

MEMORANDUM

DATE: November 23, 2004

TO: The Board of Supervisors

FROM: Darryl E. Cook, Environmental Director

SUBJECT: Chesapeake Bay Preservation Ordinance Update

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During a Work Session on June 22, 2004, the Board requested information regarding the status of implementation of the Chesapeake Bay Preservation Ordinance and to be presented with policy issues related to implementation.

The outcome of the Work Session was that the Board endorsed two items related to the Ordinance implementation but wanted to see in writing the documents that would be used to implement the proposed policies. One of the policies related to how information regarding Resource Protection Areas (RPA) identified during the single-family building permit process would be transmitted to property owners and how future property owners will be made aware of the presence of the RPA on a given property. The second item related to the threshold number for the two Field Indicator Protocol methods for perennial stream determination. These two methods, the North Carolina and the Fairfax Methods, are proposed to have the threshold numbers adjusted from the State determined numbers of 30 and 25 to 28 and 24 respectively. These adjustments are based on information gathered in Powhatan Creek as well as input from a team of local environmental professionals.

The two guidance/policy documents were presented to the Board on July 27, 2004. The Board endorsed the two documents but wanted some minor changes to be made prior to the documents being finalized and distributed. These revisions related to evaluations of streams when adjacent property owners do not permit access to their property, notification letters to adjacent property owners regarding perennial determinations, time limits for staff to review and make a decision on a perennial determination, and language providing technical definitions and terms in the policies. Following the Board meeting, staff revised the documents and then met on August 27, 2004, with a stakeholders group that had helped develop the revised Chesapeake Bay Ordinance and the two guidance documents so they could review and comment on the changes.

The attached documents have been amended to address the comments of the Board and the stakeholders group. The stakeholders group wanted two additional points to be clarified in this Board memorandum. One point of clarification concerning single-family applications is that if the applicant is willing to establish a stream or riparian buffer on his/her property in the absence of a field perennial stream determination being made for that property in order to expedite the processing of his/her building permit, that buffer requirement would not apply to any other property and no notification of adjacent property owners would be made. The second point related to casualty losses for structures in the RPA. While the County's Ordinance does not contain language regarding this situation, the State's regulations in Section 9 VAC 10-20-150.A.2 state that the regulations "shall not be applied to prevent the reconstruction of pre-existing structure within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances." This is the policy that the Environmental Division has been applying and will continue to apply in these situations.

On October 1, 2004, our request to modify the threshold numbers for the field indicator methods was forwarded to the Chesapeake Bay Local Assistance Department (CBLAD). CBLAD is in the process of reviewing the change in the threshold numbers.

The attachments to this memorandum present the two guidance documents that will be used to implement the Chesapeake Bay Ordinance policies. The single-family RPA process is detailed in Attachment 1 and unless the Board has any recommended changes, that document will be implemented beginning December 1, 2004. Attachment 2 presents the Field Indicator Protocol methods along with the data sheets and threshold numbers. Once CBLAD approves the threshold number change, the Field Indicator Protocol guidance will be available for distribution to the affected public.

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Darryl E. Cook

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Attachments:

1. Chesapeake Bay Ordinance Submission Requirements for Single-Family Site Plans
2. Chesapeake Bay Ordinance Guidance for Determining Water Bodies with Perennial Flow