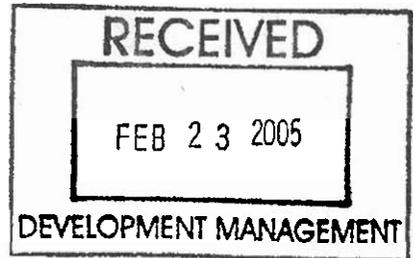


**James City County Board of Supervisors  
Reading File**

**March 8, 2005**

**A. For Your Information**

- a. Letter dated February 17, 2005 from Friends of the Powhatan Creek Watershed
- b. Email dated February 27, 2005 from Stephen Romeo, LandMark Design Group
- c. Letter dated February 28, 2005 from the Peninsula Housing & Builders Association, Inc. .



February 17, 2005

Mr. John Horne, Manager  
Department of Development Management, James City County  
P.O. Box 8784  
Williamsburg, VA 23187-8784

Dear Mr. Horne:

The Friends of the Powhatan Creek Watershed wish to express their support for the draft policy clarifying the implementation of RPA separation areas related to the Chesapeake Bay Preservation Ordinance. The RPA and associated buffer areas are the most effective tool to reduce the flow of nutrients and sediment to our waterways. We have seen firsthand the damage sustained by the Resource Protection Area buffer when illegal vegetation clearing and intrusions occur – either during or post-construction. Once the damage is done, it takes many years to fully recover. The Friends believe that the best way to reduce damage is to prevent it from happening. We believe that the draft policy establishing the use of separation areas between the construction zone and the RPA buffer is an excellent step in this direction.

Thank you for considering our comments

Sincerely,

A handwritten signature in cursive script that reads "David Fuss".

David Fuss  
President, Friends of the Powhatan Creek Watershed  
3008 Chelsford Way  
Williamsburg, VA 23185

**John Horne**

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**From:** Stephen Romeo [sromeo@landmarkdg.com]  
**Sent:** Thursday, February 24, 2005 9:20 AM  
**To:** John Horne  
**Subject:** RE: Policy for Wetland, Conservation Area, and RPA Separation Areas

John,  
The LandMark Design Group is not willing to support this in that it does not appear to be found on scientific reasoning. I have promoted the position that all of these types of measurements should be performance based and the only way to break out of mediocrity is to facilitate creativity. If that is unachievable, then we'll be relegated to a cookie-cutter environment.

Thanks for extending the opportunity for input.

Steve



**PENINSULA HOUSING & BUILDERS ASSOCIATION, INC**  
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February 28, 2005

Michael Brown, Chairman, Board of Supervisors  
James City County  
P.O. Box 8784  
101-F Mounts Bay Road  
Williamsburg, VA 23187-8784

Dear Chairman Brown,

Thank you for this opportunity to present PHBA's comments to the Board of Supervisors regarding the county's draft policy for wetland, conservation area and RPA separation areas. I am providing copies of these comments to each Supervisor and to John Horne, the county's Director of Development Management. Our members believe that an added 25-foot separation area is unwarranted. On separate enclosed pages, I refer to specific sections of the draft policy and list the association's comments.

Let me first outline our reasons why we believe a 25-foot separation area is not necessary:

- The purpose of the state's Chesapeake Bay Act is to protect water quality. The draft policy doesn't contain or nor does it refer to any studies showing that a 25-foot "buffer to the buffer" will provide any increase in environmental protection to justify the added burden on property owners. I've enclosed a chart that shows that even if one expanded the buffer to 165 feet, it would result in a marginal increase in sediment and pollutant removal.
- Throughout 2004, PHBA members worked with the Center for Watershed Protection and James City County staff on the "Builders for the Bay" project, so we could reach consensus on development principles that promote environmental protection and maintain economic growth. The consensus document – a year's worth of work - is about to go to print. It's premature at this point to proceed with an added 25-foot buffer, when recommended principles from "Builders for the Bay" may result in improved water quality without the taking of additional land.
- As Board members previously have discussed, landowners subject to this policy still will be taxed on 100 percent of their land, despite having 25 feet less to use at their discretion. Landowners aren't compensated for this subtraction in the use of their land.
- Because the policy, as drafted, would apply only to future rezonings and special use permits, the policy would have the effect of creating two classes of citizens: Those with existing lots who can do whatever they wish in the 25-foot area beyond the RPA buffer, and those citizens with future lots who will need to obtain the county's approval.
- Board members have provided direction on this issue several times before and decided not to pursue further setbacks. The county's policy/technical review committee on the Chesapeake Bay ordinance extensively discussed the question of an additional separation area, and the committee decided not to bring it forward. Staff has not presented any new information that would support overturning the recommendations of the committee.
- Although the draft policy mentions various instances of buffer violations, it does not list exact numbers of how often this problem occurs. We believe staff is proposing a broad regulation to solve a problem that occurs perhaps once out of every 800 lots, at most. In fact, during 2004, there were

only three instances of violations that were considered serious enough to warrant fines and bring to the Board of Supervisors. If there were only three serious instances last year, the county should not impose a broad, new regulation to address these problems. Enforcing state regulations and the county code is part of the job for county staff, and the numbers indicate that most of the problems of buffer violations were handled satisfactorily by county administration. It is poor public policy to adopt additional, excessive and unsubstantiated regulations in response to a small number of citations to citizens who do not follow existing laws.

- The draft policy says that a 25-foot separation area is a reasonable method ... “to decrease the administrative effort associated with protecting the buffer.” However, the added setback will not decrease the administrative effort; it will simply move it 25 feet farther inland. Construction or clearing won’t be allowed within the 25-foot area; it will have to be reviewed and approved by the Environmental Division. Perhaps staff is saying that construction or clearing within the 25-foot area will be easier for staff to approve. If that is the case, then it shows that the environmental benefit of this new regulation really is marginal, and that staff is treating homeowners differently than builders. The true relief in administrative effort will be that staff will receive fewer calls from homeowners who must be informed that they may not expand their homes towards the protected areas.
- Part of the county's justification for this new policy is that it wants to ensure that homeowners have adequate back yards. But that decision is based on what size of yard sells in today’s market. During the past decade, market trends show that consumers have a decreasing interest in yard maintenance, resulting in smaller yards. Furthermore, it is the buyer’s obligation to know what they’re buying. The size of every back yard is disclosed to every buyer in settlement documents. We cannot predict what will be considered an adequate back yard 10 years from now. So why should the County place itself in the middle of this process? Also, sound water conservation practices seek to encourage reduced yard areas so as to lessen demands for irrigation, an important issue in James City County.
- Finally, extending the proposed separation areas to conservation easements and to wetland areas is even more troublesome and substantially less justifiable. Conservation easements exist in James City County for numerous reasons – many are completely unrelated to environmental protection. Perhaps staff is referring only to the Undisturbed Natural Open Space (UNOS) easements, which do not automatically require added protection. Greater clarity and community input certainly is needed on this point. For instance, landowners may be discouraged from granting conservation easements if their lands will be burdened with yet another layer of building restrictions arising from this current proposal.

On the following pages, I refer to specific sections of the draft policy and list our comments. I’ve also enclosed the chart<sup>1</sup> showing pollutant removal according to the width of buffers. Thank you for your consideration, and please don’t hesitate to contact me with any questions or comments.

Best Regards,

Robert Duckett  
Director of Public Affairs  
Peninsula Housing And Builders Association

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<sup>1</sup> Desbonnet, A., P.Pogue, V.Lee and N. Wolff. 1994. *Vegetated Buffers in the Coastal Zone – A Summary Review and Bibliography*. Coastal Resources Center Technical Report No. 2064. University of Rhode Island Graduate School of Oceanography. Narragansett, RI 02882. 72 pp.



## DRAFT POLICY SECTIONS AND PHBA COMMENTS

**Draft Policy:** “In November, the Peninsula Housing And Builders Association sent a letter to John Horne criticizing staff for recommendations it has recently exercised ...”

**PHBA Comment:** Our members have a legitimate interest in this issue. The purpose of our November letter was not to be critical of staff, but rather to forthrightly express our views. Given the Board’s previous direction on the issue, we felt it important to raise our concerns.

**Draft Policy:** “This was done in order to reduce the need to enforce buffer violations.”

**PHBA Comment:** Creating a 25-foot separation area does not reduce the need to enforce buffer violations. If construction is prohibited in the separation area, then the need for enforcement will remain the same whether the buffer area is at 100 feet or 125 feet.

**Draft Policy:** “In both cases the developers (referring to U.S. Homes and New Town Section 3/6) did not object to the staff suggested proffers or conditions.”

**PHBA Comment:** PHBA members familiar with discussions say that both developers did object, but ultimately agreed to the condition in order to move their development forward.

**Draft Policy:** “... structures in multi-family, commercial and industrial areas shall be located no closer than 15 feet from RPA buffers, conservation easements and wetlands ... structures on single-family residential properties with backyards shall be located no closer than 25 feet from RPA buffers, conservation easements or wetlands.”

**PHBA Comment:** We see no reason here why commercial and multi-family properties should be treated differently than residential.

**Draft Policy:** “In cases of minimal separation between a house and a buffer, homeowners have been dissatisfied with the small size of their rear yards.”

**PHBA Comment:** In every home purchase, settlement documents contain information showing the buyer their property lines and the location of Resource Protection Areas. This information is disclosed to every buyer prior to the purchase. The trend during the past decade has been for a decreasing interest in yard maintenance by consumers, resulting in smaller yards. Also, effective water conservation practices seek to promote a decrease in yard areas so as to reduce demands for irrigation, a particularly important issue in James City County.

**Draft Policy:** “Such violations have occurred ...”

**PHBA Comment:** The draft policy lists neighborhoods where residents have cleared their land, but it does not list specific numbers. Exactly how often has this problem occurred?

**Draft Policy:** “Given the rear yard setbacks in the county’s zoning ordinance, it is a reasonable expectation that residential lots contain adequate area for a usable backyard.”

**PHBA Comment:** Zoning setbacks historically were created to protect a property from intrusions by adjacent property as it developed, not to define what an adequate area is for play or lawn mowing. Staff

here is mixing zoning issues (setbacks) with Chesapeake Bay environmental regulations and policies (separations).

**Draft Policy:** “The Board of Supervisors most recently discussed this issue during its review of new amendments to the Chesapeake Bay Preservation Ordinance. ... The Board declined to adopt this amendment to the ordinance citing concerns over property rights ...”

**PHBA Comment:** The Board of Supervisors previously has given direction to staff on this issue. The county’s Chesapeake Bay Policy/Technical Committee, comprised of members from county staff and public stakeholders, decided not to recommend any additional separation area. No new information has come forward since to change the basis for the Board’s previous direction.

**Draft Policy:** “Similar to policies in other jurisdictions” section

**PHBA Comment:** This section does not give the whole picture. Other local governments, such as York County, the City of Hampton and Gloucester County, either have much smaller separation areas or have no additional buffer at all.

**Draft Policy:** “In staff’s opinion, the provision of an RPA, wetland or conservation easement setback area is a reasonable method to protect the buffer and environmentally sensitive lands from encroachment, protect future property owners from having an inadequate rear yard area, and decrease the administrative effort associated with protecting the buffer.”

**PHBA Comment:** Wetland or conservation easements may be greater than the 100-foot Resource Protection Area buffer, so those easements should be deleted from the proposed policy. It is not a duty of the county to protect future property owners from having an inadequate rear yard area, and it is not the county’s duty to determine what is an adequate rear yard area. Also, a perennial stream can flow along several sides of a property, so the policy needs clarification about whether the 25-ft setback applies to both rear and side yard setbacks or just rear yards. We reiterate that the administrative effort remains the same; the policy just shifts it 25 feet farther inland.

**Draft Policy:** “... reducing the number of violations ...”

**PHBA Comment:** As we have mentioned previously, the draft policy does not detail the number of violations. How big of a problem is it in comparison to number of lots? A review of public records shows that during 2004, there were only three instances of violations that were considered serious enough to warrant fines and bring to the Board of Supervisors. If there were only three serious instances last year, the county should not impose a broad, new regulation to address these problems. Enforcing state regulations and the county code is the function of county staff, and the numbers indicate that most of the problems of buffer violations were handled satisfactorily by county administration.

**Draft Policy:** “... and is endorsed by the state.”

**PHBA Comment:** This is a small matter, but a letter from a staff member at Chesapeake Bay Local Assistance reflects the views of administrative staff at the agency. It does not reflect the views of the Chesapeake Bay Local Assistance Board, much less the Commonwealth of Virginia.

**Draft Policy:** “If a rezoning or a special use permit proposal has property adjacent to a Resource Protection Area, regulated wetland, or contains a conservation easement, the applicant will guarantee by proffer or SUP condition to locate structures away from protected areas in accordance with this policy.”

**PHBA Comment:** State law makes it very clear that proffers are voluntary. So, the wording “will guarantee by proffer” raises questions for our members, and it should be clarified that this condition is



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voluntary agreed upon by the developer. Also, as noted before, regulated wetlands and conservation easements should be deleted from this policy.

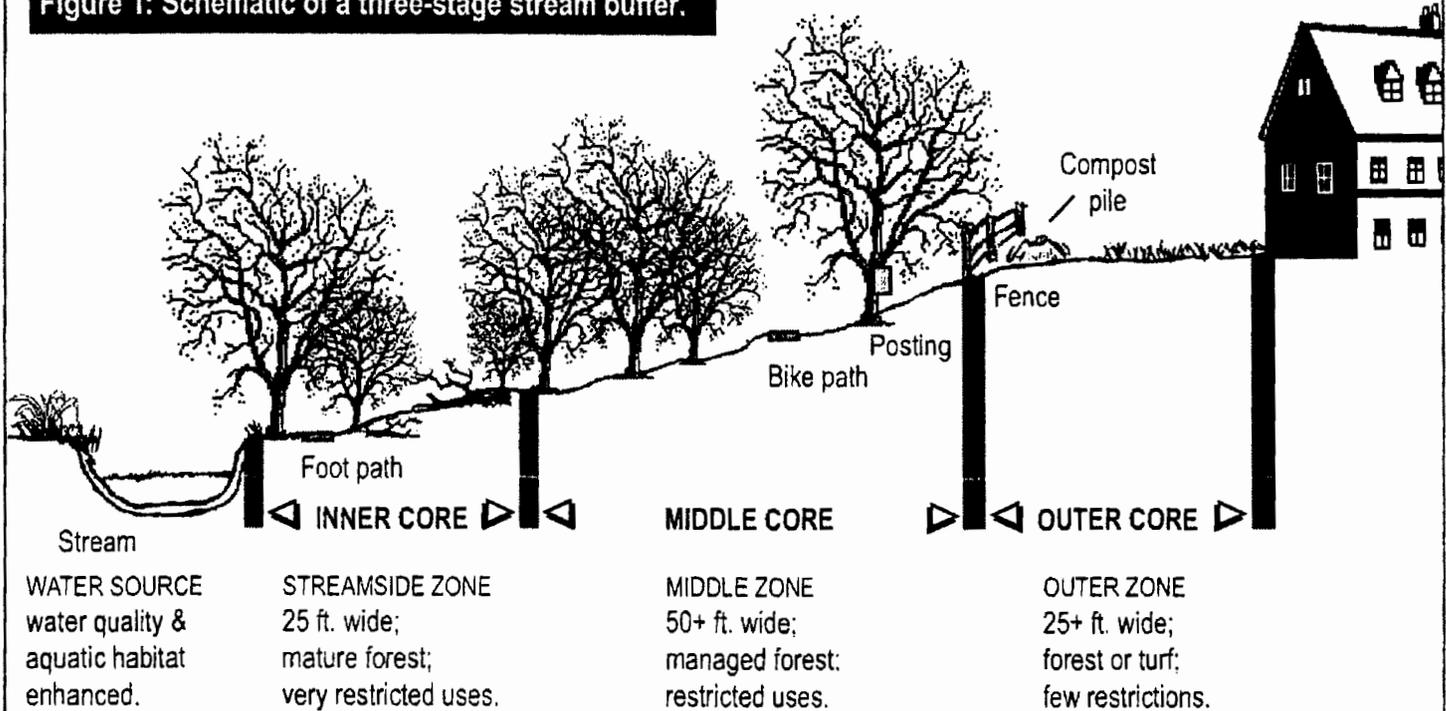
**Draft Policy:** “Commercial, multi-family or other non-residential uses without rear yard shall separate all structures a minimum of 15 feet from RPAs, regulated wetlands or conservation easements. The separation shall not apply to parking lots or internal driveways or streets. Parking lots may be constructed up to the edge of the area provided that no grading, tree removal, or land disturbance occurs within the RPA, wetland and/or conservation easement.

**PHBA Comment:** For commercial, multi-family or industrial uses, staff proposes to allow parking, driveways and roads to encroach up to the limit of the RPA without separation, provided there are no grading, clearing or other impacts to the RPA. There is no similar mention for single-family attached, detached, two-family, townhouse or any units with separate rear yards. Construction zone setbacks, to which staff refers to in its memo, are exempted for parking, roads, etc., regardless of the land use provided that there is no grading encroachment on the resource. If implemented, this should be the case with the separations, too. They should apply uniformly across all land uses.

**Table 2: A summary of pollutant removal effectiveness and wildlife habitat value of vegetated buffers according to buffer width (1 meter=3.28 feet) (Source: Desbonnet et al. 1994).**

Buffer Width	Pollutant Removal	Effectiveness Wildlife Habitat Value
5 meters (approx 16.5 ft.)	Approximately 50% or greater sediment and pollutant removal.	Poor habitat value; useful for temporary activities of wildlife.
10 meters (approx 33 ft.)	Approximately 60% or greater sediment and pollutant removal.	Minimally protects stream habitat; poor habitat value; useful for temporary activities of wildlife.
15 meters (approx 50 ft.)	Greater than 60% sediment and pollutant removal.	Minimal general wildlife and avian habitat value.
20 meters (approx 66 ft.)	Approximately 70% or greater sediment and pollutant removal.	Minimal wildlife habitat value; some value as avian habitat.
30 meters (approx 100 ft.)	Approximately 70% or greater sediment and pollutant removal.	May have use as a wildlife travel corridor as well as general avian habitat.
50 meters (approx 165 ft.)	Approximately 75% or greater sediment and pollutant removal.	Minimal general wildlife habitat value
75 meters (approx 248 ft.)	Approximately 80% or greater sediment and pollutant removal.	Fair-to-good general wildlife and avian habitat value
100 meters (approx 330 ft.)	Approximately 80% or greater sediment and pollutant removal.	Good general wildlife value; may protect significant wildlife habitat.
200 meters (approx 660 ft.)	Approximately 90% or greater sediment and pollutant removal.	Excellent wildlife value; likely to support a diverse community.

**Figure 1: Schematic of a three-stage stream buffer.**



Source: Schueler, WPT 2/94, p. 19 (Graphic Courtesy of the Center for Watershed Protection)