



# COMMONWEALTH of VIRGINIA

## CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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

### Re: Resource Protection Area Setbacks

Dear Mr. Cook:

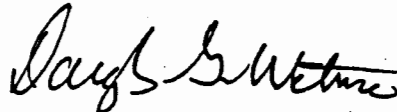
As I'm sure you are aware, the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) clarify that there is to be a 100-foot buffer area adjacent to and landward of all Resource Protection Area (RPA) features and along both sides of any water body with perennial flow. During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

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

RPA remains intact. Several Tidewater localities have had success through policy and regulatory language requiring a setback from the RPA boundary line that provides the property owner with enough usable area outside the RPA to construct a house and establish a usable yard area. Localities could also require a note on the plat that indicates that clearing or grading activities are prohibited within the RPA. In addition to new regulatory language, a plat note would help to educate new and prospective landowners on the implications of the Resource Protection Area. Because all localities are currently in the process of revising their local Bay Act programs to meet the requirements of the revised Regulations, this would be an appropriate time to make any such changes as well.

Please consider addressing these recommendations during the current revision of your local Bay Act programs and feel free to contact me if I can be of any assistance with this issue or any other issues of concern. I can be reached at 1-800-243-7229 or by e-mail at [dwetmore@cblad.state.va.us](mailto:dwetmore@cblad.state.va.us).

Sincerely,



Douglas G. Wetmore  
Principal Environmental Planner

Cc: Martha Little  
Shawn Smith