

“FAST-TRACK PERMITTING PROGRAM FOR DISPOSAL OF DREDGED MATERIAL”**CHAPTER 4 VAC 20-1340-10 ET SEQ.****PREAMBLE**

In certain instances, dredge material may be suitable for shoreline placement over State-owned submerged lands if the material is composed of sand suitable for beach nourishment, creating living shoreline features, creating wetlands, or developing oyster reef habitat in acceptable locations. Generally, overboard disposal of dredged material into tidal waters is not permitted for shoreline placement unless the material is uncontaminated and granular (sand size). As such, if other materials are suitable for living shoreline features and wetland creation, retention structures such as sills or breakwaters may be required as part of the disposal plan.

When overboard disposal is authorized, areas to be used for placement of the material should be located to minimize impacts on commercially important bottom dwelling organisms such as oysters and clams, submerged aquatic vegetation (SAV), wetlands, and other productive shallow water habitats. Overboard disposal areas should also be properly shaped and positioned to reduce scour and sedimentation.

Quality dredged material is a valuable State resource and may be used for beach replenishment at public beaches. Sandy dredged materials of suitable quality may be placed on private beaches if a public beach placement site is not suitable or available. In addition, § 10.1-704 of the Code of Virginia directs that the beaches of the Commonwealth shall be given priority consideration as sites for the disposal of that portion of dredged material determined to be suitable for beach nourishment.

This chapter is promulgated pursuant to authority contained in § 28.2-103 of the Code of Virginia and Acts of Assembly 2018, Chapter 449. The effective date of this chapter is June 1, 2019.

4 VAC 20-1340-10. Purpose.

The purpose of this chapter is to establish the necessary application requirements and review procedures for fast-track permitting of dredging and dredged material disposal sites involving state-owned submerged lands. Fast-track permitting shall be available only to local governments in Tidewater Virginia, as "Tidewater Virginia" is defined in § 28.2-100 of the Code of Virginia.

4 VAC 20-1340-20. Definitions.

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

"Coastal resilience" means the ability of natural and built coastal environments to withstand and recover from hazardous events such as extreme weather, storm surge, and recurrent flooding.

"VMRC" means the Virginia Marine Resources Commission.

“FAST-TRACK PERMITTING PROGRAM FOR DISPOSAL OF DREDGED MATERIAL”**CHAPTER 4 VAC 20-1340-10 ET SEQ.**

"Joint Permit Application" means the current standard application utilized by the U.S. Army Corps of Engineers, Virginia Marine Resources Commission, Virginia Department of Environmental Quality, and local wetlands boards to evaluate projects involving submerged lands, wetlands, and coastal primary sand dunes and beaches for permit review.

"Living shoreline" means the same as defined in § 28.2-104.1 of the Code of Virginia, that is, a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic material.

"Local government" means counties, cities, towns, and political subdivisions of the Commonwealth.

"Sand" or "beach sand" means material that is SM (silty sands), SP (poorly graded sand), or SW (well graded sand), using the Unified Soil Classification System, with a minimum median grain size of around 0.25 mm with no more than 20% passing through a #100 sieve (0.149mm) and no more than 10% passing through a #200 sieve (0.074mm).

"Submerged aquatic vegetation bed" or "SAV bed" means those areas of submerged aquatic vegetation identified and annually mapped by Virginia Institute of Marine Science (VIMS) during at least one of the previous five years. "Submerged aquatic vegetation" means any of a diverse assemblage of underwater plants found in the shoal areas of the Chesapeake Bay and Virginia's coastal bays and river tributaries, that are primarily eelgrass (*Zostera marina*), widgeon grass (*Ruppia maritima*), or may include: Eurasian watermilfoil (*Myriophyllum spicatum*), redhead grass (*Potamogeton perfoliatus*), wild celery (*Vallisneria americana*), common elodea (*Elodea canadensis*), water stargrass (*Heteranthera dubia*), coontail (*Ceratophyllum demersum*), waterweed (*Egeria densa*), muskgrass (*Najas minor*), pondweeds (*Potamogeton* sp.), Hydrilla (*Hydrilla verticillata*), and naiads (*Najas* sp.).

"Wetlands" means the jurisdictional areas defined as "vegetated wetlands" and "nonvegetated wetlands" in § 28.2-1300 of the Code of Virginia.

"Sand dunes and beaches" means the jurisdictional areas defined as "coastal primary sand dunes" and "beaches" in § 28.2-1400 of the Code of Virginia.

4 VAC 20-1340-30. Applicability and Procedures.

A. Fast-track consideration of Joint Permit Applications for dredging projects and associated dredge material disposal sites involving state-owned submerged lands shall be provided to local governments in Tidewater Virginia when shoreline or open water placement of dredge material is preferable for habitat creation or development of living shoreline features or to enhance coastal resilience.

“FAST-TRACK PERMITTING PROGRAM FOR DISPOSAL OF DREDGED MATERIAL”**CHAPTER 4 VAC 20-1340-10 ET SEQ.**

B. When placement of dredge material does not involve use of state-owned submerged lands, upland disposal sites must be identified in the Joint Permit Application.

C. To qualify for fast-track review, the applicant must submit to VMRC a request for fast-track review, a complete Joint Permit Application, the additional information identified in subsection D of this section, and any supplemental information deemed necessary by VMRC or the applicable wetlands board.

D. The application shall include a dredging plan, a dredged material placement plan, and the following additional information:

1. Geotechnical analysis of the material in the proposed channel to be dredged, unless the dredged material is sand with the same properties as the sand at the placement location and the placement location is adjacent to the dredge site;
2. Chemical analysis of the material to be dredged when VMRC determines chemical analysis is necessary due to the presence of known chemical contaminants;
3. Analysis of the benthic, marine, and fishery resources in the placement site;
4. Current recreational and commercial fishing activity in the proposed dredge and placement areas;
5. Any impact on historical artifacts in the proposed dredge and placement areas;
6. Any impact on other uses of the state waters and bottomlands at the dredge and placement sites; and
7. Anticipated environmental impact of the dredge material proposed for placement on (i) wetlands, dunes or beaches, submerged lands, and (ii) nearby benthic, marine, and fishery resources, including an assessment of any coastal resilience or beneficial ecological services provided by such placement.

E. VMRC, in consultation with the Department of Environmental Quality, the Virginia Department of Health, the Department of Historic Resources, the Virginia Institute of Marine Science, and any other interested state agency, shall coordinate a review process to ensure the orderly evaluation of a Joint Permit Application that qualifies for fast-track review. The review process shall be completed by all agencies that have been asked to comment within 45 days of VMRC notifying the agency of the Joint Permit Application.

“FAST-TRACK PERMITTING PROGRAM FOR DISPOSAL OF DREDGED MATERIAL”**CHAPTER 4 VAC 20-1340-10 ET SEQ.**

F. Any property owner adjacent to or within 200 feet of the disposal site shall be identified in the Joint Permit Application, and VMRC shall notify such property owners of the proposed project and provide an opportunity for comment.

G. VMRC shall issue a public notice for any dredge or dredge material placement project requiring public notice under 4VAC20-120-10.

H. A wetlands or sand dunes and beaches permit will not be required for any use authorized under subdivision 3 of § 28.2-1302 or subdivision 3 of § 28.2-1403 of the Code of Virginia.

I. When a wetlands or sand dunes and beaches permit is required, VMRC will not make a decision on the Joint Permit Application until receiving proof that a wetlands or sand dunes and beaches permit has been issued by the appropriate authority pursuant to § 28.2-1302 or 28.2-1403 of the Code of Virginia. After receiving such proof, or after receipt of a complete application if no wetlands or sand dunes and beaches permit is required, VMRC shall make a decision on the Joint Permit Application no more than 90 days thereafter to the extent practicable.

J. If an objection to a Joint Permit Application is filed with VMRC, VMRC shall allow 90 days from completion of the application to attempt to resolve the objection. If resolution cannot be achieved, VMRC shall consider the Joint Permit Application at a public hearing no later than 30 days after the time for resolution has ended or as soon as practicable.

4 VAC 20-1340-40. Fast-track Limitations.

A. Fast-track permitting shall not apply under the following conditions:

1. Placement of dredged material on SAV beds or where the dredged material will flow onto SAV beds.
2. Placement of dredged material on any oyster planting ground lease without written consent by the lessee.
3. Placement of dredged material, excluding sand, within 1,500 feet of an oyster planting ground lease without written consent by the lessee.
4. Placement of dredged material on sanctuary oyster reefs; natural oyster beds, rocks, or shoals; or where the dredged material will flow onto sanctuary oyster reefs or natural oyster beds, rocks, or shoals.

B. When dredged material is to be placed on shorelines not owned by the local government or political subdivision conducting the dredging, the local government or political subdivision must


“FAST-TRACK PERMITTING PROGRAM FOR DISPOSAL OF DREDGED MATERIAL”

CHAPTER 4 VAC 20-1340-10 ET SEQ.

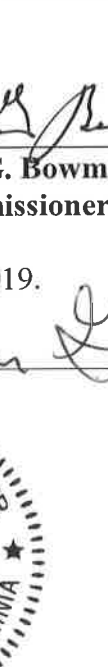
have a suitable property interest or written permission from the landowner to place dredging material on that property for any single dredging event and subsequent maintenance dredging.

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-103 of the Code of Virginia and Acts of Assembly 2018, Chapter 449, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Hampton, Virginia on May 28, 2019.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: 
Steven G. Bowman
Commissioner

Subscribed and sworn to before me this 5 day of June 2019.


Notary Public

