

Date: September 14, 2021
To: VMRC and Wetlands Board Staff
From: Mark W. Luckenbach. *Mark W. Luckenbach*
Associate Dean of Research & Advisory Service

Subject: Shoreline Project Review

The Virginia Institute of Marine Science (VIMS) is included in § 28.2-104.1 of the Code of Virginia and the Tidal Wetlands Guidelines May 2021 Update (the Guidelines), which place new design requirements on shoreline erosion control projects, and the associated decisions and permit conditions. The regulatory initiative to require living shoreline elements for shoreline applications rests upon the “best available science.” The Guidelines define VIMS as the best available science, which is consistent with VIMS’ traditional mandated advisory service role.

Clarification of terms and conditions as they apply to VIMS is necessary for state decision-makers, affected private industry, and the regulated public. Though neither § 28.2-104.1D nor the Guidelines are explicit about the breadth of the science to be considered in permitting decisions, we will continue to employ a broad interpretation that includes all relevant aspects of the project.

We are aware that there are considerable interests and, perhaps, some confusion about what the combination of the new law and Guidelines will mean for specific shoreline stabilization projects and for VIMS’ science-based reviews. This communication is intended to provide assurances that, consistent with our history, we will continue to apply an advisory approach that accounts for the collective physical and ecological conditions of a particular shoreline reach and proposed project.

The VIMS approach to shoreline project review has always involved considering the continuum from subaqueous lands to the adjacent uplands, including areas beyond the footprint of the proposed project. Recommendations that involve lands beyond the jurisdiction of a particular decision-making body are often included, but these are not intended to place burdens outside of a regulatory body’s authority or jurisdiction. We are aware of the spectrum of regulatory authority and frame our comments based on environmental factors rather than partitioning them into jurisdictional-based elements. This has been an effective and welcomed approach that VIMS intends to continue, with the understanding that our comments, if used, are applied appropriately by each regulatory entity. Moreover, the Guidelines make it clear that judging whether a living shoreline is *suitable* for a particular erosion control project is not the same as simply determining if it is achievable from an engineering perspective. Compliance with the Chesapeake Bay Preservation Act and local ordinances is required, as well as consideration of impacts on adjacent properties and habitats, including riparian vegetation, submerged aquatic vegetation and oyster reefs.

VIMS welcomes the opportunity to continue our responsibilities for providing comprehensive state-of-the-science principles on a project-level basis, and appreciates the trust that the Commonwealth has placed in science and VIMS. As noted in the Guidelines, online tools and information are available from the VIMS Shoreline Studies and Center for Coastal Resource Management programs as initial

guides for planning shoreline stabilization projects. Moving forward under the new tidal wetlands decision framework, we anticipate that input from the Office of Research and Advisory Services on specific projects will generally be in response to requests from a VMRC habitat engineer or a Wetlands Board staff when some questions arise about the suitability of the proposed action. We are confident that our traditional project review approach will continue to serve decision-makers well. This approach primarily entails focusing on effective control of upland and wetland/dune/beach erosion. VIMS assessments are initially based on determining if the erosion control objectives of the project can be met with alternative approaches that reduce impacts and/or enhance local ecological functions, including a complete living shoreline.

We recognize that regulatory authorities have responsibilities that extend beyond the scope of our typical science-based recommendations. As noted above, our analysis of projects will continue an assessment of impacts on adjacent properties and habitats and we assume that it is responsibility of the permitting agencies to weigh the trade-offs associated with these impacts.