

SELF-TAUGHT EDUCATION UNIT

The Wetlands Board

By Kirk J. Havens

This unit is presented in two sections to provide the reader with an overview of the functions and operational procedures of the Wetlands Board.

Section One: The Role of the Wetlands Board

Objectives

The purpose of this self-taught unit is to familiarize the reader with the basic foundation and functions of the Wetlands Board. This entails explanations of 1) how and why the wetlands boards were formed, 2) the functions of the wetlands boards as compared to other permit-granting bodies such as the Virginia Marine Resources Commission (State) and the U.S. Army Corps of Engineers (Federal), and 3) its function as a decision-maker at the local level.

Introduction

"... horrible desert, the foul damps ascend without ceasing, corrupt the air and render it unfit for respiration... Never was rum that Cordial of Life found more necessary than in this Dirty Place" (Byrd, 1841). A gloomy description at best by Colonel William Byrd III when, in the 17th century, he surveyed the Great Dismal Swamp. This attitude persisted well into the 1900's. The general consensus was wetlands were wastelands that should be avoided, drained, or filled. In fact, some laws were enacted to encourage the drainage of wetlands. In 1849, Congress passed the Swamp Land Act which granted Louisiana control of all wetlands and overflow lands in the state for the purpose of controlling floods in the Mississippi basin. The

Swamp Land Act decreased federal involvement in flood control and drainage by transferring federally owned wetlands to the states, allowing them the opportunity to fill or "reclaim" wetlands through drainage and levee construction (Mitsch and Gosselink, 1986).

In the 1960's, views concerning wetland values changed dramatically as scientists began discovering a multitude of benefits attributed to wetlands. A growing body of scientific literature identified the values of wetlands to society. It was recognized that wetlands play key roles in lessening flood damage, reducing erosion, recharging groundwater, filtering sediment, and abating pollution. The information collected on wetland functions and values was overwhelming and the public called for their protection.

In 1972, Congress passed the Federal Water Pollution Control Act and later the 1977 amendments known as the Clean Water Act (33 U.S.C. art. 1251 et. seq.). The Commonwealth of Virginia, meanwhile, had already commissioned the Virginia Institute of Marine Science "to make a study and report on all marsh lands and wetlands in the state" (House Joint Resolution No. 69, 1968). The subjects of the study were the ecology of wetland areas, their value to the marine environment, their value to the public and the public's re-

relationships with wetlands (Marcellus, 1972). The Wetlands Study Commission, created by House Joint Resolution No. 60, requested VIMS prepare a definition of wetlands for the Wetlands Act (1972 General Assembly).

The passage of the Virginia Wetlands Act (28.2-1300 Code of Virginia) and subsequently the Coastal Primary Sand Dune Act (28.2-1400 Code of Virginia) saw the establishment of a management system unique among state coastal resource management programs (Hershner et al., 1985). In keeping with Virginia's long standing tradition of maintaining land-use decisions in the hands of the locality, the Act vests wetland regulatory authority with local government. It establishes policies and standards for wetlands conservation, an oversight role for the Virginia Marine Resources Commission, and mandates the preparation of specific development guidelines. Localities (counties, cities, and towns) are given the option of adopting the model ordinance contained in the Act, and establishing individual wetlands boards to regulate the use or development of wetlands within their local borders. If a locality chooses not to exercise their option to adopt the model ordinance, the Virginia Marine Resources Commission assumes the permit authority on behalf of the State. Where the locality opts to form a wetlands board, it assumes original jurisdiction over the resource

and the Virginia Marine Resources Commission acts as the first level of appeal.

Wetlands and Dunes Ordinance

These ordinances give the wetlands board the authority to regulate the use and development of a municipality's wetlands, dunes, and beaches within the guidelines set forth by law.

The Wetlands Zoning Ordinance defines jurisdiction, outlines the permit process and operational procedures for the wetlands boards, and outlines permissible uses of wetlands. These permissible uses are summarized below:

1. Construction and maintenance of noncommercial structures supported by pilings.
2. Cultivation and harvesting of shellfish and bait worms.
3. Noncommercial recreational activities, provided no structures are required beyond those which are permissible under (1) above.
4. Outdoor recreational activities which do not impair the functions of, or alter the contour of, wetlands.
5. Cultivation and harvesting of agricultural, forestry or horticultural products; grazing and haying.
6. Conservation, repletion and research activities.
7. Government authorized navigation aids.
8. Emergency decrees for protection of public health.
9. Normal maintenance, repair or addition to existing wetlands crossings, provided no waterway is altered and no additional wetlands are covered.
10. Governmental activity on wetlands owned or leased by the Commonwealth.
11. Normal maintenance of drainage ditches, provided no additional wetlands are covered.

The Coastal Primary Sand Dune Zoning Ordinance defines jurisdiction, outlines the permit process and operational procedures for the wetlands boards, and outlines permissible uses of dunes and beaches. These are summarized below:

Wetlands Program
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1. Construction and maintenance of noncommercial walkways which do not alter the dune contour.
2. Construction and maintenance of observation platforms which are not an integral part of any dwelling, and which do not alter the dune contour.
3. Plantings of vegetation for the purpose of dune stabilization.
4. Placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard.
5. Sand replenishment activities, provided no sand is removed from the coastal primary sand dune.
6. Normal maintenance of erosion control structures which may abut a coastal primary sand dune.
7. Normal maintenance or repair of existing roads or railroads, provided no primary dunes are altered.
8. Recreational activities, provided the primary dune and/or its vegetation is not altered.
9. Conservation and research activities of state government agencies or institutions.
10. Construction and maintenance of governmental authorized navigation aids.
11. Activities pursuant to any emergency declaration by the governing body for the protection of public health and safety.
12. Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof.

Appointment of Board Members

Any municipality which adopts the Wetlands Zoning Ordinance must also create a wetlands board. A wetlands board can consist of either 5 or 7 members, and the members are appointed by the same governing body which adopted the Wetlands Zoning Ordinance. Except for the first board members, each member serves a five year term and members may serve successive terms.

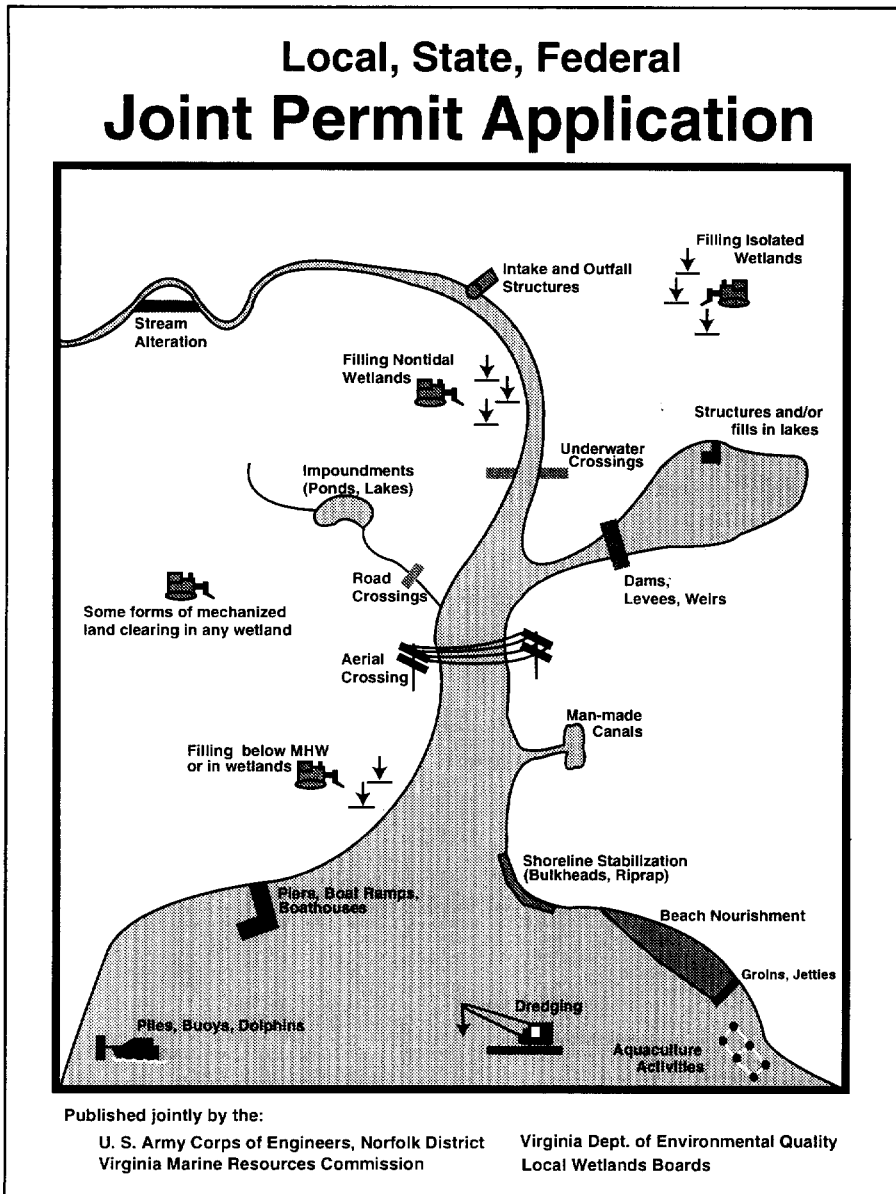
Each wetland board is required to select a chairman from among the board membership. Other officers may be elected if deemed necessary, such as a vice-chairman who serves as chairman in his/her absence. Each elected officer's term will be one year and officers may serve successive terms.

Cities or towns within counties which have adopted the Wetlands Zoning Ordinance have one calendar year from the county's adoption date to adopt the Wetlands Zoning Ordinance (if they desire to manage their wetlands resource separately). If cities or towns within the county do not elect to adopt the Wetlands Zoning Ordinance within the allotted time, the county's wetlands Board automatically retains jurisdiction of wetlands within the town's boundaries.

Permit Review

Wetlands boards are formed for the management of use of Virginia's tidal wetlands, and management is achieved through a permit process. Any activity which encroaches upon or over jurisdictional wetlands (with a few exceptions as outlined previously) requires a permit from the wetlands board, the United States Army Corps of Engineers, and in some cases the Virginia Department of Environmental Quality. A party requesting use of Virginia's jurisdictional wetlands must apply for a permit directly to the wetlands board or through the Virginia Marine Resources Commission. Application for the use of wetlands is done through the Joint Permit Application (Figure 1, page 4). This permit application package was created to streamline the permit process and is the single document needed to apply for local, state, and federal permits in regard to tidal wetlands. The Joint Permit Application is reviewed by the wetlands board, the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of Environmental Quality, the Virginia Department of Transportation, the Virginia Department of Conservation and Historic Resources, adjacent property owners and other claimants such as oyster ground leaseholders.

The United States Environmental Protection Agency, the United States Fish and Wildlife Service, and the United States Department of Commerce's National Marine Fisheries Service also review the Joint



view the application and determine whether the benefits of the proposed project outweigh the detriments, or whether the detriments outweigh the benefits. Several avenues are available to the board to help formulate a decision.

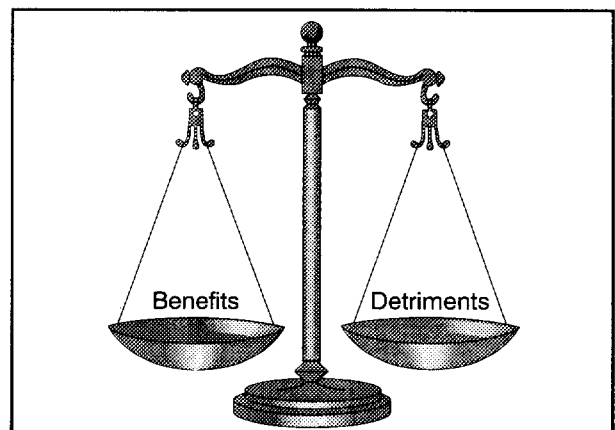
1. **The Application.** Review the application carefully. A wealth of information is included in an accurately completed application. Inaccuracies should be addressed and an uncompleted application should never be accepted for review.
2. **Site Visit.** Essentially, a picture is worth a thousand words. A site visit is a necessary step in order to accurately assess the situation.
3. **Public Comment.** Listening to comments from citizens in the area can bring forward socio-economic benefits and/or detriments that might otherwise not be noticed.

Figure 1. Local, State and Federal Joint Permit Application.

Permit Application in the role of advisors to the United States Army Corps of Engineers (Figure 2).

Decision Making

Article 9 of Chapter 1302 of 28.2 of the Code of Virginia states “In fulfilling its responsibilities under this ordinance, 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.” The wetlands boards primary role is to re-



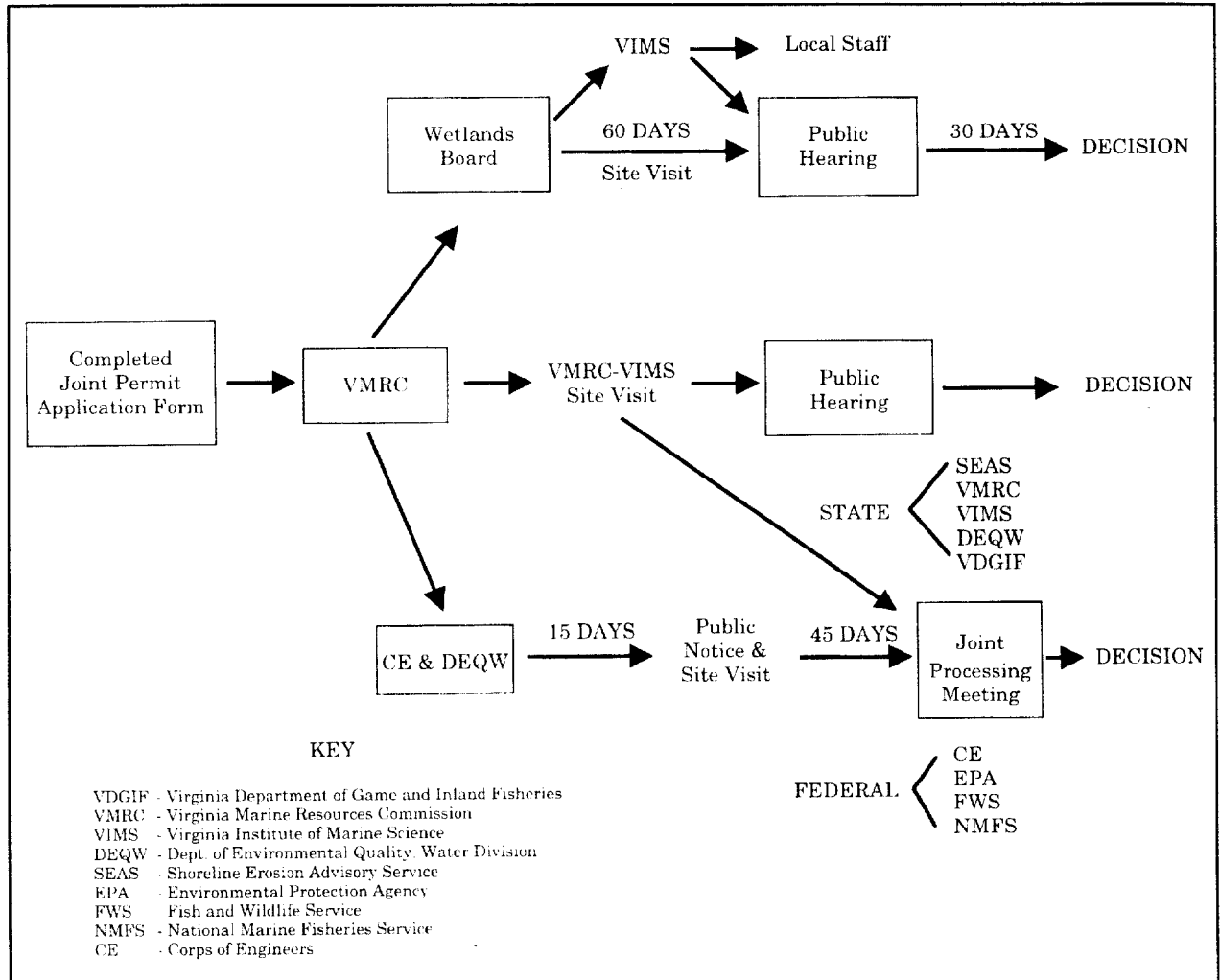


Figure 2. Virginia's Shoreline Permit Process

- Virginia Institute of Marine Science Evaluation.** The Virginia Institute of Marine Science reports on each application filed. VIMS wetlands program staff provide an accurate and unbiased evaluation of the environmental impacts of the proposed project. VIMS comments on specific impacts and potential secondary marine environmental impacts and other marine environmental concerns.
- VIMS Published Literature.** The Virginia Wetlands Report (published quarterly), a bi-monthly Technical Report Series and a bi-monthly Wetlands Flora Series are published by the VIMS Wetlands Program. These publications are intended to serve as a tool for the

education and wise management of the Commonwealth's wetland resource.

- VIMS Wetlands Staff.** VIMS Wetlands Program staff are available to answer questions concerning wetlands and their function and value.
- Local Government Service.** The Code of Virginia (28.2-1305) requires any local government that adopts the Wetlands or Sand Dune Ordinance to supply secretarial, clerical, legal, and consulting services as necessary for the board's operation.

If during the decision process it is determined by the wetlands board that the benefits outweigh the detri-

ments, then approval of the project may be in order. If the detriments outweigh the benefits, then the wetlands board has the option to deny the project, require the project be modified, or approve the project with compensatory mitigation (this should always be the last option).

Virginia Marine Resources Commission Review of Wetlands Board Decisions

The Virginia Marine Resources Commission has the authority to review wetlands board decisions and is required under 28.2-1311 Code of Virginia to review a decision if:

1. An appeal is taken to the VMRC by the applicant or municipality.
2. The Commissioner of the VMRC requests to review a decision.
3. Twenty-five or more property holders from the municipality of the proposed project petition the VMRC. Requests for review must be made within ten days of the decision by the wetlands board. The VMRC may modify, remand or reverse the wetlands board's decision if they deem necessary upon review. Judicial review may be pursued after review by the VMRC.

Section Two:

Wetlands Board Operational Procedures

Objectives

The purpose of this self-taught education unit is to provide the reader with a guide to the operation of a wetland board during a public hearing. Following completion of this study unit, the reader will be generally acquainted with:

1. Pre-meeting preparation
2. Holding meetings/hearings
3. Motions and amendments
4. Wetlands Board Modification sheet

Introduction

In order for a meeting to function properly and efficiently, it is necessary to follow procedural guidelines. Following such guidelines will allow the meeting to proceed quickly and avoid unnecessary delays or confusion. A large part of the following study unit is taken from *Robert's Rules of Order*, but it should be kept in mind that for a wetlands board that has specific concerns or questions, the best course of action is to contact the respective county or city attorney as allowed under 28.2-1305 Code of Virginia.

Pre-Meeting Preparation

Prior to the meeting or hearing, the wetlands board members and staff should review basic materials such as the Virginia State Wetlands Act (Section 28.2-1300), Coastal Primary Sand Dune Protection Act (Section 28.2-1400), the Virginia Marine Resources Commission guidelines, and all appropriate Virginia Institute of Marine Science (VIMS) Technical Reports found in the Virginia Wetlands Management Handbook (Table 1). The board members and staff should study all applications and the VIMS reports. If needed, questions may be raised and tentative evaluations, motions, conditions and time limits developed.

On the day of the meeting or hearing, the staff should telephone a reminder to board members and confirm the availability of the meeting chamber. A check of the meeting chamber should be conducted to set out name plates, pads and pencils, appropriate maps, state and local laws, photographs of sites and agendas for the public.

Holding Meetings/Hearings

The Chair should start the meeting by a call to order and a visual survey of attendance to confirm a **quorum**. A quorum is four members of a seven member board present or three members of a five member board present. If a quorum is not present, the board should adjourn until a quorum can be established.

After the presence of a quorum has been confirmed, the Chair should explain the purpose of the meeting. The reading of an opening statement is good practice because it gives the audience an idea of the board's mandate and reason for the meeting or hearing. A sample opening statement is as follows:

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 everyone in the room know what it is that we are trying to do. We are

Table 1. List of materials that should be reviewed prior to Wetlands Board meeting.

1. Virginia Wetlands Act (Section 28.2, Chapter 13)
2. Virginia Coastal Primary Sand Dune Protection Act (Section 28.2, Chapter 14)
3. Virginia Marine Resources Commission Guidelines (Wetlands & Sand Dunes)
4. Virginia Institute of Marine Science Technical Report Series
5. Virginia Wetlands Management Handbook

carrying out the **Policy** of the Commonwealth as stated by the legislature when it passed the wetlands act in 1972:

“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, and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation.”

We will be guided by this policy as well as by the legal standards and the Virginia Marine Resources Commission guidelines. That is the rather difficult task we will try to accomplish in this hearing.

I will now 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 will 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 podium, please state your name and address for the record. Try to be brief so that all parties can be equally 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 Virginia Marine Resources Commission within 10 days from today.

The Chair should then state where the agendas are posted for the public. After a brief moment to let the audience retrieve agendas, the Chair should call for comments, questions, or corrections on the minutes from the last meeting. After approval of the minutes, the Chair should inquire about and the board dispose of old business.

Once the old business is taken care of, the board can move onto new business which is generally the permit application hearing section. The Chair may shift the hearing order, administer oaths, limit presentations, and discussions. If a time limit is set for speakers, it should be stated before anyone in the audience speaks. You **should not** decide halfway through the hearing

that people are taking too long and impose a time limit on the remaining speakers. Everyone should be afforded the same opportunity to express their concerns.

The Chair or staff should state the case number and present a brief description of the proposed project. Following the project description, the VIMS comments should be read into the record. The Chair should then request the applicant or designated representative to come forward to the podium and state their name and mailing address with zip code and give any additional testimony or answer questions as required by the board. **It must be noted that any material submitted to the board at the public hearing must be kept by the board as part of the public record. This includes any photographs presented at the hearing.** It is good policy to state this early so that people who have aerial photos, etc., realize that they must be kept by the board as part of the public record and **will not be returned.**

After the applicant or the applicant's agent has spoken, the Chair should ask if anyone else wishes to speak on behalf of the application and, following those speakers, anyone who is opposed. Following these speakers, the Chair should ask one more time for anyone else who wishes to speak either in opposition or support of the application. The Chair should require all speakers from the public to approach the board, state their name and address and then return to the audience. The Chair should make a concerted effort to limit speakers to issues germane to the wetlands board. In addition, all public comment or questions should be directed to the board and interaction between the audience and the speaker should be strongly discouraged. Lacking any more speakers, the Chair should close the hearing to the public.

The Chair should now ask for comments from the board members, and the hearing discussion should be confined to the board members unless a board member has a specific question for a member of the audience (Table 2). The discourse of the board should reflect 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 is helpful. The Chair may ask for an evaluation and/or recommen-

Table 2. Board Discussion*

1. Chair asks for comments from Board members
2. Record should display a consideration of:
 - a. Social concerns
 - b. Economic concerns
 - c. Physical concerns
 - d. Environmental concerns
3. Chair asks for staff evaluation / recommendation
4. Chair asks if any additional comments from VIMS
5. Chair entertains motion

* A benefits vs. detriments format is recommended.

ation from the staff and for any additional comments from VIMS (if present).

Once discussion of the application is complete, the Chair can entertain a motion on the question or ask "What is your pleasure?" Motions may include the following:

- A. Approval as submitted.
- B. Approval in a modified form with stated conditions/time limits.
- C. Approval with bonding or letter of credit required (money required by the board and placed in an account to ensure compliance with permit requirements).
- 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. The applicant may request a deferral removing the 30 day limit.

When it becomes necessary to amend a motion, the Chair should always state the question distinctly, so that everyone may know exactly what is before them. The section proposed to be amended should be read, then the words to be struck out, if there are any; next,

the words to be inserted, if any; and finally, the section as it will stand if the amendment is adopted. An amendment can be amended, but an "amendment of an amendment" should not be amended (*Robert's Rules of Order section 56a*).

Once a motion is made and seconded (generally the seconding of a motion is required to prevent the introduction of a question when only one member is in favor of it), the Chair calls for a voice or roll call vote. A majority vote is required for the motion to carry.

The Chair should then inform the applicant that he or she will be notified in writing 48 hours after the decision, and that they have 10 days in which to appeal the board's decision to the Virginia Marine Resources Commission. The Chair should also inform the applicant that they need to apply for any changes to the permit including an extension of time. The Chair or staff should then fill out the Wetlands Board Modification Sheet and return it to the Virginia Marine Resources Commission.

The Wetlands Board Modification sheet is generated by the VIMS Wetlands Program database. It describes the proposed activity and has two columns listing the proposed and permitted impacts of the shoreline activity. The first column lists applicable information on the proposed project after a review of the permit application. The second column is used to record the shoreline activity and its impacts permitted by the wetlands board.

Sometimes VIMS' reports include alternatives to minimize project impacts. The inclusion of these alternatives, or any other changes by the applicant, or as required by the board often modifies the environmental impacts of the project. The modification sheet provides spaces for notation of the impacts of the project as permitted. Returning the information to VIMS allows for corrections to be made to the database. The data is then used to calculate annual permitted shoreline activities and their impacts to wetlands, dunes and subaqueous bottoms (Figures 3A & 3B, pages 10 and 11).

After the hearing items, the Chair should call for other new business, violations, comments from the board members, comments from the audience and, finally, announce the date and time of future meetings or conferences.

To Wetlands Board: Please indicate Wetland Board action on this sheet and return to VMRC.

Application Number: 95-0000

Name: Jane Doe
 Location: Westmoreland County
 Waterway: Potomac River

Please check here if this application was approved as proposed _____

Complete the form below if the application was modified:

	ACTIVITIES	
	<u>PROPOSED</u>	<u>PERMITTED</u>
Riprap (ft.)	167	167
Fill Type XV Sand/Mud Flat (ft2)	501	84
Impact Type XV Sand/Mud Flat (ft2)	1,002	167

Comments: This project involves the construction of 167 feet of riprap. 1. In the first scenario (A1), the riprap is constructed in the wetlands with a 6 foot encroachment resulting in the fill of 501 square feet of wetlands and impacting 1,002 square feet. Since riprap supplies some habitat value, only 1/2 of the structure is considered fill. 2. In the second scenario (A2), the riprap is placed at the mean high water line resulting in 84 square feet filled and 167 square feet impacted.

Certified by: _____

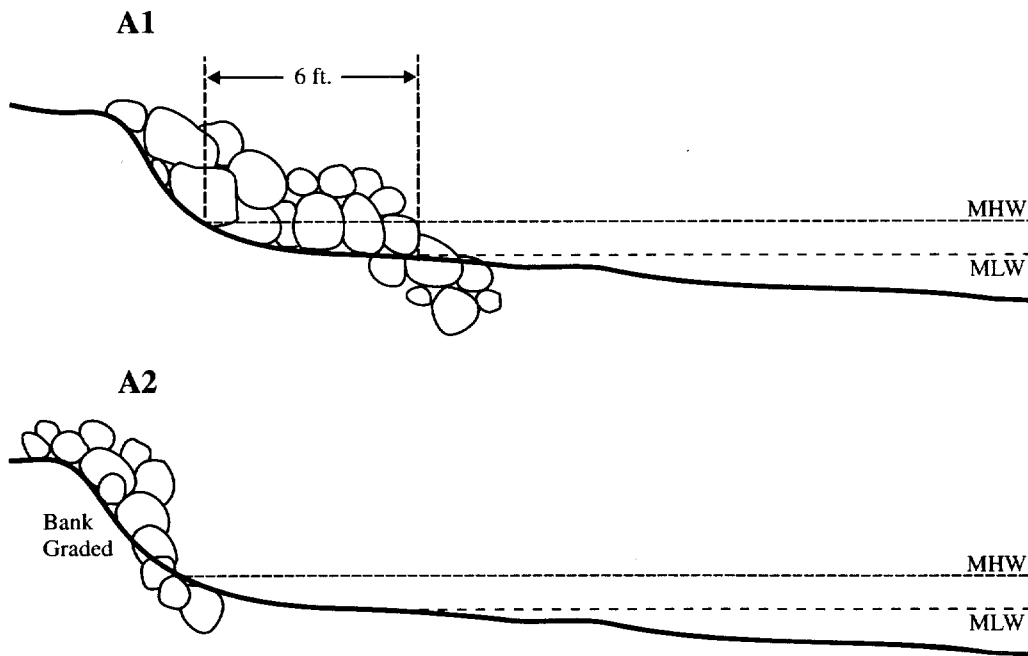


Figure 3A.

To Wetlands Board: Please indicate Wetland Board action on this sheet and return to VMRC.

Application Number: 95-0000

Name: John Doe

Location: Westmoreland County

Waterway: Currioman Bay

Please check here if this application was approved as proposed _____

Complete the form below if the application was modified:

	ACTIVITIES	
	PROPOSED	PERMITTED
Bulkhead (ft.)	167	167
Fill Type XV Sand/Mud Flat (ft ²)	1,002	167
Impact Type XV Sand/Mud Flat (ft ²)	1,002	167

Comments: This project involves the construction of 167 feet of bulkhead. 1. In the first scenario (B1), the bulkhead is built in the wetland with a 6 foot encroachment resulting in 1,002 square feet of filled (impacted) wetlands. 2. In the second scenario (B2), the bulkhead is built at the mean high water line with 167 square feet of filled (impacted) wetlands.

Certified by: _____

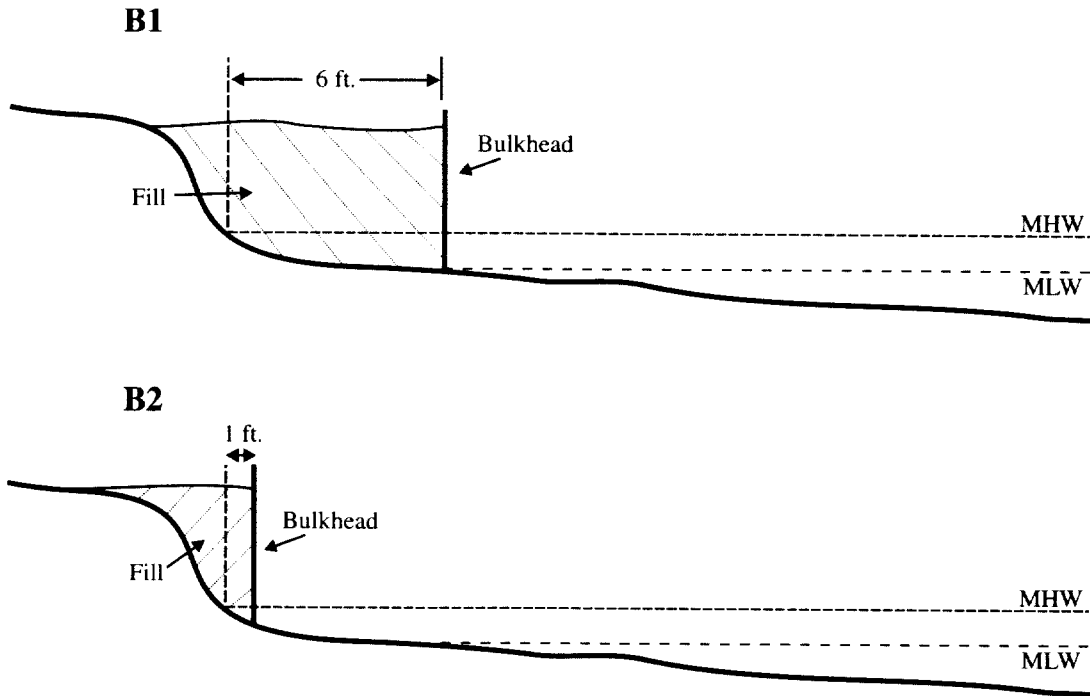


Figure 3B.

Section One:

Literature Cited

Byrd, William III (1674-1744). 1841. "Historie of the Dividing Line Betwixt Virginia and North Carolina" In: *The Westover Manuscripts*, J.C. Ruffin, Petersburg, Va., 143pp.

Hershner, C., T.A. Barnard and N.B. Theberge. 1985. Analysis of Virginia's Local Wetlands Boards. In: *Proceedings of the Fourth Symposium on Coastal and Ocean Management*. O.T. Magoon (ed), vol. 1, p. 537-543.

Marcellus, K. L. 1972. Coastal Wetlands of Virginia, Interim Report No. 2. Special Report No. 27 in *Applied Marine Science and Ocean Engineering*, Virginia Institute of Marine Science, 27pp.

Mitsch, W.J. and J.G. Gosselink. 1986. *Wetlands*. Van Nostrand Reinhold Co. 539pp.

Suggested Reading List

Code of Virginia, 28.2 1300-1500.

Mitsch, W.J. and J.G. Gosselink. 1986. *Wetlands*. Van Nostrand Reinhold Co. 539pp.

Section Two:

Glossary

Quorum- A quorum is obtained when there are 3 members of a 5 member board or 4 members of a 7 member board present.

Bond or letter of credit- Money required of an applicant by the board and placed in an account to ensure compliance with permit requirements.

Suggested Reading List

The Virginia Wetlands Act and Coastal Primary Sand Dune Act. Code of Virginia Title 28.2 Chapter 13 & 14.

The Virginia Marine Resources Commission Wetland Guidelines. Virginia Marine Resources Commission, Newport News, VA. 1993. 74pp.

The Virginia Marine Resources Commission Sand Dunes/Beaches Guidelines. Virginia Marine Resources Commission, Newport News, VA. 1993. 57pp.

Robert's Rules of Order, distr. by Outlet Book Co., Inc., Random House Co., Avenel, New Jersey. 156pp.