

## GUIDANCE REGARDING CERTAIN EXEMPT ACTIVITIES

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### FRAMEWORK AND PURPOSE

Pursuant to [Virginia Code § 28.2-1302](#), the Hampton Wetlands Ordinance ([City Code Ch. 41.1](#)) requires that any person who desires to use or develop any wetland within the City apply for a permit from the Wetlands Board, unless the activity is one listed within [City Code § 41.1-7](#).

In the course of their duties, the Staff Coordinator frequently receives inquiries regarding whether a proposed activity would require a permit from the Wetlands Board. This document provides guidance for the Staff Coordinator to assist in their determination, based upon the written submittal of a potential applicant, of whether a Wetlands Board permit is required for a use or activity within the jurisdiction of the Wetlands Board.

### GUIDANCE FOR CERTAIN EXEMPT ACTIVITIES

[City Code § 41.1-7](#) lists twelve activities which do not require a permit from the Wetlands Board. Some of these activities are very specific, such as item #12 regarding the construction of living shoreline projects authorized pursuant to [4 Va. Admin. Code § 20-1300](#) and [4 Va. Admin. Code § 20-1330](#), while others are more generalized and require interpretation. The following summaries elaborate on a couple of these more generalized activities and provide guidance for the Staff Coordinator in determining whether a proposed activity is one of these exempt activities and, therefore, does not require a permit from the Wetlands Board.

**Item #4: Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands**

There are multiple steps in the Staff Coordinator's evaluation of this item.

1. The Staff Coordinator must determine whether the activity is an "other outdoor recreational activity". The Staff Coordinator should consider that item # 3 provides a specific list of noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves. Therefore, an "other outdoor recreational activity" would be an activity other than those listed in item # 3. The Staff Coordinator should refer to resources such as the Virginia Outdoors Plan to determine other potential outdoor recreational activities. For example, the [2018 Virginia Outdoors Plan](#) identified "visiting natural areas" and "viewing the water" as two of the Top 10 Outdoor Recreation Activities by Participation. Additional resources from the Virginia Department of
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Conservation and Recreation or non-profit environmental organizations, such as The Wilderness Society, may be helpful in identifying other activities. For example, birdwatching and wildlife viewing is a common outdoor recreational activity.

2. The Staff Coordinator must determine that specific actions associated with the *other outdoor recreational activity* do not impair the natural functions or alter the natural contour of the wetlands. While this is a case-by-case determination, factors for the Staff Coordinator to consider may include, but are not limited to, the following:
  - a. whether the specific actions involve the use of any equipment and whether that equipment is manual or mechanical;
  - b. the site-specific conditions of the tidal wetlands, such as sediment consistency;
  - c. the potential impact of the specific actions on the natural functions of the tidal wetlands (i.e., storage of water, sediment trapping, and wildlife habitat);
  - d. the potential loss of vegetated areas due to long-term effects of the specific actions; and
  - e. the proximity of the specific actions to mean low water.

**Item #5:        Grazing, haying and cultivating and harvesting agricultural, forestry or horticultural products**

While this item involves multiple activities, for purposes of this document the specific activity of “haying” is described in more detail below.

1. For the Staff Coordinator to determine whether an activity is “haying”, the Staff Coordinator must evaluate the specific actions involved in the cutting and disposal of tidal wetlands vegetation. For example, the cutting of wetlands vegetation alone is not “haying”, the cut vegetation must be put toward some productive use. Therefore, leaving the cut vegetation on the tidal wetlands or disposing the cut vegetation would not be considered “haying”. However, if the cut vegetation was put to a productive use, such as use in animal feed, this may be considered “haying”.
2. In addition to the specific actions, the Staff Coordinator should also consider the type of vegetation involved because this information may impact what is considered a productive use. For example, if an invasive species is cut it may not be productive to utilize that cut vegetation for uses such as compost, which may inadvertently assist in the spread of the invasive species. Therefore, invasive species may have more limited options with respect to what is considered productive use.

### APPLICATION OF THIS GUIDANCE

Utilizing the guidance above, as well as the written description of the activity from the potential applicant, site specific conditions as may be determined from online resources or a visit to the site, and other resources as applicable; the Staff Coordinator

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shall provide a written determination to the person and shall maintain a record of this determination.

If the Staff Coordinator determines the activity can reasonably be interpreted as meeting the parameters of the exempt activity, no Wetlands Board permit is required. It should be noted that this exemption applies only to the need for a Wetlands Board permit, the person is responsible for obtaining any permits and approvals that may be required from other entities.

Alternatively, if the Staff Coordinator determines the activity cannot reasonably be interpreted as meeting the parameters of the exempt activity, then the person must apply for and obtain a permit from the Wetlands Board prior to commencing the activity. It should be noted that in addition to any required Wetlands Board permit, the person is responsible for obtaining any permits and approvals that may be required from other entities.

The Wetlands Board's standard violation procedure would be applicable in the event a person undertakes a non-exempt activity without first applying for a permit, obtains a permit but does not adhere to its conditions and requirements, or deviates from the described activity which the Staff Coordinator may have determined to be exempt.