



## COUNTY OF PRINCE WILLIAM

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PLANNING  
OFFICE

Stephen K. Griffin, AICP  
Director of Planning

December 27, 2002

**Reissued: February 7, 2003**

**To:** Development Community

**From:** Stephen K. Griffin, AICP  
Planning Director

**Re:** Applicability of the Amended Chesapeake Bay Regulations on  
Development Plans

On December 3, 2002, the Board of County Supervisors adopted the amendments to Section 740 *et seq.* of the Design and Construction Standards Manual (DCSM) and Part 504 of the Zoning Ordinance to incorporate the updated Chesapeake Bay Preservation Area Designation and Management regulations. The amendments become effective on February 3, 2003.

The following provides a County Staff overview of the applicability of those regulations on certain development plans.

### **Vesting/Grandfathering Guidelines**

All site and subdivision plans (sketch, preliminary, public improvements, storm water studies, etc...) submitted on or after February 3, 2003 must comply with the updated regulations unless they fall under one or more of the criteria listed below.

- **Final Site and Subdivision Plans** -- Approved final plans that are still valid in accordance with Section 110.04 of the DCSM will not be subject to the updated regulations. However, revisions to such approved plans, if impacting an established RPA, will have to comply with certain aspects such as the provisions limiting encroachments. These plans will not be subject to a review of the delineated RPA limits.

- All final site and subdivision plans already in the review process and those accepted for review before February 3, 2003 will not be subject to the updated regulations so long as they remain valid. “Accepted” shall mean those plans that were submitted to quality control by close of business on February 2<sup>nd</sup> and were subsequently accepted for review by the County. Engineers shall have two weeks from the receipt of comments to submit sets to the County for review or the plans will be rejected from Quality Control. Any plans rejected by the County from Quality Control and subsequently resubmitted after the effective date will have to comply with the new, updated regulations.
- Preservation Area Site Assessments (PASA) -- A PASA already approved and where development has begun and is diligently being pursued will remain valid. A PASA approved and where no development has occurred yet, will remain valid for 5 years from the date of its approval except for those approved before March 1, 1998 (5 years or older) and where no development has occurred. These will no longer be valid and a field verified perennial flow determination and a resubmission of PASA will be required in accordance with the new, updated regulations.
- A PASA under review but not yet approved will be valid for five years from the date of its approval or as long as the corresponding final site/subdivision plan remains valid. An approved PASA vests a project only with respect to further identification of RPA on site. Other requirements of the updated regulations must be complied with, such as the provisions for encroachments. If proffers are inconsistent with these provisions, the proffers may control.
- Sketch Plans – Sketch plans approved prior to February 3, 2003 will not automatically be vested, nor will they automatically vest any subsequent final plans. Sketch plans may be vested if, under a review of the project, it is determined that a substantial amount of final engineering is shown on that plan, in order to assess issues relevant to the environmental aspects of the site, and/or an approved PASA is valid on the property. Development may also be determined to be vested in accordance with Section 15.2-2307 Va Code Ann. (Saslaw vesting). If the plan remains valid, the final plans implementing this vested sketch plan will also be deemed vested, so long as the development of all phases are diligently pursued. Generally, for sketch plans deemed vested under Section 15.2-2303 Va Code Ann. (Quillen vesting), the final plans will also be vested as to use and density if substantial proffers not addressing needs generated solely by the development, have already been implemented. Applicants will require a vesting determination by the Office of Planning.

- Preliminary Plans - Preliminary plans approved prior to February 3, 2003 will not automatically be vested, nor will they automatically vest any subsequent final plans. Preliminary plans may be vested if, under a review of the project, it is determined that a substantial amount of final engineering is shown on that plan, and/or an approved PASA is valid on the property. Development may also be determined to be vested in accordance with Section 15.2-2307 (Saslaw vesting). If the plan remains valid, the final plans implementing this vested plan may also be deemed vested, so long as the development of all phases are diligently pursued. Applicants will require a vesting determination by the Office of Planning.
- Once a preliminary plan is deemed vested in accordance with Section 15.2-2307 (Saslaw vesting), and remains valid, the final plans implementing this vested preliminary plan will also be deemed vested, so long as the development of all phases are diligently pursued. Generally, for preliminary plans deemed vested under Section 15.2-2303 (Quillen vesting), the final plans will also be vested as to use and density if substantial proffers not addressing needs generated solely by the development, have already been implemented.
- “Diligent pursuit” for projects with an approved and valid preliminary plan shall generally mean that a final plan must be submitted, approved, bonded and the plat recorded within two years of preliminary plan approval, in order for the project to be vested. That plan must remain bonded to completion. For phased projects, the first phase of the project must be bonded within two years, subsequent phases must continue to be diligently pursued as evidenced by such actions as regular submission, approval and bonding, and the preliminary plan must remain valid in order for the project to maintain its vesting.
- Rezoning and Special Use Permits -- Approved Rezoning and Special Use Permits may vest the subsequent development plans that implement them. Similar to preliminary plans vesting determination noted above, a vesting determination will be made on cases by case basis. The following generally defines “diligent pursuit” as it relates to the different stages of a project:
  - Special Use Permits: For projects vested due to approval of a special use permit, diligent pursuit of the project would include the submission of a preliminary or final plan within 12 months (or other date as approved by the BOCS) of SUP approval and diligent pursuit of its approval and construction of the project.

- Rezoning: For projects vested due to rezoning approval, “diligent pursuit” of the project would include the submission and approval of preliminary plan within 24 months of rezoning approval and the subsequent submission, approval of the final plan and bonding of the project within no more than 24 months. That plan must remain bonded to completion. For phased projects, the first phase of the project must be bonded within 24 months and subsequent phases must continue to be diligently pursued as evidenced by the regular submission, approval and bonding, in order for the project to maintain its vesting.
- Lots Recorded prior to March 1, 2002 – Lots recorded prior to March 1, 2002, when application of the RPA would result in the loss of buildable area, will be able to encroach into the RPA. They are not, however, fully vested. (Section 740.06 of the DCSM).

Please note that other projects may be vested under traditional vesting. Vesting determination for such projects will be made by Planning staff in coordination with the County Attorney and will require specific information to be submitted for evaluation in accordance with current practices. In addition, since most vesting determinations are time sensitive, they must be updated. Saslaw and Quillen vesting legislation is not retroactive.

If you have any questions please do not hesitate to contact either myself or Liz Via, Development Services Division Chief at (703) 792-6830.

CC: County Executive  
Assistant County Executive  
County Attorney  
Public Works Director  
Deputy Planning Director  
Development Services Division Chief  
Zoning Administrator

## *Updated Vesting Policy Relating to the Chesapeake Bay Regulations*

<i>Development Criteria</i>	<i>Vesting Policy</i>
<b>A Sketch Plan submitted concurrently with a PASA</b>	Requires the developer to submit a Final Plan within 12 months from the approval date of the PASA. Failure to submit a Final Plan within 12 months, will render the PASA invalid.
<b>A Preliminary Plan submitted concurrently with a PASA</b>	PASAs that are approved in conjunction with an approved Preliminary Plan will remain valid for the duration of the approved Preliminary Plan.
<b>A Final Site/Subdivision Plan submitted concurrently with PASA</b>	PASAs that are approved in conjunction with an approved Final Site/Subdivision Plan will remain valid for the duration of the approved Final Plan.
<b>A Special Use Permit or Rezoning submitted concurrently with a PASA</b>	PASA will be valid for 12 months following the approval of Special Use Permit or rezoning. During this time period, the developer must submit a Preliminary or Final Plan and continue to show due diligence to keep the PASA vested.

\*Any proposed development and/or structure for which an applicant has received approval on or before February 3, 2003 that were rendered noncompliant under the amended Ordinance may be constructed as approved except that the proposed development and/or structure shall comply with the adopted requirements to the maximum extent practicable. Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in such a way as to maximize water quality protection, as necessary to mitigate RPA encroachments. Upon completion, the development and/or structure shall be deemed nonconforming.

**Notes:**

- 1) Stand Alone PASA - Requires the developer to submit a Rezoning, Sketch, SUP, Preliminary or Final Plan within 12 months from the date of the PASA approval. This will be considered an administrative approval.
- 2) This vesting policy is for the purpose of CBLAD Regulations only and other vesting issues are addressed by the Zoning Administrator and County Attorney.