

**WETLANDS BOARD  
MINUTES**

**DECEMBER 9, 1998 - 7:00PM**

**A. ROLL CALL** **ABSENT**

Henry Lindsey	None
James Jones	
David Gussman	
Larry Waltrip	
John Hughes	

**OTHERS PRESENT**

Darryl E. Cook, Secretary to the Board  
James Perry, VIMS  
Tony Watkinson, VMRC  
Leo Rogers, Deputy County Attorney  
Andy Herrick, Assistant County Attorney  
Environmental Staff

**B. MINUTES**

Approval of the November 4, 1998 minutes were approved as presented.

**C. OLD BUSINESS - None**

**D. PUBLIC HEARINGS**

**1. W-28-98: Governor's Land Associates - Proposed Bridge Crossing B**

Mr. Darryl Cook presented the case stating that Governor's Land Management Company had requested that a wetlands permit be re-issued for the previously permitted bridge crossing B in the Governor's Land Subdivision. The property is further identified as parcel (1-23) found on James City County Real Estate Tax Map (44-2).

This application was previously permitted as W-33-97, but had expired on October 8, 1998. A one month extension was granted at the November wetland meeting. No changes to the original plan are anticipated.

It is the staff's recommendation that a wetlands permit be re-issued for this application with the following conditions:

1. Construction should be from the deck of the open pile structure.
2. Mats should be placed through the wetlands area to provide access to the island for the construction of the abutment, if necessary.
3. Upland areas shall be stabilized.
4. A building permit must be obtained.
5. The permit shall expire on December 9, 1999.

Mr. Lindsey opened the public hearing.

1. Ms. Robin Morgan, Williamsburg Environmental Group, Inc. and representative for the applicant, stated she would address any questions the Board might have.

The Board had no questions for Ms. Morgan.

Mr. Lindsey closed the public hearing.

Mr. Hughes referenced the letter from Mr. Perry and stated that he appreciated the information regarding the compensation of wetlands.

Mr. Jones made a motion to approve Case No. W-28-98.

The motion was approved by a 5-0 vote.

## **2. James City County Wetlands Mitigation-Compensation Policy**

(A complete copy of the Wetlands Mitigation-Compensation Policy, Virginia Marine Resources Commission, VR 450-01-0051 has been attached to these minutes for reference.)

Mr. Cook addressed the Board and stated the James City County Wetlands Board has been in the process of developing a wetlands mitigation - compensation policy for much of this calendar year. The board has received input and advice from the Virginia Marine Resources Commission, the Virginia Institute of Marine Sciences, the Army Corps of Engineers, other local wetlands boards, and the County Attorney's Office on how such a policy could be structured. The Board has also examined how these other governmental agencies implement their policies.

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The Board is also interested in receiving input from James City County citizens on the development and implementation of this policy. Therefore, tonight a public hearing is being held to present the proposed James City County Policy and to receive input from the public who will be most directly impacted by the policy's implementation. He stated that he would present the policy followed by the guidelines that implement the state policy. Unless these supplemental guidelines are modified by the wetlands board with the concurrence of the Board of Supervisors, they will become James City County Policy and will be applied to every wetlands permit application. The policy is as follows:

It shall be the policy of the James City County Wetlands Board to mitigate or minimize the loss of wetlands and the adverse ecological effects of all permitted activities through the implementation of the principles set forth in the Wetlands Mitigation-Compensation Policy (Policy), VR 450-01-0051, and the Wetlands Guidelines, (Guidelines) promulgated by the Virginia Marine Resources Commission.

The words "compensation" and "mitigation" shall have the following meanings when used in the context of the Policy:

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*Compensation* means actions taken which have the effect of substituting some form of wetland resource for those lost or significantly disturbed due to a permitted activity. This generally involves habitat creation or restoration. Compensation is a form of mitigation.

*Mitigation* means all actions, both taken or not taken, to eliminate or reduce the adverse effects of a proposed activity on the living and nonliving components of a wetland system or their ability to interact.

The Policy and Guidelines, promulgated in 1974 and revised in 1982, require that all wetland losses be mitigated but do not require that all losses be compensated. The Policy recommends that compensation be required on a limited basis to replace unavoidable wetlands losses. To determine whether compensation is warranted and permissible on a case-by-case basis, the two-tiered evaluation procedure contained in the Policy shall be employed. The procedure first evaluates the necessity for the proposed wetlands loss (See Section 4 of the Policy). If the proposal passes this evaluation, compensation will be required and implemented as set forth in the second phase, Supplemental Guidelines, Section 5.

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In order to be considered complete, each permit application must demonstrate that it meets the requirements of the Policy. Applications will not be forwarded to the Wetlands Board for consideration until the Policy is addressed. If it is determined that monetary compensation is acceptable, the funds shall be provided to the County or some other Wetlands Board approved entity prior to the issuance of the requested permit.

## **SUMMARY OF VMRC WETLANDS MITIGATION-COMPENSATION POLICY**

### **Section 3. General Criteria**

It shall remain the policy of the Commonwealth to mitigate or minimize the loss of wetlands and adverse ecological effects of all permitted activities through the implementation of the principles set forth in these Wetlands Guidelines, which were promulgated by the Virginia Marine Resources Commission.

### **Section 4. Specific Criteria**

In order for a proposal to be authorized to destroy wetlands and compensate for same in some prescribed manner, the three criteria listed below must be met.

1. All reasonable mitigative actions, including alternate siting, which would eliminate or minimize wetlands loss or disturbance must be incorporated in the proposal.
2. The proposal must be clearly water-dependant in nature.
3. The proposal must demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits.

### **Section 5. Supplemental Guidelines**

If compensation is required, then the following guidelines should be given due consideration and, if appropriate, may be included as conditions of the permit:

1. A detailed plan describing and detailing the wetlands compensation proposal including the exact time frame from initial work to completion.
2. Prior to planting, the grading at the compensation site shall be inspected to ensure that the elevations and drainage are correct.
3. The compensation plan must be developed and implemented by experienced professionals.
4. A performance surety instrument shall be required and remain in force until the new wetland is successfully established.
5. The compensation marsh shall replace the functional value of the lost resource on an equal or greater basis.

6. The compensation shall be accomplished prior to, or concurrently with, the construction of the proposed project.
7. All reasonable steps must be taken to avoid or minimize adverse environmental impacts from the compensation activity.
8. Onsite compensation is preferred with offsite in the same watershed as a consideration when onsite is not possible.
9. In selecting a compensation site, one aquatic community should not be sacrificed to create another.
10. The type of plant community chosen as compensation must have a demonstrated history of successful establishment in order to be acceptable.
11. The proposed activity should stand on its own merits in the permit review. Compensation shall not be used to justify permit issuance.
12. Manipulating the plant species composition of an existing marsh community as a form of compensation is not acceptable.
13. Nonvegetated wetlands should be treated on an equal basis with vegetated wetlands with regard to compensation and mitigation.
14. Both short- and long-term monitoring of compensation sites should be considered on a case-by-case basis.
15. Where onsite replacement for noncommercial projects is not feasible, compensation for small wetland losses (less than 1000 square feet) should be avoided in favor of minimizing loss of existing marsh.
16. Conservation easements to be held in perpetuity should be required for the compensation marsh.
17. All commercial projects which involve unavoidable wetland losses should be compensated.

Mr. Gussman stated he had concerns relating to the State Wetlands Mitigation-Compensation Policy regarding the functional value placed on different wetlands, the definition of what constituted "finished," and if the Board had flexibility in catastrophic situations.

Mr. Hughes addressed citizens in the audience and explained why the Board was holding a public hearing on this issue.

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Mr. Lindsey opened the public hearing.

1. Ms. Tyla Matteson, resident of Hampton, Virginia and a member of the Sierra Club, asked the Board several questions. She asked what the intent of the policy was, if any other localities had modified the State Policy for their policy, and if the Board was going to make a decision tonight on establishing a policy. She requested the Board keep in mind that the more funds spent, the higher the success rate on re-establishing wetlands. She then requested the Board adopt the most restrictive policy as possible in order to preserve wetlands.

2. Mr. Chuck Roadley, Williamsburg Environmental Group, addressed the Board and presented some of his concerns relating to tidal banking. One of the problems to be considered is the lack of certainty for an individual establishing a bank that the Board will require an applicant to purchase credits from the bank. He stated that mandatory compensation is what creates banks. Another issue is the disparity between the State Guide, State Code and the Chesapeake Bay Act Agreement relating to the issue of no net loss and the responsibility of local Wetland Boards. In lieu fees help compensate for impacts but if not implemented correctly, it can undermine the bank. Need to consider State Banks or regional banks if want to keep wetlands in or near James City County.

3. Mr. Lindsey indicated that staff had received a call from a citizen requesting the Board keep the policy as strict as possible for preservation of all wetlands. (Mr. James Daniels, Toano.)

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Mr. Lindsey closed the public hearing. (At the end of discussion on this issue, the Board unanimously agreed to keep the public hearing open for the next Board meeting.)

The Board agreed that it would not be a good policy for the Board to have a County Mitigation-Compensation Bank as a negative reflection could be perceived.

Dr. Perry suggested the Board consider areas that could be restored for mitigation purposes. He also recommended the Board consider changes to the State Wetlands Mitigation-Compensation Policy, Section 5, by changing the language in #15 to place a 500 foot minimum for on-site compensation, in #17 to place a minimum on compensation, and in #12 to include language which would permit an invasive plant species to be manipulated/eradicated in certain conditions.

The Board requested Mr. Rogers to prepare a James City County Wetlands Mitigation-Compensation Policy for the Board to review and approve at the next Board meeting, which will then be forwarded to the Board of Supervisors for their action.

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It was the consensus of the Board to hold open the public hearing on this matter for the next Board meeting.

**E. MATTERS OF SPECIAL PRIVILEGE**

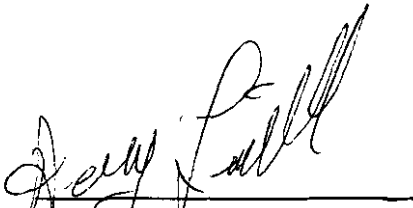
**1. Wetlands Board Meeting Schedule**

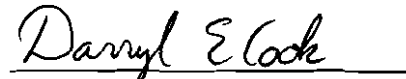
Mr. Hughes made a motion to approve the 1999 Wetlands Board Meeting Schedule, which is to be held on the 2nd Wednesday of each month at 7:00 pm, provided there are wetland cases to be considered.

The motion was approved by a 5-0 vote.

**F. ADJOURNMENT**

The meeting was adjourned at 8:25 P.M.

  
Henry Lindsey  
Chairman

  
Darryl E. Cook.  
Secretary