



Attachement A

20-WL-0187
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Maryland Department of Environment
Water and Science Administration
Compliance Program
1800 Washington Blvd, Baltimore, MD 21230
410-537-3510

Attachement B

20-WL-0187
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AI ID: 85638 **Inspector:** Shavaun Jenkins

Site Name: Merritt Properties LLC
Facility Address: 435 Ginn Lane, Pasadena, MD 21122
County: Anne Arundel County

Inspection Date: May 15, 2020 **Start Date/Time:** May 15, 2020, 11:00 AM
End Date /Time: May 15, 2020, 12:25 PM

Media Type(s): Tidal Wetlands

Contact(s): Gary Swatko – Merritt Properties
Andrew Wendell
Matthew Wallach - MDE

Tidal Wetlands

Permit / Approval Numbers: 20-WL-0141EX

Site Status: Active - No work today

Site Condition: Noncompliance

Recommended Action: Continue Routine Investigation

Inspection Reason: Initial Quarterly, Initial Yearly, PAF

Evidence Collected: Photos/Videos Taken, Visual Observation

Inspection Findings:

An announced investigation was conducted today in response to a complaint that stating filled material was placed into Broad Creek in excess of the expedited authorization. The weather today was sunny with no precipitation. The above listed contacts were on site upon arrival. After preliminary introductions, a site walk through was conducted. The site was observed at low tide. Construction activity did not occur during the inspection.

The 20-WL-0141EX license provides authorization for the following:

1. Place 150 linear feet of stone revetment within a maximum of 15 feet channelward of the mean high-water line.

Prior to the site visit Mr. Swatko advised, via email, the job started approximately two weeks ago and is 85% complete. Mr. Swatko advised the marine contractor is Donald Burgess of Chesapeake Shore Marine, Inc. While onsite, Mr. Swatko advised an older permit (09-WL-0107) was obtained for the installation of stone revetment for the property. Mr. Swatko also informed a barge was unable to get through to the property because of the sand bar at the entrance of the cove. Both contacts advised fill was brought in to create the "access road" for the equipment to reach the project. Mr. Wendell advised the marine contractor had to cut into the uplands where the peninsula juts out to ensure the equipment was able to access to the southernmost point. Both contacts were unsure of the amount of fill used. Both contacts advised fill was used along the embankment where undermining was present. Along the access road slope

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failure areas were observed and Mr. Swatko advised of the intent to use stone and fill to stabilize the slope failure areas.

The site walk determined the installed fill material and stone revetment are exceeding the authorized maximum 15 feet channelward of the mean high water line. The timber mats, used in some areas of the access road, are 14 feet wide. Along the southernmost to central portion of the site the access road ranged in width between about 14 to 18 feet. From north of the jut of the peninsula to the end of the project was approximately 147 feet long. Some of the rip rap was observed beyond the stone revetment installed. Both contacts assured the observed rip rap would be reclaimed and returned to the stone revetment. **Ensure the rip rap is does not remain in tidal wetlands.** Both parties advised the marine contractor installed a double boulder layer for the stone revetment compared to the existing stone revetment which is a single layer. The northernmost perimeter of the project identified on the license as “no impact to state tidal wetlands” has also been expanded. Accurate measurements of this area could be not obtained as I was uncertain of the location of the original upland area.

During the site walk, I was informed prior to the license being approved there was discussion regarding the hill being stabilized with a 2:1 slope. As we discussed the site conditions, I advised the contacts the site was not in compliance with the license. I advised both parties what this inspection report would identify prior to my leaving the site. Mr. Swatko stated he was unaware the authorized 15 foot maximum distance referred to the distance between the embankment to the rip rap into the tidal wetlands. He believed the maximum distance was measured from the embankment to the top of the rip rap. Both contacts also reiterated the conversation (I presumed to have occurred during the pre-application meeting) where the slope was discussed to have needed to be a 2:1 slope. Mr. Swatko explained the intent, prior to the inspection findings, was for the access road to allow the toe of the slope to be brought out to buttress the existing embankment. Mr. Swatko stated the focus is to create a slope that is stable, even if it would not be the 2:1 slope. Both parties advised surveyors were present onsite and the findings from their visit would be available in a week or so. **When available provide a copy of the surveyor’s findings.** Mr. Swatko and I briefly discussed tree size in the critical area and I advised he would be best reaching out to the Critical Area office with the questions.

After the site inspection, via phone, I spoke with Mr. Wallach. I shared my preliminary findings with Mr. Wallach and the status of the site. Mr. Wallach and I discussed the potential for a modification of the license. With respect to the above complaint the following violation of Environment Article Title 16, by Leroy M. Merritt, Merritt Companies and Chesapeake Shore Marine, Inc., was observed this day:

1. Installed is an incomplete stone revetment with an undetermined amount of fill material (used as an access road) exceeding the authorized maximum 15 feet channelward of the mean high-water line. For the southernmost to central perimeter of the project, the access road and stone revetment measurement ranges from approximately 21 to 30 feet channelward (at low tide) into Broad Creek. **Immediately remove excess fill and stone to bring site in compliance with the 20-WL-0141EX license or proceed with contacting Tidal Wetlands Plan Reviewer Matthew Wallach at (410) 537-3527 or Matthew.Wallach@maryland.gov to determine if a modification of the license would be authorized.**

A follow up inspection will occur to verify compliance. A copy of this report will be sent via email to the responsible parties.

BE ADVISED, IT IS A VIOLATION OF MARYLAND ENVIRONMENT ARTICLE TITLE 16 TO DREDGE WITHIN WATERS OF THE STATE WITHOUT AUTHORIZATION. STATE LAW PROVIDES FOR PENALTIES FOR VIOLATIONS OF MARYLAND ENVIRONMENT ARTICLE TITLE 16 PER VIOLATION. THE MARYLAND DEPARTMENT OF THE ENVIRONMENT MAY SEEK PENALTIES FOR THE AFOREMENTIONED VIOLATIONS OF TITLE 16 PER VIOLATION.

Contact this inspector upon implementation of the requested corrective actions, reasonably necessary to bring the site into compliance. If the corrective actions cannot be completed within the prescribed time frames above, you should continue to advise this inspector, at least every 30 days, of the status of the measures taken to complete the corrective actions. If you have any questions, need assistance or to request a re-inspection, please contact this by e-mail at Shavaun.Jenkins1@maryland.gov.

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Tidal Wetlands- Inspection Checklist

<i>Inspection Item</i>	<i>Status</i>	<i>Comments</i>
1. Before commencing construction, has the site acquired the necessary license or permit or made appropriate notification to the Department? [COMAR 26.24.02.01A]	Not Applicable	
2. Has the Department been notified at least 5 days prior to starting work? [COMAR 26.24.02.04D(3)]	Not Applicable	
3. Is the replacement bulkhead equal to or less than 18 inches channelward? (GL). [COMAR 26.24.02.04B(11)]	Not Applicable	
4. Is the property owner conducting routine repairs or maintenance of the existing pier? (PR). [COMAR 26.24.02.01C(5)]	Not Applicable	
5. Is the pier meeting the extended property line setback requirements? (PR). [COMAR 26.24.04.02B(2)(b)]	Not Applicable	
6. Is the pier allowing for ingress and egress into navigable waters for adjoining property owners? (PR). [COMAR 26.24.04.02B(2)(c)(I)]	Not Applicable	
7. Is the pier extended less the 25% across the waterway? (PR). [COMAR 26.24.04.02B(2)(c)(iv)]	Not Applicable	
8. Is the pier constructed at least 3 ft above the wetland substrate? (PR). [COMAR 26.24.04.02B(2)(d)]	Not Applicable	
9. Is the main section of pier 6 ft wide or less? (PR). [COMAR 26.24.04.02B(2)(a)]	Not Applicable	
10. Does the pier have 6 mooring piles, 4 boat lifts or hoists, or 4 boat slips (or less)? (PR). [COMAR 26.24.04.02B(2)(c)(v)]	Not Applicable	
11. Is the platform constructed over an unvegetated tidal wetlands (no SAV)? (PR). [COMAR 26.24.04.02B(3)(b)]	Not Applicable	
12. Is the platform constructed on more than 50% landward of the main section of pier (unless otherwise indicated in the approval)? (PR). [COMAR 26.24.04.02B(3)(c)]	Not Applicable	
13. Is the platform attached to the pier less than or equal to 200 sq ft? (PR). [COMAR 26.24.04.02B(3)(a)]	Not Applicable	
14. Is this a pre-existing boathouse (prior to 2/14/94)? (PR). [COMAR 26.24.04.02C(2)]	Not Applicable	
15. Are dredging activities occurring outside of the time of year restrictions? [COMAR 26.24.02.06E]	Not Applicable	
16. Is the upland disposal of dredged material in accordance with the approved authorization? [COMAR 26.24.03.04A]	Not Applicable	


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Tidal Wetlands- Inspection Checklist

<i>Inspection Item</i>	<i>Status</i>	<i>Comments</i>
17. Is the open water disposal of dredged material in accordance with the approved authorization? [COMAR 26.24.03.05D]	Not Applicable	
18. Is the site in compliance with the special conditions? [COMAR 26.24.02.06L(2)]	Not Applicable	
19. If disturbance is greater than 5000 sq ft or 100 cu yds, Has an approved sediment and erosion control plan been acquired? [COMAR 26.24.02.04D(2)]	Not Applicable	
20. Has the site obtained a water quality certification prior to beginning work? [COMAR 26.08.02.10E(2)(b)i]	Not Applicable	

Inspector:  5.18.20
Ms. Shavaun Jenkins/Date
shavaun.jenkins1@maryland.gov
410-537-3785

Received by: _____

Signature/Date

Print Name

Report Provided to:

☐ Fax _____
☐ Email _____
☐ Regular Mail _____
☐ Certified Mail _____



Figure 1 Slope failure observed (facing W perimeter)



Figure 2 Panoramic view of the existing revetment connecting to the to be constructed revetment (facing S perimeter)



Figure 3 Rip rap stone observed beyond installed stone revetment



Figure 4 End of access road with rip rap stock pile (facing S perimeter)



Figure 5 Access road N of the jut in peninsula (facing S perimeter)



Figure 6 Beginning of access road from the mainland (facing N perimeter)



Figure 7 Access road and stone revetment observed from the elevation of the home (facing the E perimeter)



Figure 8 Access road and stone revetment observed from the N perimeter of the utility structure (facing E perimeter)

November 17, 2020

Dr. Khaled M. Kebaish
1002 Snapper Cove Ln
Pasadena, MD 21122

RE: MDE response to comments.

Dear Dr. Kebaish,

Thank you for your comments. I have provided responses to each of your concerns. There are some items that may require further discussion and some that are awaiting a response from the applicant's agent. All of your questions and concerns will be responded to.

1) More filling into tidal waters was performed as part of the emergency solution to "shore up the dwelling foundation" than may have actually been necessary? 40-50 ft of tidal wetlands/water appear to have been filled and fill was added rather far from the dwelling. Likely could have solved the slope and foundation risk issue by installing a "retaining wall" a few feet inside the Mean High Water Line (on land, between house foundation and cove) and backfilling between said wall and foundation to reduce slope and slow/stop erosion around the foundation. For example a bulkhead built on land, driven deep. This would have had zero tidal wetlands impact, likely would have been a lot cheaper too and would have stayed in AA County jurisdictions ONLY and could have stayed out of the cove and tidal wetlands jurisdiction completely.

Response: Thank you again for providing your data on the original mean high water line and the channelward extent of the project. Based on the data that you provided, the Department is now in the process of confirming the exact channelward encroachment of the fill. Once this is confirmed, the Department will then determine if the appropriate justification was made in order to authorize the activity. Without the justification, then the Department may pursue separate corrective actions. Regarding your idea for a retaining wall or "bulkhead built on land", the Department does not authorize such bulkheads and does not support the idea of a "bulkhead built on land" particularly on an actively eroding shoreline. Once the wall is constructed, the land will continue to erode until a bulkhead is present. The bulkhead creates a vertical barrier between the water and land. This feature does not absorb wave energy but reflects it down into the substrate and back towards the water, hurting the benthic ecosystem and accelerating erosion on other shorelines. Further, this type of feature is out of our jurisdiction and would need to be approved by Anne Arundel County and the Critical Area Commission, which do not generally allow for this type of structure in the Critical Area Buffer. Revetments are allowed in areas experiencing erosion and the Department will be evaluating information provided by the applicant to determine if the channelward extent was necessary.

2) If the emergency goal was to "shore up a foundation due to risk to a dwelling" as has been mentioned, I see no emergency to shore-up and fill wetlands that are not close to the dwelling or any at-risk structures until plans are developed, applications have been processed and approved. I would estimate that anything farther away than 50-60 feet of the failing foundation was outside of the reasonable "emergency zone" and could have waited and gone through standard permit application, review, comment, issue cycle. What reason was there for doing "emergency work" along the majority of the bank where there was no risk to the dwelling or any structure?

Response: The expedited license authorized 150 linear feet of revetment extending north from the existing revetment. Anything exceeding the 150 linear feet was not authorized and was

referred to the Compliance Program. There should have been no construction beyond the original 150 linear feet authorized in License 20-0141 EX. Since it was constructed without an authorization, this current process seeks to rectify the situation. The Department is reviewing if any of that stone can now be authorized after-the-fact with the appropriate review or if any should be minimized or removed.

3) Given the topography of the site, the area proposal for a living shoreline is unnecessary and excessive based on my consultation with experts in this area. It is simply impacting tidal wetlands for no benefit - there is no structure at risk, there is no erosion there, the bank was low and gentle. State code requires shoreline stabilization that impacts state waters must be justified by erosion beyond a certain rate before any impacts can be approved. It's highly doubtful based on experts' opinions that the threshold was triggered in this area. The cove was well protected/enclosed and the slope there is gentle. Given that it has now been armored by the addition of excessive stone revetment as part of an "emergency repair" without the usual process for permits and reviews, this comes down to one of those assumptions that can no longer be proven.

Response: The unauthorized revetment constructed in the area in question would require a waiver from the State's living shoreline requirement. The living shoreline waiver process involves looking at many features, including some of the features you listed above, to determine if a waiver would be granted which would allow a structural shore erosion control feature, such as a revetment. Based on an evaluation of the conditions, the Department determined that a waiver would not be granted to emplace stone at that location. Instead, the Department does, in fact, support the development and creation of living shorelines and marsh creation. Living shorelines provide substantial benefit to the ecosystem; providing a gently-sloped, vegetated transition between uplands and tidal waters. This type of shoreline stabilization also removes pollutants and provides important habitat to aquatic creatures. Since the applicant proposed to use this site as mitigation, the Department does not need to document significant erosion because the main purpose of this site is mitigation through marsh creation, not shore erosion control. They will be required to remove the unauthorized revetment in this section and they will not receive a new authorization for revetment.

4) I would suggest restoring the shoreline in the cove to as close as the condition that existed based on Google Earth images from before the emergency work was performed. This would involve removing the stone revetment and partially removing the sand fill in area 2 and 3 shown on the map you provided and titled "Shoreline Improvement Exhibit, 435 Ginn Lane" and installing a scaled down version of a living shoreline that does not extend beyond 10-15 feet channelward from mean high water line. Currently at 42.4- 43.8 feet (please see attached exhibits)

Response: The Department evaluated the three areas identified on the current plan sheets. Section 1 (the emergency section) and section 2 did qualify for waivers from the living shoreline requirement. Section 3 did not receive a waiver, and that is why that area was selected by the applicant as the location for their proposed mitigation. Based on the impacts in Section 1, the Department requires mitigation for the square footage of impacts beyond 10-feet channelward of the mean high water line. The mitigation is then assessed at a 2:1 ratio. Section 3 was designed by the applicant to meet this requirement.

The Department does authorize living shorelines with larger channelward encroachments in areas requiring the additional area. This can be due to erosion rates, slope, or the use of the site as mitigation. In this case, since they are using this site as mitigation, the Department will accept additional channelward encroachment. That being said, we are still in the process of determining the original mean high water line based on the data you provided.

5) Installing a living shoreline that projects out into the cove 50-60 feet beyond prior Mean High Water lines (see exhibits) is an extreme approach that leads to taking away a relatively large amount of tidal waters especially when considering the very small size of the cove and its navigable areas (please note the shallow and narrow entrance into the cove) this will likely severely and permanently impair the ability of residents to access the cove from the Magothy river.

Response: The Department again thanks you for your exhibits documenting the channelward encroachment. Based on your data, we are still in the process of confirming the original shoreline and proposed channelward encroachment. However, it is the Department's opinion that the entirety of the project will be within the property lines and extended property lines of the applicant. While the exact channelward extent is still being confirmed, the Department believes that the applicant is exercising their riparian rights in this project and not extending into areas that can impact ingress or egress to neighboring property owners.

6) An examination of pre-existing conditions using Google Earth imagery, AA County provided GIS Topography, when overlaid with the proposed MDE final plans show that between 30-40 ft between the shoreline that existed prior to the emergency work, were back filled and stone revetments installed adjacent to the driveway area. In my opinion was possibly excessive. See #1, #2 above.

Response: Thank you again for your exhibits that document the original MHWL. We are still in the process of confirming the MHWL and the channelward encroachment.

7) There are obvious errors in the map you provided for the proposed work titled "Shoreline Improvement Exhibit, 435 Ginn Lane.." For example the map states that the revetment in area 2 is 10' of MHWL when in fact and based on accurate measurements done on current drone images overlaid on AA County GIS topographic maps and conducted by experts, it is over 20' (please see attached exhibits). Additional work being proposed should only be approved based on accurate maps.

Response: As mentioned above, we are still in the process of confirming the MHWL and the channelward encroachment and will ensure the application has accurate numbers represented before moving forward with the review.

In an effort to document all data and information related to this project, can you please provide your engineering firm(s) and/or expert(s) that were consulted with in the creation of your data and maps?

Given all the above, I would like to formally request a hearing in reference to this application pertaining to project number "20-WL-0187" concerning the work being conducted on the shoreline by the owner of the property located on 435 Ginn Lane, Pasadena MD 21122.

Response: Thank you for your request for the hearing. The Department grants hearings as a means for others to learn about the project from the applicant and to provide testimony/comments on the project. The Department has received your comments and exhibits and will accept additional data that supports the comments that you already made whether in a hearing setting or via email. Both will be in the public record and will be incorporated in our review equally. The Department has received no additional comments or requests for a hearing.

If you would like to continue discussing your comments and data via email, you may rescind your request (if you choose to) and we can hopefully resolve all concerns. If you still feel a need for us to conduct a hearing, we will schedule per MDE's statutory obligations. However, one of the goals of the public hearing is to hear an accurate description of the project and to obtain comments based on an accurate description of the project. Since we now have the additional data that you provided, it is possible that the description of the project is not accurate. The Department requests that we determine the channelward encroachment prior to scheduling the hearing. It is your right to proceed with your current hearing request, however, the Department requests that you rescind your request until after the mean high water line and channelward encroachment has been determined. You will not lose your right to a hearing. You will have an opportunity to request one again within 14 days after you are provided with any additional information. Please let us know if you are able to rescind the current request until after additional information is provided to you.

Additional comments from 10/29:

1) The work that was already performed inside the cove under justification of emergency and the risk to the foundation of the home:

- *What proof was there of imminent risk to justify bypassing review and permit requirements?*
- *What made agencies believe that there was no time for planning, review and comments?*
- *What event that was outside of the owners control created an "emergency situation"?*

Response: The Department received a stamped engineers letter documenting the imminent risk and the need for an emergency license to conduct work due to the erosion occurring in the proximity to the existing building. While the 'emergency license' was expedited, it was not without some level of review. Department staff did evaluate the proposal and found that a revetment extending 15 feet channelward of the mean high water line to protect a structure was consistent with many other authorizations for similar conditions. The request was also sent out to the Department of Natural Resources and the Maryland Historic Trust to ensure that this activity would not impact additional aquatic or historic resources. The request was then sent to the Administrator of the Board of Public Works who also provided some level of review. The emergency authorization required that the applicant apply within 14 days for the proposed activity so the Department would be able to put the project out on public notice and proceed with a thorough review. After a review is complete, it is then sent to the Board of Public Works for further review and a vote by the Board before an authorization is granted.

2) With the previous work, excessive fill was brought in to create an access road along the shoreline in the cove for excavators and trucks adding excessive fill to tidal wetlands

- *Stone revetment was placed east of the fill and has extended over 50 feet channelward of the mean high water line (originally granted a permit for 15 feet) taking up a lot of tidal wetland and open water, markedly reducing the size of an already small cove (I will be supplying additional maps to support this)*
- *Was a county grading permit required for more than 100 cu yds of fill? I see no such authorization.*
- *Had the emergency project been implemented by barge, impacts could have been substantially reduced*

The Department did not coordinate with the County in advance of the emergency license. The applicant is responsible to obtain all state, federal and local licenses and permits.

3) Now that the alleged emergency situation has been resolved and the foundation of the house on 435 Ginn Lane has been protected:

- *All the issues can now be examined and a solution tuned to minimize impacts to the cove, tidal areas, navigation in and out of the cove.*
- *Any proposed solution, should minimize additional fill inside the cove, as this will likely have detrimental effect on our ability to continue to access the cove using boats or other methods that are dependent on the water depth*

Response: Under Maryland's tidal wetlands regulations, MDE is required to ensure that projects designed to achieve a particular purpose -- such as shoreline erosion control-- are designed in a manner that avoids and minimizes the loss of tidal wetlands. If the applicant cannot justify the impact, they may be required to minimize the impact. However, if the applicant can justify the impact, the work may be authorized which may require mitigation. As was previously written, the majority of the revetment emplaced north of the emergency cannot be authorized as the area does not qualify for a living shoreline waiver. The applicant has agreed to remove it and, instead, construct a beneficial marsh creation/living shoreline to serve as mitigation for the impacts associated in the emergency section.

4) There is no reason to expand this project as shown by the revised plan to create a marsh/living shoreline to the north east

- *The upland topography is relatively tame/flat in this area*
- *There is no erosion or risk to structures in this area*
- *State code claims that "no action" should be taken unless erosion beyond a certain rate/level is proven*
- *Any fill in this area installed under emergency work should be removed and the shoreline left in virgin form*
- *Revetments and fill should be minimal amounts necessary to arrest erosion of steep slopes that threaten the structure. Nothing more.*

Response: The Department does not view a proposed marsh/living shoreline as an expansion of the project. A living shoreline is considered a benefit to the ecosystem and in this case, is being proposed as mitigation. As mentioned previously, the Department looks at many factors to determine if a marsh is appropriate for a shoreline. Topography, fetch, orientation, water depths, are among many factors that the Department considers in evaluating a shoreline as a potential site for a living shoreline. The Department determined that the site can support a marsh, and was an appropriate location for mitigation.

5) The cove bordering the subject property is small and extremely protected from tidal erosion forces and has a very small and shallow inlet.

- *The access road created to perform the work, specifically the fill placed on Far East end of the work that was performed, has significantly narrowed the cove inlet and has substantially changed the water flow during high tide, posing an extreme risk for making this cove not accessible to residents living on this cove in a matter of few years.*

Response: The revetment does not extend into areas that impact ingress or egress to neighboring property owners. In addition, at this time no information has been provided or identified that the constructed and proposed work has/will significantly narrow the cove inlet and has/will change the water flow during high tide creating a situation where residents will not be able to access the cove in the future.

- *To be noted the cove has previously required dredging to keep the channel open for navigation. That was a very expensive undertaking, paid for by those own homes overlooking the cove. Keeping the additional new fill in the far corner of the recent revetment will likely make this problem much worse.*

Response: If the inlet has required dredging in the past, a potential cause of this may have been sedimentation due to erosion. Since erosion was documented at Mr. Merritt's property, stopping the erosion with a revetment and living shoreline may actually decrease the sediment entering the cove and the inlet.

In closing, this is a very small and well protected cove. The point of the work was to protect the foundation of the home; the emergency work, fill and revetment was excessive to meet the goal and should be scaled way back the shoreline protection is not required northeast of the at-risk foundation where the slopes are gentle and there are no at risk structures and should be removed. The cove is too small to install a living shoreline as mitigation where there is no proof of erosion.

Thank you again for your comments and your supporting data. I hope this addresses some of your comments/concerns. We look forward to addressing the comments that I was unable to provide a response to at this time and reviewing and confirming the original MHWL and the channelward encroachment that you provided documentation on. As mentioned previously, the Department requests that we hold public hearings with the most accurate information possible and thus request that you temporarily rescind your request until the Department has completed reviewing the data that you provided in an effort to determine the original mean high water line and channelward encroachment of the proposal.

Based on my responses above, please confirm if you would like to completely rescind your request for a hearing, temporarily rescind it pending updated information, or continue with your current request as we continue our conversation and address your comments.



Response to Ginn Ln Comments

7 messages

Matthew Wallach -MDE- <matthew.wallach@maryland.gov>

Tue, Nov 17, 2020 at 2:18 PM

To: Khaled Kebaish <kebaish@gmail.com>

Cc: Greg Friedman <friedman.g@gmail.com>

Hi Dr. Kebaish,

I'm sorry for the delay. Attached are a detailed response to your comments. These responses have been edited and approved by my supervisors.

As you can see, some of your concerns have been addressed, but others are still pending additional information and a determination by my Department.

Please let me know your decision regarding a hearing within 14 days.

Thank you,



Matt Wallach

Natural Resources Planner

Tidal Wetlands Division

Maryland Department of the Environment

1800 Washington Boulevard

Baltimore, Maryland 21230

matthew.wallach@maryland.gov

410-207-0893

[Website](#) | [Facebook](#) | [Twitter](#)



response to comments.docx

22K

Khaled Kebaish <kebaish@gmail.com>

Fri, Dec 18, 2020 at 1:47 PM

To: Matthew Wallach -MDE- <Matthew.wallach@maryland.gov>

Cc: Greg Friedman <friedman.g@gmail.com>

Dear Matt,

Thanks for the detailed response to my previous email.

Based on our phone conversation a week ago I would like to temporarily rescind my request for a hearing pending updated information.

Also as per our recent conversation I am attaching an image with a diagram to propose another area for mitigation that I believe would be a better option and I would be acceptable to myself and for Mr. Merritt and would have much less additional impact on the cove and our ability to access the river.

Please let me know if you need any additional information or have any other questions.

Wishing you happy holidays,

Kal

On Nov 17, 2020, at 2:18 PM, Matthew Wallach -MDE- <Matthew.wallach@maryland.gov> wrote:

Attachment D

Hi Dr. Kebaish,

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I'm sorry for the delay. Attached are a detailed response to your comments. These responses have been edited and approved by my supervisors.

As you can see, some of your concerns have been addressed, but others are still pending additional information and a determination by my Department.

Please let me know your decision regarding a hearing within 14 days.

Thank you,



Matt Wallach

Natural Resources Planner
Tidal Wetlands Division
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
matthew.wallach@maryland.gov
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[Click here](#) to complete a three question customer experience survey. <response to comments.docx>

 **LivingShorelineLocations.pdf**
311K

Matthew Wallach -MDE- <matthew.wallach@maryland.gov>

Fri, Dec 18, 2020 at 2:16 PM

To: Khaled Kebaish <kebaish@gmail.com>

Cc: Greg Friedman <friedman.g@gmail.com>

Dr. Kebaish,

Your email has been received. Thank you for sending. We are hoping we can provide you and update soon. We will reach out to you before the end of the month.

Thanks,



Matt Wallach

Natural Resources Planner
Tidal Wetlands Division
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
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[Click here](#) to complete a three question customer experience survey.<response to comments.docx>

Khaled Kebaish <kebaish@gmail.com>
To: Matthew Wallach -MDE- <matthew.wallach@maryland.gov>
Cc: Greg Friedman <friedman.g@gmail.com>

Thu, Mar 18, 2021 at 8:41 AM

Hi Matt,

I hope all is well at your end. I'm just following up to see if there is any update at your end.

Looking forward to hearing back from you.

Thanks,

Kal

Khaled M. Kebaish, MD, FRCSC
Robert and Marion Rosenthal Professor
Professor of Orthopaedic and Neurosurgery
Chief of Spine and Fellowship Director
Department of Orthopaedic Surgery
Johns Hopkins University
601 North Caroline Street, Suite 5223
Baltimore, MD 21287-0882

On Dec 18, 2020, at 2:16 PM, Matthew Wallach -MDE- <matthew.wallach@maryland.gov> wrote:

[Quoted text hidden]

Matthew Wallach -MDE- <matthew.wallach@maryland.gov>
To: Khaled Kebaish <kebaish@gmail.com>
Cc: Greg Friedman <friedman.g@gmail.com>

Fri, Mar 19, 2021 at 6:39 PM

Hi Dr. Kebaish,

I am sorry for the long delay. Things have definitely taken longer than expected. We have met multiple times with our GIS team here at MDE and are close to making a determination. I will be able to provide an update in approximately 1 more week. If you do not hear from me by next Friday, feel free to contact me again. Apologies again about the delay.



Matt Wallach
Natural Resources Planner
Tidal Wetlands Division
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
matthew.wallach@maryland.gov
410-207-0893
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[Quoted text hidden]

Khaled Kebaish <kebaish@gmail.com>
To: Matthew Wallach -MDE- <matthew.wallach@maryland.gov>
Cc: Greg Friedman <friedman.g@gmail.com>

Thu, Apr 29, 2021 at 5:01 PM

Hi Matt,

I hope all is well at your end.

In your last email you mentioned that you were going to update me within a week on the progress related to the attempt to resolve the violation on Ginn lane. It has been over a month now. Do you have any update?

Thanks,

Kal

Khaled M. Kebaish, MD, FRCSC
Robert and Marion Rosenthal Professor
Professor of Orthopaedic and Neurosurgery
Chief of Spine and Fellowship Director
Department of Orthopaedic Surgery
Johns Hopkins University
601 North Caroline Street. Suite 5223
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Attachment D

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On Mar 19, 2021, at 6:39 PM, Matthew Wallach -MDE- <matthew.wallach@maryland.gov> wrote:

[Quoted text hidden]

Matthew Wallach -MDE- <matthew.wallach@maryland.gov>
To: Khaled Kebaish <kebaish@gmail.com>
Cc: Greg Friedman <friedman.g@gmail.com>

Thu, Apr 29, 2021 at 5:18 PM

Hi Dr. Kebaish.

Thanks for reaching out. Yes, we do have an update. This process took a lot longer than expected - apologies for the delay.

We received findings from our internal GIS team approximately two weeks ago (April 12 or 13th) and prepared a letter to the applicant, which was sent to them later that week.

I first presented the findings to the applicant (your neighbor) in order to receive updated plans. I was hoping to have an updated plan set for you to review rather than just our findings.

Since I do not have any at this point, I will provide you with the findings from our GIS team. You will be given any updated plan proposals to review and provide comment on when they come in.

And I'll be happy to discuss with you as well prior to receiving a plan update.



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Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

April 12, 2021

Attachment E

Robb Merritt
C/o Gary Swatko
2066 Lord Baltimore Dr.
Baltimore MD 21244
gswatko@merrittproperties.com

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RE: Agency Interest Number: 85638
Tracking: 202060236
Tidal Authorization/Applications Numbers: 20-WL-0141EX/20-WL-0187
Address: 435 Ginn Ln, Pasadena MD 21112

Dear Gary Swatko:

The Maryland Department of the Environment ("Department" or "MDE") has reviewed comments and documents received from a citizen. Specifically, the citizen was concerned the channelward encroachment extended 40-50' channelward of the mean high water line (MHWL) and not 21' as depicted on the site plan. The Department reviewed the provided information in addition to other information. In coordination with MDE's GIS specialist, the Department determined the following:

- 1) The maximum encroachment of revetment extends 38 feet channelward of the mean high water line.
- 2) An area measuring approximately 150 linear feet by 23 feet wide (fill beyond 10-feet from the MHWL) requires mitigation associated with permanent shallow water impacts. This area (for all fill beyond 10-feet channelward of the mean high water line with a maximum encroachment of 38 feet) is 3,435 square feet (see map: Ginn Ln Results. As discussed previously, an out-of-kind mitigation project requires mitigation at 2:1, thus the Department requires a project resulting in marsh creation to equal 6,870 square feet of planted marsh.
- 3) The proposed mitigation is depicted extending over the extended property line.

After reviewing all materials submitted to date, the Department has determined that additional information is required in order to proceed with a Public Notice and decision on the application. The Department has the following comments and additional information needed listed below:

- 1) Existing Revetment.
 - a. Due to the provided justification to stabilize the slope and the historic property line (depicted on the attached maps), the Department determined that the plan set for the installed revetment is complete and may proceed with a review, provided mitigation is agreed upon for the loss of shallow water habitat and is included in an application;

- b. As was previously discussed, the Department can authorize the 150 linear feet of revetment that was intended in 20-0141 and an additional 30 linear feet for a total of 180 linear feet north of the previously emplaced revetment.
 - c. North of the 180 linear foot mark: based on a combination of the information we have before us and the criteria we must presently use to determine whether a site is eligible for a waiver from the living shoreline requirement, this section does not appear to be eligible for a waiver from the living shoreline requirement, thus the revetment should be removed.
- 2) Mitigation.
- a. Please revise the proposed marsh creation/mitigation so it will not cross the extended property line as depicted on the attached maps.
 - b. To help address concerns regarding channelward encroachment, the Department recommends keeping the proposed marsh and stone sill to a maximum of 35 feet channelward of the original mean high water line, which was the proposed encroachment in your resubmittal.
 - c. The required mitigation has increased to 6,870 square feet, the Department recommends the following as potential projects to meet the mitigation requirement but not limited to the ones listed below:
 - i. Extend the proposed marsh creation landward (regrading and/or replanting turf grass with marsh plantings such as *Spartina patens*, switch grass or other approved grasses can add to the square foot of a marsh creation.
 - ii. Include a marsh creation component to the west side of the property; as part of MDE Application 20-WL-1483.
 - iii. Create a marsh creation channelward of 2066 Lord Baltimore Dr.; Parcel 131 (also owned by Mr. Merritt).

The Department looks forward to continuing our review and collaboration on this project. If you have any questions or need further assistance, or to schedule a meeting, do not hesitate to contact me by telephone at (410) 207-0893 or by email at matthew.wallach@maryland.gov.

Enclosed: Maps created internally by MDE GIS team

Cc: WSA Inspection & Compliance Program
Robb Merritt, Property Owner
Milton McCarthy, Consultant for 20-0141
Ken Eaton, Consultant for 21-1483
Rich Kibby, USACE

Tidal Wetlands Revetment Placement Review - Permit Map

Merritt Property, 435 Ginn Lane, Pasadena, MD 21122Text

Attachment E

This map shows the relationship of the permit application site map to the Anne Arundel County 2018 imagery.

The site map was extracted from the permit application in a PDF format. The site map was not spatially referenced. The map contained reference markers (noted with green points) that were identified with coordinates in MD 1983 Stateplane Feet. The coordinates were used to spatially position the site map using the Georeference Tool set in ARCMAP. To confirm the results of the spatial referencing, the Anne Arundel County/MD SDAT parcel boundaries data layer was added. The parcel boundaries on the site map are consistent with the parcel boundaries from SDAT. Also shown for reference are the derived MHWL and the Channelward side of the installed revetment and the proposed sill.

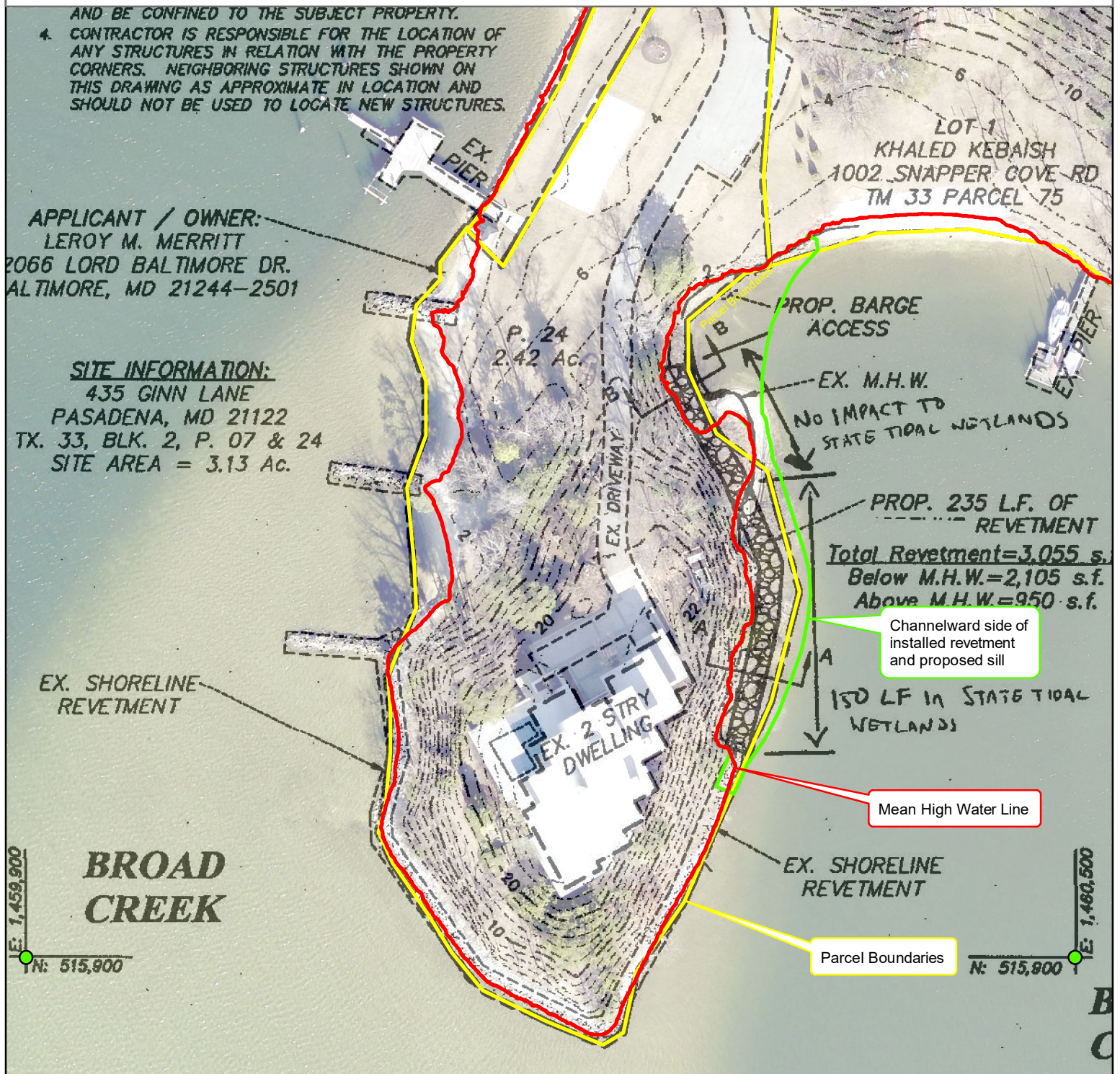
Data Sources;

Site mapPermit Application
Revetment LineMDE - created from Drone Imagery
Mean High Water LineMDE - via NOAA Guidance
Parcel BoundariesMDP/MD SDAT
ImageryAA County 2018 Imagery Map Service

Map 2 of 4

Map Date - 17 March 2021

50 25 0 50 100
Feet



Tidal Wetlands Revetment Placement Review - Results Map

Merritt Property, 435 Ginn Lane, Pasadena, MD 21122

Attachment E

This results map displays the various data used for this project review.

- Channelward of Revetment line - marks the furthest channelward extent of the installed revetment and proposed sill. Taken from the feature created using the drone image. See Site map.
- Mean High Water Line (MHWL) - Taken from the contour data, this line represents the MHWL. See Site map.
- Line depicting 10 ft channelward of the MHWL - Created by buffering the MHWL by 10 ft.
- Measurements - Distance from MHWL to the channelward side of the revetment.
- Area Requiring Mitigation. This is the area between 10 ft channelward of the MHWL and the channelward extent of the installed revetment.
- Proposed Living Shoreline. Area based on the proposed plans.

Data Sources;

Drone ImageCitizen Provided
Parcel BoundaryMDP/MD SDAT
Installed RevetmentMDE - created from Drone Image
Channel Side of Revetment ...MDE - created from Drone Image
MHWLMDE - created from Drone Image
10ft Channelward of MHWL ...MDE - created from Drone Image
ImageryAA County 2018 Imagery Service

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Map 4 of 4

Map Date - 17 March 2021



Tidal Wetlands Revetment Placement Review - Site Map

Merritt Property, 435 Ginn Lane, Pasadena, MD 21122

Attachment E

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This general site map provides an overview to the area in question as it relates to the following features;

The installed revetment and the proposed sill. This feature was created by heads-up digitizing the revetment shown on the drone image (refer to the drone image map).

The channelward line of the installed revetment and proposed sill. Extracted from the installed revetment feature. Represents the furthest channelward side encroachment of the revetment and the proposed sill.

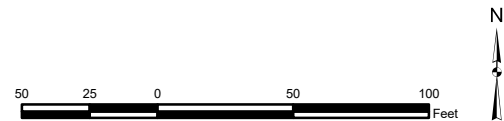
The Mean High Water Line. This feature was created, with NOAA's guidance, using Maryland's Digital Elevation Model (DEM) data. A DEM is the 3D image of elevation data used to represent terrain. Using ARCMAP's Create Contour tool, one foot interval contours were created. With an average tidal range of approximately 1.3 feet, the one foot elevation line was used as the MHWL.

Data Sources;

Revetment Line.....MDE - created from Drone Imagery
Mean High Water.....MDE - via contours from DEM data
Parcel Boundaries.....MDP/MD SDAT
Imagery.....AA County 2018 Imagery Map Service

Map 1 of 4

Map date - 17 March 2021



Tidal Wetlands Revetment Placement Review - Drone Image

Merritt Property, 435 Ginn Lane, Pasadena, MD 21122Text

Attachment E

This map shows an image of the site taken via a drone. This map was provided by a local citizen. The drone image shows the area where revetment was installed and the location of the proposed sill. Also marked on the image are the AA county "0" elevation and an estimated Mean High Water Line.

The drone image map was received in a TIFF format and not spatially referenced. The Georeference Tool set in ARCMAP was used to apply a spatial reference to the image. To perform the georeference, matching features on both images were noted and selected. ARCMAP uses the selected features to rotate and shift the drone image into position on top of the 2017 imagery. The parcel boundaries were retained to show their location in relationship to the drone image.

Data Sources;

Drone Image.....Citizen Provided
Parcel Boundary....MDP/MD SDAT
Imagery.....AA County 2018 Imagery Service

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Map 3 of 4

Map Date - 17 March 2021

50 25 0 50 100 Feet

