

**WETLANDS BOARD  
MINUTES**

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

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

Henry Lindsey  
David Gussman  
Larry Waltrip  
John Hughes  
James Jones

**OTHERS PRESENT**

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

**B. MINUTES**

Approval of the February 10, 1999 minutes were approved.

**C. OLD BUSINESS - None**

**D. PUBLIC HEARINGS**

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

Busch Properties, Inc. had applied for a one year extension for the permit listed above at the February 10, 1999, meeting. The request was turned down because the applicant had not addressed two issues adequately; the location of graves on the bluff and a mitigation plan. Following the February meeting, the applicant met with staff to inform them that Busch Properties still wanted to pursue the permit extension and that work would be done to address these issues before the March Board meeting.

Mark Eversole presented the case stating that Busch Properties, Inc. had requested a one year extension for this wetlands permit. The permit expires March 11, 1999. Due to scheduling difficulties, this 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.

Environmental Division staff met on site with the developer, contractor, consultant, and archeologist on Thursday, March 4, 1999. Mr. Henry Lindsey, Chairman of the Wetlands Board was in attendance. The parameters of the project were reviewed, along with the concerns of the staff and wetlands board. Mr. Nick Lucchetti, James River Institute for Archaeology, provided more information on the graves that are in the vicinity of the project. He agreed that the existence of graves along the bank was factual but their locations were not well documented. Mr. Tom Dunn, Busch Properties, Inc., agreed to have an exploratory archeological survey performed between the fence and the bluff to determine the existence, numbers, and locations of graves. He is present to report on the findings of that survey. Mr. Jim Gunn, Coastal Design and Construction, had presented more information on the wetlands compensation plan for this project and he also is present to provide details to the Board.

Staff recommendations are as follows:

1. Should the archaeological survey confirm the existence of graves in the area between the fence and bluff, then the plan should be approved as submitted, with no laying back of the slope. Should no evidence of graves be uncovered, then the plan should be revised to include the laying back of the bluff to the location of the existing fence.
2. The compensation plan should be expanded to provide 6,300 square feet of a combination of the following: expanded planting areas; and eradication of invasive species with replacement with desirable species, as detailed in the letter of February 26, 1999 from Mr. Neville Reynolds, VHB. This amount of compensation will equal the impacted tidal area, (type XV, Sand Mud Flat) of this proposed work.

Mr. Lindsey opened the public hearing.

1. Mr. Jim Gunn presented the findings of the archaeological study that showed the presence of numerous graves between the existing fence and the top of the bluff. He also indicated that they could accomplish the increased plantings for the mitigation plan as suggested by staff. The change would require that a total of 6,300 square feet of new wetland plantings would be installed either in currently non-vegetated wetland areas or wetland areas where invasive plant species are currently growing.

Mr. Gussman asked how much of the work would involve eradication of invasive species and how would the eradication be carried out.

Mr. Gunn responded that there was probably a total of 500 square feet of invasive plants. These would be eradicated by spraying with herbicides over a period of three years.

Mr. Watkinson said that the application of herbicides was the appropriate method of eradication of these plants.

Mr. Lindsey closed the public hearing.

Mr. Hughes suggested that a performance bond be required for the permit based on the cost to eradicate and plant new wetlands plants. The amount would be determined by the staff.

Mr. Hughes made a motion to approve extending Case No. W-4-98 for one year with staff recommendations and the additional condition of requiring a performance surety.

The motion was approved by a vote of 5-0.

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

Mr. Cook addressed the Board and stated that a draft Resolution of the Policy was before them for their consideration or modification. He stated the County Attorney's office had a major involvement in drafting the Resolution and they had coordinated with the VMRC on the content and format of the Resolution. The VMRC is in general agreement with the Policy. Mr. Cook indicated that although the public hearing on the Policy was still open, we had not received any additional comments since the last Board meeting.

Mr. Lindsey opened the public hearing.

Mr. Lindsey stated that he had received a letter from Mr. George Wright of the Historic Route Five Association just before the meeting and requested the comments be read into the public hearing record.

Mr. Cook read the letter from Mr. Wright. (Letter attached to these Minutes.)

Mr. Lindsey closed the public hearing.

Board discussion of the Policy followed. Mr. Gussman had a concern that the word "shall" in item 2. of the Policy could be interpreted in such a way as to require the Board to accept a 1:1 areal exchange of wetlands in the case where an existing wetland was being used for compensation. He felt that the word "may" would be more appropriate. Mr. Watkinson of the VMRC stated that the flexibility with the word "may" would be good because differing functional values of wetlands could result in situations where a 1:1 areal exchange would not adequately compensate for a wetlands loss. He did feel that a minimum 1:1 replacement should be upheld even if the value of the wetland lost was lower than the value of the compensation wetland. After some further discussion, it was agreed to change the word "shall" to "may" in item 2.

Mr. Watkinson addressed the Board with some general comments concerning implementation of the proposed policy. He cautioned the Board that compensation should not be the basis or justification for approval of any project; the project and its wetlands impacts need to be judged on their own merits. Wetland impacts should only be permitted if it is determined that the impact is truly necessary and then consideration of the type of compensation would follow. The general procedure to avoid, minimize and mitigate the impacts needs to be used. He also cautioned the Board that before any monetary compensation was accepted, a fund would need to be established where the funds could be placed until they are used. He felt the authority was in the law for local wetlands boards to accept these fees but that the fees should be collected only when there truly is no other option available for compensation. The other options for compensation, onsite replacement, replacement in the same watershed, and mitigation banking should be explored before settling on monetary compensation.

Mr. Hughes inquired whether monetary compensation should be considered as a proffer, an assessment or something else?

Mr. Watkinson responded that fees should be looked on as a permit condition.

There was discussion about modifying item #1 in the Resolution to make more clear that monetary compensation should only be considered as a last resort after all other forms of compensation were ruled out. It was decided for Mr. Cook and the County Attorney's office to work out the specific wording and placement of this statement in the Resolution.

There was some discussion regarding the fee schedule for monetary compensation. Mr. Watkinson suggested that fees should be set at about 1-1/4 to 1-1/2 times what it would cost to create or restore wetlands in James City County. At that level it should not create an incentive for people to opt for the monetary compensation over other forms.

## 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:

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Darryl E. Cook  
Secretary to the Board


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


It was the consensus of the Board not to vote on the Resolution at this meeting, but to wait and review the modifications made to the Resolution at their next Board meeting.

**E. MATTERS OF SPECIAL PRIVILEGE - None**

**F. ADJOURNMENT**

The meeting was adjourned at 8:10 P.M.

  
Henry Lindsey  
Chairman

  
Darryl E. Cook  
Secretary

148 Cooley Road  
Williamsburg, VA 23188  
February 12, 1999

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

Dear Mr. Lindsey:

As President of the Historic Route Five Association (HR5A) I wish to congratulate you and the Wetlands Board on the work you do for the County and for your current consideration of guidelines for Wetlands Compensation in James City County. HR5A is an association of Homeowner's Associations along Route 5; an association dedicated to the preservation of the historical and environmental character of this State Scenic Byway.

Sarah Kadec presented HR5A's positions on the Wetlands policy currently under review by your Board on February 10th. Ms. Kadec failed to stress our interest in the establishment of a restoration bank for James City County, though I believe she indicated our support when summarizing her conversation with Dr. Perry earlier in the day. We believe such a fund will greatly assist the County in maintaining restored wetlands and at the same time will permit it to undertake the restoration of older damaged or destroyed wetlands.

HR5A stands ready to assist you and your Board in anyway we can. We are fortunate to have such an expert Board handling these matters for the County.

Sincerely,

George F. Wright