

November 17, 2003

The Honorable Katherine K. Hanley
Chairman, Fairfax County Board of Supervisors
Fairfax County Government Center
12000 Government Center Parkway, Suite 530
Fairfax, Virginia 22035-0071

Re: • Proposed Changes to the Chesapeake Bay Preservation Area Maps
 • Treatment of Approved and Pending Plans of Development

Dear Chairman Hanley:

I am providing these comments on behalf of the Northern Virginia Chapter of the National Association of Industrial and Office Properties ("NAIOP"). We appreciate the opportunity to comment on the proposed changes to the Chesapeake Bay Preservation Area Maps, and the recent difficulties faced in implementation of the Board's Policy for "Treatment of Approved and Pending Plans of Development" dated July 7, 2003 (3:00 pm).

Historically, between July 1, 1993 and July 7, 2003 Approved and Pending Plans of Development have been granted an exception under 118-6-9 as long as the proposed plan did not "Aggravate Conflict". A Water Quality Impact Assessment (WQIA) was never required to be submitted and approved for uses shown on a plan that qualified as an Approved or Pending Plan. It was our understanding that the Board's Policy referenced above would continue this practice. However, 2 weeks ago a NAIOP member received a Pending Plan letter (for Fairfax County Government Center Land Bay A) stating that the following uses, all shown on a proffered CDP/FDP, and not "aggravating conflicts" would require a:

- WQIA for improvements to an existing SWM/BMP facility;
- WQIA for an additional SWM/BMP facility;
- WQIA and Section 118-2-1(d) approval for a private road crossing of an RPA;
- Written request to allow a trail in the RPA; and a
- WQIA for all stormwater outfalls (which place the water in the SWM/BMPs).

We believe that the Board Policy of July 7, 2003 should be clarified so that if a plan qualifies as an Approved or Pending Plan of Development - no further studies or approvals relative to the Chesapeake Bay Preservation Ordinance will be necessary.

With respect to the proposed Amendments to the maps of Chesapeake Bay Preservation Areas, NAIOP testified to the Planning Commission on November 6, 2003 – and the Planning Commission made two motions (unanimously passed) in response to our concerns. They were:

Commissioner Alcorn: Mr. Chairman I would Move that the Planning Commission recommend that the Board of Supervisors request staff to review all newly submitted data following adoption of these maps and prepare a report on newly submitted data and challenges to the perennality designation and the resolution of those challenges and furthermore make any recommended changes to the maps within 12 months of the adoption.

Commissioner Alcorn: *Further I recommend that staff review the process for keeping the map up-to-date and report the recommendation back to the planning commission and board of supervisors, within 12 months following adoption of the maps.*

At the very least, NAIOP urges the Board of Supervisors to accept these two recommendations. However, we also hope that the Board would take the time to address the following mapping issues in a more rapid and determinative manner:

1. Publish one corrected map set with all sheets having the same date to make it easier to determine that you are looking at the approved mapping.
2. Take the time to correct obvious errors already noted to staff and at the P.C. hearing (and check for others) – streams in pipes, as noted through a Town Home project, should not be still designated as an RPA. Establish a process to correct such obvious errors without requiring the expense of preparing and submitting an RPA plan.
3. Incorporate the 214 RPA plans (approved since 1993 by Fairfax County) that precisely depict the RPA boundary in the new RPA maps.
4. Establish an ongoing process to update the RPA maps as RPA plans are approved by DPWES – just like County Tax Maps which are updated to reflect new subdivision plans, floodplain studies, etc.
5. Do not continue to exempt linear DPWES projects (and associated works) from site review regulations. This would require the Stormwater Division to obtain valid federal and state permits, comply with Chesapeake Bay Regulations, and perhaps give staff an understanding of what these regulations are like. It's simply unfair to allow the decade long practice of not requiring all county projects to comply with the Bay Act, let alone all other OSDS regulations when the county builds linear projects.
6. Establish a procedure for the review of Perennial Stream decisions when a land owner and the Stormwater Planning Division (the staff who made the initial stream mapping decision) disagree. It is simply unfair to have the same staff who make a decision hold court over those that may disagree.

The last issue deserves elaboration with a case study. There is a pending rezoning on a property known as the "Wedderburn Property". These are the facts:

- a) County staff says the stream is perennial with a score of 27 (vs. 25 cut off). Staff does state this stream reach is a transition zone.
- b) Wetland Studies and Solutions, Inc. says the stream is intermittent, with a score of 23.
- c) County staff report says *"Resident also stated that it flows 90% of the time. It should be noted that the survey was performed in the midst of a month-long wet spell, and perenniality determination should be verified in drier weather"*.

- d) The long term land owner and several downstream owners confirm that the subject stream goes dry most years.
- e) Email from County staff on 9/24/03 regarding this issue (i.e. the fact that the stream has been observed with no flow in normal years) states "The presence or lack of water is only one indicator of perenniality."
- f) County staff will not accept a "no flow" photo from October 2002 (since it was a drought) nor sworn testaments from land owners of historic conditions.

First of all, NAIOP sees in this case study a fundamental policy issue – we believe that the presence or lack of flowing water in a stream bed in a year of normal rainfall all year round is the determinative factor for a perennial flow decision – not "one factor". The biological and geomorphic features used in the County Protocol are simply indicators of the presence or absence of perennial flow to be used when direct observation is not practicable due to time constraints. But testimony of physical observations of no flow in most years, corroborated by scientific study, should be sufficient evidence to correct the map. Secondly having to appeal a decision to the same staff that made the decision is not appropriate or tenable – as most people prefer to not say that they made a decision in error.

NAIOP requests that the Board assess these issues, and address them today if possible – or take the time to have a workshop to resolve them before implementing this county-wide mapping and all of its attendant policies.

Thank you for your time and consideration of these important issues.

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.

Michael S. Rolband, P.E., P.W.S.
President

Enclosure: Specific Ordinance and PFM Comments

cc: Members of the Board of Supervisors (w/enc.)
Martha D. Marks, NAIOP (w/enc.)