, as described, respectively, in subsections B, C, and D of this section, unless that person meets the requirements described in 4VAC20-950-48.2.

B. Any person who qualified for a directed commercial black sea bass fishery permit, as of January 1, 2003, by satisfying all the eligibility criteria listed in this subsection shall remain eligible for that permit, unless that person permanently transferred all that person's shares of the directed fishery quota.

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License in addition to a federal Black Sea Bass Moratorium Permit; and

2. That person shall have landed and sold in Virginia at least 10,000 pounds of black sea bass from July 1, 1997, through December 31, 2001.

C. Any person who meets the eligibility criteria of subsection B of this section but no longer meets the requirements of subdivision B 1 of this section shall remain eligible to transfer shares of that person's directed fishery quota in accordance with 4VAC20-950-48.1.

D. A person shall be considered eligible for a bycatch commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License, in addition to a federal Black Sea Bass Moratorium Permit; and

2. That person shall have landed and sold in Virginia at least one pound of black sea bass from July 1, 1997, through December 31, 2001.

“PERTAINING TO BLACK SEA BASS”**CHAPTER 4VAC20-950-10 ET SEQ.****4VAC20-950-47. Commercial harvest quotas.**

A. The commercial black sea bass directed fishery quota shall be allocated 100% of the annual quota each year except the commercial directed fishery quota shall not include the amount of annual quota allocated to the commercial black sea bass bycatch fishery specified in subsection B of this section. When it has been announced by the commission that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any commercial black sea bass directed fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The commercial black sea bass bycatch fishery shall be allocated 40,000 pounds of the annual quota each calendar year. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any commercial black sea bass bycatch fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount of the bycatch fishery quota overage shall be deducted from the following year's bycatch fishing quota.

4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the commercial black sea bass directed fishery quota for the current calendar year. Any directed fishery permittee shall be limited to landings in Virginia in the amount of the permittee's individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed the permittee's individual fishery quota. In addition to the penalties prescribed by law, any overages of a permittee's individual fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the directed fishery quota.

“PERTAINING TO BLACK SEA BASS”**CHAPTER 4VAC20-950-10 ET SEQ.**

C. It shall be unlawful for any person harvesting black sea bass to possess aboard any vessel in Virginia waters any amount of black sea bass that exceeds the combined total of any portion of the Virginia permitted landing limit, as described in subsection A of this section, and the North Carolina legal landing limit.

D. It shall be unlawful for any person permitted for the bycatch fishery to do any of the following:

1. Possess aboard a vessel or land in Virginia more than 200 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, except as provided in subdivision 2 of this subsection;
2. Possess aboard a vessel or land in Virginia more than 1,500 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, provided that the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Longfin squid, and Atlantic mackerel on board the vessel; or
3. Possess aboard a vessel or land in Virginia more than 100 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, when it is projected and announced that 75% of the bycatch fishery quota has been taken.

E. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

F. An individual fishery quota, as described in subsection A of this section, shall be equal to a person's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A.

4VAC20-950-48.1. Individual transferable quotas.

A. Shares of the directed fishery quota, in pounds, held by any permitted fisherman in the directed fishery may be transferred to another person, and such transfer shall allow the transferee to harvest, possess and land black sea bass in Virginia in a quantity equal to the shares of the directed fishery quota transferred, provided that transferee satisfies the eligibility requirements described in 4VAC20-950-46 B 1.

B. Any transfer of black sea bass shall be limited by the following conditions.

1. Commercial black sea bass shares of the directed fishery quota shall not be transferred in any quantity less than 200 pounds.

“PERTAINING TO BLACK SEA BASS”

CHAPTER 4VAC20-950-10 ET SEQ.

2. No person permitted for the directed fishery may hold more than 20% of the annual directed fishery quota.

3. No transfer of shares of the black sea bass directed fishery quota shall be authorized unless such transfer is documented on a form provided by the commission and approved by the commissioner.

4. Any person who receives a permanent transfer of directed fishery quota but does not satisfy the eligibility requirements described in 4VAC20-950-46 B 1 shall remain eligible to transfer shares of that person's directed fishery quota in accordance with this section.

C. Transfers of all or a portion of any person's share of the directed fishery quota may be permanent or temporary. Transferred directed fishery quota shall only be used by the transferee for black sea bass landed in Virginia. Permanent transfers of shares of directed fishery quota shall grant to the transferee that transferred share of the directed fishery quota for future years, and the transferor loses that same transferred share of the directed fishery quota in future years. Temporary transfers of shares of the directed fishery quota shall allow the transferee to harvest that transferred share of the directed fishery quota during the year in which the transfer is approved. Thereafter, any transferred share of the directed fishery quota reverts back to the transferor.

4VAC20-950-48.2. Alternate vessel authorization requirements.

A. Any person possessing a directed fishery permit may authorize an alternate vessel to harvest, possess, and land any portion of that person's individual directed fishery quota, provided the following conditions are met:

1. The directed fishery permit holder has submitted a completed and notarized alternate vessel authorization form to the commission.

2. The alternate vessel named on the authorization form holds a federal Black Sea Bass Moratorium Permit and that alternate vessel either holds a Virginia Seafood Landing License or that alternate vessel's owner and operator holds a Commercial Fisherman Registration License.

3. The alternate vessel authorization has been accepted and approved by the commissioner.

4. The alternate vessel maintains copies of the alternate vessel authorization form and the permit of the directed fishery quota owner at all times while serving as the alternate vessel.

B. No authorization for an alternate vessel to land black sea bass shall extend for more than 60 days from the date the commissioner approves the authorization. After 60 days, any unused portion

“PERTAINING TO BLACK SEA BASS”**CHAPTER 4VAC20-950-10 ET SEQ.**

of directed fishery quota authorized for the alternate vessel shall revert to its directed fishery permit holder.

4VAC20-950-49. Reporting requirements.

A. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing vessel to fail to contact, within one hour of landing, Law Enforcement Operations to report that person's name and the name of the vessel, that person's permit number, the location where catch will be offloaded, and the estimated weight of the landing of black sea bass.

B. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing vessel to fail to contact, within 24 hours of landing, the Marine Resources Commission's Interactive Voice Recording System to report the name of the permit holder and the name of the vessel that landed the black sea bass, date of landing, the permit number and the weight of black sea bass landed.

C. Any buyer of black sea bass from a directed fishery permittee, a bycatch fishery permittee, or an authorized alternate landing vessel shall maintain records of all purchases for the current year and prior year and make those records available to the Marine Resources Commission upon request.

4VAC20-950-50. (Repealed.)**4VAC20-950-60. Black sea bass aquaculture facility permit.**

It shall be unlawful for any person to operate an aquaculture facility in which any black sea bass will be cultured, possessed, offered for sale, or sold without first obtaining from the Marine Resources Commission (commission) a black sea bass aquaculture facility permit for that facility. Any person in violation of any permit condition issued under this section, may have the permit revoked at any time upon review by the commission. If the commission revokes any person's permit for an aquaculture facility, then that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

4 VAC20-950-70. (Repealed.)**4VAC20-950-80. Penalty.**

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

“PERTAINING TO BLACK SEA BASS”

CHAPTER 4VAC20-950-10 ET SEQ.

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 meeting held in Hampton, Virginia on May 27, 2025.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION**

BY: _____
Jamie L. Green
Commissioner

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

Notary Public