

# **Chesapeake Bay Board**

**MARCH 13, 2013**

**Building F, 7 p.m.**

## **A. Roll Call**

## **B. Minutes**

1. February 13, 2013 - Board Meeting

## **C. Public Hearings**

1. CBE-13-039 – Colonial Heritage LLC/AES – sewer crossing utility
2. CBE-13-065 – Housing Partnerships – Chisel Run – SFD
3. CBE-13-071 – Portela/Winall – 10142 Sycamore Landing – slope stabilization

## **D. Board Consideration(s)**

1. CBE-11-079 – HHHunt Communities/WEB – White Hall Offsite Sanitary Sewer Extension Request

## **E. Matters of Special Privilege**

## **F. Adjournment**

## **Chesapeake Bay Exception CBE-13-039: Colonial Heritage Phase 5, Section 1 Sanitary Sewer Utility Crossing**

Staff report for the March 13, 2013 Chesapeake Bay Board Public Hearing

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

### **Existing Site Data & Information**

Applicant: AES Consulting Engineers – Ryan Stephenson  
Project Developer: Colonial Heritage, LLC  
Impact Location: 499 Jolly Pond Road Williamsburg, VA. 23188  
PIN: 2240100007: Colonial Heritage LLC, owner  
Project Size/Zoning: 77.98 ac +/-, Mixed Use w/proffers  
Area of Project in RPA: 2.01 ac +/- (0.06% of Phase 5, Section 1)  
Watershed: Yarmouth Creek (HUC Code JL28)  
Proposed Activity: Sanitary Sewer Utility Crossing  
County Plan No: S-041-12

### **Proposed RPA Impacts**

Chesapeake Bay Preservation Ordinance - Board Consideration  
Utility Crossing: 39,134 square feet (0.89 ac)  
Chesapeake Bay Preservation Ordinance - Administrative Approval  
Road Crossings: 48,610 square feet (1.11.ac)

### **Brief Summary and Description of Activities**

Mr. Ryan Stephenson of AES Consulting Engineers, on behalf of Colonial Heritage LLC, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachments into the RPA buffer for the construction of roads and utilities for Colonial Heritage Phase 5, Section 1 project in James City County.

The proposed project falls under the regulations set forth within the Chesapeake Bay Preservation Ordinance adopted in 1990 as well as the subsequent 2004 revisions to the Ordinance. The submitted Water Quality Impact Assessment (WQIA) contains information pertaining to administrative and Board actions. The impacts associated with the road construction can be processed and approved administratively. Impacts

associated with the utility crossing requires Chesapeake Bay Board approval through the formal exception process since it does not qualify for administrative approval under the provisions of Section 23-7(a) of the County's ordinance and 9VAC10-20-130 of the Chesapeake Bay Preservation Area Designation and Management Regulations.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for road construction and utility crossings that will provide service to the Colonial Heritage Phase 5, Section 1 project. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance, any development or redevelopment exceeding 2,500 square feet of land disturbance in the Chesapeake Bay Preservation Area (CBPA) requires a plan of development, environmental inventory, and stormwater management plan, if applicable. All land disturbance, development or redevelopment within the RPA also requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was submitted with the plan of development for the project (County subdivision plan No. S-41-12). The WQIA was provided on February 14, 2013. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Use of conservation seed mixture for re-vegetating cleared areas within the buffer; and
- Use of E&S measures such as; straw/coconut fiber permanent turf reinforcement matting on slopes and super silt fence; and
- Use of low impact development (LID) features adjacent to the RPA to intercept and treat runoff from rear lots and yards; and
- Use of three sediment basins with enhanced outlet protection and sumped inlets; and
- Use of flat large bottom width swales and channel stabilization in critical areas within the site; and
- Additional natural open space areas totaling 0.46 acres and required replanting will be provided;

### **Staff Recommendations**

Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be **low** for the proposed development and that the proposed mitigation measures are acceptable with conditions. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:


1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and

2. Construction shall be in accordance with the provisions of approved County subdivision plan no. S-41-12; and
3. All natural open space and deed of easements for Phase 5, per the approved Stormwater Master Plan, must be recorded with the subdivision plan; and
4. This exception request approval shall become null and void if construction has not begun by March 13, 2014.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

**Consideration by the Chesapeake Bay Board**

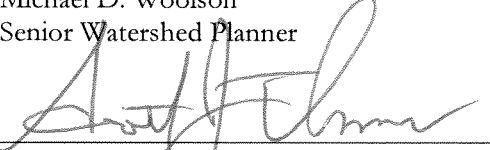
The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-13-039 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-13-039 are included for the Board's use and decision.

Staff Report prepared by:

  
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Tina Creech  
Senior Resource Protection Inspector

CONCUR:

  
\_\_\_\_\_  
Michael D. Woolson  
Senior Watershed Planner

  
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Scott J. Thomas, Director  
Engineering and Resource Protection

Attachments: Water Quality Impact Assessment Package  
Letter of Mitigation Credits

## Chesapeake Bay Exception CBE-13-065: Housing Partnerships, Single Family Home in the Chisel Run Subdivision

Staff report for the March 13, 2013 Chesapeake Bay Board Public Hearing

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

### Existing Site Data & Information

Applicant: Housing Partnerships Inc., Mr. Abbitt Woodall

Project Developer: Housing Partnerships Inc.

Impact Location: unaddressed parcel off of Chisel Run Road

Parcel Id Number: 3330100004

Project Size/Zoning: 5.32 ac +/-, R-5

Area of Project in RPA: 5.21 +/- (98%)

Watershed: Powhatan Creek, subwatershed 207 (HUC Code JL31)

Proposed Activity: two single family homes (1 administrative review, 1 CBB review)

### Proposed RPA Impacts

#### **Lot A – Administrative Review**

Clearing: 1,630 sq. ft. (.04 ac.)

#### **Lot B - Board Review**

Clearing: 2,450 sq. ft. (0.06 ac.)

Impervious Cover: 300 sq. ft. (0.01 ac.)

### Brief Summary and Description of Activities

In the rezoning of the property known as Old Town Farms in 1983 (Z-10-83), proffers were made that restricted the total number of dwelling units to 239. At the request of the property owners, the zoning administrator made a determination in 2010 that there were 237 units built to date. As the property owners thought they had more units to build than two, they appealed the determination to the Board of Supervisors (BOS), which heard the case at the regularly scheduled meeting on January 25, 2011. The BOS upheld the zoning administrator's interpretation that there were only two units left to build in the Chisel Run development by a 5-0 vote.

The parcel subject to the BOS approval was then acquired by Housing Partnership, Inc. (HPI). HPI is a locally funded non-profit agency that provides vital housing repair services to very low-income individuals and families who are unable to help themselves due to sickness, disability, or a lack of financial resources. They operate in James City County, York County, and the City of Williamsburg. HPI intends to build the two units still available under the Old Town farms rezoning (aka Chisel Run) for profit to help fund their stated mission. The parcel in question now has significant RPA issues that were not present during the original rezoning. As such, any impacts beyond that required for one unit must be heard by the Chesapeake Bay Board for approval.

Under the Chesapeake Bay Preservation Ordinance, any legally platted lot prior to August 1, 1989 is buildable from a RPA standpoint. In other words, the application of the RPA buffer on a lot cannot, by itself, make a lot unbuildable. Therefore, one unit can be built upon the parcel and as long as the RPA impacts are contained to the landward 50 ft. of the RPA, the review and approval is administrative. Lot A qualifies for an administrative review under these guidelines.

A second unit may be built upon the parcel without requiring it to be on its own lot as long as it would meet all zoning setbacks so that it could be on its own separate parcel in the future. Two units on one parcel would be considered more than necessary to afford relief under the Ordinance for the parcel. HPI does intend to plat the two units on separate lots. However, the Ordinance states that any lot created shall have sufficient area outside of the RPA to accommodate the intended use when this use is not otherwise allowed in the RPA.

As has been determined by the Zoning Administrator and confirmed by the BOS, the parcel has two units remaining that can be legally built per the proffers. Those determinations do not override the necessary review the Chesapeake Bay Board and their authority to approve or deny the application based upon the conditions set forth under Section 23-14 of the Ordinance.

HPI is proposing to plant 3 planting units on Lot A and 6 planting units of Lot B. A planting unit consists of 1 canopy tree, 2 understory trees, and 3 shrubs. The required planting mitigation is 1 planting unit on Lot B. The proposed mitigation far exceeds County requirements. In addition, HPI intends to preserve the remaining parcel (4.72 ac. +/-) through an open space easement dedicated to the County. A planting plan will be provided prior to the second housing unit receiving a clearing permit from our Division. HPI has also indicated their willingness to plant the required mitigation in a rain garden or series of rain gardens if desired.

The proposed project falls under the regulations set forth within the Chesapeake Bay Preservation Ordinance adopted in 1990 as well as the subsequent 2004 revisions to the Ordinance. The submitted Water Quality Impact Assessment (WQIA) contains information pertaining to administrative and Board actions. The impacts associated with the development of Lot A can be processed and approved administratively as they meet the guidelines in the Ordinance for a legally platted lot recorded prior to 1990. Impacts associated with the development of Lot B require Chesapeake Bay Board approval through the formal exception process since it does not qualify for administrative approval under the provisions of Section 23-7(a) of the County's ordinance and 9VAC10-20-130 of the Chesapeake Bay Preservation Area Designation and Management Regulations.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for two housing units. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance, any development or redevelopment exceeding 2,500 square feet of land disturbance in the Chesapeake Bay Preservation Area (CBPA) requires a plan of development, environmental inventory and stormwater management plan, if applicable. All land disturbance, development or redevelopment within the RPA also requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was submitted with the plan of development for the project. A revised WQIA was provided on February 27, 2013. Based on staff review, HPI proposes to mitigate for RPA impacts by:

- Planting 3 planting units on Lot A; and
- Planting 6 planting units on Lot B; and
- Creating an open space easement on 4.72 ac. +/-, dedicated to James City County.

### Staff Recommendations

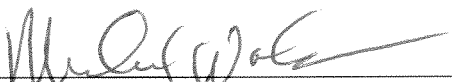
Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be **moderate** for the proposed development and that the proposed mitigation measures exceed County requirements and are acceptable with conditions. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. Submittal and approval of a planting plan prior to the clearing permit being issued for Lot B; and
3. This exception request approval shall become null and void if construction on Lot B has not begun by March 13, 2014; and
4. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

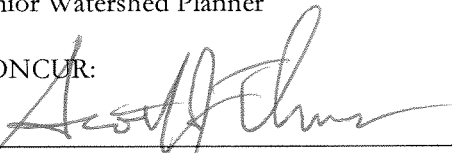
### Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-13-065 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-13-065 are included for the Board's use and decision.

Staff Report prepared by:

  
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Michael D. Woolson  
Senior Watershed Planner

CONCUR:

  
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Scott J. Thomas, Director  
Engineering and Resource Protection

Attachments: Water Quality Impact Assessment  
Proposed Subdivision Plat  
Proposed Site Plan  
Request for Zoning Verification Letter, dated March 26, 2010  
Appeal of Decision of Zoning Administrator, dated September 9, 2010  
Memorandum to BOS from Zoning Administrator, dated January 25, 2011  
Board of Supervisors Resolution, January 25, 2011  
Chisel Run Proffers – Single Family Dwelling, dated May 6, 2011



## Chesapeake Bay Exception CBE-13-071 : 10142 Sycamore Landing Road

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Staff report for the March 13, 2013 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Engineering and Resource Protection Division 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.

### **Existing Site Data & Information**

Applicant: Danny Winall, Water's Edge Construction

Land Owner(s): Deborah Portela  
4084 Hensley Circle  
El Dorado Hills, California 95762

Location: 10142 Sycamore Landing Road

Parcel Id Number: 0720300008

Parcel Size/Zoning: 0.43 +/- ac., A1 General Agricultural

Percent of Parcel in RPA: 51% (0.22 +/- ac.)

Watershed: York River (HUC Code YO 63)

### **Proposed Impacts**

Disturbed Area: 4,200 sq. ft. (.10 ac.)

Impervious Cover:: 0 (zero) sq. ft.

### **Brief Summary and Description of Activities**

Mr. Danny Winall of Water's Edge Construction on behalf of Ms. Deborah Portela has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for the re-grading of an existing failing slope and the subsequent stabilization and re-planting associated with the installation of a stone revetment.

The re-grading of the existing bank along with the associated stone revetment will create a total of approximately 4,200 sq. ft. of RPA impacts in both the landward and seaward buffer areas. Additionally, the applicant also proposes to remove four trees during the construction process. A Joint Permit Application was submitted to VMRC (#13-0132) for the stone revetment. It was determined that the wetland type impacted will be beach and dune type wetlands. James City County has not locally implemented the Coastal Dunes and Beach ordinance; therefore the impacts must be heard and approved by VMRC.

The applicant has proposed a final graded slope ranging between 1.5:1 to 3:1 to tie the grading into the adjacent properties. The applicant has also proposed a varied planting plan based upon the slope percentage.

The 1.5:1 slopes along the northern property line will be planted in native grasses; the 3:1 slopes along the southern property line will be planted in a combination of native shrubs and trees; and the 2.25:1 slopes in the center will be planted in a combination of turf grasses (near the house) and native grasses (near the bottom of the slope). A small berm is also proposed to help direct stormwater runoff from running down the slope.

In an email dated February 26, 2013 from Karen Duhring (VIMS) to Jordan Creed (VMRC), the planting and grading approach proposed is what she recommended if a community-wide offshore breakwater system with beach nourishment was not pursued. She also states that the offshore breakwater approach is no longer a viable solution due to the amount and extent of defensive structures already in place.

### **Staff Evaluation**

The lot was recorded prior to the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the re-grading and stabilization an existing failing bank which will encroach into both the landward and seaward RPA buffers. While the Chesapeake Bay Ordinance allows for shoreline stabilization projects, the Board has previously expressed concerns over potentially excessive RPA grading impacts and has requested that staff bring forward cases where high bluffs are being graded back for review and approval. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

Staff has evaluated the application and exception request for all work as described above. The proposal is for the regrading and stabilization of an existing failing bank. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request.

A WQIA was provided on February 20, 2013. Based on staff review, the WQIA proposes to mitigate for RPA impacts with a combination of regrading the failing slope to a stable slope and revegetating the disturbed RPA with a combination of native trees, shrubs, and grasses.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be **moderate** for the proposed construction and that the proposed mitigation measures will offset the impacts to the RPA. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

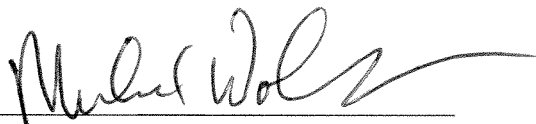
1. The applicant must obtain all other necessary local, state, and federal permits as required for the project.
2. A pre-construction meeting shall be held on-site prior to commencing work.

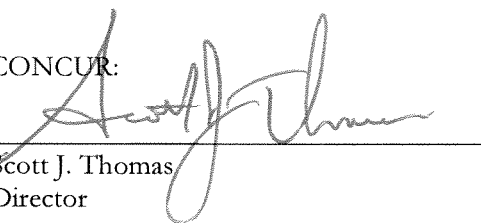
3. A mitigation planting plan shall be submitted prior to the pre-construction meeting. The mitigation plan shall have at a minimum 5 trees and 15 shrubs as well as the native grass species proposed.
4. The proposed mitigation plantings shall meet James City County Standards with all proposed trees being a minimum of .5 inch caliper and the shrubs a minimum #3 can size (21" to 24" tall shrub).
5. Implementation of the Mitigation Plan shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c) by providing a form of surety satisfactory to the County Attorney.
6. This exception request approval shall become null and void if construction has not begun by March 13, 2014.
7. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

**Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-13-071 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-13-071 are included for the Board's use and decision.

Staff Report prepared by:

  
\_\_\_\_\_  
Michael D. Woolson  
Senior Watershed Planner

CONCUR:  
  
\_\_\_\_\_  
Scott J. Thomas  
Director

Attachments: WQIA

## MEMORANDUM

**DATE:** March 13, 2013

**TO:** The Chesapeake Bay Board

**FROM:** Michael D. Woolson *MW*

**SUBJECT:** Case No. CBE-11-079, White Hall Offsite Sanitary Sewer

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Mr. Hans Klinger of HHHunt Communities is requesting an additional one year extension to the approval of case # CBE-11-079 which authorized 9,040 sq of RPA encroachments for the installation of an offsite sanitary sewer. The applicant has not built the offsite sanitary sewer in the time frame originally anticipated due to delays in acquiring the easements necessary. They plan on building the offsite sewer during the summer of 2013. Staff concurs with his request and suggests that the Board reauthorize CBE-11-079 until March 13, 2014.