

**WATER AND SCIENCE ADMINISTRATION  
TIDAL WETLANDS DIVISION**

**Wetland Report and Recommendation**

State Wetlands Case No:

20-WL-0187

Applicant: Robb Merritt  
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410-770-4744/302-424-1441

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

Comment Period Closing Date: June 15, 2020

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;
4. To provide required mitigation.

Description of Authorized Work:

**East side of property:**

- Remove 180 linear feet of stone revetment;
- 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; previously issued under 20-0141EX;
- Authorize after-the-fact 30 linear feet of stone revetment within 15 feet channelward of the mean high water line;
- Construct 184 linear feet of low profile stone sand containment sill, and fill and grade with 91 cubic yards of sand and plant with marsh vegetation within 35 feet channelward of the original mean high water line in order to create 3,760 square feet of marsh;

**West side of property:**

- Reconstruct and expand three existing groins with the following dimension:
  - 101.3-foot long by 30-foot wide,
  - 85.3-foot long by 30-foot wide, and
  - 82.6-foot long by 30-foot wide;

- Construct a 96-linear foot and a 99-linear foot low profile stone sand containment sill between the groins, and fill and grade with 209 cubic yards of sand and plant with marsh vegetation within 35 feet channelward of the mean high water line in order to create 3,625 square feet of marsh;

Waterbody: Broad Creek

Requires Water Quality Certification?: Yes, WQC (21-WQC-0321) has been 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: 7,385 s.f. of vegetated tidal marsh is proposed to compensate for the requested 6,870 s.f. of required mitigation.

Was the Applicant's Original Project Modified?: Yes. The original authorization (20-0141EX) was issued on February 10, 2020 and authorized 150 linear feet of stone revetment 15-feet channelward of the mean high water line. The applicant applied to authorize this work on February 20, 2020. However, the project was modified during construction to abate the emergency conditions and provide necessary changes to protect the hillside, dwelling, and infrastructure from eminent failure. This resulted in an increase in channelward encroachment; additional stone was also placed along the shoreline that was not included in the expedited license. The fill not reasonably necessary to abate the emergency will be removed and the area reconstructed in accordance with the regulatory framework. Fill necessary for the project will be mitigated in accordance with the regulations.

- Modification to plans #1: The applicant revised plans to remove stone that could not be authorized, revised the channelward extent of the revetment placed during the emergency construction, and provided mitigation for the fill. However, after additional comment and investigation, a different channelward encroachment was determined by Department staff.
- Modification to plans #2: The applicant revised plans again to reflect the impact and channelward encroachment of a maximum of 38 feet channelward of mean high water line, as determined by the Department.
- Modification to plans #3: The applicant's mitigation was previously placed on a proposal for a separate Wetlands License that included additional shoreline and pier work. The Department determined that all work associated with the emergency should be combined into a singularly focused R&R. This reorganization will allow the focus on the emergency and the revision as a package independent of other works at the property that are not directly related to the emergency.

### **Department Comment:**

### **Timeline of plan revisions, public notices, and neighbor correspondence:**

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. The imminent concern was documented in a letter from Carroll Engineering dated January 23, 2020.

Public Notice for 20-WL-0187 – May 15 – June 15, 2020:

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:

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

MDE received a complaint from Dr. Kebaish regarding the construction associated with the emergency authorization. The complainant alleged that revetment extended significantly further channelward than 15 feet. Dr. Kebaish provided further comments to the Department and Compliance including photos of the emergency 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. The Department determined that increase in channelward encroachment was necessary to protect the shoreline and a dwelling from failure. However, it was also determined that 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 required to complete construction of 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 180-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 3,000 square feet of living shoreline to serve as mitigation.

Public Notice for 20-WL-0187 (revised the scope of work) – Oct. 1 – Oct. 15, 2020:

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:

- Dr. 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 emergency 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. 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 of the emergency revetment is a maximum of 38 feet channelward 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. Dr. Kebaish did not respond to the Department's April 29, 2021 email.

The applicant accepted MDE's determination and provided revised plans to the Department on July 9, 2021 for 20-WL-0187 that accurately depicts the impact and removes unauthorized stone; and for 20-WL-1483 that provides for the Department's required mitigation.

*Public Notice for 20-WL-0187 (revised the scope of work) & 20-WL-1483 (mitigation and additional shoreline work) – July 15 – August. 15, 2020:*

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:

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

Dr. Kebaish received the revised plans as part of the public notice and did not provide any comments during the public notice period. The Department did not receive any additional comments from any other citizens and there were no requests for a public hearing.

Following the submittal of the Report and Recommendation to the Board of Public Works, Dr. Kebaish reiterated the same concerns regarding the emergency revetment, the construction of the proposed mitigation, and brought up additional concerns that included the loss of navigable channel to BPW. Through investigation and multiple conversations between Dr. Kebaish, the Department, and BPW, MDE concludes the following:

1. The revetment placed during the emergency repair exceeded the original authorization. However, the work was necessary to protect the shoreline and structure from imminent failure, and is consistent with State Regulations and Law. MDE does not recommend removal of the emergency revetment.
2. The area of the proposed living shoreline mitigation site adjacent to Dr. Kebaish's property is in the area where a living shoreline waiver was not granted. The proposed living shoreline is the *only* structure the Department would authorize or recommend, thus the stone revetment should be removed from this location and a living shoreline constructed in its place.
3. No navigational channels were impacted by the emergency revetment and no part of the project impacts navigation.

Finally, due to the link between both applications, the Department has determined that they should be issued as one license and is recommending authorization of all shoreline structures, including mitigation, proposed in this R&R. The Department requests to completely withdraw the Report and Recommendation for 20-1483 and the original 20-0187. This document is a revision to 20-0187 and includes all the work associated with the emergency authorization at 435 Ginn Lane, Pasadena, Maryland.

**REVIEW AND RECOMMENDATION OF SHORELINE STRUCTURES:**

In evaluating the final impact of the emergency revetment extending a maximum of 38 feet channelward of the mean high water line, the Department determined that this structure is consistent with State regulations and Law and should be recommended. The entirety of the fill is necessary for the protection of the shoreline to abate the emergency conditions and is now preventing the dwelling and associated infrastructure from failure. The Department believes it is in the interest of the State to have the emergency structure remain because it eliminates the risk associated with the loss of life or property that can occur

with the failure of the hillside. The final structure stabilizes the slope and prevents the loss of future sediment into State Tidal Wetlands.

In evaluating the stone revetment that was placed North of the emergency work, this area does not meet the criteria to receive a waiver from the State's living shoreline requirement. The Department does not recommend authorization for revetment in this section. Since the proposal now removes the unauthorized stone and replaces this with a living shoreline, the Department recommends authorization of the living shoreline. This is consistent with State regulations and will provide added benefits to the cove by providing environmental uplift by reducing nutrient pollution, and providing habitat to various land and aquatic species.

In evaluating the proposed shoreline stabilization structures on the West side of the property, the Department determined that rebuilding and expanding the existing groins can be authorized because they are currently existing functional groins that have degraded and are part of the living shoreline design as a containment structure. After mitigation was required, the area between the groins was selected for a living shoreline. The rebuilding and expansion of the groins, and the construction of the living shoreline between the groins is consistent with State regulations and will provide added benefits by providing environmental uplift by reducing nutrient pollution, and providing habitat to various land and aquatic species.

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.

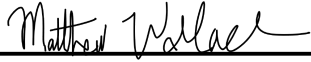
### **SPECIAL CONDITIONS:**

- 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 applicant shall provide mitigation for 6,870 square feet of impacts to shallow water habitat in accordance with the attached plans.
- I. The Licensee shall construct the mitigation area in accordance with the following conditions:
  - 1. The Licensee shall use clean substrate fill material, no more than 10% of which shall pass through a standard number 100 sieve.
  - 2. The marsh establishment area shall be planted within one year following completion of the filling operation.
  - 3. The marsh establishment project shall be maintained as a wetland, with non-nuisance species' aerial coverage of at least 85% in perpetuity. If 85% coverage is not attained, the reasons for failure shall be determined, corrective measures shall be taken, and the area shall be replanted.
  - 4. If the fill is graded hydraulically, the licensee shall use a turbidity curtain around the perimeter of the instream work.
  - 5. If the existing bank is to be cleared or graded:
    - a. The Licensee shall perform all work under and in accordance with an approved Soil Erosion and Sediment Control Plan from the applicable sediment and erosion control agency; and
    - b. The Licensee shall perform all work under and in accordance with the Critical Area requirements of the local jurisdiction in the form of an approved Buffer Management Plan.
- J. The Licensee shall accept the terms of the attached marsh maintenance plan by signing and returning the standard plan to the Water and Science Administration, Tidal Wetlands Division prior to commencement of any work authorized under this License. If the Licensee wishes to propose an alternative marsh maintenance plan, the alternative plan must be submitted to and approved by the

Tidal Wetlands Division, Water and Science Administration, prior to commencement of any work authorized under this License. Any alternative plan must provide assurances of success that are at least equivalent to those of the standard plan, in terms of the extent of native marsh plant coverage, elimination of invasive species and timeframe for plant establishment.

DEPARTMENT OF THE ENVIRONMENT APPROVAL:



Matthew F Wallach, Natural Resource Planner  
Tidal Wetlands Division

3/17/22

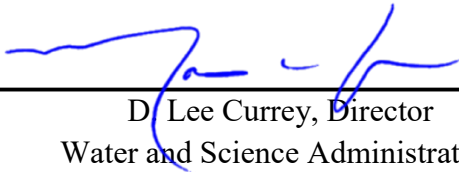
DATE



Tammy Roberson, Division Chief  
Tidal Wetlands Division

3/17/2022

DATE



D Lee Currey, Director  
Water and Science Administration

3/17/2022

DATE

WETLANDS ADMINISTRATION CONCURRENCE:

William Morgante, Wetlands Administrator  
Board of Public Works

DATE