

**WATER AND SCIENCE ADMINISTRATION
TIDAL WETLANDS DIVISION**

Wetland Report and Recommendation

State Wetlands Case No:

20-WL-0187

Applicant: Robb Merritt
2066 Lord Baltimore Dr
Baltimore, MD 21244
rmerritt@merritt-
companies.com
410-594-7409

Agent: Davis, Bowen & Friedel Inc.
C/o Ken Eaton and Andrew Scrutchfield
100 North Washington street, Suite 103
Easton, Maryland 21601
ajs@dbfinc.com
keaton@dbfinc.com
410-770-4744/302-424-1441

Date Application Received: February 20, 2020 **Public Notice Required?** Yes

Comment Period Closing Date: August 15, 2021

Maryland Coordinates: 157409 x 445072

Book Map Coordinates:

Location of Proposed Work: 435 Ginn Lane, Pasadena, MD 21122

Purpose of Proposed Work:

1. To authorize previously authorized work under 20-0141EX;
2. To protect the existing dwelling from a foundational failure;
3. To protect the shoreline from erosion.

Description of Authorized Work:

- Authorize after-the-fact 150 linear feet of stone revetment that is emplaced within a maximum of 38 feet channelward of the mean high water line.
- Authorize after-the-fact 30 linear feet of stone revetment within 15 feet channelward of the mean high water line; and
- Remove 180 linear feet of stone revetment.

Waterbody: Broad Creek

Requires Water Quality Certification?: Yes, WQC (21-WQC-0321) will be issued by MDE.

Qualifies for Maryland State Programmatic General Permit?: No.

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

Area of Open Water Tidal Wetlands Requiring Mitigation: 3,435 square feet of impact requires mitigation at a 2:1 ratio. Thus, there is a total of 6,870 square feet of required mitigation.

Area of Wetlands Created: 0 s.f. Mitigation will be provided as part of 20-WL-1483.

Was the Applicant's Original Project Modified?: Yes. After 20-0141EX was issued on February 10, 2020, the applicant applied (on February 20, 2020) to authorize the work that was included in that Expedited Authorization: 150 linear feet of stone revetment placed 15-foot channelward of the mean high water line. However, due to neighbor comment and Department investigation, it was determined that the channelward encroachment of the revetment was significantly further than authorized and additional stone was placed along shoreline that was not included in the expedited license. The applicant revised plans to remove unauthorized stone, provide mitigation and revised the channelward encroachment of the stone. However, after additional comment and investigation, and after the channelward encroachment was determined by Department staff, the applicant revised plans again to reflect the existing impact and is reflected in the project description. Revised plans were received on April 20, 2021.

Department Comment:

On February 10, 2020, BPW issued 20-0141EX to allow for the emplacement of 150 linear feet of stone revetment extending a maximum of 15 feet channelward of the mean high water line to address an imminent concern of foundational failure to an existing dwelling.

On May 11, 2020, MDE received a complaint from Dr. Khaled Kebaish regarding the construction associated with the expedited authorization. The complainant alleged that revetment extended significantly further channelward than 15 feet.

At the same time, the applicant applied to authorize the work from 20-0141EX and Department staff placed the project (20-WL-0187) on public notice; 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 May 15, 2020 to June 1, 2020 and publishing the public notice for the proposed project in The Capitol Gazette on May 15, 2020. In addition, the public notice was provided to the following adjacent property owner:

- Khaled Kebaish, 1001 Snapper Cove Road, Pasadena, MD 21122

Mr. Kebaish provided comments to the Department and Compliance. Dr. Kebaish provided photos of the construction (Attachment A). Compliance completed a site inspection associated with a Problem Activity Form (PAF) on May 15, 2020 (Attachment B). Based on site inspections by Compliance and Department staff, it was determined that the channelward encroachment was further than the 15 feet that was authorized in 20-1041EX and the linear feet of the stone revetment extended longer than the authorized 150 linear feet. Also, some of the unauthorized revetment was placed in areas where a living shoreline waiver would not be granted, and thus it would have to be removed. Finally, due to the channelward extent of the revetment, Department staff informed the applicant that mitigation would be required for any fill placed channelward of 10 feet from MHWL. As a result of these Department comments, the applicant sent in a revised set of plans showing a maximum channelward extent of 23 feet for the 150 linear feet of revetment that was included in the expedited authorization, 30 linear feet of stone revetment within a maximum of 10-foot channelward of the mean high water line; and the removal of 150-linear feet of stone revetment in the area where Department staff determined that a living shoreline waiver would not be granted, and the construction of a 3,000 square feet of living shoreline to serve as mitigation. The revised plan set was placed on public notice; 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, 2020 to October 15, 2020 and publishing the public notice for the proposed project in The Capitol Gazette on October 18, 2021. In addition, the public notice was provided to the following adjacent property owner:

- Khaled Kebaish, 1001 Snapper Cove Road, Pasadena, MD 21122

The Department received additional comments from Dr. Kebaish on October 27 and October 29, 2020. These comments included a series of aerial photographs that depict the impact of the revetment and show it extending further than 23 feet channelward of the mean high water line. Attachment C is a full list of Dr. Kebaish's questions and concerns with Department responses written on November 17, 2020. The response includes an acknowledgment that the Department will determine the original MHWL through internal consultation with the GIS team at MDE. Dr. Kebaish's comments also included a request for public hearing. Department staff explained that a public hearing based on the plans that were public noticed may not be valuable since it has been determined that those plans do not depict what was constructed and that new plans would be required once MDE determines the impact. The Attachment D confirms via email that Dr. Kebaish rescinded his request for a public hearing on December 18, 2020 pending the Department's determination on the channelward extent of the project and revised plans.

After multiple meetings between Department staff and the MDE GIS team between December 2020 and April 2021, the Department was provided with a series of maps from the GIS team. The GIS team incorporated the data from the proposed/provided plans, the neighbor's data, drone imagery, satellite imagery, and consulted with NOAA. Based on the data from these maps the Department determined that the channelward extent is 38 feet from the original mean high water line and outlined what can/cannot be authorized, and what mitigation would be required. The Determination document and included maps (Attachment E) were provided to the applicant, his agents and USACE, on April 13, 2021 and Dr. Kebaish on April 29, 2021.

In reviewing the proposed shoreline stabilization structures, the Department determined that beach nourishment was not appropriate because there is no existing or historic beach. The Department did not consider a breakwater or groin system because these structures would increase potential impacts to Dr. Kebaish's property. The area where the Department recommends a revetment was determined to be the preferred shore erosion control method. However, the Department also determined that a living shoreline waiver would not be granted for 180 linear feet of shoreline, requiring stone to be removed and that a living shoreline to be constructed for shore erosion control, which is included in wetlands license 20-1483.

The applicant accepted MDE's determination and provided revised plans to the Department on July 9, 2021 that accurately depicts the impact, removes unauthorized stone, and provides for the Department's required mitigation. The applicant had previously submitted an additional JPA (20-WL-1483) for proposed shoreline and pier work on the west side of the peninsula. The revised plans show that the mitigation for this impact is included in 20-WL-1483.

Dr. Kebaish did not respond to the Department's April 29, 2021 email.

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 July 15, 2021 to August 15, 2021 and publishing the public notice for the proposed project in The Capitol Gazette on July 20, 2021. In addition, the public notice was provided to the following adjacent property owner:

- Khaled Kebaish, 1001 Snapper Cove Road, Pasadena, MD 21122

Dr. Kebaish received the revised plans as part of the public notice and since there were no comments received by him or any other citizen, and there were no requests for a public hearing by him or any other citizens, the Department believes that all concerns have been addressed.

The Maryland Department of Natural Resources (DNR) reviewed the proposed project and had no comments regarding impacts to State natural resources.

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 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, all work performed under this Tidal Wetlands License 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. A list of licensed marine contractors 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.
- 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 perform all work in accordance with the Certification of Water Quality issued by the Maryland Department of the Environment, Tidal Wetlands Division.
- 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 rebar is to be cut off flush with the concrete. After emplacement of the revetment, any rebar 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 provide mitigation for 6,870 square feet of impacts to shallow water habitat as part of Wetlands License 20-1483.

DEPARTMENT OF THE ENVIRONMENT APPROVAL:



10/22/21

Matthew F Wallach, Natural Resource Planner
Tidal Wetlands Division

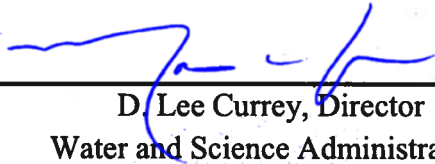
DATE



10/28/2021

Tammy Roberson, Division Chief
Tidal Wetlands Division

DATE



10/29/2021

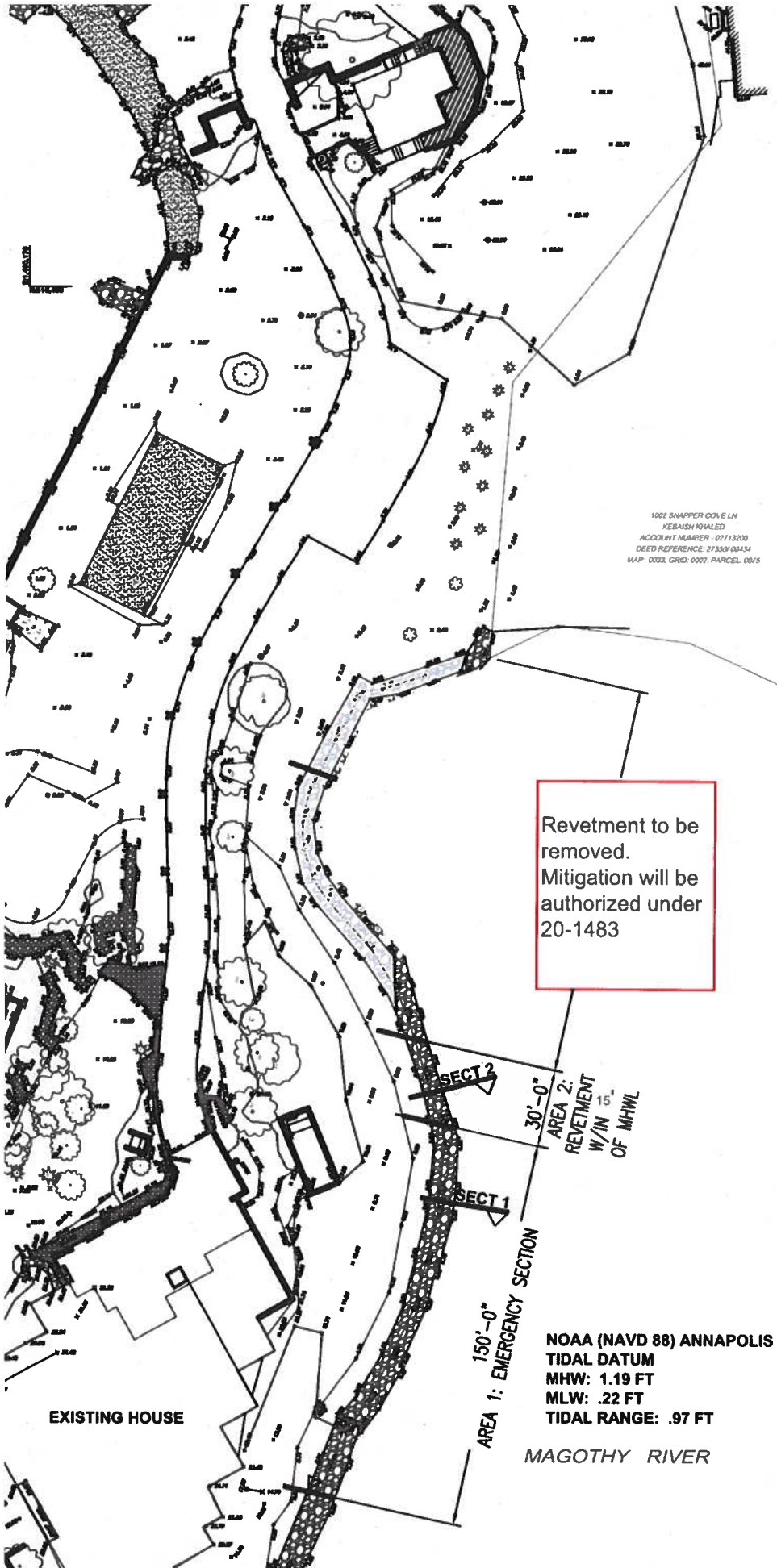
D. Lee Currey, Director
Water and Science Administration

DATE

WETLANDS ADMINISTRATION CONCURRENCE:

William Morgante, Wetlands Administrator
Board of Public Works

DATE



1007 SHAPPER COVE LN
 KEBASHI KHALED
 ACCOUNT NUMBER: 00713200
 DEED REFERENCE: 21350/00434
 MAP: 0033, GRID: 0007, PARCEL: 0075

Revetment to be removed.
 Mitigation will be authorized under 20-1483

20-WL-0187
 85638
 8/25/2020
 Sheet 1 of 3

SECT 2
 30'-0"
 AREA 2:
 REVETMENT
 W/IN 15'
 OF MHWL

SECT 1
 150'-0"
 AREA 1: EMERGENCY SECTION

NOAA (NAVD 88) ANNAPOLIS BENCHMARK
 TIDAL DATUM
 MHW: 1.19 FT
 MLW: .22 FT
 TIDAL RANGE: .97 FT

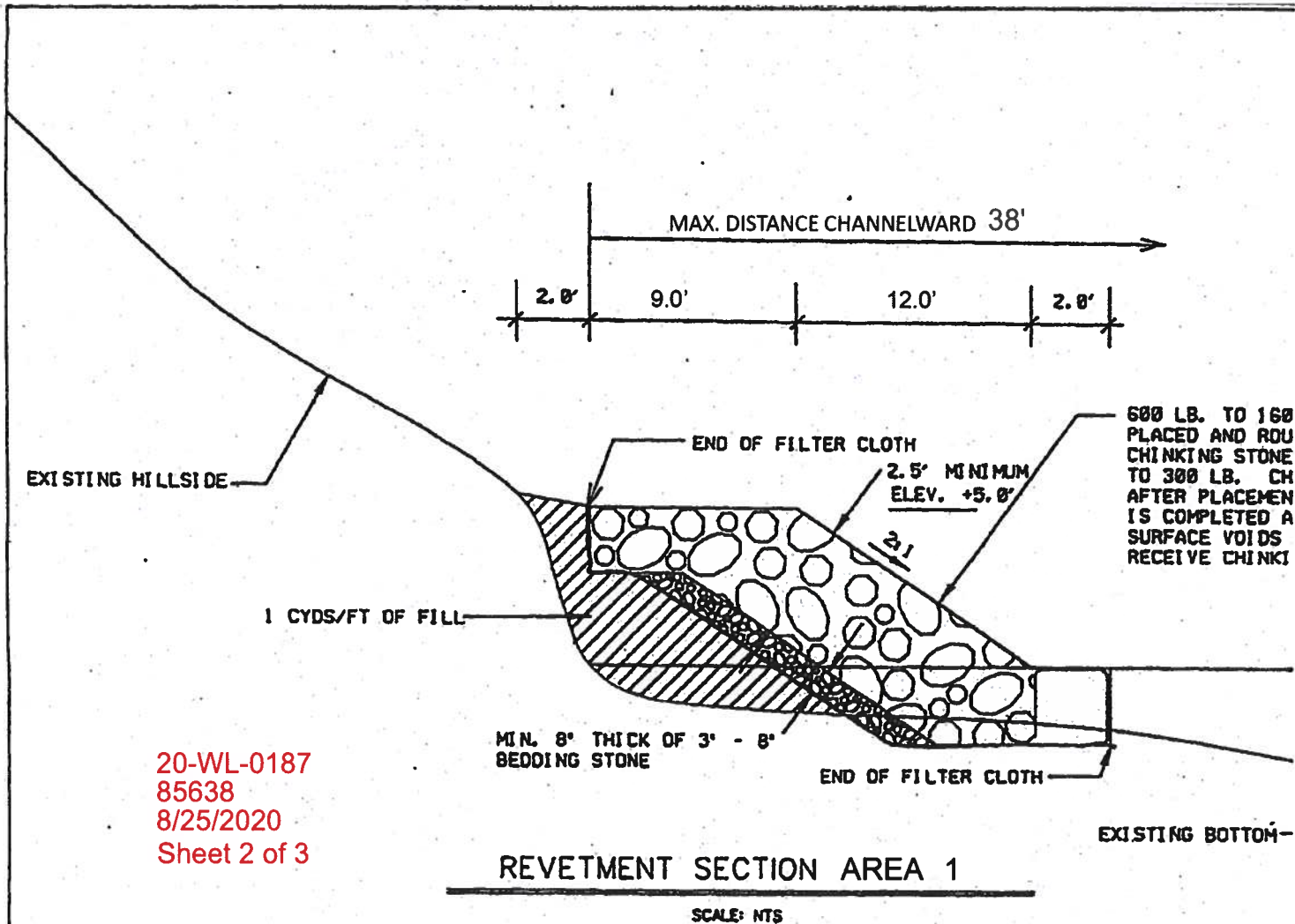
MAGOTHY RIVER

EXISTING HOUSE

OWNERS INFORMATION
 GINN LN
 MERRITT LEROY M
 ACCOUNT NUMBER - 00003380
 DEED REFERENCE: 03820/00840
 MAP: 0033, GRID: 0002, PARCEL: 0024

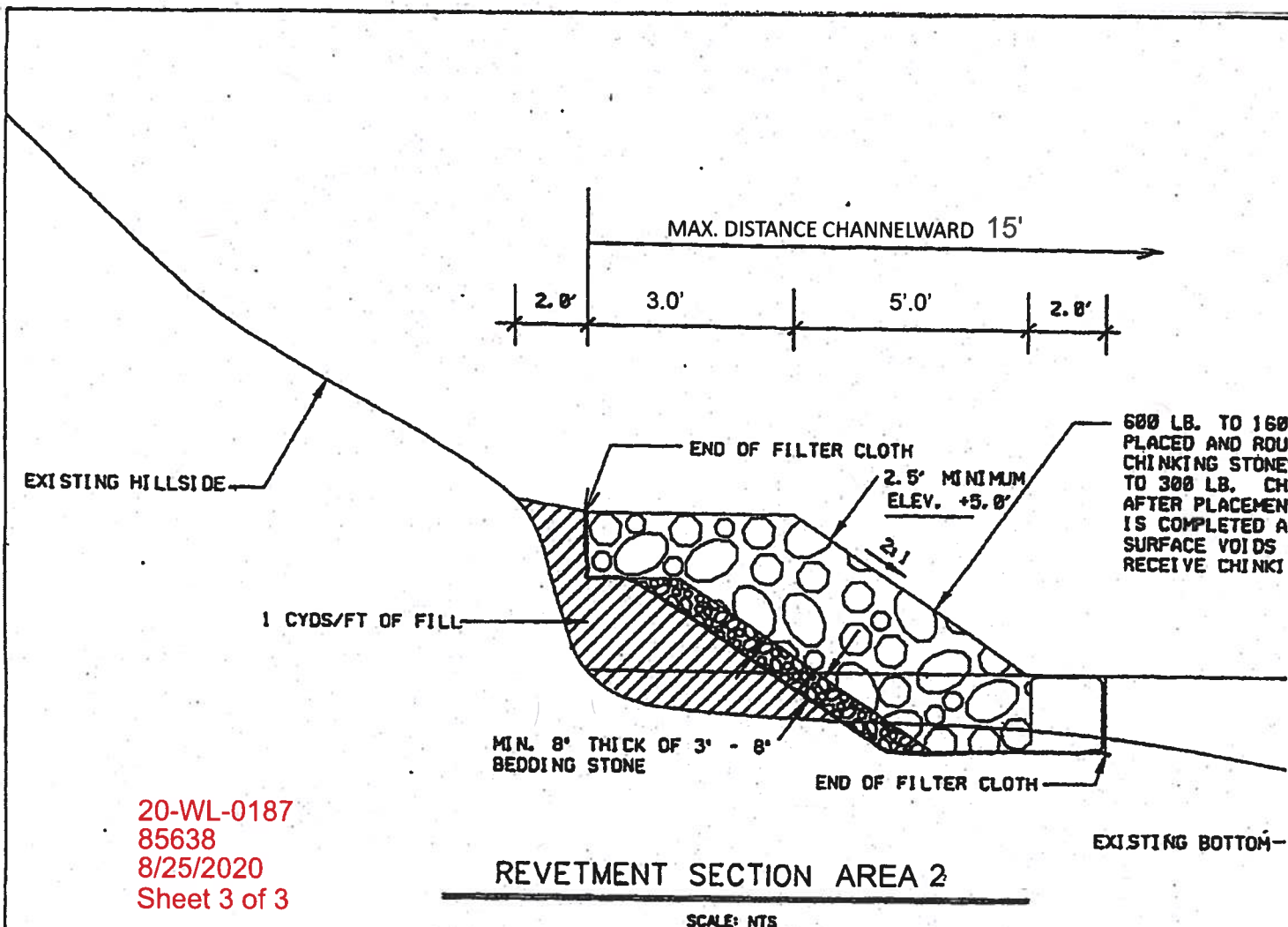


MTPLS LAND SURVEYORS, LLC 1 NASHUA COURT, SUITE A BALTIMORE, MD 21221 P: 410-586-0002 F: 410-586-2870 WWW.MTPLS.NET	
SHORELINE IMPROVEMENT EXHIBIT 435 GINN LANE PASADENA, MARYLAND 21122 3RD ELECTION DISTRICT - ANNE ARUNDEL COUNTY, MARYLAND	
SCALE: 1" = 80'	DATE: 8/24/2020
DRAWN BY: RJS	REVIEW BY: MDT
1 of 4	



20-WL-0187
 85638
 8/25/2020
 Sheet 2 of 3

<p>Tax Account No.: 3000-9000-3380 Tax Map: 33 Parcel: 24 Deed Ref: 3820/640 Lot: NA Zoning: R2 Lot Size: 3.48 AC</p>	<p>DATA/SPEC. SHEET SCALE: AS NOTED</p>	<p>PROPOSED: Construct shoreline structures erosion control.</p> <p>in: Broad Creek Stc co: Anne Arundel at: N Application by: Leroy Merritt Sheet 2 of 4 Date: 8/24/2</p>
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20-WL-0187
 85638
 8/25/2020
 Sheet 3 of 3

REVTMENT SECTION AREA 2

SCALE: NTS

<p>Tax Account No.: 3000-9000-3380 Tax Map: 33 Parcel: 24 Deed Ref: 3820/640 Lot: NA Zoning: R2 Lot Size: 3.48 AC</p>	<p>DATA/SPEC. SHEET SCALE: AS NOTED</p>	<p>PROPOSED: Construct shoreline structures erosion control.</p> <p>in: Broad Creek Stc co: Anne Arundel at: N Application by: Leroy Merritt Sheet 3 of 4 Date: 8/24/2</p>
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