

Legislation on Tidal Wetlands

- ▶ 2022 - HB 739 Shoreline improvements **tabled 10/0**...for purposes of a wetlands permit, a project shall be deemed not suitable for a living shoreline if the proposed work is to maintain or repair an existing shoreline improvement. **(This would not protect tidal wetlands that develop behind a failed bulkhead)**
- ▶ 2023 EQAC Legislative Proposal - Oppose legislation that weakens the existing tidal wetlands law, regulation, and guidelines. In particular, oppose existing tidal wetlands bulkheads from being exempted from the law. **(Bulkheads can be maintained without a living shoreline requirement as long as no tidal wetlands are destroyed)**

Tidal Wetlands

REGULATED SINCE 1972
BY CODE AND
CITIZEN WETLANDS BOARDS



Fairfax –(Regulatory) Wetlands Board

- Preserve and prevent the despoliation and destruction of wetlands while...
- Accommodating Necessary Economic Development
- No Net Loss of Remaining Wetlands

FCWB Permit Required for:

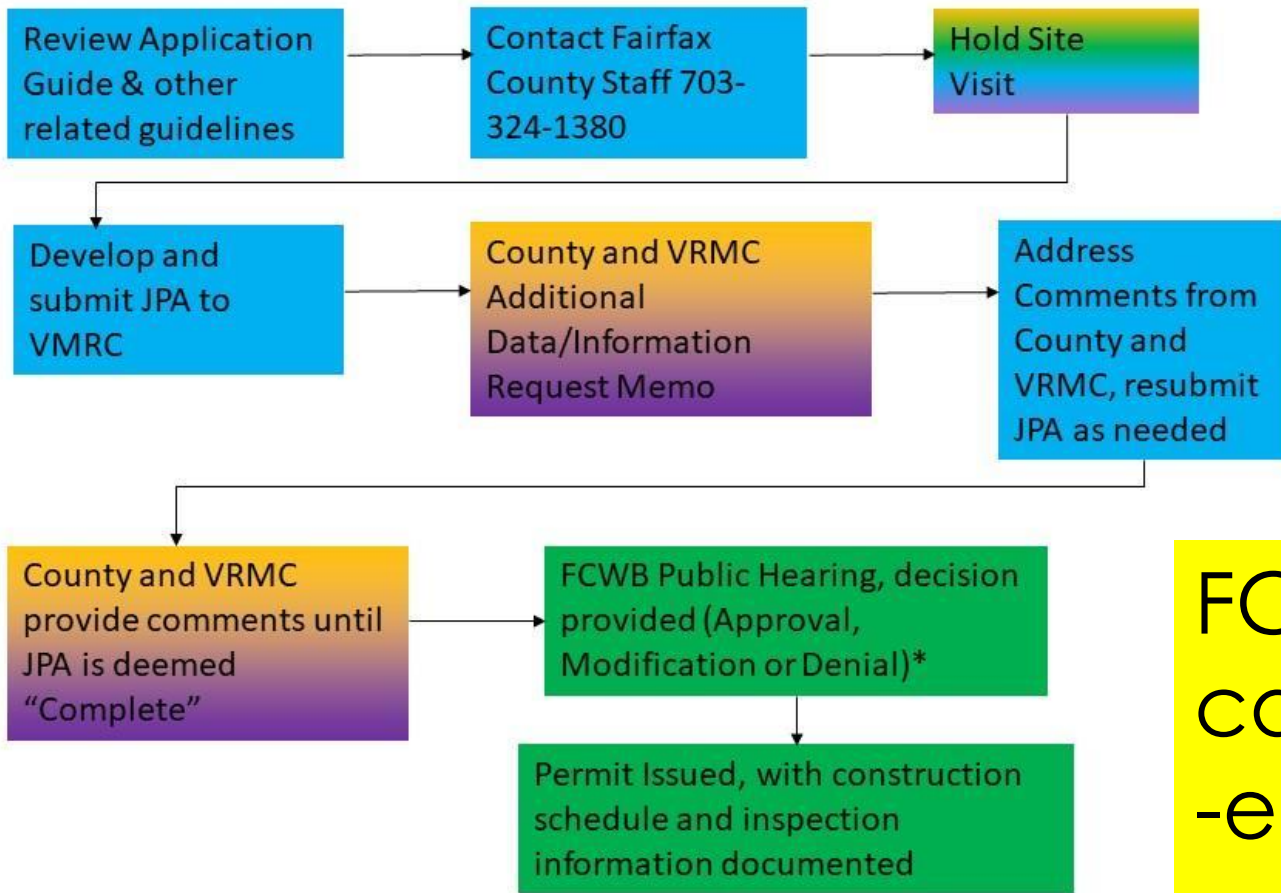
- Disturbance of Tidal Wetlands
- Erosion Protection
- SINCE 2020
 - Living Shorelines Required where suitable

2020 Law

Living Shorelines Where Suitable

- VMRC Draft Regulations
- FCWB Comments To VMRC
- VMRC Best Science Decider - Issues Guidance
- FCWB Develops Fairfax Specific Guidance
 - Public Comment -
 - Final FCWB Guidelines/Responsive Summary

FCWB Joint Permit Application (JPA) Process



Lead Party

*any appeals to FCWB decisions will follow VMRC appeal processes and timelines

Applicant and/or designated agent

Fairfax County Wetlands Board

FCWB Staff

VMRC Staff

FCWB ROLE:
case-by-case basis balance
-environmental, economic,
-public, and private
-benefit and detriment..

FCWB Guidelines –Comments/Responses

- Best Available Science
- Need for a Permit
- Maintenance
- Cost
- Property Loss

Tidal Wetlands Owners Object
Want the Law Changed to Provide
Grandfathering and More

MASSEY CREEK VIOLATION
HISTORY AND LESSONS

Permitee/Public Comment at Massey Creek Hearing

VIMS IS WRONG – IT IS NOT A WETLAND

WETLANDS OWNERS SHOULD BE ABLE TO DO WHAT THEY WANT

THIS TAKES TOO LONG AND IS EXPENSIVE

CONTRACTOR IS AT FAULT

PERMIT SHOULD BE APPROVED

Massy Creek History Summary

- ▶ Sands Purchased Property in 2014
- ▶ 2015 County Aerial photos show wetlands
- ▶ 2021 Unpermitted Construction obviated ability to assess wetlands area prior to construction.
- ▶ Stop work order issued – VIMS Report – permit applied for
- ▶ Discovered permittee does not own the Land This issue resolved later
- ▶ FCWB approved a modified permit to incorporate VIMs report elements
- ▶ Permittee
 - ▶ appealed to VMRC - Then withdrew the appeal
- ▶ Second permit application – excludes modified permit requirements
- ▶ Two Board members meet with applicant to assess permittee concerns over original permit and discuss options forward. Staff comments sent to Sands.
- ▶ May 2023 Staff report recommends rejection of second permit application as incomplete and unresponsive to comments
- ▶ Supplemental information submitted by permittee
- ▶ Permit Denied – Restoration Hearing to be Scheduled.

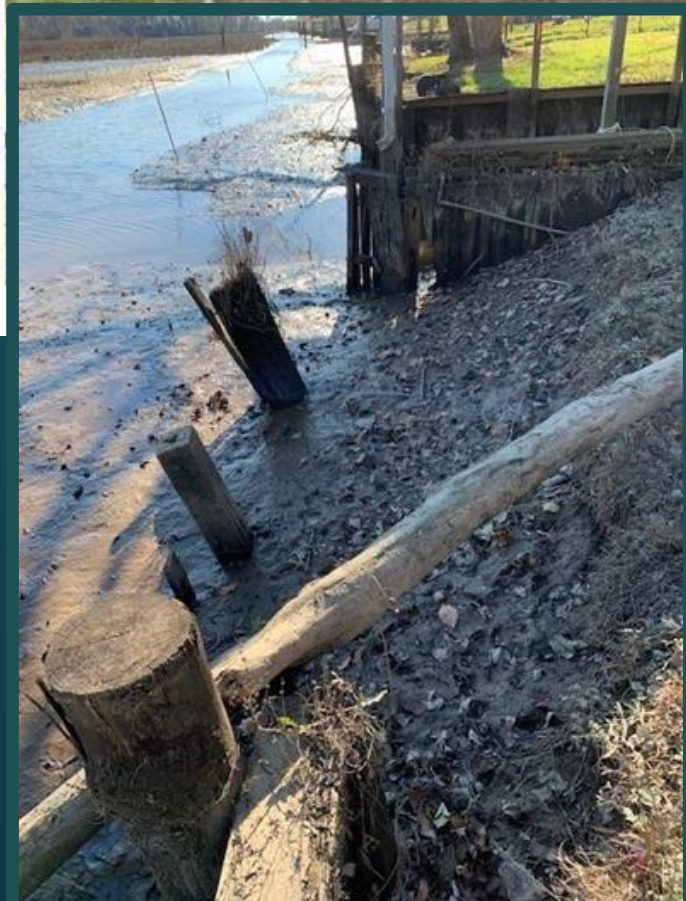


Near time of purchase

tidal wetlands
landward of
failed
bulkhead



Violation



Prior/During Violation
Jurisdictional Tidal
wetlands shown on
All sides of boathouse
and north Shoreline –
south shoreline lawn
receding from
bulkhead/wetlands
unclear



2021 During Violation
Jurisdictional Tidal
wetlands shown on
All sides of boathouse
and all shoreline
Applicant Disagrees

VIMs Report – September 2021

VIMS is the Commonwealth's science advisor and is the arbiter of best available science

- ▶ Previous bulkhead failed – vegetation is landward of its alignment
- ▶ The property to the north is a vegetated tidal wetland without erosion control structures
- ▶ Low sill recommended -However, a sheet pile sill alternatives (cut down of the installed
- ▶ Grade the bank and plant wetlands
- ▶ Careful grading to the south to protect tree
- ▶ Walkway around boat slip only to avoid shading

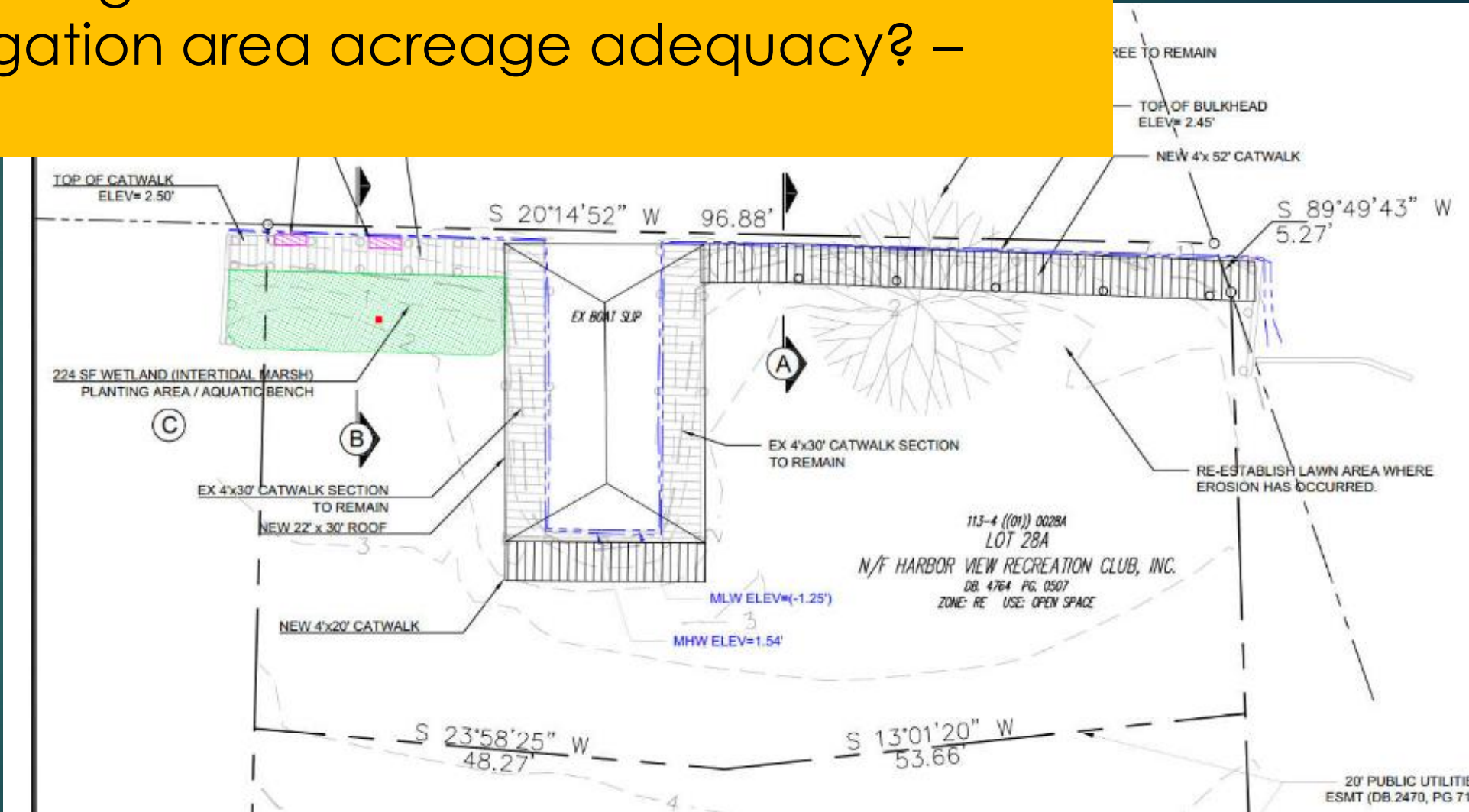
Two Years

Two Permit Applications

BOTH UNRESPONSIVE TO GUIDANCE

VIMS - STAFF - FCWB MEMBERS

New Application March 23 As Submitted Includes both previously rejected shoreline catwalks - Eliminates south wetlands mitigation area - Reduces tidal flow capacity - mitigation area acreage adequacy? - Protects Tree



FCWB Discussed

- ▶ Wetlands Area to be restored
 - ▶ Permittee Contends Yard maintained up to the bulkhead \ PE drawing shows wetlands
- ▶ Erosion Control – As recommended by VIMS or Sands
- ▶ Mitigation fee – mitigation on site preferred where feasible
- ▶ Tree Protection
- ▶ Public benefit/detriment – loss of wetlands
- ▶ Private benefit/detriment – 2.5% of property in vegetated wetlands

Range of Board Actions

- OPTION 1- GRANT THE PERMIT AS REQUESTED.
- OPTION 2 – GRANT A MODIFIED PERMIT. (REJECTED BY PERMITEE)
- OPTION 4 - DENY THE PERMIT – DO NOT ALLOW RESUBMISSION

- OPTION 5 - DENY THE PERMIT – ALLOW RESUBMISSION

Board did not impose:

- Civil Fees
- Bond
- Hire a Monitor
- Provide signed contracts

Board called on staff to
Schedule Restoration Hearing
That could require return to
1972 condition or pre-violation
condition

Clyde's Takeaways

- ▶ If you have tidal wetlands – particularly vegetative wetlands – you cannot destroy them
- ▶ VIMS is a reasonable arbiter of best available science and practical wetlands/erosion protection
- ▶ Wetlands Owners cannot should not be allowed to do whatever they want
- ▶ It does take too long and is expensive
- ▶ Contractors are often at fault and should be subject to penalties.
- ▶ Wetlands Owners are now much more aware – but not necessarily happy



Does EQACs Support?

COUNTY/COMMONWEALTH
TIDAL WETLANDS LAW

FAIRFAX WETLANDS BOARD