

The Mallard Lakes Community Association, Inc.

Tidal Waters at Mallard Lakes

Purpose:

Since inception, the issue of Mallard Lakes's Salt Pond's daily tidal water levels has been a subject requiring periodic actions by the Association, usually following abnormally high-water events. The purpose of this paper is to present the facts associated with Mallard Lakes Tidal Waters

Contents:

This paper and its attachments represent:

- a. A reasonably detailed and comprehensive overview of:
 1. The history of tidal water events at Mallard Lakes,
 2. The solutions completed and/or attempted in response to these tidal events,
 3. Impacts on insurance and property values.
- b. A brief discussion on the relevant roles and responsibilities dictated by Mallard Lakes' Bylaws.
- c. A brief synopsis of the most serious tidal / extreme weather issues and potential remediation actions, if any.
- d. 2025 Ongoing Activities

Overview:

Mallard Lakes Condominium is a forty-seven residential building development containing 477 residential units. It is located app 2 miles from the Atlantic Ocean along the north side of DE Rt. 54 and to the west of northern Assawoman Bay. All of its 47 buildings back to four man-made "lakes" and a "man-made" estuary of south Assawoman Bay (the Salt Pond). All of the Lakes drain into the Salt Pond and the Salt Pond drains into Assawoman Bay. Much of Mallard Lakes lies within the Delaware / Ocean City FEMA flood zones, which encompass much of the bayside/canal-side areas from the Ocean City Inlet to the shores of Delaware Bay. Prior to its construction the entire property was farmland.

Distribution of Building Types:

The Mallard Lakes Condominiums were constructed in two phases between 1986 and 1992. During this period, 10 buildings constructed as part of Phase 2 were built on piles at the edge of the Salt Pond. All of the remaining Phase 2 and all of the Phase 1 buildings were constructed on cement pads on grade, with higher ground floor elevations than six of the 10 buildings on piles. All ML buildings were code compliant when constructed.

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The presumed reason for constructing the 10 buildings on piles was their proximity to the edge of the Salt Pond, which is physically connected to Assawoman Bay through a drainage pipe that runs from the Salt Pond to the Bay under Route 54. The connection to the Bay means that the Salt Pond's water fluctuates in accordance with the Bay's daily tidal ebb and flow. From inception almost 40 years ago, it has been a given that tidal water from the Salt Pond would periodically flow underneath all of the buildings constructed on piles.

The following Table 1 details the distribution of the Mallard Lakes buildings constructed on concrete slab vs. piles. It also details the buildings on piles subject to some/frequent underfloor tidal water vs. mostly not subject to underfloor water.

Table 1

Mallard Lakes Buildings:	Buildings	% Total	Units	% Total
Constructed on Cement Slab	37	78.7 %	392	82.2 %
Constructed on Piles *	10	21.3%	85	17.8 %
Total Buildings	47	100.0 %	477	100.0%

* Buildings on Piles:	Buildings	% Total	Units	% Total
Mostly not Subject to Underfloor Water	2	4.3%	22	4.6 %
Subject to Underfloor Water	8	17.0%	63	13.2 %
Total	10	21.3%	477	17.8 %



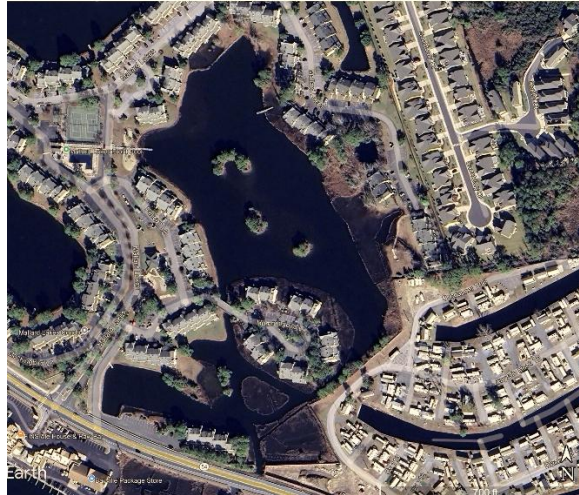
Table 2 - Mallard Lakes – ● Buildings constructed on piles.

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Original Condition



Left: ML as Farmland ca. 1980



Right: ML ca. 2024

Prior to the mid 80's, Mallard Lakes was a farm located along RT. 54 as shown in the aerial photo above to the left. As can be seen, virtually the entire Salt Pond was constructed from dry land. At that time there was a drainage ditch leading from a small freshwater livestock pond under Rt 54 and connecting to Assawoman Bay. At that time both ends of the culvert under Rt.54 were covered in gravel and there was no daily movement of tidal from Assawoman Bay onto the property except during periods of exceptionally abnormal high tides – at which time the bay flowed over Rt 54 for the entire length of the property. The picture to the right is an aerial photo of ML's tidal pond today. It is connected to the bay via a new drainage pipe installed in 2001-2 and water flows in and out of the Salt Pond every day with the ebb and flow of the tides.

Original shoreline protection.

When Mallard Lakes was built, portions of the shores of the lakes and Salt Pond were protected by rip-wrap. All of Lake 1, parts of Lakes 2 & 3 and the portion of the Salt Pond from the northwest side of the Island Bridge to just beyond the “Beach” were protected by rip-wrap. Subsequently, from original construction through the early 2000's, additional rip-wrap was added to both Lakes 2 & 3 and all of Lake 4 as part of our annual maintenance program.

Pre 2001 Tidal Water

Prior to the reconstruction of Rt. 54 in 2001-2 and the replacement of the drainage culvert under Rt 54 (which connects the Salt Pond with Assawoman Bay and is owned and

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maintained by the State of Delaware), water would overflow from Assawoman Bay over Rt. 54 and into Mallard Lakes and the Salt Pond during abnormal high-water events.

Route 54 Reconstruction and Culvert Replacement

In 2001-2 Route 54 was rebuilt and raised and the original drainage pipe connecting the Salt Pond with Assawoman Bay was replaced with a new pipe. The old pipe had both ends covered in crushed rock gravel which was removed with the installation of the new pipe. The effect of removing the crushed rock gravel was to effectively increase the daily thruput of tidal waters into and out of the Salt Pond from Assawoman Bay. This now allowed the ebb and flow of the tide to completely fill and empty the full tidal flow between the Salt Pond and Assawoman Bay. Previously the gravel filled old pipe allowed only about one half of the tidal flow to enter the Pond before the turn of the tide. The consequence of this change was that the average height of the daily high tide increased by approximately 6-10 inches. This change resulted in the presence of water under 6-7 of the 10 buildings moving from some/frequent to frequent/very frequent occurrences.

As identified in the Board's 2024 study of underfloor insulation issues, several of the buildings constructed on piles along the Salt Pond shore have experienced more frequent underbuilding tidal water than when they were originally built. In total there are 8 buildings constructed on piles that now report varying degrees of some to frequent underbuilding tidal water, and two buildings which have experienced little to no underfloor tidal water.

Salt Pond Rip-Wrap and 2004 State of Delaware Subaqueous Land Permit

At the 2003 Annual Homeowners' Meeting a motion was proposed to install 1,200 linear feet of rip-wrap along the South and Eastern shores of the Salt Pond from the entrance to the storm drain into Assawoman Bay westward to and surrounding the Island. The idea was to construct barriers to offset the increase in daily high water brought about both by the now unobstructed drainage pipe under Rt. 54 as well as the incidence of abnormally high water due to natural occurrences like storms. The total cost was estimated at \$60,000. The motion was defeated.

In September 2004, Mallard Lakes applied for and received a permit to construct 1,200 linear feet of low-profile rip-wrap along the shore of the Salt Pond (Attachment 1). However, when received, the terms of the permit precluded any of the originally anticipated remediation to daily and periodic high-water inundation due to the following permit requirements:

1. The top of the rip-wrap shall not exceed the level of the adjacent ground.
2. The rip-wrap shall not preclude normal inundation at high tide during the daily tidal cycles.

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3. The rip-wrap (or other materials) may not be placed in front of the RT.54 drainage pipe.

The Council at the time implemented the permitted rip-wrap work in three separate phases spread over a three-year period. When completed in 2007, the new rip-wrap ran from the west side of the new culvert under Rt. 54 westward along the shore to the Island bridge, and around the Island to the north side of the bridge.



Table 3: Salt Pond Rip-Wrap

KEY:

Original Rip Wrap

2004 Rip Wrap

While the new rip-wrap did help to initially stabilize the shoreline it had no effect on the daily/periodic inundation of the shorelands so protected.

Post 2001 High Water Events

The opening of the drainage pipe under RT 54 that occurred in 2001-2 as part of the roadbed raising project resulted in the underfloor water inundation of 6-7 of the buildings increasing from occasional/frequent to frequent/very frequent occurrences. It is estimated that the mean high water in the Salt Pond has increased between 1- 1.5 feet since its original construction ca. 1986.

2009 Morris & Ritchie Associates Study

In 2009, as a result of an increased frequency of tidal water inundation under several of the island buildings, Mallard Lakes engaged a Delaware engineering firm, Morris & Ritchie Associates to prepare a study to look at the feasibility of installing a water control

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structure to counteract the increased daily tides brought about by the unobstructed culvert under Rt. 54 connecting the Salt Pond to Assawoman Bay. The study was abandoned once it became clear that the proposed barrier would neither reduce the daily height of the tidal flows nor preclude the effects of storm surges.

Hurricane Sandy

On October 19, 2012, Hurricane Sandy hit the Delaware coast. Mallard Lakes experienced a severe storm surge. This has been the only time in its history that tidal water penetrated into the interiors of any of its 47 buildings. The storm surge resulted in the interior flooding of four of the six-unit buildings on the Island. A total of 24 units experienced between about 4-8 inches of storm water entering their interior ground floors. This was the only incident of water entering the interiors of any ML Buildings/Units. An additional 5 units in an 11-unit building located on Eagle experienced some water damage to their rear screened porches. This was caused by the high water and wave action and resulted in the repair and/or replacement of their porch flooring and interior walls. At least seven buildings, including these five, experienced water damage to their underfloor insulation requiring replacement.

Water flowing through Rt. 54 culvert contributed to higher-than-normal water but was not the principal cause of the Sandy flood damage. During Sandy the principal cause of high water was the channeling of the storm surge through two/three of Treasure Beach's canals located to the north and very close to Rt. 54 and terminating about a hundred yards to the east of the Island. Table 4 below illustrates the principal flow of the storm surge during Sandy.

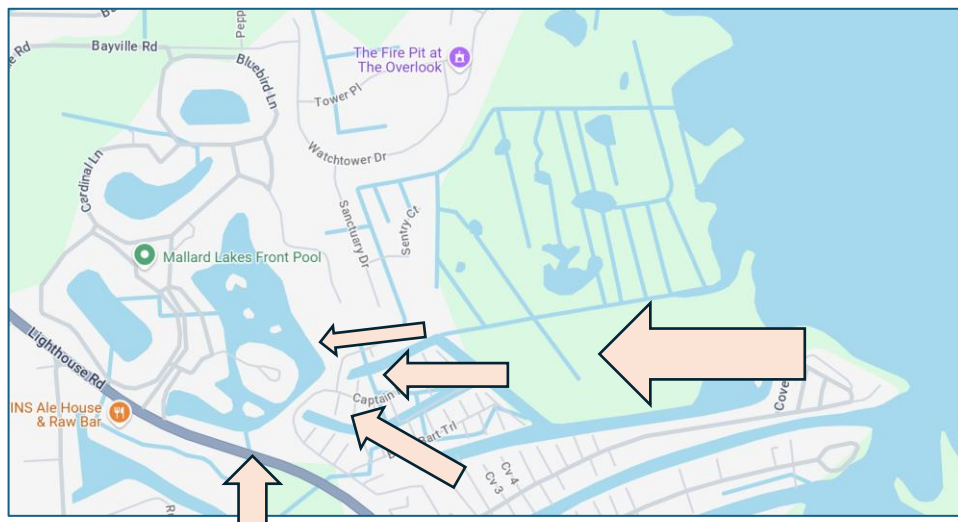


Table 4: Water Flow from Assawoman Bay during Sandy Flood Event 2012

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During Sandy, there was no interior flooding to any of the other 43 buildings / 453 units. Besides the 24 flooded units and the damaged rear porches of the five units on Eagle Lane there was also a subsequent claim of floor damage to a unit in another building also on Eagle Lane, but this damage was not caused by interior flooding.

Hurricane Sandy Island Lawsuit.

Following the hurricane, reconstruction permits for the four flooded buildings on the Island were applied for and received from Sussex County. A contractor was hired to reconstruct the damage done. At the completion of the work, the final costs were tabulated (which included other costs beyond the actual costs of construction) and were determined by Sussex County to represent “Substantial Damage”. This change in designation triggered a new review and new requirements by Delaware Department of Natural Resources, FEMA and the Army Corps of Engineers. In cases of Substantial Damage, FEMA required that any reconstruction meet the then current building code which would have required that the four affected buildings on the Island be elevated by a minimum of 4 feet. The designation also precluded the issuance of Certificates of Occupancy for these now newly rebuilt buildings. During this period, several of the Island residents filed a lawsuit against ML to recover their costs, legal fees, etc. Also, during this period there were discussions with both Sussex County and FEMA regarding possible government grants to offset the costs and out-of-pocket expenses of elevating the buildings. Following years of back and forth among all of the parties, the Substantial Damage designation was rescinded by Sussex County, the Certificates of Occupancy were issued by Sussex County, and the Lawsuit was settled by the payment of a portion of the plaintiffs legal fees by Mallard Lakes.

FEMA Building Elevation Grant Discussions

Following Sandy, discussions were held with FEMA, Sussex County and the Army Corps of Engineers regarding possible grants to cover some of the cost to elevate the four buildings flood damaged by Sandy. As part of this discussion engineering plans were produced (at the Island Unit Owners’ expense) to study the method and cost of elevating the four damaged buildings. Per the ML Bylaws, when a casualty affects only a small subsection of the ML Unit Owners, the Owners are responsible for making up the cost difference not covered by insurance, grants or other funding sources. The result was that the Island Residents were responsible for and paid the cost of this engineering study. Ultimately, as discussed above, the requirement to elevate the buildings was removed with the reversal of the “Substantially Damaged” designation by Sussex County.

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2019 Delaware Department of Natural Resources and Environmental Control (DNREC) Site Visit

In 2019 Ms. Ilisa Rogers, a wetlands specialist from DNREC, visited Mallard Lakes and toured the entire property. She was accompanied by Stacey Selby. Following the tour, she sat with Stacey to review her observations of potential issues and likely remediation activities. Essentially, while several potential issues were identified, she was unable to suggest any viable and feasible remediation activities that would be approved under current permit guidelines. The meeting ended with the conclusion that there were no next steps to be pursued.

2023-4 Underfloor Insulation Issues

Since original construction there have been several instances of abnormally high water that affected several constructed-on-piles buildings' underfloor insulation which necessitated replacing the insulation. Additionally, the more frequent presence of tidal water under these buildings made the annual inspection, repair and replacement of the underfloor insulation increasingly difficult. In late 2023, the Board established a committee to review the buildings-on-piles underfloor insulation procedures and to prepare a report with recommendations for the Board's approval.

At its regularly scheduled March 9, 2024, monthly board meeting, the Board approved the replacement of the underfloor insulation system for most of the buildings-on-piles with a waterproof spray foam product to address the complications of rising tidal water on future maintenance and replacement of the existing fiberglass bat/Tyvek system then in use.

Shoreline Erosion Salt Pond – 2001 to Present

Attachment 2 describes the extent of shoreline erosion from the raising of Rt. 54 in 2001 to present. An aerial photo taken in 2007 shows the general condition of the Salt Pond's shoreline ca. 2007. Of special note is the large, 2-3 acre wildlife refuge located in the middle of the Pond, the outline of the "Island" which holds five buildings and was the scene of the 2012 Sandy Interior flooding, as well as the "robust" shorelines on the east, north and west sides of the Pond. In contrast, a recent 2024 aerial photo details the shoreline changes that have occurred during the ensuing 17 years. The Wildlife Refuge is now reduced to three small "Islets", the "Island's" buildings are now at water's edge and the shorelines on the eastern, northern and western side of the Salt Pond are noticeably eroded.

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Unit Flooding History at Mallard Lakes

From the original construction to date, no buildings constructed on concrete slabs have experienced tidal/storm flooding affecting any of these buildings' interiors. Four of the buildings constructed on piles experienced interior flooding on only one occasion, Hurricane Sandy, 10/29/2012. A listing of all water events requiring repair or replacement since initial construction of the community is included as Attachment 3.

Insurance History / Issues

The cost of property insurance has been steadily increasing. In some years this cost has greatly outpaced inflation. Given the numerous catastrophic casualties across the country associated with hurricanes, wildfires, extreme weather events, etc., the cost of insurance is expected to continue to outpace inflation. Our Bylaws require the total cost of providing all types of insurance covering all of ML's Common Elements, including all of the "Buildings", be defined as a Common Expense. All Common Expenses are paid for by each Unit Owner on a 1/477 (i.e. equal) basis.

Two years ago, the deductible on our property insurance policy was increased to \$25,000 as a result of changes in industry practice along the Delaware Coast, and elsewhere. Given the large increase to the property insurance deductible, the Board has on multiple occasions advised all ML Unit Owners to review their personal policies to ensure that their policy includes a rider to cover any deductibles allocated from the ML policies.

Flood Insurance is provided through FEMA and is separately quoted by our property insurance provider. Flood insurance was not related to the increase to the \$25,000 deductible. The deductible for our flood insurance component currently is \$1,250 per building covered.

To date, there has been only one event (Hurricane Sandy) triggering flood insurance payments for interior damage to individual units. There have been at least two additional events triggering the payment of flood insurance claims (in addition to Sandy) that resulted in the repair/replacement of Common Element components that did not affect any of the Units.

Recently, FEMA confirmed that they had recorded 44 flood insurance claims paid since initial construction (1986).

- There were two claims in 1991 and two claims in 1992 for the same two buildings. These were for the replacement of underfloor insulation/fans damaged during high water events in those years.

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- During Hurricane Sandy in 2012, 24 units in 4 six-unit Island Buildings and 5 units in an 11-unit building had damage claims resulting in repair replacement. At least six other units, perhaps more, received payments under the flood policies for dampness remediation by fans but did not incur damage requiring repair or replacement. At least six buildings, including the above, were compensated for underfloor insulation replacement.
- There may have been other claims for the replacement of underfloor insulation or other Common Elements but neither FEMA nor ML has any record of such claims.

Impact of Sandy on ML Property Values

As detailed above, following Sandy, a group of ML Unit owners filed a suit against ML to attempt to force ML to cover their flood-related costs. This suit was settled in 2019 by the partial payment of plaintiff attorney fees to put the matter to rest. The presence of an outstanding lawsuit (and the uncertainty regarding future COA assessments), and not the flooding of the 4 buildings, was the principal reason for a diminution in ML Property values during this period. Once the suit was settled, the property values have risen to values equivalent to similar properties located along the DE Coastline (adjusted for age, quality and location). For most of the last three years, few units have remained on the market much longer than a month or so and ML sales continue to reach record highs. This is true for all ML properties, including many of those flooded on the Island during Sandy. In fact, a recent sale of an Island Unit set an ML all-time record price in early 2025.

Roles and Responsibilities

Mallard Lakes Condominium is regulated and governed in accordance with its By-laws and Title 25 of Delaware State Law. The By-laws are comprised of four documents: Articles of Incorporation, Declaration of Plan, Code of Regulations, and the Indenture (CCR's).

These documents define the roles and responsibilities of the Council (Board) and the Unit Owners. The Unit Owners are responsible for the interiors of their Units, and the Board is responsible for the Common Elements – basically everything else. The issues discussed to this point principally involve the Condominium's Common Elements. Specifically, the "Lakes", which include the Salt Pond, the grounds (including the shorelines, the storm drains connecting the "Lakes" with the Salt Pond and ultimately Assawoman Bay and the Atlantic Ocean, and the "Buildings".

The relevant governing provisions are contained in the Code of Regulations, Section 2, which confers upon the Council the duty and responsibility to undertake several actions:

The Mallard Lakes Community Association, Inc.

specifically, c) caring for the Common Elements and (h) contracting for such care. Section 7 limits the Council's authority to undertake costly improvements by requiring improvements in excess of \$20,000 to have the prior approval of a majority of the Owners, except where the Council determines that such Improvements exclusively benefit a subset of the Owners, in which case the cost will be apportioned solely amongst these Owners. Attachment 4 details these excerpts from the Code of Regulations – the full set of Bylaws is available on the ML webpage.

Discussion: What are the main issues associated with abnormal weather events and rising tidal water?

Severe Flood Risk

Given Mallard Lakes' location adjacent to Assawoman Bay along the Delaware coast, the entire community is at potential risk for flooding during large storms, hurricanes or other abnormal and severe high-water events. Most of Mallard Lakes, like most of the bay side in Ocean City and along all the bays, inlets and canals from Ocean City to the shores of Delaware Bay, are in FEMA designated flood zones. Typically, buildings within the FEMA flood zone have a higher flood risk than those which are not. However, like most of the buildings on or near the Delaware coast, all of the Mallard Lakes buildings have some level of risk.

The only major high-water event causing interior damage since Mallard Lakes' original construction was completed in 1992 was Hurricane Sandy in 2012. As discussed above, the source of high water was Assawoman Bay which entered the Salt Pond from both the Rt. 54 culvert AND two-three of Treasure Beach's canals located immediately to the east of the Salt Pond.

Unfortunately, to date there appears to be no readily available, financially feasible solution to the risk of major storm/hurricane induced flooding.

A flood gate covering Rt. 54 culvert would not have prevented the Sandy flood.

While possible, the construction of some form of barricade (in addition to a Rt. 54 culvert flood gate) to separate the Treasure Beach canals from the Salt Pond is not currently feasible due to both cost and land ownership and easement issues.

There exists the possibility of elevating from one to all of the ML Buildings, however the cost of elevating any building is believed to be financially prohibitive, without some form of third-party assistance like government grants. Additionally, short of elevating all of the

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buildings within the community, the elevation of a subset of the community's buildings would, in all likelihood, have to be borne by the Unit Owners within each building so elevated.

Frequent tidal water near or under buildings built on piles.

There is a good reason the buildings constructed on piles were built that way. Their elevations above and their proximity to the tidal waters of the Salt Pond anticipated that water would periodically flow underneath these buildings.

Since Initial construction, it is estimated that the mean high level of the tidal waters within the Salt Pond has increased by about 1-1.5 feet. This increase comes from two sources: 1) the reconstruction of Rt. 54 in 2001 and 2) a general rise in water levels along the entire Delmarva ocean coast (including the possibility of an elevation decrease along the Delaware coast). It is believed that each source has contributed to about ½ of this rise. 8 of the 10 buildings built on piles now experience water near or under the building on an often to frequent basis. The other two buildings on piles experience water on a very infrequent basis. None of the remaining 37 buildings have experienced any water against, under or within.

The presence of water under the 8 piled buildings has necessitated a change to the ML approach to the repair and maintenance of the underfloor insulation as described above. Barring another abnormal high-water event, like Sandy, it is estimated that the new insulation will likely preclude the need for replacement for the foreseeable future.

There appears to be few feasible solutions to the remediation of increased tidal water encroachment under the piled buildings. Restricting the daily flow through the culvert under Rt. 54 could potentially reduce the overall level of daily/periodic tidal inundation along the shores of the Salt Pond. It is believed that a "variable-flow" flood gate that restricts a significant portion of both tidal ebbs and flows while allowing the movement of aquatic life between the Salt Pond and Assawoman Bay could possibly reduce the daily/periodic water level in the Salt Pond by as much as one foot.

To date, any restriction to the flow rate under Rt. 54 has been prohibited by the relevant governmental authorities.

It is believed that the creation of barriers (bulkheads) at lands' end in and around these buildings would likely have no permanent effect on the continued inflow of water and inundation of adjacent shore land due to the migration of water permeating the land.

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Shoreline erosion within the Salt Pond

The shoreline of the Salt Pond has been receding since 1992. This is from both rising water and continued inundation of the shoreline vegetation. The daily/frequent inundation of shore land produces a blue algae during the hot summer months. Eventually the algae blooms tend to kill off the vegetation. As discussed above, the 2004 - 7 rip-wrapping has slowed but not stopped a portion of this gradual erosion. The ML grounds crew has periodically planted/transplanted native wetlands vegetation at the Salt Pond's water's edge to replace other vegetation which has died off. There is a possibility that continued selective planting of appropriate native plants along the shore may slow/stop land erosion.

To date this approach has had no effect reducing the shoreline inundation nor curbing the frequent tidal flow under the buildings on piles.

NOTE: Every effort has been made to gather the most comprehensive information available. Given the 39-year history of Mallard Lakes and in some cases the unavailability or incomplete nature of historic documents and /or the unavailability of firsthand participants, it is possible that aspects of the historic events and/or facts included herein may be incomplete.

ONGOING ACTIVITIES - 2025

At the Board's February 8, 2025, regular monthly meeting, the Board directed Chris Reutershan, VP of the Board and Stacey Selby, Mallard Lakes' Director of Operations to:

- i. Prepare this comprehensive White Paper on Mallard Lakes' Tidal Waters.
- ii. Determine what additional activities should be done to clarify the tidal-based and extreme weather-based issues that may exist at Mallard Lakes.
- iii. Engage and manage such professionals as may be prudent to help determine what possible, feasible remediations may exist.
- iv. Conduct meetings with appropriate third parties to determine possible courses of future action.
- v. From time-to-time report back to the Board, for further guidance, if any.

Army Corps of Engineers 3/25/25 Site Visit

Stacey Selby and ML's tidal consultant, Beth Pfaff of Tributaries, met with Michael Yost of ACOE for a site visit to review ML's tidal issues. Yost acknowledged the presence of

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underfloor water under several of the buildings on piles and reviewed the incidence of shoreline erosion that has occurred within the Salt Pond. He acknowledged that the reconstruction of Rt. 54 likely exacerbated these issues. He advised that variable flow floodgates had been approved in Delaware and a variable flow floodgate might be acceptable for the Salt Pond / Assawoman Bay interface at Rt. 54 under certain circumstances. Specifically, whatever the type of gate procured it must allow the unimpeded movement of aquatic life between the Pond and the Bay as part of each tidal cycle.

Yost advised Selby and Pfaff of a possible path to the approval of a permit for a variable flow gate on the Pond's storm drain connection to the Bay by meeting with the Federal and State Government's "informal" Joint Permit Processing Group (JPP). The JPP meets monthly for the purpose of "Screening" early-stage potential permit application requests to avoid having lengthy and costly permit processes where there is no chance of approval.

Federal and State Joint Permit Processing (JPP) Group Meeting – 6/26/25.

On June 26, Chris Reutershan, Dan Nelson, Stacey Selby and ML's tidal consultant, Beth Pfaff, met with the State of Delaware's Joint Permit Processing Group, an informal group of state and federal tidal wetlands permitting officials.

The purpose of the meeting was to discuss permit feasibility and potential next steps, if any, with about 20 of the federal and state permitting officials who would likely be involved in a formal permit application/hearing process. The meeting's discussions focused on what could be done to potentially alleviate the frequent under-buildings and shoreline inundations caused by the Salt Pond's tidal water's daily ebb and flow. The presentation sought to get their comments on the feasibility (from a permit issuance perspective) of installing some form of a tidal flow limiting device at or near the Rt. 54 culvert connecting the Salt Pond with Assawoman Bay.

The possible outcome of the meeting was either a No or Maybe to our request. The "JPP Group's" response was a non-committal and conditional Maybe.

Matthew Jones, Section Program Manager of the Wetland and Waterways Section of the Division of Water of Delaware's Department of Natural Resources and Environmental Control (DNREC), acted as the principal spokesperson for the JPP Group.

His recommended "initial" next steps require engaging our surveyor, M.T. Hammond, to review land and easement records, and additional meetings with various state and county officials (who were not represented at the meeting) to clarify land ownership rights,

The Mallard Lakes Community Association, Inc.

potential land and property access, easements and/or permissions, to determine the possible need for studies of potential impacts to both South Assawoman Bay and its migratory bird habitats and the determination of the need for a Hydrologic and Hydraulic (H&H) study (TBD). Following the completion of these tasks (and any additional required work), Jones suggested a follow-up visit to a future JPP meeting.

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Attachment 1:

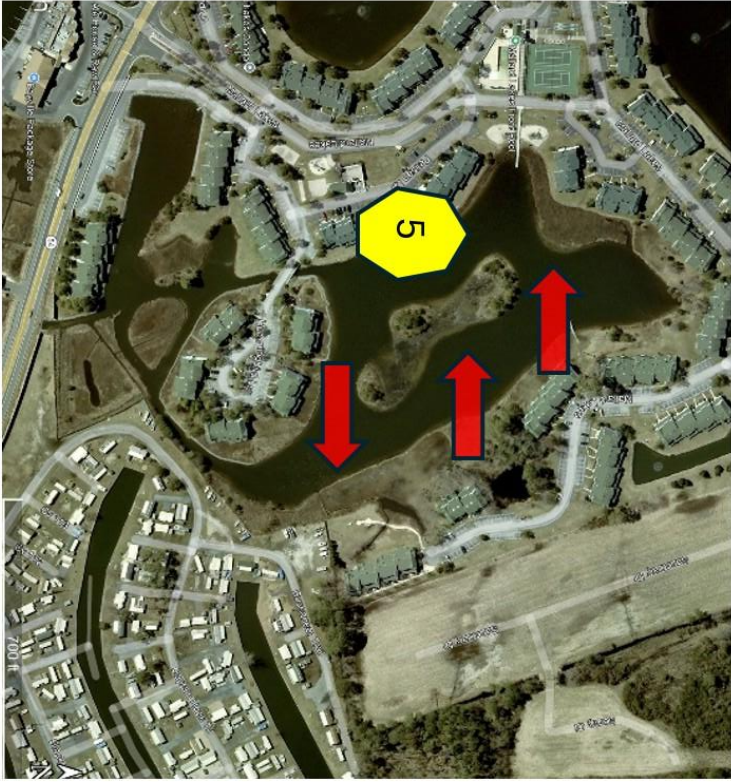
Please see the attached PDF file:

“SUBAQUEOUS LAND PERMIT GRANTED TO THE MALLARD LAKES CONDOMINIUM ASSOCIATION TO CONSTRUCT 1,200 LINEAR FEET OF LOW-PROFILE RIP-RAP AND VEGETATIVE SHORELINE STABILIZATION IN A TIDAL LAKE CONNECTED TO MONTEGO BAY, ASSAWOMAN BAY AT MALLARD LAKES CONDOMINIUMS ALONG ROUTE 54, SELBYVILLE, SUSSEX COUNTY, DELAWARE.”

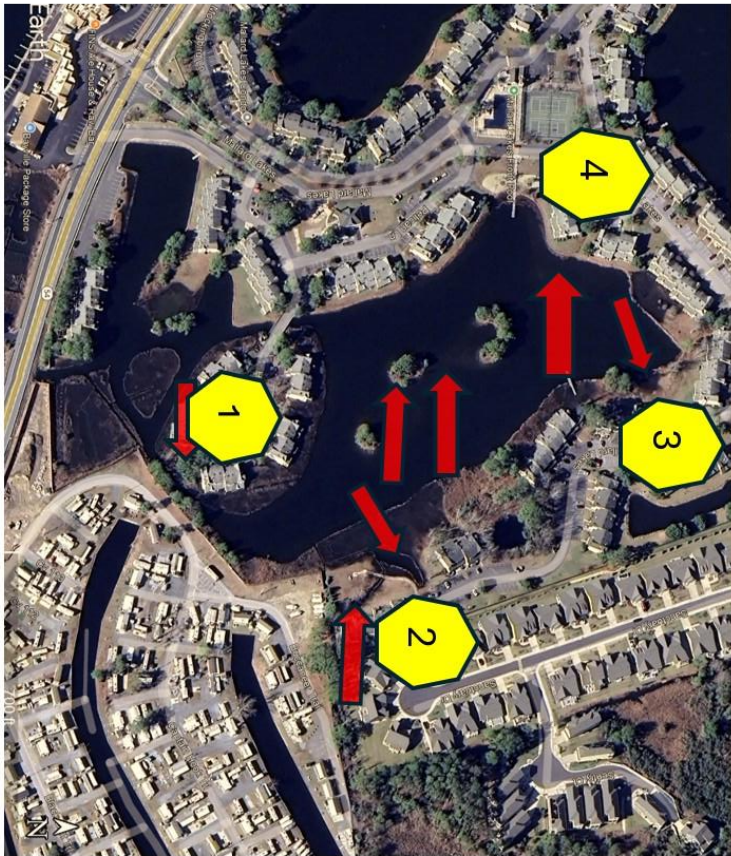
Issued by the State of Delaware Division of Water Resources and dated 9/16/04.

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Attachment 2 - Mallard Lakes Salt Pond - Tidal Erosion of Shoreline 2007 to 2024



Mallard Lakes Salt Pond – 2007



Mallard Lakes Salt Pond – 2024

1. “The Island” the shore has virtually disappeared around the Island’s 5 buildings.
2. South end of Eagle Lane – Deep erosion of what was once solid ground.
3. Head of the Pond- Erosion
4. The “Beach” and shoreline to the north – notice very large disappearance of land.
5. The “Wildlife” Preserve – what was once a single 2-3 acre island is now three small islets.

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Attachment 3:

Please see attached Excel Spreadsheet “Tidal Water Issues History” detailing ML tidal water issues and water events requiring repair or replacement.

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Attachment 4:

Excerpts from:

CUMULATIVE, COMBINED AND RESTATED CODE OF REGULATIONS OF MALLARD LAKES CONDOMINIUM

Section 2. Powers and Duties.

The Council shall have all of the powers and duties necessary for the administration of the affairs of the condominium and may do all such acts and things as are by the Unit Property Act or by this Code of Regulations directed to be exercised and done by the association of owners. The Council shall have the power from time to time to adopt any rules and regulations deemed necessary for the enjoyment of the condominium provided such rules and regulations shall not be in conflict with the Unit Property Act or the Declaration. The Council shall delegate to one of its members the authority to act on behalf of the Council on all matters relating to the duties of the managing agent, if any, which might arise between meetings of the Council. In addition to the duties imposed by this Code of Regulations or by any resolution of the association of owners that may hereafter be adopted, the Council shall have the power to, and be responsible for, the following:

(c) Providing for the operation, care, upkeep, replacement, maintenance and surveillance of all of the common elements and services of the condominium.

(h) Making, or contracting for the making of repairs, additions, and improvements to, or alterations of, the property and repairs to, and restoration of, the property, in accordance with the other provisions of this Code of Regulations, after damage or destruction by fire or other casualties.

Section 7. Additions, Alterations or Improvements the Council.

Whenever in the judgment of the Council the common elements shall require additions, alterations or improvements costing in excess of Twenty Thousand Dollars (\$20,000.00) during any period of twelve (12) consecutive months, and the making of such additional alterations or improvements shall have been approved by a majority of the unit owners, the Council shall proceed with such additions, alterations or improvements and shall assess all unit owners for the cost thereof as a common expense. Any additions, alterations or improvements costing Twenty Thousand Dollars (\$20,000.00) or less during any period of twelve consecutive months may be made by the Council without approval of the unit owners and the cost thereof shall constitute part of the common expenses. Notwithstanding the foregoing, if, in the opinion of not less than three—fifths (3/5) of the members of the Council, such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of the unit owner or owners requesting the same, such requesting unit owners shall be assessed therefor in such proportion as they jointly approve, or, if they are unable to agree thereon, in such proportions as may be determined by the Council.