

**WATER AND SCIENCE ADMINISTRATION
TIDAL WETLANDS DIVISION**

Wetland Report and Recommendation

State Wetlands Case No:

24-WL-0181

Applicant: Horseman Enterprise, LLC
4835 Madison Canning House Rd
Madison, Maryland 21648
c/o Benjamin "Benny" Horseman
bhorseman@comcast.net

Agent: Fink, Whitten & Associates, LLC
504 Maryland Ave, Unit 1
Cambridge, Maryland 21613
c/o Steve Whitten
stevewhitten.ls@gmail.com

Date Application Received: February 15, 2024 Public Notice Required? Yes

Comment Period Closing Date: November 01, 2024

Maryland Coordinates: 94178 x 467628

Location of Proposed Work: 4835 Madison Canning House Road, Madison Bay, MD, 21648

Purpose of Proposed Work: The purpose of the work is to resolve a compliance and enforcement action by removing unauthorized fill, unauthorized new bulkhead, and to restore and replant high marsh. Additionally, the project is requesting authorization for a replacement bulkhead, pier work, marsh establishment, and a new revetment.

Description of Authorized Work:

Perform the following:

1. Remove 156 linear feet of unauthorized bulkhead;
2. Remove 200 linear feet of unauthorized revetment;
3. Remove 9,993 square feet of unauthorized fill;
4. Construct and backfill 336 linear feet of replacement vinyl bulkhead within a maximum of 18 inches channelward of a deteriorated bulkhead;
5. Construct and backfill a 66-foot long vinyl bulkhead within a maximum of 1.5 feet channelward of the mean high water line.
6. Construct 135 feet of stone revetment within a maximum of 10 feet channelward of the mean high water line;
7. Construct a 115-linear foot low profile stone, sand containment sill; and grade along 135 feet of eroding shoreline and plant with marsh vegetation extending a maximum of 15 feet channelward of the mean high water line;
8. Construct a 90-foot long by 6-foot wide timber pier with a 10-foot long by 20-foot wide "L" shaped platform, an additional 18-foot long triangular shaped platform, a 10-foot long by 3-foot wide finger pier, and 20 mooring piles, all within a maximum of 113 feet channelward of the mean high water line.

Waterbody: Madison Bay

Requires Water Quality Certification? No, the project qualifies for MDSPGP-6 and does not require an individual WQC.

Qualifies for Maryland State Programmatic General Permit? Yes, the US Army Corps of Engineers is processing the project as a Category B.

Area of Vegetated Wetland Impacts Requiring Mitigation: 0 s.f.

Area of Open Water Tidal Wetlands Requiring Mitigation: 0 s.f

Area of Wetlands Created: 7,528 s.f.

Was the Applicant's Original Project Modified? Yes, the applicant originally proposed revetment in the southern shoreline area of the parcel. They revised the plans to remove the revetment and replace the area with a low-profile stone sill and plantings.

Department Comment:

As required by § 5-204 (b) of the Environment Article, the Department drafted and issued a public notice by posting the public notice on its WEB site from October 1, 2024, to November 1, 2024 and publishing the public notice for the proposed project in The Daily Banner on October 9, 2024. In addition, the public notice was provided to adjacent property owners listed below:

Harold W. Traveis Sr. 4840 Madison Canning House Rd, Madison, MD 21481

The Department did not receive a request for a public informational hearing from the public or receive any comments during the public notice.

The Maryland Historical Trust reviewed that proposed project and determined that there are no historic properties affected by this undertaking.

The Maryland Department of Natural Resources (DNR) reviewed the proposed project and determined:

To minimize impacts to submerged aquatic vegetation, the proposed construction of replacement bulkhead and repair to the existing stone revetment should not occur during the period 15 April through 15 October of any year.

Below are comments provided to the applicant and a summary of events that occurred on the parcel.

An anonymous PAF (complaint) was filed to MDE's Compliance Program (Compliance) about unauthorized activities that may be occurring at this property. An MDE inspection was conducted on July 6, 2023. The inspection included Jacob Raynor and Sean Lynch with the Department's Compliance Program, Mary Phipps-Dickerson and Matt Godbey with the Department's Tidal Wetlands Division, and owners Benny and John Horseman. During the inspection, the owners explained they are involved with the State of Maryland aiding in oyster restoration projects. While reviewing the facility revealed oyster washing takes place at the north side of the property. Water is pumped from Madsion Bay and applied to shells to remove debris prior to placing shells in a container for spat attachment. The wash water does not return directly to Madsion Bay. It is discharged north of the washing operation overland creating rills to a tidal ditch that discharges into Madison Bay.

Ownership then outlined historical expansion and filling of tidal wetlands had taken place south of the property. Including, adding concrete riprap, open water fill, a bulkhead, and back filling these areas to improve parking for the facility and truck turnarounds. The owners were advised to not encroach or alter any further tidal wetlands without proper approval from the Department. It was also suggested to install an interim sediment and erosion control measure around the wash area, specifically a silt fence.

An additional site visit was held as a follow up to the initial PAF (complaint) on December 20, 2023. The site visit included Sean Lynch and James Lyons with the Compliance Department, Matt Godbey with the Tidal Wetlands Department, and Steve Whitten the agent for the project. Mr. Whitten was preparing a Joint Permit Application; the meeting was to discuss the site violations in more detail. For reference, the R&R will refer to the areas of tidal wetland impact as the Southern shoreline, the Southeastern area, and the Northern area of the property. The discussion started with the Southern shoreline of the project. This area (attachment 8) was filled with an aggregate of stone, soil, and concrete. Revetment could be authorized along this shoreline due to the nature of the operation, but the fill landward of the revetment could not be authorized. Moving to the Southeastern area (attachment 7) open water was filled and jersey walls were constructed as a bulkhead. Bulkhead could be authorized in this location as the operation requires vessel to be moored in this area for oyster shell loading and unloading. The open water fill landward of the bulkhead could not be authorized. It was recommend this area of fill and its removal be shown on the plans. The final area of the site visit was the Northern area. This area has an existing bulkhead (attachment 6), although it is close to being considered 70% non-functional it could be replaced.

A meeting was held on February 5, 2024, at 10:30 to discuss the potential violations and a path forward on reaching a resolution on the unauthorized activities. In attendance was owners Benny and John Horseman, their attorney Brandon Mullaney, Jonthan Stewart and Matt Godbey with the Department's Tidal Wetlands Division, James Lyons and Jacob Raynor with the Department's Compliance Program, Brian Callam with DNR's Aquaculture and Industry Enhancement Division, Jennifer Esposito with the Critical Area Commission, Cassie Dyson with Dorchester County Critical Area, Susan Webb with Dorchester County Planning and Zoning, Gabrielle Leach with Legislative and Intergovernmental Relations, Senator Johnny Mautz, and Delegate Tom Hutchinson. During the meeting the 1972 Wetland Maps (72 Maps) and 1978 Lot Coverage were presented (Attachment 2). The 72 Maps were referenced as a starting point to assess the amount of fill on site. It was noted by the agent, applicant, and the attorney that the site has been inactive since the early 1990's. The meeting adjourned with the understanding the impacts were still being assessed and permission may be granted for the temporary storage of oyster shells. A temporary oyster shell storage site plan was approved by the Department on February 20, 2024, via email (Attachment 3).

MDE reviewed the Department of Taxation and Assessments tax records (SDAT) which confirmed the Horseman's purchase of the property February 10, 2021. The aerial at time of purchase is Attachment 1.

The review of the property by the Department included consulting the 72 Maps, historical aerials and maps at vintageaerial.com (VA), Google Earth (GE), and the six-inch resolution aerial imagery (6 in) from the State of Maryland. Site visits were also conducted by the Department to compare the current property and activities completed with the maps and aerials. In order to quantify impacts as a result of the unauthorized activities and determine which activities may or may not be authorizable under current regulation and law, the Department used historical imagery showing the site conditions prior, at, and subsequent to the purchase by the Horesman Enterprise, LLC. All work was completed without prior authorization from the Department and had been completed. The Department's determination is that after the purchase of the property a significant amount unauthorized wetland disturbance had occurred at the property. The unauthorized impacts within the Department's Tidal Wetlands Division's jurisdiction appear to be located on the entire site.

While reviewing the Northern area of the property on the 1972 Maps, this area was mapped as high marsh with *Iva frutescens* (Marshelder)/*Baccharis halimifolia* (Groundselbush). The Department determined that while some of the mapped tidal wetlands area was impacted by the previous activity prior to ownership (Attachment 4 in green), there was an area of the 1972 mapped tidal wetlands that remained high marsh at the time of purchase (Attachment 4 in blue). Attachment 5 is a 2022 aerial overlayed with the 1972 Wetland Maps showing use by the Horsemans. The Department recognizes that this area was most likely not high marsh at time of purchase and had converted due to previous disturbance prior to purchase. The area north depicted in blue on Attachment 4 appeared to have remained high marsh at time of purchase and no impacts to this area would have been approved and are not authorizable. The Department determined that impacts in this area must be

removed and the should be restored to its original contours and replanted with marsh vegetation. Additionally, the area shall not be impacted, permanently or temporarily, by any ongoing or future use of the property and must be protected from inadvertent impacts from onsite operation.

Since this site will be used as an active seafood processing plant and there will be a need for vessels to moor along the shoreline, a replacement bulkhead would have been authorized at this location. The Department believes that the bulkhead (Attachment 6) may have deteriorated close to the point to be considered non-functional, by definition, and some amount of filling had occurred. However, the Department determined that the Northern portion of the property can be authorized for a replacement bulkhead (North of the existing deteriorated Seafood Processing Structure).

The Southeastern area and shoreline had been filled with an aggregate of material, poured concrete, and construction of a bulkhead channelward of the existing shoreline at the time of purchase by the Horseman's. When reviewing historical aerials, the Department determined that the 3,115 square feet of unauthorized fill as depicted on Plan Sheet 6 of 9 was correctly accounted for and depicted. However, there was no evidence that an existing, functional bulkhead existed in the areas identified on the plan sheet. The Department determined that the bulkhead constructed in this area was new. Using GE, the poured concrete and fill had occurred in conjunction with the construction of a new bulkhead approximately 14 feet to 30 feet channelward of the mean high water line that existed at the time the property was purchased, as shown in Attachment 7.

The Southern shoreline as shown in Attachment 8 has been filled with a mixture of concrete and brick. Attachment 9 is a GE aerial from 2022 with the 72 Map overlaid depicting the channelward encroachment of fill material. During the site visit the applicant/property owner stated the concrete and brick had always been there, but while inspecting the shoreline and fill there were no water marks that would indicate that the material had been there for a long period of time. The Department required that this fill be removed and restored to its historic contours and replanted with vegetation.

The evaluation of this project has taken into account ecological, economic, recreational, developmental, and aesthetic considerations appropriate for this proposal as well as other requirements set forth in the Code of Maryland Regulations. To ensure that impacts to resources are avoided and minimized to the maximum extent possible and to ensure that all work is performed in accordance with critical area and local regulations, the Department has recommended a number of special conditions. Provided all general and special conditions are adhered to, the work proposed will not cause significant deleterious impacts to marsh vegetation, submerged aquatic vegetation, finfish, shellfish, or navigation.

Project Justification: In consideration of the site characteristics and the nature of the proposed work, the Department concludes that the application represents a reasonable exercise of riparian rights.

SPECIAL CONDITIONS:

- A. The Maryland Department of the Environment has determined that the proposed activities comply with, and will be conducted in a manner consistent with the State's Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended.
- B. The Licensee shall comply with all Critical Area requirements and obtain all necessary authorizations from local jurisdiction. This License does not constitute authorization for disturbance in the 100-foot Critical Area Buffer. "Disturbance" in the Buffer means clearing, grading, construction activities, or removal of any size of tree or vegetation. Any anticipated Buffer disturbance requires prior written approval, before commencement of land disturbing activity, from local jurisdiction in the form of a Buffer Management Plan.

- C. If the authorized work is not performed by the property owner or is not otherwise exempt from the licensing requirement, all work performed under this Tidal Wetlands Permit shall be conducted by a marine contractor licensed by the Marine Contractors Licensing Board (MCLB) in accordance with Title 17 of the Environment Article of Annotated Code of Maryland and COMAR 26.30. The licensed marine contractor shall be authorized for the appropriate license category to perform or solicit to perform the activities within this authorization, if applicable. A list of licensed marine contractors and their license category may be obtained by contacting the MCLB at 410-537- 3249, by e-mail at MDE.MCLB@maryland.gov, or by accessing the Maryland Department of the Environment, Environmental Boards webpage at <https://mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/LicensedMarineContractors.aspx>.
- D. The issuance of this license is not a validation or authorization by the Department for any of the existing structures depicted on the plan sheets on the subject property that is not part of the authorized work description, nor does it relieve the Licensee of the obligation to resolve any existing noncompliant structures and activities within tidal wetlands.
- E. The Licensee shall complete construction of the bulkhead prior to filling behind the bulkhead. The bulkhead shall be designed and constructed to prevent the loss of fill material to waters of the State of Maryland. Only clean fill, which is free of organic, toxic, contaminated, or deleterious materials, shall be used.
- F. The Licensee shall design and construct the stone revetment to prevent the loss of fill material to waters of the State of Maryland.
- G. The Licensee shall not use asphalt rubble in the revetment. Filter cloth shall be placed between the riprap and the soil. Prior to emplacement of the revetment, all re bar is to be cut off flush with the concrete. After emplacement of the revetment, any re bar exposed as a result of the concrete breaking during the emplacement is to be cut flush with the concrete. Except for the larger material placed along the leading edge of the revetment, the concrete shall be broken prior to emplacement so that random sized interlocking pieces are formed.
- H. The Licensee shall construct the marsh establishment area in accordance with the following conditions:
1. The Licensee shall use clean substrate fill material, no more than 10% of which shall pass through a standard number 100 sieve.
 2. The marsh establishment area shall be planted within one year following completion of the filling operation.
 3. The marsh establishment project shall be maintained as a wetland, with non-nuisance species' aerial coverage of at least 85% for three consecutive years. If 85% coverage is not attained, the reasons for failure shall be determined, corrective measures shall be taken, and the area shall be replanted.
 4. If the fill is graded hydraulically, the licensee shall use a turbidity curtain around the perimeter of the instream work.
 5. If the existing bank is to be cleared or graded:
 - a. The Licensee shall perform all work under and in accordance with an approved Soil Erosion and Sediment Control Plan from the applicable sediment and erosion control agency; and
 - b. The Licensee shall perform all work under and in accordance with the Critical Area requirements of the local jurisdiction in the form of an approved Buffer Management Plan.

- I. The Licensee shall accept the terms of the attached marsh maintenance plan by signing and returning the standard plan to the Water and Science Administration, Tidal Wetlands Division prior to commencement of any work authorized under this License. If the Licensee wishes to propose an alternative marsh maintenance plan, the alternative plan must be submitted to and approved by the Tidal Wetlands Division, Water and Science Administration, prior to commencement of any work authorized under this License. Any alternative plan must provide assurances of success that are at least equivalent to those of the standard plan, in terms of the extent of native marsh plant coverage, elimination of invasive species and timeframe for plant establishment.
- J. The Licensee shall construct at least three vent(s) (opening in the stone edging), to facilitate marsh flushing and shall be located along the stone edging as depicted on the attached plans.
- K. The Licensee shall not attach accessory platforms to any existing or proposed boat lifts.
- L. The Licensee shall have all work proposed above the mean high water line reviewed and authorized by Dorchester County Department of Planning and Zoning.
- M. Entirety of unauthorized fill material removal will be completed no later than March 21st, 2025. Upon completion of the fill removal, the responsible party will coordinate with the Department to schedule a site visit to confirm that the work has been completed to the Department's satisfaction. Restoration/planting to be completed in its entirety no later than June 21st, 2025.
- N. The Licensee shall not perform construction of the bulkhead and/or repair to the existing stone revetment from April 15th through October 15th of any year due to the presence of submerged aquatic vegetation.

DEPARTMENT OF THE ENVIRONMENT APPROVAL:



Matt Godbey, Natural Resource Planner
Tidal Wetlands Division

December 5, 2024

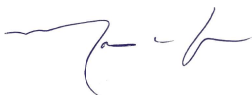
DATE



Jonathan Stewart, Acting Division Chief
Tidal Wetlands Division

December 6, 2024

DATE



D. Lee Currey, Director
Water and Science Administration

Dec 29, 2024

DATE

WETLANDS ADMINISTRATION CONCURRENCE:



William Morgante, Wetlands Administrator
Board of Public Works

January 13, 2025

DATE