



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

June 2, 2009

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

RE: Follow Up to Chesapeake Bay Preservation Act Roundtable
WSSI #21765.01

Dear Chairman Maio:

Thank you again for convening the Chesapeake Bay Preservation Act Roundtable meeting on May 20, 2009. I believe that it was a productive start towards developing an ordinance that brings Loudoun County under the umbrella of the Chesapeake Bay Preservation Act in a manner that minimizes its economic impact and maximizes environmental protection.

One consistent comment that came from almost every stakeholder representative is that a diverse group of stakeholders needs to be involved through the ordinance development process so that an ordinance is crafted that meets the wide variety of interests found in Loudoun County and reflects the flexibility allowed for localities that voluntarily "opt in" to coverage under the Chesapeake Bay Preservation Act (CBPA) and is generally acceptable to the broad range of interests in Loudoun County (despite some statements to the contrary – you do not have to follow the state regulations – you can be less restrictive). To do so will require:

1. Identifying the key conceptual issues needing resolution before developing ordinance language on these topics;
2. Meeting between now and the October due date for a draft ordinance to find mutually acceptable solutions to these conceptual issues; and
3. Expanding the stakeholders represented on the Roundtable to include at least two major interest groups not currently represented but potentially impacted – existing homeowners and associations managing Planned Unit Developments (PUDs).

One problem, based upon my experience in this same process in several other localities, is that the CBPA and its regulations are surprisingly complex. Localities that have smoothly navigated



their development of an ordinance have had broad support obtained by having informal work sessions with a focus on just one or two issues at each session (so there is time to learn about all options before picking a course of action); and ideally including some Planning Commission representation (typically a subcommittee). By working out the big issues, an ordinance can then be developed in a “building block method” with less community divisiveness than is likely to occur otherwise.

Assuming that the Planning Commission agrees to establish a series of meetings, here are some suggested topics to start with based upon last week’s meeting:

1. **Consolidation of Related Regulations** – Should the Scenic Creek Overlay District and/or Floodplain Overlay District requirements be consolidated within this ordinance to minimize confusion amongst ordinances that regulate overlapping areas adjacent to streams?
2. **RPA Definition and Mapping**
 - a. Do we want to vary the definition based upon the policy area a stream is located within to minimize effect on the Agricultural Community?
 - b. Do we want to define the streams that will be the core component based upon a specific drainage area (and reduce implementation costs to landowners and government services) – or require site specific stream assessments as required for localities required to be under the CBPA?
3. **Intensely Developed Area (IDA¹)** – Should we utilize the flexibility of the IDA (administratively reducing the buffer) to minimize the effect of the CBPA upon areas of existing development and densely planned development as Prince William County did for

¹ **9VAC10-20-100. Intensely Developed Areas.**

- A. At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of this chapter, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in Part IV (9VAC10-20-110 et seq.) of this chapter.
- B. Local governments exercising this option shall examine the pattern of residential, commercial, industrial and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions existed at the time the local program was originally adopted:
 1. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;
 2. Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by the original local program adoption date. This condition does not include areas planned for public sewer and water or constructed stormwater drainage systems;
 3. Housing density is equal to or greater than four dwelling units per acre.

major sections of its County (see attached map)? An IDA allows development to occur in the 100-foot buffer portion of the RPA with local government discretion.²

The IDA could be one mechanism to reduce the impact to properties in the Route 28 Tax District, as well as in other industrial, office, retail, and dense housing areas desired for achieving a concentration of growth in specific areas that have existing infrastructure.

4. **Agricultural**

- a. How much time should they be granted to comply with the regulations (e.g., 1 year, 5 years, 10 years, etc.)? Unlike a proposed development activity, agricultural lands have ongoing activities and need time to modify operations to comply with the proposed regulations.
- b. How will the cost of Nutrient Management Plans be funded?
- c. How can buffer fences and reforestation be encouraged / funded / required with tax credits, tax rate reductions (without rollback taxes), or trading nutrient removal requirements with development activity?

5. **Existing Homeowner Exceptions / Exemptions**

- a. Should an automatic administrative exemption be established for existing users (e.g., in Fairfax, the practice of allowing the greater of 2% of lot area or 1,000 s.f. of impervious area plus any structure less than 150 s.f. minimized impacts to landowners and staff work load)? *Or*
- b. Should all impacts to RPAs require an exception authorized after a public hearing (as suggested by others)?

6. **Policy Towards Projects in the Pipeline**

Should the “hard line” be taken that all unbuilt projects comply – or can projects already approved through some portion of the land development approval process be granted protection in a manner similar to Fairfax County³?

² **9VAC10-20-130. Development Criteria for Resource Protection Areas.**

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.

³ And provided as an attachment to my comment letter dated May 18, 2009.

Hopefully, these thoughts are useful for you as you decide on the best course of action. Feel free to contact me with any questions (e-mail: mrolband@wetlandstudies.com; telephone: 703 679 5602).

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.



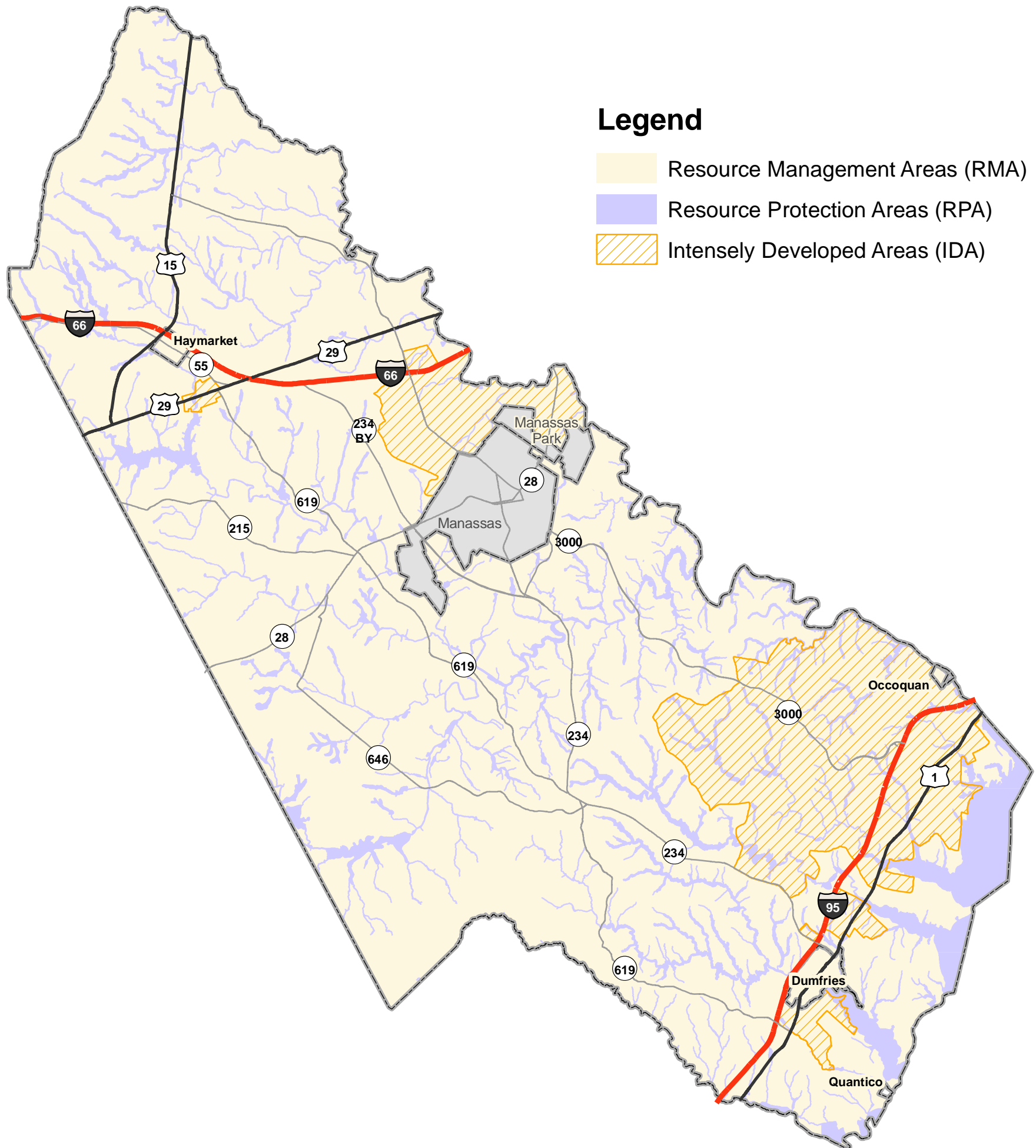
Michael S. Rolband, P.E., P.W.S., P.W.D.
President

Enclosure

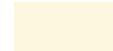


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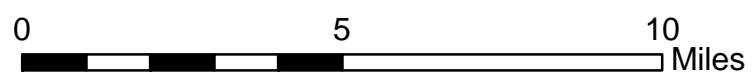
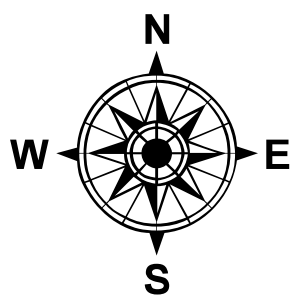
Chesapeake Bay Preservation Areas Map

Prince William County, Virginia



Legend

-  Resource Management Areas (RMA)
-  Resource Protection Areas (RPA)
-  Intensely Developed Areas (IDA)



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