

# MIDDLESEX COUNTY

## TIDAL WETLANDS AND COASTAL PRIMARY SAND DUNES AND BEACHES HANDBOOK



### MIDDLESEX COUNTY

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#### NOTICE

This guide is for information only. Please refer to the applicable laws and regulations for specific technical and procedural requirements. In some cases, you will need professional help in such areas as land survey, engineering and law.

Although every effort has been made to ensure accuracy and completeness, the procedures contained in this guide are not guaranteed to be inclusive. Permitting procedures, fees and times are subject to periodic review and change. Any errors and omissions in this guide will not relieve any applicant or property owner of the responsibility, obligation or liability in fulfilling all of these legal requirements. Fees quoted in this document are accurate as of July 2017 and are subject to change. Please check with the Department of Planning and Community Development to confirm all fees.

## TIDAL WETLANDS

### What is the Virginia Wetlands Act?

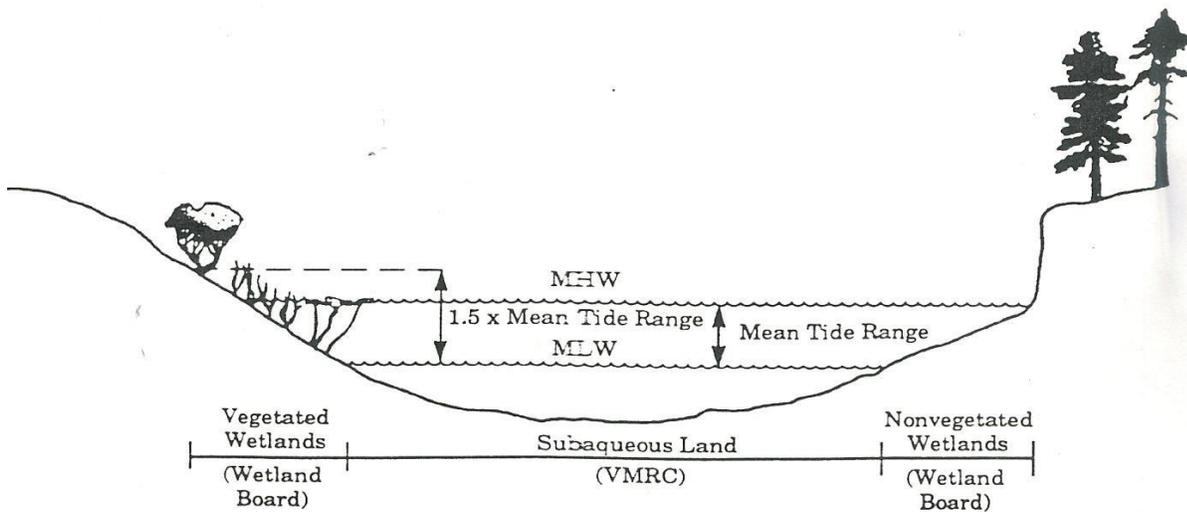
In 1972, the Virginia Legislature passed the Virginia Wetlands Act, and it stated the following as part of its policy for this Act:

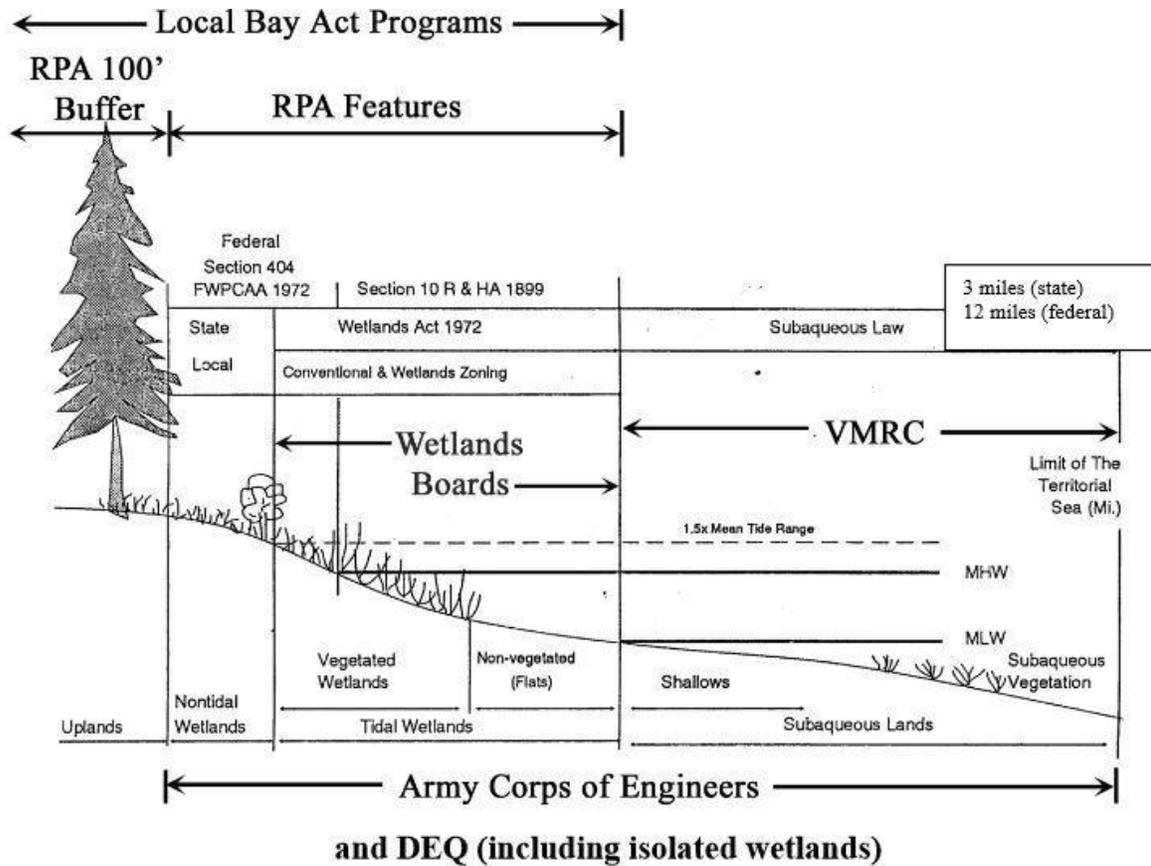
*Therefore, in order to protect the public interest, promote the public health, safety and the economic and general welfare of the Commonwealth, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is declared to be the public policy of this Commonwealth to preserve the wetlands, and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation.*

### What is a Tidal Wetland?

The Commonwealth of Virginia has its own definition of tidal wetlands. This definition is in Section 28.2-1302 of the Virginia State Code. Virginia Tidal Wetlands are both vegetated and non-vegetated wetlands.

- **Vegetated wetlands** are “the 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.”
- **Non-vegetated wetlands** are “un-vegetated land lying contiguous to mean low water and between mean low water and mean high water.”





## Coastal Primary Sand Dunes and Beaches

### What is a Beach?

The Commonwealth of Virginia has its own definition of a beach. This definition is in Section 28.2-1400 of the Virginia State Code.

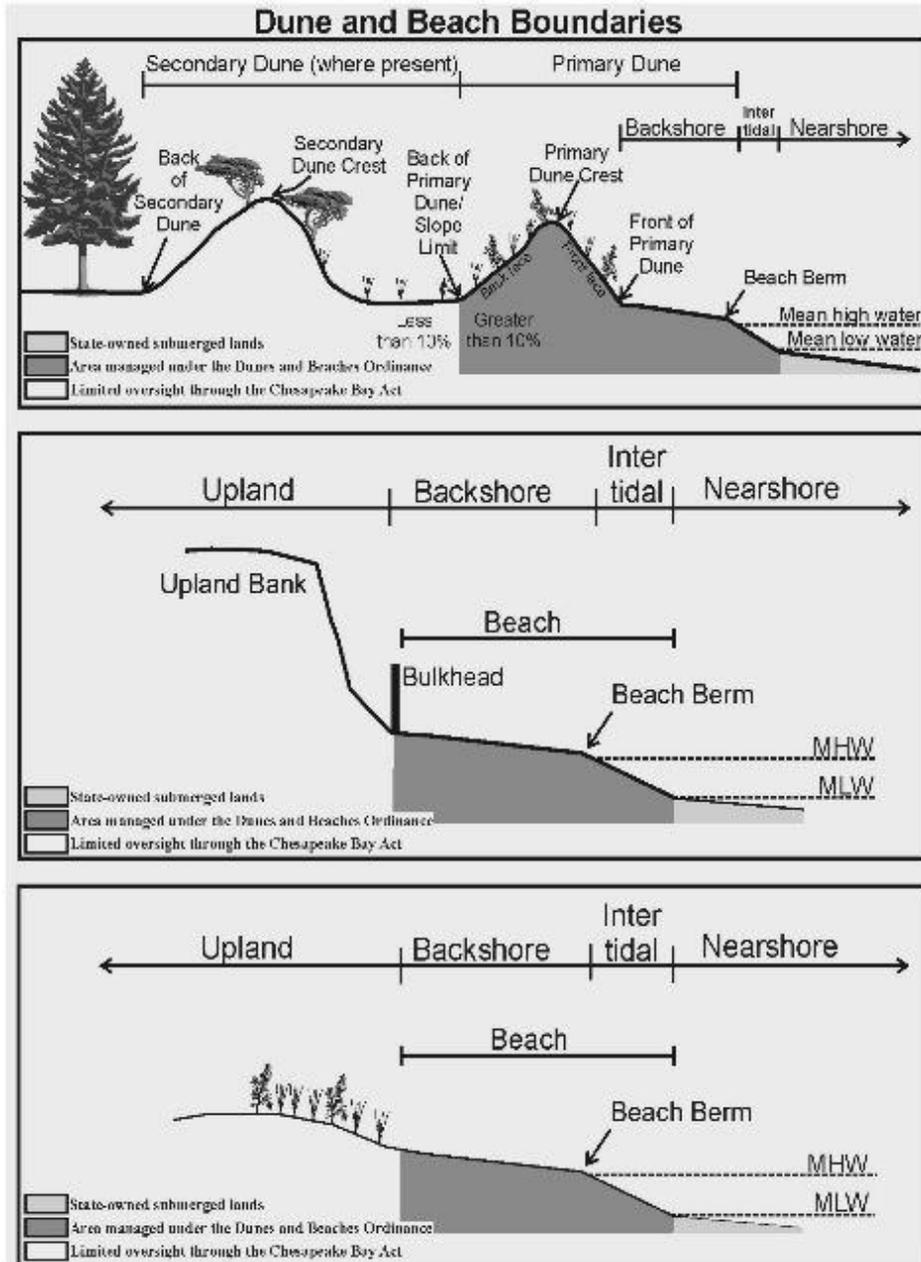
- "Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic 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 man-made structure, such as a bulkhead, revetment, or paved road.

### What is a Coastal Primary Sand Dune or "Dune"?

The Commonwealth of Virginia has its own definition of coastal primary sand dunes. This definition is in Section 28.2-1400 of the Virginia State Code.

- "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 (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostyles* spp.);

dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Honckenya peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); Japanese sedge or Asiatic sand sedge (*Carex kobomugi*); Virginia pine (*Pinus virginiana*); broom sedge (*Andropogon virginicus*); and short dune grass (*Panicum amarum*). 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.



### **What is the Middlesex County Wetlands Board?**

Section 28.2-1303 of the Code of Virginia enables Middlesex County to create a Wetlands Board. The Middlesex County Wetlands Board consists of five Middlesex County citizens who are appointed by the Middlesex County Board of Supervisors. The Wetlands Board members serve five year terms, which can be renewed by the Board of Supervisors.

### **What can I do in a Tidal Wetland?**

Projects proposed within the Tidal Wetlands of Middlesex County are reviewed by the Middlesex Wetlands Board and Wetlands Office. The Middlesex Wetlands Ordinance lists uses and activities that are permitted in tidal wetlands. Some of these uses and activities, such as a rip rap revetment, a bulkhead, or a commercial pier, require a Permit from the Wetlands Board. Some activities, such as private use piers, are reviewed by Wetlands Staff, but do not require a Permit from the Wetlands Board. This will be discussed in more detail later in this handbook.

### **Why is Tidal Wetland vegetation important?**

The wetlands vegetation that grows in tidal wetlands on the shoreline is extremely beneficial, and it should be nurtured. It provides habitat for wildlife, including mammals, marine birds and migratory waterfowl. It provides the principal food source for shellfish and the forage fish that support many of our larger commercial and recreational fish species. (Virginia Marine Resource Commission Wetlands Guidelines, 1993)

Vegetated wetlands can greatly assist waterfront property owners by protecting their land from erosion. Vegetated wetlands do erode, but by virtue of their ability to establish dense root systems, trap and accumulate sediments, and baffle wave energy, they are buffers against erosion and sea level rise. (Virginia Marine Resource Commission Wetlands Guidelines, 1993) Additionally, vegetated wetlands, when appropriate, can be less expensive and easier to maintain than structural shoreline erosion devices such as bulkheads or rip rap.

Vegetated wetlands also assist us with water quality. The wetlands act as a filter to prevent sediments and pollutants from reaching the waterways. This protects shellfish beds and navigation channels from siltation. Filtering pollutants and nutrients out of stormwater helps maintain water clarity.

### **How do I apply for permits for marine structures?**

A Joint Permit Application (JPA) is available to apply for permits for marine structures. This JPA was developed to allow you to apply for marine permits from the Federal, State, and Local regulatory agencies at the same time, with one application. This JPA may be obtained by visiting the Middlesex Wetlands Office in the Planning Department on the second floor of the Woodward Building in the Middlesex Courthouse Complex, Saluda, Virginia. Also, you may obtain a copy from the Virginia Marine Resources website [www.mrc.virginia.gov](http://www.mrc.virginia.gov) or call the U.S. Army Corps of Engineers at (757) 441-7652 to have an application mailed to you.

Once you have completed the JPA, mail it to the Virginia Marine Resource Commission (VMRC), Habitat Management Division, at P. O. Box 756, Newport News, Virginia 23607. The VMRC will assign your permit application a number, and then forward it to the review agencies. These agencies are the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, the Middlesex County Wetlands Board, and various other state agencies, as appropriate. These agencies will review your application and contact you about permit requirements for your project.

### **Hints to successful completion of the JPA:**

Careful and thorough completion of your JPA will insure the fastest review of your application.

The first five pages of the application ask for written information about your project:

- For Middlesex County projects the answer to Question #6 is the Southside Sentinel, Urbanna, Virginia, (804) 758-2328.
- When answering Question #7, include the Tax Map number of your property. This number can be obtained from the Middlesex County Commissioner of the Revenue Office at (804) 758-5331. This office is located on the first floor of the Woodward Building in the Middlesex Courthouse Complex, Saluda, Virginia.
- Question #13: A Wetlands Permit for a private project is valid for 18 months and 3 years for a commercial project. If you know that your project will take longer than eighteen months, be certain to notify County staff prior to the permit expiring. Staff will then place the extension request on the agenda of the next available meeting so the Wetlands Board can consider granting you a longer time period to complete your project.
- The answers to Question #14 also can be obtained from the Middlesex County Commissioner of the Revenue Office.
- The Adjacent Property Owner's Acknowledgment Form, mentioned in Question #14, is located on page 11 of the application. You need to make copies of this form in order to send it to all your adjacent property owners.
- Be certain to sign the application and check each Appendix that applies to your project.

The second part of your application involves drawings of your proposed project. (Page 21)

- Include all of the completed Appendices that apply to your project.
- Show permanent benchmarks established on the property and on the plan drawing. Indicate the distances in feet from the benchmarks to either end and all corners of a proposed structure. (Examples of permanent benchmarks are: the corner of a house or deck; a distinctive tree; and the edge of an existing bulkhead, pier or other marine structure.)

### **What does the Wetlands Office do with its copy of my JPA?**

The Wetlands Office reviews every JPA for Middlesex County. This review determines whether or not your project requires a Wetlands Permit from the Wetlands Board. This review often involves a site visit to your property by the Wetlands Staff. There is a minimum review fee of \$50.00 for every JPA in Middlesex County.

The Wetlands Board jurisdiction is as outline on pages 2, 3 and 4 of this handbook. If your proposed project is located within the Wetlands Board jurisdiction and is not exempted by the State Code, a public hearing at a Wetlands Board meeting must be held. This public hearing will be advertised in the Southside Sentinel, and the adjacent property owners to the project will be notified by certified mail about the public hearing.

### **What marine structures are allowed within tidal wetlands without a Wetlands Permit?**

The State Code allows "the construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observations 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" without a permit from the Wetlands Board. Commercial or community structures that cross Wetlands Board Jurisdiction do require a Wetlands Permit.

All proposed marine structures and projects still require the submission of a JPA. If your proposal is exempt from the requirement of a Wetlands Permit, then the Wetlands Board will charge you a \$50.00 review fee and issue you written approval of your proposal. The other regulatory agencies (such as the Virginia Marine Resource Commission, and the U.S. Army Corps of Engineers) may still require permits for your proposal.

### **What happens if my proposal is a private use pier?**

A private use pier, even if it crosses tidal wetlands, is exempt from a Wetlands Permit. The Wetlands Board still charges the minimum review fee of \$50.00 for the review of your JPA. After you pay the \$50.00 fee, the Wetlands Office will mail you written approval of your proposed private use pier. The Virginia Marine Resource Commission and the U.S. Army Corps of Engineers will also review your application and inform you of their permit requirements. The following situations or JPA applications shall be exempt from the \$50.00 review fee:

1. Boat lifts, davits, hoists, mooring buoys and other similar appurtenances located over State Waters and not within the Wetlands Board's jurisdiction.
2. Pier head sections and pier extensions for private use located over State Waters and not within the Wetlands Board's jurisdiction.
3. Repairs to piers.
4. Noncommercial riparian shellfish aquaculture structures – “oyster gardening” located in State Waters and not within the Wetlands Board's jurisdiction.
5. Osprey nests located in State Waters and not within the Wetlands Board's jurisdiction.

Before you can begin construction of your private pier, you must obtain a Middlesex County Zoning and Building Permit. Apply for these permits in the Middlesex County Building Department located on the second floor of the Woodward Building, Saluda, Virginia, phone number: (804) 758-4305. These permits can not be issued unless you show the Wetlands Office and Building Department copies of written approval for your project from the Middlesex County Wetlands Board, the Virginia Marine Resource Commission, and the U.S. Army Corps of Engineers.

### **How will I know if my project requires a Wetlands Permit?**

The Wetlands Office will notify you by mail about the status of your application. If your proposed project requires a Wetlands Permit, you will receive a letter that notifies you of this requirement. This letter will explain the fees required for your Public Hearing, the next available Wetlands Board meeting date, and the deadline for submitting the required fees and any other information needed by the Wetlands Board.

### **What if my project does require a Wetlands Permit?**

The fee for a private use Wetlands Permit is \$225.00. The fee for a commercial-use or community-use Wetlands Permit is \$300.00. These fees are not refundable. The fees include the cost of the public hearing, the cost of advertising your proposal in the Southside Sentinel for two weeks, and the Wetlands Permit, if it is granted.

The Wetlands Board meets at 9:00 a.m. on the second Tuesday of every month in the Board Room of the Woodward Building at the Middlesex County Courthouse Complex in Saluda, Virginia. Your JPA must have a number assigned to it by VMRC. Complete applications, with payment, received by 4:30 p.m. on the 10<sup>th</sup> of the month will be placed on the following month's agenda, subject to available space on the agenda as determined by the number of applications received. Complete applications are scheduled and placed on the agenda in the order received. Should the 10<sup>th</sup> fall on a weekend or holiday, the cut off date for receipt of complete applications shall fall on the following business day.

According to Section 6 of the Middlesex County Wetlands Ordinance, all projects requiring a public hearing must be advertised in the Southside Sentinel “at least once a week for two weeks prior to such hearing.” The Southside Sentinel publishes every Thursday, so, in order to meet the two weeks advertising requirement, the advertising deadline for the public hearing announcements is actually twenty-one days before the date of the hearing.

After you have paid your fee and returned all requested information to the Wetlands Office, the Wetlands Office will schedule your proposed project onto the next Wetlands Board Agenda. The Wetlands Office is required by State Code to notify the following of your public hearing:

- You (the applicant)
- The Middlesex County Board of Supervisors
- The Virginia Marine Resources Commission
- The owner of record of any land adjacent to the wetlands in question (the property owners next to your property and across the water from your property if the waterway is less than 500' wide)
- 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 Department of Environmental Quality, Water Division
- The Department of Transportation
- Any governmental agency expressing an interest in the application

The Wetlands Office will send notices about your public hearing to you and the property owners adjacent to your project through certified mail. The State Code requires that these notices be mailed at least twenty days before the public hearing.

The Middlesex Wetlands Staff, a scientist from the Virginia Institute of Marine Science, staff from the Virginia Marine Resource Commission, staff from the U.S. Army Corps of Engineers, and the members of the Middlesex County Wetlands Board will inspect your proposed project. The members of the Middlesex County Wetlands Board are scheduled to visit the sites on its upcoming agenda on the first Tuesday of the month. The project must be properly staked. In the event that the project is not staked at the time of the site visit, the Board will then table the application until the next meeting.

At the public hearing, the Wetlands Board Chairman will introduce your proposed project and ask the Wetlands Staff for its report. The Wetlands Staff will read the Virginia Institute of Marine Science assessment of your project, explain the project, and give a staff recommendation for the project. The Chairman of the Wetlands Board will then open the floor for public comments. Anyone may address the Wetlands Board about your project at this time. You and/or your agent may address the Wetlands Board, if you wish. It is required that you and/or your agent be present at this public hearing. After all public comments are heard, the Wetlands Board Chairman will close the Public Hearing and the Wetlands Board will discuss its decision about your proposed project. The Wetlands Board will vote whether to approve your proposed project.

If your project is approved, the Wetlands Permit will be valid for eighteen months for private projects and 3 years for commercial projects from the date of the approval.

Within forty-eight hours of the Wetlands Board decision on your proposed project, the Wetlands Office will mail you a notice that details the Wetlands Board's decision.

### **If my project is approved, when do I receive my Wetlands Permit?**

The State Code mandates the Wetlands Office wait ten days before it issues your Wetlands Permit. This waiting period is time allowed for the review of the Wetlands Board's decision by the Virginia Marine Resource Commission or for any appeals of the Wetlands Board's decision.

After this ten day period, the Wetlands Office will mail you three copies of your Wetlands Permit. (If you have hired an agent to obtain your marine permits, the Wetlands Office will mail a copy of your Wetlands Permit to your agent, you will receive the originals.) Each of these copies must be signed by you and your signature must be notarized. Then return all three of the signed copies to the Wetlands Office.

Your Wetlands Permit is not valid until you return all three signed and notarized copies of your Wetlands Permit to the Wetlands Office and you have received one returned copy, from the Wetlands Office, to be kept on site at the project. The Wetlands Office will also mail you a signed yellow placard in a plastic cover. This must be posted at the project site, in a conspicuous location, during the installation of your project.

### **When can I start work on my project?**

You must notify the Middlesex County Wetlands Office before your project begins, so the Middlesex County Staff can arrange inspections of your project.

You may not start work on your project until you have received permission from **all** applicable agencies. These agencies include:

- The Middlesex County Wetlands Board (804) 758-3382
- The Virginia Marine Resource Commission (757) 247-2200

- The U.S. Army Corps of Engineers / Northern Neck Field Office (804) 462-5382
- The Middlesex County Planning Department (804) 758-3382
- The Middlesex County Building Department (804) 758-4305

The Middlesex County Building Department will not issue your Zoning or Building Permits until written approvals from the Middlesex County Wetlands Board, the Virginia Marine Resource Commission, and the U.S. Army Corps of Engineers are received for your project.

### **What if I cannot complete my project before my Wetlands Permit expires?**

You may request an extension of your Wetlands Permit from the Wetlands Board. This request must be in writing and sent to the Wetlands Office before your Wetlands Permit expires. This request must give the reason the extension is needed and the estimated date the project will be completed. The Wetlands Permit Extension fee is \$50.00.

The Wetlands Board will consider your request for an extension of a Wetlands Permit at its next meeting. The Wetlands Office will review your Wetlands Permit file and notify any Project protestants, who provided written or oral comments in opposition to your original Application, that your Wetlands Permit is being considered for an extension.

In no case shall your Wetlands Permit be extended so that it is valid for more than three years from the original date of your Wetlands Permit issuance. If you require an extension of more than three years, you may reapply for the project by submitting another JPA.

### **What if I hire an agent to obtain my Wetlands Permit?**

If you hire an agent to obtain your Wetlands Permit, the Wetlands Office will send correspondence about your project to your agent. You will be notified of the Public Hearing date for your project and of the decision of the Wetlands Board. However, if you hire an agent to represent you, **you** are still responsible for complying with all permits and any conditions of these permits, and **you** are still responsible to notify the Wetlands Office for inspections of your project.

### **What advice is available if I think my property has an erosion problem?**

The Virginia Department of Conservation and Recreation offers a free service to waterfront property owners in Virginia. It is called the Shoreline Erosion Advisory Service (SEAS). SEAS will visit your property and give you advice about solutions to erosion problems. SEAS is located in Suffolk, Virginia, and its phone number is (804) 925-2468. Also County Wetlands staff, Virginia Marine Resources Commission staff may be able to advise as well. Additionally the Virginia Institute of Marine Science provides shoreline erosion advice to waterfront property owners.

### **Additional Information:**

The following three pages show drawings of projects and whether they are located within the Wetlands Board jurisdiction and whether they would require a Wetlands Permit. However, every proposed marine project, whether it requires a Wetlands Permit or not, does require a review by the Middlesex County Wetlands Office. This review does require the payment of a \$50.00 fee.

#### **CONTACT NAMES AND PHONE NUMBERS**

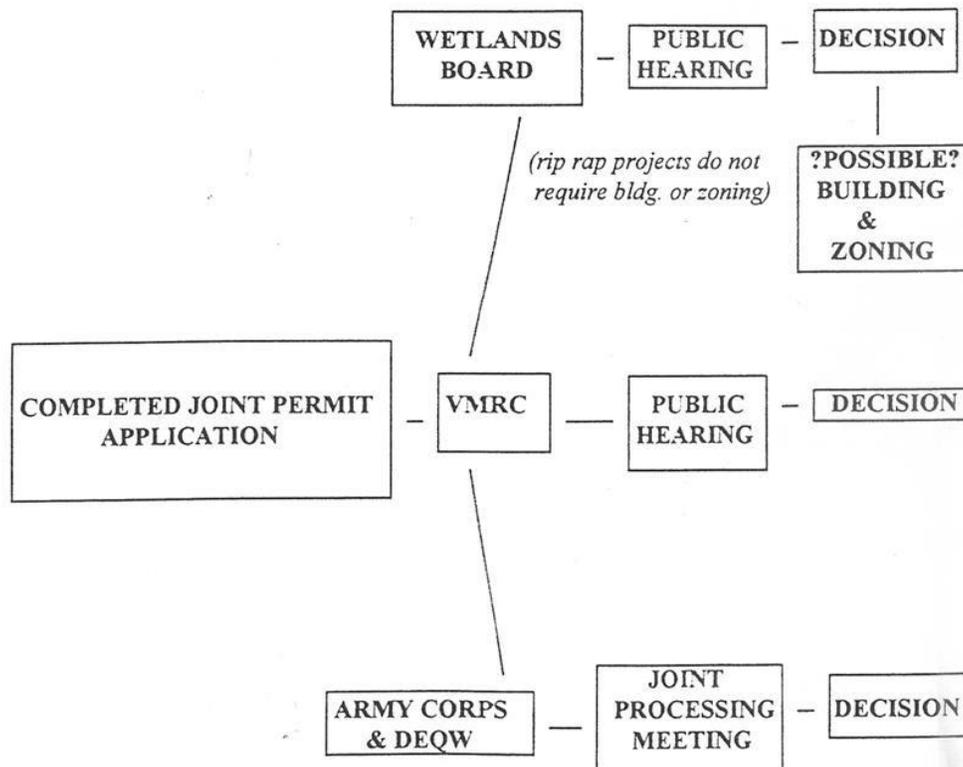
Middlesex County Wetlands Office	
Environmental Enforcement Specialist	(804) 758-3382
Virginia Marine Resource Commission	
Jay Woodward, Environmental Engineer	(757) 247-8032
U. S. Army Corps of Engineers	
Northern Neck Office	(804) 462-9362

Norfolk Office	(757) 441-7652
Virginia Department of Conservation and Recreation	
Shoreline Erosion Advisory Service (SEAS)	(804) 925-2468

The Middlesex County Wetlands Office is happy to assist you with the Joint Permit Application process. The Wetlands Office is located in the Middlesex County Planning Department in the Woodward Building in Saluda, Virginia. The office is open Monday through Friday from 8:30 a.m. to 4:30 p.m. The phone number is (804) 758-3382.

## APPENDIX A: THE MARINE PERMIT PROCESS IN MIDDLESEX COUNTY, VA

Marine activities in Middlesex County, Virginia's wetlands and subaqueous beds may require one or more permits. Activities commonly requiring permits include, but are not limited to: dredging, filling and construction of bulkheads, rip rap and groins. Submission of the Joint Permit Application initiates the permit process. You may only begin work on your project once all permits are obtained and properly displayed on site. Below is a *simplified and generalized* illustrated representation of the permit process.

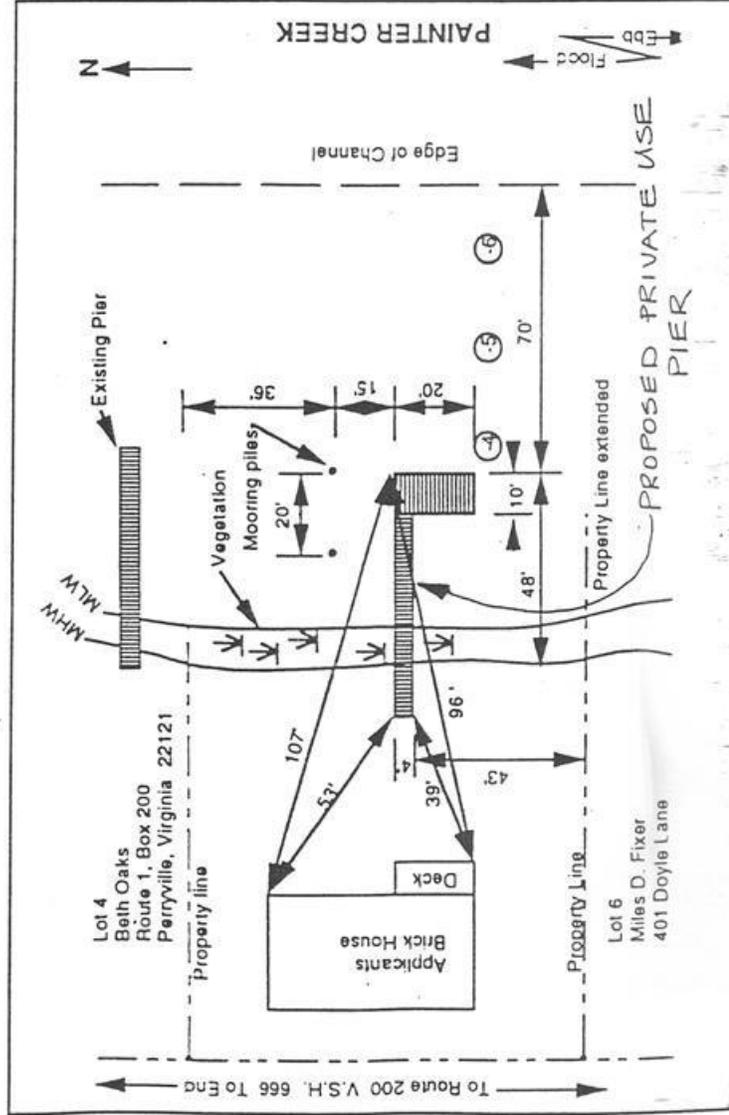


Other agencies that may be involved in the permit process include:

- SEAS (Shoreline Erosion Advisory Service)
- DEQW (Department of Environmental Quality, Water Division)
- VIMS (Virginia Institute of Marine Science)
- EPA (Environmental Protection Agency)
- FWS (Fish and Wildlife Service)
- NMFS (National Marine Fisheries Service)
- VDGIF (Virginia Department of Game and Inland Fisheries)

## Private piers are exempt from the requirement of a Wetlands Permit.

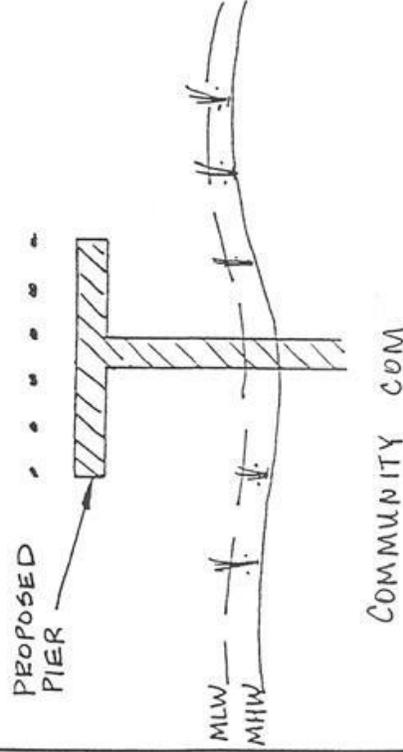
Private piers do cross the Wetlands Board jurisdiction. However, Section 3 of the Wetlands Ordinance exempts “noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided 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.” Proposed private piers are reviewed by the Wetlands Office, but they do not require a Public Hearing at a Wetlands Board meeting.



## Community and Commercial Piers require a Wetlands Permit if they are physically located within the Wetlands Board jurisdiction.

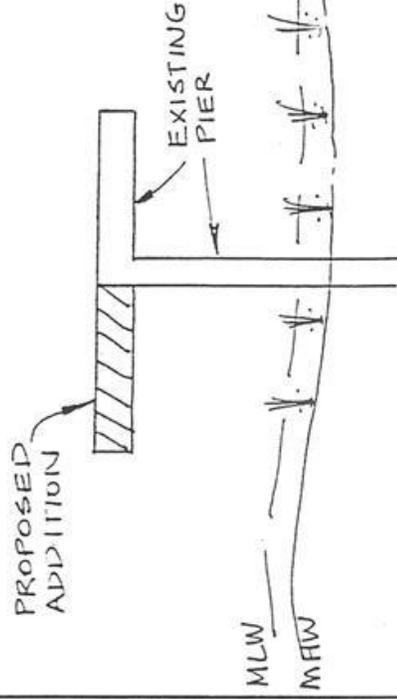
Proposed piers that are for community or commercial use do require a Wetlands Permit, if they cross the Wetlands Board jurisdiction. Any new pier will cross the Wetlands Board jurisdiction in order to connect from the land to water. However, additions to piers sometimes do not cross the Wetlands Board jurisdiction. If a proposed commercial or community pier addition is not located in the Wetlands Board jurisdiction, then a Wetlands Permit is not required.

Proposed Community Pier with pilings for Boatslips



This proposed community pier requires a Wetlands Permit because it crosses the Wetlands Board jurisdiction.

Proposed addition to an existing Commercial Pier



This proposed addition to a commercial pier does not require a Wetlands Permit because the proposal is not located in the Wetlands Board jurisdiction.