

York River Use Conflict Committee Report and Recommendations

September 17

2008

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Virginia Coastal Zone
MANAGEMENT PROGRAM



Appendix A Use Conflict Terminology

Use Conflict Dictionary of Terminology from “Boss of the Waterfront” and terms and concepts suggested by committee members.

1894 Baylor Survey of Public Oyster Beds

The Constitution of Virginia, Article XI, guarantees that the natural oyster beds, rocks and shoals be reserved for public use.

A massive two-year survey was conducted throughout State tidal waters to locate and map the naturally productive oyster beds, rocks, and shoals. Known as the "Baylor Survey", these areas were reserved for public shellfish harvesting and cannot be leased or used for other purposes.

The Baylor Survey is still in use, and is shown on current oyster planting ground maps.

Fall Line

28.2-101. Jurisdiction of Commission (VMRC).

The jurisdiction of the Commission shall include the Commonwealth's territorial sea and extend to the fall line of all tidal rivers and streams except in the case of state-owned bottomlands where jurisdiction extends throughout the Commonwealth. The Commission shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, marine organisms, and habitat in such areas. The Commission's jurisdiction shall also include the power to exercise regulatory authority over all structures and improvements built or proposed by riparian property owners in the Potomac River appurtenant to the shore of the Commonwealth. The Commission shall exercise such regulatory authority in the Potomac River consistent with the provisions of Subtitle III (♦ 28.2-1200 et seq.), and all regulations, guidance, and policies adopted thereunder.

9VAC25-260-5. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Chesapeake Bay and its tidal tributaries" means all tidally influenced waters of the Chesapeake Bay; western and eastern coastal embayments and tributaries; James, York, Rappahannock and Potomac Rivers and all their tidal tributaries to the end of tidal waters in each tributary (in larger rivers this is the fall line); and includes subdivisions 1, 2, 3, 4, 5, and 6 of 9VAC25-260-390, subdivisions 1, 1b, 1d, 1f and 1o of 9VAC25-260-410, subdivisions 5 and 5a of 9VAC25-260-415, subdivisions 1 and 1a of 9VAC25-260-440,

subdivisions 2, 3, 3a, 3b and 3e of 9VAC25-260-520, and subdivision 1 of 9VAC25-260-530. This definition does not include free flowing sections of these waters.

WHARF & PIER

Colloquially speaking, it's the infrastructure on pilings needed for vessel tie up, loading and off loading.

- **Pier-** Generally are perpendicular to shore
- **Wharf-** Parallel to shore, either at the head of a pier and/or along the waterfront.

RIPARIAN RIGHTS

- VMRC Riparian-(non commercial riparian shellfish growing)
- VRMC Subaqueous Guidelines (title to the riparian land)
- DGIF-Waterfowl Blind Licenses

➤ NONCOMMERCIAL RIPARIAN SHELLFISH GROWING

VIRGINIA MARINE RESOURCES COMMISSION (VMRC)

GENERAL PERMIT #3

VMRC GENERAL PERMIT FOR NONCOMMERCIAL RIPARIAN SHELLFISH GROWING (I. E. "GARDENING") ACTIVITIES WHICH CONFORM TO CERTAIN CRITERIA AND ARE UNDERTAKEN OVER OR ON STATE-OWNED SUBAQUEOUS LANDS IN TIDAL WATERS OF THE COMMONWEALTH.

4 VAC 20-336-10 AUTHORITY - EFFECTIVE DATE.

(a) This General Permit is promulgated pursuant to the authority contained in § 28.2-103 and Chapter 12 of Title 28.2 of the Code of Virginia.

(b) This General Permit conforms with current Commission policy in its establishment of general permits for projects which meet certain restrictive criteria.

(c) The effective date of this General Permit is January 1, 1998.

4 VAC 20-336-20 DEFINITIONS.

For the purposes of this general permit, riparian shellfish gardening is defined as the grow-out of native shellfish species in protective structures such as floats, bags, cages, etc. adjacent to a private, noncommercial pier or otherwise within a waterfront property owner's riparian area, exclusively for private, noncommercial purposes.

➤ VRMC SUBAQUEOUS GUIDLENES

“Forward”

"Tidewater Virginia" as defined in the Code of Virginia encompasses over 5,000 miles of shoreline. There are roughly 2,300 square miles, or approximately 1,472,000 acres, of tidally influenced submerged lands. This is an area larger than the entire State of Delaware and represents an ever-increasing custodial responsibility for State government. Additionally, it is not widely recognized that this responsibility extends to non-tidal streams throughout the Commonwealth.

In a May 3, 1982 opinion, the Attorney General advised the Commission to assume jurisdiction on non-tidal streams that were determined to be "navigable-in-fact" unless the landowner could show clear title to the riparian land acquired by grant prior to July 4, 1776. Where the stream was determined to be "non-navigable-in-fact", the Commission was advised to assume jurisdiction unless the landowner could show a grant prior to 1792 in that part of the State draining to the Atlantic Ocean, or prior to 1802 in that part of the State draining toward the Gulf of Mexico.

The question of navigability is a question of fact as to whether a stream is being, or has been historically used as a highway for trade or travel or whether it is capable of such use in its ordinary and natural condition (i.e. disregarding artificial obstructions such as dams which could be abated). The Commission assumes that all perennial streams with a drainage basin of greater than 5 square miles, or a mean annual flow greater than 5 cubic feet per second, are navigable-in-fact until evidence is presented proving non-navigability.

➤ DGIF-Waterfowl Blind Licenses:

All applications for blind licenses shall be made to the local license agent or clerk of the circuit court of the county or city in which or nearest which the blind site is located. In the case of floating blinds, which may be used at various locations, this is not considered to be applicable. The license plate furnished must be affixed to the blind at a location where it can be easily seen.

When Blind Licenses Sold:

- Stationary blind license for riparian owner: July 1-August 31
- Stationary blind license for nonriparian owner: July 1-September 30
- Floating blind licenses: on or after July 1
- Offshore Blind Stake Site license for nonriparian owner who has not already licensed and erected a stationary blind (see Nonriparian Owner): November 1-10
- Offshore Blind Stake Site license for riparian owner who has already licensed and erected a stationary blind (see Riparian Owner): November 11-15

Spacing of Blinds Generally:

Except for adjacent landowners, blinds may be placed no closer than 500 yards to each other, except they may be placed closer together with the mutual consent of the licensees involved. Except for county exceptions, listed on page 13 and 14, floating blinds may be positioned no closer than 500 yards to any other licensed blind, whether it is occupied or not, without consent of the owner of the neighboring blind. Stationary blinds cannot be located in any water having a depth of more than eight feet at mean high water.

Rights of Riparian Landowner:

The owners of riparian rights or their invitees shall not be required to obtain a stationary blind license when hunting waterfowl from such a blind located on the riparian owner's property. However, a stationary blind license shall be required in order to afford the riparian owners the protections provided by Virginia law. The owner of riparian rights, his lessee or permittee has exclusive privileges of licensing blinds on his shoreline and prior rights of licensing and erecting blinds in the public waters in front of such shoreline. These blinds shall not be located in water deeper than eight feet at mean high tide, nor shall they be further than halfway across the body of water from the riparian owner's shoreline. The exercise of these prior rights is valid when a license has been obtained and displayed on a stake or blind by August 31. No other blind may be located within 500 yards of this stake or blind without consent of the owner, permittee, or lessee. The stake must be replaced by an erected stationary blind as specified by Code by November 1 to be a licensed blind under the law. The owner's rights extend out from his shoreline to the point where the water reaches eight feet in depth at mean high tide. Where the lands of two property owners adjoin, each may place blinds on his property or in the public waters in front of his property without regard to the placement of blinds on his neighbor's property.

Rights of Nonriparian Owner:

Although the law states that a riparian owner who does not license a blind on his shore by August 31 forfeits the privilege for that season, it does not mean a nonriparian owner can erect or license a blind on the property of another without permission. It does mean that a riparian owner cannot erect a blind on his shore after August 31 that would deny someone else from having a blind in the public waters within 500 yards of the shore unless he has previously staked and licensed a blind in that location. If a landowner has not licensed a stake or a blind by August 31, a nonriparian owner may license a location in the public waters in front of such land, providing no other location within 500 yards has been so licensed. Again, such blind cannot be located in water in excess of eight feet in depth at mean high tide. Inasmuch as a nonriparian owner can purchase a license until September 30 and considering that he has 10 days to place the license, this privilege is valid through October 10 of each year. In other words, nonriparian owners have from September 1 until October 10 to claim unclaimed locations. Of course, if a location is secured through agreement with a riparian landowner having control of the near shoreline, the site may be licensed as applies to a permittee or lessee of a landowner. A nonriparian owner, having licensed a blind in a given location, has first option to license such blind each year unless the riparian landowner having claim to that location exercises his right to license it.

Riparian Owner's Rights Renewed Annually:

If a riparian owner fails to exercise his options, he may elect to do so the following year, thus preempting any rights of nonriparian owners who have erected blinds in the public waters in front of his shoreline.

Penalty for Violations

Any person who hunts or shoots migratory waterfowl in the public waters of this Commonwealth from a boat, float, raft or other buoyant craft or device within 500 yards of any legally licensed erected stationary blind of another without the consent of the licensee shall be guilty of a criminal offense that is punishable as a Class 2 misdemeanor. This provision shall not apply to any person when in active pursuit of a visible crippled waterfowl which was legally shot by the person. Additionally, any person who erects a stationary blind within 500 yards of another licensed blind without permission of the licensee is guilty of a trespass, and the owner of the blind so encroached upon may maintain an action for damages. It should be noted that this is a civil action, not a criminal offense. It should also be noted that by November 1 a stationary blind must be erected; therefore, a stake with a stationary license affixed thereto cannot be considered to be a stationary blind after November 1.

CHATTEL & VESTED INTEREST

- "Chattel"- article of movable personal property
- "vested interest"- A **vested interest** is the state or condition of having a special

interest in protecting or supporting something for the purpose of self-interest, gain or benefit, often financially or politically.

§ 28.2-618. Commonwealth guarantees rights of renter subject to right of fishing.

The Commonwealth shall guarantee to any person who has complied with ground assignment requirements the absolute right to continue to use and occupy the ground for the term of the lease, subject to:

1. Section 28.2-613;
2. Riparian rights;
3. The right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and
4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. **However, a fishing stand location assigned prior to the lease of the oyster ground is a vested interest, a chattel real, and an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing law**

Fishing (28.2-100) See Definition

"Fishing", "fisheries" or "to fish" means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

CLASS 4 MISDEMEANORS

COV 18.2-11. Misdemeanors

The authorized punishments for conviction of a misdemeanor are:

1. For Class 1 misdemeanors, confinement in jail for up to twelve months and a fine of up to \$2,500, either or both.
2. For Class 2 misdemeanors, confinement in jail for up to six months and a fine of up to \$1,000, either or both.
3. For Class 3 misdemeanors, maximum fine of \$500.
4. For Class 4 misdemeanors, maximum fine of \$250.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION
2600 WASHINGTON AVE., 3RD FLOOR
NEWPORT NEWS, VA 23607**

APPLICATION FOR OYSTER PLANTING GROUND

Name: _____

Address: _____
Street or P.O. Box City State Zip

Telephone: _____ Work Home SSN(Tax ID): _____

Name of responsible party if more than one applicant or contact person for corporations or companies:

I/We, a resident of The Commonwealth of Virginia, hereby apply for oyster ground pursuant to Virginia law.

Said ground is in the waters of _____, near _____
and estimated to contain _____ acres, and situated in District No. _____ in the City/County
of _____ and described and bounded as follows:

North by: _____

East by: _____

South by: _____

West by: _____

I submit herewith my non-refundable fee of \$25.00. I agree to promptly pay the newspaper, for the required advertising. I also agree to promptly pay all charges for surveying, mapping, assigning, and recording as specified in the Code of Virginia, Title 28.2. I agree to comply with all legal requirements pursuant to oyster ground leasing. I understand that this application will be given priority in the order that it is received by the Virginia Marine Resources Commission, Engineering/Surveying Department.

Do you presently lease oyster ground in this name? yes____ no____ Billing number is

Signature of Applicant(s)(All applicants must sign)

Date

Note: A use plan is required for all regular oyster ground applications. If the attached Oyster Ground Application Use Plan is not completed and included with this application, processing beyond initial acceptance will cease until a plan is provided.

FOR OFFICE USE ONLY

VMRC App. No: _____ Billing No: _____ Lease No: _____ Map No: _____

Area VMRC Surveyor: _____ Assigned Surveyor: _____

Chief, Engineering/Surveying

Date

Law Enforcement Supervisor

INSTRUCTIONS

Leaseapp. 6-1-2006

Return the completed Application for Oyster Planting Ground with the \$25.00 non-refundable fee to:

Virginia Marine Resources Commission (VMRC)
Attn: Engineering/Surveying Department
2600 Washington Ave., 3rd Floor
Newport News, VA 23607

Money orders or checks are accepted and payable to "Treasurer of Virginia."

THE FOLLOWING CHARGES ARE EFFECTIVE AS OF 6/1/2006

APPLICATION FEE (NON-REFUNDABLE).....\$25.00

ADVERTISING COST IN THE NEWSPAPER WILL BE BILLED TO APPLICANT DIRECTLY.....cost varies
 SURVEYING: VMRC SURVEY FOR LEASE
 ASSIGNMENT.....\$510.00
 ADDITIONAL PLAT CHARGE (if needed).....\$75.00
 RECORDING FEE FOR EACH ASSIGNMENT & PLAT.....\$12.00
 ASSIGNMENT FEE FOR EACH ASSIGNMENT & PLAT.....\$1.50
 RENTAL AMOUNT (PER ACRE/PER YEAR)(NO ANNUAL CHARGE FOR RIPARIAN LEASES).....\$1.50

Pursuant to the Code of Virginia, your application will be advertised in the local newspaper for four consecutive weeks. VMRC will submit the notice to the newspaper and they will bill you directly for the advertisement. **Contact the newspaper for charge amounts.**

If you are applying for a riparian oyster ground lease, the name must be shown exactly as on the highland deed. A plat or deed of your highland property is required to complete the survey.

Additional Information:

Code of Virginia related to Oyster Planting Ground: 28.2-600 ET. SEQ.

Applications: Description can be made from an Oyster Planting Ground composite map in an unassigned or vacant area. (Contact the Engineering/Surveying Dept. for assistance).
 Application must be advertised once a week for four weeks at applicant's expense.
 Application must be posted in vicinity, two or more places for 60 days, (VMRC responsibility).

Survey: After 60 day posting and advertising time VMRC will make the survey and prepare a plat. 30 day waiting period after plat is made is required by Code before ground can be assigned. (You may use any licensed land surveyor, but he must contact this office to insure the survey and plat meet VMRC standards). If the application is protested a public hearing will be scheduled for full Commission consideration.

For a riparian lease, it must adjoin the mean low water and be in the same name as the highland owner. The highland must border a minimum of 205 feet along the MLW, however the riparian lease may be as narrow as 105 feet and cannot contain more than one half acre (except for Northampton and Mathews Counties and the James River and its tributaries above the James River Bridge- contact the Engineering/Surveying Department concerning these areas).

Phone numbers: Chief Engineer: 757-247-2225
 Draftsman/Cartographer: 757-247-2230
 Program Support Technician: 757-247-2226

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§ 10.1-705. Definitions.

As used in this article, unless the context requires a different meaning:

"Agency of this Commonwealth" includes the government of this Commonwealth and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this Commonwealth.

"Board" means the Board of Conservation and Recreation.

"Develop" or "development" means the replenishment and restoration of existing public beaches.

"Erosion" means the process of destruction by the action of wind, water, or ice of the land bordering the tidal waters of the Commonwealth.

"Government" or "governmental" includes the government of this Commonwealth, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Locality" means a county, city or town.

"Program" means the provisions of the Public Beach Conservation and Development Act.

"Public beach" means a sandy beach located on a tidal shoreline suitable for bathing in a county, city or town and open to indefinite public use.

"Reach" means a shoreline segment wherein there is mutual interaction of the forces of erosion, sediment transport and accretion.

"United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(1980, c. 428, § 10-217; 1984, c. 750; 1985, c. 448; 1988, c. 891; 2003, cc. 79, 89.)

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§ 10.1-700. Definition.

As used in this article, the term "shore erosion" means the process of destruction by the action of water, wind, or ice of the land bordering any body of water including all rivers and the tidal waters of the Commonwealth.

(1972, c. 855, § 21-11.17; 1988, c. 891.)

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§ 10.1-2101. Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

"Board" means Chesapeake Bay Local Assistance Board.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § 10.1-2107.

"Criteria" means criteria developed by the Board pursuant to § 10.1-2107 of this chapter for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

"Secretary" means the Secretary of Natural Resources.

"State waters" means all waters, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tidewater Virginia" means the following jurisdictions:

The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

(1988, cc. 608, 891; 2005, c. 41.)

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§ 15.2-102. Definitions.

As used in this title unless such construction would be inconsistent with the context or manifest intent of the statute:

"Board of supervisors" means the governing body of a county.

"City" means any independent incorporated community which became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.

"Constitutional officer" means an officer provided for pursuant to Article VII, § 4 of the Constitution.

"Council" means the governing body of a city or town.

"Councilman" or "member of the council" means a member of the governing body of a city or town.

"County" means any existing county or such unit hereafter created.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as the context may require.

"Locality" or "local government" shall be construed to mean a county, city, or town as the context may require.

"Municipality," "incorporated communities," "municipal corporation," and words or terms of similar import shall be construed to relate only to cities and towns.

"Supervisor" means a member of the board of supervisors of a county.

"Town" means any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.

"Voter" means a qualified voter as defined in § 24.2-101.

(Code 1950, § 15-1; 1962, c. 623, § 15.1-6; 1997, c. 587.)

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§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat of subdivision" means the schematic representation of land divided or to be divided.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or

easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

(Code 1950, § 15-961.3; 1962, c. 407, § 15.1-430; 1964, c. 547; 1966, c. 344; 1975, c. 641; 1976, c. 642; 1977, c. 566; 1978, c. 320; 1987, c. 8; 1989, c. 384; 1990, c. 685; 1993, c. 770; 1995, c. 603; 1997, c. 587.)

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§ 28.2-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400.

"Initial inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission which have been filed prior to January 1, 1995, with the clerk of the circuit court and the commissioner of revenue in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay and in which the ungranted shores of the sea, marsh and meadowlands mapped therein are located.

"Inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission, mapping certain ungranted shores of the sea, marsh and meadowlands in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay.

"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated wetlands in § 28.2-1300.

"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean low water and between mean low water and mean high water.

"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea which were not conveyed by special grant or compact according to law prior to April 1, 1873, and which have not been conveyed by special grant of the General Assembly on or after that date and (ii) marsh or meadowlands which were not appropriated and remained ungranted prior to February 24, 1888, and which have not been conveyed by special grant of the General Assembly on or after that date.

"Virginia Coastal Land Management Advisory Council" or "Council" means the Virginia Coastal Land Management Advisory Council created pursuant to § 28.2-1505.

(1995, c. 850.)

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§ 28.2-1502. Ownership of ungranted shores of the sea, marsh and meadowlands.

All ungranted shores of the sea, marsh and meadowlands shall remain the property of the Commonwealth. Such ungranted marsh and meadowlands which have been used as a commons by the people of the Commonwealth shall continue as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. All ungranted shores of the sea may be used as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The Commission shall manage all ungranted shores of the sea, marsh and meadowlands as provided in Article 2 (§ 28.2-1503 et seq.) of this chapter.

(1995, c. 850.)

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§ 28.2-1300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"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 Bridge 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.

"County, city, or town" means the governing body of the county, city, or town.

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

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown 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; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), 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 edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp

(*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides, but not hurricane or tropical storm tides, and upon which is growing any of the following species: 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.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), 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*), or switch grass (*Panicum virgatum*).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303.

"Wetlands zoning ordinance" means the ordinance set forth in § 28.2-1302.

(1972, c. 711, § 62.1-13.2; 1973, c. 388; 1974, c. 297; 1975, c. 268; 1979, c. 524; 1982, c. 300; 1992, c. 836.)

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§ 28.2-800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Crustacea" means all edible species of crab, lobster and shrimp, whether raw or processed.

"Depuration" means the process that uses a controlled aquatic environment to reduce the level of bacteria or viruses in live shellfish.

"Establishment" means any vehicle, vessel, property or premises where crustacea, finfish or shellfish are transported, held, stored, processed, packed, repacked, or pasteurized in preparation for marketing.

"Finfish" means any cold-blooded, strictly aquatic, water-breathing craniate vertebrate with fins, including cyclostomes, elasmobranchs and higher-gilled aquatic vertebrates with cartilaginous or bony skeletons or any parts thereof.

"Relay" means to move shellfish for the purpose of natural purification from water which is not approved to water which is approved or conditionally approved by the State Health Commissioner.

"Shellfish" means all species within the phylum Mollusca including but not limited to oysters, clams, mussels, scallops, conchs and whelks, whether raw or processed.

(1979, c. 714, § 28.1-175.1; 1992, c. 836.)

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§ 28.2-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Crab dredge" means a device, which may have teeth on the bar, that is designed and used to catch crabs buried in the bottom.

"Crab pot" means a device made of wire or thread net used to catch crabs.

"Peeler crab", until the Commission promulgates a different definition, means a crab that has a soft shell fully developed under the hard shell, or a crab on which there is a pink or white line or rim on the edge of that part of the back fin next to the outer section of this fin.

"Peeler pot" means a wire mesh pot baited with only live adult male (jimmy) blue crabs.

(Code 1950, §§ 28-170, 28-173; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, §§ 28.1-165, 28.1-169; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603, § 28.1-165.1; 1985, c. 180; 1990, c. 154; 1992, c. 836; 1995, c. 129; 1996, c. 229.)

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§ 28.2-200. Definitions.

As used in this subtitle, unless the context requires a different meaning:

"Cultured hard-shell clams" means hard-shell clams (*Mercenaria mercenaria*) that have been spawned in a hatchery or controlled setting for the purpose of producing seed clams (juveniles), and planted on leased grounds, floating structures, or other privately controlled growing areas, and covered with netting or otherwise protected from predators until harvested.

"Haul seine" means a net made of mesh webbing which may include a pocket and a wing net, set vertically in water and pulled by hand or power to capture and confine fish by encirclement.

"James River seed area" means that area in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th Street and 60th Street in the City of Newport News.

"Mouth of the Rappahannock River" means the area beginning at Stingray Point, Middlesex County, at the United States Army Corps of Engineers survey station "Bird," an aluminum disk set in the top of a concrete monument, being located at coordinates 453,785.17 North, 2,638,116.66 East, 1927 North American Datum - Virginia South Zone; thence 12 degrees 52' 35" (grid azimuth) 20,846.73 feet to a point on the Eastern side of Windmill Point, Lancaster County, designated as Virginia Marine Resources Commission survey station "Windmill," a one and one-half inch iron pipe driven flush with the ground, being located at coordinates 474,107.68 North, 2,642,762.29 East, 1927 North American Datum - Virginia South Zone.

"Pound net" means any net having a funnel mouth, round mouth or square mouth with the head exposed above the water.

"Resident" means any person who maintains his principal place of abode in Virginia with the intent to make Virginia his domicile.

"Shoals" means subaqueous elevations covered by water less than four feet deep at mean low water.

(Code 1950, §§ 28-1, 28-46, 28-93, 28-93.1, 28-93.2, 28-112, 28-201.4; 1954, c. 38; 1958, cc. 182, 476; 1960, c. 517; 1962, c. 406, §§ 28.1-1, 28.1-51, 28.1-98, 28.1-148; 1966, c. 684; 1968, cc. 746, 747; 1972, c. 472; 1978, c. 208; 1980, c. 325; 1981, c. 52; 1986, c. 254; 1992, c. 836; 1994, c. 124; 2003, c. 604.)

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§ 28.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Fish" or "marine fish" means those finfish species which spend a major portion of their lives in marine or estuarine waters. Sunfish, crappies, and carp are not considered to be marine fish.

"Fishing", "fisheries" or "to fish" means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

"Habitat" means those state-owned bottomlands, tidal wetlands and coastal primary sand dunes which are subject to regulation under Subtitle III of this title.

"Marine organisms" means those species other than marine finfish or marine shellfish which inhabit marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine shellfish" or "shellfish" means such species of mollusca as oysters and clams, and such species of crustacea as crabs.

"Officer" means a member of the Virginia Marine Police.

"Territorial sea" means the waters within the belt, three nautical miles wide, that is adjacent to Virginia's coast and seaward of the mean low-water mark.

"Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

(Code 1950, § 28-1; 1962, c. 406, § 28.1-1; 1968, c. 746; 1972, c. 472; 1992, c. 836; 2002, c. 789.)

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§ 28.2-1400. Definitions.

A. As used in this chapter, unless the context requires a different meaning:

"Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road.

"Coastal primary sand dune" or "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 which is growing any of the following species: American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis* spp.); 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" or "dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

"Coastal primary sand dune zoning ordinance" means the ordinance set forth in § 28.2-1403.

"County, city or town" means the governing body of the county, city or town.

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

"Wetlands board" or "board" means the board created pursuant to § 28.2-1303.

B. Although separately defined in subsection A of this section, the terms "coastal primary sand dune," "dune," and "beach," when used in this chapter, shall be interchangeable.

(1980, c. 660, §§ 62.1-13.21, 62.1-13.22; 1984, c. 556; 1985, c. 589; 1987, c. 499; 1989, c. 342; 1992, c. 836; 1994, c. 112; 1998, c. 160.)

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§ 28.2-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400.

"Initial inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission which have been filed prior to January 1, 1995, with the clerk of the circuit court and the commissioner of revenue in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay and in which the ungranted shores of the sea, marsh and meadowlands mapped therein are located.

"Inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission, mapping certain ungranted shores of the sea, marsh and meadowlands in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay.

"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated wetlands in § 28.2-1300.

"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean low water and between mean low water and mean high water.

"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea which were not conveyed by special grant or compact according to law prior to April 1, 1873, and which have not been conveyed by special grant of the General Assembly on or after that date and (ii) marsh or meadowlands which were not appropriated and remained ungranted prior to February 24, 1888, and which have not been conveyed by special grant of the General Assembly on or after that date.

"Virginia Coastal Land Management Advisory Council" or "Council" means the Virginia Coastal Land Management Advisory Council created pursuant to § 28.2-1505.

(1995, c. 850.)

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§ 29.1-700. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Motorboat" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion.

"No wake" means operation of a motorboat at the slowest possible speed required to maintain steerage and headway.

"Operate" means to navigate or otherwise control the movement of a motorboat or a vessel.

"Owner" means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

"Personal watercraft" means a motorboat less than sixteen feet in length which uses an inboard motor powering a jet pump, as its primary motive power and which is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside, the vessel.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Waters of the Commonwealth" means any public waters within the territorial limits of the Commonwealth, the adjacent marginal sea and the high seas when navigated as a part of a journey or ride to or from the Virginia shore.

(Code 1960, c. 500, § 62-174.2; 1962, c. 626; 1968, c. 659, § 62.1-167; 1972, c. 412; 1987, c. 488; 1998, cc. 84, 443, 512, 514, 515, 533, 537, 563.)

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A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. Equality and rights of men.

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 2. People the source of power.

That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

Section 3. Government instituted for common benefit.

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Section 4. No exclusive emoluments or privileges; offices not to be hereditary.

That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Section 5. Separation of legislative, executive, and judicial departments; periodical elections.

That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Section 6. Free elections; consent of governed.

That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Section 7. Laws should not be suspended.

That all power of suspending laws, or the execution of laws, by any authority, without

improvement.

Neither the credit of the Commonwealth nor of any county, city, town, or regional government shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation; nor shall the Commonwealth or any such unit of government subscribe to or become interested in the stock or obligations of any company, association, or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor shall the Commonwealth assume any indebtedness of any county, city, town, or regional government, nor lend its credit to the same. This section shall not be construed to prohibit the General Assembly from establishing an authority with power to insure and guarantee loans to finance industrial development and industrial expansion and from making appropriations to such authority.

Section 11. Governmental employees retirement system.

The General Assembly shall maintain a retirement system for state employees and employees of participating political subdivisions and school divisions. The funds of the retirement system shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the members and beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the retirement system. Such trust funds shall be invested as authorized by law. Retirement system benefits shall be funded using methods which are consistent with generally accepted actuarial principles. The retirement system shall be subject to restrictions, terms, and conditions as may be prescribed by the General Assembly.

The amendment ratified November 5, 1996 and effective January 1, 1997—In the heading of the section, substituted "employees" for "employee" and deleted "fund" after "retirement system".

In the text, substituted "retirement system for state employees and employees of participating political subdivisions and school divisions" for "state employees retirement system to be administered in the best interest of the beneficiaries thereof and subject to such restrictions or conditions as may be prescribed by the General Assembly" and added the remainder of the paragraph.

ARTICLE XI**Conservation****Section 1. Natural resources and historical sites of the Commonwealth.**

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Section 2. Conservation and development of natural resources and historical sites.

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Notwithstanding the time limitations of the provisions of Article X, Section 7, of this Constitution, the Commonwealth may participate for any period of years in the cost of projects which shall

be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

Section 3. Natural oyster beds.

The natural oyster beds, rocks, and shoals in the waters of the Commonwealth shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth, subject to such regulations and restriction as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks, or shoals by surveys or otherwise.

Section 4. Right of the people to hunt, fish, and harvest game.

The people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.
The amendment ratified November 7, 2000 and effective January 1, 2001—Added a new section (4).

ARTICLE XII

Future Changes

Section 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. If at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment, it shall become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.

Section 2. Constitutional convention.

The General Assembly may, by a vote of two-thirds of the members elected to each house, call a convention to propose a general revision of, or specific amendments to, this Constitution, as the General Assembly in its call may stipulate.

The General Assembly shall provide by law for the election of delegates to such a convention, and shall also provide for the submission, in such manner as it shall prescribe and not sooner than ninety days after final adjournment of the convention, of the proposals of the convention to the voters qualified to vote in elections by the people. If a majority of those voting vote in favor of any proposal, it shall become effective on the date prescribed by the General Assembly in providing for the submission of the convention proposals to the voters.

SCHEDULE

Section 1. Effective date of revised Constitution.

This revised Constitution shall, except as is otherwise provided herein, go into effect at noon on the first day of July, nineteen hundred and seventy-one.

Section 2. Officers and elections.

Unless otherwise provided herein or by law, nothing in this revised Constitution shall affect the oath, tenure, term, status, or compensation of any person holding any public office, position, or employment in the Commonwealth, nor affect the date of filling any

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§ 10.1-2108. Local government authority.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this chapter.

(1988, cc. 608, 891.)

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§ 15.2-909. Authority to require removal, repair, etc., of wharves, piers, pilings, bulkheads, vessels or abandoned, obstructing or hazardous property.

Any locality may by ordinance provide:

1. The owners of property therein shall at such time or times as the governing body may prescribe, remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead or any other structure or vessel which might endanger the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within or adjoining such locality. If such property is deemed to be abandoned, the governing body may designate and empower an official to ascertain the lawful owner of such property and to have the owner repair, remove or secure such property;
2. The locality, through its own agents or employees, may remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead, or other structure or vessel which might endanger the public health or safety of other persons or which might constitute a hazard or obstruction to the lawful use of the waters within such locality, if the owner of such property, after reasonable notice and reasonable time to do so, has failed to remove, repair or secure such wharf, pier, piling, bulkhead or other structure or vessel;
3. In the event the locality, through its own agents or employees removes, repairs or secures any wharf, pier, piling, bulkhead or other structure or vessel after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and to the extent applicable may be collected by the locality as taxes are collected;
4. If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of any known owner, the locality, through its own agents or employees, may repair such wharf, pier, piling, bulkhead or other structure or vessel or remove such property after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located;
5. Every charge authorized by this section with which the owner of any such property has been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against the owner's real property, and such lien shall be recorded in the judgment lien docket book in the circuit court for such locality. Such lien may also be reduced to a personal judgment against the owner.

(1976, c. 449, § 15.1-11.3; 1997, cc. 548, 587.)

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§ 15.2-1724. Police and other officers may be sent beyond territorial limits.

Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2, (ii) in response to any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the execution of the provisions of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 relating to orders for temporary detention or emergency custody for mental health evaluation or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the police officers and other officers, agents and employees of any locality and the police of any state-supported institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such locality or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a locality within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the locality in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the locality in which such institution is located unless such member has met the requirements established by the Department of Criminal Justice Services as provided in subdivision 2 (i) of § 9.1-102.

In such event the acts performed for such purpose by such police officers or other officers, agents or employees and the expenditures made for such purpose by such locality or a state-supported institution of higher learning shall be deemed conclusively to be for a public and governmental purpose, and all of the immunities from liability enjoyed by a locality or a state-supported institution of higher learning when acting through its police officers or other officers, agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by it to the same extent when such locality or a state-supported institution of higher learning within the Commonwealth is so acting, under this section or under other lawful authority, beyond its territorial limits.

The police officers and other officers, agents and employees of any locality or a state-supported institution of higher learning when acting hereunder or under other lawful authority beyond the territorial limits of such locality or such state-supported institution of higher learning shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing their respective duties within the territorial limits of such locality or such state-supported institution of higher learning.

(Code 1950, § 15-552; 1962, c. 623, § 15.1-131; 1968, c. 800; 1971, Ex. Sess., c. 238; 1976, c. 457; 1977, c. 79; 1979, c. 503; 1984, c. 779; 1992, c. 566; 1993, c. 860; 1995, c. 844; 1997, c. 587.)

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§ 15.2-1725. Extending police power of localities over lands lying beyond boundaries thereof; jurisdiction of courts.

Any locality owning and operating an airport, public hospital, sanitarium, nursing home, public water supply or watershed, public park, recreational area, sewage disposal plant or system, public landing, dock, wharf or canal, public school, public utility, public buildings and other public property located beyond the limits of the locality shall have and may exercise full police power over the property, and over persons using the property, and may, by ordinance, prescribe rules for the operation and use of the property and for the conduct of all persons using the property and may, further, provide penalties for the violation of such rules contained in an ordinance; such penalties, however, shall not exceed those provided by general law for misdemeanors. However, no ordinances in conflict with an ordinance of the jurisdiction wherein the property is located shall be enacted.

Any locality which maintains or operates in whole or in part any property enumerated in this section may lawfully send its law-enforcement officers to the property owned beyond the limits of the locality for the purpose of protecting the property, keeping order therein, or otherwise enforcing the laws of the Commonwealth and ordinances of the locality owning the property as such laws and ordinances may relate to the operation and use thereof. The law-enforcement officer shall have power to make an arrest for a violation of any law or ordinance relating to the operation and use of the property. The district court in the city or town where the offense occurs shall have jurisdiction of all cases arising therein, and the district court of the county where the offense occurs shall have jurisdiction of all cases arising therein.

It shall be the duty of the attorney for the Commonwealth for the locality wherein the offense occurs to prosecute all violators of the ordinances of the locality that pertain to the operation and use of the property enumerated in this section.

(Code 1950, § 15-560.1; 1952, c. 382; 1962, c. 623, § 15.1-142; 1979, c. 333; 1997, c. 587.)

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§ 15.2-1744. Jurisdiction and authority of special police officers; evidence of their office.

The jurisdiction and authority of special police shall extend no further than the limits of the locality in which they are appointed, and a copy of the order of appointment made by the court, attested by the clerk of such court, shall in all cases be received as evidence of their official character. But the authority of special police shall extend throughout the Commonwealth when actually in pursuit of persons accused of crime and when acting under authority of a duly executed warrant for the arrest of persons accused of committing crime.

The jurisdiction and authority of special police upon order entered of record by the circuit court for the locality may be limited to a specific place or places in a locality; may limit or prohibit the carrying of weapons by special police; and shall prescribe the type of uniform, badge, insignia or identification to be worn or carried by special police to the extent that the uniform, badge, insignia or identification shall not resemble or be in facsimile of the uniform, badge, insignia or identification of the State Police or that of any sheriff, or member of a police department in the locality or an adjoining locality. Any special police officer initially appointed on or after July 1, 1996, whose order of appointment does not prohibit the carrying of weapons while within the scope of his employment as such may be required by the court to meet the minimum entry training requirements established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers within twelve months of his appointment. Such order may provide that special police shall, within the limits of their jurisdiction, have the same authority and responsibility as deputy sheriffs with regard to the service of civil and criminal process.

However, the jurisdiction and authority of special police, upon an order entered of record by the circuit court for an adjoining locality, may be extended into such adjoining locality or into such part thereof as the order may designate, provided that the special circumstances necessitating such extension of jurisdiction and authority are set forth in the order.

(Code 1950, § 15-570; 1954, c. 400; 1962, c. 623, § 15.1-152; 1964, c. 138; 1972, c. 218; 1976, c. 403; 1996, c. 850; 1997, c. 587.)

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§ 15.2-2233. Maps to be prepared in localities; what map shall show.

In localities where no official map exists, or where an existing official map is incomplete, the local planning commission may make, or cause to be made, a map showing the location of any:

1. Legally established public street, alley, walkway, waterway, and public area of the locality; and
2. Future or proposed public street, alley, walkway, waterway and public area.

No future or proposed street or street line, waterway, nor public area, shall be shown on an official map unless and until the centerline of the street, the course of the waterway, or the metes and bounds of the public area, have been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof. In addition to the centerline of each street, the map shall indicate the width of the right-of-way thereof. Local planning commissions are hereby empowered to make or cause to be made the surveys required herein.

After adoption by the governing body of an official map, the local governing body may acquire in any way permitted by law property which is or may be needed for the construction of any street, alley, walkway, waterway or public area shown on the map. When an application for a building permit is made to a locality for an area shown on the official map as a future or proposed right-of-way, the locality shall have sixty days to either grant or deny the building permit. If the permit is denied for the sole purpose of acquiring the property, the locality has 120 days from the date of denial to acquire the property, either through negotiation or by filing condemnation proceedings. If the locality has not acted within the 120 day period, the building permit shall be issued to the applicant provided all other requirements of law have been met.

(Code 1950, § 15-965; 1962, c. 407, § 15.1-458; 1976, c. 619; 1988, c. 436; 1995, c. 264; 1997, c. 587.)

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§ 15.2-2280. Zoning ordinances generally.

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
4. The excavation or mining of soil or other natural resources.

(Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.)

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1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
4. The excavation or mining of soil or other natural resources.

(Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.)

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§ 15.2-2281. Jurisdiction of localities.

For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

(Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.)

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§ 15.2-2283. Purpose of zoning ordinances.

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; and (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

(Code 1950, §§ 15-821, 15-968.3; 1962, c. 407, § 15.1-489; 1966, c. 344; 1968, c. 407; 1975, c. 641; 1976, c. 642; 1980, c. 321; 1983, c. 439; 1988, c. 439; 1989, cc. 447, 449; 1990, cc. 19, 169, 384; 1992, c. 812; 1993, cc. 758, 884; 1997, c. 587; 2004, c. 799.)

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§ 15.2-2233. Maps to be prepared in localities; what map shall show.

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1. Legally established public street, alley, walkway, waterway, and public area of the locality; and
2. Future or proposed public street, alley, walkway, waterway and public area.

No future or proposed street or street line, waterway, nor public area, shall be shown on an official map unless and until the centerline of the street, the course of the waterway, or the metes and bounds of the public area, have been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof. In addition to the centerline of each street, the map shall indicate the width of the right-of-way thereof. Local planning commissions are hereby empowered to make or cause to be made the surveys required herein.

After adoption by the governing body of an official map, the local governing body may acquire in any way permitted by law property which is or may be needed for the construction of any street, alley, walkway, waterway or public area shown on the map. When an application for a building permit is made to a locality for an area shown on the official map as a future or proposed right-of-way, the locality shall have sixty days to either grant or deny the building permit. If the permit is denied for the sole purpose of acquiring the property, the locality has 120 days from the date of denial to acquire the property, either through negotiation or by filing condemnation proceedings. If the locality has not acted within the 120 day period, the building permit shall be issued to the applicant provided all other requirements of law have been met.

(Code 1950, § 15-965; 1962, c. 407, § 15.1-458; 1976, c. 619; 1988, c. 436; 1995, c. 264; 1997, c. 587.)

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§ 15.2-2293. Airspace subject to zoning ordinances.

- A. A zoning ordinance shall be applicable to the superjacent airspace of any nonpublic-owned land area.
- B. Airspace superjacent or subjacent to any public highway, street, lane, alley or other way in this Commonwealth not required for the purpose of travel, or other public use, by the Commonwealth or other political jurisdiction owning it, shall be subject to the zoning ordinance of the locality in which the airspace is located.
- C. Airspace not provided for in subsection B herein that is superjacent to any land owned by the Commonwealth or other political jurisdiction and occupied by a nonpolitical entity or person shall be subject to the zoning ordinance that would be applicable if the land were owned by a private person.

(1979, c. 431, § 15.1-491.01; 1997, c. 587.)

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§ 15.2-3100. Commissioners to settle disputed boundary lines.

Whenever a doubt exists or dispute arises over the true boundary line between any two localities, the circuit courts for the respective localities may each appoint not fewer than three nor more than five commissioners, who shall be resident landowners of their respective localities, a majority of those appointed for each locality being necessary to act, who shall meet and proceed to ascertain and establish the true line.

(Code 1950, § 15-38; 1954, c. 536; 1962, c. 623, § 15.1-1026; 1979, c. 456; 1997, c. 587.)

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§ 15.2-3101. Survey and plats.

Commissioners appointed pursuant to § 15.2-3100, before proceeding to ascertain a boundary, shall employ a competent surveyor to run the boundary. The commissioners shall, with the best evidence which they can procure, direct the surveyor where to run the line and shall have him mark the boundary. After the boundary line has been run and marked, the commissioners shall require the surveyor to make two plats of the courses and distances of the line and to note thereon particularly such well-known places or prominent objects through or by which it passes as, in the opinion of the commissioners, will best designate the line.

(Code 1950, § 15-39; 1962, c. 623, § 15.1-1027; 1997, c. 587.)

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