

dolphins. This business is located at 879 Port Street outside of Easton, Maryland. Maintenance dredging has been authorized at this location several times in the past. The current water depths average around 9 feet and the proposal is to dredge to 10 feet at mean low water. The dredged material will be dewatered on site and used for maintenance projects on the property.

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 December 15, 2016 to January 15, 2017 and publishing the public notice for the proposed project in The Star Democrat on December 16, 2016. In addition, the public notice was provided to adjacent property owners listed on Attachment "A."

The Department received a request for a public informational hearing from Matt Pluta, Choptank Riverkeeper as well as a letter, dated December 20, 2016, in opposition to the proposal from Jane Hawkey, representing The Boathouse at Easton Point, LLC, an adjacent commercial marina. This letter is included as Attachment "B". The announcement for the public hearing was published in the Star Democrat on January 8, 2017, and the hearing was held at the Talbot County Free Library on 100 W. Dover Street in Easton, Maryland on January 23, 2017 at 10:00 am. Andrew May, of MDE, served as Hearing Officer and Johnny Johnsson, Parran Bean, and Mark Gabler gave a presentation about the proposed work. Matt Pluta, Choptank Riverkeeper, spoke in opposition to the. The questions, comments and concerns raised by Mr. Pluta, in person, during the hearing included:

1. Whether tide information was available and being used to minimize the risk of prop-dredging, barge grounding, and other indirect impacts associated with operation of the facility and associated vessels
2. Whether the need for dredging was due to natural erosion/siltation or whether it was from spillage during the loading/off-loading activities
3. Could Applicant guarantee protection water quality standards, including a Total Maximum Daily Load (TMDL) limit for sediment?
4. Presented photos depicting turbid discharges from barges, purported to be operating within the Tred Avon and heading to/from Vulcan facility. Emphasized potential risk to existing oyster restoration goals for US Army Corps of Engineers (USACE), etc.
5. Mentioned evidence that barges have allegedly operated out of channels, resulting in scour holes caused by tugs, heavy sedimentation within nearby slips, linking of barges causing navigational obstructions, etc. and requested that barges not sit at the site in gear for long periods of time.
6. Emphasized importance of shared uses within the waters, including kayakers, etc.
7. Asked about why the nearby Federal Navigation Channel was not marked.
8. Asked whether turbidity curtains would be used/required and whether the barge placement alone was adequate to minimize turbidity impacts.
9. Mentioned complaints and opposition from adjoining private, commercial marina facility ("Boathouse at Easton Point");
10. Presented historic shoreline aerial photo purportedly showing impacts of barge operations over time.
11. Mentioned that SAV grows on the opposing shoreline and that allowing barges to float in that area would negatively impact the SAV.
12. Asked whether dredged material would be used for "beneficial reuse"; and
13. Asked whether the 10 foot depth was what had historically been authorized.

The applicant provided responses to the questions explaining that the site had been in operation for many years and had previously been authorized to perform the maintenance dredging to a depth of 12 feet in the area, although it had been nearly 10 years since dredging had been required. The process for unloading barges was discussed and it was explained that, while they could not guarantee that no sediments were lost during the process, the amount was minimal and the dredging was needed mostly due to natural

sedimentation. They explained that Vulcan has been involved in oyster restoration projects and would work with watermen to avoid areas of natural oyster bars. The hearing was adjourned at 11:58 am. During the comment period after the hearing, written objection letters were received from Matt Pluta, Choptank Riverkeeper on February 6th, 2017 and Jane Hawkey of The Boathouse at Easton Point, LLC, on February 2nd, 2017. Copies of these letters are included with attached copy of the Department's Hearing Report (see below).

Matt Pluta questioned the reason for proposed dredging and suggested that the siltation was due to material lost overboard while unloading barges and from scour holes created by the tug boats as they held the barges in place. He asked that adequate sediment controls be required for the project including a turbidity curtain and he requested that the dredged material be considered for beneficial uses like restoring marsh along the opposite shoreline. There were concerns about loaded barges navigating in shallow water and creating sediment plumbs and negatively impacting oyster bars. Mr. Pluta also expressed his disappointment in the public hearing format, and suggested that the hearings should allow more question and answer dialogue.

Ms. Hawkey's February 2nd comment letter provided pictures of the bulkhead at her site showing that the soil behind the bulkhead had eroded. She expressed concerns that the turbulence created by the tug boats has caused a water depth of 15 feet at her bulkhead and potentially undermines her shoreline. She also provided pictures of the barges near her bulkhead and explained that they stay channelward of her property for hours which impacts her structures and blocks her ingress/egress.

A hearing report, including copies of the objection letters, was later sent to the applicant with a request to address the concerns raised, which is included as Attachment "C". The response was provided by Warren Rich of Rich & Henderson, P.C Attorneys At Law, and is included as Attachment "D". Mr. Rich explained that the Vulcan site has been used for navigable commerce since 1965 or earlier, and decisions for establishing the Boathouse at Easton Point, LLC were made with the knowledge of the existing operation on the neighboring property. Mr. Rich explained that the proposal was for a relatively small amount of dredging to improve the ability to engage in navigational commerce and that the majority of comments were outside the scope of the wetland license for maintenance dredging. He stated that the proposed dredging is considered a Category A under the MDSPGP-5 and does not require authorization through the Army Corps of Engineers, although it is actually a Category B project and the Corps is currently reviewing the proposal. Vulcan responded that they intend to use best management practices including turbidity curtains when dredging and that they have a history of efforts to accommodate environmental safeguards.

The Department provided written response letters to both Mr. Pluta and Ms. Hawkey, to address their concerns. Copies of those letters are included as Attachments "E" and "F", respectively.

The Maryland Department of Natural Resources (DNR) reviewed the project and determined that it is located in an area designated a Historic Waterfowl Concentration area under the state's Critical Area Law. To minimize impacts to wintering and staging waterfowl, they requested that no water dependent construction activity be performed during the period of November 15 through March 1 of any year.

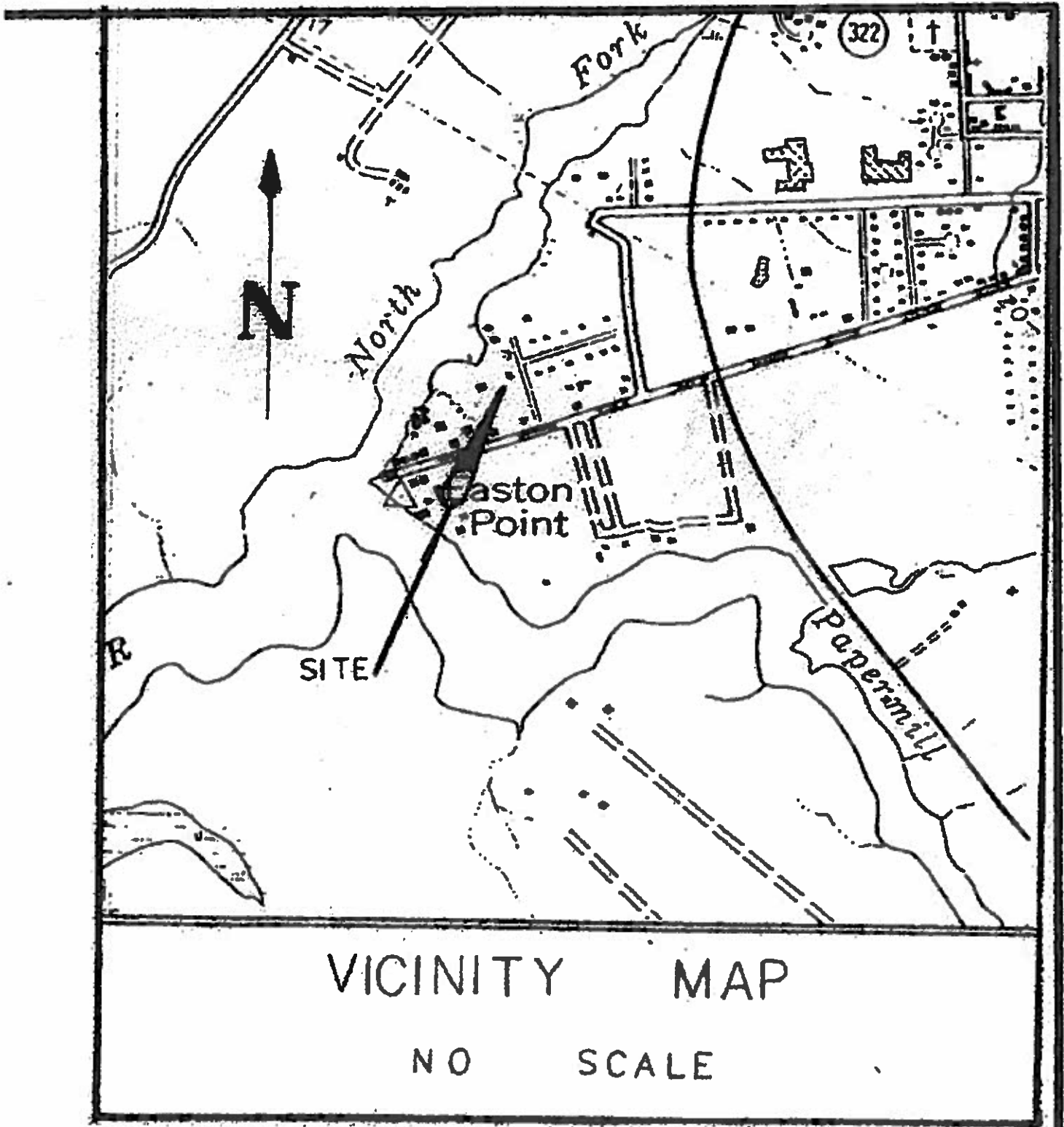
The Maryland Historical Trust reviewed that proposed project and determined that there are no historic properties affected by this undertaking.

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 insure that impacts to resources are avoided and minimized to the maximum extent possible and to insure 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.

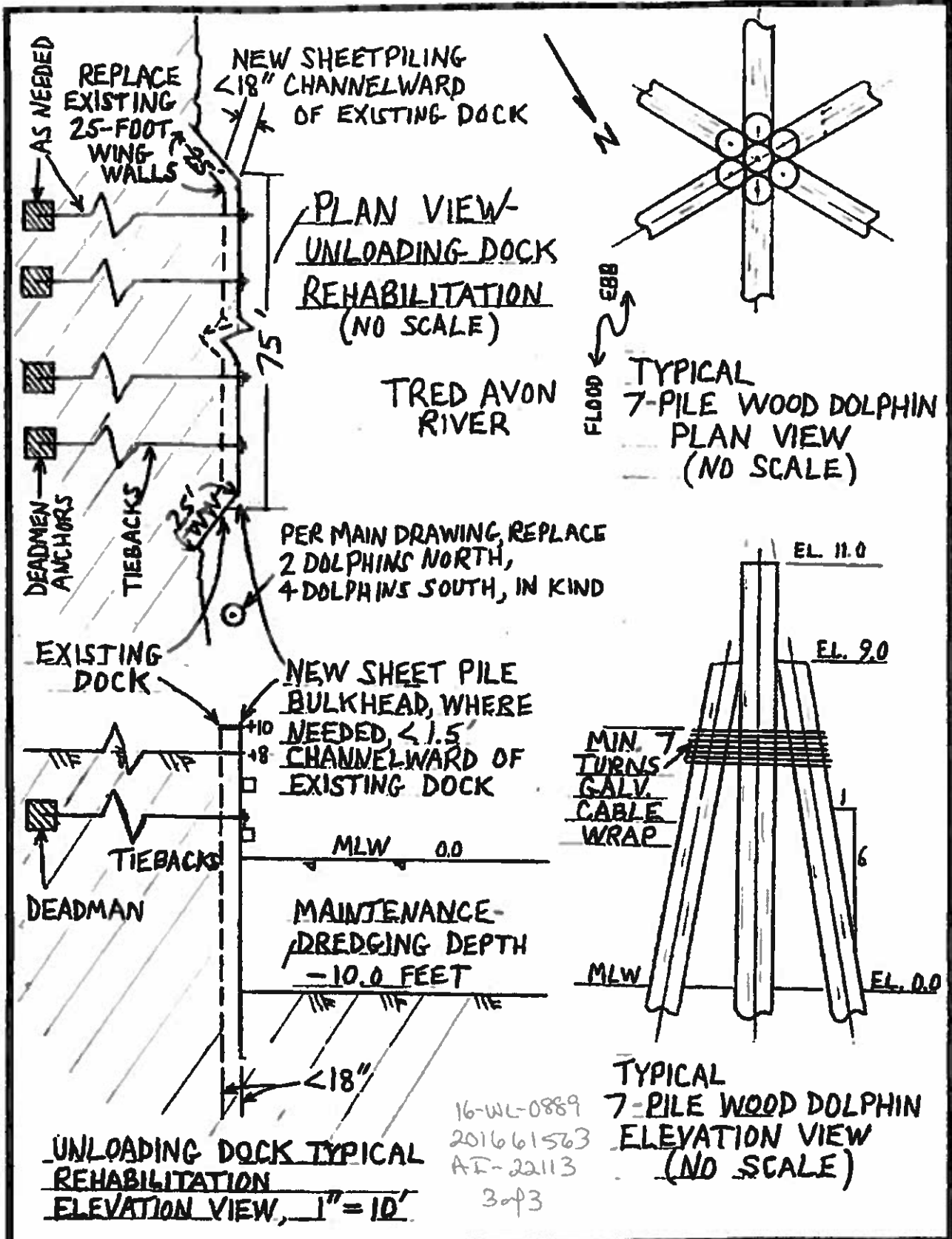
SPECIAL CONDITIONS:

- 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, all work performed under this Tidal Wetlands License shall be conducted by a marine contractor registered with the Maryland Department of the Environment in accordance with Chapter 286 of the 2010 Laws of Maryland. A list of registered marine contractors can be obtained by contacting the Department at 410-537-3249 or by e-mail at MDE.MCLB@maryland.gov.
- D. The Licensee shall have all work proposed above MHW reviewed and authorized by Talbot County Department of Planning & Zoning.
- 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 not perform any construction from November 15th through March 1st of any year to protect wintering waterfowl. The proposed project site is located in a Historic Waterfowl Concentration Area.
- G. The Licensee shall deploy and maintain a turbidity curtain tightly around and channelward of the project area prior to any excavation and backfilling along the shoreline through completion of any excavation and backfilling along the shoreline.
- H. In accordance with Code of Maryland Regulation 26.24.03.02D, dredging by means of a vessel's propeller in State wetlands is prohibited. Best management practices that can be employed to minimize the risk of propeller dredging include scheduling boat usage to coincide with high tides; and minimizing the length of time the propeller is engaged while sitting in place.



Vulcan Construction Materials, LLC
879 Port St.
Easton, Md 21601

16-WL-0889
201661563
AI-22113
1 of 3
11/2/16



VOLCAN CONSTRUCTION MATERIALS, LLC
EASTON SALES YARD
879 PORT STREET
EASTON, MD 21601

NO SCALE
11/2/16

ELEVATION VIEW
PROPOSED DOLPHINS &
DOCK REPAIRS
SUPPLEMENTAL DRAWING

Attachment A

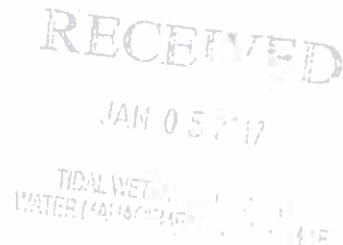
Adjacent Property Owners

**The Boathouse at Easton Point, LLC
911 Port Street
Easton, Maryland 21601-8107**

**Southern States Cooperative, Inc.
P.O. Box 26234
Richmond, Virginia 23234**

December 20, 2016

Mary Phipps Dickerson
Tidal Wetlands Division
Water Management Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230



Re: Project No. 16-WL-0889

Dear Ms Dickerson,

I recently received a letter from you notifying me that my neighbor, Vulcan Construction Materials, is requesting a State Wetland permit for dredging an area of the North Fork of the Tred Avon River in Talbot County, Maryland.

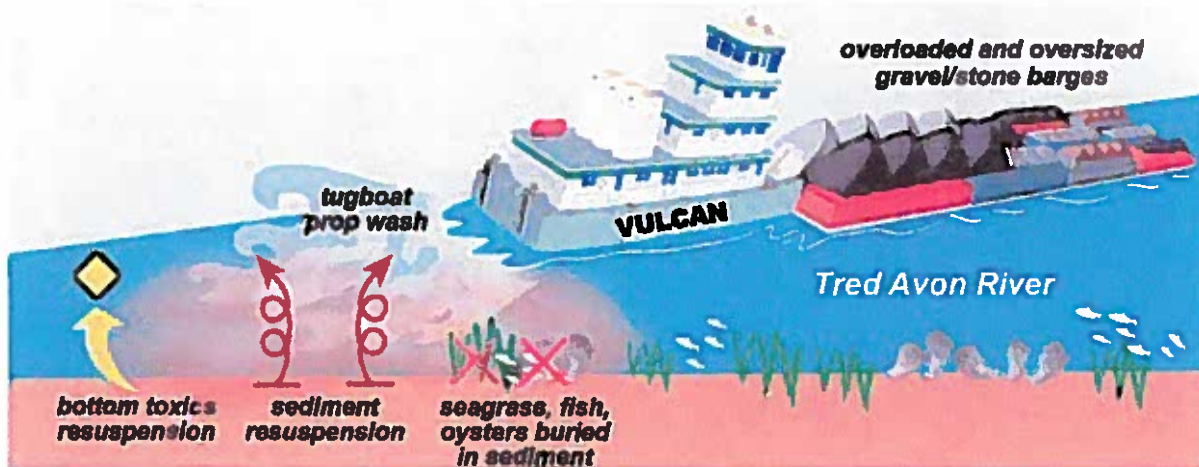
From an environmental perspective, I am alarmed that this permit to dredge might be granted for the following reasons.

1. The Tred Avon River is classified as having "impaired water quality". For that reason alone, disturbing the river sediments is to be avoided. In addition, the Code of Maryland Regulations (COMAR) has categorized the "Tred Avon River and tributaries above Easton Point as Use I, recreation contact, and protection of aquatic life." (Source: *Prioritizing Sites for Wetland Restoration, Mitigation, and Preservation in Maryland.*)

As such, MDE's mandate to protect aquatic species indicate that "Use I waters: In-stream work shall not be conducted during the period March 1 through June 15, inclusive, during any year." (Source: *Best Management Practices for Working in Nontidal Wetlands, Wetland Buffers, Waterways, and 100-year Floodplains.*)

2. In addition, the Talbot County Comprehensive Plan has the following goals related to natural resources within the Chesapeake Bay Critical Area (North Fork of the Tred Avon at Easton):
 - Protect water quality
 - Protect plant, fish, and wildlife habitat
 - Restore SAV populations to improve finfish and shellfish populations

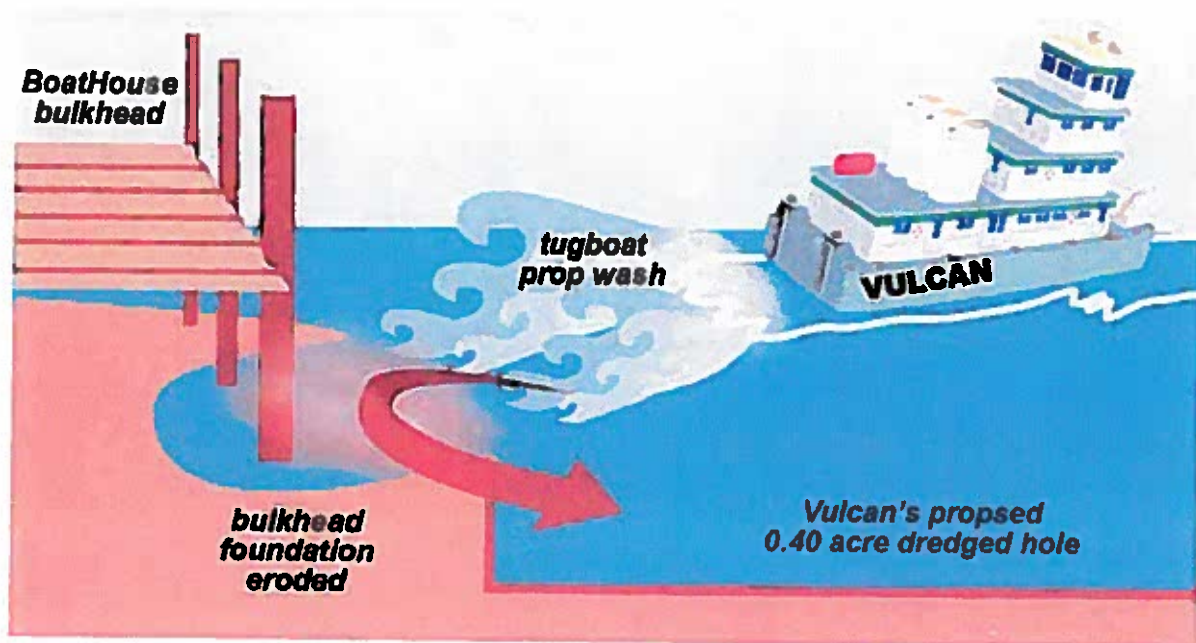
None of these resource management goals can be met when the river bottom sediments are constantly resuspended, as they are by 1) approving this proposed dredging request, and 2) the oversized and overloaded gravel barges that regularly scour the river bottom almost daily (not only on the North Fork but as they navigate the entire Tred Avon River (see figure below).



From the perspective of a neighbor with connecting waterfront, I have several concerns.

1. The area that they are proposing to dredge (0.40 acres) is much larger and more extensive (to a low water depth of 10') than the area of spilled gravel just in front of their 75' dock. And, dredging is not needed for them to replace their existing cluster piles.

2. As it stands currently, the huge prop wash that Vulcan's tugboats regularly create is sweeping away the underlying sediment at my waterfront (only a few feet away). And, I believe that Vulcan's proposed large and deep dredge hole will accelerate the loss of my bulkhead's foundation, ultimately leading to its complete failure (see figure below). Who will pay for that?



3. And lastly, the Dredging Plan that you sent is completely illegible (blurry with print too tiny to read). With the area of 0.40 acres that Vulcan is seeking permit to dredge, I believe that the boundaries of the Federal Channel would be violated. So, I would like to request that a new very clear version with larger print be sent to me – one that delineates the boundary of the Federal Channel and the boundary of the Federal Channel's buffer zone.

In closing, I think Vulcan's permit to dredge in these tidal wetlands should be denied. Vulcan can repair its dock and pilings without dredging, and it can continue business as usual if need be with slightly smaller barges that are less heavily loaded.

Sincerely,

Jane Hawkey

The BoatHouse at Easton Point, LLC
410-310-6707



Attachment "C"

Maryland

Department of
the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

To: Vulcan Construction Materials, LLC
c/o Johnny Johnsson
875 Oxford Avenue
Hanover, PA 17331

Re: Application Review for 16-WL-0889
Date: June 8, 2017
Information due by: July 8, 2017

The Maryland Department of the Environment ("MDE" or "the Department") received your Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland ("Application") on September 22, 2016. In your Application, you requested authorization to replace an existing 75-foot bulkhead with two 25-foot wing walls within a maximum of 1.5 feet channelward of the mean high water line, maintenance dredge a 350-foot long by 45-foot wide barge unloading area to a 10-foot depth at mean low tide and remove 400 cubic yards of material all within a maximum of 50 feet channelward of the mean high water line, and replace 6 existing cluster-pile dolphins, at 879 Port Street, Easton in Talbot County, Maryland.

A Public Hearing was held at the Easton Free Public Library on January 23, 2017 and concerns were presented regarding the proposed work as well as the general activities and barge traffic associated with the business. These concerns are summarized in the attached hearing report. Additionally, a letter was received from the neighboring property owner who could not attend the hearing. The concerns expressed in this letter involved barge activity near their bulkhead causing scouring at the bulkhead and leading to a bulkhead failure, and that the barge activity extends channelward of their docking area and endangers their customers' yachts as well as blocks navigation. The neighbor has requested that the area of dredging be reduced or eliminated and measures be taken to reduce future impacts to their bulkhead. While the barge activity is not directly a part of this authorization, changes in the method of loading and unloading, or a reduction in barge size may help address concerns that were raised. Please review the attached hearing report and letters and provide a written response to address the issues that have been presented.

The Department would like to help you successfully complete the application review process. If you have any questions or if I can assist you in any way, please do not hesitate to contact me by telephone at (410) 901-4033 or by email at Mary.Phipps-Dickerson@maryland.gov. Please refer to the above referenced application number when corresponding with this office.

Sincerely,

Mary Phipps-Dickerson
Natural Resources Planner
Tidal Wetland Division



Public Hearing Report

Regarding Tidal Wetlands License Under COMAR 26.24.01.05.H.

Application No.: 16-WL-0889 Date: January 23, 2017
Applicant: Vulcan Construction Time: 10:00 a.m.
Materials, LLC. Location: Talbot Co. Free Library, Easton
Branch

1. Elected Officials Present (N/A)

No elected officials were present

2. Hearing Opened

- a. Andrew May, of MDE, serving as Hearing Officer, opens the Hearing at 10:00 AM
- i. Presents overview of hearing purpose, authority and procedures, in accordance with COMAR 26.24.01.05

3. Opening Presentation by Applicant

a. Presenters

- i. Johnny Johnsson & Parran Bean, Vulcan
- ii. Mark Gabler, Rich & Henderson, PA (representing Vulcan)

b. The following is a summary of the Applicant's presentation

- i. Described previous dredging activities at the site, including previously-issued authorizations (1995 & 2001). Applicant reported that the last significant dredging occurred in 2007.
- ii. Characterized the proposed dredging as maintenance of the same area (c. 400 cubic yards, to maximum depth of -10' MLW), along with replacement of an existing, functional bulkhead, and six 7-pile dolphins.
- iii. Stated that work is necessary to support the routine, ongoing operation of the business, in a manner that has remained consistent for roughly 50 years.
- iv. Described the dredging methodology, including:
 1. Mechanical dredging via sealed clamshell bucket;
 2. Dredging to be conducted via 2 barges connected to create a turbidity containment area;
 3. Dredge material offloading and placement sites at the property, including use of a spill shield and other measures to protect water quality; and

4. Total work estimated to take approximately 3 days

4. General Questions and Concerns

The following general questions and concerns were raised by attendees:

- a. Would the project be protective of the state's designated use for the waterbody (i.e. recreation and the maintenance of healthy aquatic life)?
- b. When/how often would additional maintenance dredging be required?
- c. Question about replacement of mooring dolphins
- d. Question about volume of barge traffic
- e. Question about dredge disposal site

5. Comments in Support of the Project

Other than the applicant, no attendees made comments specifically in support of the project

6. Comments Not in Support of the Project

Mr. Matt Pluta, Choptank Riverkeeper, provided written comments in opposition to the project. Those are provided as Attachment "B". In addition to the written comments, below is a summary of the questions, comments and concerns raised by Mr. Pluta, in person, during the hearing:

- a. Whether tide information was available and being used to minimize the risk of prop-dredging, barge grounding, and other indirect impacts associated with operation of the facility and associated vessels
- b. Whether the need for dredging was due to natural erosion/siltation or whether it was from spillage during the loading/off-loading activities.
- c. Could Applicant guarantee protection water quality standards, including a Total Maximum Daily Load (TMDL) limit for sediment?
- d. Presented photos depicting turbid discharges from barges, purported to be operating within the Tred Avon and heading to/from Vulcan facility. Emphasized potential risk to existing oyster restoration goals for US Army Corps of Engineers (USACE), etc.
- e. Mentioned evidence that barges have allegedly operated out of channels, resulting in scour holes caused by tugs, heavy sedimentation within nearby slips, linking of barges causing navigational obstructions, etc. and requested that barges not sit at the site in gear for long periods of time.
- f. Emphasized importance of shared uses within the waters, including kayakers, etc.
- g. Asked about why the nearby Federal Navigation Channel was not marked.
- h. Asked whether turbidity curtains would be used/required and whether the barge placement alone was adequate to minimize turbidity impacts.
- i. Mentioned complaints and opposition from adjoining private, commercial marina facility ("Boathouse at Easton Point");

- j. Presented historic shoreline aerial photo purportedly showing impacts of barge operations over time.
- k. Mentioned that SAV grows on the opposing shoreline and that allowing barges to float in that area would negatively impact the SAV.
- l. Asked whether dredged material would be used for "beneficial reuse".
- m. Asked whether the 10 foot depth was what had historically been authorized.

7. Applicant Response to Comments & Questions

The Applicant offered the following general responses to comments and concerns raised by the attendees.

- a. Dredging and associated permitting is costly and cumbersome. While it has been nearly 10 years since the last major dredging of the site, Applicant wishes to maintain a valid authorization to ensure continued operations of the existing facility;
- b. The need for dredging was primarily due to natural siltation.
- c. Applicant asserted that "guarantee" of no water quality violation is not practicable, but that risk effectively minimized by proposed measures to control sedimentation and turbidity during dredging, offloading and dewatering operations;
- d. Explained that they were concerned about and involved in oyster restoration projects in the area and offered to work with watermen to avoid oyster beds.
- e. Described construction of the proposed concrete block containment wall to retain the dredged sediments within the upland property;
- f. Applicant stated that typical barge traffic volume is 1-2 laden barges per week;
- g. A licensed Marine Contractor would be used to perform all work;
- h. Described measures taken to mitigate risk of barges running aground or prop-dredging;
- i. Asserted that they had made the necessary coordination with USACE;
- j. Mentioned that previous dredging authorizations allowed depths up to -12' MLW, which is greater than what is being requested now.
- k. Explained that the bulkhead and dolphin repairs were replacements of existing structures that were deteriorating.

8. Hearing Closed

- a. Comments are due by 5:00 PM on February 6, 2017; must be post marked by that date or via email.
- b. The Department may request additional information from the applicant.
- c. Hearing is adjourned by Hearing Officer

Attachments:

Attachment "A" – Attendees List

Attachment "B" – February 6, 2017 Comment letter from Mr. Matt Pluta, Choptank River Keeper

Attachment "C" – February 2, 2017, Comment letter from Ms. Jane Hawkey, The Boathouse at Easton Point, LLC

Attachment "A" Attendees/Interested Parties

<u>Name</u>	<u>Mailing Address</u>	<u>Phone Number</u>	<u>Email</u>	<u>For/ Against</u>
Mark Gabler	51 Franklin St., Ste. 300 Annapolis, MD 21601	410-267-5900	mgabler@richlaw.com	For
Tom Foley	13880 Dulles Corner Ln., Ste. 450, Herndon, VA 20171	703-713-3125	foleyt@vmcmail.com	
Ted Bautz	P.O. Box 2131, Easton, MD	410-707-8241	tbautz@oxfordcommercial.net	for
Dan Etmoyer	1200 Unionville Rd., Pocomoke City, MD 21851	434-414-4675	etmoyerd@vmcmail.com	
Parran Bean	22150 Indian Bridge Rd., California, MD 20619	301-873-0463	beanp@vmcmail.com	
Johnny Johnson	875 Oxford Ave., Hanover, PA 17331	410-746-8723	johnssonj@vmcmail.com	
Matt Pluta	24 N. Harrison St., Easton, MD 21601	443-385-0511	matt@midshoreriverkeeper.org	
Zach Smith	114 Bay St., Bldg. C, Easton, MD 21601	410-819-8989	zachsmith@alrwlaw.com	

Attachment "B"

**February 6, 2017 Letter from Matt Pluta,
Choptank Riverkeeper**



TIMOTHY D. JUNKIN, ESQ.
FOUNDER

JEFFREY H. HORSTMAN
EXECUTIVE DIRECTOR
MILES-WYE RIVERKEEPER

MATTHEW J. PLUTA
CHOPTANK RIVERKEEPER

midshoreriverkeeper.org

info@midshoreriverkeeper.org

February 6, 2017

Mary Phipps Dickerson
Tidal Wetlands Division
Water Management Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

Re: Project # 16WL0889

Ms. Dickerson,

Thank you for the opportunity to comment on Vulcan Construction Material's ("Vulcan") application to request the authority to dredge around, and repair, their bulkhead and cluster pilings at their Easton, MD facility. My interest in this permit is specific to understanding the process behind MDE's Tidal Wetland Permit, and understanding and preventing any impacts that project # 16WL0889 ("The permit") might have on the Tred Avon River. I ask that you please consider all of these comments in your evaluation and deliberations before authorizing this permit.

1. Require the use of adequate sediment controls during permitted activities.

When asked at the Public Informational Hearing on January 23, 2017 if Vulcan would be required to use sediment control measures for the dredge operation, the answer from MDE was unclear. Vulcan explained that they would situate their barges in a horseshoe configuration to prevent the dispersal of any suspended sediments during dredge activities. I completely disagree with Vulcan's justification, that strategically placed barges will provide the same level of control as a turbidity curtain. If this permit is granted, I strongly urge MDE to require the use of a turbidity curtain, or other adequate sediment controls under this permit for any and all dredge activity.

2. Identify and understand the activities that warrant the need for maintenance dredging and request that these activities be refined to prevent the need for future dredging.

At the Public Informational Meeting it became clear that the need for maintenance dredging was not because of natural siltation, but because of two specific activities: spilling material when unloading the barges, and creating scour holes from a poorly operated tugboat.



It is unlawful under Maryland's Environmental Code to add or introduce any soil or sediment into waters of the state. Vulcan explained that a spill guard was installed several years ago and that it catches "most" of the material that spills when unloading a barge. Vulcan should be required to prevent any and all material from spilling off their barges and into the Tred Avon River, therefore reducing the need to maintenance dredge in the future.

When Vulcan brings a loaded barge up the Tred Avon River to their facility they take the loaded barge and line it up with the empty barge, adjacent to their bulkhead (see photo). The tugboat is often left at this spot for over an hour, idling in gear. When poorly operated in such a manner, the propeller of the tugboat creates a scour hole. When a scour hole is formed sediment is suspended and creates a sand bar upstream or downstream depending on the current and tide. If operating in this fashion during an incoming tide, the sandbar would form in the area that Vulcan is requesting to dredge. If this poor operating technique was prohibited then the need for maintenance dredging in the future would be reduced.

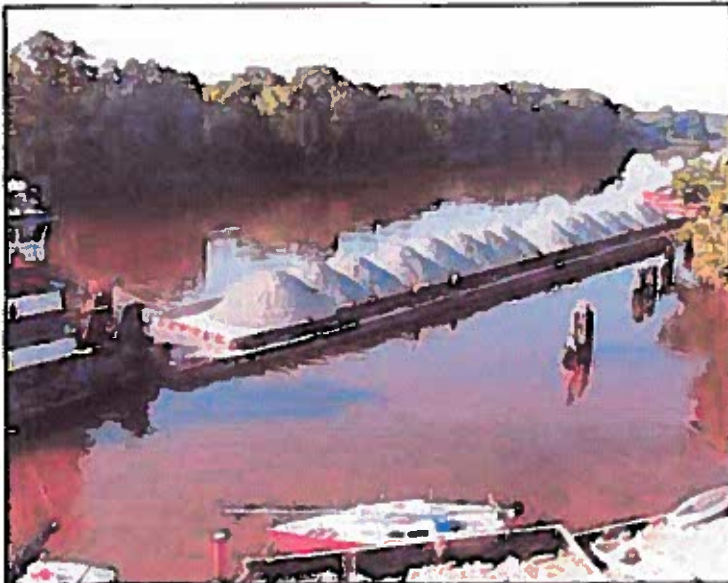


Figure 1: Loaded barge lined up behind empty barge, placing the tugboat in close proximity to adjacent property owner's bulkhead.

3. Suspend any prop-dredging activity due to its unlawful and destructive nature.

Several aerial photographs show evidence of Vulcan's barges operating at low tide in areas that are too shallow for navigating their heavy barges (see photo). As a result, the tugboats need to prop-dredge their way through the shallow water, creating sediment plumes that eventually settle nearby or on top of newly constructed oyster bars. Understanding that the entire Chesapeake Bay and its tributaries, therefore the Choptank River and the Tred Avon River, are under a TMDL for total suspended

sediments, any and all measures should be taken to prevent the resuspension of sediment within these areas.

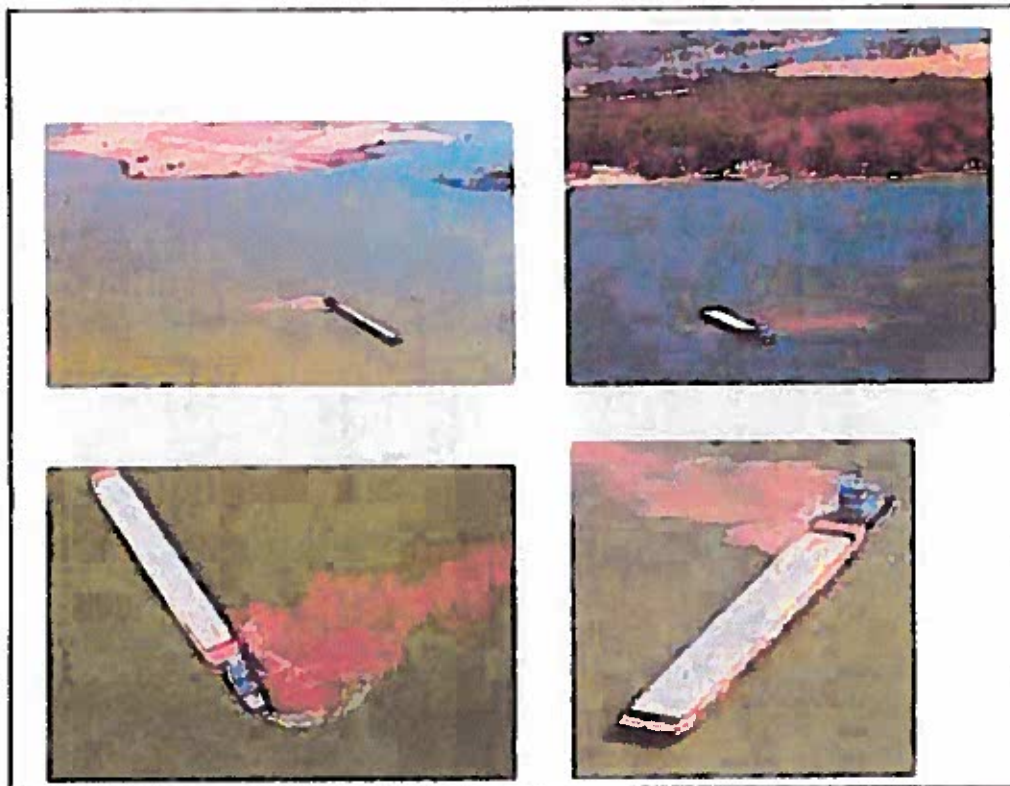


Figure 2: Aerial photographs showing Vulcan's tugboat prop-dredging through shallow water in the Tred Avon River.

When asked about this at the Public Informational Hearing, Vulcan stated that they were only aware of one oyster bar in the Tred Avon River. In the past several years, federal and state agencies such as NOAA, U.S. Army Corps of Engineers, and Maryland DNR have been restoring oyster habitat in the Tred Avon River. This activity was triggered under the federally mandated Chesapeake Bay Watershed Agreement in which Maryland has agreed to fully restore the oyster population in five major tributaries. Below is a map of the proposed constructed oyster reefs in the Tred Avon River.

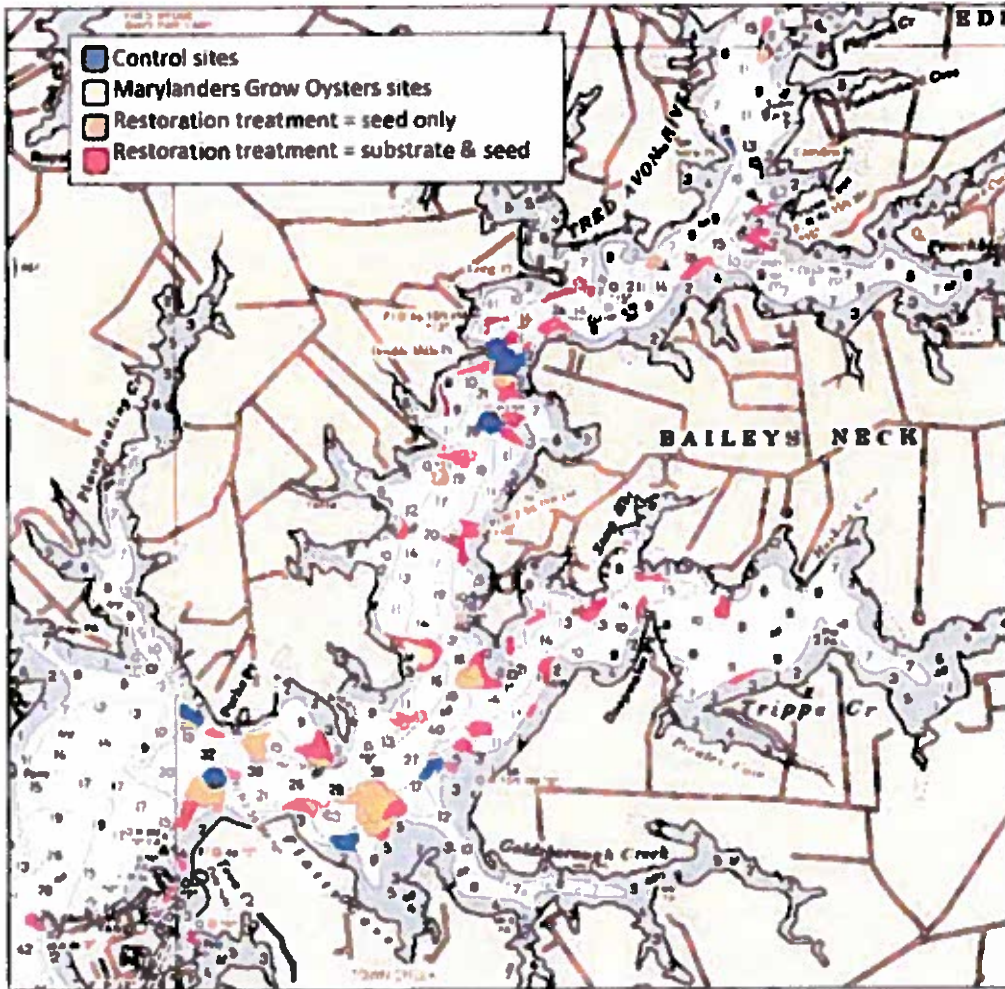


Figure 3: Map of the oyster restoration sites in the Tred Avon River.

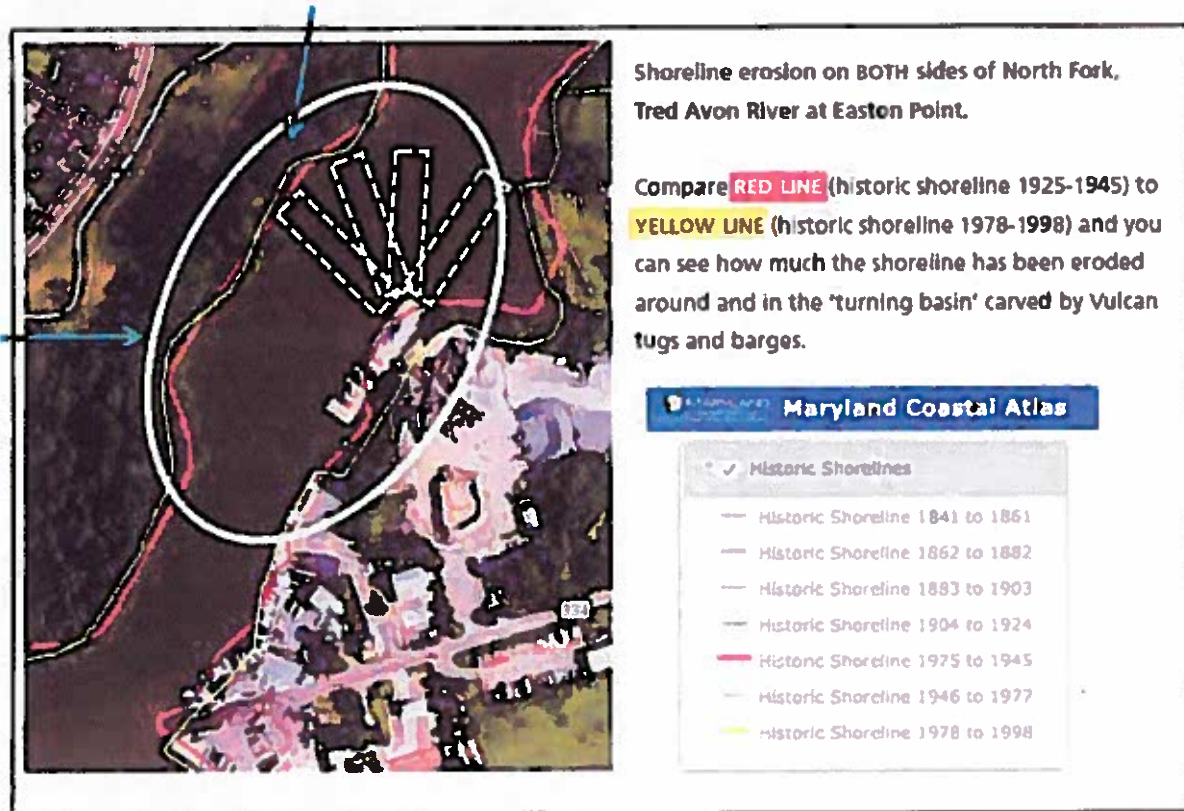
Allowing Vulcan to prop-dredge through shallow water, create sediment plumes, and silt over newly constructive oyster reefs is not only unlawful, but a waste of state and federal taxpayer money. Vulcan should be required to adjust their delivery schedule in accordance with the tide schedule to ensure that they are only navigating up the river when the water is deep enough for safe navigation.

- 4. Require a beneficial reuse of the dredge material to repair the damage to the opposite shoreline caused by free-floating barges.**

It has been observed by nearby property owners that when Vulcan is switching out an empty barge for a full barge, that the empty barge is often left free-floating in the river. These barges have been seen making contact with the opposite shoreline, causing erosion to the shoreline and sediments entering the river. The below map shows the historic shorelines (in red) compared to more recent shoreline data (in yellow). The

recent shoreline data shows indentations on the shoreline that resemble the turning radius of Vulcan's barges.

I suggest that Vulcan be required to investigate solutions for fixing the damage to the opposite shoreline caused by navigating their barges up the river. At the Public Informational Hearing it was said by Vulcan that the dredge material would not be the right size for any restoration project. What size is right? Can the dredge material be dried out and then sent through a screener to capture any suitable size sediment for reuse? What other material and resources does Vulcan have access to that could be of assistance?



5. Not adequately allowing time for questions and dialogue during the public informational part of the hearing.

My last comment about this permit is specific to the permit process carried out by MDE. At the start of the Public Informational Hearing I was notified by MDE that this was a meeting to relay information from Vulcan, and not time for an open dialogue or to ask questions about the permit. This is very concerning for someone from the public for many reasons:

When I see the title Public Informational Hearing I am under the impression that it's both an informational meeting and an official hearing for the record. Being told that I was not allowed to ask questions is contradictory to the concept of an informational hearing. Especially considering the documents submitted with the permit, and distributed to those requesting information on the permit, included an engineering design that was sketched out using a scale that was completely illegible on the provided 8.5x11" size paper (see image attached). How does the State expect the public to not have questions, at an informational meeting, when the documents provided were not readable? Moving forward I suggest that MDE does not tell the public that they are limited to the amount of dialogue and questions about the permit application, especially when providing material that is unreadable.

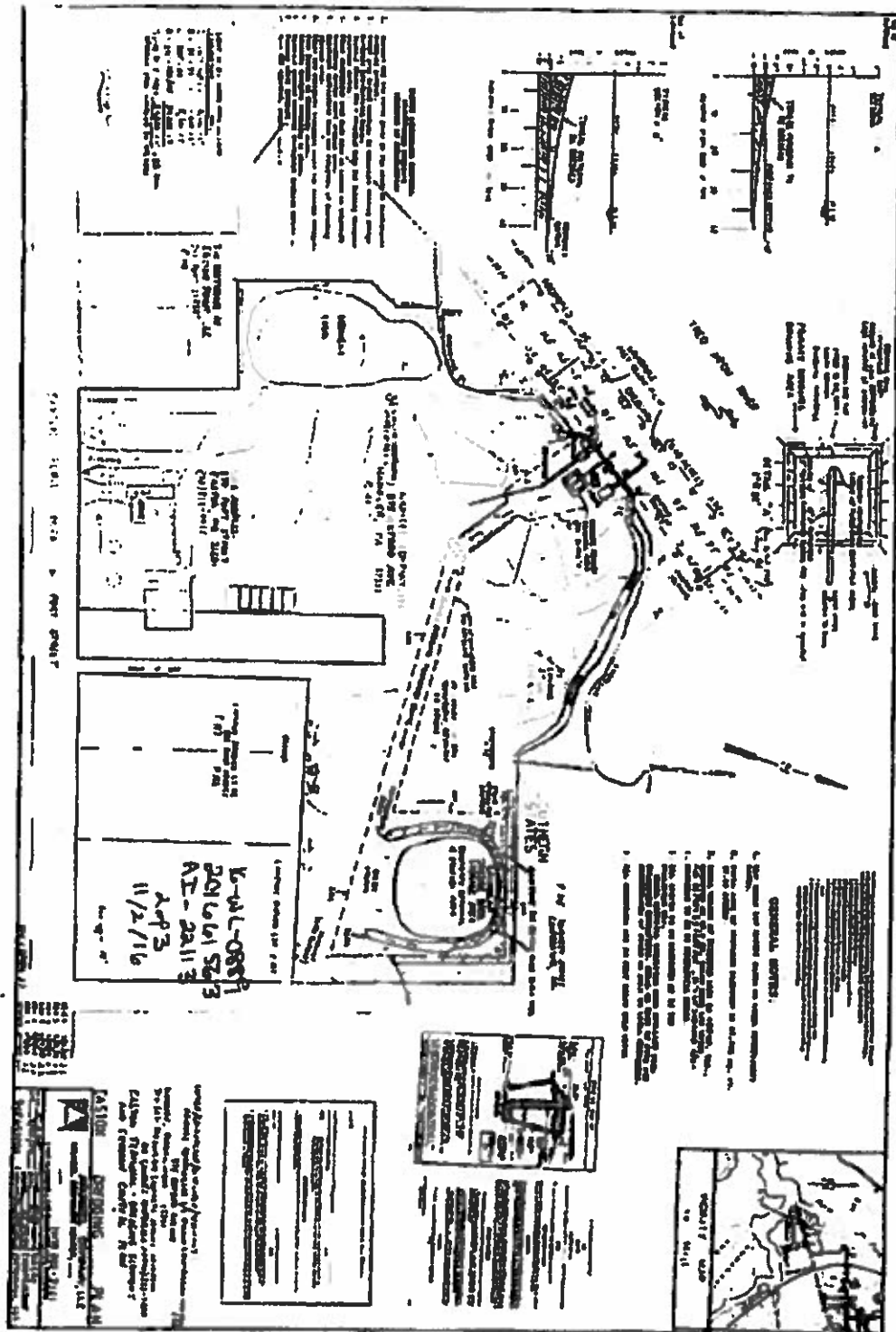


Figure 4: Unreadable engineering design provided to the public when asked for details about the permit application.

Our rivers are a natural resource designated for multiple users to enjoy and one user should not be given the right to jeopardize the health of that body of water for others. The rivers on the Eastern Shore, especially the Tred Avon River, can't afford anymore sediment being introduced or re-suspended. Considering all of the effort to restore the health and ecology in the Chesapeake Bay, and the oyster and water quality in the Tred Avon River, we have to work harder to make sure all users' needs are being met, and the health of the river continues to improve.

Thank you again for the opportunity to comment on this permit. I look forward to your responses to each of my concerns, and your final decision regarding the issuance of this permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Pluta". The signature is fluid and cursive, with the first name "Matt" being more prominent than the last name "Pluta".

Matt Pluta
Choptank Riverkeeper

Attachment "C"

**February 2, 2017 Letter from Jane Hawkey,
The BoatHouse at Easton Point, LLC**

The BoatHouse at Easton Point, LLC
911 Port Street, Easton, MD 21601

February 2, 2017

Mary Phipps Dickerson
Tidal Wetlands Division
Water Management Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

RECEIVED

FEB 09 2017

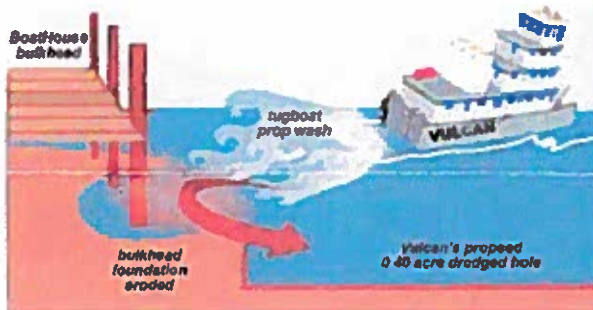
TIDAL WETLANDS DIVISION
WATER MANAGEMENT ADMIN., MDE

Re: Project No. 16-WL 0889

Dear Ms Dickerson,

Unfortunately I was out of the country so could not attend the January 23, 2017 Public Informational Hearing. But I understand that the public comment period has been extended to February 6, 2017. So, I am submitting this, my second letter to you, to be part of the public record and be seriously considered by MDE before this proposed dredge permit is granted to Vulcan Construction Materials.

I understand that the concern expressed in my December 20 letter to you, about Vulcan undermining the foundation of my connecting bulkhead (see graphic), was swiftly dismissed at the January 23, 2017 Public Hearing. Apparently Vulcan's lawyers said something like "well, we've done this dredging before and it's never been a problem so I don't see it being one now". I am told that you, MDE, allowed that weak excuse to stand uncontested.



Vulcan's proposed large and deep dredge hole will accelerate the loss of my bulkhead's foundation, ultimately leading to its complete failure. Will Vulcan pay me for that damage?



Vulcan routinely infringes on my riparian rights as a property owner and threatens collision with my customers' yachts.

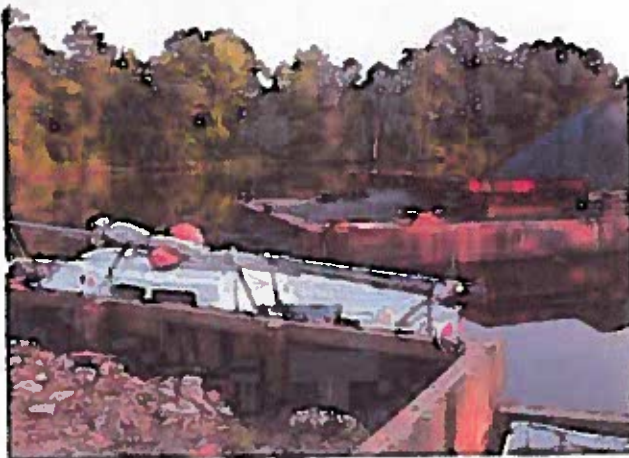
Well, it HAS been a problem before! And will again if Vulcan is granted this dredge permit for such a large area and in direct proximity to my waterfront property. To prove Vulcan's history of damage to my bulkhead, I am including images that clearly document this.

**The BoatHouse at Easton Point, LLC
911 Port Street, Easton, MD 21601**



2004: BoatHouse bulkhead in foreground and Arundel gravel barge in background.

After we removed the decking, the damage to the bulkhead was clear – the backfill of soil and rock had been completely eroded away.



2006: In the foreground, the lost soil and rock is apparent behind the new boards of the bulkhead.

In the background sits one of Arundel's gravel barges – notice how close their barges sit. If you imagine the tug that attached at its end, it is clear that the prop wash would be right at my dock. That's why I have 15' of depth at my dock and why I have to keep shoring up my bulkhead.



2006: Notice the proximity of Vulcan's dolphins and the north end of my bulkhead. Now imagine the extent of the proposed dredge hole.

Can you honestly tell me that the foundation of my bulkhead will not be affected by the dredging of that giant hole?

**The BoatHouse at Easton Point, LLC
911 Port Street, Easton, MD 21601**

In summary, I am appalled that MDE seems to be prepared to overlook all the environmental damage that will be caused by this proposed dredging activity by Vulcan. But as a tax-paying property owner, I am appealing to MDE to help protect my property as follows:

- MDE should reduce the area of the proposed dredge hole, especially in proximity to my neighboring property.
- Vulcan should be required by MDE to take ALL possible measures to guarantee no damage to my bulkhead foundation. These measures should be verified by MDE as being put in practice.
- Vulcan should be required to pay me for any damage to my bulkhead.

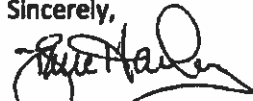
In closing, I think Vulcan's permit to dredge in these tidal wetlands should be denied. Vulcan can repair its dock and pilings without dredging, and it can continue business as usual if need be with slightly smaller barges that are less heavily loaded.

In addition, I am requesting that:

- each of my points of objection – expressed in both my December 20, 2016 letter and this February 2, 2017 letter – be responded to by MDE in writing so I understand your position, and
- MDE notify me by mail of the final permit application ruling.

Thank you.

Sincerely,



Jane Hawkey
The BoatHouse at Easton Point, LLC
410-310-6707

Attachment "D"

RICH & HENDERSON, P.C.
ATTORNEYS AT LAW
51 Franklin Street, Suite 300
Annapolis, Maryland 21401

TEL : (410) 267-5900
TOLL FREE: (800) 407-0250

FAX : (410) 267-5901
E-MAIL: wrich@richlaw.com

June 19, 2017

Via email: mary.phipps-dickerson@maryland.gov
& Certified Mail, Return Receipt

Ms. Mary Phipps-Dickerson
Natural Resources Planner
Tidal Wetlands Division
Maryland Department of the Environment
1800 Washington Street
Baltimore, MD 21230

Re: Vulcan Construction Materials, LLC
Application 16-WL-0889.

Dear Ms. Phipps-Dickerson:

This law firm represents Vulcan Construction Materials, LLC with respect to the above-referenced Tidal Wetlands License application. This responds to your June 8, 2017 belated request for a response to issues raised in the hearing report and the February 6, 2017 letter submitted by Matt Plutta and February 2, 2017 letter submitted by The Boathouse at Easton Point LLC.

Vulcan's Port Street property has been used by Vulcan and its predecessors in active navigational commerce since at least 1965. The property serves as a terminal for the marine shipment of aggregate for customers throughout the Eastern Shore. Commercial, mercantile uses existed long before operations were ever contemplated by The Boathouse at Easton Point, LLC which purchased the adjacent property in 2002. Without discussing the substance of the Boathouse assertions, the administrative records at DNR, MDE and the Corps of Engineers indicate navigational issues have been raised and decided vis-à-vis past Boathouse applications. At all times, however, Vulcan sought to protect the viability of its pre-existing operations without obstructing existing neighboring usage.

The protection of commercial commerce was the primary purpose of the Rivers and Harbors Act of 1890 which in turn was the progenitor of all wetland protection legislation by the

Ms. Mary Phipps-Dickerson
June 19, 2017
Page 2

various States, “[N]avigation for the purpose of commerce constitutes the paramount use of navigable waterways.” *Great Am. Ins. Co. v. Tugs “CISSI Reinauer,” et al.*, 933 F.Supp. 1205 (1996 SD NY). Commercial navigation is a preferred use of the waterways as recognized by the Corps of Engineers in the administration of tidal and navigational applications throughout this country. Maintenance dredging is a vital element in the safe transport and supply of aggregate to consumers and distributors on the Eastern Shore. The maintenance dredging authorization requested by Vulcan proposes to maintenance dredge less than one-half acre in area and to remove less than 400 cubic yards of material. As stated, this activity is supportive of safe navigational transport and it will allow the safe mooring of Vulcan’s vessels, reducing contact with the river bottom in the mooring area. Maintenance dredging within the parameters of this application is authorized by the Department of the Army Programmatic General Permit State of Maryland (“MDSPGP-5”) as a Category A activity and has been determined (in cooperative effort with MDE) to have only minimal individual and cumulative adverse effects on the environment. The Corps of Engineers does not require a permit for this activity. Unfortunately, the State’s procedures are not as simple for such limited dredging. We note, however, there are exceptions which apply to the requested bulkhead and dauphin replacement.

The majority of comments offered at the hearing and in writing are outside the scope of the Tidal Wetlands Maintenance License applied for by Vulcan. For example, the manner in which Vulcan operates its tugboats and barges and the schedule of its barges and shipments of aggregate do not focus on the limited activity proposed by Vulcan.

Vulcan’s responses to the comments are attached hereto.

Yours very truly,



Warren K. Rich

WKR:rw

Response to Comments in Public Hearing Report:

The comments offered by Matt Plutta during the Public Hearing on January 23, 2017, as outlined in section 6 of the Report were generally responded to by the Applicant during the Hearing as outlined in section 7 of the Report. Additional responses are below.

Comment “a” regarding tide information and indirect impacts associated with the facility and its vessels:

Response: Tug captains take tidal fluctuations into account. They seek to avoid contact with the river bottom, but variations in channel depth exist and incidental, contact with the bottom cannot always be avoided.

Comment “b” regarding the need for dredging:

Response: This comment was responded to by Vulcan during the Public Hearing; Vulcan and its predecessors have engaged in maintenance dredging historically at this location. It is part of the safe carriage of aggregate and will reduce chances of encountering river bottom, thereby reducing possible sedimentation.

Comment “c” regarding water quality standards and TMDL limits:

Response: This comment was addressed by Vulcan during the Public Hearing. TMDL standards are not applicable to either navigation activities or this maintenance dredging. Vulcan intends to utilize a sediment curtain during the dredging operations in order to maintain “best available practice.”

Comment “d” regarding photos of barges “purporting to be operating in Tred Avon” and potential risk to oyster restoration goals:

Response: This comment has no relationship to the maintenance dredging application. No competent evidence was presented to illustrate that its one-day, maintenance dredging operation would cause any negative adverse impacts on oyster reefs. Parenthetically, we note that if oyster cultivation is proposed and funded, such operations by law must not intrude on existing navigational operations which are considered paramount. *See Adams v. Carey*, 172 Md. 172 (1937).

Comment “e” regarding barges operating outside of the channel and barges causing scour holes:

Response: Although this comment is not related to the maintenance dredging application before MDE, it was addressed by the Applicant during the Public Hearing. Vulcan seeks to navigate within the Federal channel, on occasion a high spot could be encountered, even though the Captains seek to avoid these areas. No competent evidence was presented or exists in the record that Vulcan’s tugboats cause scour holes with any degree of frequency or that they sit in gear longer than necessary to maintain the safe control and operation of its barges.

Comment “f” regarding shared uses within the waters:

Response: The limited maintenance dredging will enhance other boating uses and avoid sedimentation by limiting contact with river bottom.

Comment “g” regarding the Federal Channel not being marked:

Response: This comment/question is not related to the maintenance dredging application before MDE.

Comments “h” regarding turbidity curtains:

Response: The Applicant will employ turbidity curtains.

Comment “i” regarding comments from The Boathouse at Easton Point:

Response: The Boathouse’s comments focus on Vulcan’s commercial operations not on the impacts of maintenance dredging. Assertions that there may be impacts from these operations on its bulkhead and the opposing shoreline are private in nature and do not bear on the application. Maintenance dredging with the curtain will be carried out consistent with best established practices and should not impact the water quality of the Tred Avon in any measurable or quantifiable manner.

Comment “j” related to the historic shoreline and impacts of barge operations:

Response: This comment is not related to the maintenance dredging application before MDE nor is a factual basis provided for this contention.

Comment “k” related to the SAV on opposing shoreline:

Response: Applicant will use best practices with a sediment curtain during dredging. Maintenance dredging will create deeper bottom contour that will be protective of SAV’s on a

Ms. Mary Phipps-Dickerson
June 19, 2017
Page 5

long term basis. According to the VIMS maps presented with Vulcan's application, no SAV beds exist in the area of the proposed dredging.

Comment "I" related to the use of dredged material:

Response: The Applicant has explained that it would beneficially use the dredged material to maintain its property.

CONCLUSION

This request to maintenance dredge the area adjacent to the Vulcan shoreline was filed on September 22, 2016. The administration chose to hold a public informational meeting on this matter on January 23, 2017. Comments were subsequently rendered which were in large measure duplicative of statements made at the hearing. The Applicant did respond at the hearing to the various questions and assertions raised by the Riverkeeper and others. However, for some reason this matter has languished at the agency for approximately four months without a decision.

The Applicant merely seeks to return to a controlled depth of 10 ft. The request is made in order to eliminate contact with river bottom and thereby avoid stirring up sediment in the mooring area. The Application is in furtherance of navigational commerce and it has been an activity licensed by the State and authorized by the State and Federal government since the late 1950's. Maryland regulations authorize the replacement of the bulkhead and the dolphins as requested by the Applicant without permit authorization. The only real issue is maintenance dredging, an activity that is exempt from permit by the Corps of Engineers.

As noted in the body of this letter, the comments made and issues raised do not focus on the impacts of maintenance dredging, but rather focus on the Company's operations and the Company's ability to traverse the Federal channels in the Tred Avon River. This is considered to be the paramount use of navigable rivers, it is a protected activity in accordance with the cases we have cited above. This does not mean, however, that the Applicant can avoid environmental safeguards as set forth in Federal and State regulations. The record in this case from the late 1950's on illustrates the continued effort to accommodate environmental safeguards. We, therefore, request that you issue a favorable recommendation immediately.

Attachment " E "



Maryland
Department of
the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

CERTIFIED MAIL

Midshore Riverkeeper Conservancy
Attn: Matt Pluta
24 North Harrison St.
Easton, MD 21601

Re: Vulcan Construction Materials LLC, Talbot County
Application No. 16-WL-0889
Agency Interest No. 152762

Dear Mr. Pluta,

The Maryland Department of the Environment, Wetlands and Waterways Program, Tidal Wetlands Division (Department) is in receipt of your letter of objection to the above-referenced application for a tidal wetlands license, 16-WL-0889, for the Vulcan Construction Materials, LLC (Vulcan) dredging project, in Easton (Project). Specifically, a letter dated February 6, 2017, from you on behalf of the Midshore Riverkeeper Conservancy (MRC).

The Department is also aware of objections to the proposed project that you raised in person during the public informational hearing, which was held on January 23, 2017. On June 16, 2017, the Applicant submitted the enclosed written response to the issues raised during the public informational hearing, which include many of the issues raised in the above-referenced objection letter. Copies of each of those letters, as well as the Department's hearing report, are enclosed herein for reference.

The purpose of this letter is to address, on behalf of the Department, the issues raised in your above-referenced letter, and to inform you of the Department's decision to proceed with making a Report and Recommendation to the Board of Public Works, in support of the issuance of a tidal wetlands license to the Applicant. Please be advised that, as interested parties and objectors, the Department will copy you on its final Report & Recommendation to the Board.

Part 1 - Responses to Letter from MRC

The following presents the Department's responses to each of the itemized issues raised in your February 6th, 2017, letter. The full text of that letter is not repeated here, but may be found in the enclosed reference copy.

Midshore Riverkeeper Conservancy
Re: Vulcan Materials, LLC

Comment 1. Require the use of adequate sediment controls during permitted activities.

Response from the Department:

The Department acknowledges this concern. Vulcan, per item #3 of its June 8th response letter, agrees to use turbidity curtains to minimize the release of potentially-harmful turbidity and sediment within the waterbody. The Department intends to recommend to the Board of Public Works that a special condition to that effect be included in the final Tidal Wetlands License.

Comment 2. Identify and understand the activities that warrant the need for maintenance dredging and request that these activities be refined to prevent the need for future dredging.

Response from the Department:

Regarding vessel operation, the tidal wetlands program lacks the authority to directly regulate vessels operating within navigable waters of the State. Such authority lies with the Maryland Department of Natural Resources and the U.S. Coast Guard. While propeller dredging is generally prohibited under the Department's regulations as a method to maintain or increase channel depth, this prohibition is typically applied when reviewing an application for a newly-proposed pier, marina, dredged area or similar project that would facilitate new vessel activity. Likewise, regarding possible incidental deposition of aggregates or other fill materials into a water of the State during routine operations of the facility, such events – to the extent they may occur – would be a result of operation of the existing facility, rather than the currently proposed maintenance dredging.

To the best of the Department's knowledge, the Vulcan site has been in operation as an aggregate handling facility for decades, even pre-dating the Tidal Wetlands Act of 1970. The proposed project requests approval to maintenance dredge to maintain that existing use, which is an activity that the tidal wetlands regulations generally support, so long as the dredging and dredged material disposal activities themselves are done in a manner consistent with our requirements.

Determining the primary sources of sedimentation can be challenging at any site, and is not typically a requirement to obtain authorization to conduct maintenance dredging. The Department does not dispute that incidental contact with the substrate by a vessel's propeller or incidental spillage of material may occur during barge operations at the site. However, the mere possibility of incidental spillage and propeller contact with the substrate during barge operations is not actionable evidence that this is actually occurring to a significant extent. The Department has thus far not been presented with evidence to document and quantify specific incidents to the extent that would be necessary to pursue an enforcement-related investigation or to justify suspending review of the current maintenance dredging application.

Comment 3. Suspend any prop-dredging activity due to its unlawful and destructive nature.

Midshore Riverkeeper Conservancy
Re: Vulcan Materials, LLC

Response from the Department:

Prop-dredging has not been authorized at this location. If you wish to report a possible incident of unauthorized propeller dredging or other impact to tidal wetland resources, please contact the MDE Water and Science Administration Compliance Program. You may also wish to contact DNR's Boating Services program regarding general vessel operation requirements within the State.

Comment 4. Require a beneficial reuse of the dredge material to repair the damage to the opposite shoreline caused by free-floating barges.

Response from the Department:

Under Maryland Law and the tidal wetlands regulations, beneficial reuses of dredged material within waters of the state are allowed under certain, specifically-defined circumstances, but not required. Generally speaking, when any project involving the in-water placement of fill (whether beneficial reuse or otherwise) is authorized, the Department (or the Board of Public Works) require that the fill material be clean and free of contaminants, and of a suitable grain size distribution to facilitate the intended use. Routine maintenance dredging to maintain the use of an existing facility, which does not involve dredging areas wider or deeper than previously dredged, typically would not require environmental mitigation. The Tidal Wetlands Division is also not aware of any pending compliance actions that would require the applicant to take a specific restorative action. Absent such circumstances, the Department may allow, but cannot compel an applicant to put the dredged material to a "beneficial reuse", but may only impose reasonable conditions to ensure that the handling and disposal of dredge material will not result in filling of surface waters or wetlands, or cause a water quality violation. It is the Department's intent to recommend to the Board that appropriate special conditions to that effect be included in the final Tidal Wetlands License.

Comment 5. Not adequately allowing time for questions and dialogue during the public informational part of the hearing.

Response from the Department:

This comment appears to be directed primarily at the Department and its conduct of the public informational hearing. Please be advised that the conduct of a Public Informational Hearing regarding a pending tidal wetlands license application is governed under COMAR 26.24.01.05. Those regulations establish that the primary purpose of the hearing is for the applicant to present the proposed project, and for interested parties to present statements, either in support or opposition to the project. The regulations do allow for questions to be asked of the hearing officer, but not "cross-examination". When conducting informational hearings, the Department generally accepts and attempts to address reasonable questions regarding the facts of the proposed project or our administrative process, which the Department believes was done at this hearing. While we strive to be as open in our discussions as we can, please keep in mind that such hearings are not intended to result in any final decisions on the part of any agency, nor are they intended to be conducted as

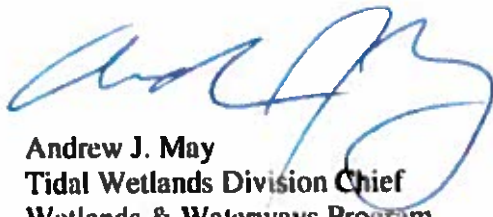
Midshore Riverkeeper Conservancy
Re: Vulcan Materials, LLC

"town hall" type meetings, which are less formal with a format that encourages back and forth exchanges among all attendees.

Based on the issues presented in your letter and raised during the public hearing, the Department believes the applicant has satisfactorily addressed the issues, within the scope of the present application. Accordingly, the Department, after thorough review and consideration, is moving forward to issue a favorable Report and Recommendation to the Board of Public Works, for the issuance of a Tidal Wetlands License for work within state tidal wetlands. If you have any questions regarding the Application, you may contact me at 410-537-3522 or by email at andrew.may@maryland.gov.

Thank you for your participation in this matter.

Sincerely,



Andrew J. May
Tidal Wetlands Division Chief
Wetlands & Waterways Program
Water Management Administration

Enclosure: Letter from Midshore Riverkeeper Conservancy (dated 2/6/17)
MDE Public Hearing Report
Response to Hearing Comments from Vulcan Construction Materials LLC (6/16/17)

cc: Johnny Johnson, Vulcan Construction Materials, LLC, 875 Oxford Ave., Hanover, PA 17331
Mark F. Gabler, Rich & Henderson, P.C., 51 Franklin St., Suite 300, Annapolis, MD 21401
Bill Morgante, Board of Public Works, 80 Calvert St., Room 117, Annapolis, MD 21404

Attachment "F"



Maryland
Department of
the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

CERTIFIED MAIL

The Boathouse at Easton Point, LLC
Attn: Jane Hawkey
911 Port St.
Easton, MD 21601

Re: Vulcan Construction Materials LLC, Talbot County
Application No. 16-WL-0889
Agency Interest No. 152762

Dear Ms. Hawkey,

The Maryland Department of the Environment, Wetlands and Waterways Program, Tidal Wetlands Division (Department) is in receipt of your letters of objection to the above-referenced application for a tidal wetlands license, 16-WL-0889, for the Vulcan Construction Materials, LLC (Vulcan) dredging project, in Easton (Project). Specifically, two letters dated December 20, 2016 and February 2, 2017, from Ms. Jane Hawkey, on behalf of the Boathouse at Easton Point, LLC.

On June 16, 2017, the Applicant submitted the enclosed written response to the issues raised during the public informational hearing, which include many of the issues raised in the above-referenced objection letters. Copies of each of these letters, as well as the Department's hearing report, are enclosed herein for reference.

The purpose of this letter is to address, on behalf of the Department, the issues raised in your above-referenced letters, and to inform you of the Department's decision to proceed with making a Report and Recommendation to the Board of Public Works, in support of the issuance of a tidal wetlands license to the Applicant. Please be advised that, as interested parties and objectors, the Department will copy you on its final Report & Recommendation to the Board.

Part 1 – Responses to the December 20th Letter from the Boathouse at Easton Point

The following presents the Department's responses to each of the itemized issues raised in your December 20th, 2016, letter. The full text of that letter is not repeated here, but may be found in the enclosed reference copy.

Boathouse at Easton Point, LLC
Re: Vulcan Materials, LLC

Comment 1. Your comment regarding the designation of this segment of the Tred Avon and its tributaries as “Use 1” waters and the applicability of a time-of-year closure for “instream work” from March 1st – June 15th .

Response from the Department:

The time-of-year closure that you reference is a best management practice applicable to nontidal wetland, wetland buffer, and (nontidal) waterway projects. Those requirements are not intended to be applied to tidal waters. For tidal wetlands license applications, the Department generally coordinates with the Maryland Department of Natural Resources (DNR). In this case, DNR specifically requested a time-of-year closure of November 1st through March 15th, to protect waterfowl, but did not recommend any additional closure periods. The Department has recommended that the requested closure be included as a special condition of the license.

Comment 2. Your comment that the project may be inconsistent with the stated goals of the Talbot County Comprehensive Plan.

Response from the Department:

Talbot County has not notified the Department of any inconsistency or notified the Department of any objection to the proposed project. The State’s action on the tidal wetlands license application is independent of, and is not determinative of, any requirements of the County or other local government.

Comment 3. Your comment that the proposed [maintenance] dredge area is larger than the area of “spilled gravel” in front of the applicant’s dock.

Response from the Department:

The application proposes maintenance dredging of an existing mooring basin/berth, which under state regulations may generally be allowed within the entire, previously-dredged basin/berth area, and is not limited only to the location of an alleged discharge of fill material.

Comment 4. Your comment that the operation of Vulcan’s tugboats is undermining your bulkhead and your question about payment for damages.

Response from the Department:

While the Department neither supports nor refutes your assertion that the operation of barges and tugs may be contributing to the deterioration of adjacent properties, such operations are historically-present and ongoing, and are not the subject of the present application. Neither the Department nor the Board can compel an applicant to pay damages to a 3rd party. If you believe that you have been harmed, or are likely to be harmed by the actions or negligence of the applicant, you may wish to retain a private attorney to explore possible options for relief.

Boathouse at Easton Point, LLC
Re: Vulcan Materials, LLC

Comment 5. Your comment regarding the legibility of the plans and requesting documentation of the location of the federal channel.

Response from the Department:

The Department has determined the submitted plans to be satisfactory, and the approved plans will be sent to the Board, along with the Department's favorable Report and Recommendation. A copy of that document will also be provided to you. Regarding a precise geospatial location of the federal channel, MDE has contacted the U.S. Army Corps of Engineers and communicated your request to them.

Part 2 --Responses to the February 2nd Letter from the Boathouse at Easton Point

The following presents the Department's responses to each of the itemized issues raised in your February 2th, 2017, letter. The full text of that letter is not repeated here, but may be found in the enclosed reference copy.

Comment 1. MDE should reduce the area of the proposed dredge hole, especially in proximity to my neighboring property.

Response from the Department:

Based upon the Department's review of the application and supporting information, the applicant has proposed to maintenance dredge within an area which has been previously dredged under prior tidal wetlands licenses, and does not appear to be proposing deepening or lateral expansion of those previously-dredged areas. Such prior uses are generally allowed to be maintained, so long as the maintenance dredging itself is done in accordance with the terms and conditions of the tidal wetlands license. The Department does not believe there is a basis to compel the applicant to reduce the size of the proposed project, so long as it is within the limits of the previously-authorized dredge areas.

Comment 2. Vulcan should be required by MDE to take ALL possible measures to guarantee no damage to my bulkhead foundation. These measures should be verified by MDE as being put in practice.

Response from the Department:

As mentioned previously, the applicant has proposed to maintenance dredge to maintain use of an existing facility which has been in place for decades. While the Department neither supports nor refutes your assertion that the operation of barges and tugs may be contributing to the deterioration of adjacent properties, such operations are historically-present, and not the subject of the present application. Therefore the Department is unable to provide any such "guarantee" that ongoing operations will not harm your property.

Boathouse at Easton Point, LLC
Re: Vulcan Materials, LLC

Comment 3. Vulcan should be required to pay me for any damage to my bulkhead.

Response from the Department:

As mentioned in response to your previous letter, neither the Department nor the Board can compel an applicant to pay damages to a 3rd party. If you believe that you have been harmed, or are likely to be harmed by the actions or negligence of the applicant, you may wish to retain a private attorney to explore possible options for relief.

Comment 4. [Vulcan's permit to dredge in these tidal wetlands should be denied. Vulcan can repair its dock and pilings without dredging, and it can continue business with slightly smaller barges that are less heavily loaded.] In addition, I am requesting that:

- **Each of my points of objection – expressed in both my December 20, 2016 letter and this February 2, 2017 letter – be responded to by MDE in writing so I understand your position, [and that]**
- **MDE notify me by mail of the final permit application ruling.**

Response from the Department:

The Department's decision to recommend authorization of the requested maintenance dredging is not dependent upon whether such work is necessary to repair or replace the existing bulkhead. Rather, the Department's decision is based upon whether the proposal constitutes the allowable maintenance of a lawfully-existing prior use – i.e. the maintenance dredging of a 10-foot-deep basin for the loading and unloading of barges.

For the reasons provided herein, the Department believes it has responded to the points presented in both of your letters, to the best of our ability given the circumstances of this application. The Department, by way of this letter, hereby notifies you of our final agency action on this application – i.e. the issuance of a Report and Recommendation to the Board of Public Works recommending that a tidal wetlands license be granted. Please note that the final authorization from the state will ultimately be determined by the Board.

Based on the issues presented in your letters and raised during the public hearing, the Department believes the applicant has satisfactorily addressed the issues, within the scope of the present application. Accordingly, the Department, after thorough review and consideration, is moving forward to issue a favorable Report and Recommendation to the Board of Public Works, for the issuance of a Tidal Wetlands License for work within state tidal wetlands. If you have any questions regarding the Application, you may contact me at 410-537-3522 or by email at andrew.may@maryland.gov.

**Boathouse at Easton Point, LLC
Re: Vulcan Materials, LLC**

Thank you for your participation in this matter.

Sincerely,



**Andrew J. May
Tidal Wetlands Division Chief
Wetlands & Waterways Program
Water Management Administration**

**Enclosure: Letters from the Boathouse at Easton Point, LLC (dated 12/20/16 & 2/2/17)
MDE Public Hearing Report
Response to Hearing Comments from Vulcan Construction Materials LLC (6/16/17)**

**cc: Johnny Johnson, Vulcan Construction Materials, LLC, 875 Oxford Ave., Hanover, PA 17331
Mark F. Gabler, Rich & Henderson, P.C., 51 Franklin St., Suite 300, Annapolis, MD 21401
Bill Morgante, Board of Public Works, 80 Calvert St., Room 117, Annapolis, MD 21404**