

University of Maryland Agriculture Extension Service: Agriculture and Environmental Law Conference

Legal Developments

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CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

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Army Corps v. Hawkes,
USCT 2016

1. Army Corps – MN peat bog was a wetland subject to CWA jurisdiction
2. Administrative appeal with the Corps, reviewer said not a jurisdictional water.
3. Revised JD - area had a significant nexus to a river 120 miles away.
4. Hawkes filed suit in MN Fed. Ct.
5. Dismissed - JD was not a final agency action under the APA.
6. 8th Cir. which overturned - JD was a final agency action.



SCT: JD was a final agency action subject to review

- Corps conceded JD was the consummation of the Corps' decision making process, and
- rights and obligations were determined – direct legal consequences – 5 year safe harbor and options inadequate; get fined or get a permit

Observations:

- Builds on Sackett v. EPA, CWA compliance order subject to review
- Case remanded – district court will determine whether JD was accurate
- Concurrence by Kennedy, Thomas and Alito: does the CWA violate due process?
- What does this mean for the WOTUS rule?



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Hawkes – Holding and Observations

Facts: 2009 EPA petitioned to list CAFOs as stationary sources under the CAA. Petition claimed EPA had an obligation to list pollutants every 5 years. EPA failed to respond. 2015 Enviro groups filed suit in DC DCT

Issue: Could suit proceed under APA or CAA; If CAA, was notice proper?

Holding: Ct agreed with EPA that suit could only be brought under CAA
Case dismissed – failed to wait 180 days before filing suit.

Groups have refiled the suit: EIP v. EPA – focused on ammonia



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Humane Society v McCarthy

Background: 2005 EPA settled with a number of Ag entities agreeing to develop emissions factors for ammonia, HS, and other air pollutants

EPA told Enviros it would not act on petition until study complete – draft

Significance: If NH₃ is a pollutant – EPA would develop primary and secondary National Ambient Air Quality Standards.

If CAFOs are stationary sources and major, they would have to comply with CAA – NAAQS, New Source Review, Prevention of Significant Deterioration and Title V permitting



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Humane Society v McCarthy



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Land Use Regulations - Accomack

Sec. 106-232. - Poultry.

Intent . It is the intent of this article to provide all residents of the county benefit from the orderly and responsible growth of the poultry industry. The following standards have been promulgated to address the larger scale and more intense nature of modern poultry operations.

Definition - Confined poultry operation –

200 or more chickens

132 or more turkeys

200 or more other fowl not permitted to graze, roam, or exercise frequently outside the structure.

Includes litter storage sites, incinerators, disposal pits, composters, and cold storage units for the collection of dead birds.



Feedback

250 feet



Sec. 106-232. - Poultry.

c. Zoning Permit required from County

f. Minimum standards – 6 acres, 1 house per 5 acres

Max. limit – 12 houses per parcel

Min. separation – 400 feet

Setbacks – 500 ft. from existing dwelling. If tunnel fans – 600 ft.

400 ft. from business

200 ft. property line

200 ft. center of Rt. 13

500 ft. from school, church, nursing home, day care, rec. areas

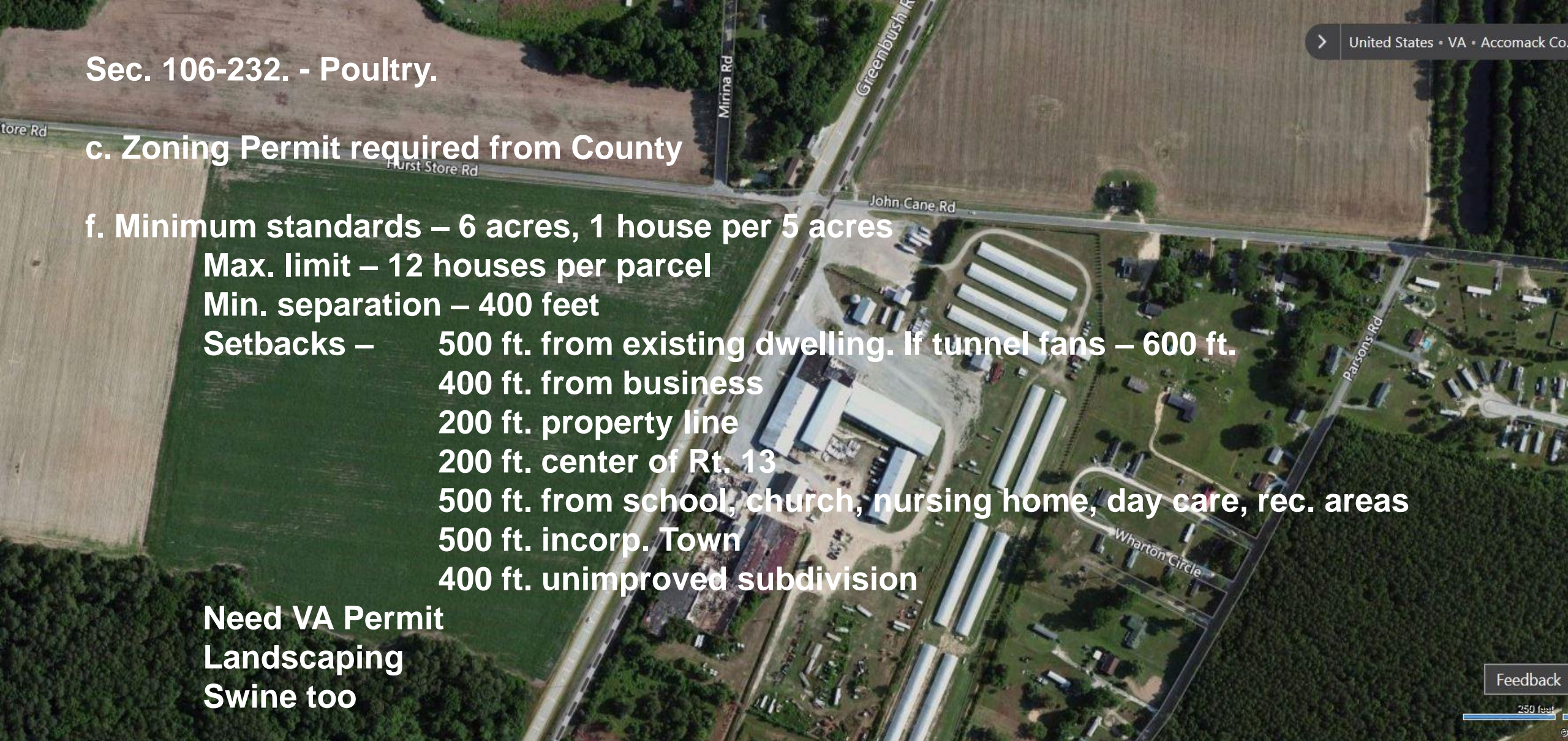
500 ft. incorp. Town

400 ft. unimproved subdivision

Need VA Permit

Landscaping

Swine too



Feedback

250 feet

