

## **A RESOLUTION EXPRESSING SUPPORT FOR FREE AND OPEN PUBLIC WATERS**

**WHEREAS**, the waterway known as Craigs Creek (the “Creek”) connects the town of New Castle, the seat of Craig County, to the unincorporated community of Eagle Rock in Botetourt County, and has been used between these communities for the purposes of trade, commerce and travel for centuries, and is navigable in fact; and

**WHEREAS**, the case of *Briar Oak Properties, LLC and Briar Oak Farms, LLC v. Virginia Marine Resources Commission and the Commonwealth of Virginia*, Civil Action No. CL-2244 (the “Case”), has been filed in the Circuit Court of Craig County; and

**WHEREAS**, in the Case, the Plaintiff has claimed, among other things, the right to “exclude others” from the Creek and the use of the same, thereby claiming the right to control passage and use of a navigable thoroughfare and damage the commerce and trade of Botetourt County (the “County”) and of the Commonwealth, and has claimed to persons using the Creek that they possess the same; and

**WHEREAS**, the common law of the Commonwealth preserves the right of the public to use and enjoy any stream which is being used or is susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted, and a change to such common law may have deleterious effects commerce, trade and passage on both Craig’s Creek and other navigable waters; and

**WHEREAS**, the tourism industry, including by use of waters for recreational activity and travel, is a significant industry in the County, and is recognized as such in the Comprehensive Plan for the County.

**NOW THEREFORE**, the Botetourt County Board of Supervisors hereby resolves:

1. Closure of Craigs Creek would damage the commerce, travel and trade of the County and the Commonwealth of Virginia, and the health, safety and general welfare of the inhabitants of the County and the Commonwealth, and the Board opposes any legal ruling that may result in such closure; and
2. The County deplors littering and illegal activity, whether carried out on private property or in or on navigable streams, and calls for prosecution of the same; and
3. The County Administrator is hereby authorized and directed to forward a true copy of this resolution to the County’s General Assembly delegation, and to such other persons as he determines may be able to assist in defending the interests of the Board and the rights of the public in the Case or the Creek; and
4. The County Attorney is hereby authorized and directed, in consultation with the Board and the County Administrator, to file such pleadings, including motions or briefs *amicus curiae* in the Case or in any appeal therefrom, as may be advisable to defend the interests of the Board and the rights of the public in the Case or the Creek; and
5. This resolution is effective upon adoption.