

Town of Cape Charles

APPENDIX E

Wetlands Ordinance

ARTICLE I

In General

Section 74.1 - 74.19 Reserved

ARTICLE II

Wetlands Zoning Ordinance

Division I Generally

Section 74.20 Definitions

For the purpose of this article:

BACK BAY AND ITS TRIBUTARIES means the following as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia - North Carolina State line; Capsies Creek north of the Virginia - North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds, and natural waterways adjacent to or connecting with the above-named bodies of water.

COMMISSION means the Virginia Marine Resources Commission.

COMMISSIONER means the Commissioner of Marine Resources.

GOVERNMENTAL SERVICES means any or all of the services provided by this Town to its citizens for the purpose of maintaining this Town and shall include but shall not be limited to such services as constructing, repairing, and maintaining roads, sewage facilities, and street lights supplying and treating water, street lights, and construction of public buildings.

PERSON means any individual, corporation, association or partnership, business, trust, joint venture, or other legal entity.

NONVEGETATED WETLANDS means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined and also includes those non-vegetated areas of Back Bay and its tributaries and the North Landing

River and its tributaries subject to flooding by tides including wind tides but not including hurricane or tropical storm tides.

NORTH LANDING RIVER AND ITS TRIBUTARIES means the following as based on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia - North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocatoy River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6,400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

VEGETATED WETLANDS means 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 Town; and upon which is growing on the effective date of this act or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*) saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia sp.*), sea lavender (*Limonium sp.*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica sp.*), sea oxeye (*Borrichia frutescer*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis sp.*), sea rocket (*Cakile ecentula*), southern wildrice (*Zizaniopsis Miliacea*), cattails (*Typha sp.*), three-squares (*Scirpus sp.*), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex sp.*), yellow pond lily (*Nuphar sp.*), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's ticks (*Bidens sp.*), smartweed (*Polygonum sp.*), arrowhead (*Sagittaria sp.*), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

The **VEGETATED WETLANDS OF BACK BAY AND ITS TRIBUTARIES** and the **VEGETATED WETLANDS OF THE NORTH LANDING RIVER AND ITS TRIBUTARIES** shall mean all marshes subject to flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica sp.*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice

cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattails (*Typha* sp.), three-squares (*Scirpus* sp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

WETLANDS means both vegetated and non-vegetated wetlands.

WETLANDS BOARD or **BOARD** means a board created pursuant to Code of Virginia, 28.2-1303.

(Ord. No. 9341, 2, 4-13-93)

Section 74.21 Permitted Uses of and Activities on Wetlands

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

1. the construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duck blinds, 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;
2. the cultivation and harvesting of shellfish and worms for bait;
3. noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shell fishing, horseback riding, swimming, skeet and trapshooting, and shooting preserves provided that structure shall be constructed except as permitted in Subsection 1 of this section;
4. the cultivation and harvesting of agricultural, forestry, or horticultural products; grazing and haying;
5. conservation, repletion, and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, and other related conservation agencies;
6. the construction or maintenance of aides to navigation which are authorized by governmental authority;
7. emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
8. 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;
9. governmental activity on wetlands owned or leased by the Commonwealth of Virginia or a political sub-division thereof.

10. the normal maintenance of man-made drainage ditches provided that no additional wetlands are covered and provided further that this paragraph shall not be deemed to authorize construction of any drainage ditch;
11. outdoor recreational activities provided that such activities do not impair the natural functions of the wetlands or alter the natural contour of the wetlands.

(Ord. No. 9341, 3, 4-13-93)

Section 74.22 - 74.30 Reserved

Division 2 Permit to Use or Develop Wetlands

Section 74.31 Application Generally

- A. Any person who desires to use or develop any wetland within this Town, other than for those activities specified in Section 74.21 above, shall first file an application for a permit with the wetlands board directly or through the Commission.
- B. An application shall include the following: the name and address of the applicant; a detailed description of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth, and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances of facilities, including those on adjacent uplands, and 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 wetlands of whom the applicant 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 offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.
- C. All fees shall be governed as set forth by the Town Council of the Town of Cape Charles.

(Ord. No. 9341, 4, 4-13-93)

Section 74.32 Application and Related Data Open for Public Inspection

All applications and maps and documents relating thereto shall be open for public inspection at the office of the Town Clerk of this Town. (Ord. No. 9341, 5, 4-13-93)

Section 74.33 Hearing on Application; Grant or Denial

- A. Not later than 60 days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the commissioner, the owner of record of any land adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, Water Control Board, the Department of Transportation, and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this Town. Every such advertisement shall contain a reference to the place or places within the county or municipality where copies of the proposed application may be examined. The costs of such publication shall be paid by the applicant.

- B. In acting on any application for a permit, the board shall grant the application upon the concurring favorable vote of three members of a five-member board or four members of a seven-member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard 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. The board shall make its determination within 30 days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of such determination; and if the board has not made a determination, it shall notify the applicant and the commission that 30 days has passed and that the application is deemed approved. The term "act" referred above shall be the action of taking a vote on the application. If the application receives less than four concurring favorable votes for a seven-member board and three concurring favorable votes for a five-member board, this will be a determination to deny the permit.

- C. The board shall transmit a copy of the permit to the commissioner. If the application is reviewed or appealed, then 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 office of the Town Clerk of this Town.

- D. In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on these factors:
 - 1. such matters raised through the testimony of any person in support of or in opposition to the permit application;

2. impact of the development on the public health, safety, and welfare;
 3. the proposed development's conformance with standards prescribed in Code of Virginia, 28.2-1308, and guidelines promulgated pursuant to Code of Virginia, 28.2-1301.
- E. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity conforms with the standards prescribed in Code of Virginia, 28.2-1308, and guidelines promulgated pursuant to Code of Virginia, 28.2-1301, and the proposed activity does not violate the purpose and intent of this ordinance or Chapter 13 (28.2-1300 et seq.) of Title 28.2 code of Virginia.
- F. If the board finds that any 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. No. 9341, 6, 7, 10, 4-13-93)

Section 74.34 Bond or Letter of Credit to Assure Compliance with Conditions and Limitations

The board may require a reasonable bond or letter of credit in an amount and 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 as provided herein, suspend or revoke a permit if the board finds that 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 as set forth in the application. The board, after hearing, may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. No. 9341, 8, 4-13-93)

Section 74.35 Preservation and Development

In fulfilling its responsibilities under this article, 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. 9341, 9, 4-13-93)

Section 74.36 Copy to be Transmitted to Commissioner

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. No. 9341, 11, 4-13-93)

Section 74.37 Expiration

No permit shall be granted without an expiration date established by the board. The board, however, may upon proper application, therefore, grant extensions. (Ord. No. 9341, 12, 4-13-93)

Section 74.38 Not to Affect Zoning and Land Use Ordinances

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinance of this Town or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. (Ord. No. 9341, 13, 4-13-93)

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on April 13, 1993, amended July 11, 1995, and ratified and confirmed on June 16, 1977.