

**JAMES CITY COUNTY WETLANDS BOARD
MINUTES
December 10, 2008 - 7:00PM**

A. ROLL CALL

John Hughes - Chairman
David Gussman
Terence Elkins
Charles Roadley

ABSENT

William Apperson
Larry Waltrip

OTHERS PRESENT

Elizabeth Gallup - VMRC
County Staff

The responsibility of this Board is to carry out locally the Commonwealth policy to preserve the wetlands and to accommodate economic activity so as to prevent their despoliation.

B. MINUTES

The November 13, 2008 Board minutes were approved as written.

C. PUBLIC HEARINGS

1. W-03-09/VMRC08-1290: Hunt – 10010 Sycamore Landing continued from 10/8/08

Pat Menichino presented the following case:

Mr. Donald C. & Carolyn L. Hunt (applicants) 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 is located on the York River, a tributary to the Chesapeake Bay. The applicants were advised their attendance at the Wetlands Board meeting was highly recommended.

The proposed revetment is to be constructed using Class III riprap armor stone, installed ovetop Class 1 core stone, and filter fabric. The project will involve impacts to jurisdictional wetlands and impacts to upland areas not within the Wetlands Board's jurisdiction. As proposed, the project will require excavation of the upland area to create an acceptable 2.5:1 slope. Grading impacts to the RPA buffer extend landward approximately 50 linear feet from existing elevation 4 (existing toe of slope).

Environmental Division staff (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 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 sqft to the upper limits of wetlands within the Boards jurisdiction. Total fill impacts for this project are estimated to be 360 sqft to non-vegetated wetlands.

Staff agrees the alternative approach (breakwaters) recommended by VIMS would protect the shoreline and the vegetated wetlands that exist channelward of the proposed stone revetment. These vegetated wetlands are slowly eroding and retreating landward. Staff discussed a breakwater option with the owners on September 17, but unfortunately, the owners preferred the stone revetment approach.

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

1. The applicant proposes to construct an armor stone revetment and grade approximately 7500 sqft 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 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 sqft of Resource Protection Area (RPA) buffer. The submitted RPA Buffer Modification Planting Schedule shall be revised to show the proposed species and locations for the (33) native canopy trees, (33) native understory trees, and (198) shrubs and shall be resubmitted to the Division for approval. Implementation of the RPA Buffer Modification Planting Schedule 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 proposed armor stone for this revetment is Class III, the core stone shall be a minimum size of Class A-I and 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 riprap.
8. This 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.

Mr. Gussman stated he had observed extensive erosion along this portion of the York River and asked if Staff knew the specific rate of erosion.

Mr. Menichino stated that information was available through VIMS.

Mr. Hughes asked how adjacent property owners had stabilized their properties.

Mr. Menichino stated they were stabilized with revetments similar to what was depicted on the north side of the applicant's property.

Mr. Elkins asked if the possibility of a marsh toe reventment was suggested.

Mr. Menichino stated a breakwater and beach nourishment was suggested to protect the channelward wetlands but the applicant was concerned with the cost.

Mr. Roadley asked for clarification on the calculation of impacts from fill.

Mr. Menichino stated the revetment contained habitable voids so the impact was calculated by multiplying the sqft of fill by .5

Mr. Hughes opened the public hearing.

A. Donald Davis, Davis & Associates, P.C., representing Mr. Hunt, reiterated the purpose for the requested permit and stated the proposed restoration plan would stabilize the area with plantings indigenous to the area.

Mr. Hughes asked if the applicant had reviewed Staff's recommendations and stated that while VIMS recommended breakwaters, the Board could only review the presented application.

A. Donald Davis stated the applicant had not considered the breakwaters because they would not logically tie into what currently exists along the adjacent shoreline. He added that the applicant was willing to work with and follow all of Staff's recommendations for restoring the vegetation.

Mr. Hughes closed the public hearing as no one else wished to speak.

Mr. Roadley stated he agreed with the proposed revetment solution, as breakwaters might not be practical in such a small area.

Mr. Gussman stated the area had some of the highest erosion rate in the County so the proposed stabilization was necessary.

Mr. Elkins stated he would be supportive of the conservative approach such as that recommended by VIMS.

Mr. Hughes stated he felt the Board should try to be consistent in their decisions and since they permitted the stabilization methods for the adjacent properties he would support the proposed application for a similar revetment.

Mr. Gussman made a motion to adopt the resolution granting the wetlands permit for case W-03-09/VMRC-08-1290 with staff recommendations.

The motion was granted by a 3-1 vote.

AYE: Roadley, Gussman, Hughes, (3). NAY: Elkins, (1).

2. W-12-09/VMRC05-2245: Colonial Pipeline – maintenance project crossings

Mr. Roadley stated he conferred with council and although his employer, Williamsburg Environmental Group, occasionally worked with Colonial Pipeline, he was not involved in any of the cases, and it would not be necessary to recuse himself from sitting on this case.

Pat Menichino presented the following case:

John Wolf with the Colonial Pipeline Corporation 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 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), and 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 sqft. The applicant proposes to mitigate for any impacts and 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 riprap 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 the expiration date.

Mr. Hughes asked if there was any change in the application from the permit requested in 2005.

Mr. Menichino stated there was not, the applicant was requesting this permit because the original permit had expired.

Mr. Elkins asked if there was any damage from the previous application.

Mr. Menichino stated the applicant could address this issued but he believed they had only done an analysis on the pipeline under the original permit.

Mr. Hughes opened the public hearing.

A. Shanna Cahill, Colonial Pipeline, gave a presentation describing the pipeline, the maintenance requirements, and the application for the proposed maintenance.

Mr. Gussman asked the age of the pipeline and how it had been inspected in the past.

A. Shanna Cahill stated the pipeline was installed in 1963 and 1964.

Mr. Roadley asked about the operational life of the pipeline and if it had required maintenance in the past. He also asked if the 1-year expiration date was acceptable to the applicant.

B. John Wolf, Colonial Pipeline, described the methods of inspection, and stated the operational life was indefinite because of the inspections and maintenance.

C. Rick Whiteside, Wetland & Ecological Consultants, stated maintenance had been performed in James City County but not in tidal areas. He stated it would be preferable for the permit to run concurrently with the VMRC permit.

Mr. Hughes closed the public hearing as no one else wished to speak.

Mr. Roadley and Mr. Hughes asked staff if the expiration date could be extended.

Mr. Menichino stated the County Ordinance required an expiration date but it could be set by the Board and Staff would not object to the permit running concurrently with the VMRC permit.

All Board members agreed that due to the uniqueness of this permit they would support the extended expiration date.

Mr. Roadley made a motion to adopt the resolution granting a Wetlands Permit for case W-12-09/VMRC-05-2245 with an extended expiration date of December 31, 2013.

The motion was granted by a 4-0 vote.

3. W-11-09/VMRC08-2028: Mershon – 500 Thompson Lane – dam alteration

Patrick Menichino presented the following case:

Mr. Lee Mershon, 500 Thompson Lane, Williamsburg, Va. applied for a Wetlands Permit to fill and impact approximately 3,700 sqft 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 is located on Gordon's Creek, a tributary to the Chickahominy River. The applicant was advised that his attendance at the December 10, 2008 Wetlands Board meeting is highly recommended.

Background Information

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

(Re: 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. **(Re: May 2, 2008 letter in case file)**

On September 10, 2008, Mr. Mershon appeared before the Wetlands Board. The Secretary was sworn in by the Chairman and provided testimony that, a significant violation of the Wetlands Ordinance had occurred on Mr. Mershon's property. Mr. Mershon was also 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 wetland 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 Restoration Hearing until December 10, 2008.

(Re: Minutes of September 10, & November 13, 2008 Board Meetings).

On November 24, 2008, Environmental Division staff (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". **(Re: staff memo dated December 2, 2008)**

Staff Report on the JPA

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 sqft 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 sq ft. 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, (copy in the case file). 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 alternatives exist that would allow for improvements to the applicant's 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.

Mr. Hughes asked if this would be considered an after-the-fact permit since there had already been filling in the wetlands.

Mr. Menichino stated this JPA was part of resolving that violation.

Mr. Hughes opened the public hearing.

A. Jason Messersmith, Attorney for the applicant, stated he had just recently been retained by Mr. Mershon. Therefore, he was requesting a deferral to evaluate the situation and prepare a response to the issues raised by Staff.

Mr. Hughes asked if the applicant was pursuing a permit from the Department of Dam Safety so the Board would have the whole package to review at the next meeting.

Mr. Roadley asked Mr. Messersmith if he understood the required report and recommendations were the basis for determining the necessity of the JPA.

A. Mr. Messersmith stated he understood the necessity and they were planning to work with DCR to determine the requirements for the engineering report.

Mr. Hughes asked Mr. Messersmith if he thought he could resolve the issues with the state by the February Board meeting.

A. Mr. Messersmith stated he would diligently pursue that deadline.

Mr. Roadley asked Staff if there was ongoing erosion and if any measures should be taken in the interim to stabilize the area.

Mr. Menichino stated the stabilization of the area would be difficult because it was a tidal. He added that Staff would support the deferral only if it was for the purpose of the applicant obtaining a permit from the Department of Dam Safety.

Mr. Hughes stated the applicant's council had indicated they would proceed promptly with obtaining the required state permits.

A. Mr. Messersmith stated that was correct and that there was currently no ongoing work in the area.

Mr. Roadley stated he had no problem with the deferral.

Mr. Elkins stated he was concerned with the deterioration of the area and felt it was the responsibility of the applicant to prevent further damage to the wetlands.

The Board and staff discussed various options for stabilizing the area.

B. Lee Mershon, the applicant, stated the area would already be stabilized if the County had not stopped him from working. He stated he would pull the fill out of the wetlands, install silt fence at the toe of the slope, and plant rye grass to stabilize the area.

Mr. Menichino explained that Staff did not recommend temporary measures to stabilize the fill in the wetlands, was because the administrative order issued on May 2, 2008, called for the removal of the fill from the wetlands.

Mr. Hughes made a motion to defer the decision on case W-11-09/VMRC 08-2025, 500 Thompson Lane, and continue the case to February 11, 2009 in order for the applicant to secure the required permits from the Department of Dam Safety. In the interim, the applicant is required to pull back some of the fill in the wetlands, install erosion control measures, and stabilize the upland areas.

The motion was approved by a 4-0 vote.

4. W-10-08: Restoration Hearing - 500 Thompson Lane cont from 11/13/08

Since the public hearing on case: W-11-09/VMRC 08-2025, applicable to the same project, was continued to the February Board meeting, Staff requested that the Chairman open the Restoration Hearing and continue it to February as well.

Mr. Hughes opened the Restoration Hearing.

Mr. Roadley made a motion to continue the Restoration Hearing to February 11, 2009.

The motion was approved by a 4-0 vote.

D. BOARD CONSIDERATIONS

1. Election of Board Secretary

Mr. Elkins made a motion that Patrick Menichino continue as Wetlands Board Secretary for calendar year 2009.

The Board approved the nomination by a 4-0 vote.

E. MATTERS OF SPECIAL PRIVILEGE

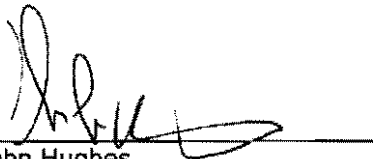
1. Presentation by Mr. Metcalfe – No-Wake Zone on Powhatan Creek

Mr. Craig Metcalfe gave a presentation for informational purposes and to request the Board's support in a petition to the Board of Supervisors for an ordinance to create a No-Wake Zone on Powhatan Creek.

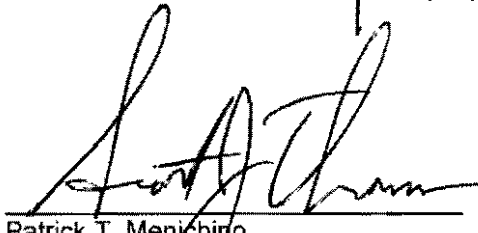
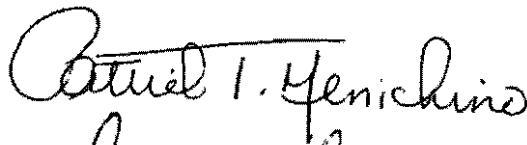
The Board members thanked Mr. Metcalfe for his presentation and asked Angela King, Assistant County Attorney and Staff to prepare a resolution on this request.

G. ADJOURNMENT

The meeting adjourned at 8:40 PM.



John Hughes
Chairman



Patrick T. Menichino
Secretary