



REPLY TO
ATTENTION OF

**DEPARTMENT OF THE ARMY
NORFOLK DISTRICT CORPS OF ENGINEERS
FORT NORFOLK 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096**

October 10, 2008

Southern Virginia Regulatory Section
04-V2213 (NAO-2006-05453 (North Bay))

Ladies and Gentlemen:

This is in reference to your letter regarding the permit application submitted by Kenneth Douglas Wilkins for Department of the Army authorization to construct the Wilkins Mooring and Launching Facility in the Sandbridge community of Virginia Beach, Virginia.

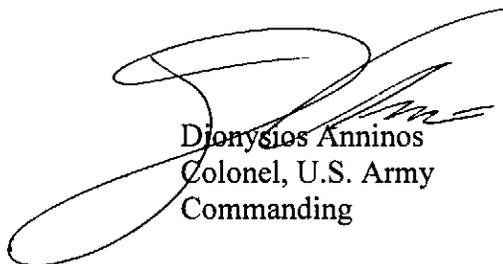
The U.S. Fish and Wildlife Service initially objected to the issuance of a permit for the proposed facility and sought higher level coordination under the 404(q) Memorandum of Agreement between our agencies. As a result of this coordination, I incorporated a condition into the permit to address enforcement of the no-wake zone in Back Bay; and I will host a meeting of federal, state and local agencies and community stakeholders to address potential expansion of the no-wake zone, additional signage, and channel marking that are bay-wide issues not applicable to the conditions of the Wilkins permit. The Fish and Wildlife Service indicated that these agreements have addressed their concerns and they would not further elevate the decision to issue the permit.

Therefore, I have completed my review of the permit application and I have determined that the proposal is not contrary to the public interest. Your concerns and comments have been evaluated and addressed in our Statement of Findings on this project which has been posted on the web at the following link:

<http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/PN/PN.asp>

Thank you for your comments.

Sincerely,



Dionysios Anninos
Colonel, U.S. Army
Commanding

STATEMENT OF FINDINGS

SUBJECT: Permit Application Number 04-V2213 (NAO-2006-05453) (Kenneth Douglas Wilkins)

I have evaluated, in light of the overall public interest, all available information pertaining to the subject application which involves the construction of a 76-slip mooring facility known as the Wilkins Mooring and Launching Facility. The following summarizes my evaluation which reflects the national concern for both the protection and utilization of important resources and demonstrates that I have balanced the reasonably foreseeable benefits against the reasonably foreseeable detriments of the implemented project.

I have found that the project will have no, or minimal adverse impact on the following project resources: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. These issues are addressed in my Final Environmental Assessment on the project.

The project was advertised by public notice dated 1 March 2005 with a 30-day comment period ending on 1 April 2005. In accordance with requests from the U.S. Fish and Wildlife Service and EPA, the time limit for comments from those two agencies was extended by 15 days until 18 April 2005. Due to numerous concerns raised by Sandbridge residents, the District Commander determined that a 30-day extension of the comment period was warranted to allow for thorough public review and comment on this project. Therefore, the comment period was extended to end on 1 May 2005.

Over 350 comment letters, electronic messages and postcards were received in response to the Public Notice, the overwhelming majority of which were in opposition to the project. Among the comment letters received were letters from the U. S. Fish and Wildlife Service, the Environmental Protection Agency, the Virginia Department of Game and Inland Fisheries, Congresswoman Thelma Drake, City of Virginia Beach Mayor Meyera Oberndorf, Sandbridge Beach Civic League, Friends of Back Bay, Wetlands Watch, Inc., Outdoor Resorts of Virginia Beach, Defenders of Wildlife, and Back Bay Restoration Foundation.

Agency opposition to the project centers on the potential for direct, indirect, and cumulative adverse impacts from the construction and operation of the mooring and launching facility on the adjacent Back Bay National Wildlife Refuge, including impacts to SAV beds, bald eagles, estuarine habitat, fish and waterfowl habitat, and over-wintering waterfowl. EPA and the Service feel the project would be in conflict with ongoing federal, State and local initiatives to protect and enhance coastal habitats for the benefit of fish, wildlife and wildlife dependent recreation within Back Bay.

Letters from the public expressed great concern about additional boat traffic, (especially jet skis), noise, pollution, increased turbidity, additional vehicle traffic through Sandbridge, fuel spills, waste and litter, public boating safety, shoreline erosion from boat wakes, destruction of wildlife habitat, insufficient parking and boat trailer storage, lack of safety and maritime patrols in Back Bay, and the potential for additional similar

commercial development in the area. One commenter requested that the Corps hold a public hearing on the project.

Most of the comments were quite similar in nature, therefore only some of the comment letters are summarized below:

Mayor Oberndorf: In a letter dated 28 April 2005, City of Virginia Beach Mayor Meyera Oberndorf expressed her opinion that the facility would greatly increase access for jet skis and powerboats to the ecologically sensitive Back Bay. She stated that the City of Virginia Beach, the State of Virginia and the Fish and Wildlife Service have expended countless millions of dollars to conserve Back Bay and to develop appropriate public uses through land holdings and policies at Little Island City Park, False Cape State Park, and Back Bay National Wildlife Refuge. She stated her opinion that Mr. Wilkins was attempting to leverage his small private parcel into a commercial operation that would exploit Back Bay. She stated her belief that issuance of a permit for the Wilkins Mooring and Launching Facility would have detrimental impacts to Back Bay and be contrary to the public interest and asked that a permit be denied.

Congresswoman Thelma Drake: In a letter dated 8 December 2005, Congresswoman Thelma Drake asked my predecessor, Colonel Yvonne Prettyman-Beck, to meet with her and U. S. Fish and Wildlife Service representatives at the project site to discuss the issues before issuing a permit. Colonel Prettyman-Beck informed Congresswoman Drake on 19 Dec 2005 that she had already visited the site on 9 June 2005, but that she was making plans to meet with Fish and Wildlife Service and Refuge personnel at the refuge on 18 January 2006 to discuss their concerns.

Defenders of Wildlife: In response to the Public Notice, a letter dated 1 March 2006, was received from the Defenders of Wildlife, which was also written on behalf of the National Wildlife Refuge Association and the Wilderness Society.

The letter claimed that the Public Notice was deficient and that Corps had violated the National Environmental Policy Act (NEPA) by failing to provide adequate public notice and opportunity to comment on the proposal. The letter claimed that the Corps had also violated NEPA by not preparing an Environmental Impact Statement. They alleged that the Corps had completely ignored and failed to disclose the significant indirect and cumulative effects to the Back Bay National Wildlife Refuge and had not addressed reasonable alternatives in the public notice.

They stated that the Corps must consult with the Fish and Wildlife Service and give full consideration of the views of the Service in deciding on the issuance, denial or conditioning of a permit. Finally, the letter stated that the Corps must deny the project since there are existing public boat launching facilities that could accomplish the goals of the project and that the project would not meet the public interest test. On 14 March 2006, the Regulatory Office sent an interim response on behalf of the District Commander.

Virginia Department of Game and Inland Fisheries: In their 6 June 2005 comment letter, the Virginia Department of Game and Inland Fisheries (VDGIF) stated their concern that increased motorboat and personal watercraft (jet ski) activity in the shallow waters of the Bay would further degrade already eroded marshes and the increase in noise and other human disturbances from additional commercial and residential development would adversely impact wildlife resources.

VDGIF fears that approval of this facility may make the State, Federal and private efforts to restore water quality and SAV in Back Bay more challenging and possibly unsuccessful. They feel that water quality will continue to be degraded by discharges of fuel, oil, paint and other pollutants from motorboats at the mooring facility as well as by increased turbidity from the proposed and future dredging.

As Back Bay is a popular area for waterfowl hunting, fishing, and wildlife watching, VDGIF anticipates that motorboats from the facility, especially personal water craft, will conflict with these user groups, and could result in dangerous situations. VDGIF does not support the originally proposed removable floating section of walkway across the waterway as it would impede navigation into the cove and essentially privatize public waters.

U. S. Fish and Wildlife Service: In their comment letter dated 29 April 2005, the U.S. Fish and Wildlife Service (Service) expressed their concern that the proposed project will result in an increase in the use of motorized watercraft (including jet skis) in Back Bay. In particular, they are concerned that boat propellers will cause sediment re-suspension, shoreline erosion, destruction of SAV and wetlands as well as disturbance to fish and wildlife; and that discharges of waste, fuel, oil, paint, solvents and other pollutants from vessels and from the facility will impact water quality. Since the effects of jet skis on the aquatic environment have been well documented and because Back Bay is a shallow water system, the Service is concerned that these effects will likely be amplified.

The Service stated that depending on the species, the level of tolerance to disturbance and the time of year, motorboat traffic, including jet skis, can adversely affect the feeding, breeding success, and resting of many species of fish and wildlife. Increased energy expenditures and forced movement away from important feeding areas can be fatal during severe weather or when food supplies are reduced.

The Service quoted literature documenting threats to SAV which include propeller and wave damage from boating activity in shallow waters, dredging and filling of habitat, bottom disturbance by fishing gear and by constructing docks over SAV beds. They quoted literature documenting that the creation and maintenance of navigational channels can destroy grass beds, but that boat propeller damage appears to be the major contributor to SAV loss when boaters who lack navigational skills misjudge water depth, travel outside of marked channels, anchor over beds or prop dredge to create a channel.

The Service anticipates that increased motor boat traffic in Back Bay will increase conflict among jet skies, motor boats, fishing boats, canoes and kayaks, and may increase the risk of accidents during waterfowl hunting in the fall months. They fear that increased traffic in the vicinity of shallow uncharted sand bars will result in personal injury from collisions and capsizing. The Service believes that additional law enforcement will be required to provide for public safety and to ensure that inappropriate activities and trespass do not occur within the Proclamation Boundary of the refuge. The Service fears that noise from boat and jet ski motors will disturb wildlife and degrade the solitude sought by birders and other recreational users in Back Bay and the Refuge.

The Service is concerned that the issuance of a permit for this type of facility will set the stage for additional development that would be incompatible with the on-going restoration efforts for Back Bay and the

habitat management goals of the Refuge. They expressed their fear that future expansion of the proposed facility and the construction of similar facilities would encourage additional development of vacation homes, restaurants and other businesses, as well as roads, sewer lines and parking lots. The Service questioned the need for the facility since public access to Back Bay for motorized vessels is currently available at two VDGIF boat ramps: the Drum Point Boat Ramp on Mill Landing Road, and the Trojan Waterfowl Management Area on Back Bay Landing Road.

Due to the potential for significant environmental impacts to federal trust resources (migratory birds, fish, threatened and endangered species, SAV, and the Back Bay National Wildlife Refuge) from habitat loss, disruption or elimination of migratory pathways and feeding and resting areas, the Service recommends that the Corps prepare an Environmental Impact Statement (EIS).

The Service recommended that the EIS should address direct, indirect, permanent and temporary impacts from construction and operation of the project including the following:

1. The number and kind of watercraft that will use the facility
2. Cumulative impacts on water quality
3. Effects to spawning fish and fish habitat
4. Effect on the feeding and breeding behavior of birds
5. Effect of watercraft on bald the eagle nest located at False Cape State Park
6. Effect of construction and traffic on secretive marsh birds
7. Effect of construction on SAV
8. Aquatic resource impact of proposed and future dredging
9. Cumulative impact of turbidity and boater access on the quality and quantity of SAV beds
10. Turbidity and shoreline and island erosion, from boat wakes and wash
11. Anticipated effects and a proposed management plan for typical pollutants associated with individual watercraft and the facility
12. Effects of increased human access (particularly by jet skis) to sensitive habitats in Back Bay
13. Public user conflicts, public safety, noise pollution, and the increased need for law enforcement
14. Effects to the wilderness character of the Refuge
15. A cumulative impact analysis

The Service recommended denial of the project as proposed since they believe it may result in substantial and unacceptable impacts to aquatic resources of national importance. The Service indicated their intent to elevate the decision on this project to a higher authority if the Corps decides to issue the permit. On 20 May 2005, the Service submitted the required second letter regarding their intent to elevate the decision to higher authority in accordance with the Clean Water Act 404(q) Memorandum of Agreement between the Department of the Army and the Department of the Interior unless the Corps modified, conditioned or denied the permit.

During the later portion of the coordination between the Corps and the Service under the 404(q) Memorandum of Agreement, the District Commander met with representatives of the U. S. Fish and Wildlife Service and Back Bay National Wildlife Refuge on 15 April 2008 to discuss the project. The Service indicated their desire to work out a compromise so that the project did not have to be elevated to higher authority within our agencies. They would accept the project if only electric motors or small gas motors were allowed, but no jet skis or jet boats. (The Corps informed the Service that the applicant had

already proposed in writing that no jet skis would be allowed at the facility and the draft permit already contained a special condition to that effect. In a subsequent electronic message on 2 May 2008, the Service relayed their recommendation that the facility be restricted to canoes and kayaks, watercraft that operate with sails and/or paddles, but no outboard motors except for emergency electric motors. They said that up to 6 pontoon boats of any size would be acceptable to them, but with no more than a 10 HP four-stroke outboard motor. The Service recommended that no other outboard motors be permitted. The Service also recommended the removal of the proposed dredging from the project to further minimize the impacts of the project. A full discussion of the coordination of this project under the 404(q) Memorandum of Agreement appears in the District's Final Environmental Assessment.

Environmental Protection Agency: In a letter dated 2 May 2005, the Environmental Protection Agency (EPA) expressed deep concern about direct, indirect and secondary impact of the project on the Back Bay area. Because of the significance and unique characteristics of Back Bay and the Back Bay National Wildlife Refuge, EPA believes this area could be considered an aquatic resource of national importance. EPA stated their belief that the proposed project is contradictory to the environmental goals of several Federal, State, and local resource agencies and the public interest with respect to the Bay.

EPA expressed concern over the proposed fixed walkway pier spanning the waterway between the two sections of piers. They believe that the applicant's proposal to include a 10-foot wide removable floating section would still restrict access to waters not owned by the applicant. Further, EPA believes that the applicant's proposed mitigation would not replace the functions and values lost by any unavoidable impacts.

EPA believes that the project appears speculative in nature since there are existing serviceable facilities at this and other nearby locations. They recommended that additional avoidance and minimization measure are available and that further on-site and off-site alternatives analysis is required.

EPA indicated that they share the concerns raised by the U.S. Fish and Wildlife Service about impacts to estuarine habitat, submerged aquatic vegetation, birds, fish and endangered species. EPA strongly recommended that the project be denied, but did not recommend elevation.

Response to Comments: The concerns expressed by the agencies and the public have been arranged by topic and are addressed below:

1. **Additional boat traffic (especially jet skis) on North Bay and Back Bay:** Of the 76 proposed slips, there are already 12 slips at the existing facility; therefore, the project would result in an increase of 64 slips. Back Bay Getaways, the eco-tourism and jet ski (personal water craft) rental business owned by former City Councilman, Jim Reeves, currently occupies the existing 12-slip mooring facility where some of the slips are used to moor jet skis on specially designed floating cradles. Mr. Reeves will continue to operate at the location.

However, the applicant has stated that no jet skis will be moored or launched from the 64 slips that comprise the Wilkins Mooring and Launching Facility. Launching and mooring of jet skis will be restricted to only those utilized by

the existing eco-tourism and rental operation. This has been made a condition of the Corps' permit and any change to this operation would require a permit modification.

The slips were designed and sized primarily for pontoon boats which are wide, shallow drafted vessels that are very popular on North Bay. In addition to Pontoon boats, runabouts and small sailboats will also be moored at the facility. Canoes and kayaks would not be moored in slips, but would be kept on land.

The exact number of vessels which currently utilize Back Bay is not known, but based on the number of properties located on the bay and its tributaries; an additional 64 slips would represent only a minor increase in the total mooring capacity in North Bay. There are about 1,800 individual lots on North Bay and its immediate tributaries that have the potential to access North Bay and Back Bay. Therefore, an increase of 64 slips represents only a three percent increase in additional boat moorings. (A more detailed discussion of this issue can be found in the Navigation Section of the FEA.)

2. Impacts to SAV beds from construction and operation of the facility (direct, secondary and cumulative impacts of the project): SAV populations in Back Bay, and especially North Bay, have fluctuated widely over the years due to agricultural run-off, rapid development in the watershed, salinity changes, turbidity, and possibly other factors not well understood. Residential development on North Bay, particularly in Sandbridge, has resulted in increased recreational water craft on North Bay and Back Bay. It has been documented that damage and destruction by boat propellers is a factor in the loss of SAV.

In cooperation with the U. S. Fish and Wildlife Service, Elizabeth City State University began conducting an updated SAV habitat mapping project in Back Bay and the Currituck Sound system in 2004 to provide a general overview of the current baseline distribution and presence of SAV. Aerial surveys revealed small SAV populations, generally located in very shallow coves or adjacent to marsh islands.

SAV was not observed in the open water areas of the bays where the larger motor boat activity occurs. Although most boat traffic should have less potential to directly impact current SAV populations, jet skis can be operated in very shallow water and have greater potential to impact these populations.

The 10-week long summer boating season (second week of June through the third week of August) coincides with the peak growth and flowering period for SAV in North Bay and Back Bay. Fragile flowers and tendrils on the water surface can be severed or destroyed, and entire plants can be uprooted by propellers or damaged by passing boat wakes.

Back Bay Getaways, a jet ski rental and eco-tourism company, currently occupies the existing 12-slip facility and will continue to be partners in this project. However, no jet skis will be moored or launched by members or owners of the 64 slips at the Wilkins Mooring and Launching Facility.

The Norfolk District has designated a Restricted Area in Back Bay which established a buffer extending 100 yards from ordinary high water along the entire shoreline of the Back Bay National Wildlife Refuge Proclamation Boundary. This no-wake zone restricts vessels of any type from operating at speeds that create a wake within 100 yards of the Refuge's shoreline. This

restricted area was intended to limit shoreline erosion and reduce destruction of SAV beds.

Conditions of the Corps permit require the permittee to develop and provide to each member of the mooring facility an information packet concerning the ecological sensitivity of Back Bay/North Bay; and to install information/educational signs at the facility regarding the environmental value of the Refuge, and the need to control speed while operating in the area. Both the packets and the signs will include the Norfolk District's Local Order for a Restricted Area in water adjacent to Back Bay National Wildlife Refuge. Therefore, motor boat operators originating from the Wilkins Mooring and Launching Facility will be well informed and educated regarding SAV.

Back Bay Getaways can control the activities of those who rent their jet skis and can deny further rentals to those who ignore their rules. However, neither the Wilkins Mooring and Launching Facility nor Back Bay Getaways can be held accountable for the activities of operators of privately owned boats and jet skis that originate from elsewhere in the Bay.

Although the Fish and Wildlife Service personnel report that they have observed scattered SAV in the cove of the project site that could be impacted by the construction of the project or by the dredging, the 2004 SAV survey did not identify any there, nor did the Corps observe any during site visits in 2005. Therefore no direct impacts to SAV are anticipated from the construction of the project. (A more detailed discussion of SAV can be found in the Fish and Wildlife Values Section of the FEA.)

3. Increased turbidity and shoreline erosion from boat wakes: Runoff from adjacent farm fields, rural residential areas and concentrated residential areas, such as Lago Mar, Red Mill and Ocean Lakes, generate high levels of suspended sediment loadings. Wave action can and does erode unprotected shorelines, destroy wetlands and SAV, and create turbulence that causes re-suspension of fine bottom sediments. Prop wash from boat propellers can generate high levels of turbidity in the Bay by disrupting the bottom sediments. Such disturbance can adversely affect the survival of SAV as well as some species of fish and wildlife. However, turbidity is also generated when the wind agitates the shallow waters of the Bay. Although areas of the substrate that are largely sand will settle very quickly when disturbed, turbidity is more of a problem in areas with finer grained sediments. Sediments in the Bay generally grade from sands closest to the barrier island on the east to silt and sand mixes further to the west and to more organic mucky soils adjacent to the marsh islands and at the mouths of the contributing waterways on the north and west side of the Bay.

From the previous dredging operation, it is known that the majority of the substrate within the project area consists of sand. Dredging will be conducted hydraulically and the dredged material will be pumped directly to the previously approved contained dredged material disposal area. Therefore, the dredging operation should generate very little turbidity.

The Norfolk District's designated Restricted Area restricts vessels from operating at speeds that create a wake within 100 yards of the Refuge's shoreline. This no-wake zone will reduce shoreline erosion caused by boat wakes within the Proclamation Boundary of the Refuge. Furthermore, conditions of the permit will require education and control of users of the facility to observe "no-wake" zones and avoid operating in sensitive areas. However, the applicant cannot control or be held accountable for the actions of other users of the waterway.

4. Effect of watercraft on bald eagle nests: Two nests of the bald eagle, a species that was federally listed as threatened when this coordination began in 2005, have been documented in the Back Bay system. Although the bald eagle was de-listed in June 2007, the species continues to be protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Both of these acts prohibit killing, selling or otherwise harming eagles, their nests or eggs. One nest is located on the Back Bay National Wildlife Refuge and the other is located within False Cape State Park. The Service does not anticipate effects to the nest on the Refuge as it is located more than 1/4 mile from the Bay waters.

The nest located in False Cape State Park appears to be located approximately 800 feet from the shoreline and thus located outside the 750-foot primary management zone. The closest water depth reading on the Knotts Island quadrangle indicates a depth of 1 foot approximately 1000 feet offshore and approximately 1800 feet from the nest.

The Service requested that the applicant address the effects of the increased use of motorized watercraft in Back Bay on that nest. Based on the information provided by the Service, the applicant determined that a vessel traveling south from the project site through the Great Narrows would have to make an approximately 9 mile trip to reach the area of the nest. Furthermore, very few motorized boats other than jet skis, are capable of navigating the shallow depths of one foot or less found in this area.

In the operation plan for the facility, the applicant has stated that no jet ski launching or mooring will be permitted at the facility other than those owned and operated by the existing eco-tourism business, therefore, no impacts to the nest are anticipated to occur as a result of the project.

5. Effects of increased human access (particularly by jet skis) to sensitive fish, wildlife and over-wintering waterfowl habitats in Back Bay: North Bay and Back Bay are historical over-wintering areas for migratory waterfowl and one of the management goals of the Back Bay National Wildlife Refuge is to provide over-wintering habitat and refuge for these birds. Most waterfowl arrive in the Back Bay area between late October and early winter and usually depart in March and April.

Boat usage in North Bay and Back Bay is seasonal in nature. Very little boat traffic occurs on North Bay or Back Bay during the fall through early spring and boaters during that time are usually local residents who are duck hunters, fisherman or commercial watermen. Based on the lack of winter boat use by current residents of the Sandbridge area and the three campgrounds, very little, if any, additional boat traffic is anticipated to be generated by the proposed mooring facility during the winter months.

Research has demonstrated a correlation between the lack of SAV and less use of Back Bay by over-wintering waterfowl populations, and refuge personnel report that most of Back Bay's over-wintering waterfowl now use the refuge impoundment complex rather than the open waters of Back Bay. The impoundments are buffered from the open navigable waters of Back Bay by maritime forest, forested wetlands and emergent wetlands. Therefore, waterfowl within the refuge's interior impoundments should not be affected by boat traffic on the Bay.

Most recreational boating activity on North Bay occurs between the second week in June and the third week in August. During this time, motor boat traffic,

including jet skis, has the potential to adversely affect the resting, feeding, and breeding behavior of many species of fish and wildlife.

This 10-week boating traffic season coincides with the nesting period for many secretive marsh birds including the Least bittern (Ixobrychus exilis) and King rail (Rallus elegans), which are species of special concern due to their nationally declining status. Boating activity can result in disturbance, nest destruction and egg loss in nests located close to waterways. Currently, the Refuge does not prohibit navigation within the proclamation boundaries and existing regulations do not protect these birds from harm even though they are located within the Refuge boundaries.

The Corps' Back Bay Restricted Area established a buffer extending 100 yards from ordinary high water along the entire shoreline of the Back Bay National Wildlife Refuge located within the Proclamation Boundary. The establishment of a no-wake zone will restrict vessels of any type from operating at speeds that create a wake within 100 yards of the Refuge's shoreline.

This restricted area will limit disturbance to sensitive nesting waterfowl, reduce shoreline erosion, and reduce destruction of SAV beds. This regulation also restricts vessel access to the interior of Ragged Island in order to protect sensitive waterfowl nesting sites and to reduce the potential for disturbance of nesting waterfowl that use the area.

I have suggested that after obtaining the necessary permits, the Back Bay National Wildlife Refuge further protect the interior of Ragged Island by erecting a physical barrier to preclude access. Furthermore, if the Refuge identifies other areas along their shoreline where vessel access should be restricted, those areas can be added to the Restricted Area regulation and physical barriers can be erected in there as well.

The mooring and launching of jet skis at the proposed facility will be restricted to only those owned and operated by the existing eco-tourism and rental operation, Back Bay Getaways. Any change to this operation would require a permit modification. Each of the private slips and/or memberships shall be tied to a condominium unit or a specific lot within the Sandbridge community. No owners or members will be allowed to sublease, rent, timeshare or in any other fashion make their slip available to anyone other than themselves or their contract renter/lessee. No guest launching will be allowed.

Finally, it should be noted that even during the height of the prime boating season, most boats are not in use for the vast majority of time. Therefore, the additional 64 slips at the proposed mooring facility would not equate to an increase of 64 vessels on the waterway at any one time.

6. Insufficient mitigation for impacts to wetlands: The applicant originally proposed to relocate by hand all wetlands impacted by the proposed low-profile bulkhead and by dredging channelward of the boat ramp to non-vegetated areas immediately behind the low-profile structure. As there was concern that this mitigation plan would not replace the functions and values lost, the applicant revised the plan to include compensation at a 1 to 1 ratio for the 666 square feet of tidal emergent wetlands displaced.

The applicant will create a minimum of 666 square feet of tidal wetlands consisting of species indigenous to North Bay. In addition, the Corps accepted the originally proposed plan to relocate the actual wetland plants displaced by the project to non-vegetated areas behind the low-profile bulkhead, and to

continue the on-going Phragmites abatement/wetland enhancement program to promote the growth of more desirable native species. Therefore, the revised mitigation plan should adequately compensate for the displaced wetland vegetation. (A more detailed discussion of this issue can be found in the Wetlands Section of the FEA.)

7. Discharges of waste and litter, spills of fuel, oil, paint, solvents and other pollutants from vessels and from the facility itself would impact water quality: Most boats which navigate North Bay and Back Bay use portable gas tanks, which are removed, filled at a gas station and brought back onboard. Those vessels which have built-in tanks are filled by owners carrying portable gas cans to the boat or are fueled at a gas station while on a boat trailer. There are currently no public fueling stations in the entire Back Bay system, and the applicant will not include a fueling station at the mooring facility.

None of the type of boats that can navigate North Bay are large enough to have an onboard water closet, therefore, no sanitary pump out facilities are necessary for the proposal. The applicant will not provide restroom facilities on land.

There are no plans to install a fish cleaning station, or a boat wash-down area. Small boats are generally pulled out of the water to be painted. The applicant does not anticipate allowing such activity to take place at the site since there would not be sufficient room to store a boat on a trailer while the work is performed. Therefore, spills of paint and solvents should not be an issue at the facility.

Regular trash, litter and small spill control is currently accomplished daily at the existing eco-tourism facility. The applicant plans to continue these efforts at the expanded facility. In addition, the applicant will acquire and maintain an on-site U. S. Coast Guard spill response kit, and will develop a hazardous material contingency plan for any major spills.

8. Boating safety, lack of maritime patrols and law enforcement in Back Bay: Many comments were received regarding boating safety and existing hazards to navigation. Concern was also expressed that dangerous situations could result when motorboats from the mooring facility, especially jet skis, come into conflict with other user groups such as commercial watermen, or naturalists in canoes or kayaks, especially since there is a lack of safety patrols and law enforcement in the Back Bay area.

The most frequently encountered hazards in North Bay are deteriorated or partially submerged duck blind poles and piles and other man-made structures such as old boundary markers. Shallow uncharted sand bars and the lack of navigational buoys or channel markers also represent a navigational challenge to boaters unfamiliar with the area.

U. S. Fish and Wildlife Service personnel report that the Refuge has contracted to remove the old proclamation boundary markers and replace them with buoys, so some of the exiting hazards will be eliminated.

Boating activity on North Bay generally coincides with the 10-week peak rental season between the second week of June and the third week of August. Boat traffic on North Bay and Back Bay in the fall, winter and early springs months is greatly reduced and generally confined to commercial waterman, duck hunters and fisherman. Therefore, there should be little opportunity for conflict among the user groups.

The establishment of a Restricted Area buffer along the entire shoreline of the Back Bay National Wildlife Refuge within the Proclamation Boundary will restrict vessels of any type from operating at speeds that create a wake within 100 yards of the Refuge's shoreline. This restricted area will protect boaters in canoes and kayaks from being capsized by wakes from faster moving motorized watercraft such as jet skis.

Currently there is no city or State marine patrol within the Bay. Also, the Restricted Area regulation is not being actively enforced at this time. However, it may be enforced by any Federal agency, State, local or county law enforcement agency, or private security firm employed by the Corps of Engineers or the U.S. Fish and Wildlife Service. Violators of the regulation would be guilty of a misdemeanor, and at the discretion of the court, may be required to pay a fine not exceeding \$500, or may be imprisoned for up to six months.

The existing eco-tourism and rental operation provides all of its customers with an orientation session regarding the limits of vessel operation within North Bay, known navigational hazards and no-wake zone operation rules.

The applicant proposes to establish a similar but expanded orientation and training session as a mandatory requisite for all members of the mooring facility to help ensure maximum public safety. Conditions of the permit require the applicant to make all members of the mooring facility aware of the need to obtain a boat operators license as required by the Commonwealth of Virginia (including classroom instruction and a written exam) prior to undertaking boat operations from the facility. Another condition requires the applicant to develop and provide to each member of the mooring facility an information packet including published information on water depths within North Bay, Shipp's Bay and the Great Narrows. The packets will also include a copy of the Corps' Local Order for a Restricted Area in waters adjacent to Back Bay National Wildlife Refuge. In addition, the applicant will be required to install information/educational signs regarding the valuable resources of the Refuge, and the need to control speed while operating in the area. Finally, the permit requires the applicant to permanently post nautical charts of the North Bay, Shipp's Bay and Great Narrows areas as well as the Corps Local Order.

Both Back Bay Getaways and the applicant can generally control the activities of those who use their facilities, but they cannot be held accountable for privately owned vessels (including personal water craft) that originate from elsewhere in the Bay. Because of the applicant's proposed operation plan that includes restrictions on use and extensive education of the members of the facility, boaters originating from the Wilkins Mooring and Launching facility are likely to be well educated and well prepared to safely navigate the waters of Back Bay.

9. Cumulative adverse impacts to the Back Bay National Wildlife Refuge: There has been great concern regarding the potential for direct, indirect, and cumulative adverse impacts on the adjacent Back Bay National Wildlife Refuge from the construction and operation of the facility. There is also concern regarding the project's potential to conflict with the ongoing Federal, State and local initiatives to protect and enhance coastal habitats within the Back Bay system and to enlarge, maintain and improve the Back Bay National Wildlife Refuge for wildlife and migratory waterfowl.

I am fully aware of the environmental importance of the Back Bay estuary, and my predecessor and I have been sensitive to the needs of the Back Bay National

Wildlife Refuge. The Norfolk District's responsibilities under the National Environmental Policy Act, the Clean Water Act and the Environmental Protection Agency's (EPA) 404(b)(1) Guidelines require that District's public interest review include an evaluation of the direct, indirect, secondary and cumulative impacts of the project. To that end, the District's Regulatory Office staff has coordinated this proposal extensively with EPA, the U.S. Fish and Wildlife Service, the Back Bay National Wildlife Refuge and the Virginia Department of Game and Inland Fisheries, as well as other state and local agencies, special interest groups and concerned citizens during a series of meetings in order to obtain more information and to be able to address all concerns.

The project site is located approximately 3,000 feet (approximately 0.6 mile) north of the Back Bay National Wildlife Refuge. While the construction of the facility will have no direct impact on Refuge properties, I realize that watercraft from either the facility or from private properties elsewhere on the Bay could generate secondary effects on the resources of the Bay and the Refuge.

After consideration of the all concerns both for and against the proposal, my predecessor, Colonel Yvonne Prettyman-Beck, tasked the Regulatory Office staff with trying to develop a win-win solution that would continue to protect the fragile environment and resources of Back Bay while allowing this project and other projects in the area to be built. To this end, numerous site inspections were conducted and multiple meetings were held with the U.S. Fish and Wildlife Service, Refuge personnel, special interest groups, local residents and concerned citizens.

This coordination revealed that the currently unrestricted use of the waters in and around the Refuge may have an adverse impact on the sensitive and unique natural resources of the Back Bay National Wildlife Refuge and Back Bay as a whole. Unrestricted boat access by those users who are unaware of the consequences of their actions may increase damage to submerged aquatic vegetation, disturbance of the feeding, nesting and breeding activities of waterfowl, shoreline erosion from boat wakes and boating safety problems. I realize that these impacts may increase as upland development continues, and may continue to conflict with efforts to restore, enhance and preserve Back Bay.

However, my predecessor and I agree that denial of the proposed Wilkins Mooring Facility would not solve the existing and future problems caused by recreational boating in Back Bay. Furthermore, denying this proposal would arguably necessitate the denial of all future private piers, boat ramps and mooring projects in Back Bay due to the potential for cumulative impacts. Therefore, it was determined that the most effective way to protect the resources of the Bay while continuing to allow the public's right to utilize the waters of the United States is to limit the speed of vessels operating within a buffer or "restricted area" within the proclamation boundary of the Back Bay National Wildlife Refuge.

To that effect, a Local Order for a Restricted Area within the Back Bay Wildlife Refuge was issued on 16 June 2006 and announced by public notice. A public information meeting was held on 27 July 2006 at Three Oaks Elementary School near the Sandbridge community in Virginia Beach.

The intent of this regulation was to encourage maximum use of public resources while controlling the distance and manner in which all vessels, regardless of make or size, may operate in and around the Refuge. The regulation provides protection to the Refuge and its resources, provides a common operating

standard for all vessel traffic near the shoreline, and addresses the safety issues of different types of vessels operating in close proximity.

During the District's preliminary review, it became apparent that the majority of waterway users are already operating within the scope of this regulation. Therefore, this regulation is aimed at those users who do not understand how their actions on the waterway adversely affect the environment, property owners and other waterway users.

The designation of a restricted area in Back Bay originally involved the establishment of a buffer or restricted zone within the waters extending 150 yards from ordinary high water along the entire shoreline of the Back Bay National Wildlife Refuge located within the Proclamation Boundary established in 1939. This no-wake zone was reduced to 100 yards when the regulation was modified on 25 February 2008 restricting vessels of any type from operating at speeds that create a wake within 100 yards of the Refuge's shoreline.

This restricted area limits disturbance to sensitive nesting waterfowl, reduces shoreline erosion, reduces destruction of SAV beds, and protects boaters in canoes and kayaks from being capsized by wakes from faster moving motorized watercraft. These wake restrictions do not apply to vessels operating within the Great Narrows Channel, or the East and West Channels while transiting to or from Shipps Bay and Redhead Bay. (Originally, only Great Narrows Channel was exempt from the speed regulation.)

This regulation also restricts vessel access to the interior of Ragged Island in order to protect sensitive waterfowl nesting sites and to reduce the potential for disturbance of nesting waterfowl that use the area. If they desire, the Refuge can construct a barrier to physically restrict access to the interior of the island after obtaining a permit from the Corps of Engineers for the structures.

This regulation complies with the management goals of the Refuge as well as on-going research and restoration programs. Both the U.S. Fish and Wildlife Service and the Back Bay National Wildlife Refuge are in agreement with this goal of the restricted area and the Service verbally indicated that implementation of the regulation should alleviate many of their concerns regarding the Wilkins Mooring and Launching Facility.

Currently, this regulation is not being actively enforced. However, it may be enforced by any Federal agency, State, local or county law enforcement agency, or private security firm employed by the Corps of Engineers or U. S. Fish and Wildlife Service. Violators of the regulation would be guilty of a misdemeanor, and at the discretion of the court can be required to pay a fine not exceeding \$500, or be imprisoned for up to six months.

The applicant has informed the Corps that he agrees with and fully supports the management goals of the Refuge, and he has also agreed to having special permit conditions imposed that will reduce the potential for adverse impacts to the Refuge and Back Bay and will compliment and augment the Restricted Area regulation. Those conditions include the following: 1) The mooring and launching of jet skis at the facility will be restricted to only those owned and operated by the existing eco-tourism and rental operation, Back Bay Getaways. 2) The facility will be utilized only by owners or members. Each of the private slips and/or memberships shall be tied to a condominium unit or a specific lot within the Sandbridge community. No owners or members will be allowed to sublease, rent, timeshare or in any other fashion make their slip

available to anyone other than themselves or their contract renter/lessee. No guest launching will be allowed. 3) The permittee will post signs regarding facility operating parameters and hours. 4) The permittee will install and manage a locked gate at the boat ramp to prevent unauthorized use. 5) The permittee will install no-wake zone signs along the southern edge of the entrance channel beginning at the westernmost limit of the channel and extending into the mooring basin. 6) The permittee will acquire and properly maintain an on-site U. S. Coast Guard spill response kit and will develop a hazardous material contingency plan. 7) The permittee will make all members of the mooring facility aware of the need to obtain a boat operators license as required by the Commonwealth of Virginia (including classroom instruction and a written exam) prior to undertaking boat operations from the facility. 8) With input from the Back Bay National Wildlife Refuge and the City of Virginia Beach Division of Parks and Recreation, the permittee will develop and provide to each member of the mooring facility an information packet concerning the ecological sensitivity of Back Bay/North Bay. The packets will include published information on water depths within North Bay, Shipps Bay and the Great Narrows. The packets will also include a copy of the Norfolk District Corps of Engineers Restricted Area in waters adjacent to Back Bay National Wildlife Refuge. 9) The permittee will install information/educational signs regarding the value of the Refuge and the need to control speed while operating in the area, including the Corps' Local Order for a Restricted Area in water adjacent to Back Bay National Wildlife Refuge. 10) The permittee shall permanently post in a conspicuous location, nautical charts of the North Bay, Shipps Bay and Great Narrows area. 11) The maximum horsepower of any inboard or outboard motor on any vessel moored or launched at the facility shall not exceed 75 HP, with the exception of 24-foot long, or longer, pontoon boats which shall not exceed a 90 HP motor. Any requested changes to these conditions would require a new public notice and comment period.

I have suggested that the Refuge construct removable barriers across the small creeks and openings that lead into the sensitive areas within the refuge so that boats and canoes can be kept out during critical times of the year. My staff and I have offered to work with the Refuge to obtain the necessary permits and to identify and isolate other critical areas within the Refuge that need such protection. In addition, I have recommended that the Fish and Wildlife Service work with the Virginia Department of Game and Inland Fisheries to mark the Great Narrows Channel in order to establish a safe route for boaters not familiar with the Bay when traveling North and South through the Refuge.

While boating activity may be one of the complex multiple contributing factors in the overall ecological decline of Back Bay, it has not been cited as a primary cause. I am confident that the special conditions included in the DOA permit, the Corps' Restricted Area Regulation and other recommended actions will ensure that boating will not substantially impact the future ecologic balance of Back Bay.

11. Noise: There is little doubt that boat motors will produce a certain amount of noise. How much impact this may have on the resources of the area depends on how fast the boats travel and how closely they approach the feeding and nesting areas of wildlife and waterfowl.

The Restricted Area regulation should reduce the impact of noise by precluding high speed boat access in the sensitive areas of the Refuge. Also, the applicant's Operational Management Plan will ensure that boaters using the mooring facility will not adversely impact the ecologically sensitive Back Bay/North Bay area. Conditions of the Corps permit require the installation of

no-wake zone signs along the southern edge of the entrance channel to the facility, the development of an information packet for members of the facility concerning the ecological sensitivity of Back Bay/North Bay, and the installation of information/educational signs regarding the value of the Refuge and the need to control speed while operating in the area. Therefore, boaters originating from the mooring facility will be aware of the adverse impacts associated with excessive noise.

12. Precedent setting commercial use and the potential for additional commercial development in the area: There is concern that this development will set a precedent for, and encourage additional development of vacation homes, restaurants and other businesses, as well as roads, sewer lines and parking lots. Concern was also expressed that the new condominium units and the slips at the mooring facility would be used as commercial "time-share" units thereby resulting in a constant stream of vacationers who are unfamiliar with the hazards to navigation as well as the sensitive nature of Back Bay.

The Sandbridge area is already undergoing extensive upland development that is likely to continue with or without the proposed mooring facility. There are a total of 895 waterfronts located in North Bay and its immediate tributaries (Sandbridge plus the waterfront campground lots). There are about 100 waterfront properties on the west side of the bay, and another 764 non-waterfront lots within the three campgrounds, as well as the 249 condominium units in phases I and II of the Sanctuary at False Cape and another proposed 158 condominium units on the west side of Sandpiper Road.

While the proposed Wilkins Mooring and Launching Facility will be the first community mooring facility in Sandbridge, it does not set a precedent for commercial use on the property. The proposed facility is an expansion of an existing commercial operation which has been in existence for over twenty-five years and there is already a restaurant on the property. The project will provide upgraded facilities for the existing rental and eco-tourism operation and will provide 64 additional slips for privately-owned vessels. The facility will not be open to the general public; rather, it will be a "club" open only to members or owners in accordance with an association or condominium business model requiring contractual commitments of no less than one year at a time.

The facility will be utilized only by owners or members of the mooring and launching facility. Each slip and/or membership shall be tied to a condominium unit or a specific lot within the Sandbridge community. No owners or members will be allowed to sublease, rent, timeshare, or in any other fashion make their slip available to others. No guest launching will be allowed.

13. Additional vehicle traffic through Sandbridge: The rapid residential development of the Sandbridge area has undoubtedly resulted in more vehicular traffic and this trend will continue as long as the upland development continues. Some non-waterfront property owners in Sandbridge may be members and will travel to the facility. However, it is anticipated that most of the users of the mooring facility will be owners of the condominium units and will not need to travel through Sandbridge in order to use the facility.

14. No need for additional public boat access: The U. S. Fish and Wildlife Service and others questioned the need for the facility since public access to Back Bay for motorized vessels is currently available at two Virginia Department of Game and Inland Fisheries public boat ramps: the Drum Point Boat Ramp on Mill Landing Road, and the Trojan Waterfowl Management Area ramp on Back Bay Landing Road.

Both of these ramps are located on the west side of the bay and are miles away from the Sandbridge area where the boaters will originate. The proposed mooring facility was designed and sized to meet the current and anticipated high demand for a public mooring and launching facility in the Sandbridge area. The use of the existing public ramps would not serve the needs of Sandbridge residents and could actually increase boat traffic in Back Bay and in the vicinity of the Refuge rather than keeping boat traffic in North Bay.

In order to obtain access to North Bay/Shipps Bay, Sandbridge residents would have to drive a minimum of about 16 miles from Sandbridge to the closest ramp at Drum Point on Redhead Bay. Once launched from this facility, boaters would then need to travel approximately 6 miles in the opposite direction through the Great Narrows if they wished to return to the North Bay area. The drive to Trojan Waterfowl Management Area ramp would be much longer and would require a 10 mile boat trip back to North Bay. It is more likely, however, that once launched from either of these ramps, boaters will remain in Back Bay. This could prove to be detrimental to the Refuge by placing the boaters in closer proximity to the sensitive areas of the Refuge.

15. No Need for Dredging: The need for additional maintenance dredging was questioned since the access channel had been dredged in the year 2000. Also, concern was expressed regarding the potential for adverse impacts to aquatic resources from large volumes of future maintenance dredging. Not all of the dredging authorized under permit 00-V0504 has been performed. Those portions located immediately adjacent to the RV Resort campground boat ramp and access channel were not dredged in 2000. Also, a large volume of sand was deposited in the dredged channel in an ocean over-wash event during hurricane Isabel in 2003. The volume of material from these two areas equals almost the entire volume calculated for maintenance in this application. Therefore, it is not anticipated that such a large volume of dredging would be required for each future maintenance cycle.

16. Deficient Public Notice Comment Period: The Public Notice comment period was not deficient. In fact, the usual 30-day Public Notice comment period was extended for an additional 30 days to allow for thorough public review and comment on this project. The public was afforded ample time to provide meaningful comments on this project and this office received over 350 letters and e-mails commenting on the proposal.

17. Need for public hearing: One individual requested that the Norfolk District conduct a public hearing for this project. Corps public hearings are one process by which the public is afforded an opportunity to present views, opinions and information that will be considered by the Corps in evaluating a proposed permit action. A Corps public hearing is not a forum for public debate, rather it is an information gathering session conducted when the District Commander determines that additional information is needed from the public in order to gain a better understanding of the issues. Ample opportunity for public participation and comment has been provided on this project and approximately 350 written comments were received in response to the public notice. A number of public meetings and meetings with local, State and Federal agencies and special interest groups were conducted by me, my predecessor and my staff in order to learn all of the issues and concerns on this project.

Through coordination of public concerns with the applicant and applicable State and federal agencies, I have attempted to resolve the substantive issues informally and I have determined that no additional information is needed to make a decision. I believe I have a full understanding of all of the

substantive issues and concerns raised on this proposal and I have determined that a Corps public hearing is not warranted.

18. Need for Environmental Impact Statement: The U.S. Fish and Wildlife Service and Defenders of Wildlife recommended that an Environmental Impact Statement (EIS) be prepared for the project and provided a list of issues to be addressed in that document. All of the issues identified by the Service, other federal and state agencies and the general public have been addressed in my Final Environmental Assessment.

In reviewing this project, the Norfolk District has complied with the requirements of the National Environmental Policy Act (NEPA) found at 40 CFR Parts 1500-1508 and with the Corps of Engineers' Procedures for Implementing the National Environmental Policy Act found at 33 CFR Parts 230 and 325.

The Norfolk District gathered and reviewed all available information for the required Environmental Assessment and determined during the preparation of the document that the project will result in a Finding of No Significant Impact (FONSI) on the quality of the human environment.

I have fully evaluated the application and determined that the individual and cumulative impacts associated with this project are minimal, including impacts to wetlands, wildlife, water quality and SAV. Therefore, I have determined that an Environmental Impact Statement is not warranted.

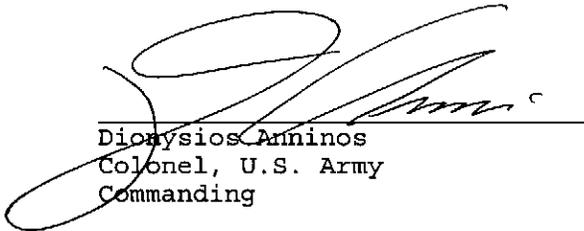
19. Alleged Violation of NEPA: When the Defenders of Wildlife wrote their letter alleging that the Corps had violated NEPA, the only public document that the Norfolk District had published at that point was the Public Notice. The Corps is required to notify the public of a proposal within 15 days of receipt of a complete application so that the public will be informed as soon as possible of the proposed work. Therefore, the public notice is published long before any final determinations have been made on any of the public interest factors or an alternatives analysis is performed. For this reason, it is clearly stated in the public notice that initial findings are based on a preliminary review, and that additional information might change any of those findings. As I had taken no final course of action at that time, the accusation that the Norfolk District was not in compliance with NEPA is unfounded.

Conclusion: I have prepared a Final Environmental Assessment for the Wilkins Mooring and Launching Facility in the Sandbridge community of Virginia Beach, Virginia, which addresses the issues raised by the U. S. Fish and Wildlife Service, the Environmental Protection Agency, other Federal and State agencies, special interest groups and the general public. As part of this review I have also prepared an analysis pursuant to Section 404(b)(1) of the Clean Water Act.

I am confident that the project has been modified and the permit conditioned sufficiently so that there are no longer substantial adverse impacts on Aquatic Resources of National Importance. Modifications to the proposal, including one to one compensation for wetland impacts; special permit conditions; and the Corps Restricted Area regulation will reduce the project's potential for adverse impacts to the resources of Back Bay and the Back Bay National Wildlife Refuge.

In my evaluation, I have found no unresolved conflicts concerning alternative uses of the project site resources. In addition, I have found that the proposal will not be contrary to the public interest and that it complies with the Environmental Protection Agency's 404(b)(1) guidelines. Therefore, my decision is to issue the permit, incorporating all practicable general and special conditions to avoid or minimize environmental harm.

10 Oct 2008
Date


Dionysios Anninos
Colonel, U.S. Army
Commanding