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§ 15.2-3102. Report of commissioners.

The commissioners shall return such plats to the respective courts by which they were appointed, together with their report of the performance of their duties in ascertaining and establishing the line, which report shall fully describe the line. If the report meets the requirements of this article and is unanimous, the courts shall approve the report. The courts shall direct that the approved report, together with the plat, be recorded in the deed books of their respective clerks' offices and indexed in the name of each locality. The courts shall certify a copy of the report to the Secretary of the Commonwealth. In all controversies thereafter concerning the location of the line, the reports and plats shall be taken as conclusive evidence of its location.

(Code 1950, § 15-40; 1954, c. 536; 1962, c. 623, § 15.1-1028; 1970, c. 751; 1978, c. 642; 1997, c. 587.)

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§ 15.2-3104. Procedure when commissioners fail to agree.

If the commissioners fail to agree upon the location of the line, they shall so report to the circuit courts for their respective localities, stating in their reports the points and grounds of disagreement and describing fully the conflicting lines. Either locality may file a petition in the circuit court for either locality to have a court, constituted as hereinafter provided, ascertain and establish the true boundary line in doubt or dispute. Such petition shall describe, with reasonable certainty, the location contended for and shall state the grounds of such contention. A plat, showing the location contended for, filed with the petition, may serve the purposes of such description. The petitioner shall make the other locality the party defendant, and the case shall be commenced by serving a copy of the petition upon the county attorney, if any, or the attorney for the Commonwealth of such county, the city attorney of such city or the town attorney of such town. No formal plea or answer to the petition shall be necessary, but the defendant shall state its grounds of defense in writing, describing, with the same degree of certainty required of the petitioner, the line as contended for by the defendant, and the locality shall be deemed to be at issue. The issue shall be the true location of the boundary line so in doubt or dispute.

The case shall be heard and decided by a court without a jury presided over by three judges as follows: the judge of the circuit court for the petitioning locality, the judge of the circuit court for the defendant locality, and a judge of some circuit court in this Commonwealth remote from the localities, to be designated by the Chief Justice. When the localities are within the same circuit, the Chief Justice shall designate a third judge from an adjoining circuit. The court shall hear the case upon the evidence introduced in the manner in which evidence is introduced in common-law cases and shall ascertain and establish the true boundary line by a majority decision, and shall give judgment accordingly. Costs shall be awarded as the court shall determine. The judgment of the court shall be recorded in the common-law order book and in the current deed book of the court and indexed in the names of the localities, and, unless reversed, shall forever settle, determine, designate and establish the true boundary line. A copy of any final judgment shall be certified to the Secretary of the Commonwealth. An appeal may be granted by the Supreme Court, or any justice thereof, to either party from the judgment of the court, and the cost of such appeal shall be awarded to the party substantially prevailing.

(Code 1950, § 15-42; 1954, c. 536; 1962, c. 623, § 15.1-1030; 1970, c. 751; 1973, c. 544; 1978, c. 642; 1979, c. 456; 1997, c. 587.)

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§ 15.2-3105. Boundaries to embrace wharves, piers, docks and certain other structures.

The boundary of every locality bordering on the Chesapeake Bay, including its tidal tributaries (the Elizabeth River, among others), or the Atlantic Ocean shall embrace all wharves, piers, docks and other structures, except bridges and tunnels that have been or may hereafter be erected along the waterfront of such locality, and extending into the Chesapeake Bay, including its tidal tributaries (the Elizabeth River, among others), or the Atlantic Ocean. However, only the wharves, piers, docks, or other structures which lie within the territorial jurisdiction of this Commonwealth shall be embraced within the boundary of such locality.

(Code 1950, § 15-42.1; 1958, c. 280; 1962, c. 623, § 15.1-1031; 1976, c. 646; 1997, c. 587.)

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§ 15.2-3106. Establishment by agreement.

Whenever any two or more localities wish to relocate or change the boundary line between them, the governing bodies of such localities may, by agreement, establish, relocate or change such boundary line between them.

(1977, c. 277, § 15.1-1031.1; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

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§ 15.2-3107. Publication of agreed boundary line.

Before adopting an agreement pursuant to § 15.2-3106, each governing body shall advertise its intention to approve such an agreement at least once a week for two successive weeks in a newspaper having general circulation in its locality, and such notice shall include a descriptive summary of the proposed agreement. The summary shall describe the new boundary, but need not include a metes and bounds description. The publication shall include a statement that a copy of the agreement is on file in the office of the clerk of the governing body which is considering the proposed agreement. A joint publication of the proposed agreement by the localities which otherwise meets the requirements of this section shall satisfy this requirement. If joint publication is used, the publication costs shall be apportioned between the participating localities in the manner agreed upon by them. After providing the notice required by this section, each locality shall hold at least one public hearing on the agreement prior to its adoption.

(1977, c. 277, § 15.1-1031.2; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

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§ 15.2-3108. Petition and hearing; recordation of order; costs.

Within a reasonable time after a voluntary boundary agreement is adopted by the affected localities, each affected locality shall petition the circuit court for one of the affected localities to approve the boundary agreement. The petition shall set forth the facts pertaining to the desire to relocate or change the boundary line between the localities, and the petition shall include or have attached to it a plat depicting the change in the boundaries of the localities as agreed or a metes and bounds description of the new boundary line as agreed upon by the two localities. If the court finds that the procedures required by § 15.2-3107 have been complied with and that the petition is otherwise in proper order, the court shall enter an appropriate order establishing the new boundary. The order shall include a plat depicting the change in the boundaries of the locality or a metes and bounds description of the new boundary line of the locality, and that order shall be entered in the land records of the court and indexed in the names of the localities which were involved. Costs shall be awarded as the court may determine. Whenever such an order is entered, a certified copy of the order shall be sent to the Secretary of the Commonwealth by the clerk of the court.

(1977, c. 277, § 15.1-1031.3; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

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§ 15.2-3109. Court-ordered adjustment of boundary lines.

A. Whenever any two localities have agreed that a change should be made to their common boundary line so that public services in an area may be provided more effectively and more efficiently, but are unable to agree as to the proper location for the new boundary line, their governing bodies may petition jointly either of the circuit courts for their respective localities for an order establishing the new boundary line within the terms of the petition. The court shall refer the petition to the Commission on Local Government, and shall also certify the filing of the petition to the Supreme Court with a request that a three-judge court be convened pursuant to § 15.2-3000 to decide the matter. The Commission shall conduct a hearing to receive evidence concerning the location of the new boundary line. Any interested persons may present evidence. The Commission shall publish notice of its hearing at least once a week for two successive weeks in newspapers of general circulation in each locality. Based upon the evidence and the report of its staff, the Commission shall determine a new boundary line that best promotes the more effective and efficient provision of public services. The Commission shall transmit its findings to the court in writing, where they shall be received in evidence. The court shall hear evidence with respect to relocating the boundary line and shall enter an order establishing the new boundary line so as to promote, to the extent possible, the more effective and more efficient provision of public services. Such order shall set forth the terms for the transfer of territory and shall be recorded in the common-law order book and in the current deed book for both localities' courts and indexed in the name of the localities as the case may be. A certified copy of the order shall be sent to the Secretary of the Commonwealth by the clerk of the circuit court.

B. Notice of any application as provided in subsection A hereof shall be served upon the property owners, if any, of the area affected by the agreement, and if such property owners object to the change, they shall be permitted to intervene in the proceedings and show cause why the boundary line should not be changed.

(1979, c. 85, § 15.1-1031.4; 1997, c. 587.)

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§ 28.2-101. Jurisdiction of Commission.

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.

(Code 1950, § 28-3; 1950, p. 979; 1962, c. 406, § 28.1-3; 1968, c. 746; 1992, c. 836; 2005, c. 191.)

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§ 28.2-106. Virginia Marine Police; law-enforcement responsibilities; qualifications; oath.

A. The law-enforcement division of the Commission shall be designated as the Virginia Marine Police. It shall exercise such powers and duties as the General Assembly may confer upon it by law and as provided in regulations adopted pursuant to law, including but not limited to:

1. Patrolling the tidal waters and shoreline of the Chesapeake Bay, its tidal tributaries, and territorial sea;
2. Enforcing marine fishery and habitat conservation laws and regulations;
3. Enforcing health laws pertaining to the harvesting of seafood from condemned areas;
4. Enforcing or assisting other agencies in enforcing laws pertaining to the removal of obstructions and abandoned vessels from the water, to boating operation and navigation, and to larceny on the water;
5. Providing for water-borne safety;
6. Conducting search and rescue activities; and
7. Protecting from terrorist attack federal and state water-related installations and other water-related locations within the tidal waters of the Commonwealth as may be designated by federal or state officials as important to national security.

B. Officers of the Virginia Marine Police shall have the same powers as (i) sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth, and (ii) regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1.

C. A person shall be (i) at least twenty-one years old and (ii) a high school graduate or equivalent to qualify for appointment as an officer.

D. Each officer shall qualify before the clerk of the circuit court of the county or city in which he resides, or in which his district may be, by taking the oaths prescribed by law.

(Code 1950, § 28-36; 1962, c. 406, §§ 28.1-41, 28.1-42; 1964, c. 115; 1972, c. 824; 1973, c. 19; 1990, c. 521, § 28.1-45.1; 1991, c. 338, § 28.1-45.2; 1992, c. 836; 2001, c. 232; 2002, c. 789.)

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§ 28.2-237. Removal of abandoned pole or stake; revocation of licenses for failure to remove stakes.

A. Any person fishing a pound net or any other type of fishing device requiring the use of fixed poles or stakes shall remove all such abandoned poles or stakes; however, one pole or stake may be left standing at least four feet above mean high water at old stands as an identification marker.

Abandoned poles or stakes are considered to be poles or stakes which are not used for fishing.

B. The Commission may revoke any fishing licenses issued to such person, as set forth in § 28.2-232, if abandoned poles or stakes are not promptly removed. Failure to remove such poles or stakes is a Class 1 misdemeanor. The most recent licensee for the fishing device is responsible for removing the poles or stakes.

(1962, c. 406, § 28.1-79; 1964, c. 393; 1992, c. 836.)

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§ 28.2-309. Distance nets may extend across body of water or channel; prohibition; regulations; penalty.

A. It is unlawful to set or fish any net or nets across any river, bay, estuary, creek, or inlet which are longer than one-fourth the width of the body of water from mean low water to mean low water at the point where the net or nets are set or fished.

B. It is unlawful to set or fish any net, other than a menhaden net, in any portion of a marked channel of a river, bay, estuary, creek, or inlet which has navigation aids installed or approved by any agency of government. However, the prohibitions and restrictions on setting nets contained in this subsection shall not apply to any net set on the eastern or ocean side of the Counties of Accomack and Northampton. The Commission shall have the authority to promulgate regulations governing the setting of any net on the eastern or ocean side of the Counties of Accomack and Northampton.

C. It shall be unlawful to set or fish any net which is a hazard to navigation.

D. Any person who violates the provisions of this section is guilty of a Class 3 misdemeanor.

(Code 1950, § 28-47; 1950, p. 981; 1962, c. 406, § 28.1-53; 1968, c. 748; 1990, c. 212; 1991, c. 683; 1992, c. 836.)

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§ 28.2-551. Surveys and reports as conclusive evidence.

The surveys of the natural oyster beds, rocks, and shoals of the Commonwealth, made pursuant to Chapter 511 of the 1892 Acts of Assembly, shall continue to be the surveys defining and determining the natural oyster beds, rocks, and shoals of the Commonwealth. The surveys and reports filed in accordance with this Act of Assembly are conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks, and shoals and that there are no other public oyster beds, rocks, or shoals. The surveys of the public oyster beds, rocks, or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of such body of water, notwithstanding any surveys, plats, markers, or lines to the contrary.

(Code 1950, § 28-117; 1962, c. 406, § 28.1-100; 1964, c. 624; 1992, c. 836.)

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§ 28.2-552. Resurvey on motion of Commission or on application of citizens.

The Commission may select and appoint any surveyor to survey or resurvey any oyster-planting grounds either in his own or any other county, and to reestablish and permanently mark any line or lines of the Baylor survey of natural oyster rocks which the Commission finds necessary to define.

(Code 1950, § 28-117; 1962, c. 406, § 28.1-100; 1964, c. 624; 1992, c. 836.)

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§ 28.2-553. Reestablishment of lines of Baylor survey; procedure; evidence of reestablished lines.

The Commission may reestablish, relocate, and remark all lines of the Baylor survey which cannot be otherwise relocated because of the loss or destruction of previous marks. In reestablishing any such lines, the line surveyed by Fred E. Ruediger shall be followed wherever such line exists or was surveyed. Where no former line can be reestablished the Commission may establish a new line.

When such grounds or lines have been reestablished and relocated, the reestablishment and relocation shall be conclusive evidence in all courts of the Commonwealth that such grounds are public oyster rocks, beds, or shoals and that all grounds lying outside of such boundaries are rental grounds. Plats shall be made under the direction of the Commission showing the reestablishment of such lines, and shall be recorded in the appropriate clerk's office.

(Code 1950, § 28-118; 1962, c. 406, § 28.1-101; 1964, c. 393; 1992, c. 836.)

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§ 28.2-600. Riparian planting ground assignments; eligibility; fee.

Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 feet at the low-water mark, who has not had as much as one-half acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may apply for planting grounds to the Commissioner. The Commissioner shall assign to him such ground wherever the owner may designate within his riparian waters, provided the ground does not encroach into an existing oyster-planting ground lease assigned under Article 2 (§ 28.2-603 et seq.) of this chapter. The fee for such assignment shall be \$1.50. Such ground shall not exceed one-half acre, and shall not be less than 105 feet wide along the shore, beginning at low-water mark, extending out not more than 210 feet, or to the middle of the channel or body of water, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned, and recorded as provided for assignments to persons in Article 2 (§ 28.2-603 et seq.) of this chapter. Any riparian assignment that was duly recorded in the clerk's office of the county or city where the grounds are located, or at the Commission office prior to July 1, 1986, shall continue in effect.

(Code 1950, §§ 28-39, 28-123; 1950, p. 987; 1952, c. 649; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, cc. 168, 184; 1992, c. 836.)

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§ 28.2-601. Riparian assignments; entitlements; obligations.

The riparian leaseholder shall have the exclusive right to the use of such ground for planting or gathering oysters and clams.

The assignment made pursuant to § 28.2-600 shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from the highland. A transfer of highland ownership shall require a transfer of the riparian assignment within eighteen months after the transfer of the highland ownership under the following conditions:

1. The application for transfer shall be in the form prescribed by the Commission and shall be filed with the Commissioner.
2. The Commissioner shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred.
3. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys of general oyster-planting ground.
4. The application shall be accompanied by a transfer fee of five dollars.
5. The Commissioner shall return the approved application for transfer and plat with any correction to the applicant. A copy of the transfer and plat shall be recorded at the Commissioner's office.
6. If no application for transfer is received by the Commissioner within eighteen months after the transfer of the highland ownership, the riparian assignment shall become vacant and open to assignment.

(Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, § 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, c. 168; 1992, c. 836.)

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§ 28.2-602. Riparian assignments; special terms and conditions.

The provisions of this article apply to all Virginia counties and cities bordering on bodies of water in oyster-growing areas, except they shall not apply to riparian lands located above the James River bridge in the James River or its tributaries. In any Virginia county or city where more than one-half acre of ground per waterfront tract has been assigned to a riparian owner, the ground in excess of one-half acre shall be ground held under a regular lease and assignment, and not a riparian assignment.

For Northampton County, however, § 6 of Chapter 254 of the 1883-1884 Acts of Assembly, not this article, shall govern the quantity of land to be assigned to and held by riparian owners. Nothing in this article authorizes a rental of a lesser amount per acre than that provided by law for riparian owners in Northampton County of the land assigned them as such riparian owners. Nothing in the section which restores to riparian owners in Northampton County one-fourth of their waterfronts suitable for planting oysters, permits the owners of waterfronts to compel occupants of the fronts to remove their oysters from any fourth of the shores, if the residue of the shore is already in the landowner's possession or is unoccupied.

Riparian landowners may erect wharves, landings, or other structures as otherwise permitted by law.

(Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, § 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, c. 168; 1992, c. 836.)

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§ 28.2-610. Restriction on acreage owned or operated.

No person shall own or operate more than 3,000 acres of general oyster-planting grounds in the waters of this Commonwealth other than in the Chesapeake Bay. If ground in excess of 3,000 acres is acquired, the person has a right to lawfully hold the ground for one year and shall have a legal right to assign it. If no assignment is made within one year, the ground in excess of 3,000 acres shall revert to the Commonwealth and may be applied for by any person having a legal right to do so.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(9); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-613. Duration of lease.

Each assignment of general oyster-planting ground shall continue in force for ten years from the date of assignment, unless the assignment is terminated; however, assignments issued between July 1, 1976, and July 1, 1980, shall continue in force for twenty years from the date of assignment. The interest in such ground is chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within eighteen months after the date of death. If the named beneficiary is not a resident he shall have eighteen months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall vest in the personal representative, who shall transfer the lease to a qualified holder within eighteen months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional ten-year term. The Commission shall not renew or extend an assignment where there has been no significant production of oysters or clams, no reasonable plantings of oysters, clams or cultch or no significant oyster or clam aquaculture operation, during any portion of the ten-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant oysters, clams or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment. In determining whether there was good cause for the failure to produce or plant oysters, clams, or cultch, in addition to other factors, the Commission shall consider the prevalence of the diseases MSX and Dermo, and whether the oyster-planting ground has traditionally produced commercial quantities of oysters or clams.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(12); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836; 1996, c. 985; 1997, c. 259.)

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§ 28.2-617. Recordation of plat.

The plat and assignment, as soon as practicable after completion, and after the ground has been assigned to the applicant, shall be filed for record in the office of the Commission.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(14); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 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 laws.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(15); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-619. When leases become vacant.

When the Commission finds that a lessee is dead or unknown, and no one claims such property as an heir or assignee, the ground shall become vacant and open to assignment.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(16); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-629. Rights of owner to waters within lawful survey.

If any creek, cove, or inlet within the jurisdiction of this Commonwealth flows into or runs through the lands of any person, is less than 100 yards in width at mean low water, and is comprised within the limits of his lawful survey, as defined in § 28.2-1202, such person or other lawful occupant shall have the exclusive right to use the creek, cove, or inlet for sowing or planting oysters or other shellfish. However, in the County of Mathews the owners or lawful occupants of land on both sides of any creek, cove, or inlet, except Horn Harbor, Winter Harbor, and Milford Haven, suitable for the planting of oysters, above the point where such creek, cove, or inlet is 100 yards in width, shall have the exclusive right to use such creek, cove, or inlet for planting oysters. The right of the owners or occupants of land on the opposite sides of such creek, cove, or inlet extends to the middle of the channel.

(Code 1950, § 28-132; 1962, c. 406, § 28.1-116; 1964, c. 393; 1966, c. 656; 1968, cc. 659, 747; 1972, c. 539; 1992, c. 836.)

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§ 28.2-630. Rights of riparian owners to build bulkhead or wharf.

All assignments or leases of oyster or clam grounds under this chapter shall be subject to the rights vested in riparian claimants under Article 1 (§ 28.2-600 et seq.) of this chapter and also to the following condition: That any landowner who desires to erect a bulkhead or wharf in front of his property or to open a channel, and who is not a lessee or riparian holder of suitable bottoms for that purpose, shall give the lessee or other holder of oyster or clam grounds in front of his property twelve months' notice of such intention; and upon the expiration of that time, the rights of the lessee or holder of so much of the oyster or clam grounds as are reasonably needed for building the bulkhead, wharf, or channel shall cease. This twelve-month notice and waiting period shall not apply if, at the time the landowner provides notice to the lessee or other holder of the oyster or clam grounds in front of his property, the landowner provides the Commissioner sufficient information describing the dimensions and location of the bulkhead, wharf or channel and the Commissioner subsequently finds, in writing, that the proposed bulkhead, wharf or channel will not adversely impact commercially productive oyster or clam grounds. For purposes of this section "commercially productive oyster or clam grounds" are those areas which can be demonstrated to have (i) suitable substrate for oyster or clam production and (ii) evidence of commercial oyster or clam production within the past three years. If the bulkhead, wharf, or channel has not commenced as specified in the notice within three months after the oyster or clam grounds were vacated, the former lessee or holder shall have the right to resume possession of the oyster or clam grounds he has vacated in favor of such landowners, subject to the provisions of this chapter. Any person constructing a channel under this section shall compensate the lessee of any oyster or clam grounds for all losses or damages including the value of the ground taken for the construction of the channel. The lessee shall have recourse under action of the law in the court of the proper jurisdiction of the Commonwealth of Virginia to recover damages.

(Code 1950, § 28-134; 1962, c. 406, § 28.1-118; 1992, c. 836; 2000, c. 167.)

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§ 28.2-633. Bathing grounds; assignment; rental.

Any person desiring to obtain a location for bathing grounds shall apply to the Commissioner to have the location designated, surveyed, and assigned. An annual rental fee of \$7.50 per acre shall be charged for obtaining such a location. The cost for the assignment of bathing grounds shall be three dollars. Any such application, surveying, assigning, and marking shall conform to the law pertaining to oyster-planting grounds. Such licenses shall be for public or commercial bathing grounds only.

If any lessee of bathing ground has his ground or any portion thereof resurveyed or if he reassigns any or all of the ground, the resurvey or reassignment shall not be considered a twenty-year renewal of his lease, or as a new assignment of the ground, but shall be a continuation of the original assignment, subject to all the limitations and conditions under which the ground was originally assigned.

The lessee of any bathing ground, the rent of which is to be paid to the following September of any year, may abandon his holdings at any time without being liable for the payment of the rent for the following year, provided he notifies an officer or the Commissioner in writing of his intention to do so before September 1. This notice, when received by the officer, shall be immediately forwarded by him to the office of the Commissioner.

(Code 1950, §§ 28-39, 28-187; 1952, c. 649; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-118.1; 1984, c. 100; 1986, c. 184; 1992, c. 836.)

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§ 28.2-710. Unlawful to place crab, eel, or fish pots in certain channels; penalty.

It is unlawful to place or maintain any crab, eel, or fish pot in a navigable channel which has navigation aids installed or approved by any agency of the United States government or in any portion of a government marked channel of a river, bay, estuary, creek or inlet. The owner or user of any crab, eel, or fish pot who has located such pot in accordance with this section shall be relieved of civil liability for any damages resulting from the location of such pot.

A violation of this section is a Class 3 misdemeanor.

(1968, c. 785, § 28.1-173.1; 1981, c. 23; 1990, c. 493; 1992, c. 836.)

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§ 28.2-903.1. Impeding lawful fishing in tidal waters; penalty.

A. It is unlawful for any person to willfully and intentionally impede the lawful fishing of any species of fish or shellfish. "Fishing" means those activities defined in § 28.2-100 as "fishing," "fisheries" or "to fish."

B. Notwithstanding any other provision of law, any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

(1997, c. 703.)

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§ 28.2-907. Jurisdiction of courts.

Any proceeding under any section of this subtitle shall be before a court of competent jurisdiction in the county or city (i) in which the offense was committed or (ii) adjacent to the waters in which the offense was committed.

(Code 1950, § 28-218; 1962, c. 406, § 28.1-193; 1992, c. 836.)

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§ 28.2-1200. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.

All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, hunting, and taking and catching oysters and other shellfish. No grant shall be issued by the Librarian of Virginia to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

(Code 1950, § 62-1; 1960, c. 533; 1968, c. 659, § 62.1-1; 1992, c. 836; 1995, c. 850; 1998, c. 427.)

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§ 28.2-1201. Ungranted islands which rise from lands which are property of the Commonwealth.

A. Except as otherwise provided in subsections B and C hereof, all ungranted islands which rise by natural or artificial causes from the beds of bays, rivers and creeks that are ungranted under § 28.2-1200 shall remain the property of the Commonwealth and shall be managed by the Commission as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title. In case of any conflict between the provisions of this subsection and the common law of accretion, reliction and avulsion, such common law shall control.

B. Any island or land that is owned by the Commonwealth, whether currently in existence or subsequently created, that now or hereafter abuts a barrier island of the Eastern Shore shall remain the property of the Commonwealth and shall be managed by the Commission as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.

C. This section shall not apply to accretions to privately owned lands or islands, whether or not they are used as commons.

(1991, c. 378, § 41.1-4.1; 1992, c. 836; 1995, c. 850.)

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§ 28.2-1202. Rights of owners to extend to mean low-water mark.

A. Subject to the provisions of § 28.2-1200, the limits or bounds of the tracts of land lying on the bays, rivers, creeks and shores within the jurisdiction of the Commonwealth, and the rights and privileges of the owners of such lands, shall extend to the mean low-water mark but no farther, except where a creek or river, or some part thereof, is comprised within the limits of a lawful survey.

B. For purposes of this section, "lawful survey" means the boundaries of any land, including submerged lands, held under a special grant or compact as required by § 28.2-1200, such boundaries having been determined by generally accepted surveying methods and evidenced by a plat or map thereof recorded in the circuit court clerk's office of the county or city in which the land lies.

(Code 1950, § 62-2; 1968, c. 659, § 62.1-2; 1972, c. 865; 1992, c. 836.)

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§ 28.2-1205. Permits for the use of state-owned bottomlands.

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;
2. Marine and fisheries resources of the Commonwealth;
3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;
4. Adjacent or nearby properties;
5. Water quality; and
6. Submerged aquatic vegetation (SAV).

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the State Water Control Board, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities that has been approved by the State Department of Health.

D. A permit is required and shall be issued by the Commission for placement of any private pier measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend beyond the navigation line established by the Commission or the United States Army Corps of Engineers. The permit may reasonably prescribe the design and location of the pier for the sole purpose of minimizing the adverse impact on such oyster or clam grounds or the harvesting or propagation of oysters or clams therefrom. The permit shall contain no other conditions or requirements. Unless information or circumstances materially alter the conditions under which the permit would be issued, the Commission shall act within 90 days of receipt of a complete joint permit application to approve or deny the application. If the Commission fails to act within that time, the application shall be deemed approved and the applicant shall be notified of the deemed approval.

E. All permits issued by the Commission for the use of state-owned bottomlands pursuant to § 28.2-1204,

or to recover underwater historic property shall be in writing and specify the conditions and terms that the Commission determines are appropriate, and royalties unless prohibited under other provisions of this chapter.

F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 shall not be deemed to have been made pursuant to the police power. No person shall reapply for the same or substantially similar use of the bottomlands within 12 months of the denial of a permit by the Commission. Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.

(Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836; 1996, c. 228; 1999, c. 741; 2000, c. 167; 2001, c. 72; 2004, cc. 405, 899, 1018; 2005, c. 839.)

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§ 28.2-1210. Removal of obstructions or hazardous property from state waters; penalty.

A. Whenever any wharf, pier, piling, bulkhead, structure, or vessel is found in or upon the bays, oceans, rivers, streams or creeks of the Commonwealth in a state of abandonment, in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of such waterway, the Commission may ascertain the owner of the property and require him to repair or remove the property from the waters of the Commonwealth. If the identity or location of the owner remains unknown and unascertainable after a diligent search and the posting of proper notice at the last known address of the owner, if known, the Commission may have the property removed from the waterways of the Commonwealth after giving notice by publication once in a newspaper of general circulation in the area where such property is located.

B. It is unlawful for any person who owns a vessel to allow such vessel, for more than one week after delivery of notification by the Commission or a law-enforcement official in person or by United States Postal Service certified mail, return receipt requested, to be in a state of abandonment and in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of a waterway. Upon the occurrence of a natural disaster or other act of God, the Commission or law-enforcement official shall not issue a notification until sixty days following such occurrence. Any person who violates this subsection is guilty of a Class 3 misdemeanor.

(1974, c. 602, § 62.1-194.1:1; 1992, c. 836; 1997, c. 258; 1999, c. 544.)

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§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.

Any county, city or town may adopt the following ordinance, which, after October 1, 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town which has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.

Wetlands Zoning Ordinance

§ 1. The governing body of, acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

§ 2. As used in this ordinance, 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.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Governmental activity" means any of the services provided by this (county, city, or town) to its citizens for the purpose of maintaining this (county, city, or town), including but not limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and street lights; 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.

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

"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 of the Code of Virginia.

§ 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
2. The cultivation and harvesting of shellfish, and worms for bait;
3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subdivision 1 of this section;
4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
5. Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
6. Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine

Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

7. The construction or maintenance of aids to navigation which are authorized by governmental authority;

8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

9. The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

10. Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision thereof; and

11. The normal maintenance of manmade drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch.

§ 4. A. Any person who desires to use or develop any wetland within this (county, city, or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file an application for a permit directly with the wetlands board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.

§ 5. All applications, maps, and documents submitted shall be open for public inspection at the office designated by the applicable governing body and specified in the advertisement for public hearing required under § 6 of this ordinance.

§ 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of

general circulation in this (county, city, or town). The published notice shall specify the place or places within this (county, city, or town) where copies of the application may be examined. The costs of publication shall be paid by the applicant.

§ 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within thirty days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination within the thirty-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under § 5 of this ordinance.

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. 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.

§ 10. A. In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

1. The testimony of any person in support of or in opposition to the permit application;
2. The impact of the proposed development on the public health, safety, and welfare; and
3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and

private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board or his authorized representative, and notarized. A copy of the permit shall be transmitted to the Commissioner.

§ 12. No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land use ordinances of this (county, city, or town) or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

(1972, c. 711, §§ 62.1-13.1, 62.1-13.5; 1973, cc. 382, 388; 1975, c. 268; 1979, c. 418; 1982, c. 300; 1985, c. 541; 1988, c. 587; 1989, c. 360; 1992, c. 836; 1994, c. 274.)

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§ 29.1-205. Power to make arrests.

All game wardens are vested with the authority, upon displaying a badge or other credential of office, to issue a summons or to arrest any person found in the act of violating any of the provisions of the hunting, trapping, inland fish and boating laws.

Regular game wardens are vested with the same authority as sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth.

Any special game warden shall have general police power while performing his duty on properties owned or controlled by the Board.

Any commissioned, warrant or petty officers of the United States Coast Guard and of the United States Coast Guard Reserve while engaged on active duty, in the conduct of their official duties in uniform, and any officers of the customs as defined by 19 U.S.C. § 1709 (b), in the conduct of their official duties in uniform, shall have the same power to make arrests under Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 as game wardens.

(Code 1950, § 29-32; 1960, c. 540; 1979, c. 264; 1982, c. 64; 1987, c. 488; 1988, c. 605.)

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§ 29.1-344. Stationary blinds on shore and in the public waters for owners of riparian rights.

Each year, the owners of riparian rights, their lessees or permittees shall have the exclusive privilege of licensing and erecting stationary blinds on their shoreline, and the prior right of licensing and erecting stationary blinds in the public waters in front of their shoreline, to shoot waterfowl over the public waters. Such blinds shall not be located in water having a depth greater than eight feet at mean high tide, nor shall they be located further than halfway across the body of water from the riparian owner's shoreline. When such a license has been obtained and a stake or a stationary blind has been erected on the site with the license for that season properly affixed, no other stationary or floating blind shall be located in the public waters within 500 yards of the licensed site without the consent of the riparian owner, lessee or permittee. Riparian owners, their lessees or permittees may obtain licenses on and after July 1 and on or before August 31 of each year. A stake or a stationary blind shall be erected on the site, and a license plate supplied with the license for that season shall be affixed thereto by August 31. If a stake has been erected on the site of a stationary blind, such stake must be replaced by a blind by November 1 pursuant to the provisions of § 29.1-341. Such stationary blinds shall conform to the standards prescribed in § 29.1-341.

(Code 1950, § 29-85; 1987, c. 488; 1989, c. 217; 2004, c. 422.)

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§ 29.1-344.1. Stationary duck blind license; riparian landowners exempted.

Notwithstanding the provisions of § 29.1-340, 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 §§ 29.1-344, 29.1-345, and 29.1-349.

(1992, c. 237; 1993, c. 209.)

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§ 29.1-345. Stationary blinds in the public waters for nonriparian owners.

Unless a license has been obtained pursuant to § 29.1-344, and a stake or a blind has been erected and marked within the time stated as specified in that section, in any year, the owners of riparian rights, their lessees or permittees shall forfeit the privilege of licensing blinds on their shores and also lose priority for licensing stationary blinds in the public waters adjoining such shores. Any locations remaining in the public waters shall belong to whoever first obtains a license and erects a stake or a blind. The blind cannot be located in water having a greater depth than eight feet at mean high tide on the site selected. In addition, the blind must be at least 500 yards from any other stationary blind, and the license for that season must be properly affixed to the structure. The nonriparian license for a stationary blind in the public waters may be obtained on and after July 1 and on or before September 30. A stake or blind shall be erected on the site, and a license plate supplied with the license for that season must be affixed thereto by October 10.

(Code 1950, § 29-86; 1987, c. 488.)

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§ 29.1-346. When license for floating blinds issued; distance from stationary blinds.

Licenses for floating blinds permitted by law, in the public waters, may be obtained on and after July 1. Floating blinds shall have a license plate supplied with the license for that season affixed to the blind. Floating blinds, including any accompanying boat or tender, shall anchor or tie out at least 500 yards from any licensed stationary blind for shooting, whether on the shore or in the water, unless agreed otherwise between the parties.

(Code 1950, § 29-87; 1970, c. 579; 1987, cc. 94, 488.)

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§ 29.1-347. Renewing licenses.

The holders of licenses first issued under this article may renew the same privileges each succeeding year by licensing within the time required and placing the license tag on the stake or blind as required by this article. The exclusive privileges prescribed with respect to owners and their lessees and permittees in § 29.1-344 shall be recurrent each year even if the privileges were forfeited to some other person or persons in the preceding year. If any blind is destroyed in any manner beyond the control of the owner, it may be replaced within thirty days without losing the position which it formerly occupied. Those licensing stationary blinds in the public waters shall remove the blinds when the licenses expire or when they no longer intend to use them.

(Code 1950, § 29-88; 1987, c. 488.)

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§ 29.1-348. Obtaining licenses.

All applications for blind licenses under this article 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. The clerk or local license agent shall be paid similar fees as for issuing hunting licenses. With each license the clerk or local license agent shall deliver a license plate bearing the number of the license, which shall be affixed to the blind where it may be easily observed. The Department shall furnish the licenses and license plates provided for in this article. The money arising from the sale of blind licenses shall be paid into the game protection fund.

(Code 1950, § 29-89; 1987, c. 488.)

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§ 29.1-349. Hunting, erecting blind within 500 yards of licensed blind.

A. No person shall hunt or shoot 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, except when in active pursuit of a visible crippled waterfowl which was legally shot by the person.

B. No person shall erect a stationary blind in the public waters within 500 yards of any other licensed blind without the consent of the licensee. Any person who violates this subsection shall be guilty of a trespass, and the affected blind licensee may maintain an action for damages. Furthermore, the trial court shall immediately revoke the blind owner's license for the stationary blind where the offense was committed. The blind owner may be eligible for a license in the following open season upon the same conditions that would apply to a new applicant. When a license for a stationary blind has been revoked, the blind shall be destroyed by the former licensee or by the game warden.

(Code 1950, § 29-90; 1954, c. 305; 1956, c. 318; 1987, c. 488; 2004, c. 422.)

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§ 29.1-350. Exemption from application of article.

The provisions of this article shall not apply to the shores and public waters and marshes of Accomack and Northampton Counties. However, in those localities no person shall hunt migratory waterfowl, whether from a blind or otherwise, without having obtained a season license to hunt.

(Code 1950, § 29-91; 1970, c. 644; 1987, c. 488; 1993, c. 209.)

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§ 29.1-351. Regulations to be issued; present regulations continued in force.

The Board shall have the power to amend or alter the provisions of this article by regulation prescribing a distance less than 500 yards between blinds whenever and wherever such action seems practicable and desirable. The Board may adopt other regulations concerning the use of such blinds as may appear advisable to meet changing conditions as to hunting migratory game birds. The regulations of the Board now applying to such hunting are hereby continued in force until amended or repealed by the Board; however, the Board shall not have the power to alter in any respect the privileges prescribed for owners and their lessees and permittees in §§ 29.1-344 and 29.1-347.

(Code 1950, § 29-92; 1987, c. 488.)

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§ 29.1-734. Authorization for and placing of markers in waters of the Commonwealth used for public swimming areas; no motorboating, waterskiing in marked area.

A. Any owner of real estate which touches any of the waters of this Commonwealth or the agent of the owner may petition the Board to authorize the placing of markers approved by the Board around a public swimming or bathing area.

B. The Department, upon receiving the petition and sufficient proof that the water adjacent to the real estate is used in whole or in part as a public swimming or bathing area, may authorize the placement of the markers to designate the area as a swimming or bathing area.

C. The cost of the purchase and placement of the markers shall be borne by the party requesting the placement of the markers.

D. No person shall operate a motorboat or manipulate skis within the area of the waters of the Commonwealth marked under this section. Persons violating this subsection shall be guilty of a Class 4 misdemeanor.

(1964, c. 654, § 62-174.5:1; 1968, c. 659, § 62.1-171; 1983, c. 475; 1987, c. 488.)

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§ 29.1-744. Local regulation; application for placement or removal of "no wake" buoys, etc.

A. Any political subdivision of this Commonwealth may, at any time, but only after public notice, formally apply to the Board for special rules and regulations with reference to the safe and reasonable operation of vessels on any water within its territorial limits and shall specify in the application the reasons which make the special rules or regulations necessary or appropriate.

B. The Board is authorized upon application by a political subdivision or its own motion to make special or general rules and regulations with reference to the safe and reasonable operation of vessels on any waters within the territorial limits of any political subdivision of this Commonwealth. Without limiting the generality of the grant of such power, a system of regulatory or navigational markers may be adopted by the Board. Nothing in this section shall be construed to affect the application of any general law concerning the tidal waters of this Commonwealth.

C. Any county, city or town of this Commonwealth may enact ordinances which parallel general law regulating the operation of vessels on any waters within its territorial limits, including the marginal adjacent ocean, and the conduct and activity of any person using such waters. The locality may also provide for enforcement and penalties for the violation of the ordinances, provided the penalties do not exceed the penalties provided in this chapter for similar offenses.

D. After notice to the Department, any county, city or town may, by ordinance, establish "no wake" zones along the waterways within the locality in order to protect public safety and prevent erosion damage to adjacent property. However, any county that is adjacent to an inland lake (i) more than 500 feet above sea level and (ii) of 20,000 acres or more and wholly located within the Commonwealth may, by ordinance, establish "no wake" zones along such lake within the locality in order to protect public safety or prevent erosion damage to adjacent property. The markers and buoys designating a no wake zone shall conform to the requirements established by the Board. Any marker or buoy which is not placed in conformance with the regulations of the Board or which is not properly maintained shall be removed by the locality. The locality may provide for enforcement and penalties for the violation of the ordinance.

E. Any person who desires to place or remove "no wake" buoys or other markers relating to the safe and efficient operation of vessels pursuant to any local ordinance shall apply to the local governing body. The local governing body shall approve, disapprove or approve with modifications the application and forward it to the Director, who shall approve, disapprove or approve with modifications within thirty days the placement and type of marker to be used or the removal of "no wake" buoys or other markers. The cost of the purchase and placement or the removal of the buoys or markers shall be borne by the person requesting the placement or removal of the buoys or markers. Any marker or buoy which is not placed in conformance with the regulations of the Board or which is not properly maintained may be removed by the Department. "No wake" buoys or other markers placed prior to July 1, 2001, shall only be removed when no longer required for the safe and efficient operation of vessels pursuant to any local ordinance.

(1960, c. 500, § 62-174.15; 1964, cc. 346, 654; 1968, c. 659, § 62.1-182; 1978, c. 598; 1982, c. 232; 1987, c. 488; 1997, c. 522; 1999, c. 489; 2001, c. 649.)

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§ 29.1-744.3. Slacken speed and control wakes near structures.

It shall be unlawful to operate any motorboat, except personal watercraft, at a speed greater than the slowest possible speed required to maintain steerage and headway when within fifty feet or less of docks, piers, boathouses, boat ramps, and people in the water. Nothing in this section shall prohibit a motorboat from towing a person with a rope less than fifty feet in length.

(1998, c. 857.)

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§ 29.1-744.4. "Pass-through" zones; local ordinances; penalties.

After providing notice to the Department, any locality may, by ordinance, establish "pass-through" zones in any portion of a waterway within its territorial limits where congestion of watercraft traffic routinely poses a significant safety risk to persons in such designated area. The ordinance shall provide that while in a pass-through zone, operators of watercraft shall maintain a reasonable and safe speed and shall be prohibited from stopping, anchoring, loitering, or otherwise engaging in recreational activity. The locality shall clearly identify pass-through zones by buoys or other markers that conform to the general requirements as established by the Board for similar buoys or markers. The locality may provide for enforcement and penalties, not to exceed a Class 4 misdemeanor, for the violation of the ordinance.

(2003, c. 780.)

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§ 41.1-1. Librarian of Virginia in charge of Land Office.

The Librarian of Virginia shall be in charge of and keep and preserve all records of the Land Office.

(Code 1950, § 41-1; 1952, c. 185; 1970, c. 291; 1998, c. 427.)

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§ 41.1-3. Grants of certain lands, etc., to be void; such lands, etc., under control of Governor.

No grant shall be valid or effectual in law to pass any estate or interest in (i) any lands unappropriated or belonging to the Commonwealth, which embrace the old magazine at Westham, or any stone quarry now worked by the Commonwealth, or any lands which are within a mile of such magazine, or any such quarry; (ii) any ungranted beds of bays, rivers, creeks and the shores of the sea under § 28.2-1200; (iii) any natural oyster bed, rock, or shoal, whether such bed, rock, or shoal shall ebb bare or not; (iv) any islands created in the navigable waters of the Commonwealth through the instrumentality of dredging or filling operations; (v) any islands which rise from any lands which are property of the Commonwealth under § 28.2-1201; or (vi) any ungranted shores of the sea, marsh or meadowlands as defined in § 28.2-1500. Every such grant for any such lands, islands, bed, rock, or shoal shall be absolutely void; however, this section shall not be construed to affect the title to grants issued prior to March 15, 1932. Such magazine and every such stone quarry and the lands of the Commonwealth adjacent to or in their neighborhood, shall be under the control of the Governor, who may make such regulations concerning the same as he may deem best for the interests of the Commonwealth.

(Code 1950, § 41-8; 1970, c. 291; 1991, c. 378; 1995, c. 850.)

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