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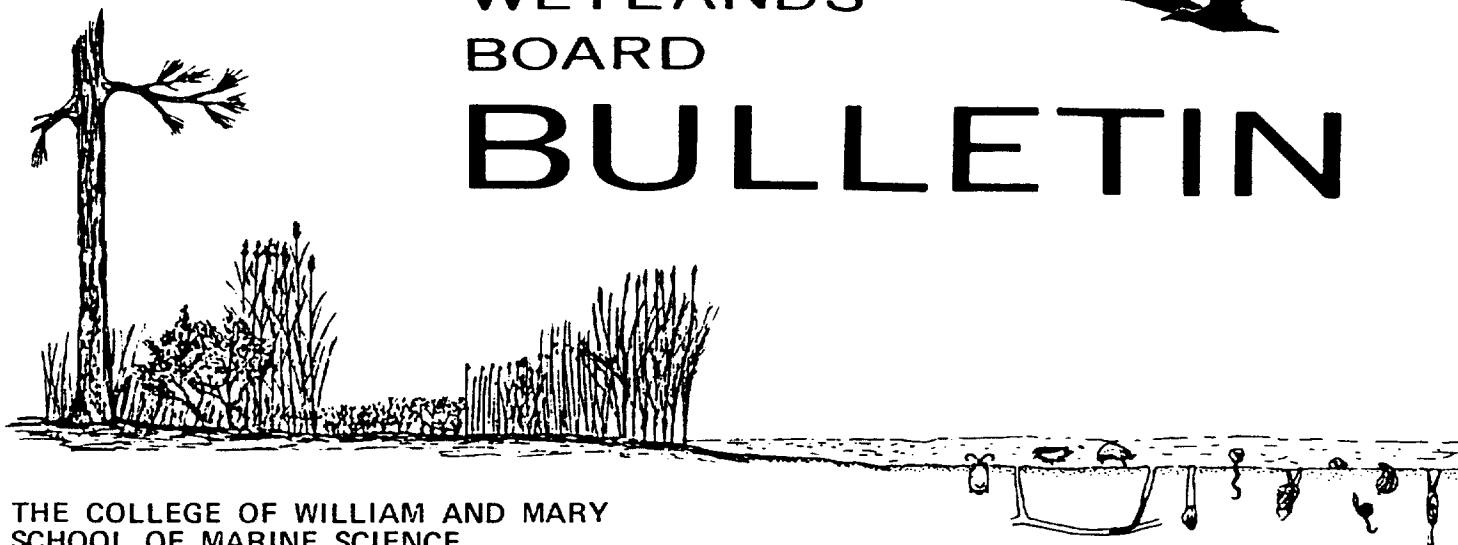
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WETLANDS
BOARD

BULLETIN



THE COLLEGE OF WILLIAM AND MARY
SCHOOL OF MARINE SCIENCE
VIRGINIA INSTITUTE OF MARINE SCIENCE

Volume II No. 1

Kirk J. Havens, Editor

Mar. 1987

1987 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER

An act to amend and reenact 62.1-13.22 and 62.1-13.28 of the Code of Virginia, relating to the Coastal Primary Sand Dune Protection Act.

Be it enacted by the General Assembly of Virginia:

1. That 62.1-13.22 and 62.1-13.28 of the Code of Virginia are amended and reenacted as follows:

62.1-13.22. Definitions.--For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

A. "Commission" means the Virginia Marine Resources Commission.

B. "Commissioner" means the Commissioner of the Virginia Marine Resources Commission.

C. "County or city" means the governing body of such county or city.

d. "Coastal primary sand dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon any part of which is growing as of July 1, 1980, or grows thereon subsequent thereto, any one or more of the following: American beach grass (*Amnophilla breviflulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis umbellata* var. *paludigena*); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this chapter "coastal primary sand dune" shall not include any mound of sand, sandy soil or dredge soil which has been deposited by man for the purpose of the temporary storage of such material for later use. The owners of the area within residential building lots in the Sandbridge Beach Subdivision of the City of Virginia Beach, abutting the Atlantic Ocean shown in subdivision plots bounded on the north by Molly Cooper Road, on the west by Sandfiddler Road, and on the south by Sea Scape Road, shall not be prohibited from erecting and maintaining protective bulkheads of a type, size and configuration approved by the Virginia Beach Wetlands Board. The Virginia Beach Wetlands Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead but shall maintain a continuing responsibility to ensure that each bulkhead constructed under the authority of this section is maintained in a condition which is safe, structurally sound, and otherwise in conformity with the reasonable conditions imposed by such Wetlands Board.

E. "Coastal primary sand dune zoning ordinance" means that ordinance set forth in 62.1-13.25 of this code.

F. "Governmental activity" means any or all of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities and shall include but not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and constructing public buildings.

G. "Reach" means a coastal segment of sandy beach fronting on the Chesapeake Bay (i) upon which there is mutual interaction of the forces of erosion, sediment transport and accretion, (ii) whose landward limit, where no coastal primary sand dune can be identified, is defined by the nearest man-made impermeable structure or structures similarly located where a proposed structure is contemplated, or roads or bulkheads and (iii) lies within a county, city or town which is receiving or has received funds under the provisions of Chapter 21 (10-215 et seq) of Title 10 of the Code. Whenever coastal primary sand dunes are referred to in this chapter such reference shall also include reaches.

62.1-13.28. Exemptions.--A. Nothing in this chapter shall affect any project or development (i) for which a valid building permit or final site plan approval has been issued prior to July 1, 1980; or (ii) which, if no building permit is required for such project including a locally approved mining operation, has been otherwise commenced prior to July 1, 1980, and certified as exempt by the Commission or appropriate wetlands board; or (iii) approved by the governing body of any county or city pursuant to any local ordinance whose principal purpose is to review development in coastal primary sand dunes prior to July 1, 1980. Nothing in this section shall be deemed to exclude from regulation any activity which expands or enlarges upon a project already in existence or under construction.

B. The Virginia Beach Wetlands Board shall make an ongoing determination in the Sandbridge Beach subdivision of the area bounded on the north by Dam Neck Naval Base, on the west by Sandfiddler Road, and on the south by White Cap Lane, to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of structures or properties so defined shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent structural improvements of a type, size and configuration approved by the Virginia Beach Wetlands Board. The Virginia Beach Wetlands Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement but shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition which is safe, structurally sound, and otherwise in conformity with the reasonable conditions imposed by the Virginia Beach Wetlands Board. However, prior to the undertaking of construction of bulkheads or other structural improvements, adjacent property owners on both sides of the proposed bulkhead or other structural improvement shall indicate by written agreement their consent to the proposed construction. Such written agreement shall be submitted with the application

requesting approval of the improvement to the Virginia Beach Wetlands Board. At the time the application is submitted, the applicant shall consent in writing to any subsequent construction which may occur whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with that bulkhead proposed by the applicant. Such consent shall be considered a waiver of property line defenses relating to the bulkhead line.

1987 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER

An Act to amend the Code of Virginia by adding a section numbered 62.1-13.16:1, relating to the issuing of stop work orders by the Marine Resources Commission; penalties.

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 62.1-13.16:1 as follows:

62.1-13.16:1. Reporting, site inspections and notice to comply; Commission or Wetlands Board to issue stop work order. - A. Reporting, site inspections and notice to comply. - With respect to permits required pursuant to this chapter, Chapter 1 (62.1-1 et seq.) or Chapter 2.2 (62.1-13.21 et seq.) of this title, the Commissioner or Board Chairman may require of the person responsible for carrying out the provisions of the permit such monitoring and reports as they may reasonably deem necessary. With respect to any reported activity not authorized by the aforementioned chapters or with respect to the violation of any permit issued pursuant thereto, they may direct such on-site inspections as are deemed reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of the aforementioned chapters are being violated. Prior to conducting such inspections, notice shall be provided to the resident owner, occupier or operator.

Such resident owner, occupier or operator shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or Board Chairman shall serve notice upon the person who is responsible for carrying out the provisions of the permit at the address specified by him in his application or by delivery at the site of the permitted activities to the person supervising such activities and designated in the permit to receive such notice. Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he may be deemed to be in violation of this section and upon conviction shall be subject to the penalties provided in this chapter.

B. Issuance of stop work order. - Upon receipt of a sworn complaint of a substantial violation of this chapter, Chapter 1 (62.1-1 et seq.) or Chapter 2.2 (62.1-13.21 et seq.) of this title from the designated enforcement officer, the Commissioner or Board Chairman may, in conjunction with or subsequent to a notice to comply as specified in subsection A of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized by the aforementioned chapters or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the subaqueous bottoms, wetlands or the coastal primary sand dunes protected by the aforementioned chapters, such an order may be issued without regard to whether the person has been issued a notice to comply as specified in subsection A of this section. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permit holder or the resident owner, occupier or operator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or Board Chairman from taking any other action specified in 62.1-13.16.

The duties of the Commissioner or the Board Chairman prescribed in this section may be delegated to their respective designees; however, such respective designees shall not be those persons who are also designated as enforcement officers.

Letters to the Editor

Question:

What can a wetlands board do to regulate dredge spoil disposal? Can a board require sediment erosion control devices (silt fence, straw bales, etc.) to prevent re-entry of the material into wetlands via uncontained runoff to ditches and streams even if the spoil is placed out of the board's jurisdiction in "upland"?

Answer:

The wetlands board can require erosion and sedimentation controls if there is any risk of the material spilling into wetland areas. Any evaluation of the degree of risk is a matter of wetland board's judgement.

Question:

What is the extent of a wetlands board's jurisdiction when mean high water and mean low water coincide on a bulkhead? Should the board require a permit?

Answer:

In such a case, the best approach is to start with the policy which is to preserve wetlands. If the contemplated activity will affect wetlands, then jurisdiction can be exercised.

(The following answers were supplied by Norman Larsen, Chief of the VNRH Habitat Management Division and Fred Fisher, Assistant Attorney General.)

Tidal inventories from the Virginia Institute of Marine Science

The following is a list of the completed tidal marsh inventories.

Mathews Co. 1974 reprinted 1982
Lancaster Co. 1974 reprinted 1982
York Co. 1974 reprinted 1981
Northumberland Co. 1975
Prince William Co. 1975
King George Co. 1975 reprinted 1981
City of Hampton 1975
Stafford Co. 1975
Fairfax Co. 1976 reprinted 1982
City of Virginia Beach Vol. 1 (Northlanding R. & tributaries) 1976
Gloucester Co. 1976
City of Newport News 1977
Accomac Co. 1977
Northhampton Co. 1977
Westmoreland Co. 1978
Essex Co. 1979
City of Virginia Beach Vol. 2 (tidal marshes) 1979
New Kent Co. 1979
Caroline Co. 1979
Spottsylvania Co. 1979
James City Co. 1980
Isle of Wight Co. 1981
Middlesex Co. 1981
Surry Co. 1981
City of Norfolk 1987

The inventories to be completed are:

Prince George Co. (partially complete)
Suffolk Co.
Chesterfield Co. & Cities of Petersburg & Colonial Heights
City of Richmond & Henrico Co.
King William Co. (partially complete)
King & Queen Co. (partially complete)
Richmond Co.
City of Virginia Beach Vol. 3 (Back Bay)

For copies of any of the completed inventories, write to

Kirk J. Havens
Editor, Wetlands Board Bulletin
Virginia Institute of Marine Science
Gloucester Point, VA 23062

WETLANDS WORKSHOP

June 13, 1987

Tentative Agenda

0900-0930 Registration and Coffee
0930-1015 Wetland Types and Values
1015-1100 Construction Impacts
1100-1120 VIMS Wetlands Research Overview
1120-1140 Inventory Program Status
1140-1200 Mitigation/Compensation
1200-1220 Cumulative Impact
1230-1330 Lunch
1330-1500 Tour VIMS Shoreline Demonstration Projects
Fringe marsh - revetment
Gapped breakwaters
Dune
Beach nourishment and revetment
Seagrass Research

Please cut along this line and return to:

Virginia Institute of Marine Science
Wetlands Program
Gloucester Point, VA 23062
ATTN: Editor, Wetlands Board Bulletin

Wetlands Board _____

Number planning to attend: _____

The following is for wetlands board information. A checklist for public hearings and an opening policy statement based on the proceedings of the Norfolk Wetlands Board.

CHECKLIST FOR WETLANDS BOARD MEETINGS AND PUBLIC HEARINGS

- I. Before meetings/hearings:
 1. The board members and staff should review basic materials from time to time, as needed. This may include the Virginia State Wetlands Act (Section 62.1, Chapter 2.1), Coastal Primary Sand Dune Protection Act (Section 62.1, Chapter 2.2) the City Wetlands and Sand Dune Ordinances (Chapter 49), and the Virginia Marine Resources Commission guidelines.
 2. The board members and staff should study all applications, and VIMS reports. If needed, questions may be raised, tentative evaluations, motions, conditions, and time limits developed.
 3. On the day of the meeting/hearing, staff telephones a reminder to board members, confirms the availability of the Council Chamber with the City Clerk's Office, checks that lights and speakers are on, sets out name plates; pads and pencils; brings City map, State and local laws; photographs of sites, places agendas for public.
- II. Holding the meetings/hearings
 - A. Preliminary
 1. Chairman calls meeting to order;
 2. Chairman or staff takes visual attendance and confirms a quorum;
 3. Explains the purpose of the meeting; (opening statement)
 4. States where agendas are placed for the public;
 5. Calls for comments, questions, corrections on the minutes;
 6. Inquires about old business.
 - B. Hearing Items:
 1. Chairman may shift the hearing order, administer oaths, limit presentations, and discussions.
 2. Chairman or staff state case number and present a brief description of the proposed project.
 3. Read VIMS comments.
 4. Chairman requests the applicant or designated representative to come forward to the podium, to state his name and mailing address with ZIP, to give any additional testimony or answer questions as required by the board.
 5. Chairman asks if anyone else wishes to speak on behalf of the application; anyone opposed; others opposed;
 - 5a. Chairman closes hearing to public.
 6. Chairman asks for comments from the board members. The Record should display a consideration of social, economic, physical and environmental impacts as they relate to the policies and standards contained in the Wetlands and/or Sand Dune Acts. A benefits vs. detriments conclusion format is helpful.
 7. Chairman asks for an evaluation and recommendation from the staff and VIMS.
 8. The Chairman will entertain a motion on the question or ask, "What is your pleasure?" A second is optional. Motions may include the following:
 - a. approval as submitted
 - b. approval in a modified form with stated conditions/time limits (either at the request of the applicant or board members)
 - c. approval with bonding or letter of credit required
 - d. denial
 - e. denial without prejudice (to deny the specific permit but allow the applicant to submit a new application to accomplish the same purpose but in a different manner)
 - f. direct the applicant to provide more information prior to final action
 - g. defer a decision for up to 30 days. Caution: If a decision is not made within 30 days, the permit is automatically approved as submitted.
 9. Chairman calls for voice or roll call vote;
 10. Chairman, as appropriate, informs applicant & VMRC he will be notified in writing 48 hours after the decision; 10 days to appeal; description of the appeal process; receive permit in mail; permit dated 14 days from approval date; need to apply for any changes including extension of time.
- III. Other than hearing items:
 1. Chairman calls for other new business, violations;
 2. Asks for comments, communications, letters from members or himself;
 3. Asks for comments, questions, introductions in audience;
 4. Announces future meetings, conferences.

Editors Note

A number of persons have expressed interest in organizing a Virginia Wetlands and Shorelines Association. Such a group would help bring together all wetlands board members and others who have a responsibility or interest in preserving, protecting and managing the wetlands, dunes, beaches and shorelines in the Commonwealth. The Association could help to provide a focus for the exchange of information, help promote more uniformity in wetlands board actions, help foster better interagency cooperation and understanding and also help provide a means for better informing the general public on the values of and problems facing Virginia's wetlands and shoreline resources.

Those who desire to be involved in helping to organize the Association, may write or call:

Clay Bernick
Environmental Planner
Virginia Beach Planning Department
115 Operations Building
Virginia Beach, Virginia 23456
(804) 427-4621

WETLAND BOARD OPENING STATEMENT

The (_____) wetlands board is now in session. (Gavel)

Let the record show that _____ members of the board are present. This (does/does not) constitute a quorum.

Before we begin the hearing, I will read excerpts from the Code of Virginia to let everybody in the room know what it is that we are trying to do. We're carrying out the policy of the Commonwealth as stated in Title 62:1:

"In order to protect the public interest, promote the public health, safety and economic and general welfare of the Commonwealth, and to protect public and private property, wildlife, marine fisheries, and natural environment, it is declared to be the public policy of this Commonwealth to preserve the wetlands, reaches, and primary coastal sand dunes; to prevent their despoliation and destruction; and to accommodate necessary economic development in a manner consistent with their preservation".

We will be guided by this policy as well as by the legal standards and the VMRC Guidelines. That's the rather difficult task we will try to accomplish in this hearing.

Now let me explain the procedure for each hearing item. To begin, we will discuss the project requested. We will then read the recommendation by VIMS. If the person who has made the request or that person's agent is here, I'll ask him or her to speak. If there are others in the room who want to comment, it will be their turn next. After that, the board will make its decision. When you come to the lectern please give us your name and address for the record. Try to be brief so that all parties can be fairly heard.

Finally, the applicant will receive a memo advising him of the action taken. Unless appealed, board approval will result in a permit within 14 days. If the request is denied, the applicant may appeal to the VMRC within 10 days from today.

Accomack

W. Samuel Nelson, III, Chairman
Contact: C. M. Powell, Secretary, 804/787-4069

Charles City

N. Hofmeyer, Jr., Chairman
Contact: Lloyd O. Jones, County Administrator, 804/829-2401, ext. 201

Chesapeake

Luke M. Brown, Chairman
Contact: Max S. Taback, Secretary, 804/547-6176

Colonial Heights

Walter G. Parker, Jr., Chairman
Contact: Stephen H. Manster, 804/526-8869

Essex

Fred L. Garrett, III, Chairman
Contact: James F. Moore, County Administrator, 804/443-4331

Fairfax

Elizabeth S. Hartwell, Chairman
Contact: Bill Swietlik, 703/691-4335

Gloucester

David D. Penny, Chairman
Contact: Peggy G. Sheppard, 804/693-4040

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Harold Broudy, Chairman
Contact: David L. Watson, Staff Coordinator, 804/727-6140

Hopewell

Curtis W. Harris, Chairman
Contact: Martin Martin, Secretary, 804/541-2267

Isle of Wight

Wilson E. Holland, Chairman
Contact: Juanita L. Byrum, Secretary, 804/357-3191

James City

Virginia Carey, Chairman
Contact: Carolyn A. Owens, Assistant Planner, 804/220-1122

King George

Wesley W. Meyers, Chairman
Contact: Chester F. Mack, Jr., Secretary, 703/775-5281

King William

J. F. Townsend, Jr., Chairman
Contact: Dale R. Burton, Secretary, 804/769-4927

Lancaster

Fred Ajootian, Chairman
Contact: Fred Ajootian, 804/462-5220

Prince William Co.

Dr. George Garrigan, Chairman
Contact: Mr. Lokhande, 703-335-6830

Mathews

John Lee Machen, Jr., Chairman
Contact: Kacheryn Diggs, Secretary, 804/725-7171

Middlesex

Sherman T. Holmes, Chairman
Contact: Orneida J. Bull, Secretary, 804/758-4305

New Kent

C. B. Penzkofer, Chairman
Contact: Mr. H. Garrett Hart, III 804/966-9861

Norfolk

Carvel Blair, Chairman
Contact: Lee Rosenberg, Assistant Manager, 804/441-2152

Northampton

Edward C. Warren, Chairman
Contact: John L. Humphrey, Secretary, 804/678-5872

Northumberland

Wallace E. Lewis, Chairman
Contact: Kenneth D. Eades, Zoning Administrator, 804/580-7666

Poquoson

Robert S. Forrest, Chairman
Contact: Sherry Harless, Clerk, 804/868-7151, ext. 25

Richmond

Thomas J. Boswell, Chairman
Contact: Stephen K. Whiteway, County Administrator, 804/333-3415

Stafford

Charles W. Dean, Chairman
Contact: J. R. Hill, Jr., 703-659-8668

Suffolk

W. E. Ashley, Jr., Chairman
Contact: Robert L. Barnett, Building Official, 804/934-3111

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Contact: Wayne Couch, 804/427-4131

Westmoreland

Preston C. Hodges, Chairman
Contact: Howard W. Woodhead, Secretary, 804/493-8911, ext. 211

West Point

Stuart Petke, Chairman
Contact: Stuart Petke, 804/843-2348

Williamsburg

Thaddeus Tate, Chairman
Contact: William A. Mettler, Planning Director, 804/229-8511

York

John K. Kane, II, Chairman
Contact: Ken Robertson 804/898-0080

This Issue's Quote

Man is rich in proportion to the number of things he can leave alone.
...Henry David Thoreau

Readers are asked to submit responsible questions concerning wetland ecology to Editor, Wetlands Board Bulletin, Virginia Institute of Marine Science, Wetlands Program, Gloucester Point, VA 23062. The editors reserve the right to edit letters for clarity and space.