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Elaine Nagey
3 Beach Road
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William Chandler
811 Robin Hood Road
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RE: MODIFICATION OF EXISTING REVETMENT PERMIT TO PERMIT FOR LIVING SHORELINE

Dear Elaine and Bill:

This letter reflects facts learned in discussions with various staff in the Maryland Department of Environment (MDE) and Department of Natural Resources (DNR) regarding a hypothetical switch from an existing permit for a traditional revetment to a living shoreline. While I do not know the terms of the existing permit, and thus was unable to provide specific answers to some questions posed by regulators in my conversations with them, I believe I presented them with sufficient non-identifying facts to reasonably inform the opinions set forth herein.

Background:

Overall, my opinion is that living shorelines provide a multitude of biological, physical, aesthetic, and potentially financial benefits. For instance, living shorelines provide shallow water habitat which engenders higher abundance and diversity of aquatic species. Living shorelines also maintain a link between aquatic and upland habitats and provide shoreline access for wildlife and human recreation.

Further, living shorelines improve water quality by settling sediments, filtering pollution, and reducing erosion by absorbing wave energy, storm surge and flood waters. In many instances, living shorelines maintain natural shoreline dynamics and sand movement, including, in some circumstances, the occlusion of sand to increase the extent of the shoreline.

Finally, it is the law of Maryland that living shorelines (a.k.a. non-structural shoreline stabilization measures) be utilized when new shoreline stabilization is considered, unless a waiver is obtained. Md Code Regs. 26.24.04.01(C). Mindful of the benefits of living shorelines to our waters, the State has expressed in the section of COMAR regulating shoreline stabilization measures, that “[i]t is the goal of the State to preserve the tidal wetlands of the State, prevent their loss and despoliation, and strive for a net resource gain in tidal wetland acreage and function.” Md Code Regs. 26.24.01.01(A).

Procedure:

Sherwood Forest has two avenues it may pursue to change their shoreline project: a modified permit application, or a new permit application. For either avenue, a design for the living shoreline will need to be obtained. Megan Senkel, a Natural Resource Plan Reviewer for the Severn River with MDE, states that the design should include such items as the height, length and width of any stone berms, groins, or other structural elements, the location of sand fill and marsh plantings, and calculation of total impacted area in order to determine any necessary wetland mitigation.

Whether an applicant should pursue a new application or a modified application depends primarily on the expiration date of the existing permit. Generally, permits enjoy a three-year term from the time of issuance until construction must begin.¹ If an existing permit has less than 240 days remaining, a new application will be required, as MDE's turn-around time to reach a decision on an application is 240 days.² Assuming more than 240 days remain in the permit term, a modified application may be a speedier avenue, and the cost (\$250) is less than a new permit application (\$750).

If an applicant pursues a modified permit, it must provide a new application form which references the existing permit number, and includes the new design as an attachment. This modification request should be sent to the same reviewer as the original application. MDE would then generate a new report and recommendation to the Board of Public Works (BPW). In addition, if the original permit required public notice and the opportunity for public comment and/or a public hearing, the modified application would also require that public input. MDE's report and any public input would then be transmitted to BPW for their review, and BPW would issue the permit directly.

Ms. Senkel recommended a pre-application meeting between MDE, DNR, and the U.S. Army Corps of Engineers to discuss the wishes of the applicant and/or its design consultant or construction contractor, and the various requirements and considerations of these government agencies. For instance, DNR may provide funding assistance in the form of a 0% interest loan with a 15-year term, but often will require certain design features as a condition of extending this financial assistance.³

¹ It is also possible to obtain an additional 3-year extension to the original permit.

² Ms. Senkel was quick to qualify this time-frame by saying that 1) this is a target only, and not required, and 2) the Board of Public Works also reviews these permits, and that process has its own time requirements over which MDE has no control. Thus, it is likely that the total time between applying and getting a permit, or receiving comments from MDE which must be addressed before a permit is issued, may be longer than 240 days.

³ For more on possible funding assistance, as well as the various benefits of living shorelines, and considerations for design, see:

http://www.seagrant.sunysb.edu/Images/Uploads/PDFs/LivingShorelines0513-Presentations/5_NYSG_Living_Shorelines_Maryland.pdf

Other Considerations:

A primary concern of residents in the neighborhood with changing course at this time may be the cost of retaining a design professional to complete a modified or new application, but this cost can in all likelihood be offset by DNR funding assistance. The likelihood of receiving that assistance, and the application procedure for obtaining it would have to be investigated independently and would likely be elucidated during a pre-application meeting with DNR. It is also possible that the Chesapeake Bay Trust, MDE, and/or National Fish and Wildlife Foundation may provide funding assistance, but they too will have application requirements that require further investigation. Moreover, actual construction cost may be lower than the proposed revetment cost.

Another concern may be any delay that is occasioned by the change of permit, and any attendant damage to community property and/or water quality which may result from active erosion in the interim. While this concern is certainly valid, a countervailing consideration is that living shorelines, when well designed and properly constructed, are likely to have a much longer life-span than typical armored shoreline, as they grow by trapping sediment, and thus may reduce future need for repair.⁴

Conclusion:

The application procedures described above are relatively simple and straightforward. A lot can be learned by a pre-application meeting with regulators and design consultants, and I recommend such a meeting if the community decides to move forward with this change of course. Important points to emphasize with neighbors who may be undecided about whether to pursue this changed design are: improvement of water quality, potential lower cost of construction, likelihood of longer life span than traditional shoreline armoring, and the community amenity aspect of a living shoreline. This area will be far more attractive aesthetically and recreationally than a rock revetment. It can be an area where swimmers, crabbers and kayakers may access the water safely in comparison with traveling over rocks.

Sincerely Yours,



Jesse L. Iliff, Esq.

⁴ See: <http://oceanservice.noaa.gov/facts/living-shoreline.html>