

November 16, 1982

AT A REGULAR MEETING OF THE WETLANDS BOARD OF THE COUNTY OF JAMES CITY, VIRGINIA, IN THE COUNTY GOVERNMENT CENTER, 101D MOUNTS BAY ROAD, SCHOOL BOARD CONFERENCE ROOM, AT 7:30 P. M. ON THE SIXTEENTH DAY OF NOVEMBER, NINETEEN HUNDRED AND EIGHTY-TWO.

1. ROLL CALL

Ms. Virginia Carey, Chairman
 Mr. William L. Apperson
 Mr. Jack P. Kirtland
 Mr. Gerald Otey, Sr.
 Ms. Donna M. E. Ware

OTHERS

Mr. Orlando A. Riutort
 Mr. Allen J. Murphy, Jr.
 Mr. Frank M. Morton, III

2. MINUTES

Ms. Ware stated that under item #2 in the minutes of the October 10, 1982 meeting, it should state that Mr. Porter was going to pursue marshland zoning with the legislature and not Mr. Porter and Delegate Grayson. It was also not a question of marshland zoning but a minimum amount of marshland death with by the legislature.

Upon a motion by Mr. Kirtland, seconded by Mr. Ware, the minutes were accepted as corrected.

3. CASE NO. W-2R-82. CONTINENTAL CABLEVISION

Mr. Murphy presented the staff report. It was noted that the expiration date stated in paragraph four of the memo and item six of the state recommendation should read August 1983 rather than 1982.

Ms. Carey opened the public hearing.

Mr. Otey expressed concern that no mention had been made of the possibility of gas or oil being spilled in the marshland during the digging process. He, therefore, proposed the addition of another condition to the staff recommendation requiring that special precautions be taken with regard to not spilling any oils or gasoline while the work was being done.

Ms. Carey asked Mr. Dierks if it was necessary to be more specific as to the precautions that were required. He responded that there were two ways in which oil or gasoline might be introduced into the wetlands. One way was for the pipeline to rupture; however, Colonial Pipeline had imposed strict restrictions on their activities in order to protect the pipeline and will have a representative on the site all during the digging and they will be staying 24 feet from the center line and will not dig within 10 feet of the pipeline. These restrictions reflect their concern about the pipeline's being ruptured inadvertently.

Another way in which the pipeline will be safeguarded is by the use of special equipment which was explained by Mr. Staples, an engineer. Mr. Staples stated that if his firm gets the contract for this work, they will jet the line in and no heavy equipment should be required while working near the Creek. No petroleum products would be stored near the site and their workers would be aware of the need for safety. There would also not be any used in the field maintenance procedures.

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Mr. Otey reiterated his concern that everyone be aware of the need to avoid oil and gasoline spills. Mr. Dierks said his firm would make it part of their instructions to the contractor when they prepared their agreement.

Ms. Ware asked how the jetting device was powered. She was informed that it was gasoline powered; however, it was done through a hose and the machinery would not come in contact with the water.

Mr. Priest pointed out that the precaution against oil and/or gasoline spillage is included by the Corps of Engineers in their permit. The statement in the permit was read to the Board by Mr. Dierks. This precaution is also covered in the State Water Control permit.

Ms. Carey asked if ditching will only be done in the upland areas and the jetting would be used only in the swamp area. Mr. Dierks and Mr. Staples both agreed that that was correct. It was noted that the revised application was submitted with a page showing how they would approach the crossing. It was also noted that the six inch conduit would extend into the bank 10 feet above the high water mark on Tutters Neck Creek and perhaps further than that on College Creek. It will be weighted in by the backfill and by cement blocks at various points in the pipe which is put in the Creeks, probably at 15 foot intervals. Whatever is dug out will be put back from the edge of the bank to the wetlands and the rest will be done by divers. No machinery will be used. The mud will also go back over it naturally in the creeks. In response to a question from Mr. Kirtland as to whether sand would be used if the contractor deemed it necessary, Mr. Staples stated that sand would be used to bring it back to the natural grade if necessary; however, based on observations made by the divers on November 4, this should not be necessary.

Mr. Kirtland stated that, as previously discussed, if the area was dug up to reseed the entire 750 sq. ft., it would be self-defeating because this would rob the area of existing plants for reseeded which would have to start all over again. Mr. Priest replied that plants would be brought from Maryland and that it would not take many to reseed the area. Mr. Turnamian pointed out that this was covered by the Planning staff's memorandum of November 10, 1982 under item 3 of the conditions. Mr. Otey wanted clarification of how the area would be reseeded if no extra digging was done. Mr. Anderson stated that he would let the wording in his letter cede to that of the staff report. Proper replanting then would not imply digging up the surrounding area. Mr. Priest stated the requirement for replanting and grading was for protection in case the vegetation in the area did not revegetate itself. Most of the plants are annuals and should revegetate. The most important factor is that the area be regraded to its proper level. With jetting being used, replanting would probably not be necessary. It is just another precaution for when the time comes to release the bond. The replanting would be done between April 15 and May 15 by which time it would be possible to determine if the plants were coming back naturally or if the area would have to be replanted.

Mr. Otey asked whether it would be a requirement when the bond was released that the area be brought back up to grade. Mr. Riutort assured him that there would be an inspection by Public Works and VIMS before the bond was released and that all requirements would have to be met. Any problems would be addressed at that time.

Mr. Otey asked Mr. Staples if he would be able to work within the 25 foot limit and Mr. Staples said that he saw no problem with it.

Ms. Carey closed the public hearing.

Ms. Ware made a motion, seconded by Mr. Otey, to accept the staff recommendation with five conditions rather than six. Mr. Otey said he was satisfied the precautions against gasoline and oil spillage would be taken. Item three was to be changed as stated previously regarding proper regrading and proper planting having taken place. The expiration date in the memo was to be changed to August 15, 1983.

Mr. Apperson asked if item one applied to the wetlands crossing and if there were any questions about marsh being wetlands. There were no questions.

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The secretary called for a roll call vote which went as follows:

Mr. Otey	Aye	Ms. Ware	Aye
Mr. Apperson	Aye	Ms. Carey	Aye
Mr. Kirtland	Aye		

4. MATTERS OF SPECIAL PRIVILEGE

The model wetlands ordinance was distributed to the Board members. Ms. Carey stated she would prepare a statement to be presented to the Board of Supervisors who would be holding a hearing on the ordinance at their December 13 meeting. Mr. Morton explained the format of the new ordinance.

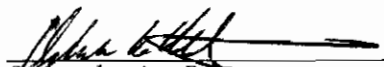
Ms. Carey asked for any questions. Mr. Morton explained the changes in definitions which included non-vegetated wetlands. Forestry was added as a permitted use in the wetlands. He further explained that the changes were in the boiler plate language of the General Assembly which gave the choice of adopting something simpler and retaining local control or turning control over to the State.

Additional explanation of grandfathering was requested. Mr. Morton stated that the cutoff date for grandfathering is December 31, 1982. Projects that are not certified would have to receive certification by that date. No provision for grandfathering was included in the new ordinance. The Board has received no requests for such certification. It is essentially a recognition of earlier projects of about ten years ago which should by now have been completed or subject to the ordinance. Mr. Riutort explained that it had to be advertised that certification is required and the ad was run in the Daily Press and other newspapers. An application had been developed for persons wanting certification and the Board must act on the applications within 120 days of their receipt. The ordinance goes into effect automatically on January 1, 1983.

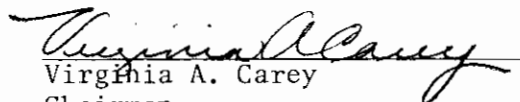
Ms. Carey asked how many of the members wanted to attend the Virginia Wetlands Management Symposium on January 8, 1983. Ms. Carey, Ms. Ware and Mr. Apperson said they would attend and Mr. Riutort said he would make the reservations for them.

5. ADJOURNMENT

Upon a motion by Mr. Kirtland, seconded by Mr. Otey, the meeting adjourned at 8:30 P. M.



Orlando A. Riutort
Secretary



Virginia A. Carey
Chairman

ORDINANCE NO. 65A-2

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 19A, WETLANDS, OF THE CODE OF THE COUNTY OF JAMES CITY, ARTICLE I, IN GENERAL, SECTION 19A-2, DEFINITIONS, BY AMENDING THE DEFINITIONS OF GOVERNMENTAL SERVICES AND WETLANDS, AND BY ADDING A DEFINITION FOR VEGETATED WETLANDS AND FOR NONVEGETATED WETLANDS, IN SECTION 19A-3, PERMITTED USES, BY AMENDING SUBSECTIONS (a), (d) and (e) AND ADDING SUBSECTION (j); AND ARTICLE II, USE PERMITS, SECTION 19A-4, SUBSECTION (a), PERMITS REQUIRED FOR CERTAIN ACTIVITIES; SECTION 19A-6, PUBLIC HEARING; SECTION 19A-7, WETLANDS BOARD ACTION; SECTION 19A-8, BOND REQUIRED, SECTION 19A-9, SUBSECTION (b), STANDARDS FOR PERMIT APPROVAL, SECTION 19A-II, EXPIRATION DATE, AND ADDING 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 that Chapter 19A, Wetlands, of the Code of the County of James City be, and the same is hereby, amended and reordained as follows: Article I. In General, Section 19A-2, Definitions of Governmental Services, Wetlands are amended, a Definition for Vegetated Wetlands and "Nonvegetated Wetlands" is added, and Section 19A-3, Permitted Uses, Subsections (a), (d), and (e) are amended and a Subsection (j) is added; and Article II, Use Permits, Section 19A-4, Subsection (a), Permits Required for Certain Activities; Section 19A-6, Public Hearing; Section 19A-7, Wetlands Board Action, Section 19A-8, Bond Required; Section 19A-9, Subsection (b), Standards for Permit Approval is amended; and Section 19A-11, Expiration date, and Applicable Zoning and Land Use Ordinances is added.

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, for purposes of fulfilling the policy standards set forth in such

chapter, adopts this chapter regulating the use and development of wetlands. (9-11-72, Sec. 1.)

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 marine resources commission.

Commissioner. The commissioner of marine resources.

Governmental activity. 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.

Person. Any corporation, association or partnership, one or more individuals or any unit of government or agency thereof.

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* sp.), sea lavender (*Limonium* sp.), 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* sp.), 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 board or board. A board created as provided in section 62.1-13.6 of the Code of Virginia (9-11-72, Sec. 2.)

Nonvegetated wetlands. All that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein.

Wetlands. All vegetated and nonvegetated wetlands.

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, 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, forestry or horticultural products; grazing and haying;

(e) Conservation, repletion and research activities of Virginia Marine Resources Commission, 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; and

(j) 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 authorize construction of any drainage ditch.

ARTICLE II. USE PERMITS

Section 19 -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 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 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 installation, 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; 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 of one hundred dollars to cover the cost of processing shall accompany each application. (9-11-73, Sec. 4; 2-11-74.)

Section 19A-6. Public hearing.

Not later than sixty (60) 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 Department of Game and Inland Fisheries, water control board, the Department of Highways and Transportation and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than twenty (20) days prior the date for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two (2) 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 19A-7. Wetlands board action.

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 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 (30) days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight (48) 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. (9-11-73, Sec. 7.)

Section 19-81. Bond required; Suspension or revocation of permit.

The board may require a reasonable bond or letter of credit 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 19A-9. Standards for approval; granting or denying permit.

(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.

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

The permit shall be in writing, signed by the chairman of the board and notarized. (9-11-73, Sec. 10).


Section 19A-11. Expiration date.

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 grant, upon proper application therefor, extensions. (9-11-73, Sec. 11.)

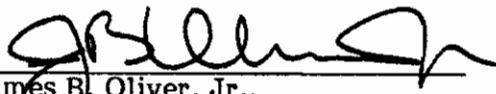
Section 19A-12. No Effect on Applicable Zoning and Land Use Ordinances.

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

Ordinance No. 65A-2


Abram Frink, Jr., Chairman
Board of Supervisors

ATTEST:


James B. Oliver, Jr.,
Clerk to the Board

Adopted by the Board of Supervisors, James City County, Virginia
this 13th day of December, 1982.

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