

Wetlands Board

december 10, 2008

A. Roll Call

B. Minutes

1. November 13, 2008 – Board Meeting

C. Public Hearings

1. W-03-09/VMRC08-1290: Hunt – 10010 Sycamore Landing cont from 10/8/08
2. W-12-09/VMRC05-2245: Colonial Pipeline – maintenance project crossings
3. W-11-09/VMRC08-2028: Mershon – 500 Thompson Lane – dam alteration
4. W-10-08: Restoration Hearing - 500 Thompson Lane cont from 11/13/08

D. Board Considerations

1. Election of Board Secretary

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: December 10, 2008

TO: The Wetlands Board

FROM: Patrick T. Menichino, Wetlands Board Secretary

SUBJECT: Case NO. W-03-09 / VMRC 08-1290; 10010 Sycamore Landing Road

Mr. Donald C. & Carolyn L. Hunt (applicants) have applied for a Wetlands permit to install approximately 120 linear feet of riprap revetment to prevent future erosion along the shoreline located at 10010 Sycamore Landing Road. The property is further identified by James City County Real Estate as PIN # 0720400001. The project site in question is located on York River, a tributary to the Chesapeake Bay. The applicants have been advised that their attendance at the Wetlands Board meeting is highly recommended.

This project will involve the construction of 120 linear feet of rip-rap revetment. The revetment is proposed to be constructed using Class III rip-rap armor stone, installed overtop of Class 1 core stone, and filter fabric. The project will involve impacts to jurisdictional wetlands and it will also include impacts to upland areas not within the Wetlands Board's jurisdiction. The project as proposed will require the excavation of the upland area to create an acceptable 2.5:1 slope. Grading impacts to the RPA buffer extend land ward approximately 50 linear feet from existing elevation 4 (existing toe of slope).

Environmental Division staff visited the site on September 17, 2008, and met with the applicants and their consultant to review the project scope and potential impacts. The Virginia Institute of Marine Science (VIMS) has submitted a report concerning this application. However it should be noted that the impacts reported by VIMS are taken from the JPA and do not represent an actual field assessment.

Staff estimates the impacts for this project to be 720 square feet to the upper limits of wetlands within the Boards jurisdiction. Total fill impacts for this project are estimated to be 360 square feet to non-vegetated wetlands.

Staff agrees that the alternative approach (breakwaters) recommended by VIMS would protect the shoreline and also protect the vegetated wetlands that exists channel ward of the proposed stone revetment. This vegetated wetlands is slowly eroding and retreating landward. Staff discussed a breakwater option with the owners on September 17th, but unfortunately the owners preferred the stone revetment approach.

Staff's offers the following information, and guidance for the Boards consideration:

1. The applicant proposes to construct an armor stone revetment and grade approximately 7500 square feet of RPA buffer in order to achieve a 2.5:1 slope. The proposed revetment will tie into the existing armor stone revetment located on the adjacent property.
2. The shoreline along this stretch of the York River has experienced high energy wave attack during major storm events resulting in shoreline erosion.

3. There is no imminent danger to existing dwellings that may be caused by the shoreline erosion.
4. The applicants have submitted an RPA buffer modification planting plan that exceeds the County's requirements.

Should the Board vote to approve this application for a permit, staff recommends the following permit conditions be applied:

1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site.
2. The limits of clearing and grading shall be flagged in the field prior to the preconstruction meeting.
3. All vegetation to be removed shall be clearly flagged or marked with spray paint prior to the preconstruction meeting and approved by the Environmental Division (Division), prior to any land disturbance.
4. The proposed project will impact approximately 7500 square feet of Resource Protection Area (RPA) buffer. The RPA buffer modification plan submitted shall be revised to show the proposed species and locations for the (33) native trees, (33) native understory trees, and (198) shrubs proposed and shall be resubmitted to the Division for approval. The implementation of the RPA restoration plan shall be guaranteed by surety in a form acceptable to the Division and to the County Attorney and be submitted prior to the preconstruction meeting.
5. The armor stone proposed for this revetment is Class III, the core stone shall be a minimum size of Class A-I. Filter cloth shall be installed underneath of the core stone.
6. The Environmental Director reserves the right to require erosion and sediment control measures for this project if field conditions warrant their use.
7. Filter fabric shall be inspected by the Division prior to the placement of rip-rap.
8. The permit shall expire December 10, 2009. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the expiration date.

MEMORANDUM

DATE: December 10, 2008
TO: The Wetlands Board
FROM: Patrick T. Menichino, Wetlands Board Secretary (Secretary)
SUBJECT: Case NO. W-10-08 – Wetlands Violation at 500 Thompson Lane

Mr. Lee Mershon of 500 Thompson Lane, Williamsburg, Va. has been found to be in violation of the County's Wetlands Ordinance for unauthorized impacts to approximately 2,220 square feet of tidal Wetlands, on property described above and further identified by James City County Real Estate as PIN # 3610100005. The violation occurred in Wetlands identified as type: XI Fresh Water Mixed Community, adjacent to Gordon's Creek a tributary to the Chickahominy River.

Background Information

On April 16, 2008, the Secretary received a complaint concerning the possible filling of wetlands located on property identified as 500 Thompson Lane, Williamsburg, Va.

(Please review minutes of September 10, 2008 Board meeting)

On May 2, 2008, following an investigation the Secretary issued an administrative order to Mr. Mershon requiring that he submit a restoration plan to the County, for the removal of fill, trees and debris from within areas identified as CBPA and Wetlands.

(Please see May 2, 2008 letter attached)

On September 10, 2008, Mr. Mershon appeared before the Wetlands Board. The Secretary was sworn in by the Chairman and provided the Board with testimony that, a significant violation of the Wetlands Ordinance had occurred on Mr. Mershon's property. Following the Secretary's testimony, Mr. Mershon requested to speak and was sworn in by the Chairman. Following Mr. Mershon's statement the Board voted 4-0 in favor of holding a Wetlands Restoration Hearing on November 12, 2008.

On November 12, 2008, the Secretary requested a deferral of the restoration hearing because Mr. Mershon had on October 30, 2008, submitted a Joint Permit Application to the Board requesting approval for proposed wetlands impacts on his property. Because of the submission of the JPA the Secretary requested that the Board defer consideration of a wetlands restoration hearing until after the JPA could be considered. The Board voted to defer the case until December 10, 2008.

(Please review minutes of September 10, & November 13, 2008 Board Meetings)

On November 24, 2008, Staff along with representatives from Virginia Marine Resources Commission (VMRC) and Virginia Institute of Marine Science (VIMS) visited the site to review the JPA and proposed wetlands impacts. VIMS filed a report recommending that the wetlands be restored.

On December 10, 2008, The Wetlands Board denied the applicants request for the issuance of a wetlands permit and proposed tidal wetlands impacts.

Staff Recommendations

Staff agrees with the findings of VIMS and with their recommendations. Staff and VIMS both consider the onsite vegetated wetlands type; XI Fresh Water Mixed Community, adjacent to Gordon's Creek to be a valuable resource. Staff agrees that the wetlands impacted by the unauthorized activities must be restored.

Staff believes that the guidance found in the Wetlands Ordinance, in the Code of Virginia, along with the Commonwealth's Policy of "No Net Loss of Wetlands" is compelling in the case.

Staff recommends that the Board issue a Notice to Comply to the property owner ordering the submission of a Wetlands Restoration Plan, Restoration Narrative and Wetlands Monitoring Plan and to implement the same and complete the restoration of the wetlands, prior to May 30, 2009.

MEMORANDUM

DATE: December 10, 2008

TO: The Wetlands Board

FROM: Patrick T. Menichino, Wetlands Board Secretary (Secretary)

SUBJECT: Case NO. W-11-09 / VMRC 08-2025; 500 Thompson Lane

Mr. Lee Mershon of 500 Thompson Lane, Williamsburg, Va. has applied for a Wetlands Permit to fill and impact approximately 3,700 square feet of vegetated tidal wetlands to create a 3:1 fill slope on an existing dam embankment located on his property. The property is further identified by James City County Real Estate as PIN # 3610100005. The project site in question is located on Gordon's Creek, a tributary to the Chickahominy River. The applicant has been advised that his attendance at the December 10, 2008 Wetlands Board meeting is highly recommended.

Background Information

On April 16, 2008, the Secretary received a complaint concerning the possible filling of wetlands located on property identified as 500 Thompson Lane, Williamsburg, Va.
(Please review minutes of September 10, 2008 Board meeting)

On May 2, 2008, following an investigation the Secretary issued an administrative order to Mr. Mershon requiring that he submit a restoration plan to the County, for the removal of fill, trees, and debris from within areas identified as Chesapeake Bay Preservation Areas (CBPA) and Wetlands.
(Please see May 2, 2008 letter attached)

On September 10, 2008, Mr. Mershon appeared before the Wetlands Board. The Secretary was sworn in by the Chairman and provided the Board with testimony that, a significant violation of the Wetlands Ordinance had occurred on Mr. Mershon's property. Following the Secretary's testimony, Mr. Mershon requested to speak and was sworn in by the Chairman. Following Mr. Mershon's testimony, the Board voted 4-0 in favor of holding a Wetlands Restoration Hearing on November 12, 2008.

On November 12, 2008, the Secretary requested a deferral of the Restoration Hearing because on October 30, 2008, Mr. Mershon submitted a Joint Permit Application (JPA), requesting approval for proposed wetlands impacts on his property. The Secretary requested that the Board defer consideration of the Restoration Hearing until after the JPA could be considered. The Board voted to defer the case until December 10, 2008.
(Please review minutes of September 10, & November 13, 2008 Board Meetings)

On November 24, 2008, Staff along with representatives from Virginia Marine Resources Commission (VMRC) and Virginia Institute of Marine Science (VIMS) visited the site to review the JPA and proposed wetlands impacts.

On December 2, 2008, the Secretary contacted James M. Robinson, Dam Safety Program Manager with DCR, to discuss the status of Mr. Mershon's case. Mr. Robinson stated that Mr. Mershon had contacted Dam Safety about 2 weeks ago and was told that he (Mershon) "will need to hire a professional engineer licensed within the Commonwealth to complete and submit the required study to Dam Safety". Mr. Robinson added "if he is doing things onsite it is without State approval".
(Please see staff memo dated December 2, 2008)

Staff Report on the JPA

Environmental Division staff visited the site on November 24, 2008 along with representatives from VIMS and the VMRC to review the JPA and evaluate the proposed impacts.

This project will involve filling and grading approximately 3,700 square feet of vegetated tidal wetlands identified as: Type X1 Fresh Water Mixed Community. The amount of wetlands fill has also been determined to be 3,700 square feet. The applicant proposes to fill the wetlands in order to create a preferred 3:1 side slope on a dam embankment located on his property. The fill is to be placed within wetlands located adjacent to the downstream side of the dam embankment which is adjacent to Gordon's Creek, a tributary to the Chickahominy River.

VIMS submitted a report concerning this JPA which has been attached for your review. Their report does not support the granting of a Wetlands Permit in this case.

In considering this matter the Board should follow the guidance found in Sections 22-9 and 22-10 of the Wetlands Ordinance and the following section of the Code of Virginia.

Section 28.2-1308 of the Code of Virginia, as amended

Section 28.2-1308. Standards for use and development of wetlands; utilization of guidelines.

A. The following standards shall apply to the use and development of wetlands and shall be considered in the determination of whether any permit required by this chapter should be granted or denied:

1. Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed; and
2. Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed prior to July 1, 1972, in nonvegetated wetlands which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia outside of wetlands.

B. The provisions of guidelines promulgated by the Commission pursuant to Section 28.2-1301 shall be considered in applying the standards listed in subsection A of this section.

C. When any activity authorized by a permit issued pursuant to this chapter is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase of credits from any wetlands mitigation bank that has been approved and is operating in accordance with applicable federal guidance for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S.

cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed as the impacted site; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. (1972, c. 711, Section 62.1-13.3; 1982, c. 300; 1992, c. 836; 1996, c. 736.)

Staff Recommendations

Staff agrees with the findings of VIMS and with their recommendations. Staff believes that alternatives exist that would allow for improvements to the applicants dam without the permanent impacts to vegetated Wetlands adjacent to Gordon's Creek. Staff and VIMS both consider the onsite vegetated wetlands type; XI Fresh Water Mixed Community, to be a valuable resource.

Staff believes that the applicant has not met the requirements of the Division of Dam Safety. The applicant has not submitted the required engineering report and has not filed for the necessary permits according to Dam Safety Regulations. Staff contends that without the submission and review of the required engineering report, there is no way for the Board to evaluate the need for permanent impacts to vegetated tidal wetlands.

In addition any proposed impacts to vegetated wetlands would require onsite mitigation or compensation under the County's Mitigation/Compensation Policy and the JPA does not address that issue.

Staff believes that the guidance found in the Wetlands Ordinance, in the Code of Virginia, along with the Commonwealth's Policy of "No Net Loss of Wetlands" is compelling in the case.

MEMORANDUM

DATE: December 10, 2008
TO: The Wetlands Board
FROM: Patrick T. Menichino, Wetlands Board Secretary
SUBJECT: Case NO. W-12-09/VMRC 05-2245; Colonial Pipeline Corporation; Possible Pipeline Maintenance Sites

Mr. John Wolf of the Colonial Pipeline Corporation has applied for a Wetlands Permit to allow for possible tidal wetland impacts at four potential maintenance sites along the pipeline located within James City County. The specific sites will be determined after internal inspections of the pipeline have been completed. Wetland & Ecological Consultants, LLC, the authorized agent, has been advised that their attendance at the Wetland Board meeting on December 10, 2008 is highly recommended.

The four potential maintenance areas are identified as, the James River Crossing (Figure 1, Crossing 1), Halfway Creek Crossing (Figure 2, Crossing 3), College Creek Crossing (Figure 2, Crossing 4), Chickahominy River Crossing (Figure 4, Crossing 5). The application also includes a crossing at Powhatan Creek, but that location has been identified as non-tidal. The specific maintenance required within each area will not be known until inspections of the internal structure of the pipeline have been completed. The purpose of the project is to determine areas of potential problems along the Colonial Pipeline and to perform any repairs if necessary.

The application includes the following attached appendices. Appendix B is a copy of the original Wetlands Board Permit which expired in January 2008. Appendix C is a letter from VMRC authorizing an extension to their permit until December 2013. Appendix D contains Colonial Pipeline Corporation's erosion and sediment control measures along with the best management practices for pipeline maintenance activities. The potential tidal wetland impacts at each of the four areas could be 1800 SF. The applicant proposes to mitigate for any impacts by returning areas that have been disturbed to their original state by restoring original contours and seeding/ sprigging native wetlands species plants.

It is the staff's recommendation that the Board approve this application, with the following conditions:

1. Land disturbing activities will adhere to the standards indicated in the Joint Permit Application, Appendix B.
2. The applicant shall notify James City County's Environmental Division forty-eight hours prior to the commencement of any land disturbing activity.
3. The applicant shall restore wetlands to the original topographical and vegetative state after completion of land disturbing activities.
4. The placement of rip rap or revetment mats within tidal wetlands is not authorized by this permit.
5. A Wetlands Restoration Plan with surety guaranteeing the restoration, in an amount deemed satisfactory by the Environmental Division Director must be submitted and approved by the Environmental Division, for any land disturbing activity within jurisdictional wetlands.
6. The Colonial Pipeline Company must monitor any areas that have been impacted for a period of

two years after completion of any land disturbing activity. Monitoring reports shall be submitted to the Environmental Division annually. The Environmental Division will periodically inspect the impacted areas to ensure that proper restoration is achieved.

7. The permit will expire on December 10, 2009.
8. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to expiration date.