

# NORFOLK WETLANDS BOARD

# POLICY & PROCEDURES MANUAL

# BOARD ADMINISTRATIVE PROCEDURES

(THESE DO NOT REQUIRE BOARD APPROVAL)

## TAB

- 1 Formal Session Opening Statement
- 2 Violation Hearing Statement (No JPAs)
- 3 Violation Hearing Statement (JPAs)
- 4 Sample Violation Motions  
Executive Session Guide
- 5 Informal Session Opening Statement
- 6 VIMS Staff Assistance
- 7 Officer Election Guide

# BOARD ADMINISTRATIVE PROCEDURE

(Does not require Board Approval)

## Formal Session Opening Statement (January 10, 2019)

### I OPENING (CHAIRMAN READS THE FOLLOWING)

(Gavel) The Norfolk Wetlands Board is now in session.

**Please turn off or silence any communications device at this time.**

Let the record reflect Ms./Mrs./Mr. \_\_\_\_\_ are present. Ms./Mrs./Mr. \_\_\_\_\_ is/are absent. Ms./Mrs./Mr. \_\_\_\_\_ is/are appointed as a voting member(s) for today's session. This does/does not constitute a quorum.

We have been provided with a copy of the minutes from the \_\_\_\_\_ (month) hearing. Are there any corrections? Is there a motion to approve the minutes as written/corrected?

Are there additions, deletions, or order of business revisions to the agenda?

This concludes the Board opening.

### II PUBLIC HEARING (Read only if there are JPAs to be considered)

Before we begin the public hearing, I would like everyone to know what we are trying to accomplish (City Code Chapter 49-5-1):

It is the policy of the Wetlands Board to "preserve and prevent the despoliation and destruction of wetlands within the city while accommodating necessary economic development in a manner consistent with wetlands preservation." We will be guided by this policy as well as the legal standards and guidelines established by VMRC.

To begin, Staff will present the specifics of each application and advise us of the VIMS findings and recommendations as applicable. Staff will then provide their assessment.

If the applicant or their agent is here, I will ask them to come forward to speak if they would like. Opening statements are limited to a maximum of ten (10) minutes. Next, if there is a representative from an opposing viewpoint they will be given ten (10) minutes for an opening statement. The applicant or his representative will then have a three (3)

minute rebuttal period. If there are others in the room that wish to comment, either in support or opposition, they will follow. The Board will alternate between supporters and opponents, in that order, with a three (3) minute time limit until all have had a chance to speak. After that, the Board will deliberate and make its decision.

Prior to speaking at today's hearing, please ensure that you have signed in with Staff. This will help document the names of speakers in the hearing record. Please provide Staff with any documents, digital media, or other items you wish the Board to review or enter into the official hearing record if you have not already done so.

When you come forward to speak for the record, please state your name, your business or home address as appropriate, and describe any expertise you have on the subject on which you will comment. Please try to be brief and to the point so that all parties may be heard in a fair manner.

After the board hearing, the applicant will receive a letter from Staff advising what action has been taken by the Board and noting the determination made on the project. **THIS IS NOT A PERMIT**. Unless appealed, the Board's approval will result in a permit being issued after 14 days from the hearing date. If an applicant, project opponent, or any other party wishes to appeal the Board's decision, the appeal to VMRC must be commenced within ten (10) days from the date of this hearing. It is recommended that VMRC be contacted for specific appeal requirements.

Now, everyone who will testify or speak at today's hearing, please stand and raise your right hand:

**Oath:** Do you swear or affirm that the testimony you are about to give is true to the best of your knowledge? (RESPONSE)

Thank you. Please be seated.

Based on the agenda, will Staff present the first public hearing item?

# BOARD ADMINISTRATIVE PROCEDURE

(Does not require Board Approval)

## III Violations Statement (April 10, 2019) [No JPAs considered]

***If the violator does not show, request counsel/Staff issue a magistrate's warrant***

(CHAIRMAN READS THE FOLLOWING)

Before we begin the violation hearing, I would like everyone to know what we are trying to accomplish (City Code Chapter 49-5-1):

It is the policy of the Wetlands Board to “preserve and prevent the despoliation and destruction of wetlands within the city while accommodating necessary economic development in a manner consistent with wetlands preservation.” We will be guided by this policy as well as the legal standards and guidelines established by VMRC.

Our procedure is to have Staff present the specifics of the violation and make a recommendation to the Board. This may be to either order the restoration of the site or order submission of an after-the-fact (ATF) permit application (JPA).

After the recommendation, the Board will take testimony from the property owner or respondent concerning the violation, with a ten (10) minute speaking limit. We will then take testimony from other parties who wish to speak concerning the violation, with a three (3) minute limit on each. After that, the Board will deliberate and make its decision.

Following that decision, the Board will decide if civil charges should be assessed. As specified in the State Statute, the Board may, with the consent of the person in violation, assess a civil charge of no more than \$10,000 for each violation. I wish to reinforce that a person in violation has the option to either agree or not agree to pay the civil charge. If the person in violation does not agree to pay the civil charge, the Board may seek civil penalties in the Norfolk Circuit Court in the amount not to exceed \$25,000 per day for each violation.

Prior to speaking at today's hearing, please ensure that you have signed in with Staff, this will help document the names of speakers in the hearing record. Please provide Staff with any documents, digital media, or other items you wish the Board to review or enter into the official hearing record if you have not already done so. When you come forward to speak for the record, please state your name, your business or home address as appropriate, and describe any expertise you have on the subject on which you will comment. Please try to be brief and to the point so that all parties may be heard in a fair manner.

With that explanation of our violation procedures, will everyone who will testify or speak

at today's hearing please stand and raise your right hand:

**Oath:** Do you swear or affirm that the testimony you are about to give is true to the best of your knowledge. (RESPONSE) Thank you. Please be seated.

Based on the agenda, will Staff present the first violation?

### Conduct Hearing –Take Action

(After presentation) What is Staff's recommendation – restoration order or ATF JPA?  
Are there any questions from the Board?

Will Mr./Ms./Mrs. \_\_\_\_\_ (violation) please come forward and state your name, home or business address as appropriate, and any involvement or expertise you have on the subject?

- Do you have any comments on Staff's presentation?
- Do you have a presentation or comment you would like to make about the violation?

(After presentation) Are there questions from the Board? Please be seated.

Does anyone else wish to speak on this matter? If so, please come forward and state your name, home or business address as appropriate, and any involvement or expertise you have on the subject.

(After presentation) Are there questions from the Board? Please be seated.

This ends the testimony period for this phase of the violation hearing. We will begin Board deliberations. Who would like to begin?

Now that the Board has taken action on this violation, what is Staff's recommendation on a civil charge assessment?

Staff recommends whether a civil charge is warranted based on an evaluation of the Board's civil charge policy. If a charge is warranted, Staff provides an evaluation of the degree of environmental impact and degree of non-compliance. The VMRC civil charge matrix is generally utilized to determine a civil charge amount.

Will Mr./Ms./Mrs. \_\_\_\_\_ (violation) please come forward? Do you have any comments on the Staff's recommendation?

(After presentation) Are there any questions from the Board? Please be seated.

*(The Board now has an opportunity to determine the facts of the case before determining a civil charge amount.)*

The Board will deliberate on the civil charge. Who would like to begin?

(After the Board deliberates) Is there a motion? (use sample motions below)

Will Mr./Ms./Mrs. \_\_\_\_\_ (violator) please come forward?

The Board has decided on a civil charge of \_\_\_\_\_ dollars (and the special conditions as stated in the motion). To reiterate, it is your option whether or not to pay this amount. Paying the civil charge, however, will close this case today (or upon completion of the Wetlands Class). If you decide not to pay the charge, this Board has the authority under State statute to seek civil penalties of a much greater amount in the Norfolk Circuit Court. Do you have any questions? Do you understand the special conditions as stated in the motion? If there are no (further) questions, do you agree to pay the civil charge and comply with the special conditions (if any)?

If the violator **agrees** to the charge, the Board votes to order the payment of the civil charge in the amount of \_\_\_\_\_ dollars within 30 days (or as determined by the Board). The motion should also provide that, if payment is not received within the specified time period, legal counsel is directed to seek civil penalties in Circuit Court. If the violator **doesn't agree** to the charge, Board votes on referring matter to counsel for legal action to recover charges under the civil penalties provision.

Will Staff present the next violation OR This concludes the Violation hearing(s).

# BOARD ADMINISTRATIVE PROCEDURE

(Does not require Board Approval)

## III Violations Statement (November 15, 2018) [JPAs considered]

***If the violator does not show, request counsel/Staff issue a magistrate's warrant***

(CHAIRMAN READS THE FOLLOWING) At this time the Board will consider violations. Our procedure is to have Staff present the specifics of the violation and make a recommendation to the Board. This may be to either order the restoration of the site or order submission of an after-the-fact (ATF) permit application (JPA).

After the recommendation, the Board will take testimony from the property owner or respondent concerning the violation, with a ten (10) minute speaking limit. We will then take testimony from other parties who wish to speak concerning the violation, with a three (3) minute limit on each. After that, the Board will deliberate and make its decision.

Following that decision, the Board will decide if civil charges should be assessed. As specified in the State Statute, the Board may, with the consent of the person in violation, assess a civil charge of no more than \$10,000 for each violation. I wish to reinforce that a person in violation has the option to either agree or not agree to pay the civil charge. If the person in violation does not agree to pay the civil charge, the Board may seek civil penalties in the Norfolk Circuit Court in the amount not to exceed \$25,000 per day for each violation.

With that explanation of our violation procedures, will Staff present the first violation for the Board's consideration?

### Conduct Hearing –Take Action

(After presentation) What is Staff's recommendation – restoration order or ATF JPA?  
Are there any questions from the Board?

Will Mr./Ms./Mrs. \_\_\_\_\_ (violator) please come forward and state your name, home or business address as appropriate, and any involvement or expertise you have on the subject?

- Do you have any comments on Staff's presentation?
- Do you have a presentation or comment you would like to make about the violation?

(After presentation) Are there questions from the Board? Please be seated.

Does anyone else wish to speak on this matter? If so, please come forward and state your name, home or business address as appropriate, and any involvement or expertise



you have on the subject.

(After presentation) Are there questions from the Board? Please be seated.

This ends the testimony period for this phase of the violation hearing. We will begin Board deliberations. Who would like to begin?

Now that the Board has taken action on this violation, what is Staff's recommendation on a civil charge assessment?

Staff recommends whether a civil charge is warranted based on an evaluation of the Board's civil charge policy. If a charge is warranted, Staff provides an evaluation of the degree of environmental impact and degree of non-compliance. The VMRC civil charge matrix is generally utilized to determine a civil charge amount.

Will Mr./Ms./Mrs. \_\_\_\_\_ (violator) please come forward? Do you have any comments on the Staff's recommendation?

(After presentation) Are there any questions from the Board? Please be seated.

*(The Board now has an opportunity to determine the facts of the case before determining a civil charge amount.)*

The Board will deliberate on the civil charge. Who would like to begin?

(After the Board deliberates) Is there a motion? (use sample motions below)

Will Mr./Ms./Mrs. \_\_\_\_\_ (violator) please come forward?

The Board has decided on a civil charge of \_\_\_\_\_ dollars (and the special conditions as stated in the motion). To reiterate, it is your option whether or not to pay this amount. Paying the civil charge, however, will close this case today (or upon completion of the Wetlands Class). If you decide not to pay the charge, this Board has the authority under State statute to seek civil penalties of a much greater amount in the Norfolk Circuit Court. Do you have any questions? Do you understand the special conditions as stated in the motion? If there are no (further) questions, do you agree to pay the civil charge and comply with the special conditions (if any)?

If the violator **agrees** to the charge, the Board votes to order the payment of the civil charge in the amount of \_\_\_\_\_ dollars within 30 days (or as determined by the Board). The motion should also provide that, if payment is not received within the specified time period, legal counsel is directed to seek civil penalties in Circuit Court. If the violator **doesn't agree** to the charge, Board votes on referring matter to counsel for legal action to recover charges under the civil penalties provision.

Will Staff present the next violation OR This concludes the Violation Portion of the agenda.

SAMPLE VIOLATION MOTIONS:

- 1 Motion for after-the-fact permit to be submitted by \_\_\_\_\_ (date) and subject to the special conditions recommended by Staff (if any).
  
- 2 Motion for restoration order to be completed by \_\_\_\_\_ (date) and subject to the special conditions recommended by Staff (if any).
  
- 3 Motion to assess a civil charge of \$\_\_\_\_\_ to be paid within 30 days by check made payable to The City of Norfolk Treasurer and delivered to the Environmental Services Bureau office. If not paid as specified, legal counsel is directed to seek civil penalties in Norfolk Circuit Court.
  
- 4 Motion to assess a civil charge of \$\_\_\_\_\_ with \$ \_\_\_\_\_ waived upon completion of the Wetlands class within one year from today. \$\_\_\_\_\_ to be paid within 30 days by check made payable to The City of Norfolk Treasurer and delivered to the Environmental Services Bureau office. If not paid as specified, legal counsel is directed to seek civil penalties in Norfolk Circuit Court.

# EXECUTIVE SESSION GUIDE (December 15, 2018)

## 1 When to Convene an Executive Session:

When the chairman or members of the board have questions or matters involving actual or probable litigation, or require the provision of legal advice by counsel.

## 2 How to Convene an Executive Session:

A The chairman shall state: “Is there a Motion for closed session to confer with legal counsel concerning actual or probable litigation as provided for by Virginia Statute § 2.2-3711 A.7 (with Staff present – if appropriate).

(Example only—see VA § 2.2-3711 for list of authorized closed meetings)

A recorded vote shall be taken and recorded in the meeting minutes.

board member							
Aye							
Nay							

“This Board is now in closed session” (Gavel). The board then should proceed to a separate closed room to discuss legal matters and receive the advice of counsel.

- B Informal notes may be taken during the executive session. Staff will attend if motion so states. At the conclusion of the executive session, the board will return to the designated regular meeting room.
- C (Gavel) The chairman shall state “This Board is reconvened in open session. By a recorded roll call vote, we certify that to the best of each member's knowledge that:
- 1) Only public business matters lawfully exempted from open meeting requirements as stated in the motion to convene in closed session AND
  - 2) Only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body.” VA Statute § 2.2-3712 D

board member							
Aye							
Nay							

The public hearing resumes at the point of the closed session’s beginning.

# BOARD ADMINISTRATIVE PROCEDURE

(Does not require Board Approval)

## INFORMAL SESSION OPENING STATEMENT (October 10, 2018)

### I OPENING: (CHAIRMAN READS THE FOLLOWING)

A (Gavel) The Norfolk Wetlands Board Informal Session is now in session.  
**Please turn off or silence any communications device at this time.**

#### B Agenda Review

(Such as: add late agenda item(s); reorder agenda items; amended agenda items; postponement of agenda items)

Before we begin, the Board is here to discuss issue(s) that is/are reflected on the agenda. There will be no decisions and no public comment period. A Staff record of the meeting will be kept.

### II OLD BUSINESS:

Based on the agenda, will Staff or presenter present the first item?

### III NEW BUSINESS:

Based on the agenda, will Staff or presenter present the first item?

### IV ADJOURNMENT:

(There is no voting, therefore chairman declares when the meeting is adjourned)

(Gavel) This session is adjourned.

# VIMS STAFF ASSISTANCE

April 10, 2017

Dear Wetlands Board Members and Staff:

The Virginia Institute of Marine Science's commitment to providing scientific guidance for protecting and managing wetlands is reflected in our long history of engagement with shoreline management programs in the Commonwealth, preceding even the Tidal Wetlands Act. That engagement has included the development of a robust set of educational and guidance materials, board training programs, annual workshops, and comments on specific projects via the permit application review process. Historically, it also involved site visits to virtually all project sites followed by project-specific comments.

As budgetary and personnel constraints reduced our capacity over the past dozen or so years to make on-site visits to every proposed shoreline project, we worked to improve upon those guidance materials and to make them widely available. The combination of these guidance materials and training programs, along with the knowledge of the professional staff at the state and local levels that are involved in shoreline management, served as a foundation evaluating most projects. Yet, as many of you have expressed to us over the last several years, there remains a need for select and direct interaction by VIMS scientists on proposed projects and issues that have unique, innovative, highly technical, or controversial elements. In response to this need, over the past year the VIMS Office of Research & Advisory Services, under my direction, has relied on the expertise of the Habitat Management Engineers at VMRC to bring to our attention those projects that would benefit greatly from site-specific technical reviews. Within the limits of our resources, we have accommodated those requests by joining them on a site visit and incorporating comments from appropriate specialists at VIMS in our technical reviews.

The feedback that I have received from VMRC and Wetlands Board staff related to these efforts to date has been positive, but I write to you at this time to ask for your cooperation in the expansion of this approach to best meet your needs. I will begin that dialogue by stating that your board or your staff are welcome to work through my office, directly or in conjunction with VMRC Habitat Management staff, to obtain VIMS comments on specific projects that require additional considerations beyond the above-referenced guidance. Bearing in mind our resource limitations, I hope that you will choose to do so in those cases where our involvement can make a substantive difference. I strongly encourage using the educational and guidance materials provided on the VIMS website under the Center for Coastal Resource Management and Shoreline Studies programs and suggest that you should feel free to contact the appropriate staff for assistance in utilizing any of these resources.

We remain committed to providing science-based advice that aids in the protection of the Commonwealth's valuable wetlands by promoting the preservation, wise use, and enhancement of natural systems such as marshes, beaches, and dunes whenever appropriate for shoreline erosion protection and development. Having served on the Accomack County Wetlands Board myself for 10 years, I have a great appreciation for role that you play in weighing the public and private benefits and detriments of each project that comes before you. I also recognize the limitations of trying implement changes to projects during the public hearing phase of the process. Therefore, I request your assistance in helping to identify those projects where active involvement by VIMS staff as early as possible in the review process might lead to a more positive outcome for both the property owner and the marine environment. I welcome the opportunity to work with each of you to determine how VIMS can best help you achieve our shared goals.

Request for VIMS involvement with a project can be made through the Office of Research & Advisory Service through the contact information below or via the VMRC Habitat Management staff. We will do our best within the limits of personnel and resources to meet your needs.

Again, thank you for your service to the Commonwealth and its natural resources. I know I speak for all at VIMS with wetlands and shoreline management expertise in saying that we look forward to working more closely with you.

Sincerely,



Mark W. Luckenbach  
Associate Dean for Research and Advisory Services  
Professor of Marine Science

Office of Research & Advisory Service

General email: [advisory@vims.edu](mailto:advisory@vims.edu)

Emily Hein, Assistant to the Assoc. Dean, 804-684-7482 [eahein@vims.edu](mailto:eahein@vims.edu)

Lyle Varnell, Associate Director for Advisory Service, 804-684-7764

Mark Luckenbach, 804-684-7108, [luck@vims.edu](mailto:luck@vims.edu)

Cc:

Pamela Mason, VIMS

Scott Hardaway, VIMS

Tony Watkinson, VMRC

# BOARD ADMINISTRATIVE PROCEDURE

(Does not require Board Approval)

## OFFICER ELECTION GUIDE (April 10, 2019)

When the floor is opened for nominations the nominator does not need to be recognized. A 2<sup>nd</sup> is not required but is acceptable as showing support for the nominee. Once the nominations are closed, we will vote for the nominees in order of nomination – please raise your hand when you vote to ensure the tally is accurate. You can only vote once.

Are there any questions? If not, the Floor is open for nominations for Chairman:

---

If there are no further nominations the nominations are closed.

Those in favor of \_\_\_\_\_ please signify by saying aye and raising your hand

Those in favor of \_\_\_\_\_ please signify by saying aye and raising your hand

Ms./Mrs./Mr. \_\_\_\_\_ is elected as chairman

The Floor is open for nominations for Vice-Chairman

---

If there are no further nominations the nominations are closed.

Those in favor of \_\_\_\_\_ please signify by saying aye and raising your hand

Those in favor of \_\_\_\_\_ please signify by saying aye and raising your hand

Ms./Mrs./Mr. \_\_\_\_\_ is elected as Vice-Chairman

This concludes the elections.

# BOARD POLICIES

## TAB

- 1 BOARD
  - A On-Site Meetings
  - B Officer Term of Office
  - C Use of Alternate Members
  - D Amend Board Policy
  
- 2 MITIGATION
  - A Impacted Vegetated Wetlands Rate
  - B Impacted Non-Vegetated Wetlands Rate
  - C Dredging Rate
  
- 3 APPLICATIONS
  - A Completeness
  - B 60-Day Decision Deferral
  - C Dredging
  
- 4 PERMITS
  - A Extensions
  - B Transfers
  - C Dredging
  
- 5 OTHER
  - A Wetlands Violation Procedures



# BOARD

## A ON-SITE MEETINGS:

- 1) When Board members are contacted by a property owner, their contractor, agent, or any other person(s) representing the property owner, Board members shall request that Staff be contacted in order to schedule a mutually convenient time for all interested parties to meet on site to discuss the project.
- 2) When three (3) or more Board members in their capacity as Board members will be present at an on-site meeting (or other meeting site), a notice of such meeting shall be prepared indicating the date, time, and place of said meeting. The notice shall be published at least once a week for the two (2) weeks prior to such hearing in a newspaper having a general circulation in the city and also given to the City Clerk. If possible, the notice shall also be posted on the Department of Planning's web page. The notice of the meeting shall be posted not less than three (3) days prior to the meeting.
- 3) If requested, Staff shall arrange for a City vehicle for those Board members who would like to attend an on-site meeting.
- 4) Generally, on-site meetings will be arranged for controversial sites and those sites for which Staff is recommending a denial of a permit application. Other meetings may be scheduled if a property owner or Board member so desires.
- 5) An informal inspection of the property by less than three (3) individual Board members at a time is appropriate and legal.

Adopted: Not recorded  
Amended: January 12, 2000  
Amended: April 10, 2019

## B OFFICER TERM OF OFFICE:

Officer terms are March 1<sup>st</sup> of each year to the end of February of the following year.

Adopted: May 10, 2017

## **C USE OF ALTERNATE MEMBERS:**

In addition to the minimum standards in City Code Section 49, it shall be the policy of the Board to implement the following procedures:

- 1) Orientation: Staff shall obtain and provide a link to a digital copy of the Virginia Wetlands Management Handbook to each new board member. Staff will also provide alternate members with a packet of information including local Wetlands Ordinances and Board policies and procedures.
- 2) Notification: Staff shall print and distribute a list of Board hearing dates. Not later than Friday prior to the hearing, the chairman or his/her designee shall poll the Board members to determine attendance availability. Not later than the Monday before the hearing, the chairman or his/her designee shall select and notify an alternate member(s) to take the place of regular Board members planning to be absent. At the hearing, the chairman or his/her designee may select additional alternate members to serve should unplanned board vacancies arise. The chairman shall alternate the use of Board alternates when more than one alternate exists. Serving alternate member(s) shall sit at the dais, vote on all matters before the Board during their service, and participate in closed sessions.
- 3) Attendance: It shall be the policy of the Board to encourage regular attendance by alternate members regardless of the need for their service. This will provide valuable information that will assist alternate members in future decision-making and facilitate decision consistency. Non-serving alternate members shall have the option to sit at the dais along with other Board members and participate in discussions of matters before the Board, but shall not participate in any closed session held by the Board, and shall not vote. The chairman shall note the attendance of participating members in the hearing record and, periodically, Staff will report attendance information to the chairman.

Adopted: February 9, 2005  
Amended: November 14, 2018  
Amended: April 10, 2019

## **D AMEND BOARD POLICY:**

In accordance with Virginia Code § 28.2-1304 and City Code Section 49-5, the Norfolk Wetlands Board may make, alter, and rescind rules and forms, provided they are consistent with state law and local ordinances. The following requirements and

restrictions apply to any proposal to adopt a new rule or to amend or rescind an existing rule:

- 1) No change shall be made to the policies of the Board without the affirmative vote of at least five (5) members.
- 2) No change in the policies shall be made unless notice is given at the meeting preceding the meeting at which the change is to be voted on, or unless such notification shall have been given in writing to each member of the Board at least 14 days in advance of the meeting at which the change is to be voted on.
- 3) Those policies and procedures established by the Code of Virginia or by the Code of the City of Norfolk cannot be modified by the Board.

Adopted: November 14, 2018

Amended: April 10, 2019

# MITIGATION

## A IMPACTED VEGETATED WETLANDS:

Mitigation for impacted vegetated wetlands is required by State Law. The in-lieu rate will not be less than the rate established by the closest mitigation bank. The rate will be \$22.00 pre square foot effective March 13, 2019.

Adopted: Not recorded  
Amended: March 13, 2019

## B IMPACTED NON-VEGETATED WETLANDS:

Mitigation of non-vegetated wetlands other than dredging projects is on a case-by-case basis. The in-lieu rate will be one half of the Board's vegetated wetlands mitigation rate.

Adopted: March 12, 2014  
Amended: April 10, 2019

## C DREDGING IMPACTED NON-VEGETATED WETLANDS:

Mitigation for dredging impacts is established at \$5.50 per square foot.

Adopted: July 12, 2017  
Amended: April 10, 2019

## D MITIGATION RATE REVIEW:

All mitigation rates will be reviewed yearly in March and be effective July 1<sup>st</sup> or as otherwise required by the Board and be effective 90 days from date of adoption.

Adopted: April 10, 2019

# APPLICATIONS

## A APPLICATION COMPLETENESS:

### 1) Policy:

For projects reviewed by the Board at a previous hearing and deemed incomplete, OR deferred to allow the applicant to resolve outstanding issues with Staff. Applicants must submit revised plans no later than 20 days prior to the hearing date at which their project will be reconsidered.

### 2) Operation:

In all cases, Staff will work with applicants in a timely fashion so that any necessary revisions can be made quickly. However, the burden is upon applicants to coordinate any meetings and submit revised plans to the Board, VIMS, VMRC, and the USACOE staff within the appropriate timeframe. If applications are deferred, applicants will be asked to waive their rights to a timely decision. Once revisions are submitted, Staff will notify the applicant(s) and/or their agent(s) of the hearing at which their project will be heard.

Adopted: April 13, 1994  
Amended: February 9, 2005  
Amended: April 10, 2019

## B DECISION DEFERRAL:

### 1) Policy:

Staff will offer applicants the option to request a 60-day deferral of the Board's decision to facilitate additional review of VIMS and Staff analysis of project impacts and consistency with guidelines for project approval.

To request the deferral, applicants will be required to complete and sign the following statement:

I, \_\_\_\_\_ [print full name] would like to defer consideration of my project for 60 days from the deadline for submission of completed applications and hereby waive my rights to a timely decision on my

application, signed

\_\_\_\_\_ [sign name], \_\_\_\_\_ [date]

The proposed language would be provided to all applicants who received permit applications from the City's Environmental Services Bureau. For applications downloaded from the USACOE website or obtained from other sources, the form would be provided to applicants following application receipt by Staff.

Adopted: December 14, 2005

Amended: April 10, 2019

## C DREDGING:

- 1) All dredging permit applications shall be prepared and certified by a professional engineer or surveyor licensed by the Commonwealth of Virginia.
- 2) Should an individual applicant wish to withdraw from an approved group dredging permit, that modification can be approved administratively by Staff. Should that individual later desire to dredge a new wetlands permit application shall be required.
- 3) Any changes to approved dredging permits including minimizing basins resulting in change of wetlands impact must be resubmitted as a revision to the approved dredging permit.

Adopted: March 14, 2018

Amended: April 10, 2019

# PERMITS

## A EXTENSIONS:

- 1) Permits issued by the Board shall be valid for three (3) years. The Board, in its discretion, may issue a permit extension for one (1) additional three (3) year period. In no case shall a permit be extended for more than six (6) years from the original date of permit issuance.
- 2) The Board may entertain a request for a permit extension provided that the permittee or agent submits a written request prior to the permit expiration date, or within a 30-day grace period following the expiration date. Requests that are received after the grace period has elapsed will not be considered for an extension; however, the permittee is free to submit a new application for the project.
- 3) Staff shall review the extension request and determine whether the wetlands characteristics or jurisdiction have changed materially since the original permit was issued. The Board shall consider having the permittee submit a new application if the resource characteristics or jurisdiction have significantly changed.

Adopted: April 12, 2000  
Amended: April 10, 2019

## B TRANSFERS:

### 1) Policy:

Under the provisions of City Code Section 49-5, the Board authorizes the Board Chairman's designee and/or Staff to independently process wetlands permit transfers.

### 2) Operation:

Staff shall review each application for wetlands transfer to ensure that the original permit has not expired. If still active, a letter will be sent to the new owner indicating the permit transfer and advising them of any permit conditions. Notification of the transferred wetlands permit shall not obviate the need for the new owner to obtain building permits or any other necessary authorization prior to

commencement or continuation of regulated activities.

Adopted: November 13, 2002

Amended: April 10, 2019

## C DREDGING:

- 1) Should an individual applicant wish to withdraw from an approved group dredging permit, that modification can be approved administratively by Staff. Should that individual later desire to dredge a new wetlands permit application shall be required.
- 2) Any changes to approved dredging permits including minimizing basins resulting in change of wetlands impact must be resubmitted as a revision to the approved dredging permit.

Adopted: March 14, 2018

Amended: April 10, 2019



# OTHER

## A WETLANDS VIOLATION PROCEDURES

### 1) Public Hearing:

- a) Staff presentation of violation.
- b) Provide Staff recommendation based on a review of the State Guidelines and/or consultation with the Board's technical advisor and legal counsel.
- c) Board Action:
  - (1) Submission of an after-the-fact permit application.
  - (2) Restoration order with time period for compliance.
  - (3) Civil charges.

### 2) After-the-Fact Applications:

Follow prescribed notice and public hearing procedures.

### 3) Restoration Orders:

- a) Restoration order as approved by the Board is prepared and issued by the Board Chairman Designee (sent regular mail & certified-return receipt).
- b) Site inspections by Staff (following notice procedures), as required.
- c) Non-compliance may result in appropriate legal action by the Board's legal counsel.

### 4) Civil Charges:

As specified in Sections 28.2-1320 of the Code of Virginia, the Board may order, with the consent of the person in violation, a one-time payment of civil charges for each violation not to exceed \$10,000. Civil charges shall be in lieu of any appropriate civil penalty, which could be imposed by the Circuit Court. Civil charges may be in addition to the cost of any restoration ordered by the Board.

- a) The policy of the Board is to consider the assessment of a civil charge for wetlands violations which meet one of the following criteria:
  - (1) As determined by the Board, the violation was knowingly or intentionally committed. Factors to consider include, but are not limited to, evidence of prior consultation or site meetings with Staff, testimony or evidence

presented at the violation hearing, issuance of prior wetlands permit. Failure to comply with the conditions of an authorized wetlands shall constitute a knowing violation.

- (2) The violator has been served notice to appear before the Board on prior violation(s). In all cases, inclusion in this category shall constitute a knowing violation under criteria 4) a (1) above.
  - (3) Significant and/or irreparable damage has occurred to the wetlands as a result of the subject violation.
- b) There is a presumption by the Board that all persons engaged in the business of constructing shoreline defense structures or conducting land disturbing activities are aware of permitting requirements. Therefore, the Board will consider the assessment of a civil charge against such persons even though they may not have had any prior contact with Staff.
- c) The policy of the Board is to determine the civil charge amount based on the degree of environmental impact and non-compliance. The civil charge matrix within VMRC Staff report entitled, "A Review of Current Enforcement Procedures in Light of Recent Changes to Title 62.1 of the Code of Virginia", shall also be considered in determining an appropriate civil charge amount.
- Environmental impacts shall be based on supporting documentation provided within the State's guidelines, a review by Staff, and/or an evaluation by the Board's VIMS technical advisor.
- The degree of non-compliance shall be a further consideration in determining the civil charge amount. Relative degree of deviation or non-compliance refers to the extent or magnitude of a violation. Other factors to be considered include, but are not limited to, the violator's degree of good faith, willfulness, history of non-compliance, and cooperation.
- d) The above factors and specific circumstances of the violation shall govern the establishment of an appropriate civil charge. However, in order to defray a portion of the administrative costs of pursuing a violation pursuing a civil charge, it shall be the policy of the Board not to establish a charge of less than \$100.
- e) In cases of unauthorized activity or permit violation and where civil charges are recommended, Staff shall provide a recommendation on the degree of non-compliance and environmental impact. In cases where a civil charge is recommended, Staff will provide a recommended charge amount based on an evaluation of environmental impact, degree of noncompliance, and evaluation

of the VMRC civil charge matrix. The Board, at their discretion, may assess a civil charge after making an independent determination of the levels of non-compliance and environmental impact and considering the current civil charge matrix.

5) Designated Officers:

- a) Board Chairman
- b) Board Vice Chairman
- c) Board Chairman Designee – Manager, Environmental Services Bureau
- d) Enforcement Officer(s) – Environmental Engineer(s), Environmental Services Bureau

Adopted: November 12, 2003  
Amended: April 10, 2019

## REFERENCES

### TAB

- 1 Jurisdictional Boundaries
- 2 Annual Board Events
- 3 Annual FOI/COIA Guidance

### REFERENCE HYPERLINKS

Virginia Statue 2.2.3711 & 3712 Virginia Freedom of Information Act

<https://law.lis.virginia.gov/vacode/title2.2/chapter37/section2.2-3711/>

<https://law.lis.virginia.gov/vacode/title2.2/chapter37/section2.2-3712/>

Virginia Statue 28.2-1300 to 1320 - Wetlands

<https://law.justia.com/codes/virginia/2010/title-28-2/chapter-13/>

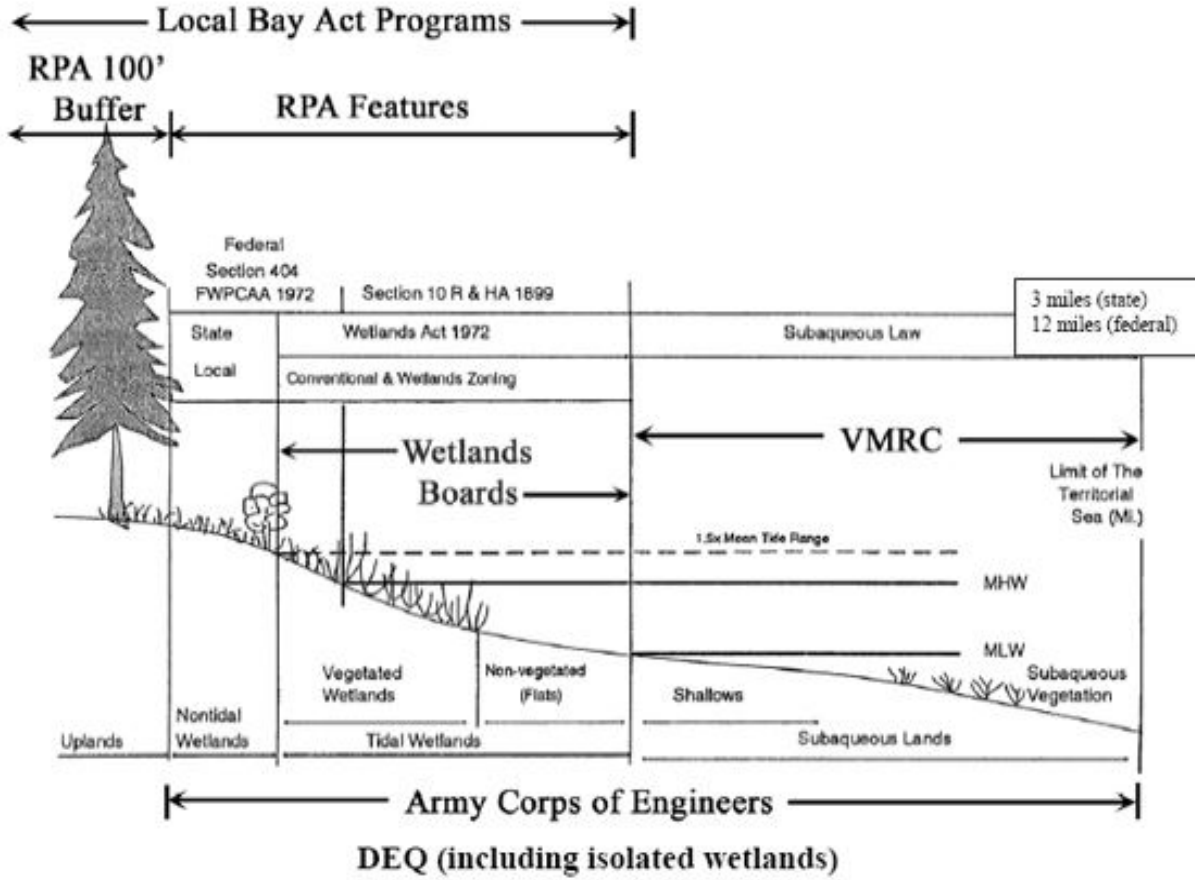
VMRC Reg 20-390-10 – Wetlands Mitigation Compensation and Supplemental Guidelines

<http://www.mrc.virginia.gov/regulations/fr390.shtm>

Norfolk City Code Section 49 – Wetlands

[https://library.municode.com/VA/Norfolk/codes/code\\_of\\_ordinances?nodeId=COCI\\_C49WECOPRSADU](https://library.municode.com/VA/Norfolk/codes/code_of_ordinances?nodeId=COCI_C49WECOPRSADU)

# JURISDICTIONAL BOUNDARIES



## Annual Board Events

January	–
February	– City Council Board Member Appointments – Annual Report – Officer elections
March	– In-lieu mitigation rates review
April	–
May	–
June	– VIMS Training (Tentative)
July	– FOIA/COI Review
August	–
September	–
October	–
November	–
December	–
TBD	– Informal Session(s)

# ANNUAL FOIA/COIA GUIDANCE

Under development