

A G E N D A
JAMES CITY COUNTY POLICY COMMITTEE
REGULAR MEETING
Building A Large Conference Room
101 Mounts Bay Road, Williamsburg, VA 23185
June 13, 2019
4:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MINUTES

D. OLD BUSINESS

1. Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity, Stage II

E. NEW BUSINESS

F. ADJOURNMENT

ITEM SUMMARY

DATE: 6/13/2019

TO: The Policy Committee

FROM: Tori Haynes, Planner and Thomas Wysong, Senior Planner

SUBJECT: Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity, Stage II

ATTACHMENTS:

	Description	Type
▣	Memorandum	Cover Memo
▣	Attachment 1. Draft Ordinance	Ordinance
▣	Attachment 2. Diascund Reservoir Watershed Map	Backup Material
▣	Attachment 3. Little Creek Reservoir Watershed Map	Backup Material
▣	Attachment 4. Skiffe's Creek Reservoir Watershed Map	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	6/7/2019 - 3:30 PM
Policy	Holt, Paul	Approved	6/7/2019 - 3:41 PM
Publication Management	Daniel, Martha	Approved	6/7/2019 - 4:01 PM
Policy Secretary	Secretary, Policy	Approved	6/7/2019 - 4:01 PM

MEMORANDUM

DATE: June 13, 2019

TO: The Policy Committee

FROM: Tori Haynes, Planner
Thomas Wysong, Senior Planner

SUBJECT: Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity, Stage II

History

The Policy Committee met on April 11, 2019, to discuss the scope of potential special regulations within the Zoning Ordinance for the protection of public water supply reservoirs. Staff presented Stage I materials, which included a chart comparing the proposed special regulations to the equivalent existing regulations of Newport News and York County. The Committee recommended that staff: a) revise the definition of “development” to include a reference to land disturbance; b) restrict the type of roads permitted to cross a reservoir protection buffer; and c) continue coordinating with Stormwater and Resource Protection (SRP) to develop definitions for environmental features (e.g., perennial, intermittent, and tributary streams) that correspond with the County’s Chesapeake Bay Preservation Ordinance.

Draft Ordinance

Since the Stage I meeting, staff has drafted Ordinance language based on feedback from the Policy Committee and SRP. This draft language is included as Attachment No. 1 and establishes the following:

- Adds a new section (Section 24-41, Protections for the public water supply) to Article II, Division I, Special Regulations.
- Creates definitions specific to this section of the Zoning Ordinance, including revisions to the definition of “development” as suggested by the Policy Committee.
- Prohibits the following uses within the watershed of a water supply reservoir: discharge of hazardous materials, slurry coal facilities, land application of industrial wastes, and sanitary landfills.
- Provides for enhanced performance standards for uses dealing with the manufacture, bulk storage, or distribution of hazardous materials within the watershed of a water supply reservoir.
- Implements buffers of 100 feet around reservoir tributary streams, and 200 feet around impoundments. Encroachment by roads or utilities (except sewage lines) in the buffer is only permitted if the following performance standards are met:
 - Road and main-line utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the hydrology of the watershed.
 - Indigenous vegetation shall be preserved to the maximum extent possible.
 - Non-essential elements of the road or utility project, as determined by the Planning Director, shall be excluded from the buffer.

Discussion Items

Staff has identified the following areas for additional Committee feedback and/or further research:

Roads

Major road projects administered by state or federal agencies are not subject to the County's Ordinances. However, other roads such as those created through a major subdivision would only be able to impact a reservoir buffer with Planning Director approval if the associated performance standards are met. This approach is similar to that of Newport News and York County. Staff is seeking feedback regarding whether or not the performance standards for buffer encroachment by roads or utilities included in the draft Ordinance are adequate.

Coordination with Chapter 23, Chesapeake Bay Protection Area

The Resource Protection Area (RPA) buffer is generally 100 feet around perennial streams and their associated wetlands, and Chapter 23 provides a robust set of regulations to protect these areas. Intermittent streams are not specifically regulated through Chapter 23. To reflect the discussion at the last Policy Committee meeting, the attached draft Ordinance as currently written would have a 100-foot buffer applying to all tributary streams (both perennial and intermittent), as well as a 200-foot buffer around reservoirs. Staff has noted that the proposed buffers of 100 feet around all tributary streams and 200 feet around reservoirs would result in a vast overlap with the RPA, thus one site could be subject to both Ordinances.

Reservoir Protection Buffer	RPA Buffer	Comments
100 feet around perennial streams and their associated wetlands	100 feet around perennial streams and their associated wetlands	The reservoir protection buffer and RPA buffer wholly overlap.
100 feet around intermittent streams and their associated wetlands	Not included in the RPA buffer	The reservoir protection buffer could overlap the RPA buffer where an intermittent stream and perennial stream intersect.
200 feet around reservoirs	Reservoirs are not specifically stated in Chapter 23; however, the three reservoirs in James City County include RPA around the impoundments	The 100-foot RPA buffer that currently exists around reservoirs would overlap the seaward (inner) 100 feet of the proposed 200-foot reservoir buffer.

This could result in conflicting requirements and processes for applicants, even with staff's best efforts to avoid such conflicts. After additional staff discussion, and for the reasons outlined above, staff suggests that the proposed 100-foot buffer apply only to intermittent streams and not perennial streams to help reduce occurrences of overlapping buffers; the 200-foot buffer around impoundments would remain.

Encroachments into the RPA buffer require review by the Stormwater and Resource Protection Division and a public hearing before the Chesapeake Bay Board, while in the draft Ordinance as currently written, encroachments into a reservoir protection buffer would require review by the Planning Director with appeals being heard by the Development Review Committee. Staff suggests that language be included specifying that decisions by the Chesapeake Bay Board would be final for any activities in the RPA. If the Committee is comfortable with this, staff will need to work further with the County Attorney's Office to verify the feasibility of this approach.

Applicability of Regulations to Development Types

As discussed in the Stage I memorandum, it is staff's understanding of the Board's guidance to date that the primary focus of the regulations is related to commercial and industrial operations. As previously noted, staff had not included items such as the restriction of feedlots or livestock impoundments, which are included in adjacent localities, for this reason. However, as currently written, staff has noted that the draft Ordinance would affect certain aspects of agricultural uses and would also affect individual residential uses, such as the restriction on structures (which could include sheds or deck additions) in Section (d)(2). Staff has identified on GIS that there are existing residential lots that would likely be within the buffer area. In keeping with staff's understanding of the Board's guidance to date, staff suggests that language be included specifying that the language of the Ordinance only applies to commercial and industrial development, either in the definition of development or other appropriate location. Based on input and recommendations by the Policy Committee, staff will follow up with the County Attorney's Office accordingly.

Next Steps

Staff will incorporate the Committee's feedback and further research the impacts of the proposed regulations. Any feedback provided by the Board of Supervisors at the upcoming work session will likewise be incorporated for Committee review.

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Attachments:

1. Draft Ordinance
2. Skiffe's Creek Reservoir Watershed Map
3. Little Creek Reservoir Watershed Map
4. Diascund Reservoir Watershed Map

Sec. 24-41. – Protections for the public water supply.

(a) Applicability. The provisions of this section shall apply to the watersheds of Diascund Creek, Little Creek, and Skiffe's Creek Reservoirs.

(b) Definitions. For the purposes of this section, the following terms shall have the following meanings:

- (1) Buffer. An area of natural or established vegetation managed to protect other components of resource protection areas and county and state waters from significant degradation due to land disturbances or use.*
- (2) Bulk storage. Storage equal to or exceeding six hundred sixty (660) gallons.*
- (3) Development. Any construction, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel or land.*
- (4) Hazardous material. Any material regulated by state or federal law which, by reason of properties or quantities, is considered hazardous and requires special disposal, including but not limited to (i) petroleum and petroleum-based products, thinners, and distillates; and (ii) toxic chemicals.*
- (5) Impervious surface. A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted aggregate surface.*
- (6) Intermittent stream. A body of water flowing in a natural or man-made channel that contains water for only part of the year. During the dry season and periods of drought, these streams will not exhibit flow.*
- (7) Reservoir watershed. Any area lying within the drainage basin of any water supply reservoir.*
- (8) Tributary stream. Any perennial or intermittent stream, including any lake, pond, or other body of water formed therefrom, flowing either directly or indirectly into a reservoir.*
- (9) Utility. A provider of essential utility or communication services to the general public. This includes but is not limited to electric, natural gas, water, sewer, telephone, and cable companies.*
- (10) Water body with perennial flow. A body of water that flows in a natural or man-made channel year-round during a year of normal precipitation. This includes, but is not limited to, streams, estuaries, and tidal embayments, and may include drainage ditches or channels constructed in wetlands or from former natural drainageways, which convey perennial flow. Lakes and ponds through which a perennial stream flows are part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. The methodology to determine perennial flow shall be in accordance with section 23-10.*
- (11) Water supply reservoir. Any impoundment of surface waters designed to provide drinking water to the public.*

(c) Buffer requirements.

- (1) Development shall not occur within 100 horizontal feet from the edge of any tributary stream, as measured from the edge of the contiguous non-tidal wetlands or the top of the stream bank, whichever results in the greatest buffer width.*
- (2) Development shall not occur within 200 horizontal feet from the edge of any water supply reservoir, as measured from the mean high water level of such reservoir.*
- (3) The buffer shall remain undisturbed in its natural state except as specified below:*
 - a. Development by the public water supplier that is appurtenant to the production, supply, distribution, or storage of drinking water for the public.*
 - b. Interior alterations and repairs that do not expand the building footprint or impervious surface.*
 - c. Supplemental landscaping that enhances the effectiveness of the buffer in accordance with a landscape plan approved by the director of planning.*
 - d. Stormwater management facilities as approved by the director of stormwater and resource management, or designee.*
 - e. Lots, structures, or uses lawfully established prior to August 6, 1990.*
 - f. Encroachments by roads or utilities, except sewage lines, may be permitted by the director of planning provided that the following performance standards are met:*
 - 1. Road and main-line utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the hydrology of the watershed.*
 - 2. Indigenous vegetation shall be preserved to the maximum extent possible.*
 - 3. Non-essential elements of the road or utility project, as determined by the director of planning, shall be excluded from the buffer.*
 - g. Any removal of vegetation from the required buffer, whether permitted or unpermitted, shall be replanted in accordance with a landscape plan approved by the director of planning.*

(d) Prohibitions.

- (1) Within any reservoir watershed, the following uses shall be prohibited:*
 - a. Discharge of hazardous materials;*
 - b. Slurry coal facilities;*
 - c. Land application of industrial wastes;*
 - d. Sanitary landfills; and*

e. Manufacture, bulk storage, or distribution of hazardous materials unless enhanced performance standards are met as specified in paragraph (e) below.

(2) Within any buffer, the following shall be prohibited except as provided in paragraph (c)(3) above:

a. Structures;

b. Impervious surfaces;

c. Septic tanks;

d. Drain fields;

e. Trash containers/dumpsters;

f. Sewage pumping stations or sewage lines;

g. Fuel storage in excess of fifty (50) gallons;

h. Manufacture, bulk storage, or distribution of hazardous materials.

(e) Enhanced standards for the manufacture, bulk storage, or distribution of hazardous materials within a reservoir watershed.

(1) Operations proposing the manufacture, bulk storage, or distribution of hazardous materials shall be located at least 200 horizontal feet from any tributary stream or water supply reservoir;

(2) Spill handling and containment structures adequate to prevent release of hazardous materials in the event of a spill shall be required;

(3) All underground storage tanks containing hazardous materials shall be double-walled and contain a warning device;

(4) Submittal requirements:

a. List of all hazardous materials to be kept on site;

b. Soils report;

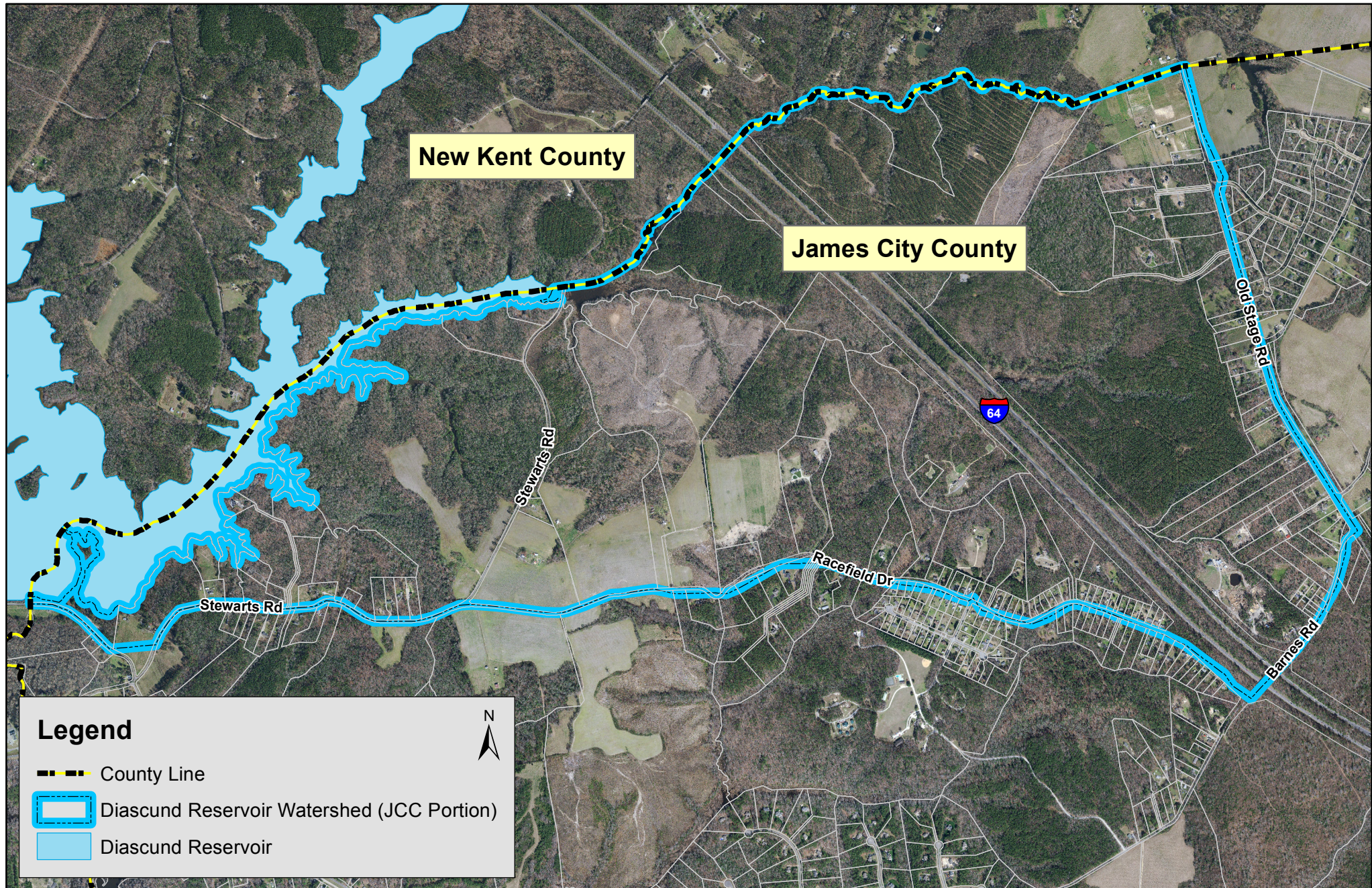
c. Description of surface and groundwater characteristics of the site;

d. Description of all spill preventing/containment/leakage control measures.

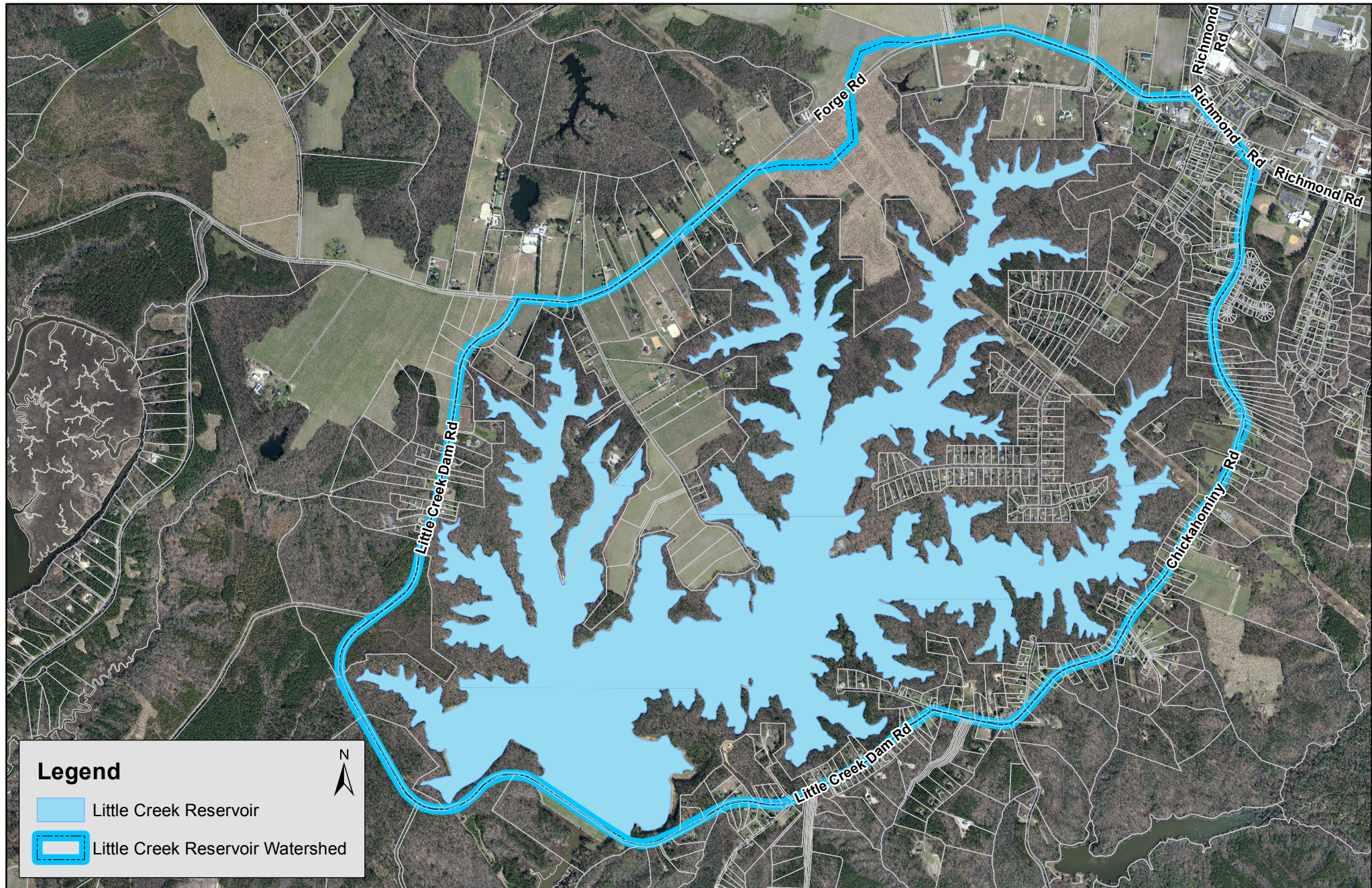
(f) Appeals.

(1) In the event the director of planning disapproves plans applicable to this section, the applicant may appeal the decision to the development review committee who shall forward a recommendation to the planning commission.

Diascund Reservoir Watershed



Little Creek Reservoir Watershed



Skiffe's Creek Reservoir Watershed

