

June 24, 2008



Ms. Sherri Kattan
Department of Environmental Quality
Tidewater Regional Office
5636 Southern Road
Virginia Beach, VA 23462

Dear Ms. Kattan:

Wetlands Watch is a Norfolk-based nonprofit organization with members in Virginia Beach as well as throughout the state. Unable to attend the June 9, 2009, hearing, we are submitting these written comments in opposition to the proposed permit for wetlands-disturbing activity by Sandler at Indigo Bay LLC.

Relevant Virginia code states, "A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources." (§ 62.1-44.15:21 Code of Virginia) These impacts are to be considered prior to and independently of any proposed mitigation measures.

The applicant proposes to permanently impact 2.35 acres of tidal wetlands. We maintain that these impacts are sufficient to deny the permit application given the significantly impaired state of the Lynnhaven River and the Chesapeake Bay.

The Lynnhaven River is already significantly impaired as evidenced by state and federal decisions and activities. Ten years ago, the state listed much of the Lynnhaven River as impaired in Virginia's 1998 303(d) Total Maximum Daily Load (TMDL) Priority List and Report. The Virginia Department of Environmental Quality (DEQ) under the ongoing TMDL process is currently addressing the impairments to the Lynnhaven River and meetings have been held in the watershed to discuss the TMDL plan for the River.

The Lynnhaven River is listed as impaired due to e-coli contamination in shell fishing areas. Bacterial source tracking (BST) to determine the origins of the e-coli indicate that

birds, pets, wildlife, livestock, and human sources are all present. Of these, the bird, pet, and wildlife sources can be controlled by tidal wetlands given wetlands ability to hold and treat sediments and fecal material.

Indeed, in the “Draft Implementation Plan for the Fecal Coliform TMDL (Total Maximum Daily Load) for Shellfish Areas of Lynnhaven Bay, Broad Bay, and Linkhorn Bay Watersheds,” (March 2006) there are aquatic restoration goals that include “the preservation and restoration of critical shoreline habitats.” This indicates that one source of dealing with the significantly impaired waters in the Lynnhaven River is to preserve, not remove more wetlands.

Other government studies concur on the importance of wetlands in the Lynnhaven River and the role that their removal has played in the River’s significant impairment.

The US Army Corps of Engineers (USACE) has been concerned about the environmental health of the Lynnhaven River for decades. Currently, it is engaged in an environmental restoration effort in the Lynnhaven River, having completed a reconnaissance study for this work in 2002, with a feasibility study underway.

In a 1980 report on the Lynnhaven River, contracted for by the USACE restoration effort, the reasons for the impairment of the Lynnhaven River were detailed. The most significant reasons for this impairment were laid to the loss of wetlands.

”Considerable areas of marshland have been eliminated by dredging, filling, bulkheading, and channelizing. Remaining tidal marshes have become increasingly important...” (Malcom Pirnie, Lynnhaven River Study, 1980.)

This finding was confirmed 22 years later in the USACE reconnaissance study.

“Loss of tidal wetlands can be directly correlated with declines in water quality, including clarity, turbidity, and nutrients. Historical wetland losses, while not quantified at this point in time, can be assumed to be significant.” (Lynnhaven River Environmental Restoration, Section 905(b) (WRDA 86) Analysis, US Army Corps of Engineers, June 28, 2002.)

Given that the Lynnhaven River is significantly impaired and that the USACE studies point to wetlands losses as part of the reason for those impairments and that DEQ’s own TMDL implementation plan points to the preservation of wetlands as part of the strategy for the River’s recovery, we assert that no additional wetland loss in the Lynnhaven River can be permitted without contributing to the significant and ongoing impairment of the River.

In addition, there are threats on the horizon for any existing wetlands in front of hardened shorelines and development. Current projections are for a minimum of a two-foot relative sea level rise in the coming century in southeastern Virginia. The tide range in the Lynnhaven River runs two feet or less. Without adequate sediment and growth to

keep pace with sea level rise, wetlands will need to “migrate” up slope. Any hardened structure or development will prevent that migration and cause the wetlands to drown in place, removing their environmental functions. These coming wetlands losses make the significant impairment of the Lynnhaven River even more serious and argue for not permitting any additional losses.

We submit that regulatory bodies must begin to include sea level rise projections for tidal waters in Virginia into any determination of “existing or proposed impacts to wetlands,” as mentioned in Virginia Code.

Finally, the Lynnhaven River is part of the Chesapeake Bay watershed, which is listed as a significantly impaired water body for nutrient and water clarity under Section 303(d) of the Clean Water Act. TMDL’s are commencing under that listing and the Lynnhaven River, as part of the Lower James River, will come under that TMDL as well.

These TMDL’s will start with the Tributary Strategies developed in 2004 under the leadership of Virginia’s Secretary of Natural Resources. In the report, “Chesapeake Bay Nutrient and Sediment Reduction Tributary Strategy for the James River, Lynnhaven and Poquoson Coastal Basins,” the need for an additional 2,000 acres of wetlands was projected, along with numerous other approaches along the shoreline buffers in those watersheds, in order to remove the impairments.

Once again, the wetlands in the Lynnhaven River are part of a TMDL-imposed restoration strategy on a significantly impaired body of water. Any further removal of wetlands will clearly “contribute to a significant impairment of state waters,” arguing for no permitted losses of wetlands in that watershed.

We recognize that the applicant is offering mitigation for their proposed impacts. However, those mitigation measures can only be considered AFTER a determination is made that the permanent impacts, “will not cause or contribute to a significant impairment of state waters...” Clearly the Lynnhaven River, the object of one current and one future TMDL and the subject of a decades long federal restoration effort, is already significantly impaired.

We argue that this prevents the issuance of a Virginia Water Protection permit to Sandler at Indigo Bay LLC.

Regards,

A handwritten signature in black ink that reads "Ship Stiles". The signature is written in a cursive, flowing style.

William A. Stiles, Jr.
Executive Director