District of Columbia Office of Planning

Office of the Director

March 7, 2011

Farroll Hamer
Director of Planning
City of Alexandria
Department of Planning & Zoning
301 King Street, Room 2100
Alexandria, VA 22314

Dear Director Hamer:

I am writing to respond to your inquiry about the District of Columbia's permitting process for construction of piers and other structures in the Potomac River. After having reviewed your case, the District of Columbia has determined that the City of Alexandria (a) is not required to obtain District permissions to construct structures located inside the pierhead line; (b) should consult with the U.S. Army Corps of Engineer for the approval process for moving the pierhead line; and (c) is required to receive District Department of the Environment water quality permits should the proposed project result in discharges into the water. This letter provides additional detail about the District's determination, as well as provides points of contact within the District government to whom you may direct further questions.

Findings

Geographically, the bed of the Potomac River is located within the boundaries of the District of Columbia and has been since 1791[1] and the Council of the District of Columbia is generally authorized to make rules and regulations for the government and control of wharves, piers, bulkheads, structures, adjacent waters, basins, slips, docks, and land under the water.[2] Today, except in one area along the Virgina shoreline, the boundary of D.C. ends at the mean high water mark on the Virginia shore and changes with fluctuations in that high water mark. The only area along the Virginia shoreline where this is not true is along the Alexandria waterfront. Along the Alexandria waterfront, the boundary of D.C. ends at the pierhead line, as changed or altered, which boundary was clarified in 1945 by Congress.[3] The clarification act states that from Second Street in Alexandria south to the D.C./Maryland boundary line, the D.C./Virginia boundary follows the "present established pierhead line" and that "wherever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line." Accordingly, the D.C./Virginia boundary runs along the mean high water

[1] See *Smoot Sand & Gravel Corp. v. Washington Airport, Inc.*, 283 U.S. 348 (1931) and *U.S. v. Robertson Terminal Warehouse, Inc.*, 575 F. Supp. 2d 210, 213 (D.C.D.C. 2008).

[2] See Title 5USC – Appendix, Reorganization Plan No. 3 of 1967, Part IV, Transfer of Functions to the D.C. Council, (9) Public Buildings and Grounds, Pub. L. 90-623, Sec 7(b), Oct 22, 1968, 82 Stat. 1315 (Chapter 9 of Title 5 of the United States Code, Public Buildings and Grounds.

[3] For clarification of the boundary line between the District of Columbia and the Commonwealth of Virginia, see the Congressional Act of October 31, 1945, 59 Stat. 552, D.C. Official Code §1-101, Note codified at D.C. Official Code, vol. 1, p.112 (2001) and D.C. Official Code §1-207.17 (2001). Also, the U.S. Army Corps of Engineers established harbor lines in front of the Alexandria waterfront in 1939, consisting of a bulkhead line and a pierhead line. *Robertson Terminal Warehouse, Inc.*, 575 F. Supp. at 228.

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mark on the Virginia shore, but bumps out to the pierhead line adjacent to the Alexandria waterfront, and the Alexandria waterfront is therefore within the territory and jurisdiction of the State of Virginia.

Please note that the bed of the Potomac River is owned by the U.S. and, for purposes other than navigation, is administered by the National Park Service, as part of its National Capital Region.[4] This may trigger the need for the City of Alexandria to receive permission from the National Park Service to construct within the pierhead line. Please also note that the District of Columbia has not researched or made any determinations as to the above requirement, but is flagging the matter for the City of Alexandria to research and make its own determination.

Finally, the City of Alexandria is required to abide by the District's Water Pollution Control Act (the "WPCA"),[5] since riverward of the Alexandria pierhead line is regulated by the District of Columbia. According to the WPCA, no person is allowed to discharge pollutants to the waters of the District without a permit. Depending on the nature and quantity of the pollutants discharged, the District may authorize a permit directly, or may be required to certify federal permits which may be issued by the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency under the Clean Water Act.[6] To determine which permits are required, whether District and/or federal, the City of Alexandria should contact the District Department of the Environment to discuss the specific nature of the pollutants and the associated permit requirements.

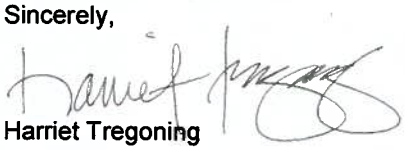
Points of Contact

If you should have further questions about this issue, please feel free to contact me directly at (202) 442-7636 and harriet.tregoning@dc.gov or to contact the following specialized experts:

Jurisdiction and Authority: Alan Bergstein, Section Chief, Land Use Division, Office of the Attorney General, at (202) 442-9777 and alan.bergstein@dc.gov.

Water Quality Permits: Collin Burrell, Associate Director, Water Quality Division, District Department of the Environment, at (202) 535-2255 and collin.burrell@dc.gov.

Sincerely,



Harriet Tregoning
Director, Office of Planning

cc: Allen Lew, City Administrator
Christophe Tulou, District Department of the Environment
Alan Bergstein, Office of the Attorney General

[4] See *Iskcon of Potomac, Inc., v. Kennedy,* 61F.3d 949 (D.C. Cir. 1995).
[5] D.C. Official Code §8-103.01 *et seq.*
[6] Clean Water Act, 33 U.S.C. 1251 *et seq.*