

Virginia: At a meeting of the Accomack County Wetlands Board, held in the chambers of the Board of Supervisors on the 24th day of May, 2012, A.D.

Members present:

Mr. George T. Parker, Chairman
Mr. Earl B. Frederick, Vice-Chairman
Mr. C. Lee Davis
Mr. George H. Ward, Jr.
Mr. Gene Taylor (Alternate Member)

Staff present:

Mr. David Fluhart, Secretary
Ms. Gracie A. Milbourne, Recording Secretary

Others present:

Mr. Hank Badger, VMRC
Mr. Robert Cole, USACE

The meeting was called to order by Chairman George T. Parker, and opened to a public hearing at 10 a.m. All applications are approved for a one-year period from the date of this hearing, unless specifically noted. All applicants, speakers and representatives are sworn in before the Board on the following wetlands applications:

This Board is aware of and complies as closely as possible with the objectives of the Virginia Marine Resource Commission's Wetlands Policy of No Net Loss.

1). MINUTES

Mr. Davis made a motion to approve the minutes of the April 26, 2012 meeting as circulated. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Davis, Mr. Ward, and Mr. Taylor.

2). NEW BUSINESS

1). An application from Marshlight LLC, VMRC #2011-1495, for 1) dredging in a manmade boat basin; 2) replace a bulkhead with a return wall installed

channelward of an existing deteriorated bulkhead; 3) remove existing riprap and reinstall riprap; 4) install Bio Coir Logs with backfill; and 5) install a private pier for launching of kayaks on property at 7131 Piney Island Road, near Chincoteague, Virginia. TM# 30A6-A-55.

Ms. J. Stacey Hart of J. Stacey Hart & Associates Inc., appeared before the board to represent this application. Ms. Hart gave a brief history of the ownership of the property and asked for the approval of the proposed application as submitted.

Mr. Frederick asked questions about extending the riprap back into the gut. Ms. Hart explained that the riprap cannot be extended but needs to be removed and reinstalled to establish a living shoreline using the same stone that was not properly placed. She also mentioned that the installation of Bio Coir Logs would tie into the uplands to prevent further erosion and referred to the revised drawing dated April 2012 that incorporated the March 2012 drawing of plantings and the Coir Logs which showed the flag line, rip rap, kayak pier and impact of 30 square feet of vegetated wetlands for clarification.

After a lengthy discussion, Mr. Taylor made a motion to approve this application as presented based on the drawings dated March 2012 and April 2012 which includes mitigation of 30 square feet of vegetated wetlands impacts for a sum of \$360.00. Mr. Davis seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Davis, Mr. Taylor, and Mr. Ward.

2). An application from Edward E. Wilson, VMRC #2012-0554, for the installation of a bulkhead structure with stone scour protection along an eroding shoreline on property located at Blackbeard Road, Captain's Cove, near Greenbackville, Virginia. TM# 5A3-1-1314 and 1315.

Ms. J. Stacey Hart of J. Stacey Hart & Associates, Inc. appeared before the Board to represent this application. Ms. Hart stated that Mr. Wilson plans to angle his bulkhead across both lots and tie in with his neighbors once they replace their gabion bulkhead with a vinyl bulkhead.

Mr. Fluhart advised the board that Mr. Wilson's neighbor, the Dills, will not have to come before the Wetlands Board because theirs is subaqueous.

After a brief discussion, Mr. Frederick made a motion to approve this application as presented based on the drawings dated April 19, 2012 and April 24, 2012 which shows the angle of the corners of the bulkhead and mitigation of 10 square feet of vegetated wetlands with those fees paid into the mitigation fund. Mr. Davis seconded the motion.

Ayes: Mr. Parker, Mr. Frederick, Mr. Davis, Mr. Ward, and Mr. Taylor.

3). An application from Gerry Negley, VMRC #2011- 1774, for the 1) installation of a bulkhead with two return walls; 2) installation of riprap toe protection along the face of the bulkhead; and 3) install two culverts behind the bulkhead to facilitate repair of the ditch/dike system along the property located at 14005 Tarkill Road, near Onancock, Virginia. TM# 90-A-25.

Mr. Jonathan Mudd of Mudd Marine Construction appeared before the Board to represent this application. Mr. Mudd asked for permission to build a low-profile wall and install 2-foot culverts and referred to the drawings. He agreed that he would do whatever was needed for the repair but was not sure of the flow rate for the culverts.

Mr. Robert Cole with the Army Corp of Engineers – Regulatory Branch - appeared and stated that he does not have a problem with the culverts as long as Mr. Mudd & Mr. Negley knows the proper size and calculations.

Mr. Davis disagreed with having a flow rate underneath the road when the only thing that can get through is what the pipe lets through.

A brief recommendation from Mr. Davis led to a motion to table this application to allow Mr. Mudd and Mr. Cole to get together and verify the size of the pipe and show it on a drawing along with any other information that Mr. Cole needs and eliminate the two 6" pipes going out to the bulkhead. Mr. Frederick seconded the motion.

Discussion after the motion began. Mr. Fluhart asked if the board would consider not tabling the whole project since there is an erosion problem on the face of the berm and continuing the culvert bridge project until the next meeting.

Mr. Davis withdrew his motion and Mr. Frederick withdrew his second after this discussion.

Mr. Hank Badger with Virginia Marine Resource Commission (VMRC) appeared before the Board and questioned how the board could give a partial approval of this project. Mr. Fluhart indicated that a partial approval has been given to other applications when a project can be done in two phases/parts.

Again, Mr. Robert Cole of Army Corp of Engineers stated that he does not have a problem with the culverts as long as an engineer provides the pipe size and calculations.

Mr. Mudd agreed to comply with any and all recommendations from this Board and the Army Corp. and acknowledged that a mitigation fee of \$2,880.00 was required.

After a lengthy discussion, Mr. Davis made a motion to approve this application pursuant to the revised drawings dated April 20, 2012 and received by VMRC on April 26, 2012 with the conditions that 1) the two 6" pipes be removed; 2) includes the rip rap toe in front of the bulkhead; and 3) the Army Corp of Engineers must approve the culvert

pipe size. Mr. Taylor seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Davis, Mr. Ward, Mr. Ward, and Mr. Taylor.

4). An application from Lee-Ann Fick, VMRC #12-0581, for the installation to permit a pier extension and open-side roof, an upwelling tank, and a floating upweller for commercial use along property located at 13348 Full Measure Lane, near Pungoteague, Virginia. TM# 99-1-A3.

Ms. Lee-Ann Fick appeared before the Board to represent this application. Ms. Fick asked for the approval of a pier extension and an upweller for an oyster aquaculture business that has been in existence for three years.

Ms. Fick explained that a 5-foot section was taken off the dock a couple of years ago and referred to the submitted drawings that showed the replacement of more than the 5-foot section, the installation of a tank upweller on the dock and a 20' X 8' floating upweller beside it.

Mr. Fluhart informed the board that all of this project is subaqueous of the Commonwealth and does not directly impact vegetated or non-vegetated wetlands between the mean low water mark and the high water mark, but because it has changed from a private pier to a commercial operation it was brought to this board.

Mr. Parker noted and read a letter of opposition from neighboring property owners, Mr. Lawrence and Ann Steiger. In summary, they objected to having a commercial aquaculture operation at this residential location due to direct view from their property, pollution to the creek, increase in traffic and noise.

Ms. Fick agreed to contact the Steigers to explain that this operation would be basically the same as it has been for the last three years with no additional traffic or noise

and will try to mitigate any issues they may have.

Mr. Fluhart passed out literature from the Attorney General regarding their opinion on wetlands, zoning and land-use for projects located on State-owned bottom land or the waters above them. In summary, this opinion does not give authority to Counties to approve or disapprove projects unless it affects wetlands and therefore gives authority to VMRC.

Mr. Steve Johnson, a property owner across Pungoteague Creek, appeared and spoke in support of Ms. Fick's project.

After a brief discussion, Mr. Davis made a motion to approve this application as presented. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Davis, Mr. Ward, and Mr. Taylor.

3). **OTHER BUSINESS:**

Discussion on the handouts regarding "**Guidance for Civil Charge Assessment**" was opened by David Fluhart. He distributed Section 28.2-1213 of the Code of Virginia which provides the matrix and factors used to determine the degree of impact and degree of deviation or noncompliance that are used by the Commission and made reference to the VIMS Center for Coastal Resource Management website that offers guidance for permitting agencies and provides answers to local wetlands boards regarding guidance in investigating wetlands violations. He stated that the *VIMS Guidance* can be used as a guide.

After a brief discussion, Mr. Ward made a motion to adopt the Guidance for Civil Charge Assessments as adopted by VIMS on March 27, 2012 and referenced as Section 28.2-1213 of the Code of Virginia. Mr. Davis seconded the motion. Ayes: Mr. Parker,

Mr. Frederick, Mr. Ward, Mr. Davis, and Mr. Taylor.

ADJOURNMENT:

Mr. Davis made a motion to adjourn at 11:45 a.m. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Davis, Mr. Ward, and Mr. Taylor.

Mr. George T. Parker, Chairman