

**A G E N D A**

**JAMES CITY COUNTY BOARD OF SUPERVISORS**

**WORK SESSION**

**County Government Center Board Room**

**March 25, 2003**

**4:00 P.M.**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. BOARD DISCUSSION**

1. James City Service Authority Groundwater Treatment Facility Bond Issue
2. PRIDE (Protecting Resources in Delicate Environments)
3. Stormwater Issues

**D. ADJOURNMENT**

**MEMORANDUM**

DATE: March 25, 2003  
TO: The Board of Directors  
FROM: Larry M. Foster, General Manager, James City Service Authority  
SUBJECT: Groundwater Treatment Facility Bond Issue

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The James City Service Authority (JCSA) intends to issue revenue bonds in the amount of \$15 million to finance a large portion of the cost to construct the planned Groundwater Treatment Facility. Representatives of Davenport & Company and Troutman Sanders, the JCSA's financial advisors and bond counsel, respectively, will be in attendance to review the bond issue process and address questions.

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Larry M. Foster

LMF/gs  
gtfbond.mem

MEMORANDUM

DATE: March 25, 2003  
TO: The Board of Supervisors  
FROM: Lisa Meddin, Watershed Education Coordinator, James City Service Authority  
SUBJECT: PRIDE (Protecting Resources in Delicate Environments)

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On October 17, 2002, the Department of Development Management launched PRIDE. PRIDE stands for Protecting Resources in Delicate Environments. PRIDE is the educational component of the County's water quality program. The goal of PRIDE is to improve water quality in James City County by teaching residents about the importance of watershed protection while providing residents and neighborhoods with specific watershed restoration and protection tools.

PRIDE offers County residents, neighborhoods, and businesses the opportunities to become a PRIDE partner. For example, Homeowner's Associations can earn PRIDE designations for their neighborhoods by engaging in watershed protection activities like BMP improvement, stream restoration, or tree planting. To date, two communities have earned PRIDE designations through their watershed protection efforts.

PRIDE offers twice yearly watershed protection and restoration demonstration projects, the Best Management Practice (BMP) Ratings Report, Mini-Grant Program, and educational assistance for concerned residents. PRIDE also features an interactive web site at [www.protectedwithpride.org](http://www.protectedwithpride.org). The purpose of today's presentation is to provide the Board with information about the program. No action is requested.

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Lisa Meddin

CONCUR:

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John T. P. Horne

LM/gs  
PRIDE.mem

Attachments

**PROTECTING RESOURCES  
PRIDE  
IN DELICATE ENVIRONMENTS**


## What is PRIDE?

**PRIDE:**  
Protecting Resources in Delicate Environments is educational component of the County's water quality program.


**GOAL:**  
Improve water quality in James City County by teaching residents about the importance of watershed protection while providing residents and neighborhoods with specific watershed restoration and protection tools.

**CITIZEN OPPORTUNITIES :**

- Become a PRIDE designated neighborhood or business
- Mini Grant Project
- Volunteer at demonstration projects
- Learn about BMP status and take action




*Wetland Planting,  
Community Center,  
May 2002*




**PROTECTING RESOURCES  
PRIDE  
IN DELICATE ENVIRONMENTS**


## Elements of Our Watersheds... What We Want to Protect




*Cypress Swamp,  
Chickahominy Haven*



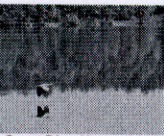
*Tidal Creek,  
Old County Road*



*Riparian Buffer,  
Chickahominy Park*



*Osprey Nest,  
Jamestown Island*




*Great Blue Heron,  
Little Creek Reservoir*

**PROTECTING RESOURCES  
PRIDE  
IN DELICATE ENVIRONMENTS**

## PRIDE Team

- **John Horne**, Manager, Development Management
- **Scott Thomas**, Civil Engineer, Environmental Division
- **Mike Woolson**, Watershed Planner, Environmental Division
- **Lisa Meddin**, Watershed Education Coordinator
- **Renee Dallman**, Neighborhood Connections

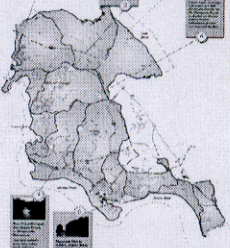


*PRIDE Sign Unveiling, Heron Run*

**PROTECTING RESOURCES  
PRIDE  
IN DELICATE ENVIRONMENTS**

## Components of PRIDE

- Color brochure and JCC subwatershed map
- Watershed protection projects twice yearly
- Mini-Grant program
- PRIDE Neighborhood Designation Opportunities
- Interactive Website ([www.protectedwithpride.org](http://www.protectedwithpride.org))
  - Website designed to provide citizens about watershed protection tools vs. presenting County policy




*Elements of Our Watersheds  
James City County  
Please take pride in the resources and help to protect our environment.*

*Watershed Elements Map  
PRIDE Brochure*


**PROTECTING RESOURCES  
PRIDE  
IN DELICATE ENVIRONMENTS**

## PRIDE Projects and News

- May 11, 2002  
Wetland Planting Workshop at the Community Center
- October 19, 2002  
Watershed Program Unveiled with Hands On BMP Restoration
- March 8, 2003  
St. Thomas Hundred & St. George's Hundred Named Second PRIDE Community for Watershed Protection Efforts
- March 8, 2003  
James City County Announces "Mini-Grants" To Encourage Watershed Improvements
- March 8, 2003  
James City County Releases PRIDE BMP Ratings Report



*Wetland Planting,  
BMP Community Center*



*PRIDE Communities:  
St. Thomas/St.  
George's Hundred*

**PROTECTING RESOURCES  
PRIDE  
IN DELICATE ENVIRONMENTS**

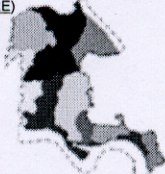
## Website

[www.protectedwithpride.org](http://www.protectedwithpride.org)

- Interactive
- Watershed protection information
- BMP Maintenance Guide
- BMP Ratings Report
- RPA Guide
- Mini Grant Application
- Watershed Resources
- Riparian Buffer Guide (future listing)

**EXAMPLE:**  
**Subwatershed Finder**

Find yourself or a location in James City County and where you fit in with respect to our subwatersheds by browsing our subwatershed map. ([CLICK HERE](#))



Watershed RPA  
Watershed Plan  
Watershed Map  
Watershed Resources  
BMP Guide  
BMP Rating  
News & Projects  
Mini Grant Program

**PRIDE**  
PROTECTING RESOURCES  
IN RICHMOND'S ENVIRONMENTS

**Demonstration Events:**  
Wetland Planting,  
WJCC Community Center, May 2002

**PRIDE**  
PROTECTING RESOURCES  
IN RICHMOND'S ENVIRONMENTS

**Heron Run BMP Improvement**  
October 19, 2002

**PROTECTED WITH PRIDE**  
IN JAMES CITY COUNTY

**PRIDE**  
PROTECTING RESOURCES  
IN RICHMOND'S ENVIRONMENTS

**St. Thomas Hundred /St. George's Hundred**  
PRIDE Designation, March 8, 2003

- Neighborhood volunteered to clear brush from embankment
- Second PRIDE designated neighborhood

**PRIDE**  
PROTECTING RESOURCES  
IN RICHMOND'S ENVIRONMENTS

**Upcoming Projects**

- **Stream Bank Restoration**  
Demonstration/Volunteer Event  
May 17, 2003 (eroded stream on property owned by Powhatan Plantation (located behind Steeplechase Apts).
- **Rain Garden**  
Demonstration/Volunteer Event,  
Fall 2003, King of Glory Lutheran Church, Longhill Road

## M E M O R A N D U M

DATE: March 25, 2003  
TO: The Board of Supervisors  
FROM: Darryl E. Cook, Environmental Director  
SUBJECT: Stormwater Issues

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This cover memorandum serves to update the Board on two issues related to stormwater management: the revisions to the Chesapeake Bay Preservation Ordinance, Chapter 23 of the County Code; and the establishment of a Stormwater Task Group. Regarding the Ordinance, information will be presented on the current status of the Chesapeake Bay process at the State level and two of the major changes in the proposed Ordinance will be highlighted. Then an overview of the purpose and the role of the Stormwater Task Group will be presented.

### **Chesapeake Bay Preservation Ordinance**

The Chesapeake Bay Preservation Area Ordinance is in the process of being amended to bring it into compliance with the revised State Chesapeake Bay Preservation Area Designation and Management Regulations. The State regulations became effective on March 1, 2002, and all local governments were originally given until March 1, 2003, to amend their ordinances to ensure consistency with the revised regulations. On February 11, 2003, the Secretary of Natural Resources requested that the Chesapeake Bay Local Assistance Board (CBLAB) extend that deadline, primarily so that more guidance could be provided to localities in the area of perennial flow and associated wetlands determinations. On February 18, 2003, CBLAB met and passed a resolution granting an extension to its deadline until December 31, 2003. A technical group is being formed by the Department of Conservation and Recreation (DCR) that will help CBLAB finalize all the outstanding guidance by July.

The resolution adopted by CBLAB is permissive in that it states jurisdictions can proceed on their own schedules to adopt their revised ordinances if they feel the lack of the outstanding guidance does not present a significant obstacle to implementation of their ordinance. As the major outstanding issue relates to perennial flow determination, the Board should be aware that the County has proceeded on its own to develop a perennial flow methodology. The methodology or protocol has been reviewed by a committee of local stakeholders from the engineering, development, and environmental communities. There was general agreement by the committee that the method was appropriate and acceptable but there are some details that need to be resolved before the protocol can be considered for implementation in the County. It is our intent to reconvene the committee and resolve the outstanding issues in the near future. **We do not recommend that the Board take action on the Ordinance until further clarity on perennial flow protocol is available from the State.**

An earlier version of the amended Ordinance was sent to the Board as a Reading File item dated January 28, 2003. That memorandum presented a draft version of the Ordinance but that version did not incorporate any changes recommended by the external review committee that was described in the previous paragraph. Staff met with the committee four times during the month of January to review the proposed amended Ordinance and the perennial flow protocol. The attached memorandum discusses in detail all the proposed changes to the Ordinance and it includes changes that were generally consensus items developed with the committee. The memorandum presents all the proposed changes, the rationale behind the changes, and a brief Statement as to whether the items are mandatory or optional, and if a consensus was reached by the committee regarding the change.

The major and probably the most controversial change that is required by the new State regulations relates

to the determination of the Resource Protection Area (RPA). The RPA is defined as lands adjacent to water bodies with perennial flow. The new regulations require that the determination of perennial flow be conducted on a site-specific basis using a reliable scientific method. The requirement is made clear in the attached letter dated February 27, 2003, from the Director of the Chesapeake Bay Local Assistance Department (CBLAD) to Wayland Bass. While the Board has received correspondence from the Peninsula Housing and Builders Association (PHBA) that states that a site-specific perennial flow determination based on actual stream analysis is not required, this letter from CBLAD makes it clear that the PHBA statement is incorrect. The particular protocol to be used is the true issue to be resolved. A complete discussion of this issue is found in the attached memorandum.

There is another change that has been the subject of discussion at the committee and that relates to the establishment of a 25-foot separation between the principal structure and the limit of the RPA. The separation area can be used as yard area and for expansion of the principal structure or the installation of accessory structures. This provision is for protection of the buffer and the future property owner by ensuring that they will have reasonable use of their lot. This is an optional change that has been modeled after similar provisions in Henrico and Chesterfield Counties. A full discussion of this matter is presented in the attached memorandum in Section 23-6, Lot Size.

The Ordinance will be presented at the March 25 Board work session and staff will be available to answer any questions related to the Ordinance and the process. Based on input from the Board, it is the intention of the staff to continue to work with the external review committee to resolve final issues related to the Ordinance changes and the perennial flow protocol, and bring the Ordinance back to the Board for public comment and adoption at the appropriate time in the future based on local and State events.

### **Stormwater Task Group**

The Board was given the attached Reading File memorandum dated February 25, 2003, regarding the establishment of a Stormwater Task Group. This Task Group is a separate body from the committee that has been assisting County staff with the Chesapeake Bay Ordinance amendments. As presented in the memorandum, the Task Force is being established to accomplish some of the objectives of the Powhatan Creek Watershed Management Plan and the 1998 Stormwater Policy Study. The three primary objectives of the Task Force will be to:

- Develop Special Stormwater Criteria in Sensitive Streams and Conservation Areas;
- Encourage Better Site Design in Powhatan Creek; and
- Establish an Off site Open Space Trading Program for the Best Management Practice (BMP) Point System.

Secondary objectives of the Task Group will be to update the County's BMP Manual to reflect any changes necessary as a result of the Group's work, and to explore ways to promote Better Site Design and Low-Impact Development stormwater management principles in the County.

The Stormwater Task Group will be comprised of team members as presented in the attached memorandum with one change - a landowner in the watershed will be added. It is anticipated that the Group will need to meet once a month for at least ten months to accomplish its objectives. Given that the Task Group will not be reviewing or commenting on the Chesapeake Bay Ordinance and that the items they will be addressing are not directly related to the Ordinance, staff believes the Group can and should be established at this time. Findings and recommendations of the Group will be presented to Board of Supervisors upon completion.

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Darryl E. Cook

CONCUR:

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John T. P. Horne

DEC/gb  
chesbaypreord.mem

Attachments:

1. Chesapeake Bay Ordinance Memorandum
2. Memorandum from Scott Thomas dated February 25, 2003
3. Chesapeake Bay Local Assistance Department letter dated February 27, 2003
4. Peninsula Housing and Builders Association letter dated February 7, 2003



## MEMORANDUM

DATE: March 25, 2003  
TO: The Board of Supervisors  
FROM: Darryl E. Cook, Environmental Director  
SUBJECT: Chesapeake Bay Preservation Ordinance

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The Chesapeake Bay Preservation Ordinance is being revised to bring it into compliance with the first major revision to the State Chesapeake Bay Preservation Area Designation and Management Regulations since the State law was adopted in 1989. The regulations became effective on March 1, 2002, and all local governments were originally given until March 1, 2003, to amend their ordinances to ensure consistency with the revised regulations. On February 11, 2003, the Secretary of Natural Resources requested that the Chesapeake Bay Local Assistance Board (CBLAB) extend that deadline primarily so that more guidance could be provided to localities in the area of perennial flow and associated wetlands determinations. On February 18, 2003, CBLAB met and passed a resolution granting an extension to its deadline until December 31, 2003. A technical group is being formed by the Department of Conservation and Recreation that will help CBLAB finalize all the outstanding guidance by July 2003.

An earlier version of the amended ordinance was sent to the Board as a reading file item dated January 28, 2003. That memorandum presented a draft version of the ordinance but it did not incorporate any changes recommended by an external review team consisting of representatives of the local engineering, development, and environmental communities. Staff met with representatives of these groups four times during the month of January to review the proposed amended ordinance. This memorandum discusses in detail all the proposed changes to the ordinance and it incorporates changes that were generally consensus items developed with the committee. It will be pointed out in this memorandum those items where it was not possible to obtain consensus.

The new regulations require many changes to the Chesapeake Bay program, some major and some minor. Some of the changes are required and others are left as a local option. This memorandum will outline the major changes and discuss the impact of those changes. One of the major required changes was to clarify the protection and maintenance of the 100-foot Resource Protection Area (RPA) buffer. Language in the previous regulations allowed the reduction of the buffer to 50 feet if equivalency to the 100-foot buffer could be demonstrated. This language has been removed and it is the State's position that the buffer is always 100 feet in width with provisions made for any necessary encroachment. This does not represent a change in our administration of the ordinance as the 100-foot buffer has always been the standard in the County. Other major changes are presented below and presented in the body of the memorandum in bold type:

- **Perennial flow basis for determination of the RPA - Sections 23-3 -pg 2, 23-4 -pg 3, 23-10(2) -pg 6.**
- **Site specific RPA determination requirements - Sections 23-4 -pg 3, 23-8 -pg 5, 23-10(2)(d) -pg 6.**
- **Stormwater management performance criteria - Sections 23-9(8) -pg 6.**
- **Agricultural performance standards and management plans - Sections 23-7 -pg 5, 23-9(10) -pg 6.**

- **Clarifications regarding noncomplying structures and lots, and exemptions - Sections 23-12 -pg 7, 23-13 -pg 7.**
- **Exception review and approval process - Sections 23-3 -pg 2, 23-14, 23-15, 23-16 -all pg 7.**
- **Lot Size - Section 23-6 -pg 3.**

The optional or permissive items in the regulations that may be included in local programs are:

- Designation of Intensely Developed Areas - not applicable to James City County.
- Septic system inspections and alternatives - Two options were presented in the State regulations to the currently required mandatory septic tank pumping once in every five years. These options were installation and maintenance of a plastic filter in the outflow pipe of the septic tank, or inspection and certification once every five years by a certified sewage hauler that the septic system was functioning properly and that the tank did not need pumping. Neither the Williamsburg Environmental Health Office of the Virginia Department of Health, nor staff recommends the first alternative, and, therefore, that alternative has not been included in the ordinance. However, the second alternative of inspection and certification is in accordance with the proposed regulations for septic systems as contained in the Sewage Handling and Disposal Regulation of the Commonwealth of Virginia developed by the Virginia Department of Health and is being included in the ordinance.
- Some components of the agricultural management plans - added in Sections 23-7, 23-9(10).
- The additional grandfather period for lots platted between October 1, 1989, to the effective date of the amended ordinance. - added in Section 23-7(c)(2) -pg 5.

The major changes are outlined below along with the rationale for each change and as applicable, the review committee's input is included. The changes are listed by section in numerical order.

### *Section 23-3. Definitions*

- A. The major change in this section relates to the definition of the RPA. The RPA is defined as lands adjacent to water bodies with perennial flow (streams flowing year round). The new regulations (9 VAC 10-20-105) and the revised ordinance in Sections 23-4 and 23-10(2)(d) require that the determination of perennial flow be conducted on a site-specific basis using a reliable scientific method. This is a change from the current situation where a perennial stream was identified on a USGS quadrangle map (see *tributary stream* definition which is being deleted). There was some discussion by the review committee as to whether this was an optional or required change. Staff's reading of the regulations and the attached letter from the Chesapeake Bay Local Assistance Department (CBLAD) dated February 27, 2003, make it clear that it is required that an onsite perennial flow determination be made.**

**To address this issue, the County hired a consultant to develop a method to meet this perennial flow determination requirement. The goal was to develop a method that met the State regulations but could be readily applied in the field without significant cost or training requirements. The consultant proposed the use of a well known, scientifically based methodology that is currently used in North Carolina and adapted for use in Fairfax County. The method which was developed by the North Carolina Department of Water Quality and re-titled the Coastal Virginia method by the Commonwealth of Virginia, was applied in the Powhatan Creek watershed. The method and the results are contained in a report available in Development Management. The study demonstrated**

**that perennial flow generally extended further upstream than depicted on the USGS topographic maps, which were used as the reference document for perennial flow determinations when the ordinance was first adopted in 1990. The increase in area established as an RPA buffer would be increased by 206 acres. But as shown in the attached Table 2 from the report, after evaluation of areas that were already developed, government-owned, or located within existing conservation easements, the increase in buffer acreage was reduced to 72 acres of private, undeveloped land. The review committee did conclude that the proposed methodology was generally acceptable but it is our intent to reconvene the committee and discuss this matter in more detail and resolve any outstanding issues. An example of the stream classification form is attached to this memorandum.**

- B. At the request of the review committee, a definition of perennial flow was added. The definition is based on information from the U.S. Geological Survey, Army Corps of Engineers, and Fairfax County.
- C. **A definition was added for the Chesapeake Bay Board, which is comprised of the members of the Wetlands Board. The exception process has been revised by the regulations and in Section 23-14 to require that certain exceptions for RPA encroachments not be granted administratively by County staff but by a Board of Supervisor's appointed board. The process also requires that a public hearing be held for the Board processed exceptions. This is a required change.**
- D. There are minor changes in the definitions of floodplain, highly erodible soils, impervious cover, nontidal wetlands, noxious weeds, and Resource Management Areas. Most of these were modified at the suggestion of the review committee.
- E. A definition was added for silvicultural (forestry) activities as these are exempt from the ordinance requirements and it was important that the eligible activities be identified. The definition is from the State regulations.
- F. At the suggestion of the review committee, definitions were added for *sight line* and *runoff*.

These were consensus items from the committee:

*Section 23-4. Designation of Chesapeake Bay Preservation Area (CPBA)*

**This section was modified to require that a site specific delineation of the RPA occur for each project as described previously in the definitions section. This is a required change as discussed in the definitions section.**

*Section 23-5. Permitted Uses.*

Wording was deleted to eliminate a reference to other sections of the ordinance where disturbance of 25 percent slopes is allowed without an exception. This wording was unnecessary as there are no other sections of the ordinance where this is permitted.

*Section 23-6. Lot Size.*

**This section has been amended to include a 25-foot separation between the principal structure and the limit of the RPA. The separation area can be used as yard area and for expansion of the principal structure or the installation of accessory structures. This provision is for protection of the buffer and the future property owner by ensuring that they will have reasonable use of their lot. This is modeled after similar provisions in Henrico and Chesterfield Counties. Henrico County instituted the measure because without this separation, the lots were not satisfactory to homeowners and it resulted in higher quality**

**development. The study of local Chesapeake Bay programs by the Joint Legislative Audit and Review Commission (JLARC) commented that this provision in Henrico County virtually eliminated the need for exceptions and offered a high degree of protection to the buffer (see attachment). This provision is also recommended by CBLAD as presented in the attached letter dated November 8, 2002. In James City County, there has been a similar experience with regard to inadequate separation between residential structures and the RPA. Currently, the largest separation we can establish is about 10 feet, which is the minimum distance necessary to construct a structure without disturbing the RPA. As this is not a specific requirement of the ordinance, its application becomes a site-by-site administrative procedure and causes significant “conflict” on some lots with some builders or owners. This minimal separation has led to dissatisfaction on the part of homeowners because of the small amount of useable yard area and has contributed to some violations. This issue has caused problems on lots in Landfall at Jamestown, Heron’s Run in Seasons Trace, Governor’s Land, Kingsmill, and other individually platted properties. In some cases, the homeowners stated they would not have purchased the property if they had realized the placement of the house allowed them no rear yard or limited the ability to expand their home.**

**In staff’s opinion, the provision is a reasonable method to protect the buffer from encroachment, protect future property owners from having an inadequate rear yard area, and decrease the administrative effort associated with protecting the buffer. The Board has been seeking a way to increase protection of the RPA buffer and reduce the number of violations and this represents an effective way that has been utilized elsewhere and is endorsed by the state. Exceptions to this provision would be administratively handled by County staff. This provision was amended after meeting with the review committee to clarify that an attached deck or attached garage could be sited in the separation area during the initial construction of the house and that the ordinance provision would only apply to single-family residential structures. However, even with these changes, consensus was not reached among the members of the committee on this item. This is an optional item.**

*Section 23-7. Development Criteria for Resource Protection Areas*

- A. There are numerous changes to this section as a major focus of the regulations’ revisions concerned the RPA. Changes have been incorporated in Subsection (a) regarding the use of the RPA for placement of roads or driveways, stormwater management facilities, and new uses on lots recorded prior to adoption of the revised ordinance. These items are optional but they were included in the ordinance to allow for increased flexibility regarding the use of the RPA, as the extent of the RPAs will be expanding as a result of the perennial stream definition change.
- B. Subsection (a)(1)(a) was amended to add a reference to any *applicable approved watershed management plan* such as the Powhatan Creek Watershed Plan.
- C. Subsection (a)(4)(i) was amended at the request of the committee to determine how “optimum” would be applied when reviewing the siting of a BMP in the RPA. The following explanation has now been included: optimum location shall mean that it is the best place to locate the facility from an engineering/functionality consideration regardless of the presence of an RPA.
- D. Subsection (c) was moved from Section 23-9 to this section for consistency as all the other items related to the RPA were contained in Section 23-7. In addition, there were some changes made to this section.
  1. A statement was added that the buffer shall consist of three layers of vegetation and be of native vegetation for clarification. This is currently how the buffer requirements are being administered.
  2. A sentence was added at the request of the committee that states that existing vegetation can be included in a buffer modification plan.

3. The language regarding reduction of the buffer width is being deleted as discussed in the second paragraph of this memorandum.
4. Language was added to Subsection (1) to clarify that buffer modifications require approval by the County before they are undertaken.
5. Any modification of the buffer vegetation must be shown on a buffer modification plan.
6. The word vista was removed from Subsection (1)(a) as it was redundant to the sight line criteria and caused confusion as to its definition.

The change related to the buffer width is a required change; the others are optional.

- E. Subsection (c)(2)(a) allows for administrative RPA buffer modifications and the use of the separation area on lots created before the adoption of the revised ordinance. It sets forth mitigation requirements associated with the buffer modifications. **The additional “grandfather” period as presented in Subsection (c)(2)(b) is optional but was included to allow for greater flexibility in administration of the ordinance provisions.**
- F. **There are several language changes to the agricultural provisions but essentially the use of the buffer for agricultural purposes is little changed. The requirement for a conservation plan has been changed to a conservation assessment or nutrient management plan. These are required changes.** One additional change requested by the review committee was to add “and implemented” to the requirement that a nutrient management plan be developed.
- G. Subsection (4) was added to ensure that when agricultural or silvicultural use of the buffer ceases and the land converted to other uses, the RPA buffer is to be reestablished. This is a required change.

*Section 23-8. Determining Resource Protection Areas Boundaries.*

**As discussed previously, a site specific delineation of the RPA is required by the new regulations and is included in this section.**

*Section 23-9. Performance Standards.*

- A. Language was included in this subsection regarding the stormwater management objectives for redevelopment or as the regulations now refer to this category of development, previously developed land. This revision has no material effect on the County’s administration of this criteria as we use a point system rather than a direct pollutant load calculation for demonstrating compliance with the stormwater management criteria.
- B. Subsection (b)(1)b. has been revised to allow for flexibility in the application of the 60 percent impervious cover limitation. Sites can exceed the 60 percent coverage if it can be demonstrated that water quality impacts will be no greater that if the site were 60 percent impervious. The changes also include a provision that encourages stormwater master planning for projects by allowing the computation of impervious cover on a project rather than individual site basis.

- C. In Subsection (2)a., a statement was added at the committee's request to state that trees 12 inches and larger could be removed to accommodate site grading. Also, the size of vegetation to be replanted for restoration of vegetated areas has been reduced from 2-1/2 inches to 1-1/2 inches caliper. It has been determined that the survivability and availability of the smaller size trees plants is greater.
- D. Subsection (8) regarding the stormwater management requirements for projects has been revised to be consistent with the State's stormwater criteria. This is a required change. Also, a statement was added to clarify that water quantity increases resulting from development activities would need to be addressed in accordance with the County's Erosion and Sediment Control Ordinance, Chapter 8 of the County Code.**
- E. Subsection (8)(a) contains a clarification for sites utilizing existing BMP facilities for compliance with stormwater management criteria.
- F. Subsection (9) was amended at the committees request to include language that addressed projects that do not require wetlands permits or only have to submit post-construction information.
- G. Subsection (10) changes the requirement for a conservation plan to a conservation assessment. The assessments are not as comprehensive as a plan but this is a required change. A factor to consider is that the Colonial Soil and Water Conservation District is currently not able to prepare conservation plans due to cutbacks.** Language has also been added to this section to clarify that plans of development or water quality impact assessments would not be required for agricultural lands except for land disturbing activities not associated with food and fiber production.
- H. Subsection (c) has been transferred to Section 23-7 as discussed previously.

*Section 23-10. Plan of Development.*

- A. The introductory section and subsection (1) establish that a plan is required for all development activities that exceed 2500 square feet to ensure that the requirements of the ordinance are met. This is a requirement of the regulations. Language was also added to include consistency with any approved watershed management plans when reviewing development plans.
- B. The environmental inventory, subsection (2) has been revised to include the requirement for the perennial flow determination and the change in definition for RPA features. This is a required change.** A requirement has been added to show the regulated floodplain, which is required by the Zoning Ordinance (Chapter 24). This is an optional change but does not represent a change in administration as the floodplains have always been shown on the environmental inventories.
- C. The Clearing Plan, Subsection (3)(a)3 has been modified to remove the word vista to be consistent with the change in Section 23-7(c)(1). Also, subsection a.4. has been added regarding the inclusion of erosion control measures on the plan. Again, this has been a matter of practice but has not been explicitly stated in the ordinance. Under Subsection b., the size of the trees to be planted has been reduced from 2-1/2 to 1-1/2 inches for the reasons stated previously for Section 23-9(b)(2)a.
- D. Subsection (4) regarding stormwater management was modified to clarify that water *quantity* control stormwater management would still need to be considered as part of the Erosion Control Ordinance requirements even if water *quality* were not required by the Chesapeake Bay Ordinance.

*Section 23-11. Water Quality Impact Assessments.*

This section was modified to include the requirement for a water quality impact assessment for land disturbance activities in an RPA. This is a required change.

*Section 23-12. Waiver for Noncomplying Structures.*

- A. This section has been modified to address the granting of waivers to the ordinance requirements for structures that were in existence prior to the adoption of the original ordinance in 1990. These provisions are generally the same as they were previously but have been restructured to meet the new regulation requirements.**
- B. Subsection (1)(d) was added to add a statement that the waiver would not conflict with the comprehensive plan or applicable watershed management plan.

*Section 23-13. Exemptions.*

**This section has been modified to meet the current regulations. The exemptions are a requirement of the regulations but do not represent a significant change from the previous requirements. The exemptions for RPAs were included in the previous ordinance in Section 23-14 as exceptions.**

*Section 23-14. Exceptions.*

**This section contains significant required changes regarding exceptions that are granted for the use of RPAs. The use requirements are presented in Section 23-7. The changes involve the requirement that RPA encroachments be handled by a citizen board and that a public hearing must be conducted. Currently, all exceptions are handled administratively by County staff. The process and the findings required for granting an exception are included in this section. As presented in the revised ordinance, staff recommends that the Wetlands Board be the hearing body for these exception requests. The Wetlands Board is currently the appeal body for the administrative determinations currently made under the ordinance and has stated their willingness to serve as the exception hearing body. The Wetlands Board is already familiar with the RPA issues through their involvement with granting wetlands permits although additional training will be necessary.**

*Section 23-15. Applications for Exceptions.*

**This section was amended to include the Board as one of the entities to which an exception application can be made.**

*Section 23-16. Granting waivers or Exceptions.*

**This section was amended to include the board as one of the entities which can grant an exception.**

*Section 23-17. Appeals.*

This section was amended to remove reference to the Wetlands Board to be consistent with Section 23-14. Also, Subsection (d) was added to state that appeals to the Board decisions are to the Circuit Court.

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Darryl E. Cook

CONCUR:

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John T. P. Horne

DEC/gs  
chesbayord\_2.mem

Attachments:

1. Chesapeake Bay Local Assistance Department Letter dated February 27, 2003
2. Coastal Virginia Stream Classification Form
3. Joint Legislative Audit and Review Commission's Chesapeake Bay Study, Page 41
4. Chesapeake Bay Local Assistance Department Letter dated November 8, 2002



# Coastal Virginia Stream Classification Form

Project Name: \_\_\_\_\_ River Basin: \_\_\_\_\_ County: \_\_\_\_\_ Evaluator: \_\_\_\_\_  
 Nearest Named Stream: \_\_\_\_\_ GPS Points: \_\_\_\_\_  
 Date: \_\_\_\_\_ USGS QUAD: \_\_\_\_\_ Location/Directions: \_\_\_\_\_

## Primary Field Indicators: (Circle One Number Per Line)

I. Geomorphology	Absent	Weak	Moderate	Strong
1) Is There A Riffle-Pool Sequence?	0	1	2	3
2) Is The USDA Texture In Streambed Different From Surrounding Terrain?	0	1	2	3
3) Are Natural Levees Present?	0	1	2	3
4) Is The Channel Sinuous?	0	1	2	3
5) Is There An Active (Or Relic) Floodplain Present?	0	1	2	3
6) Is The Channel Braided?	0	1	2	3
7) Are Recent Alluvial Deposits Present?	0	1	2	3
8) Is There A Bankfull Bench Present?	0	1	2	3
9) Is A Continuous Bed & Bank Present?	0	1	2	3
(*NOTE: If Bed & Bank Caused By Ditching And WITHOUT Sinuosity Then Score=0*)				
10) Is A 2 <sup>nd</sup> Order Or Greater Channel (As Indicated On Topo Map And/Or In Field) Present?		Yes=3	No=0	

PRIMARY GEOMORPHOLOGY INDICATOR POINTS: \_\_\_\_\_

II. Hydrology	Absent	Weak	Moderate	Strong
1) Is There A Groundwater Flow/Discharge Present?	0	1	2	3

PRIMARY HYDROLOGY INDICATOR POINTS: \_\_\_\_\_

III. Biology	Absent	Weak	Moderate	Strong
1) Are Fibrous Roots Present In Streambed?	3	2	1	0
2) Are Rooted Aquatic Plants Present In Streambed?	0	1	2	3
3) Is Periphyton Present?	0	1	2	3
4) Are Bivalves Present?	0	1	2	3

PRIMARY BIOLOGY INDICATOR POINTS: \_\_\_\_\_

## Secondary Field Indicators: (Circle One Number Per Line)

I. Geomorphology	Absent	Weak	Moderate	Strong
1) Is There A Head Cut Present In Channel?	0	.5	1	1.5
2) Is There A Grade Control Point In Channel?	0	.5	1	1.5
3) Does Topography Indicate A Natural Drainage Way?	0	.5	1	1.5

SECONDARY GEOMORPHOLOGY INDICATOR POINTS: \_\_\_\_\_

II. Hydrology	Absent	Weak	Moderate	Strong
1) Is This Year's (Or Last's) Leaf litter Present In Streambed?	1.5	1	.5	0
2) Is Sediment On Plants (Or Debris) Present?	0	.5	1	1.5
3) Are Wrack Lines Present?	0	.5	1	1.5
4) Is Water In Channel And >48 Hrs. Since Last Known Rain?	0	.5	1	1.5
5) Is There Water In Channel During Dry Conditions Or In Growing Season)?	0	.5	1	1.5
6) Are Redoxy-Morphic Conditions Present In Sides Of Channel (Or In Headcut)?	Yes=0			No=1.5

SECONDARY HYDROLOGY INDICATOR POINTS: \_\_\_\_\_

III. Biology	Absent	Weak	Moderate	Strong		
1) Are Fish Present?	0	.5	1	1.5		
2) Are Amphibians Present?	0	.5	1	1.5		
3) Are Aquatic Turtles Present?	0	.5	1	1.5		
4) Are Crayfish Present?	0	.5	1	1.5		
5) Are Macrobenthos Present?	0	.5	1	1.5		
6) Are Iron Oxidizing Bacteria/Fungus Present?	0	.5	1	1.5		
7) Is Filamentous Algae Present?	0	.5	1	1.5		
8) Are Wetland Plants In Streambed?	SAV	Mostly OBL	Mostly FACW	Mostly FAC	Mostly FACU	Mostly UPL
(* NOTE: If Total Absence Of All Plants In Streambed As Noted Above Skip This Step UNLESS SAV Present*).	3	1	.75	.5	0	0

SECONDARY BIOLOGY INDICATOR POINTS: \_\_\_\_\_

**TOTAL POINTS** (Primary + Secondary) = \_\_\_\_\_ (If Greater Than Or Equal To 19 Points The Stream Is At Least Intermittent)

<b>Table 7</b>	
<b>Local RPA Development Applications Approved (FY 2000 and FY 2001)</b>	
<b><u>Type of Building Permits</u></b>	<b><u>Frequency</u></b>
Single Family Development	185
Subdivision	16
Accessory	60
Industrial/Commercial	16
Other*	37
<b>Total</b>	<b>314</b>

\*\*Other\* includes activities such as landscaping, stream bank erosion protection, tree removal, and septic tank installation.

Source: JLARC staff file analysis of Bay Act program files at 11 Tidewater cities and counties.

ranged from a fairly strict policy where few encroachments are allowed unless hardships are demonstrated to a more generous policy where encroachments appeared to be regularly allowed into the buffer. However, there did not appear to be a single explanation as to the differing policies.

Henrico County is an example of a locality that follows a "strict" RPA buffer policy. According to Henrico County staff, the county protects its RPA buffer by requiring a mandatory 30 to 50-foot setback (depending on the zoning classification) "between the buildable area on a residential lot" and the buffer allowing homeowners to have adequate rearyard space which helps eliminate the need to encroach. Henrico also requires developers to post signs along the RPA boundaries designating them as environmentally sensitive areas. Henrico staff reported that they authorized very few "exceptions" for property owners to encroach into the RPA buffers because the county requires applicants to demonstrate "significant" hardships before granting encroachment rights. Henrico staff also said the nature of the county's geography precludes citizens from requesting RPA encroachments, for the most part, because there are no real scenic vistas along its preservation areas.

JLARC staff confirmed that Henrico County does not grant RPA encroachments unless property owners demonstrate significant hardships. The study team reviewed a proposal that Henrico received in February 2001 requesting that a "landfill" operation expand into the RPA buffer. The county responded to the applicant by stating:

...it is the intent of the Chesapeake Bay Act to protect the water quality of streams and wetlands by maintaining a 100 [foot] vegetated buffer along tributary streams. I can not imagine an instance whereby a 100-foot buffer could be more useful or beneficial than at a landfill operation. In addition, your proposal to include a 2 to 1 landfill slope as part of the buffer is particularly



# COMMONWEALTH of VIRGINIA

## CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

James Monroe Building  
101 North 14th Street, 17th Floor  
Richmond, Virginia 23219  
FAX: (804) 225-3447  
November 8, 2002

C. Scott Crafton  
Acting Executive Director  
(804) 225-3440  
1-800-243-7229 Voice/TDD

Mr. Darryl Cook  
Environmental Division Director  
James City County  
P O Box 8784  
Williamsburg, VA 23187-8784

### Re: Resource Protection Area Setbacks

Dear Mr. Cook:

As I'm sure you are aware, the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) clarify that there is to be a 100-foot buffer area adjacent to and landward of all Resource Protection Area (RPA) features and along both sides of any water body with perennial flow. During recent meetings with certain localities, **it became clear that the 100-foot RPA buffer was being used as a building setback line and not as a required "no disturbance" area.** Allowing structures to be built on the RPA boundary line has led to construction disturbance within the buffer area, which is not allowed under the Regulations. Section 9VAC 10-20-130.3 of the Regulations requires that "...a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from run-off shall be retained if present and established where it does not exist." In addition, Section 9VAC 10-20-130.5.a of the Regulations describes the circumstances in which vegetation may be removed from the buffer. Nothing in this subsection permits the removal of vegetation in the buffer for the purpose of clearing land in preparation for construction.

In order to avoid disturbance within the RPA, each locality's review process needs to ensure that structures on lots recorded after the date of local program adoption, and not otherwise exempted by the new Regulations, are placed far enough outside of the RPA so that no disturbance of the RPA occurs during the construction process. Allowing the placement of houses and other structures at the edge of the RPA line appears to cause unnecessary violations during construction, and further serves to cause additional intrusions into RPAs as property owners add patios, decks, home additions, or clear more area for a yard. The Department recommends that localities place additional language in their land development ordinances that ensures that the





There are also several secondary objectives that may also need to be presented, discussed, reviewed, and accomplished by the *Special Stormwater Criteria Task Group* in order to accomplish the above primary objectives. Discussion or preparation of guidance material for secondary objectives may be necessary prior to, during, or following action on the primary objectives. Secondary objectives generally may include, but are not limited to:

**Secondary Objectives:**

- General Revisions to the *James City County Guidelines for Design and Construction of Stormwater Management BMPs* otherwise known as the County BMP manual; and
- Discuss and explore ways to incorporate Better Site Design (BSD), Low Impact Development (LID), and other alternative principles and practices for stormwater management purposes.

**Task Group Format:**

From April to August 2000, Environmental Division staff assembled an Engineering Review Team to prepare, develop, and implement three technical documents necessary for administering certain aspects of the stormwater management program of James City County. These materials consisted of a design plan checklist, certification requirements for stormwater management/BMP facilities, and design and construction guidelines for private (outside VDOT right-of-way) drainage systems. The Engineer Review Team consisted of five local consulting engineering firms and one representative from VDOT. After eight team meetings were held, technical documents were finalized and a workshop was held in February 2001 to introduce and explain the materials to the design and development community.

Based on staff experience, this approach seemed to be a very effective and successful method of preparing program administrative/technical guidance material with input from the local design and development community. A wide array of technical material was presented, discussed and common consensus and conclusions were derived to achieve established objectives. Therefore, it is recommended that the *Special Stormwater Criteria Task Group* follow the same general outline and approach as the previously assembled Engineer Review Team. However, due to the diverse nature of anticipated topics, some adjustments are necessary. Staff will provide an active role in coordinating meeting dates, preparing advance agendas, preparing outline and initial baseline material and participate in discussions for the primary/secondary objectives as outlined and to keep the group focused on agenda items and purpose.

It is proposed that the task group will meet once per month and the team will need at least ten meetings to properly explore all established program objectives. Many of the topics to be discussed range from very broad to very specialized issues related to site design, drainage, stormwater management and enhanced BMP design, construction, and maintenance. Other related topics that may arise include: the plan of development review process, economics, engineering, erosion and sediment control, landscaping, permitting, planning, pollution prevention, watershed management and the latest state-of-the art materials, principles and practices related to each. Each of the team members should have adequate education, knowledge, and experience in one or many of these potential topic areas to actively participate in the task group.

**Proposed Team Members:**

The following ten-member team is proposed to be assembled to form the *Special Stormwater Criteria Task Group*. The matrix is general and flexible enough to allow each participant to choose an appropriate person who is qualified and can best represent his or her specific area of expertise. Formal invitations will be forwarded to the participant by Environmental Division staff.

<b><i>Proposed Special Stormwater Criteria Task Group</i></b>	
<i>No.</i>	<i>Participant</i>
1	Local Consulting Firm
2	Local Consulting Firm
3	Local Consulting Firm
4	Landscape Architect
5	Large Private Developer in a Designated SSC Catchment Area
6	Large Homeowners Association in a Designated SSC Catchment Area
7	Small Homeowners Association in a Designated SSC Catchment Area
8	Friends of the Powhatan Creek Watershed
9	Williamsburg Land Conservancy
10	Regulatory Sector - Local Interest

<b>County Staff Advisory Members</b>	
Scott Thomas, Senior Engineer	Primary Contact
Darryl Cook, Environmental Director	Secondary Contact
Michael Woolson, Watershed Planner	Observation Role
Planning Division	As Needed
Parks & Recreation	As Needed - Greenway / Greenspace programs
Purchase of Development Rights Administrator	As Needed - PDR Program

<b>County Staff Supervision</b>	
John Horne, Development Manager	Staff Oversight Role

**Summary and Recommendations:**

The Powhatan Creek Watershed Management Plan is clear and specific about where and when Special Stormwater Criteria should be applied, especially in the mainstem portion and subwatersheds 202, 205, 208 and 209. These areas are situated within the Primary Service Area and based on the recent past, reflect areas where development is occurring at a rapid pace. The longer implementation of SSC is delayed, the more development area is lost that would be subject to the Special Stormwater Criteria thus resulting in further degradation of sensitive streams, conservation areas and water quality within Powhatan Creek.



Formation of a Special Stormwater Criteria Task Group as Recommended in the Powhatan Creek  
Watershed Management Plan

February 25, 2003

Page 4

Based on the proposed program, it is reasonable to expect that full implementation of SSC would probably not occur until well into the middle of calendar year of 2004. As Special Stormwater Criteria has not yet been fully developed, staff will not apply Special Stormwater Criteria to site and subdivision plans submitted under the plan of development review process until specifics are completely formulated by the task group.

However, in the interim, any parcels or projects that are situated in SSC designated areas and require rezoning or special use permits would be subject to staff review under SSC. Staff will handle these cases on a case-by-case basis using preliminary guidelines as established by the Center for Watershed Protection and by using information as it progressively develops from the Special Stormwater Criteria Task Group.

County staff will proceed with the establishment of the Special Stormwater Criteria (SSC) Task Group under this format unless the Board of Supervisors provides other direction.

---

Scott J. Thomas

CONCUR:

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John T. P. Horne

SJT/adw  
taksgrp.mem

Attachment



**COMMONWEALTH of VIRGINIA**  
**CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT**

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C. Scott Crafton  
Acting Executive Director  
(804) 225-3440

February 27, 2003

FEB 27 2003

Mr. Wayland N. Bass  
County Engineer  
James City County  
P.O. Box 8784  
Williamsburg, Virginia 23187-8784

Re: Chesapeake Bay Preservation Area Designation and Management Regulations (9  
VAC 10-20 et seq.)

Dear Mr. Bass:

You have made an oral request that I respond to the concerns raised by the Peninsula Housing and Builders Association in two letters, one to the Board of Supervisors of James City County, and the other to me, relating to the local designations of Resource Protection Areas.

Section 9 VAC 10-20-80 (A) of the Chesapeake Bay Preservation Area Designation and Management Regulations ("the Regulations") provides that "Resource Protection Areas shall consist of lands adjacent to water bodies with perennial flow." In making the initial delineation of Resource Protection Areas ("RPAs") a locality has the choice under Subsection (D) of the above mentioned section of using (1) the U. S. Geological maps described therein, or (2) a scientifically valid system of in-field indicators of perennial flow. Regardless of which option a locality selects for the purpose of making its initial delineation of RPAs, the requirements contained in the last sentence of Subsection (D) apply in any case where a proposed development of land within the locality is subject to (1) a plan-of-development review process, or (2) a water quality impact assessment.

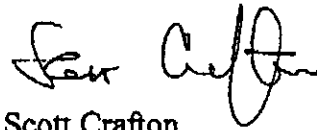
If the proposed development is within an RPA delineated pursuant to Section 9 VAC 10-20-80(D)(i), or is in a Resource Management Area and, therefore, subject to a plan-of-development process, a "site specific" determination that any water body within the proposed development has "perennial flow" is required to be made at that time pursuant to the provisions of the last sentence of Subsection (D) of Section 9 VAC 10-20-80. Existing delineations are to be adjusted, as necessary, based on the scientific evaluation of the site. In summary, site-specific determinations of perennial flow are not required for the purpose of initially designating RPAs; however, they are required at the time of development when the conditions outlined above exist.

Mr. Wayland Bass  
February 27, 2003  
Page 2

Under the Regulations, which took effect on March 1, 2002, James City County is authorized to amend its ordinances, consistent with the provisions of Section 9 VAC 10-20-80, to designate its Resource Protection Areas, and it has the option of using "a scientifically valid system of in-field indicators of perennial flow" for this purpose. So long as the County is satisfied that it has used such a system, it is free to amend its ordinances at any time, even though the deadline for doing so has been extended to December 31, 2003.

The analysis provided in this response to your request is consistent with the opinions expressed by Mr. Douglas G. Wetmore in his letter to Mr. Darryl Cook dated January 16, 2003.

Sincerely,



Scott Crafton

CSC/ce

C: The Honorable W. Tayloe Murphy, Jr.  
Chairman and Members, Chesapeake Bay Local Assistance Board  
Members, Board of Supervisors of James City County  
Roger Chaffe, OAG  
Willard W. Morris, PHBA  
Mike Toalson, HBAV  
Martha Little  
Doug Wetmore



**PENINSULA HOUSING & BUILDERS ASSOCIATION**

760 MCGUIRE PLACE, NEWPORT NEWS, VA 23601  
(757) 595-1600 // (757) 595-8983 FAX

February 7, 2003

Board of Supervisors  
James City County  
P.O. Box 8784  
Williamsburg, VA 23187



Re: Chesapeake Bay Preservation Ordinance

Mr. Chairman and Members of the Board

This Association and several of its members were invited by Staff to participate in a committee to review Staff's recommended revisions to the Chesapeake Bay Preservation Ordinance to comply with the State's March 1, 2002 deadline. There was not a consensus on the Committee for revisions which the Regulations do not require.

In its recommended revisions, Staff has misinterpreted the Regulations and gone far beyond what the newly revised State Regulations require and intend, including:

A. Determination of "water bodies with perennial flow":

The Final Regulation Amendments (attached hereto) adopted on December 10, 2001 and effective March 1, 2002 do not include definitions for either "water bodies" or "perennial flow" under 9VAC 10-20-40. "Resource Protection Area" (RPA) is defined as "lands adjacent to water bodies with perennial flow".

In 9VAC 10-20-80, the Regulations state that, for the purpose of generally determining whether water bodies have perennial flow, local governments may (1) continue to rely on USGS maps designations or (2) use "a scientifically valid system of in-field indicators of perennial flow".

Staff's January 28, 2003 memo to the Board erroneously states that "the new regulations... require that the determination of perennial flow be conducted... using a reliable scientific method" and that "this is a change from the current situation where a perennial stream was identified" based on USGS maps designations. In fact, the Regulations still permit the determination of perennial streams based on USGS map designations; any change to a scientific method is at your discretion, not required.

B. Site-Specific Evaluations of Perennial Flow

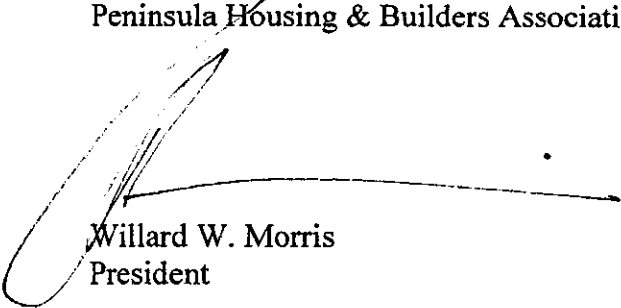
As part of the local government's development review process, it must ensure

in what is becoming an uncertain process focused, not on Bay water quality, but on minimizing availability of new housing.

On behalf of property owners throughout the County, The Peninsula Housing and Builders' Association request that the Board adopt only those revisions to this Ordinance which are required by the new Regulations and provide Staff with such guidance, including not incorporating language from CBLAD's Draft Regulatory Guidance documents until CBLAB adopts finalized documents (per CBLAD Director Crafton's December 23, 2002 memo, also enclosed). Specifically, in the case of the above concerns, we ask the Board to direct Staff to:

1. Determine water bodies with perennial flow by using USGS maps pursuant to 9 VAC 10-20-80 D (i).
2. Conduct or insure site-specific evaluations that consider property lines with respect to those water bodies with perennial flow shown on the USGS maps, but do not additionally require the use of any system of in-field indicators of perennial flow.
3. Require no separation from the RPA, but require instead (a) mitigation of any temporary construction land disturbance and (b) a 10-foot setback of the principal structure from any tree in the RPA with a trunk diameter of more than 12" as measured 3 feet above ground.

Sincerely,  
Peninsula Housing & Builders Association



Willard W. Morris  
President

Attachments: Final Regulation Amendments Adopted 12/10/01  
CBLAD Memo of December 23, 2002