

AN ORDINANCE REGULATING THE USE AND DEVELOPMENT OF WETLANDS

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia:

Section 1. Wetlands Zoning Ordinance.

The governing body of the County of James City, acting pursuant to Chapter 2.1 of Title 62.1 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this ordinance regulating the use and development of wetlands.

Section 2. Definitions.

- (a) "Commission" means the Virginia Marine Resources Commission.
- (b) "Commissioner" means the Commissioner of Marine Resources.
- (c) "Person" means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.
- (d) "Governmental services" means any or all of the services provided by this County to its citizens for the purpose of maintaining this County and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.
- (e) "Wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this County; and upon which is growing on the effective date of this act or grows thereon subsequent thereto, any one or more of the following: 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 (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoices*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile ecentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), threesquares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* spp.) marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's ticks (*Bidens* sp.), smartweeds (*Polygonum* sp.), arrow-head (*Sagittaria* spp.), sweet flag (*Acorus calamus*), and switch grass (*Panicum virgatum*).

- (f) "Wetlands board" or "board" means a board created as provided in Section 62.1-13.6 of the Code of Virginia.

Section 3. The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

- (a) 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 marsh;
- (b) The cultivation and harvesting of shellfish, and worms for bait;
- (c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting preserves; provided that no structure shall be constructed except as permitted in subsection (a) of this section;
- (d) The cultivation and harvesting of agricultural or horticultural products; grazing and haying;
- (e) Conservation, repletion and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, Commission of Game and Inland Fisheries and other related conservation agencies;
- (f) The construction or maintenance of aids to navigation which are authorized by governmental authority;
- (g) Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;
- (h) The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, State, county, city or town abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;
- (i) Governmental activity on wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof.

#### Section 4.

- (a) Any person who desires to use or develop any wetland within this County, other than for those activities specified in Section 3 above, shall first file an application for a permit with the wetlands board and shall send copies to the Commission and the Virginia Institute of Marine Science.
- (b) An application shall include the following: the name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of wetland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and 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; and 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 deem necessary.
- (c) A nonrefundable processing fee to cover the cost of processing the application of twenty-five dollars shall accompany each application.

#### Section 5.

All applications and maps and documents relating thereto shall be open for public inspection at the office of the recording officer of this County.

#### Section 6.

Not later than sixty days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the 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 Division of State Planning and Community Affairs, the Department of Game and Inland Fisheries, Water Control Board, the Department of Highways and governmental agencies expressing an interest therein shall be notified of the hearing by mail

not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this County. The costs of such publication shall be paid by the applicant.

#### Section 7.

In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard 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. The board shall make its determination within thirty days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination and if the board has not made a determination, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then 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 office of the recording officer of this County.

#### Section 8.

The board may require a reasonable bond 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 hearing as provided herein, suspend or revoke a permit if the board finds that 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 as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

Section 9.

- (a) In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on these factors:
- (1) Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.
  - (2) Impact of the development on the public health and welfare as expressed by the policy and standards of Chapter 2.1 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.
- (b) If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate or tend to violate the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this County, to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2.1 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate or tend to violate the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

Section 10.

The permit shall be in writing, signed by the chairman of the board and notarized.

Section 11.

No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefore, grant extensions.

Section 12.

This ordinance shall become effective on date of adoption.

Adopted by the Board of Supervisors of James City County, Virginia, on October 11, 1972.