

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the day 6<sup>th</sup> of February, 2024:

<u>MEMBERS:</u>	<u>VOTE:</u>
Meg Bohmke, Chairman	Yes
Tinesha O. Allen, Vice Chairman	Yes
Deuntay T. Diggs	Yes
Darrell E. English	Yes
Monica L. Gary	Yes
Crystal L. Vanuch	Yes
Dr. R. Pamela Yeung	Yes

On motion of Ms. Allen, seconded by Ms. Gary, which carried by a vote of 7 to 0, the following was adopted:

AN ORDINANCE TO AMEND AND REORDAIN THE STAFFORD COUNTY CODE BY REPEALING AND REPLACING STAFFORD COUNTY CODE CHAPTER 27, "WETLANDS"

WHEREAS, County Code Chapter 27, "Wetlands" (Wetlands Ordinance) regulates tidal wetlands pursuant to Virginia Code § 28.2-1302 et seq.; and

WHEREAS, Virginia Code § 28.2-1302 requires amendments to the Wetlands Ordinance; and

WHEREAS, the Board considered the recommendations of staff and the testimony of the public, if any, at the public hearing; and

WHEREAS, the Board finds that public necessity, convenience, and general welfare, require the adoption of this ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 6<sup>th</sup> day of February, 2024, that Stafford County Code Chapter 27, "Wetlands," be and it hereby is repealed in its entirety and reordained and replaced as follows, with all other portions of the County Code remaining unchanged:

**STAFFORD COUNTY VIRGINIA  
CHAPTER 27 OF COUNTY CODE  
WETLANDS**

**ARTICLE I. WETLANDS ORDINANCE**

**Sec. 27-1. - Purpose.**

The board of supervisors, the governing body of Stafford County, 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.

**Sec. 27-2. - Definitions.**

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 to its citizens for the purpose of maintaining this county, 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 Virginia Code § 28.2-1303.

**Sec. 27-3. - Permitted uses of and activities in wetlands.**

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 Wildlife Resources and other conservation-related agencies;
- (7) The construction or maintenance of aids to navigation that 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;
- (11) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch; and
- (12) The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of Virginia Code § 28.2-104.1.

**Sec. 27-4. - Application for permit.**

- (a) Any person who desires to use or develop any wetland within this county, other than for the purpose of conducting the activities specified in County Code Sec. 27-3, 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 statement indicating whether use of a living shoreline as defined in Virginia Code § 28.2-104.1 for a shoreline management practice is not suitable, including reasons for the determination; 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 board of supervisors with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.

**Sec. 27-5. - Application open for public inspection.**

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 public notice for public hearing required under County Code Sec. 27-6.

**Sec 27-6. - Hearing on application.**

Not later than sixty (60) days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, the board of supervisors, 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 Wildlife Resources, the State Water Control Board, the Department of Transportation, and any governmental agency

expressing an interest in the application shall be notified of the hearing. The Commission or board shall mail or email these notices not less than twenty (20) days prior to the date set for the hearing. The board shall also (i) cause notice of the hearing to be published at least once in the seven (7) days prior to such hearing in a newspaper of general circulation in this county; (ii) post a notice of the hearing on its website at least fourteen (14) days prior to such hearing; and (iii) provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. The published notice shall specify the place or places within this county where copies of the application may be examined. The costs of publication shall be paid by the applicant. In the event that the board submits a correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the board shall be deemed to have met the notice requirements of this subsection so long as the notice is published in the next available edition of such newspaper.

**Sec. 27-7. - Determination of board; grant or denial.**

- (a) Approval of a permit application shall require the affirmative vote of three (3) members of a five (5) member board or four (4) members of a seven (7) 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 (30) days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within (48) 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 (30) 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 (4) affirmative votes from a (7) seven-member board or less than (3) three affirmative votes from a (5) 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 County Code Sec. 27-5.

**Sec. 27-8. - Bond to secure compliance with conditions and limitations.**

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.

**Sec. 27-9. - Board responsibilities.**

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 and any standards set by the Commonwealth in addition to those identified in Virginia Code § 28.2-1308 to ensure protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including the provisions of guidelines and minimum standards promulgated by the Commission pursuant to Virginia Code § 28.2-1301.

**Sec. 27-10. - Grounds for decision of board regarding application.**

- (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 Virginia Code § 28.2-1308 and guidelines promulgated pursuant to Virginia Code § 28.2-1301.
- (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 Virginia Code § 28.2-1308 and guidelines promulgated pursuant to Virginia Code § 28.2-1301.
  - (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.

**Sec. 27-11. - Form of permit.**

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

**Sec. 27-12. - Expiration date of permit.**

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

**Sec. 27-13. - Effect of permit on other zoning ordinances.**

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

**Sec. 27-14. - Tidal wetlands fund.**


The tidal wetlands fund, originally established by Ordinance O07-73, shall continue and may be used for the collection of:

- (i) Civil penalties for wetlands violations imposed pursuant to Virginia Code § 28.2-1320(A);
- (ii) Civil charges ordered by the wetlands board pursuant to Code of Virginia Code § 28.2-1320(B); and
- (iii) In-lieu fees for the mitigation of unavoidable fill in tidal wetlands pursuant to Regulation 4 VAC 20-390-50.

Administration of the fund shall include the ability to trace the contribution of in-lieu fees. The in-lieu fees shall be used for tidal wetland creation or restoration projects in the county or for the purchase of credits in an approved compensatory tidal mitigation bank.

The schedule of in-lieu fees for tidal wetlands impacts is pursuant to Ordinance O07-74.

A Copy, teste:

  
Randy E. Vosburg  
County Administrator