



February 12, 2003

CHESAPEAKE BAY DEADLINE EXTENDED

The March 1, 2003 deadline for Chesapeake Bay Preservation Ordinance Revisions imposed by the Chesapeake Bay Local Assistance Board (CBLAB) will be deferred to December 31, 2003 to allow for an orderly compliance transition, alleviating the mad scramble by localities to enact ordinances. On February 11, 2003, in a letter to all localities covered by the Chesapeake Bay Preservation Act, the Secretary of Natural Resources, W. Tayloe Murphy, Jr., withdrew draft guidance concerning Resource Protection Area delineations and directed the formation of an ad hoc stakeholders' advisory group to work with the Chesapeake Bay Local Assistance Department (CBLAD) staff to recommend appropriate guidance and identify additional steps that may be needed to address this and other issues. The intent of the withdrawal is to allow time to address significant concerns that have made implementation of the revised state regulations difficult for many localities and regulated parties.

The ad hoc committee will look at the following issues:

- (1) guidance on how to delineate RPAs;
- (2) the absence of a definition of a "perennial stream" or a "water body with perennial flow";
- (3) the lack of a protocol for site specific determinations of whether the stream in question is perennial;
- (4) the definition of "contiguous" or "adjacent" as those terms apply to nontidal wetlands when determining the geographical extent of Resource Protection Areas (RPAs); and
- (5) the need to revise local Chesapeake Bay Preservation Area maps to reflect changes in RPA designations."

These issues, partly at WSSI's behest, were brought to the attention of the highest levels of the state government who realized their legitimacy and the critical importance for prompt action.

Property owners should stay informed of the evolving local ordinances, how they affect their property, and participate in workshops and hearings to ensure that fair, equitable and practicable ordinances are created during the remainder of 2003.

Other Local Chesapeake Bay Ordinance Updates

Fairfax City

On February 10, 2003, the Planning Commission voted to defer its decision until March 24, 2003 at 7:30 p.m. in order to allow time to further evaluate RPA delineation options and develop better mapping information to describe these options.

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Fairfax County

The next workshop is scheduled for February 19, 2003 at 7:00 p.m. in the Board Conference Room (behind the main Board of Supervisors' hearing room).

Arlington County

Arlington County's Board of Supervisors adopted its revised Chesapeake Bay Ordinance on Saturday, February 8, 2003. Two minor changes to the text of the previous Draft Ordinance were made, with more substantive changes made to the RPA map. The map revisions were made to remove approximately 85 properties that were determined to be located adjacent to storm water pipes, not open ditches, as previously identified. The new map will be posted on the Arlington website within a few days. One caveat to the Arlington County Chesapeake Bay Ordinance that should be noted: **the Board retained the right to include "other lands" into the RPA anytime in the future.** This provision needs to be kept in mind when considering development projects within Arlington County.

Note: For the latest local Chesapeake Bay Preservation Ordinance schedule information (and on-line draft ordinance links, when available), please visit WSSI's website at: www.wetlandstudies.com.

For Further Information

Call or Email Wetland Studies and Solutions, Inc. at:

Mike Rolband at mrolband@wetlandstudies.com /703-631-5800, Ext. 103, or
Mark Headly at mheadly@wetlandstudies.com /703-631-5800, Ext. 115.

Or call your WSSI Project Engineer, Scientist or GIS Specialist.

About WSSI:

WSSI has provided wetlands consulting on 70,000+ acres comprising over 1,200 sites in Northern Virginia, D.C. and Maryland and has restored over 800 acres of wetlands and 22,000 linear feet of streams in three wetlands banks and 85 stream and wetlands mitigation projects in this area since its inception in 1991. WSSI's team of 39 engineers, scientists, technicians, GIS/survey specialists and administrative staff takes a holistic approach to environmental issues associated with real estate development and public works projects, integrating the practical constraints of economics and land plan requirements with the need to satisfy local, state, and federal regulatory requirements. For more information about WSSI, visit our web site at <http://www.wetlandstudies.com>.

Attachment



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"SAMPLE LETTER"

February 11, 2003

Mr. R. Gary Allen
County Administrator
Essex County
205 Cross Street
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Tappahannock, VA 22560

Dear Mr. Allen:

It has been brought to my attention that a number of Tidewater localities may be attempting to comply with a resolution adopted by the Chesapeake Bay Local Assistance Board ("the Board") establishing March 1, 2003, as the deadline for adopting amendments to your Chesapeake Bay Preservation Act ordinances to comply with revisions of the state regulations adopted last year.

Several localities have questioned whether these amendments should be made in accordance with the draft guidance document entitled "Resource Protection Areas: Nontidal Wetland Delineation" proposed for comment by the Chesapeake Bay Local Assistance Department ("CBLAD") and displayed on its web site. On December 23, 2002, CBLAD's Acting Executive Director, Scott Crafton, sent a letter to all Tidewater Virginia local governments stating that the guidance document was not complete and had not been approved by the Board. Local governments were advised that they should not incorporate the guidance document language into local ordinance amendments or implement policies thereunder until the Board approval process was complete.

In December, Mr. Crafton withdrew the original draft of the guidance document so that his staff could revise it to reflect the public comments that had been received. The revised draft guidance document was posted again for further comment, and CBLAD has received comments stating additional concerns of a significant nature. Accordingly, the revised draft guidance document has also been withdrawn and removed from CBLAD's web site in order to provide an opportunity for further consideration of the issues that have been raised.

The additional concerns that have been identified relate to (1) the absence of a definition of a "perennial stream" or a "water body with perennial flow", (2) the lack of a protocol for site specific determinations of whether the stream in question is perennial, (3) the definition of "contiguous" or "adjacent" as those terms apply to nontidal wetlands when determining the geographical extent of Resource Protection Areas (RPAs), and (4) the need to revise local Chesapeake Bay Preservation Area maps to reflect changes in RPA designations.

In order to address these concerns, I have directed the formation of an ad hoc stakeholders' advisory group to work with the CBLAD staff to recommend appropriate guidance and additional

Mr. R. Gary Allen
February 11, 2003
Page 2

steps that may be needed to address the issues that have been identified as previously set forth in this letter. This advisory group will be facilitated by Russell Baxter, Assistant Secretary for Chesapeake Bay Program Coordination. I will request that this group complete its work by July 1, 2003.

In a contemporaneous letter to the Chairman and the members of the Board, I am requesting that the Board convene a special meeting to amend its resolution of December 10, 2001, to extend the deadline for adopting local ordinance amendments to comply with revised state regulations from March 1, 2003, to December 31, 2003. This extension, if granted by the Board, is not intended to prevent any locality from proceeding to adopt its local amendments sooner than December 31, 2003, should it choose to do so. It would simply extend the deadline for those localities that choose to wait for the resolution of the issues noted above. In advance of my request, the Acting Executive Director of CBLAD has called for a special meeting of the Board for 2:00 p.m. on Tuesday, February 18, 2003, in Conference Room B of the James Monroe Building, 101 North 14th Street, Richmond, Virginia.

I believe that the extension of the deadline for local ordinance amendments and the establishment of the advisory group will result in clearer program requirements and policy guidance. I hope that it will also foster better cooperation among affected stakeholders in their pursuit of the goals and objectives of the Chesapeake Bay Preservation Act. If you have any questions about this course of action, please feel free to contact Russ Baxter of my staff (804-786-0044), or Scott Crafton at CBLAD (804-225-3444).

Sincerely,



W. Tayloe Murphy, Jr.

WTMJR/bj

- c: Chairman and Members, the Chesapeake Bay Local Assistance Board
- Local Government Chesapeake Bay Preservation Act Program Coordinators
- PDC Chesapeake Bay Preservation Act Contacts
- Russell Baxter, OSNR
- Scott Crafton, CBLAD
- Roger Chaffe, Office of the Attorney General
- Joseph Maroon, DCR
- Michael Toalson, HBAV
- Philip Abraham, Vectre Corporation
- William Thomas, Reed Smith LLP
- Michael Rolband, Wetland Studies and Solutions, Inc.
- Patrick O'Hare, Reed Smith LLP
- Roy Hoagland, CBF
- Larry Land, VACO
- Denise Thompson, VML