

Chapter 22
WETLANDS

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ARTICLE I. IN GENERAL

Sec. 22-1. Purpose of chapter.

The governing body of the county acting pursuant to Virginia Code sections 28.2-1300 et seq., for purposes of fulfilling the policy standards set forth in such sections, adopts this chapter regulating the use and development of wetlands. (Ord. of 9-11-72, § 1; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-4-93)

Sec. 22-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Commission. The state Marine Resources Commission.

Commissioner. The Commissioner of Marine Resources.

Governmental activity. Any of the services provided by this county to its citizens for the purpose of maintaining public facilities and shall include, but shall not be limited to, such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.

Nonvegetated wetlands. Unvegetated land lying contiguous to mean low water and between mean low water and mean high water.

Person. Any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

Vegetated wetlands. All that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this county; and upon which is growing any of the following: Saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Sprius validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), Black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpuraseens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

Wetlands. All vegetated and nonvegetated wetlands.

Wetlands board or board. A board created pursuant to Virginia Code, section 28.2-1303. (Ord. of 9-11-72, § 2; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-3, 12-2-85; Ord. No. 65A-5, 1-4-93)

Sec. 22-3. Permitted uses.

The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

- (a) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided, that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
- (b) The cultivation and harvesting of shellfish and worms for bait;
- (c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, and skeet and trap shooting and shooting on shooting preserves; provided, that no structure shall be constructed except as permitted in subsection (a) of this section;
- (d) Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands.
- (e) The cultivation and harvesting of agricultural, forestry or horticultural products; grazing and haying;
- (f) Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other related conservation agencies;

- (g) The construction or maintenance of aids to navigation which are authorized by governmental authority;
 - (h) Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
 - (i) The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, state, county, city or town abutting on or crossing wetlands; provided, that no waterway is altered and no additional wetlands are covered;
 - (j) Governmental activity in wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof; and,
 - (k) The normal maintenance of man-made drainage ditches; provided that no additional wetlands are covered. This subdivision does not authorize construction of any drainage ditch.
- (Ord. of 9-11-73, § 3; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-14-93)

ARTICLE II. USE PERMITS

Sec. 22-4. Required for certain activities; application generally; fee.

(a) Any person who desires to use or develop any wetland within this county, other than for the purpose of conducting the activities specified in section 22-3 above, shall first file an application for a permit through the Commission.

(b) The permit application shall include the following: The name and address of the applicant; a detailed description of the proposed activities; a map drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways and other related appurtenances or facilities, including those on adjacent uplands, a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the application has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental off-site effects; the completion date of the proposed work, project or structure; and such additional materials and documentation as the wetlands board may require.

(c) A nonrefundable processing fee shall accompany each permit application to cover the cost of processing as follows:

- (1) For permits affecting 20,000 square feet or less of wetlands - \$100.00.
- (2) For permits affecting more than 20,000 but not more than 40,000 square feet of wetlands - \$200.00.

(3) For permits affecting more than 40,000 square feet of wetlands - \$200.00 plus \$100.00 for each acre in excess of one acre of affected wetlands.
(Ord. of 9-11-73, § 4; Ord. of 2-11-74; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-4, 4-21-86; Ord. No. 65A-5, 1-4-93; Ord. No. 65A-6, 10-23-07)

Sec. 22-5. Applications, maps, documents to be open to public inspection.

All applications, maps and documents submitted shall be open for public inspection at the environmental division office. (Ord. of 9-11-73, § 5; Ord. No. 65A-5, 1-4-93; Ord. No. 65A-6, 10-23-07)

Sec. 22-6. Public hearing.

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, the local governing body, commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the department of Game and Inland Fisheries, the Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this county. The published notice shall specify the place or places within the county where copies of the application may be examined. The costs of such publication shall be paid by the applicant. (Ord. of 9-11-73, § 6; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-3, 12-2-85; Ord. No. 65A-5, 1-4-93)

Sec. 22-7. Wetlands board action.

(a) Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

(b) The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board and the rationale for the decision.

(c) The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall notify the applicant and the commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.

(d) If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the environmental division office of this county.
(Ord. of 9-11-73, § 7; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-3, 12-2-85; Ord. No. 65A-5, 1-4-93; Ord. No. 65A-6, 10-23-07)

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Sec. 22-8. Bond required; suspension or revocation of permit.

The board may require a reasonable bond or letter of credit in an amount with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this chapter, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. of 9-11-73, § 8; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-4-93)

Sec. 22-9. Role of board.

In fulfilling its responsibilities under this chapter, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation. (Ord. No. 65A-5, 1-4-93)

Sec. 22-10. Standards for approval; granting or denying permit.

(a) In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

- (1) The testimony of any person in support of or in opposition to the permit application;
- (2) The impact of the proposed development on the public health, safety and welfare; and
- (3) The proposed development's conformance with standards prescribed in Virginia Code section 28.2-1308 and guidelines promulgated pursuant to Virginia Code section 28.2-1301.

(b) The board shall grant the permit if all of the following criteria are met:

- (1) The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment;
- (2) The proposed development conforms with the standards prescribed in Virginia Code section 28.2-1308 and guidelines promulgated pursuant to Virginia Code section 28.2-1301; and
- (3) The proposed activity does not violate the purposes and intent of this chapter or Virginia Code section 28.2-1300 et seq.

(c) If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form. (Ord. of 9-11-73, §9; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-4-93)

Sec. 22-11. Permit to be in writing.

The permit shall be in writing, signed by the chairman of the board and notarized. A copy of the permit shall be transmitted to the commissioner. (Ord. of 9-11-73, § 10; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-4-93)

Sec. 22-12. Expiration date.

No permit shall be granted without an expiration date established by the board. Upon proper application the board may extend the permit expiration date. (Ord. of 9-11-73, § 11; Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-4-93)

Sec. 22-13. No effect on applicable zoning and land use ordinances.

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinances of this county. (Ord. No. 65A-2, 12-13-82; Ord. No. 65A-5, 1-4-93)