

ACCOMACK COUNTY WETLANDS MINUTES OF APRIL 27, 2023

At a meeting of the Accomack County Wetlands Board held on the 27RD day of APRIL 2023 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. T. Lee Byrd, Chairman

Mr. George Ward, Vice Chairman

Mr. Gene Wayne Taylor

Mr. Timothy Getek

Mr. George H. Badger

Others Present:

Ms. Chontese Ridley, Environmental Programs Permit Specialist

Mrs. Beth Nunnally, Environmental Planner II

Ms. Claire Gorman, Virginia Marine Resources Commission (VMRC)

Mr. Justin Worrell, Virginia Marine Resources Commission (VMRC)

Mr. Leander Pambid, Deputy County Administrator for Building, Planning & Economic Development

DETERMINATION OF A QUORUM

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

2. ADOPTION OF AGENDA

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

3. MINUTES

A. April 27, 2023

On a motion made by Mr. Getek and seconded by Mr. Badger, the Wetlands Board voted to approve the April 27, 2023 minutes.

4. OTHER BUSINESS

A. Julie Burke Extension Request- VMRC# 2021- 2389

Construction of a new bulkhead 2 feet in front of the existing bulkhead, located in Greenbackville, VA 23356 tax map# 5A1-1-935.

Ms. Nunnally, Environmental Programs, stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Nunnally said this project was approved in January 2022 and went over the project's description.

Ms. Nunnally also said there was no vegetated wetlands and that there was 90 square feet of non-vegetated wetlands caused by erosion on the back side of the bulkhead.

Ms. Nunnally said that Mr. Britton would like to extend the permit for six months.

Mr. Byrd added that there was still no vegetated wetlands on the property.

Mr. Byrd said the Board typically extends for one year and the extension was granted it would be for one year.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2021- 2389.

No one made a request to speak.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Badger asked when the existing permit due was to expire. (The existing permit expired in January 2023). Mr. Badger said this was after-the-fact and that it would have to be reinstated then extended.

Mr. Badger asked to hear from VMRC.

Ms. Claire Gorman, (VMRC), appeared before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Badger said the permit did not exist, because it lapsed in January of this year. He asked, in order for this to go forward, would it be correct to extend it. How would they get between January and now.

Ms. Gorman said since it had already expired, they generally request that a new application be submitted.

Mr. Badger asked if the current permit be reactivated and extended.

Ms. Gorman said that was not some they, (VMRC), typically did and did not have an answer.

Mr. Getek asked Ms. Gorman if they had made any exceptions for emergency or extreme circumstances, and she said they ask people to request the extension before their permit is due to expire.

Mr. Byrd told Ms. Nunnally to contact Mr. Britton about submitting a new application.

Mr. Byrd asked how submitting an application were nothing has changed would work.

Ms. Nunnally said that Mr. Britton could submit the same application, and that she would go out and do an inspection.

Mr. Justin Worrell, (VMRC), appeared before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Worrell said it was in the County's and the Board's purview to set a limit for their permit expiration.

Mr. Worrell said VMRC's recommendation, if they were going to extend permits as Clair mentioned, would be to make sure they have the request in writing prior to the expiration date. Extending a permit after it has expired would set a bad precedent.

5. NEW BUSINESS

A. Judd Brook Properties LLC- VMRC# 2022- 2580

Creation of a freshwater impoundments for timber preservation, sustainability, sea level rise and protection, and habitat creation located along the Machipongo River, tax map#(s) 112-A-21 & 112-A-22A.

Ms. Nunnally went over the project description.

Ms. Nunnally said the loss of 56.6 acres of salt marsh would be mitigated on site with the construction of 9.8 acre constructed tidal marsh. The proposed mitigation site, along with the diversion of fresh water from the Frogstool Branch to the impoundment, would also change the mouth to saltwater. This would bring tidal salt water upstream into the inland mitigation site.

Ms. Nunnally said if the project was approved it would require engineer stamped drawings and a Land Disturbance permit from Accomack County.

Ms. Nunnally added that at least 13 opposition letters had been received from the public and from multiple from federal agencies all in opposition.

Mr. Byrd stated that every letter had been read by the board and put in the record.

Mr. Jim Cahoon, Bay Environmental, appeared before the Wetlands Board on behalf of the applicant, and was sworn in by Chairman Byrd.

Mr. Cahoon said with him today was his co-agent Mr. Bill Nickel, Mr. Doug Davis, (professional wetland scientist), and Mr. Pete Burkheimer, (Virginia professional engineer).

Mr. Cahoon said he had worked on this project for seven years, he has owned Bay Environmental for 20 years and had 30 years of experience being a wetlands delineator.

Mr. Cahoon said the Frogstool Nature Preserve was a 691acre property on the Machipongo River containing commercially viable timber and marsh associated with the river.

Mr. Cahoon said their primary purpose for the project was to protect the value and the ongoing and future silvicultural of the timber operation. Adding that saltwater intrusion, due to sea level rise was causing ghost timber.

Mr. Cahoon said their secondary purpose was a resiliency project. He said Virginia and federal government agencies were spending a lot of money on resiliency. They were focusing on dike projects that abate sea level rise.

Mr. Cahoon said the Frogstool Branch waters were determined to be impaired waters by DEQ, but that their project would allow the water to be filtered through a robust emergent fresh water marsh.

Mr. Cahoon said their third purpose was to create and enhance prime nesting habitat for American Black Duck, Eastern Black Rail, and fowl/water birds.

Mr. Cahoon asked to read the following statement into the record:

The owners propose to privately fund and install a resiliency project that creates a freshwater impoundment to abate sea level rise and saltwater intrusion killing their valuable timber within the impaired upper Machipongo River. The project will convert an ailing tidal marsh into a diverse non-tidal emergent marsh. Direct impacts to wetlands from construction of the berm will be compensated onsite through creation of tidal and non-tidal wetlands from uplands. The primary purpose of the project is to protect the silvicultural operation. Other benefits include:

- 1. Prime nesting habitat*
- 2. Trapping of sediment and uptake of nutrients from the impaired fresh water*
- 3. Enhancing the diversity (When you have many hundred acres of the same habitat and you provided diversity with a different habitat, like a fresh water marsh, you have increased the overall functions and values of the overall system)*
- 4. Future Department of Wildlife Resources Wildlife Management Area*

Mr. Cahoon said the project proposes to construct a berm with water control structures. They were trying to put a fresh water wedge in front of the timber to prevent salt water intrusion and to protect the timber.

Mr. Cahoon said the berm could not be placed in the woods, because it would flood the pines.

Mr. Cahoon added that a Living Shoreline, as it was suggested, did not meet any of the purposes for the project.

Mr. Cahoon said there were two reasons why they chose the berm:

1. Elevation of freshwater inputs
2. Avoidance and/or minimization of impacts to lower marsh

Mr. Cahoon said this project was not unique and that there were numerous projects, (like this one), across the county.

Mr. Cahoon then went over the impacts for the project. They were proposing 7.17 acres of direct fill with the berm, and .87 acres of non-tidal wetlands. A conversion of 48.68 acres, (the impoundment area), of upper tidal marsh to freshwater marsh was also being proposed.

Mr. Cahoon said direct impacts to be compensated onsite and all the impacts were above mean low water except for the areas where the control devices were located. Meaning their project only had a small opportunity to impact normal tidal flow range.

Mr. Cahoon said there were a number of reasons why they felt the conversion impacts were self-mitigating:

1. Increased Resiliency
2. Water Quality Benefit of filtering the impaired fresh water through their impoundment before it discharges back into the Machipongo River.

3. Enhanced Wildlife Habitat
4. Habitat Uniqueness

Mr. Cahoon said a number of studies had been worked on to support this project. He then listed the agencies they worked with and also the studies/assessments that had been done:

- Wetland Delineation with U.S. Army Corps of Engineers Confirmation
- Forestry Stand Assessment
- Baseline Water Quality Assessment
- Mosquito Assessment
- Geotechnical Investigation
- Topographical Survey

Mr. Cahoon said a lot of money had been spent studding this to come to this application.

Mr. Cahoon said a lot of concerns had been raised and they were sensitive to them. Adding that many of them were discussed in the narrative of their application. They also had an entomologists state that freshwater impoundment would help to control saltmarsh mosquitoes, which travel more and carry more diseases.

Mr. Cahoon said the project site was less than 1% of the Machipongo River watershed, and fresh water flows would remain virtually the same from the project site once the impoundment reaches equilibrium. Meaning the impoundment would fill up then flow out of their outlet structures. They would not be diverting all the water Frogstool Branch. For the remainder, they had four to five other drainage ditches that come through their property out into the marsh.

Mr. Cahoon said they had a third party scientist come out and do the Water Quality Assessment.

Mr. Cahoon said they hired J.D. Hines, a geotechnical firm, to conduct a stability study within the soils which were found to be very acceptable.

Mr. Cahoon said one of the most common issues was flooding. He said there was a discussion on that in the application, but Mr. Pete Burkheimer would give additional insight on how tidal flooding would be effected.

Mr. Cahoon said additionally, as noted in their application, refracted wave energy off of their dike would have to travel over 800 feet across marsh, across Frogstool Branch, and across more marsh to affect their neighbor's to the west. Mr. Cahoon said that concern did not appear to be valid.

Mr. Cahoon said the adjacent property was 5-10 feet above mean sea level and the apex of their proposed berm was only 5 feet.

Mr. Byrd asked Mr. Cahoon, to confirm, there was a first right of refusal of \$451,000.00 after the project was completed.

Mr. Cahoon said not \$451,000.00. Right of refusal to sale of the property meant the State would have the ability to potentially purchase the property after the project was constructed.

Mr. Byrd asked if there was no offer or reasonable offer to do that now, and Mr. Cahoon said no.

Mr. Ward asked, after the fresh water built up, how long would it take for it to equalize so that it would be running out as fast as it was running in.

Mr. Cahoon said they anticipated removing the flash board risers during the summer season so it would be flowing out exactly as it was.

Mr. Cahoon said if they install the flash board risers in September by October they would be at full pull.

Mr. Cahoon said the intent, (with the fresh water conversion), was to place a pipe that takes up higher flows, not the base flow, of Frogstool Branch.

Mr. Taylor asked if the 48 acres was fresh water for duck ponds or fresh water marsh.

Mr. Cahoon said it would probably be planted marsh.

Mr. Taylor asked how deep the impoundment would be and Mr. Cahoon said 12-18 inches at the berm. It would be fresh water non-tidal.

Mr. Pete Burkheimer, (Civil Engineer), appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Byrd.

Mr. Burkheimer said this was his 54 year practicing as a Civil Engineer and his 50th year as a licensed engineer in the Commonwealth.

Mr. Burkheimer said he was semi-retired and that most of his work had been done in Southeastern Virginia and some in North Carolina.

Mr. Burkheimer said he was not an expert in anything dealing with tidal wetlands or non-tidal wetlands, and that his testimony to the board was on the narrow issue of flooding, (tidal flooding).

Mr. Burkheimer said it was his opinion that the filling on the one mile frontage of this project would have no impact on tidal flooding. Mr. Burkheimer then gave an example concluding that the level in which the tidal surface is going to rise would not really change, but there might be some slight timing changes with how quickly it moved up stream.

Mr. Burkheimer said the water would be creating a break in the ocean when high tide is reached. The high tide would then propagate up stream as any high tide would. That would not be changed in any way that could be statistically discern due to this project.

Mr. Burkheimer said this was a fairly generic/ordinary piece of coastline, in the sense of tidal performance. Adding that he did not see any hydraulic or hydrology mechanics, (his specialty), by which this would increase.

Mr. Burkheimer said it was his opinion that doing this would not help or hurt the situation. It simply would leave the tidal situation unchanged.

Mr. Badger said if there were hurricane tides or strong tides and wind that it would hit the berm and asked how it would affect the area.

Mr. Burkheimer said he did not have expertise in hydrodynamics of wave action. He said that his comment was about the static level of tidal flooding.

Mr. Cahoon showed Mr. Badger the small area that would be exposed out in the tidal marsh, and that the rest of it was inside of the wood line. The fetch was directed away from the property.

Mr. Getek asked to confirm that the average tidal range for the area was 2 feet, and Mr. Burkheimer said it was over 2 feet.

Mr. Byrd said it was closer to 3 feet from what he had been told and Mr. Burkheimer agreed.

Mr. Ward said he read somewhere in the papers (application) that it was 5 feet.

Mr. Burkheimer said in most places where he worked in the Mid-Atlantic region, it was a little as the high 2's to as high as 4 feet.

Mr. Bill Nickle, (Co-Agent), appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Byrd.

Mr. Nickle presented from a packet that he gave staff and the board members before the meeting started.

Mr. Nickle asked everyone to turn to page 2 of the packet.

Mr. Nickle said page 2 showed information from DEQ on the impairment of the Machipongo River by E.coli bacteria. Mr. Nickle added that the Machipongo was likely contaminated all the way to the bottom.

Mr. Nickle said there was a complaint that pollution could come down from their project could come down and get into the clam operation at Willis Wharf. He did not see how that would be possible.

Mr. Nickle said the other reason for wanting to do this project was when you have a river that's impaired with bacteria, and also hydrologically impaired by the Machipongo River Bridge and causeway, you have a prime candidate up the North Machipongo River to do some restoration and habitat work. Adding that the causeway was 6 feet above the marsh and blocked 88% of the tidal flow and the bridge let in 12%.

Mr. Nickle said he wanted to counter the opposing letters to the project with a quote from the EPA-Wetlands Protection & Restoration:

“Due to their high levels of nutrients, freshwater marshes are one of the most productive ecosystems on earth. They can sustain a vast array of plant communities that in turn support a wide variety of wildlife within this vital wetland ecosystem. As a result, marshes sustain a diversity of life that is disproportionate with their size. In addition to their considerable habitat value, non-tidal marshes serve to mitigate flood damage and filter excess nutrients from surface runoff.”

Mr. Nickle said that is what they were proposing to do.

Mr. Nickle wanted to talk about some of the favorable laws. Mr. Nickle said the Federal Government in 404.B.1 Guidelines of the Clean Water Act:

“Minimization of adverse effects on population of plants and animals can be achieved by using planning and construction practices to institute habitat development and restoration to produce a new or modified state of higher ecological value by displacement of all or some of the environmental characteristics.”

Mr. Nickle said the dominant existing environmental characteristic was mainly saltwater inundations were killing the existing environment in the project area.

Mr. Nickle said they wanted to upgrade the area, but there would be some ecological tradeoffs resulting in net loss, (as mentioned in a study).

Mr. Nickle said Governor Ralph Northam signed Executive Order Number Twenty-Four into order in 2018 stating:

“Empower individuals to reduce their risk to the maximum extent possible, state agencies should use their planning, grant-making, and legal authorities to empower Virginian residents to take individual actions to increase resilience of private property to natural hazards.”

Mr. Nickle said it was their property and in his opinion they were not bothering anyone nor were they a threat to anyone else’s property.

Mr. Nickle said the progress was that DEQ had forwarded their application to state advisory agencies for review and comment. They were expecting to hear back from them no later than December 31, 2022. If no significant concerns were raised by those agencies, in an effort to avoid duplicative permitting, DEQ was evaluating a permit waiver pathway - 9VAC25-210-220(B).

Mr. Nickle said this was with the understanding that the project would be reviewed and permitted by the US Army Corps of Engineers and VMRC.

Mr. Nickle pointed out the location of the proposed dike and said they were very careful to avoid features that were useful to wildlife. Noting they were staying away from the river and into the higher lower quality marsh.

Mr. Nickle said page 20 was a typographic picture showing an elevation of the Savage’s property at a 10. Mr. Nickle said he did not see how they would flood the Savage’s property due to their property being at a lower elevation than the Savage’s property.

Mr. Nickle said their property’s elevation was lower than 5 so it was the Savage’s property that was flooding them.

Mr. Nickle mentioned some other dike projects adding that nowhere at any time had they heard anyone say the dikes caused flooding.

Mr. Nickle said the dike was needed to stop the flooding and that the fresh water coming in would stop the destruction of the trees.

Mr. Nickle said they had nesting islands on the back side 1 meter high, which they intended to surround with 12-18 inches of fresh water.

Mr. Nickle said Duck Unlimited did a study that said if the flood water was more than a few hundred yards out to the nesting area, the predation dropped down 85-90%.

Mr. Nickle said it was 35 miles of landward interface for black ducks and black rails to nest.

Mr. Nickle said they were very sad to see the opposition, but that he thought the project would be good for the river.

Mr. Nickle read from a publication on pages 38 and 39 by the Center for Conservation Biology and the College of William & Mary on projects similar to theirs.

“Eastern Black Rail habitat requirements are a subtle mix of factors no longer common--or readily available-- in many places. In both tidal and non-tidal wetlands, they appear to prefer shallow water, dense vegetation, abundant invertebrates and seeds, some slope, and often an element of sheet flow. It is critical that partners rapidly restore degraded wetlands and/or develop managed or created wetlands with suitable conditions (perennial shallow water, with dense herbaceous vegetation) in salt and freshwater habitats, in order to achieve our population objectives.”

Mr. Nickle said he could not stand by these numbers, but the marsh acreage in Virginia was estimated to be 1 million. He added that their project was 60 acres and if you divided by the 1 million you would get 6 one hundred thousand. 60 acres over the hundred thousand, estimated to be in the Machipongo watershed, would be 6 ten thousands, and that was all they were asking for.

Mr. Nickle said they were not ruining it, but that they were going to change it to a freshwater herbaceous emergent marsh. The highest quality marsh there was.

Mr. Nickle said that he hoped the board would vote along the lines that were set by the Department of Environmental Quality.

Mr. Nickle said he they believed this should be a self-mitigating project, because of the public and private benefits so vastly outweighing the public and private detriment. Add that to him, there were no public or private detriments to the project.

Mr. Nickle said this was venue that was needed in Accomack County and it was a plan “B” to what was going on at the Chincoteague Refuge.

Mr. Nickle said the board, (not the wetlands board), were very rightly to consider whether marsh was going to be destroyed, but also to keep an eye out for necessary economic development. He said it should also be considered is what type of money could come out of this.

Mr. Nickle said the project would be a 1.5 million dollar gift to the County, one person’s property, every topographical feature of that property had been thoroughly examined by consultants of all kinds, and \$400,000.00 and six years had been spent on this.

Mr. Nickle said the property owner was willing to give a conservation easement and a first refusal.

Mr. Nickle stated this place would be a nature preserve that would benefit 200 – 250 species of birds and area mammals.

Mr. Nickle said the property owners would not be using the property to duck hunt. It was a project they were doing, because they were ecofriendly and they like wildlife.

Mr. Nickle said more money would come in from the issuance of hunting licenses, and he felt that was necessary economic development.

Mr. Nickle said he had spoken to Mr. Scott and they wanted this to be a refuge. They did not want to be hunting there, but added that his son might hunt there. However, there would be no public or commercial hunting there.

Mr. Byrd asked to confirm that there would be no gunning, and Mr. Nickel said he could not say there would never be any gunning. There are maybe 5-6 ducks shot per year.

Mr. Nickle also said that he hoped the state would make this place a refuge.

Mr. Nickle said they were trying to protect the timber and to clean up the pollution, but asked if they do not if there was reverse mitigation? He said there was no provisions under the law to pay them for protecting the trees or for the continuous pollution that they can clean up.

Mr. Byrd asked Mr. Nickle, to confirm, if he was suggesting if they do nothing that timber would be lost and wanted to know if they would be paid for it. Mr. Nickle said it was just a thought.

Mr. Nickle said if approved he did not see a whole lot of bad happening. If the project was a total failure they could do two things:

1. Open up the gates and let the salt water go back in
2. Sale the property

Mr. Nickel said they were asking for approval of the permit, to find it self-mitigating, to follow the same path already out there by DEQ, and to help them by asking the board above and federal government above to allow the project to go through.

Mr. Nickle said as far as in lieu fees, they could not pay it.

Mr. Nickle also stressed that this project would not be any cost to the County of Accomack or the state of Virginia.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2022- 2580.

Ms. Jean Savage stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mrs. Savage said she received a letter from Mr. Bill Nickel in February of 2020 and wanted to read from the letter:

“Why would you want to deny anyone anywhere the right to protect their woods, farm fields, yards, equipment, livestock, etc. from saltwater and erosion. We would not deny you that right.”

Mrs. Savage said it sounded like that is what was happening here.

Ms. Savage said that she lived less than a quarter of a mile away, and behind her property was the cove that branches off from the Machipongo River. When there are storm and full moon tides, it flows in and covers every bit of the marsh.

Ms. Savage where the duck line is located was surrounded by water and if digging was done there, since they had already had so many cruel tides, that the tide would swamp.

Ms. Savage said they live on the cove, (they have 3 properties on the west side of the berm), and that Accomack County had declared that all three homes were in the flood zone. In the 50 plus years they have lived on the farm they had experienced many storm and full moon related extreme tides. Some high with strong winds, wave action and some less violent, but they still came on to their property. They have had high tides in their chicken pin, dog pins, and near their barn. Those tides had been allowed to spread over the marsh areas to level out on both sides of the cove.

Ms. Savage said if the project was allowed to proceed, and the berm is put in place, she had no doubt it would block a great deal of the marshes that now take over some of that flow. It would be forced into the cove and on to their properties and do much damage.

Ms. Savage said she questioned, since the property owners of Judd Brook Properties do not live on the Shore, if any of them had witnessed the extreme tides that they see behind their property all the time.

Ms. Savage said when they, (applicant), first purchased the property there were duck blinds all around it, because they wanted to hunt it.

Ms. Savage said her other concern was the mitigation site. It touches their property on two sides, and on one side they have a historic site that the State gave them a number to register it, (less than 200 feet from the berm).

Mr. Carroll Savage stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Savage said he was positively against it and his main concern about the Judd Brook project was the flooding.

Mr. Savage said if the water cannot to do what it has done for years, (go into the marshes), the water will build up on them.

Mr. Savage spoke on the comment that misquotes would not be a problem, stating that he would like to see Mr. Nickel and Mr. Cahoon walk around the berm on an August day.

Mr. Savage said they, (his family), were on the front line where they were. He said they had fought many storms and hurricanes trying to keep their livestock out of the way and moving their equipment/boats back.

Mr. Savage said he wanted to speak on sportsmanship. Mr. Savage maybe about three years ago he was standing out by his Muscovy duck's pin, (they had to be pinned up during duck season due to the duck hunters not knowing the difference), and someone came out of the marsh to

shoot a duck flying over. The shells started falling on his tin roof and on him. Mr. Savage said that really upset him.

Mr. Savage said they also have clam beds, (they rent 4.4 acres of oyster land from the state). Mr. Savage wanted to know was there any insurance that if the project crashes and kills their oysters/clams. He added that young clams could not take fresh water.

Mr. Savage said he was also concern the berm could be breached very easily, that Judd Brooks would be getting all the water and no one else would have access to it, and that the project could affect their ancestral gave site.

Mr. Clifford Miles stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Miles said the Machipongo River was funny; tides out of nowhere. If anything was put there the river would back up. Mr. Miles said Mr. Nickel's spoke on compensation and wanted to know if the project were to fail if they, (the property owners), would be compensated.

Mr. Miles stated that half of Quinby was already in the flood zone, and if all of Quinby was in the flood zone their property values would go down. Mr. Miles also wanted to know if there would be compensation for that.

Mr. Keith C. Privett stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Privett started with thanking the Board for the opportunity to comment.

Mr. Privett said he had been assured that the board members had read all comments from the land owners and the government agencies, and that he had too. Mr. Privett said in doing so, he did not see any support for the project. From what he read, any idea that the proposed project would result in any habitat improvement have been debunked by the scientific experts.

Mr. Privett said he seen absolutely no need for the project, practically in the salt marsh. Mr. Privett said he could see long term negative effects from this proposal. He said the applicants have requested to destroy salt marsh, they want to excavate and move massive amounts of soil and spoils. Mr. Privett said that could not be done without major runoff and sediment entering the watershed.

Mr. Privett said by proposing to build the dike at a lower elevation, it would be exempt from the Virginia Dam Safety Act with no engineering or safety review. Mr. Privett said that scared him.

Mr. Privett said he spoke to Dan Miller, the of the Accomack Field Office Division of the Department of Shellfish Safety Virginia Department of Health, and Mr. Miller said the shellfish closure in that area was not due to poor water quality. Mr. Miller said it was, because they do not sample it.

Mr. Privett said he hoped that the applicant would consider upland alternatives and leave the saltmarsh undisturbed.

Mr. Privett ended with asking the Board to please deny this request.

Ms. Jennifer Young stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Young started with thanking the Board for the opportunity to speak.

Ms. Young said her family's property had been there for over 100 years and that it backed the river. She said she was not an environmentalist or ecologist so she relied on the experts.

Ms. Young said the Nature Conservancy, VIMS, and other organizations were strongly opposed to the project.

Ms. Young said she was not just there to voice her concerns for the families involved, but for the effects to the surrounding environment.

Mr. C.W. Savage stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. C. W. Savage said he was very much opposed to the project, and it seemed outrageous that they were even there considering something like that. 56 acres, 1 mile and ½ long, and it made no common sense.

Mr. Savage asked what was going to happen when the water could not go anywhere. If a storm or something terrible were to come where would the water go?

Mr. Savage they, (the applicant), bought in experts and Mr. Savage said he also seen himself as an expert when it came to this matter. He said there was not a bit of the land on either side that he had not walked on.

Mr. Savage said everyone had the right to do what they wanted to do on their own land when it did not impact someone else's. When you are doing something on your land that is illegal, will impact the way of life, the livelihood or property of someone else there were boards like the Wetlands Board to stand in to decide if it's right or could be done.

Mr. Savage said he was asking them to do the right thing and to think about how it would impact other people.

Mr. Savage said as far as the property went, (applicant's property), it was not made by man. It was made by God. There was not a berm on the Savage side or a dike that was causing their timber to go bad.

Mr. Savage said they brought a piece of property that had tidal timber on it, and it never had any economic value. Mr. Savage said he understood that they were trying to improve it, but when they are trying to improve their land to the point that it devalues/causes trouble or issues with someone else's that was not right.

Mr. Savage said the timber not growing much and dying off was not something abnormal. He said that it was something they see all the time.

Ms. Gwendolyn Shive stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Shive said her family lived along the Machipongo, and felt like more people should be made aware of this project. (Not just the ones notifications were sent out to)

Ms. Shive said she was distressed as to the overall impact to the land, water, ecosystem, and the property owners along the Machipongo. Adding that the studies that had been done by Judd Brook Properties were just that, studies done by them. Ms. Shive said that studied could be

skewed to show a project in its best light. Ms. Shive said it was thinking her that an impact study should be done by an independent entity. Someone who did not have a vested interest.

Ms. Shive asked that the proposal be denied in light of further observation and study.

Carmie Savage stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Savage thanked the board for the opportunity to express her strong opposition for this project. She added that she had lived on the Savage farm her whole life and would be affect by the project was well.

Ms. Savage said she felt like the construction of a soil berm would bring even more flooding to her property.

Ms. Savage said if the role were reversed, and the Savage family proposed the construction of a 1.2 mile with a 3-5 feet high and 12 feet wide berm around their farm, she guaranteed them that the Judd Brook Property owners would be fighting them.

Ms. Savage said the difference was that they would never propose something like that, because they care about what would happen to their neighboring lands, neighbors, and the Machipongo River.

Ms. Savage said with so many agencies and neighbors opposing, she was surprised that the project was even being considered.

Ms. Savage said she wanted to clear up something said by Mr. Nickel that was inaccurate. Ms. Savage said she works in the same building as NRCS, (Natural Resource Conservation), and they had recently approved six duck ponds. They partner with Ducks Unlimited (duck projects) and four more were currently underway.

Ms. Savage stressed again that she was strongly opposed and hoped that the Board would take in consideration all the neighboring lands and the condition of the Machipongo River.

C.W. Savage, Sr. stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Savage, Sr. said to him this was as plain as a thunder storm in the summer time. He said the project just did not make sense.

Mr. Savage, Sr. said a lot of pretty pictures had been shown and a lot of professionals spoke, but they did not live there. He said he lived on the farm and had seen high tides come across their farm.

Mr. Savage, Sr. added that this project would make that worse and wanted to say that he opposed it.

Robert (Bob) Savage stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Savage said he felt the same as the others felt about the potential flooding, but that he was concerned about the structure of the project.

Mr. Savage said he spent thirteen years working for the Virginia Department of Health as a regulator and in the private sector doing site and soil evaluations.

Mr. Savage said if he looked at this project in terms of what he was used to working with, it was almost like looking at a large municipal treatment plant. Those plants have people who are on site 24/7 monitoring it and making sure there are no problems. Mr. Savage said the applicants mentioned having cameras on site, but by the time someone could get out there it would be too late. The damage would have already been done.

Mr. Savage also said that earthen berms could be breached and use New Orleans as an example. Adding that all the fresh water and sediment would wash out into the Machipongo River.

Mr. Savage said, to him, an approach like this was very dangerous controlled by a private entity. Who was going to enforce the maintenance on it?

Mr. Savage said that he had seen dozens of flocks of black ducks behind his property and they seemed to be doing well there.

Mr. William (Bill) Savage stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Savage said he had several concerns and was opposed to the project. He said he was one of the owners on the family farm and was not contacted about the project.

Mr. Savage said the applicant's agent mentioned that if the project was not approved they might offer to sell it to another government agency. Mr. Savage asked why want to build something that they want to give away? Looked as if the applicant was not looking at this long-term for themselves. Mr. Savage said it seemed like this was only for profit, but that his family had to live there for the rest of their days.

Mr. Savage said, short of selling their land, there's a substantial chance of them being flooded out. Having their homes, equipment, and livestock destroyed.

Mr. Savage said, as mentioned, they sit on a historic site that have a number for registered with the state. The property has historic value in the form of artifacts that have been found and could be found in the future. Adding that the land around them were historical sites at one point and he did not see where that had been looked into.

Mr. Savage stressed again that he was very concerned. He was not looking at from abstract point of view, this was something that was going to affect his family for the rest of their lives if the project were to go through.

Mr. Nickel said Mr. Bob Savage mentioned there might be poison coming out, but there was a problem now and it needed to be cleaned up.

Mr. Nickel said there were no historical sites on their property

Mr. Nickel said that he empathized with the people who came up, but he did not hear any proof of damage that could be caused by them to others. Mr. Nickel added that the flooding they recited was happening naturally anyway.

Mr. Nickel said they had 900 feet of wave suppressing marsh in every direction on their property, plus wind protection for all three sides from the trees and causeway.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

5 Minute Recess taken at 12:03 PM

Meeting reconvened at 12:08 PM

Mr. Badger said that he thought the presentation was an excellent presentation, but that he could not get passed the loss of 58 acres of tidal wetlands.

Mr. Badger said that was a huge loss and that the state was averaging less than 10th of an acre, per year, for the last 20 years. His guess was that had been mitigated against also.

Mr. Taylor asked Mr. Cahoon if he did freshwater tidal and non-tidal wetlands. If so, if what he was proposing was there now, and natural, what would be the freshwater classification.

Mr. Cahoon said if it was existing it would still be considered PEM (Palustrine emergent).

Mr. Taylor said if he were to disturb that PEM, and he was getting a permit to disturb it, that would be about \$2.30 - \$3.00 per square feet. (If he was going to pay mitigation to a wetlands bank).

Mr. Cahoon told Mr. Taylor if he was going to by Mitigation credit there was only one bank, the brand new one on Rt. 13, and it was somewhere around the order of \$50,000.00 - \$75,000.00 per acre.

Mr. Taylor said making it about \$3.00 per square foot.

Mr. Taylor said their, (the Board's), cost for mitigation was \$18.00 per square foot and that was a big gap from the \$3.00.

Mr. Taylor said the only mitigation they, (the Board and staff), had ever done was never for freshwater non-tidal wetlands. Mr. Taylor asked if he was correct in saying that.

Ms. Nunnally said their jurisdiction was between low and high tide. When there was vegetation jurisdiction was 1 ½ times and that it was always 1:1.

Mr. Taylor said, as a Board, mitigation was tidal wetland creation or the money. Mr. Taylor asked it that was correct and Ms. Nunnally and Mr. Byrd agreed.

Mr. Badger said the other part of that, before getting to mitigation, is that the project was to be an acceptable and appropriate project.

Mr. Byrd said they had turned many down for much smaller square footages.

Mr. Taylor said it was being proposed as self-mitigating, but the Board does not accept non-tidal mitigation for tidal.

Mr. Byrd said that he had several questions, and that he thought they could be answered by Mr. Burkheimer.

Mr. Burkheimer said he wanted to speak on tidal flooding and gave this example:

- *If you have a gallon of open space, up to whatever the elevation is, it, (water), will come in and fill up to until that elevation was equal. If you cut that down to a quart, instead of a gallon, it will flow in until it fills up to the same level and then the flow would stop.*

Mr. Burkheimer said it had been suggested that when that capacity is cut in half that was going to somehow cause it to rise higher, and do more damage.

Mr. Byrd asked Mr. Burkheimer if there was water going into an open gut, versus in the open bay or ocean, would it be the same principal? Would the water still equalize as quickly?

Mr. Burkheimer said pretty much so unless it was coming in at a screaming velocity. If water was moving and the current was 10 – 20 miles per hour in the channel, not talking about waves or wind blowing, there was a certain kinetic energy that could get converted to potential energy and raise up.

Mr. Burkheimer said water could actual flow uphill under a circumstance like that, but was it going to be any different because the gut was a litter narrower, no it would be the same.

Mr. Burkheimer said that Ms. Savage stated that he was being paid and that he would say whatever needed to be said. To that Mr. Burkheimer said that was not the case.

Mr. Burkheimer said he was not going to lie for a few dollars.

Mr. Getek asked Mr. Burkheimer if he knew what the designated VE or AE flood zone was in that area.

Mr. Burkheimer said he did not, but he was sure that the properties were below it.

Mr. Byrd asked Ms. Gorman if she could bring them up to date, from a VMRC stand point, of what she had heard and if she agreed with it. Mr. Byrd also asked if she had anything to add or subtract from going to the site more than one and hearing from the audience.

Mr. Gorman said she had no comment. The project was not jurisdictional for them.

Mr. Byrd then asked Mr. Worrell the same question.

Mr. Worrell also said that he had no comments.

Mr. Ward said that he was still confused about what the water was going to do when it went past his house, gets to the end of the creek, and stops. Was it going to back up again or would it level out?

Mr. Ward said a statement was made that the rise and fall was 2-3 feet, but at his house it was a lot more than that.

Mr. Ward said that concerned him, because he did not know whose information was right. He did not know if this would make it worse.

Mr. Ward said the experts in the audience said no and he would accept that.

Mr. Getek said their mandate was “0” net loss and they were looking at a very large acreage of tidal vegetated wetlands. Mr. Getek that was their focus and they had to look at that very closely.

Mr. Byrd asked for a roll call vote and requested a motion be made regarding JPA application 2022- 2580.

Mr. Badger said he wanted to go over a few of the things they had talked about before making the motion.

Mr. Badger said as far as the flooding went, there may or may not be an issue. There seemed to have been some conflict/confusion about whether or not it was.

Mr. Badger said to him that was not the important part. The important part to him was the 56 acres of vegetated tidal wetlands that would be loss to the tidal system.

Mr. Badger said mitigation would only be appropriate if the project was approved.

Mr. Badger said VIMS, state agency they turn to for an environmental perspective on projects, stated, in their October 2018 review of the project, that the saltmarsh was healthy, productive, and provided an important and high value ecosystem and habitat.

Mr. Badger said it was a functioning marsh.

Mr. Badger said §28.2-1303-B1 [in the Virginia State Code] stated:

- *The anticipated public and private benefit of the proposed activity [does not] exceed its anticipated public and private detriment.* (Mr. Badger said he put in “does not”, because that section of the code must meet that and he did not think it did).

Mr. Badger said based on that he was recommending denial of the project as submitted.

On a motion made by Mr. Badger and seconded by Mr. Ward, the Wetlands Board voted to deny a permit for Judd Brook Properties LLC- VMRC# 2022- 2580 for the proposed creation of a freshwater impoundments for timber preservation, sustainability, sea level rise and protection, and habitat creation located along the Machipongo River, tax map#(s) 112-A-21 & 112-A-22A.

ROLL CALL VOTE			
Shooting Point Oyster Company - VMRC# 2022- 2580			
Wetlands Board Members	YEA	NAY	ABSTAINED
Mr. T. Lee Byrd - Chair	✓		
Mr. George Ward - Vice Chair	✓		
Mr. Gene Taylor	✓		
Mr. Timothy Getek	✓		
Mr. George Badger	✓		

6. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, June 22, 2023 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

7. **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 12:21 a.m.

T.Lee Byrd, Chairman

Chontese Ridley, Environmental Permit Specialist