

**WETLANDS BOARD  
MINUTES**

**FEBRUARY 10, 1999 - 7:00PM**

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

Henry Lindsey James Jones  
David Gussman  
Larry Waltrip  
John Hughes

**OTHERS PRESENT**

Darryl E. Cook, Secretary to the Board  
Tony Watkinson, VMRC  
Leo Rogers, Deputy County Attorney  
Environmental Staff

**B. MINUTES**

Approval of the December 9, 1998 minutes were approved as presented.

**C. OLD BUSINESS - None**

Mr. Gussman made a motion to amend the Agenda to include W-4-98: Busch Properties, Inc. - 1000 Kingsmill Road/Marina - Permit Extension, to be heard under Matters of Special Privilege.

The motion was approved by a 4-0 vote.

**D. PUBLIC HEARINGS**

1. W-17/98/ & W-26/97: First Colony Area Civic Assoc. - First Colony Beach

Mr. Mark Eversole presented the case stating that the Greater First Colony Area Civic Association had applied for a wetlands permit to modify their existing permit for beach nourishment, sand replenishment and groin placement located at the First Colony beach, 94 Shellbank Drive in the First Colony subdivision. The property is further identified as parcel (4-1) found on James City County Real Estate Tax Map No. (45-3).

The First Colony beach is located on the James River. An Environmental Inspector visited the site in January 1999. This permit application proposes an extension to the existing groin on the west side, a breakwater on the east side and beach nourishment.

Previous permits have been issued to First Colony Civic Association. One was to extend the existing riprap groin and another was to construct two wooden groins with spurs. Part of the riprap groin was extended, but the wooden groins were not installed. The permit for the two wooden groins (W-26-97) expired on November 10, 1998.

It is the staff's recommendation to approve this application with the following conditions:

1. A preconstruction meeting will be held onsite prior to commencing the project.
2. A turbidity curtain shall be in place along the entirety of the project prior to any construction.
3. Only 100% sand is to be placed on the beach and around the cypress trees.
4. When placing the sand on the beach, the final grade of the sand is to stay below the existing timber walls.
5. Caution will be taken when placing the sand around the cypress trees, so the cypress knees are not damaged.
6. The area adjacent to the groin and the breakwater shall be planted with *Spartina patens*. An area of approximately 75 square feet shall be planted inside of each structure.
7. No mature trees shall be cut unless previously approved by the Environmental Division.
8. This permit will expire on February 10, 2000.

Mr. Eversole informed the Board that Mr. John Ryland, an adjacent property owner, had objected to the proposal to the extent that he felt the fence indicated on the west property line was on his property and not on the property line, as well as part of the nourishment area indicated was located on his property. Mr. Eversole stated Mr. Guernsey and Mr. Sowers were present to answer questions.

Mr. Lindsey opened the public hearing.

1. Mr. O. Marvin Sowers, Jr., Committee Chairman for the applicant, stated the Civic Association had raised funds to complete their shoreline project as proposed by Mr. James Davis-Martin, Department of Conservation and Recreation. In order to complete the project their existing

permit needed to be amended and he requested the Board's approval of their permit. Mr. Sowers informed the Board that prior to commencing the project a survey would be done to identify the property line.

2. Mr. Roger Guernsey responded to a question from the Board that the height of the dune would be no higher than the existing bulkhead.

Mr. Lindsey closed the public hearing.

Mr. Hughes made a motion to approve Case No. W-17-98 with staff's recommendations and the added condition that a land disturbing permit with surety be required and remain in force until the new wetland is successfully established in the tidal area; a minimum of three growing seasons.

The motion was approved by a 4-0 vote.

2. W-31-98: John D. Williams - 2425 Manion Drive

Mr. Mark Eversole presented the case stating that Mr. John D. Williams had applied for an after the fact wetlands permit for an existing bulkhead on his property located at 2425 Manion Drive, in the Drummonds Field subdivision. The property is further identified as parcel (1-2) found on James City County Tax Map No. (46-3) and is located on the James River.

In October 1998, it was brought to the attention of the James City County Environmental Division that a bulkhead had been constructed at 2425 Manion Drive, with no record of a permit being issued for this project. An Environmental Inspector has visited the site and Dr. Jim Perry from VIMS has also visited the site.

It is the staff's recommendation to approve this application with the following conditions:

1. Both return walls need to be backfilled. The tree growing behind the bulkhead and return wall on the west end needs to be cut down to allow for the backfilling.
2. After the return walls are backfilled, all denuded areas are to be stabilized.
3. The permit shall expire on February 10, 2000.

Mr. Lindsey opened the public hearing.

1. Ms. Elsie (Boots) Johnson, 210 Red Oak Landing Road, Williamsburg, inquired what the Board's policy was on after-the-fact permits.

Mr. Hughes and Mr. Lindsey responded stating that if a builder does the work prior to obtaining a permit the Board finds it unacceptable as they should know the permit process. If a homeowner does the work the Board will be more flexible as they understand most homeowners are not familiar with the permit process. Prior to the Board making a decision, each case is reviewed separately to determine the minimal impact on wetlands.

Mr. Lindsey closed the public hearing.

Mr. Gussman made a motion to approve Case No. W-31-98 with staff's recommendations.

The motion was approved by a 4-0 vote.

3. W-1-99: Jamestown 4-H Educational Center, Inc. - 3751 4-H Club Road

Mr. Gerald Lewis presented the case stating that Mr. Wilbur Jordan had applied on behalf of the Jamestown 4-H Educational Center, Inc., located at 3751 4-H Club Road, for a permit to temporarily remove approximately 40 linear feet of riprap, install 40 linear feet of tongue and groove salt treated bulkhead and replace the riprap at the toe of the bulkhead. The property is further identified as parcel (01-0-0003) on the James City County Real Estate Tax Map (46-3).

The property in question is located along the James River. Representatives from the Environmental Division visited the site in December 1998. There will be no additional permanent impact to wetlands as the bulkhead and riprap will be placed in the same location as the existing riprap. However, there will be approximately 200 square feet of temporary impact due to the relocation of the aforementioned riprap.

This bulkhead installation is a continuation of an ongoing replacement of the old concrete seawall as previously permitted in case W-3-97. It is staff's recommendation that this permit be approved with the following conditions:

1. The existing seawall be removed prior to construction.
2. The bulkhead be aligned with, have the same top elevation, and tie into the adjacent seawall at the northwest end of the bulkhead. To ensure a proper connection between the two structures, the existing soil shall be excavated for a longitudinal distance of 10 feet along the existing seawall with filter fabric placed in a continuous manner from the bulkhead behind the seawall and then backfilled at the same time and manner as the bulkhead.
3. The riprap will be placed to serve as a return wall at the southeast end of the bulkhead and constructed in a manner to minimize damage to existing vegetation in this area.
4. The riprap shall be placed on filter cloth.
5. The Environmental Division shall inspect the tie backs, deadmen and filter fabric prior to backfilling.

6. All upslope disturbed areas shall be stabilized.

7. The permit shall expire February 10, 2000.

Mr. Lindsey inquired if a turbidity curtain had been considered and wanted to know where the riprap would be placed.

Mr. Lewis responded that there would be too much damage done to wetlands if a turbidity curtain was used and the riprap would go at the toe of the bulkhead.

Mr. Lindsey opened the public hearing.

1. Mr. Ron Smith, representative for the owner, stated that previously permitted riprap, W-3-97, was not working as anticipated and inquired if he could use some of this riprap to shore the section up that was not adequate.

Mr. Lewis responded that he would work with Mr. Smith for a uniform grade that would work.

Mr. Lindsey closed the public hearing.

Mr. Hughes made a motion to approve Case No. W-1-99 with staff's recommendations.

The motion was approved by a 4-0 vote.

4. James City County Wetlands Mitigation-Compensation Policy

Mr. Cook addressed the Board and stated a draft Resolution was before them for their consideration or modification. He stated the Deputy County Attorney had discussed the format and procedure for adoption with VMRC and they were satisfied with the approach. Mr. Cook reminded the Board that the public hearing was still open to hear public comment.

**RESOLUTION**

**COUNTY WETLANDS MITIGATION POLICY**

WHEREAS, the Virginia Marine Resources Commission adopted certain guidelines entitled "Wetlands Mitigation - Compensation Policy" and identified as VR450-01-0051 (the "Guidelines"); and

WHEREAS, the Guidelines shall be used by the James City County Wetlands Board in deciding whether to grant or deny a Wetlands Permit; and

WHEREAS, the James City County Wetlands Board desires to identify certain procedures and interpretations of the Guidelines for issuance of wetlands permits in James City County.

NOW, THEREFORE, BE IT RESOLVED by the Wetlands Boards of James City County, Virginia, the following procedures and interpretation shall be used in deciding whether to issue a wetlands permit:

1. Section 1. Definitions

In applying the term "compensation," the Wetlands Board may consider the payment of money to be used to purchase, preserve, restore, or create wetlands in the County.

2. Section 5. Supplemental Guidelines

In applying Paragraph numbered 5 of the Guidelines, the Wetlands Board shall seek a minimum of 2:1 areal exchange unless the compensation marsh is already in existence and its wetland vegetation is successfully established. In the case of this exception, a minimum of 1:1 areal exchange shall be acceptable.

3. Section 5. Supplemental Guidelines

In applying Paragraph numbered 8 of the Guidelines, the Wetlands Board shall consider locating a compensation site outside the river basin of the project only if it is done as part of a County-coordinated program of ecological enhancement.

4. Section 5. Supplemental Guidelines

In interpreting Paragraph numbered 12 of the Guidelines, the Wetlands Board may allow manipulation of plant species where current species are listed as an invasive species on the Department of Conservation and Recreation, Division of Natural Heritage's list of Invasive Alien Plants of Virginia.

5. Section 5. Supplemental Guidelines

In interpreting and applying Paragraph numbered 15 of the Guidelines, the Wetlands Board shall consider any wetlands impacts occurring on property subdivided after the adoption of this Resolution as commercial activity regardless of the use of the property.

Wetlands Board of James City County, Virginia

\_\_\_\_\_  
Henry Lindsey, Chairman

ATTEST:

\_\_\_\_\_  
Darryl E. Cook  
Secretary to the Board

This Resolution is adopted by the Wetlands Board of James City County, Virginia, this 10th day of February, 1999.

A short discussion was held relating to subdivided waterfront property with existing shoreline erosion problems after the adoption of the policy and if it should be defined as commercial or noncommercial activity in determining required compensation.

Mr. Lindsey opened the public hearing.

1. Ms. Sarah Kadec, 3504 Hunter's Ridge, Williamsburg, and a representative of the Historic Route 5 Preservation Association, addressed the Board. She referenced the letter that she had sent to Board members and urged the Board to adopt a policy that would preserve all wetlands possible and be in the best interest of James City County. (Letter attached to these Minutes.)

2. Ms. Elsie (Boots) Johnson, 210 Red Oak Landing Road, Williamsburg, addressed the Board and summarized a letter which she had sent to the Board on February 5, 1999 stating her concerns relating to the policy. Ms. Johnson emphasized that James City County must have a firm policy which will preserve wetlands. (Letter attached to these Minutes.)

Mr. Lindsey closed the public hearing.

It was the consensus of the Board to continue the public hearing on this matter to the next Board meeting. It was also the consensus of the Board not to vote on this policy without all Board members being present to vote.

#### **E. MATTERS OF SPECIAL PRIVILEGE**

1. W-4-98: Busch Properties, Inc. - 1000 Kingsmill Road/Marina - Permit Extension

Mr. Mark Eversole presented the case stating that Busch Properties, Inc. had requested a one year extension to this permit. The permit expires on March 11, 1999. Due to scheduling difficulties, the wetlands permit had not been executed. It is the desire of the Developer that this permit be extended for one year from its original expiration date.

Mr. Hughes inquired if staff had been contacted by the owner prior to this request.

Mr. Eversole responded that they had not contacted staff.

Mr. Hughes made a motion to deny extending Case No. W-4-98.

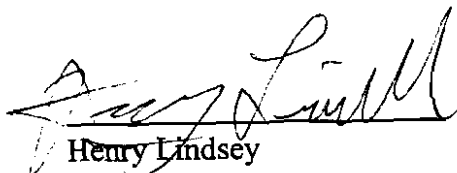
The motion was approved by a 4-0 vote.

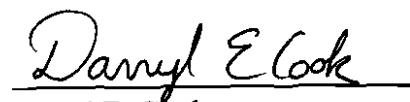
The basis for the denial is that when the permit was initially issued, the owner expressed a need for expediency of the Board's action. As an accommodation, the Board granted the permit but with reservations. They felt the information regarding the historic resources on the site, the graves at the top of the slope, was not well documented. Also, the Board has become more active concerning mitigation and compensation of wetlands impacts, which was not addressed in the original permit application. This project impacts a significant amount of wetlands. These aspects of the project would need to be more fully developed prior to reconsideration of the project.

Mr. Watkinson reminded the Board of the Wetlands Management Symposium to be held on February 20, 1999.

**F. ADJOURNMENT**

The meeting was adjourned at 8:31 P.M.

  
Henry Lindsey  
Chairman

  
Darryl E. Cook.  
Secretary



3504 Hunter's Ridge  
Williamsburg, VA 23188  
January 26, 1999

Mr. Henry Lindsey, Chair  
Wetlands Board  
James City County  
101 Mounts Bay  
Williamsburg, VA 23188



Dear Mr. Lindsey:

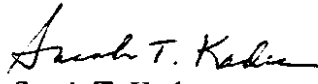
As I told you on the telephone, I attended the December Wetlands Board meeting at which the Board requested public input to the Policy under consideration. Unfortunately, I had not had a chance to review the policy and felt ill prepared to comment. Hopefully, I will be able to attend the February 10th meeting, but in case I cannot, these are my comments relative to the State Policy under consideration for James City County.

- in Section 2, the statement is made that studies have demonstrated that created habitats may not be "capable of performing the ecological functions of the undisturbed habitat". I could not find that the policy addresses the wildlife found in wetlands, and whether replaced wetlands can attract these wildlife if located other than in the general area of the original wetlands.
- State policy clearly indicates that wetlands are an "irreplaceable natural resource" and that they should be preserved in their "natural state". At the same time it indicates a willingness to "accommodate necessary economic development in a manner consistent with wetlands preservation". Who determines what is necessary? Developers no doubt can make the case that any project will have the highest public and private benefit, and thus the loss of wetlands is unavoidable.
- All of the specific criteria (at least in James City County) should have to be met before an activity is approved. If the proposal is not clearly water-dependent, that should stop consideration of the project. If reasonable mitigation actions aren't incorporated, then the project review should go no further. And finally, the proposal would have to meet these two criteria and have overwhelming public and private benefits for approval. If any of the three criteria are not in place, the project should be disapproved, whether or not mitigation/compensation is promised.
- Any compensation should be carried out in James City County, not in Charles City or any other location. Item number 8 in the suggested guidelines supports this.
- James City County should identify any successfully compensated sites for review by those proposing any activity that would result in wetlands loss. A performance bond or letter of credit should remain in force longer than two growing seasons, to ensure that adequate compensation has occurred. Langley AFB has at least one restoration that its staff considers successful. This could be used as an example, if none are available in the County.
- Compensation should be accomplished prior to construction of any proposed project. See item number 6 in Section 5.

- Monitoring of **all** compensation activities should be required long-term, not "should be considered on a case-by-case basis", as indicated in number 15, Section 5. In this section, two years minimum is stated; in "Suggested Management Guidelines...." it states that monitoring should last a minimum of three years.
- If on-site compensation is not feasible (Section 5, Item 15) then a permit should not be issued.
- The policy statements in items 8 through 13 and 16 of Section 5 are very good. Item 17 is also good provided there is to be **unavoidable** loss.

Thank you for your consideration of these points. If I am able to attend the February Board Meeting, I will certainly speak to these.

Sincerely,

  
Sarah T. Kadec

**facsimile**  
**TRANSMITTAL**  


**To:** D. Cook  
**Of:** Environmental Quality  
**Fax:** 2536850  
**Pages:** 5, including this cover sheet.  
**Date:** February 5, 1999

Following is a letter expressing concerns I have relative to the Mitigation-Compensation policy.  
Please put me on the agenda to speak at the February 10 Wetlands Board meeting.

Boots Johnson (229-5279)

*Could you get copies to the board members  
I have e-mailed to J Hughes and Jsgussman.*

From the desk of...

Elsie G. (Boots) Johnson  
210 Red Oak Landing Road  
Williamsburg, VA 23185-2356

February 5, 1999

Wetlands Board  
James City County  
101 Mounts Bay Road  
Williamsburg, VA 23188

I wish to express a number of concerns relative to the Mitigation-Compensation Policy (Wetlands Mitigation-Compensation Policy, VR 450-01-0051), specifically as the policy may be applied in James City County.

The VMRC publication is loosely written for general purposes and for general consideration. It does not provide the necessary guidance for regulatory management and code enforcement needed at the local level. James City County needs a clear commitment to the protection of natural systems through the requirement of the avoidance and minimization of encroachment on wetlands.

I have two major concerns with compensatory mitigation:

1. The de-emphasis of commitment to the protection of natural systems through avoidance and minimization on wetlands.
2. The probability of convenience and financial expediency overshadowing better planning and design to prevent further loss of wetlands.

Should James City County consider compensation as a form of mitigation, we must include specific, clear and definitive policy statements to guide the approach to any wetlands compensation decision. Reference to "Suggested Management Guidance for Implementation of Wetlands Compensatory Mitigation in Tidal Area of Virginia" in the VMRC publication give a number of ideas for definitive Policy Statements for James City County, which could follow the General Policy and General Criteria of Sections 2 and 3.

For example:

1. Compensation should be considered only as a last resort. Emphasis remains on protection of natural systems and only unavoidable losses to be compensated. Permittee must pursue preliminary consultations to avoid wetland loss early in the planning process.
2. Preservation of existing wetlands shall not be used as a form of compensatory mitigation.
3. Replacement of wetland function shall be the primary aim of the compensation effort.

4. If compensation is required, all (delete reasonable) steps shall be taken to insure long term persistence of the artificial system.
  - a. Clear and detailed goals and objectives shall be determined for the compensated wetlands. This shall determine the criteria by which successful establishment will be judged during the permitting and development period of the artificial wetland. The goals and objectives shall incorporate the created wetland into the overall landscape.
  - b. Short term and long term monitoring shall be required for a minimum of three years, and shall continue until it is determined that the compensation wetland will survive on its own without further artificial manipulation.

#### Section 4. Specific Criteria

In order for a proposal to be authorized to destroy wetlands and compensate for same in the prescribed manner, all criteria listed below must be met. If a proposal does not meet criteria one and two, it shall be denied. The board may allow the applicant to submit a new proposal where the activity occurs apart from the wetland and otherwise attempts to correct the deficiency of the earlier proposal to meet all criteria requires for approval.

1. The proposed activity must clearly be water dependant in nature, and an activity permitted by wetlands regulation.
2. The proposal must clearly demonstrate that alternate siting is not possible. To expedite the process, if the proposal is located within a larger plan, the applicant shall include the overall plat and specify the acreage and function of the wetland to be lost.
3. All mitigative action which would result in the least loss or disturbance must be incorporated in the proposal.
4. The proposal must demonstrate overwhelming public benefit as well as private benefit. The proposed activity must stand on its own merits, without reference to a gain through compensatory mitigation.

#### Section 5. Supplemental Guidelines

Compensation for wetlands losses that would result from a regulated activity, that meets all criteria stated in Section 4 must mitigate the replacement of both acreage and function of the wetland lost to protect and maintain the overall natural functioning of the watershed.

Proposal for compensation shall include the following condition of permit:

**Comment:** I propose to address only parts of a few of the conditions of permit.

1. A detailed plan **shall** be submitted describing the objective of the wetlands compensation, to include:

**Comment:** A detailed listing of specifics is preferred over a series of items in paragraph form. Refer to "Suggested Management Guidelines", pp3 and 4, item 2 and 3.

4. This paragraph needs to be rewritten to comply with the suggested policy statement in Section 3, paragraph 4, b.
5. The compensation wetland must be in-kind replacement, to replace the functional values of the lost resource on an equal or greater basis.... A minimum 1:2 areal exchange is required.

**Comment:** The question of the feasibility of establishing compensation wetland is, at present, still not clearly established. To address the functional replacement in area for area exchange with increased mitigation ratios and in-kind or higher order of planting to not include invasive species, is the most heavily utilized approach to increase the chance for success.

6. The compensation **must** be completed prior to any activity on the construction of the proposed project.
7. All (delete reasonable)
8. ... Locating a compensation site outside the stream basin of the project is not acceptable (delete, unless...and following).
11. The proposed activity **must** stand on its own.
13. Non-vegetated wetlands **must** be ..... is more valuable than the other for the overall functioning of the watershed.
14. ....monitoring of compensation site **shall** be required. (As specified in suggested policy guidelines, Section 3, paragraph 4.b.). The applicant shall be responsible for funding the monitoring necessary to insure best chance for the success of the artificial wetland.
15. If on site replacement for single owner, non-commercial project, small wetland losses **must** be must be avoided in favor of the natural marsh to the maximum extent possible.

Comment: bit by bit loss of wetland has often been shown to add up to a greater overall loss to the watershed function than some large areas. The impact of the smaller areas combined function within the watershed are difficult, if not impossible, to replace and must be avoided.

17. All commercial projects....

Question: Define, please. Are we speaking of any commercial project, projects permitted by wetlands code, or what?