

ADOPTED

JAN 4 1993

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

ORDINANCE NO. 65A-5

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 19A, WETLANDS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 19A-1, PURPOSE OF CHAPTER; SECTION 19A-2, DEFINITIONS; SECTION 19A-3, PERMITTED USES; ARTICLE II, USE PERMITS, SECTION 19A-4, REQUIRED FOR CERTAIN ACTIVITIES; APPLICATION GENERALLY; FEE; SECTION 19A-5, APPLICATIONS, MAPS, DOCUMENTS TO BE OPEN TO PUBLIC INSPECTION; SECTION 19A-6, PUBLIC HEARING; SECTION 19A-7, WETLANDS BOARD ACTION; SECTION 19A-8, BOND REQUIRED; SUSPENSION OR REVOCATION OF PERMIT; BY ADDING NEW SECTION 19A-9, ROLE OF BOARD; BY RENUMBERING AND AMENDING SECTION 19A-9. STANDARDS FOR APPROVAL; GRANTING OR DENIAL PERMIT; SECTION 19A-10, PERMIT TO BE IN WRITING; SECTION 19A-11, EXPIRATION DATE; AND BY RENUMBERING SECTION 19A-12, NO EFFECT ON APPLICABLE ZONING AND LAND USE ORDINANCES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 19A, Wetlands, is hereby amended and reordained by amending Article I, In General, Section 19A-1, Purpose of chapter; Section 19A-2, Definitions; Section 19A-3, Permitted uses; Article II, Use Permits, Section 19A-4, Required for certain activities; application generally; fee; Section 19A-5, Applications, maps, documents to be open to public inspection; Section 19A-6, Public hearing; Section 19A-7, Wetlands board action; Section 19A-8, Bond required; suspension or revocation of permit; by adding new Section 19A-9, Role of board; by renumbering and amending Section 19A-10, Standards for approval; granting or denial

permit; Section 19A-11, Permit to be in writing; Section 19A-12, Expiration date; and Section 19A-13,
No effect on applicable zoning and land use ordinances.

CHAPTER 19A. WETLANDS

ARTICLE I. IN GENERAL

Section 19A-1. Purpose of chapter.

The governing body of the county acting pursuant to ~~Chapter 2.1 of Title 62.1 of the Code of Virginia, Virginia Code Sections 28.2-1300 et. seq.~~ for purposes of fulfilling the policy standards set forth in such chapter, adopts this chapter regulating the use and development of wetlands.

Section 19A-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Commission. The state ~~m~~Marine ~~r~~Resources ~~e~~Commission.

Commissioner. The ~~e~~Commissioner of ~~m~~Marine ~~r~~Resources.

Governmental activity. Any ~~or~~all of the services provided by this county to its citizens for the purpose of maintaining public facilities 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.

Nonvegetated wetlands. ~~All that land lying contiguous to mean low water and which land is between mean low water and mean high water not other wise included in the term "vegetated wet lands" as defined herein.~~ *Unvegetated lands lying contiguous to mean low water and between mean low water and mean high water.*

Person. ~~Any corporation, association or partnership, one or more individuals or any unit of government or agency thereof.~~ *Any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.*

Vegetated wetlands. 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 grown 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 oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Sprius validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), Black gum (*Nyssa*

sylvatica), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

Wetlands. All vegetated and nonvegetated wetlands.

Wetlands board or board. A board created *pursuant to Virginia Code* ~~as provided in Section 62.1-13.6 28.2-1303. of the Code of Virginia.~~

Section 19A-3. Permitted uses.

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 wetlands;
- (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, *and skeet and trap shooting, and shooting on*

shooting preserves, provided, that no structure shall be constructed except as permitted in subsection (a) of this section;

(d) *Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands.*

(e) The cultivation and harvesting of agricultural, forestry or horticultural products; grazing and haying;

(f) Conservation, repletion and research activities of the ~~Virginia Marine Resources Commission, the Virginia Institute of Marine Science, Commission~~ *the Department of Game and Inland Fisheries and other related conservation agencies;*

(g) The construction or maintenance of aids to navigation which are authorized by governmental authority;

(h) Emergency ~~decrees~~ *of measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;*

(i) 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.

(j) Governmental activity ~~on~~ *in* wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof; and

(k) The normal maintenance of man-made drainage ditches; provided that no additional wetlands are covered; ~~and provided further, that this paragraph shall not be deemed to~~ *This subdivision does not* authorize construction of any drainage ditch.

ARTICLE II. USE PERMITS

Section 19A-4. Required for certain activities; application generally; fee.

(a) Any person who desires to use or develop any wetland within this county, other than ~~for those~~ *the purpose of conducting the* activities specified in section 19A-3 above, shall first file an application for a permit with the wetlands board directly or through the Commission.

(b) ~~An~~ *The permit* application shall include the following: The name and address of the applicant; a detailed description of the proposed activities; ~~and~~ a map drawn to an appropriate and uniform scale, showing the area of wetlands 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, *and the location of* all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; *, a description of* ~~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 application has notice; *an* 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 off-site effects; the completion date of the proposed work, project or structure; and such additional materials and documentation as the wetlands board may ~~deem necessary~~ require.

(c) A nonrefundable processing fee *shall accompany each permit application* to cover the cost of processing ~~shall accompany each application~~, as follows:

- (1) For permits affecting ~~twenty thousand~~ 20,000 square feet or less of wetlands - ~~One hundred dollars~~ \$100.00.
- (2) For permits affecting more than ~~twenty thousand~~ 20,000 but not more than ~~forty thousand~~ 40,000 square feet of wetlands - ~~Two hundred dollars~~ \$200.00.
- (3) For permits affecting more than ~~forty thousand~~ 40,000 square feet of wetlands- ~~Two hundred dollars~~ \$200.00 plus ~~one hundred dollars~~ \$100.00 for each acre in excess of one acre of affected wetlands.

Section 19A-5. Applications, maps, documents to be open to public inspection.

All applications, ~~and maps and documents, relating thereto,~~ *submitted* shall be open for public inspection at the *Code Compliance* office. ~~of the recording officer of this county.~~

Section 19A-6. Public hearing.

Not later than sixty days after receipt of ~~such a complete~~ application, the wetlands board shall hold a public hearing on ~~such the~~ 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 ~~Commission~~ *Department of Game and Inland Fisheries, the wWater eControl bBoard*, the Department of ~~Highways and~~ Transportation, and *any* governmental agencies expressing an interest ~~therein in the~~ application shall be notified ~~by the board~~ of the hearing. ~~by~~ *The Board shall mail these notices* not less than twenty days prior *to* the date *set* for the hearing. The wetlands board shall also cause notice of ~~such the~~ hearing to be published at least once a week for two weeks prior to such hearing in ~~the~~ *a* newspaper ~~having a~~ of general circulation in this county. *The published notice shall specify the place or places within the county where copies of the application may be examined.* The costs of such publication shall be paid by the applicant.

Section 19A-7. Wetlands board action.

A. ~~In acting on any application for a permit, the board shall grant the application upon the concurring favorable vote of three (3) members. Approval of a permit application shall require the affirmative vote of three members of a five member board or four members of a seven member board.~~

B. 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~~ testify 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.

C. The board shall make its determination within thirty days ~~from~~ of the hearing. If the board fails to act within ~~such~~ that 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~~ its determination. ~~and if the board has not made~~ fails to make a determination, within the thirty day period, it shall notify the applicant and the commission that ~~thirty (30) days has passed and that~~ the application is deemed approved. ~~The term~~ For purposes of this section, "act" ~~referenced above means shall be the~~ action of taking a vote on the application. If the application receives less than four ~~concurring favorable affirmative~~ votes, ~~for from~~ a seven-member board and or less than three ~~concurring favorable affirmative~~ votes ~~for from~~ a five-member board, ~~this will be a determination to deny the permit. shall be denied.~~ The board shall transmit a copy of the permit to the commissioner.

D. If the ~~application~~ *board's decision* is reviewed or appealed, ~~then~~ the board shall transmit the record of its hearing to the eCommissioner. Upon a final determination by the eCommission, the record shall be returned to the board. The record shall be open for public inspection at the *Code Compliance* office of ~~the recording officer~~ of this county.

Section 19A-8. Bond required; suspension or revocation of permit.

The board may require a reasonable bond or letter of credit in an amount with surety and conditions satisfactory to it, securing to the eCommonwealth compliance with the conditions and limitations set forth in the permit. The board may, after *a hearing as provided herein, held pursuant to this chapter* 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 described~~ in the application. The Board *may*, after *a hearing*, ~~may~~ suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

Section 19A-9. ~~Standards for approval; granting or denying permit.~~ *Role of board.*

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 the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this chapter, 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 chapter. 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 the purposes and intent of Chapter 2.1 of Title 62.1 of the Code of Virginia and of this chapter, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.~~

In fulfilling its responsibilities under this chapter, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.

Section 19A-10. *Standards for approval; granting or denying permit.*

A. *In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:*

1. *The testimony of any person in support of or in opposition to the permit application;*
2. *The impact of the proposed development on the public health, safety, and welfare; and*
3. *The proposed development's conformance with standards prescribed in Virginia Code Section 28.2-1308 and guidelines promulgated pursuant to Virginia Code Section 28.2-1301.*

B. *The board shall grant the permit if all of the following criteria are met:*

1. *The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment;*
2. *The proposed development conforms with the standards prescribed in Virginia Code Section 28.2-1308 and guidelines promulgated pursuant to Virginia Code Section 28.2-1301; and*

3. *The proposed activity does not violate the purposes and intent of this chapter or Virginia Code Section 28.2-1300 et seq.*

C. *If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.*

Section 19A-10 11. Permit to be in writing.

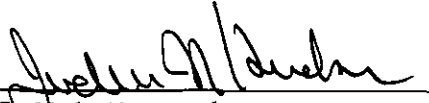
The permit shall be in writing, signed by the chairman of the board and notarized. *A copy of the permit shall be transmitted to the Commissioner.*

Section 19A-11 12. Expiration date.

No permit shall be granted without an expiration date, ~~and established by 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.* ~~Upon proper application the board, however, may grant, upon proper application therefor, extensions.~~ *Upon proper application the board, however, may extend the permit expiration date.*

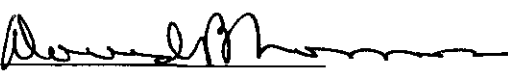
Section 19A-12 13. No effect on applicable zoning and land use ordinances.

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinances of this county.



Judith N. Knudson
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
DEPUE	AYE
TAYLOR	NAY
EDWARDS	AYE
SISK	AYE
KNUDSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 4th day of
January, 1993.

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