

**A G E N D A**  
**JAMES CITY COUNTY CHESAPEAKE BAY BOARD**  
**REGULAR MEETING**  
**County Government Center, Building F**  
**101 Mounts Bay Road, Williamsburg, VA 23185**  
**September 13, 2017**  
**5:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MINUTES**

**D. PUBLIC HEARINGS**

1. CBE-18-012 : 113 Holman Road
2. CBE-17-045 : New Town Section 8, Parcel D

**E. BOARD CONSIDERATIONS**

**F. MATTERS OF SPECIAL PRIVILEGE**

**G. ADJOURNMENT**

**ITEM SUMMARY**

DATE: 9/13/2017  
TO: Chesapeake Bay Board  
FROM: Michael Woolson, Senior Watershed Planner  
SUBJECT: CBE-18-012 : 113 Holman Road

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Mr. Richard Arms has applied for an encroachment into the Resource Protection Area for the construction of a retaining wall on property located at 113 Holman Road in the Kingsmill Subdivision.

**ATTACHMENTS:**

	Description	Type
▣	Staff Report	Staff Report
▣	Resolution	Resolution
▣	Water Quality Impact Assessment	Backup Material
▣	Site Plan	Backup Material
▣	Detail - Wall	Backup Material
▣	Public Hearing Notice	Backup Material
▣	APO Notification Letter	Backup Material
▣	APO Notification List	Backup Material

**REVIEWERS:**

Department	Reviewer	Action	Date
Chesapeake Bay Group	Woolson, Michael	Approved	9/7/2017 - 8:14 AM
Chesapeake Bay Group	Geissler, Fran	Approved	9/7/2017 - 8:15 AM
Publication Management	Burcham, Nan	Approved	9/7/2017 - 8:33 AM
Chesapeake Bay Group	Secretary, ChesBay	Approved	9/7/2017 - 1:39 PM

**CHESAPEAKE BAY BOARD EXCEPTION No. CBE-18-012. 113 Holman Road  
Staff Report for the September 13, 2017, Chesapeake Bay Board Public Hearing**

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*This staff report is prepared by James City County Stormwater and Resource Protection to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.*

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**EXISTING SITE DATA AND INFORMATION**

Applicant: Mr. Richard Arms

Agent: Same

Location: 113 Holman Road

Tax Map/Parcel No.: 5021000025

Legal Description: Lot 25, Section 1, Southall Quarter, Kingsmill

Lot Size: 0.4 acres

Area of Lot in Resource Protection Area (RPA): 0.27 acres +/- (68%)

Watershed: College Creek (HUC Code JL34)

Floodplain: Panel 0206D  
Zone X, outside the 0.2% annual chance floodplain

Proposed Activity: Construction of a retaining wall

Impervious Cover: Approximately 168 square feet

RPA Encroachment: Impervious cover within the landward and seaward 50-foot RPA buffer

Staff Contact: Michael D. Woolson, Senior Watershed Planner Phone: 253-6823

**BRIEF SUMMARY AND DESCRIPTION OF ACTIVITIES**

Mr. Richard Arms has applied for a Chesapeake Bay Exception for encroachments into the RPA buffer for the construction of a retaining wall on property known as 113 Holman Road, in the Southall Quarter section of the Kingsmill subdivision and within the College Creek watershed. The property is further identified as James City County Real Estate Tax Map Parcel No. 5021000025. The parcel was platted prior to the original 1990 adoption of the Chesapeake Bay Preservation Ordinance and the house was built in 1977.

The existing driveway is failing and sliding towards the creek and adjacent property. The owner wishes to construct a retaining wall to stabilize the rear yard before he replaces the driveway. The retaining wall starts near a former playground area near the southern property line, goes north to the neighboring property line, then turns east alongside the existing driveway. The total length of the retaining wall is approximately 168 linear feet. The mitigation required for this amount of impervious cover impact would be one unit, which equates to one canopy tree, two understory trees and three shrubs. The mitigation plan provided does not meet these requirements.

## STAFF EVALUATION

Staff has evaluated the application and exception request for the construction of the retaining wall and finds that the application meets the conditions in Sections 23-11 and 23-14. The Board shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the ordinance if the Board finds that:

1. The exception is the minimum necessary to afford relief; and
2. Granting the exception will not confer upon the applicant any special privileges denied by the ordinance to other property owners similarly situated in the vicinity; and
3. The exception request will be in harmony with the purpose and intent of the ordinance and is not of substantial detriment to water quality; and
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

This application should be heard by the Board because the improvements are accessory in nature.

## STAFF RECOMMENDATIONS

Staff has reviewed the application and exception request and has determined impacts associated with the proposal to be minor. Staff recommends approval of this exception request. Should the Board wish to approve, staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other necessary federal, state and local permits and permissions as required for the project; and
2. The applicant shall provide a mitigation plan consisting of one canopy tree, two understory trees and three shrubs prior to issuance of the Building Permit for the retaining wall; and
3. Surety of \$500 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plantings; and
4. This exception request approval shall become null and void if construction has not begun by September 13, 2018; and
5. Written requests for an extension to an exception shall be submitted to the Stormwater and Resource Protection Division no later than six weeks prior to the expiration date.

MDW/gt  
CBE18-012Holman

### Attachments:

1. Resolution
2. Water Quality Impact Assessment

## RESOLUTION

CASE NO. CBE-18-012. 113 HOLMAN ROAD

### JAMES CITY COUNTY CHESAPEAKE BAY PRESERVATION ORDINANCE EXCEPTION

WHEREAS, Mr. Richard Arms (the “Applicant”), has applied to the Chesapeake Bay Board of James City County (the “Board”) on August 11, 2017, to request an exception to use the Resource Protection Area (the “RPA”) on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 5021000025 and further identified as 113 Holman Road in the Kingsmill on the James subdivision (the “Property”) as set forth in the application CBE-18-012 for the purpose of constructing a retaining wall; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, BE IT RESOLVED that the Chesapeake Bay Board of James City County, Virginia, following a public hearing, by a majority vote of its members FINDS that:

1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code and is not of substantial detriment to water quality.
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
  - a. The applicant must obtain all other necessary federal, state and local permits and permissions as required for the project; and
  - b. The applicant shall provide a mitigation plan consisting of one canopy tree, two understory trees and three shrubs prior to the issuance of the Building Permit for the retaining wall; and

- c. Surety of \$500 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plantings; and
- d. This exception request approval shall become null and void if construction has not begun by September 13, 2018; and
- e. Written requests for an extension to an exception shall be submitted to the Stormwater and Resource Protection Division no later than six weeks prior to the expiration date.

\_\_\_\_\_  
David Gussman  
Chair, Chesapeake Bay Board

\_\_\_\_\_  
Michael Woolson  
Senior Watershed Planner

Adopted by the Chesapeake Bay Board of James City County, Virginia, this 13th day of September, 2017.

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ IN THE COMMONWEALTH OF VIRGINIA, IN THE COUNTY OF JAMES CITY.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

CBE18-021Holman-res



# Chesapeake Bay Preservation Ordinance Sensitive Area Activity Application

For Office Use Only  
CB Number CBE-18-012

**Submission Requirements: (Check all applicable)**

- A \$25 non-refundable processing fee payable to Treasurer, James City County.
- RPA - landward 50' - Complete Items 1 - 5, and sign on Page 3.
- RPA - seaward 50' - Complete Items 1 - 5, sign on Page 3 and submit an additional \$100 non-refundable fee payable to Treasurer, James City County, for the Chesapeake Bay Board.
- Conservation Easement - Complete Items 1, 2, 3, and 5, and sign on Page 3.
- Steep Slopes  $\geq$  25 percent - Complete Items 1, 2, 3, and 5, and sign on Page 3.
- Attach plans as required (see instruction on Page 4, Item 4).
- Applicable surety as required for mitigation (see Mitigation Rates Table on Page 2).

Engineering & Resource Protection  
AUG 11 2017  
RECEIVED

Upon completion, please return pages 1-3 to the JCC Engineering and Resource Protection Division

**Property Owner Information:**

Date: 6-23-17

Name: RICHARD ARMS  
 Address: 113 HOLMAN ROAD  
 Phone: 757 869 4290 Fax: N/A Email: RICHARDARMS@COX.NET  
757 869 4290  
 Contact (if different from above):

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

**Project Information:**

SEE SURVEY 12.12.17 SEE ECS CERTIFICATION

Project Address: 113 HOLMAN ROAD  
 Subdivision Name, Lot, and Section No.: KINGSMILL LOT 25 SOUTHWALL QUARTER  
 Parcel Identification No. or Tax Map No.: 5021000025  
 Date Lot was platted: DEC 7 2016 Line or Bldg Permit No.: A171128  
LAST SURVEY 5/11/76

**Activity Location and Impacts (Square Feet - SF): (check all that apply)**

- |  |   |
|--|---|
| <input type="checkbox"/> Steep Slopes $\geq$ 25 percent _____ (SF) | <input type="checkbox"/> RPA - Landward 50' <u>84 x 84 = 168</u> _____ (SF) |
| <input type="checkbox"/> Conservation Easement _____ (SF)          | <input type="checkbox"/> RPA - Seaward 50' _____ (SF)                       |
| <input type="checkbox"/> Trees to be Removed <u>3</u> (#)          | <input type="checkbox"/> Proposed Impervious Cover <u>168</u> _____ (SF)    |

**Activity involves: (check all that apply)**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> New principal structure construction               | <input type="checkbox"/> Building addition to principal structure | <input type="checkbox"/> Attached Deck     |
| <input type="checkbox"/> Permitted buffer modifications:                    | <input type="checkbox"/> Dead/diseased/dying tree removal         | <input type="checkbox"/> Sightline         |
| <input checked="" type="checkbox"/> Accessory (Detached) Structure or Patio | <input type="checkbox"/> Invasive/noxious weed removal            | <input type="checkbox"/> Access path/trail |
| <input type="checkbox"/> Other: <u>retaining wall</u>                       | <input type="checkbox"/> Redevelopment: _____                     |  |

**Chesapeake Bay Preservation Ordinance  
Sensitive Area Activity Application**

AUG 11 2017

SEE SURVEY DEC 12, 17  
SEE ENGINEER CERTIFICATION RECEIVED

For Office Use Only
CB Number <u>0BE-18-02</u>

**1. Description of requested sensitive area activity and reason for request:**

*(In the description, please indicate the reason for the proposed structure or activity, the location, sizes and dimensions of feature. For decks or expansions, indicate if ground floor, first floor or other levels)*

INSTALL RETAINING WALL TO STOP DRIVEWAY  
AND PROPERTY WASH OUT.

2. As per Section 23-9 of the Chesapeake Bay Preservation Ordinance, if there is an on-site sewage disposal system on this property, has it been inspected and/or pumped out in the past five years?  Yes  No
3. Are permits from other local, State or Federal agencies required for any portion of this project?  Yes  No  
(If yes, please explain) \_\_\_\_\_

**4. Water Quality Impact Assessment**

The purpose of a water quality impact assessment is to demonstrate that the project will result in the removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater run-off and that it will retard runoff, prevent accelerated erosion, promote infiltration, and filter non-point source pollution equivalent to the full undisturbed 100-foot buffer.

- A. Why is this encroachment necessary? Can it be relocated to avoid RPA impacts?  
\_\_\_\_\_
- B. What measures will be used to minimize impervious area? Examples: pervious pavers, removal of existing impervious surfaces (concrete, pavement, etc.) in the RPA not needed for the project  
\_\_\_\_\_

**5. Proposed mitigation measures:**

**Note:** All mitigation measures must be shown in detail on a mitigation plan. Show both location of mitigation measures and plant species if applicable. All mitigation plants must be native species and be located in the sensitive area (RPA or Conservation Easement).

**Mitigation Rates Table**

Impervious Area (SF)	Mitigation Required	Surety
<400	1 tree and 3 shrubs	\$250
400-1,000	1 canopy tree, 2 understory trees and 3 shrubs per 400 SF (or fraction thereof)	\$1,000
>1,000	Plant at same rate as 400 – 1,000; or may be determined by Director of Engineering and Resource Protection Division	To be determined



**Chesapeake Bay Preservation Ordinance  
Sensitive Area Activity Application**

Engineering & Resource Protection  
AUG 11 2017  
RECEIVED

For Office Use Only  
CB Number CBG-18-012

**A. Vegetation/ground cover enhancement of buffer (see Mitigation Rates Table on previous page).**

Number of native canopy trees \_\_\_\_\_  
 Number of native understory trees \_\_\_\_\_  
 Number of native shrubs 3 \_\_\_\_\_  
 Square feet of native ground cover \_\_\_\_\_  
 Square feet of mulch \_\_\_\_\_

**B. Best Management Practices (BMPs)**

<input type="checkbox"/> EC-2 (degradable) erosion control matting	<input type="checkbox"/> Bioretention or rain garden practice
<input type="checkbox"/> Dry Swale	<input type="checkbox"/> Infiltration Area/Trench/Drywell
<input type="checkbox"/> Silt fence	<input type="checkbox"/> Structural BMP (Wet or Dry Pond)
<input type="checkbox"/> Turf (Nutrient) Management Plan	<input type="checkbox"/> Rain Barrel
<input type="checkbox"/> Gravel under deck (3" of gravel over synthetic filter fabric under entire deck area)	
<input type="checkbox"/> Other: _____	

**I understand that the following are approval conditions:**

- 1) Mitigation for the above activity shall follow the approved mitigation plan and be guaranteed with a form of surety acceptable to the County Attorney.
- 2) Limits of disturbance as shown on the approved plan shall not be exceeded.
- 3) This approval shall become null and void if construction has not begun within 12 months of the approval date.
- 4) Surety will be released following the completion and inspection of mitigation plantings.

Property owner signature Richard Arm Date 6-22-17  
 Program Administrator \_\_\_\_\_ Date \_\_\_\_\_  
 Authorized Signature

For Office Use Only

	Surety Amount: _____ Date/Rec No.: _____ Fee Paid? <input type="checkbox"/> Yes <input type="checkbox"/> No Amount: <u>100.25</u> Date/Rec No.: <u>8/11/17 #3199</u>
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PROJECT: ARMS RESIDENCE - RET. WALL

SHEET NO: 1

TITLE: RETAINING WALL

PROJ. NO: 46:3086

SCALE: N/A

BY: MJS

DATE: 5/30/17

APPROVED:

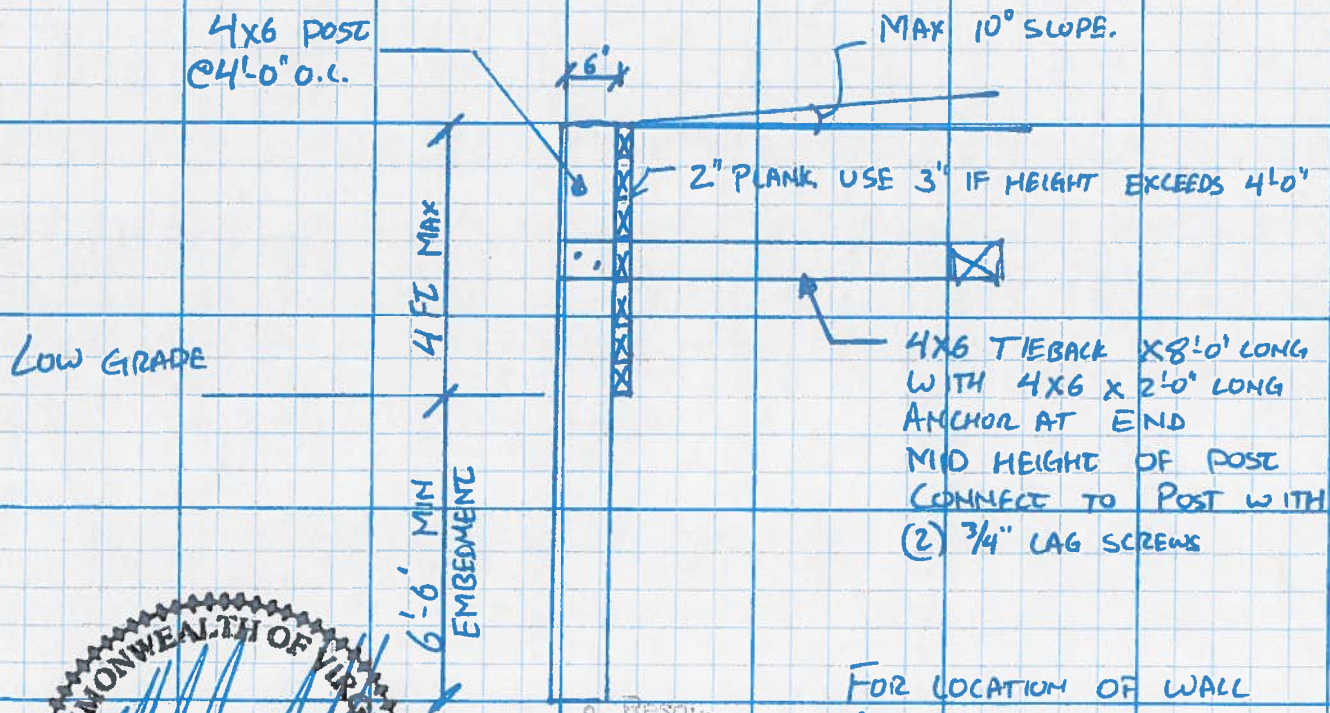
DATE:

DESIGN: IBC 2012, VAUBC  
1966 ARTICLE BY WOOD PRESERVING NEWS  
"TREATED TIMBER RETAINING WALLS, BULKHEADS AND SEAWALLS"

SOIL: 1,500 PSF BEARING CAPACITY  
30° ANGLE OF INTERNAL FRICTION.

WOOD: DFL OR SP TREATED FOR CONTINUOUS GROUND CONTACT PER AWPA

HIGH GRADE.



FOR LOCATION OF WALL  
SEE SITE PLAN  
LOT 25 SOUTHWEST QUARTER  
PLAT BOOK 33 PAGE 65



Engineering & Resource  
AUG 11 2017

RECEIVED



## **PUBLIC HEARING NOTICE**

THE CHESAPEAKE BAY BOARD OF JAMES CITY COUNTY, VIRGINIA WILL HOLD PUBLIC HEARINGS **WEDNESDAY SEPTEMBER 13, 2017 AT 5 P.M.** IN THE BOARD ROOM OF BUILDING F, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA TO CONSIDER THE FOLLOWING CASES:

CBE-18-012: Mr. Richard Arms filed an exception request to encroach into the RPA buffer for installation of a retaining wall at 113 Holman Rd, in the Kingsmill subdivision, JCC Parcel No 5021000025.

CBE-17-044: AES Consulting Engineers, on behalf of ABVA Development LP and Newtown Associates LLC, filed an exception request to encroach into the RPA buffer for installation of a sanitary sewer bridge and BMP outfall at 5335 Settlers Market Blvd and 4400 Casey Blvd, JCC Parcel Nos 3820100015 and 3820100014.

Appeals from decisions under the Chesapeake Bay Preservation Ordinance may also be heard.

All interested parties are invited to attend the meetings. The applications and plans are on file and may be viewed during normal office hours in the Stormwater and Resource Protection Division, 101 Mounts Bay Road, Building E, James City County, Virginia.

## **NOT FOR PUBLICATION**

DISPLAY: WEDNESDAY – August 30 and September 6, 2017.  
ACCOUNT NO.: 0011040200 - VIRGINIA GAZETTE

COPIES: PLANNING  
ASSISTANT COUNTY ATTORNEY  
CHESAPEAKE BAY BOARD MEMBERS



**Stormwater and Resource  
Protection Division**  
P O Box 8784  
Williamsburg, VA 23187  
Resource.Protection@jamescitycountyva.gov

**Building Safety and Permits**  
757-253-6620

**Stormwater and Resource Protection**  
757-253-6670

**Planning**  
757-253-6685

**Zoning Enforcement**  
757-253-6671

August 23, 2017

RE: CBE-18-012: 113 Holman  
Retaining wall

Dear Adjacent Property Owner:

In accordance with State and County Codes, this letter is to notify you that a request has been filed with the James City County Chesapeake Bay Board by Mr. Richard Arms, for encroachment into the Resource Protection Area (RPA) associated with construction of a retaining wall, on his property at 113 Holman Road in the Kingsmill subdivision. The property is further identified by James City County Real Estate as Parcel No. 5021000025.

A complete description, plan, and other information are on file in the Stormwater and Resource Protection Division and are available for inspection during normal business hours, should anyone desire to review them.

The Chesapeake Bay Board will hold an advertised public hearing on **Wednesday, September 13, 2017 at 5 p.m.** in the Board Room of Building F, 101 Mounts Bay Road, James City County, Virginia, at which time you may request to speak on the above referenced project.

Sincerely,

*Melanie Davis*

Melanie Davis  
Chesapeake Bay Board Secretary  
757-253-6866

cc: Richard Arms

Mailing List for: CBE-18-012 – 113 Holman - Retaining Wall

Owner - 5021000025

Richard Arms  
113 Holman Road  
Williamsburg, VA 23185-5552

5021000026

Stuart E III and Mara Hallett  
117 Holman Road  
Williamsburg, VA 23185-5552

5021000024

Don and Brenda Leftwich  
109 Holman Road  
Williamsburg, VA 23185-5552

5021000029

Glenn and Christine Rehberger  
112 Holman Road  
Williamsburg, VA 23185-5515

5021000030

Randal and Nancy Bailey  
108 Holman Road  
Williamsburg, VA 23185-5515

5021000038

James and Suzan Griffin  
112 Jerdone  
Williamsburg, VA 23185-5516

Kingsmill Community Services Association  
P O Box 348  
Williamsburg, VA 23187-0348

**ITEM SUMMARY**

DATE: 9/13/2017  
TO: Chesapeake Bay Board  
FROM: Michael Woolson, Senior Watershed Planner  
SUBJECT: CBE-17-045 : New Town Section 8, Parcel D

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AES Consulting Engineers, on behalf of ABVA Development LP and Newtown Associates LLC, has filed an exception request to encroach into the RPA for installation of a sanitary sewer bridge and BMP outfall at 5335 Settlers Market Boulevard and 4400 Casey Boulevard, JCC Parcel Nos 3820100015 and 3820100014.

**ATTACHMENTS:**

	Description	Type
▣	Staff Report	Staff Report
▣	Resolution	Resolution
▣	Water Quality Impact Assessment	Backup Material
▣	DEQ & Corps Permit Modification Request	Backup Material
▣	DEQ Approval of Permit Modification	Backup Material
▣	Public Hearing Notice	Backup Material
▣	APO Notification Letter	Backup Material
▣	APO Notification List	Backup Material

**REVIEWERS:**

Department	Reviewer	Action	Date
Chesapeake Bay Group	Woolson, Michael	Approved	9/7/2017 - 8:14 AM
Chesapeake Bay Group	Geissler, Fran	Approved	9/7/2017 - 8:16 AM
Publication Management	Trautman, Gayle	Approved	9/7/2017 - 8:35 AM
Chesapeake Bay Group	Secretary, ChesBay	Approved	9/7/2017 - 1:40 PM

**CHESAPEAKE BAY BOARD EXCEPTION No. CBE-17-044. New Town Section 8, Parcel D  
Staff Report for the September 13, 2017, Chesapeake Bay Board Public Hearing**

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*This staff report is prepared by James City County Stormwater and Resource Protection to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.*

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**EXISTING SITE DATA AND INFORMATION**

Applicants: ABVA Development LP and  
Newtown Associates, LLC

Agent: Jason Grimes, AES Consulting Engineers

Locations: 5335 Settlers Market Boulevard and  
4400 Casey Boulevard

Tax Map/Parcel Nos.: 3820100015 (5335 Settlers Market Boulevard) and  
3820100014 (4400 Casey Boulevard)

Legal Descriptions: Parcel D, Section 7 and 8 New Town and  
Remainder Area, Section 7 and 8 New Town

Parcel Sizes: 27.67 acres +/- and  
41.74 acres +/-

Area of parcel in Resource  
Protection Areas (RPAs): 0 acres +/- (0%) and  
17.1 acres +/- (41%)

Watershed: Powhatan Creek (HUC JL31)

Floodplain: Panel 0119D  
Zone X, areas determined to be outside the 0.2% annual chance floodplain

Proposed Activity: To construct sanitary sewer connections and Best Management Practice (BMP)  
outfalls associated with the development of the New Town Section 8, Parcel D  
project

Impervious Cover: Approximately 2,750 square feet

RPA Encroachment: Landward 50-foot Resource Protection Area (RPA) buffer impact = 3,000 square  
feet  
Seaward 50-foot RPA buffer impact = 3,000 square feet  
Non-tidal RPA wetland impact = 3,500 square feet

Staff Contact: Michael D. Woolson, Senior Watershed Planner Phone: 253-6823

**BRIEF SUMMARY AND DESCRIPTION OF ACTIVITIES**

Mr. Jason Grimes of AES Consulting Engineers, on behalf of ABVA Development LP and Newtown Associates, LLC, has applied for a Chesapeake Bay Exception for encroachments into the RPA buffer for the construction of BMP outfalls, pedestrian bridge and a sanitary sewer connection on property known as 5335 Settlers Market Boulevard and 4400 Casey Boulevard, in the New Town Section 8 subdivision and within the



Powhatan Creek watershed. The properties are further identified as James City County Tax Map Parcel Nos. 3820100015 (5335 Settlers Market Boulevard) and 3820100014 (4400 Casey Boulevard). The parcel is part of the overall New Town development.

This exception request is intended to address RPA impacts associated with the development of New Town Section 8, Parcel D, James City County Plan No. SP-0043-2016. The total RPA impacts listed in the report are 8,318 square feet. The stormwater and sanitary sewer will have permanent 20-foot easements centered on the pipes for future maintenance activities. The sanitary sewer is also co-located under the pedestrian bridge to reduce impacts.

For utility impacts such as those proposed, standard County practice is to require an area that is equal to two times the impact area of forested land to be placed into a Natural Open Space easement. This area should be adjacent to the RPA for maximum water quality benefit. The total RPA impact listed in the Water Quality Impact Assessment (WQIA) is 8,318 square feet or 0.19 acres and would require an additional Natural Open Space Easement of 0.38 acres.

Furthermore, the proposed impacts are within a dedicated easement to the Corps of Engineers, Instrument No. 120016286 recorded August 6, 2012. In comments to the applicant on January 23, March 29 and August 11, 2017, it was stated the staff required written confirmation from the Corps of Engineers that they were okay with the proposed changes to their easement. That information has not been provided to date.

## **STAFF EVALUATION**

Staff has evaluated the application and exception request for the construction of the storm sewer, sanitary sewer and pedestrian bridge and finds that the application meets the conditions in Sections 23-11 and 23-14. The Board shall review the request for an exception and the WQIA and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the ordinance if the Board finds that:

1. The exception is the minimum necessary to afford relief; and
2. Granting the exception will not confer upon the applicant any special privileges denied by the ordinance to other property owners similarly situated in the vicinity; and
3. The exception request will be in harmony with the purpose and intent of the ordinance and is not of substantial detriment to water quality; and
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

This application should be heard by the Board because the proposed infrastructure improvements impact the RPA and cannot be administratively approved.

## **STAFF RECOMMENDATIONS**

Staff has reviewed the application and exception request and has determined impacts associated with the proposal to be minor for the proposed development. Staff recommends approval of this exception request.

Should the Board wish to approve, staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other necessary federal, state and local permits and permissions as required for the project; and
2. Specific to this exception, the RPA impacts may not be realized until such time as the U.S. Army Corps of Engineers has provided written confirmation that the proposed changes to their easement, Instrument No. 120016286 are satisfactory; and
3. A \$5,000 surety will be required in a form acceptable to the County Attorney's office to guarantee the dedication of the Natural Open Space deed and easement. Once all 0.38 acres has been dedicated the surety will be returned; and
4. This exception request approval shall become null and void if the RPA impacts are not realized by September 13, 2018. Written requests for an extension to an exception shall be submitted to the Stormwater and Resource Protection Division no later than six weeks prior to the expiration date.

MDW/nb  
CBE17-044-NTwnSec8ParD

Attachments:

1. Resolution
2. Water Quality Impact Assessment

## RESOLUTION

CASE NO. CBE-17-044. NEW TOWN SECTION 8, PARCEL D

### JAMES CITY COUNTY CHESAPEAKE BAY PRESERVATION ORDINANCE EXCEPTION

WHEREAS, Mr. Jason Grimes (the “Applicant”), on behalf of ABVA Development LP and Newtown Associates LLC, has applied to the Chesapeake Bay Board of James City County (the “Board”) on September 13, 2017, to request an exception to use the Resource Protection Area (the “RPA”) on parcels of property identified as James City County Real Estate Tax Map Parcel No. 3820100015, further identified as 5335 Settlers Market Boulevard and James City County Real Estate Tax Map Parcel No. 3820100014, further identified as 4400 Casey Boulevard in the New Town subdivision (the “Property”) as set forth in the application CBE-17-044 for the purpose of constructing a sanitary sewer bridge and Best Management Practice outfall; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, BE IT RESOLVED that the Chesapeake Bay Board of James City County, Virginia, following a public hearing, by a majority vote of its members FINDS that:

1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code and is not of substantial detriment to water quality.
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
  - a. The applicant must obtain all other necessary federal, state and local permits and permissions as required for the project; and
  - b. Specific to this exception, the RPA impacts may not be realized until such time as the U.S. Army Corps of Engineers has provided written confirmation that the

proposed changes to their easement, Instrument No. 120016286, are satisfactory;  
and

- c. A \$5,000 surety will be required in a form acceptable to the County Attorney's office to guarantee the dedication of the Natural Open Space deed and easement. Once all 0.38 acres has been dedicated the surety will be returned; and
- d. This exception request approval shall become null and void if construction has not begun by September 13, 2018. Written requests for an extension to an exception shall be submitted to the Stormwater and Resource Protection Division no later than six weeks prior to the expiration date.

\_\_\_\_\_  
 David Gussman  
 Chair, Chesapeake Bay Board

\_\_\_\_\_  
 Michael Woolson  
 Senior Watershed Planner

Adopted by the Chesapeake Bay Board of James City County, Virginia, this 13th day of September, 2017.

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ IN THE COMMONWEALTH OF VIRGINIA, IN THE COUNTY OF JAMES CITY.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

CBE17-044NTwnSec8ParD-res

CBE-17-045

# Water Quality Impact Assessment

## New Town

## Section 8, Parcel D

Engineering & Resource Protection  
AUG 16 2017

RECEIVED

Original: December 22, 2016  
Revised: August 2017



CONSULTING ENGINEERS

Prepared by:

**AES Consulting Engineers**

5248 Olde Towne Road, Suite 1

Williamsburg, VA 23188

(757) 253-0040 Fax: (757) 220-8994

<http://www.aesva.com>

## Table of Contents

### **I. INTRODUCTION**

### **II. WATER QUALITY IMPACT ASSESSEMENT**

A. Identification of the impact and the required information for review

B. Proposed mitigation

### **III. CONCLUSION**

### **IV. APPENDIX**

- Exhibit A – Overall Exhibit of Impacts
- Exhibits 1 – Sewer Bridge Impacts
- Exhibit 2 – BMP Outfall Impact

## **I. INTRODUCTION**

Atlantic Homes, LLC is proposing to subdivide a parent parcel of 27.674 acres into a 122 lot residential subdivision named Section 8, Parcel D within New Town subdivision. The site is bordered on the south and east by the New Town development. Humelsine parkway, Route 199 borders the project to the west.

The purpose of this assessment is to summarize and organize information about the proposed impacts to the Chesapeake Bay Preservation Area(s) (CBPAs) and non-CBPA wetlands buffer which are reasonably necessary for the development of this property and to identify proposed mitigation that addresses such impacts.

For the purposes of this report, there are three (2) specific areas of CBPA impact in the project area. In addition to those areas there are two (2) non-CBPA wetlands buffer; Section 23-7 of the James City County Chesapeake Bay Ordinance generally categorizes these impacts. Exhibit 1 and 2, submitted with this report, identifies the relative location of the impacts. Upon approval of the formal exception, the proposed mitigation described in this assessment will be incorporated into the submitted subdivision plans, which are required as part of the development review process.

The total area of RPA Buffer impacted within the sewer and storm outfalls is approximately 8,318 square feet. The 2 Non-RPA Buffers which are impacted are approximately 2,182 square feet.

## **II. WATER QUALITY IMPACT ASSESSMENT**

### **A. Identification of Impacts and Required Information for Review**

A majority of the site is moderately sloped, averaging 2-10%, with perimeter areas exceeding 10%. A majority of those lands sloped 10-25% are located in RPA & non-RPA buffers and (with the exceptions listed below) shall not be disturbed. The hydrologic soil groups found to be located on this site are primarily hydrologic group C that generally indicates a low infiltration rate, with a majority of these soils being located in RPA buffers and wetlands. Exhibit A more clearly delineates the various soils and their relative hydrological classification, erosive characteristics and typical slopes.

#### **RPA Buffer Impact**

This impact is for the construction of the BMP outfall and sewer bridge. The area of this impact is 8,318 square feet or 0.19 acres.

Careful consideration has been taken to minimize the impacts for the proposed development. Exhibits 1 and 2, submitted with this report, identifies the location of these impacts. The proposed mitigation described in this assessment has been incorporated into the construction plans for the subdivision, which are required as part of the development review process.

Although not dependent on the review and approval of this assessment, required permits necessary to develop this project include: General Virginia Stormwater Management Program (VSMP) Permit, Corps of Engineers Wetland Disturbance Permit, Virginia Department of Environmental Quality's Virginia Water Protection General Permit, Land-Disturbing Permit and Siltation Agreement, and JCSA Construction Permit. These and any other permits that may be required shall be (if not already) applied for at the appropriate time.

### **B. Proposed Mitigation**

Mitigation to the grading shall include minimal disturbance to existing vegetation. The main mitigation is the transfer/dedication of additional open space previously anticipated to be impacted in the location of the previously anticipated sewer bridge crossing that now has been transferred to open space. The impacts associated with the bridge and BMP outfall anticipate minimal grading. Additionally for these impacts we shall also include E&S measures as described in the Virginia Erosion & Sediment Control Handbook, such as permanent seeding that will incorporate a conservation seed mix applicable to the special requirements of the RPA, super silt fencing, and ECSC-3 straw/coconut turf reinforcement matting (manufactured by East Coast Erosion Control or equal). These elements have been designed such that the preservation of existing vegetation will be preserved to the greatest extent possible. These stabilization measures



are located in the construction plans for New Town Section 8, Parcel D revised most recently in August 2017.

### **III. CONCLUSION**

In summary, the findings of this Water Quality Impact Analysis indicate that:

- All measures or methods have been explored to avoid any impact to the CBPA and non-CBPA buffer. When unavoidable, the impacted area has been minimized to the greatest extent possible.
- Extensive measures were also employed to minimize the effects of the subsequent discharge of stormwater to the receiving channel and wetlands.
- E&S measures and conservation seeding have been provided in order to mitigate for the impacts noted.
- Transfer of Natural Open Space in excess of the proposed impacts in this WQIA.

**IV. APPENDIX**



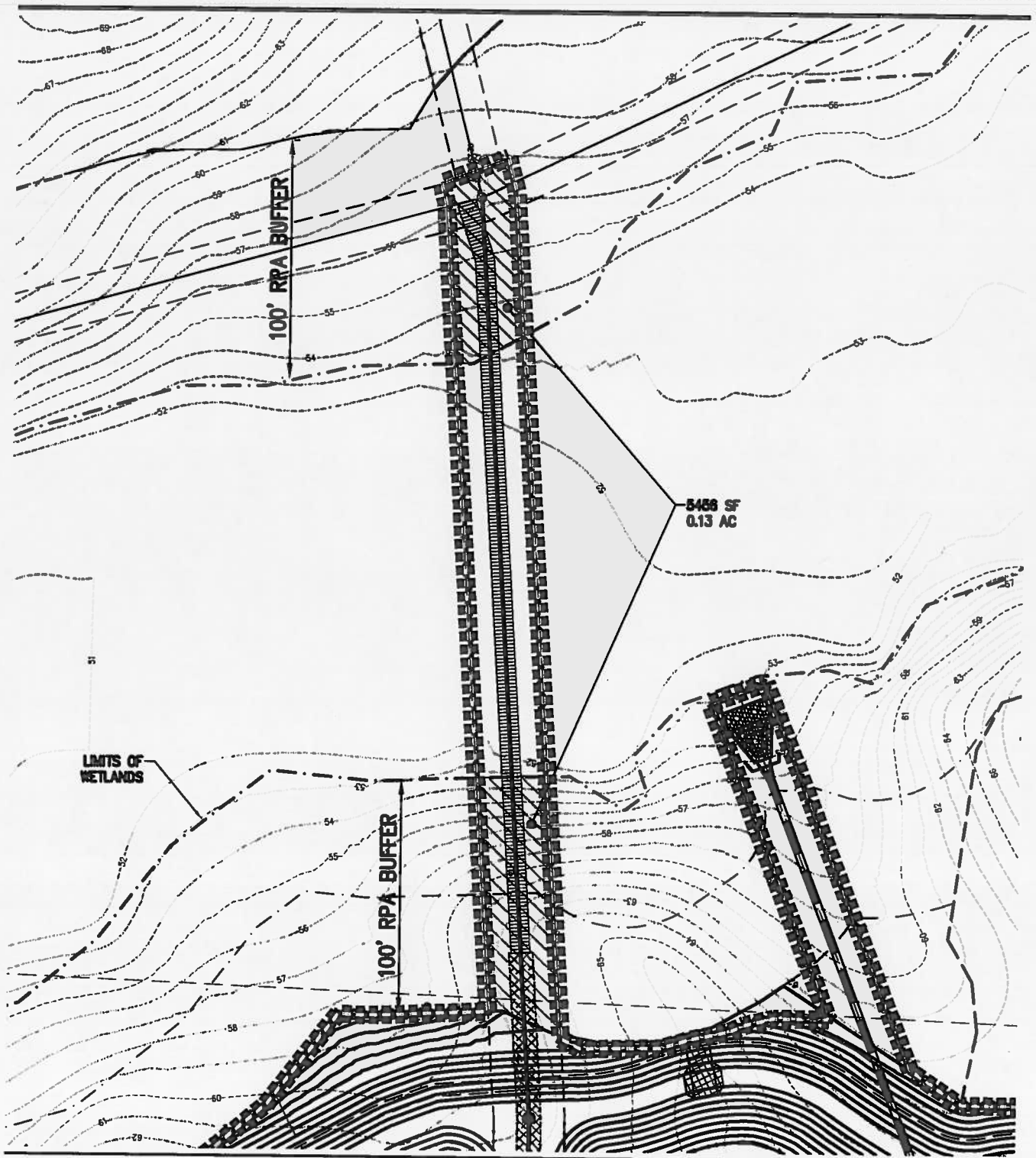


EXHIBIT 1

**NEW TOWN**  
SECTION 8, PARCEL D

JAMESTOWN DISTRICT      JAMES CITY COUNTY      VIRGINIA

Project Contacts:	JAG	Scale:	1"=40'
Project Number:	6632-8-01	Date:	05/25/2016



5248 Olde Towne Road, Suite 1  
Williamsburg, Virginia 23188  
Phone: (757) 253-0040  
Fax: (757) 220-8994  
[www.aesva.com](http://www.aesva.com)

Hampton Roads | Central Virginia | Middle Peninsula

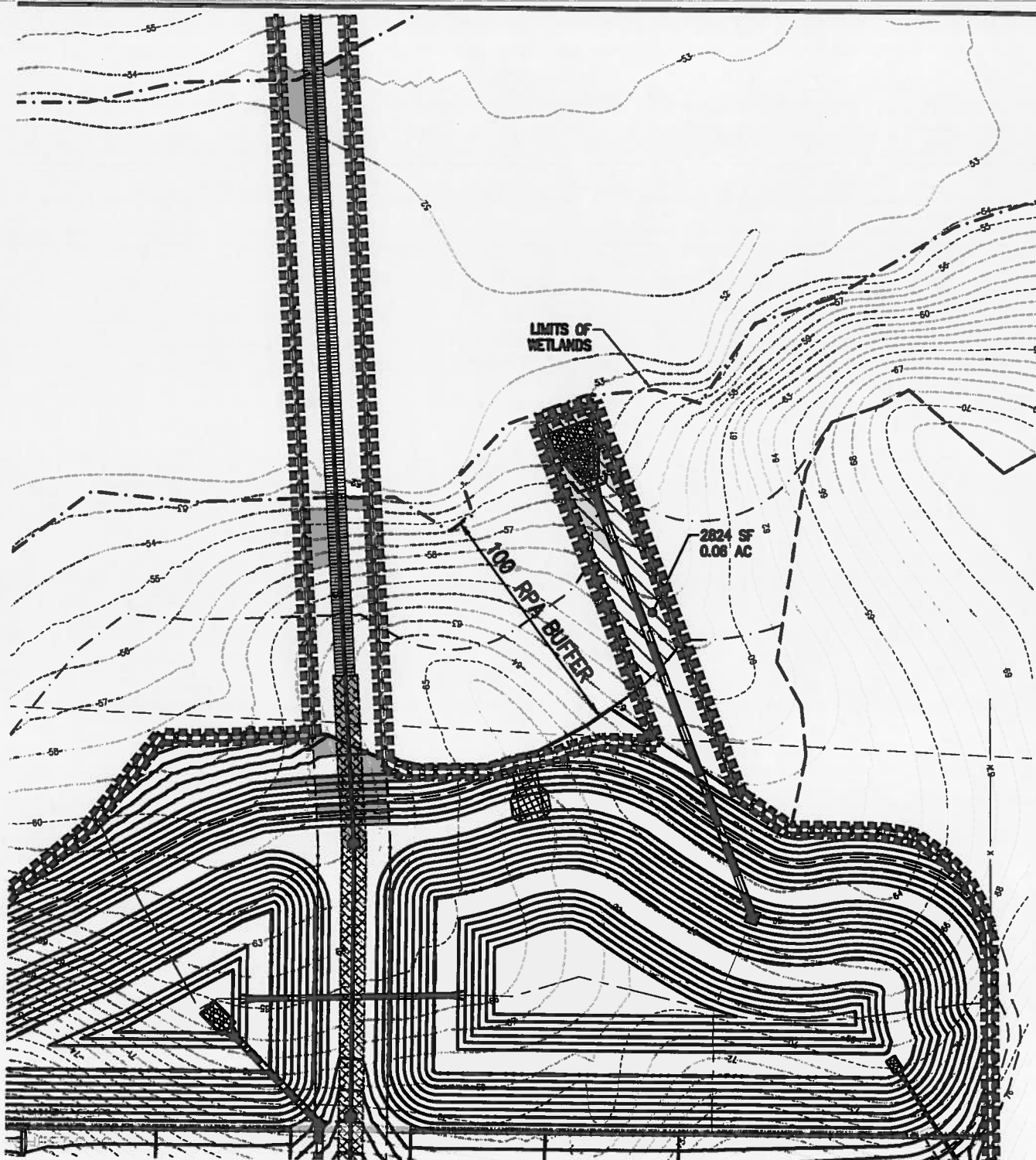


EXHIBIT 2

**NEW TOWN**  
SECTION 8, PARCEL D

JAMESTOWN DISTRICT      JAMES CITY COUNTY      VIRGINIA

Project Contacts:	JAG	Scale:	1"=40'
Project Number:	6632-8-01	Date:	05/25/2016



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Hampton Roads | Central Virginia | Middle Peninsula



Stantec Consulting Services Inc.  
5209 Center Street, Williamsburg VA 23188-2680

February 23, 2015  
File: 203404561

**Attention: Ms. Sayward Meincke and Ms. Sheri Kattan**

U.S. Army Corps of Engineers  
Southern Virginia Regulatory Section  
803 Front Street  
Norfolk VA 23510-1096

Virginia Department of Environmental Quality - Tidewater Regional Office  
Virginia Water Protection Permit Program  
5636 Southern Boulevard  
Virginia Beach VA 23462

Dear Ms. Meincke and Ms. Kattan,

**Reference: New Town Section 7, 8, 9 and Portions of 6 Modification Request, Permit Number NAO-2006-6655/05-V2948**

On behalf of the Permittee, Stantec Consulting Services Inc. (Stantec) respectfully requests the modifications of the U.S. Army Corps of Engineers (Corps) Individual Permit Number NAO-2006-6655 and the corresponding Virginia Department of Environmental Quality (DEQ) Virginia Water Protection (VWP) Individual Permit #V05-2948 for the completion of the final phase (Phase IV), of the New Town Development, a combined residential and commercial development in James City County, Virginia. Phase IV includes New Town Development Sections 7 and 8, the remaining portions of Sections 6 and 9, and secondary impacts in Section 4. The Corps Individual Permit for the project was issued on April 24, 2007 and extended to May 1, 2017. The DEQ permit was issued on May 1, 2007 and will expire on April 30, 2022.

The Corps and DEQ permits authorized impacts to 2.27 acres of palustrine forested wetland (PFO), the conversion of 0.13 acres of PFO to palustrine emergent wetlands (PEM) and 554 linear feet (0.03 acres) of stream channel. The permits authorized temporary impacts to 48 linear feet of stream.

The applicant is proposing to abandon the permitted and unconstructed northern crossing of an unnamed tributary to Powhatan Creek, and instead collocate an aerial sewer with the previously authorized pedestrian open-pile bridge located approximately 400' to the south and as depicted in the attached Revised Jurisdictional Impacts Map, dated 10/31/2014. Additionally, in order to comply with stormwater regulations, a new stormwater pond with outfall structure is proposed and will impact 0.03 acres of previously restricted buffer (Impact Area B2).



February 23, 2015  
Ms. Sayward Meincke and Ms. Sheri Kattan  
Page 2 of 3

Reference: **New Town Section 7, 8, 9 and Portions of 6 Modification Request, Permit Number NAO-2006-6655/05-V2948**

The proposed changes depicted on the revised impact maps will result in an overall reduction in project impacts as summarized in Table 1.

Table 1. Impact Reduction

	Buffer	Wetlands		Stream Channel
	Area (ac)	Type	Area (ac)	Length (ft)
<b>Permitted Impacts to be Deleted</b>				
C1		PFO	-0.13	
T1				-48
B1	-0.41			
<b>Proposed Impacts</b>				
C2		PFO	0.08	
T2				25
B2	0.03			
B3/B4	0.11			
<b>Proposed Impact Reduction</b>	<b>-0.27</b>		<b>-0.05</b>	<b>-23.00</b>

As stated previously, 2.27 acres of PFO and 554 linear feet of stream channel were originally authorized. The proposed modification will result in a reduction in overall impacts to buffer, PFO wetlands, and stream channel. The proposed changes will require an amendment to the deed restricted areas, once permitted. In addition, no mitigation is proposed as impacts to stream channels, wetlands, and buffer are less than those originally authorized and mitigation has been completed separately.

Thank you for your prompt review of this request. If you have any questions or require additional information, please feel free to contact me at your convenience at 757-220-6869.

Regards,

**STANTEC CONSULTING SERVICES INC.**



February 23, 2015  
Ms. Sayward Meincke and Ms. Sheri Kattan  
Page 3 of 3

**Reference: New Town Section 7, 8, 9 and Portions of 6 Modification Request, Permit Number NAO-2006-6655/05-V2948**

Rachel Roberts  
Senior Regulatory Specialist  
Phone: (757) 220-6869  
Fax: (757) 229-4507  
rachel.roberts@stantec.com

Attachment: Revised Jurisdictional Area Impacts Map

c. Mr. Chuck Roadley, Stantec  
Mr. Larry Salzman, New Town Associates, LLC

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**LEGEND:**

- SURVEYED WETLAND LIMITS
- APPROXIMATE STREAM CHANNEL LIMITS
- PROPOSED WALKING PATH
- PREVIOUSLY PERMITTED WETLAND IMPACTS
- PREVIOUSLY PERMITTED STREAM CHANNEL IMPACTS
- PREVIOUSLY PERMITTED WETLAND CONVERSION
- PREVIOUSLY PERMITTED TEMPORARY STREAM CHANNEL IMPACTS
- PROPOSED STREAM CHANNEL IMPACTS
- PROPOSED TEMPORARY STREAM CHANNEL IMPACTS
- WETLAND CONVERSION
- PROPOSED ONSITE RPA IMPACTS
- PROPERTY LINE BUFFER
- PROPOSED VOLUNTARY WETLAND BUFFER (1.32 ACRES ±)
- PROPOSED VOLUNTARY WETLAND BUFFER 50 FEET OR GREATER (12.70 ACRES ±)
- RPA BUFFER (13.16 ACRES ±)
- PRE-DEVELOPMENT DRAINAGE AREA (15.09 ACRES ±)
- SWP COLONY (0.55 ACRES ±)
- SWP COLONY BUFFER (8.96 ACRES ±)
- ARCHAEOLOGICAL LOCATIONS
- APPROXIMATE TRILLIUM LOCATION (LOCALIZED SUB POPULATION)
- APPROXIMATE TRILLIUM LOCATION (LARGER SUB POPULATION)

**CONVERSION IMPACTS TABLE:**

	REVISED WETLANDS	
	PFO	TOTAL
C2	0.08	0.08
<b>TOTAL</b>	0.08	0.08

**TEMPORARY IMPACTS TABLE:**

	REVISED STREAM CHANNELS LXW	
	R3	
T2	25x3.5	
<b>TOTAL</b>	25	

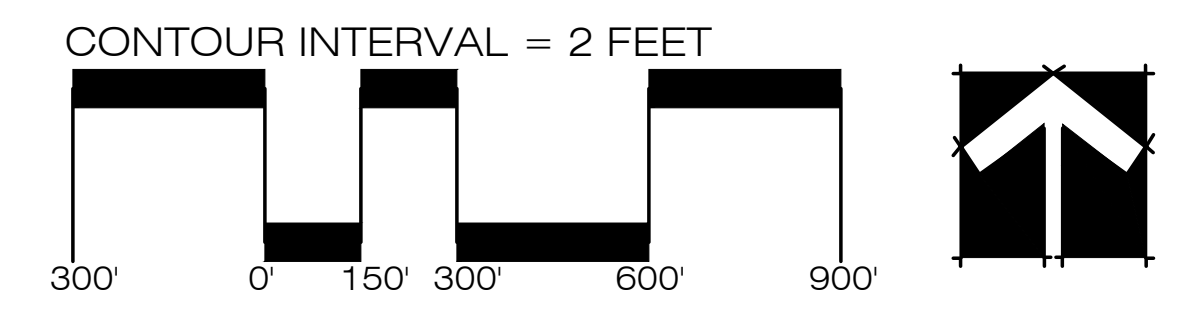
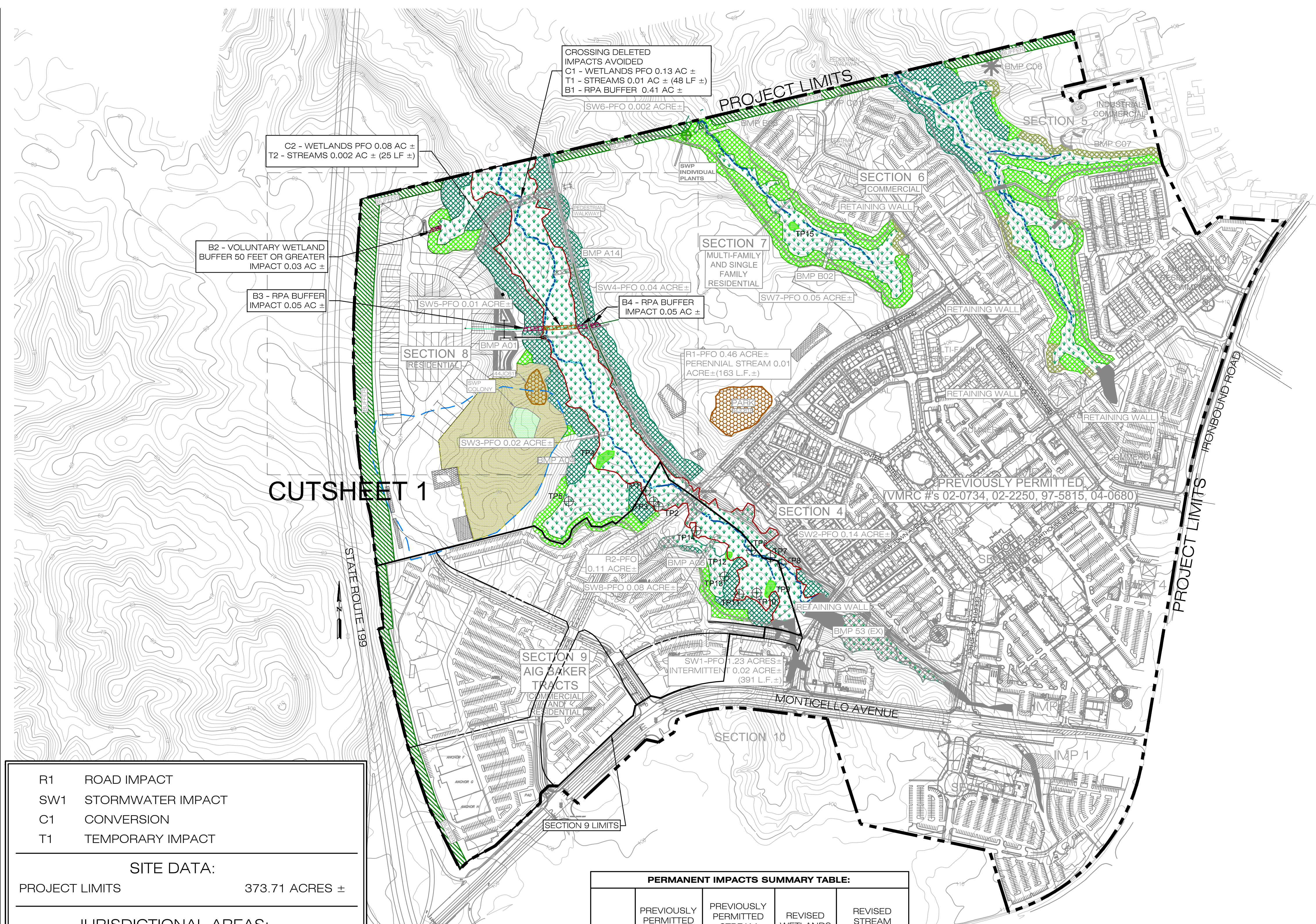
R1	ROAD IMPACT	
SW1	STORMWATER IMPACT	
C1	CONVERSION	
T1	TEMPORARY IMPACT	
<b>SITE DATA:</b>		
PROJECT LIMITS		373.71 ACRES ±
<b>JURISDICTIONAL AREAS:</b>		
WETLANDS		29.82 ACRES ± (CONFIRMATION NUMBER 95-R5673)
STREAM CHANNELS		0.53 ACRE ± (7,505.65 L.F. ±)
<b>PREVIOUSLY PERMITTED JURISDICTIONAL AREA IMPACTS:</b>		
<b>ROAD IMPACTS</b>		
WETLANDS		0.57 ACRE ±
STREAM CHANNEL		0.01 ACRE ± (163 L.F. ±)
<b>STORMWATER IMPACTS</b>		
WETLANDS		1.57 ACRES ±
STREAM CHANNEL		0.02 ACRE ± (391 L.F. ±)
<b>CONVERSION</b>		
WETLANDS		0.13 ACRE ±
<b>TEMPORARY</b>		
STREAM CHANNEL		0.01 ACRE ± (48 L.F. ±)

**BUFFER IMPACTS SUMMARY TABLE:**

	PREVIOUSLY ALLOWED BUFFER IMPACTS (SQ FT)	REVISED BUFFER IMPACTS (ACRES)
B1	0.41	REMOVED
B2	-	0.03
B3	-	0.05
B4	-	0.05
<b>TOTAL</b>	0.41	0.13

**PERMANENT IMPACTS SUMMARY TABLE:**

	PREVIOUSLY PERMITTED WETLANDS (ACRES)	PREVIOUSLY PERMITTED STREAM CHANNELS LxW	REVISED WETLANDS (ACRES)	REVISED STREAM CHANNELS LxW
C1	0.13	-	REMOVED	-
R1	0.46	163x3	0.46	163x3
R2	0.11	-	0.11	-
SW1	1.23	391x2	1.23	391x2
SW2	0.14	-	0.14	-
SW3	0.02	-	0.02	-
SW4	0.04	-	0.04	-
SW5	0.01	-	0.01	-
SW6	0.002	-	0.002	-
SW7	0.05	-	0.05	-
SW8	0.08	-	0.08	-
T1	-	48x9.1	-	REMOVED
C2	-	-	0.08	-
T2	-	-	-	25x3.5
<b>TOTAL</b>	2.27	602	2.22	579



**FIGURE 2-1 REVISED  
JURISDICTIONAL AREA IMPACTS MAP  
SELECTED ALTERNATIVE  
NEW TOWN - SECTIONS 4,6,7,8 & 9  
JAMES CITY COUNTY, VIRGINIA**

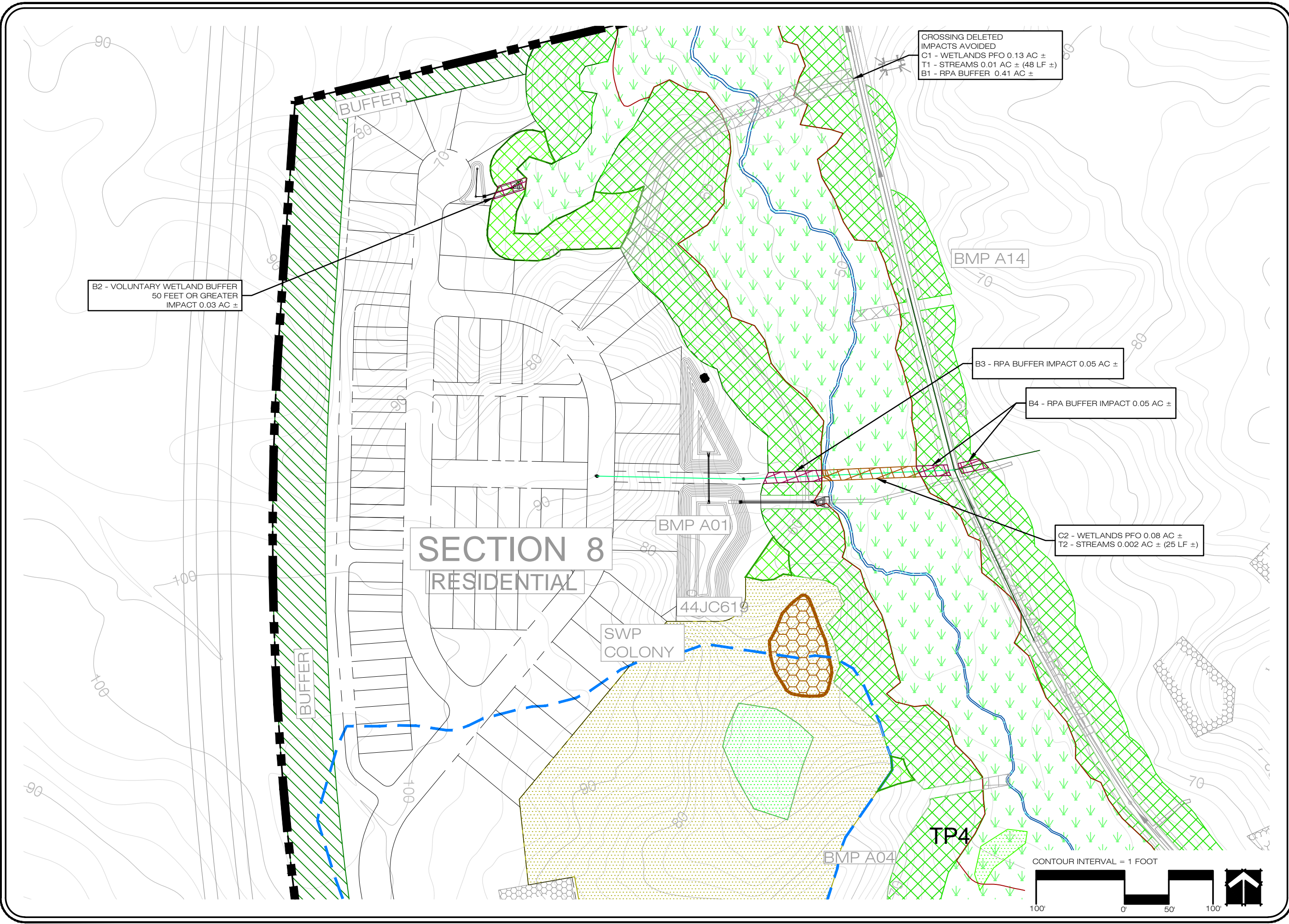
DATE: DECEMBER 14, 2005  
 REVISED: APRIL 5, 2006; OCT 17, 2006; JAN 9, 2007;  
 MAR 8, 2007; OCT 31, 2014; FEB. 6, 2015  
 JOB NUMBER: 203404561  
 SCALE: 1 INCH = 300 FEET  
 SOURCE: BASE MAP PROVIDED BY AES CONSULTING ENGINEERS

5209 Center Street  
 Williamsburg, Virginia 23188  
 (757) 220-6869

1011 Boulder Springs Drive, Suite 225  
 Richmond, Virginia 23225  
 (804) 267-3474

150 Riverside Parkway, Suite 301  
 Fredericksburg, Virginia 22406  
 (540) 785-5544

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5209 Center Street  
 Williamsburg, Virginia 23188  
 (757) 220-6869

1011 Boulder Springs Drive, Suite 225  
 Richmond, Virginia 23228  
 (804) 287-3474

150 Riverside Parkway, Suite 301  
 Fairfax, Virginia 22031  
 (940) 785-5544

**CUTSHEET 1**  
**JURISDICTIONAL AREA IMPACTS MAP**  
**SELECTED ALTERNATIVE**  
**NEW TOWN - SECTIONS 4, 6, 7, 8 & 9**  
**JAMES CITY COUNTY, VIRGINIA**

DATE: \_\_\_\_\_ BASE MAP PROVIDED BY: \_\_\_\_\_  
 AES CONSULTING ENGINEERS

REVISIONS:

NO.	DATE	DESCRIPTION

DRAWN BY: MAC	CHECKED BY: FR
DATE: 20141031	
SCALE: 1 INCH = 100 FEET	
SHEET: JOB#: 203404561	<b>2</b>



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

March 2, 2016

Mr. John McCann  
New Town Associates, L.L.C.  
4801 Courthouse Street  
Suite 203  
Williamsburg, Virginia 23188

and Mr. Phillip McAfee  
AIG Baker Williamsburg, L.L.C.  
1701 Lee Branch Lane  
Birmingham, Alabama 35242

c/o Mr. Mark McElroy  
Stantec  
5209 Center Street  
Williamsburg, Virginia 23188

**RE: Approval of Second Minor Modification**  
Virginia Water Protection Individual Permit Number 05-2948  
New Town Development - Sections 7, 8, 9 and portions of 6  
James City County, Virginia

Dear Mr. McCann and Mr. McAfee:

The Virginia Department of Environmental Quality (DEQ) received your request to modify the above-referenced permit for an overall reduction in permitted impacts on November 12, 2014, with supplemental revisions and clarifications received through January 20, 2016. Changes in project design and required stormwater management have resulted in an overall reduction in permitted impacts by eliminating the northernmost crossing of a tributary to Powhatan Creek. Eliminating this pedestrian/utility crossing has resulted in a 0.13-acre reduction in forested wetland conversion impacts and a 48 linear-foot reduction in temporary stream impacts. However, due to the need to re-locate this pedestrian/utility crossing further south, there will be an additional 0.08-acre forested conversion impact and a 25-linear foot temporary stream impact at the new location, just north of a permitted stormwater pond outfall. This results in a net reduction in 0.05 acres of forested wetland conversion and 23 linear feet of temporary stream impacts for this project.

In addition to the change in permitted impacts, you have also proposed to make a change to one of the deed restricted upland buffers which was used as partial compensation for permitted stream impacts. More specifically, you propose to impact 0.03 acres of Voluntary Wetland Buffer 50 Feet or Greater to install a necessary receiving channel and outfall from a required

Mr. McCann and Mr. McAfee  
Minor Permit Modification  
March 2, 2016  
Page 2 of 3

stormwater pond in the vicinity of the eliminated crossing. Also, based on calculation errors that were recently presented, the original amount of upland buffer acreage provided for this project's stream compensation was, in fact, 13.79 acres rather than the 13.87 acres noted in the permit documents. This equates to another 0.08-acre reduction in upland buffer. In combining these two reductions, we get a 0.11-acre reduction in upland buffer provided for this project's stream compensation. After careful review, we have determined that this reduction will not significantly affect the project's stream compensation. However, please be aware that any future impacts or reductions to these upland buffers may result in the requirement for additional stream compensation.

The above-discussed modifications are depicted on "Cutsheet 1, Jurisdictional Area Impacts Map, Selected Alternative, New Town - Section 4, 6, 7, 8 & 9, James City County, Virginia" prepared by Stantec, dated October 31, 2014, and revised on September 22, 2015. These modifications have been further incorporated into the revised project drawing entitled "Figure 2-1, Revised Jurisdictional Area Impacts Map, Selected Alternative, New Town - Section 4, 6, 7, 8 & 9, James City County, Virginia" prepared by Stantec, dated December 14, 2005, and last revised September 22, 2015.

Pursuant to the VWP Permit Program Regulation 9 VAC 25-210-180 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, DEQ approves the above-discussed changes in impacts as a Minor Modification to your permit in accordance with 9 VAC 25-210-180.F.9 which states that a minor modification may occur when there is a reduction in authorized impacts. Your permit cover page, and Part I.A of your permit special conditions have been modified to reflect this Minor Modification. The enclosed cover page and Part I – Special Conditions replace the current cover page and Part I – Special Conditions of your permit.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have **30 calendar days** from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17, and 62.1-44.19 of the State Water Control Law aggrieved by any action the board has taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in the board's Procedural Rule Number 1 (9 VAC 25-230-130 B). In cases involving actions of the board, such petition must be filed within **30 calendar days** after notice of such action is sent to such owner by certified mail.

Mr. McCann and Mr. McAfee  
Minor Permit Modification  
March 2, 2016  
Page 3 of 3

Please note that this letter is an official component of the permit and should be attached to the permit in your files. If you have any questions, do not hesitate to contact Sheri Kattan of my staff at 757-518-2156 or [sheri.kattan@deq.virginia.gov](mailto:sheri.kattan@deq.virginia.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Bert Parolari, Jr.", with a long horizontal stroke extending to the right.

Bert W. Parolari, Jr.  
Virginia Water Protection Permit Manager

Enclosures: Revised Permit Cover Page and Part I - Special Conditions

cc: Peter Kube, U. S. Army Corps of Engineers



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

VWP Individual Permit Number 05-2948

Effective Date: May 1, 2007

Modification Date: June 25, 2007

Modification Date: March 2, 2016

Expiration Date: April 30, 2022

### VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with §401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.


**Permittees:** New Town Associates, L.L.C. and AIG Baker Williamsburg, L.L.C.  
4801 Courthouse Street 1701 Lee Branch Lane  
Suite 203 Birmingham, Alabama 35242  
Williamsburg, Virginia 23188 Attn: Mr. Phillip McAfee  
Attn: Mr. John McCann

**Activity Location:** The project is located at 6216 Monticello Avenue in James City County.

**Activity Description:** This permit authorizes permanent impacts to 2.142 acres of forested wetlands, permanent conversion of 0.08 acres of forested wetlands to emergent wetlands, permanent impacts to 554 linear feet of stream, and temporary impacts to 25 linear feet of stream for construction of one road crossing, one road bed, a stormwater pond, six stormwater pond outfalls, and a sewer crossing and pedestrian bridge associated with Sections 7, 8, 9, and portions of Section 6 in Phase IV of the New Town Development. The authorized impacts also include residual impacts from Section 4.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions and Part II - General Conditions.

  
\_\_\_\_\_  
Maria R. Nold

  
\_\_\_\_\_  
Date

## **Part I – Special Conditions**

### **Authorized Activities and Permit Term**

#### *A. Authorized Activities*

This permit authorizes the following impacts as indicated in the application dated December 2005 and supplemental materials, revisions, and clarifications received through January 20, 2016, including the plan entitled “Figure 2-1, Revised Jurisdictional Area Impacts Map, Selected Alternative, New Town - Section 4, 6, 7, 8 & 9, James City County, Virginia” prepared by Stantec, dated December 14, 2005, and last revised September 22, 2015.

1. The permanent impact of 1.432 acres of forested wetlands and 391 linear feet of intermittent stream for construction of a stormwater pond and six stormwater outfalls.
2. The permanent impact of 0.57 acres of forested wetlands and 163 linear feet of perennial stream for construction of one culverted road crossing and one additional roadway in Section 9.
3. The secondary impact of 0.14 acres of forested wetlands associated with completed development activities in Section 4.
4. The permanent conversion of 0.08 acres of forested wetlands to emergent wetlands, and the temporary impacts to 25 linear feet of perennial stream associated with installation of a sewer line on a proposed open pile pedestrian walkway between Section 7 and Section 8.

#### *B. Permit Term*

This permit is valid for **15 years** from the date of issuance. An extension of this permit term or a new permit may be necessary for the continuance of the authorized or any permit requirement that has not been completed, including compensation provisions. The permit term, including any granted extensions, shall not exceed 15 years.

The permittee shall notify DEQ in writing at least **120 calendar days** prior to the expiration of this permit if an extension of the permit term is required.

### **Project Construction at Impact Site**

#### *C. Standard Project Conditions*

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat,

- maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
  3. At crossings of streams, pipes and culverts less than 24 inches in diameter shall be countersunk a minimum of three inches, and pipes and culverts greater than 24 inches in diameter shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple-celled culverts, only the bottoms of those cells situated below the limits of ordinary high water shall be countersunk. To the greatest extent practicable, other cells, pipes, or culverts shall be elevated to provide a natural distribution of flood flows. The requirement to countersink shall not apply to extensions or maintenance of existing culverts that are not countersunk, to floodplain culverts being placed above ordinary high water, to culverts being placed on bedrock, or to culverts required to be placed on slopes 5% or greater.
  4. Flows downstream of the project area shall be maintained to protect all uses.
  5. No activity shall cause more than minimal adverse effect on navigation, and no activity shall block more than half of the width of the stream at any given time.
  6. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
  7. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, French drains, or other similar structures.
  8. Activities shall be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. The permittee shall retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
  9. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity. Turbidity levels downstream of the construction site shall not exceed turbidity levels upstream of the construction site at any time.



10. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
11. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
12. All fill material placed in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
13. Stormwater runoff shall be prohibited from directly discharging into any surface waters. Best management practices (BMP) designed, installed, and maintained, as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction), shall be deemed suitable treatment prior to discharge into surface waters. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
14. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
15. Machinery or heavy equipment is authorized in temporarily impacted streams provided that it is placed on mats or geotextile fabric, or other suitable means are implemented to minimize soil disturbance to the maximum extent practical. Mats, fabrics, or other measures shall be removed as soon as the work is complete in the temporarily impacted stream. Work shall be conducted in the dry or during low flow conditions, whenever possible.
16. Temporary disturbances to wetlands, stream channels, and/or stream banks during project construction activities shall be avoided and minimized to the maximum extent practicable. Any temporary impacts, not authorized in Part I.A, shall be reported to DEQ immediately.
17. All authorized temporarily impacted streams and stream banks shall be restored to their original elevations and contours within **30 calendar days** following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.

18. All materials (including fill, construction debris, excavated materials, and woody materials, that are placed in authorized surface water impact areas or on stream banks) shall be placed on mats or geotextile fabric, shall be immediately stabilized to prevent the material or leachate from entering surface waters, and shall be entirely removed within **30 calendar days** following completion of that construction activity. After removal, disturbed areas shall be returned to original contours, shall be stabilized, and shall be restored to the original vegetated state within **30 calendar days**. The permittee shall take all appropriate measures to promote and maintain the revegetation of authorized temporarily disturbed surface waters through the **second year post- disturbance**.
19. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
20. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
21. Seeds used for all project and compensation activities shall conform to the Virginia Seed Law (Sections 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-290-10 et. seq).
22. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized. DEQ may require additional controls if deemed necessary to prevent impacts to surface water resources.
23. All *non-impacted* wetlands, streams, and designated upland buffer preservation that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. **In addition, orange construction fencing shall be installed around the perimeter of the entire small whorled pogonia preservation area for the life of the construction activity within that area.** The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas*.
24. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

DEQ Tidewater Regional Office  
Virginia Water Protection Program

5636 Southern Boulevard  
Virginia Beach, Virginia 23462

25. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
- a. The authorization is made in writing by the permittee.
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
26. All submittals shall contain the following signed certification statement:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
27. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 757-518-2177. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
28. DEQ shall be notified in writing within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
29. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

*D. Projects Involving Stream Modifications, Including Intake/Outfall Structures*

1. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in each impact area. Methods and materials for stabilization shall be in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
2. Redistribution of existing stream substrate for erosion control purposes is prohibited.
3. Material removed from the stream bottom shall not be deposited into surface waters unless otherwise authorized as fill material in this permit.
4. Riprap apron for all outfalls shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
5. For streambank protection activities, structures and backfill shall be placed as close to the streambank as practical, while still avoiding and minimizing impacts to vegetated wetlands to the maximum extent practical. No material shall be placed in excess of the minimum necessary for erosion protection.
6. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills, breakwaters, dams, or weirs.
7. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. The diversion shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application and should incorporate natural stream channel design principles to the greatest extent practicable. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow shall be fully established before construction activities in the old streambed can begin.

*E. Projects Involving Utilities*

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area. Authorized temporarily disturbed surface waters shall be restored in accordance with special conditions C.17 and C18, unless otherwise authorized by this permit.

2. Material resulting from trench excavation may be temporarily sidecast into authorized wetland impact areas not to exceed a total of 30 calendar days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a French drain effect).

F. *Projects Involving Road Crossings*

1. Access roads authorized by this permit shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible pre-construction contours and elevations.
2. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions or other similar structures.
3. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The stream channelization or relocation shall be constructed following the typical sections submitted with the application and should incorporate natural stream channel design principles to the greatest extent practicable. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow shall be fully established before construction activities in the old streambed can begin.
4. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction to ensure that the design elevations were met. This information shall be submitted to DEQ with the construction monitoring report due after elevations are measured.

G. *Projects Involving Stormwater Management Structures*

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (as per the Dept. of Conservation and Recreation's Stormwater Management Handbook, First Edition, 1999, or the most recent version in effect at the time of construction), such as vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, and bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources, that provide for long-

- term aquatic resources protection and enhancement, to the maximum extent practicable.
2. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.
  3. Final design plans for the proposed wet stormwater pond shall be submitted to the DEQ prior to commencement of the associated wetland impacts. Maintenance excavation shall follow the approved maintenance plan, and shall not exceed the original contours of the facility as constructed.
  4. Final design plans for the six proposed stormwater outfalls/channels shall be provided to DEQ prior to commencement of the associated wetland impacts.
  5. Maintenance within stormwater management facilities will not require compensation provided that the maintenance is accomplished in designated maintenance areas as indicated in the stormwater management maintenance plan.
  6. Draining of a stormwater management facility shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.

H. *Project Construction Monitoring and Submittals (Impact Site)*

**Pre-Construction Monitoring**

1. The permittee shall conduct photographic monitoring of pre-construction conditions in permitted permanent and temporary impact areas covered by this permit. Photographic monitoring shall be conducted by the following method:

Enumerated photo stations shall be established at each permitted impact area that shall be used for the duration of construction activities. The directional orientation of each photo station shall remain constant during all monitoring events. Photo stations shall be sufficient to distinguish the boundaries between permitted impact areas and non-impact areas and any site stormwater discharges entering surface waters. Photo stations may be established via water craft or temporary floating structures. Each photograph taken shall be labeled with the permit number, the permitted impact area, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary.

### **Pre-Construction Submittals**

2. Final plans for the project construction activities on each development Section (i.e. Section 7, 8, 9 and portions of 6) authorized by this permit shall be submitted **30 calendar days** prior to initiating any land disturbance or construction in permitted impact areas on each respective section. Construction activities shall not be initiated until DEQ has both reviewed and commented on the plans, or until **30 calendar days** have passed, during which time no DEQ comments were received regarding the plan. In the event DEQ submits comments on the final plans, construction shall not proceed until comments are resolved to DEQ's satisfaction.
3. Construction shall be performed in accordance with the final construction plans submitted to DEQ, which shall be in compliance with the permit. Final construction plans shall include the location and orientation of all photo monitoring stations. Any changes to the final plans for permitted areas shall be submitted to DEQ immediately upon determination that changes are necessary. DEQ approval shall be required prior to implementing the changes.
4. The permittee shall submit written notification at least **ten calendar days** prior to the initiation of land disturbance or construction activities in permitted areas. The notification shall include a projected schedule for initiating and completing work at each permitted impact area.

### **Monitoring During Construction**

5. The permittee shall conduct photographic monitoring of construction activities to document that the permitted activities are in compliance with permit conditions, and to document any events that are not in compliance with the construction-related permit conditions. Monitoring shall document all site stormwater discharges into surface waters. The permittee shall use the same photo method and location that was used for pre-construction monitoring.
6. Photographic monitoring during activities in each permitted impact area shall be required during **each quarter**.
7. For authorized temporary disturbances to surface waters, the permittee shall conduct photographic monitoring **after** the temporary disturbance activity is complete in order to document that the area has been restored in compliance with these permit conditions.
8. Construction photographic data, except for temporarily disturbed surface waters, shall be submitted with construction monitoring reports as detailed in special condition H.9.

### **Construction Monitoring Reports**

9. Construction Monitoring Reports shall be submitted to DEQ **quarterly**. The quarterly reports shall be submitted by the **10<sup>th</sup> calendar day** of the month following each quarter (i.e. April 10th, July 10th, October 10th, and January 10th). The reports shall include the following, as appropriate:
  - a. A written narrative stating whether or not work was performed during the monitoring period in each permitted impact area. If work was performed, the narrative shall include a description of the work performed, when the work was initiated, and the expected date of completion.
  - b. A summary of activities conducted to comply with the permit conditions, including items associated with meeting specific permit conditions and a description of erosion and sediment controls used to protect water quality and any maintenance performed on the controls.
  - c. A written summary, including photographs, of non-compliance events or problems encountered, any corrective actions taken, and any subsequent notifications to DEQ.
  - d. A summary of anticipated work to be completed during the next reporting period, and an estimated date of construction completion at all permitted impact areas.
  - e. A labeled site map depicting all permitted impact areas and photo stations.
  - f. Properly labeled photographs, including those documenting the completed restoration of temporarily disturbed surface waters. The first construction monitoring report shall also include the photographs taken at each permitted impact area prior to initiation of land disturbance or construction activities in that area.

### **Post-Construction Monitoring**

10. The permittee shall conduct photographic monitoring of all permitted impact areas upon completion of construction and stabilization of the area. The permittee shall use the same photo method and location that was used for pre-construction monitoring.

### **Post-Construction Submittals**

11. Post-construction photographs of permitted impact areas shall be submitted within **30 calendar days** of completing **work in each permitted area**.



12. The permittee shall submit an annual photograph, through the **second year** post-disturbance, documenting the conditions at each temporarily disturbed surface water area.
13. The permittee shall submit written notification within **30 calendar days** after the completion of all activities in all permitted impact areas authorized under this permit.

### **Compensation for Surface Water Impacts**

#### *I. On/Off Site Creation, Restoration, and/or Preservation Compensatory Mitigation*

1. As part of the compensation package for authorized wetland impacts, the permittee shall provide *off-site* wetlands compensation at Phase II of the Nice Mitigation Site in Charles City County via creation of 4.38 acres of forested wetlands as depicted in the final mitigation plan entitled “Wetland Mitigation Construction Plan, New Town Offsite Mitigation – Nice Property: Phase II, Charles City County, Virginia” prepared by Williamsburg Environmental Group, dated April 29, 2005, and last revised on October 17, 2006. The compensation site shall be preserved in perpetuity as described in final mitigation plan and special conditions K.1 to K.3 of this permit.
2. To compensate for authorized stream impacts, the permittee shall preserve in perpetuity via deed restriction or conservation easement all non-RPA upland buffers located adjacent to the seven stream reaches identified on the plan entitled “Proposed Stream Mitigation, New Town, James City County” dated February 8, 2007 and revised on March 13, 2007. In addition, the permittee shall preserve in perpetuity, via deed restriction or conservation easement, the 0.55-acre small whorled pogonia colony and the adjacent 4.08 acres of upland buffer surrounding the colony as depicted on the same plan. The compensation areas shall be preserved in perpetuity as outlined in special conditions K.1 to K.3 and M.2 and M.3 of this permit. If at the end of the monitoring period specified in condition M.6, DEQ determines that the small whorled pogonia colony is no longer viable for any reason, additional compensation may be required.

#### *J. On/Off Site Creation, Restoration, and/or Preservation Standard Conditions*

1. The permittee is responsible for meeting all of the components of the compensatory mitigation requirements associated with this permit. This responsibility can only be transferred if and when the permit is transferred to another party and then only to the new permit recipient.
2. The final compensation plan approved by DEQ shall be an enforceable requirement of this permit. Any change to the approved final compensation plan must be submitted to DEQ for approval prior to implementing the change.
3. Planting of woody plants shall occur when vegetation is normally dormant unless

otherwise approved in the final compensation plan.

4. Vegetation shall be native species common to the area and shall be suitable for growth in local wetland and/or riparian conditions.
5. All vegetation removal for control purposes shall be done by manual means, unless authorized by DEQ in advance. Herbicides or algicides shall not be used in or immediately adjacent to compensation areas except as authorized by DEQ.
6. Point sources of stormwater runoff shall be prohibited from entering any compensation site prior to treatment by appropriate best management practices (BMPs) that are designed, installed, and maintained as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction). Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
7. All *non-impacted surface waters* and designated upland buffers that are within the compensation site limits, and that are within fifty feet of any compensation site activities, shall be clearly flagged or demarcated for the life of the activity within that area. Open water areas should be demarcated as practicable. The permittee shall notify all contractors and subcontractors that *no activities are to occur within these marked areas*.
8. All required notifications and submittals shall be to the DEQ Tidewater Regional Office, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit.

K. *Wetland Compensation Site Construction Tasks, Monitoring, and Submittals*

**Pre-Construction Submittals**

1. All compensation areas shall be surveyed or platted and the final survey or plat shall be certified by a professional engineer or licensed land surveyor and shall be submitted to DEQ for review. DEQ shall have **15 calendar days** to review the surveys or plats to verify that the protected areas are the same as those presented in the final compensation plan.
2. The protective instrument shall be recorded in the chain-of-title to the properties on which the compensation sites exist. Proof of recordation shall be submitted to DEQ prior to commencement of any land disturbance activities on the project site.

3. The protective instruments for the on-site upland buffers, the on-site small whorled pogonia preservation areas, and for Phase II of the Nice Mitigation site, shall be written so that no activity will be performed on the property in any area designated as a compensation site or non-impacted surface water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless otherwise authorized by DEQ, the restrictions apply to ditching, land clearing, or the discharge of dredge or fill material. The protective instrument restrictions shall contain the phrase "ditching, land clearing, or discharge of dredge or fill material" in the limitations placed on the use of these areas. Additional language may be necessary in the small whorled pogonia protective instrument and this language shall be coordinated with and be acceptable to the DEQ, the U.S. Fish and Wildlife Service, and the DCR – Division and Natural Heritage.

#### **Monitoring for Success Criteria After Construction**

4. Success monitoring of Phase II of the Nice Mitigation site shall begin at the first complete growing season (monitoring year one) following compensation site construction; shall be conducted on the frequency stipulated in the approved final compensation plan; and shall continue for the time specified in the approved final compensation plan.
5. If all success criteria have not been met by **November 30<sup>th</sup>** of the last monitoring year specified in the approved final compensation plan, or if visual observations conclude that the site has not met the overall restoration goals, corrective actions shall be implemented in accordance with the DEQ-approved corrective action plan. Annual monitoring shall continue until two sequential, annual reports indicate that all criteria have been successfully satisfied (e.g., that corrective actions were successful) and the compensation site has met the overall restoration goals. The permittee shall be solely responsible for ensuring that all necessary corrective actions are implemented so that the compensation site meets the success criteria, as detailed in the final compensation plan. Should any significant changes to the compensation site be necessary, the first full growing season after the changes are complete shall become the new monitoring year one. Monitoring shall continue in accordance with the DEQ-approved corrective action plan.
6. Photographic documentation during success monitoring shall be conducted in accordance with the final compensation plan approved by DEQ.
7. Hydrology monitoring at a *nontidal* wetland compensation site shall be conducted in accordance with the final compensation plan approved by DEQ.
8. Wetland vegetation monitoring shall be conducted in accordance with the final compensation plan approved by DEQ. Undesirable plant species shall be identified and controlled as described in the monitoring and control plan for undesirable plant

species, such that they are not dominant species or do not change the desired community structure.

9. Monitoring for the presence of hydric soils or soils under hydric conditions shall be conducted in accordance with the final compensation plan approved by DEQ.
10. Wildlife data collection shall be conducted in accordance with the final compensation plan approved by DEQ.
11. At the completion of each monitoring year, a calculation of the acreage of each wetland type shall be made and shall be based upon that monitoring year's soils data, vegetation data, and hydrology data (if required). The acreage calculation shall be shown on the most recent version of the compensation site design plan sheet(s) and shall be submitted with that year's monitoring report.
12. Within **60 calendar days** of the completion of the entire monitoring cycle, including any time extensions for corrective action, a wetland boundary survey shall be conducted by a licensed land surveyor or a licensed professional engineer, and shall be based upon the results of monitoring data for soils, vegetation, and hydrology. A calculation shall be made of the total acreage of each wetland type. The boundary and acreage per wetland type shall be shown on the most recent version of the compensation site design plan sheet(s).

#### **Submittals for Success Criteria Monitoring**

13. Wetland compensation site monitoring reports shall be submitted by **December 31<sup>st</sup>** of the years in which a monitoring report is required, including the final monitoring year, as identified in the approved final compensation plan. The reports shall include the following, at a minimum:
  - a. A general description of the compensation site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells (if applicable), and wetland zones;
  - b. Summary of activities completed during the monitoring year;
  - c. Description of monitoring methods;
  - d. An analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams, or other open water areas, as detailed in the final compensation plan;
  - e. Evaluation of hydric soils or soils under hydric conditions;

- f. An analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, set forth in the final compensation plan;
  - g. Discussion of wildlife or signs of wildlife observed at the compensation site;
  - h. Properly labeled photographs;
  - i. Comparison of site conditions from the previous monitoring year and/or reference site;
  - j. The acreage calculation, shown on the most recent version of the compensation site design plan sheet(s);
  - k. A corrective action plan, if necessary, which shall include any proposed actions or maintenance activities, a schedule, and a monitoring plan (e.g., the control of undesirable species, the repair of a damaged water control device, the replacement of damaged, planted vegetation, etc.);
14. *For final monitoring year only*, the report shall include all items in Part I.K.13 and the most recent version of the compensation site design plan sheet(s) depicting the final wetland boundary and area calculations, as detailed in Part I.K.12.

*L. Approved Mitigation Bank General Conditions*

- 1. As part of the compensation package for authorized wetland impacts, the permittee shall purchase 0.03 mitigation bank credits from the Chickahominy Environmental Bank in Charles City County, Virginia.
- 2. Documentation that the Chickahominy Environmental Bank has debited the required mitigation credits from the mitigation bank ledger shall be submitted to and received by DEQ prior to initiating work in permitted impact areas.

**On-Site Resource Protections**

*M. On-Site Preservation and Other Protections*

- 1. The permittee shall preserve in perpetuity, via deed restriction or conservation easement, all upland buffers and all non-impacted wetlands and streams, and the entire small whorled pogonia colony and 8.16-acre colony buffer as depicted on the plan entitled "Figure 2-1, Revised Jurisdictional Area Impacts Map, Selected Alternative, New Town Section 4, 6, 7, 8 & 9, James City County, Virginia" prepared by Williamsburg Environmental Group, dated December 14, 2005, and last revised March 8, 2007. The applicant may propose use of the 4.08 acres of small whorled pogonia buffer, depicted as "SWP Colony Buffer for Newport News" on the plan

entitled "Proposed Stream Mitigation, New Town, James City County" dated February 8, 2007 and revised on March 13, as compensation for future projects; however, the amount of compensation credit given, if any, will be determined by DEQ during processing of the associated application(s).

2. All preservation areas shall be surveyed or platted and the final survey or plat shall be certified by a professional engineer or licensed land surveyor and shall be submitted to DEQ for review. DEQ shall have **15 calendar days** to review the surveys or plats to verify that the protected areas are the same as those presented in application.
3. The final instruments for preservation of all the on-site upland buffers and non-impacted wetlands and streams, and the on-site small whorled pogonia colony and buffer, including the associated surveyed plats, shall be submitted to the DEQ for review and approval. Copies of these instruments shall also be provided concurrently to the Virginia DCR – Division of Natural Heritage (DCR) and the U.S. Fish and Wildlife Service (USFWS) for their review. This submittal, and subsequent proof of recordation of these approved final instruments, shall be submitted to DEQ prior to commencement of any project construction activities. The restrictive language for the on-site upland buffers may include allowance for a foot trail constructed of crushed stone and no wider than 5 feet, and for 3 open-pile elevated pedestrian bridges in areas denoted on the plan referenced in special condition L.1. The restrictive language shall allow for control of invasive species, as authorized by DEQ, necessary to protect the small whorled pogonia and Virginia least trillium populations.
4. Following completion of construction activities adjacent to the small whorled pogonia preservation area, the permittee shall install permanent fencing around the small whorled pogonia preservation area except where it abuts the adjacent RPA.
5. Prior to commencement of project construction activities in permitted impact areas in Sections 8 and 9 and within 300 feet of any designated upland buffer or the small whorled pogonia preservation area, the permittee shall submit an invasive species control plan to DEQ for review and approval. The plan shall also be submitted concurrently to the DCR, the USFWS, and the Department of Agriculture and Consumer Services (VDACS) for their review. The purpose of this plan shall be to eliminate threats to the small whorled pogonia, and to identify species to be treated and the methods and timing of treatments.
6. Prior to commencement of project construction activities in permitted impact areas and within 300 feet of any designated upland buffer or the small whorled pogonia preservation area, the permittee shall submit to DEQ for review and approval, a plan for monitoring the status and any threats to the small whorled pogonia colony and the two pogonia locations identified in the 2004 and 2006 site surveys located along the site's middle drainage feature. This plan shall be submitted concurrently to the DCR, the USFWS and the VDACS for their review. This plan shall provide for monitoring to begin the first pogonia survey season following permit issuance and continue

annually for an additional 10 years. The plan shall specify that the monitoring be conducted by an individual or individuals proficient in the identification and biology of the small whorled pogonia. It shall also include the requirement to develop and implement any adaptive management actions determined necessary by the USFWS, the DCR, and the VDACS. As part of this plan, the permittee shall conduct a detailed characterization of soils within one acre around the main small whorled pogonia colony and a general mapping of soils in the remainder of the pogonia preservation area.

7. Prior to commencement of project construction activities in permitted impact areas in Section 7, 8 and 9 and within 300 feet of any designated upland buffer, the permittee shall submit to DEQ for review and approval, a plan for monitoring the status of the Virginia least trillium populations identified on site. This plan shall be submitted concurrently to the DCR for their review. This plan shall include monitoring of the trillium populations beginning the first survey season following permit issuance and every other year through project completion. This monitoring shall include reporting of any invasive species in the vicinity of the trillium populations and the requirement to control these species, using methods approved by DEQ, should they be determined by DCR to be a threat to the trillium populations.



## **PUBLIC HEARING NOTICE**

THE CHESAPEAKE BAY BOARD OF JAMES CITY COUNTY, VIRGINIA WILL HOLD PUBLIC HEARINGS **WEDNESDAY SEPTEMBER 13, 2017 AT 5 P.M.** IN THE BOARD ROOM OF BUILDING F, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA TO CONSIDER THE FOLLOWING CASES:

CBE-18-012: Mr. Richard Arms filed an exception request to encroach into the RPA buffer for installation of a retaining wall at 113 Holman Rd, in the Kingsmill subdivision, JCC Parcel No 5021000025.

CBE-17-044: AES Consulting Engineers, on behalf of ABVA Development LP and Newtown Associates LLC, filed an exception request to encroach into the RPA buffer for installation of a sanitary sewer bridge and BMP outfall at 5335 Settlers Market Blvd and 4400 Casey Blvd, JCC Parcel Nos 3820100015 and 3820100014.

Appeals from decisions under the Chesapeake Bay Preservation Ordinance may also be heard.

All interested parties are invited to attend the meetings. The applications and plans are on file and may be viewed during normal office hours in the Stormwater and Resource Protection Division, 101 Mounts Bay Road, Building E, James City County, Virginia.

## **NOT FOR PUBLICATION**

DISPLAY: WEDNESDAY – August 30 and September 6, 2017.  
ACCOUNT NO.: 0011040200 - VIRGINIA GAZETTE

COPIES: PLANNING  
ASSISTANT COUNTY ATTORNEY  
CHESAPEAKE BAY BOARD MEMBERS





**Stormwater and Resource  
Protection Division**

101 Mounts Bay Road, Bldg E  
Williamsburg, VA 23185

Resource.Protection@jamescitycountyva.gov

**Building Safety and Permits**  
757-253-6620

**Stormwater and Resource Protection**  
757-253-6670

**Planning**  
757-253-6685

**Zoning Enforcement**  
757-253-6671

August 23, 2017

RE: CBE-17-044 – New Town Section 8, Parcel D  
Sewer Bridge and BMP Outfall

Dear Adjacent Property Owner:

In accordance with State and County Codes this letter is to notify you that a request has been filed with the James City County Chesapeake Bay Board by AES Consulting Engineers, on behalf of property owner ABVA Development LP and Newtown Associates, LLC, for encroachment into the Resource Protection Area (RPA) buffer associated with installation of a sanitary sewer Bridge and BMP outfall for the proposed New Town Section 8, Parcel D subdivision. The project is located at 5335 Settlers Market Blvd and 4400 Casey Blvd, in the New Town subdivision in James City County. The properties are further identified by James City County Real Estate as Pin Nos. 3820100015 and 3820100014.

A complete description, plan, and other information are on file in the James City County Stormwater and Resource Protection Division and are available for inspection during normal business hours, should anyone desire to review them.

The Chesapeake Bay Board will hold an advertised public hearing on **Wednesday, September 13, 2017 at 5 p.m.** in the Board Room of Building F, 101-F, Mounts Bay Road, James City County, Virginia, at which time you may request to speak on the above referenced project.

Sincerely,

*Melanie Davis*

Melanie Davis  
Chesapeake Bay Board Secretary

cc: AES Consulting Engineers  
ABVA Development LP  
Newtown Associates, LLC

Mailing List for CBE-17-044 – NEW TOWN SECTION 8, PARCEL D – Sewer Bridge and BMP Outfall

3820100015 - 5335 Settlers Market Blvd  
ABVA Development LP  
710 Denbigh Blvd, Ste 4A  
Newport News, VA 23608-4427

3820100005 – 11750 Humelsine Pkwy  
FCD, LLC  
1 Fords Colony Dr  
Williamsburg, VA 23188-6355

3820100014 - 4400 Casey Blvd  
Newtown Associates, LLC  
P O Box 5010  
Williamsburg, VA 23188-5200

3910100152 - 4601 Ironbound Rd  
Commonwealth of Virginia  
Eastern State Hospital  
Williamsburg, VA 23188-2652

AES Consulting Engineers  
Attn: Jason Grimes  
5248 Olde Town Road, Ste 1  
Williamsburg, VA 23188

3824100006A - 5214 Rollison Dr  
3824100010C - 4430 Olive Dr  
ABVA Development LP  
710 Denbigh Blvd, Ste 4A  
Newport News, VA 23608-4427

3820100010 - 5455 Center St  
3824100014A - 5300 Beverly Ln  
NT Development LP  
710 Denbigh Blvd, Ste 4A  
Newport News, VA 23608-4427

3820100009 - 5495 Center St.  
New Town Residential Association, Inc  
P O Box 5010  
Williamsburg, VA 23188-5010

3843300001F - 4455 Casey Blvd  
3843300001A - 5225 Settlers Market Blvd  
CPT Settlers Market LLC  
c/o Marvin F Poer & Company  
3520 Piedmont Rd, NE, Suite 410  
Atlanta, GA 30305-1512

3843500001A - 4910 Trailview  
ME Settlers LLC  
2250 Old Brick Rd, Ste 220  
Glen Allen, VA 23060-6008

3830100034A - 3975 Windsormeade Way  
Virginia United Methodist Homes of Williamsburg, Inc  
9808 Firetown Rd  
Toano, VA 23168-9501