

**COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX**

MINUTES OF THE WETLANDS BOARD

DATE: Tuesday, March 6, 2023

TIME: 7:00 PM – 9:00 PM

LOCATION: Electronic Meeting via Zoom and In-Person

<https://us06web.zoom.us/j/85977107064?pwd=WFVId3pBT0RVSU9RaVhBSWhsVk5RUT09>
password 846446

Mount Vernon Magisterial District Office, 2511 Parkers Ln, Alexandria, VA 22306 -
Community Rooms 2 and 3

Wetlands Board Member Attendance*

Name	Present (P)/ Absent (A)	Name	Present (P)/ Absent (A)
Bryan Campbell	P	Aurali Dade	A
John Collins	P	Kim Larkin	P
R. Dean Costello	P	Clyde Wilber	P
Bert Cramer	P		

**All members participated remotely*

In Attendance

Katie Hermann Dept of Planning and Development, Fairfax County
Mark Eversole Virginia Marine Resources Commission

The meeting was called to order at approximately 7:00 PM.

1. Call to order and roll call

Clyde Wilber, Chair, called the meeting to order. Everyone introduced themselves and informally the roll was called. A quorum was present.

2. Public Hearing for JPA 2021-1648 for 10625 Greene Drive, Lorton, VA

County staff provided an explanation of the application which discussed that this joint permit application (JPA) requests approval to complete the construction of a partially built 160 ft long bulkhead replacement, with new pilings and whalers, a covered boat slip with pilings and metal hip roof, and catwalks. The new bulkhead is currently located on Tax Map 113-4 ((1)) Parcel 28A and will be connected to an existing bulkhead on the adjacent property to the south of the subject property. The adjacent property to the north has no erosion control structure. Natural fill has filled in between the new bulkhead and disturbed ground caused by the construction of this bulkhead.

The applicant seeks an after-the-fact approval from the Wetlands Board of this JPA on Parcel 28A, which is owned by Harbor View Recreation Club, Inc (HVRC). The partially constructed bulkhead was inadvertently built on HVRC's property by the Sands. The Sands have coordinated with HVRC and are in the process of having the entire shoreline segment along the property conveyed from HVRC to the Sands so that the Sands will eventually own the property subject to this JPA. This land conveyance is currently in-process at Fairfax County.

Since August 2021, the applicant has submitted several resubmissions of their joint permit application. An important item to note is that the applicant incorporated many of the Virginia Institute of Marine Science and The Virginia Dept of Conservation and Recreation's Shoreline Erosion Advisory Service performed a site visit in September 2021. VIMS's and SEAS provided recommendations to incorporate living shoreline design components into the final JPA. Although VIMS and SEAS recommended the addition of low sills that would tie into the bulkhead, the final JPA does not include any sills but commits to lowering the newly constructed bulkhead to just above the mean low water (MLW) elevation in two portions of the bulkhead that face directly to Massey Creek. The applicant noted that installing sills out into the waterway would negatively impact boat access to the Harbor View Recreation Club's marina.

Applicant has proposed the following:

1. Retain the "U" shaped boat slip with a covered roof in the center of the shoreline that will be referenced as the "boathouse." The boathouse also has 80 ft of bulkhead and catwalks surrounding it.
2. Lower two portions of the bulkhead (shown as purple in the image) so that water elevations between mean high water (MHW) and MLW can pass through the area. The two proposed lowered bulkhead sections are approximately 40 ft combined; the total length of the bulkhead is 160 ft with 80 ft of the bulkhead supporting the boat house.
3. Retain approximately 132 ft of catwalk which is constructed on top of the bulkhead. The proposed catwalk areas to remain are located around three sides of the boat house and the southern portion of the shoreline as it ties into the neighbor's bulkhead. The catwalk located on the northern side of the boathouse would be removed.
4. Remove the upstream portion of the catwalk.
5. Create three (3) landscaping areas on the landward side of the bulkhead. There are two RPA landscaping areas proposed, one on the northern end of the boat house and one on the southern end. The third planting area will be 212 sqft of native tidal wetlands vegetation with specialized plant species for intertidal marshes. One of the RPA landscaped areas includes a mature maple tree that will remain.

In the County staff memo, there were the following important points that were noted related to bulkhead stability, the living shoreline components, and the proposed fee calculation.

- Bulkhead stability – County staff made the acknowledgement that there is a common interest in the neighborhood to ensure the marina access is maintained through the Massey Creek waterway. It is possible that the bulkhead could provide some stability to the waterway, though this concept was not studied by the applicant. Staff notes that the bulkhead could provide some stability to the Massey Creek waterway and that this perspective is relevant to the Wetland Board's consideration of the JPA.

- Living shoreline - staff from VIMS and VMRC, as well as SEAS, were consulted about the potential to implement living shoreline solutions. These technical partners provided feedback on the greatest extent of living shoreline solutions available for this project, while taking into consideration the fact that the new bulkhead was already built. As stated above, while VIMS and SEAS recommended low sills to be placed underwater beyond the bulkhead, this solution would have incurred significant cost to the applicant and may have impacted the use of the Massey Creek waterway by members of HVRC. VIMS and SEAS acknowledged in their memo dated September 21, 2021, that low sills may not be feasible and therefore recommended that the bulkhead be lowered so that water could flow across the bulkhead and that only the three sides of the catwalk around the boathouse remain. As a result, the applicant updated the proposed JPA design to incorporate the recommendation to lower the bulkhead in two segments to allow water to flow above the lowered bulkhead and provide wetlands access to the Massey Creek waters. In a response to an applicant's submission, the County asked that the applicant remove all catwalks from the project design except for the three sides of the boathouse. This suggestion was made because covered tidal wetlands are unlikely to have the adequate sunlight required for tidal wetland vegetation to thrive. As a result, the applicant responded in their February 23, 2022, comment response letter that the removal of all catwalks would occur, except around the three sides of the boathouse. However, in subsequent submissions, portions of catwalks were added back into the proposed design.
- Fee calc - The initial fee is calculated in the following manner: 160 linear feet (shoreline) x 2 feet (channelward) = 320 sq ft of impact x \$28 per square foot = \$8,960. However, the applicant is proposing to plant 212 sq ft of intertidal marsh vegetation. Therefore, the proposed new planting area compared to the loss of tidal wetlands is equal to 108 sq ft (320 sq ft – 212 sq ft = 108 sq ft). This would result in a final fee of 108 sq ft of impact x \$28 per square foot = \$3,024.

Mr. Wilber asked if VMRC had any additional comments to provide, in which Mark Eversole declined and explained he had no additional comments.

A Wetlands Board member asked county staff to further explain how the vegetated wetlands were determined. In which staff explained that since a violation and land disturbance occurred here before staff could assess conditions on-site, the photographic evidence of wetlands plants observed on-site was used to make this determination. Additionally, the JPA sketches show approximately 2 ft of width from MLW and MHW, which would define county Wetlands Board jurisdiction, was shown. Also there was photographic evidence of the bulkhead failing with portions of the bulk missing and being overtopped with water.

Mr. Wilber then reviewed the options prior to testimony in this case because the current permit application includes areas that may not be owned by the applicant but rather by the HVRC. An application to County to transfer the HVRC property on the applicant was made and then halted. Verbal information has been received that an alternate survey indicates the applicant owns the property. However, formal information on this has been received for the record. Property ownership needs to be resolved on the record. As Board members listen to testimony, please consider the following options:

- Option 1 – Grant the permit as requested. This option cannot be approved because the record does not resolve the ownership issue as required by the County Attorney’s 90 day demand letter send in September 2022.
- Option 2 – Grant a modified permit – This option is possible if the Sands and the Rec-Club testify in the hearing tonight that the ownership/permission issue is resolved. Then appropriate conditions can be placed in a modified permit.
- Option 3 – Grant a modified permit with a Bond that could be forfeited if the conditions of the permit are not met. This option would include a requirement that the property issue is addressed.
- Option 4 – Deny the permit – Note that this would leave the violation in place and the FCWB could require restoration to the pre-development condition.
- Option 5 – Deny the permit without prejudice, allowing resubmittal.
- Option 6 – Leave the Hearing Open for up to 30 days with direction the applicant to provide more information prior to final action.

Mr. Collins asked if the Wetlands Board had ever issued a bond related to an application and Mr. Wilber explained that he did not think the Board had done this before.

Mr. Wilber then explained that it was time for the applicant to provide their statement. Mr. Wilber used this statement to swear in this speaker, Ms. Liviya Sand, and additional speakers *“State your name for the record and raise your right hand. Do you swear to tell the truth, the whole truth ,and nothing but the truth?”*

Ms. Liviya Sand provided the following statement:

“Good evening. I first want to thank county staff and the Wetlands Board for working with us through all the bumps in the road that have led us to our hearing tonight. We are appreciative of your time and grace as we navigated through all of the JPA requirements with county staff to finally be allowed to proceed to this stage.

I’d like to first address our project generally, then the specifics of our JPA, and finally the recommendations made by county staff in their report.

In accordance with MRC guidelines, construction of the bulkhead, boathouse, and catwalk at our property as proposed in our JPA are authorized because they are necessary to provide us - as property owners adjacent to navigable water – access to Massey Creek, and to promote our water dependent recreational interests as well as the interests of our neighbors and others who utilize the channel. The proposed construction is supported by the best available science as a complete living shoreline isn’t possible at our location. As I’ll note later, the proposed use also does not contribute to loss of tidal wetlands, and there are no other detrimental affects created by this proposal which would preclude it from approval under MRC guidelines.

Our ability to access the navigable waters of Massey Creek, to fish, store and launch our boat, kayak and paddleboard, have others visit by boat and be able to dock up, and even just walk along and enjoy our water front, requires the construction proposed in our JPA. The value of our property is based upon the waterfront area remaining usable and accessible. We pay an

increased tax rate as a waterfront property owner, which should ensure our property right to protect our land for these purposes.

The portion of Massey Creek adjacent our property is actually a man-made channel that was developed for the purposes of providing access to the Occoquan and Potomac rivers for our neighborhood. Our property and all other Massey Creek waterfront property owners, per the Declaration and Covenants of our neighborhood, were envisioned to own and have exclusive use of their waterfront property areas once the channel was created.

As you have seen from the pictures provided in the supplementary information form, for over 30 years a bulkhead has existed on our property and a boathouse was added shortly thereafter. Our property has always been maintained lawn up to the bulkhead, so we could walk right to the waterfront. Existing lawns and structures such as ours are generally grandfathered in and allowed to be maintained even if laws change. For example, the Fairfax County Website FAQs for RPAs specifically state that lawns or structures in RPAs that existed prior to the establishment of the RPA designation on that property can be maintained.

We embarked on this project because our bulkhead was failing and we had a responsibility to maintain the existing structures. We were told they could only be repaired by replacement. All of the tiebacks had broken and the wall on the northern part of our property was in disrepair. Continued deterioration would prohibit us from being able to access the water, infringing on our recreational interests and also jeopardizing the recreational interests of all those who use Massey Creek – continued erosion from our property would fill the channel and without a stable bulkhead, the large maple tree on the southern part of our property could fall into the creek blocking it entirely.

The construction proposed in the JPA is the best approach to shoreline management at our property.

As was described in detail in our supplementary information form, a true living shoreline is just not possible at our location. There is an existing maple tree, a utilities easement, and 2 adjacent property owners that preclude us from being able to encroach on the property to do the grading that would be needed for a true living shoreline. Even if encroachment was viable, it would take away a significant amount of our property and preclude us from accessing the navigable water given the impassable mudflat that would be created. It is also impossible to extend the property forward and create a living shoreline that way, given how close the channel is to our property line. The few feet that exist between the channel and the shoreline is not sufficient space to implement a complete living shoreline in the current footprint, either. Most importantly, living shorelines do not provide sufficient stabilization in this area.

The mud/silt substrate that makes up our channel is extremely fluid and malleable. Further, tidal plantings are seasonal, providing no erosion protection in winter. A living shoreline alone would not provide the structure necessary to prevent erosion into Massey Creek, as evidenced by the pictures I provided of a neighboring property showing bank collapse due to the lack of vegetation on the muddy incline that exists between high and low tide. The channel also gets constant traffic from boats, creating wave activity that intensifies erosion. Living shorelines

would not be able to withstand these conditions. This is why properties without hardened structures on Massey Creek show significant erosion. Living shorelines just aren't feasible methods of stabilization here.

This is one of those situations recognized in the MRC guidelines where the best available science does not support a living shoreline. Bulkheading is necessary to sufficiently address erosion concerns due to the unique conditions of Massey Creek, the location of the property and the channel, and hydrological and geological shoreline factors. Even VIMS acknowledged after a site visit to our property that a true living shoreline approach may not be feasible, and they are correct.

However, we have included living shoreline elements to the maximum extent practicable as required by county staff. I'd now like to turn to our JPA to discuss them.

Our initial desire was a complete replacement in the exact same footprint as our previous bulkhead and boathouse. We also wanted a catwalk along the entire waterfront to cover what is now and has always been lawn. After consultations with county staff who did not approve this approach, we agreed to certain modifications, resulting in the current JPA. I'll address the project from North, upstream closest to the marina, to South.

At the insistence of county staff, we agreed to remove the catwalk and lower the bulkhead on the upstream part of our property to allow for water to flow on and off. We also agreed to plant pickerelweed in the appropriate wetlands area and RPA plants to create a buffer between the tidal plants and our yard.

These planting areas will function the same as a living shoreline, they will just be further stabilized by the remaining bulkhead underneath the water.

We note that this area, as well as the other area where the wall is proposed to be lowered, are both directly adjacent to each neighbor's lawn. These neighbors (here tonight?) may have valid concerns about how lowering our wall increases the risk of erosion to their own properties, and if so, we ask the board to please consider their input. Otherwise, we look forward to these planting areas adding an interesting element and attracting new wildlife to our yard. With this proposal, about 1/3 of our waterfront will change from lawn to a stabilized living shoreline. Turning to the boathouse. Given that we are waterfront property owners along navigable waters, the boathouse is the only way for us to store and launch our boat to access Massey Creek from our property. This is clearly an authorized form of construction under the MRC guidelines described above.

Now I'd like to turn to the other side of the boathouse. Our JPA continues the bulkhead in the same footprint as the previous wall. We also propose a catwalk on the entirety of this side and a planting area was added around our existing maple tree.

At the insistence of county staff, we also agreed to lower one section of the bulkhead on this side. I'll note that we are concerned that this will create erosion as the land behind the higher wall erodes down and out the space created by lowering the remainder of the wall, filling up the

channel and creating an unstable situation for our existing maple tree. But we were told to lower the wall in this area, so we did so to move forward.

The catwalk is one of the elements of this project that we are most excited about. As I have expressed since the beginning, we want a safe way to access the water. At no time did we, the homeowners, ever agree to remove the entire catwalk. We had originally wanted catwalk along the entire waterfront, as many of the properties in our neighborhood have. We currently have lawn up until the bulkhead so we have always been able to walk up to the water line. The catwalk will simply take the place of our existing lawn and provide a more stable point of access. Additionally, I feel that the catwalk is necessary for safety purposes over the area of the wall that county staff required us to lower. Without a catwalk, this would become a muddy slippery incline that would be dangerous for anyone walking up to it. My kids and their friends who want to check out the waterfront and go fishing and try to catch things with their nets will try to walk right down the bank to the water – I've seen them do it at virtually every waterfront we visit. If we have to lower the wall, the constant water flow from the tides will prohibit vegetation, like in the pictures I provided, and the area will become a slippery mudbank. I'm afraid that without a catwalk, when kids try to approach the water they will slip and fall into the creek.

This is also a serious concern in winter. We have a hill in our backyard that we sled down. It is right above the area that is proposed to be lowered. Even with the current flat space at the bottom of the hill, we've gone as far as the bulkhead. If that area is lowered, our flat space will eventually erode into a decline, resulting in the sleds going faster to the water. Without a barrier between the creek and our hill, I'm concerned that kids who aren't paying attention or who just aren't coordinated enough to bail out will end up right in the creek in freezing cold temperatures.

The mud in Massey Creek acts like quicksand and can create a suction so strong that you just can't get out. I know this because I once got stuck in the mud in our boathouse trying to remove debris and I couldn't get out, my husband had to pull me out. If any kids were to get stuck in this creek, especially in winter with freezing temperatures, and not be able to get out, that is a very dangerous situation. Even if we have to plant tidal plantings in that space and they survive, those plants will die off in the winter and the same concern will exist. At least the catwalk will provide a safety barrier both between the land and the water for anyone sledding down the hill to use their feet to stop against, but will also provide a cover for the muddy slope that will inevitably be created so the kids can easily access the water as they do now from our lawn. The catwalk will ensure that our waterfront remains safe and provide us with easy water access. I'd now like to address the staff report recommendations.

As stated above, the catwalk provides a safe and stable structure for my kids to access the water, rather than trying to do so amidst a bunch of tidal plants or a muddy slope, and also ensures a safety barrier between land and water when we are sledding down our hill in winter. Removing the catwalk and lowering the wall on the southern side present a safety concern to our children and anyone who visits our backyard. We respectfully request that this Board not implement staff's recommended condition of removing the catwalk. Please don't force us to create a dangerous environment that children will be drawn to, to their detriment.

Second, we believe that the calculation of a mitigation fee is improper. As noted above, this is a man-made channel. Since the channel was created, our backyard has always been lawn up to the water's edge. There has been no formal designation of wetlands on our property. Since no wetlands existed, none have been disturbed and none will be lost by the proposed construction. If no wetlands are disturbed or lost, no mitigation fee is appropriate. While I understand that one plant that is indicative to wetlands was found on one part of our property, one plant cannot automatically turn an entire yard into wetlands. Smartweed is a common weed in this area that invades many lawns outside of tidal wetlands, so it alone should be immaterial.

To the extent any mitigation fee is required, it should be completely offset by the new planting area which increases the amount of wetlands on our property from none to 1/3 of our shoreline. We ask that the board not require any mitigation fees.

Third, the recommendation to plant tidal plantings in areas where they will not survive is not supported by the 'best available science'. Tidal plantings are unlikely to survive in the area where the wall is not lowered, or even where the wall is lowered on the south side, given the shade provided by the catwalk and the tree and the rootbound nature of the soil. It is unreasonable to require us to spend money and time buying and planting plants that will not survive. It's also inappropriate as I've already said - we should be authorized to maintain the lawn and structures which existed prior to this new legislation.

Finally, we believe that all of the recommendations in the county staff report, if implemented, would leave us with no reasonable way to access the water from our property. Removing the catwalk and planting tidal wetlands plants all along the bulkhead would create an impassable area precluding us from accessing the water for any purposes, which should be a property right we have, and pay an increased tax rate for, as an owner adjacent to navigable water.

All these conditions, taken together, appear to rise to the level of a regulatory takings and are inconsistent with the VA Code section Limitations on Eminent Domain. As stated in Title 1 Chapter 2.1 Article 2, Section 1-219.1, the right to private property is fundamental and no law shall be passed by the State of VA whereby private property is taken for public uses without just compensation, and no more private property may be taken than is necessary to achieve the stated public purpose.

If all the staff recommendations are adopted, we will lose all of our currently usable waterfront property. We will have no safe way to access the navigable waters we are adjacent or to enjoy any water dependent recreational interests. These conditions are also not supported by the best available science. The public purpose here is to promote living shorelines and ensure no net loss of wetlands. No wetlands existed at our property so none will be lost regardless. However, at the insistence of county staff we have already agreed to plantings on 1/3 of our waterfront. That's a net gain of wetlands with just one plant, exceeding the public purpose of the living shoreline requirements. Creation of more wetlands to the detriment of usable waterfront decreases the value of our house and takes away our rights as waterfront property owners, all while serving no additional public purpose.

While none of us can control state laws, in implementing them the county and this board must read the requirements in a way that is consistent with the constitutional principle of eminent domain. Our proposed JPA strikes that balance. The staff report recommendations do not. We were also not aware of the property ownership discrepancies that exist for the shoreline, but they are working

For all the reasons I just described, we respectfully request that you approve our JPA without any of the conditions recommended in the staff report. We ask that if we are allowed to retain the catwalk, the Board also consider not requiring us to lower the wall anywhere but the one planting area on the northern side of the boathouse. Lowering the southern part of the bulkhead serves no purpose and can do more harm than good with the potential erosion problems it will create.

Thank you very much for listening and considering my statement. I am happy to answer any questions that you have.”

Shoreline Ownership – Mr. Wilber explained that a previous letter that was provided by the Office of the County Attorney asking the applicant to resolve the shoreline property ownership issue. Ms. Sands explained that they have an agreement in place with HVRC to complete this project once the legal transfer of this land is finalized. The HVRC representative confirmed for the Board that the land should be transferred before the work continues and wants to transfer this land to the property owners. A nearby neighbor, Mr. Kyle, who is leading the property transfer action that is impacting 5-6 properties along Massey Creek and the HVRC. He explained that the County’s Survey team approved the process that required additional surveys to show the accurate information and go through a re-plat and quick-claim process. Mr. Wilber had the applicant, HVRC and David Kyle agree to this.

Historical permits – previous permits were not located in county or state records for the old bulkhead and boat house, and the property owners have no record of permits. The current county and state regulations for wetlands were established in 1972. A discussion of the old bulkhead status was commented on by Mr. Wilber and the applicant. 2015 photos shown the bulkhead overtopped, but the applicant explains that this only happens at occasionally high tide events.

RPA Plantings – Mr. Wilber asked the applicant to verify/confirm that wetlands and the RPA planting area would consume about 1/3 of the property. And further that the planting area in the RPA and Vegetative Wetlands is 644 sqft or a little less than 3.5% of the total property. Mr. Wilber asked do you contend that as an owner of land in tidal wetlands and the RPA that calling for environmental protection of 3.5% of your property is an undo burden? The applicant confirmed because they don’t think it’s appropriate.

Tide lines – Ms. Larkin asked a question related to the tide lines. The applicant acknowledged that the tide has overtopped the old bulkhead. The JPA sketches agrees with this depiction. The applicant’s agent explained that the MLW & MHW lines on the JPA sketch are the tide lines without a bulkhead in-place. The applicant said that the bulkhead was only overtopped by high tide events and is not overtopped on a regular basis.

Wetlands Plants – a plant was found behind the new bulkhead and its identification was confirmed by VIMS, which was stated as such in their Sept 2021 letter “***The previous bulkhead had failed to the extend that wetland vegetation is found landward of its alignment. Of those species named in §28.3 1300, there is some Polygonum sp. (smartweed) present on site. Submerged aquatic vegetation (SAV) was observed adjacent to the project shoreline at a site visit on 8 September 2021.***” The applicant explained that they feel that only finding one wetland plant behind the new bulkhead shouldn’t result in the entire area being defined as a vegetated wetland.” Mr. Wilber clarified for the Board members that VIMS identified wetlands plants behind the new bulkhead. Mr. Collins asked if there was any additional information about the number of plants and the location of the plants. Mr. Wilber explained that VIMS identified this and they are scientific experts of tidal wetlands, and they were found landward of the new bulkhead. This is important related to their recommendations for the living shoreline components. Mr. Cramer stated that the Board’s role is not to adjudicate VIMS determination and to assess the violation and the permit based on what’s been submitted.

Erosion – Mr. Collins asked if there was any additional information about erosion. The applicant said that their adjacent neighbor to the north of this property is where erosion occurs.

Mr. Wilber allowed the applicant to provide a rebuttal to anything that was discussed. The applicant thanked neighbors for coming to the meeting, approximately 10 people from the public commented at this hearing. They asked that the HVRC be relieved of their violation.

Mr. Wilber asked the Board if members want to leave the public comment portion of this hearing open, and there was no support for this. The Board voted to close the public portion, with Mr. Wilber initiating the motion and with Mr. Cramer seconding the motion.

The Board had open discussions on the following topics:

- The land ownership
- Extent of living shoreline components in design
- Mitigation fee
- Erosion
- Safety
- Contractor Licensing
- Balance Economic and Environmental interests

Mr. Wilber called for a motion, and reminded the Board to consider the social, economic, physical and environmental impacts based on the oral and written testimony and the anticipated public and private benefit or detriment resulting from the project.

Modified permit with the following conditions was proposed by Ms. Larkin through a motion:

Based on oral and written testimony presented at this hearing, the anticipated public and private benefit resulting from this project will exceed the public and private detriment; therefore, I move that Wetlands Board approve this application Wetlands Board Permit #WETLD-2022-MV-00001 and Virginia Marine Resources Commission #: 21-1648 subject to the following conditions:

1. That the applicant shall meet the permitting requirements of all county, state and federal laws and regulations, including, but not limited to, the County's Chesapeake Bay Preservation Ordinance (CBPO), the Erosion and Sedimentation Control Ordinance and the Floodplain Regulations of the Fairfax County Zoning Ordinance;
2. The applicant is not required to pay a mitigation fee.
3. The applicant shall commit to the following conditions in a revised JPA Permit submittal certified and stamped by a professional engineer (PE):
 - Remove all catwalks from the JPA, except for the three sides around the boathouse and,
 - Include additional tidal marsh plantings where the catwalk does not exist to promote the growth of additional tidal wetland vegetation. These plantings shall include at a minimum all areas between surveyed Mean High and Mean Low Water not under the catwalk.
 - Provide a revised planting schedule that includes only native plants certified as appropriate by a Landscape Architect or Professional Wetland Scientists (PWS).
 - Revise the applicant property line to include the entire area of construction or provide documentation that permission for the project has been granted by any additional property owners in the area of construction.
4. Record the land conveyance from HVRC to the Sands in the Land Records of Fairfax County;
5. Properly maintain the plantings including debris removal, and replanting failed vegetation as necessary.
6. Property access must be provided to staff in order to inspect, and to collect photos before construction, immediately after construction and at one-year post-construction at MLW and MHW;
7. A pre-construction conference with the permittee, the engineer (PE) of record, the contractor, and a member of Fairfax County staff will be held on site within seven days prior to the commencement of the work and will include a discussion of the terms and conditions of the permit. Notice will be provided to staff for the days when construction is planned to facilitate inspection.
8. Before and after photos documenting all aspects of the project shall be obtained and included in the project completion certification required below.
9. At the completion of construction, the applicant shall provide a certification by the Professional Engineer of Record that the project has been completed in accordance with this permit.
10. The duration of the permit is for a period of 2 years. The Wetlands Board may grant additional time if a written request for additional time is filed with Fairfax County staff prior to the date of permit expiration with a suitable explanation for the need for delay.
11. Two years after certification that the project has been completed in accordance with the permit the applicant shall provide a certification by a Professional Engineer, Landscape Architect or Professional Wetland Scientists (PWS) that the wetlands plants have been properly maintained. If it is determined that less than 50% of the tidal marsh plants are surviving, then the applicant must undergo a replanting program to rehabilitate the area.

Ms. Larkin made the motion to approve the motion. Mr. Wilber seconded the motion. A final discussion regarding the location of proposed catwalks, which includes the “U” shape and for the southern portion existing now.

All Wetlands Board members voted to approve. The motion to approve the application was approved unanimously. There were no abstentions.

Mr. Wilber proposed a motion to close the hearing, Mr. Cramer seconded the motion. The motion was approved unanimously.

3. Meeting Minute Review and Approval

Katie sent draft meeting minutes for the November 29, 2022 meeting via email on January 6th. Mr. Wilber offered a motion to approve the November 6th meeting minutes. Mr. Wilber proposed to approve the meeting notes and Mr. Costello seconded the motion. The motion was approved unanimously.

4. Public Comment

The HVRC representative invited county staff or Wetlands Board members to explain regulations for the RPA and tidal wetlands. This request can be coordinated through County staff.

5. Adjournment

Ms. Larkin motioned to close the meeting, and Ms. Dade seconded the motion. The vote was approved unanimously.

The meeting adjourned at 9:12pm.