

**Chesapeake Bay Local Assistance Board  
Southern Area Review Committee  
October 28, 2008  
1:00 p.m.**

**Southern Area Review Committee Members Present**

Beverly D. Harper, Chair  
Barry Marten  
Charles Whitehurst  
John Zeugner

**Southern Area Review Committee Members Not Present**

Richard Taylor

**Other Board Members Present**

Donald W. Davis, Chair  
William E. Duncanson, Vice Chair  
Gregory Evans

**DCR Staff Present**

Joseph H. Maroon, Director  
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance  
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance  
Amy Doss, Senior Environmental Planner  
Michael R. Fletcher, Board and Constituent Services Liaison  
Adrienne Kotula, Principal Environmental Planner  
Daniel Moore, Principal Environmental Planner  
Shawn Smith, Principal Environmental Planner  
Elizabeth Andrews, Office of the Attorney General

**Others Present**

Diane Cook, Prince George County  
Bill Hopkins, Town of Smithfield  
Kim Hummel, Isle of Wight County  
Dick McElfish, Chesterfield County  
Diana Parker, Falls of the James Sierra Club  
Douglas Pritchard, Chesterfield County  
Scott Williams, Chesterfield County

**Call to Order and Opening Remarks**

Ms. Harper called the meeting to order. A quorum was declared present.

### **Local Program Reviews: Compliance Evaluation**

Mr. Sacks reviewed the three types of review of Local Bay Act Programs.

**“Phase I Consistent”** means the required local ordinances (zoning, subdivision, maps, etc.) are in place to designate CBPAs and to require that the performance criteria are met

**“Phase II Consistent”** means the required comprehensive plan components have been adopted

**“Compliant”** means the locality is properly implementing the required Phase I components of the local Bay Act program

#### *Chesterfield County*

Ms. Kotula gave the report for Chesterfield County. She noted that Dick McElfish, Doug Pritchard and Scott Williams were present from the County. She thanked them for working with her during the review process.

Chesterfield County’s initial compliance evaluation was completed in September of 2007 and resulted in eight conditions.

Ms. Kotula said that she would address Condition #1 at the end of her presentation.

Ms. Kotula reminded the Board that Chesterfield County appealed the imposition of Condition #2, which required that the County properly impose the requirements of the Regulations on vested properties. Department and County staff were successful in reaching a settlement agreement, which was approved by the Board at its September 15, 2008 meeting. A Consent Order signed by the Chesterfield County Attorney’s Office and the Office of the Attorney General was submitted to the Chesterfield Circuit Court on September 29, 2008. A term of the Consent Order was that it satisfied this condition. Accordingly, staff believes that this condition has been adequately addressed.

Condition #3 required that the County update their Engineering Reference Manual to be consistent with the Regulations. This revision has occurred and new versions of the manual have been made available to the public and therefore this condition has been addressed.

Condition #4 required that the County cease the implementation of their BMP credit program. The County has rescinded their policy allowing BMP credits and a review of County files revealed that all new requests for credits from the program have been denied.

Condition #5 required that utility exemptions be administered in accordance with the Regulations. Chesterfield County has included a section within their newly revised Engineering Reference Manual that properly details the process that must occur when utilities are crossing the RPA. All new proposals will be required to comply with this policy and therefore this condition has been addressed.

Conditions #6, 7 & 8 required that the County properly administer encroachments within the RPA. A review of all encroachment requests over the last year revealed that the County is following the proper procedures, requiring WQIAs when necessary, and requiring formal exceptions when they are necessary. Ms. Kotula said that staff opinion was that all three of these conditions have been addressed.

Condition #1 required that the County properly delineate RPA on all development plans and in the field. Specifically, the initial compliance evaluation found that the County properly verifies water bodies with perennial flow for protection with RPA buffers but there is no equivalent process for accurately identifying nontidal wetlands as RPA features.

Ms. Kotula explained that in an attempt to address this condition, the County issued a policy entitled *Designation of Resource Protection Areas (RPA) Resulting from the Perenniality Flow Determination Process* on April 30, 2008, and a copy of this policy was attached to the staff report. The County developed the policy to provide a balance between the CBLAB *Resource Protection Areas: Nontidal Wetlands* Guidance Document and the County's desire to balance the needs between environmental protection and economic development. The Department of Environmental Engineering's Engineering Supervisor has stated that the County recognizes the differences between their policy and the CBLAB Guidance Document and that they believe that their policy "is superior to the CBLAB Guidance in that it achieves RPAs in more extensive locations which would not be RPAs per CBLAB Guidance." The Engineering Supervisor also believes that the County Policy "will achieve a similar acreage of property within RPAs as that required by the Regulations" due to the fact that they include wetlands on the outside of upland levees as RPA features.

Ms. Kotula said that staff's position was that the County policy contains elements that do not meet the regulatory requirement of including those non-tidal wetlands that are "connected by surface flow and contiguous to ... water bodies with perennial flow" per Section 9 VAC 10-20-80 B 2 of the Regulations. The primary concern with the County's policy revolves around Figures 1, 2 and 5 which depict the limits of the RPA extending along nontidal wetlands for only 500 feet beyond a perennial water body. This method fails to base RPA designations upon the hydrologic features present on a site, which directly conflicts not only with the requirements of Section 9 VAC 10-20-80 B 2 of the Regulations, but also conflicts with Section 9 VAC 10-20-105 ii which requires that RPA boundaries be adjusted based upon the evaluation of the site.

Division staff has met with the County to discuss their concerns and has also reviewed numerous development plans to determine whether the County policy would have an impact on the number of features that are included as RPA. Of the eighteen plans reviewed for the delineation of nontidal wetlands, seven contained nontidal wetlands where the RPA designation would differ between the County policy and the Regulatory requirement. The County acknowledges that there are development sites where the RPA designation may differ, but nevertheless feels that their approach accomplishes the objective of providing a balance between the protection of natural resources and the County's goal of economic development.

Ms. Kotula said that staff opinion was that Chesterfield County's policy entitled *Designation of Resource Protection Areas (RPA) Resulting from the Perenniality Flow Determination Process* is not consistent with the Regulations, and that Condition #1 has not been adequately addressed. She said staff is recommending that Chesterfield County be found noncompliant and be given until February 13, 2009 to address the following condition:

The County must ensure that all required RPA features are consistently and properly delineated on all tentative and final construction plans, and in the field for consistency with 9 VAC 10-20-80 and 9 VAC 10-20-105 of the Regulations.

Ms. Kotula said that the County had prepared a presentation for the Board to consider regarding this policy.

Mr. Davis asked if the staff has been out to look at sites similar to this with the Chesterfield County's delineation to see how it matches up with the guidance provided by the Board.

Ms. Kotula responded that there were eighteen plans reviewed; five sites were visited. Of those five visited there was only one site where there is a difference between the Regulations and County policy. One of the sites contained an upland levee where there was a difference between the County's policy and the Department's guidance, but that is not the issue at hand.

Ms. Harper asked if it was a great difference between the RPA delineations.

Ms. Kotula's response was that on the one site there were two wetland drainages that would have different delineations representing a significant amount of area.

Mr. McElfish thanked the Committee for having him today and thanked staff for visiting the County on more than one occasion. He introduced Mr. Pritchard and stated that he would present how they think they are in compliance with the regulations.

Mr. Pritchard gave the following presentation.



# Resource Protection Areas Non Tidal Wetlands



CHESAPEAKE BAY LOCAL ASSISTANCE BOARD  
September 17, 2007

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION  
CHESTERFIELD COUNTY

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in 2007, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation of Chesterfield County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on August 14, 2007 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report; and

WHEREAS the Committee recommended removal of condition number 2, and requested DCR staff work with County Staff to study the issue further and present to the Board a revised condition, if appropriate; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Chesterfield County's Phase I program do not comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Chesterfield County to immediately address recommended condition number 4 and complete the remaining seven (7) recommended conditions contained in the staff report no later than June 30, 2008.

1. For consistency with 9 VAC 10-20-80 and 9 VAC 10-20-105 of the Regulations, the County must ensure that all required RPA features are consistently and properly delineated on all tentative and final construction plans, and in the field. Specifically, the County must accurately delineate RPA nontidal wetlands consistent with DCR's new guidance titled *Resource Protection Areas: Nontidal Wetlands*.

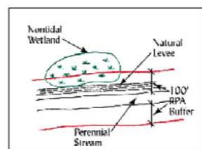


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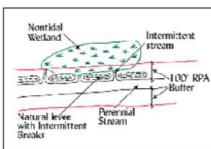
Nontidal Wetlands Separated by a Levee

The following addresses nontidal wetlands as an RPA feature when they are separated from a water body with perennial flow by a natural river levee or berm, which is not a wetland itself and therefore separates the wetland from the stream channel. The formation of a raised depositional area adjacent to the bank of a stream or river channel can range from almost imperceptible on small streams to very high and wide along major rivers. The designation is centered on the two requirements for nontidal wetlands that the regulations require be included in the RPA: that the wetland be part of a system that is (1) connected by surface flow, and (2) contiguous to (touching) a tidal wetland or perennial stream (Figures 3A and 3b). Such nontidal wetlands are not required to be included as RPA features.



The natural levee separates the nontidal wetland from the perennial stream, so it is not contiguous to a perennial waterbody and does not require the RPA buffer.

FIGURE 3A

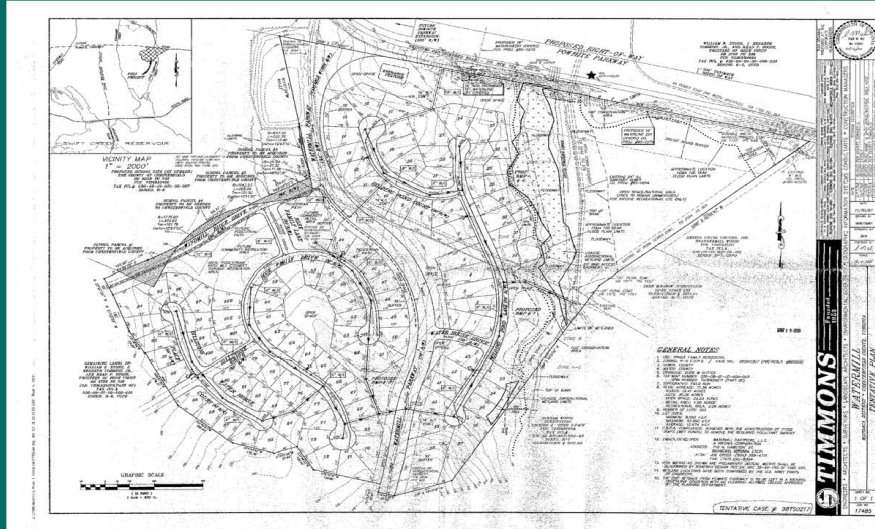


This nontidal wetland is not connected by a water body with perennial flow, so it does not require the RPA buffer.

FIGURE 3b

Interrupted and Disconnected Nontidal Wetlands

The following addresses the inclusion of nontidal wetlands as an RPA feature when the wetlands are interrupted by man-made obstructions (such as roads, levees, utility lines and crossings, etc.). In these instances, the wetland was one contiguous system prior to the man-made interruption, so the contiguity requirement would have been evident prior to the interruption.



DEPARTMENT OF ENVIRONMENTAL ENGINEERING - POLICY NO. A080005.000	
SUBJECT: <b>Designation of Resource Protection Areas (RPA) Resulting from the Perenniality Flow Determination Process</b>	
EFFECTIVE DATE: 30 April 2008	SUPERCEDES: None
APPROVED: <i>RADKOWSKI</i> DIRECTOR	DATE: 30 April 2008
<b>Purpose:</b> To provide Chesterfield County guidance in the establishment of Resource Protection Areas (RPA) after a perennial flow determination has been made and approved.	
<b>Policy:</b> The designation of Chesapeake Bay Preservation Areas as Resource Protection Areas (RPA) will be generally governed by the Virginia Department of Conservation and Recreation (DCR) publication, "Resource Protection Areas - Nontidal Wetlands - Guidance on Chesapeake Bay Preservation Area Designation and Management Regulations" as adopted, June 18, 2007, and as revised, with the following additional local guidance, clarifications, and exceptions:	
<ol style="list-style-type: none"> <li>1. The limit to which an RPA shall extend beyond the stream or point of perennial flow is 500 feet, measured tangentially. (See Figure 1 on sheet 2 of 5, attached.)</li> <li>2. The terminus of the RPA shall be formed by the upstream projection of a 100-foot radius from the point that is 400 feet from the point of perennial flow to transition to the actual width of the RPA at 400 feet. (See Figure 2 on sheet 3 of 5, attached.)</li> <li>3. Wetlands beyond the 500 feet shall not be impacted except for the purposes of infrastructure construction. Standard setbacks will apply.</li> <li>4. The DCR guidance, as illustrated in Figures 3A and 3B, allows for non-tidal wetlands, when separated by a natural levee, to be considered as not connected. In Chesterfield County, should wetlands exist within the stream valley system (e.g., 100-year floodplain), of the perennial stream and separated by a natural levee, the county will consider it connected and the 100-foot upland conservation buffer shall be measured from the wetlands including those that are separated by a natural levee. (See Figure 3 on sheet 4 of 5 and Figure 4 on sheet 5 of 5, attached.)</li> <li>5. The DCR guidance regarding Interrupted and Disconnected Non-Tidal Wetlands, provides for non-tidal wetlands separated by a man-made obstruction but still connected via surface flow to be included as RPA features. In Chesterfield County, as illustrated in Figure 4A, non-tidal wetlands that have been separated by man-made obstructions but remain connected via perennial flow shall be included as RPA features.</li> <li>6. Previous guidance which was in effect prior to June 18, 2007 remains in effect. (See Figure 5 on sheet 6 of 6, attached.)</li> </ol>	
DEPOL A080005.000	PAGE 1 OF 6



4. The DCR guidance, as illustrated in Figures 3A and 3B, allows for non-tidal wetlands, when separated by a natural levee, to be considered as not connected. In Chesterfield County, should wetlands exist within the stream valley system (e.g., 100 year floodplain), of the perennial stream and separated by a natural levee, the county will consider it connected and the 100-foot upland conservation buffer shall be measured from the wetlands including those that are separated by a natural levee. (See Figure 3 on sheet 4 of 5 and Figure 4 on sheet 5 of 5, attached).

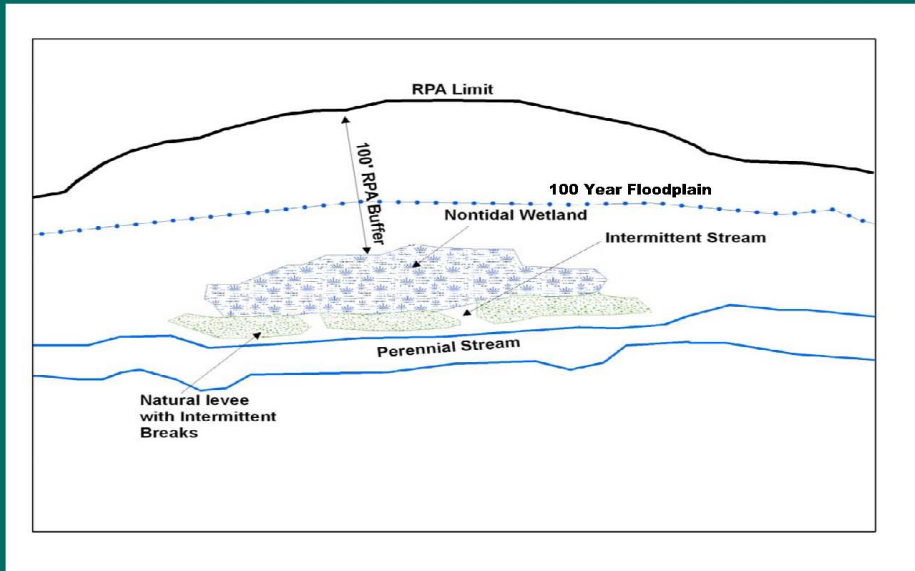


Figure 3



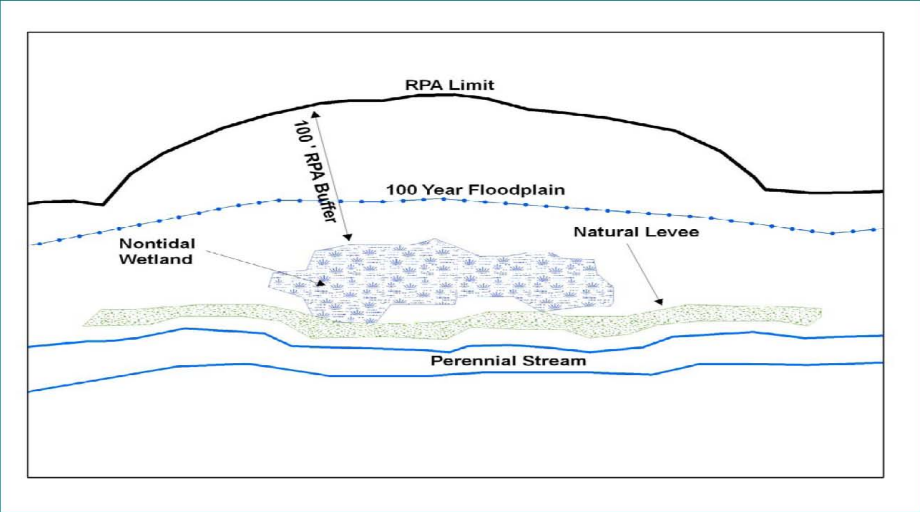
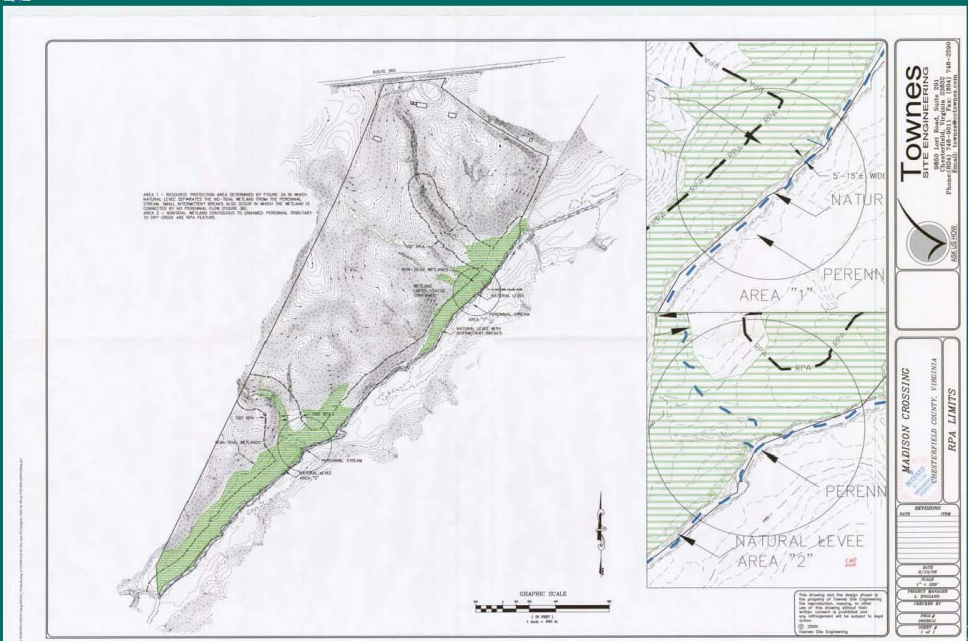
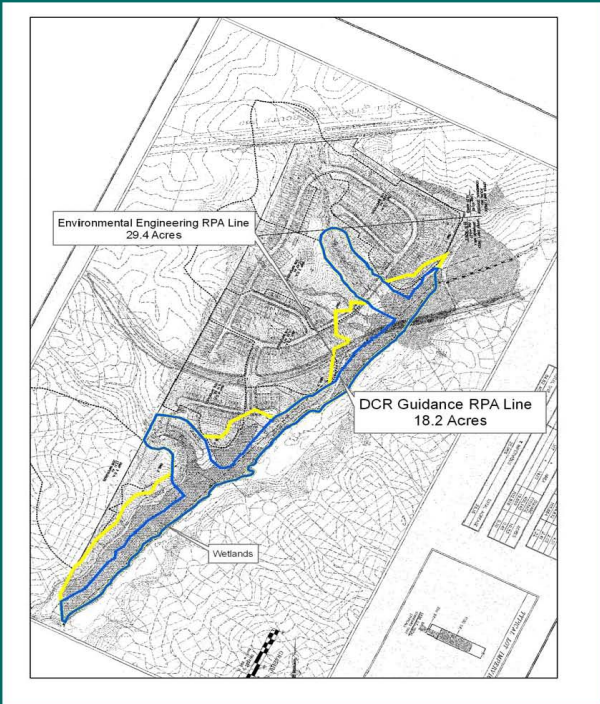


Figure 4





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EFFECTIVE DATE: 30 April 2008	SUPERCEDES: None
APPROVED: <i>RMM/epd</i> DIRECTOR	DATE: 30 April 2008
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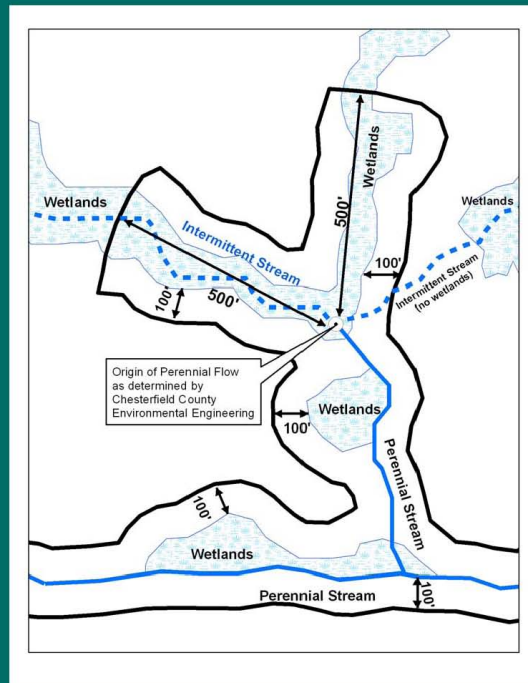
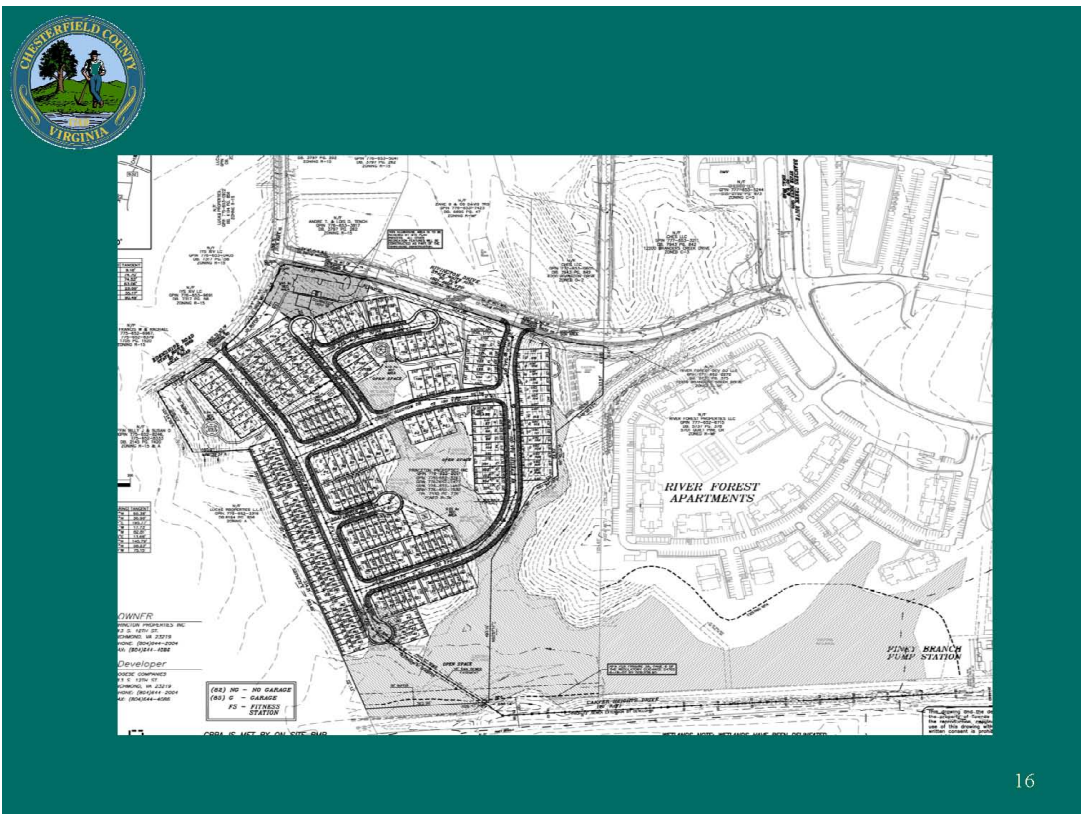
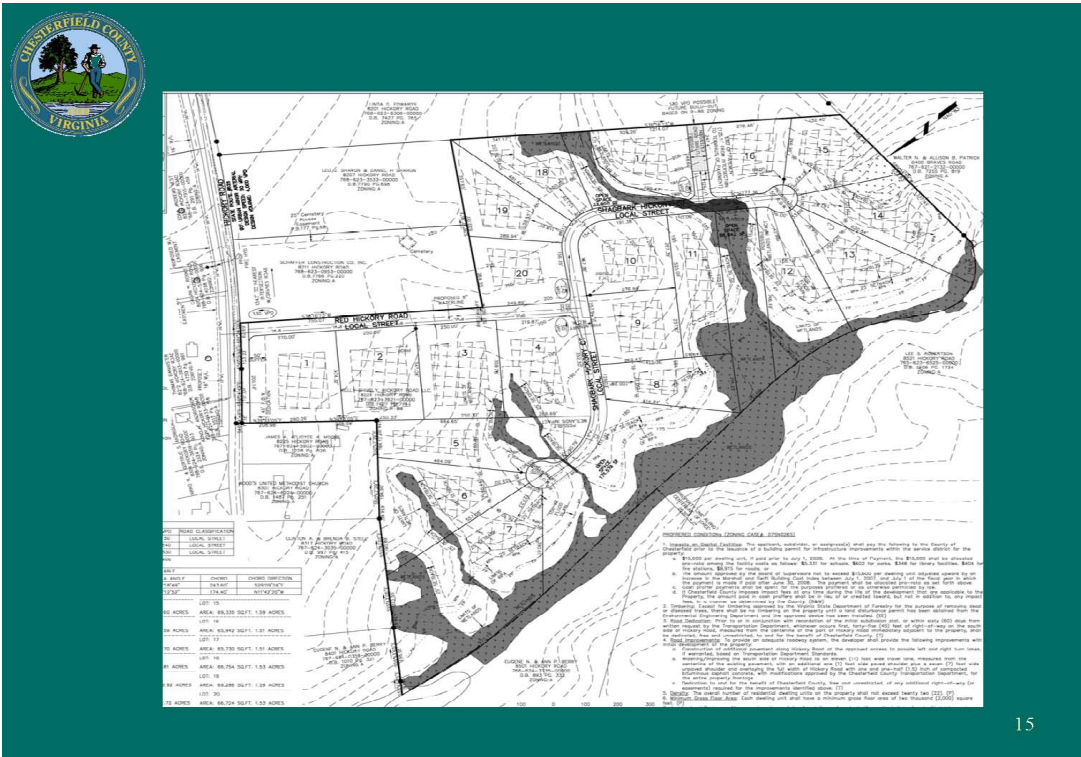


Figure 1





DEPARTMENT OF ENVIRONMENTAL ENGINEERING - POLICY NO.: A080005.000	
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EFFECTIVE DATE: 30 April 2008	SUPERCEDES: None
APPROVED: <i>R. M. C. [Signature]</i> DIRECTOR	DATE: 30 April 2008
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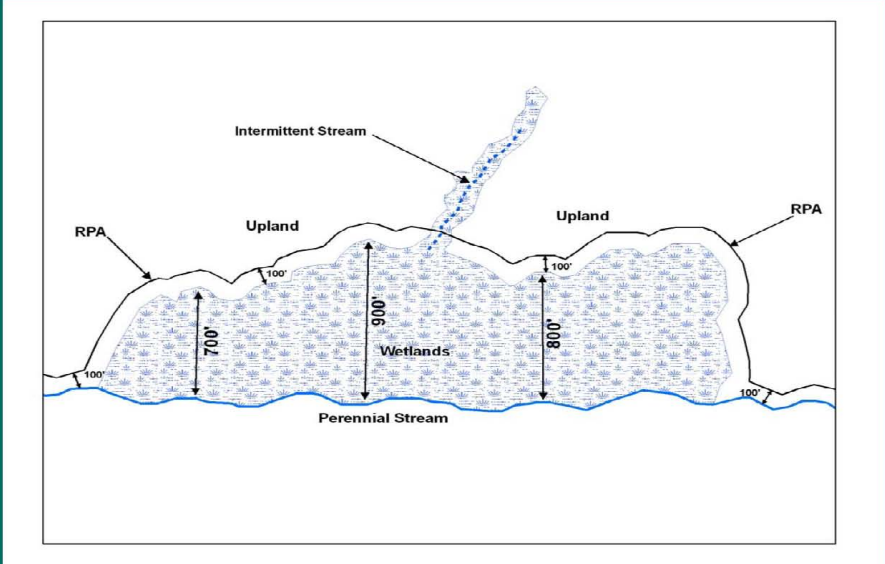


Figure 5

Mr. Pritchard introduced himself and thanked Ms. Kotula and Mr. Hughes. He said their ability to articulate the guidance from DCR was helpful. He stated that they had visited six sites in the County with six engineering firms and felt that the session had been very helpful. He stated that, by and large, the County policy does follow DCR Guidance. He hopes to answer the questions that have been raised, as he endeavored to use the sites that were visited in his presentation and hopes to answer the questions that have been asked.

He presented the original compliance evaluation resolution. The Chesterfield point of view is that the Guidance provides the minimum approach for adhering to the regulations. The Guidance does not prohibit a locality from formulating what it feels is a superior approach to the subject. He stated that is why we are here today and it would be easy to follow the guidance, but what the County was proposing was in the best interest of Chesterfield County. He said that the County has an important drinking water reservoir called the Swift Creek Reservoir that is fed by nine major tributaries all of which exhibit the upland levee characteristics.

He presented the DCR Guidance that describes an upland levee as a formation of raised depositional area adjacent to the bank of a stream or river and can in size range from imperceptible on small streams to very high and wide along major rivers. The inclusion of nontidal wetlands behind these levees is centered on the two requirements, one being connected by surface flow, the other being contiguous or touching.

Mr. Pritchard said that the County understood the DCR staff position. However, he noted that County employees have a similar situation with regard to the Planning Commission and County staff recommendations regarding consistency with the land use plan. He stated that the planning commission has the authority to approve plans that do not meet the plan against the recommendation of staff.

Mr. Pritchard said that when the DCR guidance was presented in June 2007, Chesterfield County believed that it was not consistent with the way the County had been addressing the issue. He said that he was aware of the levee system feeding the reservoir from the standpoint of having walked proposed sewer lines and seeing areas that would block sedimentation from getting into the streams. He said that for the County to have guidance that would prevent giving the maximum level of protection to the reservoir was problematic.

Mr. Pritchard said that alluvial material adjacent to the top bank is evidence that there is actually contact with the water and that the area where the alluvial material is occurring is subject to being inundated by stormwater from that creek so the creek can pick up the material from areas adjacent to it and convey it down stream. This is why we want to have the protection of an upland buffer around the wetlands.

Mr. Pritchard referenced a subdivision on the slide called Watermill in the upper Swift Creek area. He showed Moon Tomahawk Creek and the upland buffer around it. He added that it is difficult to see, but showed the wetlands and the 100 foot upland buffer.

He showed steep slopes, where staff kept the development away from the area by the addition of the 100 feet upland buffer; otherwise, he noted with the levee system, the RPA would be on the other areas he pointed to.

Mr. Pritchard said that the developer took exception to the County's point-of-view and they had Shep Moon come out to the site just after a very hard rain storm they were viewing just the top tip of the levees picking up above the water level and the entire area was engulfed in water.

Mr. Maroon requested that Mr. Pritchard point out for this site the difference between following the Board Guidance compared to following the County policy.

Mr. Pritchard showed on the slide that using the Board guidance, the RPA line would have been measured 100 feet off of the stream and within the wetlands.

Ms. Harper asked, "if it was wetlands off a stream, why wouldn't our buffer be off of the wetlands?"

Mr. Pritchard said that the guidance says that if you have those upland levees that the RPA doesn't apply to the limits of the wetlands. He added that the upland levee is immediately adjacent to the top of the banks.

Mr. Pritchard, pointing at slide 5, showed culverts where the stream comes through the levee, and added that it is a perennial stream.

Mr. Davis asked if the levee Mr. Pritchard was referring to was continuous with no breaks the entire length of the perennial stream.

Mr. Pritchard said no. He added that he knows that in the Board Guidance there is a presentation of an uninterrupted levee but he has yet to see a levee that doesn't have a break in it ultimately.

Mr. Pritchard said that the County Policy addresses the situation described by Figures 3A and 3B of the Board Guidance. He explained the Board Guidance allows such wetlands separated by natural levees to be considered not connected. In Chesterfield County, if wetlands exist within a stream valley system, for example the 100 year floodplain, of the perennial stream and separated by a natural levee, the County will consider them connected and the 100 foot upland RPA buffer will be measured from the wetlands including those that are separated by a natural levee. He said this is illustrated by Figures 3 and 4 of the County's Policy.

Mr. Pritchard, referring to slide 8, explained the difference between the location of the RPA buffer using the Board Guidance and the County policy.



Mr. Evans stated that it sounded to him that the County was not necessarily proposing an alternative guidance, rather the County's policy regarding the 100 foot buffer in these situations is a supplement to the Board's guidance rather than an alternative to it.

Mr. Pritchard said that he would say the County's policy is more restrictive and provides a higher level of water quality protection.

Mr. Evans asked if it is in lieu of our guidance.

Mr. Pritchard said that it is over and above.

Mr. Evans asked if they are proposing an additional restriction above what we are proposing in our minimum guidance or are you proposing an alternative way of calculating from what is in our guidance.

Mr. Pritchard said that the County staff is making the case ultimately to discuss the 500 foot policy with regard to the nontidal wetlands. He stated they are making a case to balance the more restrictive approach with the levees because this works best for Chesterfield County because its most important streams have these alluvial deposits that makes the Board's guidance less restrictive than the level of protection Chesterfield County wants to provide for its reservoir.

Mr. Pritchard clarified that the engineering department proposal is to use the County policy of April 30<sup>th</sup> and use it in the field in the alternative to the Board's guidance.

In response to a question from Mr. Evans, Mr. Pritchard confirmed that he was proposing an alternative to the Board Guidance rather than a supplement to it.

Mr. Pritchard referred to a slide of Madison Crossing on Dry Creek and Route 360 (Hull Street Road). He pointed out the Swift Creek Reservoir, steep slopes and a U.S. Army Corps of Engineers approved wetlands delineation. He added that the Corps has confirmed the outer limits of these wetlands. He showed how the Resource Protection Area per the Board Guidance remains within the wetlands and provides no upland buffer outside of the wetlands to protect the water quality.

Ms. Harper asked for clarification regarding the wetlands. Mr. Pritchard discussed whether the wetlands above the levees were connected and contiguous

Mr. Pritchard said that per the interpretation of the Board guidance, these wetlands are not considered connected and contiguous. Per County policy they are considered connected and contiguous.

Mr. Pritchard described slide 11, that showed the site as developed with the blue line showing the RPA line per the DCR Guidance and the yellow line the RPA per Chesterfield County policy. He explained that in this particular case this plan came out after the DCR guidance but before the County had instituted its policy. Using GIS

technology, the comparison between the guidance and the policy showed DCR guidance yields 18.2 acres of RPA and the environmental engineering policy yields 29.4 acres of RPA. He added that in Chesterfield County, this approach works better, and the development community is accustomed to this approach. The County would not want to lose their ability to maintain this level of protection.

Ms. Harper explained to Mr. Pritchard that the County is not losing its ability to maintain that level of protection, that the County can make it much stronger than the Board's regulations if it so chooses. She added that the County can amend their policy to be stronger than Board policy so it is not an issue to maintain that level of protection; the County most definitely can.

Mr. Davis said that he thinks this clearly falls under other lands or sensitive lands that the localities have a right to be able to expand the RPA.

Mr. Pritchard said that what they are doing is making their case for the issue with 500 feet.

Mr. Marten asked if the extensions in blue, the little figures of RPA, would continue to be there under County's policy.

Mr. Pritchard said yes.

Mr. Evans asked if he had one example of where the County policy would have met less than the minimum of the Board Guidance.

Mr. Pritchard began discussing the issue of the County's policy on the 500 foot limitation on the RPA. He explained that per the policy, the limit to which an RPA shall extend beyond a stream or point of perennial flow is 500 feet measured tangentially. Referring to a slide, he showed the main perennial stream and explained that with a secondary perennial stream, as long as it is perennial, it is going to be an RPA. He added that once they establish that point of perenniality, to balance out the County's more restrictive aspect in terms of the natural levees, instead of going forever in this direction from that point of perenniality, they are going to enclose an intermittent stream with an adjacent wetlands by the RPA another 500 feet. They will enclose wetlands that stem from the point of perenniality only up to another 500 feet. They will cut off, consistent with the DCR guidance, whether it is an intermitted stream by 100 feet.

He referred to a slide of Hickory Creek Estates, a site visited by himself and Adrienne and Nathan. He explained that they found two wetlands which were contained within the bed and banks. He described how the RPA was delineated on the site and where the RPA was limited to 500 feet. He noted that in this situation they were "cutting it off at 500 feet." He added that the loss of RPA by that limitation is "miniscule as compared to the loss of RPA by implementing the DCR guidance with respect to the natural levees."

Mr. Davis asked Mr. Pritchard to describe how he arrived at a 500 feet instead of 400 feet, 600 feet, or 1000 feet limit and what the environmental effect of that is to the waters that would be running through the wetlands area, eventually getting into the perennial streams.

Mr. Pritchard said that they looked at a number of different examples. In referring to the previous slide, he noted that this development predates the Board's guidance. He explained that at the time, they had the RPA as basically 100 feet off of the wetlands, and when they started dealing with the applicant, County staff explained that according to the Board guidance the RPA is going to have to come all the way up to several areas he pointed out on the slide. He noted from the applicant's standpoint this would wipe out about thirty to forty percent of the project.

Mr. Pritchard stated the following: "They studied the guidance and said they needed to find some upland levees down here and sure enough they were found down here. So where previously the RPA was up here, that upland separation between the perennial stream brought the RPA down here. So what this did was create an opportunity where if they followed this and gone through here you would have had an RPA right through there. Consequently, they have come in here and actually filled in wetlands to take advantage of the fact that this is no longer an RPA. What is the average distance that you have through here? It is about 500 feet. We felt like 500 feet was pretty representative of the extent of reasonable and balanced protection of our waters."

Mr. Davis said that in this case, it is 500 feet but in others it could be a thousand or it could be two feet.

Mr. Pritchard said that he thinks the key is the configuration of the wetlands in relation to the perennial stream, and that as long as you have this type of situation, it could be 700 feet, 900 feet, 800 feet. It would not stop at 500 feet. From this standpoint, since this separate leg is over 500ft. from this perennial stream, we would not then wrap this separate leg in RPA.

Mr. Maroon asked if the minimum would be 500 feet.

Mr. Pritchard said that was correct.

Ms. Harper asked where the County's RPA would be on the slide. She asked if it would be right where it is shown.

Mr. Pritchard said that was correct.

Ms. Harper asked how that compares to the Regulations governing the RPA.

Mr. Pritchard stated that if you are within the Swift Creek Reservoir, such as Blackman Creek or Tomahawk Creek, you are going to have upland levees through here. (pointing

to the slide). So the RPA would be somewhere within the wetlands exposing the rest of the wetlands to potential encroachment by development.

Mr. Davis asked for clarification about the area to the north in the slide, an intermittent stream that was not included in the RPA. He asked if, based on the guidance, the wetland area is located within the bank of a ditch, or if it extended beyond the bank of the ditch.

Mr. Pritchard said the wetland has to extend beyond the bank of the ditch to be enclosed. The guidance from DCR would have also enclosed that. They feel that this is the important part of the wetland protection system adjacent to the perennial stream. They want to protect that. They are going to keep people out of this area, but they do not want to add the additional 100 feet in the other area when it is beyond 500 feet.

Mr. Mc Elfish stated if they are identified wetlands, the County keeps development out of them and they have for years.

Mr. Davis said that on a previous slide it had a cul-de-sac which was placed inside of a wetland.

Mr. McElfish said that he believed they were able to get a permit because the wetlands were outside of the RPA.

Mr. Pritchard said that the development predated the policy and that if the County's policy was in effect they would have been able to prohibit them from doing that.

Mr. Maroon suggested that they have a refresher and return to the last slide. He also suggested that the Board would get a better understanding of what the County is trying to do with this particular landscape if they could get a presentation from Nathan Hughes on how the DCR Guidance would treat this situation. He expressed that they are discussing guidance and not the regulations, and that the County is presenting an alternative, they believe superior, approach to what we are requiring. The Board will have to determine if their policy is at least equivalent in protection to what we are requiring.

Ms. Salvati added that staff has been out to sites that Doug has discussed and that Nate can give his observations on them. She also noted that the question staff asked in making recommendations to SARC was whether the policy developed by the County is consistent with the regulations. She stated that staff did not feel it was their role to determine if it offered an equivalent level of water quality protection, but simply if it complies with the regulations, and that is the decision that SARC has to make.

Mr. Davis asked to hear two things from Nate, or others. First, he wanted to know if Nate had been to the site, and second, does he agree with the location of the RPA.

Ms. Salvati stated that he has not been to the site, but he has been to others.

Mr. Davis noted that this was the first time the Board was hearing the proposal. He noted that the development of the guidance was based on the regulations themselves and also noted that the guidance was developed in an eighteen month process and that they were careful with determining what was considered connected and contiguous wetlands.

Ms. Harper asked who represented Chesterfield on the Ad-Hoc Committee.

Mr. Davis stated that a gentleman from Timmons and a gentleman from Chesterfield County were on the Ad-Hoc Committee.

Mr. McElfish stated that Scott Flanigan from Chesterfield County was on the Ad-Hoc Committee and he represented the science side, not the policy side. They have been trying to separate the two sides.

Ms. Salvati asked if he represented Chesterfield County.

Mr. McElfish said yes the he did.

Ms. Harper requested that Mr. McElfish clarify his previous statement.

Mr. McElfish stated that the County has been trying to keep policy and science separate as people have been trying to mess with the science.

Ms. Harper asked if the County policy was strictly policy and not based on any science.

Mr. McElfish stated that he is looking at the perennial flow determination and any other issues out there that are determined with science.

Mr. Pritchard stated that the process of establishing perennality through the North Carolina and Fairfax method is the science aspect of it. The policy aspect of it would be the application of this guidance to those areas that have been deemed to be perennial.

Mr. Evans asked if he was correct in saying that the policy goal here is essentially a trade off because you want to have the area that extends beyond our guidance as a primary area and now you are saying that the reality of the developers is that you need to compensate with this area. He asked if that is what they were trying to do.

Mr. Pritchard said that was correct and it works better in Chesterfield County because of the uniqueness of the plethora of upland levees that the County has on its streams.

Ms. Harper asked for clarification, as she indicated that Mr. Pritchard in a round about way was admitting that in some aspects the County's policy is greater than the Board's Regulations, but in others Mr. Pritchard in a round about way is admitting that by leaving certain things out the County is not following Board Regulations or Guidance.

Mr. Pritchard responded he felt like “we are providing a balance that is actually superior to the level of protection that the guidance provides. All and all, yes we are attempting to balance it out but it is still balanced out in the favor of water quality protection.”

Ms. Harper responded “but you also admit that you do not follow the regulations in some of these instances.”

Mr. Pritchard says “we do proudly because we think what we’ve got is better.”

Mr. Maroon asked to hear from Nate.

Mr. Hughes made the following comments: “I will start with Figure 3. As Doug said, we have a perennial stream and we have a wetland. What we have here is upper levy of course, but these connections are stream channels, intermittent stream channels, so therefore, these wetlands are not contiguous to a perennial water body or tidal wetland. They are connected by surface flow via the intermittent stream, but they are not physically touching that perennial stream. Now, if those were wetlands, then that would be a different case. The only way our policy would not make this RPA, if those are wetlands, is if they are contained only within the bed and bank, Figure 5 of our Guidance. In this case, we are not meeting the regs, we are not contiguous to a perennial water body.”

Mr. Maroon asked where he would draw the Board’s RPA line on that figure.

Mr. Hughes said for this particular example, with there being intermittent streams, it would go 100 foot off the perennial stream channel.

Ms. Salvati stated by way of background, this particular figure was discussed at length at the Ad Hoc Committee level in determining how this would be treated and the test that the Ad Hoc Committee used was would that particular figure, in that particular instance, comply, consistent with the regulations, would that wetland have to be a part of the RPA? She added if the regulations would suggest that those wetlands were to be part of the RPA, then yes, they should be included.

Mr. Maroon commented in the case for Figure 3, at least, Chesterfield County exceeds all requirements in the Board’s Regulations.

Mr. Davis stated that Chesterfield County still could include that area as other lands or sensitive lands. They would have that right as long as they go through the normal process.

Mr. Maroon commented that’s what he meant by “exceeds”, and they are doing more than they are required to do.

Mr. Hughes commented on the next slide and stated “...that an upland levee without breaks is very rare; you can find a break somewhere; you then determine what type of

feature is present at that break. So, this levee could continue and continue, but if you have a break right here (pointed at slide), that is where the surface water is getting back into the stream, and as a result, is still technically contiguous and connected by surface flow to that perennial stream channel and would require the buffer, per our guidance. Now if this levee was to continue and continue, then, of course, the RPA would, like previously stated, go off the perennial stream channel. As Doug said, it would encompass some of the wetlands but it is not going to be the additional 100 feet from the wetland boundary.”

Mr. Maroon stated this is another situation where the County is going beyond what is required, in Figure 4.

Mr. Hughes answered “yes” and commented on the next slide saying that “we are still contiguous to this perennial stream channel right here (pointed to slide). These wetlands are touching this perennial stream channel; they are contiguous. Now what we do have in this example is an intermittent stream channel, but in this case it is viewed as a surface flow connection. Intermittent streams only flow during wet times/part of the year; but, the regulations say nothing about when that surface flow connection has to occur. We still have it here, therefore, our buffer would continue, instead of breaking the RPA at 500 feet. We still have contiguous wetlands that continue on up the drainage. This figure (referring to Chesterfield’s Policy-Figure 3) is identical to our guidance document. The wetlands are spatially separated; they are still connected by surface flow to this perennial stream channel, but are spatially separated so you don’t have the contiguous aspect”.

Mr. Maroon asked Mr. Hughes to outline the buffer according to the Board’s Guidance.

Mr. Hughes commented that the wetlands on this drainage are still contiguous and an RPA feature. The only exception would be if there is a ‘pinch point’ where the wetlands tied into this intermittent stream; say this little section right here was just an intermittent stream, and then wetlands were present again further up the drainage. In this instance, our RPA would break 100 feet from where those wetlands connected to the intermittent stream. So again, it is basically the same as this example.

Mr. Evans asked how Chesterfield County staff makes the determination that the overall impact on water quality is going to be equivalent to or better than the impact using the Board’s Guidance.

Mr. Pritchard stated that the acreage of RPA achieved they feel will be larger by the County’s policy method than by continuing upstream over narrow wetlands. He said what you want to see is RPA to be maxed out by adding that 100 feet to your widest wetland; that way you get the most RPA.

Mr. Evans commented that as shown in the upper part of the picture there now none of the other part would be protected so you are going to have degradation to the water quality connected to the wetlands.

Mr. Pritchard commented except as whereas there would be if they could get permits they could actually impact these wetlands. He stated that County policy says you don't have the 100 foot but you cannot impact these wetlands, they are protected.

Ms. Harper asked if when Mr. Pritchard says "can't impact" does this mean you cannot build in them but you can build right up next to them.

Mr. Pritchard said, that is correct. There would be a 25 foot buffer setback.

Ms. Harper asked who determines the edge of the wetlands.

Mr. Pritchard says the Corps of Engineers confirmed wetlands that are survey located.

Mr. Davis asked if the 25 foot buffer is a part of the County's regulations currently.

Mr. Pritchard stated that it is in the subdivision ordinance.

Ms. Salvati commented that it is a setback, it is not a buffer.

Mr. Zuegner stated that it does not necessarily provide any water quality benefits; it is just a setback.

Mr. Pritchard said that was right. It ensures that you have enough room between where you are developing and the wetlands so there is no collateral damage to your wetlands. And the County also has a 25 foot setback from the RPA because in the early days people were building right up to the RPA and you had the collateral impacts of the RPA just by the realities of the building. So by giving that 25 foot setback from any protected areas, in addition we have optic-orange safety fence that goes around the RPAs ahead of the construction so that there are no mistakes made on the part of the contractor.

Mr. Marten asked if that upper section is currently unprotected within that 25 foot setback, do they require erosion control?

Mr. Pritchard answered yes.

Mr. Maroon asked what can occur in that 25 foot setback.

Mr. Pritchard answered that the setback could be a lawn; the setback can be anything that traditionally goes in a backyard.

Ms. Harper recognized Bill Hopkins from the Town of Smithfield.

Mr. Hopkins asked if that included accessory structures, or if nothing can be built in that 25 foot setback.



Mr. Pritchard stated that applies to the principal building but can apply to accessory structures. If you want to use the 25 foot to build a deck, then you can build a deck.

Ms. Harper asked so if they are actually protected under the Board's Regs and they couldn't do that but being that they weren't, then they can actually fill it in.

Mr. Maroon asked staff to outline what our RPA requirements would have been on this spot relative to the area that is in bold brown that they have already identified. In other words, what is the extent of difference between what we would do and what they would do?

Mr. Hughes referenced the slide with Figure 2 from the Chesterfield County policy and stated that, from here (the line parallel to the perennial stream) down the DCR Guidance is identical to the County's policy. The difference is that after the 500 feet shown on Figure 2, the DCR policy continues to include all wetlands up the drainage.

Mr. Maroon says that's what he thought so the width of the RPA is not different to the point where Chesterfield stops. Correct?

Mr. Hughes said they are still going 100 feet laterally off the sides of the perennial stream and part of the wetlands contiguous to the intermittent stream, but they are cutting off the RPA at 500 feet. Where RPA is shown, they still have their 100 foot buffer on both sides.

Mr. Maroon asked Mr. Pritchard how, in this particular case is the County's approach more protective than that which would be required under the Regulations?

Mr. Pritchard said you wouldn't consider case by case, it would be on an aggregate basis that in terms of the impact of the policy on a whole in Chesterfield, the policy is going to render a higher acreage of RPA than would be by DCR guidance.

Ms. Harper asked if that has been determined or if that is an assumption.

Mr. Pritchard stated, that's an assumption.

Mr. Evans commented that this goes back to his science question in terms of the value of the acreage of losing buffer protections in one area, but gaining them further down. He asked in terms of science, how Chesterfield has determined that extended buffer areas increase the water quality protection to the degree, or to the equivalent to, or in excess of, what they are giving up by not protecting beyond 500 feet

Mr. Pritchard answered, "We feel that it does. Do we have a scientific case study? No, but we feel it does".

Ms. Harper stated the Review Committee is makes a recommendation to the full Board, and the issue is not whether or not Chesterfield thinks or assumes that they are providing equal water quality protection, but instead, the recommendation to the Board is solely

based on whether the County's program meets the regulations or not. She added that even if the Committee thinks that the added lands is great, the recommendation to the full Board should not be whether the same water quality is met, but whether or not the County's program meets the requirements of the regulations.

Mr. Pritchard stated "the reason they are so passionate about it is that they know that if the Board tells us that they have to extend these things on indefinitely, we are not going to be able to hold onto this level of protection that we've got. That's going to have to be conceded."

Mr. McElfish clarified that Mr. Pritchard was talking about the upland levees, the policy for which they have been doing since 1991. He added that they received all kinds of argument from the private sector. It had nothing to do with upland levees, but where there were wetlands adjacent, inside most of them it turned out to be adjacent so that you would protect the whole thing. .

Mr. Pritchard said these little nuisances as far as what happens adjacent to the stream are just such "minutiae" that nobody is looking that. He added "We do not have reliable information whereas they've got a wetland boundary. We have a reliable resource to work from to know that we have a reliable RPA. We are not at all comfortable, but we are not comfortable with it but we would be obligated to go with it. If someone comes in and says I've got an upward levy adjacent to the stream we've got no way of disputing that."

Mr. Hughes stated that is the Corps' responsibility. If it's an actual upland levy, then it should not be confirmed as a wetland; therefore, that burden goes to the consultant and ultimately the developer to prove that to the Corps.

Mr. Pritchard says that we have been finding that the Corps is stepping back further and further and doing less and less and he doesn't think they are going to be able to get the Corps to put that much of a microscope on the inner side of the wetlands when what they are mainly interested in is making sure that the extent away from the creek has been accurately delineated.

Mr. Zuegner asked how long a stream would have to be dry in order for it to be determined intermittent, if it is just a week.

Mr. Pritchard stated "that's the science, I'm the policy."

Mr. Davis commented that the subject of perennality had already been addressed by the Board which has issued guidance on that issue.

Mr. Pritchard says the perennality aspects of the County's program have been found to be consistent.

Ms. Kotula stated that is correct.

Ms. Harper asked if there is anyone else with questions.

Mr. Zuegner clarified that his question was aimed at these non-tidal wetlands that are further up these intermittent tributaries. He commented that they may be dry for a short period of time, but the rest of the time, they have the water quality benefit and all that gets written off by this particular policy.

Mr. Davis said he thinks this is one of the things that was discussed at great length by the Ad Hoc Committee that dealt with guidance itself, and that it took about 18 months to develop that guidance. This type of location for the RPA was discussed at great length, including where you stopped and started with these connected wetlands, what was contiguous, what was adjacent, where the point of perenniality was. This is a new concept for us, but also, the focus is very clearly what the law says, and the big effort by the Ad Hoc Committee was to make sure the guidance is in conformance with the law. Now if we want to change the law, that's another matter, but we have got to deal with that more than be inconsistent with the guidance itself.

Ms. Parker from the Falls of the James Sierra Club commented that whereas Mr. Pritchard has indicated extraordinary protection that Chesterfield is giving to the upper Swift Creek Reservoir in that area, there are other streams in other areas of Chesterfield County which she felt are not being protected that do not have the extraordinary plans and guidance in place and she believed the policy would be a part of the balancing act that they would be doing with the developers to provide more benefit at that end, in the Northwest part of the County and they will not see that in the Southeast part of the County.

Ms. Harper thanked Ms. Parker for her comments.

Mr. Maroon asks if the policy applied County-wide.

Mr. Pritchard answered that this policy applies County-wide.

Ms. Harper clarified that her comment was that other parts of the watershed were being protected the same. That it might grant some more protection than others.

Mr. Maroon clarified that no matter where you were in the county, this is the approach that would exist.

Mr. Pritchard said that was correct, county-wide.

Mr. Davis asked if all of their watersheds flow to the Chesapeake Bay.

Mr. Pritchard said that was correct.

Mr. Davis commented that this has been great information they had seen today.

Ms. Harper agreed.

Mr. Davis said that he would suggest that there be substantial discussion about this, first of all, the policy committee needs to take a look at this now that they have seen the information and thoroughly discuss it. He added the Board has some latitude when localities come in front of them to plead their case, but he believed that they are a ways yet from making a decision, at least in his opinion.

Ms. Harper asked if SARC actually had the latitude to turn it over to the policy committee rather than the Board.

Mr. Davis commented that he was suggesting that the SARC make a recommendation to forward this to the Policy Committee. He did not think, in his opinion, the SARC should be making a vote yes or no today.

Ms. Harper stated that she heard two things there: You would recommend that we send it to the Policy Committee and not make a recommendation to the Board.

Mr. Davis went on to explain that he believed the Policy Committee needs to convene prior to the Board meeting with a recommendation from SARC.

Ms. Salvati clarified that it would be with a recommendation as to whether or not this condition has been met from SARC.

Mr. Davis said yes.

Ms. Harper asked if there were comments from Policy Committee members.

Mr. Duncanson suggested that the Policy Committee meet prior to the full Board meeting on December 15<sup>th</sup> and wondered if that would give them ample time to discuss this issue. Mr. Maroon stated that they have done that in the past, met in the morning and then have the full Board meeting start in the afternoon.

Mr. Davis asked if that would give ample time for staff to prepare a statement, since we have now heard Mr. Pritchard's comments and what Chesterfield County is doing, for staff to be able to look at that information and provide background information and possibly a recommendation to the full Board.

Ms. Salvati said she actually believed that when the staff report was developed, staff were very well aware of this Policy and actually looked at 18 plans and went out on 6 different sites, so for our purposes, we understand the issue and we have already had very good productive conversations with Chesterfield County staff, and honestly, there is nothing in the information they have provided to us that shows, with all due respect to Chesterfield County, that this 500 foot cutoff is consistent with the regulations. So, the County understands our position, and we have to make the recommendation that this policy is not

consistent with the regulation simply because there are no words in the regulations that allow for this cutoff of 500 feet from the perennial flow. She said she didn't know what else staff would be able to provide. The December 15<sup>th</sup> meeting might afford the Policy Committee members the opportunity to see if there can't be a change to the guidance to reflect the natural levy issue, but didn't know what else the staff could provide on this.

Mr. Davis asked if staff has decided that this does not fit within the guidance that has been approved and also does not fit the intent of the regulations itself.

Ms. Salvati stated that the staff report to SARC lays out very clearly that it is not consistent with the Regulations and that staff is not in a position to recommend to SARC that Condition 1 has been met by that policy.

Mr. Davis stated that part of that is something he had not heard before. He thinks that it is important to understand that staff has been fully aware of the Chesterfield County policy.

Mr. Evans asked if, under the question of consistency, was the question of equivalency something that they wanted to consider at the Policy Committee? He wanted to clarify what the charge of the Policy Committee would be.

Mr. Davis added that he thinks SARC needs to decide today what they are going to do. If they are going to agree with the staff report and approve the draft resolution, disagree with it, make changes, or take no action on it and maybe forward it on to the Policy Committee. He thinks there are a number of options that SARC has today and none are binding at this point.

Ms. Harper said the recommendation can be made and still go forth to the Policy Committee, however, she feels like the Policy Committee, at a minimum, needs to review the levee issue.

Mr. Maroon stated that he still had the question of whether SARC believed that scientific information was being provided to them through this approach. He has heard that in large measure what they are doing is commendable but what is problematic is that the science showing why you stop at the 500 foot point in the wetlands is not forthcoming. It sounded like it was a policy decision and not a science decision. So the question comes back to us as to what additional information the Policy Committee could receive and perhaps, if we are not certain today, if the Policy Committee wants to review this issue. He suggested we not wait until the day of the Board meeting because we may want to think this through to see if there is any additional information you want to have brought forward that may take some time for staff to gather.

Ms. Salvati said that when this first came in, staff took it very seriously. Staff gave a lot of credit to Chesterfield staff for taking the position they took on the natural levee issue, and worked to understand how Chesterfield was applying this by going in the field and compared their policy versus our guidance and looked at plans. If we were to have a Policy Committee meeting, we do not know that we would be able to come up with a

statistically valid sampling of how their policy versus our guidance would apply County-wide so that we could demonstrate whether or not what they are doing here does provide an equivalent level of water quality protection. Her second comment was that she does not believe that the Board has the authority to allow equivalent measures. She believes that they way the regulations read, it says “those nontidal wetlands that are connected by surface flow and contiguous” so from her perspective, it is straightforward.

Mr. Davis agreed and said it must meet the requirements of the law. He saw another locality, prior to the guidance, have an example almost completely like this that used 100 feet, and it was based on no scientific data. He is not convinced that scientific data would change his mind. The focus that they have is to look at the law. If it meets the requirements of the law, based on staff recommendations, he thinks they need to review them both, but he also thinks they need to give Chesterfield County the opportunity to present their case, but then make a decision based on the regulations themselves.

Mr. Maroon stated that perhaps that would be better to do at the full Board meeting rather than the Policy Committee, if there is not additional information.

Mr. Davis stated that he didn't think it made a difference. He just thought it would be a good place at the Policy Committee to discuss some of the issues and go through some of the process that was used to develop the guidance by the Ad Hoc Committee.

Mr. Maroon asked for a recommendation from Elizabeth Andrews from the Attorney General's office.

She stated that Tidewater localities are required to comply with the Regulations. She stated that the regulations state that the Resource Protection Area shall be comprised of tidal wetlands, nontidal wetlands connected by surface flow and contiguous to tidal wetlands and water bodies with perennial flow, etc. She stated that there is not a provision in there that allows a locality may choose not to comply subject to local conditions. She stated that it might help to think about it in terms of whether Chesterfield County's policy complies with the regulations. She also stated that the upland levee piece is a separate issue. She stated that the issue before the Board today was whether the policy complies with the Act and the Regulations.

Ms. Salvati stated that the particular aspect of the policy that was not consistent was this 500 foot piece. This was the scenario at issue and there has not been anything demonstrated to us that that treatment of nontidal wetlands was consistent with the regulations.

Mr. Davis stated that he agreed with Ms. Salvati, but he thinks they owe it to Chesterfield to take a look at what they have developed and have a response back, but he also believes that it needs to be in strict accordance with the regulations. If Chesterfield, or the City of Norfolk, or some other jurisdiction wants the regulations changed, that is another matter, and they can be changed, there is a process for that. We have to be careful that we do not exceed our authority in compliance with the regulations.

Mr. Maroon followed up on Mr. Davis' and Ms. Andrews' comments by saying that even if the County would come in at the next meeting with an analysis that shows equivalency, that the equivalency is not really the issue at hand. What is the issue is that those features that are outlined in the regulations are protected.

Ms. Andrews added in this case, the regulations spell out pretty clearly what needs to be in the RPA. She also wanted to clarify the difference between guidance and the regulations. She stated in this case, staff is making a recommendation based on whether the Chesterfield policy complies with the regulations. In this case, the section of the regulations that defines the RPA does not allow a locality to come up with its own alternative.

Mr. Davis commented that the Regulations specifically say you cannot use buffer equivalencies to change the buffer or mitigate for it. He said it was very clear in the 2001 regulations.

Mr. Evans asked to go to the first slide where the yellow line is shown. He said he would be interested in the Policy Committee talking about how they need to protect water quality and how they may be straight-jacketing localities that want to do something more. He understood they were not trying to do that, but he heard Chesterfield County say they will not be able to hold to this upland levee scenario due to the guidance and he doesn't know how many times this scenario is going to play out in other localities. He is interested in that and he doesn't know the value or impact on water quality. It comes dangerously close to an equivalency thing, that we can't get into and as you have heard here, our job here is to determine whether this policy adheres to the law. But from the subjective side of it, we are all here to protect water quality. He as a Board member would like to understand how the guidance may impact that. Are we in the end improving water quality or not?

Ms. Salvati said one of the things that could be addressed at the Policy Committee meeting is that there is quite a bit of discussion regarding the natural levee issue and we can talk about the input that we've received on that issue.

Mr. Evans said he would appreciate it if that would make it into the discussion.

Mr. Duncanson said that some of Nate's comments addressed that because there are times when there are wetlands landward of that natural levee that are not exempt from the RPA. He stated that it is a leap to decide whether those are always exempt or not.

Mr. Maroon commented that he agreed with Mr. Evans that it is worthwhile to have this discussion, but his understanding is that there is a difference between having a restriction on localities and the reality within a locality. We do not restrict them and in fact they have the ability to include any additional land they want.

Mr. Evans commented that he was “looking for the answer to how, at the end of the day, do we achieve better water quality? Is it by picking where we are, or do we allow some kind of break-ability if they think they can do more in a trade-off? I don’t know the answer to that – maybe it is something too complex.”

Mr. Davis commented that the discussion is good, but there are two issues. First of all, does what Chesterfield County presented meet the requirements of the regulations, and secondly, if it is decided that there is a better way to have better water quality, there is a process to go through when something needs to be done to change the regulation but we are not there today. That is a totally different issue.

Ms. Harper asked if there were any questions or comments and if not, she commented that she would be happy to entertain a motion as they see fit.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of Chesterfield County’s Phase I program noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and that in order to correct this deficiency, the County be directed to undertake and address the one recommended condition contained in the staff report no later than February 13, 2009. Further, that the SARC ask the Policy Committee to review the Chesterfield County proposal with regard to the issue of wetlands separated by a natural levee.

**SECOND:** Mr. Whitehurst.

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

### *Isle of Wight County*

Mr. Sacks gave the staff report for Isle of Wight County on behalf of Ms. Smith. He recognized Kim Hummel from the County.

On September 17, 2007, the Board found that certain aspects of the County’s implementation of its Phase I program did not fully comply, and that the County should address 3 conditions for compliance. The deadline was set as September 30, 2008. The conditions related to developing and implementing a septic pump-out program; developing a BMP inspection and maintenance program; and, reviewing onsite site-specific RPA delineations.

To address condition #1, on May 15, 2008, the County Board of Supervisors adopted a septic pump-out ordinance and the County has developed a pump-out program based on



the ordinance. The County has mailed pump-out notices to the first of five Board of Supervisor districts. The Smithfield district was selected first to coordinate the program implementation with the Town of Smithfield, also on the agenda for today's meeting. The County has a program that includes enforcement and penalty provisions as well as a schedule for notifying the remaining 4 districts.

For condition #2, the County adopted a Stormwater Management Ordinance on December 17, 2007 which includes a section that requires all SW facilities to be inspected on an annual basis. The County's Engineering Division also performs periodic inspections and requires monitoring reports.

To address condition #3, the County routinely conducts site visits for all development projects on sites that contain or are likely to contain RPAs; staff uses a variety of resources to check RPA delineations, including requesting assistance from Division staff to ensure that onsite RPA delineations are correct. County staff began to take a more aggressive approach to ensuring onsite RPAs were correct during the compliance evaluation.

Mr. Sacks said it was staff's opinion that the conditions had been addressed.

Ms. Hummel thanked staff for working with the County and noted that the septic pump out program had been put into effect.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of Isle of Wight County's Phase I program complies with §§ 10.1-2109 and 21112 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

**SECOND:** Mr. Marten

**DISCUSSION:** None

**VOTE:** Motion carried unanimously

### *Town of Smithfield*

Mr. Sacks gave the report for the Town of Smithfield. He recognized Bill Hopkins, Planning Director for the Town.

On December 10, 2007, the Board found that certain aspects of the Town's implementation of its Phase I program did not fully comply, and that the Town should address 3 conditions for compliance. The deadline was set as December 31, 2008 and we are pleased to note that the Town has addressed their conditions early. The conditions related to developing and implementing a septic pump-out program; requiring BMP

maintenance agreements and developing a BMP inspection and maintenance program for all water quality BMPs; and, ensuring that they consider any request for encroachment into the RPA on a case-by-case basis.

To address condition #1, the Town Council adopted a septic pump-out program closely modeled after Isle of Wight County. On September 23, 2008, the town mailed program registration packets to homeowners in order to develop a database of all septic tanks and provide information for follow-up notices to non-complaint properties.

For condition #2, the Town developed a BMP maintenance program which included mailings to all current public and private BMP owners to ensure that all BMPs have maintenance agreements. The Town has created a database to assist in the tracking of BMP maintenance.

To address condition #3, the Town has considered requests to encroach into the RPA buffer individually regardless of the recordation date of a given plat. Since the compliance evaluation, there have been only 2 such requests, and in each case, the applicant has not pursued the encroachment after meeting with town staff to review the proposed encroachment.

Mr. Sacks said that staff opinion was that the conditions had been adequately addressed.

Mr. Hopkins said that it had been a pleasure to work with staff. He said the Town had sent out over 200 letters and received about a 50% response. A follow up letter will be sent out. He said that letters regarding the BMPs have been sent to the property owners. He noted that these range from 10-20 years old.

The Town has had discussions with some property owners and expects to get a good response. He noted that since the program had been adopted property owners will need to have an agreement or they will not be able to obtain a land disturbing permit.

MOTION: Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find the implementation of the Town of Smithfield's Phase I program complies with §§ 10.1-2109 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Marten

DISCUSSION: None

VOTE: Motion carried unanimously

*Prince George County*

Ms. Doss gave the report for Prince George County. She recognized Diane Cook, Erosion and Sediment Control Administrator for the County.

Located 25 miles southeast of Richmond, Prince George County's estimated population is 35,886. The County's land area includes 266 square miles, approximately half of which is located in the Chesapeake Bay drainage area.

The Compliance Evaluation was conducted throughout the second half of 2008 and the process revealed six program elements that were not fully compliant with the Act and the Regulations. Since the issuance of the staff report, some of these elements have begun to be addressed. The County's Erosion and Sediment Control Specialist, Diane Cook, is here today and can help to clarify some of these issues.

The first condition is that the County must revise its current Resource Protection Area and Resource Management Areas Map so that it accurately depicts all RMA features as described in the County's Chesapeake Bay Preservation Area Overlay District ordinance. The County's ordinance requires a 150' RMA and whole lot provision; however the current map scaling is incorrect, only showing a 100' RMA, nor does the map include all of the required RPA and RMA features when compared with VIRGIS maps. The County understands this major discrepancy in their map and has met with their GIS specialist to determine the best possible solution to correct the map before the deadline.

In December 2007, the County Board of Supervisors approved a revised ordinance which redefined the RMA, without CBLAB approval. The second condition requires that the County present the Phase I modifications to the Chesapeake Bay Local Assistance Board for review at the March 2009 meeting. The County has informed staff that the latest version of the ordinance will be repealed at the November 20<sup>th</sup> Board of Supervisors meeting, and prior to adoption of any ordinance modifications in the future, the County will take them to CBLAB for approval. Ms. Doss said that if this occurs, staff would reassess the situation and possibly remove or alter the condition prior to the CBLAB meeting on December 15<sup>th</sup>.

The third condition requires the County to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. Two of the files reviewed by staff did not have a WQIA in the file, when they clearly should have been required due to disturbance being proposed in the RPA. The County appears receptive to this condition and has templates given to them by staff ready to use. The County will be monitored over the next year to ensure compliance.

The fourth condition relates to BMP installation, inspection, tracking, and maintenance. During staff's review of the program, it was discovered that the County engineer does not accept BMP maintenance agreements. Furthermore, the County did not have a tracking database and inspection schedule. After discussion with the County, staff supplied the County with templates and guidance on how to implement the program. The County has agreed to require maintenance agreements and begin to track new BMPs, and will make

an effort to obtain agreements on existing BMPs when discovered. The County will be monitored over the next year to ensure compliance.

The fifth condition has to do with properly showing the CBPAs on the plans submitted to the County. Plan reviews revealed that the labeling of CBPAs on plans was not being consistently required. The County acknowledges this issue and will be updating their mapping data and therefore be better equipped to require labeling for CBPAs on site plans. The County will be monitored over the next year to ensure compliance.

Condition number six requires the County to administer exceptions consistent with County code requirements. During staff's field investigation, it was determined two of the sites should have required an exception and did not. The County will be monitored over the next year to ensure compliance.

Ms. Doss said that given this information, staff recommended that Prince George County be found to not fully comply with the Act and Regulations and be given until December 31, 2009 to address five of the six conditions discussed, and submit the revised ordinance described in condition number two for March 2009 Board Review.

Ms. Cook gave the following prepared remarks:

My name is Diane Cook. I was hired 13 months ago as the erosion and sediment control inspector and am now the E&S Program Administrator for Prince George County. Staff changes in a few key positions have apparently resulted in the institutional loss of portions of the Chesapeake Bay program.

Speaking for the county, it is our desire to bring Prince George County's Phase I program into full compliance with the Act and Regulations in a timely manner.

I wish to thank your current and former staff (Amy Doss, Adrienne Kotula, V'lent Lassiter, Daniel Moore, Nate Hughes and Rob Suydam) as they remained accessible and have been a tremendous resource to me as I work to develop our program.

The six recommended conditions contained in the draft resolution are an accurate assessment of our program deficiencies. As with all levels of government these days, funding of any program is a challenge, and the Chesapeake Bay program is no exception.

Regarding Condition 1, I met with our county GIS coordinator to plan his revision of the RPA and RMA map. He has committed to evaluate the scope of the work, estimate the time needed to do the work, and to present a request to county administration for the additional resources needed to complete this project.

Regarding Condition 2, the revised Ordinance was prepared by Marsh Witt and Associates who have extensive experience in this type of work. I do not know if

the modification of a number was a typographical error or an editorial change. Regardless, the ordinance will be revoked by the county Board of Supervisors. We appreciate the offer by your staff to assist us as we make needed revisions to the ordinance.

Condition 3 requires that the county document submission of a Water Quality Impact Assessment for any land disturbance within an RPA. At the direction of the Deputy County Administrator, I have prepared a 3-ring binder of the Phase I audit as a staff guidance manual. This will be a valuable resource as I develop the program and it will also be a training tool for future staff so that the program will not suffer during periods of staff changes.

Condition 4 requires the county to obtain signed Maintenance Agreements for all BMPS, and to track BMP installation, inspection, and maintenance. We have over a thousand homes subject to the Chesapeake Bay program, but no record of BMPs installed or proof of maintenance. We are awaiting delivery of a new field and desktop software program that will be used for inspections and to track correspondence and enforcement actions in support of the Chesapeake Bay program.

Condition 5 requires the correct depiction of all Chesapeake Bay Preservation Areas on all development plans. This is required by several of our ordinances; our new Planning Director is committed to requiring this on all future site plan and subdivision documents signed by the Planning Department.

Finally, Condition 6 requires the county properly administer exceptions to the ordinance. The guidance manual will be a useful tool to accomplish this task.

Thank you for this opportunity to speak with you.

Ms. Harper commended staff for their work with Prince George County.

Mr. Marten thanked Ms. Cook for her cooperation.

**MOTION:** Mr. Zeugner moved that the Southern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Prince George County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Prince George County to undertake and complete five of the six Recommended Conditions in the staff report no later than December 31, 2009 and submit the revised ordinance described in condition number two for March 2009 Board Review.

SECOND: Mr. Marten  
DISCUSSION: None  
VOTE: Motion carried unanimously

**Other Business**

There was no additional business.

**Public Comment**

Ms. Parker of the Falls of the James River Sierra Club passed out a graphic of the Virginia Natural Landscape Assessment provided to her by the Green Infrastructure Center.

Ms. Parker commended the Board for their work in protecting the Bay.

Ms. Salvati noted that the DCR Division of Natural Heritage works with this program and with Coastal Zone Liaisons to train localities and Planning District Commissions on use of the Virginia Conservation Land Needs Assessment.

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Beverly D. Harper  
Chair

Joseph H. Maroon  
Director