

## ACCOMACK COUNTY WETLANDS MINUTES OF AUGUST 22, 2019

At a meeting of the Accomack County Wetlands Board held on the 22<sup>ND</sup> day of AUGUST 2019 in the Accomack County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

### 1. CALL TO ORDER

#### MEMBERS PRESENT AND ABSENT

Wetland Board Members Present

Mr. Earl Frederick, Chairman

Mr. George Ward, Vice Chairman

Mr. T. Lee Byrd

Mr. Timothy Getek

Mr. Gene Wayne Taylor

#### Others Present:

Mr. G. Christian Guvernator IV, PE, Director Environmental Programs

Ms. Chontese Ridley, Environmental Programs Permit Specialist

Mr. Hank Badger, Virginia Marine Resources Commission (VMRC)

#### DETERMINATION OF A QUORUM

There being a quorum, Chairman Frederick called the meeting to order at 10:00 a.m.

### 2. ADOPTION OF AGENDA

Mr. Frederick stated that item number three, the minutes from the July meeting, were not ready yet so there would not be an approval for those minutes.

Mr. Getek asked if under "Other Business" he could talk briefly about Captain Cove's CERT meeting and environmental presentation. Mr. Getek also wanted to discuss a proposed Army Corps of Engineers workshop at Captain's Cove.

**On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to approve the agenda.**

### 3. OLD BUSINESS

#### A. Franklin Heinicke – VMRC# 2019 – 0881

4106 Channel Lane

The installation of two 10"x20' pilings in the intertidal zone. The property is located on Chincoteague Island, VA 23336, Tax Map# 30A4-34-12.

Mr. Chris Guvernator, Environmental Programs Director, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Guvernator said he wanted to give an update on the permit. Due to some of the revisions on the permit that were received the bulk of the work has been removed, and what is being proposed is not in the board's jurisdiction. He then showed some images and explained that in the revision the applicant is only going to be replace/install two pilings. He added that the staff determined that no permit would be needed.

### 4. NEW BUSINESS

#### A. Eloise E. Buckle Life Trust – VMRC# 2019 – 0034

To install approximately 315 linear feet of off shore quarrystone sill, to install 8 linear feet quarrystone marsh toe protection, and a 75 feet long private pier with a 10x20 feet "T-Head". The property is located in Onancock, VA 23417, Tax Map #84-A-78B

Ellen Grimes, (CRM, LLC), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Ms. Grimes said this was close to the Onancock boat ramp. She added that Mr. Henry Custis put in an application for a still and marsh toe protection that was approved by the board, and that Mr. Buckle wanted to do something similar. The only difference is that Mr. Buckle's sill would be greater in length and there is one little revetment of 8-12 feet up against the marsh toe behind the gap. Ms. Grimes then showed the board where the gap was in the drawings/images. She said they would be using class 1 and 2 stones and would be installing filter cloth above high water. Ms. Grimes noted that there was some existing marsh and that no fill would be put in.

Mr. Byrd said what Ms. Grimes said was correct. He stated the approved what Mr. Custis wanted to do because he wanted to create marsh, and was tired of losing it. The Buckles' are having the same issue, and that the area had lost 40 acres in his, (Mr. Byrd's), lifetime since the early 50's.

Mr. Frederick said this was also the cut bank for he Onancock Creek. He said he would be concerned for the portion of marsh that was not being protected. Mr. Getek asked where did the no wake zone start. Mr. Byrd said there was four, (grandfathered in), and pointed them out on the map. Mr. Byrd said this project needed to be allowed to protect the creek.

Ms. Grimes asked with Mr. Buckle living in Alabama if the permit could be valid for two years instead of one. Mr. Frederick said it could be done.

**On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (2) years) for Eloise E. Buckle Life Trust – VMRC# 2019 – 0034 to install approximately 315 linear feet of off shore quarrystone sill and to install 8 linear feet quarrystone marsh toe protection. The property is located in Onancock, VA 23417, Tax Map #84-A-78B.**

#### **B. Norman & Susan Colpitts - VMRC# 2019-0963**

##### **Royal Woods Lane**

To install approximately 164 linear feet of oyster castle sill with a 10 feet gap in the middle of the two long sections of sill, and approximately 83 cubic yards of fill. The property is located in Craddockville, VA 23420, Tax Map# 117-11-4.

Ellen Grimes, (CRM, LLC), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Ms. Grimes explained that this was previously an approved Group 2 Living Shoreline project, but due to a protest by an adjoining property, it fell out of the Group 2 criteria. Ms. Grimes showed where the Colpitts' property was located and pointed out the small cove that leads back to the adjacent property owner. The Coldpitts also own the vacant lot on the other side of them. She said there was a small, non-tidal, wetlands seep there that empties at the middle of that lot into the bay. The applicants would like to protect that seep and the marsh toe scar that has developed from the erosion.

Ms. Grimes said this would be an oyster castle project. She described them as cement legos that lock together. They are 12x12x10 and hollow inside. They plan to put up a wall of oyster castles into the return walls, and there will be a 10 feet gap every 100 feet to let water in. Ms. Grimes added that fill material would be put in behind it, (granular), and spartina alterniflora will be planted in that confined space. She mentioned some trees in the area that could be taken out to gain access within that area. Ms. Grimes said maybe to mats would be needed, but the only equipment really needed to do the work was a bobcat with forks. After about two years several marine animals would be covering the castles. Mr. Frederick asked if filter cloth would be used and Ms. Grimes responded yes.

Mr. Norman Colpitts, (property owner), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Colpitts said he wanted build the living shoreline to counter act erosion of the marsh on part of his property. He then gave some background information on his family and his support for the Chesapeake Bay Act. Added that he reached out to the state of Virginia's Shoreline Erosion Advisory Service program, (SEAS), whose job is to give information on coastal erosion, (What can and

cannot be done). It was recommended that he have a living shoreline constructed with a seal of granite boulders or oyster castle system would be an ideal way to rebuild marsh and to stop erosion.

Mr. Colpitts said his neighbors to the east signed off and had no issues with the project. His neighbors to the west, the Frisch's, thought the sand from the fill would migrate and close off access to the small channel that connects both properties to Craddock Creek. Mr. Colpitts scheduled a day and time to meet with Mr. Frisch, but Mr. Frisch did not show or reschedule. He did add that he did not believe that Mr. Frisch was protesting his project out of spite, but out of being afraid that it would fail and block the channel. Mr. Colpitts said he would agree to modify the plans if needed, and ask the board from approval on the scientific merit that projects like this have been successful.

Mr. Getek asked if the castles would be in a straight line, go up and down, or be a solid line. Ms. Grimes said they would be a solid line. Mr. Colpitts chimed in to talk about the benefit the fertile oysters would be to the area and that this would be a low damage project.

Mr. Guvernator said he would like to speak on the additional protest information that was received. Mr. Frederick reminded everyone that Mr. Frisch came to a previous board meeting with Mr. Colpitts not present. Mr. Frederick apologized for it, but said the board wanted to at least hear him. Mr. Colpitts said the thought that protest had to be submitted in writing 15 days before the hearing. Mr. Guvernator said he would speak on that. Mr. Frederick said that the and Mr. Getek had a question about the seep. He asked if there was appreciable sediment that would come out of a seep, and Ms. Grimes said no, just seeping water. Mr. Getek asked to conform that the seep was underground, and Ms. Grimes said yes.

Ms. Grimes showed a photo to the board and audience of a somewhat similar project and it was entered into the record. Mr. Colpitts spoke on the channel and that he did not believe the sediment would migrate to it and fill it in. Mr. Frederick said at the previous meeting Mr. Byrd asked Mr. Frisch what he had done to keep the channel open. Mr. Byrd said channels are made by going back and forth. Since it is solid area he did not see how it would fill in, but if it did, it would not be any more than what nature would do over time. Mr. Frederick said normal usage would keep it open.

Mr. Getek asked if there was any planned maintenance for the castles or if they were going to let them go to nature. Ms. Grimes said they were letting them go to nature, but if any were broken or cracked they would be replaced. Mr. Taylor asked if the spartina patens would hold better than alterniflora and Ms. Grimes said the patens had a different root system and would not grow where they wanted to plant them. Mr. Frederick if the proposed fill would go behind the gaps or just behind the castles. Ms. Grimes said just behind the castles. Mr. Frederick asked if she could think of any remedy to address Mr. Frisch's concerns. Keeping the sediment out of the 10 feet channel while the grass is established. Ms. Grimes suggested putting one row of blocks in and it would not be connected in the nesting fashion to the other blocks so they can be removed. Mr. Frederick said he was thinking of something more temporary like coir logs. Ms. Grimes said a 10 or 20 feet coir log could be staked across, and it would let water come in and out.

Mr. George Badger, (VMRC), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Badger said that he did not see any problems. Mr. Byrd asked if he coir logs would be removed. Ms. Grimes said they will remove themselves over time, but if they started to pull and pond in water, she would do something about them. Mr. Frederick asked if the planting plan included in the application, and Ms. Grimes said no. However, she did say that she would submit a planting plan.

Mr. Guvernator stood to speak about the paperwork that had been turned after the original application. The first item received was a protest/complaint objecting to the procedure that was followed during a previous board meeting where the complaintive was able to speak at length without the applicant being present. It stated that the application was incompletely advertised, there was no board motion to be considered at the time, the applicant/agent were not notified, and the adjacent property owner should not have been able to voice concern ahead of the applicant's presentation or presence at the meeting. Mr. Guvernator said he also received a formal protest that identified two negative environmental impacts: (1) Sand migration from the project site, and (2) closing the side creek mouth.

Lastly, Mr. Guvernator received some VIMS comments on the project. It talked about some different aspects of the project as follows:

- *Additional gaps at or near the landward ends of the oyster castle sill would allow for greater mobility of fauna into and out of the area at lower tides.*
- *project appears to be located east of the narrowest portion of the mouth of the cove*
- *Providing the proposed plants receive adequate sunlight (i.e. are not shaded by upland trees), they should stabilize the proposed nourishment sediment*
- *the volume of proposed sediment is small and unlikely to significantly impact the channel*
- *If concerns regarding sediment transport from the project remain, we suggest that plant densities could be increased near the gaps in the structure and/or sediment elevations within the project could be monitored*
- *If sediment is found to be reworked into the nearby system, we could evaluate the site at that time and discuss strategies for sediment containment*

Mr. Guvernator informed the board that the adjacent property owner was there to speak. Mr. Frederick opened the meeting up to public comment.

Mr. Walter Frisch, (adjoining property owner), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Frisch said that his issue was not with the oyster castles, but with the 83 cubic yards of fill. He like with that much fill it would not be an in and out job, and that tear up what is there then replanting with hopes that it would take. He added that if a bad storm were to come in before the pants took the water would move it. Mr. Byrd said he had not heard this from Mr. Frisch before, and thought that he was concerned about the transfer of fill into the channel. He informed Mr. Frisch that a planting plan and replanting was almost always suggested, and that there were rules on when it had to be done and when the plants would come back. He added that the owner/agent had a 3-5-year time period to study it and see what needs to be done. Mr. Byrd asked Mr. Frisch if this was offered would it change his mind. Mr. Frisch replied that if something happened in the meantime that he would not be able to get out.

Mr. Guvernator asked if it was just access through the channel or destruction of the existing wetlands that he was concerned about. Mr. Frisch said the project would have an impact on the wetlands. Mr. Byrd explained the process of disturbing wetlands to construct a project and how everything has to be put back to the original conditions, but he did tell Mr. Frisch that he understood is concern. Mr. Byrd then asked if putting the logs in to block any sediments that could possibly come through change his thoughts. Mr. Frisch said it did a little. He was then asked if there was there any method of getting the material down to the site that would ease his concerns. Mr. Guvernator chimed in to say an Erosion & Sediment Control plan could be requested to hold them accountable for returning the area to its original state. This would be taking it a step further by requiring certain measures to be done at the end of each construction day.

Mr. Byrd once again asked Mr. Frisch what could be done to ease his concerns besides not going forward with the project. Mr. Frisch said not to put the fill in behind the oyster castle. Mr. Byrd said that was not what they had just discussed. They discussed not ruining the marsh getting down to it to put in the castles. He then asked if there was something that could be put in that would stop the erosion from falling in. Mr. Byrd said the erosion was going to continue and that if nothing at all is done more and more marsh would be lost. Mr. Frisch suggested putting in the castles and not trying to create marsh. Mr. Frisch said 160,000lbs of dirt, (83 cubic yards of fill), would not all stay. Mr. Frederick said no, it all would not stay, but that it would be confined behind a concrete wall of oyster castles.

Ms. Grimes said she had some construction comments that she would like to make. She assured everyone that fully loaded dump trucks would not be back up into the marsh to dump fill material. Ms. Grimes said the project could be done in 1 ½ days. The fill would be stockpiled up by Mr. Colpitts house and it would be transported to the edge of the marsh by a track/wheeled bobcat. Mr. Frisch asked how many trips would it take and Ms. Grimes said she could not answer that question. She stated that if 83 cubic yards of fill was

not needed the applicant would not use that amount. Mr. Colpitts would only be putting in enough fill to raise the elevation to sustain the growth of spartina alterniflora behind the wall.

Mr. Ward asked about more openings/holes being put in and wouldn't it create more opportunity for the fill to get out of the impoundment. Ms. Grimes said yes and Mr. Frederick said suggestion came from VIMS. Mr. Ward said he liked the idea of using the coir logs and asked if they would be on both ends to buffer. Ms. Grimes said it could be done. He said if the ends and center were protected it would hopefully hold the fill tighter.

Mr. Getek asked, with the current seeping and erosion, if it had any effect on the channel over the last 10-20 years. Mr. Frisch said maybe, but after taking a boat through a few times it opens back up. Mr. Getek said he did not see this project being impactful enough to clog up the channel. Mr. Byrd said he liked the idea Mr. Ward had on putting the coir logs on the ends, and asked Mr. Frisch if that made him feel any better. Mr. Frisch said anything to contain the sand would make him feel better. Mr. Byrd asked if the project was going to be monitored by VIMS, repeated visits made, mats are taken up to make sure there's replenishment, there's a time limit, (3 years), and there is not complete restoration then the applicant will have to replant if this would make him, (Mr. Frisch), feel better. Mr. Frisch said anything to contain the soil would ease his concerns.

Mr. Taylor said with the coir logs everything is being done to contain the fill and less would go. He also added that the board promotes living shorelines, and that it was beneficial to everyone. Ms. Grimes went over what revisions needed to be submitted. She then asked if Mr. Frisch could submit in writing that he was happy and retracts his protest. Mr. Frederick asked Mr. Guvernator if Ms. Grimes' proposed planting plan was sufficient, and Mr. Guvernator said daily erosion and sediment control measure needed to be added. Mr. Frederick said that he could not ask Mr. Frisch to retract his protest.

**On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (2) years) for Norman & Susan Colpitts - VMRC# 2019-0963 to install approximately 164 linear feet of oyster castle sill with a 10 foot gap in the middle of the two long sections of sill, and approximately 83 cubic yards of fill with the following conditions:**

1. *Oyster Castles will go in before fill*
2. *Coir logs, (or equivalent), be placed behind the gap and ends*
3. *Fill will be placed upland, it will be managed daily with placement of the fill over the marsh, and it will be replanted if necessary. It will be monitored over a three-year period*
4. *Erosion & Sediment Control measures need to be followed daily so that the existing marsh has a chance to come back as it presently is*
5. *Drawing Modifications need to be submitted showing the following:*
  - a. *Required planting plan stating there will double and or triple planting where necessary*
  - b. *Installation of the coir logs*

**The property is located in Craddockville, VA 23420, Tax Map# 117-11-4.**

#### **4. OTHER BUSINESS**

##### **A. Seaview Street stop work order**

Mr. Guvernator placed a stop work order at the edge of Seaview Street in Captain's Cove related to unauthorized work that had been done in the board's jurisdiction. Mr. said some members of the Captain's Cove Home Owners Association came to him about some sand fill on Seaview Street. He went out and inspected it and thought he needed to talk to Mr. Guvernator about it. He sent Mr. Guvernator some photos and was told they needed to be taken at a better angle. Mr. Getek said he went back out on August 9<sup>th</sup> and noticed pilings had been put in what looked like vegetative wetlands. He took and sent the photos to Mr. Guvernator. Mr. Getek said the permit that was approved in 2015 said nothing about pilings or a bulkhead so he asked Mr. Guvernator if it could be some type of

maintenance. It was not. From there Mr. Governator issued a stop work order. Mr. Governator said that his office tries to avoid the issuance of those, however, this seemed appropriate for two reasons:

1. Appears to be in the tidal zone, which would have required a permit from the Wetland's Board
2. Impacted the re-plantings in the area and the maintenance of the riprap

Mr. Governator said he has heard back from the property owner/contractor and they have decided to pull out the pilings as soon as possible and restore the area back to the way it was. Mr. Getek asked about the fill and Mr. Governator said the original permit called for fill in that area. For the upland area research was still being done. Mr. Getek asked if a time had been given to have the pilings pulled up and Mr. Governator said nothing formal had been submitted yet. It was his assumption that it would be done that week, but that would be following up with a formal request. A mitigation plan would also need to be submitted.

Mr. Getek asked since the previous approved permit did not include a bulkhead would a JPA have to be put in for one and Mr. Governator said yes. Mr. Taylor asked when the fill was put in and Mr. Getek said it was noticed towards the end of July.

Mr. John Ward, (Captain's Cove), appeared before the Wetlands Board and was sworn in by Chairman Frederick. He said the rocks that had been put on the site were sitting in the bay and wanted to know who owned the water. Mr. Taylor said VMRC. Mr. John Ward said the rocks were trespassing if the state owned the water. Mr. Badger said it was owned by the Commonwealth of Virginia and that they were permitted, by the board in 2015, for a rock structure. A permit for the rocks were issued, but he was not sure whether or not the rocks were meeting the standard of what was approved. Mr. John Ward then asked if there was a rule that the rocks could only be 6 feet wide. Mr. Badger said he would have to check to see what was permitted. Mr. Frederick said the original drawings showed a 12-foot base on a slope. Mr. Ward asked if that was a new planting of grass and it was.

Mr. Getek said a low profile bulkhead was once, several months ago, talked about to protect the road, but nothing was applied for then this occurred. Mr. John Ward spoke on the beach fronts being washed away and that the lots being sold were in the water. Mr. Getek informed him that area was out the board's jurisdiction. It was suggested to Mr. John Ward to contact DEQ and the Army Corps of Engineers.

Ms. Grimes asked when was something going to be done about contractors doing illegal work. Mr. Getek asked if there was a repeat offender, doing work without permits, what was the remedy for it. Could the county suspend their operator's license or what other type of actions are taken instead of penalizing the people the contractors are working for. Mr. Governator said he would research it and get back to him. Ms. Grimes said he didn't think the county could do a suspension, but that the board of Contractor could. Mr. Frederick asked Mr. Badger if the Commonwealth could do. Mr. Badger said if it was in VMRC's jurisdiction there were civil penalties, (\$25,000 per offense), and civil charges, (\$10,000 per offense), that could go against the landowner, contractor or both. Mr. Frederick asked how common these happenings were. Mr. Badger said applications could be refused, but it was very rare.

## **B. Makemie Shoreline Stabilization Project Update**

Mr. Governator wanted to give an update on the project being there was confidence that it would be moving forward based on the board's previous actions on mitigation funds being used for that project. Next steps:

1. DRAFT Memorandum of Understanding under review to determine who does what throughout the course of the project.
2. Society contracting with engineer to complete design on their own and not from the county's perspective.
3. Submittal of JPA in the next 60 days

Mr. Governator added they were augmenting the design. Instead of having a solid wall with a gap in the middle there will be two offset walls. Mr. Ward asked if the board would be able to approve the

application being that the board was putting money into it. No one was sure and Mr. Guvernator said he would look into. Mr. Guvernator said the previous motion to use mitigation funds to create more tidal wetlands than what was there. A short discussion ensued on this concluding that it was the County's money and that they, (the board), should be able to approve it.

Larry Berger appeared before the Wetlands Board and was sworn in by Chairman Frederick. Said he gain a lot of education and commended Mr. Ward for posing the question of whether or not the board could approve a JPA for the Society if Wetland's Board funds were funding part of it.

**C. Captain's Cove CERT Meeting**

Mr. Getek said the meeting was held on August 3<sup>rd</sup>. It was a health and safety fair. He also mentioned that he presented some Environmental Programs Department materials. It was well attended and thanked Mr. Guvernator and Mr. Frederick for their comments.

**D. Army Corps of Engineers Meeting**

Mr. Getek said he attended a meeting in May in regards to how to delineate wetlands. There they asked if any community would like to have a meeting at their location. Mr. Getek said he was taking a survey to see how many people would like to attend one at Captain's Cove.

**5. NEXT MEETING**

The next Wetlands Board meeting is scheduled for Thursday, September 26, 2019 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac.

**6. ADJOURNMENT**

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to adjourn the meeting.

The meeting was adjourned at 12:16 p.m.

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Earl Frederick, Chairman

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Chontese Ridley, Environmental Permit Specialist