



Via U.S. Mail and E-mail: Peggy.Maio@loudoun.gov

May 18, 2009

Ms. Peggy Maio, Chairman
Loudoun County Planning Commission
35618 Williams Gap Road
Round Hill, VA 20141

RE: Chesapeake Bay Preservation Act Roundtable
Comments for May 20, 2009 Meeting
WSSI #21765.01

Dear Chairman Maio:

Thank you for inviting the Wetlands Workgroup to participate in the Chesapeake Bay Preservation Act (CBay) Roundtable meeting and to provide comments in advance. I have been given the honor of representing the Wetlands Workgroup in this forum and have summarized our initial comments for your review.

While the fundamental concept behind CBay is simple, the regulations are complex and have become more so over time. Luckily, since Loudoun County is "opting in," we have more flexibility in choosing how it is implemented – and have the opportunity to use lessons learned from close to 20 years of implementation experience in nearby jurisdictions¹. Our stakeholder group has several members who have dealt with CBay regulations as consultants and landowners in Northern Virginia.

The following comments and suggestions are provided to reflect how we believe that CBay could be implemented in Loudoun County in a manner that reflects its unique situation and that best fits with a fundamental concept of the Chesapeake Bay Preservation Act: "Healthy state

¹ My personal experience arises from managing Wetland Studies and Solutions (WSSI) since founding it in 1991. To put that date into perspective relative to these proposed regulations - Prince William adopted its CBay Ordinance in 1991; Fairfax County in 1993. WSSI has provided natural and cultural resource consulting services on over 2,000 sites, comprising 140,000 acres; of which 538 sites and 61,618 acres are located in Loudoun. We have prepared roughly 50% of all RPA plans in Fairfax and Prince William County; we also prepared the revised RPA maps for Fairfax City in December 2003. Besides my "on the ground" experience in Northern Virginia, I have been involved with the Bay Act in these capacities: Chesapeake Bay Local Assistance Board (1996 - 2001); Chesapeake Bay Local Assistance Program, RPA Guidance Ad-Hoc Committee (2005 - 2007); Ad-Hoc Workgroup (2003 - 2004); Regulation Review Committee (1994); Regulation Study Group (1991- 1992); and Compliance Cost Study Outside Technical Reviewer (1991).

and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive.”

1. Resource Protection Area (RPA) Definition

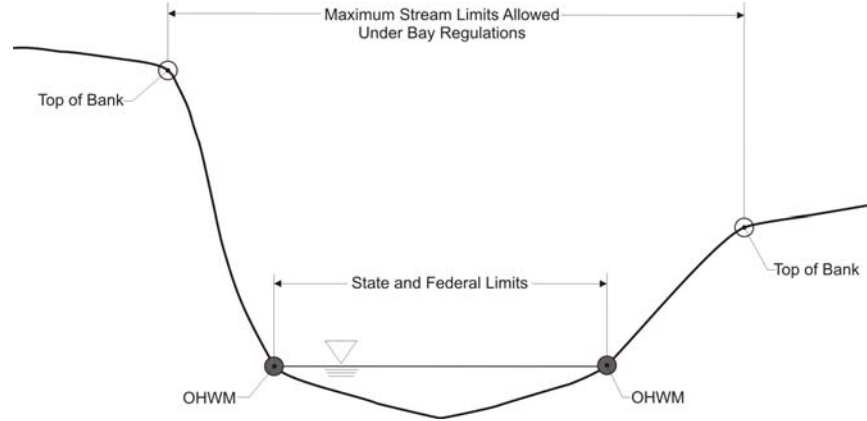
- a. **Core Component Selection** – The standard definition of the RPA² includes a core component now defined as a “water body with perennial flow.” This element came into being in state regulations (without a specific regulatory definition) in March 2002 after the Chesapeake Bay Local Assistance Board (CBLAB) was unable to agree on a definition for “perennial stream.” It replaced the original convention of using USGS Quad Maps to define “tributary streams” as those being depicted as perennial because the USGS Quad Maps significantly understated the extent of perennial streams. The problem faced by CBLAB and the Chesapeake Bay Local Assistance Division (CBLAD) staff at that time is that, except in a handful of communities (which have spent enormous sums of money to map perennial streams – a low seven-figure cost estimate in Loudoun County), there is no reliable map of perennial streams. So the result is that in jurisdictions that have not mapped these perennial streams, the landowner must engage consultants to assess the flow regime (perennial, intermittent, or ephemeral) using protocols described in a CBLAD guidance document, “Determinations of Water Bodies with Perennial Flow,” adopted September 2003; revised December 10, 2007. To complicate matters, none of these protocols are definitive in transition areas and results vary based upon both the personnel assessing them, time of year, and moisture conditions. The result is that defining this element of the RPA employs consultants, is costly for landowners, and consumes staff time.

A simple solution is to select a drainage area that approximates the average drainage area of a perennial stream in the physiographic provinces of Loudoun County (in our experience, this average drainage area is in the 40 – 50-acre range in Northern Virginia, with the lower end of that range expected in the Piedmont physiographic province) – understanding that it will capture as RPA some intermittent streams and not include some perennial streams. But it will significantly reduce the cost of the program while removing the same quantity of pollutants in stream buffers as the total buffer length and area will be the same. An alternative that would even be easier to implement and have less economic impact would be to use a 100-acre cut off to be consistent with the Loudoun County definition of the 100-year floodplain as such areas have already been mapped and people are expecting regulation in these areas.

Because Loudoun County is “opting in” to Bay Act coverage, this modification of the RPA is allowable. Since the entire regulation is voluntary and CBLAB will not be reviewing the County program for consistency, we have the ultimate flexibility in picking and closing elements of the Bay program or modifying the program as deemed appropriate by the County to meet our unique environmental, economic, and political requirements.

² Since Loudoun County does not have any tidal bodies of water – that core component is not applicable in this jurisdiction.

- b. **Edge of Stream** – The edge of the stream is allowed to be defined as either the top-of-bank or the ordinary high water mark (OHWM) as regulated by the U.S. Army Corps of Engineers (COE) and the Virginia Department of Environmental Quality. The difference is depicted below:



Since most land development applications require a delineation and survey of all streams and wetlands – we suggest that the OHWM be used (except for agricultural uses in the rural and transition policy areas as described in Section 1.c below) to reduce the cost of locating these boundaries. Otherwise, two parallel lines will need to be flagged and surveyed when the top-of-bank is not well defined by topography. We have dealt with numerous situations where the top-of-bank is debatable due to gradual slopes or where multiple stream side terraces are present – thus, for development situations when the streams must be flagged and surveyed for the COE / DEQ, let us use the OHWM definition that they utilize.

- c. **Rural and Transition Policy Areas Alternative** – Another costly aspect of precisely determining the extents of the RPA boundary is the need to delineate and survey the edge of wetlands and determine which wetlands are “contiguous and connected by surface flow to a water body with perennial flow.” Landowners must engage consultants to determine this and the County will utilize staff resources to review the results. There have also been debates throughout the entire program’s history over what this definition means in the field.³

The easier and less expensive it is for a landowner to comply with regulations, the more likely it is that they will follow them. To encourage landowners engaged in agricultural activities in the rural and transition policy areas to participate in this program – it is suggested that the RPA definition not include wetlands – and simply be a 100’ buffer from the top-of-bank of the core stream. This way, farmers and ranchers can easily measure out the buffer to fence off these streams – and County staff review time will be

³ Three times stakeholder groups have been engaged to discuss it. The most recent attempt at clarification resulted in DCR-CBLA’s publication of “Resource Protection Areas: Nontidal Wetlands,” adopted June 18, 2007; revised December 10, 2007. At this time, at least one locality has refused to comply (Chesterfield) and there may soon be court actions.

minimized. This alternative will still provide significant protection to these resources and is reasonable given the less intensive land uses in this policy area.

2. Mapping of RPAs

- a. **Guidance Map** – If the suggestion is accepted to utilize a specific drainage area to determine which streams should be protected as an RPA core component – a relatively reliable map could be produced easily at low cost. We would suggest using 40 acres of drainage – as that is the typical size of the “average” drainage areas for perennial streams in the Piedmont physiographic province based upon our experience – understanding that we have seen the site specific range from 2 to 800+ acres in size).
- b. **Update Maps Digitally** – As lands are developed, site specific RPA mapping will be required for County review and use in land planning and site engineering. We recommend that these plans be accompanied by a digital submission so that your GIS department continually updates the general RPA map with both the approved RPA boundary and the source plan number. Since Loudoun County already collects wetlands delineations in a similar manner, this should be easy to do, as well – and will lead to providing the public with more accurate and useful RPA boundaries.

3. Exceptions Review Committee

All regulations face the need to grant exceptions for unforeseen circumstances and to prevent undue hardship. Thus, CBay regulations provide for an Exceptions Review Committee (ERC). We suggest that you provide for the Board of Supervisors (BOS) to be the ERC in cases where the requested RPA Exception is related to a land use decision – allowing the Planning Commission (PC) to be involved in recommending a decision (as done in Fairfax) – and preventing the Catch-22 of having a land use decision by the PC / BOS review be then modified by an ERC decision and requiring further review by the PC / BOS (as can occur in Prince William County).

4. Perennial Flow Determination / Resource Protection Area Plan Life

In some jurisdictions, RPA plans have no expiration⁴ - one jurisdiction had approvals that only lasted one year, which was recently determined unworkable and changed to five years⁵. When Prince William County had PFDs and RPAs only valid for one year, consultants and staff were kept busy redoing them multiple times during the rezoning and construction plan review time. Not only was this unproductive as most of the time changes do not occur – it sometimes adds difficult complications when there is a perennial stream / intermittent stream transition which can migrate based upon weather patterns, watershed development, head cut migration (when the head cut is the transition point) and stream bed movement due to erosion. Then oddly, once the construction plan is approved, the resulting RPA line was then locked in for the life of the plan.

⁴ Fairfax County for example.

⁵ Prince William County.

Our suggestion - adopt an approval life for PFDs (if we need them – depending upon how comment #1 is resolved) and RPA plans in the same manner that the U.S. Army Corps of Engineers recently did for wetlands delineations:⁶

The greater of 5 years or the approval life of a construction plan approved that utilizes an RPA boundary valid at the time of the construction plan approval.

This way, there is reasonable certainty that plans developed based upon an approved RPA can be used.

5. RPA Plan Format

Every locality has varying requirements for the format of RPA plan submittals. Over the years, we have found that the Fairfax County submission requirement – having every element of the RPA and all supporting documents (i.e., wetlands report, jurisdictional determination, stream assessments, topo, boundary, etc.) incorporated into one plan set is the best in the long run. While it is easier up front to not pull all that material into one plan set (and just refer to, or copy, separate bound reports) – over time, as the projects evolve, it is easier for landowners and staff to have a consolidated submission because otherwise the various reports and exhibits and plans folded into pouches, etc. invariably get misplaced.

6. Desirable Allowable Uses in RPA

Neighboring localities have different interpretations on certain uses as to whether or not they are “allowable uses” in an RPA versus being called “water-dependant uses.” The difference is that water-dependent uses require the submission and approval of a water quality impact assessment (WQIA). There are three uses we suggest Loudoun County should classify as allowable uses because in a locality where they are determined to not be “allowable” but rather are water dependent – both the public and private sector incur the cost of a WQIA, which has always (in my experience) been approved because they are needed or desirable. These uses are:

- i. Stormwater Outfalls;
- ii. Stream Restoration / Wetlands Creation and Restoration; and
- iii. Septic Field Connections.

To explain our rationale:

- a. **Stormwater Outfalls** – In some localities, staff consider stormwater outfalls to be an “appurtenant structure” to the stormwater pipe and thus an “allowed use.” However, others determined that this is not an appurtenant structure and thus required a WQIA for such outfalls. Since the outfall location is usually determined by other regulatory requirements, such as “adequate outfall” – this is leading to unnecessary time and

⁶ Which now have an expiration the latter of: (i) 5 years after approval of the delineation, or (ii) the expiration of a permit issued that utilizes said delineation’s boundaries.

expense for all involved. Prince William County calls these an allowed use; Fairfax County did from 1993 to 2002 and then switched (yet every one we know has been approved as submitted).

- b. **Stream Restoration / Wetlands Creation and Restoration** – These are activities that Loudoun County has focused attention on removing regulatory barriers very successfully over the last two years. Thus, adding back another approval hurdle – for something we want under public policy – is counter productive. Please make these allowed uses as done by practice in Prince William County (but not in Fairfax County).
- c. **Septic Field Connections** – While sewer lines are clearly an allowable use, it has been a source of confusion (in some localities) as to whether the pipe that travels to a septic field is a “sewer line.” Thus, please, for the benefit of rural area residents, clarify that such lines are an “allowable use” in the RPA, as occasionally the only available septic field is located on the other side of an RPA relative to the house location.

7. Existing Approvals

There are many rezonings and approved construction plans that may be in conflict with any version of a Chesapeake Bay Preservation Ordinance. To minimize both economic dislocations and community angst – how such existing approvals will be handled should be clearly spelled out. Two approaches have been commonly used:

- a. Listing every such known approval and granting them a period during which they are “protected” from having to comply with this new ordinance⁷; or
- b. Publishing, either in the Ordinance (preferable for easy reference) or in a stand alone document a procedure for determining which projects are protected and to what extent⁸.

In our opinion, the latter is preferable as it covers all situations, does not require extensions, and utilizes less staff time.

8. Stand Alone Ordinance vs. Incorporating in Existing Regulations

The more the Chesapeake Bay Ordinance and related regulations are scattered throughout existing regulations, the more difficult it is to ensure compliance. Thus, both the staff and regulated public are more effectively served by one stand alone ordinance. Please implement as a stand alone ordinance.

⁷ See attached example from Prince William County.

⁸ See attached the original section of Fairfax County’s Ordinance in 1993, as well as how they converted it to a separate document in November 18, 2003 when they made a major RPA change – there have been several more versions published after each RPA map revision.

9. Pollutant Trade Offs

Loudoun County has enormous agricultural resources that should be kept economically viable – yet to minimize their impact to water quality from the desired ongoing uses - RPAs (e.g., stream buffers) need to be fenced from livestock and reforested. However, unlike a development project, which (in normal times) generates positive revenue from its operation to pay for protecting RPAs and providing stormwater management / best management practices (SWM / BMPs), ongoing agricultural uses will not generate additional revenue and thus have limited economic ability to fence off and reforest RPAs.

It is also well accepted that the cost effectiveness of a forested buffer in agricultural areas is much greater than urban / suburban BMPs.

Thus, we suggest a trading mechanism be established whereby a certain percentage of the BMP requirements from development and redevelopment are met through a contribution toward the fencing and reforestation of RPAs in agricultural uses. These areas could also potentially benefit from tax credits if donated as conservation easements. There are many mechanisms that could accomplish this – so instead of providing a specific suggestion, I suggest instead that interested stakeholders conduct a specific meeting(s) devoted solely to this topic.

While difficult, it holds the promise of protecting more open space and making greater water quality improvements than any other aspect of this regulation.

Again, thank you for the opportunity to provide some initial comments prior to our first meeting and please feel free to contact me with any questions (e-mail: mrolband@wetlandstudies.com; telephone: 703 679 5602).

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.



Michael S. Rolband, P.E., P.W.S., P.W.D.
President

Enclosures

cc: Laura Edmonds - County of Loudoun – Via U.S. Mail (with enclosures)
Chesapeake Bay Preservation Act Stakeholders (with enclosures)
Wetlands Workgroup (with enclosures)

MOTION: SPELLANE

**February 18, 1992
Regular Meeting
Res. No. 92-240**

SECOND: BARG

RE: TRANSITIONAL RULES REVISION

WHEREAS, the Board of County Supervisors has recognized a need to encourage economic development in the County; and

WHEREAS, the Board of County Supervisors has enacted regulations and supported policies to assist economically distressed development projects; and

WHEREAS, the construction industry employment has been seriously affected by the current recession; and

WHEREAS, staff has recommended revisions to the Chesapeake Bay transitional rules to create uniformity with other provisions of the Prince William County Design and Construction Standards Manual;

NOW, THEREFORE, BE IT RESOLVED, that the transitional rules adopted by the Board of County Supervisors on November 27, 1990 are hereby amended in accordance with Attachment I; and

BE IT FURTHER RESOLVED, that Resolution 91-870 is amended to delete reference in the last paragraph of the resolution to the Chesapeake Bay Vesting Guidelines compliance; and

BE IT FINALLY RESOLVED, that the staff and the County Attorney's office are directed to take any necessary steps with the CBLAB regarding this modification of the County's Chesapeake Bay Act implementation program.

ATTACHMENT

Votes:

Ayes: Barg, Becker, Caddigan, Jenkins, Seefeldt, Spellane

Nays: McManus, McQuigg

Absent from Vote: None

Absent from Meeting: None

For Information:

County Attorney

Development Administration Director

CERTIFIED COPY

Catherine Clemens Rollins
Clerk to the Board

**COUNTY OF PRINCE WILLIAM**

1 County Complex Court, Prince William, Virginia 22192-9201
(703) 792-6980 Metro 631-1703

DEVELOPMENT
ADMINISTRATION

Richard E. Lawson
Director

Polins, Weyant & Hamm, Inc.

2200 Opitz Boulevard, #300
Woodbridge, VA 22191

March 10, 1992

LD 92-7

TO: Engineers, Architects and Land Surveyors
RE: Revision to the Chesapeake Bay Regulations
Transitional Rules

Please find attached a copy of the revised Chesapeake Bay regulations "Transitional Rules" that The Board of County Supervisors adopted at their February 18, 1992 meeting.

The revision was designed to cause the term "diligently pursued", as used in the Transitional Rules, to be consistent with that in the Design and Construction Standards Manual. This was accomplished by deleting the specific definition for the term in paragraphs 2 and 3 of the Transitional Rules. Therefore, if a plan meets the criteria set forth in paragraphs 2 and 3, and is vested, it will remain vested as long as final plans have been submitted for review within the validity period of the preliminary plan (see Section 1002.04) and are diligently proceeding towards approval.

We wish to emphasize that extensions of plan submissions, beyond what is stated in the DCSM, will generally not be entertained. In addition, please be aware, that any applications previously granted plan submission extensions must resubmit appropriately revised plans within sixty (60) days or their file will be administratively closed.

The revision to the Transitional Rules also allows plans already approved, and still valid in accordance with Section 1003.04 of the DCSM, to retain their vesting.

We are seeking your assistance in advising those of your clients which have pending projects to continue pursuing approval of their projects in order to retain their vesting. If you have any

questions concerning this matter, please feel free to contact either Nimet El-Alaily or Paul Costanzo at (703) 792-6920.

Very Truly Yours,

Martha Marshall

Martha Marshall, Acting Director
Department of Development Administration

- pc: Director of Planning
- Director of Public Works
- County Attorney
- Deputy Director, Land Development
- Chief, Permits & Records Division
- Asst. Chief, Plan Review Division

ATTORNEY GENERAL

**Chesapeake Bay Regulations
Vesting Guidelines**

The following circumstances will result in the vesting of development applications solely with regard to the Chesapeake Bay Regulations found in Section 32.504.00 et. seq. of the Zoning Ordinance and Section 750.00 et. seq. of the Design and Construction Standards Manual. This policy is crafted with consideration for the substantial impacts the Regulations will have on development in the County and should not be viewed as a precedent for vesting determinations under any future regulatory amendments.

Projects in the development process including plans approved but not yet bonded shall be considered vested if they fall into one of the categories listed below and provided they meet the listed criteria:

1. Approved Special Use Permit

A Special Use Permit approved by the Board of County Supervisors and the acceptance of a preliminary or final plan for review within six (6) months of the date of the issuance of the Special Use Permit. Plans submitted for review must be diligently pursued in order to retain their vested status.

2. Proffered Rezoning and an Approved Preliminary or Final Plan

A proffered rezoning incorporating substantially defined uses, which has been approved by the Board of County Supervisors and the approval of a preliminary or final plan, provided the applicant diligently pursues the plan. In instances of multi-phased projects, vesting of one final phase of the project would vest subsequent phases, provided the remaining phases of the project are diligently pursued and also provided the preliminary plan remains valid under Section 15.1-466(F), VA. Code Ann. ~~The term "diligently" as it is used in this section shall be defined as obtaining the approval and recordation of final plans within two (2) years of preliminary plan approval followed by an application for building permits within two (2) years of final approval, or in the instance of multi-phased projects, the preliminary plan shall only be vested for five (5) years from the date of recordation of the first final phase of the project.~~

An applicant who has submitted a preliminary plan and has received a summary letter from the Department of Development Administration indicating that only minor issues remain to be addressed may petition the Director of the Department of Development Administration to have his preliminary plan determined vested pursuant to this policy.

The Director shall determine whether the plan shall be vested pursuant to this policy and shall consult with the Offices of Planning and Economic Development before issuing a determination.

3. Final Plan Acceptance

Development applications that are not subject to a Special Use Permit or a proffered rezoning shall be considered vested upon the acceptance of a final plan for review by the Department of Development Administration provided that the plan is diligently pursued. In the instance of multi-phased projects, the vesting of one of the final phases would vest subsequent phases provided the plan is diligently pursued. ~~The term "diligently pursued" as it is used in this section is defined as the approval and recordation of final plans within two (2) years of the preliminary plan approval followed by an application for building permits within two (2) years of final plan approval; or in the instance of multi-phased projects, the preliminary plan will be vested for five (5) years from the date of recordation of the first final phase of the project.~~

4. An applicant whose preliminary plan has been approved may petition the Director of the Department of Development Administration to have his preliminary plan vested under this policy provided that he can substantiate that substantial engineering has been accomplished on the preliminary plans. The Director shall determine whether the preliminary plan shall be vested pursuant to this policy after consultation with the Offices of Planning and Economic Development.

5. Appeals

Appeals from any decisions made by the Director of the Department of Development Administration pursuant to this policy shall be handled as any appeals of determinations by the Zoning Administrator under the Zoning Ordinance.

Adopted 11/27/90

12192A

November 28, 1990

Listed below are preliminary plans which have been determined eligible* for vesting status; relative to the Chesapeake Bay Regulation guidelines adopted by the Prince William Board of County Supervisors on November 27, 1990.

- . Ashland, SD# 90-19P
- . Ascot Woods, SD#89-16P
- . Ashbury Place, SD#90-04P
- . Ballantrae Estates, SD#89-45P
- . Barrington Oaks, SD#89-36P
- . Belmont Glen Apartments, SP#87-17P
- . Bethlehem Assemblage, SD#89-27P
- . Boggs Subdivision, SD#88-15P
- . Bogle Industrial Center, SP#90-01P
- . Bright Wood Forest-Phase III, SP#88-20P
- . Brightwood Forest-Phase 5, SD#89-24P
- . Brightwood Forest-Phase IV, SD#88-24P
- . Cabin Run, SD#88-20P
- . Cardinal Crest South, SD#89-08P
- . Cardinal Knolls, SD#89-21P
- . Carolyn Forest, SD# 87-11P
- . Centerpoint II, SP#88-23P
- . Champs Mill Branch, SD# 89-42P
- . Courtland Heights, SD#89-03P
- . Courtland Heights, SD#90-20P
- . Dale City-Section 22, SD#89-20P
- . Dale City-Section 23, SD#87-26P
- . Dale City-Section T-19, SD#85-08P
- . Dale City-Section T-7D, SD#89-05P
- . Dale City Section 7-E SD#88-13P
- . Devils Reach, SP#88-25P
- . East Chartwell, SP#90-12P
- . Fashion Place, SP# 90-04P
- . Featherstone Farms-Parcel A, SD#89-22P
- . Festival @ Rollingwood, SP#89-09P
- . Forest Park Townhouse and Apartments, SD#87-33P
- . Gainesville Business Center, SD#88-03P
- . Gingerwood, SD#89-44P
- . Highbridge, SD#88-25P
- . Hunters Ridge, SD#89-11P
- . Jackson Ponds Estates, SD#90-05P
- . Jackson Ridge-Phase 2, SP#89-16P
- . Kingsberry Woods, SD#90-07P
- . Lake Montclair Shopping Center, SP#88-27P
- . Lake Point Office Park, SD#89-04P
- . Liberty Business Park, SD#89-19P
- . Linden Lake Business Center, SP#89-03P
- . Manassas Ramada Inn-Expansion, SP#89-15P
- . Maple Square, SD#89-33P
- . Markhams Grant, SD#89-26P
- . Mayfair, SD#89-37P

3 of 6

- . Meadows of Minnieville, SD#89-12P
- . Melbourne, SD#88-19P
- . Melbourne-Section II, SD#88-29P
- . Middle Ridge, SP#88-15P
- . Occoquan Landing, SD#88-22P
- . Occoquan Valley Estates, SD#89-15P
- . Old Bridge Estates-Section 16, SD#89-39P
- . Old Bridge Estates-Section 17, SD#89-09P
- . Oxbridge Center-Phase II, SP#88-17P
- . Paradise Parcel H, SD#88-30P
- . Paradise Parcel U, SP#90-14P
- . Paradise-Parcel G, SD#89-07P
- . Paradise-Parcel I, SD#89-06P
- . Paradise-Parcel P, SP #90-07P
- . Paradise-Parcels N&O, SP#89-03P
- . Pembroke-Consolidated 91-134-RO-SDP
- . Piney Branch Estates, SD#88-31P
- . Portsmouth Station, SP#87-15P
- . Potomac Festival II, SP#88-21P
- . Potomac Festival, SP#88-21P
- . Potomac Mills-Phase III, SP#89-19P
- . Powell's Creek, SP#90-09P
- . Powells Landing, SD#89-44P
- . Prince Williams Commons, SD#89-30P
- . Princeton Woods Commercial, SP#89-02P
- . Princeton Woods Section 4, 91-00012-r1-SDP
- . Princeton Woods-Sections 4, SD#89-17P
- . Promenade at Manassas, SP#89-14P
- . Quarry Center, SP# 90-08P
- . Residency Road Development, SD#88-18P
- . Ridgfield Village, SD#89-38P
- . Riegert Estates, SD#88-23P
- . River Oaks Commercial, SP#90-01P
- . River Ridge, SD#89-25P
- . River Ridge-Section 3, 9100004-RO-SPP
- . River Edge, SD#90-15P
- . Robert Trent Jones Lts., SD#90-36P
- . Robert Trent Jones RPC, SD#87-31P
- . Robert Trent Jones-Phase I, SP#88-02P
- . Segewick Heights, SD#88-13P
- . Signal Hill Center, SP#89-11P
- . Sixty Six Commerce Centre SP#88-21P
- . Soldiers Ridge Condominiums, SP# 89-13
- . South Lakes at Montclair-Phase III, SP#88-11P
- . Spring Lake, SD90-17P
- . Staples Mills Retail Center, SP#89-17P
- . Stonecrest-Phase I-IV, SD#89-13P
- . Stoneridge, SP90-13P
- . Sudley Business Center, South, SP#88-29P
- . Sunnygate Office Park, SP#88-24P
- . The Hamlets, SD90-35P
- . Thornton, SD#89-23P
- . The Glen, SD#90-03P
- . Towns of Forest Hills, SD#89-31P

- . Trails Ends Estates, SD#88-28P
- . U.S. Navy Housing, SP#90-10P
- . Vantage Pointe, SP#89-20P
- . Village Centre, SP#89-19P
- . Virginia Oaks, SD #89-46P
- . Waterford, SD#89-41P
- . Wayside Village Apts, TH, SFD, SD#88-04P
- . Wayside Village-Phase 2, SD#90-06P
- . Welborn Properties, SD#90-27P
- . West Chartwell, SD90-11P
- . Wickliffe Village, SD#89-34P
- . Winslow Chase, SD#88-33P
- . Winslow Chase, SD#88-33P
- . Yorkshire Acres-Section 3, SD#89-32P

* These determinations have been made without consideration of the "due diligence" requirement of the adopted vesting guidelines.

November 28, 1990

Listed below are preliminary plans which have been determined ineligible* for vesting status relative to the Chesapeake Bay Regulation guidelines adopted by the Prince William Board of County Supervisors on November 27, 1990.

- * Chesapeake Apts., SP# 88-28P
- * Cockpit Point Industrial Park, SP# 90-02P
- * Doves Landing, SD# 90-02P
- * Doves Overlook, SD# 88-12P
- * Evergreen Terrace, SP# 87-04P
- * Fortuna, Inc., SP# 88-07P
- * Foxmill, 91-001100-RD-SDP
- * Gainesville Depot, SP# 90-19P
- * Groveton Industrial Park, SP# 90-15P
- * Hampton Court, SP# 89-06P
- * Hoadly Road Community Center, 91-00127-RD-SPP
- * John Marshall Commons, SP# 90-18P
- * Koons of Manassas II, SP# 89-12P
- * Lakeview 66 Commerce Center, SD# 90-21P
- * Linden Place, SD# 90-34P
- * Madison Forest, SD# 88-17P
- * Manassas 28, SP# 88-19P
- * Marsh Farm Estates, SD# 90-08P
- * Occoquan Village, SP# 90-05P
- * Old Stage, SP# 88-22P
- * Omisol Estates, SD# 90-32P
- * Orchard Bridge, SP# 90-17P
- * Pacific Estates, SD# 90-33P
- * Palisades Pointe, SD# 90-28P
- * Parkway Station, SP# 90-21P
- * Pennypacker Square, SD# 90-31P
- * Potomac Gables, SP# 89-23P
- * Ridgeleigh, 91-00003-RO-SDP
- * Robinson Marine Terminal, 91-00013-RO-SPP
- * Ruppert Landscape Company, SP# 90-11P
- * Shell Farm, SD# 90-09P
- * Shelter Lakes, SD# 90-09P
- * Silvas Office Building, SP# 89-21P
- * Southpointe Industrial Park, 91-00054-RO-SDP
- * Tall Oaks Estate, 91-00047-SDP
- * Vista Brooke, 91-00079-SDP
- * Wellingford Industrial Park (phase 2, SD# 90-01P
- * Wickcliffe Industrial Park, SD# 89-29P
- * Woodbridge Run Condos. 91-00075-SDP
- * Wrench Group, SP# 90-06P

* These determinations have been made without consideration of the "appeal" procedures of the adopted vesting guidelines.

Section 118-6-8. Minor Additions.

(a) The Director may waive any or all of the performance criteria and requirements of this Chapter for the construction of accessory structures and uses and additions to structures legally in existence as of the effective date of this Chapter which do not result in the creation of 1,000 square feet or more of additional impervious area within an RPA, or the creation of additional impervious area within an RPA that exceeds two (2) percent of the lot area, whichever amount is greater. The maximum additional impervious area shall be applied to each lot legally in existence as of the effective date of this Chapter and shall be a cumulative measure based on the amount of impervious area added to the particular lot after the effective date of this Chapter. Additions to impervious area shall be allowed to such lots until the maximum additional impervious area allowed is reached on the particular lot. The cumulative limit on the maximum additional impervious area measure shall continue indefinitely, regardless of ownership of the property.

(b) The Director may approve, deny, or approve with conditions individual exception requests upon a consideration of whether no more land will be disturbed than is necessary to provide for the proposed activity.

Section 118-6-9. Exceptions for Approved and Pending Plans of Development.

(a) Upon written request, the Director may waive or modify any or all of the performance criteria and requirements of this Chapter for plans of development which are approved or pending prior to the effective date of this Chapter. Plans of development shall be eligible for an exception under this section as follows:

(1) Proffered rezoning applications and P district rezoning applications approved prior to the effective date of this Chapter. Proffered condition amendments and amendments to approved P district rezonings may be approved as long as the amendment does not aggravate conflicts with the provisions of this Chapter.

(2) Special permit, special exception and variance applications approved prior to the effective date of this Chapter provided that the activity authorized is established, or any construction authorized is commenced and diligently prosecuted in accordance with the provisions of Sect. 8-015, Sect. 9-015 or Sect. 18-407 of the Zoning Ordinance, as applicable. Amendments to such special permit, special exception and variance applications may be approved so long as the amendment does not aggravate conflicts with the provisions of this Chapter.

FAIRFAX COUNTY, VIRGINIA
CHESAPEAKE BAY PRESERVATION ORDINANCE
Adopted by Board of Supervisors on March 22, 1993

16-93-118

N (3) Structures for which Building Permits have been approved prior to the effective date of this Chapter, provided the structure is constructed under the approved Building Permit.

(4) Structures and other impervious surfaces shown on preliminary site plans as required in the PRC District and site plans filed with the Department of Environmental Management prior to the effective date of adoption of this Chapter, containing required information as set forth in Sect. 17-105, or Sect. 16-303 of the Zoning Ordinance, as applicable, so long as due diligence is maintained and the properly submitted and accepted plan is approved within twenty-four (24) months of the effective date of this Chapter. For the purposes of this paragraph, due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return to the developer by the Division of Design Review. Resubmission of such filed plans may be approved as long as such resubmission does not aggravate conflicts with the provisions of this Chapter.

(ii) In the case of the preliminary site plans as required in the PRC District, a site plan shall be submitted in accordance with Sect. 16-205 of the Zoning Ordinance and shall obtain approval within twelve (12) months of approval of the preliminary site plan by the Department of Environmental Management.

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package to the developer, or within twelve (12) months of the effective date of this Chapter, whichever is later.

(iv) The above limitations may be extended only by the Board of Supervisors and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of the Department of Environmental Management in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.

(5) Preliminary site plans as required in the PRC District, site plans, site plan waivers or exceptions approved prior to the effective date of this Chapter provided a Building Permit(s) for the structure(s) shown on the approved plan is

FAIRFAX COUNTY, VIRGINIA
CHESAPEAKE BAY PRESERVATION ORDINANCE
Adopted by Board of Supervisors on March 22, 1993

16-93-118

issued in accordance with Par. 1 of Sect. 17-109 of the Zoning Ordinance and provided further that the structure(s) is in fact constructed in accordance with such Building Permit(s). Revisions to such approved plans may be approved so long as such revision does not aggravate conflicts with the provisions of this Chapter.

(6) Preliminary subdivision plats approved prior to the effective date of this Chapter, provided that (a) upon application, such preliminary subdivision plat may be reapproved in accordance therewith one time after the effective date, (b) the subsequent subdivision construction plan or site plan associated with the development is approved within twelve (12) months of the approval or reapproval of the preliminary subdivision plat, as the case may be, (c) the final subdivision plat is recorded in accordance with Section 101-2-5(d)(2) of the Subdivision Ordinance, and (d) the provisions of Paragraph 8 are met. Revisions to such approved plats may be approved so long as such revisions do not aggravate conflicts with provisions of this Chapter.

(7) Final subdivision plats approved prior to the effective date of this Chapter, provided that such record plats are recorded within 180 days of their approval and provided further that the provisions of Paragraph 8 are met.

(8) Construction plans, grading plans, conservation plans and Building Permits, containing all the required information, filed pursuant to a plat described in Paragraphs 6 or 7 of these provisions, so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted construction plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return to the developer by the Division of Design Review. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) If corrections to a properly submitted rough grading plan, grading plan, conservation plan or Building Permit are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within sixty (60) days of its return to the developer by the Department of Environmental Management. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

FAIRFAX COUNTY, VIRGINIA
CHESAPEAKE BAY PRESERVATION ORDINANCE
Adopted by Board of Supervisors on March 22, 1993

16-93-118

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package to the developer, within six (6) months of the date the construction plan is marked recommended for approval, or within twelve (12) months of the effective date of this Chapter, whichever is later.

(iv) Grading plans, conservation plans and Building Permits filed pursuant to a plat described in Paragraph 6 or 7 must be filed within two (2) years of the recordation of the final subdivision plat.

(9) Structures may be built within the footprints shown on over-lot grading plans approved prior to May 21, 1991, where such lots have been validly recorded prior to May 21, 1991 and have been substantially graded in accordance with a subdivision construction plan approved prior to May 21, 1991, which subdivision construction plan shows existing and proposed grading contours and footprints of the proposed structures.

(b) An exception request may be approved by the Director, subject to the following standards:

(i) All developments shall comply with the provisions of this Chapter to the extent possible, provided such compliance does not preclude fulfillment of any proffered condition, conditions of a P District rezoning or any condition of a special permit, special exception or variance, in which case the condition shall supersede the provisions of this Chapter only insofar as it conflicts with this Chapter.

(ii) All development shall comply with the provisions of this Chapter to the extent possible, provided such compliance does not result in the reduction of density, floor area ratio, or the relocation of structures or facilities all as shown on the plan of development.

(iii) Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.

(c) There shall be no fee assessed for the review of exception requests submitted pursuant to this section.

ARTICLE 7.

Appeals.

**BOARD POLICY
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT**

Amendments to Chapter 101 (Subdivision Ordinance), Chapter 104 (Erosion and Sedimentation Control), Chapter 112 (Zoning Ordinance), and Chapter 118 (Chesapeake Bay Preservation Ordinance) of the Code of the County of Fairfax, Virginia, and to the Public Facilities Manual (PFM) were adopted by the Board of Supervisors (the Board) on July 7, 2003, to be effective upon adoption of the Chesapeake Bay Preservation Area Maps. The maps were adopted by the Board on November 17, 2003, with an effective time and date of 12:01 a.m. November 18, 2003. These amendments implement revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.). The Board separately adopted the following policy for the treatment of approved and pending plans of development with respect to said amendments.

Policy for Treatment of Approved and Pending Plans of Development

This policy shall be administered by the Director of the Department of Public Works and Environmental Services (DPWES).

Plans of development which are approved or pending as of the effective date of the amendments, November 18, 2003, and which do not fully comply with the amendments will not be subject to the exceptions review process. In administering the amended ordinances and PFM (collectively referred to as the "Ordinance"), such plans will be treated as follows:

- Construction may proceed for all work shown on construction plans approved prior to November 18, 2003 without further action by the permittee so long as the plan remains valid. Revisions to such plans may be approved provided they do not aggravate conflicts with the amended Ordinance. Construction plan types are subdivision construction plans (SD plans), site plans (SP plans), minor site plans (MSP plans), public improvement plans (PI plans), lot grading plans for nonbonded lots (INF plans), lot grading plans for bonded lots, and rough grading plans (RGP plans).
- Construction may proceed for all structures for which Building Permits have been approved prior to November 18, 2003 without further action by the permittee, provided the structure is constructed under the approved Building Permit. New Building Permits for replacement house types or minor changes to building footprints for previously approved Building Permits may be approved provided they do not aggravate conflicts with the amended Ordinance.
- All previously approved exception requests shall remain valid for the period indicated in the letter approving the exception or for the life of the associated plan if the plan has been approved. Extensions of previously approved exception requests may be granted by the Director on a case-by-case basis.
- To "Aggravate conflicts" shall mean to create any new or additional noncompliance with the amended Ordinance such as increasing the impervious area or disturbance in the RPA.
- As determined by the Director, all plans that qualify as pending plans of development except for approved construction plans and Building Permits noted above shall comply with the provisions of the amended Ordinance as follows:

(A) All developments shall comply with the provisions of the amended Ordinance to the extent possible, provided such compliance does not preclude fulfillment of any proffered condition, conditions of a P District rezoning or any condition of a special permit, special exception or variance, in which case such condition shall supersede the provisions of the Ordinance only insofar as it conflicts with the amended Ordinance.

**BOARD POLICY
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT**

(B) All development shall comply with the provisions of the amended Ordinance to the extent possible, provided such compliance does not result in the reduction of density, floor area ratio, or the relocation of structures or facilities all as shown on the plan of development.

(C) Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.

(D) All plans that are not approved as of the effective date shall show the Resource Protection Area (RPA) boundary in accordance with the requirements of the amended Ordinance regardless of whether or not an encroachment into the RPA has been authorized by an exception or through application of (A) and/or (B). The location of RPA boundaries shown on the plan may be based on the interim guidance map until the final RPA map is adopted by the Board. RPA boundary delineation studies not approved as of the effective date shall comply fully with the amended Ordinance.

(E) All plans that are not approved as of the effective date shall include a statement saying that the plan complies fully with the amended Ordinance; or, that the plan qualifies as a pending plan of development, stating the basis for that determination, identifying any conflicts with the amended Ordinance, and stating how the requirements of (A) through (C) have been met.

Pending Plans of Development are designated as follows:

(1) (a) Any plat, plan, or Building Permit submitted pursuant to a proffered rezoning application or P district rezoning application approved prior to July 1, 1993. Proffered condition amendments and amendments to approved P district rezonings may be approved as long as the amendment does not aggravate conflicts with the provisions of the amended Ordinance.

(b) Any plat, plan, or Building Permit submitted pursuant to a proffered rezoning application or P district rezoning application approved between July 1, 1993 and November 18, 2003. Plats and plans shall comply fully with the provisions of the Ordinance in effect on the date the rezoning application was approved unless an exception is approved. Proffered condition amendments and amendments to approved P district rezonings may be approved as long as the amendment does not aggravate conflicts with the provisions of the amended Ordinance.

(2) (a) Any plat, plan, or Building Permit submitted pursuant to a special permit, special exception or variance application approved prior to July 1, 1993, provided that the activity authorized is established, or any construction authorized is commenced and diligently prosecuted in accordance with the provisions of Sect. 8-015, Sect. 9-015 or Sect. 18-407 of the Zoning Ordinance, as applicable. Amendments to such special permit, special exception and variance applications may be approved so long as the amendment does not aggravate conflicts with the provisions of the amended Ordinance.

(b) Any plat, plan, or Building Permit submitted pursuant to a special permit, special exception or variance application approved between July 1, 1993 and November 18, 2003 provided that the activity authorized is established, or any construction authorized is commenced and diligently prosecuted in accordance with the provisions of Sect. 8-015, Sect. 9-015 or Sect. 18-407 of the Zoning Ordinance, as applicable. Plats and plans shall comply fully with the provisions of the Ordinance in effect on the date the special permit, special exception or variance application was approved unless an exception is approved. Amendments to such special permit, special exception and variance applications may be approved so long as the amendment does not aggravate conflicts with the provisions of amended Ordinance.

**BOARD POLICY
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT**

(3) Lot grading plans for nonbonded lots and Building Permit applications, accepted for review as containing all the required information, filed with DPWES prior to close-of-business September 5, 2003, so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted lot grading plan or Building Permit application are deemed necessary by the reviewing authority, a plan or application containing the revisions shall be resubmitted within sixty (60) days of its return by DPWES. Resubmission of such filed plans and applications may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) The Building Permit must be approved within six (6) months of November 18, 2003.

(4) Structures and other impervious surfaces shown on PRC plans, as required in the PRC District, site plans, and minor site plans filed with DPWES prior to close-of-business September 5, 2003, accepted for review as containing all required information as set forth in Sect. 17-106, or Sect. 16-303 of the Zoning Ordinance, as applicable, so long as due diligence is maintained and the properly submitted and accepted plan is approved within twenty-four (24) months of November 18, 2003. For the purposes of this paragraph, due diligence shall mean the following:

(i) If corrections to a properly submitted and accepted plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not aggravate conflicts with the provisions of the amended Ordinance.

(ii) In the case of the PRC plans as required in the PRC District, a site plan shall be submitted in accordance with Sect. 16-204 of the Zoning Ordinance and shall obtain approval within twelve (12) months of approval of the PRC plan by DPWES.

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package by DPWES, or within twelve (12) months of November 18, 2003, whichever is later.

(iv) The above limitations may be extended only by the Board of Supervisors and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of DPWES in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.

(5) Plats and plans filed pursuant to PRC plans, as required in the PRC District, approved prior to November 18, 2003 provided a Building Permit(s) for the structure(s) shown on the approved plan is issued in accordance with Par. 1 of Sect. 17-110 of the Zoning Ordinance and provided further that the structure(s) is in fact constructed in accordance with such Building Permit(s). Revisions to such approved PRC plans may be approved so long as such revision does not aggravate conflicts with the provisions of the amended Ordinance.

(6) Subdivision construction plans, rough grading plans, lot grading plans, final subdivision plats, and Building Permits, accepted for review as containing all the required information, filed pursuant to a preliminary or final subdivision plat approved prior to November 18, 2003, so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:

**BOARD POLICY
FOR
TREATMENT OF APPROVED AND PENDING PLANS OF DEVELOPMENT**

(i) If corrections to a properly submitted and accepted subdivision construction plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(ii) If corrections to a properly submitted rough grading plan, lot grading plan, final subdivision plat, or Building Permit are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within sixty (60) days of its return by DPWES. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.

(iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package by DPWES, within six (6) months of the date the construction plan is marked recommended for approval, or within twelve (12) months of November 18, 2003, whichever is later.

(iv) Rough grading plans, lot grading plans, and Building Permits filed pursuant to a preliminary or final subdivision plat must be filed within two (2) years of the recordation of the final subdivision plat.

(v) The above limitations may be extended only by the Board of Supervisors and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of DPWES in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.

(7) Resource Protection Area (RPA) boundary delineation plans, approved prior to close-of-business September 5, 2003, are valid for a period of one year from September 5, 2003.

(i) Corresponding proffered rezonings, P district rezonings, special permits, special exceptions, variances, lot grading plans for nonbonded lots, Building Permits, PRC plans, site plans, minor site plans, subdivision construction plans, rough grading plans, lot grading plans, and final subdivision plats shall comply fully with the other provisions of the amended Ordinance for RPA areas shown on the approved RPA delineation plan.

(ii) Corresponding proffered rezonings, P district rezonings, special permits, special exceptions, variances, lot grading plans for nonbonded lots, Building Permits, PRC plans, site plans, minor site plans, subdivision construction plans, rough grading plans, lot grading plans, and final subdivision plats shall comply to the extent possible with the other provisions of the amended Ordinance for RPA areas not shown on the approved RPA delineation plan unless the proposed development is otherwise eligible for treatment under the provisions of paragraphs (1) through (6) above.